

ORIGINAL

In the
Supreme Court of the United States

ARKANSAS,

Petitioner,

Vs

LONNIE JAMES SANDERS,

Respondent.

No. 77-1497

Washington, D. C.
February 27, 1979

Pages 1 thru 53

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Washington, D. C.

Tuesday, February 27, 1979

The above-entitled matter came on for argument at
10:56 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the Supreme Court
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
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

JOSEPH H. PURVIS, ESQ., Deputy Attorney General of
Arkansas, Justice Building, Little Rock, Arkansas
72201; on behalf of the Petitioner.

JACK T. LASSITER, ESQ., McArthur & Lassiter,
800 Tower Building, Little Rock, Arkansas 72201;
on behalf of the Respondent.

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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 Arkansas v. Sanders.

Mr. Purvis, you may proceed whenever you are ready.

ORAL ARGUMENT OF JOSEPH H. PURVIS, ESQ.,

ON BEHALF OF THE PETITIONER

MR. PURVIS: Thank you, Mr. Chief Justice, and may it please the Court: I would like to reserve approximately ten minutes of my time, if I might, at the end for rebuttal.

The issue here before this Court is whether this Court is going to extend its holding in United States v. Chadwick so as to prevent law officers who are in the process of conducting a valid automobile exception search from searching luggage which is found within the vehicle.

Now, it appears to me that from the facts here there is no question but that what we have here is an automobile search. Digressing a little bit, this Court has held in Carroll, in Chadwick and in other cases that it will recognize an exception to the Fourth Amendment warrant clause, where there is probable cause to believe a vehicle contains contraband and it is coupled or the situation is coupled with exigent circumstances.

QUESTION: What are the exigent circumstances here that distinguishes it from Chadwick? You will tell us about that, will you?

MR. PURVIS: Mr. Justice, I think we are clearly talking apples and oranges, and I think in Chadwick this Court made it extremely plain, mentioning several times that it did not deal with nor was it confronted with an automobile exception search. The automobile exception in Chadwick was not raised in the Court of Appeals, nor was it brought before this Court. What you had there was a situation where the officers had made the arrest and had seized a 200-pound double-lock footlocker which was about to be placed into the trunk of a parked car with its engine not running, with the trunk open, but the search did not take place there. It was after the officers reduced both the defendant and the footlocker to their exclusive control and took both to the federal building in Boston where they kept them for an hour and a half before doing the search that led this Court I believe to say in no stretch of the imagination can we see exigent circumstances.

Here, on the other hand, we are faced with a search -- we are faced first of all with the defendant and a confederate whose existence the officers did not know until they saw him meet up at the baggage area of the airport, these individuals leave the baggage area of the Little Rock Airport, which incidentally is immediately adjacent to the door where the cabs are, leave the baggage area, they climbed into a taxicab, which is moving down one of the busiest thoroughfares

in town, away from the airport at 5:00 o'clock, in rush-hour traffic, on Friday afternoon, after the courts have closed for the weekend, to some point unknown.

QUESTION: General Purvis, if I understand your theory correctly, in Chadwick you would say the automobile exception would have applied if the agents had waited a few moments until they put the footlocker into the trunk of the car and then started the motor, is that right?

MR. PURVIS: I think it possibly would have, but I think certainly when you are speaking of a 200-pound double-locked footlocker --

QUESTION: Well, it still would have fit into the trunk, I think.

MR. PURVIS: Yes, sir.

QUESTION: And if they started the motor, it would be precisely like this car. And in your example about this case, the car wasn't moving when they got in -- the taxi wasn't moving when they put the suitcase into the taxi, was it?

MR. PURVIS: What you had, Mr. Justice --

QUESTION: Isn't it a different point in time when the officers chose to make the search? Isn't that the only difference?

MR. PURVIS: No, sir.

QUESTION: They could have, presumed they knew about

the description of the luggage when they put it in the trunk here. If they had grabbed it right before they put it in the trunk, then it would be exactly like Chadwick, wouldn't it?

MR. PURVIS: I don't think that there was any way, Mr. Justice Stevens, that the officers here really could have made the search and seizure at that time because of the particular facts of this situation. Number one, they knew about Mr. Sanders. It was almost a Draper-like fact situation, corroboration of an informant's tip. All right. There was no corroboration, no full corroboration until he picked up the suitcase.

QUESTION: But then there was.

MR. PURVIS: But Mr. Sanders then meets up with a confederate. The officers did not have any information on him. Suddenly the rise -- I think the natural inference is, "Well, we may be dealing with a ring here, a conspiracy, certainly more than one." All right. Mr. Sanders very coolly then goes out and gets into the taxicab, while Mr. Rambo, the codefendant, stands there as the lookout for any officers that might move in, then picks the suitcase up and away they go. Now, also --

QUESTION: Well, when he picks the suitcase up, they could have seized it right then, couldn't they?

MR. PURVIS: You are also dealing with a situation where the officers were --

QUESTION: Could they not have picked the -- have seized the suitcase when he picked it up, at the moment you just described?

MR. PURVIS: I think also the officers were far enough away physically that they probably could not have gotten to him. Mr. Sanders would have driven away in the taxicab had the officers moved in, and there is also the possibility that the officers could not have gotten to Mr. Rambo before he got into the taxicab. There is also the possibility that he might have had a weapon and in an airport gun play could have ensued.

QUESTION: Mr. Purvis, the facts you've described sort of make this sound like a much more kind of fluid situation and not the classical automobile search exception when you've got a taxi.

MR. PURVIS: Mr. Justice Rehnquist, I don't think the fact that it is a taxicab as opposed to an individual private vehicle, I don't see anything in the automobile requirement that says we will grant an automobile exception as to taxicabs but -- or as to private vehicles, but we won't as to taxicabs. I think the same factors, the same two basic criteria that allow the warrantless automobile search are applicable in this situation here. I think they are present. I think there is certainly the probable cause to believe that the taxicab contains contraband, and I think given that, given

the situation you have, the fact that there are certainly exigent circumstances.

Now, the officers I believe testified in the hearing, in the pretrail suppression hearing that the Little Rock Airport is rather uniquely situated in that there is an observation deck up here (indicating), there is a baggage area here (indicating), and here (indicating) is the door, out of which the -- the officers apparently were up here on the observation deck watching all of this.

