

In the

Supreme Court of the United States

STATE OF CALIFORNIA,)
)
 Petitioner,)
)
 v.)
)
 JUDITH H. KRIVDA)
 and)
 RODGER T. MINOR,)
)
 Respondents.)

No. 71-651

Washington, D. C.
October 10, 1972

Pages 1 thru 53

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IN THE SUPREME COURT OF THE UNITED STATES

STATE OF CALIFORNIA,

Petitioner,

v.

JUDITH H. KRIVDA

and

RODGER T. MINOR,

Respondents.

No. 71-551

Washington, D. C.,

Tuesday, October 10, 1972.

The above-entitled matter came on for argument at
11:00 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

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for the Petitioner.

ROGER S. HANSON, Beverly Hills, California; for
the Respondents.

C O N T E N T SORAL ARGUMENT OF:PAGERussell Iungerich, Esq.,
for the Petitioner

3

Roger S. Hanson, Esq.,
for the Respondents

27

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 71-651, California against Krivda and Minor.

Mr. Iungerich, you may proceed whenever you're ready.

ORAL ARGUMENT OF RUSSELL IUNGERICH, ESQ.,

ON BEHALF OF THE PETITIONER

MR. IUNGERICH: Mr. Chief Justice, and may it please the Court:

This case arises after the affirmance of the trial court judge in dismissing a criminal case after a motion to suppress had been granted in California trial court -- California trial court. It was a people's appeal.

The facts of the case, briefly, was in this manner.
female

An anonymous/informant placed a telephone call to a Los Angeles police officer and informed him that two persons, named Rodger and Judy were living at 1901 Nolden, in Los Angeles, and were engaged in narcotics activities, and were also injecting methedrine into two children living at that residence.

The officers verified that a lady named Judy Krivda was paying the utilities at that address. By visual observation, in going to that location, they saw two young children playing in the front yard.

They returned at a later date, approximately a week

later, and observed several trash barrels next to the curb, on the Parkway, awaiting pickup by trash collectors.

They also observed trash collectors in the vicinity with a trash collection truck. They intercepted the trash collectors and requested that the trash collectors empty the well of the trash truck and deposit these particular barrels into the well of the trash truck so that they would not be conglomerated with other trash collected from the neighbors in that vicinity.

Then, a block away from the residence where the respondents Krivda and Minor were residing, the police examined the contents of these trash barrels from the well of the trash truck, and in the contents of the trash barrels they discovered four to six partially smoked marijuana cigarettes and other miscellaneous contraband narcotic material.

After this, the officers observed respondent Rodger Minor come from the house and retrieve the trash barrels and place them on the front porch of the house. At this point, the officers went to the house, they arrested respondent Minor, affected entry, conducted a further search, and ultimately arrested respondent Judith Krivda.

In this context, then, two important questions arising under the Fourth and Fourteenth Amendments of the Constitution of the United States are presented here.

The first is whether Fourth Amendment protection extends to garbage, in this case, which has been placed on the curb and, for all intents and purposes, appears to have been abandoned to the trash collector.

And, secondly, whether, under the circumstances in this case, the application on the exclusionary rule is constitutionally compelled.

With respect to the first issue, petitioner submits that this case is controlled by this Court's precedents set in the cases of Hester v. United States and Abel v. United States.

In the latter case, Mr. Justice Frankfurter wrote that there is nothing unlawful in the government's appropriation of abandoned property.

And I submit to this Court that it is clear in the context of this case that this property was abandoned and that the respondents herein retained no further privacy interest protected by the Fourth or Fourteenth Amendment.

Under the circumstances in this case, it is clear that they were acts of abandonment, first, by placing the trash into the trash container, and, secondly, the abandonment of the trash was further confirmed by the fact that the barrels were placed upon the curb for collection by the trash collector. And, finally, I think we can draw a further inference of an intent to abandon by the fact that the

residents of the house did not attempt to intercept these trash barrels when the trash men came to collect them, or in any manner attempt to retrieve them, when apparently they were within the house, since Rodger Minor was later seen to emerge from the house and retrieve the trash barrels.

I think, in the context of this case, it is clear that privacy was at an end; that the Constitution protects, with the Fourth and the Fourteenth Amendment, as the Fourth is applied to the States, basically the fundamental proposition that a man's home is his castle, and things around his house are protected. But when we extend privacy beyond these fundamental principles, these fundamental areas, we get into a very tenuous area where we don't have the privacy interest, we don't have annexes that connects the personal Fourth Amendment rights of the individual with the property seized or the place that is ultimately searched or the material that is ultimately examined.

I think that if we look at the text of the Fourth Amendment, it speaks in the possessive, that persons have the right to be secure in their houses, papers, and effects, but it speaks of their papers and effect, and the "their" portion of the amendment ceases when property is abandoned.

QUESTION: You mean it's no longer theirs?

MR. LUNGERICH: It's no longer theirs; that's correct, Your Honor.

QUESTION: But I thought this was a possession prosecution.

MR. IUNGERICH: Well, I think the question of possession, I think that was raised in the opinion of the California Supreme Court in a footnote, in California vs. Krivda, but I think if we analyze, we are dealing with two separate matters here, as to whether there is sufficient evidence to convict, and whether there is probable cause for arrest.

And I would present this example to the Court: The example of a man who sees a police officer approaching, and at that point he throws a bundle of heroin on the ground. The courts have said the bundle of heroin --

QUESTION: We've seen cases like that here.

MR. IUNGERICH: Yes. -- the bundle of heroin is abandoned, but no court has ever held that the fact that the man had possessed it recently, had possessed it prior to the abandonment, that that could not be used as circumstantial evidence to subsequently convict him, having had dominion and control at the prior point in time.

And I think that those two fundamental questions need to be separated. I think that the California Supreme Court's opinion, with the footnote, suggests that possibly there would not be sufficient dominion and control is inadvertent and those facts were not before the court. And I think that

it is improvident that that statement was made in the opinion.

But I think that the two questions are wholly separate.

The question here is whether or not the police officers had the right to examine this property in the well of the trash truck, and certainly these particular respondents had no fundamental right of privacy protected by the Fourth Amendment in the location, one block away from their home, inside the well of the trash truck, or with respect to the material that was examined, which had been abandoned by them. And I think there's no question that they voluntarily relinquished all further rights or interests in that property.

QUESTION: Would the case be any different if the barrels had been on the back porch, where the trash collectors had to go through the property, across the front lawn, to get it?

MR. IUNGERICH: I think that the case might be fundamentally different under those circumstances.

