

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

**THE SUPREME COURT
OF THE
UNITED STATES**

CAPTION: WILLIAM FEX, Petitioner
MICHIGAN

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

CASE NO: 91-7873

PLACE: Washington, D.C.

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

2 (11:52 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in number 91-7873, William Fex v. Michigan.

5 Mr. Payne, you may proceed.

6 ORAL ARGUMENT OF JOHN B. PAYNE, JR.

7 ON BEHALF OF THE PETITIONER

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

10 5 years ago today, there was a robbery in
11 Jackson County of a Rax restaurant that gave rise to the
12 -- this case. I'd like to note that my opponent pointed
13 that out to me, but it is an interesting coincidence.

14 On February 29, 1988, a complaint was issued by
15 the Jackson County sheriff's -- or Jackson County
16 prosecutor that showed that the residence of the defendant
17 was the Fort Wayne, Indiana jail, and that's at the joint
18 appendix on page 2.

19 I don't have any specific references in the
20 joint appendix between that date and September 7 of 1988,
21 but on that day, my client, Mr. William Fex, signed a
22 request for disposition under the Interstate Agreement on
23 Detainers.

24 Between that date and September 26, 1988, there
25 is again something of a void, but that is the date on

1 which the prosecutor urges that they actually received the
2 request for distribution -- or request for disposition of
3 the detainer, and that is the date that we will concede
4 that they actually received the request for disposition.

5 The question here is does the signing of the
6 request for disposition on September 7 or does the receipt
7 of the request for disposition trigger the 180-day
8 limitation on prosecution under the Interstate Agreement
9 on Detainers.

10 From the time that my client was sentenced in
11 Indiana until he was transferred to Michigan for
12 prosecution in this present case, he was effectively
13 prevented from participating in any rehabilitation at the
14 prison in Indiana. And that is the problem. That is the
15 injury here.

16 QUESTION: Had he been going through such a
17 program prior to the installation of the request?

18 MR. PAYNE: No, there wasn't any opportunity
19 because at the time that the complaint was issued -- and I
20 cannot believe that the Michigan prosecutor's office
21 didn't have some kind of communication with the Indiana
22 prosecutor's office and the court there. This was before
23 he was sentenced in Indiana. It was before he was
24 convicted, as a matter of fact. From the time that he was
25 convicted, there was at least a hold, if not a technical

1 detainer --

2 QUESTION: So, they were on top of him right
3 away. They were on top of him right away.

4 MR. PAYNE: Yes, Your Honor.

5 And I would like to point out that a complaint
6 is one of the documents that is listed under the
7 Interstate Agreement on Detainers. And so, from the day
8 that he was sentenced, I believe that was in -- on or
9 about April 26, he was under the act, and he should have
10 been notified. But he was not notified until September 7.

11 I would like to make three points here during my
12 argument. The first point is that the injury here is not
13 merely to my client. It is an injury to the society as a
14 whole because it prevents the rehabilitation of the
15 prisoner.

16 I would also like to stress that the prisoner
17 here is not in control. The prosecutor in the receiving
18 State and the jailers are in control. They are in very
19 firm control, and by manipulating the paperwork properly,
20 they can either ensure a prompt disposition or they can
21 delay it.

22 Thirdly, I would like to --

23 QUESTION: That may be a policy argument, but it
24 may be that the language of the statute makes it an
25 argument that ought to be addressed in the Congress. I

1 mean, it does say caused to be delivered, doesn't it?

2 MR. PAYNE: Justice Scalia, I don't think that
3 the language of the statute is sufficiently clear. We
4 have the statute which says that the prosecutor shall have
5 180 days after the prisoner shall have caused to be
6 delivered this request.

7 Now, you have three concepts. One is that the
8 prisoner makes a demand. Two is that the demand is
9 transmitted through his jailers, and three, that there's
10 180 days. And I think that from a grammatical standpoint
11 or from a logical standpoint, the requirement of the 180
12 days will follow the other two requirements. So, the
13 natural way that you would say this is that the prisoner
14 makes a demand. He gives it to the jailer, and then
15 there's 180 days that the prosecutor has to bring the
16 action.

17 QUESTION: I think it's a little different than
18 that, isn't it, Mr. Payne? Supposing in the first of
19 October, after the prosecutor had received the document,
20 someone said to the prisoner on what date did you cause
21 that document to be delivered to the prosecutor, what
22 would your answer be? When did he cause it to be
23 delivered?

24 MR. PAYNE: He would -- if he knew what he was
25 after, he would say it's September 7 when he signed it.

1 QUESTION: Well, just say you're mailing a
2 letter paying a bill, and after the bill has been paid
3 somebody asked when did you cause that letter to be
4 delivered. Would your answer be when it was received or
5 when you mailed it?

6 MR. PAYNE: I would say when it was mailed.

7 QUESTION: Of course.

8 MR. PAYNE: But I think that --

9 QUESTION: What if you knew it never got there
10 and somebody asked you the same question, when did you
11 cause it to be delivered? You would still say on March 7,
12 even though it was never delivered?

13 QUESTION: You'd say it was never delivered.
14 Assume --

15 MR. PAYNE: It's kind of an unusual phraseology.

16 QUESTION: But these have been delivered. These
17 are documents that have been delivered. That's
18 undisputed, isn't it?

19 MR. PAYNE: Yes.

20 QUESTION: And the only question is when did he
21 cause it to be delivered.

22 MR. PAYNE: He caused it on September 7, and --

23 QUESTION: Your argument would be a lot easier
24 if the statute said sent, wouldn't it?

25 MR. PAYNE: Yes, it would be, Justice.

1 QUESTION: Isn't that a distinction we ought to
2 bear in mind?

3 MR. PAYNE: Yes, and it still is not clear,
4 though, because normally you wouldn't ask somebody when
5 did you cause your light bill to be paid. You would say
6 when did you send it or when was it received.

7 QUESTION: But you couldn't say when did you
8 send it here because he doesn't send it, does he? He
9 gives it to someone else to send it.

10 MR. PAYNE: That's correct, and I would like to
11 point out --

12 QUESTION: And the statute doesn't say after it
13 was delivered, does it? It says after he caused it to be
14 delivered.

15 MR. PAYNE: That's correct, and the emphasis
16 should be on he, and it's on what he does.

17 QUESTION: Don't we still have the problem that
18 he didn't cause it to be sent? The statute does not speak
19 of his causing it to be sent. The statute speaks of his
20 causing it to be delivered.

21 MR. PAYNE: That's correct, Your Honor.

22 QUESTION: And that's the distinction that I was
23 trying to suggest.

24 QUESTION: We'll resume there at 1:00, Mr.
25 Payne.

1 MR. PAYNE: Thank you.

2 (Whereupon, at 12:00 noon, oral argument in the
3 above-entitled matter recessed, to be reconvened at 1:00
4 p.m. this same day.)
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1 AFTERNOON SESSION

2 (12:59 p.m.)