QUESTION: Why wouldn't -- I can see how that might give them probable cause to seize the suitcase, but how about searching it and opening it right on the spot --

MR. PURVIS: I think you have exactly the same thing and arguably a lesser intrusion into the privacy of the owner of the goods and the owner of the vehicle and what not than you would in a Carroll case, because --

QUESTION: How do you think a search of the vehicle which is a taxicab, when you are searching a bag which the taxi company doesn't own, the taxi driver doesn't own -- you were searching the suitcase.

MR. PURVIS: You were searching the suitcase, but it is an integral part, there is no --

QUESTION: Does the respondent complain about the searching of the cab?

MR. PURVIS: Does the respondent?

QUESTION: Yes. No, he doesn't complaint about it at all, does he?

MR. PURVIS: Apparently he does not, no, sir.

QUESTION: Well, why do you keep saying that they had a right to search the cab?

MR. PURVIS: Because if you want to take the crux of the argument further and essentially what the issue is here, we do not think that Chadwick applies to restrict officers who are making a legitimate automobile exception search.

QUESTION: Do you think they can search everything in it and open it up?

MR. PURVIS: I think certainly that they have a right to, at --

QUESTION: Including a double-locked locker?

MR. PURVIS: I would question as to a distinction of the right of privacy between an individual as to the contents of his actual seats of the car, as in Carroll.

QUESTION: If there was a double-locked trunk in a car, could you search it?

MR. PURVIS: I think possibly you could.

QUESTION: By opening the locks, breaking the locks?

MR. PURVIS: I think possibly you could.

QUESTION: And that wouldn't hurt Chadwick at all?

MR. PURVIS: No, sir, because I think --

QUESTION: Just ignore it?

MR. PURVIS: -- I think as long as you --

QUESTION: You just ignore it?

MR. PURVIS: No, sir, I think you are talking apples and oranges. I think Chadwick has its own realm.

QUESTION: I don't have to ask you which is apples and which is oranges.

QUESTION: General, the suitcase in this case was unlocked, wasn't it?

MR. PURVIS: Yes, sir, it was.

QUESTION: In your view, does that make a difference so far as Chadwick is concerned?

MR. PURVIS: I think it certainly is a criteria to be considered along with the totality of the facts. Now, it has also got to be remembered here, the officers did not -- there were not separate perky-jerky instances. The officers did not stop the individuals and then they did not place them under arrest, and then they did not seize the suitcase and take it out and do a search. The officers stopped the cab, with the aid of another car finally, in rush-hour traffic, got the individuals out and immediately asked the cab driver if he would open the trunk of the car, the suitcase was still in the trunk of the car, the suitcase was immediately popped open, they saw that it contained marihuana, they closed it up

and put the individuals under arrest and confiscated the suitcase and down to the station they went.

QUESTION: You said popped open, of its own volition?

MR. PURVIS: No, I said they -- popped is a rather colloquial term -- I'm sorry I used that.

QUESTION: I just wanted to be certain.

MR. PURVIS: But they opened the suitcase. Apart from there, Mr. Justice Marshall defined exigent circumstances in his dissent in United States v. Watson, saying that where law enforcement officers have probable cause to believe that an offense is taking place in their presence and that the suspect is at that moment in possession of the evidence, then exigent circumstances exist.

Now, there is no question but that they had probable cause to believe that that suitcase and the defendant here was in possession, was committing an offense and did have the evidence within his possession, and I don't think Chadwick and indeed I don't know of any case that says, as respondent would have this Court believe, that upon stopping this vehicle as they were authorized to do, that exigent circumstances somehow flitter away like butterflies or moths in the morning light. I just do not think that that happens.

In fact, in looking at the facts in Carroll where the search was conducted after they had stopped Mr. Carroll's

automobile some fifteen miles away from Grand Rapids, in the Chambers case, where the search was done at the police station after they had brought the vehicle back. This leads to a --

QUESTION: Mr. Purvis, is it your submission that there is probably cause not only to search but at the time that there was probable cause to arrest the occupants of the cab?

MR. PURVIS: Yes, sir, and I think there was probable cause to arrest on a suspicion and I think when the officers observed the contents of that suitcase, which I think under the circumstances of this particular case, was a very minimal or probably a far minimal privacy intrusion than it would have been to have arrested the cab driver and the two occupants thereof and have driven all of them down to the police station and waited at least two hours while some magistrate was hunted up and a warrant was obtained.

QUESTION: And where was the suitcase in the cab?

MR. PURVIS: The suitcase was in the trunk of the cab.

QUESTION: In the trunk. So under Chimel it is doubtful whether this would have been --

MR. PURVIS: Yes, sir, and we tried --

QUESTION: I was thinking about the Rios case, which involved a taxicab. I don't know if you are familiar with it,

364 U.S. It involved the stop of a taxicab.

MR. PURVIS: I must confess that I am not thoroughly familiar with it.

QUESTION: Mr. Purvis, let me go back to a question that the Chief Justice asked you about what were the exigent circumstances. At the end of the Supreme Court of Arkansas's opinion, they say with the suitcase safely immobilized, there was no risk that the evidence might be lost. What were the exigent circumstances?

MR. PURVIS: As I reiterated before -- and let me preface this, Mr. Justice Stevens, with the remarks that it seems to me quite obvious that the Arkansas Supreme Court was so bound and determined to fit the facts of this case within the ambit of Chadwick that it did everything it could, including inventing and misconstruing argument on behalf of the state to try to shoehorn the facts within that case.

QUESTION: That may be, but I didn't really hear your answer to the Chief Justice's question and I haven't heard you address my question.

MR. PURVIS: I think --

QUESTION: What were the exigent circumstances?

MR. PURVIS: I think, sir, that the exigent circumstances were that you had a defendant and a just met confederate who are in a moving vehicle, who are moving away from the airport, in rush-hour traffic, at 5:00 o'clock, on a Friday

afternoon after the courts have closed, to a point unknown on one of the busiest streets in town. And I think those were exigent circumstances.

QUESTION: For opening the bag --

MR. PURVIS: Yes, sir.

QUESTION: -- or for stopping the cab?

MR. PURVIS: I think both, because I think --

QUESTION: Well, what were the exigent circumstances as to why they couldn't have carried the bag to the police station or --

MR. PURVIS: I think, Mr. Justice Marshall, that under the facts here, where you have as we contend a legitimate automobile search, that given the language of *Chambers v. Maroney*, there is no constitutional difference between a search, a warrantless search at the scene and taking the individuals all back to the police station.

QUESTION: But why couldn't you have gotten a warrant?

MR. PURVIS: There couldn't have been a warrant obtained -- at which juncture, after the search, before the search?