QUESTION: All right. All right.

MR. IUNGERICH: I think there the immediate protection with the areas immediately around the house, for the protection of these contents, in other words, they might --

QUESTION: You mean in that circumstance, putting the trash in the barrel would not be an abandonment?

MR. IUNGERICH: Well, I think it would be possibly --

I think that it would show an abandonment. But I think that there we would have a conflicting situation. In other words, that the contents of the trash barrel at that point may have been abandoned, may somehow be protected because the trash barrel at that point is owned by the individual and it is within his backyard, for example, as it was in Edwards. I think that there may be some situation. That's not the situation we have here.

QUESTION: That's because of the protection given to his home, --

MR. IUNGERICH: That would be correct.

QUESTION: -- isn't that correct? And the same would be true of something in a wastebasket inside his living room. He might have abandoned it, conditionally at least, but the reason that's protected is because his home is protected; is that right?

MR. IUNGERICH: That would be the way I would distinguish the case, yes, Your Honor. That would be, of course, different from the situation in Abel, where the man had vacated a hotel room and the contents were found in the wastepaper basket; there, of course, they would be abandoned.

QUESTION: That was no longer Abel's home because he had given up the room.

MR. IUNGERICH: That's correct.

QUESTION: On the other hand, somebody's property,

I suppose, is protected, even in another person's home; is that right, under the Fourth Amendment? If I lend you a chattel, have I got standing to object to an unlawful search of your home where that chattel is seized?

MR. IUNGERICH: Not under the Alderman decision of this Court, I don't believe, Your Honor. I don't believe you would have standing.

I think under California, under People vs. --

QUESTION: It's my property, those are my effects, that have been unlawfully searched, and have been seized. Let's say I lend you some guns.

MR. IUNGERICH: But I think there would be a question there as to whether you could raise an objection at that point to the unlawful seizure. In light of the fact that, I think probably the crucial distinction there would be that there would be nothing to indicate the fact of possession to the officer, whether located in the different location. I don't know whether we would have a right of privacy there. I could see a right of privacy, perhaps, when you deposited your chattels with --

QUESTION: Well, you say, you read to us, you put it to us, the language of the Fourth Amendment, where it talks about a person's effects. And among my effects I own three shotguns. I lend them to you to go hunting. And they're in your house. There's an unlawful search of your house, and

an unlawful seizure of those guns. Do I have standing to object to that?

MR. IUNGERICH: I would not think so, because I think there again we've got -- we have a question of -- you have -- actually under those circumstances, I think it would be the question of having assumed the risk that possibly there would be an invasion of your privacy where you would not be there to assert your own personal rights.

QUESTION: This isn't an invasion of my privacy, it's a seizure of my effects, an unlawful search and seizure. That's covered by the language of the Fourth Amendment, isn't it?

MR. IUNGERICH: Yes, but I don't think that that -- that the coverage of your effects, in that sense, I think there has to be some closer -- first, I think it's important to look in terms of the -- of being secure in those effects. I think somehow your personal connection with the effects has to be manifest at the point to someone outside, that they are your effects, or that they are likely to be the effects of someone other than the person who is in that particular dwelling, and holding those particular chattels.

Now, I think that under the circumstances a police officer, for example, would not be able to discern that they were your effects, from the fact that you have lent them to someone else. And under those circumstances, I think that

he would be judging it on the basis of the reasonable probabilities involved, that they belonged to the person in the house and not to you.

I think, under those circumstances, I wouldn't -- I think that we might make an exception, from the language as it's stated in the Amendment. I don't know that it's an exception, but I don't think it would be applied to that situation.

QUESTION: Isn't the whole point of the other side that the man assumes that his garbage will not be turned over to the police? Period.

MR. IUNGERICH: I don't think that's a reasonable assumption, Mr. Justice Marshall.

QUESTION: Why not?

MR. IUNGERICH: Because I think that when a man abandons property --

QUESTION: Well, the police are not in the garbage business.

MR. IUNGERICH: I don't believe the police are in the garbage business, but, on the other hand, I think the question has to be: Has the man exposed -- as we speak of -- as this Court has spoken of in Katz, where he has exposed this particular material to the public, his privacy interests are at an end. In other words --

QUESTION: But I would -- well, suppose the can was

covered?

MR. IUNGERICH: I believe the cans in this case were originally covered.

QUESTION: Well, don't you think that he would assume that nobody would get in there?

MR. IUNGERICH: I don't believe so, Your Honor, because it's well known that the garbage man, himself, is going to actually empty those cans and possibly observe the contents.

QUESTION: Well, where did this -- what town did this occur in?

MR. IUNGERICH: It occurred in the City of Los Angeles.

QUESTION: Well, how many times do the police examine garbage in Los Angeles?

MR. IUNGERICH: I don't have the statistics on that, I was unable to locate any statistics on the number of times.

QUESTION: Well, I still say, couldn't I assume that the police would not look into my garbage?

MR. IUNGERICH: I don't think it's a question of whether you can assume that the police would not look into your garbage, because, I think you could also assume that there is a likelihood that the police would not search your house, with or without a warrant. There is also a strong possibility that the police would not arrest you.

But I don't think that that necessarily shows that you have a reasonable expectation of privacy.

The circumstances are under --

QUESTION: I don't know of any better act of privacy than to have my garbage co-mingled with a thousand other people's garbage.

MR. JUNGERICH: Well, I think what that proposition ultimately leads to is that we create a constitutional sanctuary for the disposal of evidence. In other words, if a man, for example, -- and changing the facts of our case at this point -- but assume the police had not received the telephone call that they did but rather received a phone call from an anonymous informant who said that the man who lived inside this house had murdered his wife, and that they were unable to verify that, but they did see the trash cans. And assume further that this man had dismembered his wife and put the portions of her body in brown butcher paper inside a can.

The police would then -- would, under the circumstances of this case, if they attempted to look at the contents in the well of the trash truck, would actually be barred by a constitutional rule to the contrary to the position that the petitioner takes in this case, they would be barred from ever reaching that evidence, and this man would be given a sanctuary for the disposal of this type of evidence, and actually from the disposal of the body.

QUESTION: Well, I think we could decide this case without allowing somebody to hide a dead body.

MR. IUNGERICH: Well, I don't think that there -- that most -- I don't think the --

QUESTION: Well, why didn't the police look in the cans themselves?

MR. IUNGERICH: Well, I think that the police did not look in the can because they felt that perhaps if they were aware of the Edwards decision that that might violate -- well, rather than -- they wanted to get it as far removed --

QUESTION: I think you were right the first time.

