

In the

# Supreme Court of the United States

JEFFREY RICHARD ROBBINS,

PETITIONER,

v.

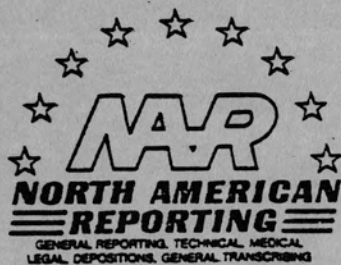
CALIFORNIA

)  
)  
)  
) No. 80-148  
)  
)  
)

Washington, D.C.  
April 27, 1981

Pages 1 thru 60

ORIGINAL



202/544-1144

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - :  
:   
JEFFREY RICHARD ROBBINS, :  
:   
Petitioner, :   
: No. 80-148  
v. :   
:   
CALIFORNIA :   
:   
- - - - - :

Washington, D. C.  
Monday, April 27, 1981

The above-entitled matter came on for oral ar-  
gument before the Supreme Court of the United States  
at 10:04 o'clock a.m.

APPEARANCES:

MARSHALL W. KRAUSE, ESQ., Krause, Timan, Baskin, Shell  
& Grant, Wood Island, Suite 207, 60 E. Sir Francis  
Drake Blvd., Larkspur, California 94939; on behalf  
of the Petitioner.  
  
RONALD E. NIVER, ESQ., Deputy Attorney General, State  
of California, 6000 State Building, San Francisco,  
California 94102; on behalf of the Respondent.  
  
ANDREW L. FREY, ESQ., Deputy Solicitor General, U.S.  
Department of Justice, Washington, D.C. 20530;  
on behalf of the United States as amicus curiae.

C O N T E N T S

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
MARSHALL W. KRAUSE, ESQ., on behalf of the Petitioner	3
RONALD E. NIVER, ESQ., on behalf of the Respondent	27
ANDREW L. FREY, ESQ., on behalf of the United States as amicus curiae	49
MARSHALL W. KRAUSE, ESQ., on behalf of the Petitioner -- Rebuttal	57

- - -



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

2                    MR. CHIEF JUSTICE BURGER: We'll hear arguments first  
3 this morning in Robbins v. California. Mr. Krause, I think you  
4 may proceed now, whenever you're ready.

5                    ORAL ARGUMENT OF MARSHALL W. KRAUSE, ESQ.,

6                    ON BEHALF OF THE PETITIONER

7                    MR. KRAUSE: Thank you, Mr. Chief Justice. Good  
8 morning, and may it please the Court:

9                    This case is not about whether petitioner should go to  
10 prison for 30 pounds of marijuana. It's about my right to carry  
11 my private papers without government search even though I choose  
12 not to carry them in luggage or briefcase, even though I choose,  
13 for instance, to carry them in a heavy paper folder, which I  
14 normally do when I go to court on behalf on clients --

15                    QUESTION: Do you ordinarily carry them in a plastic  
16 sack?

17                    MR. KRAUSE: I don't ordinarily carry my papers in a  
18 plastic sack. However, should it be raining and I would want to  
19 protect them from the rain, Justice Rehnquist, I would certainly  
20 want that option without a policeman coming up and saying, I want  
21 to see what's inside that sack.

22                    QUESTION: The question here is not how you do it but  
23 how Mr. Robbins was doing it and the circumstances under which  
24 he was doing it. Isn't that the question before us?

25                    MR. KRAUSE: That's quite right. But, of course, that



1 question has great implications, and Mr. Robbins was doing it  
2 in this way. He had some packages, oblong packages, which were  
3 in the luggage compartment of his station wagon.