QUESTION: At any time.

MR. PURVIS: There could --

QUESTION: I will give you a whole lot of leeway.

MR. PURVIS: Yes, sir. I don't think a warrant

could have been obtained before these officers went to the airport because all they had --

QUESTION: All right, after then.

MR. PURVIS: -- were facts. All right, certainly after the fact these officers were engaged in a rather high-speed chase through traffic.

QUESTION: When the chase was over and the car, the motor had cooled off, could they have gotten a warrant then?

MR. PURVIS: Well, sir, I don't believe the motor had cooled off by the time they had done the search.

QUESTION: Well, if the motor was still hot, could they have gotten it then?

MR. PURVIS: They could have, Your Honor, but I --

QUESTION: Well, why didn't they?

MR. PURVIS: I do not --

QUESTION: What are the exigent circumstances for them not getting it?

MR. PURVIS: It goes back to the fact that given a valid auto search, the exigent circumstances do not immediately vanish when you have stopped the individuals.

QUESTION: Well, you can search anything then?

MR. PURVIS: As long as -- our point is that, given a valid automobile exception, that it naturally extends to the contents of the vehicle.

QUESTION: Could they have broken open a safe?

MR. PURVIS: I think if it were within an automobile and you were there pursuant to a legitimate auto exception search.

QUESTION: You don't suggest that there are any more exigent circumstances here than would accompany an ordinary automobile search? Do you think the automobile exception, as you call it, rests on some assessment of the generality of exigent circumstances or not?

MR. PURVIS: I think to a certain extent, Mr. Justice White, there has to be a determination made by officers who are there at the scene based upon their practical experience. They are not --

QUESTION: Carroll and Chambers say that you can search a car on probable cause without a warrant, just as a general proposition.

MR. PURVIS: Yes, sir. And Coolidge, I believe --

QUESTION: And you don't stop in every individual case to decide whether there are exigent circumstances in that particular case, do you?

MR. PURVIS: No, sir, but I think that the cases seem to --

QUESTION: But does this one have any more exigent circumstances than the --

MR. PURVIS: I think under the facts, I cannot recite more exigent circumstances.

QUESTION: I understood you to say that the police in effect had two or three balls bouncing in the air at one time and that for that reason it was a stronger case than the ordinary automobile search case, with the confederate, the suitcase and the person in the cab.

MR. PURVIS: Yes, sir.

QUESTION: It seems to me your real answer is that if it is within the automobile exception, you don't need exigent circumstances. It seems to me that is the argument you should be making.

QUESTION: That is the exigent circumstance.

MR. PURVIS: Yes, sir.

QUESTION: A moving automobile on a highway.

MR. PURVIS: Forgive me for not going into that, but this Court has noted time and time again that given a moving automobile, that the probable cause to believe that it contains contraband is the real touchstone with the Fourth Amendment.

QUESTION: Do you think you can get into a locked trunk and get into a locked suitcase in a trunk?

MR. PURVIS: Yes, sir, and I think to hold anything otherwise would create, as the Ninth Circuit held in *Finnegan*, would create wholly illogical results, or it would, as we contend, totally emasculate the automobile exception because you get into a situation if you are going to create an

exception for luggage, what constitutes luggage. I have ridden on many buses in my lifetime with people who were too poor to buy formal American Tourister or Amelia Earhart, who carried their whole possessions in a sack. And what practically occurs then at that point is you have officers who do not know who automatically then think "I cannot do" -- given a valid auto search stop, a stop and auto search, you have officers who are afraid and will not do a search of the vehicle, of any sack, bag, and what not.

QUESTION: General Purvis, aren't there really two kinds of situations that might possibly call for different rules? One is if you have probable cause to believe somewhere in a vehicle, maybe in language, maybe in the trunk, maybe in the glove compartment, there is contraband, and another case where you have probable cause to believe it is in a specific piece of luggage, and you know there is nothing else in the taxicab. Do you think you apply the same rule to both of those cases?

MR. PURVIS: Yes, sir, I think you can because I think to do otherwise, you tend to focus the Fourth Amendment away from the right of privacy and toward places and things.

QUESTION: Well, what if there has been a piano stolen and you stop a truck and you want to search and see if the truck has got the piano on it. Do you think you can

search the glove compartment?

MR. PURVIS: I think for anyone to expect that a piano would be stuffed in a glove compartment would be rather ludicrous.

QUESTION: So your answer is no or not?

MR. PURVIS: I think --

QUESTION: Say you have got probable cause to stop the truck to search for the piano.

MR. PURVIS: I think you probably could.

QUESTION: Why, if you have just got probable cause to search for a piano?

MR. PURVIS: I think --

QUESTION: Why can you get in the glove compartment?

MR. PURVIS: I think when you are talking glove compartment, you arguably bring in some new exceptions to the Fourth Amendment, you arguably bring in Chimel.

QUESTION: How about the Terry aspect, that you might want to search in the glove compartment to see if the driver had a .45 automatic.

MR. PURVIS: Indeed, and --

QUESTION: Which he could get in the glove compartment.

MR. PURVIS: Exactly.

QUESTION: Which he couldn't get if it was in the trunk.

MR. PURVIS: Yes, sir, but here again we are talking apples and oranges. We are talking search incident as opposed to --

QUESTION: You are the one talking apples and oranges. I am --

MR. PURVIS: No, sir, I tried to make the distinction over here that you are dealing with a different case.

QUESTION: The answer to me that it is apples and oranges is pretty ineffective unless you talk who are the apples and who are the oranges.

MR. PURVIS: Yes, sir.

QUESTION: Now, as I understand it, once you stop it, once you have a reason to stop the vehicle, you have a right to search everything, anybody and everything in that vehicle.

MR. PURVIS: Yes, sir.

QUESTION: So if you are looking for a diamond ring, you have a right to rip open the suitcase in the trunk, wouldn't you?

MR. PURVIS: I think possibly you would.

QUESTION: And the shoes?

MR. PURVIS: (no response)

QUESTION: There are no restrictions at all?

QUESTION: What about probable cause to arrest someone in the vehicle, do you think that would also provide a

basis for searching everything in the vehicle or just what you could call incident to the arrest?

MR. PURVIS: I think you could really proceed under either theory.

QUESTION: Well, do you think if you simply had probable cause to stop a vehicle because you had reason to believe that a suspect was in the vehicle, without any additional evidence, you could search the trunk, get out a suitcase and search the suitcase --

MR. PURVIS: Yes, sir.