MR. IUNGERICH: Well, I don't think -- there is the possibility that if it were still on the curb there might be a chance of it being within the curtilage. And I think to be on the safe side, that the officers had the cans, you know, had requested in this case that the cans be placed within the well of the trash truck, where it was a clear situation.

And I think the only thing I can say in this case that could account for that is that it was good police work rather than bad police work, in light of the decisions of this Court.

In other words, in this case the officers tried, as best they could, to have the minimum possible intrusion. And I don't think that one, a man expects to have the right of privacy in his garbage as a general rule. I would think, if

you would ask the general man on the street actually where his garbage came to rest, he would probably tell you that he didn't even care. And I don't think that most of us are concerned about the disposition that takes place afterward. We are concerned about privacy.

I think the question also, as I pointed out, major credit card companies advise their card holders to cut the cards and to actually destroy the cards and mutilate them before they go into the garbage can. And I think that proceeds on the inference that the public doesn't expect privacy, that the public expects today -- and colleges, for example, comb over garbage to find whether there's recyclable material; they expect the possibility of dogs or cats or nosy neighbors to look inside the trash cans, and possibly scavengers on the street.

And I think under these circumstances, while there may be a subjective expectation among some people, that there is a privacy interest protected by the Fourth Amendment.

I don't think that that is a reasonable expectation, in light of the fact that the man has departed his control over this particular item of property. He has abandoned it. He has done what is the classic definition of abandonment, he has thrown it away.

I think that it is one thing to say that a man's home is his castle; it's another thing to say that the garbage

dump is his castle.

QUESTION: Well, let me bring you back to your concessions, I think it was, a little while ago that if these cans were on the back porch the situation would be different.

MR. IUNGERICH: Yes, Your Honor. But --

QUESTION: Well, who owns the curb on which these cans were standing?

MR. IUNGERICH: Well, I don't believe it's clear from the record in this case. I am familiar with the rules in Los Angeles, as far as setback regulations, and the county or the city, in this case, would own that property or have an easement upon the property out in front, on the parkway.

I think, under the circumstances of this case, however, we have removed even from the point at which the garbage was out at that point on the parkway, because the ultimate examination which took place took place in the well of the trash truck a block away from the location. So, I think, at that point there's no question that there was any curtilage involved here, or protection of the area of the domestic economy around the house.

I think, however, there's still no question that the property was abandoned. If the police officers did look into the trash cans at that point and did retrieve something from the trash cans, that property was abandoned property and, under the holding in the Abel case, it would -- if it is

abandoned, it would not -- would be reasonable to appropriate it, as these officers did.

QUESTION: Are you saying that it is not abandoned on the back porch, but it is abandoned on the curb?

MR. IUNGERICH: I'm saying that -- yes, Your Honor. I'm saying that if we assume that that is government land in front, in other words --

QUESTION: I thought you responded to Justice Stewart by saying, yes, it's abandoned even when it's on the porch, but it's still in effect in his house, and therefore protected by the explicit terms of the Constitution.

MR. IUNGERICH: Yes, I think I made a slip of the tongue here when I said that -- it is abandoned at the point it's on the back porch. And that is my position. That there may be some protection from the Fourth Amendment in the area around the house or connected with the house at that point.

QUESTION: Also, I suppose, it's a factual inference that it might be more conditionally abandoned. Sometimes people put things in the wastebasket and, while it's still close to them, they decide to get it back out. Yesterday's paper, for example. They'll say, well, we put that in the garbage can, but I wanted to see an article in it. I'll go out and get it.

MR. IUNGERICH: Well, I don't think --

QUESTION: Whereas, if it's put far from the house,

it's unconditional.

MR. IUNGERICH: I would think so. I would think that would distinguish the Work case from this case, where there as an inference, possible inference, of hiding something in a can, which differentiated it.

I think that --

QUESTION: Mr. Iungerich, are you going to address yourself, sometime during your argument, to the basis for the Supreme Court of California's opinion as to whether it did decide the case on a federal constitutional ground?

MR. IUNGERICH: Yes, Your Honor, I could do that now.

QUESTION: I was hoping you would come to it at sometime in your argument.

MR. IUNGERICH: Well, this question, I think, is fairly clear from the -- this goes to the argument that respondent has made, that certiorari has been improvidently granted, as I would understand Mr. Justice Rehnquist.

Is that the question?

QUESTION: Yes.

MR. IUNGERICH: Well, I think it's clear from the opinion that the California Supreme Court rested its decision on the Fourth and Fourteenth Amendments and not upon any separate ground. You find no mention of either Article I, Section 19 of the California Constitution, which is the search

and seizure analog in the California Constitution, or to the Cahan rule.

And I think the case is just clearly set forth, from the language of Mr. Justice Burke, that he relied upon the Edwards and Bradley decisions, which may be ambiguous, but he said he relied on them only to the extent that they relied upon like principles in Katz vs. United States.

And I think that there is no question from that that he was relying on federal and not State law.

So, therefore, I think --

QUESTION: This case came up on a motion to suppress, I take it?

MR. IUNGERICH: Well, it was a --

QUESTION: Did it?

MR. IUNGERICH: Yes, Mr. Justice White.

QUESTION: Is the motion in the record?

MR. IUNGERICH: The motion to suppress is -- the argument on the motion to suppress is not in the Appendix, Your Honor.

QUESTION: Well, is the motion? Was it an oral motion, a speaking motion?

MR. IUNGERICH: Yes, it was, Your Honor.

QUESTION: Is there a transcript of what kind of motion was made?

MR. IUNGERICH: Yes. There was a motion to

suppress.

QUESTION: On what ground?

MR. IUNGERICH: And it was made on the ground that this was an unreasonable search and seizure. There were actually two --

QUESTION: Under what?

MR. IUNGERICH: Under the Fourth Amendment, I believe. I haven't --

QUESTION: Don't you think that's rather important to know, what issues were presented to the court?

MR. IUNGERICH: Well, I think, Your Honor, the question is --

QUESTION: And what the court was purporting to -- the State Court might well have reached the State ground first, if the State ground was presented to them.

MR. IUNGERICH: Oh, I don't -- I don't think that that is what Your Honor, what the opinions of this Court, Mr. Justice White, have indicated this Court looks at. This Court has indicated that it looks to the decision of the court itself, that it examines --

QUESTION: Well, I'm interested in the motion. Is it around somewhere? Can you find it?

I don't think it's in the printed portion -- but there was a transcript of the proceedings lodged?

