

OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE

**THE SUPREME COURT  
OF THE  
UNITED STATES**

CAPTION: THOMAS LEE DEAL, Petitioner v. UNITED STATES.

CASE NO: 91-8199

PLACE: Washington, D.C.

DATE: Monday, March 1, 1993

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IN THE SUPREME COURT OF THE UNITED STATES

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THOMAS LEE DEAL, :  
On behalf of Petitioner :  
v. : No. 91-8199  
UNITED STATES of the Respondent :  
- - - - - x

Washington, D.C.  
Monday, March 1, 1993

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States at  
11:02 a.m.

APPEARANCES:

DOLA JEAN YOUNG, ESQ., Houston, Texas; on behalf of the  
Petitioner.  
MIGUEL A. ESTRADA, ESQ., Assistant to the Solicitor  
General, Department of Justice, Washington, D.C.; on  
behalf of the Respondent.

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

2 (11:02 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument  
4 next in No. 91-8199, Thomas Lee Deal v. the United States.

5 Ms. Young, you may proceed.

6 ORAL ARGUMENT OF DOLA JEAN YOUNG

7 ON BEHALF OF THE PETITIONER

8 MS. YOUNG: Mr. Chief Justice, and may it please  
9 the Court:

10 Thomas Lee Deal, the petitioner, committed six  
11 bank robberies in the Houston, Texas area during a 4-  
12 month period. In addition to being found guilty and  
13 sentenced for those bank robberies he was found guilty and  
14 sentenced for six counts of using a firearm during a crime  
15 of violence and for being a felon in possession of a  
16 weapon. At issue in this case is whether Mr. Deal was  
17 given notice that he would receive 20-year sentences on  
18 five of the six counts for using a firearm during a crime  
19 of violence pursuant to 18 U.S.C. 924(c).

20 Mr. Deal contends that his Fifth Amendment due  
21 process rights were violated because the rule of lenity  
22 was not applied when imposing the 20-year sentences under  
23 section 924(c).

24 QUESTION: It's your position, Ms. Young, that  
25 the rule of lenity is required by the Fifth Amendment?

1 MS. YOUNG: No, Your Honor, it is required by  
2 the rulings of this Court when a statute is ambiguous. So  
3 for that reason petitioner is asking this Court to  
4 construe the statute as imposing a 20-year sentence only  
5 if the offense is committed after a previous 5-year  
6 sentence has been, has become final. Such a construction  
7 is necessary because the language of section 924(c),  
8 specifically in the case of his second or subsequent  
9 conviction, is ambiguous for several reasons when both the  
10 language of the statute and the structure and operation of  
11 the statute are considered.

12 Turning to the language of the statute, the  
13 specific language at issue has two meanings, one of two  
14 meanings. It can be construed as multiple convictions  
15 occurring at the same time, or it can be construed as  
16 multiple convictions occurring in chronological sequence.  
17 Also --

18 QUESTION: Ms. Young, if you prevail here what  
19 will be the ultimate outcome? 30 years instead of --

20 MS. YOUNG: Of 105, yes, sir.

21 QUESTION: 105. So he is put away for 30 years  
22 anyway?

23 MS. YOUNG: Well, 30 years on the 924(c) counts,  
24 plus he received approximately 14 years on the bank  
25 robberies which was to run concurrently with 10 years for

1 being a felon in possession of a weapon. So the total  
2 sentence would be approximately 44 years.

3 QUESTION: But the six counts were bank robbery,  
4 was it?

5 MS. YOUNG: Yes, sir, that was the crime of  
6 violence.

7 QUESTION: They were different dates and  
8 different places, I suppose?

9 MS. YOUNG: Yes, sir, they were. There were six  
10 bank robberies, there were four different banks, and two  
11 of the banks were robbed twice but at different dates, on  
12 different dates.

13 QUESTION: So if there had just been, if there  
14 had just been separate indictments for the six bank  
15 robberies, one indictment for each bank robbery, you  
16 wouldn't be here, I suppose?

17 MS. YOUNG: Yes, Your Honor, we would still be  
18 here because looking at the operation of the statute, the  
19 statute is in two parts. The first part, which calls for  
20 a 5-year sentence when a firearm is used during a crime of  
21 violence, is clearly an enhancement statute. That is the  
22 penalty is imposed for violation of another statutory  
23 provision.

24 QUESTION: But suppose the, there was a bank  
25 robbery by your client and he was indicted and convicted

1 for it?

2 MS. YOUNG: Yes, sir.

3 QUESTION: And similarly for the other five.

4 Wouldn't the statute apply, the enhancement apply there?

5 MS. YOUNG: No, Your Honor, because the second  
6 part of the statute, in the case of his second or  
7 subsequent conviction, is a recidivist statute, and that  
8 language, in the case of, is linking the second part of  
9 the statute to the first, and it's --

10 QUESTION: Well, when would enhancement ever  
11 apply?

12 MS. YOUNG: When the offense occurs after a  
13 previous sentence has become final.

14 QUESTION: Well, that's -- I thought I was  
15 posing that in my last hypothetical.

16 MS. YOUNG: The offense would have to occur  
17 after the previous 5-year sentence had become final. The  
18 hypothetical --

19 QUESTION: Oh, after, you mean after he had  
20 served the 5-year sentence?

21 MS. YOUNG: Yes. And that's because of the  
22 language in the case of, because it's referring back to  
23 that part in the first clause, that use of a firearm and  
24 receiving a 5-year sentence.

25 QUESTION: Wouldn't your argument be served



1 going back to Justice White's hypo? If he had been  
2 sentenced to the 5-years enhancement and if for some  
3 reason he escaped from custody before being sent to prison  
4 and committed another bank robbery, wouldn't he be subject  
5 to the second enhancement for that even though he had not  
6 served the first one?

7 MS. YOUNG: Well --

8 QUESTION: Even on your theory that it's a  
9 recidivism statute?

10 MS. YOUNG: Well, I think we would have to look  
11 at the general policy of recidivist statutes, and that is  
12 for --

13 QUESTION: Well, I don't mean to cut you off  
14 there, but I just thought on your own argument that in the  
15 case that I give he would be subject to the second  
16 enhancement. Did I misunderstand you?

