

Supreme Court of the United States

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Supreme Court, U. S.
MAR 13 1970

In the Matter of:

Docket No. 127

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 WILLIAM MONKS, :
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 Petitioner, :
 :
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 vs. :
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 :
 THE STATE OF NEW JERSEY :
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 Respondent. :
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Place Washington, D. C.
Date February 26, 1970

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ARGUMENT OF:

P A G E

Anthony G. Amsterdam, Esq., on
behalf of Petitioner

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Archibald Kreiger, Assistant Prosecuting
Attorney, on behalf of Respondent

21

REBUTTAL:

Anthony G. Amsterdam, Esq., on
behalf of the Petitioner

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ENHAM

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

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The above=entitled matter came on for argument at 11:50 o'clock a.m., on Thursday, February 26, 1970.

BEFORE:

WARREN E. BURGER, Chief Justice
 HUGO L. BLACK, Associate Justice
 WILLIAM O. DOUGLAS, Associate Justice
 JOHN M. HARLAN, Associate Justice
 WILLIAM J. BRENNAN, JR., Associate Justice
 POTTER STEWART, Associate Justice
 BYRON R. WHITE, Associate Justice
 THURGOOD MARSHALL, Associate Justice

APPEARANCES:

ANTHONY G. AMSTERDAM, ESQ.
 Stanford University Law School
 Stanford, California 94305
 Counsel for Petitioner

ARCHIBALD KREIGER,
 Assistant Prosecutor
 Court House
 Paterson, New Jersey, 07505
 Counsel for Respondent

1 obtained.

2 As I understand the State's position in its brief
3 it initially asserts that it agrees with all of Petitioner's
4 facts in the case. However, in the argument portion of this
5 brief, it does make certain factual assertions with which we
6 are in disagreement. There are a half dozen of those and I
7 mean to advert to them specifically in my presentation,
8 because I think the most important aspect of this case is the
9 facts.

10 We begin with what is clearly a major factor in the
11 case, and that is the Petitioner's age. At the time of his
12 detention, interrogation and confession he was a 15-year-old;
13 to be exact, 15 years and four months old.

14 The State, of course, does not contest that. But it
15 does make three factual assertions in that regard, which I
16 wish to bring to the Court's attention.

17 First, it characterizes the Petitioner as "above
18 average" and indicates that he had an intelligence beyond his
19 mere age. The State cites nothing in the record on either of
20 these propositions; the Court will find nothing in the record
21 to support either of these propositions, and as I take it,
22 it is an inference of the Respondent, drawing from nothing
23 other than the fact that the Petitioner managed to hold out
24 for a goodly time to sustain police questioning.

25 The second factual matter raised by the State in

1 connectionwith Petitioner's individual characteristics, is
2 that he was, as the State puts it, "court-wise," or in another
3 place in its brief, "a hardened juvenile criminal."

4 Again, the record shows no such thing. The facts in
5 this regard are set forth in our brief at page 46 in the
6 footnotes 59. The trial record here shows only that the
7 Petitioner previous to this detention and interrogation had
8 been a probationer of the Juvenile Court. It does not show
9 what caused him to be a probationer of the Juvenile Court and
10 it does not show what contacts, if any, he had had with the
11 police incident to becoming a probationer of the Juvenile
12 Court.

13 There are, however, psychiatric reports in this
14 record, one of which we advert to in our footnote, which shows
15 that as of a time three months prior to his detention the only
16 run-ins he had had with the police were a minor pilfering
17 incident: stealing a flashlight and jacket from a car; a
18 broken window incident and some misconduct inschool.

19 In reviewing the record for this argument, I notice
20 that I omitted from that footnote that the same diagnostic
21 report also indicates a charge of waywardness, whatever that
22 may be, sometime prior to 1953 when he would have been 11 or
23 12. Again, no indication as to whether he had dealing with
24 the police in thatconnection.

25 And for the sake of completeness, I simply want to

1 bring to the Court's attention that there is another psy-
2 chiatric report made later after his prison juvenile commit-
3 ment, in which, under sodium amatol interviews and methadrine
4 interview at the State Diagnostic Center, Petitioner also
5 adverted to two additional contacts with the police. However,
6 this came out under amatol; it is quite unclear what these
7 contacts were and there is no objective verification of this
8 amatol material.

9 In any event, he hardly is shown by this record to be
10 a hardened juvenile criminal.

11 And finally, the State says that the Petitioner was,
12 and I quote: "Familiar with the ability to take refuge in
13 silence." That is carefully-phrased statement to the extent
14 that it seems to assert that there is anything in this record
15 showing that the Petitioner knew anything about his privilege
16 of self-incrimination or his right to resist police questioning.
17 It is, again, totally unfounded in the record.

18 The only material cited by the State to support it is
19 a statement that at one time the Petitioner was, in fact,
20 totally silent during five minutes of particularly sustained
21 police questioning. There is no indication that he knew of
22 his right to maintain and retain that silence.

23 So, I think what we end up with in terms of the
24 personality and nature of this Petitioner, is that he was
25 simply a 15-year-old boy. I cannot honestly claim that there

1 is anything in the record indicating that he is subnormal, but
2 I think there there is certainly nothing in the record to
3 indicate that he supernormal, in any regard.

4 We turn then, to what happened to this 15-year-old
5 boy. First, it is undisputed that, prior to the interrogation
6 which led to his confession, he was detained without access
7 to friends, family or an attorney for a ten-day period. Now,
8 I am quick to admit that this detention has none of the
9 aggravating trappings that has sometimes attached to cases
10 coming to this Court; no shuttling around from police station
11 to police station and that sort of thing. He was simply de-
12 tained in the juvenile home, and he was questioned by the
13 police on four occasions: one immediately after his arrest,
14 then several days later after having weakened when the police
15 attention focused on him in connection with these cases, then
16 as soon as a lie-detector expert could be gotten, and finally,
17 several days later on the day in which he confessed.

18 The important thing, however, about that detention
19 -- there are, I think, two important things about the deten-
20 tion. It shows a very considerable callousness on the part
21 of the police and the juvenile authorities, and indicates that
22 they were far more concerned with their investigation than
23 they were with this 15-year-old's welfare and that of his
24 family. He had been away from home prior to his arrest. His
25 mother had called the police and had called the juvenile

1 authorities and she had made continuing inquiries of him and
2 had been assured that as soon as he was picked up he would be
3 brought home.

4 In fact, when he was picked up he was detained for
5 ten full days and his mother never learned that he was in cus-
6 tody, until the newspapers printed that he had confessed.