3 CHIEF JUSTICE REHNQUIST: Mr. Payne, you may
4 proceed with your argument.

5 MR. PAYNE: Thank you, Mr. Chief Justice.

6 Before the lunch break, we were -- I was asked a
7 question about shall have caused to be delivered, and the
8 only answer I have is that this is ultimately an ambiguous
9 way of phrasing the requirement. When somebody is asking
10 whether or when a phone bill or a light bill was paid, the
11 question is when did you send it, and the answer, of
12 course, is on the day that it was put in the mail.

13 The Senate report to 91-1356 has a somewhat
14 different formulation in explaining the Interstate
15 Agreement on Detainers than the excerpt that -- on which
16 the Solicitor General and the respondent reply. There --

17 QUESTION: When you mail a check, you may think
18 you've paid it, but have you?

19 MR. PAYNE: Well --

20 QUESTION: Probably not.

21 MR. PAYNE: -- we're in somewhat of an --

22 QUESTION: Probably not.

23 MR. PAYNE: -- artificial situation here because
24 we're dealing with the --

25 QUESTION: For example, if you didn't have

1 sufficient funds, do you think you've paid your bill? No.
2 That's all right.

3 MR. PAYNE: Well, Justice, if you are accepting
4 a -- an offer of a contract, the offer of a contract is
5 accepted when it is put in the mail or when you have
6 delivered the offer to the agent of the -- or when you've
7 delivered your acceptance to the agent of the offeror.

8 QUESTION: Or if you want to comply with our
9 time requirements, if you have a little verification that
10 you put it in the mail on time, you are in time.

11 MR. PAYNE: That's correct, but the bottom line
12 here I think is that the prison authority is the agent of
13 the prosecutor.

14 And Mr. Schrotenboer urges that the prison
15 authorities have to have a certain amount of time in order
16 to respond to the request for disposition. I would like
17 to suggest that they really don't. As a matter of act, in
18 this case, the certificate of inmate status was executed
19 on the same day that the inmate executed his request for
20 disposition, and even if they needed a day or two, they
21 could process that paperwork before they gave the request
22 for disposition to the prisoner so that it would be all
23 ready to go when he signed it.

24 Now, the Solicitor General suggests that the
25 prisoner is in control. I handle habeas corpuses --

1 habeas corpus case. I handle section 1983 cases. I
2 handle a lot of criminal appeals, and I visit prisoners on
3 a regular basis. And I submit to the Court that prisoners
4 do not have control over their jailers. They can
5 manipulate the system with petitions and --

6 QUESTION: I'm glad to hear that.

7 MR. PAYNE: -- writs.

8 QUESTION: I'm glad to hear that, Mr. Payne.

9 MR. PAYNE: Yes.

10 QUESTION: We worry about that sometimes.

11 MR. PAYNE: But --

12 QUESTION: It's very comforting.

13 MR. PAYNE: Well, they can manipulate. They can
14 disrupt. They can cause effects outside of the prison,
15 and certainly they can disrupt the internal affairs of the
16 prison, but they don't have control over their jailers to
17 the extent that they would be able to ensure that the
18 prison sends the request for distribution to the
19 prosecutor.

20 And that's the kernel of the Supreme Court of
21 Tennessee's handling of this issue. They said that --

22 QUESTION: Mr. Payne, are you familiar with a
23 case up here not too long ago called Houston against Lack?

24 MR. PAYNE: No, I am not, Your --

25 QUESTION: It's not cited in your brief. I

1 commend it to you for what it's worth.

2 MR. PAYNE: I will -- I thank you for that.

3 QUESTION: It helps you, by the way. It doesn't
4 hurt you.

5 (Laughter.)

6 MR. PAYNE: Okay, thank you.

7 In any case, the prison -- the Moore case, which
8 is probably the primary case on which the respondent
9 relies, from the Supreme Court of Tennessee would hold
10 that, number one, the prisoner is responsible for ensuring
11 that the jailer sends the request for disposition. And if
12 the prison does not do so, then that's chalked up against
13 the prisoner. It is not -- any delay by the prison is not
14 considered against the prosecutor's 180 days.

15 QUESTION: I know, but it isn't like increasing
16 his sentence or anything. It's just a -- it just means
17 that the prosecutor is going to have a few more days extra
18 to try him.

19 MR. PAYNE: Well, in some cases, it's a few more
20 days. In Moore, it was 225 days, but the problem here is
21 that all of the time that the prisoner is under detainer,
22 he's unable to get favorable work assignments. He's
23 unable to get rehabilitative services. He's in general
24 -- in this case, my client was in segregation that period
25 of time. He's unable to be rehabilitated, and that's the

1 -- the intent of the legislature is to address that
2 problem.

3 QUESTION: Mr. -- excuse me.

4 QUESTION: So, you think the prosecutor in the
5 other State should take the risk of delay by the prison
6 authorities and by the mail.

7 MR. PAYNE: Well, Justice White, I don't
8 think --

9 QUESTION: Well, the answer is yes, isn't it?

10 MR. PAYNE: Yes.

11 QUESTION: Okay.

12 MR. PAYNE: I'm sorry.

13 QUESTION: That's all I need to know.

14 MR. PAYNE: Yes, and may I amplify that? When
15 the prosecutor sends the request for -- when the
16 prosecutor sends the detainer to the prison authorities,
17 the prosecutor certainly should know that they have done
18 it. And if they keep any kind of a log and if the
19 paperwork is properly set up so that -- for example, you
20 have a one-write system in accounting or in docket
21 management -- if the prosecutor sets up its paperwork
22 trail and keeps a log, I can't see that the prosecutor
23 would lose any more than possibly a few days when they
24 have to contact the prison to find out whether the
25 prisoner signed it or not.

1 Now, they -- if they keep track of these things,
2 I can't -- I cannot see that the prosecutor could be
3 severely hampered in adhering to the 180-day rule, and if
4 there is a reason for the delay, then they can go to court
5 and ask for a continuance. The statute provides for that.

6 QUESTION: And then what's the consequence of
7 their failure to -- I mean, let's assume they don't do it.
8 What is the consequence?

9 MR. PAYNE: The consequence is that they lose
10 jurisdiction to try the prisoner.

11 QUESTION: He doesn't get punished for that
12 offense at all. Right?

13 And what's the consequence of putting the burden
14 the other way?

15 MR. PAYNE: The consequence of burden --

16 QUESTION: That the prisoner may not be
17 rehabilitated for up to a couple hundred days.

18 MR. PAYNE: Yes, and in many cases --

19 QUESTION: Putting those two risks next to each
20 other, it's clear to me which one is greater.

21 MR. PAYNE: Yes. But, Justice Scalia, you have
22 to consider whether -- who has the control. Who's in
23 charge here? The prosecutor has control over the
24 situation, and the prosecutor can control whether or not
25 the paperwork gets processed, whether the prisoner is

1 writted from the one State to the other and whether the
2 trial takes place within 180 days.