17 MS. YOUNG: The position is that the offense  
18 would have to have become final, the offense would have to  
19 occur after. And you are correct, because your  
20 hypothetical said that if he had been sentenced, he was in  
21 prison and he escaped. Then yes, you are correct, then  
22 for the bank robbery that occurred after the escape the 20  
23 years would apply.

24 QUESTION: Okay.

25 QUESTION: Ms. Young, do we know that -- how do

1 we know this is a recidivist statute? Maybe it's just a  
2 habitual criminal statute. You seem to think that the  
3 only reason for imposing greater sentences for the later  
4 crime is that this guy just doesn't learn from being in  
5 jail. Maybe another reason is, whether he has been in  
6 jail or not, people who are habitual criminals are worse  
7 than people who on one occasion robbed a bank. This guy  
8 robbed six banks, one after another.

9 MS. YOUNG: Well, we don't know that Congress  
10 intended this to be a habitual --

11 QUESTION: We don't know, so we have to look to  
12 the text, I assume. And what the text says, in the case  
13 of his second or subsequent conviction. It seems to me  
14 the most you can make out of that, the very most is that  
15 the first conviction has to have been final before the  
16 second, which means in Justice White's hypothetical you  
17 would have to say so long as he has been sentenced on the  
18 first count, when he is sentenced for the second count you  
19 are dealing with in the case of a second conviction and he  
20 should get the enhanced sentence.

21 MS. YOUNG: Well, given that situation we don't  
22 know which of the counts would be the second conviction.  
23 There is no notice of where the second conviction occurs.

24 QUESTION: Well, it means second in time, don't  
25 you think? What else could it mean? Second or

1 subsequent. Subsequent --

2 MS. YOUNG: It could mean second in order or it  
3 could mean subsequent, take the meaning of subsequent,  
4 which would refer to later in time. But he had -- the  
5 problem is that Mr. Deal, a person in Mr. Deal's position  
6 would not have any notice of when that enhancement would  
7 apply, the 20-year sentence would apply.

8 The respondent I think concedes the ambiguity of  
9 this language by rewriting the statute in a manner that  
10 changes the language. Respondent's construction of this  
11 statute, which as I said is a rewrite, is that there would  
12 be 20 years for any subsequent offense, and that does not  
13 give effect to every clause and word of the statute.

14 If we look at the operation of the statute  
15 because the language itself is ambiguous, I would also --  
16 I need to back up a minute to the language of conviction.  
17 That also goes to the ambiguity of the language because  
18 conviction, as this Court has noted in previous opinions,  
19 that the word conviction carries two different meanings  
20 and Congress has attached different meanings to different  
21 statutes. And there is no definition of the word  
22 conviction in the statute, so we would have to construe  
23 conviction as meaning a final judgment and not simply a  
24 finding of guilt, as the respondent would have us do.

25 Now, turning to the structure and operation of

1 the statute, although the language is unclear we can glean  
2 some help from the structure in support of petitioner's  
3 construction. The first part is the sentence enhancement,  
4 that is it imposes an increased punishment for one  
5 convicted under another statutory provision. The second  
6 part is a recidivist statute because of the words in the  
7 case of, which clearly refer to a legal proceeding which  
8 introduces a stiffer penalty for one who has ignored a  
9 previous notice by way of a conviction. The --

10 QUESTION: You say -- what meaning is it you  
11 attach to the words in the case of?

12 MS. YOUNG: A legal proceeding.

13 QUESTION: Well why, don't we use the phrase in  
14 the case of very often just to identify a particular  
15 episode that doesn't necessarily have anything to do with  
16 a legal proceeding?

17 MS. YOUNG: Yes, we do, but as this Court has  
18 noted, when a term has more than one meaning and there is  
19 a meaning that is applicable in a legal sense, then the  
20 legal sense is the one that governs, and that would be the  
21 reason for construing in the case of as a legal  
22 proceeding.

23 QUESTION: And what case would you cite for the  
24 proposition that you just stated?

25 MS. YOUNG: That case comes, that comes from the



1 case -- I don't have it on the tip of my tongue right now,  
2 but there is a case and it is cited in our brief for that  
3 proposition. The dependence --

4 QUESTION: So you would read the statute as if  
5 it said after conviction in a second or subsequent case?

6 MS. YOUNG: I would --

7 QUESTION: That's the way you would have us  
8 interpret the statute?

9 MS. YOUNG: I would read it after conviction --

10 QUESTION: In a second or subsequent case.

11 MS. YOUNG: If an offense after conviction, an  
12 offense that is sentenced in a proceeding after conviction  
13 would receive a 20-year sentence.

14 QUESTION: Well, actually you would say after  
15 conviction and after the sentence has been served?

16 MS. YOUNG: Yes.

17 QUESTION: Yes. But what you're applying that  
18 after to is not the later case. You're really reading it  
19 to say in the case of -- not in the case of his second or  
20 subsequent conviction, but you're saying in a case  
21 involving criminal activity, alleged criminal activity  
22 that occurred after his first conviction.

23 MS. YOUNG: That's correct, Justice Scalia.

24 QUESTION: You insist not just that the case be  
25 second, but that the criminal, alleged criminal activity

1 upon which the case is based be second.

2 MS. YOUNG: That's correct.

3 QUESTION: That's -- I mean, I can follow you  
4 the first step, that the case has to be second, although I  
5 can't see why anyone would want such a disposition, why  
6 you would insist on six separate trials instead of one  
7 trial in order to get the enhancement. It makes no sense.  
8 Your disposition makes some sense, it turns this into a  
9 recidivist statute, but I don't see how you can get it out  
10 of the language. All it says is in the case of his second  
11 or subsequent conviction.