MR. IUNGERICH: Yes. There was no transcript of

the proceedings lodged, as far as I know, with this Court.

There is a transcript of the proceedings.

QUESTION: Well, wouldn't a typical motion to suppress made by a defense counsel in the Superior Court in California raise both State and Federal grounds, if you're talking about unreasonable search and seizure?

MR. IUNGERICH: Well, I don't think necessarily they would. I have heard many motions to suppress evidence in the California court, and I don't think I've ever heard one that's been specifically argued on the basis of the California Constitution.

The reason for that is our exclusionary --

QUESTION: Well, the California Supreme Court has decided some search and seizure questions specifically under the California Constitution.

MR. IUNGERICH: I don't think there has ever been a California case that's decided expressly that the case is determined under the California constitutional article on searches and seizures. I think that if you examine --

QUESTION: Isn't it identical with the Federal?

MR. IUNGERICH: It's identical with the Federal one, Your Honor. But I don't think there's any case that has said that specifically the question --

QUESTION: So, in this case, if we ruled the same way and give you all the relief you want, couldn't California

say, well, we'll do it on the State one?

MR. IUNGERICH: I think California could well predicate it further on State grounds. But I don't think that's a ground for --

QUESTION: Under what ground?

MR. IUNGERICH: Well, under the circumstances, we would have a clear ruling that it was not required under the Federal Constitution. I think that that same situation was involved in California vs. Byers,[?] which this Court reviewed, which dealt with a Federal Constitutional question dealing with the Fifth Amendment.

QUESTION: Well, didn't your Supreme Court adopt the exclusionary rule before we ever applied it in Mac --

MR. IUNGERICH: Yes, and --

QUESTION: And didn't they do it under your State Constitution?

MR. IUNGERICH: No, they did not, Mr. Justice Brennan. They predicated -- the rule was stated as a judicially declared rule of evidence that was not constitutionally compelled, and in the specific language of Mr. Justice Traynor in that opinion, said that: absent any compulsion from the Federal Constitution --

QUESTION: Well, now, what about the difference between the standing rule in search and seizure cases, as announced in your Supreme Court and the Federal rule?

MR. IUNGERICH: Yes. Well, most recently in the Kaplan decision, in 6 Cal. 3d, the California court expressly stated, and there's a clear footnote in that opinion, which states that they do not reach the question of whether that standing rule is required under Article I, Section 19 of the California Constitution. They avoided the question entirely.

I don't think it was --

QUESTION: Well, on what did they predicate it?

MR. IUNGERICH: They predicated it on the fact that they were relying on -- that this rule had continued since the Cahan days, and that they did not feel that since it had been an established practice in California for such a long period of time that it should be overturned.

And I think they distinguish in the opinion the question of standing from a question of Fourth Amendment protection.

QUESTION: Now, your comparable Fourth Amendment provision in the California Constitution literally tracks it, it's not identical in phraseology with the Fourth Amendment, is it?

MR. IUNGERICH: It has one minor difference. They are virtually identical. The difference is that it's seizure and search rather than search and seizure.

QUESTION: Now, you're familiar, I am sure, with your Supreme Court's decision in the Sirano case, it doesn't

involve this, but a tax case?

MR. IUNGERICH: I am familiar with the case, I'm not familiar with all the facts of the record in that matter, Your Honor.

QUESTION: Well, I'm thinking of the opinion. I noticed, in reading the opinion yesterday, that, like this one, it relies upon the constitutional decision recently in this Court in reaching the conclusion it did on equal protection. Yet it had a footnote in which it said that the question under the State Constitution was raised, and since the State Constitution provision is virtually the same, what we say here for the Federal Constitution goes for the State Constitution.

MR. IUNGERICH: Well, I don't think that that's clear from the California decisions.

QUESTION: In this case?

MR. IUNGERICH: In this case. And under the search and seizure question.

And secondly, --

QUESTION: Could I -- could we have -- would it be possible to get the transcript, or some supplement, indicating what the motion was?

MR. IUNGERICH: Yes, I'm certain we can, Your Honor. Possibly by the end of the week, since it would be --

MR. CHIEF JUSTICE BURGER: If you would supply a copy to the Court and supply a copy to your friend.

QUESTION: Now, again, last term, in the death penalty case, the California Supreme Court clearly rested its decision in the death penalty cases on the California Constitution, and said so, didn't it?

MR. IUNGERICH: Yes, it did, Your Honor.

QUESTION: Well, is that the practice of that Court, when it does it, to say so?

MR. IUNGERICH: I think it most certainly is, Your Honor. I think that they most clearly come forward and state that they are relying on that. And, as the Anderson case quite --

QUESTION: And yet it's only a few years ago, I can't remember the name of the case, we had to send one back to the California Supreme Court because we couldn't tell, reading its opinion, whether it rested on State or Federal Constitution. And they reviewed it and said, Well, anyone who can read would know we rested it on State constitutional grounds.

I couldn't.

MR. IUNGERICH: Well, I think we don't have that ambiguity in this case. I think you must be referring, Mr. Justice Brennan, to the Kirschner opinion. But I don't think --

QUESTION: Kirschner is what I'm referring to.

MR. IUNGERICH: But I don't think we have that same situation in this case, because there isn't any ambiguity in this opinion, and I think the cases that --

QUESTION: Well, it reads to me much as the Kirschner opinion did.

MR. IUNGERICH: I think the difference here is that the California -- Mr. Justice Burke expressly states in this opinion that he's relying on California law only to the extent that it is compelled by Katz in the decisions of this Court.

And has clearly indicated in -- they could indicate in some possible reference. In the other decisions they did mention, in the prior decisions and garbage collection cases, the Edwards decision and the Bradley decision, they indicated that the case did have emanations in the California constitutional articles.

In this case there were none.

MR. CHIEF JUSTICE BURGER: Thank you.

Mr. Hanson.

ORAL ARGUMENT OF ROGER S. HANSON, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. HANSON: Thank you, Your Honor.

Chief Justice Burger, and may it please the Court:

I'll pick up where Mr. Iungerich left off here, because I think it's important to this Court to realize that this case, People vs. Krivda, was the second California garbage can decision. The first case, People vs. Edwards, 71 Cal 2d 1096, dealt with a situation slightly different. In Riverside County, California, which is a more rural type

of county, the police the police vaulted the back fence of a home of the Edwardses, came upon their property, went into the garbage can, that garbage can was setting on the back step. In that particular case the California Supreme Court held, five to two, specifically stating, under Article I, Section 19 of the State Constitution, that it was an illegal search and seizure. Also relying, of course, on the Fourth Amendment.

