

IN THE SUPREME COURT OF THE UNITED STATES

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TEXAS, :

Petitioner :

V. : No. 99-1702

RAYMOND LEVI COBB :

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Washington, D.C.

Tuesday, January 16, 2001

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

APPEARANCES:

GREGORY S. COLEMAN, ESQ., Solicitor General of Texas,  
Austin, Texas; on behalf of the Petitioner.

LISA S. BLATT, ESQ., Assistant to the Solicitor General,  
Department of Justice, Washington, D.C.; on behalf of  
the United States, as amicus curiae, supporting the  
Petitioner.

ROY E. GREENWOOD, ESQ., Austin, Texas; on behalf of the  
Respondent.

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

2 (1:00 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument  
4 99-1702, the State of Texas, Petitioner, v. Raymond Levi  
5 Cobb.

6 I have misplaced my -- here we go. Mr. Coleman.

7 ORAL ARGUMENT OF GREGORY S. COLEMAN

8 ON BEHALF OF THE PETITIONER

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

11 Before Raymond Cobb confessed to murdering  
12 Maggie and Korie Rae Owens, he was more than once  
13 meticulously informed of his right to counsel and the  
14 consequences of his choice to waive that right. His  
15 confession was properly admitted at trial and should not  
16 have been rejected under Jackson, because Sixth Amendment  
17 right to counsel had never attached to the murders and  
18 therefore did not need to be waived, or, alternatively,  
19 because Cobb validly waived whatever Sixth Amendment right  
20 to counsel had attached.

21 Applying McNeil's rule of offense specificity to  
22 exclude factually related but uncharged crimes from the  
23 scope of Sixth Amendment attachment is true to and, we  
24 think, required by both the text and the purposes of the  
25 Sixth Amendment.

1                   In evaluating attachment, the court is  
2     interpreting the Sixth Amendment terms, criminal  
3     prosecutions and the accused, and for decades this Court  
4     has consistently interpreted that text to limit attachment  
5     of the Sixth Amendment right to counsel to the formal  
6     initiation of judicial criminal proceedings.  Indeed,  
7     setting aside Escobido --

8                   QUESTION:  Mr. Coleman, do I understand from  
9     what you just said that if everything had occurred in  
10    Walker County, if there had been no moving of Cobb to  
11    Odessa, no bail, everything happens in Walker County, and  
12    it really is a point that you represent Cobb, the Walker  
13    County law enforcement personnel never consult Ridley  
14    before interrogating Cobb repeatedly, it would still be,  
15    in your view, no violation of any Sixth Amendment right;  
16    is that correct?

17                  MR. COLEMAN:  The fact that the interrogation  
18    occurred in Odessa makes no difference, you're exactly  
19    right.  If Ridley had been appointed on the burglary and  
20    had not yet been appointed on the murders because there  
21    had been no indictment, the police were free to  
22    interrogate Mr. Cobb.

23                  QUESTION:  So what the police did was something  
24    they didn't need to do.  In other words, the police did  
25    twice call Ridley while he, while Cobb was still in Walker

1 County.

2 MR. COLEMAN: That is correct.

3 QUESTION: Twice called him and said, is it okay  
4 if we question your client, and Ridley said yes both  
5 times, but that was something extra the police did they  
6 were not required to do, in your view?

7 MR. COLEMAN: That's correct. I don't think  
8 that they were obligated to do it. I don't think that  
9 they called. I think the record indicated that, in fact,  
10 he was in court with Ridley when they asked if they could  
11 talk, and so he was there.

12 QUESTION: But in any event, they did tell him,  
13 we're going to talk to your client, is it okay, and he  
14 said yes?

15 MR. COLEMAN: Yes.

16 QUESTION: Taking Justice Ginsburg's question a  
17 little bit further, suppose you have this situation: the  
18 counsel is there, they begin questioning him on the  
19 break-in. The police then say, counsel, we'd like to see  
20 you outside a minute, and they go outside of the  
21 interrogation room and they say, counsel, you know, we're  
22 not interested in the stereo, we're interested in the  
23 murder. Could a responsible attorney say, oh, well, I'm  
24 not representing him on that, go back in the room, ask him  
25 all the questions you want? I would be amazed if an

1 attorney could do that.

2 MR. COLEMAN: I don't know if it would be a  
3 responsible thing to do, but the Court made clear in Davis  
4 that until there's been an initiation of criminal  
5 proceedings the Sixth Amendment constitutional right to  
6 counsel doesn't attach, so it would be poor practice,  
7 perhaps malpractice, but not a Sixth Amendment violation.

8 QUESTION: Well, a number of courts have come to  
9 the conclusion that where the two crimes arise out of the  
10 same conduct and are closely related, that you're going to  
11 go ahead and apply the Sixth Amendment requirement to the  
12 related but yet-uncharged crime. Is that the majority  
13 view of lower courts today?

14 MR. COLEMAN: I don't think that courts have  
15 established any kind of consistent test, but yes, most of  
16 the courts that have addressed this issue have said there  
17 is this test, although most of them have found that there  
18 is, in fact, no violation. It's a relatively small  
19 number that have found a violation.

20 But we would go back and say that they're  
21 erroneous in applying that test at all, and as I was  
22 saying, Escobido aside, this Court has never, ever held  
23 that the Sixth Amendment attached prior to the initiation  
24 of formal judicial proceedings, prior to indictment or  
25 arraignment.

1                   QUESTION: Well, under the hypothetical we were  
2 just discussing and the answer you gave to Justice  
3 O'Connor, I suppose the police could say, and we're now  
4 going to question him about that murder so we want you out  
5 of the room. You can't go back in that room.

6                   MR. COLEMAN: Under Moran that might be  
7 constitutionally permissible, but remember, the important  
8 aspect of the analysis is what happens in the room,  
9 because the defendant does have a Fifth Amendment right to  
10 counsel that he needs to be informed about, and he has an  
11 opportunity to waive that, so that would only happen if  
12 the defendant or suspect has actually waived his Fifth  
13 Amendment right to counsel.

14                  QUESTION: That's true. What I'm concerned  
15 about is the possibility for some manipulation, if the  
16 police hold and charge on the lesser offense merely to  
17 bide their time until they begin questioning about the  
18 more serious offense.

