OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: ROBERT L. DAVIS, Petitioner v. UNITED STATES

CASE NO: 92-1949

PLACE: Washington, D.C.

DATE: Tuesday, March 29, 1994

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IN THE SUPREME COURT OF THE UNITED STATES

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ROBERT L. DAVIS, :

Petitioner :

v. : No. 92-1949

UNITED STATES :

- - - - - - - - - - - - - - - - - - -X

Washington, D.C.

Tuesday, March 29, 1994

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:02 a.m.

APPEARANCES:

DAVID S. JONAS, ESQ., Washington, D.C.; on behalf of the Petitioner.

RICHARD H. SEAMON, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the Respondent.

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PROCEEDINGS

(10:02 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument first this morning in 92-1949, Robert Davis v. the United States.

Mr. Jonas.

ORAL ARGUMENT OF DAVID S. JONAS

ON BEHALF OF THE PETITIONER

MR. JONAS: Mr. Chief Justice, and may it please the Court:

In the Marine Corps we have a bedrock principle; we never abandon our stragglers. So when a unit, a company, a battalion goes out on a march, the slow man in the unit sets the pace. If there's faster and stronger Marines, then they may not like that, but they understand the importance of that principle and so they put up with it.

Similarly, this Court has in the Miranda v. Arizona case set a bedrock principle too, the Fifth Amendment right to counsel. And I would respectfully suggest to this Court that in considering the standard to set for the invocation of that right, that you consider the stragglers in society like petitioner in this case: the weak, the timid, the uneducated, and those who have never before been exposed to the perils and the pressures

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of custodial interrogation.

There's essentially a universe of comments that a suspect in custodial interrogation can make about counsel. He can make an unequivocal invocation of his right to counsel, and then everyone knows what to do, interrogation ceases. He can make an unequivocal waiver, and the interrogation proceeds. He can make a passing reference. He can say -- make a comment like, "my sister used to date a lawyer," and that has absolutely no legally operative effect whatsoever.

But then we get to the subject of this case, the statement which is ambiguous, an ambiguous request for counsel, which is the issue granted in this case.

QUESTION: Well, now, just to set the scene, was there a -- he was read his Miranda rights at the outset?

MR. JONAS: Yes, Justice O'Connor, he was.

QUESTION: And waived them.

MR. JONAS: Yes, that's correct.

QUESTION: So there had been an unequivocal waiver initially.

MR. JONAS: That's correct. That's correct.

QUESTION: And so we are looking at this statement in that context and setting.

MR. JONAS: That's correct, Your Honor. But I'm not aware of any authority which indicates that once a

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suspect has waived his rights, that it is more difficult for him to subsequently then invoke them. So --

QUESTION: No, but it may have some bearing on whether it's appropriate to inquire about the meaning of an ambiguous statement made later. I think it has a bearing on the resolution of this case, perhaps.

MR. JONAS: Well, I would respectfully disagree, because I don't see how it's -- how once a suspect waives his right, that it's more difficult for him to invoke. At any rate, the issue in this case is an ambiguous request. And I just want to be very clear about the terms, because ambiguity is a fog that is very difficult to pierce. And if you'll note, in the issue granted by this Court the subject was an ambiguous request for counsel, and yet the Government has consistently referred to it as an ambiguous comment or an ambiguous statement, and an offhanded remark, that type of thing. And what --

QUESTION: It loads it to call it an ambiguous request for counsel. I mean it was a request for -- you're saying it was a request for counsel that was ambiguous. Maybe it wasn't a request for counsel. That's the whole problem.

MR. JONAS: Well, that's the problem with ambiguity.

QUESTION: Isn't it more accurate to call it a

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statement that was ambiguous? It might have been a request for counsel, it might not have been a request for counsel.

MR. JONAS: Well, we --

QUESTION: So, I mean, if you want to be picky-picky about words, it seems to me the Government's more accurate than you are.

MR. JONAS: Well, I think that our standard, which says that when a -- that you have an invocation when a suspect in custodial interrogation makes a statement which could reasonably be construed in context as a request for counsel, then it becomes an invocation. That's the easy thing about our standard; it requires one question, what --

QUESTION: Yes, but the Court hasn't adopted your standard, and I thought you were talking about, you know, what is the question we're presented with. The question we're presented is whether this particular statement is or is not a request for counsel.

MR. JONAS: That's correct, Mr. Chief Justice. And that is to be determined in context, and if we look at the context here we've got a young military man. He's a young sailor, an extremely low ranking sailor. He's attached to a combat vessel -- and I point that out because the closer you are to where a unit goes into

combat, the closer you are to where the rubber meets the road, the higher the discipline in the unit.

It's -- he's in an authoritarian setting, and what happened was he was -- he was in the psychiatric ward for over a week when he was arrested by the Naval Investigative Service agents and taken to their headquarters. At that time he was handcuffed to a chair and the interrogation begun -- began. And as Justice O'Connor noted, he, in fact, did initially waive his rights, and the interrogation proceeded.

However, what happened was -- you have to realize what this young man was -- the situation that had occurred. He had been making weird statements and that's why he was in the psychiatric ward for a week. And under Colorado v. Connelly, a suspect's mental condition is a relevant issue to be considered in terms of the voluntariness calculus, which has to be addressed here.

In the interrogation the questions got more and more difficult when they finally confronted him with a bloody t-shirt which they told him had the victim's blood on it, which, in fact, it did not. So at this point he said, "maybe I should talk to a lawyer."

Now, when you remember that the man is in the military and how different it is in the military and the things that military people can't do that civilians can

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do -- civilians can -- civilians can have "question authority" bumper stickers, they can wear a ponytail, they can tell their boss where to go, they can quit their job. And that's all fine.

Civilians get to do that. And I have no problem with civilians. I love civilians. My mother's a civilian.

(Laughter.)

MR. JONAS: But the fact of the matter is that in the military it's different, and if a military member does any of those things, he'll have "United States V" in front of his name.

QUESTION: But --

QUESTION: Are you proposing a special rule for military cases? I didn't realize that from your briefs.

MR. JONAS: Absolutely not, Justice Scalia.

QUESTION: Oh, then all of this is irrelevant.

MR. JONAS: No, we're not -- no, it's relevant because the context of the invocation has to be considered, and where the suspect in custody --

QUESTION: You said this is a man accustomed to taking orders --

MR. JONAS: Correct, Justice Ginsburg.