QUESTION: -- although perhaps the person that you had probable cause to arrest was thought to be fleeing, a suspect and had connection with the suitcase?

MR. PURVIS: I certainly think you can, and I think that situation, Mr. Justice Rehnquist, is extremely analogous to the situation in Chambers, where the officers had probable cause to believe that that vehicle contained four men who fit the description of the robbers of a store, and that was the reason that they stopped. And once given that valid auto exception search, I think it allowed them or deemed reasonable the search of the entire vehicle.

QUESTION: May I be sure I understand your answer to Mr. Justice White's hypothetical about a truck containing a piano.

MR. PURVIS: Yes, sir.

QUESTION: Do you take the position that that would authorize a search of the glove compartment?

MR. PURVIS: Yes, sir.

QUESTION: You do?

MR. PURVIS: And I think it could also be authorized and probably would better be authorized in that situation as a search incident to --

QUESTION: No, just the automobile exception. Under your understanding of the automobile exception, knowing that a piano was in the truck would justify a search of the glove compartment? That is your view, as I understand it.

MR. PURVIS: That is carrying it to an extreme, but I think --

QUESTION: Well, you have an extreme view.

QUESTION: Do you relate this again to the Terry concept, that they are entitled to make a prophylactic search to see if there is a .45 automatic in the --

MR. PURVIS: I think the search of the glove box would be fare more akin to that.

QUESTION: Under the seat of the driver, and so forth?

MR. PURVIS: Yes, sir.

QUESTION: You would certainly take the position from your predicate that you could search the driver himself to see whether he had a .45 automatic somewhere?

MR. PURVIS: It seems to me, too, something to be remembered here is that this Court has also repeatedly held that those who occupy an automobile moving on the highways operate under a diminished expectation of privacy. And to hold that it is the automobile itself which enjoys that diminished expectation of privacy I think is frivolous. Certainly there is no such thing as an inanimate object that occupies or that enures or has that --

MR. CHIEF JUSTICE BURGER: I think I should tell you that you are into I think four minutes of your rebuttal time that you wanted to save.

MR. PURVIS: Oh, right, I will save the rest for rebuttal, Your Honor. Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Lassiter.

ORAL ARGUMENT OF JACK T. LASSITER, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. LASSITER: Mr. Chief Justice, and may it please the Court: I am Jack Lassiter, court-appointed attorney for the respondent, Mr. Sanders.

What do we do with the suitcase in the trunk of the cab? Before I start in here, let me say that it is simply the respondent's position that we have no exigent circumstances here, once the cab is stopped, once Mr. Sanders is arrested along with his cohort, Mr. Rambo, and the suitcase is seized. I can't think of what possible exigency then

existent.

Whether Mr. Sanders was placed in the rear of the police car or he was handcuffed outside the police car prior to the entry into the trunk of the cab, I think in either situation any exigency ceased at that point.

QUESTION: At what point?

MR. LASSITER: When the cab is stopped and Mr. Sanders is placed under arrest, and then the trunk is opened and the suitcase itself is seized, removed from the trunk of the cab.

QUESTION: Why could they get into the trunk?

MR. LASSITER: Well, I have not argued that they didn't have probable cause to open the trunk and seize the suitcase itself, just that they could not then enter the suitcase without prior judicial authorization.

QUESTION: Well, assume there is probable -- let's just assume there is probable cause to believe that there was contraband or something in the suitcase.

MR. LASSITER: Yes, Your Honor.

QUESTION: So there was probable cause to stop the cab. Once the arrest is made and the cab is stopped, why wouldn't you have to get a warrant to get in the -- to make the search of the car, of the taxicab?

MR. LASSITER: Well, that --

QUESTION: Certainly, why not have to get a warrant

to get into the trunk?

MR. LASSITER: I think you could certainly argue that, and maybe I am arguing against my position a little bit, but the Fourth Amendment analysis is based on the expectation of privacy. What we want to protect is the content of the suitcase. Now, if we follow the reasoning in Carroll and the other car search exceptions, we allow the officers to get into the automobile due to the mobility fact.

QUESTION: Has that been held?

MR. LASSITER: Well, the lower courts have in the past. Now, the alternative here would have been to take the cab on in to the station house, I guess, and get a warrant before they opened the trunk, and you could certainly argue that once the piece of luggage is placed in the trunk and the trunk is closed, that the expectation of privacy I guess then attaches to the contents of the trunk. But we haven't --

QUESTION: Only the cab driver --

MR. LASSITER: Pardon me, Your Honor.

QUESTION: Only the cab driver has standing to object to opening the truck --

MR. LASSITER: That's correct.

QUESTION: -- and he consented here.

MR. LASSITER: That is what I was about to get to here. Now, Mr. Sanders was not the owner of the cab. He didn't have control of the trunk, and it was the driver himself

who could I presume consent to opening the trunk for the officers, but not consent to the officers entering the suitcase.

QUESTION: But the officers have a perfect right to take that trunk -- the suitcase out of the trunk, don't you admit that?

MR. LASSITER: I think so. I think they had a perfect right to seize the suitcase.

QUESTION: But not to open it?

MR. LASSITER: Correct.

QUESTION: What if the police had probable cause to believe that there was some sort of a loaded weapon in the suitcase, something to that effect, do you think they would have had a right to open it on the spot, rather than cart it around for a couple of hours until they could get it to a magistrate?

MR. LASSITER: Well, it is certainly not in the Chimil wingspread, is it, in the trunk. Mr. Sanders has already been arrested. He is not going to reach back there and pull it out.

QUESTION: He couldn't get access to it. The police could have prevented him from getting access to it without having opened it on the spot.

MR. LASSITER: Yes, Mr. Justice Rehnquist, I think the transcript is quite clear on that.

QUESTION: Mr. Lassiter, couldn't they put it in the back of their car?

MR. LASSITER: Certainly.

QUESTION: And lock it with their key?

MR. LASSITER: Certainly.

QUESTION: But isn't there something to be said for the idea that they shouldn't be obligated to carry around for several hours a trunk which they have probable cause to believe has a weapon in it, without being able to open it?

MR. LASSITER: Well, what they very simply can do with it, what the LRPB would do with it is take it back to the station house and put it in the property room. It is certainly not going to go anywhere then, and nobody is going to get back there to get the weapon. It seems to me that the citizenry is protected at that point from somebody taking the weapon out of the suitcase and doing something with it.