7 Now, the State suggests, and here is a fourth matter
8 in which we are in factual disagreement: the reason why Monks
9 never saw his parents during this period was that he didn't
10 want then. Again, the record has absolutely no support for
11 this proposition. It seems to be an inference that from the
12 fact that at the time of his arrest he was living away from
13 home. However, as I have indicated, his mother had made
14 steps to find him, both through the police and through the
15 juvenile authorities. They knew that very well, and never got
16 in touch with her.

17 But if it were so that Monks was so far from his
18 parents that he felt that not even they, not even his mother
19 and his father could be called to help him in this situation,
20 it seems to me that bespeaks not strength and not a factor
21 which supported this boy in his ordeal with the police, rather
22 the converse.

23 Passing from that aspect of the continued detention
24 to another --

25 MR. CHIEF JUSTICE BURGER: If this is a good breaking

1 point for you, Mr. Amsterdam, we will break for lunch.

2 MR. AMSTERDAM: It is, Mr. Chief Justice.

3 (Whereupon, at 12:00 o'clock p.m. the argument in the
4 above-entitled matter was recessed to resume at 12:30 o'clock
5 p.m. this day.)
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1 (After the recess the argument resumes)

2 MR. CHIEF JUSTICE BURGER: Mr. Amsterdam, you may
3 continue.

4 MR. AMSTERDAM: Thank you, Mr. Chief Justice.

5 If the Court please: Prior to the recess I had noted
6 Petitioner's ten-day detention prior to the interrogation that
7 produced his confession.

8 The most important result of that ten-day detention
9 is that, in fact, and to Petitioner's appearance, he was
10 completely subject to the will of the police throughout that
11 period. He was not being detained for some fixed time, after
12 which he would appear in court. In fact, and as far as he
13 knew, the police could hold him and question him whenever they
14 pleased until he confessed.

15 Q I's like to get that time sequence clearer in
16 my mind now, Mr. Amsterdam. He was in a juvenile detention
17 home at this period?

18 A He was in a juvenile detention home for this
19 ten-day period.

20 Q Does the record show whether the police were
21 regularly stationed there, or whether they came intermittently
22 and left to talk with him?

23 A There is no indication that they are regularly
24 stationed there. When he was arrested and before he was taken
25 to the juvenile home he was questioned for several hours by the

1 police. Indeed, he was questioned from 1:00 a.m., when he was
2 arrested until noon the following day.

3 Q I just wanted to be sure we didn't have a ten-day
4 police station detention.

5 A No, we do not. We have only two days of police
6 interrogation in the intervening period after the first police
7 interrogation and prior to the day of his confession.

8 Q Does it appear why they picked him up?

9 A Yes. He was arrested in connection with two
10 unrelated purse snatchings, which he admitted immediately.

11 However, he was being held, from all appearances for
12 questioning on these offenses because the police officers had
13 their attention called immediately to a similarity of motives
14 between the crimes and on the Monday following the Saturday of
15 his arrest, they began to question him on these two particular
16 offenses. They applied to the juvenile court for leave to do
17 so; they were granted leave to do so and they began to do so.

18 Now, here we come to, perhaps one additional factual
19 matter in which we are in disagreement with the State, because
20 we believe that the implication to him was obvious, that he
21 simply had no right to refuse to answer police questions and
22 that the police would persevere in holding him and questioning
23 him, until he broke and confessed.

24 The State asserts in its brief that the police in fact,
25 gave the Petitioner warnings of his right to remain silent

1 at one point. The State citation to support that assertion re-
2 fers entirely to a warning given after the Petitioner had been
3 questioned on three days and during 12 hours on the third day
4 without any warning or caution of any sort by the police at any
5 time.

6 It is undisputed that he was never given any warning
7 throughout the interrogation until he had twice orally con-
8 fessed to the offenses. That point, and just prior to the formal
9 transcription of his statement, he was told: "We are going to
10 ask you to make a voluntary statement which you may make or you
11 may not make, as you please. That is the sum total of the
12 warnings on this record.

13 I want to make absolutely clear that he did not know
14 and was not told at any time anything contrary to the clear
15 indication presented by the police, continual questioning, that
16 he simply was going to have to answer.

17 Now, I come, then, to the final critical day,
18 and time is very important here. At 7:00 a.m. he was up --
19 before 7:00 a.m. he was up, because he ate breakfast at 7:00.
20 At 10:00 police questioning began. The confessions were com-
21 pleted and signed at 1:00 a.m. the following day: 15 full hours
22 after the interrogation began.

23 Now, during this time he was not for one minute out of
24 the presence of two or three police officers, except when he
25 was being interrogated by a polygraph operator: never during this

1 15 hours did he see or speak to anybody other than his interro-
2 gators. The actual amount of direct interrogation, of ques-
3 tioning of him is unclear, as it always is in these cases, but
4 by the police admissions, the minimum possible time that he
5 could have been under direct questioning was six-and-a-half or
6 seven hours. And that account of the time leaves several un-
7 explained gaps in the day, as is invariably the testimony re-
8 garding matters of this sort.

9 What is very important is that this record makes clear
10 as no other record I have ever seen in this Court, what is going
11 on throughout the 15 hours, because it is misleading to imagine
12 that only six-and-a-half of that or seven of that involved
13 investigation or interrogation. The point is that throughout
14 the entire 15-hour period he was subject to discussion and
15 questions of the interrogative process.

16 While he was not being questioned he was being con-
17 fronted with his friends who were brought in to say that he had
18 made admissions to them. They were undergoing polygraph tests
19 and while he waited outside the room to see what the result of
20 that testing would be, he hovered around to the scene of the
21 offense. He was told to sit and wait while the police officers
22 left him, went across the room and in his presence, discussed
23 what they were going to do next. All of this time he was under-
24 going on-going process of police interrogation.

25 So that the 15 hours, I think, have to be seen as a

1 block under which this 15-year-old boy was subjected to the
2 interrogative process and all of its pressures.

3 What is equally important is that he persisted, from
4 the very beginning in denying these offenses. This is not one
5 of these threshold confessions, by any means. The inquiry
6 here is whether he voluntarily confessed, whether he willfully
7 confessed.

8 Now, for two days of questioning he did not. For 12
9 hours on the third day of questioning, he did not.

10 Q If you eliminate the confessions, what, in your
11 judgment would the record show? Is there enough to convict him
12 apart from the confession?

13 A There is nothing -- not only not enough, Mr.
14 Justice, there is no evidence, literally, pointing to his guilt
15 other than his confessions; absolutely none.

16 Now --

17 Q We've never had a case, I guess, have we, in
18 which the person interrogated has had assigned to him by the
19 juvenile court, somebody like this man, Jarmolowitz?