QUESTION: -- Is the point that you're making. But he did know how to say later -- later, he made a

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statement, "I think I want to talk to a lawyer." Here he says, "maybe I should talk to a lawyer." And he was told after he made the statement, "maybe I should talk to a lawyer," crediting Agent Sentell, as we must, "we made it very clear that if he wants a lawyer, we will stop any kind of questioning." And then the -- Agent Sentell says, "when they made that very clear, he said, no, I don't want a lawyer." So this person is capable of making definite statements.

MR. JONAS: Well, the problem is, Justice Ginsburg, that he had already invoked his right to counsel. People in that kind of setting, people in a powerless setting relatively -- in other words I'm not going to address this Court with imperatives because I don't have the power here. Similarly, petitioner in this case, confronted by older agents who were experienced in interrogation who have him handcuffed to a chair, he doesn't have the power in that situation.

So as the amicus brief points out, by Professor Ainsworth, people in powerless situations don't use imperatives.

QUESTION: But you're begging the question when you say he had already invoked his right to counsel. He had said, "maybe I should have a lawyer", and as I understand the facts, the interrogating officials then

pursued the question of whether, indeed, he did want a lawyer, and he said, "no, I don't; I'll go ahead anyway." I don't see how the person has been put upon.

MR. JONAS: If the Fifth Amendment right to counsel is to apply to everyone in America, including the weak and the timid, it's not -- people don't speak in imperatives. People don't -- no one is going to say, I hereby invoke my Fifth Amendment right to counsel as construed in Miranda v. Arizona. That's not how people talk.

QUESTION: But when you -- when you make an ambiguous statement and then the person says, do you want a lawyer, and you say no, this isn't a matter of being weak or timid, it's a matter of -- we cannot run a system for idiots. It's impossible to assume that everybody does not mean what he says in a criminal law system. You can't do it.

MR. JONAS: Well, Justice Scalia, I'll agree that a suspect has to try -- just like in a march, the Marine can't take his pack off and sit down, he has to try, he has to do a little bit. But the point is ordinary people, in context, would understand "maybe I want to talk to a lawyer" as an invocation of his right to counsel. That's obviously what he's thinking. It's not like it was right after the Miranda warnings themself.

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QUESTION: He's --

QUESTION: Well, do you concede, counsel, that at any point interrogators have an obligation to clarify what the suspect has said, to determine whether or not what he has said indicates the desire for a lawyer?

MR. JONAS: Absolutely not, Justice Kennedy. I think that --

QUESTION: So there's no matter of degree here. There either is an invocation of the right to counsel --

MR. JONAS: Or not.

QUESTION: -- Of either the clear or ambiguous variety, or not at all.

MR. JONAS: That's correct.

QUESTION: May I suggest --

QUESTION: In other words, there's no universe of ambiguous statements that could ever require clarification.

MR. JONAS: The passing reference can be clarified, if they care to do so, because it has no legally operative effect. A statement like, you know, I have a friend who used to be a lawyer, that's not an invocation under any standard. So that -- if they want to clarify that, they're welcome to, or they're free to ignore it.

But clarification has its own set of perils.

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Under Miranda, when a suspect indicates in any manner and at any stage of the proceeding that he wants to invoke his right to counsel, that's it. It's a low threshold, and this Court has set a low threshold for invocation in North Carolina v. Butler, and it has set a low standard for reinitiation in Oregon v. Bradshaw, where all a suspect had to say is, hey, what's going to happen to me now, and all of a sudden he's reinitiated the interrogation.

All we're saying is that it should be the same -- if it's a swinging door, right now a suspect has to push hard to get in to invoke the right to counsel, whereas to waive it, he has to touch the door and the door goes flying open and he goes out. All we're asking for is the same amount of pressure to be applied to that swinging door to get in and to get out. So --

QUESTION: May I ask -- I'm sorry, were you going to ask him?

May I ask you this? Your argument I think has two strains in it. One strain of the argument is this ambiguous statement or this allegedly ambiguous statement is, in fact, an invocation of the right to counsel. The second strain of your argument is when confronted with a question like this, the interrogators ought to do one thing or the other; i.e. they ought either to treat it as an invocation of counsel, or they ought to ask further

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questions to decide whether it is. And your argument is that it's the former of those alternatives.

My question is this; in order to agree with you that they should treat the statement as an invocation and not question the suspect about what he means, we don't have to agree with you about your -- on your first point that this statement before us, which is called ambiguous, in fact really isn't ambiguous at all, that it's really an invocation.

In other words, we can -- we can say, no, you're wrong, this is a truly ambiguous statement, we don't know what it means, and even in context we're not sure, and yet consistently we could say confronted with that kind of a question or that kind of a statement, they either ought to stop or they should stop and call a lawyer.

MR. JONAS: Well, Justice Souter, the problem is an individual who mentions -- he can only mean three things: I want a lawyer, I don't want a lawyer, or I don't know. In a perfect world, ambiguity would always reflect equivocation, but in this situation "maybe" is on its face ambiguous, and there's no question about it. But, of course, I mean in Smith v. --

QUESTION: So why don't you -- why don't you forget the argument that the ambiguous statement is really an invocation of counsel, and simply go to the question of

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what the Government ought to do when it's confronted with an ambiguous statement. And your argument there is the Government ought to treat it as if it were an invocation.

MR. JONAS: That's correct.

QUESTION: And call a lawyer.

MR. JONAS: That's correct.

QUESTION: So we don't have to agree with you on kind of the true meaning of the statement. All we have to agree with you, for you to win, is what should you do when you don't know what the statement means.

MR. JONAS: Well, but if -- if they -- there's a lot of statements that they can know what it means which aren't invocations, and that's where the context becomes critical, as in this case. So our point is that -- and look how the agents reacted to the statement "I think I want the lawyer," the functional equivalent of "maybe I want a lawyer," unless there's some metaphysical difference of which I'm unaware, which was -- which terminated the interrogation.

QUESTION: There's a big difference. I don't think it's metaphysical at all. Do you think the statement "maybe it will rain tomorrow" is ambiguous?

MR. JONAS: Any -- any statement --

QUESTION: Is that -- "maybe it will rain tomorrow," do you think that's ambiguous? I don't think

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it's ambiguous at all.

MR. JONAS: I think it has some ambiguity on its face, yes.

QUESTION: Well, I think it's a clear unambiguous statement that there is a possibility it will rain tomorrow.