3 QUESTION: You're talking about the Jackson
4 County prosecutor in Michigan now.

5 MR. PAYNE: Yes.

6 QUESTION: How does he have control over what
7 goes on in the Indiana prison?

8 MR. PAYNE: He knows that the detainer has been
9 sent to the Indiana prison, and if he is keeping a log, he
10 knows when to expect the return of the request for
11 disposition.

12 QUESTION: Well, but that depends on the action
13 of the individual inmate, doesn't it?

14 MR. PAYNE: Well, Mr. Chief Justice, I think
15 that if the inmate is going to sign the request for
16 disposition, he probably will do it immediately, and the
17 prosecutor could operate on the assumption that it's going
18 to come back and at least start the initial paperwork.

19 The alternative is that you say to the prison
20 officials, well, if you don't send it back, that's okay
21 because the prosecutor is not prejudiced by your failure
22 to return the request for disposition. There's just no
23 control whatsoever.

24 And in the Moore case, the Supreme Court of
25 Tennessee went so far as to say that if there is an

1 intervening detainer that is processed and if the prisoner
2 goes to another State and then comes back, the original
3 detainer is extinguished. It just goes away.

4 QUESTION: Don't you think a lot of people who
5 are charged with a crime would rather delay the trial? A
6 lot of people would.

7 MR. PAYNE: I think if they're in prison,
8 though, the motivation is all the other way. The
9 motivation --

10 QUESTION: Well, is there a -- is there some
11 experience that you've had or that other people have had
12 that indicate that when a detainer is filed, the prisoner
13 immediately requests for a trial?

14 MR. PAYNE: Well, certainly in this case and in
15 a large majority of the cases that I have read, they
16 indicate that when the detainer is given to the prisoner,
17 he signs it immediately. That appears to be the case.
18 Now, that was not the case in Moore. If I remember
19 correctly, Debbie Moore at first refused extradition and
20 then someone in the prison -- you know, a prison paralegal
21 clued her in and said, you know, you should sign the
22 request for disposition and file it, and so she did.
23 But --

24 QUESTION: Mr. Payne, earlier I think you
25 started to comment on the Government's use of the

1 legislative history in this case where they refer to a
2 comment that the 180 days is -- it's kind of ambiguous,
3 but were you going to -- and you never finished what you
4 were going to say about that.

5 MR. PAYNE: Yes, Justice Stevens. The attorney
6 General, as part of the legislative history in Senate
7 report 91-1356, says article 3 of the agreement provides
8 that the inmate may make a request for the disposition of
9 all pending charges upon which detainers are based by
10 applying to the official in whose custody he is placed,
11 and that application will be forwarded to authorities of
12 the jurisdiction in which the charges are pending. The
13 prisoner must be brought to trial within 180 days
14 thereafter.

15 And the excerpt on which the Solicitor General
16 relies seems to indicate that the 180 days starts after
17 the request for disposition is received by the prosecutor.
18 I believe that a reasonable interpretation of that
19 language would indicate that -- or treats the signing of
20 the request for disposition and the transmittal by the
21 prison authorities as one event which triggers the 180-
22 day time limit so that when you say the charges on which
23 detainers are based -- he may request the disposition by
24 applying to the official in whose custody he is placed. I
25 think there's a slightly different emphasis there than on

1 the excerpt on which the Solicitor General relies.

2 QUESTION: If a State were routinely remiss in
3 processing these requests quickly -- say for budgeting
4 reasons, they say, well, they thought IAD's are taking too
5 many -- too much time -- is there any remedy that the
6 receiving State can institute? Say one State is
7 particularly slow, particularly remiss.

8 MR. PAYNE: Well, Justice Kennedy, in my
9 experience or in -- according to my understanding, there
10 is no penalty on the sending State for not following
11 through. The only real control that we have here is the
12 receiving State's determination to bring the prisoner to
13 trial, and I think that you have to consider that the
14 prison authorities and the prosecuting authorities are
15 going to work very well together, whereas the prisoner --

16 QUESTION: In my hypothetical they didn't. Then
17 there's nothing you can do?

18 MR. PAYNE: As far as I know, there's no remedy
19 for that.

20 QUESTION: Could the prisoner bring an action to
21 compel the prison authorities to forward his request?

22 MR. PAYNE: The statute doesn't -- my answer to
23 that would be no, Justice O'Connor, because it would be
24 more time consuming than would be -- would have any
25 practical effect and also because the statute doesn't

1 provide for it. I can imagine a section 1983 action or a
2 request for writ of habeas corpus, but those things just
3 take too long, and I can't imagine the State just sitting
4 on it for, you know, 9 months to a year.

5 QUESTION: Does the statute provide that the
6 prisoners get any kind of notice as to whether or not it
7 was delivered?

8 MR. PAYNE: The statute does not provide for
9 that.

10 QUESTION: So, how would he know whether he had
11 a suit or not?

12 MR. PAYNE: Well, that's a -- he wouldn't.

13 QUESTION: He just assumes --

14 MR. PAYNE: He wouldn't.

15 QUESTION: -- that they'll carry through, yes.

16 MR. PAYNE: If there are no further questions, I
17 would -- I'll reserve the remainder of my time for
18 rebuttal.

19 QUESTION: Very well, Mr. Payne.

20 Mr. Schrotenboer.

21 MR. PAYNE: Thank you.

22 ORAL ARGUMENT OF JERROLD SCHROTENBOER

23 ON BEHALF OF THE RESPONDENT

24 MR. SCHROTENBOER: Mr. Chief Justice, and may it
25 please the Court:

1 I'm asking that the Court affirm this particular
2 case. Both the Michigan Supreme Court and the vast
3 majority of jurisdictions have correctly ruled that
4 article III, the Interstate Agreement on Detainers' 180-
5 day provision, begins with the actual receipt by the
6 prosecutor, and I'm asking you to rule the same
7 essentially for three reasons.

8 First, the language of the statute itself.
9 After all, this is a statutory interpretation case.
10 Secondly, the congressional history, and third, the actual
11 policy considerations, which actually favor respondent's
12 position, which favor the position of a vast majority of
13 jurisdictions.

14 The first is the statute's language itself.
15 This phrase -- the statute is not ambiguous. The phrase
16 that we're talking about here is shall have caused to be
17 delivered.

18 QUESTION: No. You left out the key word. He
19 shall have caused to be delivered. And who is the he to
20 whom the statute refers?

