

69
Supreme Court of the United States

OCTOBER TERM, 1968

In the Matter of:

Docket No. 770

----- X
TED STEVEN CHIMEL, :
 :
 :
 Petitioner, :
 :
 :
 vs. :
 :
 :
 CALIFORNIA :
 :
 :
 Respondent. :
 :
 :
----- X

Duplication or copying of this transcript
by photographic, electrostatic or other
facsimile means is prohibited under the
order form agreement.

Place Washington, D. C.

Date March 27, 1969

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

Office-Supreme Court, U.S.
FILED

APR 2 1969

JOHN F. DAVIS, CLERK

TABLE OF CONTENTS

ARGUMENT OF:

P A G E

Keith C. Monroe, Esq., on behalf
of Petitioner

2

Ronald M. George, Esq., on behalf
of Respondent

21

REBUTTAL:

Keith C. Monroe, Esq.

54

- - -

1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

3 - - - - -x
4 TED STEVEN CHIMEL, :

5 Petitioner; :

6 vs. :

No. 770

7 CALIFORNIA, :

8 Respondent. :

9 - - - - -x
10 Washington, D. C.
11 Thursday, March 27, 1969

12 The above-entitled matter came on for argument at
13 10:45 a.m.

14 BEFORE:

15 EARL WARREN, Chief Justice
16 HUGO L. BLACK, Associate Justice
17 WILLIAM O. DOUGLAS, Associate Justice
18 JOHN M. HARLAN, Associate Justice
19 WILLIAM J. BRENNAN, JR., Associate Justice
20 POTTER STEWART, Associate Justice
21 BYRON R. WHITE, Associate Justice
22 ABE FORTAS, Associate Justice
23 THURGOOD MARSHALL, Associate Justice

24 APPEARANCES:

25 KEITH C. MONROE, ESQ.
1428 North Broadway
Santa Ana, California 92706
Counsel for Petitioner

RONALD M. GEORGE, ESQ.
Deputy Attorney General of the State of California
600 State Building
217 West First Street
Los Angeles, California 90012
Counsel for Respondent

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

2 MR. CHIEF JUSTICE WARREN: No. 770, Ted Steven Chimel,
3 petitioner; versus California.

4 Mr. Monroe.

5 ARGUMENT OF KEITH C. MONROE, ESQ.

6 ON BEHALF OF PETITIONER

7 MR. MONROE: Mr. Chief Justice, and may it please the
8 Court:

9 The Court considers today a case which, I believe,
10 goes to the very core of the Fourth Amendment of the Constitution.

11 The facts of the case: In February 1965, there was a
12 burglary of the Pulati home in Santa Ana, California. A number
13 of coins were taken, some medals and tokens, containers, and so
14 forth.

15 Q This wasn't currency; these were rare coins or
16 collectors' items.

17 A Rare coins, collectors' items, Your Honor; yes.

18 Thereafter, in August of 1965, there was a burglary of
19 a coin shop, the Money Vault. This took place in Orange, Cali-
20 fornia, nearby.

21 Without going into a great deal of detail, there was
22 suspicion of the petitioner as to the Pulati burglary, but I
23 think it was pretty much agreed, and appears in the record that
24 way, that there was no probable cause on which his arrest could
25 have been founded.

1 Q He was a fellow member of a collectors' club, with
2 the Pulatis, was he?

3 A That is correct, Your Honor.

4 Q And he missed a meeting one night, and that was
5 the night the Pulatis house was burglarized?

6 A That is correct, Your Honor. Also, prior to that
7 time he had talked to them about insurance, whether or not the
8 coins were insured. He knew, of course, as a fellow member of
9 coin clubs, that they were coin collectors and that they did
10 have coins in their home.

11 As to the Money Vault burglary, the petitioner made a
12 statement before the burglary to a neighbor that he had a big
13 deal cooking that night and that he was going to knock over --
14 I don't know whether he said "coin shop" exactly; he was going
15 to knock over a place, anyhow.

16 Thereafter, to the same neighbor he made a statement
17 the day following the burglary that an attempt had been made to
18 enter, which had been unsuccessful, and some two weeks later he
19 made another statement to another coin shop operator that he had
20 been involved in the Money Vault matter.

21 Now, then, this was about the middle of August. On
22 August 25th, the California Supreme Court found that petitioner
23 was arrested without a warrant, on the street, in Santa Ana,
24 California, by the investigating officer here, Officer Del Coma.
25 After transportation to the Orange Police Station and some

1 interrogation, petitioner was released.

2 Then on September 13th, something more than two weeks
3 later, Officer Del Coma went to the appropriate magistrate and
4 submitted a complaint in purely conclusionary form. The com-
5 plaint is set out in the petitioner's brief.

6 On the basis of this complaint which, in substance,
7 merely said "I believe that this man committed a burglary on
8 such-and-such a date in this county," on the basis of this com-
9 plaint, a warrant of arrest issued at 10:39 a.m. on September
10 13th.

11 Officer Del Coma doesn't give us too clear a picture
12 of what he did the rest of that day. He knew where the peti-
13 tioner was at that time. He knew where he worked. He knew where
14 to go and get him. But in any case, Officer Del Coma arrived at
15 the petitioner's home something shortly after 4:00 p.m., knowing
16 at that time that he was not home.

17 He gained admittance to the house, waited for him to
18 come home --

19 Q Was somebody else in the house?

20 A His wife was there, Your Honor.

21 Q Does it show how he gained entry into the house?
22 Did he show the wife the arrest warrant, or doesn't the record
23 show?

24 A The record simply shows that the officer requested
25 admittance to wait for Mr. Chimel, Your Honor.

1 Q Well, is that to say that at least his pre-
2 sence, the officer's presence is not an unlawful presence in-
3 side the house, based upon the consent of the wife?

4 A I think this record is clear enough to show one
5 way or the other, Your Honor. We don't contend that the offi-
6 cer's presence was unlawful at that point.

7 Mr. Chimel came home at something like 4:30 p.m., where-
8 upon the officer, after he had entered the house, placed him
9 under arrest on the authority of the warrant, showed him the
10 warrant, requested permission to search, which was not granted.
11 The officer then stated that, having executed a lawful arrest on
12 a felony warrant, he had a right to search, and he was going to,
13 and proceeded to do so.

14 This search covered every room in the house. It
15 covered the garage. It covered an inspection in the attic and
16 it involved the opening of drawers, the opening of boxes, cup-
17 boards. It was described by the officer as a general search.

18 The officer did not have knowledge, at the time he
19 made this search, of information which led him to believe that
20 any specific property was to be found in that house.

21 Q What is your position about the arrest? Was that
22 a lawful arrest on that warrant?

23 A I can't answer this simply yes or no, Your Honor,
24 for the reason that in this case we raised the issue, so far as
25 I know in California, that the arrest warrant had been unlawfully

1 issued.

2 Q Under State law?

3 A Under Federal law, Giordenello versus U.S. and
4 Aguilar.

5 Q The California court so held, didn't they?

6 A The California court did so hold, Your Honor.

7 Q So we now have a ruling of the State courts that
8 this warrant is invalid.

9 A That is correct.

10 Q Did they rule that it was invalid under California
11 law?

12 A No, Your Honor. It was under Giordenello,
13 Aguilar, and Barnes, cases from this Court.

14 Q I see; the arrest warrant itself, on a probable
15 cause basis.

16 A That is correct, Your Honor. This brings us, then,
17 to the alternative holding of the California court that it was
18 a valid probable-cause arrest.

19 If I may leave that point for a moment, it ties in
20 with a later part of the argument.

21 Q Well, I suppose it is going to be relevant, isn't
22 it; what we have to decide is the scope of the search, whether
23 that arrest was or was not lawful; whether on the basis of the
24 warrant or on the basis of probable cause in respect to the
25 warrant?

1 A Yes, Your Honor. I am a little bit on the horns
2 of a dilemma in that I don't want to concede the arrest was law-
3 ful, because I have doubts. I think that the search was bad for
4 other reasons. I simply don't want to make the concession.

5 Q Well, without making a concession, I guess you are
6 going to argue on the assumption that it was lawful, nevertheless,
7 in scope, this exceeded the speed limit under the Fourth Amend-
8 ment.

