

OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE  
**THE SUPREME COURT**  
**OF THE**  
**UNITED STATES**

CAPTION: FREDEL WILLIAMSON, Petitioner v. UNITED STATES

CASE NO: 93-5256

PLACE: Washington, D.C.

DATE: Monday, April 25, 1994

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -X  
3 FREDEL WILLIAMSON, :  
4 Petitioner :  
5 v. : No. 93-5256  
6 UNITED STATES :

7 - - - - -X  
8 Washington, D.C.  
9 Monday, April 25, 1994

10 The above-entitled matter came on for oral  
11 argument before the Supreme Court of the United States at  
12 11:04 a.m.

13 APPEARANCES:

14 BENJAMIN S. WAXMAN, ESQ., Miami, Florida; on behalf of  
15 the Petitioner.

16 JOHN F. MANNING, ESQ., Assistant to the Solicitor  
17 General, Department of Justice, Washington, D.C.; on  
18 behalf of the Respondent.

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1 PROCEEDINGS

2 (11:04 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument  
4 next in Number 93-5256, Fredel Williamson v. The United  
5 States.

6 Mr. Waxman.

7 ORAL ARGUMENT OF BENJAMIN S. WAXMAN

8 ON BEHALF OF THE PETITIONER

9 MR. WAXMAN: Mr. Chief Justice and may it please  
10 the Court:

11 This case calls upon this Court to make clear  
12 what it has indicated in every case on this issue in the  
13 past 30 years, and that is that a postarrest statement of  
14 an uncross-examined alleged accomplice, made in the  
15 throngs of custodial interrogation, which implicates a  
16 defendant, is inadmissible.

17 This Court has repeatedly recognized the  
18 inherent and unique untrustworthiness of these statements.  
19 They are made in the coercive atmosphere of police  
20 interrogation. They are made under circumstances when the  
21 declarant has every motive to speak without regard to the  
22 truth. These are desperate people in desperate times.

23 People that are arrested, their lives pass  
24 before their eyes, and they were motivated to speak in  
25 order to curry favor, in order to assist their own

1 situation, and for the same reason that is why they  
2 attempt to shift blame to someone else, to put the light  
3 on a different person, and to divert the attention from  
4 themselves.

5 The Government in this case recognized the  
6 inadmissibility of these statements, of Harris'  
7 statements, when it took the extraordinary measure of  
8 moving to sever Harris, the declarant in this case, from  
9 Williamson, the defendant.

10 QUESTION: The declarant is what you're --

11 MR. WAXMAN: Harris, which was the person whose  
12 statement we're concerned with.

13 QUESTION: You pronounced it declarant.

14 MR. WAXMAN: The declarant.

15 QUESTION: Well, just so I understand what  
16 you're talking about.

17 MR. WAXMAN: I'm sorry.

18 Harris' statements in this case graphically  
19 demonstrate the validity of this presumption that this  
20 Court has repeatedly recognized, and why today this Court  
21 should make these statements categorically inadmissible.

22 He was explained -- in custody he was told that  
23 he would be advised what benefit he would receive for  
24 making statements, cooperative statements. He knew that  
25 the thing he needed to do was to finger someone else.

1 That's what he could do to relieve the burden that was  
2 placed on him at this moment. That's something that  
3 everyone his shoes knows they need to do in order to get  
4 out from under the criminal justice system at that time.

5 They don't need to be promised. They know it  
6 instinctively. The mere suggestion in this case that some  
7 benefit might inure if he cooperated was enough to effect  
8 his state of mind so that he would speak, regardless of  
9 the truth of what he said.

10 QUESTION: But the declarant did admit his own  
11 criminal liability, at least to something in this area.

12 MR. WAXMAN: He admitted very minimally that he  
13 was a courier, that he was someone who was following  
14 directions, he was a mule.

15 QUESTION: He was found in position, and he knew  
16 what it was, and he was transporting it, so that would be  
17 enough to convict the declarant of several offenses, I --

18 MR. WAXMAN: That's correct, and even without  
19 his statements the courts have sustained conviction after  
20 conviction based on an individual's presence in a vehicle  
21 under these statements without even the incriminating  
22 statements.

23 QUESTION: Were there conspiracy charges brought  
24 against the two defendants?

25 MR. WAXMAN: There was a conspiracy charge.

1           QUESTION: Well, are you saying this entire  
2 class of statements can't be admitted, Mr. Waxman? The  
3 Government seems to argue that it is a case-by-case  
4 analysis under our decision in Lee and cases like that.  
5 Are you saying that there is a broad exclusionary  
6 principle, and if so, what is it?

7           MR. WAXMAN: The broad exclusionary principle  
8 would be that these types of statements -- in other words,  
9 statements of uncross-examined, alleged accomplices such  
10 as Harris, which are made in the throngs of custodial  
11 interrogation which implicate in a self-serving way a  
12 defendant such as Williamson, should categorically be  
13 excluded.

14          QUESTION: Well, you put so many qualifications  
15 on it, though, that it's hard to know how general your  
16 principle is.

17          All of this is technically hearsay, I take it.  
18 These are people who don't testify at trial, and you're  
19 trying to get it in as an exception to the hearsay rule,  
20 and traditionally the declaration against penal interest  
21 is contended by the Government, I think with some reason,  
22 that it's a well-established exception to the hearsay,  
23 rooted in history. Do you disagree with that?

24          MR. WAXMAN: We do disagree with that, but I  
25 think the focus of this Court should be on this peculiar

1 narrow category of statements that falls within the  
2 general category, and this is what the Court discussed in  
3 Lee.

4 QUESTION: Well --

5 QUESTION: So -- you're not arguing here that  
6 the declaration against penal interest is not a firmly  
7 rooted principle of hearsay?

8 MR. WAXMAN: I believe that it is, but I don't  
9 believe the Court needs to get to that issue.

10 QUESTION: In Lee, and in a subsequent case  
11 coming out of New Mexico, didn't we really describe a  
12 presumption against admitting the evidence, rather than  
13 making it a categorical rule?

14 MR. WAXMAN: That's correct.

15 QUESTION: And do you -- can you prevail here  
16 only if the Court adopts a categorical rule?

17 MR. WAXMAN: No. I think under -- certainly  
18 under the facts of our case, the statement failed to not  
19 only meet the requirements of the rule, 804(b)(3), they  
20 certainly failed to meet the requirements of the  
21 Confrontation Clause, and we should indeed prevail, but  
22 I --

23 QUESTION: But you don't want us to just stick  
24 by Lee and the other cases that we've decided. You want  
25 something more.