MR. JONAS: Well, if a suspect says, "I don't know if I want a lawyer," that's a genuine statement of indecision, clear statement of indecision, and I'll agree with you there, there are those -- such statements.

QUESTION: Of decision. But there's a difference between indecision and ambiguity. It seems to me if he says maybe I want a lawyer, it's -- I don't see any ambiguity about the statement. He doesn't know whether he wants a lawyer or not.

MR. JONAS: But we believe that he has decided he wants one, but is not expressing it clearly or in an imperative manner. The court of military appeals says that if you don't have an unequivocal request, it can be clarified. Out point is --

QUESTION: What if he says, "I don't know if I want a lawyer," the example you just gave, what then?

MR. JONAS: Again, Justice Ginsburg, we look to context. If it was immediately after the Miranda warnings themself, when essentially the interrogation itself hadn't

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proceeded or hadn't begun, at that point we would say that really what he's -- what's going on there is he's -- his Fifth Amendment right to silence is what comes into play, which doesn't have to be invoked, which already exists. So at that point the Government could not show a knowing and intelligent waiver of his right to silence in order to proceed, so they should stop interrogation.

However, given the facts of this case, if petitioner had said at that moment when they're saying, hey, we found a bloody t-shirt on it -- with the victim's blood on it, and he says, "I don't know if I want a lawyer," that sounds like an invocation to me because it's obvious what he's trying to do; he's making the connection --

QUESTION: Well, I don't agree with you at all on that. To say, "I don't know if I want a lawyer," why on earth not interpret it just the way every ordinary English-speaking person would; I don't know if I want a lawyer.

MR. JONAS: Because, Mr. Chief Justice, I think if some -- if someone -- you know, if you said to me that you were going to go have pizza for lunch, maybe you were going to have pizza for lunch, or I don't know if I was going to have pizza for lunch, you're not in the position of custodial interrogation, none of those pressures are on

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you, so I would assume that you really don't know.

QUESTION: Well, but why does -- why does the pressure of custodial interrogation make someone say something that isn't really what they mean?

MR. JONAS: Well, I think --

QUESTION: I can see why you might be somewhat cowered, but if you say, "I don't know if I want a lawyer," I don't see why someone in custodial interrogation means anything different than that -- from that than someone who's not in interrogation.

MR. JONAS: Again, that -- if we look to Edwards and see what Edwards says, and drawing that bright line that when a suspect is trying to invoke his right to counsel, he's saying I can't deal with the pressures of custodial interrogation, as opposed to the right to silence where he's just saying I don't want to talk to you now. There's a world of difference there, and when he's saying, "I don't know," he's reflecting that inability to cope with the inherent pressures of custodial interrogation.

QUESTION: Well, he's reflecting his indecision about whether or not he wants a lawyer.

MR. JONAS: If it's genuine indecision, then our --

QUESTION: But what better guide than the plain

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words that he uses?

MR. JONAS: The context, Mr. Chief Justice. Again, we have to look at the context. And --

QUESTION: Mr. Jonas, assume that we can't figure it out; we don't know whether he is invoking a lawyer or not invoking a lawyer. You may be right that that's what he's doing, but we don't know. What is the answer to this question: why don't we instruct the interrogators at that point to ask him a simple question, "Do you want a lawyer?"

MR. JONAS: Because, Justice Souter, that -- that type of clarification has all the hazards of clarification which we pointed out in our brief. First of all, we view it as carving out an exception to Edwards, where clarification will really be used as a ploy for continued interrogation.

Similarly, it requires the suspect to leap two hurdles. A suspect who thinks he's already invoked his right to counsel is then said, "Well, what do you mean, do you want a lawyer?" And he thinks he's already invoked. There's a lot of things that go on in custodial interrogation that we don't see in appellate practice.

QUESTION: If he thinks he's -- if he thinks he's already invoked and the question is, "Do you want a lawyer," he's going to say yes, isn't he?

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MR. JONAS: We don't believe so, Justice Souter.

QUESTION: What you're -- it seems to me that what your answer suggests is that they're not going to play it straight with the question, they're not going to say, "Do you want a lawyer?," they're going to say, "Do you want a LAWYER?"(Heavy stress on "LAWYER?") And if they ask the question straight, "Do you want a lawyer?" I presume if he really wants one, he can say, "Yes."

MR. JONAS: Well, Justice Souter, I --

QUESTION: And what your -- what your argument boils down to, and it may be a serious one, is we should not adopt this alternative because interrogators won't play it straight; but that's the nub of your argument, isn't it?

MR. JONAS: They're human. I understand police.

QUESTION: They're human, but that -- I mean that is the nub of your argument isn't it.

MR. JONAS: But --

QUESTION: They won't play it straight. They'll ask the question, "you want a LAWYER?"

MR. JONAS: And this Court should not set rules that are going to fly in the face of human experience.

QUESTION: But, I mean, that's what you're telling us they'll do, and that's why we shouldn't allow the question and instead should treat the ambiguous

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statement as a request for counsel.

MR. JONAS: That's correct. Because police -- police wear a uniform like I do, they have a rank structure like I do, they are mission oriented like Marines are. When -- their mission in that interrogation room is to get a confession.

QUESTION: That's quite a different argument from saying that someone in this situation, because he is powerless, is incapable of expressing himself clearly, and that's why I asked you, pointing to his later statement which was, "I think I want a lawyer before I say anything else." The situation hadn't become less intimidating for him at that point, had it, when he made that statement?

MR. JONAS: Well --

QUESTION: "A lawyer, before I say anything else."

MR. JONAS: Well, it's difficult to say, Justice Ginsburg, why he did that at that point. And the reason why they treated it as invocation is perhaps because they weren't going to get anything else out of him at that point. However, the -- if you couple a weak suspect with the police motive to get a confession, you have intentional or unintentional dissuasion of an invocation, and that's our point here.

QUESTION: Counsel, it seems to me that what

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you're asking us to do is to adopt a rule that is most inefficient. I have, frankly, been surprised at some of the statements that you consider to be ambiguous, that I don't. So it seems to me what you're asking us to do is to have a whole jurisprudence of ambiguous and nonambiguous phrases.

MR. JONAS: Not at all.

QUESTION: And it seems to me that this will propel us into a great deal of inefficiency, and inefficiency that could easily be eliminated by simply asking the interrogating officer to clarify what the suspect has said.