12 MS. YOUNG: That's exactly the point, Justice  
13 Scalia, that we don't get it from the language. We look  
14 at the operation of the statute and we look also at the  
15 fact that there are different sentences imposed, because  
16 it makes no sense to impose 5 years and 20 years at the  
17 same time. If Congress had wanted something like that to  
18 apply, Congress could simply have said 20, or 10 or 20  
19 years for any offense where a firearm is used during a  
20 crime of violence. There is no real reason, it just  
21 doesn't make sense to have those different sentences  
22 imposed at the same time.

23 QUESTION: Well, it certainly could, I suppose.  
24 I mean, the district judge at sentencing in this case  
25 might say, after having sentenced on the first count, now

1 I'm about to enter a second judgment of conviction.  
2 Therefore this is a case of a second judgment of  
3 conviction and therefore the 20-year provision applies. I  
4 mean, you can certainly read the statute that way.

5 MS. YOUNG: That is one possibility, but I  
6 think, as this Court has recognized, that a mere  
7 possibility, a mere construction is not sufficient to  
8 provide a person with notice. That is one possible  
9 reading of it, but again the issue is whether there is  
10 notice that the defendant, when he knows that he will be  
11 subject to the 20-year sentence

12 Respondent points --

13 QUESTION: Do you think the conviction word used  
14 in this enhancement provision refers to a criminal  
15 judgment?

16 MS. YOUNG: Yes, sir, I do. And that's for two  
17 reasons.

18 QUESTION: It's not return of the jury verdict?

19 MS. YOUNG: Not, absolutely not. For two  
20 reasons. One, the last part of the statute refers to  
21 convicted. The court shall not place on probation or  
22 suspend the sentence of any person convicted of a  
23 violation of this subsection. So therefore we would have  
24 to refer to that as a judgment. A finding of guilt also  
25 does not, a finding of guilt requires some indicia of

1 finality, and just a simple finding of guilt does not  
2 require, it does not give a defendant any, it does not  
3 give the sentence -- excuse me. A simple finding of guilt  
4 does not provide an indicia of finality.

5 QUESTION: How about a finding of guilt plus a  
6 sentence?

7 MS. YOUNG: There there would be an indicia of  
8 finality.

9 QUESTION: Well, then if the judge, on the basis  
10 of the jury's verdict, says with respect to the first  
11 count, you know, I sentence you to 5 years, why isn't that  
12 then final if you agree with the question that I just  
13 asked you? So that when the time comes to impose the  
14 sentence on the second count, it is final since there has  
15 been not only a finding of guilt but a sentence.

16 MS. YOUNG: Then yes, you're correct, then it's  
17 final because the sentence has been imposed. But, as I  
18 stated earlier, the requirement to then turn around and  
19 do, impose a 20-year sentence, there is no notice and  
20 there is nothing in the language to support that.

21 QUESTION: Well, to what was your argument about  
22 lack of finality addressed, Ms. Young, because I assume  
23 from your answers that you have just given that you do not  
24 think that a jury verdict of guilt plus a sentence  
25 indicates lack of finality?



1 MS. YOUNG: It does not.

2 QUESTION: So wherein does the lack of finality  
3 occur that you object to?

4 MS. YOUNG: I don't recall which justice it was,  
5 but asked me if a conviction would refer to a finding of  
6 guilt, and that's when I responded that a conviction would  
7 not refer to a simple finding of guilt.

8 QUESTION: But a conviction would refer to a  
9 finding of guilt plus a sentence?

10 MS. YOUNG: Yes.

11 QUESTION: And in this case, Ms. Young, how many  
12 judgments were entered?

13 MS. YOUNG: One single judgment.

14 QUESTION: One judgment including, all the  
15 sentences on all the counts were incorporated in a single  
16 judgment?

17 MS. YOUNG: Yes, sir.

18 QUESTION: So you say in this case there was one  
19 conviction, as you define the term?

20 MS. YOUNG: That's correct. Respondent --

21 QUESTION: But the trial court could have  
22 changed all that on the basis of the same jury verdict had  
23 he simply entered six judgments?

24 MS. YOUNG: That would not be proper, Your  
25 Honor. I don't think that that would solve --

1 QUESTION: Well, should it then depend on  
2 whether or not there was one judgment based on six  
3 convictions or six different judgments based on six  
4 findings of guilt?

5 MS. YOUNG: I'm sorry, I did not follow your  
6 question.

7 QUESTION: Well, ought the outcome in this case,  
8 whether your client is sentenced to 40 years, as you say  
9 he should be, or 105, ought it to depend on whether the  
10 trial court says I am going to enter six different  
11 judgments here because there have been six different  
12 findings of guilt by the jury, or if he says there have  
13 been six different findings of guilt by the jury but I am  
14 going to enter just one judgment?

15 MS. YOUNG: No, because then that still does not  
16 take care of the notice requirement that a defendant would  
17 not know when he would be subject to that 20-year  
18 sentence. And I think, as respondent has pointed to 21  
19 U.S.C. section 962(b) as an example of what Congress can  
20 do to overcome this particular problem, and that is an  
21 example of what Congress can do, but that statute was  
22 enacted 2 years after 924(c), and 924(c) was the first  
23 attempt that Congress made to resolve this issue. And  
24 Congress made a deliberate choice of words to say  
25 subsequent conviction and not subsequent offense, as it

1 had in other statutes earlier, and I think this is because  
2 Congress was struggling with a different situation. And  
3 also the fact must be noted that this statute was passed  
4 in great haste when compared to other recidivist statutes.

5 QUESTION: Subsequent offense would be better  
6 for your position, wouldn't it, I mean if it had read  
7 subsequent offense it would make your argument easier, I  
8 assume?

9 MS. YOUNG: If it had read subsequent offense, I  
10 don't think so, because that's the exact structure that  
11 the Government is relying on in order to get this 105-  
12 year sentence, because the Government says for any  
13 subsequent offense then it's 20 years. And so then no, it  
14 would not help my position.

15 QUESTION: May I ask you, following up on the  
16 Chief Justice's question, what is your experience? Do the  
17 trial judges normally enter separate judgments on each of  
18 several counts or do they generally enter one judgment  
19 covering the whole case?