19                  MR. COLEMAN: I'm actually very anxious, Justice  
20 Kennedy, to debunk this idea of abuse or manipulation,  
21 because when the police are doing an investigation, and  
22 they might be investigating a number of related crimes,  
23 once they have enough evidence to convict, admissible  
24 evidence to convict on one of them, there's certainly no  
25 problem with them bringing that charge.

1                   They have a serious societal interest in  
2 continuing to investigate other crimes, but if you compare  
3 that defendant who has had one crime charged against the  
4 defendant where they haven't brought any of the charges,  
5 once you charge that defendant he has the right to counsel  
6 that has now attached not only to the Fifth Amendment but  
7 also the Sixth Amendment, and our system ensures that that  
8 person will not only have a right to counsel but will  
9 relatively quickly actually be represented by counsel, who  
10 will then, of course, advise the client as to the charged  
11 offense and almost certainly as to the uncharged offenses  
12 and will say, don't talk to the police about this charged  
13 offense or anything else and, in fact, Mr. Ridley had  
14 given that counsel to Mr. Cobb. He simply didn't follow  
15 it. But I don't think --

16                   QUESTION: Well, that -- that isn't the --

17                   MR. COLEMAN: -- there's a real serious risk of  
18 manipulation.

19                   QUESTION: As I understand it, that isn't the  
20 advice that he gave him. He -- there's no indication that  
21 I know of that he gave him any advice that he should not  
22 talk to the police about anything else. He in fact said  
23 to the police sure, go ahead and talk with him about the  
24 murder.

25                   MR. COLEMAN: In September 1995 --



1                   QUESTION: Is -- just as a matter of fact, isn't  
2   that correct?

3                   MR. COLEMAN: Yes.

4                   QUESTION: Okay.

5                   MR. COLEMAN: On two occasions he told the  
6   police to go ahead and talk to them. In September 1995,  
7   when Cobb was returning to Odessa, Ridley said, here's my  
8   card and my number. If the police try to contact you, call  
9   me.

10                  QUESTION: Well, the obvious problem is the  
11   person is accused, or the police think he kidnapped,  
12   murdered and raped a person, or they think he distributed  
13   drugs, you know, and my first example could involve three  
14   separate crimes, my second example could involve  
15   possession, a telephone count, a distribution count, and  
16   if there was more than one person a conspiracy, all right?  
17   So the police indict the person for one of those four, or  
18   two of them, and he gets a lawyer, and the next minute  
19   they turn around and start asking him questions. They  
20   say, oh, we were asking him about the other two. It's all  
21   the same event.

22                  So I mean, what could a Constitution mean that  
23   creates that situation? That's why every court has  
24   decided that it doesn't mean that.

25                  MR. COLEMAN: Not every court, Justice Breyer.

1 QUESTION: Well, I mean most.

2 MR. COLEMAN: But that --

3 QUESTION: What's the answer? I mean, that -- I  
4 think my problem is what has led almost all the courts to  
5 adopt this fuzzier test, and what is the response to that  
6 rather direct problem?

7 MR. COLEMAN: I think if you can establish  
8 trickery then you create a Fifth Amendment issue, because  
9 it is the Fifth Amendment and not the Sixth Amendment that  
10 goes primarily to the issue of coercion.

11 QUESTION: It won't be trickery. If the rule is  
12 you cannot -- you know, the counsel relates only to the  
13 offense charged, there's no trick involved. The police,  
14 in total good faith, go and ask the same set of questions  
15 relating to the kidnapping without telling the counsel.  
16 There's no trick, and that seems not a trick, it seems  
17 absurd.

18 MR. COLEMAN: I don't believe that it is. I  
19 believe that the police have a strong societal interest in  
20 continuing to investigate crimes that have not yet been  
21 solved, just as the police were trying to solve two  
22 murders in this case. They suspected Cobb but they had no  
23 evidence, and I don't think that the Constitution,  
24 particularly the Sixth Amendment, prevents the police from  
25 going back in and interrogating --

1           QUESTION: And the lower courts have all agreed  
2 with you. They've all agreed with you, if it's actually a  
3 separate crime.

4           MR. COLEMAN: I don't believe that the fact that  
5 there is a factual connection between the crimes makes any  
6 constitutional difference, distinction.

7           QUESTION: Well, doesn't McNeil say that it's  
8 offense-specific?

9           MR. COLEMAN: McNeil specifically does say that  
10 it's offense-specific and that should be interpreted, as I  
11 was arguing, to exclude factually related crimes, because  
12 factually related crimes are in no better position to  
13 receive those kinds of constitutional protections that the  
14 Sixth Amendment gives than are unrelated crimes.

15           This Court has said that the purpose of the  
16 Sixth Amendment is to protect the unaided layman at  
17 critical confrontations with his expert adversary, the  
18 Government, after the adverse positions of the Government  
19 and the defendant have solidified with respect to a  
20 particular alleged crime.

21           There are three parts of that statement that  
22 this Court has given in several cases that can't be  
23 satisfied by a factually related crime. Certainly the  
24 particular alleged crime doesn't meet it. We don't think  
25 that there's a solidification of the adverse positions

1 with respect to factually related crimes. The police are  
2 still investigating a related crime. They don't know if  
3 the defendant did it or not. Generally speaking they  
4 won't have sufficient evidence to bring that charge,  
5 certainly there was not sufficient evidence in this case,  
6 and so there's no solidification, and there is not a  
7 critical confrontation, which has been defined to be a  
8 critical stage, which is a very well-established part of  
9 this Court's Sixth Amendment jurisprudence. There's  
10 simply no critical stage because it is pre-indictment.

11 QUESTION: Mr. Coleman, would it make any  
12 difference to you if the other crime about which he's  
13 being interrogated is not only factually related but,  
14 under the Blockburger test, would be a greater offense of  
15 which the offense on which he's indicted is a lesser-  
16 included offense? That is to say, he has an attorney on a  
17 burglary charge, and he's interrogated concerning the  
18 offense of murder in the course of burglary.

19 MR. COLEMAN: We have argued, and it is our  
20 position, that if it is not simply a factually related  
21 crime, but the argument is that it is the same crime, then  
22 we think that there's a strong argument the Sixth  
23 Amendment would, in fact --

24 QUESTION: Well, it's not quite the same crime,  
25 but if he got acquitted on the burglary he'd have to be

1 acquitted on murder in the course of burglary. I mean,  
2 Blockburger would cover it and it would be double  
3 jeopardy. So in that case you'd say he could not be  
4 interrogated without consulting his lawyer concerning  
5 murder in the course of burglary?