4 QUESTION: How did he happen to get stopped in the  
5 first place? Let's begin at the beginning with the facts.

6 MR. KRAUSE: He happened to get stopped because a  
7 policeman named Officer DePue thought that he was driving erra-  
8 tically, that he had crossed the center line, dotted center line  
9 of a highway, and so pulled him over for investigation. And as  
10 soon as he pulled him over for investigation petitioner Robbins  
11 got out of the car and showed him his driver's license and  
12 Officer DePue then asked for his registration, which Mr. Robbins  
13 had in, I believe, the glove compartment of his automobile. So  
14 he opened the door and went back into his car. Officer DePue  
15 followed him and smelled marijuana, the strong pungent odor of  
16 marijuana which was coming from the passenger compartment of the  
17 car. He then very soon placed Mr. Robbins under arrest for  
18 driving under the influence of marijuana, a charge, by the way,  
19 which he was later acquitted on.

20 After Mr. Robbins was placed under arrest, he was put  
21 outside of his own car, spread-eagled right above his exhaust  
22 pipe, and where he had to inhale the fumes of the exhaust, and  
23 soon was overcome by these exhaust fumes, became badly ill, and  
24 collapsed on the road.

25 QUESTION: Is that established in the record, that it

1 was the exhaust fume that caused this illness?

2 MR. KRAUSE: I believe it is established that he was  
3 placed right at the left rear of the car where the exhaust came  
4 out.

5 QUESTION: The motor was running?

6 MR. KRAUSE: The motor was running. That is definitely  
7 in the record, Justice Blackmun. Yes.

8 QUESTION: I suppose you're just drawing a conclusion  
9 that it was due to the fumes?

10 MR. KRAUSE: Well, I think this was a conclusion from  
11 the fact that the motor was running and that he was spread-  
12 eagled right over the exhaust.

13 QUESTION: Well, is this important to your position in  
14 anyway?

15 MR. KRAUSE: It would only be important if we were  
16 worried about probable cause, which --

17 QUESTION: Well, there's no question of probable cause  
18 to arrest, was there?

19 MR. KRAUSE: Well, there's no question of probable  
20 cause to arrest, no, but there is some question of probable  
21 cause to search, which in all frankness is not presented in our  
22 petition, so it's not that significant. What is significant is  
23 that soon Mr. Robbins found himself handcuffed and in the back  
24 of the patrol car, and the police started searching his car.  
25 Now, this is, of course, without a warrant at all. The first

1 thing they opened up was a closed metal cookie tin, as it's been  
2 described. This cookie tin contained a small amount of mari-  
3 juana, one-eighth of an ounce. Previously, the police officer  
4 had found a partially smoked cigarette which he assumed to be  
5 marijuana and a handrolled cigarette --

6 QUESTION: What if he had, looking in the back of the  
7 car, had found a paper bag that looked as though it contained a  
8 large bottle and opened the package, the bag, and found a half-  
9 consumed bottle of whiskey. Would he have drawn any inferences  
10 about that? Would he be entitled to draw any inferences that  
11 the erratic driving of the car might have been related to the  
12 missing part of the whiskey in the bottle?

13 MR. KRAUSE: Yes, I think that inferences could be  
14 drawn from such a discovery, Justice --

15 QUESTION: Well, if he smelled the marijuana and found  
16 a cigarette, could he draw any inferences that the marijuana  
17 smoking might have contributed to the -- ?

18 MR. KRAUSE: Yes, sir. That's why he was perfectly  
19 justified in arresting Mr. Robbins for driving under the influ-  
20 ence of marijuana. No question about it.

21 QUESTION: In this case, as I understand it, we assume  
22 there was probable cause for the search. But the issue is whe-  
23 ther or not a warrant was required?

24 MR. KRAUSE: That's the issue. And I want to describe  
25 the way in which the 30 pounds of marijuana came to the attention



1 of the officers, because that's the only issue really before  
2 this Court. I might say that what was found in the cookie tin  
3 is not really before this Court in my opinion, because the  
4 Attorney General did not cross-petition for certiorari and that  
5 cookie tin marijuana formed the basis of an entirely separate  
6 charge, possession of marijuana, which was dismissed, which was  
7 ordered dismissed by the court of appeal in California because  
8 in that court the Attorney General conceded that the cookie tin  
9 was covered by Sanders and also the tote bag, there was a canvas  
10 tote bag that contained a little more marijuana. Finally,  
11 after the police officer unlocked the back door of the station  
12 wagon with the petitioner's keys, opened up the luggage compartment  
13 and went through a briefcase and the tote bag, he came  
14 across two securely wrapped plastic packages. They were opaque  
15 plastic packages. No one could see inside those packages to  
16 determine what they contained. There is no issue about that;  
17 they were opaque.