20 MS. YOUNG: It has been my experience one  
21 judgment covering the whole case.

22 QUESTION: Isn't your strongest argument that  
23 the ambiguity simply in here is in the word, in the  
24 referent to the word subsequent? You don't know whether  
25 it means subsequent to, an offense subsequent to another

1 offense or an offense subsequent to a prior conviction.  
2 That's your ambiguity argument, isn't it?

3 MS. YOUNG: Yes, sir. Another --

4 QUESTION: Well, but no. You want to go further  
5 than that. You want to say it has to be subsequent to  
6 serving a sentence. The options are not conviction or  
7 offense, subsequent to a prior conviction or subsequent to  
8 a prior offense. That won't satisfy you. You insist that  
9 it be subsequent to serving the sentence from the prior  
10 conviction. Isn't that your position?

11 MS. YOUNG: No, because as one of the other  
12 justices pointed out, if the person had been incarcerated  
13 and escaped and committed an offense, then the 20 years  
14 would be applicable in that situation.

15 QUESTION: You have to have at least begun to  
16 serve your sentence, is that it?

17 MS. YOUNG: That's correct, Your Honor, because  
18 that puts you on, the imposition of the sentence puts you  
19 on notice for any subsequent offenses.

20 QUESTION: Not the imposition of the sentence,  
21 the serving of the sentence.

22 MS. YOUNG: Well, correct. Well, I am assuming  
23 that once it's imposed you begin to serve it. But --

24 QUESTION: Immediately. You're immediately in  
25 custody. Well then, then if you sentence the person in



1 six separate counts, one after another, he immediately  
2 begins serving the first count as soon as you sentence  
3 him.

4 MS. YOUNG: But then the offense has not  
5 occurred --

6 QUESTION: The offense hasn't occurred yet.

7 MS. YOUNG: Another aspect --

8 QUESTION: Of course that is inconsistent with  
9 your own interpretation of the second use of the term  
10 conviction, where the statute directs that the sentence  
11 not be suspended. It's a very odd result to say you can't  
12 suspend a sentence until after the sentence has been  
13 served. I mean, that doesn't make any sense.

14 MS. YOUNG: You could not suspend --

15 QUESTION: Well, you were arguing that the  
16 second use of the word conviction in the statute, which  
17 says that the judge shall not place on probation, the  
18 court shall not place on probation or suspend the sentence  
19 of any person convicted, has bearing on the definition of  
20 the word conviction in the statute. It's a very strange  
21 construction to say that he cannot suspend the sentence  
22 until after the sentence has been completed. So therefore  
23 the use of the term conviction cannot comprehend the  
24 serving of the sentence or that sentence just doesn't make  
25 any sense.

1 MS. YOUNG: That's -- I did not say it would  
2 require the serving of the sentence. I thought that I was  
3 saying that the imposition of the sentence in response to  
4 Justice Scalia's question.

5 QUESTION: Yes, because you answered an earlier  
6 question of mine in which I posed the situation in which  
7 the individual is sentenced and immediately escapes. He  
8 runs out of the courtroom and commits another robbery. In  
9 that case you agreed that the 20-year enhancement could be  
10 applied when he was convicted for the second offense.

11 MS. YOUNG: Yes, sir, I did.

12 QUESTION: Okay.

13 MS. YOUNG: Another aspect of the structural  
14 ambiguity lies in the fact that it was almost 20 years  
15 before prosecutors leaped to this interpretation. The  
16 statute was enacted in 1968 and it was 1987 before we saw  
17 an issue of this type come before the courts. Prosecutors  
18 across the country conceded to two or three consecutive 5-  
19 year sentences being imposed even as late as 1991. There  
20 are some cases cited in the brief to that effect. The  
21 split in the circuits also attests to the structural  
22 ambiguity.

23 And finally, the respondent concedes by asking  
24 this Court to construe this statute in a manner that no  
25 other recidivist statute operate, and it would make this

1 statute very different from any, the operation of any  
2 other statute of its kind. Respondent's construction is  
3 an anomaly for five reasons. One, it changes the language  
4 of the statute. It changes, substitutes offense in for  
5 conviction, and substitutes any subsequent for second or  
6 subsequent. Two --

7 QUESTION: Why isn't it enough for you to say,  
8 well, second or subsequent conviction means second or  
9 subsequent judgment? And there was only one judgment here  
10 so why shouldn't you win?

11 MS. YOUNG: That we would also win if it said  
12 second or subsequent judgment, because there was only one  
13 judgment.

14 QUESTION: Well, it does say second or  
15 subsequent judgment because it says second or subsequent  
16 conviction.

17 MS. YOUNG: But then it does not take into  
18 effect the relationship to the first part --

19 QUESTION: But I don't know why you want to win  
20 more than you have to to win your case here. There is  
21 only one judgment. There is not a second or subsequent  
22 judgment on which there can be an enhancement. Why isn't  
23 that enough to solve your case?

24 MS. YOUNG: That is true in this case, Your  
25 Honor.

1 QUESTION: Maybe you haven't argued that because  
2 it makes it really a very silly statute. It means that  
3 you can give this person 100 years if you bring six  
4 separate prosecutions, but you can't if you join them all  
5 in one. That doesn't make much sense at all.

6 MS. YOUNG: No, it does not, and that -- in  
7 construing the statute I think the Court would need to be,  
8 we'd need to look at that. That is not the situation that  
9 Mr. Deal faced, but it is, it sort of makes it irrelevant  
10 that we're even here if that is the construction that the  
11 Court gives the statute.