21 MR. SCHROTENBOER: The inmate, of course. The
22 inmate --

23 QUESTION: So, when the --

24 MR. SCHROTENBOER: -- shall have caused to be
25 delivered.

1 QUESTION: Right, and what is the last time he
2 did anything to cause it to be delivered?

3 MR. SCHROTENBOER: When he handed it to the
4 warden. That is correct.

5 QUESTION: So, isn't that date he shall have
6 caused it to be delivered?

7 MR. SCHROTENBOER: No.

8 QUESTION: Then why doesn't the statute say
9 after delivery if that's what it means?

10 MR. SCHROTENBOER: You can always --

11 QUESTION: See, these words are superfluous
12 under your reading of the statute.

13 MR. SCHROTENBOER: No.

14 QUESTION: You say it doesn't mean after he
15 shall have caused it to be delivered. It says after it
16 was delivered is what you're saying it means.

17 MR. SCHROTENBOER: That's right. It's written
18 up in such a way as not to add in an extra sentence. He
19 shall --

20 QUESTION: But it has unnecessary words that are
21 not needed at all.

22 MR. SCHROTENBOER: No.

23 QUESTION: And don't we generally construe
24 statutes to avoid assuming that certain words are totally
25 unnecessary?

1 MR. SCHROTENBOER: Of course, but I don't quite
2 understand what's unnecessary under this interpretation.
3 Yes.

4 QUESTION: The words, have caused to be.

5 MR. SCHROTENBOER: Yes. Caused to be delivered,
6 and that's the key point here. And that shows that it's
7 180 days from actual receipt.

8 QUESTION: It doesn't say that.

9 MR. SCHROTENBOER: Yes, it does for two reasons,
10 Your Honor. First, it's in the future perfect tense. If
11 it was the time that he actually received it -- I mean,
12 that he handed it to him, it wouldn't be future perfect.
13 Future perfect means complete and in the future, after he
14 shall have caused to be delivered.

15 And the second reason is the use of the word
16 delivery itself. Your Honor yourself used the word
17 delivered that way. Well, when you asked the question
18 this morning is there any doubt that the documents have
19 been delivered.

20 QUESTION: No, no, no. That wasn't the
21 question. The question is after delivery and you ask the
22 person who has mailed the thing to you and you said to him
23 when did you cause it to be delivered. And you're telling
24 me you would answer that by saying, oh, when you got it.

25 MR. SCHROTENBOER: That's right.

1 (Laughter.)

2 QUESTION: And you think that's perfectly plain.

3 MR. SCHROTENBOER: That is sufficiently plain
4 given everything in this particular case.

5 The word delivered -- you know, just yesterday
6 on the television I heard an advertisement for Federal
7 Express. We confirm delivery. That would be totally
8 meaningless if we confirm having sent it on.

9 You know, UPS, the best delivery service in the
10 business, it means -- if they're going to come in and say,
11 well, we sent it on and that's all that we care about, we
12 don't really care that much about actual receipt, they're
13 not going to get too much.

14 The phrase is not that ambiguous. Yes, it was
15 written by a lawyer, and that's sometimes a problem and
16 that's why we're here. But those -- it is sufficiently
17 clear to show that that is what was intended, which is
18 exactly what the vast majority of jurisdictions have
19 ruled.

20 And the second reason, of course, in going --

21 QUESTION: Justice Stevens and say, well, by his
22 calculation, when it isn't delivered, it's the prisoner
23 who has caused it to be nondelivered. He has given it to
24 the prison authorities, and he -- and anticipating it be
25 sent in the mail, and either the prison authorities or the

1 mail failed.

2 MR. SCHROTENBOER: That's correct.

3 QUESTION: And so, he caused it to be
4 nondelivered.

5 MR. SCHROTENBOER: No, no. That's --
6 (Laughter.)

7 MR. SCHROTENBOER: That's not -- no.

8 QUESTION: Nobody caused it to be delivered if
9 it never got there. After it has gotten there --

10 QUESTION: Caused to be nondelivered. He caused
11 it to be nondelivered.

12 (Laughter.)

13 MR. SCHROTENBOER: No. The -- let's not forget
14 the phrase here is shall start -- you know, let's go back
15 a little bit further --

16 QUESTION: I think what you're saying is he
17 can't cause it to be -- he cannot possibly cause it to be
18 delivered until it gets there.

19 MR. SCHROTENBOER: That is true.

20 QUESTION: He cannot possibly cause it to be
21 delivered at a time prior to when you know it has been
22 delivered.

23 QUESTION: That's right.

24 MR. SCHROTENBOER: That is true.

25 QUESTION: Obviously, it has to be delivered

1 before they can be a cause of the delivery, but once it
2 has been delivered, you ask when did he cause it to be
3 delivered. And you say he caused it to be delivered 20
4 days --

5 MR. SCHROTENBOER: When he --

6 QUESTION: -- after he had anything to do with
7 it.

8 MR. SCHROTENBOER: The phrase is he shall be
9 brought to trial within 180 days after he shall have
10 caused to be delivered, and that is the future perfect.
11 The word perfect means complete. And, therefore, it
12 starts with actual receipt.

13 QUESTION: No. It's complete, but the question
14 is always asked at a period after the delivery has been
15 completed. That's the hypothesis in all these cases, and
16 you're just measuring the date at which he caused it to be
17 delivered. It has always been delivered. So, your future
18 -- you always look at it after the transaction has been
19 completed because it wouldn't be a problem otherwise.

20 QUESTION: That is correct. And the way to
21 interpret it, the way to look at it is starts the day that
22 the prosecutor receives, and that's what it says. It
23 doesn't say it in the -- those words, but that is what it
24 says.

25 QUESTION: When the prosecutor gets this

1 material -- let me ask this question -- does -- will he
2 have any way of knowing when it was handed to the warden?

3 MR. SCHROTENBOER: Absolutely not, Your Honor.

4 QUESTION: I mean, I can understand a prosecutor
5 gets it. He says to be put -- you know, his office hits a
6 receipt stamp on it. He knows he has to count 180 days
7 from then. Right? Otherwise, he would have to try to
8 figure out when it was that the inmate gave it to the
9 warden in the other State.

10 MR. SCHROTENBOER: That is absolutely correct,
11 Your Honor. That's the third point in here, the policy
12 consideration.

13 QUESTION: And inmates might be inclined to lie
14 about something like that?

15 MR. SCHROTENBOER: Yes.

16 QUESTION: They've been known to lie.

17 MR. SCHROTENBOER: Yes. Considering Jackson
18 County has the largest walled prison in the world, yes, I
19 can say they've been known to lie.