18 QUESTION: How did he happen to go into the trunk?

19 MR. KRAUSE: He was making basically a general exploratory  
20 search.

21 QUESTION: Well, what I'm driving at is, did not your  
22 client say to him, what you're looking for is in the back?

23 MR. KRAUSE: Yes. He said that after the cookie tin  
24 had been entered and after it was obvious that the police officers  
25 were making a general exploratory search. Now, that goes

1 to the issue of probable cause. Does that add to the police  
2 officer's probable cause? And as I've said, we didn't really  
3 raise that issue in our petition for certiorari, so really the  
4 warrant question is the only one that is fully before this Court  
5 although we do not concede that there was probable cause to go  
6 into the trunk in the first place, but we didn't want to bring  
7 that up precisely because we weren't sure that that would be an  
8 issue that you would be interested in at this time.

9 QUESTION: Let's focus on that warrant now for a  
10 minute.

11 MR. KRAUSE: All right.

12 QUESTION: I have a question to put to you. You have  
13 conceded that if the policeman saw what appeared to be a bottle  
14 and on retrieving the bottle found that it was half consumed or  
15 half filled, what about -- is that in plain view?

16 MR. KRAUSE: If the bottle is in a paper bag it pre-  
17 sents the difficult question which was just handled by the  
18 Court of Appeals for the D.C. Circuit in United States v. Ross  
19 in that en banc decision that was handed down March 31.

20 QUESTION: But that wasn't a bottle of whiskey, was it?

21 MR. KRAUSE. No. That was, I think, some sort of  
22 controlled substance that was in the bag. I think my answer to  
23 the paper bag having a half-consumed bottle of whiskey is that  
24 this would truly be one of those question that depended on the  
25 individual facts and the testimony. If the policeman testified

1 that he could smell whiskey, had picked up the bag and it felt  
2 like a bottle of whiskey to him, that it was on the floor of  
3 the car and he thought it was trash, all of those things, I  
4 think, would add to the factual issue and on the basis of those  
5 facts you would, some judge would make the decision as to whe-  
6 ther a warrant was required.

7 In this case, I would say we have considerably stronger  
8 and better facts for requiring a warrant. We have a package,  
9 we have a sealed opaque package. We have a package which we be-  
10 lieve qualifies under the Jackson case, which Chief Justice  
11 Burger cited and relied upon in Chadwick. And the Jackson case,  
12 of course, involves a package, a package in the mail, but this  
13 Court said in Jackson that packages in the mail are protected  
14 in the same manner as if the individual still had control of  
15 them before putting them into the mail. So I don't think that  
16 the Jackson case is specifically a mail case. The Jackson  
17 case is a package case, and it's very clear from the Jackson  
18 case that Justice Field who wrote the case and the other jus-  
19 tices on the Court at that time were clear that packages were  
20 protected by the warrant clause back in the 19th century.

21 QUESTION: Yet, if the defendant in this case had been  
22 arrested on probable cause and searched pursuant to a custodial  
23 arrest, there's no question that a package on his person could  
24 have been searched, is there?

25 MR. KRAUSE: Yes, Justice Rehnquist, I would question



1 that. If a person is validly arrested and is carrying a sealed  
2 package, unless there's some emergency I see no reason why pro-  
3 bable cause for that package should not be presented to a magis-  
4 trate.