1 MR. WAXMAN: I think in -- today, with 30 years  
2 of experience of these types of statements, and seeing the  
3 validity of the presumption and, indeed, that these  
4 statements are categorically, inherently, and uniquely  
5 untrustworthy -- any person in this position instinctively  
6 will seek to curry favor and to lay blame elsewhere.

7 QUESTION: Why shouldn't -- as a matter of  
8 general principle, why shouldn't we leave it to the jury  
9 to figure this out and maybe give them some instructions?

10 MR. WAXMAN: Because the jury was never  
11 presented with the facts and the circumstances to be able  
12 to fairly evaluate this statement. That's precisely the  
13 problem. By denying the defendant the ability to cross-  
14 examine the declarant, in this case Harris, the defendant  
15 was unable to show why Harris was motivated to falsely  
16 implicate Williamson. The jury was -- this evidence was  
17 kept from the jury, and the judge could only speculate on  
18 the state of mind of Harris and why he would make a  
19 statement implicating Williamson.

20 QUESTION: Well, you're giving us a lot of facts  
21 here about why Harris' declaration wasn't trustworthy.  
22 Couldn't those have been brought to the attention of the  
23 jury?

24 MR. WAXMAN: Some of them could be.

25 For instance, certainly the jury was made aware

1 that the agents advised him that any cooperation he gave  
2 would be reported to the prosecutor, but do we know that  
3 that's really what happened in this circumstance?

4 Don't we really need Harris to find out whether  
5 a firm promise had been made, or what impact that  
6 statement had on his mind, and how it motivated him to  
7 make this statement?

8 QUESTION: Well, you've certainly got the  
9 ability to bring some of the facts before the jury, as you  
10 indicate. You don't have the opportunity to cross-examine  
11 Harris, and that's what hearsay exceptions are all about.

12 MR. WAXMAN: That's correct, but under this set  
13 of circumstances, we're presented with a situation that in  
14 every case is going to bring before the Court statements  
15 that are inherently untrustworthy.

16 QUESTION: What about -- is it untrustworthy to  
17 the extent that they incriminated Harris himself? How  
18 about letting in that much of his statement?

19 MR. WAXMAN: I think that that's a way that the  
20 Court could go. That was the mode of analysis that Chief  
21 Justice Cavanaugh took in Michigan, recognizing that,  
22 while a statement implicating the declarant -- the  
23 declarant, excuse me -- Harris in this case, may indeed  
24 satisfy the requirements of the rule.

25 The portion of the statement that incriminates

1 Williamson was not against his penal interest, but indeed  
2 was self-serving. That was the most and the best kind of  
3 statement that Harris could make at that time to serve his  
4 own selfish interests, and so the Court could certainly  
5 allow statements such as those that Harris made which  
6 incriminated himself, while excluding statements,  
7 collateral statements which incriminate third parties,  
8 which is --

9 QUESTION: On the ground that those are not  
10 against Harris' penal interest --

11 MR. WAXMAN: Correct, and indeed --

12 QUESTION: -- and on the contrary they tend to  
13 make him a lesser actor in this criminal affair.

14 MR. WAXMAN: Correct, and particularly on the  
15 facts of this case. Again, we have Harris saying that he  
16 was a mere courier. He was following the directions of  
17 another. Williamson, he claims, was the principal. He  
18 was the one who procured the cocaine, who arranged for it  
19 to be transported and was ultimately going to be the  
20 recipient.

21 He laid the bulk of the blame on Williamson, and  
22 we're left to speculate why, and the reason is, is because  
23 he had every incentive to lay the blame on someone else,  
24 and Williamson was denied the ability to probe his mind,  
25 his state of existence, and why he made these kinds of

1 statements.

2 QUESTION: What would your rule be if the  
3 statement which inculcated the defendant also included  
4 admissions against the declarant which went beyond  
5 anything the police might have known at that point? Would  
6 your broad principle apply then?

7 MR. WAXMAN: I think the broad principle, and  
8 the primary factor, is that we are in the context of  
9 custodial interrogation, a context that this Court has  
10 recognized in numerous cases is fraught with the  
11 possibility of coercion, is fraught with the concern of  
12 what the state --

13 QUESTION: Well, if we're worried about that, we  
14 won't let anything in. I mean, the argument for keeping  
15 out the statement or the portion of the statement that you  
16 object to is that it's too much in the declarant's  
17 interest to make it, and to make it falsely, but if that  
18 is in fact part of the -- if that occurs in a context in  
19 which the declarant is also making it worse for himself by  
20 admitting more than the police would have had against him  
21 at that point, doesn't that lend a note of probity to the  
22 statement, and therefore shouldn't your broad principle of  
23 exclusion fall in that case?

24 MR. WAXMAN: I would urge that the Court should  
25 adopt a broad principle that would be protective of

1 circumstances such as this, where the danger that the  
2 statement may be not true and untrustworthy is great  
3 enough that we may indeed have --

4 QUESTION: But the danger is less -- I take it  
5 you would agree the danger is less in the case that I put.

6 MR. WAXMAN: Absolutely.

7 For instance, I think Lee is a case much more  
8 similar to yours, where the arrested person whose  
9 statement we were concerned with specifically admitted  
10 that they had murdered Aunt Beattie. They had committed  
11 one of the murders.

12 Here, very differently, we've got someone  
13 minimizing their role and maximizing the role of the  
14 person who is not present, who has no opportunity to  
15 cross-examine. I think that there's definitely a variant  
16 which the Court could find would make a statement more  
17 reliable in Your Honor's circumstance.

18 There are numerous other facts in our case to  
19 demonstrate the untrustworthiness of this statement.  
20 Harris refused to give a written statement, and ultimately  
21 refused to make the statement under oath. He was granted  
22 immunity. The statement could not have been used against  
23 him.

24 The only thing he had to lose by making the  
25 statement would have been the potential prosecution for

1 perjury if this statement were false. He had already  
2 implicated Williamson. He had nothing to lose to testify  
3 under oath, but he refused, as he had refused to make a  
4 written statement.