MR. JONAS: If I may, Justice Kennedy, our standard says is it an invocation or not? The clarification standard requires three legal determinations, which will lead -- would lead to much more litigation. You would have to look at what requires -- what statement made by a suspect is ambiguous enough to rise to the level of requiring clarification; then does the officer keep his clarification within appropriate bounds, which in this case did not occur; and then finally, under Smith, did they try to use any of the subsequent statements to cast doubt on his original statement?

So that's -- that's why it just doesn't work

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when you --

QUESTION: Yes, except the -- except the step you miss is that when there is an ambiguous statement, it will be clarified and there will be no litigation.

MR. JONAS: But --

QUESTION: Because either the person will say that he wants -- the suspect will invoke the right to counsel and interrogation will cease or he won't.

MR. JONAS: But this asks the police officer who is trying to get a confession to be the champion of a suspect's Fifth Amendment right. Furthermore --

QUESTION: I really don't understand this argument that we can't trust the interrogator. I mean the whole Miranda structure, we can just do away with all of it if we must proceed on the assumption that interrogating officials cannot be trusted, because they can always come in and lie and say we gave him Miranda rights and he waived.

We can't proceed on the assumption that in the military or anywhere else, if an interrogating officer is told, once there is an ambiguous request for counsel all you can do is -- without asking the question, the way Justice Souter put it, all you can do is clarify it, I think we're entitled to assume that that's what they will do.

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QUESTION: Major, can I ask a question about the specific comments when the interrogator cleared it up saying we made it very clear, and so forth and so on? Did you object to the form of the question and answer there? We don't know exactly what was said. We have her summary of what she said. How come we don't have her attempt to recall the verbatim conversation, which is normally what the rules of the evidence require?

MR. JONAS: Because on the Joint Appendix, page 144, the military judge noted that, wow, all that from those little notes. In other words, it was amazing that she was able to recollect all this from her little bit of notes. And so all we have is a paraphrase.

But the point is the first thing they said is, hey, we're not here to violate your rights, which clarifies nothing. As a matter of fact, the converse is really true, that they're -- since they're there to procure a confession, they may be there to help him confess and to help him self-incriminate.

So in that regard, the clarification used here went beyond a neutral and detached objective type of clarification which we suggested in our brief at page 33, note 34, the type of suggested clarifications that would be reasonable if this Court were to adopt a clarification standard, which we are not arguing for. But if

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clarification had to be used, this went beyond it.

Also, the military judge in this case found specifically that the statement -- the mention of a lawyer was not in the form of an invocation, and under North Carolina v. Butler this Court held that waiver is not a question of form at all. And so, in other words, the military judge said that since he didn't properly dot his i's and cross his t's, he didn't get this valuable constitutional right.

QUESTION: The thing that puzzles me -- maybe -- I don't want to labor this, but apparently the witnesses could recall the precise words that he used, but nobody testified as to the precise words that made up the clarification, and they could make a lot of difference, as Justice Souter's example suggests. But the record really doesn't tell us exactly what she said. She said we made it very clear, and so forth, but how did she make it very clear? Did she start out telling him if you want to do that, of course, you won't be able to tell us the rest of the story now, so we're kind of interested -- you don't know what she said.

MR. JONAS: That's correct.

QUESTION: Yeah.

MR. JONAS: Ultimately, all we have is her paraphrase saying that we're not here to violate your

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rights; are you making a comment about a lawyer or are you asking for a lawyer. That's really all we have.

QUESTION: Was there any restriction on the cross-examination of Agent Sentell with respect to precisely what she said?

MR. JONAS: No, there was not.

Mr. Chief Justice, I'd like to reserve the remainder of my time.

QUESTION: Very well, Mr. Jonas.

Mr. Seamon, we'll hear from you.

ORAL ARGUMENT OF RICHARD H. SEAMON

ON BEHALF OF THE RESPONDENT

MR. SEAMON: Thank you, Mr. Chief Justice, and may it please the Court:

It is the United States' position that the police may ask clarifying questions when a suspect in custody makes an ambiguous reference to counsel. This clarification approach has been adopted by a majority of the Federal circuits and numerous State courts, and we urge this Court to adopt it because it comports with the balance of competing interests underlying the Miranda and Edwards rules. On the one side --

QUESTION: May I just get one thing out of the way. Is it your position they can ask clarifying questions in the tone of voice that Justice Souter

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suggested?

MR. SEAMON: No. A tone of voice, as much as the contents of what a police officer says, can tend to influence a suspect either way, and so our position is that the police have to -- police officers have to be neutral both in terms of what they say and how they say it.

QUESTION: So the clarification cannot suggest one course of action rather than the other.

MR. SEAMON: That's correct. The police are limited to ascertaining what the suspect's wishes are, and they're not permitted to try to dissuade the suspect from making the choice of getting a lawyer.

QUESTION: Would you accept a general rule that the police may simply -- or the interrogators may simply ask one question at that point, "Do you want a lawyer?"

MR. SEAMON: No, we wouldn't go so far. We don't believe that the approach that this Court adopts should attempt to script precisely what the police are entitled to say in response to an ambiguous reference.

QUESTION: We scripted Miranda pretty thoroughly.

MR. SEAMON: That's -- we suggest against that approach in this context. We suggest, instead, that there really be two ground rules, if you like. One is that the

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police, in response to an ambiguous reference that can be construed as a request, can't continue questioning the suspect about the offense under investigation. And secondly, they have to remain limited to trying to ascertain the suspect's wishes, rather than trying to influence his choice.

And the reason we recommend against scripting the approach and trying to inform exactly what they must say, is that ambiguous references can take a lot of different forms. In some cases -- for example, in some of the lower court cases cited in the briefs, suspects have posed questions to the police such as, "Do you think I need a lawyer?" Now, in a case like that, we think that it would be permissible for the police officer to say, "That's your decision to make," before posing the question, "Do you want a lawyer?"

There has to be that degree of flexibility because sometimes the suspect's ambiguous reference indicates that he needs more information about the nature of his rights or a better explanation. What we think is improper is a case such as Mueller v. Virginia, which is the case in which this Court denied cert but Justice White wrote a dissenting statement.

In that case the suspect said, "Do you think I need a lawyer here?" to the police, and the police

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responded by shaking their head from side to side and shrugging and saying, "You're just talking to us." We think that that can only reasonably be construed as indicating to the suspect that we don't think you should get a lawyer and it's not in your best interests to do so.