5 QUESTION: How do you distinguish the Robinson case  
6 and the Gustafson case?

7 MR. KRAUSE: Well, I don't think that that case in-  
8 volved a sealed package. I would say that once you get rid of  
9 the emergency, once it's clear that the package has been taken  
10 away from the arrested person so he can no longer present any  
11 threat to the police officers, then I believe that that package  
12 should be taken down to the station. If I'm wrong on that it  
13 still doesn't make any difference for our case, Justice Rehn-  
14 quist, because there's never been any contention that this was  
15 a search incident to an arrest, in the Robbins case. Nor has  
16 there every been any contention that this was a consented search.

17 QUESTION: No, but there has to be some sort of line  
18 somewhere which police officers and ordinary citizens and magis-  
19 trates can operate under without having it fluctuate, based on  
20 the facts of each case.

21 MR. KRAUSE: Yes, and I think that I would like to  
22 suggest such a line, and we have suggested such a line. That  
23 is, that where there is no emergency or no consent or other  
24 waiver, that if a person, if a policeman has probable cause as  
25 to a package or takes it into his custody incident to an arrest

1 that the warrant rule should apply, because this Court for well  
2 over 100 years has said that the warrant is the rule. And un-  
3 less there is an exception found there must be a warrant. The  
4 Court has said many, many times that no amount of probable cause  
5 will serve as a substitute for a warrant. And I think, Justice  
6 Rehnquist, that that is the easy line that can be applied by  
7 the officer in the field, that if there is an opaque package  
8 that he can't see, take it to a magistrate, get permission to  
9 open it, make sure that your arrest will stick.

10 QUESTION: Well, what do you do in the meantime if  
11 you're by yourself, as a law enforcement officer?

12 MR. KRAUSE: You're going to put the person you ar-  
13 rested in your patrol car and you also put the package in the  
14 patrol car, Justice Rehnquist. I think that it certainly  
15 couldn't be considered to be a burden on the officer to take,  
16 for instance, the two packages in this case and put them in his  
17 patrol car. He was going to take the defendant, the arrested  
18 defendant in to the station anyway. He wasn't going anywhere.  
19 He had a second officer with him. There was absolutely no bur-  
20 den or inconvenience. It would have been good law enforcement  
21 for that officer to do that. It would have validated his arrest  
22 instead of bringing it before the Supreme Court of the United  
23 States, as it is now.

24 QUESTION: What if they had three heavy suitcases?

25 MR. KRAUSE: We thought about that, Justice Stevens.

1 What if the suitcases are like the trunk in Chadwick that's so  
2 huge that it can't be moved?

3 QUESTION: And there are, you know, there are four or  
4 five of them, it would be rather bulky to stick in the back of  
5 the --

6 MR. KRAUSE: Yes, if there is that problem, then I  
7 think that we have the same kind of a situation as is present  
8 under Chambers for an automobile search. And to whatever force  
9 the automobile search exception has, I think that same exception  
10 should apply to packages or piano cases or safes or suitcases  
11 that are too heavy to move. I think that the officer should  
12 have some attention paid to him. If he tells the court, the  
13 trial court, that, yes, he realized that he perhaps could have  
14 lifted up this suitcase but it was too heavy and too bulky to put  
15 in his car and it would have caused him some inconvenience, I  
16 don't think that there's a court in the country that wouldn't  
17 give credence to that kind of a judgment. Because it's an offi-  
18 cer in the field.

19 This is not that kind of a case. This is a simple  
20 case. This is a case of a constable's blunder, and now both  
21 the state government and the federal government are trying to  
22 erode the Fourth Amendment to protect this simple arrest that  
23 should have been handled in the first place.

24 QUESTION: Suppose an officer has concededly probable  
25 cause to believe that someone either walking on the street or



1 driving in an automobile has illegal drugs in a plastic bag,  
2 an opaque plastic bag, and everybody concedes that there was  
3 perfectly good reason to believe that he was carrying such drugs  
4 in a plastic bag. And the officer seized the man, he has the  
5 plastic bag, or he stops the car on probable cause and he sees  
6 that there's a plastic bag there. Now, I take it you agree he  
7 can arrest the man?