6 MR. COLEMAN: We would say that this Court's  
7 rule would prohibit the introduction of evidence relating  
8 to that interrogation.

9 QUESTION: Why? Now, why is that, because it  
10 satisfies the, or doesn't satisfy the Blockburger test?  
11 That's quite a burden to put on a police officer. I mean,  
12 we have a hard enough time applying that test ourselves,  
13 and to say that the police officer would be responsible  
14 for a Blockburger analysis really is quite demanding.

15 MR. COLEMAN: We think that the Court recognized  
16 in Moulton that when the police interrogate suspects  
17 they're frequently trying to get evidence about any number  
18 of crimes, and one of those might be a previously charged  
19 crime, and that is why the Court has very consistently  
20 said that the remedy we're going to impose is simply that  
21 if you get evidence as to a charged crime for which the  
22 Sixth Amendment has attached and been asserted, then we  
23 will not allow you admitted at trial but if you have  
24 evidence related to other, uncharged crimes, and we would  
25 say also factually related uncharged crimes, then you may

1       admit it.

2               So it's not the police that are really having to  
3       make a hard determination at the time that they do the  
4       interrogation. That is made later, when you try to  
5       introduce the evidence at trial.

6               QUESTION: Well, I think it's become even  
7       harder. I assume the police officer ought to know that if  
8       he has a constitutional right to interrogate or not, and  
9       you say well, maybe he does, maybe he doesn't, depending  
10      on what the defendant says. That -- we've never given  
11      that insufficient guidance to the police.

12              MR. COLEMAN: Well, Clanky is the only case we  
13      think in which there was actually the same offense, and we  
14      think that if the police are still investigating, or they  
15      believe --

16              QUESTION: What was the name of the case you  
17      said, Clanky?

18              MR. COLEMAN: Clanky v. Illinois. I'm sorry.  
19      It's an Illinois Supreme Court case applying the factual  
20      relation test.

21              The police are still investigating other crimes  
22      for which no charge has been made. We think that they  
23      have at that point -- and that's all they need to know.  
24      They can then interrogate the suspect, give them their  
25      Fifth Amendment rights, and do what they can to protect

1     those, and then if they end up getting information about a  
2     charge that has been -- a crime that has been charged and  
3     for which the Sixth Amendment has both attached and been  
4     asserted, then they can't use it at trial, but they can  
5     use it, under Moulton and under this Court's precedents,  
6     for any uncharged crime, a crime for which the Sixth  
7     Amendment had not yet attached at the time of the  
8     interrogation.

9             But what respondent would have the court do is  
10    make the court, make the police apply a test that asks the  
11    police to know ahead of time if the crime for which they  
12    are going to interrogate the suspect relates to something  
13    that the suspect has previously been charged, or with  
14    respect to something that the suspect and his counsel may  
15    feel that there is an attorney-client relationship, and we  
16    don't think that that can be the test.

17            QUESTION:  Mr. Coleman, there are -- there's  
18    quite a range.  There's one, the McNeil case itself, where  
19    the uncharged offenses were wholly unrelated, different  
20    time, different place, and here you have one continuous  
21    episode.  Don't most courts, if I understand them  
22    correctly, think that if there is a close relationship  
23    between the offenses, if they're all part of one series of  
24    events, that the Sixth Amendment right would attach?

25            MR. COLEMAN:  The fact that there is a close

1 relationship cannot overcome the fact that that closely  
2 related crime cannot fit within the stated purposes of the  
3 Sixth Amendment, and the fact that it would improperly and  
4 unnaturally hamstring the police's legitimate efforts to  
5 investigate and solve a crime for which no one has been  
6 brought to justice.

7 QUESTION: Mr. Coleman, as I understand your  
8 argument on why the permissibility of this kind of  
9 interrogation for related offenses is not likely to cut  
10 back, in effect, on the Sixth Amendment right which has  
11 attached, your best argument seems to be that you don't  
12 have to recognize a Sixth Amendment right here because  
13 there's going to be, as there was in this case, an  
14 adequate warning that one doesn't have to speak, and an  
15 adequate Fifth Amendment opportunity to get a lawyer,  
16 probably the same one, but in any case to get a lawyer  
17 prior to the commencement or continuation of any  
18 interrogation.

19 Do you agree that's probably your strongest  
20 response to the concerns expressed by people like Justice  
21 Breyer?

22 MR. COLEMAN: I believe so, and I believe that's  
23 exactly what the Court said in Patterson when it  
24 indicated --

25 QUESTION: Right.



1           MR. COLEMAN:  -- that the reason to have counsel  
2   at a custodial interrogation for Sixth Amendment purposes  
3   is not any stronger than it is for Fifth Amendment, and  
4   the Fifth Amendment --

5           QUESTION:  What about --

6           MR. COLEMAN:  -- test protects them.

7           QUESTION:  I'm sorry.  What about, then, the  
8   concern for noncustodial interrogations?  If the person  
9   who has been charged with the first offense is out on  
10  bail, and the police want to go and interrogate, simply  
11  see if they can strike up a conversation with a guy at his  
12  apartment, we're not going to get -- I presume we're not  
13  going to get into any Miranda rights.

14           Isn't the opportunity for abuse there, so that  
15  on your best argument, if the police are subtle about what  
16  they do, and they have a defendant who's not in custody,  
17  they will, in fact, raise the, I think the specter of  
18  cutting back on the Sixth Amendment right with respect to  
19  the crime that has already been charged.

20           MR. COLEMAN:  The Court in Patterson made it  
21  clear that, as to the charged offense for which the Sixth  
22  Amendment has attached, there must be an express waiver,  
23  so that is why --

24           QUESTION:  So that there would be an exclusion  
25  if anything were said about that offense?

1           MR. COLEMAN:  If there was no valid waiver for  
2   the charged offense.  I think that's the meaning of this  
3   Court's decision in Patterson and Moulton.