5 He lied to the police. We know this. He made  
6 three different statements. The statements were  
7 inconsistent.

8 QUESTION: Because he was afraid --

9 QUESTION: Can you bring that out to the jury?

10 MR. WAXMAN: That was brought out to the jury,  
11 absolutely.

12 QUESTION: So it's not as if you can't bring  
13 this to the attention of the factfinder.

14 MR. WAXMAN: Some of the facts and circumstances  
15 can be brought to the attention of the factfinder, but the  
16 concern is that they do not get the full flavor that  
17 they're entitled to when dealing with this witness who,  
18 whether present or absent, was the most crucial witness in  
19 the entire case.

20 Typically in a criminal case the cross-  
21 examination of this type of person is the most riveting  
22 moment in the trial. It is the moment that every person  
23 in the Court knows that the freedom and liberty of the  
24 defendant depends upon. If this witness is believed, the  
25 defendant will be found guilty, and if this witness is

1       disbelieved, the defendant --

2               QUESTION: Well, did the defendant take the  
3 stand here, in this case?

4               MR. WAXMAN: No, the defendant did not take the  
5 stand.

6               QUESTION: Did Harris -- was Harris called to  
7 testify in front of the jury, and did he take the Fifth in  
8 the presence of the jury?

9               MR. WAXMAN: No. That whole procedure was  
10 done --

11              QUESTION: But he could have been? He could  
12 have been brought into the courtroom, sworn, and had the  
13 jury see him?

14              MR. WAXMAN: I would say -- excuse me. I would  
15 say under the case law it would have been rather unethical  
16 for the defendant, knowing that Harris had invoked the  
17 Fifth, to call him as a witness and to make him --

18              QUESTION: I thought that happened all the time,  
19 because that's one of the circumstances the jury can then  
20 consider. I've had it happen in courtrooms where I've  
21 been presiding.

22              MR. WAXMAN: It's always been my understanding  
23 as a defense attorney that if I know a particular party is  
24 going to invoke the Fifth, then I'm not permitted to call  
25 that party and to have them invoke their constitutional

1 rights in front of the jury, and then to argue from that  
2 invocation that -- you know, inferences about what the  
3 person might have said or might not have said.

4 QUESTION: But here the invocation was before  
5 the judge, right?

6 MR. WAXMAN: Correct.

7 QUESTION: And the judge offered the witness  
8 immunity.

9 MR. WAXMAN: Correct.

10 QUESTION: And the witness said no, and then  
11 what happened?

12 MR. WAXMAN: Ultimately, the witness was held in  
13 contempt, and that was the end of Harris' position in  
14 court, and at that point the Government went behind its  
15 severance motion and put on the agent to testify about  
16 what Harris said out of court, not under oath, about what  
17 he claims Williamson did.

18 I would submit that the hearsay in this case in  
19 those statements was even worse than that which was  
20 brought in against Sir Walter Raleigh in that case in the  
21 early 1600's which is often seen as the genesis of the  
22 Confrontation Clause. This statement was not even under  
23 oath. It was the worst and least-reliable form of hearsay  
24 that we --

25 QUESTION: Mr. Waxman, what are your best



1 authorities for -- under the Federal rule here that the  
2 state would invoke? Tell us how much of this statement  
3 should come in. If it is a declaration against penal  
4 interest, what are your best authorities in support of a  
5 requirement of redaction, for example?

6 MR. WAXMAN: The case that we relied on most  
7 heavily would be Flores out of the Fifth Circuit. That's  
8 at 985 F.2d. It's a 1993 decision in which that court  
9 recognized that these statements, again as this Court has  
10 repeatedly stated, have unique and inherent indicia of  
11 unreliability because they are taken in the throngs of  
12 custodial interrogation, and because the arrestee is  
13 motivated to speak without regard to the truth.

14 QUESTION: It's sort of surprising that there  
15 isn't more authority for the meaning of the rule in terms  
16 of what comes in along with the statement, whether related  
17 statements come in, or they don't, or whether redaction is  
18 required.

19 MR. WAXMAN: Well, quite frankly I think that  
20 there has been some confusion under the rule, and the  
21 courts have adopted numerous different ways of approaching  
22 these issues.

23 Some courts have found that while these types of  
24 statements satisfy the first part of the rule -- in other  
25 words, the part that says, if the statements so far

1 compromises one's penal interest, such that a reasonable  
2 person would not have made them unless believing them to  
3 be true, they've said that a statement has satisfied that  
4 portion of the rule, but has failed to satisfy the part  
5 that most courts have read into it, which is that these  
6 statements have to be supported by a particularized  
7 showing of guarantees of trustworthiness, so you have  
8 cases that have dealt with it in that way.

9           You have cases that have found, notwithstanding  
10 these circumstances similar to the ones presented here,  
11 similar to those recognized in Lee, that have said we're  
12 going to hold that these statements satisfy the rule, that  
13 they --

14           QUESTION: Well, if this statement had been  
15 redacted to strike out the name of Williamson, would you  
16 be here today?

17           MR. WAXMAN: No, nor would the statement have  
18 been introduced, because it would have --

19           QUESTION: It wouldn't be relevant --

20           MR. WAXMAN: It would have had no --

21           QUESTION: -- perhaps, or would it? Would it  
22 have been relevant, still?

23           MR. WAXMAN: It would have had no relevance in  
24 Williamson's trial. The only issue there was Williamson's  
25 guilt. He was not at the scene at the time of the arrest.

1 He had no involvement in the initial law enforcement  
2 efforts whatsoever.

3 QUESTION: Well, why wouldn't it be relevant? I  
4 mean, it seems to me that the State would introduce -- the  
5 State is trying to say someone else made the arrangements  
6 for this cocaine distribution, and it would introduce  
7 testimony by the person who had it in the car that,  
8 indeed, someone else did, and the State's trying to prove  
9 that someone else is Williamson. Why, it would certainly  
10 be relevant --

11 MR. WAXMAN: I think Your Honor --

12 QUESTION: -- so it would get in.

13 MR. WAXMAN: I think Your Honor is correct.

14 There was reference to an unidentified --

15 QUESTION: Right.

16 MR. WAXMAN: -- Cuban male at some point in Fort  
17 Lauderdale, and it's true there was a conspiracy charge  
18 here.

19 QUESTION: Right.

20 MR. WAXMAN: I take back what I said.

21 QUESTION: I think it would get in.

22 Is all that you're arguing -- are you just  
23 arguing before us a question of fact, that rule 804(b)(3)  
24 was applied incorrectly?

25 MR. WAXMAN: I think the Court could find that

1 it was applied incorrectly, and I would be satisfied with  
2 a ruling to that extent.