8 MR. KRAUSE: Yes, sir.

9 QUESTION: He can arrest the man based on the proba-  
10 ble cause that he is carrying drugs?

11 MR. KRAUSE: Yes.

12 QUESTION: But he may not open the bag?

13 MR. KRAUSE: He may not open the bag.

14 QUESTION: He has to -- it may be that if he opened  
15 it and found that it didn't have drugs in it he could let him  
16 go.

17 MR. KRAUSE: That's the same issue that was discussed  
18 by Justice Powell in this Arkansas v. Sanders.

19 QUESTION: Right, right.

20 MR. KRAUSE: And he said, if -- and I think Chief  
21 Justice Burger said this, too -- if the man under arrest feels  
22 that he wants to surrender his right of privacy he can do that  
23 at any time and say, look in my bag.

24 QUESTION: So you say to the man, I'm either going to  
25 -- I'm going to take you and the bag to the police station or

1 I'm going to open the bag now if you'll let me.

2 MR. KRAUSE: That's right. That's the Fourth Amend-  
3 ment. That's the protection of privacy. That gives our citi-  
4 zens the confidence that they have some control over our govern-  
5 ment.

6 QUESTION: What about the statement, "What you are  
7 looking for is in the back"? Do you have any comment about what  
8 that meant?

9 MR. KRAUSE: I don't know. I know that the petitioner  
10 had collapsed on the street and had vomited and was very ill at  
11 the time and I don't know what it meant. Certainly, there  
12 could be some very strong inferences drawn, and if the state  
13 had argued that that was a consent, then perhaps we would have  
14 a more difficult case. But the state has never argued that that  
15 is a consent. And that leads me to believe that even the state  
16 concedes that the statement was involuntary because the man had  
17 just been rendered unconscious by being forced to inhale his own  
18 exhaust.

19 QUESTION: Well, now, you have said that several times.  
20 Is there anything in this record that says he was unconscious  
21 because he inhaled exhaust or because he inhaled marijuana?

22 MR. KRAUSE: All I can is that he seemed to be func-  
23 tioning before he had to stand over his exhaust pipe.

24 QUESTION: Mr. Krause, you don't challenge the open-  
25 ing of the trunk itself, do you?

1 MR. KRAUSE: Perhaps we should have but we haven't,  
2 Justice Stevens.

3 QUESTION: That's not an issue here anyway?

4 MR. KRAUSE: That's not an issue. There are so many  
5 issues that we could have raised --

6 QUESTION: But you didn't?

7 MR. KRAUSE: But we decided to present the warrant  
8 issue as such and we don't challenge the opening of the trunk  
9 itself, although I'm not conceding that a police officer can  
10 open a trunk in any circumstances --

11 QUESTION: Arguendo, by assumption, by hypothesis,  
12 everything that happened up until the search of this particular  
13 container, you don't question?

14 MR. KRAUSE: No, not legally. I would like to also  
15 point out that there are a couple of other important cases that  
16 apply the Warrant Clause to packages. One of them is the Walter  
17 case as to which there may not have been a clear majority opinion  
18 but it seems that five justices did join in those parts that say  
19 that those cardboard cartons that contain the allegedly obscene  
20 films were protected by the Warrant Clause, and then there's the  
21 van Leeuwen case involving some boxes in the mail.

22 I would also like to say that the Warrant Clause seems  
23 to me to be extremely important for another reason mentioned by  
24 Chief Justice Burger in Chadwick, and that is the separation of  
25 powers. The big problem with the writs of assistance was that  
they were executive warrants in England. They were issued by an



1 executive officer to be enforced by an executive officer and I  
2 think that the separation of powers concept is extremely impor-  
3 tant, that wherever possible we want a representative of the ju-  
4 diciary to pass upon whether our privacy should be violated,  
5 not a policeman acting on the street.

6 And I say, "wherever possible," because those are the  
7 compromises made by this Court and accepted by society. If you  
8 have a situation where it's not possible, where there's an  
9 emergency, where there's a waiver, where there's a problem,  
10 then let the police officer do his duty. But I say, Justices,  
11 that there is no such situation in this case.

