

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## TOME v. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 93-6892. Argued October 5, 1994—Decided January 10, 1995

Petitioner Tome was charged with sexually abusing his daughter A. T. when she was four years old. The Government theorized that he committed the assault while A. T. was in his custody and that the crime was disclosed while she was spending vacation time with her mother. The defense countered that the allegations were concocted so A. T. would not be returned to her father, who had primary physical custody. A. T. testified at the trial, and, in order to rebut the implicit charge that her testimony was motivated by a desire to live with her mother, the Government presented six witnesses who recounted out-of-court statements that A. T. made about the alleged assault while she was living with her mother. The District Court admitted the statements under, *inter alia*, Federal Rule of Evidence 801(d)(1)(B), which provides that prior statements of a witness are not hearsay if they are consistent with the witness' testimony and offered to rebut a charge against the witness of "recent fabrication or improper influence or motive." Tome was convicted, and the Court of Appeals affirmed, adopting the Government's argument that A. T.'s statements were admissible even though they had been made after her alleged motive to fabricate arose. Reasoning that the pre-motive requirement is a function of relevancy, not the hearsay rules, the court balanced A. T.'s motive to lie against the probative value of one of the statements and determined that the District Court had not erred in admitting the statements.

*Held:* The judgment is reversed, and the case is remanded. 3 F. 3d 342, reversed and remanded.

JUSTICE KENNEDY delivered the opinion of the Court, except as to Part II-B, concluding:

1. Rule 801(d)(1)(B) permits the introduction of a declarant's consistent out-of-court statements to rebut a charge of recent fabrication or improper influence or motive only when those statements were made before the charged fabrication, influence, or motive, conditions that were not established here. Pp. 4-9, 12-16.

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(a) Rule 801(d)(1)(B) embodies the prevailing common-law rule in existence for more than a century before the Federal Rules of Evidence were adopted: A prior consistent statement introduced to rebut a charge of recent fabrication or improper influence or motive was admissible if the statement had been made before the alleged fabrication, influence, or motive came into being but was inadmissible if made afterwards. The Rule's language speaks of rebutting charges of recent fabrication and improper influence and motive to the exclusion of other forms of impeachment, and it bears close similarity to the language used in many of the common-law premotive requirement cases. Pp. 4-9.

(b) The Government's argument that the common-law rule is inconsistent with the Federal Rules' liberal approach to relevancy misconceives the design of the Rules' hearsay provisions. Hearsay evidence is often relevant. But if relevance were the sole criterion of admissibility, it would be difficult to account for the Rules' general proscription of hearsay testimony or the traditional analysis of hearsay that the Rules, for the most part, reflect. The Government's reliance on academic commentators critical of excluding a witness' out-of-court statements is also misplaced. The Advisory Committee rejected the balancing approach such commentators proposed when the Rules were adopted. The approach used by the Court of Appeals here creates the precise dangers the Advisory Committee sought to avoid: It involves considerable judicial discretion, reduces predictability, and enhances the difficulties of trial preparation because parties will have difficulty knowing in advance whether or not particular out-of-court statements will be admitted. Pp. 12-14.

(c) The instant case illustrates some of the important considerations supporting the foregoing interpretation. Permitting the introduction of prior statements as substantive evidence to rebut every implicit charge that a witness' in-court testimony results from recent fabrication or improper influence or motive would shift the trial's whole emphasis to the out-of-court, rather than the in-court, statements. It may be difficult to ascertain when a particular fabrication, influence, or motive arose in some cases. However, a majority of common-law courts were performing this task for over a century, and the Government has presented no evidence that those courts or the courts that adhere to the rule today have been unable to make the determination. Pp. 15-16.

2. The admissibility of A. T.'s statements under Rule 803(24) or any other evidentiary principle is left for the Court of Appeals to decide in the first instance. P. 16.

KENNEDY, J., announced the judgment of the Court and delivered

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the opinion of the Court with respect to Parts I, II-A, II-C, and III, in which STEVENS, SCALIA, SOUTER, and GINSBURG, JJ., joined, and an opinion with respect to Part II-B, in which STEVENS, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed an opinion concurring in part and concurring in the judgment. BREYER, J., filed a dissenting opinion, in which REHNQUIST, C. J., and O'CONNOR and THOMAS, JJ., joined.