20 QUESTION: Do they -- have they learned about
21 the invention of the time stamp in Jackson County? So,
22 you couldn't time stamp it in the county where the
23 prisoner gives it to the warden. There's no way of
24 keeping a record of that date?

25 MR. SCHROTENBOER: We have learned the time

1 stamp in Jackson County.

2 QUESTION: But you don't think they know how to
3 do it in Fort Wayne.

4 MR. SCHROTENBOER: But for some strange reason,
5 Mr. Fex did not bother walking over to our office on
6 September 7 to have it time stamped.

7 QUESTION: Well, you're in Michigan, aren't you?
8 And he was in jail in Fort Wayne. So, I imagine he
9 couldn't go into your --

10 (Laughter.)

11 MR. SCHROTENBOER: That's right.

12 QUESTION: But couldn't the Fort --

13 MR. SCHROTENBOER: That's right.

14 QUESTION: But couldn't the Fort Wayne
15 authorities? Wouldn't they as a routine? How do they
16 know that this one was actually on September 7? They rely
17 on his testimony, or do they have some kind of record
18 keeping that enables them to fix that date?

19 MR. SCHROTENBOER: That is probably some type of
20 record keeping in this particular case.

21 But that's the point. The inmate is in a better
22 position to monitor it. Although that does not seem
23 correct on its face, it actually is correct. The
24 prosecutor --

25 QUESTION: Well, at best your prosecution would

1 be subject to the record keeping practices, which may be
2 quite slovenly, of somebody in another State. Correct?

3 MR. SCHROTENBOER: Yes.

4 QUESTION: And that is not what you want to
5 risk.

6 MR. SCHROTENBOER: Yes. Being rather intimately
7 connected with the Michigan Department of Corrections, I'd
8 certainly hate to be subjected to that. They have the
9 Reception and Guidance Center in Jackson too.

10 QUESTION: I suppose 99 percent of your returns
11 from the prison where you -- to which you have sent a
12 detainer, they do have a time stamp on it as to when the
13 prisoner gave the demand to the authorities to deliver.
14 You would have no problem then about when the 180 days
15 starts, would you?

16 MR. SCHROTENBOER: As long as the prison bothers
17 sending that little piece of information on. I haven't
18 always received that thing. I handle the extraditions in
19 Jackson too. It doesn't always happen.

20 QUESTION: Well, it always happens because the
21 mail fails.

22 MR. SCHROTENBOER: It doesn't always happen
23 because the prison officials don't always bother sending
24 that piece of information on.

25 QUESTION: And so that risk should be taken by

1 the prisoner rather than negotiating with the other State.
2 You don't speak to one another I guess.

3 MR. SCHROTENBOER: That is correct, and the
4 reason for that is the prisoner is in the vastly better
5 position. Yes, the Jackson prosecutor's office knew that
6 he was in the county jail, but the Interstate Agreement on
7 Detainers had not yet kicked in then because he hadn't
8 been under a judgment of sentence, which is the very first
9 phrase of subsection (a), article III. We did not know he
10 was under a term of imprisonment until months later.

11 The prosecutor's office doesn't always send out
12 detainers. Very often it's police agencies that send
13 them. Very often a detainer is filed with the jail which
14 is, of course, before the IAD kicks in. And then it is
15 forwarded on, along with the judgment of sentence, to the
16 prison system, and they don't bother letting the
17 prosecutor know about it.

18 QUESTION: Do you have an obligation, as you
19 understand the act, to send a second detainer once the
20 judgment becomes in effect?

21 MR. SCHROTENBOER: I don't see it as an
22 obligation. I think it might be wise to do something like
23 that.

24 QUESTION: Do you think you fulfill your
25 statutory responsibilities by sending it to the jail

1 before the IAD even comes into effect?

2 MR. SCHROTENBOER: I don't see how there's any
3 statutory duties. There is no statutory duty for the
4 prosecutor to file any detainer at all.

5 QUESTION: Well, I take it there's a duty to do
6 something in order to trigger the 180-day period.

7 MR. SCHROTENBOER: That is entirely on the
8 inmate to trigger it. The -- as this Court stated in
9 United States against Mauro, the triggering part of the
10 act is the filing of the detainer itself. If the
11 prosecutor doesn't feel like filing the detainer, the act
12 doesn't apply. If there's no detainer, there's no
13 problem. So, there's no duty by the prosecutor. It would
14 be wise for the prosecutor to do it if he feels like
15 getting the guy back to try him, particularly now as
16 opposed to later.

17 QUESTION: Well, do --

18 QUESTION: And that's the way these cases come
19 up, isn't it? The prosecutor does file a detainer
20 because --

21 MR. SCHROTENBOER: Or someone does.

22 QUESTION: -- he wants to bring the defendant
23 back for trial.

24 MR. SCHROTENBOER: Yes.

25 QUESTION: But is it proper procedure under the

1 act to file the detainer with the jail before the prison
2 commitment begins?

3 MR. SCHROTENBOER: It is proper procedure, but
4 it's certainly not mandated. What it -- the detainer in
5 the jail is, of course, nothing but a hold on him. Please
6 don't let him go. We have a felony or something or other
7 against him. Please don't let him go before you send him
8 to us. And, of course, the Interstate Agreement on
9 Detainers does not apply to that situation. That is
10 exceptional --

11 QUESTION: It comes to into effect only when
12 what? There's a judgment of commitment or --

13 MR. SCHROTENBOER: It goes into effect when a
14 detainer is filed after he has -- is under a judgment of
15 sentence. That is correct.

16 QUESTION: So, then it would seem to me under a
17 reading of the act that you -- at least to be careful, you
18 ought to file a second detainer after the judgment so that
19 this act can -- so that -- at least so that the prisoner
20 can know --

21 MR. SCHROTENBOER: It makes a lot of sense.

22 QUESTION: -- that a formal detainer has been
23 filed.

24 MR. SCHROTENBOER: Well, let's put it this way.
25 You file a second detainer to make sure that the prison

1 system knows so that they don't let him go. If they tell
2 me that there's somebody in a -- another prison, I'll file
3 the detainer right away. I'm not going to think, well,
4 maybe an earlier detainer is following it along, this
5 thing, and that thing. No, I'm going to type out myself a
6 letter and I'm going to send it out.

7 But it's the inmate who is in a better position
8 to monitor it than the prosecutor. The prosecutor very
9 often doesn't know it. The inmate, yes, 42 U.S.C.,
10 section 1983, this Court's case, Adams against Cuyler. If
11 the warden send it on, that's a subsection (b) violation.
12 He can sue for that. Also --

13 QUESTION: Yes, but how does the prisoner know
14 he hasn't sent it on?

15 MR. SCHROTENBOER: Well, subsection (c) requires
16 -- well, he'll know. When nothing happens after the --
17 after, say, 180 days has gone by, he'll know. He'll know.