3 QUESTION: Why would we want to go beyond that?

4 I mean, really what you're saying is that the  
5 statement there that a reasonable person in declarant's  
6 position would not have made the statement unless  
7 believing it to be true, what you're telling us is, there  
8 are a lot of reasons why somebody in this position would  
9 make it without believing it to be true, therefore  
10 804(b)(3) was not met.

11 MR. WAXMAN: Because I think what the Court  
12 needs to do is to give guidance to the lower courts on how  
13 to deal with these type of statements which are often the  
14 most strong and possibly the only evidence that the  
15 Government has to convict a defendant, and in cases that  
16 have been decided by this Court --

17 QUESTION: Why should the guidance be anything  
18 more than, take that line seriously, and you can say, to  
19 the extent that the statement is purely self-serving, that  
20 it doesn't satisfy that requirement. To the extent that  
21 it incriminates the speaker himself, it does fit the rule.

22 MR. WAXMAN: Again, with that kind of a ruling  
23 the petitioner would prevail, and we would certainly be  
24 satisfied.

25 But what I think this case does is present an

1 opportunity to evaluate this presumption that the Court  
2 has recognized for 30 years and has repeatedly dwelled  
3 upon, and to say, what we are now saying is that these  
4 circumstances are so fraught with the possibility of  
5 deceiving the factfinder and concealing the truth that we  
6 are going to categorically make any of these statements  
7 admissible to prevent a violation of confrontation rights,  
8 such as the one that occurred in this particular case.

9 This is not the only case in which the rule has  
10 been inappropriately applied to this factual circumstance.

11 QUESTION: But you conceded earlier, and I think  
12 you're sticking to it, that to the extent it incriminated  
13 Harris, it could come in. There was evidence placing  
14 Williamson together with Harris and connecting them both  
15 to that vehicle, was there not?

16 MR. WAXMAN: Yes, there was.

17 QUESTION: So there would be some relevance to  
18 having Harris say, yes, I was the courier, and then there  
19 were at least three items of evidence that connected  
20 Williamson to the car.

21 MR. WAXMAN: There were, that's correct.

22 QUESTION: What was that evidence, just his name  
23 on the rental agreement?

24 MR. WAXMAN: His name was on the rental  
25 agreement. There was no evidence that it was in his

1 handwriting. There were, I believe, one or two receipts  
2 with his name on it in the vehicle, and the luggage in the  
3 truck bore initials matching Williamson's sister's name.  
4 There were no fingerprints of Williamson found --

5 QUESTION: Is that the extent of the evidence  
6 that connected him with the vehicle?

7 MR. WAXMAN: That was the extent of it.

8 QUESTION: Was there some correspondence,  
9 something with -- or am I confusing this with another  
10 situation, something with a girlfriend?

11 MR. WAXMAN: The girl -- the connection with the  
12 girlfriend, I believe, was the initials on the luggage in  
13 which the cocaine was found.

14 QUESTION: I thought that was a relative.

15 MR. WAXMAN: No, that was his sister.

16 QUESTION: Yes. She was not his girlfriend.

17 MR. WAXMAN: I'm sorry, I apologize. It was --  
18 the sister's name matched the initials on the luggage, and  
19 I believe you're right, I believe there was a piece of  
20 correspondence with the name of his girlfriend on it.

21 Again, what the Court should do is look at these  
22 statements as being very distinct, ones that are self-  
23 serving, and ones that are not.

24 While the statement against Harris may have been  
25 against his penal interest, certainly the ones against

1 Williamson were not.

2 QUESTION: What if they're inextricably  
3 intertwined, that in two or three sentences, each sentence  
4 has some declaration against penal interest, but also some  
5 inculcation of third parties?

6 MR. WAXMAN: I think, for instance -- the  
7 example that comes to my mind is Lee, where there were  
8 references to "we did this," and "we did that," and I  
9 would urge the Court that -- the Court conceivably could  
10 separate that situation out and suggest that those  
11 circumstances be separately analyzed, but again, what I  
12 believe is the crucial factor here is the fact that these  
13 statements again are made in the coercive atmosphere of  
14 custodial interrogation, and even those --

15 QUESTION: Of course, if they're coercive  
16 statements, custodial atmosphere, that's a -- presumably  
17 the Miranda warnings take care of that, so I mean, we're  
18 not -- I would think we wouldn't be arguing that point  
19 here.

20 MR. WAXMAN: Well, I think this Court's cases  
21 have recognized that even given Miranda warnings, it could  
22 still be determined that a statement was involuntary due  
23 to the coercive circumstances of the custodial  
24 interrogation, but yes, that conceivably could address  
25 these circumstances.

1 QUESTION: So you don't agree that the parts  
2 that incriminated Harris and the parts that incriminated  
3 Williamson were inextricably intertwined here.

4 MR. WAXMAN: Absolutely not, and again I think  
5 the contrast here would be Lee, where there's a much  
6 better argument that these statements were inextricably  
7 intertwined.

8 Unless the Court has any further questions, I  
9 would reserve the balance of my time for rebuttal.

10 QUESTION: Very well, Mr. Waxman.

11 Mr. Manning, we'll hear from you.

12 ORAL ARGUMENT OF JOHN F. MANNING

13 ON BEHALF OF THE RESPONDENT

14 MR. MANNING: Thank you, Mr. Chief Justice, and  
15 may it please the Court:

16 Petitioner argues that an inculpatory confession  
17 made by an accomplice to the police while he's in custody  
18 should be excluded per se under the rules of evidence and  
19 under the Confrontation Clause. That contention, however,  
20 finds no support either in the rules or in this Court's  
21 Confrontation Clause cases.

22 As to the rules, petitioner's argument would  
23 mean that no matter how overwhelmingly all of the other  
24 circumstances of the case pointed to the admissibility of  
25 a statement under the rule, the district court would be



1 required to exclude any such statement as long as it was  
2 made by an accomplice to the police while the declarant  
3 was in custody.

4 So if you think about this situation, if someone  
5 went to the police and was in custody and said, I murdered  
6 Fred, took the watch off of his wrist, and sold it to Joe,  
7 that statement would have to be excluded in Joe's trial  
8 for possession of stolen goods.

9 In other words under petitioner's view, no  
10 district court could find that a reasonable person in the  
11 declarant's position would not have made the statement  
12 admitting to a capital crime, and at the same time  
13 implicating someone else in a misdemeanor. We do not  
14 believe that that can be sustained under the plain  
15 language of the rule.