4           QUESTION:  And that would be enforceable by the  
5   exclusionary rule?

6           MR. COLEMAN:  Yes.

7           QUESTION:  Okay.

8           MR. COLEMAN:  If I may, I'd reserve the rest of  
9   my time for rebuttal.

10          QUESTION:  Very well, Mr. Coleman.

11          Ms. Blatt, we'll hear from you.

12                       ORAL ARGUMENT OF LISA S. BLATT

13                   ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,

14                               SUPPORTING THE PETITIONER

15          MS. BLATT:  Mr. Chief Justice, and may it please  
16   the Court:

17               Police have a compelling interest in  
18   investigating uncharged crimes and in obtaining voluntary  
19   confessions from suspects who have been advised of their  
20   right to counsel under Miranda and are willing to speak to  
21   the police about those uncharged crimes.  That questioning  
22   does not violate the Sixth Amendment right to counsel  
23   because that right is offense-specific.

24               Under that rule, the statements may not be used  
25   to prove the charged offense, but the statements are

1     admissible in a trial for the uncharged offenses. It does  
2     not matter, under this rule, whether the two crimes are  
3     factually related. The test is rather whether the two  
4     crimes constitute the same offense.

5             QUESTION: Why? Why? I mean, you see my  
6     problem from what I said before, don't you? I mean, crime  
7     is ambiguous as to whether you're describing a set of  
8     events in the world, or a legal concept.

9             Look at the set of events in the world. It  
10    would have all been over in 15 seconds, and it could  
11    constitute any one of 15 crimes, and the police charge on  
12    the basis of that 15 seconds of real-world behavior three  
13    crimes, and he gets a lawyer for those three. Why should  
14    the police be able, without a lawyer, to interrogate him  
15    about what happened in the real world because there are  
16    eight other things that weren't charged?

17            MS. BLATT: Because the Sixth Amendment, the  
18    text of the Sixth Amendment only applies to someone who  
19    has been accused in a pending prosecution, and the  
20    prosecution is limited by the actual offenses that are  
21    charged by the State, and it is only at that time that the  
22    right to counsel attaches under the Sixth Amendment.

23            QUESTION: So it's purely formal. Your argument  
24    is purely formal.

25            MS. BLATT: No. This Court has repeatedly

1 recognized that the requirement that there must be a shift  
2 from investigation to accusation is more than just a  
3 formalism, because the purpose and the essence of the  
4 Sixth Amendment is to make sure the defendant has an  
5 opportunity to consult with counsel and prepare for a  
6 defense against the pending charges.

7 A suspect has no Sixth Amendment right to  
8 counsel, to have a lawyer appointed or assist him in  
9 connection with charges that have not been brought by the  
10 State, that may never be brought by the State. The  
11 suspect has never indicated any unwillingness to talk to  
12 the police about those uncharged offenses.

13 QUESTION: Ms. Blatt, you gave the example, or I  
14 think your brief indicates that you would support the  
15 example that if the crime for which the person is already  
16 charged is burglary, and they can't ask him about the  
17 homicide at the time of burglary because that would be a  
18 greater -- that would be the same crime, yes, in that  
19 legal sense that we understand for double jeopardy  
20 purposes.

21 But this has got to be administered by police  
22 officers, and a police officer will say gee, homicide is a  
23 lot different from burglary. I don't understand when it's  
24 okay and when it isn't.

25 MS. BLATT: The same elements test under

1 Blockburger leads to consistent and predictable results,  
2 and can be ascertained ahead of time by the police  
3 officer, and if he needs to consult with the prosecutor,  
4 he can do that.

5 By contrast, pegging the Sixth Amendment right  
6 to a transaction test leaves police officers in the  
7 untenable position of not knowing before they question the  
8 suspect what --

9 QUESTION: Well, I would think the lay person  
10 would understand, it all happened in the same episode,  
11 more readily than would understand Blockburger.

12 MS. BLATT: He may not know that. It may be  
13 that they know that there's been a burglary and that there  
14 are missing bodies, but have no idea whether those victims  
15 were murdered by someone else 2 weeks from then, whether  
16 there had been a kidnapping, whether it was in a different  
17 location.

18 I mean, he can't possibly know ahead of time,  
19 without talking to the suspect, nor can a court ask at the  
20 time of appointment of counsel, would you mind telling me  
21 everything you did as part of the same transaction so I  
22 can make sure you're appointed counsel with respect to all  
23 possible offenses that may be brought against you. They  
24 just -- they don't know that. They're in a phase of  
25 investigation, and this case is a perfect illustration of

1       that.

2               There's no contention in this case the State  
3       manipulated the charges when they indicted him for  
4       burglary and 15 months later questioned him about the  
5       murder, nor is there any suggestion that they had enough  
6       proof at the time that they charged him with burglary to  
7       charge him with murder, and there's a hypothetical  
8       assertion that there might be incentives for selective  
9       manipulation, but we don't believe that those incentives  
10      necessarily exist.

11              Once the State initiates a prosecution, the  
12      suspect will not only be afforded the right to counsel,  
13      but at the time that he's approached, if he's in custody,  
14      he will be given his Fifth Amendment Miranda warnings and,  
15      under this Court's decision in --

16              QUESTION: May I ask this question? It seems to  
17      me it's not the question of when the lawyer was appointed,  
18      but what is the scope of the representation by the lawyer  
19      who has been appointed.

20              Assume a lawyer is paid \$20 an hour by the State  
21      for representing a defendant. He's appointed then to  
22      represent him in the robbery charge, then he talks to the  
23      client, the client says, there's a lot of other stuff I  
24      think you ought to know in order to represent me well, and  
25      then he goes and interviews him at great length about all

1     these things that happened in the same transaction, but  
2     they've never been indicted.  Would that lawyer be  
3     entitled to be paid for the time he spent on questioning  
4     about the related crimes?

5             MS. BLATT:  I think to the extent that the --  
6     yes, and to the extent that the defense relates to the  
7     pending charge.

8             QUESTION:  It has no relation to the pending  
9     charge, except it was part of the same bunch of  
10    transactions.

11            MS. BLATT:  If he said to his lawyer, I also  
12    murdered these two people, I think it would be perfectly  
13    clear that the -- if the defendant went off and started  
14    researching capital sentencing procedures under Texas law  
15    he very well might not get paid for that.  He was  
16    appointed to represent his client on the burglary charge.  
17    He certainly can take on a scope of representation that's  
18    greater than that, and can work out an arrangement with  
19    his client to get paid for that.

20            QUESTION:  So he's -- the lawyer, the good,  
21    conscientious lawyer would say, well, don't talk to me  
22    about that because I'm not going to get paid for any  
23    advice I give to you on that, on those matters?