QUESTION: Mr. Seamon, you do take the position, though, that if there is either a nonambiguous request and they continue or if there is an ambiguous request and they fail to clarify it, the confession is -- any confession that follows is automatically inadmissable?

MR. SEAMON: I'm sorry if that's not clear. Not any ambiguous reference requires the police questioning to stop; it's only references that reasonably can be construed as a request for counsel.

QUESTION: Right. All right, right, that reasonably could be construed. But thereupon, that single factor would render the confession inadmissable that follows.

MR. SEAMON: That's right -- we think --

QUESTION: How does the Government square that with section 3501 of title 18, which says in words that couldn't be clearer that no single factor is to be -- is to be determinative concerning the voluntariness of a confession, but that a court is to consider all the circumstances surrounding the giving of the confession in

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deciding on its admission?

MR. SEAMON: We don't believe that section 3501 applies in this setting. We set out the relevant portion of 3501 at page 18 of our brief on the merits in footnote 13. The statute provides that in "any criminal prosecution brought by the United States" a confession "shall be admissible if it is voluntarily given." As we explain in that footnote, we don't believe that court martial cases are criminal prosecutions for purposes of section 3501, and in saying that we rely on decisions of this Court suggesting that court martial cases aren't criminal prosecutions for purposes of the Sixth Amendment.

In addition to that, we believe that even if section -- even if court martial cases were considered criminal prosecution, that in the military setting the rule -- this situation would be governed by Military Rules of Evidence 304 and 305, which essentially, in relevant part, codify Miranda and Edwards, and were promulgated by the President pursuant to his statutory authority.

QUESTION: We may be dealing with a very narrow case here, then, that just applies in the military context. Is that what you're telling us?

MR. SEAMON: What I'm telling you is that the Court need not decide the section 3501 issue in this case, and it may remain an open one in other cases.

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QUESTION: What you're saying is that it doesn't -- it's not relevant to this case and it would be relevant in a regular criminal prosecution, and the issue would be open then. Is that --

MR. SEAMON: It may well be relevant, and certainly in some cases such as Alvarez versus -- Alvarez-Sanchez, a case that we've argued earlier this term, it does bear -- it does have a direct bearing, but not in this case.

QUESTION: Does 3501 apply to State criminal prosecutions?

MR. SEAMON: It does not, Justice O'Connor.

QUESTION: And is the rule that you would advocate that we adopt here in the military context, the same rule that you think we would have to apply on habeas review of a State prosecution?

MR. SEAMON: Yes. We think that's correct. The -- we urge the Court to adopt an approach in this case that would apply not in the -- not only in the military context, but also in the civilian context as well.

QUESTION: Why would that be, that we would -- despite the fact that Congress says in a United States prosecution you consider all the circumstances, we would not consider all the circumstances in a State prosecution? Would we adopt a different rule for State prosecutions?

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MR. SEAMON: The Court may choose to adopt an approach that was the same for State prosecutions. It -- obviously, this is one of the difficulties of understanding exactly the significance of section 3501.

QUESTION: But now you're getting involved in a lot of hypotheticals, because I take it -- you haven't answered -- you say it's for another day -- the first point, whether 3501 supersedes the position that you're arguing today.

MR. SEAMON: That's correct. In any event, it doesn't apply in this case, and we would suggest that apart from the question of section 3501, we're arguing here that merely a reading of the Miranda line of decisions leads to the conclusion that the clarification approach is the one that should be adopted. Because on the one hand it serves what the Court has identified as the fundamental purpose of Miranda, which is to protect the suspect's right to choose whether to have a lawyer present during any questioning or to proceed without a lawyer.

But on the other side, it also takes into account the fact that society has a compelling interest, just as the Miranda case has recognized, in the effective investigation and punishment of crime, and that voluntary confessions play an essential role in serving that

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interest.

Petitioner's approach, in contrast, would skew the balance underlying Miranda. Petitioner's approach requires the police to stop questioning a suspect when the suspect makes any reference to a lawyer that could reasonably be construed as a request for a lawyer.

The problem with this approach is that not every ambiguous reference to a lawyer is, in fact, a request for a lawyer, even if it can reasonably be construed as such. Suppose, for example, in response to the Miranda warnings the suspect asks this question: "Can I get a lawyer now even though I can't afford one?"

Now, this might be a request for counsel, and in some cases presumably it will be, but in other cases it will simply be a request for more information. We think that in that situation nothing in Miranda, much less the Constitution, requires the police to assume that the reference is a request for an attorney simply because it might be a request for an attorney.

QUESTION: Does it require clarification?

MR. SEAMON: Yes, we think that clarification is the best approach to carrying out the purposes of Miranda, which is --

QUESTION: But does the statement that you just gave us require clarification, in your view?

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MR. SEAMON: Yes, I would say that it does require clarification.

QUESTION: How do we find -- define those statements that require clarification?

MR. SEAMON: The statements that require clarifications are those which can reasonably be construed as a request for an attorney. Alternatively, some references to an attorney will indicate indecision on the part of the suspect about whether he wants an attorney or not, and in those situations too, we think that clarification is appropriate.

Actually, the statement that was made in this case is a good example of a statement that is both ambiguous and you might also say ambivalent. I mean, on the one hand it could be construed to simply express indecision on the part of -- on the part of the petitioner.

QUESTION: I thought that you disagreed with counsel for the petitioner that a request that can reasonably be construed as a request for an attorney is unworkable, and yet that's the definition that you give for the duty to clarify.

MR. SEAMON: That's correct, both our approach and petitioner's come into play at the same point, upon a reference that can be construed as a request.

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QUESTION: So his statement, his formulation does have a workable content so far as a workable rule; you just disagree with what the rule ought to be.

MR. SEAMON: We think it's workable to that point. Where we disagree is what the consequences of such a reference to an attorney should be. To us it makes no sense to require the police to stop and back away and not say anything to the suspect, and speculate about whether, in fact, he's asking for an attorney or not or whether it's ambiguous enough, when clarification will take care of many of these cases.

We think it's unreasonable to assume that once a suspect makes an ambiguous reference to an attorney, if he actually wants an attorney, he'll suddenly change his mind in response to neutral clarifying questions. We don't think that suspects' wills will be overborne that simply.

QUESTION: Do you have a standard for distinguishing between statements that reasonably could be construed to be a request for counsel and are ambiguous, and those that reasonably could be construed as requests for counsel and should be so construed? How do you tell the difference?