12 If there are no other questions, I'd like to  
13 reserve my remaining time for rebuttal.

14 QUESTION: Very well, Ms. Young.

15 Mr. Estrada, we'll hear from you.

16 ORAL ARGUMENT OF MIGUEL A. ESTRADA

17 ON BEHALF OF THE RESPONDENT

18 MR. ESTRADA: Thank you, Mr. Chief Justice, and  
19 may it please the Court:

20 Mr. Deal was found guilty of using a gun in six  
21 different bank robberies on six different dates. The  
22 district court sentenced him to 20 years on each count on  
23 which he was found guilty of using a gun, save for the  
24 first, finding that each of those counts was a second or  
25 subsequent conviction under section 924(c). Eight of the

1 nine courts of appeals that have considered that issue  
2 have agreed with the district court --

3 QUESTION: What do you think a conviction is?

4 MR. ESTRADA: A conviction is a finding of guilt  
5 by a court or jury, Justice White.

6 QUESTION: Or jury, you think.

7 MR. ESTRADA: Yes.

8 QUESTION: So that the conviction happens when  
9 the jury verdict is returned?

10 MR. ESTRADA: That is right, or when a plea of  
11 guilty is entered.

12 QUESTION: You don't have to enter a judgment on  
13 it before there is a conviction?

14 MR. ESTRADA: Not as the word is used in context  
15 in this case.

16 QUESTION: Well, what did we say in Dickerson?

17 MR. ESTRADA: In Dickerson the Court was dealing  
18 with section 922(g), which is part of the same chapter  
19 where section 924(c) is now. And the term in Dickerson  
20 was that someone who had been convicted of a felony was  
21 not allowed to have a firearm. The word --

22 QUESTION: Well, and we said conviction meant it  
23 didn't occur with the entry of the plea, but only after  
24 the sentence and judgment were imposed.

25 MR. ESTRADA: With all respect, Justice



1 O'Connor, that is in fact not what the Court said. The  
2 Court at page 111, if I recall, said that all that was  
3 necessary was the entry of the plea and more was not  
4 required, and those were the words that the Court used.  
5 As it happens --

6 QUESTION: Well, even if you say the conviction  
7 occurs with the return of the jury verdict, there was only  
8 one conviction here. The, there was only one verdict.  
9 One verdict came in. There wasn't a second or subsequent  
10 conviction in the sense of a second or subsequent jury  
11 verdict, was there?

12 MR. ESTRADA: No. That is not right, Justice  
13 White, for the following reason. The statute uses the  
14 word conviction under this subsection, which means a  
15 finding of guilt under this subsection, and there were six  
16 different findings of guilt by the jury under section  
17 924(c). Each of them was a conviction under the statute.

18 QUESTION: Yes, but it wasn't a second finding,  
19 was it?

20 MR. ESTRADA: Well, the word second in this --

21 QUESTION: So you rely on second rather than  
22 subsequent?

23 MR. ESTRADA: No, we think that each of the two  
24 terms has a distinct meaning in the statute, Justice  
25 White. The word second in everyday language means the

1 number two in a countable series or what follows the  
2 first, either in time or in number sequence. The word  
3 subsequent in this context means what follows the second,  
4 either in time or in number sequence, and it is just a  
5 proxy for Congress to have said third, fourth, fifth,  
6 sixth, et cetera.

7 QUESTION: So the jury must have, the jury  
8 couldn't have considered all counts at the same time, so  
9 at least they had to consider them separately and so their  
10 finding of guilt on each, for each bank robbery, they  
11 were -- some were later and some were earlier.

12 MR. ESTRADA: The significant point is that they  
13 made seven different findings of guilt under section  
14 924(c), and that is all that the statutory language calls  
15 for in this case, Justice White. Those are, five of those  
16 are second or subsequent convictions under the plain terms  
17 of the statute.

18 I think the most significant and salient point  
19 about the case is that this is a dangerous person statute.  
20 It is not in anyway a recidivist statute. The structure  
21 of the language, and especially the scale of penalties in  
22 section 924(c) make that very clear.

23 QUESTION: Why wouldn't that be clear if the  
24 enhancement were the same in each instance, but in this  
25 case the enhancement is 4 times for the second or

1 subsequent what it is in the first, which indicates that  
2 it's something other than just a dangerous person statute,  
3 isn't it?

4 MR. ESTRADA: That is not right, Justice Souter,  
5 because the first sentence of the statute makes clear that  
6 what Congress is doing in the statute is two things. It  
7 is looking to identify persons who do even one crime with  
8 especially dangerous weapons, and also looking to identify  
9 those who do dangerous or even more dangerous crimes more  
10 than once. Even a first --

11 QUESTION: Well, when you get into comparative  
12 danger you are getting into recidivism, aren't you? In  
13 other words this is a person who does not learn from his  
14 offense.

15 MR. ESTRADA: That is not necessarily so as a  
16 general matter, Justice Souter. That is not so in this  
17 statute. Under this statute even a first crime carries a  
18 mandatory penalty of 30 years imprisonment if the firearm  
19 used is equipped with a silencer, if it is a machine gun,  
20 or under the most recent changes, if the firearm is a bomb  
21 or any similar explosive. And Congress has made a  
22 judgment that those types of activities are so dangerous  
23 that even someone who does that only once, and for the  
24 very first time in his life, should be subject to the 30-  
25 year mandatory sentence.

1           We think that the second or subsequent clause  
2           that immediately follows is written in the same vein, and  
3           simply seeks to identify a particularly dangerous class of  
4           criminals, those who would use a gun to do a crime more  
5           than once and who thereby place at risk the lives of other  
6           people every time they do so.

7           What Congress in effect is saying to those  
8           persons is if you are the type of person who would do a  
9           crime with a gun more than once you are just too dangerous  
10          to have around and you must be separated and incapacitated  
11          from society.

12           QUESTION: Mr. Estrada, is Ms. Young correct  
13          when she told us that from 1968 to 1987 the prosecutors  
14          did not read the statute this way?

15           MR. ESTRADA: That is not right in the sense  
16          that the issue did not come up in a litigated case until  
17          1987.

18           QUESTION: You mean in all those years there  
19          were no charges where the defendant had robbed more than  
20          one bank?

21           MR. ESTRADA: The issue wouldn't be really --

22           QUESTION: I mean, obviously it wasn't appealed  
23          on this issue if the practice was always to do as she says  
24          the right reading of the statute is. But was that, I'm  
25          asking you do you think that was the practice or do you

1 know?