20 A Never. And that is the one -- and that is the
21 one legal wrinkle that makes this case different from any other.

22 Q We haven't had a case involving that?

23 A No, Mr. Justice; not that I know of. I mean to
24 come to that, because I think that it the nub of this case.

25 Q Mr. Amsterdam, didn't you say that no other

1 evidence; what about his admissions to his friends?

2 A They relate to the Weiss affair, which is an
3 affair which is not now in issue, because there are two
4 choices here: the so-called "Weiss affair," and the Giambro
5 affair.

6 For the Weiss affair, he has already fully served all
7 the time he can legally under the New Jersey law. The only
8 thing that is in contention here is Giambro. Now, with regard
9 to Giambro, there is one other confession. That is a confes-
10 sion, or an admission, rather, made to, not a friend, but to an
11 inmate in the juvenile home, following and clearly derivative
12 of the confessions that are in contention here.

13 One could not find on this record that that confession
14 was not derivative of these. If these confessions fall, that
15 admission clearly must fall.

16 Q Well, why do you say that?

17 A Because of his testimony. He was explicitly
18 asked on cross-examination by the District Attorney: "Well, why
19 did you tell Talon in the receiving home that you had done it?"

20 He said: "I had been denying it all along; I admitted
21 it to them and the cat was out of the bag; I then admitted it
22 to everybody."

23 Q Well, it doesn't necessarily follow that any
24 admission following a coerced confession is also coerced; I
25 don't suppose.

1 A Mr. Justice, I think that the clear implication
2 of this Court's holding in Robinson v. Tennessee, adopting Mr.
3 Justice Harlan's opinion in Darwin, is that the State, at
4 least has the burden after a first involuntary confession is
5 given of showing that the subsequent confession is not tainted
6 by it and is not involuntary. No such showing is possible or
7 could be made on this record.

8 I do not assert that it could not be made. I assert
9 that on this record it is not made.

10 Now, what actually went on in the course of the police
11 questioning --

12 Q Before you go on, Mr. Amsterdam, I'd just like
13 to clear up one other matter. Was there anything in the desc-
14 ription given by this woman before her death, before she died,
15 that linked him up with the attack? They said it was a man in
16 a brown -- dark leather jacket. Was there any follow-up on
17 that?

18 A This much follow-up: again, all of these matters
19 are detailed in the appendix to Petitioner's brief. The
20 follow-up is simply this: That Petitioner did, in fact, have a
21 black leather jacket. The victim's description was "a man;"
22 this is a 15-year-old boy, "in a" -- now, it's unclear what
23 she said. The officer first said she said, "dark leather
24 jacket," but then remembered that somebody had said she said,
25 "brown leather jacket." Monks' jacket was black and the jacket

1 was equally tainted by the confession. The jacket was dis-
2 closed immediately following the confession. Under Wong Sun
3 there would be no question whatever that the jacket would fall,
4 so that the only follow-up again, derives immediately from the
5 confession.

6 When I speak of their being no independent evidence of
7 guilt, I mean no independent evidence. Both the Talon ad-
8 mission and the jacket fall with these confessions. But, in
9 any event, the probative value of the defendant's having a
10 black jacket, and the victim saying that she was struck by a
11 man with a dark jacket, is virtually nil.

12 Now, what in fact, happened throughout the course of
13 this interrogation; was it that the defendant simply refused,
14 resisted any efforts to get him to talk? He was, during these
15 hours, subjected to confrontations by friends in connection
16 with the Weiss matter, was put under a lie detector nine times,
17 was confronted with a prior admission in the Weiss matter, that
18 he knew that it was snowing on the night of the Weiss offense,
19 and was subjected to everykind of blandishment by the police:
20 "You can't fool God"-type of questioning; that "you will feel
21 better for it," and "sit in the corner and search your con-
22 science type of thing." And, as I say, on-and-off question-
23 ing by the police, and then the lie detector and back to the
24 police and back to the lie detector.

25 Now, I come to Mr. Justice Stewart's question about the

1 probation officer. I think that this case would so clearly be
2 a case of coerced confession it wouldn't even be up here if it
3 weren't for the probation officer. What both courts below seem
4 to have done is to rely exclusively on the presence of the
5 probation officer to distinguish this case from Haley, and as I
6 read the Respondent's brief, almost exclusive reliance was
7 placed on the probation officer there, too.

8 So, the question now is down to this: whether, where
9 the interrogation itself, which the probation officer was
10 present at and did not stop, clearly makes a case of coercion
11 under Haley, where is near presence, doing nothing, changes the
12 result and somehow makes the confession voluntary. Now, in
13 that regard, I have several specific, factual points.

14 (1) The probation officer was simply not there during
15 the critical time. Although he had been instructed by the
16 court to be present when the Petitioner was interrogated by the
17 officers. He seems to have construed this as not including the
18 polygraph operator, with the result that the three-and-a-half
19 hours of interrogation that went on on the 26th alone; the
20 critical day alone, by the polygraph operator, during one of
21 which he finally broke and started to make the confession, the
22 Giambro confession. These were sessions where the probation
23 officer was not present.

24 When he finally did break, who was brought in? Not
25 the probation officer, but the investigating detective and he

1 then proceeded to make his confession to the detective, again
2 out of the presence of the probation officer.

3 Q Where was Chester Jarmolowicz? Where was he?

4 A When?

5 Q Yes, he had been directed by the court, as we
6 know, to be present. Where was he?

7 A We assume that he didn't regard the polygraph
8 operator as a detective. I can't understand why he wasn't
9 present.

10 Q And the record doesn't show where he was?

11 A Oh, I'm sorry. He was in the next room, as he
12 said. The questioning went on in what appears to have been a
13 small room, an anteroom to the grand jury room. He was in the
14 next room. There is no indication as to whether one could
15 hear, and in fact, the door was closed so one would suppose that
16 he couldn't hear and was not supporting by his presence, the
17 petitioner in any way.

18 Now, Respondent states that the State Courts below
19 made what the Respondent calls "express findings" that the
20 probation officers presence was a restraining influence on the
21 police. Let me make that very clear. The State Courts below
22 made no such express finding, and could not, on this record,
23 have done so. What the State Courts did was simply to rely on
24 the fact that he was assigned by the court and was sometimes
25 there, as making this confession voluntary. It made no findings

1 that he had any impact on the police and indeed, no findings of
2 that sort could be made, because he never said a word; never
3 stopped the police from doing anything; never interjected.
4 There was no testimony by the police that they regarded him as
5 a restraining influence. In short, he was simply there.