QUESTION: Suppose you arrest a man on the street whom you've got probable cause to arrest or you've got a warrant for his arrest and he is carrying a suitcase. Now, can you search the suitcase right on the spot or not?

MR. LASSITER: Only if Chimil were to apply to the fact situation.

QUESTION: Well, he has got it in his hand and he is walking along.

MR. LASSITER: What is they arrest him --

QUESTION: Right on the street.

MR. LASSITER: -- and they handcuff him and the suitcase is then standing by his side where he can't possibly get into it. I think maybe that is a case by case determination, Your Honor. Certainly, in some instances Chimil would justify the entry; in some it would not.

In Chadwick, the individual is sitting on top of the --

QUESTION: I didn't say whether there was probable cause. Does it make any difference in your answer to my question whether there was probable cause to think there was anything in the suitcase?

MR. LASSITER: If there is probable cause to arrest the individual --

QUESTION: Yes.

MR. LASSITER: -- and Chimil justifies the entry, they can go ahead into the suitcase to look for weapons and protect themselves.

QUESTION: So your answer is, no, it doesn't make any difference whether they have probable cause to think there is anything in the suitcase?

MR. LASSITER: That would be correct, as long as the suitcase is within his wing-spread. Once I guess the suspect himself is immobilized by being handcuffed or placed in the back of the police unit, at that point he can't reach into

that briefcase and search for a weapon, and there is no reason for the police to enter it.

QUESTION: Mr. Lassiter, I take it from what you have said that you think the proper procedure would have been for the police to take the suitcase to headquarters and obtain a warrant there?

MR. LASSITER: Yes, Your Honor.

QUESTION: Is that correct?

MR. LASSITER: They could have taken Mr. Sanders back at that time along with the suitcase, and they could have held him while they procured a warrant.

QUESTION: Yes. But do you agree that there would have been sufficient probable cause for the magistrate to issue a warrant?

MR. LASSITER: (no response)

QUESTION: Let's assume for the moment that there was such probable cause.

MR. LASSITER: All right.

QUESTION: I would suspect under --

MR. LASSITER: I hesitated answering that because I have some questions, after reading the transcript, as to where the informant had received his information, whether it really reached the requirements of Spinelli and Aguilar, but that has been conceded far below I guess, that probable cause was present, so --

QUESTION: You did concede a moment ago that they could seize the suitcase --

QUESTION: Yes, I think you did.

QUESTION: -- which would require probable cause.

MR. LASSITER: Yes. Yes. What I am saying is I am not raising that here, and for the purposes of our argument we concede that they did have probable cause to seize the suitcase and that a warrant would have been issued.

QUESTION: And if the suitcase in fact had been empty of any contraband, in other words if there was nothing incriminating in it, your client would have been more inconvenienced by having it taken to the station house than having it opened on the spot.

MR. LASSITER: He certainly would have and he could also have said on the spot, "I don't want to go down to the station house, go ahead and search it here and I will be on my wary."

QUESTION: And "I will open it for you."

QUESTION: Is there a privacy interest in contraband?

MR. LASSITER: No, Your Honor, I think there is not. However, the next question that flows from that is then is there an expectation of privacy to nine pounds of marihuana in a suitcase. All I can say is the focus of the analysis in the court, by the court in the past has been on the expectation

of privacy that attaches to the area itself, here the suitcase. If there is no expectation -- if the analysis centered on whether or not there is an expectation of privacy in contraband, we would not have had the Chadwick decision because that is precisely what we had there, a footlocker full of marihuana.

QUESTION: Mr. Lassiter --

MR. LASSITER: Yes, Your Honor?

QUESTION: -- we have been talking about the automobile exception. Do you make a distinction between an automobile search exception with respect to a private car and to a common carrier? The taxicab is a common carrier, is it not?

MR. LASSITER: Yes, it is. I think --

QUESTION: Let me pursue that by saying, to take the illustration, a hypothetical Mr. Justice White posed about the hijacked truck which has stolen a piano and the driver is part of that operation. There you have not a common carrier but a private car. Would you say that you could search the glove compartment as well as searching the back of the car to see if the piano was there?

MR. LASSITER: If the car is stolen and the driver is --

QUESTION: No, not stolen, it is just a private truck, a private hijacker and there is indeed a stolen piano or several stolen pianos, as you would have it, but can they

search the glove compartment and the rest of the car to see if he has got a .45 automatic, a prophylactic search?

MR. LASSITER: If they are looking for the piano then, you can't look for an elephant in a matchbox, I think somebody told me in law school one time, and you sure wouldn't have reason to believe that there was a piano in that glove box. Again, Chimil may come into play. If the glove box itself is within the reach of the individual who has been arrested and it is unlocked, perhaps the officers can enter therein. We certainly through the Gustafson and Robinson opinion indicate that the officers on even a traffic stop can frish somebody down.

QUESTION: Wouldn't the concept of Terry indicate that you could make that prophylactic search? It wouldn't be much profit in finding the piano or two pianos in the trunk if the driver meanwhile could go and get a .45 automatic out of this glove compartment or somewhere --

MR. LASSITER: Yes, and that would again --

QUESTION: -- and attack the officers.

MR. LASSITER: Yes, and I would agree with that, and that again would be your holding in Chimil, they can --

QUESTION: When you stop the truck with the pianos, you can search the entire truck to see if there is a weapon --

MR. LASSITER: Wouldn't that depend on what had been done with the driver, if he has been taken and placed in

the back of the police unit, with locked doors, there is not going to be much danger that he is going to be back in the front of the truck, car, cab or whatever to get the weapon.

QUESTION: Well, you can't have the rule of law applicable depending on the sequence of events, whether they put the man in the -- the driver in handcuffs before they had determined that he had the stolen piano. Aren't they entitled to make a prophylactic search as soon as they have probable cause to stop the private car, as distinguished from a common carrier?

MR. LASSITER: Your Honor, I am not sure that the Court wants to tell law enforcement officers that any time they stop an individual when there is probable cause for arrest, and not probable cause for search of the automobile, that the officers can go in and completely search the interior of the automobile once that driver has been removed from access to the automobile.

QUESTION: Hasn't the Court gone beyond that in Terry, among other cases. In Terry, they could search the person.

MR. LASSITER: Correct.