16 QUESTION: Well, Mr. Manning, under the plain  
17 language of the rule, how much of this statement can the  
18 Government get in, or is there some requirement that we  
19 analyze the statement and each part of it to see whether a  
20 reasonable person in the declarant's shoes would have made  
21 it and thought it -- wouldn't have made it unless he  
22 thought it were true, because there is some concern here  
23 that insofar as the statement implicates Williamson,  
24 perhaps it doesn't meet that requirement.

25 MR. MANNING: Well, there are two distinct

1 answers to that. One comes from the advisory committee  
2 note itself. In the advisory committee note, and this is  
3 cited on page 23 of our brief, the advisory committee  
4 explained that a third party confession may include  
5 statements implicating the accused, and under the general  
6 theory of declarations against interest, they would be  
7 admissible as related statements. Now, that is consistent  
8 with the common law tradition of statements against  
9 interest which, although --

10 QUESTION: But wouldn't it have to meet the  
11 requirement of the rule itself to be admitted?

12 MR. MANNING: Oh, absolutely, Your Honor.

13 QUESTION: And can it, insofar as Williamson is  
14 concerned?

15 MR. MANNING: Well, yes, we think it absolutely  
16 can, for a couple of reasons. If you just think about  
17 when somebody is making a statement against penal interest  
18 and describing his role in an offense, in describing that  
19 role, he says more than just the core, I robbed the bank.

20 He will say, I robbed the Riggs National Bank,  
21 Georgetown Branch, on Tuesday at 11:00 a.m., and there are  
22 lots of facts that are part of that statement against  
23 interest that if you took them in isolation might not be  
24 strictly against the declarant's interest, but in the --

25 QUESTION: Yes, but insofar as the declarant is

1 seemingly trying, or could be seen as trying to minimize  
2 the declarant's own role when caught red-handed and have  
3 the major offender be somebody else, maybe it doesn't meet  
4 that test.

5 MR. MANNING: Well, we think that the Court  
6 absolutely has to look at the statement as a whole and  
7 make a determination of whether the entire statement is  
8 actually in the declarant's penal interest.

9 QUESTION: Do you say that if portions of the  
10 statement don't meet that requirement of the rule, that  
11 the statement can be redacted and offered, then, in a  
12 lesser version, or redacted version?

13 MR. MANNING: Well, we think that that would not  
14 be appropriate in a case like this, where --

15 QUESTION: Is that possible in an appropriate  
16 case?

17 MR. MANNING: It's certainly -- it's certainly  
18 possible.

19 QUESTION: You don't say that's not --

20 MR. MANNING: No, it --

21 QUESTION: -- what the Court can do?

22 MR. MANNING: It would certainly be appropriate  
23 in the right kind of case, but we would say that the right  
24 kind of case would be a case where the other statement  
25 would not be related, or would not be against the

1 declarant's penal interest, and let me give you an  
2 example, if I may, of the distinction that we would draw  
3 in this situation.

4 If the declarant says, Joe and I robbed the  
5 bank, then that statement, the entire statement is against  
6 the declarant's penal interest, because he has not only  
7 admitted that he robbed a bank, he has admitted that he  
8 has committed a conspiracy with Joe to rob the bank and  
9 the entire statement would come in as being against his  
10 penal interest.

11 Now, if he says, it's ironic, I robbed a bank  
12 today, and Joe robbed a bank yesterday, well, the second  
13 part of that statement would be excluded because it  
14 wouldn't be related, it wouldn't be integral to his  
15 description of his own offense, and that statement would  
16 be redacted when the statement against penal interest was  
17 submitted to the jury.

18 QUESTION: Well, you -- I'm not sure I follow  
19 you in your answer to Justice O'Connor's question about  
20 the proper use of a redacted statement. This is  
21 Williamson's trial, and you have a declaration from  
22 Harris, and Harris says, in effect, what he said in this  
23 case about Williamson, and the judge is supposed to admit  
24 that on the issue of Williamson's guilt, although all  
25 references to Williamson's name are stricken?

1 MR. MANNING: No, he absolutely should not  
2 strike the references to Williamson's name.

3 QUESTION: I thought it was to be redacted.

4 MR. MANNING: Oh, no, Mr. Chief Justice. All I  
5 was explaining was that in a situation like that, where  
6 there is a statement that includes parts, some of which  
7 have no relationship to the declarant's description of the  
8 offense, it may --

9 QUESTION: Justice O'Connor I thought early  
10 asked you -- earlier -- whether there would be some  
11 situations where you couldn't get the declaration in  
12 verbatim, but it would be proper to get it in with the  
13 name of the person on trial, the defendant, redacted,  
14 and --

15 MR. MANNING: Oh, no --

16 QUESTION: -- an example of it.

17 MR. MANNING: -- we don't think that would be  
18 appropriate.

19 QUESTION: Oh, no --

20 MR. MANNING: When the declarant argue -- when  
21 the declarant says, I was making this delivery to  
22 Williamson, Williamson acquired the cocaine and I was  
23 taking it over State lines, all of those statements are  
24 against the declarant, Harris' penal interest, because he  
25 is telling the police that he is involved in a conspiracy

1 with Williamson, that he and Williamson are engaged in the  
2 offense of traveling across State lines for the purposes  
3 of engaging in the business of distributing controlled  
4 substances, and each detail that Harris gave of the  
5 offense helped to sink him further, not only in the sense  
6 that it described elements of offenses that he --

7 QUESTION: He was pretty far under water before  
8 he started.

9 MR. MANNING: Well, he was --

10 QUESTION: All this stuff in the trunk of a  
11 rented car --

12 MR. MANNING: He was --

13 QUESTION: -- and he was worried about being  
14 found guilty.

15 MR. MANNING: He was fairly far under water, but  
16 his nose was still above the surface --

17 (Laughter.)

18 MR. MANNING: -- and what he gave up -- what he  
19 gave up by his confession was the element of knowledge. I  
20 mean, we think that --

21 QUESTION: Let me ask you a question. You say  
22 that there should not be a per se rule, that custodial  
23 statements should be excluded.

24 MR. MANNING: That's correct.

25 QUESTION: Would you agree, however, that it

1 makes a big difference whether this statement was made to  
2 police officers while he was in custody on the one hand,  
3 or the same statement being made to a friend which was  
4 tape recorded on another hand?