9 A This is correct, Your Honor.

10 Q But you are going to argue, aren't you, that there
11 should be no arrest without a warrant at all?

12 A No, Your Honor, I don't intend to make that argu-
13 ment.

14 Q You do concede that you may arrest without a war-
15 rant, constitutionally

16 A Oh, certainly. I am sure that there are myriad
17 cases where an arrest without warrant should be valid.

18 Q I agree with that. I just wondered what your
19 contention was.

20 Q I don't understand your position in here, what
21 you have said. I thought that you were arguing to this Court
22 that the arrest was an unlawful arrest, in these particular cir-
23 cumstances, and that, second, even if the arrest was lawful,
24 which you say it was not, the search was of an impermissible
25 scope. Now, is that your position or is it not?

1 That is what I thought was indicated by your petition
2 for cert, and by your brief here.

3 A My primary focus, Your Honor, is on the search it-
4 self. I also take a second position that on the facts of this
5 case, a valid warrant should have been used. However, my primary
6 focus is on the search itself.

7 Q I understand that, but I am trying to find out,
8 following my brother Brennan's question to you, whether second-
9 arily, or in whatever order you want to do it, you challenge the
10 lawfulness of the arrest here.

11 A Yes, that is correct, Your Honor.

12 Q I thought you did, but if you don't, I would cer-
13 tainly like to know. As I read your papers, you certainly chal-
14 lenge the lawfulness of the arrest here on the theory that, as
15 the California courts held, the warrant was invalid, that without
16 the warrant the arrest here was unlawful and in violation of the
17 Fourth Amendment.

18 A If I can clarify, Your Honor, to back up and
19 change the facts a little bit, if the officer had simply put the
20 petitioner under arrest at his home, and taken him down to the
21 station, had that been all that had gone on, I would not challenge
22 that arrest on probable cause.

23 Q And you would not challenge that arrest on the
24 grounds that he should have obtained a warrant?

25 A No.

1 Q Because you say there was -- is it your position
2 that whenever the police have probable cause to arrest, regard-
3 less of the time factor or any other circumstances, they don't
4 have to get a warrant? Is that your position?

5 A That is not my position, Your Honor, but so far
6 as the arrest which involves no search, I don't think that it is
7 fairly before this Court on this record.

8 Q I don't understand that at all.

9 Q Well, you would have a hard time getting a remedy
10 if that is all you had, as far as this case is concerned. You
11 might have a civil action, or something, but you would have a
12 hard time arguing that an otherwise valid conviction had to fall
13 because the arrest was an improper one. We have never held any-
14 thing like that, have we?

15 Q No, but involved in this, as I understand it, one
16 of the arguments that the State makes is that the search and the
17 seizure were lawful as incident to a valid arrest.

18 A That is correct, Your Honor.

19 Q Now, do you or do you not argue that the arrest
20 was invalid as one branch of your submission to this Court?

21 A For the sake of argument, Your Honor, I will con-
22 cede that this arrest was invalid, for the sake of argument here.

23 Q No, no. I am not asking you to concede anything.
24 I am trying to find out what your position is. I have read your
25 petition and your brief here, and you surprised me by what you

1 said. If that is your position, then that is your position.

2 A Pursuing the facts of the case, then, after this
3 search, or going back to this search of September 13th, it was
4 based altogether on a charge of burglary of the Money Vault. So
5 far as the record shows, the only thing which was missing from
6 the Money Vault was coins, nothing else. Nevertheless, in this
7 search, a large quantity of coins and medals, tokens, boxes,
8 razor blades, containers, various other non-coin items were seized.

9 Q Were these the fruit of another burglary?

10 A This was what later developed, Your Honor.

11 Q Did the police know it at the time?

12 A No.

13 Q They never even knew of the other robbery or burg-
14 lary?

15 A The record indicates that Officer Del Coma, who
16 is the central figure here, had heard something of the Pulati
17 burglary, the first burglary, but that --

18 Q He didn't know what was stolen there?

19 A I think he knew there were coins which had been
20 taken, but he did not have any detailed information so far as the
21 record shows.

22 Q If he had known what was stolen in the Pulati case
23 and he encountered it in the house that he searched, in the course
24 of searching for coins stolen in another burglary, would you say
25 he couldn't seize the fruit of the Pulati --

1 A Oh, no. If, Your Honor, he were in the course of
2 a legal search, I think under Marron he would have a right to
3 seize contraband or stolen goods which he happened to come across
4 in the course of a legal search, although I don't think this was
5 a legal search at all here.

6 Q This is your fundamental question, the legality
7 of the search.

8 A That is correct, Your Honor.

9 Q Without either a valid arrest warrant or a valid
10 search warrant.

11 A That is correct.

12 Q Well, the legality of the search, as I understand
13 your case, depends upon two issues: First of all, the search, I
14 suppose you would argue, was obviously invalid if the underlying
15 arrest was invalid.

16 A That is correct.

17 Q Because the only justification for the search is
18 that it was incident to a lawful arrest; therefore, if the arrest
19 was not lawful, the search could not be lawful, regardless of its
20 scope.

21 Your second point is, even if the arrest was a lawful
22 arrest, this search which is justified only as an incident to a
23 lawful arrest, was far too wide in scope to be incident to a
24 lawful arrest. Is that your submission?

25 A That is correct, Your Honor, plus on additional

1 point: I suggest that in order to make a search as an incident
2 to an arrest, there should be a showing of the same elements of
3 probable cause thereafter which would have justified issuance of
4 a search warrant in the first place, else you are proceeding with
5 a search which is not justified by as much showing, you are pro-
6 ceeding without a warrant with less showing than you would be had
7 you proceeded with a warrant, the preferred method of procedure.

8 Q Let's assume a lawful street arrest of somebody
9 that you have reasonable cause to believe has a concealed weapon
10 and let's assume that there is sufficient probable cause and that
11 you do stop and arrest that man. Then certainly incident to that
12 arrest you can search him. You would agree with that?

13 A No quarrel.

14 Q And if, instead of a gun, you don't find a gun at
15 all, but what you do find is narcotics on him, right in his
16 pocket, although there was never any ground for a search warrant
17 to search his pockets for narcotics, would you agree or not that
18 that is a perfectly valid search and seizure of the narcotics,
19 even though there was no ground at all to search him for nar-
20 cotics.

21 A Oh, certainly, Your Honor. Searches, I think,
22 stand on an altogether different plane, because the officer
23 arresting a person obviously has a primary need to search that
24 man and see that he is not assaulted with some sort of weapon.
25 I don't think there is any question there. There is an obvious

1 necessity.

2 Q Well, let's see, then, Mr. Monroe. This gets
3 down, then to, except for searches of a person -- except for
4 searches of the person -- there has to be both probable cause to
5 arrest, and independent of the arrest, probable cause to search.

6 A If I may, Your Honor, I wouldn't say really that
7 it is independent of the probable cause to arrest. Rather, turn-
8 ing to --

9 Q Well, in addition to, rather than independent.

10 A There has to be that other element of some reason
11 to think, if I, as the officer, am going to search the place of
12 arrest, then I have to have some reason to think --

13 Q Well, all of our cases so far, I gather, have
14 sustained searches, so long as there was probable cause to make
15 the arrest and the search was incident to that arrest, whether
16 or not the officers had knowledge of what it was they might pick
17 up. Would that be so?

18 A I think there is a strong suggestion in the cases,
19 Your Honor, the cases which have sustained searches, that this
20 Court, in fact, has over the years sustained those searches
21 which have proceeded in this context with a valid arrest warrant
22 and a very strong suggestion that the officer did have knowledge
23 that "What I want at least has a likelihood of being there."

24 It becomes almost impossible to explain the exploratory
25 search cases unless there is something of that nature.

1 Q Well, what more do you suggest we need if you have
2 probable cause, or a warrant to arrest a fellow for stealing
3 some coins, and you go to his house and arrest him in his house?
4 Do you suggest you need more reason to search his house for the
5 coins than the fact that you think he stole them?

6 A That is correct, Your Honor.

7 Q You have to have some reason to believe that he
8 has not only stolen them, but that he has actually got them there?

9 A That is correct, Your Honor.

10 Q And you suggest our cases support that submission?

11 A Yes, Your Honor.

12 Q Has that question ever been explicitly addressed
13 in any of our opinions?

14 A No. The cases in this Court --

15 Q You get more comfort out of the pre-Harris cases
16 than you do out of the Harris case.

17 A The Harris case is not comforting at all, Your
18 Honor.

19 Q Or Rabinowitz.

20 A No. Rabinowitz, I think, is squarely an issue, so
21 far as its language, the warrant is not required.

22 Q Really, the essence of your position is that you
23 want us to re-examine Rabinowitz and Harris, and that is a per-
24 fectly understandable position.