18 QUESTION: Well, that certainly is -- he has to
19 wait the full statutory period before he has any
20 opportunity to know.

21 MR. SCHROTENBOER: To a certain extent, that's
22 right. And then he can sue.

23 And also, Sixth Amendment right to speedy trial,
24 which overrides the Interstate Agreement on Detainers.

25 QUESTION: You don't need an agreement on

1 detainer statute or agreements if you can rely on that.

2 MR. SCHROTENBOER: No. I'm saying that that
3 supplements it. Of course, we need the Interstate
4 Agreement on Detainers because the whole purpose of the
5 act is to facilitate trial. It's not so easy walking over
6 to a prison in another State and say I'd like to pick up
7 this inmate and come over across the line. You know, it's
8 as easy walking into Canada and asking for that. You have
9 to go through the extradition procedures, and this is, in
10 a sense, an extradition act.

11 QUESTION: Yes, but the States have a mutual
12 interest in working together in implementing the statute,
13 don't they?

14 MR. SCHROTENBOER: That's right.

15 QUESTION: If you don't cooperate with Indiana,
16 Indiana won't cooperate with you.

17 MR. SCHROTENBOER: That's --

18 QUESTION: I would assume that the two of you
19 have a common interest in promptly processing these
20 requests and keeping proper records and all the rest.

21 MR. SCHROTENBOER: That is basically correct --

22 QUESTION: You're not dealing with --

23 MR. SCHROTENBOER: -- even though two States
24 have not signed the IAD.

25 QUESTION: But here we have States that have

1 signed it.

2 MR. SCHROTENBOER: Both of them have signed it.

3 QUESTION: Do you have any comment on the
4 Houston against Lack case? Are you familiar with it?

5 MR. SCHROTENBOER: Yes, I am. Houston against
6 Lack absolutely does not control in this case. It is
7 superficially similar, but it does not control. It was a
8 5-4 case. I know that Your Honor and Your Honor, Justice
9 Blackmun, were in the majority --

10 QUESTION: What difference does it make if it's
11 5 to 4 or 6 to 3?

12 MR. SCHROTENBOER: Nothing.

13 QUESTION: Okay.

14 MR. SCHROTENBOER: Houston against --

15 QUESTION: any of us who were in dissent?

16 MR. SCHROTENBOER: Yes, I'm kind of trying to
17 remind people.

18 QUESTION: But I'm not sure I was.

19 MR. SCHROTENBOER: You were in the majority.

20 (Laughter.)

21 MR. SCHROTENBOER: I'm trying to remind the
22 people who were in the dissent.

23 The case dealt with a habeas petitioner who had
24 lost in the district court. He then appealed. It's the
25 30-day Federal rule 4(a)(1) of the Federal Rules of

1 Appellate Procedure. He appealed. The 30-day procedure
2 is jurisdictional. What he loses by not making it on time
3 is his appeal. The reason -- and this Court said for
4 purposes of this statute, we're going to start it the day
5 he hands it over to the warden.

6 The reason it's different is because this is a
7 fairness case. Actually I agree with it, but that's
8 beside the point. It's a fairness case. It's unfair for
9 the inmate. Inmates are in a little tougher situation
10 than normal people are because they can't just walk over
11 to a courthouse and hand it over to them. That is -- and
12 that's why this Court in cases like Haines against Koerner
13 and things like that have given inmates special deference.

14 But there's something extra in the present case.
15 The inmate in the present case -- it's not he loses the
16 appeal, but he just -- the prosecutor gets a few extra
17 days, a few extra hundred days.

18 And also Houston against Lack is a two-party
19 case. The only parties are the inmate --

20 QUESTION: He -- the prosecutor doesn't get any
21 extra days. He just gets the days he's entitled to.

22 MR. SCHROTENBOER: Actually that's right, Your
23 Honor, but a few extra days as opposed to the other
24 interpretation.

25 Houston against Lack was a two-party case. The

1 only parties are the court system and the inmate. In the
2 present case, we're talking a three-party. There's the
3 prosecutor too. There's no unfairness to the prosecutor
4 in Houston against Lack. In the present case, there's a
5 lot of unfairness to the prosecutor.

6 I guess the only other point. Going back to the
7 language itself, this Court itself in Carchman against
8 Nash actually said it starts from actual receipt. It's
9 not quite the words it used. You, of course, can read it,
10 yes, it is dicta, but that's my point. It's the actual
11 language. It's the common usage of the language.

12 And, of course, there's the congressional
13 history, and I guess -- which is spelled out both in my
14 brief. The Senate report makes it very obvious. The
15 Solicitor General's brief going into the California and
16 Oregon statutes really make it obvious that this is what
17 the drafters intended.

18 And the very last point is we do have an extra
19 issue here, subsection (c).

20 QUESTION: Of course, the California statute is
21 interesting because that's perfectly clear. It says shall
22 have delivered.

23 MR. SCHROTENBOER: The reason that it is
24 different is because that requires the inmate to send it
25 on to the prosecutor. The IAD is better because it

1 requires the warden to send it on so that when the
2 prosecutor gets it, it will be more reliable and more
3 thorough. The prosecutor really should have information
4 like minimum out date, maximum out date, and the warden is
5 more likely to provide reliable information on that point.
6 Thus, the change in language.

7 But there's absolutely nothing anywhere that
8 shows that the drafters intended to change the date of
9 actual receipt as the day for the 180 days to start.

10 QUESTION: Nothing except the language of the
11 statute.

12 MR. SCHROTENBOER: Well, whatever.

13 The only other question in the case is a claimed
14 subsection (c) violation. I'm going to have to rely on my
15 brief in that case to the extent that -- except to say
16 there is no evidence presented whatsoever that subsection
17 (c) was violated, and petitioner has not even requested an
18 evidentiary hearing on that. And secondly, there is no
19 actual prejudice whatsoever, even alleged.

20 Other than to ask the Court to affirm, this ends
21 my presentation, and I ask if anyone has any questions.

22 QUESTION: Thank you, Mr. Schrottenboer.

23 Mr. Seamon, we'll hear from you.

24 ORAL ARGUMENT OF RICHARD H. SEAMON

25 ON BEHALF OF THE UNITED STATES

1 AS AMICUS CURIAE, SUPPORTING THE RESPONDENT

2 MR. SEAMON: Mr. Chief Justice, and may it
3 please the Court:

4 I'd like to begin by addressing a question that
5 Justice Stevens posed to my colleague, which is whether
6 under our interpretation of article III(a) of the IAD, the
7 provision doesn't contain unnecessary language. Pardon
8 me. And my answer to that is no.