QUESTION: Which is a much greater invasion of privacy than searching a --

MR. LASSITER: And we justify that because the police need to protect themselves by searching the person, and we did

that same thing in Robinson. You can search the driver on a traffic stop. But it seems to me that -- and our cases in the past have said that, whenever we conduct a warrantless search, those situations must be carefully defined and they must be justified by exigencies or the reason for the search must be imperative or compelling. And it seems to me that once the driver is removed from the vicinity of the automobile, there is no compelling reason then to enter the automobile looking for a weapon in your hypothetical.

If I might return to a question you raised a moment ago, is there a distinction between a cab and a private vehicle, there certainly might well be. I think a passenger in a cab certainly has a lesser expectation of privacy than I do in my car out on the street, what is contained in my glove compartment or under my seat. But he still has an obvious expectation of privacy to the contents of his suitcase.

There was a question raised a moment ago as to whether it made any difference whether or not the suitcase was locked. That is a factor raised by the state in an attempt to distinguish Chadwick from the instant case. Arguably, there is a lesser --

QUESTION: It just occurred to me that if we treat this as an automobile exception case and therefore you have an objection raised by two passengers to the search or one passenger, I don't think your client has standing to object

to the search of the suitcase.

MR. LASSITER: Rockas.

QUESTION: Yes.

MR. LASSITER: Rockas says that the passenger in the automobile does not have standing to raise the motion to suppress if the car doesn't belong to him and he does not exhibit any sort of proprietary interest in that item which the state is seeking to introduce into evidence, the court rejecting the target theory. Now --

QUESTION: Well, when a passenger gets into a taxicab, the car pro tem does belong to him. He has hired it. Isn't that correct?

QUESTION: It is his suitcase, too.

MR. LASSITER: That's correct, and that would be -- I am leading hopefully to disintuishing the standing problem here. The difference in what we had in Rockas and what we have got here I think are two-fold. One, the police allage that there is marihuana contained in the suitcase and it belongs to the defendant, haven't they given him standing by doing this, and that --

QUESTION: Not unless he paid the fare, I don't think.

MR. LASSITER: Your Honor?

QUESTION: Not unless he paid the fare, under Akas that is.

MR. LASSITER: Secondly, here in Sanders the contraband in the cab is the crux of the charge. He is charged with possession of marihuana with intent to deliver. In Rockas, the individual there was charged I believe with robbery or some violent crime, and the item introduced is a weapon. He is not charged with felony possession of a firearm. So I think the case is distinguishable. We simply haven't had enough time for the lower courts to throw it around enough to know exactly what we are going to do with it.

I would argue that he does have standing because the crux of the charge is the possession of the contraband and in that it was his suitcase in the trunk of the car and the police say it was his.

QUESTION: Well, he also presumably rented the trunk as well as the space he was riding in for the purposes of that particular trip.

MR. LASSITER: Certainly.

I think I was about to comment concerning the fact that the suitcase was unlocked. I don't really see that that invites public entry into the suitcase any more than you are inviting someone into your house by leaving a door unlocked or a window unlatched.

Perhaps the reason -- and I am as guilty of this as anyone, that a number of us travel with our suitcases unlocked,

is just the reason that we don't expect people to get into them other than perhaps a border entry point or at a check point prior to getting on an airplane. I really don't see that as a persuasive distinguishing factor.

QUESTION: Well, if there is a weapon in it, there is a reason to have to locked, to prevent access to it.

MR. LASSITER: That would be correct. That would be correct.

There is a distinction that the Attorney General raises or attempts to raise based on Chambers in which he addresses language therein that speaks of the lesser and greater intrusion analysis in Chambers. The argument there was that once the car is seized, the subsequent entry into the automobile later on is just simply a lesser intrusion from the greater intrusion into the constitutionally protected area of seizing the automobile.

It would seem to me that that analysis was abandoned in Chadwick, in a footnote written by Mr. Chief Justice Burger, in which he points out that there is a distinction between the proprietary property interest in the object, be it a car or a suitcase, which is something entirely different from the individual's privacy expectation in the contents thereof.

Certainly, as was stated in Chadwick, the far greater intrusion is into the suitcase, not the mere seizure

of it.

There is one further point that I would raise to the Court. Obviously, we take the position that the Fourth Amendment mandate that we should be protected in our persons, houses, papers and effects and that the exceptions to the general warrant requirement are carefully drawn should require the issuance of a warrant before intrusion into the suitcase under circumstances of this case. I feel that that is a better rule of law. There is one further --

QUESTION: Say you arrest a man on the street with probable cause or with a warrant and he is carrying a suitcase and it is locked and you search him and you find a sealed envelope in his inside pocket. Can you open the envelope?

MR. LASSITER: It would appear under Terry --

QUESTION: Under Terry, but what about a search incident to arrest?

MR. LASSITER: Unless the envelope seemed to contain a weapon, I don't think you could justify --

QUESTION: What if it was bulky enough to have a few thousand dollars worth of heroin?

MR. LASSITER: Well, that might --

QUESTION: It might be several government bonds or it might be some heroin, could you open it then?

MR. LASSITER: I think so, under Robinson. There we

find --

QUESTION: You can search anything on a guy's person.

MR. LASSITER: Yes, Your Honor, that's correct. In response to your question, I believe under Robinson, I believe there we had a marihuana cigarette found in a crushed cigarette package. So the answer to your question I believe would be, yes, you could.

QUESTION: But you can't search a suitcase in his hand?

MR. LASSITER: Right.

QUESTION: There is a different expectation to privacy, I guess.

MR. LASSITER: There is --

QUESTION: Is that your answer?

MR. LASSITER: There is no justification for the warrantless entry into it. We have justification for the warrantless entry --

QUESTION: Into the envelope, the sealed envelope?

MR. LASSITER: I think under Robinson you would. It is a difficult distinction to make.

QUESTION: Even if there is no constitutional issue involved, isn't it a fact that when you arrest a man, you look at everything he has solely for the purpose of inventory, and that is the excuse. Am I right or wrong?

MR. LASSITER: I think the --

QUESTION: There is no -- they do it and they say they are doing it for inventory and both sides agree that it is all right.

MR. LASSITER: Well, I don't agree that it is all right. The Ottman case I think has been used on a number of occasions --

QUESTION: Do you mean when a man is arrested, he can't be searched before he is put in jail?

MR. LASSITER: No, Your Honor, I am not saying that.

QUESTION: I hope you don't.

MR. LASSITER: No. Certainly he can be patted down, his person --

QUESTION: He can be searched.

MR. LASSITER: All right, that is correct, the individual can be searched.

QUESTION: Within the limits of Chimil --

MR. LASSITER: Yes --

QUESTION: -- after lawful arrest.