6 More important, the Petitioner was never told that he
7 was there to protect him. He knew that he was a probation
8 officer, but a juvenile's view of a juvenile probation officer
9 wholly allies him with the police, and there was no suggestion
10 communicated to Monks that he was there in any protective role.

11 In addition to that, I think this point is exceedingly
12 important: that when he came to trial the probation officer
13 was not a supportive or a friendly figure in any way. He was
14 hostile to the Petitioner, he was heedless of the facts dealing
15 with the circumstances of the confession; he admitted he didn't
16 listen to any of the details of the questioning or the answers;
17 he simply regarded his own role, the protection of himself, as
18 what was important.

19 Q Is there anything in the record as to whether or
20 not he told Petitioner he was there to help him or did he tell
21 the Petitioner anything?

22 A The only thing he told the Petitioner was that
23 if he did it he ought to say so. He did not tell the Petitioner
24 anything. The Petitioner admitted --

25 Q He didn't say that "I'm here in place of your

1 parents to do what I can for you,"or anything like that?

2 A Absolutely not. The only thing in the record is
3 this: at one point there is a leading question by the Court as
4 to whether the Petitioner does not know that these juvenile
5 probation officers are there to help juveniles? Petitioner
6 says, "Yes, I know that." But it wasn't this probation officer
7 or anything else. Now, that is simply the juvenile court
8 mistake. I think this Court need attach no significance to it.
9 It certainly doesn't communicate helping him in what way, and
10 the Respondent in this Court asserts that he was not there to
11 help support him in refusing to answer questions or assert his
12 privilege, if he felt like it.

13 The Respondent rightly points out that we have great
14 concern for the probation officer's role here. We think that
15 he was heedless, at the least of his role, and possibly
16 mendacious, and I say that, not by comparing his testimony
17 with that of the Petitioner, but by comparing his testimony with
18 that of the police officers who sometimes testified he was
19 under interrogation three or four times as long as the
20 probation officer admitted. And by comparing his own testimony
21 internally, which shows total heedlessness of any protective
22 role.

23 The question, then, Mr. Justice Stewart, I think, is
24 that not whether any protective figure may prevent a confession
25 from being involuntary, but whether the presence of a figure

1 who does nothing to stop clearly coercive police questioning,
2 who is not known to the Petitioner to be there in a protective
3 role, and who serves no function as an impartial observer in any
4 way, prevents an otherwise coerced confession from being
5 found coerced. We submit that it does not.

6 Q If you have any time left on rebuttal, I hope
7 you will use it to address yourself to your notice point in
8 connection with the enhanced sentence.

9 A I will do that, Mr. Justice.

10 MR. CHIEF JUSTICE BURGER: Mr. Kreiger,

11 ORAL ARGUMENT BY ARCHIBALD KREIGER, ASSISTANT

12 PROSECUTING ATTORNEY, ON BEHALF OF RESPONDENT

13 MR. KREIGER: Mr. Chief Justice, and may it please the
14 Court: If the prefatory statement made today by counsel was
15 all that there was to this case, I am frank to say, here and
16 now, that the State would confess error. But he very adroitly,
17 and I am sure, very skillfully has kept the most important
18 distinctive, significant fact of this entire case, for the last
19 factor, and only when questioning by the Court has brought it
20 forth.

21 The most significant fact in this case and which makes
22 this case different from any others, was anticipated by Justice
23 Stewart, when he said: "Had this Court ever decided the question
24 involving a juvenile where the confession was made in the
25 presence of a court-assigned representative?" And counsel

1 evaded it and said so far as he knows, "no."

2 I'd like to call to the Court's attention the fact
3 that since I have written this brief I have made further re-
4 search and I would like to help the Court in this connection.
5 To my brief at page 7 I refer to the New York statute which
6 provides for the notification of a parent or other representa-
7 tive before a juvenile who has been arrested may be interro-
8 gated.

9 I have found that there is a similar statute in
10 Arizona; it is ARS, Title 8, Section 221 and construed by the
11 Arizona Supreme Court in 1966 in 420 Pacific 2nd, 281, where
12 the Court held that: "When a juvenile is arrested, it is the
13 duty of the arresting officer to notify the probation officer
14 at once and a probation officer is assigned to him and stays
15 with him."

16 And the Arizona Supreme Court has held that this rule
17 does not prevent the police from questioning a juvenile; it
18 only prevents them from subjecting the juvenile to formal
19 interrogation without permission of the person appointed, and
20 that it is consistent with the rehabilitative process of the
21 juvenile court to see that he's prevented from overzealous
22 questioning.

23 Without such a statute in New Jersey, the Juvenile
24 Court Judge in this case in 1957, made such an order and I
25 would like to give the Court very briefly the chronological

1 factors in this case which I regret to say, counsel did not
2 give the Court, and they are these:

3 This juvenile was arrested on February 16th by the
4 Paterson police. He was taken to the police station; I might
5 say a prohibitive practice under the New Jersey law, notwith-
6 standing, the juvenile confessed.

7 Q And he was 15 years and four months old?

8 A That's right.

9 Q How big was he?

10 A Well, Mr. Justice, I --

11 Q Any record of it?

12 A -- I never saw him; I don't know him. I only
13 know --

14 Q One of the witnesses referred to her assailant
15 as "a man," and Petitioner's brief talks about him as a child.

16 A Well, I'm sorry; I cannot answer you on that,
17 sir.

18 Q You mean the whole record doesn't show his size?

19 A Pardon?

20 Q You mean that there is no reference to his size
21 in the entire record?

22 A No. No; there is none, sir.

23 When arrested on February 16th he immediately admitted
24 several purse snatchings and admitted the method by which he
25 had concealed these purses by burying them in the yard of a

1 certain house where he used to frequent for other purposes. The
2 police immediately went to the scene and dug up and uncovered
3 these purses. He was immediately sent to the Children's
4 Shelter, where juveniles are detained. And when these facts
5 came to light, the Prosecutor's Office of Passaic County, noted
6 some similarity between the modus operandi in these cases and
7 the two unsolved crimes in 1956: the Weiss affair in February
8 and the Giambro murder in November.

9 Q Mr. Kreiger, were his parents there? Was his
10 mother in Paterson?

11 A Yes, indeed.

12 Q When was she notified?

13 A She was notified on February the 27th or the
14 28th, after the confession had been obtained.

15 Q Why not before?

16 A Well, she was not notified before, for reasons
17 I cannot give you, that I have --

18 Q Well, don't you feel any duty to give some
19 reasons for it?

20 A Well, the only explanation, sir, I can give is
21 this: there was an estrangement between the juvenile and his
22 parents --

23 Q Is that a reason for not telling the parents?

24 A The juvenile never requested it, never manifested
25 any interest in his parents; in fact, he had run away from home

1 he was sleeping in the cellar of a friend of his and in
2 abandoned cars --

3 Q And you say he waived the right to notify his
4 parents?

5 A I wouldn't put it in legal terms, Mr. Justice,
6 but I --

7 Q Don't you think that the State had an obligation
8 before they questioned this boy for ten days to notify his
9 parents of what they were doing?