5 MR. MANNING: That is --

6 QUESTION: It would make quite a difference,  
7 wouldn't it?

8 MR. MANNING: That is certainly a factor for the  
9 district court to consider in its consideration of the  
10 totality of the circumstances. What the district court  
11 has to find under this rule is not only that the statement  
12 the declarant made was -- would tend to subject him to  
13 criminal liability --

14 QUESTION: Testifying --

15 MR. MANNING: -- but that a reasonable person in  
16 the declarant's position would not have made this  
17 statement unless believing it to be true.

18 QUESTION: Well, wouldn't a reasonable --

19 QUESTION: Isn't it obvious that a reasonable  
20 person in declarant's position might well have made  
21 precisely this statement, even if there wasn't a word of  
22 truth in it?

23 MR. MANNING: Well, we think that -- are you  
24 asking about the circumstances of this particular case?

25 QUESTION: Of this very case, yes.

1 MR. MANNING: Well, we think that there are  
2 several circumstances. Obviously, there is a serious  
3 issue under the rule in this case, but we think there are  
4 a variety of circumstances that support the district  
5 court's determination that the rule properly applied.

6 QUESTION: Do you take the position that no  
7 reasonable person would have made this statement unless he  
8 believed it was true, in declarant's position, had been  
9 caught with all this stuff --

10 MR. MANNING: We think --

11 QUESTION: -- and that no one would try to pass  
12 the blame onto a third party?

13 MR. MANNING: We think that the district court  
14 was justified in making that finding, which is the inquiry  
15 for this Court, and the reason --

16 QUESTION: Mr. Manning, isn't the most logical  
17 inference that when somebody is caught red-handed, has  
18 every incentive to put the blame on somebody else, and  
19 that that -- putting the blame on the other person has no  
20 reasonable -- why would have anyone have reason to believe  
21 that putting the blame on somebody else is true?

22 I mean, he's caught with the goods, and he says,  
23 well, I was a lesser -- I was only the courier.

24 MR. MANNING: Well --

25 QUESTION: Williamson was the big guy. Why



1 would anyone say that there are reasonable assurances that  
2 that latter part is true?

3 MR. MANNING: Well, in fact, we think that he  
4 did not try to minimize his role in the offense in the way  
5 that you describe, with respect, Justice Ginsburg. This  
6 is not a case where somebody is caught selling baggies of  
7 dope on the streets and says, look, I'm just the agent  
8 here, the kingpin works in that convenience store and I'll  
9 give you his name in exchange for a deal.

10 This is a situation where the declarant admitted  
11 his full participation in a conspiracy to transport  
12 approximately \$10 million worth of cocaine from Florida to  
13 Georgia for distribution.

14 Now, to be sure, he said that Williamson  
15 arranged the acquisition, and that the delivery was to  
16 Williamson, but he did not portray himself as a bit player  
17 in this conspiracy, and the statements he made not only  
18 conceded knowledge that the cocaine was in his trunk, and  
19 by the way, we think that these facts are more significant  
20 than petitioner suggests.

21 The cocaine was in the trunk of a rental car,  
22 petitioner's name was on the rental agreement, there was  
23 an envelope addressed to petitioner in the glove  
24 compartment, a receipt bearing his girlfriend's address in  
25 the glove compartment, and the drugs were in a suitcase

1 that had petitioner's sister's initials on it. Now, if  
2 someone were to --

3 QUESTION: But as far as Harris is concerned,  
4 Harris paints himself as the courier, right --

5 MR. MANNING: But --

6 QUESTION: -- the one who arranged it and not  
7 the one to whom the delivery was being made?

8 MR. MANNING: But in this case, painting  
9 yourself as a courier is a very significant role in the  
10 offense, and it subjected him to charges not only of  
11 possession with intent to distribute, but also conspiracy.

12 QUESTION: That much is against his penal  
13 interests, and I don't think there's any quarrel about  
14 that. Mr. Waxman said, yes, that much can come in.

15 To the extent that he is incriminating  
16 Williamson, that Harrison is incriminating Williamson, how  
17 is that against Harris' penal interest?

18 MR. MANNING: Well, certainly in a case like  
19 this, where you're describing your role in a conspiracy,  
20 every detail that you give to the police helps to sink you  
21 further. It is rare that you find a case where the  
22 Government prosecutes somebody on the basis of a naked  
23 confession.

24 QUESTION: May I just ask one question?

25 MR. MANNING: Sure.

1           QUESTION: In determining whether it's against  
2 penal interest, it is not merely a kind of a schoolroom  
3 textbook analysis of whether there's an additional element  
4 of criminal liability, but also on the other side of the  
5 balance is maybe he thought this would give him more  
6 lenient treatment from the prosecutor because he was  
7 cooperating with the police, and shouldn't that be  
8 evaluated in determining whether the net value was against  
9 his penal interest?

10           MR. MANNING: That is certainly a factor for the  
11 district court to consider in considering the totality of  
12 the circumstances.

13           QUESTION: And so if we have a case in which the  
14 substantial motive for making the statement is to obtain  
15 more lenient treatment, what ought the result to be?

16           MR. MANNING: Well, again, it depends on what  
17 other circumstances obtain. If you take the example that  
18 I gave of the guy admitting to a murder and implicating  
19 someone else in the receipt of stolen goods, then that's a  
20 situation where, even if the motive of the person was to  
21 seek lenient treatment, you would have to think that his  
22 self-incrimination in a capital crime of murder would  
23 overcome any doubt about the accuracy of his statement  
24 arising from his desire to curry favor by handing over the  
25 person to whom he gave the stolen watch that he took off

1 of the murder victim.

2 Now, the most important point, though, that we  
3 would like to make is that in any of these situations the  
4 district court should be trusted to weigh the  
5 circumstances. It is absolutely relevant if there is  
6 evidence that the declarant made the statement with the  
7 idea of currying favor or getting leniency from the  
8 authorities in exchange for giving up a cohort.

9 QUESTION: But if the substantial motive is to  
10 obtain leniency, it seems to me that that undercuts the  
11 rationale of the rule.

12 The rationale of the rule is that you wouldn't  
13 make this statement unless it were true if it's against  
14 penal interest, but we're hypothesizing now a situation in  
15 which the penal interest is irrelevant. What you are  
16 trying to do is to better your condition, is to obtain  
17 leniency.