2 MR. ESTRADA: I don't know, and I think that the  
3 reason it did not come up is because until the mid  
4 eighties the penalties for a first and/or second were  
5 quite close to one another. They were 5 and 10. And in  
6 fact there were --

7 QUESTION: But you're telling me you really  
8 don't know what the practice was?

9 MR. ESTRADA: That's correct.

10 QUESTION: But she is correct that it wasn't  
11 litigated until 1987?

12 MR. ESTRADA: It was not -- the first court of  
13 appeals case dealing with the issue was Rawlings coming  
14 from the circuit in Florida, the --

15 QUESTION: Eleventh Circuit.

16 MR. ESTRADA: Right.

17 QUESTION: In 1987.

18 MR. ESTRADA: In 1987.

19 QUESTION: 19 years after the statute had been  
20 passed.

21 MR. ESTRADA: 19 years. And for most of that  
22 time, Justice Stevens --

23 QUESTION: Rather strange.

24 MR. ESTRADA: -- the important point is that the  
25 penalty ranges with the first few years were overlapping.



1 QUESTION: Were not sufficient to justify a  
2 defendant having an interest in appealing if he wanted to  
3 challenge this statute.

4 MR. ESTRADA: Well, there were two different  
5 issues, Justice Stevens. For part of the time the statute  
6 was written in a way where the sentence was not fixed.  
7 There were two ranges, and the ranges were overlapping.  
8 That is the first problem. So there was a measure of  
9 discretion in the district court to give a slightly  
10 different sentence.

11 The second issue is that even when Congress  
12 changed that --

13 QUESTION: When was that? When did it eliminate  
14 the overlapping?

15 MR. ESTRADA: I think they did that in the early  
16 eighties.

17 QUESTION: Okay.

18 MR. ESTRADA: Justice Scalia. I beg your  
19 pardon.

20 QUESTION: I just wanted to get the date.  
21 Please finish the sentence.

22 MR. ESTRADA: And following that the range was 5  
23 under the first clause and 10 under the next, so it was  
24 not the type of issue that would be actively litigated  
25 because even though it obviously mattered it didn't matter

1 as much as it does now. It was not until --

2 QUESTION: You mean you didn't think a defendant  
3 would appeal a 10-year enhancement but he would appeal a  
4 30-year enhancement? That's what you're saying in effect?

5 MR. ESTRADA: Well, I think that he is more  
6 likely to take issue with the plain meaning of the statute  
7 if more turns on it than not. I think that is right.

8 The next point I was going to make in reference  
9 to what counsel said is that it is not the case that there  
10 were other cases in which the Government stipulated to a  
11 lower sentence by reason of any view it had of the second  
12 or subsequent clause. The cases it cites, one from the  
13 Tenth Circuit and one from the Ninth, both deal with a  
14 different problem that is not raised in this case and  
15 which is logically antecedent to the problem in this case,  
16 which is what the unit of the offense is under section  
17 924(c), specifically whether using multiple firearms to do  
18 a single crime is a single or a multiple crime under  
19 section 924(c). And in those, based on guidance from this  
20 Court in *Busic* and from what the courts of appeals have  
21 told us, we have taken the view that if a person uses more  
22 than one firearm to do a single crime of violence, that is  
23 a single crime under section 924(c).

24 Those are the cases that she is pointing to, and  
25 those raise an entirely different issue that is not raised

1 in this case because it is conceded here that he is guilty  
2 of six different 924(c) crimes.

3 Now, the important point about 924(c), as I was  
4 saying earlier, is that this is not a recidivist statute ✓  
5 but a dangerous person statute.

6 QUESTION: I suppose, Mr. Estrada, that if a  
7 person robs a single bank on a single day and takes both  
8 money and Government securities as part of the hold up and  
9 there are two counts, that the consecutive sentence rule  
10 or the enhanced sentence rule would apply here?

11 MR. ESTRADA: It is generally the case, Justice  
12 Kennedy, that if a person is guilty of two crimes of  
13 violence that he does as part of the same episode, it is  
14 true that two 924(c) crimes could be charged. I don't  
15 understand the facts that you gave me as really raising  
16 that, because I don't think that the separate taking of  
17 the bonds as part of the same bank robbery would  
18 necessarily be a separate crime of violence.

19 QUESTION: Well, suppose there were two counts  
20 charged. I certainly think that it would be more serious  
21 to take bonds and money than just money. Suppose two  
22 counts were charged. What would be the result under this  
23 statute?

24 MR. ESTRADA: I am answering yes to your  
25 question, Justice Kennedy. If a person, as part of a

1 single criminal episode, is guilty of more than one crime  
2 of violence or drug trafficking crime, it is in fact the  
3 case under our reading of the statute that if he uses a  
4 firearm with respect to each of those crimes and thereby  
5 makes more grave each of them, that he would be subject to  
6 two separate counts under section 924(c).

7 QUESTION: Even though it's really one episode.

8 MR. ESTRADA: That is right. And in other  
9 circumstances where Congress has thought that type of a  
10 circumstance significant, for example in section 924(e),  
11 it has expressly stated that the crimes must be, must  
12 happen on occasions different from one another. And  
13 Congress knows fairly well to write, how to deal with that  
14 type of issue if it thinks it should make a difference.

15 With respect to whether this is in fact a  
16 statute that is designed to teach a person a lesson, as I  
17 stated earlier, it is not. It is a dangerous person  
18 statute. And in fact it bears very little resemblance to  
19 a true recidivist statute. When Congress has enacted a  
20 true recidivist statute it has generally been quite  
21 explicit about the level of finality that a conviction  
22 must have attained in order for it to count under that  
23 statute. And I think all of the several statutes that we  
24 have cited in title XXI in the narcotics area are fairly  
25 instructive on that score.



1           In addition, it would be an odd recidivist  
2     statute that asks not only whether the defendant had  
3     served time in jail before for any crime or whether he had  
4     served time in jail for a state or Federal crime of the  
5     same general type as he is now charged with, those are  
6     clearly the case here, but which asks whether he had  
7     served that time in jail under this subsection of this  
8     statute and no other. And that is a very strange version  
9     of a recidivist statute.

10           QUESTION: Mr. Estrada, do you take the position  
11     that there is no ambiguity whatever in this statute?