24            MS. BLATT:  No, he certainly will want to talk  
25    to his client with respect to the conduct that constituted

1 the offense for which he's been charged, and there might  
2 be other things he needs to know about.

3 QUESTION: But if it doesn't survive the  
4 Blockburger test, the fact that it happened at the same  
5 time, that wouldn't justify the lawyer spending any time  
6 on it?

7 MS. BLATT: He will need to spend whatever time  
8 is necessary to defend him on the pending charge ,but he's  
9 certainly free to tell his client, I'm not competent to  
10 represent you in a death penalty case and you ought to  
11 retain separate counsel for that offense, and moreover,  
12 you haven't even been charged with that offense.

13 In all these cases where there is a pending  
14 charge, the court in McNeil and in Moulton represented --  
15 excuse me, recognized the compelling interest that the  
16 police have in investigating and solving uncharged  
17 offenses, and if the suspect never indicates any  
18 unwillingness to talk to the police about those offenses,  
19 there's no basis for excluding what is concededly a  
20 voluntary confession to those crimes that might otherwise  
21 go unsolved.

22 The other thing I wanted to say, just about the  
23 Blockburger test, is that this Court, in the context of  
24 double jeopardy and the lesser-included offenses context,  
25 has recognized that that test is workable, and is



1       predictable, and can lead to consistent results.

2               QUESTION:   Workable in court from double  
3       jeopardy determinations; workable when you're talking  
4       about the police officer, I'm less certain.

5               MS. BLATT:   I think the police officer can  
6       certainly ascertain immediately what the pending charge  
7       was against the suspect, and if he has any questions about  
8       the elements test he can certainly ask a prosecutor, but  
9       generally the police can be advised, as this Court  
10      recognized in Moulton, that it's okay to approach a  
11      suspect that's under indictment about additional crimes,  
12      and so the question just simply becomes, what's a separate  
13      offense, and that's a lot easier question than, is it  
14      possible that the suspect may say something that's so -- a  
15      court may or may not later deem inextricably intertwined,  
16      such that the statements can't be used.

17              If there are no other questions --

18              QUESTION:   Thank you, Ms. Blatt.

19              Mr. Greenwood, we'll hear from you.

20                      ORAL ARGUMENT OF ROY E. GREENWOOD

21                              ON BEHALF OF THE RESPONDENT

22              MR. GREENWOOD:   Mr. Chief Justice, and may it  
23      please the Court:

24              We are asking only that this Court follow its  
25      prior precedents in Brewer and Maine v. Moulton.   We don't

1 want to expand any constitutional application.

2 QUESTION: Well, but we've said in McNeil that  
3 it's offense-specific --

4 MR. GREENWOOD: Yes, ma'am.

5 QUESTION: -- this Sixth Amendment right, and  
6 here there was at the time of the burglary charge no  
7 evidence of the murder -- the murders, or the defendant's  
8 connection with them, so why isn't that a separate  
9 offense?

10 MR. GREENWOOD: Your Honor, in looking at the  
11 Court's, initially the Fifth Amendment cases on the right  
12 of counsel and then the stair-stepping and the filling in  
13 of the blanks of the various phases where counsel has come  
14 in, as we've all had to do in the research for these  
15 cases, and we get to McNeil -- and we have no problem with  
16 McNeil. McNeil makes sense in the context in which it was  
17 written.

18 QUESTION: Well, how about its statement that  
19 Sixth Amendment right is offense-specific?

20 MR. GREENWOOD: Your Honor, in --

21 QUESTION: You have to go beyond that, don't  
22 you?

23 MR. GREENWOOD: Your Honor, I can -- under -- in  
24 the context of the way, the facts of McNeil, I can see  
25 that statement being legitimately and perfectly

1 reasonable, but McNeil --

2 QUESTION: But it's a categorical statement.

3 MR. GREENWOOD: Yes, Your Honor, it is.

4 QUESTION: So you are asking us to go beyond our  
5 cases. You're asking us to distinguish McNeil and very  
6 sharply limit it.

7 MR. GREENWOOD: No, Your Honor. That statement,  
8 taken in separation with the facts of McNeil and the  
9 issues presented I think are really different, and I  
10 recognize -- we've reviewed you all's decisions,  
11 concurring and dissenting opinions here, and we understand  
12 you all's concerns about that, but in our view, in  
13 starting with McNeil, the Wisconsin Supreme Court, the  
14 question before them was unrelated offenses, and this  
15 Court granted cert on unrelated offenses, and during the  
16 argument of counsel the Government on at least three  
17 separate occasions in McNeil, and we've got their  
18 transcripts, said this is -- the situation here is  
19 completely separate and distinct offenses, different  
20 counties, different victims, different facts.

21 QUESTION: Yes, but you can limit any one of our  
22 opinions in that respect to say, you know, this happened  
23 on a Tuesday and not on a Wednesday, but we employ  
24 statements as to what we think the law is and so on in  
25 deciding these cases, and it isn't always limited just to

1 the particular facts.

2 MR. GREENWOOD: That's true, Your Honor, and --  
3 but it just, from our viewpoint, even though McNeil makes  
4 sense as to separate and distinct offenses, when you look  
5 at Brewer, and Moulton, and the interrelated, intertwined  
6 defenses, to us you just simply cannot say, well, the line  
7 of Brewer just stopped, because --

8 QUESTION: What is your definition of, quote,  
9 intertwined, close quote, or interrelated, close quote?

10 MR. GREENWOOD: In looking at all of these  
11 things and trying to make a decision, the simplest and  
12 easiest definition we got to is just the related offenses,  
13 where those that occur in one single immediate transaction  
14 and incident.

15 QUESTION: Well, okay. What is a -- you know,  
16 this doesn't make it any easier. What's a transaction?  
17 What's an incident?

18 MR. GREENWOOD: Okay. Well, transaction is  
19 defined -- is not even defined under Texas joinder law, so  
20 you get a dictionary out, but at the same immediate  
21 temporal time and place.

22 QUESTION: And you think this case meets that  
23 definition --

24 MR. GREENWOOD: Yes, sir.

25 QUESTION: -- of the same time?

1                   MR. GREENWOOD: Absolutely.

2                   QUESTION: Mr. Greenwood, I think your, sort of  
3 your strongest argument is that, if you don't recognize  
4 the scope of the right as you argue for it, that the risk  
5 that the Sixth Amendment right in the -- with respect to  
6 the first offense will be infringed is simply too great,  
7 and you cannot run that risk, and this is the way to avoid  
8 it.