18 MR. MANNING: If the district court finds, based  
19 upon a preponderance of the evidence, that the statement  
20 that the declarant made was in his penal interest in the  
21 sense that he inculcated someone else in an effort to gain  
22 leniency, then that certainly would be a finding that  
23 should be sustained and it would be a proper application  
24 of the rule.

25 Our point is that in making that determination,

1 the Court should not adopt a per se rule that places  
2 talismanic significance on questions of custody or of  
3 whether the declarant made the statement to the police.

4 QUESTION: Well, I just want to make clear what  
5 your position is.

6 QUESTION: Mr. Manning --

7 QUESTION: If the predominant motive in making  
8 the statement is to obtain leniency, is that a statement  
9 against penal interest and therefore admissible?

10 MR. MANNING: Again, I think that it's very  
11 difficult to answer that question without knowing all of  
12 the facts that surround the statement, but it would be a  
13 factor --

14 QUESTION: Well, why is it against penal  
15 interest if the dominant motive is to obtain leniency?

16 MR. MANNING: Well, because if the dominant  
17 motive is to obtain leniency, but the declarant makes a  
18 statement that is very, very strongly against his penal  
19 interest and the district court concludes that no one in  
20 the declarant's position under all of the circumstances of  
21 the case -- for example, he has admitted to a murder, and  
22 his quest for leniency will gain him very little -- if the  
23 district court in those circumstances makes the  
24 determination that no reasonable person in the declarant's  
25 circumstances would have made the statement unless

1 believing it to be true, then the district court would  
2 appropriately admit that statement under Rule 804(b)(3).

3 QUESTION: Is the district court always well-  
4 situated to determine what a person's dominant motive or  
5 prevailing motive was in making a statement?

6 MR. MANNING: Well, the district court has to  
7 consider all of the evidence that is submitted by the  
8 Government and by the defendant in making the  
9 determination. We think that the district court is among  
10 the various actors who could make that determination, the  
11 best-situated.

12 QUESTION: Why should we ask any factfinder  
13 involved in this evidentiary -- to make a finding as to  
14 what someone's dominant motive was?

15 MR. MANNING: Well, because what the district  
16 court has to -- the determination that the district court  
17 has to make is whether a reasonable person in the  
18 declarant's position would have a motive to fabricate his  
19 confession, and in that sense the district court  
20 inevitably is making an inquiry into what a reasonable  
21 person in the declarant's position would be motivated by.

22 Now, one other point I would like to make is  
23 that the chief justice had mentioned earlier the  
24 possibility that the jury would be able to weigh the  
25 various circumstances that surround the making of the

1 statement, and I would like to reinforce that point by  
2 noting that under Rule 806 of the Federal Rules of  
3 Evidence a declarant can be impeached as to a hearsay --  
4 the credibility of a declarant can be impeached with  
5 respect to a hearsay statement to the same extent as a  
6 person making the same statement in court in live  
7 testimony.

8 So not only is it possible for the jury to weigh  
9 the evidence that is submitted pursuant to a hearsay  
10 statement admitted under Rule 804(b)(3), but it's also  
11 possible for the defense to impeach the declarant's  
12 testimony under Rule 806, and bring out any bias or motive  
13 or interest that the declarant might have had in making  
14 this statement, including --

15 QUESTION: But that's true with respect to any  
16 hearsay, isn't it?

17 MR. MANNING: That's true about any hearsay, and  
18 the Court has relied on Rule 806 in holding that, for  
19 example, coconspirator's statements can be admitted  
20 pursuant to a firmly rooted hearsay exception, because it  
21 mitigates the concern that surrounds the admission of  
22 hearsay.

23 QUESTION: Mr. Manning, at least getting away  
24 from the question of motive, you would at least -- I take  
25 it you would admit that it would be a correct statement to

1 say that if the trial court reasonably reads the statement  
2 as conferring a net benefit on its face as conferring a  
3 net benefit upon the declarant, that it would be  
4 inadmissible. You agree to that, I take it.

5 MR. MANNING: Well, I think we would prefer to  
6 put it in terms of the rule itself, that the district  
7 court found that a reasonable person in the declarant's  
8 position would make the statement even though he did not  
9 believe it was true, that is, if he had some benefit,  
10 something to gain by fabricating a statement, then  
11 absolutely the district court would properly exclude that  
12 evidence.

13 QUESTION: Well, don't you always have something  
14 to be gained by making a statement which is in effect net  
15 in your favor?

16 MR. MANNING: Well, I suppose if you put it that  
17 way you would have something to gain if the statement were  
18 net in your favor.

19 If the declarant gained a great deal by  
20 inculcating someone else -- for example, a situation might  
21 be if you had a defendant and the police said, we will cut  
22 your sentence in half if you roll over on your cohort, and  
23 the declarant said, fine, you know, I'll -- you know, I'll  
24 give a statement, and then he refuses to testify, that  
25 would be a situation --



1 QUESTION: But there, there --

2 MR. MANNING: -- where it would be appropriate  
3 for the district court to make the finding that a  
4 reasonable person in those circumstances would have  
5 fabricated the statement.

6 QUESTION: There are certainly limits, though,  
7 to which a reasonable person would go and simply casting  
8 blame on someone else, if, you know, the police are going  
9 to look into it and say, gee, this is just a bunch of bunk  
10 you told us, I mean, a reasonable person isn't just going  
11 to make perfectly wild statements in hope of getting some  
12 sort of deal.

13 MR. MANNING: Well, that's right, Your Honor,  
14 and that's why it's important to give the district court  
15 the latitude it needs to look at all the circumstances of  
16 the case.

17 In fact, in this case, we think that a situation  
18 like that occurred when Harris revised his statement at  
19 6:00 p.m. in response to agent Walton's setting up a  
20 controlled delivery.

21 As petitioner mentioned, earlier in the day,  
22 Harris had made the statement that he had gotten the drugs  
23 from a Cuban and that he was going to make a controlled  
24 delivery to a dumpster in Atlanta at 10:30 p.m.

25 And then when Agent Walton questioned Harris at

1 6:00 p.m. that evening, he finished his questioning, he  
2 stood up to go make a controlled delivery, and Harris  
3 stood up and said, I can't let you go through with it,  
4 it's not true, what I told you is false, and he revised  
5 his story, giving details about -- that petitioner was  
6 driving in front of him in a rented Lincoln Continental  
7 and he saw the arrest, and therefore there could be no  
8 controlled delivery because petitioner knew that he --  
9 that Harris had been arrested.