9 Now, Justice Stevens asked why the article
10 III(a) is not drafted so as to simply trigger the 180 days
11 after delivery of the prisoner's request. My -- I would
12 suggest that the answer to that comes from the drafting
13 history, which we discuss in our brief beginning at page
14 21. The drafters note -- pardon me -- the Council of
15 State Governments, which opposed the IAD in 1957, actually
16 proposed two State -- two agreement proposals at the same
17 time, one based on interstate detainers and one governing
18 intrastate detainers.

19 The speedy trial provisions in both proposals
20 were virtually identical, and the council noted that the
21 intrastate proposal was based on statutes then in effect
22 in California and Oregon. Both the California and Oregon
23 statutes plainly required actual receipt for triggering of
24 the speedy trial provision.

25 We suggest that the drafters did not intend to

1 change the actual receipt requirement. The relevant
2 differences between the State models on which the IAD was
3 based and the IAD itself is the wording requiring the
4 prisoner to have caused delivery of the required
5 documents. There are two reasons for that wording
6 requiring the prisoner to cause delivery.

7 First is the whole topic of article III is that
8 the prisoner has initiated the process of disposing of the
9 charges underlying the detainer. The fact that the
10 prisoner has initiated the process is what distinguishes
11 article III from article IV, which deals with when the
12 State initiates the process of disposing of the charges.

13 QUESTION: How does he initiate the process? By
14 causing something to be delivered?

15 MR. SEAMON: That's correct. He causes --

16 QUESTION: So, that's what you focus on, is his
17 act in initiating the process is the key act in whole
18 statutory scheme.

19 MR. SEAMON: No. Under article III, there are
20 two acts that must occur before the 180-day period begins.

21 QUESTION: You have to file a detainer with the
22 prison I'm sure.

23 MR. SEAMON: Well, and specifically under
24 article III, he has to cause the transmittal of his
25 documents, and the documents actually have to be

1 delivered. And there's no dispute here that delivery
2 means actual receipt.

3 Article III(a) differs from the State proposals
4 on which --

5 QUESTION: If you talk about the drafting
6 history, I'm surprised they didn't follow the Oregon
7 statute which was an equally clear model for this under
8 your view I take it.

9 MR. SEAMON: The Oregon statute revolved -- was
10 built around the verb receive.

11 QUESTION: Right.

12 MR. SEAMON: And we would suggest that the
13 problem with using the verb receive rather than the verb
14 deliver in article III is that then you would shift the
15 focus of article III to the prosecutor and the appropriate
16 courts receiving it. That would shift the focus away from
17 the prisoner, and the prisoner has a vital role under
18 article III as opposed to article IV because he initiates
19 the process.

20 QUESTION: Well, but that's precisely the shift
21 in focus which you say the drafters intended. It should
22 focus on receipt.

23 MR. SEAMON: But article III as
24 distinguished --

25 QUESTION: That the whole scheme, rather,

1 focused on the prisoner which would seem to focus on when
2 he caused it to be delivered.

3 MR. SEAMON: I'm sorry. I may have misspoken.
4 The scheme of article III focuses on the prisoner's having
5 initiated the process. And so, using the prisoner as the
6 subject of the relevant clause we're talking about makes
7 sense in understanding why article III is different from
8 article IV of the IAD because article IV is directed at
9 the State.

10 And, of course, the other reason for using the
11 word cause in the relevant wording is that the prisoner
12 does not make an actual delivery directly to the court and
13 the prosecutor in the receiving State. Instead, under
14 article III(c), he is required to give his request for
15 disposition to the wardens who are then required to
16 promptly forward it to the receiving State. That's why
17 the causing language is in there.

18 And -- but the gist of article III is to require
19 a communication between the prisoner and the prosecutor in
20 the receiving State. And it is only when that
21 communication, namely, the prisoner's request for
22 disposition, has been completed that the prosecutor's duty
23 to bring the prisoner to trial in a speedy manner begins,
24 and that he cannot know of his duty to do so until he has
25 actually received the request for disposition.

1 The other point about the relevant language of
2 article III I'd like to repeat is one that Justice Souter
3 raised, which is that the drafters could easily have
4 drafted article III(a) to trigger the 180-day period to
5 begin when the prisoner sent or gave his request for
6 disposition to the warden officials. In fact, the
7 language of giving or sending is included in article
8 III(b). Therefore, it would have been natural, had the
9 drafters intended to adopt petitioner's rule, for them to
10 have used similar language in article III(a). The use of
11 different language suggested that they had a different
12 intention.

13 QUESTION: Mr. Seamon, is there anything in the
14 IAD that requires a prosecutor to move promptly in order
15 to get a prisoner back for trial?

16 MR. SEAMON: I'm not quite sure I understand
17 your question. Certainly once he receives the prisoner's
18 request, he then has 180 days.

19 QUESTION: Well, no. Supposing he just says I'm
20 not sure whether I want this guy to come back for trial,
21 so I'm not going to put a detainer on him. I might do it
22 next year.

23 MR. SEAMON: Ultimately there are Sixth
24 Amendment limitations.

25 QUESTION: Yes, but I said in the IAD.

1 MR. SEAMON: No, there are none.

2 I would note that under the Speedy Trial Act in
3 the Federal system, my answer would be different because
4 the Speedy Trial Act does give a Federal prosecutor a duty
5 to file the detainer if he knows that a prisoner, who has
6 been charged with a crime, is in a State. But the IAD
7 itself does not.

8 And we recognize at the same time that States
9 have an interest in processing these requests speedily,
10 and in fact, that the prison officials have a duty -- and
11 we would suggest in most cases, they live up to that duty
12 -- of sending on the prisoner's paperwork promptly.
13 Nonetheless, the IAD itself does not contain a sanction
14 for addressing the situation in which a State does not
15 forward those documents promptly.

16 That doesn't mean there are no remedies. Both
17 at the political level, the State -- a State that has been
18 negligent in fulfilling its duty may well be subject to
19 political pressure from other States that are parties to
20 the IAD, and at an individual level, the prisoner himself
21 certainly has remedies by way of mandamus or the internal
22 grievance procedure that is present in all prison systems,
23 including the Federal system.

24 If there are no further questions.

25 QUESTION: Yes. I'd just be curious as to what

1 you'd have to say about Houston against Lack.

2 MR. SEAMON: I agree with my colleague's
3 explanation of Houston v. Lack. Houston v. Lack concerned
4 a very different --

5 QUESTION: Do you think the plain -- the
6 language in that rule is any less plain than this?

7 MR. SEAMON: The Court construed the language of
8 rule 4(a) to avoid an interpretation that would have
9 effectively disastrous consequences for the prisoner in
10 that case. He would have lost his right to appeal on the
11 merits of his conviction.