25 A That is correct.

1 Q But that is the guts of your case, isn't it?

2 A That is correct.

3 Q You think your re-examination would go so far as
4 overruling.

5 A I don't think it would be necessary. Let me
6 clarify my position here, too, because, of course, when one sug-
7 gests a re-examination of Rabinowitz, the mind automatically
8 turns to the revival of Trupiano. I am not really suggesting
9 this, because I think Trupiano was a very difficult case on its
10 own facts. Trupiano, it may be recalled, involved a valid ar-
11 rest of Antonio, who was then committing a felony, and the still,
12 the paraphernalia for committing the felony was in plain view.

13 I think possibly Trupiano went too far in not permitting
14 the still to come into evidence. There was, after all, a valid
15 probable-cause arrest, and this still was seen in the course of
16 making that arrest. Trupiano raised some, I think, very defi-
17 nite problems there.

18 In terms of results, the cases in this Court which have
19 generally been supported --- it might be noted here, too, that
20 Rabinowitz so often cited as a non-warrant case, was a case, in
21 fact, in which there was a valid arrest warrant and there was
22 every reason to think the very property for which the search was
23 made was in the place which was searched. Every element which
24 would have been necessary to get a search warrant was known to
25 the officer and was almost unquestionably present.

1 The other cases which have supported similar searches,
2 United States versus Ventresca, Rugendorf, Jones versus the
3 United States 362 U.S., Abel versus U.S. 362, of course Rabino-
4 witz which was with a warrant, U.S. versus Lefkowitz, and Marron
5 versus U.S.

6 Q I take it, then, that your position certainly
7 would be that if the officer went to the magistrate and said, "I
8 have probable cause to believe that so-and-so stole some coins,"
9 and if the magistrate agreed with him that he had probable cause,
0 he nevertheless couldn't automatically also get a search warrant.

1 You couldn't say to the magistrate, "Well, you agree
2 with me that I have probable cause to believe that John Jones
3 stole these coins, and you are giving me the arrest warrant for
4 his arrest; therefore, give me a search warrant for his house."
5 You would say he would have to have more than that to get a
6 search warrant.

7 A Certainly, Your Honor, because he would have to
8 particularly describe for the magistrate the place to be searched
9 and the persons or things to be seized.

0 Q Well, it describes the house.

1 A But the persons or things to be seized.

2 Q He also says the coins may be there.

3 Q He says the coins that were stolen here, the
4 description of the coins.

5 A But I think under Camara he would have to give

1 some reason for thinking that they were there.

2 Q Well, because the man stole them, and that is
3 where he lives.

4 A If this were before a magistrate, and the magis-
5 trate passed on it and felt that there was a sufficient showing,
6 taking all of the facts in such-and-such --

7 Q Well, I know, but would you agree there was a
8 sufficient showing? If you agreed there was probable cause to
9 arrest, and you agreed that the arrest warrant, validly issued,
10 would you agree there was then probable cause to issue the search
11 warrant to search his house where he lived?

12 A Cause shown is merely enough to arrest, if that
13 is the cause shown, I do not think that is enough to search his
14 house.

15 Q What more must he show?

16 A Some reason for thinking that --

17 Q That he stashed the coins there instead of some-
18 place else.

19 A That is correct, Your Honor.

20 Q Well, suppose the officer says, "I would assume
21 that he has them in his home."

22 A If the officer assumed that they were in his
23 possession?

24 Q If he told the magistrate that. Of one thing I
25 am sure. He did rob this place. I am certain of that, and I

1 assume that the coins will be in his home.

2 A Let me turn to the facts in the case --

3 Q Isn't it your position that he has to do more
4 than assume that they are there? Isn't that what your position
5 is?

6 A Oh, certainly. There has to be something other
7 than an unfounded assumption.

8 Q That the coins are there; like somebody saw him
9 put them there.

10 A Or he had conducted himself in such manner as to
11 purport belief that they are there.

12 Q Going back to the second point, how far, when he
13 is arrested, do you go beyond search of a person? The room?

14 A I think there can be no question, Your Honor,
15 about the validity -- let me separate, first of all, searches
16 and seizures. Many of the cases treat them as one and the same.
17 I think there can be no question about seizure of evidence,
18 instrumentalities, contraband, in plain view. Searches of the
19 person, of course, are conceded.

20 As far as searches beyond that, it is very, very hard,
21 I think, to find a logical stopping point, because we start with
22 Rabinowitz, which permitted a very narrowly circumscribed search
23 of one room. Now we are searching entire houses.

24 Q You would draw one line on the attic, wouldn't
25 you?

1 A Sir?

2 Q You would draw one line in the attic? You would
3 draw the other line at his person, and then you wouldn't try to
4 draw a line anyplace else.

5 You would say certainly he couldn't search the attic.

6 A I think, Your Honor, that the only logical line
7 that can be drawn is the person, and those things which are in
8 plain view of the person at the place of arrest. When it involves
9 going into the containers, so to speak, then I think the legiti-
10 mate scope of the search has been exceeded.

11 Q What happens if he arrests him, takes him down,
12 and announces to everybody in the house that he is arresting him
13 for stealing these coins, and then gets a search warrant. Do
14 you think the search warrant would be worth anything?

15 A It seems to me, Your Honor, in looking at the
16 facts of this case, there were three officers. It would have
17 been a very simple thing, if they wanted to do so, to leave one
18 officer there and obtain a search warrant.

19 Q Yes, but you say he couldn't get one anyway, if
20 he went after it, because he had absolutely no probable cause to
21 think the coins were in the house.

22 A That is true, Your Honor, on the facts of this
23 case.

24 Q So the officers ought to leave. They just aren't
25 going to get to search ever.

1 A The officer describes this as a general search.
2 He wasn't searching for anything specific, so it seems to me
3 clear on his testimony that he was exploring this house.

4 Q Just for the fun of it. He wasn't looking for
5 coins as the product of the crime for which he was arresting him.

6 A I questioned him on that and he didn't so testify.

7 Q Isn't this case somewhat confusing because there
8 were two burglaries involving coins, and the police officer went
9 there with probable cause to arrest for one of them.

10 A That is correct, Your Honor.

11 Q He had no knowledge of the other one, and he made
12 a general search of the whole house, and found nothing in con-
13 nection with the burglary on which they had probable cause, but
14 found some things on the other burglary for which they had no
15 probable cause when they went there, and had no information.

16 A That is true, Your Honor. This is a hard point
17 here, and I think it bears emphasis that the case on which they
18 had probable cause was coins, and coins alone, so far as the
19 record shows, and the seizure was of medals, tokens, boxes,
20 wallets, razor blades, things which weren't even in the same
21 class.

22 Q This is something like the facts in Mapp, where
23 they went looking, I think, for gambling apparatus, or something
24 of that kind, and they made a general search and ended up finding
25 some obscene literature in a trunk in the place. That would be

1 somewhat comparable to this, wouldn't it?

2 A It is, Your Honor; yes.

3 I see that my time has expired.

4 MR. CHIEF JUSTICE WARREN: Mr. Monroe, we have taken
5 all your time by asking questions, and I think we would like to
6 hear something about Rabinowitz and Harris, because that is the
7 thrust of your case, and I suggest that you may have five
8 minutes for rebuttal, if you want, after hearing from the other
9 side.

10 MR. MONROE: And, of course, you may have five
11 minutes extra if you wish it, too, Mr. George.

12 ARGUMENT OF RONALD M. GEORGE, ESQ.

13 ON BEHALF OF RESPONDENT

14 MR. GEORGE: The issues in this case basically are
15 was the search, which was an incident of the concededly valid
16 arrest on probable cause, rendered unreasonable solely by virtue
17 of the fact that it extended beyond the room in which petitioner
18 was arrest.

19 Secondly, was it rendered unreasonable by virtue of
20 the fact that there was a delay of some six hours in executing
21 the warrant of arrest.

22 Third, was it rendered unreasonable solely by virtue of
23 the fact that it was conducted as an incident to an arrest on
24 probable cause, instead of by way of a search warrant.

25 Q In what way did the California court hold that

1 the warrant was invalid?

2 A The California Supreme Court, in this case and in
3 the companion case of People versus Sesslin, held that the pro-
4 cedure which had been followed in the State of California for
5 many, many years, of issuing warrants upon complaints which did
6 not set out the factual elements of probable cause, were invalid,
7 but the court held that, although this arrest warrant was invalid,
8 there was ample probable cause --

9 Q I understand that. Well, what about the second
10 point that you listed there? Why do we have to consider that,
11 the delay of six hours in executing a warrant? Is that involved
12 in this case?