12 In this case you had a situation of a very simple fact  
13 of putting two packages or maybe three packages in the back of  
14 a patrol car with the defendant.

15 I would like to get a little bit to Footnote 13 of  
16 the Arkansas v. Sanders case. That seems to be an unlucky  
17 footnote, because although the Court below relied upon it, the  
18 Solicitor General does not rely upon it and the Attorney General  
19 of California merely makes the barest passing reference to Foot-  
20 note 13.

21 Footnote 13, it seems to me, has two meanings. One is,  
22 where there is something in plain view -- and there was nothing  
23 in plain view in this case. There is no testimony about plain  
24 smell or plain feel or anything. The officer just said, he saw  
25 these opaque plastic packages and he opened them. No testimony

1    whatsoever about the officer could tell what the contents are.  
2    There is some testimony, in answer to a question from the prose-  
3    cutor the officer testified that he had heard that marijuana is  
4    sometimes packaged in this way. That was never put forth as a  
5    justification for his opening the packages. It was obvious  
6    that this officer was determined to open everything in the car.  
7    He had already opened the suitcase, a briefcase. He had already  
8    opened the tote bag. And then he got to the packages. The fact  
9    that he had heard that marijuana is sometimes packaged in this  
10   way does not add to any plain view showing.

11           Then there's the part of Footnote 13 that says, where  
12   the contents can be inferred from the very container, that can-  
13   not support a reasonable expectation of privacy. And Justice  
14   Powell gave us two examples, a gun case and a kit of burglar  
15   tools.

16           QUESTION: I suppose a bottle with some brown liquid  
17   in would be something like that too, wouldn't it?

18           MR. KRAUSE: Yes, if you had a whiskey bottle, its  
19   contents could be inferred from its outside appearance. In our  
20   package we didn't have that; in our packages we didn't have that.

21           QUESTION: But preceding that you had the odor of  
22   marijuana identified by the officer and the marijuana cigarette.

23           MR. KRAUSE: Yes. In the front part of the car. But  
24   nothing, no odor at all from the rear luggage compartment, which  
25   was entirely separate. It's a station wagon and the testimony

1 was that there was a rug over the luggage compartment. You have  
2 to take off the rug, lift up the metal cover to the luggage com-  
3 partment. And there was no testimony that he smelled anything  
4 at all there. I consider the gun case, I've characterized it in  
5 our brief as a self-identifying container, and I would like to  
6 explain that, if you choose to carry something in something  
7 like the gun case, it may be a gun, or conceivably could be a  
8 fishing rod, or it could be your diary. But you choose to carry  
9 it in a container which suggests by its very nature its need for  
10 inspection, just as if you had walked down the street with a  
11 container labeled dynamite.

12 I don't think you should expect that that container  
13 would not be inspected. You have identified, you have invited,  
14 you have waived by that kind of a container. Contrast that with  
15 the footlocker in Chadwick where we had leaking talcum powder  
16 which the experts who had looked at it said was a sure sign of  
17 marijuana, and we had a dog who smelled that and said, in  
18 his own inimitable language, there's marijuana in this foot-  
19 locker. Still, that was not self-identifying, Your Honors.  
20 A warrant was required, a warrant was required because it was  
21 closed, it was opaque, and the contents could not be viewed.  
22 I would say the same thing is true in this case.

23 I think, relevant to Footnote 13, also, is that  
24 petitioner had protected his privacy very carefully by the way  
25 he packaged the containers and where he put them, and I think



1 all of the cases discussing warrants discuss that protection  
2 of privacy. And I might point out that anything could be packed  
3 in a plastic-wrapped parcel, from books, to papers, to marijua-  
4 na, and I might also point out the converse, that marijuana can  
5 be packed in anything. And you just -- you could have a hunch,  
6 you could have a guess; but that's not sufficient for a warrant-  
7 less search, that's not sufficient to qualify --

8 QUESTION: Well, here we assume there was probable  
9 cause. We assume it.

10 MR. KRAUSE: We assume that there's probable cause;  
11 yes. Right.

12 QUESTION: The question is, whether or not a warrant  
13 was required. That's the only issue before us, isn't it?

14 MR. KRAUSE: Yes, and, of course, we rely on no amount  
15 of probable cause standing alone can justify a warrantless  
16 search absent waiver of emergency, Coolidge v. New Hampshire,  
17 and many, many other cases.