And I think in this particular case there is no ambiguity whatsoever, and I would like to call the Court's attention to my brief, starting on page 91, I have cited verbatim the Edwards opinion, excerpts from the Edwards opinion. I'd like to simply call that to the Court's attention, on page 92 of my brief.

It says: Accordingly that search was unlawful under the Fourth Amendment of the Federal Constitution. It similarly violated Article I, Section 19 of the California Constitution. The trial court thus erred in admitting the evidence found in the trash can. People vs. Edwards, 71 Cal 2d 1096, at pages 1104 and 1105.

Now, in the Krivda decision.

QUESTION: And Justice Burke wrote that opinion, didn't he?

MR. HANSON: Yes, Justice Burke wrote that opinion. Justice Burke also wrote the Krivda opinion.

Going over to page 93 of my brief, at page 367, the

California Court said, and I quote now from Krivda:

It is also clear, as in Edwards, that defendants' reasonable expectation of privacy was violated by unreasonable government intrusion. See People vs. Edwards, supra, 71 Cal 2d 1096, 1104 and 1105.

We should hesitate to encourage a practice whereby our citizens' trash cans can be made the subject of police inspection without the protection of applying for and securing a search warrant.

QUESTION: Mr. Hanson, you contend, I take it, that it's patent that the Supreme Court of California relied on the State grounds, your opposing counsel apparently contends that it's equally apparent that it relied on the Federal grounds.

If we should be in some doubt, wouldn't the natural thing for us to do under the present would be to remand under Minnesota vs. National Tea and that line of cases?

MR. HANSON: Oh, I don't think there's any ambiguity, Mr. Justice Rehnquist.

QUESTION: Well, suppose we should conclude there is?

MR. HANSON: Well, I suppose --

QUESTION: Do like we did in Kirschner.

MR. HANSON: Well, that's within the decisions of this Court, but I just don't see --

QUESTION: But that's what they insisted, so that's why we did it in Kirschner.

MR. HANSON: Well, I'm not familiar with Kirschner, I'll be honest with the Court.

But in this particular case there's no question that Edwards overtly was decided on Article I, Section 19 of the California Constitution.

QUESTION: Well, there seems to be no question, I gather, that, not as overtly at least, the Krivda opinion makes no reference to it.

MR. HANSON: No, I disagree with that, because it cites exact paginations where this decision is found, 1104 and 1105 of 71 Cal 2d 1096.

QUESTION: All right.

MR. HANSON: And I would appreciate the Court peruse pages 92 and 93 of my brief. I think it's as clear as a bell. No question about it.

QUESTION: You mean that incorporates those very discussions of the California grounds?

MR. HANSON: Very definitely. Very definitely.

QUESTION: Your position, the only way it could make it clear, would have been to put the quotes in, in that. That's the only way.

MR. HANSON: Well, I don't see how it could be --

QUESTION: And yet that's not necessary once they cite the pages.

MR. HANSON: That's correct. That's correct.

QUESTION: Could I ask you -- you made the motion, apparently, in the lower court?

MR. HANSON: Well, I was not trial counsel at that time.

QUESTION: Did you know -- have you read the record?

MR. HANSON: No, I haven't.

QUESTION: You don't know, then, whether the State ground was ever presented to the State Courts?

MR. HANSON: No, I do not.

But it certainly was decided --

QUESTION: Let's assume it was not.

MR. HANSON: Well, I don't think that matters, I think it's what the California Supreme Court decided in this case, and they decided it was illegal under the State Constitution.

QUESTION: Well, you say, it's your argument that they did decide under the State Constitution, and yet they didn't say so expressly. You say they did, I don't see it in there expressly. But would it make any difference in the interpretation of their decision as to whether that ground was even before the court?

MR. HANSON: I don't think so, not in the opinions of this Court. I think in all the opinions of the Court, the Court simply goes to what the State Supreme Courts base their opinion on. And that's my understanding of reading the

Minnesota vs. National Tea and so forth.

Now, in addition, I think that the second point is it really doesn't matter because under this Court's decision in Cooper vs. California, which I have cited repletely in my brief, it doesn't make any difference because the State Supreme Court of California is permitted, as far as this Court goes, to provide more stringent Fourth Amendment protection than this Court is mandating under the Federal Constitution. And I think impliedly, impliedly, the California Supreme Court has given protection to the domestic garbage can.

Now, I'm familiar with the fact that the Supreme Court of Wyoming and the Supreme Court of Oregon and several of the lower Federal courts have not gone along with protection of domestic garbage cans. But that is not material, because, I think that Cooper vs. California stands as authority for the fact that a State Supreme Court can give more rigid Fourth Amendment protection to its citizens if it wishes to.

QUESTION: But isn't that just the situation that obtained in Kirschner and obtained in Minnesota vs. National Tea? This Court didn't question the fact that the State could afford broader protection in the Federal Constitution, but we felt it was unclear whether or not the State had felt compelled by the Federal Constitution or was acting under its own aegis.

MR. HANSON: Well, all I can again certify to this

Court is that in the Krivda opinion it cited specifically pages 1104 and 1105 of the Edwards decision, which was very explicit on Article I, Section 19 of the California Constitution.

Now, while it did not say we are going beyond the Federal Constitution -- I agree to that, it did not say that in this opinion, that we are going beyond what the Federal Constitution required in giving protection to this garbage can, certainly impliedly that's what happened in this particular case.

The California Supreme Court, I think, is a very erudite court. It's a court that studies these things very closely. It is probably the leading State Supreme Court in the United States. And I think that these cases were very thoroughly studied by that Court. And it gave this protection.

Now, one thing that I think is very important in this decision is there has always been, from the point of view of the State of California, that this property was abandoned. Now, it would be my contention, if it please the Court, that the concept of abandoned property deals with not Federal matters. It deals with what the State Supreme Court decides constitutes abandonment in the State of California.

Now, my opponent has cited in his brief certainly Law Review articles. He cited the law of the State of New York. The question is, what is the law of the State of

California concerned with abandonment?

I think, first of all, we've got to say that anybody that really overtly places contraband in the trash can, or deals with contraband, is vitally concerned with what happens to that property. This is, after all, a prosecution for possession. And if it's a prosecution for possession, the people are deemed to still have some type of possessory interest in this particular problem.

QUESTION: Well, I thought the theory was only that it was circumstantial evidence of the fact that they did have possession.

MR. HANSON: Well, surely; that's correct.

QUESTION: Not that they still possessed it when it was in the garbage can.