MR. LASSITER: -- and Robinson and Terry and the cases that talk about the search instant to arrest of the individual. I would not carry the inventory -- well, if you raise the question concerning inventory as to the person, of the defendant arrested, certainly he can be searched. I don't think the inventory case, Opperman, justifies entry into the suitcase or briefcase. I think the police can take the

suitcase, the briefcase, they can put a piece of tape on it, seal it and put it on the property room, put it up in the property room and all of the rationale, the supporting rationale of the inventory search has then been satisfied.

QUESTION: Of course, what about all the other things with respect to -- you just mentioned the briefcase, suppose it is just a shoebox and then you get into a woman's handbag, you can say that isn't this case but we have to think about these down the line.

MR. LASSITER: Yes, sir, I understand that, and that certainly raises a can of worms. But I think the test must be that the object, the repository of personal effects must be clearly without doubt, without argument obviously a repository of personal effects. A shoebox that isn't taped shut, a box that is not taped shut, a sack that is just rolled down I don't think meets that test. I don't know what we do if the box is taped shut, the shoebox is taped shut.

QUESTION: Suppose your suitcase had a locked container inside it, do you have to get two warrants?

MR. LASSITER: No, I think one would be sufficient to --

QUESTION: You can go through even six locked containers, each within the other on one warrant?

MR. LASSITER: Yes, I think so, once we say that the expectation of privacy, the sphere that it is penetrated, I

think they are properly entered on one warrant. I don't think there would be a necessity of a series of warrants, particularly not in this situation. Nine pounds of marihuana could have been I guess conceivably in one container inside another container inside the suitcase, but I think once they are in there, then -- there is one other matter that I believe would be worthy of mention.

We talk a lot in law enforcement and in defense work about predictability in these cases. Everybody wants that, the police, the Attorney General, the folks on my side of the fence. Isn't it most predictable and most consistent to say that whether the suitcase is in the trunk of the car or it is on the sidewalk, the police ought to get a warrant to enter it.

In Chadwick we said that as far as this repository personal effects is concerned, if it is outside the car and we can't get in it under Chimil, then the police are going to have to get a warrant. Should we have a different rule at all in the automobile, wouldn't it be most consistent to also require a warrant to search if it is in the car unless it happens to fall within the Chimil wing-spread.

If we don't do that, we are going to have a rather inconsistent situation and you are going to encourage police to wait until the suitcase gets in the car there at the airport and tear off in this high-speed chase sometimes through

traffic. I think the better rule would be to require the warrant.

QUESTION: Assume the police had probable cause to believe that -- say they had listened to some -- intercepted some telephone conversations and one of the spokesmen said we will delivery contraband from point A to point B in a certain vehicle and they don't tell whether it will be in luggage but somewhere in that vehicle at the time the police have strong reason to believe that is true. They stop the vehicle and inside the vehicle there is this green suitcase. Would you agree that under the automobile search exception they could then search the luggage?

MR. LASSITER: No.

QUESTION: You would not?

MR. LASSITER: I would not. First, let's assume that --

QUESTION: They don't know whether it is in the luggage or not. It is different from this case.

MR. LASSITER: Okay. Let's assume that you have probable cause if this individual who supplied this information is a reliable informant, we meet and we take off after him.

QUESTION: Right.

MR. LASSITER: I think still the warrant requirement ought to prevail before we go entering into the suitcase.

QUESTION: But the problem I suppose would be that they would not have probable cause to believe it was within any particular suitcase. It might be concealed under the -- in the tires, in the roof of the car, any place like that. So how could they ever get a warrant to search the piece of luggage unless they could say it is part of an overall search of the vehicle?

MR. LASSITER: Well, I am not sure that we want them to enter the luggage unless they do have a warrant. I just -- certainly I can take the position as distinguishable from this case because they knew that the marihuana was inside the suitcase, and I guess I can have my cake and eat it, too, in the argument. But it strike me that we need to draw the line somewhere in car searches and it ought to be with our repositories and personal effects in cars and that police officers should not enter into a suitcase, a locked briefcase or whatever, that object which on its face apparently has a high expectation of privacy without the police having a warrant.

QUESTION: Mr. Lassiter --

MR. LASSITER: Yes, Your Honor?

QUESTION: -- you concede I guess at least for purposes of this argument that there was probable cause to arrest these people, was there?

MR. LASSITER: Correct.

QUESTION: And if there was and they were in a moving car, certainly the arrest would have to be accomplished right then and there and they would have had to be -- the people would have had to be removed from the car.

MR. LASSITER: Correct.

QUESTION: And also you concede, since there was probable cause to arrest and there was probable cause to search, there was a probable cause to search the car without a warrant under Carroll and therefore to remove the suitcase from the car.

MR. LASSITER: To seize and remove.

QUESTION: To seize and remove, you concede all of that.

MR. LASSITER: Yes, sir.

QUESTION: Therefore to take the people and take the locked suitcase down to the stationhouse.

MR. LASSITER: Correct.

QUESTION: But there you say there was a warrant needed to open up the suitcase.

MR. LASSITER: Yes, Your Honor.

QUESTION: That is the limited and rather narrow question in this case, isn't it?

MR. LASSITER: That's correct.

QUESTION: But wouldn't you say that you have to have a separate probable cause to get the warrant to get into

the suitcase?

MR. LASSITER: Well, certainly we need something, yes. If you are asking me different probable cause from the arrest, here I think the probable cause for the arrest is sufficient for issuance of the warrant, I will concede that. If --

QUESTION: You what?

MR. LASSITER: I will concede here that the probable cause for arrest --

QUESTION: Yes?

MR. LASSITER: -- would also be sufficient for issuance of the warrant.

QUESTION: To search the suitcase?

MR. LASSITER: The key to the issue is getting it before the magistrate, the impartial magistrate.

QUESTION: Yes, but what would you have to show the magistrate?

MR. LASSITER: Well, you would have to --

QUESTION: Wouldn't you have to show him, if you have got an expectation of privacy in the suitcase and you don't want it violated, shouldn't there be some probable cause to believe that there is something in the suitcase the officers are entitled to seize?

MR. LASSITER: Exactly. Exactly, and --

QUESTION: Well, that might be quite different from

the -- suppose you arrested this man for -- suppose you arrested this man for stealing a piano and he had his suitcase with him and you seized him and his suitcase and took him down to the station house.

MR. LASSITER: The suitcase --

QUESTION: Could you get a warrant to search the suitcase?