13 A That has been raised by the petitioner. We con-
14 sider it a purely frivolous point that is hardly an unreasonable
15 delay. But petitioner contends that the execution of the arrest
16 was deliberately delayed so as to permit the officers to search
17 the house.

18 Q You mean, assuming that the warrant was otherwise
19 valid, petitioner argues that its effect was spent, or it was
20 invalid or ineffective because of the delay. Is that the point?

21 A Yes. But the State Supreme Court specifically
22 upheld the arrest on the theory of probable cause apart from the
23 warrant. I would submit that one could not find a case in which
24 there was more probable cause for arrest.

25 Q Did they search the house before Mr. Chimel came

1 back?

2 A No, they did not.

3 Q They waited for him. They went to the house,
4 found he wasn't there, wanted to arrest him, and they waited for
5 him.

6 A They waited approximately 10 minutes.

7 Q They arrested him, and then the search followed
8 that, is that it?

9 A That is correct.

10 Q I take it that your point is that the arrest was
11 valid because there was probable cause, and that no warrant was
12 necessary.

13 A That is correct. The officer --

14 Q Is there any case that you can think of in which
15 a warrant is necessary and can be lawfully obtained consistent
16 with the Fourth Amendment? In other words, doesn't this position
17 really read out of existence -- read out of existence -- the
18 need for a warrant?

19 A No, it does not.

20 First of all, may I ask Your Honor for a clarification?
21 Are you speaking of warrants for arrest when you speak of search
22 warrants?

23 A Let's take the arrest warrant. First, is there
24 any case where an arrest warrant could be obtained under the
25 Fourth Amendment and would be necessary on the theory in which

1 this case is being argued by you, and I expect by your adversary?

2 A Our position is no.

3 Q In other words, police never need a warrant. If
4 they have probable cause, they can get a warrant, of course, for
5 purposes of the Fourth Amendment; but they don't need it, because
6 if they have probable cause, they can go ahead and arrest.

7 A That is correct.

8 Q So all this business of going to a magistrate in
9 terms of the warrant is wasted time.

10 A I don't think it is wasted time, and the officer
11 here certainly didn't think it was wasted time. He testified
12 expressly that it was his habit that whenever possible --

13 Q I know. Well, maybe it is a nice thing for offi-
14 cers to do, but no legal requirement.

15 A That is correct. Trupiano said that.

16 Q Second, turning to the search warrant, your posi-
17 tion is exactly the same, isn't it; that is to say, wherever there
18 is probable cause to search, there is no need to obtain the war-
19 rant.

20 A No.

21 Q On the other hand, if there is not probable cause,
22 the warrant cannot be obtained.

23 Q You don't say that, do you?

24 A That is not our position, because clearly a search
25 may not be made upon probable cause. A search may be made only

1 as an incident to an arrest upon probable cause, and we would
2 submit that whenever there is a proper arrest, and that the
3 search is (1) reasonable; and (2) incident to the arrest, that
4 then there is no need to obtain a search warrant.

5 Q Can you suggest a situation to me in which there
6 is probable cause for arrest and not probable cause to search?

7 A Yes. One situation which comes readily to mind
8 is the arrest of a person -- let's say Mr. Chimel was arrested
9 at a friend's house. Now, there would be the right to search
10 incident to arrest, but perhaps not the same type of search as
11 you have here, because it would not be predictable that the
12 stolen coins would be at this friend's house, or a public place.

13 Q What you are really saying is that there may be
14 a difference in the permissible scope of the search, but that
15 whenever there is probable cause to arrest, there is probable
16 cause to conduct some sort of search. Is that what you are say-
17 ing?

18 A Yes, that is our position.

19 Q How far could they go in the searching in the
20 hypothetical that you just gave?

21 A That might depend upon who this friend was, whether
22 he had some connection with the burglary or not. Now, under cur-
23 rent law, there doesn't seem to be any definite limitation. This
24 Court has always said that we must view the legality of the par-
25 ticular search in light of its reasonableness and the facts of

1 the case, and there can't be any mechanical standards here.

2 I think what is significant is that the Fourth Amend-
3 ment, as it was drawn up by the framers, does not confer a nar-
4 row grant of the power to search. What it does, it restricts the
5 power to search, the existing and recognized power to search, and
6 prohibits only searches that are unreasonable. In turn, that
7 determination of reasonableness is a very practical concept and
8 it has been since it evolved under the common law.

9 Q May I break in just one moment on the other
10 point?

11 Assuming that they know, they are confident that this
12 man committed this robbery, and they see him on this side of
13 town, going toward his home. Is it possible that some detective
14 would say, "Well, if we arrest him here, we can only search his
15 person; but if we let him go home, and then arrest him, we can
16 search the attic, the garage, and anything else"? Is that pos-
17 sible?

18 A It is possible that officers would do that.

19 Q Well, what is different about that case and this
20 case?

21 A I think it is improper when the officers do that.
22 We concede that, and there are cases so holding, but it is im-
23 proper.

24 Q Well, didn't they deliberately wait at home for
25 him? They knew where he was.

1 A No, they didn't. If I may answer your question
2 by chronicling the events that day, I would like to point out
3 that the arrest warrant issued at 10:39 in the morning. The
4 officer submitted the arrest warrant which he had obtained and
5 which, under current California law was a valid arrest warrant.

6 Number 2, the Warrant Detail of his department, this
7 was customary practice of his department, and this was done as
8 a general rule, without exception, unless there was a definite
9 information that the suspect was about to flee, the Warrant De-
10 tail processed the warrant until 2:00 o'clock that afternoon.

11 Now, both prior to 2:00 p.m. and after 2:00 p.m., the
12 officer was involved in other burglary investigations. He had
13 a monthly caseload of 45 to 80 burglaries. He was involved with
14 those burglaries. He was not required, it is our position, to
15 drop all other business of an enforcement and investigatory
16 nature in order to serve that arrest warrant.

17 All right. Then it was getting on in the afternoon.
18 He was busy with these other things. He might well have missed
19 the petitioner, who arrived home at 4:15. He also testified
20 that he had a desire not to embarrass the petitioner at his
21 place of employment.

22 Now, had the petitioner been released on bail, as he
23 was perhaps the same afternoon, but very shortly after -- the
24 record isn't completely clear -- and had the case not gone to
25 trial, the petitioner's employer would never have learned of the

1 arrest, petitioner would not be fired, there would not be any
2 consequence. His wife would have learned of it in any event.

3 Q So once again we find the police are only in-
4 terested in doing favors for the defendant.

5 A I would not state that as a general proposition.
6 I would not be so naive as to hold that that is a universal rule.
7 However, I would submit that it is unparalleled, almost. It is
8 impossible to find a police officer who could have given more
9 attention to the observance of the defendant's constitutional
10 rights than did this officer. He did not arrest --

11 Q There were three officers.

12 A There were two officers from Santa Ana who accom-
13 panied him, and that was required under California law because
14 the place of arrest, petitioner's home, was outside the investi-
15 gating officer's jurisdiction.

16 Q Well, that is three.

17 A Under California law, then -- it has since been
18 changed -- Officer Del Coma would not have had the right to go
19 outside the City of Orange to arrest petitioner at petitioner's
20 Santa Ana home.

21 Q But regardless, there were three.

22 A There were three.

23 Q They went to the man's home.

24 A They went to the man's home.

25 Q And waited for him.

1 A And waited 10 minutes for him.

2 Q And after he came home, they shook his house apart.

3 A They did not shake his house apart. They searched
4 the house very carefully with the petitioner's wife. They asked
5 her to accompany them. They did not open drawers. They did not
6 ransack.

7 Q They were looking for the coins from this robbery.

8 A That is correct.

9 Q Which they didn't find.

10 A No, that is not the case. The only -- and I wish
11 to correct prior statement on that that was made in the preceding
12 argument.

13 The record shows that no coins were positively identi-
14 fied as coming from that burglary, but that is not to say that
15 there were no coins seized. The inference is very strong that
16 many of the coins were from the Money Vault burglary. We have
17 set out an inventory of the coins seized in our brief as an ap-
18 pendix, and if you compare those items to some of the items
19 seized from Mr. Slocum's store during the burglary, there is a
20 great similarity. But we know that coins are, by their very
21 nature, almost fungible items, with a few exceptions, and it is
22 very difficult to say "That is my nickel."