MR. HANSON: All right. Very well. But the question is: are they concerned as to what happens to it and who thereafter may get ahold of it?

And in our Supreme Court decision of People vs. Irwin, which is 1 Cal 3d 423 opinion. The Supreme Court of California again says the following: Abandonment is defined as the voluntary giving up of a thing by the owner because he no longer desires to possess it or to assert any right or dominion over it -- and now the important thing -- and is entirely indifferent as to what may become of it or as to who may thereafter possess it.

I would suggest to this Court that if in fact we have a bona fide dealing in contraband, anybody that does that, if you're dealing in cocaine, you're dealing in heroin, --- and I deal with these people all the time out in California in defending them -- they are vitally concerned with what happens to it. And so under the strict definition of abandonment, it has not been abandoned as defined by the California Supreme Court. And that is not, I would suggest to this Court, a constitutional issue, which this Court may take a look at.

The question is, what has our State Supreme Court said about it? I say that they have said it is not abandoned in this particular case.

Now, furthermore, the decisions of the California Supreme Court, again in the field of search and seizure, in our Marshall decision, at 69 Cal 2d 51, and in our Magrue decision, 1 Cal 3d 404, there is language in those decisions that specifically preclude the going into closed, opaque containers without a search warrant. It is not confined to containers within the home. There is a triumvirate decision, Magrue, Aft, so forth, in 1 Cal 3d, which proscribe going into closed containers at airports.

So we have a closed garbage can here. Not only do we have a closed garbage can, but within that closed garbage can we have closed, opaque brown bags. And they could not have

gone in those bags without violating the California law, without getting a search warrant.

Now, the fact that they didn't do that, of course, is because the garbage haulers, employed by the police as police agents, the police told them exactly what to do: intercept the truck a block away from the house, go pick the stuff up, make sure the well of the truck is cleaned out so there's no co-mingling, take it a block away. They directed everything they did, and it's my contention that these garbage haulers became police agents for the purpose of this particular pickup.

QUESTION: I think, Mr. Hanson, the Supreme Court of California used the word "requested", didn't it, when it spoke of the context between the police and the garbage haulers?

MR. HANSON: Well, I don't know. I'm sure that they probably requested or demanded or commanded something of them. I suppose it was a friendly confrontation. I don't know exactly how it --

QUESTION: You think there's no difference between the word "commanded" and "requested"?

MR. HANSON: Oh, I'm sure there is, usually a difference in being "requested". But, you know, garbage haulers are generally not the most educated people, and they, I think, are more compliant with the request of police. I

don't think they question anything that they want them to do. They went ahead and did this. And I think, under the general Stoner vs. California, and Chapman vs. United States rationale, it is expected that a maid will clean your room, but it is not expected she's going to lead them on a tour of your possessions. When you rent a house, it's expected that the man may come in to inspect the premises, but it's not expected that he's going to bring the revenue agents in, under Chapman vs. United States.

I think that is axiomatic in this particular case. It is not expected that these garbage haulers are going to comply with a request of the police department.

Now, furthermore, --

QUESTION: Mr. Hanson, let me just interrupt you there. Your opposition, the Attorney General, in his reply brief, contends that a City of Los Angeles ordinance exempts city officers, such as policemen, from the general prohibition against tampering with garbage containers. Do you agree with that interpretation of that ordinance?

MR. HANSON: No, no, definitely not. I think the Court's attention must be referred to Section 6603 of the City Code, and Section 6629 of the City Code. Now, if it be contended that officers are exempted, they're certainly employees of the City, and Section 6629 says this, it says: No employee of this city shall remove or dispose of, for said

employee's benefit or use, any of the contents of any vessel, tank, or receptacle used for the collection or removal or disposal of rubbish.

So I think -- first of all, I'm not conceding whatsoever that an officer in the context that's used there is a police officer. I think that's a garbage officer of some nature. There must be a chain of command in the garbage business also, and I'm not suggesting that this in any way permits police officers to go after this. I don't think it does, at all. And, anyway, they're employees, and so Section 6629 does not permit them to do this.

While in general I admit the rationale of this Court in Abel, but, nonetheless, in California vs. Krivda we have a very heavy regulation on California garbage, very heavily regulated, and it just absolutely precludes this particular behavior that took place in this case. And not only does the municipal county ordinances preclude it, but they, taken in context with the Ninth and Tenth Amendments to the U. S. Constitution, suggest to me that where the States have not overtly legislated and where the federal government has not overtly legislated, then it is up to the citizens, acting through their municipalities, to legislate. And these statutes actually absolutely preclude this type of confiscation of the garbage can.

Now, those are the threshold laws, and I would like

now to address myself to the merits of the case.

Anybody that says, in recognizing the certified question, the certified question that came up to this Court was whether there is -- whether anybody who takes contraband and puts it in a garbage can and puts that curbside exhibits a reasonable expectation of privacy, that that garbage will not be viewed in the well or the bin of the garbage truck some distance away from pickup and prior to co-mingling.

Now, I have a little garbage truck here, which I purchased over in Virginia yesterday, and this little garbage truck is one exactly like we have in California, and to insure that the Court understands what California garbage trucks look like, this is what they talk about when they say the well of the truck. This is the well of the truck back here.

And, characteristically, these trucks move around the streets in California, and they have a very heavy schedule to meet, a lot of homes to meet, and there will be a man standing on the back of this truck and a man driving the truck, and they will drive up to a home, this man will jump off the back of the truck, he will take the cans, he will up-end them into the well, he will hit a hydraulic button and within two or three seconds it is elevated into the truck. Within two or three seconds it is elevated into the truck.

There is absolutely no opportunity, no practical opportunity at all for this to be viewed in the well of the truck. This is a very smelly place, it is covered with dust, when they dump these cans in here, there is an emanation of dust that comes out of the end of it. I would suggest to this Court that it is not practically nor reasonably to expect that anybody is going to view what's going on in the well of that truck.

That button is hit, it is gone in three seconds, and actually, even though this model of the truck has the top of it gone, the California garbage truck is closed there, and this garbage disappears into that truck within the twinkling of an eye, and nobody ever sees it again until it's out to the dump. And in California, one of the big uses of garbage is for land fills. We have a lot of mountains out there, and they are dumped in mountains, and they're covered over by bulldozers.

Now, I have a movie with me, and if the Court would take a look at it before this Court decides this case -- it is two minutes and 57 seconds, it is a totally unrehearsed movie, which is in color, in 16 millimeter, and it shows California garbage. I personally --

QUESTION: Is it obscene?