18 QUESTION: You're assuming, I gather, then, that if  
19 this same package had been carried as he walked down the street,  
20 under his arm, without being in any other larger container,  
21 there would have been probable cause to arrest him for posses-  
22 sion of marijuana? If you're assuming probable causes for pur-  
23 poses of analysis here?

24 MR. KRAUSE: That is a -- I'm not going to walk into  
25 that one. I wouldn't say that.

1 QUESTION: Well, you did awhile ago. I asked you  
2 exactly the same question and you said, yes, there would be  
3 probable cause to arrest him even if you couldn't open the  
4 package.

5 MR. KRAUSE: No, I think your question assumed, Jus-  
6 tice White, or I understood it to assume that there was probable  
7 cause for arrest.

8 QUESTION: Oh, yes. And I think Justice Stevens --

9 MR. KRAUSE: And I think Justice Stevens --

10 QUESTION: Well, I asked you if there was probable  
11 cause to arrest, because there was probable cause to believe  
12 that he was carrying drugs in an opaque sack?

13 MR. KRAUSE: Oh, well, then I completely misunderstood  
14 your question. I thought --

15 QUESTION: Why wouldn't there be probable -- oh, ex-  
16 cuse me; you can go ahead with Justice Stevens.

17 MR. KRAUSE: That's all right. I think both --

18 QUESTION: I think you've already answered the ques-  
19 tion.

20 MR. KRAUSE: Both can be answered at the same time,  
21 because merely carrying a plastic-wrapped package is not pro-  
22 bable cause that that package contains contraband.

23 QUESTION: Well, no, but I said that -- I asked you  
24 that, suppose that anybody would agree that the officer had  
25 reliable information that this man was carrying drugs in an

1 opaque plastic bag.

2 MR. KRAUSE: Yes, sir?

3 QUESTION: That he did have probable cause to believe  
4 that and everybody would concede it. And I thought you said  
5 that if he knew that, he could arrest him?

6 MR. KRAUSE: I did say that. And then Justice Stevens  
7 I understood to ask me, suppose there wasn't probable cause to  
8 arrest and the only thing you could see was a man walking --

9 QUESTION: Well, apart from this particular package  
10 which apparently some officers would consider probably to con-  
11 tain marijuana.

12 MR. KRAUSE: Right.

13 QUESTION: The reason I ask you is, I'm wondering if  
14 he could get a warrant. Do you assume or do you not assume  
15 that if they took the package out of the trunk and brought it  
16 in and set in on the magistrate's desk and said, I'd like a war-  
17 rant to open this, what would the magistrate do?

18 MR. KRAUSE: I think the magistrate would turn down  
19 the warrant unless the additional facts were presented to him  
20 that also this man was smoking a joint of marijuana, a cigarette  
21 that smelled to me like marijuana, and here it is, and I can  
22 identify it as marijuana. Once you have connected the possessor  
23 of the package with other marijuana, I think your probable cause  
24 for the package increases. I'm not prepared to --

25 QUESTION: Would it be probable cause if it weren't in



1 a plastic package, if it were just in say, a suitcase? Say,  
2 instead of a plastic bag, we had a suitcase in the trunk, and  
3 the officer took the suitcase out, took it to the magistrate  
4 and said, this fellow was smoking marijuana when we arrested  
5 him. We want to open his suitcase. What should the magistrate  
6 do?

7 MR. KRAUSE: If I were the magistrate I don't think I  
8 would issue the warrant. I don't think there would be enough,  
9 unless the officer was willing to swear that this suitcase was  
10 treated with, in a manner that indicated to him that it con-  
11 tained contraband, such as the arrested party was very afraid  
12 and nervous about the package, and things of that sort. If  
13 there were sufficient facts, yes. But standing alone, no.