10 A I would like to first point out that the State
11 did not question him for ten days.

12 Q Well, the State held him for ten days.

13 A He had been held for the unrelated purse
14 snatchings. That was his original detention.

15 Q He was held for ten days without notifying his
16 parents or anyone that knew anything about him; am I correct?

17 A That is true.

18 Q Why?

19 A Why?

20 Q You can't give a reason; can you?

21 A I can't; no, I can't.

22 Q But, in the record you want us to uphold his
23 conviction.

24 A The record indicates that this juvenile never
25 manifested an interest; he never asked the superintendent at

1 shelter for his parents or advised them of where he was. He
2 was estranged from his parents.

3 Q Did you ever tell him he had a right to have his
4 parents?

5 A Well, yes.

6 Q Is it in the record?

7 A The protection that Judge Shannock of the
8 Juvenile Court afforded this juvenile, by providing for inter-
9 rogation only in the presence of the probation officer.

10 Q Did he know that the probation officer was there
11 to protect him?

12 A Yes, sir; he did.

13 Q How? Where is that in the record?

14 A He was told, he was told by the probation
15 officer that.

16 Q What page is it?

17 A Let me see if I can find it, sir.

18 Q Well, we can get it later; that's all right.

19 A Yes; I will get it later and I will supply it
20 to you.

21 Q Sure.

22 A On February 18th the Prosecutor's office, after
23 noting similarities between the purse-snatchings for which he
24 had been arrested on the 16th, decided to interrogate this
25 juvenile and being in the shelter, they applied to the judge

1 of the Juvenile Court for permission to interrogate him. The
2 judge granted permission on the condition that such interroga-
3 tion take place only, and at all times, in the presence of the
4 probation officer, Mr. Chester Jarmolowicz.

5 On February 18th, in the presence of Chester
6 Jarmolowicz, at the Children's Shelter, this juvenile was
7 interrogated and he made a slip of the tongue in which he said
8 -- they mentioned something to him about "Did you engage in
9 any purse-snatchings on 31st Street, 32nd Street, 28th Street,
10 and enumerated this east side section of Paterson and when it
11 came to 31st street, which is where the Weiss assault took
12 place, he says: "Oh," he says, "I have an alibi for that one."
13 No one asked him or even mentioned anything about Weiss. And
14 then when they came to Rural Avenue(?) which was in back of
15 St. Theresa's Church, where a bingo game was held quite often
16 and where the victim Giambro was going the evening when she
17 was assaulted and later died. He said, "Oh, I read about that
18 in the paper; I had nothing to do with that."

19 And with as a starting point, the Prosecutor's
20 detectives said to him: "Willie, would you submit to a lie
21 detector test," and this juvenile, aged 15, said, "Why cer-
22 tainly," he says. "They're a fake; they don't prove anything.
23 even when you submit to them.

24 "Very well," and that's all the interrogation that
25 took place that day.

1 On the 21st, two days later, arrangements were made
2 for the polygraph operator to interrogate this juvenile and
3 the interrogation took place in an anteroom of the grand jury
4 in the court house in Paterson. The tests were submitted, not
5 lengthy, and immediately after he was taken back by the
6 probation officer to the Children's Shelter, and the polygraph
7 operator advised the detectives who were handling this case,
8 "Don't ask him, or pursue any further interrogation," and there
9 was no further interrogation.

10 In the meantime, the Prosecutor's office, pursuing
11 their own independent investigation, and they came up with the
12 names of a few of his friends and associates, two of whom --
13 one was named Ogg and the other one was named Stopford. They
14 interrogated them and they found out from them that this Monks
15 lad had a day or two after the Weiss assault, which took place
16 on East 31st Street --

17 Q And that had taken place about a year earlier;
18 hadn't it?

19 A That's right.

20 Q When this fellow was 14 years old.

21 A That's right; that's right, sir.

22 He had boasted to one of his friends that he had
23 committed that assault and he had received something like \$30
24 that she had in her purse.

25 Q WERe those the people who frequented the candy

1 store?

2 A Yes, yes, yes.

3 Now, what made the Weiss case interesting, which gave
4 the police the indication that this young man was connected
5 with this assault, was at on the evening of the assault it had
6 been snowing and immediately after this girl had been assaulted
7 and was unconscious, the police came to the scene and there
8 were footprints that led from the place of the assault to a
9 house two-and-a-half blocks away on 15th Avenue and the foot-
10 prints led in the back door of that particular house.

11 During the period of investigation in '57 which this
12 young man was not being interrogated, the police found out that
13 young Monks frequented this place with his friends, where they
14 would go to smoke a cigarette and do other little things of
15 that sort in privacy.

16 In fact, the confession indicates that this was the
17 place, the backyard of which he had buried the purses that he
18 had snatched. Well, on the next occasion of interrogation the
19 lie detector operator was present and --

20 Q Was he a police officer?

21 A Pardon?

22 Q Was he a police officer?

23 A No.

24 Q Was he employed by the police department?

25 A No. He's Mr. Arthur, who is associated

1 with the Reed Associates, who are lie detector operators and
2 I think they have offices in Chicago and New York.

3 Incidentally, Mr. Reed is a co-author with Professor
4 Inbau on "Lie Detection and Interrogation," one of the books
5 cited by former Chief Justice Warren in Miranda.

6 On the 26th of February, which was the next occasion,
7 Mr. Jarmolowicz went to the Children's Shelter in the morning
8 of that day; it was around ten o'clock or so, and picked up
9 Mr. Monks and he brought him to the court house and it is
10 true that he was interrogated a little bit; not too much. He
11 was again subjected to lie detector tests, quite a few but a
12 minute, two minutes, five minutes; nothing extensive; nothing
13 to wear out this young man, or to use the language that this
14 Court has used quite often in these -- only in these two
15 juvenile cases that I know of: Haley and Gallegos, there was
16 nothing in this case and this record doesn't show the
17 slightest callous disregard of the rights of this juvenile.