12           MR. ESTRADA: Well, there is none as to the  
13     issue raised in this case, Your Honor. It is certainly --

14           QUESTION: Well, I'm asking you about the  
15     statute. Is it, is there no ambiguity in the meaning of  
16     the term conviction?

17           MR. ESTRADA: None as used in this statute. We  
18     readily concede that with every other word, that as with  
19     every other word in the English language it is possible  
20     that each of the words used conceivably might have a  
21     different meaning. What is important and dispositive in  
22     this case --

23           QUESTION: How about the term in the case of a  
24     second or subsequent?

25           MR. ESTRADA: There is no ambiguity whatever in



1 those words. The thought that in the case of, for  
2 example, might mean in the legal case of makes no sense  
3 for three reasons. The first one is that the most natural  
4 reading of the words in the case of is simply in the event  
5 of, and that is how the expression is used in everyday  
6 language.

7 The second one is that even reading the word  
8 case to mean legal case doesn't really do anything for Mr.  
9 Deal's case unless he also adds words like involving or  
10 similar words, as he does in his reply brief I think at  
11 page 7, whose purpose is essentially to nullify the choice  
12 of tense that Congress placed into the statute. It is  
13 those words, which are in essence fudge words, that really  
14 do the work for the alternative version of the statute  
15 that is being urged.

16 And finally, that reading wouldn't make sense as  
17 well because saying that case means legal case would turn  
18 the result of each case on how counts are joined in that  
19 case by the Government. That would be an unusual reading  
20 of a sentencing statute because sentencing statutes  
21 usually deal with the defendant's conduct, to what he did,  
22 not to how he was charged and tried. And all of those  
23 reasons I think clearly indicate that the plain meaning of  
24 the words in case of is simply in the event of.

25 QUESTION: How about the word subsequent?

1 MR. ESTRADA: Again, I think it is possible to  
2 read the word subsequent in isolation to have more than  
3 one meaning. Our submission in this case, Justice  
4 O'Connor, is that each of the words second or subsequent  
5 take meaning from the other and make the context clear.  
6 For example, it is a possible meaning of the word second  
7 that it is the sixtieth part of a minute. No one has ever  
8 said that that might be the meaning in this case for the  
9 obvious reason that everyone understands that in this  
10 context that can't be the meaning.

11 Again, we think that as used in the statute the  
12 expression second or subsequent really means another  
13 finding of guilt at any time after the first.

14 Finally, as to the word conviction --

15 QUESTION: Excuse me, after the first in time?  
16 It must be after the first in time, and not just in  
17 addition to the first?

18 MR. ESTRADA: No, I think it can mean in  
19 addition to the first. In order or in time, or at any  
20 time. But I think that given our reading of the word  
21 second to mean what its plain language says, something  
22 that follows the first either in time or in number  
23 sequence, or simply the number 2 in a countable series, it  
24 is the case that it can be in time or in order and the  
25 statute clearly encompasses both.

1                   As I was about to turn to the following --  
2       excuse me, to the final word that is of consequence here,  
3       Justice O'Connor, which is the word conviction, again we  
4       readily concede that there may be other contexts in which  
5       the word taken in isolation might mean a judgment of  
6       conviction. In this case it is clear from the context  
7       that its ordinary rather than its technical meaning is  
8       intended. The statute by its plain terms sets forth a  
9       chronological order in which events are to occur. Before  
10      a 20-year sentence may be imposed there must be a second  
11      or subsequent conviction. The statute therefore makes it  
12      clear that the, excuse me, that the conviction must come  
13      before the sentence, and therefore conviction cannot mean  
14      a judgment which already incorporates a sentence.

15                   Now, I think the Government --

16                   QUESTION: I assume that would only be a problem  
17      for the second one. After the second one you would be  
18      okay, right?

19                   MR. ESTRADA: Well, I think it's a problem for  
20      any of them, Justice Scalia.

21                   QUESTION: Well, you would have two before. I  
22      mean, with the second one -- well --

23                   MR. ESTRADA: Certainly. We think that our  
24      submission as to the meaning of the statute is also  
25      reinforced by the history of section 924(c) because, as

1 this Court indicated in *Busic* and in *Lewis*, the Gun  
2 Control Act of 1968 in general and section 924(c)  
3 specifically were passed in 1968 in response to an  
4 unprecedented wave of assassinations, riots, and violent  
5 crime. Since 1968 Congress repeatedly has thought,  
6 sought, excuse me, to turn the screw on armed violent  
7 crime, to single out those instances of armed conduct that  
8 give rise to intolerable risks to human life.

9 By and large the changes that Congress has made  
10 to the scope of the statute since 1968 or to the scale of  
11 its penalties, including its 1984 decision to change the  
12 result in *Busic*, manifest an attitude not of leniency but  
13 of increasing severity toward this very serious problem.

14 The second or subsequent clause in our view is a  
15 plain dangerous person statute and is not different from  
16 those other steps that Congress has taken. With the sole  
17 exception of the Tenth Circuit, every court of appeals to  
18 consider the issue that is raised here has discerned  
19 Congress' intent from the clear language of section  
20 924(c), and because that language is indeed clear we ask  
21 that the Court affirm the judgement of the Fifth Circuit.

22 QUESTION: May I just ask one more question?  
23 Would you agree that if one should read the word  
24 conviction to mean judgment, that then the judgment has to  
25 be reversed?



1 MR. ESTRADA: I cannot agree with that, Justice  
2 Stevens, for the reason that we have taken the view that  
3 if one were to read the word conviction to mean a judgment  
4 the statute would make no sense. And if we were not told  
5 anything more than is in your question right now we would  
6 not know what follows from that decision.

7 QUESTION: Well, you would know there have to be  
8 at least two judgments, because it has talked about a  
9 second or subsequent conviction or judgment. I suppose  
10 one judgment could not satisfy the requirement of needing  
11 a second or subsequent judgment.

12 MR. ESTRADA: On that theory, and if that were  
13 all the Court said, Justice Stevens, the judgment would be  
14 vacated and sent back to the district court where we would  
15 move to sever the sentences.