12 And here the consequences are much different.
13 They are noteworthy, of course. The prisoner suffers a
14 delay in coming to trial, but nonetheless, they are much
15 less drastic. In fact, the consequences that are drastic
16 here are visited upon the prosecutor who suffers dismissal
17 of the charges against the prisoner perhaps simply through
18 the fortuity of the prisoner's request being lost through
19 the mail.

20 QUESTION: Well, the respondent strove mightily
21 to distinguish Houston against Lack, and none of you cite
22 it. All three of you let it rest in limbo.

23 MR. SEAMON: We did not cite Houston v. Lack in
24 our brief because we don't think it's apposite. We did
25 cite a jurisprudentially related case of Fallen v. United

1 States on page 12.

2 That concludes my presentation. I thank the
3 Court.

4 QUESTION: Thank you, Mr. Seamon.

5 Mr. Payne, you have 6 minutes remaining.

6 REBUTTAL ARGUMENT OF JOHN B. PAYNE, JR.

7 ON BEHALF OF THE PETITIONER

8 MR. PAYNE: Thank you, Mr. Chief Justice.

9 I have to differ with the respondent. The
10 prisoner does not initiate the process here. The
11 prosecutor initiates the process, and if the prosecutor
12 wants to take control of the process, he can do so right
13 down on the line.

14 QUESTION: Do you disagree that the detainer
15 could have been filed before the sentencing? It could
16 have been filed by someone other than the prosecutor
17 before the sentencing. Is that true or not?

18 MR. PAYNE: Well, the detainer may have been
19 filed. In this case, the complaint was filed before the
20 -- it was before the prisoner was convicted and sentenced.
21 However --

22 QUESTION: Sure, but you say -- the prosecutor
23 isn't in control if it isn't up to him whether this whole
24 statute shall be called into play by the filing of a
25 detainer which is the first step that triggers it or that

1 lets the prisoner trigger it.

2 MR. PAYNE: Well, the complaint, Justice Scalia,
3 comes from the same place as the detainer would. It comes
4 from the Jackson -- in this case, from the Jackson County
5 prosecutor's office. It just happened to be that there
6 was a complaint that was issued before the prisoner was
7 sentenced in Indiana, and then there was a detainer
8 issued, which was served on the prisoner on September 7,
9 1988. He had already been serving his sentence for some
10 time. This case --

11 QUESTION: Of course, that complaint can be
12 filed before he knows -- before the prosecutor knows that
13 the person is even arrested anywhere else. Right? I
14 mean, can't that be so?

15 MR. PAYNE: No, Justice Scalia, because -- at
16 least not in the --

17 QUESTION: All the statute says is whenever
18 during the continuance of a term of imprisonment, there is
19 pending in any other party State any untried indictment,
20 information, or complaint. That could have been filed
21 long before the imprisonment. Right? It just has to be
22 still pending.

23 MR. PAYNE: Yes, I would have to agree with you
24 on that.

25 QUESTION: Okay. So --

1 MR. PAYNE: But still it comes from the
2 prosecutor's office, and the prosecutor doesn't know --

3 QUESTION: Well, yes, but he doesn't know that
4 he's triggering -- that he's beginning anything under this
5 detainer statute. It seems to me the only State action
6 that you can say consciously invokes the detainer statute
7 is the filing of a detainer, and that -- is your colleague
8 incorrect that that could have been filed by a police
9 department instead of by a prosecutor?

10 MR. PAYNE: At least in Michigan, the complaint
11 would have to be signed by the prosecutor.

12 QUESTION: No. I'm talking about the detainer.
13 The detainer could be put on by a police department.

14 MR. PAYNE: My understanding of the detainer --
15 now, the Court ruled -- has ruled that a probation
16 violation is not a detainer, and if I am not -- it's my
17 understanding -- now, I don't work for the prosecutor's
18 office, and I'm not completely up on how this paperwork is
19 processed. But it's my understanding that if we just have
20 a warrant, that a warrant would not constitute a detainer.
21 It's only after the prosecutor's office issues a complaint
22 or an indictment or a detainer that we actually have a
23 document that is recognized under the IAD.

24 And I would like to suggest that, as Justice
25 White has suggested, that when the prisoner has delivered

1 the paperwork to the prison authorities, he has caused the
2 request for detainer to be delivered.

3 And I ask the Court to rule in the only way that
4 does not eviscerate the Interstate Agreement on Detainers.
5 If you rule in favor of the petitioner, you have a bright
6 line test.

7 The problem of competing requests for detainer
8 can be dealt with in the way that the paperwork is
9 handled, and the statute provides for a continuance when
10 the prisoner unavailable. It does not affect the -- a
11 prisoner-sent request for detainer, which was the problem
12 in a number of cases because when you have a prisoner
13 sending it himself, there are problems in proving when it
14 was sent and proving when it was received. But it's no
15 more difficult for the prosecutor to prove when the
16 prisoner tendered the request for disposition to the prison
17 than it would be for the prisoner to prove that -- when
18 the prosecutor received it.

19 And I want to stress that we are talking about
20 the prisoner tendering the request for disposition to the
21 agent of the prosecutor who is initiating the detainer or
22 the complaint or the indictment. And the prosecutor, if
23 he wants to do so, can exert perfect control over when the
24 paperwork is processed, how it is processed, and what
25 kinds of records are kept in order to ensure that it's not

1 lost along the way. A very simple log will ensure that we
2 don't have the kinds of problem that we have here.

3 And --

4 QUESTION: Could I ask you another question
5 about the text here? If you look at subsection (a), I
6 think one must acknowledge that there is some room for
7 ambiguity in the shall have caused to be delivered as to
8 whether you look to the place of causing -- to the time of
9 causing or the time of delivery.

10 But if you skip down to the end of that same
11 section, the last sentence says the request of the
12 prisoner shall be accompanied by a certificate of the
13 appropriate official. Now, that last sentence is
14 obviously taking a viewpoint at the time of delivery.
15 Certainly at the time he makes the request, at the time he
16 gives his request to the warden, it is not accompanied by
17 this document. It seems to me the whole paragraph is
18 looking at it from the prosecutor's receipt point of view.
19 Doesn't it?

20 MR. PAYNE: May I respond to that, Mr. Chief
21 Justice?

22 QUESTION: Certainly.

23 MR. PAYNE: In this case, which is the only case
24 I've had direct experience with, the certificate of inmate
25 status was signed by Superintendent Broglin of Westville

1 Correctional Center the same date that my client signed
2 the request for --

3 QUESTION: In Fort Wayne. In Indiana.

4 MR. PAYNE: Yes, in Indiana. And I can't see
5 that that would be a problem.

6 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Payne.
7 The case is submitted.

8 (Whereupon, at 1:49 p.m., the case in the above-
9 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:

William Felt ✓ Michigan

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BY Lona M. May

(REPORTER)

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