18 And bear in mind, that in 1957 the criminal law
19 enunciated by this Court was not what it is today. In fact,
20 we claim --

21 Q When was Haley decided?

22 A Beg pardon?

23 Q When was Haley decided?

24 A Haley was '48.

25 Q When?

1 A 1948.

2 Q I thought so; I thought it was before '57.

3 A Yes, but I see the only similarity between Haley
4 and this case, is that they were both 15 years of age; because
5 in this case we claim and the record shows, unless you disagree
6 with methods, that the methods of the police in the interroga-
7 tion of this juvenile were fair, reasonable, penetrating and
8 an attempt to find out whether this young man was involved in
9 this heinous offense of murder. Nothing wrong about that; a
10 fair instrumentality in criminal investigation.

11 We state that the purpose of this probation officer
12 were several: first of all, to allow interrogation and to
13 prevent overzealous pressure; to see to it that the interroga-
14 tion was fair and that he was not tired, deprived of refresh-
15 ment, rest or relief.

16 The right to interrogate this juvenile, granted by the
17 juvenile court, did not require that the probation officer act
18 as his counsel, tell him what questions to answer and what not
19 to answer. The fact is that during a particular lull when the
20 proceedings -- when the detectives went to another part of the
21 room and were conferring about trying to piece together various
22 things that had already been developed, the probation officer
23 sat alone with this juvenile and he said to him: "Willie," he
24 says, "I don't want you to say anything to these police officers
25 unless it's the truth, and I don't want you to worry about this,

1 because let your conscience be your guide."

2 I see nothing wrong about this kind of advice to a
3 juvenile from a probation officer, because, bear in mind, that
4 even up until the first decision of this Court in this recent
5 case involving the Nebraska Statute on Juveniles, as to whether
6 there was a right of trial by jury, which this Court did not
7 deem necessary to decide, Justice Douglas, in his opinion said
8 that the Juvenile Court is still set up for the purpose of
9 rehabilitation and has not yet become a court for the trial of
10 juvenile criminals."

11 And in 1957 the viewpoint, whether good, bad or in-
12 different, was clearly consistent with that policy.

13 Now, what else was this probation officer designed to
14 do?

15 Q What were the circumstances under which the
16 court appointed this probation officer to accompany the
17 Petitioner?

18 A A petition was made by the Prosecutor's detec-
19 tives to interrogate this juvenile because he was in custody
20 at the Children's Shelter.

21 Q So that the Prosecutor's Detectives had to apply
22 to a judge of the court for permission to interrogate this
23 juvenile who was in the juvenile center.

24 A And the court granted that permission, providing
25 that the probation officer was present at all times during

1 interrogation.

2 Now, much has been made --

3 Q Is it correct that he was there for the purpose
4 only to see that the boy was not browbeaten or exhausted in any
5 way?

6 A Well, that's true.

7 Q Well, that's what the officer said.

8 A That's what the officer said.

9 Q That he wasn't there to advise him of his rights?

10 A Precisely.

11 Q And he wasn't there to aid and comfort him?

12 A Well,--

13 Q Just to make sure they didn't beat his brains
14 out.

15 A Well, they didn't beat his brains out, Justice.
16 There isn't a word in this record, expressly or by fair
17 inference --

18 Q I agree with you fully, but my whole point is:
19 This is his testimony, that he was only to see that he wasn't
20 browbeaten. There was nothing to say to him that he shouldn't
21 be questioned for long periods of time. This man was not
22 trained in the law at all. He had a degree in pharmacy, this
23 man that's advising this boy.

24 A And he was a probation officer for 15 years.

25 Q And assigned a degree in pharmacy to advise this

1 fellow of his legal rights?

2 A But how about his experience as a probation
3 officer and handling the juveniles, which gave him great
4 competence in the understanding of the probation process.

5 Q But he at no time told this boy that "You don't
6 have to take a lie detector test?"

7 A He didn't advise this boy; he was not there as
8 his counsel.

9 Q Well, didn't you just say he told him: "Now,
10 you be good and get this off your chest and all." Do you call
11 that counseling?

12 A Well, he only told him to tell the truth.

13 Q That's what you call counseling.

14 A I don't call that counseling. I don't call that
15 counsel. Because, gentlemen, if this young man had a lawyer
16 this juvenile would never have uttered a word. This would have
17 been and remained an unsolved offense. Because I don't so
18 think that a juvenile should receive the advice and the same
19 kind of advice that a mature person should receive when it
20 comes, and bearing in mind his future development.

21 For whatever it's worth, in a case cited in my
22 brief, Chief Justice Weintraub of the New Jersey Supreme Court
23 wrote a concurring in this Culombe. He called it "State in the
24 interest of Culombe," cited in my brief, where he states that
25 "when it comes to juveniles and the advice he should receive, it

1 incongruous for his parent, if he's present at the time of
2 police interrogation to advise this young juvenile not to talk,
3 to arrange silence, because among things in the development of
4 character and personality," as Chief Justice Weintraub said,
5 "is the lesson which a juvenile must learn early, to face the
6 music," and he didn't think and he stated in his viewpoint in
7 dealing with a juvenile that "The same kind of advice should
8 be handed to a juvenile as would be given to a mature person,
9 bearing in mind the fundamental difference between the juvenile
10 and rehabilitation process and the process of the criminal law."

11 Q What goes on in New Jersey now when they arrest
12 a juvenile?

13 A I didn't get that.

14 Q What goes on in New Jersey now when they arrest
15 a juvenile? If he had been arrested today would he have been
16 given the Miranda?

17 A Right; he gets the Miranda warnings; he does, sir.
18 He does. He gets the warnings required by Miranda.

19 Q And he also doesn't testify in the proceeding
20 unless he wants to; does he?

21 A That's true.

22 Q And that didn't used to be so.

23 A That's true, sir.

24 Q So Gault decided that; didn't it?

25 A Pardon?

1 Q Gault made that much different.

2 A That's true; that's true.

3 I don't think that Gault has so overshadowed the
4 entire juvenile process that it has, as Justice Douglas said,
5 "converted the juvenile court into a trial for juvenile
6 criminals."

7 I don't think that has yet happened, whether it will
8 or not, the future will determine that factor.

9 The fact is --

10 Q Well, I thought you said it was a matter of
11 interrogation. If you tell him he is entitled to counsel now
12 and he said, "I want one," you'd have to appoint one; wouldn't
13 you?

14 A He gets one; he gets one.

15 The fact is, in our judgment that most of the argument
16 of Petitioner in this case has been what I will choose to
17 describe an inflation of the significance of what are not such
18 serious matters; or as the phrase has once been: "there has
19 been an abundant resort to labels in this case, labeling
20 everything that has been happening, that has happened here as
21 being of a terrible nature and trying to put them all together
22 to come up with the phrase, "a callous disregard of the rights
23 of this particular accused," in order to justify and finally
24 come up with the prescription that there was an involuntary or
25 coerced confession.