16 QUESTION: But you would agree there would have  
17 to be some, at least have to be sent back to the district?

18 MR. ESTRADA: There would have, on that  
19 reading --

20 QUESTION: You'd have to do that in every case  
21 where the district judge made a mistake of entering just  
22 one judgment.

23 MR. ESTRADA: That's correct.

24 QUESTION: Which is what normally happens at the  
25 end of criminal trials.



1 MR. ESTRADA: Well, that is what does normally  
2 happen at the end of what happens in the district court.

3 QUESTION: One piece of paper entitled judgment,  
4 I suppose, could, you could say that that really is  
5 several judgments because he has entered judgment on  
6 several counts.

7 MR. ESTRADA: That is right, Justice White, and  
8 I think the, how that is treated tends to vary from  
9 district to district. Ms. Young indicated that in her  
10 district this is thought of as a single judgment. I  
11 formerly worked in a different Federal district in New  
12 York City where the document was called a judgment and  
13 commitment order, and it was thought there to incorporate  
14 several judgments as to each of the counts. So I think  
15 this is a matter that is thought of differently in every  
16 district.

17 QUESTION: Because on your, if I recall, your  
18 argument is that judgment can never mean final judgment  
19 here because that doesn't occur until after the sentencing  
20 and therefore you would have the anomaly of having an  
21 addition to the sentence after the sentencing was complete  
22 and judgment had been entered.

23 MR. ESTRADA: Right. That the statute as  
24 written, and especially in light of the tense Congress  
25 chose, would make no sense because whereas the statute

1 sets forth a clear order in which events are to occur and  
2 that therefore dictates that the conviction must come  
3 before the sentence, you would be reading the word  
4 conviction to include the sentence, which in this context  
5 we think would make no sense.

6 QUESTION: Certainly the Federal Rules of  
7 Criminal Procedure contemplate that the judgment will  
8 occur after the sentence.

9 MR. ESTRADA: That is right. Federal Rule  
10 32(b)(1) says exactly that, Mr. Chief Justice.

11 If there are no other questions we will rest on  
12 our briefs. Thank you.

13 QUESTION: Thank you, Mr. Estrada.

14 Ms. Young, you have 4 minutes remaining.

15 REBUTTAL ARGUMENT OF DOLA JEAN YOUNG

16 ON BEHALF OF THE PETITIONER

17 MS. YOUNG: I would begin by taking issue with  
18 Mr. Estrada's position that conviction means a finding of  
19 guilt. As Justice O'Connor questioned this Court's  
20 opinion in the Dickerson case, Dickerson does require an  
21 indicia of finality. And Mr. Estrada referred  
22 specifically to page 111 as support for his position that  
23 it's a finding of guilt. However, on that page the Court  
24 also noted that of significance was that the, that Mr.  
25 Kenneson was placed on probation even though sentence had

1 not been imposed. There was an indication of finality  
2 from the fact that he was placed on probation.

3 QUESTION: What you had there, was it not, Ms.  
4 Young, was a plea of guilty? No finding of guilt and no  
5 sentence, but placing on probation?

6 MS. YOUNG: Yes, sir.

7 QUESTION: And the Court said that's enough to  
8 amount to a conviction?

9 MS. YOUNG: Yes, sir. And there was not just  
10 simply a finding of guilt in that case.

11 QUESTION: But there was not any finding of  
12 guilt in the case.

13 MS. YOUNG: Well, that's true. There was not  
14 any finding of guilt because it was a deferred  
15 adjudication type case. The statute is ambiguous --

16 QUESTION: Well, I guess Dickerson does point in  
17 the direction that supports Mr. Estrada more than it  
18 supports your view that there has to be a sentence  
19 actually imposed.

20 MS. YOUNG: It does not require that sentence  
21 has to be actually imposed, you are correct, Justice  
22 O'Connor.

23 QUESTION: Right.

24 MS. YOUNG: However, I think that it does not  
25 support Mr. Estrada's position that simply a finding of

1     guilt is sufficient for a conviction. The Dickerson case,  
2     I might also note, was a civil case and not really a  
3     criminal case, so there is just some indication of  
4     support. It's not exactly on point.

5             QUESTION: Well, we do have here ultimately a  
6     determination by the judge on each count that there is  
7     guilt and the imposition of a sentence on each count. We  
8     do have that here.

9             MS. YOUNG: This was a jury trial, and the jury  
10    found Mr. Deal guilty on each count.

11            QUESTION: Yes, but then the judge followed  
12    through and imposed a sentence separately on each count.

13            MS. YOUNG: That's correct. Yes.

14            QUESTION: So for your purposes we just have to  
15    come to grips with any ambiguity perhaps in the case of  
16    any second or subsequent --

17            MS. YOUNG: That's correct.

18            QUESTION: -- the meaning of that language.

19            MS. YOUNG: Yes, Your Honor. The change, Mr.  
20    Estrada referred to changes in the statute, and there have  
21    been several amendments to the statute since 1968, but I  
22    would point out to the Court that none of those amendments  
23    have dealt with this particular language and there has  
24    been no further elucidation or any changes to this  
25    specific language.

1 Due process is required from the law and the  
2 indictment, and not just from merely splitting the  
3 indictments. So splitting the indictments still does not  
4 address the issue of the due process in this case.

5 I would also point out the, in reference to  
6 dangerous people, 18 U.S.C. section 924(e), which is also  
7 a part of the Gun Control Act, is similar to 924(c) in  
8 that they are both designed to eliminate the use of  
9 firearms and get them out of the hands of dangerous  
10 people. 924(e) also uses the word conviction and does not  
11 define conviction. This -- thank you very much.

12 CHIEF JUSTICE REHNQUIST: Thank you, Ms. Young.  
13 The case is submitted.

14 (Whereupon, at 11:58 a.m., the case in the  
15 above-entitled matter was submitted.)  
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## CERTIFICATION

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

Thomas Lee Deal

✓ United States

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BY Ann Marie Federico

(REPORTER)