MR. SEAMON: I'm sorry, I'm not sure I follow.

QUESTION: I mean most invocations of Miranda rights reasonably could be construed -- I mean invocations

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reasonably could be construed as requests for counsel. Say he had said instead of "maybe I should talk to a lawyer," said "I think I should talk to a lawyer," that certainly could be construed as -- but is that ambiguous or is that a clear request for counsel?

MR. SEAMON: It's -- under our approach, it wouldn't actually matter which it was, in the sense that if -- in response, if the police believe that it's ambiguous and they ask one or two clarifying questions.

QUESTION: Well, what if I said "I wish I had a lawyer with me right now?" I mean, my point is your universe of ambiguity includes statements that reasonably could be construed as requests for counsel. And, of course, all requests for counsel could reasonably be so construed, so how do I tell the difference between an unambiguous request for counsel and a -- one that's merely it reasonably could be construed as a request for counsel?

MR. SEAMON: I believe that is a difficult distinction to make, but I don't believe that it's necessary to make that distinction under the clarification approach.

QUESTION: Well, can't the police always say I didn't think he really meant it, he -- because previously he had waived his rights, so I thought I'd better ask for

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clarifying information. Can they always say, "do you really mean what you say?"

MR. SEAMON: Not if they do so -- they can't certainly do so with the intent of dissuading the suspect, but in many cases it will not be perfectly clear, and we think that even if after the fact there's reasonable -- there's a reasonable doubt about whether it's clear or slightly unclear, the clarification approach, you know, doesn't -- it means that it won't make a difference in the sense that in most cases the suspect --

QUESTION: Well, can you narrow the -- excuse me, Chief Justice.

QUESTION: Well, you're weaving in, Mr. Seamon, all sorts of factual nuances that are -- it struck me that petitioner's system of response was going to raise a lot of factual questions; it seems to me that yours does too.

Why not simply say that there are some things which are requests for counsel, the police have to stop? Then there's a big area inbetween which people might say was an ambiguous request or not, just kind of in the middle, and there you're entitled to clarify, without all this about what the intent with which you ask a question. This has got to be administered by thousands of trial courts.

MR. SEAMON: You're quite correct, Chief Justice

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Rehnquist, and that is our basic submission, that there are certain statements that will be so clear the police should stop. My only point was the minor one that clarifying questions often will be harmless in those situations.

QUESTION: Well, I thought that your universe was clear requests for counsel which require that interrogation be ceased.

MR. SEAMON: That's correct.

QUESTION: And ambiguous requests which might reasonably be construed as a request for counsel.

QUESTION: That narrows the universe.

MR. SEAMON: That's correct. And in the case of the former, questioning should stop, and in the case of the latter, clarification is permitted.

QUESTION: Mr. Seamon, is there a difference between an ambiguous statement and an equivocal one?

MR. SEAMON: There may be, but as a practical matter our approach wouldn't differentiate between those two.

QUESTION: You would apply the same rule to a statement that was equivocal as you would to a statement that was ambiguous?

MR. SEAMON: Yes. To the extent that the statement can reasonably be construed either as a request

for a lawyer or as indicating that the suspect is contemplating getting a lawyer, both require clarification.

QUESTION: An equivocal one indicating that the person being questioned is not sure whether --

MR. SEAMON: That's correct, and --

QUESTION: -- He or she wants a lawyer.

MR. SEAMON: That's correct, and the statement in this case is an example, to my mind, of a statement that is both ambiguous and equivocal. The statement, "maybe I should get a lawyer," could be construed to indicate indecision, and in that case -- and as a practical matter, it is often difficult to distinguish between ambiguous and equivocal assertions of counsel. And as a legal matter, under Miranda the Government has the burden of proving that a suspect has clearly waived his right to counsel before they can continue questioning, so if -- if the suspect makes it clear that he is undecided on that point, questioning has to stop until he makes a clear and unequivocal waiver.

Ultimately, petitioner bases his approach on two arguments, and we think that both are irreconcilable with the whole Miranda line of cases. The first argument is simply that the police cannot be trusted to limit themselves to neutral clarifying questions in response to

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an ambiguous reference. But as Justice Scalia pointed out, it could also be argued that the police can't be trusted to give the Miranda warnings in the first place, at least and tell the truth about it on the stand.

And, in fact, such an argument was made in the dissent in Miranda by Justice Harlan, and we think the answer to both Justice Harlan's argument and petitioner's is the same, that the clarification approach doesn't depend on trusting the police to do the right thing in every case, any more than does the Miranda line of cases. They do depend, and reasonably so, on the ability of courts to enforce the rules when the police do not observe them.

The second argument that petitioner makes is a related one, which is that even neutral clarifying questions will somehow exert a coercive influence.

QUESTION: Yeah, but if you had just a stop rule, if you had the rule that petitioner is urging, then you wouldn't have to worry about the police officers' credibility.

MR. SEAMON: There would still be credibility issues about what the suspect said in certain cases, about whether what the suspect said was clear or ambiguous.

QUESTION: Yes, you wouldn't eliminate that ambiguity, but you certainly would insulate the defendant

against a statement of the type Justice Souter suggested. I mean, "You really want a LAWYER!?"

MR. SEAMON: That's correct, but we don't think that the additional fact-finding that courts are required to engage in under the clarification approach is that much different and that much more complicated than determining what the suspect said, as opposed to determining what the police said in response.

And, obvious -- there is an obvious cost associated with petitioner's approach, and we think it is a significant one, which is that in many cases the police will be required to stop questioning a suspect who hasn't actually made a decision that he wants to have counsel present during the questioning, and we think that Miranda entitles the police to continue questioning in those cases until the suspect has actually invoked his right.

The other argument I was referring to is that somehow neutral clarifying questions exert a coercive influence, and this argument too is similar to an argument that was made in the dissent in Miranda, this time by Justice White. He argued that if the coercive setting is inherently -- if the custodial setting is inherently coercive, how can we trust a suspect to give an uncoerced response to the simple question of whether he wants a lawyer or not.

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And, again, the answer to both Justice White's argument and petitioner's is essentially the same, that Miranda is premised on the assumption that once the Miranda warnings are given, they dispel the coercive forces that are inherent in the custodial setting and enable the suspect to make a knowing and voluntary and intelligence choice about whether to exercise his rights. That assumption doesn't drop out of the picture just because a suspect makes an ambiguous reference to counsel.