23 Q Mr. George, put it this way: They knew exactly
24 what they were looking for -- coins.

25 A Yes.

1 Q And they seized items other than coins, which
2 they did not know at that time were stolen.

3 A No, that is not the case. Mr. Monroe --

4 Q Did they know about this other robbery before
5 then?

6 A There is some indication that the arresting offi-
7 cer had some knowledge that there was another burglary, but he
8 had no detailed information, as Mr. Monroe pointed out. There
9 was not a wholesale --

10 Q Wouldn't he have needed that to have made the
11 search?

12 A No, he would not have needed that other informa-
13 tion. He was looking for one thing only, and that was evidence,
14 stolen fruits of the burglary for which he was arresting the
15 petitioner.

16 Q You suggest that everything he seized at that
17 time was the kind of thing that might have been stolen from the
18 Money Vault? Is that your argument?

19 A Exactly. I would like to clarify the record on
20 that. There was some confusion.

21 The items seized consisted of coins, coin paraphernalia,
22 and one item that does not fall into that category -- a quantity
23 of razor blades, and why razor blades? The officer was asked
24 that. Well, because petitioner had said at the time of the
25 arrest, "These razor blades are part of a coin transaction."

1 Now, that is susceptible of the inference that they
2 could have been part of the Money Vault burglary transaction,
3 but there is nothing that is not reasonably apparent as to be
4 part of the Money Vault burglary that was seized. It was a very
5 limited search that was confined by the objective of the officer,
6 which was a permissible objective, namely, to return the stolen
7 property. This was three-fourths of the man's inventory that
8 had been wiped out, and the officers merely wanted to return
9 that property to their rightful owner, and their search was 45
10 minutes and was confined to that.

11 Now, petitioner has implied that this was a wholesale
12 ransacking of the house. This isn't true. The record indicates
13 unequivocally, and we have set it out in detail in our brief,
14 that there were only two rooms that were really searched in the
15 sense of what a search is, prying into hidden places.

16 Q Which rooms were they?

17 A They were a bedroom, and a second bedroom --

18 Q How large a house was this?

19 A This was a 3-bedroom tract home.

20 Q Tract? What kind of a tract?

21 A Tract-size home. That is how it was described in
22 the record.

23 Q That is a new word to me.

24 A A suburban house. These two rooms were searched
25 in the sense of drawers being opened and petitioner's wife being

1 asked to move the contents of the drawers to one side, to offer
2 an innocuous explanation for any coins, and the officers left
3 many coins. They only took those which appeared to be connected
4 with the Money Vault.

5 Now, these other rooms, the officer testified, he
6 glanced into them. It was a cursory search. He looked into the
7 garage. He looked into the child's room. But this was not a
8 search. The search was confined to two rooms, its objective was
9 perfectly permissible, and the search was of 45 minutes' duration.

10 Q Mr. George, may I ask you this: Is your desire to
11 broaden out the right of search? Does that indicate a desire
12 on the part of law enforcement in California to wipe out the
13 necessity of warrants, search warrants, warrants of every kind,
14 in order to go in and search whenever they want to do so?

15 A No.

16 Q I will tell you the reason I ask that. It is be-
17 cause in one case we had here a while back, it was stated to us
18 that in the great City of Los Angeles, the Police Department got
19 out, I think it was, fewer than 20 search warrants in an entire
20 year.

21 A That is incorrect information.

22 Q How widespread is the practice of getting search
23 warrants in Los Angeles?

24 A I will indicate that. I want to preface that by
25 stating that the California Supreme Court, in its Keener decision,

1 which we have cited, has evidenced a policy encouraging the use
2 of warrants. We cite an article in the official publication of
3 the California Peace Officers Bulletin encouraging officers to
4 use search warrants, an article by the District Attorney.

5 Q How prevalent are they, let's say, in the City
6 of Los Angeles?

7 A The figures we have for the Central District of
8 Los Angeles, and some of the neighboring judicial districts --
9 this is not the whole county -- is 225 search warrants issued
10 last year.

11 Q But that includes territory outside of Los Angeles.

12 A Out of the city, certain parts; yes. It is not
13 county-wide.

14 Q The Los Angeles Police have nothing to do with
15 those.

16 A That is correct.

17 Q How many in the City of Los Angeles?

18 A The City of Los Angeles, I would say approximately
19 200, I would think. Most of those in the Los Angeles Judicial
20 District are in the City of Los Angeles.

21 Q Most of them, you say.

22 A Yes. Now, this is a thirteenfold increase since
23 1954, which is the year that the California Supreme Court antici-
24 pated this Court's decision in Mapp and required the exclusionary
25 rule to be followed in California.

1 As Mr. Justice Harlan pointed out in his dissent to
2 the Chapman case, California has been in the forefront of all the
3 States in laying down rules protecting the rights of criminal
4 suspects, both in the field of confessions and search and seizure.
5 The State has encouraged the use of warrants and they are being
6 used increasingly. Each year the number increases.

7 This officer here testified he will obtain an arrest
8 warrant, as he tried to do here. The law was changed after he
9 obtained it. It was his policy to get one.

10 Q What did they get in the house?

11 A They got coins, coin paraphernalia, and this one
12 item of a few razor blades.

13 Q Was that identified by anybody as belonging to the
14 place that had been burglarized?

15 A There were two burglaries, of course. Some of
16 the coins were definitely identified as coming from a second
17 burglary because they were unusual coins. They were odd metals.
18 We have set them forth. Things like Alaska Centennial coins, or
19 something like this, that the Pulatis recognized immediately, or
20 else a container of coins with Mr. Pulati's handwriting crossed
21 out.

22 So, of course, those were able to be identified, but
23 they were 35 coins out of this quantity, a large quantity, of
24 coins. The other coins, there was a very strong inference that
25 they were one and the same from the burglary for which the

1 officers had made the arrest.

2 Q Did the defendant testify?

3 A The defendant did testify. He gave an explanation
4 that was so inherently improbable of his guilt that we would
5 submit that it afforded a consciousness of guilt evidence of his
6 guilt. It was a highly unlikely explanation.

7 Q What did you say? He testified?

8 A He testified in his own behalf and gave such a
9 contrived explanation of how he had come into possession of some
10 of these coins --

11 Q Did he admit he had come into possession of them?

12 A Yes, he did; and he said that he had purchased
13 them from a man, and he didn't know whom, and he didn't collect
14 medals, but he had bought these medals anyway, and it was a very
15 obvious attempt to fabricate an explanation for them. In fact,
16 he changed his testimony with reference to one coin, that he
17 didn't know how he had obtained that, but later on he suddenly
18 remembered that he had bought it. He gave no satisfactory ex-
19 planation.

20 Q Then the testimony that he was in possession of
21 them is without dispute?

22 A That is true; yes. In fact, there was a stipu-
23 lation between Mr. Monroe and the District Attorney who tried
24 the case that the coins identified by the Pulatis, found on the
25 premises, were the same coins that were at the Pulatis' home on

1 the night of their burglary. That is in the record.

2 Q Mr. George, was he tried for both burglaries?

3 A He was, and was convicted of both.

4 Q He was convicted of both.

5 A Yes, he was.

6 Q Although there was no identification of the coins
7 from the second or the burglary on which they had had probable
8 cause?

9 A Well, no. There were no coins found at petition-
10 er's house that were tied into that burglary positively, but
11 there was another coin, a very unusual coin with four faulty
12 markings, that two months, I believe, after the search, petition-
13 er sold to a coin dealer, and this was a coin from the Money
14 Vault burglary.

15 There is a great length of testimony in that regard
16 and that was established clearly. It was a very unusual coin.

17 Q This was a single trial of both burglaries?

18 A Yes, it was. Both accounts were joined.

19 I would like to address myself to the reasonableness
20 of the search in light of all of the officer's conduct here.
21 The officer had the admissions of the defendant to various
22 civilian witnesses that he had committed the burglary in question.
23 The defendant was negotiating to return the coins. The officer
24 attempted to obtain an arrest warrant, conducted a great many
25 sessions with the District Attorney's office, before he would

1 deprive petitioner of his freedom.

2 The District Attorney's office said, "Well, we think
3 you have enough information, but go out and get another one.
4 Talk to this witness." He did that. Only then did he decide to
5 make the arrest.