MR. HANSON: What's that? No, it's not, but I presume there's a --

[Laughter.]

MR. HANSON: Because of the cases that are coming up --

QUESTION: Perhaps more important, is it in the record?

MR. HANSON: No, it's not, but, nonetheless, it is argument at least. It is argument at least, and it's factual. I represent to the Court it is not posed, it is very correctly done. It is done by myself supervising the taking of pictures of how they actually pick up garbage. It shows the California smog levels. There is a demarcation in California of a brown belt of smog and blue sky, and that is another reason why this has to be done in California.

QUESTION: Did the respondents in this case have anything to do with that picture?

MR. HANSON: Does what?

QUESTION: The respondents in this case.

MR. HANSON: The respondents? No, they did not.

QUESTION: Well, how will that help their position in this case?

MR. HANSON: Well, because it's very typical of how it's done, Mr. Justice Marshall.

QUESTION: Well, I mean, if he thinks it's private, does that help him or not?

MR. HANSON: Well, it shows. The question, again --

QUESTION: Is it your position that this man knew that all these things happen to garbage?

MR. HANSON: If he's at all alert, he knows that this is what happens to it, because I've seen many, many --

QUESTION: Well, then, why do you need the movie?

MR. HANSON: What's that?

QUESTION: Why do you need the movie?

MR. HANSON: Well, I thought it would help the Court to confirm my contentions as to how California garbage is picked up.

If the Court would view it, I'd appreciate it.

One of the things that I think is very important here is that really the California citizen operates under a contract of adhesion, really: he cannot get rid of the garbage any other way. You can't burn California garbage. You can't do anything like that, because of the smog levels out there. The only thing you can do, if you want to get rid of it at all, is carry it out to the curbside. You can't leave it behind your house, because if you do they won't pick it up.

You may be able to do that in some of the small towns, I don't know; but in the City of Los Angeles, the only way you can get rid of it, and it's covered by these statutes in my brief, is to carry it out to the curbside.

And the California Supreme Court, even in its

dissent, in its three-man dissent in the Krivda case, recognized the right of privacy in that can when it was on the back step of the home.

But somehow, and I contend this is an intellectual non sequitur, they seem to lose three votes when it was carried out to the curb, and I don't understand that, because this is what people have to do. If you did not do that, you would have the home being engulfed by garbage, because you'd never get rid of it. You have to carry it out to the curb to get rid of it.

My clients were doing only what they had to do in order to get rid of this.

We have a very regulated situation in California, and I don't think that these people can be held to have given up any right of privacy simply because they had to carry this can out to the curbside in order to get rid of it.

So, therefore, in my opinion, there is no distinguishment between the Edwards case and the Krivda case in the State of California.

Now, I think also of great importance is the following: Is there a possibility of detecting contraband under such circumstances? I defend in California a lot of drug cases. I have never seen, never seen at all, even licensed chemists who were able to detect contraband without doing analysis. And I'm talking here about marijuana and

pills and so forth; you can't tell the majority of white pills from aspirin tablets. So, therefore, you have a university-trained chemist who has to make quite extensive tests to detect contraband, and therefore I would contend that the average person, who would have a split-second chance to view contraband in the well of this garbage truck, would have no chance, no chance at all, to detect it whatsoever. You could not possibly detect it.

QUESTION: Mr. Hanson, where did you say the garbage ultimately goes in Los Angeles?

MR. HANSON: It goes to a landfill, Mr. Justice Powell, where it's plowed over by bulldozers, to make landfill.

QUESTION: How frequently is it plowed over by bulldozers?

MR. HANSON: All the time. They're out there all the time. When those trucks bring it out there, they're constantly out there, weaving back and forth on the land and disposing of it.

QUESTION: No incineration of it?

MR. HANSON: In general -- well, there may be, yes. There may be. But that's in this movie also. I'd like to have the Court take a look at it. This is an unrehearsed movie of the California dump, showing just what happens to this stuff.

QUESTION: Did the lower court see that movie?

MR. HANSON: No, they didn't. I made this movie two weeks --

QUESTION: Did anybody see it before now?

MR. HANSON: No, nobody has seen it.

But I again offer it to this Court for the realization as to what takes place in California garbage dumps.

QUESTION: You spoke of your client getting rid of marijuana, do you equate that to abandonment?

MR. HANSON: No, I don't. I equate this to a requirement as to how you have to dispose of something, and not --

QUESTION: What's the difference between getting rid of something and abandonment?

MR. HANSON: Well, under the general idea of abandonment, as far as I'm concerned, abandonment would be just some free will, free desire to get rid of something. Here you have a very regulated way that you have to do it. You're disposing of something pursuant to statute, pursuant to statute. You can't do it any other way in California. Unless you want to get in the business yourself.

QUESTION: You don't know of any other way to get rid of a marijuana pot than to put it in the garbage?

MR. HANSON: Yes, I think you could flush that down the toilet, or, as some people do who are kind of hard-pressed for it, they'll roll it over again in a new cigarette. I think

you could do that. But I don't know, I've never fooled with it myself, other than to represent these people. But I'm told that they will recycle their marijuana into new cigarettes when it gets down to the end.

Now, one thing, I think, that we've got to distinguish here is -- I'm sure the State of California is probably not suggesting widespread indiscriminate searching of garbage cans. If they are, I would contend, as I have in my brief, that this is a mathematical impossibility. It's a statistic impossibility, that there is just no possibility that this is going to be successful, when you talk about the number of police that can be devoted to it versus the number of garbage cans.

So, therefore, we have to talk about a situation where there's some type of information, some type of premonition that a can contains contraband, and in those particular circumstances I contend that the search warrant is the preferred way. Agalar vs. Texas, Pinelly vs. United States, Whiteley vs. Warden of Wyoming State Prison, all the various decisions of this Court, which actually require -- and I suggest also Coolidge vs. New Hampshire. As I read Coolidge, in the 91 Supreme Court Edition 2022, at page 2047, this Court has restricted the particular ways of seizing things any more to either a search warrant or as incident to a lawful arrest.

So instead of trying to muddy up the waters, instead of trying to complicate the field of search and seizure, this Court has simplified it by curtailing the means by which somebody can seize something.

So I think there's just a host of decisions going to the merits of the case, going to the law of California, going to the decision of the California Supreme Court, invoking Article I, Section 19, in the Edwards case, and incorporating that in the Krivda case, would just absolutely preclude this type of thing from happening. And I think the decision of this Court should be nine to nothing affirming the opinion of the California Supreme Court in this particular case.