MR. LASSITER: No, and the suitcase should not be searched in that situation.

QUESTION: So you do need not only the warrant -- you need a separate probable cause to support the warrantless suitcase?

MR. LASSITER: Yes, Your Honor. Sometimes probable cause for arrest may be the same as probable cause for issuance of the warrant.

QUESTION: As it was in this case, wasn't it?

MR. LASSITER: That's correct.

QUESTION: Well, I take it you can arrest someone because you have probable cause to believe that he just assassinated someone or murdered someone, you might have -- that same probable cause would justify you in getting a warrant for searching his suitcase in a way that probable cause to believe he had stolen a piano would not? I mean, doesn't it depend a little bit on the kind of offense that you are talking about?

MR. LASSITER: Yes, certainly. In your hypothetical, if we believe that a murder has been accomplished with a .45 automatic by this individual, he is seen running from the scene, he is arrested soon thereafter with the briefcase, I believe perhaps we could get the warrant for entering the briefcase to look for the automatic.

QUESTION: What you are saying is that the term "reasonable" in the Fourth Amendment means reasonable under all the circumstances of the particular case, with all the nuances that may occur in the variations?

MR. LASSITER: And hopefully with as well defined rules as we can possibly create to give it some predictability in the situation.

QUESTION: No one has been able to determine them very well up to now.

MR. LASSITER: Pardon me?

QUESTION: No one has been able to define them precisely up to now.

MR. LASSITER: It is a very difficult problem, Your Honor.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Lassiter. Do you have anything further, Mr. Purvis?

ORAL ARGUMENT OF JOSEPH H. PURVIS, ESQ.,

ON BEHALF OF THE PETITIONER -- REBUTTAL

MR. PURVIS: Just a very few remarks, Your Honor.

First, contrary to Mr. Lassiter, I think again let me reiterate what we have here is not necessarily an arrest prior to seizure and all of this, but we have one rather rapid smooth-flowing set of circumstances and it seems clear to me at least that the search of the suitcase was clearly justifiable under the automobile exception. In fact, it was part and parcel and didn't constitute the search of the automobile itself.

To hold that there were no exigent circumstances present merely when the officers stopped them would be, number one, it seems to me, to deny the smooth-flowing facts of the case and of the search which was highly contemporaneous to the stopping; and, two, to say that they have evaporated in that sort of situation makes it rather impossible to have exigent circumstances present in any situation where you have stopped any automobile.

We use the rather far-fetched analogy in our brief that in order to follow this particular log, you would have to have someone make a John Wayne-stype leap from one moving vehicle into another and to conduct the search while the vehicle was still moving, and I don't think that this Court nor any court nor any human being with a whit of common sense would say that that would be required. It goes simply to the point that exigent circumstances once present don't quickly evaporate merely because the police have stopped the

individual.

QUESTION: Mr. Purvis, would it be the same case if instead of getting in a taxicab they got on a bus or a subway?

MR. PURVIS: I frankly don't know, Your Honor, because I am not aware of an extension of the automobile exception to any such large common carrier.

QUESTION: Don't you think there is a difference between a common carrier and a private car?

MR. PURVIS: Yes, sir, to a certain extent I do.

QUESTION: A common carrier might be a taxi which you have commandeered exclusively or you might share it with two other passengers or it might be a bus in which you would share it with fifty or a hundred.

MR. PURVIS: I think that of all the common carriers of which I know, that the taxicab probably is intended to be a repository of the fewer number of people. You generally have anywhere from one to four people who obtain a taxicab as opposed to an airplane or a bus where you may have fifty, sixty or hundreds. And it seems also to me that if you say, as Mr. Lassiter does, well, you can conduct a valid search of this automobile, but you can't -- or seizure of the suitcase, but you can't do a search because of the privacy right, then you are saying that given a diminished expectation of privacy in the vehicle, that you are going to place then your truck entirely on the place or the thing in which that alleged

privacy right was focused, namely a suitcase or a piece of luggage, and I think it is the right of privacy overall and I think given one who is in an automobile, that it is his expectation of privacy over the contents of the automobile, his possessions in the automobile that are reduced.

Also going back to I think you are confronted again, if you follow Mr. Lassiter's logic, with a definition of what is luggage. And I will agree with Jack that one of the primary focuses is to come to some sort of predictability, because all law enforcement people would like this and people on both sides of the fence, and it seems to me that if you say that we are going to create an exemption of the automobile exception or carve out an exception within it for luggage or repositories of private effects, that you are engaging in a never-ending battle, a never-ending definition because what may be trash to me might be someone else's luggage. And you can battle this out forever.

Finally, I think, too, the one key thing to remember is the question that needs to be answered here, was was this search of the suitcase reasonable under the circumstances. And given the exigent circumstances which I have previously stated, which I earnestly feel existed, that justified the stopping, I think with the expectation of privacy, I think it was only reasonable for those officers to open up that suitcase and look inside it. Had they found nothing,

obviously, Mr. Sanders and his defendant would have been allowed to go on their way. And I think it is exactly this situation that this Court referred to in its opinion in Chambers, that given the valid auto exception there is no constitutional difference, in fact it may very well be the Court held implicitly a lesser intrusion of the right of privacy to allow that immediate warrantless search on the scene as opposed to taking the individuals back and waiting several hours upon the obtaining of a warrant.

QUESTION: As a practical matter, if there had been nothing incriminatory inside that suitcase, the respondents would have consented to the search and you wouldn't have had any subsequent problem.

MR. PURVIS: Certainly, which leads to another problem --

QUESTION: And there wouldn't have been any delay.

MR. PURVIS: -- which leads to another problem, too, and that is consent. It is very easy to say, well, he could have consented to it. However, I am sure Mr. Lassiter, as a trial lawyer, very well knows the problem of consent at the time of the search and proving consent at the time of trial or at the appellate level are two different things. Very often, the Arkansas Supreme Court has rejected twice in the past three weeks consent searches where there was testimony of two officers and, indeed, a consent form signed where the

lower courts found that there was valid consent and the Arkansas court held, well, because it was a situation where there were three officers in uniform, with guns, and one defendant or two defendants, there was the natural coercion there, and we just cannot believe that this was a valid consent.

QUESTION: Was your court unanimous in those cases?

MR. PURVIS: Yes, sir, they were. It was by a four-member panel, and all four members were unanimous. We have filed for petitions for rehearing.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.
The case is submitted.

(Whereupon, at 11:58 o'clock a.m., the case in the above-entitled matter was submitted.)

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