6 The search was incident to the arrest, clearly. It
7 was the same time and place. The objective was as legitimate
8 as any imaginable, to return thousands of dollars of stolen coins
9 to their true owner. Only coins and coin paraphernalia that ap-
10 peared to be connected with that particular burglary were seized.

11 The manner of conducting the search was inherently
12 reasonable. He had to bring along Santa Ana officers to legiti-
13 matize his search, since it was outside of his jurisdiction. He
14 announced his entry, identified himself, asked whether he could
15 enter, treated the defendant with utmost courtesy. He informed
16 the defendant of the warrant, showed it to him, let him read it.

17 He asked whether he could search, although consent was
18 not given. But he informed the defendant that he had the right
19 to search anyway.

20 The defendant's wife was the one who opened the drawers
21 so there would be no ransacking. The officer proceeded as
22 quickly as he could. He took only 45 minutes to search. And
23 then the officer took the defendant to the station and the two
24 of them compiled an inventory of all of the seized property,
25 defendant was shown the inventory, and he signed a copy.

1 Now, what can be unreasonable in this search? Cer-
2 tainly not the scope. The scope was certainly proper. The
3 objective of returning the stolen coins to their owner would not
4 be served by arbitrarily saying, "Well, you can search this
5 room, but not that one; this cupboard, not that one." If we
6 started setting down standards like that, the police and the
7 courts would certainly be confused.

8 What size of a room could you search? What circum-
9 ference around the defendant?

10 We submit that the Rabinowitz standard of reasonable-
11 ness under all the circumstances is the proper standard, especially
12 in the light of the fact that we have a State conviction here.
13 Under our Federal system, and under the decision in Ker, the
14 States may develop workable rules of search and seizure. That
15 is what California has done.

16 Q What is your submission as to why an officer,
17 when he arrests someone in his house, should be able to search
18 any more broadly than the person of the defendant, to search for
19 weapons or something like that, to guarantee the officer's own
20 safety, or to just seize what is in plain sight? What is your
21 basis for saying that he should be able to search for the fruits
22 of a crime?

23 A Well, our legal basis is, first of all, the
24 Agnello decision. The full citation is in our brief at page
25 392. It indicates that fruit of the crime may be searched.

1 Q Anywhere in the house.

2 A It doesn't speak in terms of arbitrary geographi-
3 cal limitations.

4 Q I know, but what is your submission. You should
5 be able to search for the fruits of the crime anywhere in the
6 locality where you arrest the defendant?

7 A Depending on the facts of the case. Let's say
8 we have a television set involved here.

9 Q Well, why should you be able to search for the
10 fruits of the crime, though, without a warrant?

11 A Because the objective of returning them to their
12 owner is certainly a legitimate --

13 Q Well, you can get a warrant and do that.

14 A All right. In this case, we submit --

15 Q You know what the fruits of the crime are. Why
16 don't you come armed with a warrant for a search?

17 A It is easy to speak in terms of one case and say
18 "Well, the officer could have taken the two or three hours to
19 obtain a search warrant," and that is what Commentator states
20 it takes under ideal conditions to obtain one. But if you mul-
21 tiply this across the country, the last year for which there
22 were statistics, there were 1,600,000 burglaries committed in
23 the United States alone. Now, if you multiply that paper work --

24 Q I know, but if he had gotten a search warrant
25 here, the search warrant would have specified only the fruits

1 of the first robbery, isn't that right, because that is all this
2 policeman had any cause to suspect was connected with Chimel;
3 isn't that right?

4 A That is true, but --

5 Q By not getting a search warrant -- just a moment --
6 by not getting a search warrant, on your submission the police
7 officer was able to make a broader search than he would have
8 been able to make if he had gotten a search warrant. Am I
9 right or wrong about that?

10 A I would say we do not agree with that, and I will
11 tell you why.

12 The officer thought that he was only seizing coins
13 from that burglary. There were many boxes and containers of
14 coins. He could have delayed the defendant hours had he taken
15 each box, sorted out a few medals that apparently that would not
16 have been involved with one burglary, and gone through -- the
17 defendant would have been standing there all day.

18 If he saw a box that appeared to contain coins from
19 the Money Vault burglary, it is our position he was entitled to
20 take that container, that box. The inventory of the items seized
21 indicates that there were many, many, there were perhaps hundreds
22 or thousands of coins seized. There were many, many containers.
23 The officer could not pick through each one individually. That
24 would have been an impossible task.

25 Q But if he was searching for, or if he had had a

1 warrant for certain coins, he might have been able to search any-
2 where in the house for those coins.

3 A That is true.

4 Q And if he encountered some other coins that he
5 recognized as having been stolen from someone else, he could
6 have seized them anyway, couldn't he, under Harris and some other
7 cases?

8 A Yes.

9 Q But you still haven't really gotten around to
10 saying why you think that an officer should be able to search a
11 house without a warrant for the fruits of a crime. You said that
12 it would be a lot of trouble. So far you have said that much.

13 A Yes. Now, we recognize --

14 Q Is that it?

15 A No, that is not all. I don't think you can just
16 say that it would be trouble. You have to, under the Fourth
17 Amendment, we submit, look at it in terms of what is reasonable,
18 and as part of reasonableness this Court has always looked at
19 the practical effect on law enforcement.

20 Q Did you have probable cause to get a search war-
21 rant?

22 A Yes.

23 Q A very simple question: When the officer went to
24 get the arrest warrant, why didn't he also ask for a search war-
25 rant, because you have already admitted that one of his purposes

1 was to retrieve this money.

2 A Yes.

3 Q Well, why didn't he write this other piece of
4 paper?

5 A Exactly. It is so simple that one wonders why
6 not, with an officer who is as eager to protect the defendant's
7 constitutional rights.

8 That answer is, under this Court's decisions, specific-
9 ally Marron and Stanford versus Texas, there is a very stringent
10 requirement of particular description. It would not have been
11 enough for the officer to describe the property to be seized as
12 "coins and coin paraphernalia stolen from the Money Vault."

13 Q I thought you said you had enough to get one.

14 A Yes, but what would the officer have had to do
15 to get one? He would have had to describe these coins in great
16 detail.

17 Q There you are.

18 Q But what you are saying there is the officer has
19 more latitude, lawfully has more latitude if he does not get a
20 warrant than if he does get a warrant.

21 A No, we are not, because the officer could have
22 obtained a search warrant. It might have taken him two weeks to
23 do it because he would have had to distinguish the stolen coins
24 from the coins that would be found on the premises. He knew
25 that petitioner was a coin collector.

1 Q But realistically, though, do you think officers
2 under our cases would get a search warrant when our cases appear
3 to hold that if you make a valid arrest on probable cause, you
4 may search incident to an arrest? Officers don't ordinarily come
5 armed with -- let's assume for the moment that it would have been
6 very easy, very easy, to get the search warrant, automatic, five
7 minutes.

8 A Yes.

9 Q Officers don't ordinarily come armed with both
10 search and arrest warrants, do they?

11 A They do sometimes, and the reason --

12 Q I said ordinarily. Do they?

13 A It varies according to jurisdiction. I wouldn't
14 say ordinarily across the country, no; but I think that there
15 are incentives to obtain a search warrant that will make officers
16 get them at times, and I would like to mention some of those to
17 the Court.

18 There is a presumption of legality that attends a
19 search effected by a search warrant. In many jurisdictions, and
20 in California, if the officer does not have a search warrant,
21 the search is presumed to be illegal in California, and the bur-
22 den is on the prosecution to obtain a search warrant, a justi-
23 fication for the search. It must show that there was probable
24 cause and that the search was incident to an arrest.

25 Secondly, the fact that there was a search warrant

1 will insulate the officer from civil and criminal liability that
2 will not be the case if there is not a search warrant.

3 Finally, or rather additionally, there is also an
4 opportunity for a broader search if there is a search warrant.
5 The officer will be able to search outbuildings and throughout
6 the premises and take as long as he wants if he has a search war-
7 rant. There will also be the possibility of search in the ab-
8 sence of the suspect.

9 If he doesn't arrest the suspect at the house, of
10 course, he couldn't search incident to an arrest. So this way,
11 with a search warrant, he can search the house in the absence
12 of the defendant. If there are multiple suspects, as there often
13 are in narcotics raids or other conspiracy crimes, let's say, he
14 can search many places. The police force can simultaneously,
15 even if one or more defendants are absent.