If you accept the premise of Miranda, once the warnings are given any inherent coercive pressures are dispelled. Now, it's true that subsequent police questioning may exert a force of their own that prompts the suspect to attempt to invoke the right to counsel, but here again it's unreasonable to believe that the suspect in that case will suddenly change his mind in response to a few neutral clarifying questions. If the suspect thinks he's in trouble and that feeling leads him to ask for a lawyer in an unsuccessful way, then it's unreasonable to believe that he's going to lose that incentive in response to a few neutral questions.

This case illustrates the point. Petitioner makes --

QUESTION: Mr. Seamon, can I come back to section 3501? Do I understand it to be the Government's

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position that the Code of Military Justice provides for more rigorous procedural protections within the military than is provided in civilian criminal trials, that we should interpret the Code of Military Justice in such a way to provide for more rigorous prophylactic procedural protections than Congress has provided for civil trials? Is that the Government's position?

MR. SEAMON: No, that's not quite the Government's position. Our position isn't a comparative one of the sort that you posited. It's the narrower one simply that section 3501 doesn't apply in the military setting, and it's appropriate for the Court, in deciding the question presented here, to follow the Miranda line of cases, because they have been codified in military --

QUESTION: 3501 does not apply because it is not a prosecution by the United States.

MR. SEAMON: It is not a criminal prosecution for purposes of 3501, that's --

QUESTION: And the cases you rely on for that are cases involving the Sixth Amendment --

MR. SEAMON: That's correct.

QUESTION: -- That say it is not a criminal prosecution for purposes of the Sixth Amendment.

MR. SEAMON: That's correct.

QUESTION: It is not at all a criminal

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prosecution for purposes of the Sixth Amendment?

MR. SEAMON: The Court has not broadly held that court martial cases aren't criminal prosecutions for any purposes.

QUESTION: Is it a criminal prosecution for purposes of the Fifth Amendment, the self-incrimination right?

MR. SEAMON: The Fifth Amendment is a more difficult question, because it expressly --

QUESTION: Well, what is your position on that?

QUESTION: Where does Miranda come in?

MR. SEAMON: I'm sorry, I didn't quite follow your question.

QUESTION: A court martial proceeding.

MR. SEAMON: Yes.

QUESTION: Does someone who is being dealt with in a court martial proceeding have Fifth Amendment rights?

MR. SEAMON: He does, and this Court's decisions --

QUESTION: But not Sixth Amendment?

MR. SEAMON: Certain Sixth Amendment rights may well apply by virtue of the due process clause. But the Court has held, for example, that the right to a jury trial doesn't apply -- the Sixth Amendment right to a jury trial doesn't apply in court martial cases.

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QUESTION: But the privilege against self-incrimination is fully applicable in the military context, you believe?

MR. SEAMON: That's correct.

QUESTION: That is your position.

MR. SEAMON: Yes.

QUESTION: I suppose your position there would be --

QUESTION: Excuse me, just let me finish if I may. 3501, does that alter if it applied, at all, the Miranda standard, in your view? If you were here on a Federal criminal case, not in the military context, and we had this very same question that we have here, would we look to 3501 and would it require any different result?

MR. SEAMON: We don't take a position on that issue. With respect to the self-incrimination clause, I would just point out further it not only applies of its own force, but it is also codified in article 31 of the UCMJ, which is set out in our brief at page 2, which essentially provides for the same protections. And for that reason, we think the question presented here is governed by the Miranda line of cases.

QUESTION: I find it extraordinary that you don't take a position on that and haven't taken a position on that for many years. I can't understand. The language

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of 3501 seems to squarely apply, and the Government just comes in time after time and doesn't take any position on raising 3501, continues to argue Miranda as though there's no statute explicitly addressing it?

MR. SEAMON: I --

QUESTION: Now, today the reason is that this is under the Uniform Code of Military Justice, which we're going to interpret to be stricter on prophylactic results, contrary to everything else I've ever seen, than is civil or civilian criminal procedures. But it seems to me the Government ought to have a position on this.

MR. SEAMON: You may well be right, Justice Scalia. I would just clarify that we don't say that Miranda and Edwards apply with particular rigor in the military context, setting aside 3501. Our point is the narrower one that the military itself and the President has determined that Miranda and Edwards apply --

QUESTION: Does rule 304 specifically refer to Miranda?

MR. SEAMON: No, it doesn't, but rule 304 and 305, read together, require that a suspect be given the same -- the Miranda warnings, and they also codify the Edwards protection, that once a suspect invokes the right to counsel, interrogation must stop.

The Court of Military Appeals has, in addition,

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construed both Miranda and Edwards to apply in the military context. So in that sense, this case doesn't involve an interpretation of the rules of military evidence; it involves a question of what the Miranda line of cases require in this context.

QUESTION: Has the Court of Military Appeals ever dealt with the applicability of section 3501?

MR. SEAMON: The Court of Military Appeals itself has not. One of the service courts of military review have, and that is cited in one of the amicus briefs. It doesn't come to the top of my head.

QUESTION: Mr. Seamon, just help me out on one point. I take it it's the Government position that because the Fifth Amendment does apply, as you said to Justice O'Connor, that Miranda therefore applies. Otherwise, we would, in effect, be giving sort of an advisory opinion about Miranda in hopes that it would be helpful in construing certain military rules which presumably are not of constitutional significance necessarily.

MR. SEAMON: Yes, that's correct. We --

QUESTION: So this is a Fifth Amendment case. It's not a case about the military's own rules.

MR. SEAMON: This is a Fifth Amendment case and it is not a case about the military's own rules.

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QUESTION: Does 3501 has no bearing on what the Fifth Amendment ought to mean?

MR. SEAMON: It certainly does have a bearing to the extent that it reflects Congress' judgment about what the Fifth Amendment may require. And it's, frankly, a difficult question to what extent section 3501 and Miranda can be reconciled. Again, we don't take a position in this case.

QUESTION: Is Miranda required by the Fifth Amendment? I thought it wasn't required. Have we said it's required by the Fifth Amendment?

MR. SEAMON: No, this Court has repeatedly made clear that the Miranda rules are prophylactic.

QUESTION: But it's not.

MR. SEAMON: But on the other hand, the Court has suggested that some kind of warnings to a suspect have to be given prior to custodial interrogation. That's why it raises a somewhat difficult question about the effect of 3501.