1 I submit, gentlemen, that what has been happening here
2 by the Petitioner's description of the various acts that are
3 in this record and that are likely as well, to be innocent and
4 free from the terrible connotations placed upon them, was the
5 imposition of what one of the former justices of this Court
6 referred to as "The tyranny of ravings."

7 We think that in this case the presence of the
8 probation officer, the overall conduct of the police, in their
9 interrogation, which was fair, reasonable, humoring and
10 human and civilized, did not add up to such a destruction of the
11 will, or such an overbearing of the ability of this juvenile
12 to withstand the interrogation, as to constitute an enforced,
13 coerced or run-down confession.

14 We think that, on the total record and on the
15 totality of all of the circumstances taken together, without
16 fragmentation or isolation, that there was in this case, no
17 "callous disregard of the rights of this juvenile," but that
18 there was a fair, reasonable and decent regard for his rights
19 and that this confession in this case was voluntary and should
20 be sustained.

21 Q Is this youngster in for life?

22 A Yes; he is. I might say this, Mr. Justice: "He
23 has come up for parole three or four times and he has been
24 turned down on the basis of poor adjustment and I can also say
25 this: this record has facts in here that are a little cloudy as

1 as to why a '57 adjudication finally came before the Appellate
2 Division in New Jersey in '68 and I think you are entitled to
3 know why.

4 In the first place, there were two court reporters
5 in this case. Immediately after the adjudication of delin-
6 quency, one of them was called to the service and immediately
7 sent overseas, so for three years, there was an inability to
8 get a part of the transcript prepared which this reporter had
9 taken.

10 Then we have in New Jersey -- an appeal, a notice of
11 appeal had been filed. And we have in New Jersey, a practice,
12 where periodically the court issues a show cause for dismissal
13 of cases which have not been prosecuted, as the rules require.

14 And I was in the office on each of these occasions
15 this young man would be consulted and would consult, as counsel
16 would go to see him at the Bordentown Reformatory where had
17 been committed originally, and he would say to his counsel: "I
18 don't want to go through with this appeal yet, but see if you
19 can hold it, because I'm coming up for parole and I don't want
20 this to interfere with my parole."

21 Well, the court wouldn't dismiss the appeal; we'll
22 accept this. Before you know it, time runs by and in '67 he
23 was transferred from the Bordentown Reformatory to States
24 Prison, which I call post-graduate elevation, where he un-
25 doubtedly went. Jailhouse lawyers and who aided and assisted

1 him in filing per se in the Appellate Division in August, 1968
2 an application to revive the appeal which had been suspended,
3 and to proceed, and it was granted.

4 Counsel was assigned, the case was argued, the
5 Appellate Division decided and so it went; and here we are.

6 Q Absent any investigation of the Weiss and
7 Giambro affairs, and he had just admitted those other purse
8 snatchings which he had just admitted, what would have been
9 the normal course of dealing with him. Would he have been
10 detained until those charges were heard by the juvenile judge
11 or would he have been --

12 A As a matter of fact, what happened, Mr. Justice,
13 is that on March the 20th he was committed by the judge of the
14 juvenile court for these purse snatchings for which he was
15 arrested on February 16th, to the Bordentown Reformatory for
16 an indefinite term.

17 And it was while he was in Bordentown and after a
18 complaint had been filed against him for Weiss and Giambro, in
19 December he was brought from the Bordentown Reformatory to the
20 Court House --

21 Q Well, would he normally have been detained on
22 those other charges --

23 A Under New Jersey law he would be detained for
24 such period as in the judgment of the Board of Managers, of the
25 Bordentown Reformatory thought him to be ready to be

1 rehabilitated.

2 Q No, but I mean, when a juvenile was charged,
3 was -- he's arrested and charged with a purse snatching and he
4 admits it. Between then and the time of the hearing, delin-
5 quency hearing, what happens to him?

6 A He is detained at the Children's Shelter, or
7 he may be released in the custody of his parents or he may be
8 released --

9 Q Well why was this young man detained?

10 A Why he was detained after February 16th is
11 because on March the 8th, March the 2nd or 3rd, the complaints
12 were filed in Weiss and Giambro and counsel was assigned --

13 Q I know, but why would you detain him during
14 these ten days?

15 A Just as a matter for --

16 Q I mean if there hadn't been any investigation
17 of Weiss and Giambro, would he have been detained?

18 A That I don't know, sir. It all depends upon the
19 judge of the juvenile court and the state of their calendar
20 and the circumstances. He might have been detained because of
21 this prior involvement in other juvenile offenses, where he had
22 been involved, and likewise, a complaint had been made against
23 him by his parents for having run away from home. So that this
24 young man was not the ideal youngster for release to the
25 streets.

1 Q Thank you.

2 Q Mr. Kreiger, before you sit down: what does
3 life mean in New Jersey now?

4 A Well, life in New Jersey means you are eligible
5 for parole after 13 and a half years and he's practically
6 served that, although in --

7 Q Ordinarily, I gather, you are --

8 A In this instance, as a juvenile, he was eligible
9 for parole before 13-and-a-half years. In fact, as I say, he's
10 been up for parole, I know, as much as four times.

11 Q YOU are suggesting that his chances are that he
12 will, in fact, will not serve more than 13-and-a-half years?

13 A That's my suggestion; that's my best judgment.

14 Q And Giambro is the only thing in issue here.
15 He has served his Weiss sentence for five years?

16 A Under the 1958 Act which was held retroactive,
17 even though he was adjudicated in '57, because it was bene-
18 ficial to the juvenile and not held, because for the first time
19 it did away with indeterminate sentences in the case of juveniles
20 and provided for fixed terms not to exceed age 21, except in
21 homicides.

22 If the Court would ask for argument on the second
23 point dealing with the question as to the validity of the life
24 sentence, otherwise I would rely upon my brief and the arguments
25 contained therein.

1 MR. CHIEF JUSTICE BURGER: Mr. Kreiger, we'll take
2 thaton your brief.

3 MR. KREIGER: Thank you.

4 Q May I ask you if the record shows somewhere the
5 number of times this young man had been arrested and what had
6 happened to him, or is there anything in there about that?

7 A Mr. Justice, you will find that in the trial
8 transcript that's on file with the Clerk of the Court, because
9 this appendix was an abridged matter --

10 Q Was what?

11 A Was abridged by agreement between me and counsel
12 for the Petitioner, but for the facts concerning his prior
13 involvements are in the transcript of the entire trial, which
14 is on file with the Clerk.

15 Q On file with our Clerk?

16 A Your Clerk.

17 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Kreiger.
18 Mr. Amsterdam, you have three minutes and I believe that
19 Justice Harlan had a uestion pending for you.