16 Q Well, now, without the arrest, this search could
17 not have been made. You agree with that.

18 A That is correct.

19 Q Without a warrant, that is.

20 A Without the arrest.

21 Q What difference, then, would the State suggest
22 it makes in terms of the permissibility of this search? What
23 difference does it make that the arrest took place? I know you
24 can say, "Well, the cases hold that," but those cases are under
25 attack here. I just wonder why you think the arrest, just the

1 fact of arresting a man in his house, gives the officers the
2 right to make a search of the bedroom that otherwise they would
3 not have had in the absence of arrest?

4 A Because the officer had sufficient information to
5 make the most basic invasion of the defendant's privacy that one
6 can imagine, the seizure of his body. Now, how much more of an
7 invasion of privacy is it for the officer to also seize items
8 around the defendant?

9 Q Well, I know, but if you had arrested him down at
10 his office and made that basic invasion of privacy, it would be
11 very difficult to go and search the house without a warrant.

12 A True, but you could have searched his office.

13 Q I know, but you couldn't go and search his house.

14 A Yes, but there is nothing to indicate that it was
15 maneuvered.

16 Q What difference does it make whether you arrest
17 him in his house or in his office as to whether or not you can
18 search his house without a warrant?

19 A Well, there are various justifications. He might
20 have weapons there. He might try to destroy evidence.

21 Q I know, but I understand the State to say that
22 they officers have a right to search for the fruits of a crime.

23 A Yes.

24 Q Anywhere in the house that fruits of that sort
25 might be. That is your submission.

1 A Of that sort. Yes. It is different for a tele-
2 vision theft.

3 Q You wouldn't look in a bedroom drawer for a tele-
4 vision set.

5 A Correct.

6 Q But you think they could have looked anywhere in
7 the house that coins might have been hidden.

8 A Yes, where coins could have been hidden and, of
9 course, --

10 Q I am surprised that you don't suggest that once
11 you arrest a man in his house, confederates, family, and everyone
12 else is alerted and that it might be essential, if the officers
13 have probable cause, to make the arrest, and probable cause to
14 believe that he has the fruits, or that they are somewhere, that
15 there is some kind of urgency about looking for them, for the
16 fruits, before they are made off with.

17 A Well, of course, that would support the officer's
18 not having to leave and come back with a warrant later.

19 Q But it doesn't get to why they didn't get a war-
20 rant in the first place, does it?

21 A Well, what it does is, the practical burden that
22 would have been imposed on this officer to describe thousands
23 of coins with sufficient particularity, as would be required
24 under this Court's decision, to distinguish them from the defen-
25 dant's coins --

1 Q In what decision do you say we said that?

2 A Marron.

3 Q Did we go that far?

4 A Marron describes the --

5 Q Your submission is that to get a warrant, it is
6 necessary to specify every coin, hundreds of coins?

7 A At least to the degree necessary to distinguish
8 them from the defendant's own coins, which the officers knew
9 would be on the premises, and because there is authority, and we
10 have cited it in our brief, that the description must be adequate
11 to segregate lawful property, the defendant's own property, from
12 the items to be seized.

13 That is why the officer did not get a search warrant.
14 Very frankly, off the record, I asked the officer, "Why didn't
15 you," as Justice Marshall asked, "if you were down there and you
16 executed this affidavit for the arrest warrant, why didn't you
17 also get a search warrant?" and that is it. He didn't want to
18 get a search warrant that would get knocked out if it just de-
19 scribed the coins in a general way.

20 Q Mr. George, my problem is, I assume that the offi-
21 cer knew what he was looking for.

22 A He did.

23 Q And when he did the search, he was looking for
24 these coins.

25 A Yes.

1 Q And the only problem that you have, and the offi-
2 cer has, is writing down what he already has in his mind.

3 A He would have had to write down the description
4 that the victim told him, "Well, this is my coin because it is
5 this age, and maybe it is marked up this way, and therefore I
6 know this nickel from somebody else's nickel."

7 Q He had that information. It was just a question
8 of putting it on paper.

9 A That would have been quite a difficult problem.
10 The officer chose to --

11 Q You mean difficult physically to dictate it or
12 write it.

13 A Well, both, and also to reduce certain conceptual
14 matters to writing.

15 Q Could there also be the possibility that once he
16 puts it down on paper, he would be restricted to that and he
17 wouldn't be able to pick up something else? Would that be a
18 problem?

19 A That didn't trouble him, because he left coins
20 on the premises. He left many, many coins.

21 Q There simply is no reason why he shouldn't have
22 gotten a search warrant, is there?

23 A Oh, there definitely is. It would have been an
24 impossible task for him to do it, almost.

25 Q Impossible for him to write it?

1 A Considering the number of coins. They are listed
2 in our appendix here. There are hundreds, if not thousands, of
3 coins.

4 Q And he couldn't write it?

5 A This would have been an unreasonable burden --

6 Q Oh, it is an unreasonable burden for a police
7 officer to write.

8 A In certain situations, to give this kind of a
9 description.

10 Q I understand your position.

11 A It would be like describing the grains of sand on
12 a beach.

13 Q Mr. George, if they couldn't differentiate at the
14 police station, or at the court when they were getting a warrant
15 of arrest, what coins they were interested in, how did they dif-
16 ferentiate when they were in the house as to what coins they
17 would take and what ones they would leave?

18 A The officer apparently had a general description,
19 at least, of particular types of coins right with him, and if he
20 saw a particular container --

21 Q Couldn't he have given that to the judge?

22 A It might not have been sufficient. Of course,
23 this Court has been very stringent. If you don't dot your "i's"
24 and cross your "t's" --

25 Q Because he didn't think that was sufficient

1 information that he had, he thought he couldn't get a search
2 warrant, so he thought he would do it without one.

3 A He thought it was sufficient information. He
4 thought that it would have been very, very difficult to meet the
5 burden of setting it all out in writing and having it stand up.
6 He thought it wasn't necessary in view of this Court's decisions
7 stretching back many, many years, that a search is reasonable if
8 it is incident to an arrest. That is why he thought that he did
9 not have to.

10 Q Mr. George, may I ask you this: When you and I
11 were discussing the number of search warrants, I thought you
12 indicate that someplace in the record here there were some
13 figures on that.

14 A No. Not in the record. The only figure related
15 to that is the number of burglary investigations that Officer
16 Del Coma himself had for a month, but the number of search war-
17 rants --

18 Q But you told me something like 200 in the Central
19 District of Los Angeles. You don't have any figures like that in?

20 A I have only a letter from the District Attorney's
21 office. I thought the Court might be interested in that point
22 and I inquired.

23 MR. CHIEF JUSTICE WARREN: Would there be any objection,
24 counsel, to including that?

25 MR. MONROE: None whatsoever. I also have some figures.

1 MR. CHIEF JUSTICE WARREN: Very well. I would like to
2 have them. It might not be relevant, but it would be interesting
3 anyway.

4 MR. GEORGE: May I file with the Court the letter that
5 I received from the District Attorney's office?

6 MR. CHIEF JUSTICE WARREN: Yes, please.

7 Q Mr. George, I wanted to ask you one question. You
8 might not have time to do it between now and 12:00, about a
9 minute and a half.

10 You said many times that they had probable cause to
11 believe he was guilty and that justified an arrest.

12 A Yes.

13 Q Could you state briefly what evidence there was
14 that they had?

15 A Yes. The defendant, prior to the burglary itself,
16 had approached the victim and said, "How would you like to have
17 your place knocked off," and "Do you carry insurance," and all
18 of that. Shortly before the burglary, just a few hours, he
19 told a friend, "I have a big job going. We are going to knock
20 off a coin shop, maybe \$50,000 or \$60,000 are involved."

21 Q Is this a pawn shop?

22 A A coin shop. Then shortly afterwards, he told
23 the same friend, "Well, we broke through the two walls and we
24 came across the wires, but we didn't really go through with the
25 job completely."

1 Then the next day he told the fellow, "Oh, well I was
2 just kidding. Don't believe what I said."

3 Then he told another person after the burglary, "I am
4 involved in the Money Vault burglary. I may be going to jail on
5 that."

6 Then he negotiated with the police for the return of
7 the coins. This man broadcast all over town that he--

8 Q He negotiated for the return of the coins?

9 A For the return of the coins; yes.

10 Q How do you mean "negotiate"?

11 A He and another suspect, and an attorney who the
12 record indicates was representing both suspects, negotiated for
13 the return of the coins for a civil release.