If the Court has no further questions, that concludes my presentation.

QUESTION: Thank you, Mr. Seamon.

Mr. Jonas, you have 6 minutes remaining.

REBUTTAL ARGUMENT OF DAVID S. JONAS

ON BEHALF OF THE PETITIONER

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MR. JONAS: Mr. Chief Justice, just to clarify a few things. First, we believe that Miranda can dispel the inherently coercive pressures, but like after petitioner was in interrogation for over an hour here, we believe that at that point it's sort of worn off. And Edwards says a request can indicate that a suspect is incapable of dealing with the pressure of custodial interrogation, and that's why we believe that an ambiguous request indicates that a suspect is even less capable of dealing with those pressures.

I'd like to just address some of the issues that arose also. The question of "can I get a lawyer" or "do you think I need a lawyer" are simple requests for information, certainly not invocations, and in that case you would have the interrogator, who is the powerful one, clarifying information for the powerless suspect. And that's okay. There's absolutely no problem with that. It's only where the powerful interrogator is making the suspect clarify his desires that there's a problem. And under Arizona v. Roberson, we believe that the suspect's viewpoint, in this case a timid suspect, should be considered.

The Government also says that clarification will cost the Government confessions, and I think that what that does is acknowledge that without clarification

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they're going to lose confessions, because if the suspect is confronted with the additional coercion of a clarification scenario, he may very well back off of his initial invocation.

QUESTION: Well, it could mean, Mr. Jonas, that in some cases clarification will make clear it is a request for counsel, in other cases it will make clear that it wasn't a request for counsel, and in the latter kind of class of cases, the police were entitled to continue to interrogate but didn't do so.

MR. JONAS: That's true, Mr. Chief Justice, but the Government also points out their problem with foisting a lawyer on the suspect. You know, it's not the lawyer that's going to come in and handcuff the suspect to a chair. If the suspect doesn't want to talk to the lawyer, he's free to dismiss the lawyer, or more likely he'd reinitiate the questioning before the lawyer even ever got there. So we don't see a danger with ceasing question upon -- ceasing questioning upon an ambiguous request for counsel.

QUESTION: Well, there may not be a danger, as you see it, but don't you agree that the Government is right; out of the class of cases of ambiguous requests that are clarified, some would turn out to be not requests and some yes requests. In the ones that turn out to be

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not requests, the Government is losing its further opportunity to question.

MR. JONAS: Well, again, it's very difficult to comment without understanding what the context was for the invocation. If the ambiguous request appears to be an invocation, as in this case, then they have no business clarifying it, whereas if it's something else, like a passing reference --

QUESTION: Yeah, but you're not claiming that every ambiguous statement is, in fact, a request for counsel, are you?

MR. JONAS: Well, what we're saying, Justice Souter is that --

QUESTION: No, but could you answer that question? I mean some ambiguous statements are requests for counsel and some are not, don't you agree with that?

MR. JONAS: Well, using that specific terminology, ambiguous request, ambiguous requests are requests for counsel under Miranda in any manner. If there's ambiguity, it's still a request --

QUESTION: You keep calling them ambiguous requests. Let's take a neutral term and call them ambiguous statements. Some ambiguous statements that refer to counsel are, in fact, requests for counsel, and some of them are not. Do you agree with that statement?

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MR. JONAS: Yes, I do.

QUESTION: Okay. Well, the Government's point, I think, simply is that if you require an automatic cessation of questioning, in those cases which are not requests for counsel the Government is lose -- going to lose a confession which it would otherwise perhaps have had. Isn't -- isn't that all the Government is saying?

MR. JONAS: Well, but, Justice Souter, I think what -- in Miranda the language of the agent's using his judgment does not refer, in our opinion, to clarification. Rather, it refers to simply using the judgment, was it an invocation or not? If it's an invocation, questioning must cease, and the Edwards bright line rule kicks in.

QUESTION: Well, that's another possibility. We don't have a clarification rule, but just an absolute rule. You have to make up your mind whether it's a request for counsel or not. If it isn't, if it's too ambiguous to be that or too uncertain or too doubtful, maybe I want counsel and maybe I don't, then you can go ahead without any clarification with the rest of the questioning.

MR. JONAS: That's baseball. We agree. That's the way the game's played, and the interrogator has to make the call.

QUESTION: It's baseball with an appeal.

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(Laughter.)

QUESTION: Major, putting instant replay to one side.

(Laughter.)

QUESTION: Do you -- you make the argument that when there is an ambiguous request, interrogation must cease. Do you argue in the alternative that assuming there could be clarification, that there was more than clarification in this case?

MR. JONAS: Absolutely, Justice Stevens. And by saying what they did, making a gratuitous comment such as, "we're not here to violate your rights," they went beyond the neutral bounds of what proper clarification should be. And under Zerbst, we feel that -- under Zerbst this Court held that every -- that the Court should indulge every reasonable presumption against waiver. And what we're arguing for in the invocation sense is the converse of that rule, that courts should be told to adopt every reasonable presumption in favor of invocation, and that's really all our standard does.

Under Connecticut v. Barrett this Court held --

QUESTION: Wouldn't your argument there be a lot stronger if the assumption were not, as it must be here, that there has already been an ambiguous waiver? In other words, if we were dealing with a right, as it were, out of

the blue, to which the Government -- as to which the Government had to give no warning, you might have a fairly strong argument there. But here we're dealing with a right which has already been unambiguously waived, or there wouldn't be any questioning going on at all.

MR. JONAS: That's true. I'm not sure I understand your question.

QUESTION: So I guess once -- I'm saying that once the suspect has unambiguously satisfied the Zerbst standard, I'm not sure what force your argument has that we should sort of reindulge the Zerbst presumption in this converse sense and say any ambiguous statement should be an invocation.

MR. JONAS: Because, again, of Miranda --

QUESTION: It's already ambiguously waived.

MR. JONAS: Because, again, Justice Souter, of Miranda's language: "when he indicates in any manner and at any stage of the proceedings." We don't require -- we don't believe that that requires a different threshold to invoke.

I see my time is up, Mr. Chief Justice.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Jonas.

The case is submitted.

(Whereupon, at 11:00 a.m., the case in the above-entitled matter was submitted.)

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The United States in the Matter of:
ROBERT L. DAVIS, Petitioner v. UNITED STATES

CASE NO.: 92-1949
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BY Ann Marie Federico

(REPORTER)