9                   Mr. Coleman has essentially two responses to  
10 that, and I'd like you to comment on them. The first  
11 response is that if the subsequent interrogation is a  
12 custodial one, the Miranda warnings are going to be there,  
13 and they functionally will assuage your concern and that  
14 in any event, even in a noncustodial case and, a fortiori,  
15 in the custodial case, if, in fact, there is a violation  
16 of Sixth Amendment right with respect to the first  
17 offense, any evidence so given will be excluded with  
18 respect to the first offense. And he in effect says,  
19 these two avenues of warning or relief are sufficient to  
20 reduce the concern about the risk that you raise. How do  
21 you respond?

22                   MR. GREENWOOD: Initially, Your Honor, one of  
23 the concerns that I have is, as the Chief Justice wrote in  
24 one of his dissenting opinions, I think in Moulton,  
25 correct me if I'm wrong, that there has not been in the

1 past wholesale violation of Sixth Amendment problems by  
2 law enforcement. I think to allow -- but over the years  
3 in this, these more than two decades of cases that dealt  
4 with this related offense concept have generally kept the  
5 police away from the defendant in these related contacts,  
6 so you haven't had wholesale --

7 QUESTION: Right, but let's assume we no longer  
8 have that regime, but we have the regime that your brother  
9 argues for and he says the two safeguards are Miranda in  
10 custodial cases, exclusion in noncustodial cases if the  
11 interrogation strays into the evidence on the first  
12 offense.

13 MR. GREENWOOD: The immediate, most immediate  
14 concern I have is that a statement by this Court that that  
15 is permissible will encourage police officers to make  
16 those contacts.

17 QUESTION: Let's assume that it does. Let's  
18 assume that no, this relatedness test is not the proper  
19 test, there's going to be more interrogation.

20 MR. GREENWOOD: Absolutely.

21 QUESTION: We're all assuming that. Now, why  
22 are his two safeguards going to be insufficient?

23 MR. GREENWOOD: Under the facts of this case,  
24 and because the -- and I must preface this just briefly.  
25 This can be a complicated situation, with regard to Sixth

1 Amendment and the related offenses, and that's why most of  
2 the courts of appeals, Fifth Circuit and Third Circuit,  
3 have devised a list of factors, totality of the  
4 circumstances, which we think are necessary.

5 Having said that, in this case, for example, you  
6 have a long-term, 17 months or more, attorney-client  
7 relationship. Counsel has been dealing with the courts,  
8 actively filing motions. He has been dealing with the  
9 district attorney, theoretically, with law enforcement  
10 concerning this immediate burglary, but everybody knows  
11 there's these other potential crimes out there. They're  
12 still investigating them.

13 QUESTION: What about the circumstance of, I  
14 didn't know that the word, offense-specific, in McNeil,  
15 whether it referred to something on paper --

16 MR. GREENWOOD: Right.

17 QUESTION: -- namely, the definition of a crime,  
18 or something in the world, such as the robber entering the  
19 bank, hitting the teller and taking the money, which, of  
20 course, could be one of several crimes.

21 MR. GREENWOOD: Yes, sir. Thank you for filling  
22 in the --

23 QUESTION: Well, I don't want you just to accept  
24 it because maybe what I've just said is wrong.

25 QUESTION: Well, take it, Mr. Greenwood. Take

1 it.

2 (Laughter.)

3 MR. GREENWOOD: Your Honor, in dealing with all  
4 this, we have looked at the term transaction, because  
5 that's a series of acts of conduct which can have one  
6 offense or dozens. The term crimes means different things  
7 in this context. The term --

8 QUESTION: Mr. --

9 MR. GREENWOOD: -- offenses does, and I don't  
10 want to get into a semantic battle with you all. You all  
11 are the experts in that, and need to write this thing.

12 QUESTION: It's what we do.

13 MR. GREENWOOD: Right.

14 QUESTION: Can I get back to your description of  
15 what was going on here? The man had a lawyer, the police  
16 had dealt with him over many cases. What I can't  
17 understand about your case, or about the rule that you're  
18 urging upon us, is why it makes a difference that the  
19 other offense was factually related, was simultaneous.

20 I mean, I can understand the position that,  
21 look, once a man has a lawyer -- I have a lawyer for  
22 embezzlement. I'm a stockbroker, and I'm charged with  
23 having embezzled on May 13th. I'm charged with an  
24 entirely separate embezzlement -- or, I'm interrogated  
25 about an entirely separate embezzlement on May 14th. I



1 would feel just as strongly as you do about, well, it's  
2 only fair they know the man has a lawyer, they shouldn't  
3 go to him without going to his lawyer.

4           They know the man has a lawyer to represent him  
5 vis-a-vis the police. What difference does it make  
6 whether it's factually related or not, if you're going to  
7 appeal to that, I don't know, that feeling once you know a  
8 guy has a lawyer, you ought to deal with his lawyer? I  
9 don't see that the factual relationship makes me feel any  
10 worse about it.

11           MR. GREENWOOD: Your Honor, I agree with that,  
12 but since --

13           QUESTION: Okay, well --

14           MR. GREENWOOD: Since McNeil, it does make a  
15 difference, and --

16           QUESTION: Well, I think unless we're going to  
17 go all the way down to the bottom of that slippery slope  
18 it makes sense to say what you have a lawyer for is for  
19 the charge, and that the choice is between saying you have  
20 a lawyer for that charge, and the police can deal with you  
21 separately on any matter that is apart from that charge,  
22 and if you're not going to adopt that rule you really  
23 ought to jump all the way over to the rule that once  
24 you're represented by a lawyer with regard to this police  
25 department, with regard to matters that -- concerning this

1 defendant, they ought to contact that lawyer for  
2 everything they have to do with that defendant.

3 MR. GREENWOOD: Well, and that's part --

4 QUESTION: And that's a big extension of what  
5 we've said up to now.

6 MR. GREENWOOD: In the decisions of the courts  
7 of appeals on this issue dealing with the totality of the  
8 circumstances, one of the important things in making sure  
9 that the concerns of the court with regard to really  
10 hamstringing law enforcement are not overdone, is limiting  
11 it to a single criminal investigation in a jurisdiction by  
12 the same type of law enforcement, and we'll go along with  
13 that, because we can think of hypotheticals --

14 QUESTION: What do you mean, you'll go along  
15 with it if we do that? You don't have much choice.

16 MR. GREENWOOD: No, I understand.

17 (Laughter.)