14 Q Actually negotiated at the police station.

15 A At the police station.

16 Q Before arrest.

17 A So this man's guilt and the probable cause was
18 beyond a reasonable doubt. I cannot imagine a case with more.

19 Q He did claim, though, that he had bought these
20 things, did he not? He did not admit to any burglarizing. He
21 claimed that he had bought these from somebody, fictitious or
22 otherwise.

23 A He gave a very unlikely explanation; yes.

24 MR. CHIEF JUSTICE WARREN: Very well. We will recess.

25 (Whereupon, at 12 Noon the argument in the above-
entitled matter was recessed until 12:30 p.m. the same day.)

1 (The argument in the above-entitled matter resumed at
2 12:30 p.m.)

3 MR. GEORGE: May I ask leave for one minute?

4 MR. CHIEF JUSTICE WARREN: You may have one minute.

5 FURTHER ARGUMENT OF RONALD M. GEORGE, ESQ.

6 ON BEHALF OF RESPONDENT

7 MR. GEORGE: Thank you very much.

8 One point that I wanted to make in concluding was that
9 the issue here under the Rabinowitz test is not really whether or
10 not it is the police officer or the magistrate who is to make
11 the decision to arrest and search; but rather, whether it is
12 the magistrate who will decide it before the search or the magis-
13 trate after the search, because, of course, as this Court has
14 noted, it is the exclusionary rule which is the most effective
15 means of deterring unreasonable search and seizure.

16 As we have attempted to point out in our brief, Cali-
17 fornia affords many, many opportunities at all stages of the
18 proceedings to invoke the exclusionary rule and that means has
19 certainly been effective, if not more effective, than the some-
20 what cursory examination which is given prior to issuing a search
21 warrant.

22 I want to note that I did find the letter, which I
23 will file with the Clerk. It does not cover just the City of
24 Los Angeles. It covers the entire County of Los Angeles, those
25 search warrants issued by the District Attorney, but not by

1 other law enforcement agencies.

2 Q What does it show?

3 A It shows that a total of 225 search warrants
4 issued by the District Attorney of Los Angeles County during
5 1968.

6 Q A county of 7 million people.

7 A That is true; approximately 7 million people. But
8 this does not cover the various other law enforcement agencies
9 in the county which have also issued search warrants.

10 Q We may assume, I suppose, that there were many,
11 many more searches than that.

12 A Search warrants?

13 Q No, searches.

14 A Searches. I think that is a fair assumption.

15 Thank you.

16 MR. CHIEF JUSTICE WARREN: Mr. Monroe.

17 REBUTTAL ARGUMENT OF KEITCH C. MONROE, ESQ.

18 ON BEHALF OF PETITIONER

19 MR. MONROE: To pursue this same point a little bit
20 on the matter of warrants, I had shortly before coming here
21 contacted the clerk of the Municipal Court in the Los Angeles
22 Judicial District, who is one of the few agencies in California,
23 or anywhere, so far as I can find out, who has some statistical
24 information available on search warrants.

25 To give you an idea of what Los Angeles Judicial District

1 comprises, the entire County is authorized 125 Municipal Court
2 Judges. The Los Angeles Judicial District, which is within that
3 county, comprises 58 of those 125 Judges. So we have something
4 here which is approaching half of the entire county.

5 In 1931, according to the letters I have, the Clerk
6 of this court commenced keeping separate records of search war-
7 rants issued and papers received for search warrants. They were
8 numbered serially, commencing with the Number 1. As of March
9 12, 1969, these numbers had reached 1938 or, in other words,
10 during this period of time, there had been approximately some
11 50 warrants per year, or something like that, although this is
12 not a fair representation, since in 1968, according to advice
13 I have personally received from the Clerk, there were papers
14 processed in this Judicial District for 179 search warrants.

15 So the figure has gone up, but it was to me amazingly
16 low for a 38-year period.

17 Q Will you submit that to us, too, please, Mr.
18 Monroe?

19 A Yes, I will. The 1968 figures I obtained myself.
20 The letter covers the rest.

21 Q Do you have any idea of the comparable figures
22 in other States?

23 A I do not, Your Honor.

24 Q Or the comparable figures in the Federal system
25 itself?

1 A I do not know.

2 Turning to Rabinowitz, I think it is necessary to look
3 to the Fourth Amendment itself. I think we can see rather
4 clearly two distinct philosophies in interpretation of the amend-
5 ment.

6 Rabinowitz and Harris, and that line of cases, say not
7 in so many words, but in terms of results they say, the Fourth
8 Amendment consists of two clauses, one which prohibits unreason-
9 able searches, and the other clause sets forth the procedure
10 for obtaining warrants.

11 The opposing line of cases is, of course, Trupiano,
12 Taylor versus U.S., and those similar cases which say this is
13 not true; rather, there is a general requirement in the amendment
14 which points to the use of warrants and, with or without a war-
15 rant, any search which is unreasonable does not comply with the
16 amendment itself.

17 The question which troubles me greatly in the Rabino-
18 witz-Harris philosophy is that if the unreasonable search clause
19 can stand by itself, and if there is not some requirement some-
20 where for the use of warrants as a general rule, but if unreason-
21 able searches covers the ground, then we have violated a cardinal
22 principle of statutory construction, because the unreasonable
23 search clause really covers the substance of what is in the
24 warrant clause. It is not necessary to have the warrant language
25 there.

1 On that basis, I submit that there must be something
2 more to the amendment which suggests that under some conditions
3 a warrant is required.

4 The facts in this case, I think, illustrate with the
5 search of a home, with very ample time, in fact conceded no
6 exigent circumstances, where a question about cause for searching,
7 if this case doesn't require a search warrant, I ask what case
8 possibly could, and if there is not a case that possibly could
9 require a warrant, then the Fourth Amendment itself is changed.

10 Q Well, of course, the development in this whole
11 field, like so many areas, hasn't been strictly logical. If you
12 take the first philosophy, or what you call the Harris philosophy,
13 through to its logical conclusion, and say that all the Fourth
14 Amendment requires is reasonableness under the circumstances,
15 I would suppose, as a matter of logic, it would follow that if
16 a policeman gets a warrant for the arrest of a man at his house,
17 and then finds he doesn't happen to be there, and he gets law-
18 ful access to the house because of his warrant, it would be very
19 difficult to see why logically he wouldn't be reasonable. That
20 is the only test, for him to go ahead and search the house any-
21 way.

22 This whole train of development hasn't been a matter
23 of pure logic by any manner or means, has it?

24 A Along that line of thought, Your Honor, that,
25 then, would cast doubt on Chapman. It would cast doubt on

1 Taylor. It would cast doubt on all of the cases where there
2 has been a search and not even an arrest. They can't all be
3 wrong, can they?

4 Q I am not suggesting that is so. I am suggesting
5 that the law, if it remains perfectly stable, that you can't
6 search without a warrant except in very limited circumstances,
7 one of which is incident to an arrest and, therefore, it is not
8 quite accurate to say that there are two opposite philosophies
9 as regards the interpretation of the Fourth Amendment as a whole,
10 namely, reasonable or, logically, a warrant in every case where
11 you can get one feasibly.

12 A My purpose in addressing myself to this, Your
13 Honor, was that if the reasonable clause is to be given primary
14 meaning, then there doesn't seem to be any real, strong reason
15 for having the warrant clause in the amendment at all, for cer-
16 tainly a warrant which was issued without oath or affirmation,
17 or without probable cause, would not, on its face, be reasonable.

18 Q Well, we have both parts of the amendment.

19 A I think the amendment must be read as a whole,
20 Your Honor.

21 MR. CHIEF JUSTICE WARREN: Mr. Monroe, before you take
22 your seat, I just want to say that the Court is conscious of the
23 fact that you are here in the public interest by assignment of
24 this Court to represent this indigent defendant.

25 The Court is greatly comforted by the fact that lawyers

1 are willing to do that. We consider it a real public service
2 for a lawyer to come to Washington and perform such a service.

3 We thank you for what you have done, sir.

4 MR. MONROE: The pleasure and opportunity has been
5 mine.

6 MR. CHIEF JUSTICE WARREN: I want to say to you, Mr.
7 George, that, of course, we are also as interested in the fair
8 representation of a State as we are in the interest of the
9 petitioner and we appreciate your frank and earnest interest in
10 the State of California. We thank you, as well.

11 MR. GEORGE: Thank you.

12 (Whereupon, at 12:45 p.m. the argument in the above-
13 entitled matter was concluded.)
14
15
16
17
18
19
20
21
22
23
24
25