10 Now, those circumstances vouch for the  
11 reliability of the statement that Harris made at that  
12 point, because he would have been in much greater trouble  
13 if he had fabricated them at that point.

14 The DEA could certainly have verified if  
15 petitioner had a rented Lincoln Continental on the day  
16 that Harris said he did, and certainly if Harris was  
17 fabricating there was a chance that petitioner would have  
18 a credible alibi, and the Government could have gone  
19 through with the controlled delivery, and if Harris had  
20 been lying at that point he would have opened himself up  
21 to charges of obstruction of justice, so --

22 QUESTION: Mr. Manning, I assume that the  
23 reasonable person referred to in the rule is a reasonable  
24 person who has no compunction about lying, is that right?

25 MR. MANNING: A reasonable person who has --

1 QUESTION: A reasonable person who doesn't mind  
2 lying under oath.

3 MR. MANNING: Well, it would have to suppose  
4 that a reasonable person calculating the advantage of  
5 telling a lie would tell a lie in these circumstances.

6 QUESTION: But he's not under oath.

7 MR. MANNING: He's not under oath, that's true.  
8 That's true. Before I --

9 QUESTION: I don't like the implication anyway.

10 MR. MANNING: Neither do I.

11 QUESTION: Mr. Manning, could these statements  
12 have come in anyway under the coconspirator exception, or  
13 were they no longer made in furtherance of the conspiracy?

14 MR. MANNING: Well, the district court initially  
15 suggested that they would come in under the coconspirator  
16 exception, but made no --

17 QUESTION: The prosecutor talked him out of  
18 that.

19 MR. MANNING: The prosecutor did talk him out of  
20 it, and we believe the conspiracy had probably terminated  
21 at the time of the arrest, although in connection with  
22 that, I'd like to use that to illustrate the fact that  
23 it's important in all of these cases that in a variety of  
24 circumstances we trust district courts to make  
25 determinations about the admissibility of hearsay under

1 the Federal Rules of Evidence and trust the district  
2 courts to evaluate the totality of the circumstances.

3 In most cases, when someone is --

4 QUESTION: Well, you do, but there has been a  
5 lot of strong language in a number of this Court's cases,  
6 a recent one being Lee v. Illinois, about the  
7 untrustworthiness of this kind of statement. You do have  
8 to acknowledge that and deal with it.

9 MR. MANNING: We do acknowledge that, and we  
10 agree that in making an evaluation about the totality of  
11 the circumstances and what a reasonable person in the  
12 declarant's position would do when you're dealing with  
13 somebody who is in police custody, the district court must  
14 be sensitive to the pressures and to the circumstances  
15 that would indicate whether the declarant in the  
16 particular case had given up someone else in order to make  
17 a deal or to get leniency.

18 QUESTION: Don't you think that most of the time  
19 the defendant -- or, pardon me, the declarant makes the  
20 statement because he thinks it's in his net benefit?

21 MR. MANNING: No, I don't think so. I think  
22 that often you have people who are confronted with having  
23 been caught in a crime who make statements that are very  
24 much against their penal interest.

25 I mean, in this case itself the officer pulled

1 Harris over and was questioning him about his weaving in  
2 traffic, and he asked Harris, may I search your trunk, and  
3 Harris said yes, knowing that there were 19 kilograms of  
4 cocaine in the trunk. People all the time make statements  
5 to the authorities that are against their penal interest,  
6 and if they didn't we would very rarely catch criminals.

7 QUESTION: Well, let me put it this way, then.  
8 The penal interest rule that you're advocating rests on  
9 the assumption that most of the time these statements are  
10 made even though it is not to the defendant's net benefit,  
11 as he understands it, to make them.

12 MR. MANNING: And that's the very premise of the  
13 longstanding exception for declarations against interest.  
14 Almost as early as the hearsay rule itself developed, the  
15 courts developed an exception for statements against  
16 interest.

17 Statements against pecuniary interest and  
18 proprietary interest were the first ones to develop, and  
19 the supposition is that people don't say things against  
20 their own interest if they are lying, and that gives --

21 QUESTION: But doesn't the calculus change when  
22 there are multiple defendants?

23 MR. MANNING: The calculus may very well change  
24 when there are multiple defendants, but the district court  
25 is perfectly situated to evaluate all of the factors and

1 circumstances in determining whether the calculus has  
2 changed in a way such that a reasonable person in the  
3 declarant's position would fabricate his story in order to  
4 gain advantage from the authorities.

5 I mean, our basic -- in all sorts of contexts,  
6 we trust the district court to assess the probativeness of  
7 evidence, and this Court has been very reluctant to  
8 shackle district courts in the context of admitting  
9 hearsay with per se rules that restrict their ability to  
10 consider the whole picture in deciding whether something  
11 fits within a hearsay exception.

12 In *Bourjaily*, the Court rejected a per se rule  
13 forbidding district courts from considering hearsay  
14 evidence in determining the admissibility of statements  
15 pursuant to the coconspirator exception.

16 In *Idaho v. Wright*, the Court rejected a per se  
17 rule that would prevent district courts from allowing the  
18 introduction of hearsay that was made by a witness who was  
19 unavailable because she was determined to be incompetent.

20 One of the purposes of the Confrontation Clause  
21 and the principal purpose, we would submit, is to further  
22 the truth-seeking function of the trial, and if  
23 petitioner's view is accepted, a district court looking at  
24 an array of circumstances, if confronted with the fact of  
25 custody, will have to ignore every other fact, put on

1 blinders, and say, this statement doesn't come in.

2 We think that's contrary to the general approach  
3 of this courts and the lower courts, the Federal Rules of  
4 Evidence, and it's contrary to the plain language of Rule  
5 804(b)(3).

6 If there are no further questions --

7 QUESTION: Thank you, Mr. Manning.

8 You have 5 minutes remaining, Mr. Waxman.

9 MR. WAXMAN: Unless the Court has any further  
10 questions at all, I would waive my rebuttal time.

11 QUESTION: Thank you, Mr. Waxman.

12 The case is submitted.

13 (Whereupon, at 11:55 a.m., the case in the  
14 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:*

*FREDEL WILLIAMSON, Petitioner v. UNITED STATES*  
*No. 93-5256*

*and that these attached pages constitutes the original transcript of the proceedings for the records of the court.*

BY *Ann Marie Federico*

(REPORTER)



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