20 REBUTTAL ARGUMENT BY ANTHONY G. AMSTERDAM, ESQ.

21 ON BEHALF OF THE PETITIONER

22 MR. AMSTERDAM: If I may just advert briefly to the
23 questions the Court asked and to statements of Mr. Kreiger. I
24 have five very short factual matters and then I will get to
25 Mr. Justice Harlan's question.

1 First, with regard to Mr. Justice White's question,
2 Mr. Kreiger stated initially that during the ten days the boy
3 was being held on those other purse snatchings and then ad-
4 mitted, in effect that that was not so. There is nothing in
5 the record that will support the contention that he was being
6 held in connection with the purse snatchings. The record --

7 Q It's not that he was arrested for them --

8 A He was arrested for them; that's right.

9 Q He was taken into detention, he was detained --

10 A Correct.

11 But, as Mr. Kreiger has stated, New Jersey law will
12 be unclear as to whether he should be released under that
13 situation and the clarification here is that he was held be-
14 cause he was being investigated for the Weiss and Giambro
15 matters.

16 Secondly, Mr. Kreiger's statement that the boy was
17 estranged from his family and that that explains to Mr. Justice
18 Marshall why the mother wasn't called. The mother had con-
19 tacted the police two or three times and the juvenile authori-
20 ties more, asking that this boy be brought home when he was
21 picked up. And both the police and the juvenile authorities
22 knew that and the parents were not contacted.

23 Third, in response to Mr. Justice Marshall's question
24 about whether he was told about the probation officer's role.
25 Mr. Kreiger has said that he will file something responsive to

1 that. I think the Court will find at pages 200 and 201 of the
2 appendix all that there is. It supports my statement that he
3 knew that the probation officer was a probation officer, had
4 been assigned to "stay with him," and that's it.

5 Finally -- no, two more points: First, Mr. Kreiger's
6 statement as to what the probation officer told the boy. This
7 is on page 90 of the appendix and this is supposed to be
8 good probation officer's advice. "I took advantage of one of
9 the respites in questioning, in one of these episodes, to ask
10 the boy if he really knew anything about these offenses; that
11 he should unburden himself and search his conscience and he
12 would feel much better if he told it, because he would have to
13 live with it the rest of his life. This sort of counseling
14 I would give any boy in the juvenile court."

15 That's the support and assistance of the probation
16 officer.

17 Finally, with respect to Mr. Justice Black's question:
18 I think, Mr. Justice Black, that you will not find in the
19 record, the original record, any indication of the number of
20 prior incidents of this boy. The record only shows that he was
21 a probationer of the juvenile court at the time he was picked
22 up here.

23 It shows nothing about the number, frequency, reasons
24 for his being in probation. There is no such thing in this
25 record.

1 Now, if I may --

2 Q The record shows that he was five feet, eight
3 inches tall.

4 A Pardon me?

5 Q In response to my question, the record shows
6 he was 5'8" tall.

7 A I believe that's correct.

8 Q That's what he said he was, about.

9 A I believe that's correct.

10 Now, if I may speak very briefly, having only a minute
11 left, to Mr. Justice Harlan's point. We think that the
12 sentencing question is a fairly straightforward application
13 in Paterson, with one wrinkle: there is no doubt that when this
14 boy's maximum sentence was determined, subsequent to his
15 original trial, that a finding was made which was neither
16 required nor was any charge made at the original juvenile
17 trial, which was that he was adjudicated a delinquent on the
18 basis of an offense which would be first degree murder.

19 That involves findings not made at the time of the
20 trial, within the meaning of Specht, a new fact.

21 Under New Jersey law evidence is admissible, going to
22 that fact, such as evidence of diminished capacity; in this
23 case psychiatric evidence which was not put in by his counsel,
24 as it should not have been at the original trial, since it
25 didn't matter what degree of homicide he was found guilty of,

1 as a juvenile, prior to the new statute.

2 Now, the only question, therefore, is whether or not
3 Specht applies if the new finding of fact is required, not by
4 antecedent legislation, but by subsequent legislation which
5 state law chooses to make retroactive.

6 As far as I can see, that makes no difference, what-
7 ever. It is the State of New Jersey which has chosen to
8 say that a differentiation between two classes of people
9 should be made: those who have been found guilty of first
10 degree homicide and those with lesser degrees. The difference
11 is critical. The difference in this case is the difference
12 between six years imprisonment -- this boy would have been
13 released seven years ago, had it been a life sentence.

14 That fact is a critical fact; it was not in issue.
15 The State has put it in issue by the new legislation and we
16 think that the Petitioner had a right to a hearing on it.

17 Q What was the juvenile proceeding in which he
18 was found to be a delinquent? What was his defense?

19 A The juvenile delinquency. The charges were --

20 Q No; I didn't say offense. I said how did he
21 defend the charge; what did he have to say about the question
22 of whether or not he was a delinquent at that proceeding?

23 A Not guilty; "I didn't done it."

24 Q Did he have an alibi; did he say he was somewhere
25 else?

1 A He has an alibi; that is correct.

2 And I want to make very clear that I disagree with the
3 State entirely, that that is inconsistent with diminished
4 capacity. You don't have to admit anything to show the juvenile
5 judge or the jury what the nature of the defendant is. It's
6 not like the defense of consent in a rape case, which is in-
7 consistent with alibi. To simply show the court that they
8 are dealing with a juvenile who may be defective, retarded.
9 Remember the court here ordered psychiatric treatment for this
10 boy when they originally committed him, simply tells the court
11 that if he did do it, which he says he didn't do it, then he
12 hasn't got the capacity to be guilty of first degree murder.
13 There is no inconsistency there, a good trial lawyer could
14 present those --

15 Q Well, that answers my question.

16 My second question about that proceeding is what was
17 the burden of proof required to show his delinquency in that
18 proceeding, under New Jersey law?

19 A In the initial proceeding.

20 Q In which he was shown to be delinquent.

21 A I must admit I do not know the answer to that
22 question. Perhaps Mr. Kreiger could enlighten you. No issue
23 has been made of this below and --

24 Q Was it the duty of the state to prove his
25 delinquency beyond a reasonable doubt?

1 A I have -- all I can say as to that, I'll be
2 glad to find it out and submit, unless Mr. Kreiger knows the
3 answer to that question, submit it to the Court in writing.
4 No issue having been made of it below, I do not know the
5 answer to that question.

6 Q Thank you.

7 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Amsterdam,
8 Mr. Kreiger. The case is submitted.

9 (Whereupon, at 1:30 o'clock p.m. the argument in the
10 above-entitled matter was concluded)

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