18 MR. GREENWOOD: We will take that, Your Honor,  
19 as to a limitation. There are limitations on this.  
20 McNeil, obviously, Koolman v. Wilson. We concede in our  
21 brief that ongoing and future crimes should be exempted  
22 from this related offense rule.

23 QUESTION: It's not just an exemption. You've  
24 said that, I think, the law enforcement would be seriously  
25 hamstrung --

1 MR. GREENWOOD: Absolutely. Absolutely.

2 QUESTION: -- if the simple fact that a person  
3 had a lawyer stopped policemen from asking him questions.

4 MR. GREENWOOD: Right.

5 QUESTION: All right. But that isn't true where  
6 you're talking about a single offense defined in terms of  
7 what happens in the world, I take it.

8 MR. GREENWOOD: That's correct. That's correct,  
9 and we are afraid that if the Court follows the  
10 petitioner's argument that, because of the ability of law  
11 enforcement and prosecutors to charge in a matter of  
12 discretion at their will, they can, in fact pick different  
13 crimes and then make dozens of confrontations with the  
14 defendant.

15 For example, in this case --

16 QUESTION: But to stop to ask a less friendly  
17 question, I think what's worrying the department and  
18 others is that once you depart from the definition of  
19 offense in terms of some words on paper, i.e., once you  
20 start looking to what happened in the world, there's no  
21 good way to define what is the same offense, and therefore  
22 they get into a mess, and therefore we have six different  
23 circuits trying to do different things.

24 MR. GREENWOOD: Right.

25 QUESTION: And you say in response to that, no,

1       there is a good way, and what is it?

2               MR. GREENWOOD:  I -- in the brief before the  
3       Court of Criminal Appeals we followed the Third and Fifth  
4       Circuits' totality of circumstances test, and followed it  
5       right down the line with regard to that.  Any one of those  
6       factors could have totally thrown off the analysis of this  
7       case.

8               QUESTION:  Of course, the problem that the law  
9       enforcement has is not only that they don't know how to  
10      define what is a related offense, but that they also don't  
11      know whether the offense that they're inquiring about  
12      meets that definition or not.  That is a totally separate  
13      second problem which existed here.  They did not know  
14      whether the kidnapping was done at the same time as the  
15      murder, whether the two were related or not.

16              It's a real problem, not just figuring out a  
17      definition, but also figuring out whether what they're  
18      asking about falls within that definition or not.  They  
19      won't know that until the facts are fully known.

20              MR. GREENWOOD:  That is true, and in our attempt  
21      at definition to limit expansion of this concept any  
22      longer, is the transaction or incident in a temporal time  
23      and place seems to be the least expansive you can get, and  
24      most police officers --

25              QUESTION:  What if the police here thought that

1 the kidnapping had occurred on a different day from the  
2 burglary, that he had done the kidnapping and the murder  
3 and then he'd gone back the next day and burglarized the  
4 place?

5 MR. GREENWOOD: I don't think under the facts  
6 you could have gotten there, but assuming that --

7 QUESTION: Is it enough that they thought that  
8 and it turns out not to be the case, they're nonetheless  
9 not violating the Sixth Amendment rights?

10 MR. GREENWOOD: You would have -- if you had  
11 something like that, you would have two separate crimes --

12 QUESTION: I understand that.

13 MR. GREENWOOD: -- really, as opposed to the  
14 same transaction.

15 QUESTION: No, but it didn't turn out that way.  
16 It turned out that they were both done on the same day.  
17 Now, but you're going to let the police off because they  
18 thought it was on separate days, right?

19 MR. GREENWOOD: Oh, well, thought, but you see,  
20 if the facts show otherwise, then you have a set of facts  
21 that can be analyzed.

22 QUESTION: So they can't talk at all then,  
23 because even though they think it happened on a separate  
24 day and therefore, believing they're in full compliance  
25 with the Sixth Amendment they interrogate the person

1 without his lawyer, it turns out that they happened on the  
2 same day, and all this evidence has to be thrown out.

3 MR. GREENWOOD: I may have missed some of that,  
4 Your Honor, but law enforcement officers deal with  
5 transactions and incidents daily --

6 QUESTION: I understand.

7 MR. GREENWOOD: -- and that, it seems to me,  
8 would be the easiest definition.

9 QUESTION: Are you suggesting that what matters  
10 is the reality, or what matters is what the interrogator  
11 believes when he conducts the interrogation?

12 MR. GREENWOOD: I will concede that at the time  
13 what he legitimately believes.

14 QUESTION: Okay.

15 MR. GREENWOOD: Yes. That makes sense, under --  
16 in considering all this, because you could have a bizarre  
17 circumstance when no one would know when certain crimes  
18 occurred.

19 QUESTION: -- just not sure. I mean, does he  
20 have to know that it was at the same time, or suppose he's  
21 in a state of complete agnosticism. He doesn't know when  
22 it occurred.

23 MR. GREENWOOD: In --

24 QUESTION: Is he violating the Sixth Amendment?

25 MR. GREENWOOD: A police officer in a -- I

1 cannot answer the question. That -- I do not think of  
2 that concept --

3 QUESTION: I can't, either.

4 MR. GREENWOOD: But -- but, if I knew a police  
5 officer who had no knowledge or intent, really -- I'm  
6 trying to separate it from this case. That's my  
7 difficulty -- had really no knowledge that an  
8 investigation was going on and that we want to interrogate  
9 him about this serious crime, then I could see a judge  
10 under the totality-of-the-circumstances test saying,  
11 there's no either bad faith or negligence or intentional  
12 or even accidental violation of the Sixth Amendment. I  
13 haven't been able to work out your factual question far  
14 enough down the line, sorry.

15 But I do believe -- in this case, for example,  
16 in the Texas statutory scheme, this defendant could have  
17 been charged, well, with nine different capital crimes,  
18 and three of them, at least three of them are under  
19 statutorily different offenses which would have allowed  
20 prosecution under Blockburger, even though it's the same  
21 offenses, same exact conduct, and where -- we are  
22 concerned that under a circumstance where an attorney has  
23 been representing a defendant for a substantial length of  
24 time, and he consults and investigates on this limited,  
25 immediate transaction about various crimes, and he tells,

1 and he consults the attorney about what we're going to do  
2 -- for example, in the example it was asked if he was  
3 arrested on one offense, he said, by the way, I killed two  
4 other people.