I just can't see how it can be anything else, under the various things that have happened in this particular case.

QUESTION: Well, if the opinion of the Supreme Court of California rests on a State law ground, we wouldn't affirm it, would we?

MR. HANSON: You mean --

QUESTION: It's none of our business.

MR. HANSON: -- you'd dismiss it for want of --

QUESTION: We wouldn't affirm it, we wouldn't reverse it; that's a matter for the State.

MR. HANSON: Well, that may be true --

QUESTION: Jankovich, you cite the Jankovich case --

MR. HANSON: Indiana Toll Road; Jankovich, yes.

QUESTION: We dismissed it, didn't we?

MR. HANSON: Right. Correct.

Now, I think there's one other area I want to touch on in the closing minutes here.

I think there is a very pragmatic situation in this particular case. I think that if this Court would at all sanction a search of garbage cans, it is an avenue to open up numerous areas of fraud, because a garbage can, as this Court, I think, can almost take judicial notice, can be loaded by somebody who wants to get rid of somebody else. If I want to get rid of my neighbor, I go and deposit marijuana in the can, I make an anonymous phone call to the police department, I say, Mr. Jones at 123 Main Street has marijuana in the garbage can. Zoom, they come over, they descend on the can, they search it, and they find marijuana; and he's off to the pokey.

And if you don't think it's difficult to defend these drug cases in California, why, you've got another think a-coming, because I do it all day and it's very emotionally laden, and it's very difficult to get these people off if caught in any way with narcotics, before a jury. They think that they're guilty, there's no way you can do it. And I would suggest that if this Court in any way gives any credence to the desires of the California Attorney General,

we have some problems. We have some severe problems in this particular case.

I think also -- I think also we have the final threshold question as to the right of privacy of people to live their lives, to dispose of their life's tracings, if it might be birth control residue or if it might be a particular liquor that they want to use or something, I think that it is a severe encroachment upon their right of privacy, if this Court would in any way suggest that the California police should be given the right to indiscriminately search these cans.

Citing Griswold vs. Connecticut, I think that the birth control privacy of the bedroom should be extended to getting rid of that birth control material out into the garbage can. And also I think there is a severe equal protection problem, because if this whole matter depends on where that can might be setting, or whether he might be living in a rural area, residential area, I think it's a refinement that we don't want to go into.

Many people live in huge apartment houses, where there is co-mingling in a huge trash can. There you don't have the problem, because it's initially co-mingled, but if you don't have the situation where you're living under a circumstance like that, where you're living in a private home, of course, then you have to comply with the regulations of

the County of Los Angeles and the City of Los Angeles in how you get rid of this material.

QUESTION: So the whole Fourth Amendment, its applicability depends inevitably upon sometimes very subtle nuances and differentiation of fact, doesn't it?

MR. HANSON: Certainly it does. I recognize that.

Now, no one has said in argument yet about the general attack on Mapp vs. Ohio, but in the couple of minutes I have left, assuming my opponent is going to allude to it in his closing argument, I think that somebody of my particular educational status is not going to, in the few minutes, in any way attempt to overcome the scholars of the last fifty years who have considered, debated, discussed, published Law Review articles by the thousands on the exclusionary rule. I think that the State of California is now in a position where, frankly, there has been an addition of four new members to this Court, and I think they feel that they can take a new shot at the exclusionary rule. And I would suggest to this Court that this Court should not lightly consider an assault on this rule.

There is really no other practical way, no other practical way. Some people may say: pursue a 42 USC 1983 civil rights suit. But I would suggest to this Court that if somebody is caught with a bunch of cocaine and it is shown to be an illegal seizure, but because you can't exclude

it, the man is convicted, he does maybe ten years, he makes \$50,000 a year selling cocaine, he brings a civil rights suit to recover \$50,000 times ten years, or \$500,000, what jury -- what jury in the United States would give him ten cents? A man who is dealing in cocaine brings a civil rights suit to recover money because he's been illegally searched and seized, can anybody, in their wildest imagination, suggest that that man would get any money?

I don't think so.

There really is practically no relief under 1983 of the Civil Rights Act.

Some people may suggest, well, we should discipline the police. I don't think this is practical, I think this has been hashed and rehashed for years. It is not a practical way of handling it.

The only way it can be done is by this exclusionary rule, and I think that the scholars the last fifty years, emanating from Weeks vs. United States on down through Mapp vs. Ohio, have so considered, and there just is really no other way of doing it.

If the State of California is really sincere in this, I would suggest that this Court may give some credence to a parallel type of relief along with this exclusionary rule, to see how it works.

I think Mr. Chief Justice Burger, in the Bivens vs.

Six Agents of the Federal Bureau of Narcotics, expressed a reluctance to throw away the exclusionary rule until an alternate could be selected.

So I think that if there is any credence to be given to an alternate, let it go in a parallel manner to the exclusionary rule, and let's all investigate and see what happens.

I would suggest that the exclusionary rule would probably still be in effect, because the alternates are merely shams, that they really will not work too well.

California talks about restricting it to substantial violations, and I would suggest that we're getting into replete additional things which are going to be more complicated, because then you're going to have to decide whether there is a reasonable or unreasonable search, where it has already been held to be somewhat unreasonable.

I think you're going to have nuances on nuances on this particular thing, to the point where anybody that would want it to happen would give up in despair on it.

Even in the Amicus Curiae briefs, the reasons for doing away with it, the Americans for Effective Law Enforcement present statistics which show that the police are doing so well that in 84 percent, six out of seven cases, the attack on the search and seizure has been upheld as being correct.

On the other hand, California, in its brief, says, Well, the thing is so complicated, our police can't understand it.

I think that and that alone is reason for a disinterested, neutral magistrate, who's had training in law, to set and decide if it's legal or illegal.

Illinois says, and I'd hesitate to admit it, that their police are lying so badly, every time they get caught and they're challenged by a judge, why, they would be prone to lie in order to get the evidence in.

Well, I would suggest to the State of Illinois that if, in fact, that's their admission, that they ought to try and curtail the police from lying and go on the same rule that everybody else goes: that a judge is supposed to decide this.

MR. CHIEF JUSTICE BURGER: Mr. Hanson, I think your time is up.

You were appointed by this Court, and accepted the appointment, and on behalf of the Court, we express our appreciation to you.

MR. HANSON: Thank you, Mr. Chief Justice. It's a pleasure to do it.

MR. CHIEF JUSTICE BURGER: The case is submitted.

[Whereupon, at 12 o'clock, noon, the case was submitted.]