5 Well, I know what I would do if I was his  
6 counsel, and take all possible avenues to try to protect  
7 him under my responsibility. I give a lot of credence in  
8 this whole issue here with the responsibility of the scope  
9 of counsel.

10 In the McNeil argument one of the attorney --

11 QUESTION: Well, I know what you'd do, too.  
12 You'd say, take the Miranda advice seriously, refuse to  
13 answer any questions now, later, a week from now, a month  
14 from now, and then you're protected. That's it.

15 MR. GREENWOOD: That, of course, is what their  
16 position is, Your Honor, and --

17 QUESTION: Isn't that implied by what you were  
18 just saying? I mean, any prudent lawyer is going to say  
19 to his client, don't talk to them about anything, no  
20 matter what, unless I'm there, and why isn't that one of  
21 the answers to the concerns that you're raising?

22 MR. GREENWOOD: We believe that if the Court  
23 allows this continuous conduct where law enforcement can  
24 come in on a regular basis, in this case, literally dozens  
25 of times could have come back at Mr. Cobb to interrogate



1 him about all the potential offenses, that it gives  
2 certain rise to complete abuse.

3 QUESTION: But Mr. Greenwood --

4 QUESTION: He can say no any time. He can  
5 refuse to talk to them. His lawyer has advised him.

6 MR. GREENWOOD: And we say they -- once he has  
7 counsel, in these facts they know he has counsel, they  
8 ought to stay away from him.

9 QUESTION: They -- first, the Odessa people  
10 didn't know he had counsel.

11 MR. GREENWOOD: They didn't know.

12 QUESTION: But there's another aspect to this  
13 that I hope you will address. In this -- it seems to me  
14 that this case may not be a strong case for your position,  
15 even if we were to take a related-offense view of it.

16 As I understand Jackson, the purpose was to keep  
17 the police from badgering a defendant, keep coming back at  
18 him and back at him, and even though he's been given  
19 Miranda warnings, to wear down his will. In this case  
20 there was a considerable interval of time. Defendant was  
21 out of custody, he was living with his father, and in that  
22 interval he could have talked to his lawyer many times.  
23 When he has that interval why, in that case, isn't Miranda  
24 enough, when he's not in custody where he's --

25 MR. GREENWOOD: I still maintain that as long as

1     that formal charge was pending, and the counsel  
2     relationship continued, that when you throw law  
3     enforcement into talking to the defendant without his  
4     counsel, that you're still subjecting the defendant to  
5     abuses because, primarily, of the Moran v. Burbine  
6     decision that allows police officers to lie to the  
7     defendants, and you're getting a conflict, more than  
8     likely, which will encourage a conflict of statements  
9     between what the lawyer's telling him and what the police  
10    officers are telling him.

11                QUESTION: I suppose, Mr. Greenwood, that your  
12    response to the contention that it ought to be enough that  
13    his lawyer tells him at the very beginning, look it, I'm  
14    only representing you on this crime, but you shouldn't  
15    talk to them about any other crime, you got that? Yes.  
16    Yes. Don't talk to them at all. Yes, yes, I understand.

17                The argument that that suffices, what's wrong  
18    with that is that if it suffices here it would have  
19    sufficed or ought to have sufficed in Michigan v. Jackson  
20    as well. I mean, doesn't Michigan v. Jackson assume that  
21    that's not enough? The lawyer's going to tell him, look  
22    it, I'm your lawyer now, don't talk to the police without  
23    me, and yet Michigan v. Jackson still says, even though  
24    the lawyer's told him that, if the police try to talk to  
25    him without him, it's a constitutional violation.

1 MR. GREENWOOD: Right.

2 QUESTION: So maybe Michigan v. Jackson is  
3 wrong. I mean, if --

4 MR. GREENWOOD: No, Your Honor. We still  
5 maintain that Jackson is a proper continuation of Sixth  
6 Amendment jurisprudence.

7 QUESTION: And I suppose the same answer that  
8 Justice Scalia just outlined for you is your answer to the  
9 question that I raised earlier about your brother's  
10 argument. If Miranda is good enough to protect him here,  
11 why wasn't Miranda good enough to protect him there?

12 MR. GREENWOOD: We just believe that if you rely  
13 on this, the invocation of the Fifth Amendment on these  
14 related offenses, you're going to have officers, encourage  
15 them to make more and more contact with the defendant and  
16 invade that attorney-client relationship with false  
17 information, which I think will lead to more abuses.

18 That's all the questions?

19 QUESTION: Maybe -- well, this is just to  
20 clarify something that I had trouble understanding.

21 MR. GREENWOOD: Yes.

22 QUESTION: Suppose that a person is -- what's  
23 the law in the following situation? The person, a  
24 defendant is put into custody, a suspect, he's  
25 interrogated. He's told about his Miranda rights. He

1 gets a lawyer, and then he's not charged, all right? He's  
2 not charged.

3 The next day, although the police know he got a  
4 lawyer, he has a lawyer, they call him back to question  
5 him again without telling the lawyer. Can they do that?

6 MR. GREENWOOD: I think they could, Your Honor.

7 QUESTION: Thank you, Mr. Greenwood.

8 MR. GREENWOOD: Thank you, Your Honor.

9 QUESTION: Mr. Coleman, you have 1 minute  
10 remaining.

11 REBUTTAL ARGUMENT OF GREGORY S. COLEMAN

12 ON BEHALF OF THE PETITIONER

13 MR. COLEMAN: I'd like to very quickly address  
14 Justice Stevens' question about the scope of  
15 representation and real-world fact scenarios that are  
16 uncharged, and I think in both of those instances I can go  
17 back beyond the cases of this Court and say, those are not  
18 criminal prosecutions, and that person has not been  
19 accused of those factually-related crimes, and the Sixth  
20 Amendment by its own text simply does not apply in those  
21 types of circumstances.

22 When -- and also, in both of those  
23 circumstances, if the defendant or the suspect is  
24 questioned he can say, at the advice of his counsel, I  
25 don't want to talk to you, in other words cuts him off.

1 CHIEF JUSTICE REHNQUIST: Thank you, Mr.  
2 Coleman.

3 The case is submitted.

4 (Whereupon, at 1:52 p.m., the case in the above-  
5 entitled matter was submitted.)

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