14 And standing alone, a man walking down the street  
15 carrying Mr. Robbins' two plastic-wrapped packages, it would be  
16 outrageous to consider that a magistrate would issue a warrant  
17 for the search of that.

18 QUESTION: Then, I take it, the magistrate should not  
19 have issued a warrant for the cookie tin or the tote bag either  
20 if they'd been brought in?

21 MR. KRAUSE: If it weren't for the odor of marijuana,  
22 I would say the probable cause would be zero. But unfortunately  
23 for petitioner, there was the odor of marijuana and what appear-  
24 ed to be marijuana cigarettes.

25 QUESTION: See, this thing I'm trying to think through

1 is whether the issue here is whether a warrant is necessary or  
2 whether a search can take place.

3 MR. KRAUSE: Well, the issue as we presented it is  
4 whether a warrant is necessary. We have not raised the issue of  
5 probable cause. Now, the issue of what is a legitimate expecta-  
6 tion of privacy has come up a lot and I think that's an extreme-  
7 ly important area for this Court because too many people assume  
8 that you want the policeman on the street to make some judgment  
9 as to a legitimate or a reasonable expectation of privacy.  
10 Justices of the Supreme Court, I don't think that's what you  
11 intend. I think that that is just a manner in which you describe  
12 the way in which you determine whether there has been a search  
13 or whether the person complaining about the search has the stand-  
14 ing to complain about it.

15 QUESTION: What kind of judgments must the policeman  
16 on the beat make before he makes a Terry type of search?

17 MR. KRAUSE: I think that he has a lot of leeway there  
18 and I think his --

19 QUESTION: Now, ~~all of the factors are subjective,~~  
20 are they? Or are some objective and some subjective?

21 MR. KRAUSE: I think there are certainly some objec-  
22 tive facts and in the particular case you had to have individ-  
23 uals acting suspiciously, walking up and down in front of a  
24 store, as if they were going to rob the store. And the police-  
25 man -- maybe an ordinary citizen might not have thought too

1 much about that, but the policeman can use his expert knowledge  
2 and can infer that something's going on. But even then, you've  
3 only given that policeman the right to pat down the outside of  
4 the man's clothing, to protect himself, while he's detaining  
5 and asking questions. You have not given him the right to even  
6 enter pockets or let alone suitcases or packages. So I think it  
7 is a different situation. But, once again, justified.

8 QUESTION: In a Terry search, could he enter any  
9 package that might contain a gun?

10 MR. KRAUSE: No, sir, I don't believe so, unless the  
11 suspect could get to it. If he had a sealed package, for  
12 instance, it's highly unlikely that he could unseal the package  
13 before the policeman could do something about it, I would say, if he  
14 was carrying an open shopping bag that he could reach in and  
15 pull out a weapon from, and the policeman had good facts from  
16 which he could say that there might be a danger to himself if  
17 he detained this man and questioned him about his suspicious  
18 activities without first protecting himself, I would say that  
19 he would have a right to pat down that shopping bag to make  
20 sure that there wasn't an easily reachable gun in it.

21 The last thing I want to say before I sit down and  
22 reserve the rest of my time is that the legitimate expectation  
23 of privacy, when you analyze it carefully, has nothing whatso-  
24 ever to do with the Warrant Clause. It is entirely independent.  
25 The Warrant Clause depends on entirely different considerations



1 mainly dealing with the exigencies of the situation. Legiti-  
2 mate expectation of privacy deals with the person's ability to  
3 come to this Court or any other court and say, my privacy has  
4 been invaded, my Fourth Amendment rights have been taken away  
5 from me.

6 That is the confusion that the respondents have en-  
7 tered into. They have tried to confuse this Court to say that  
8 legitimate expectation of privacy has something to do with,  
9 number one, the Warrant Clause, and number two, the policeman's  
10 decisions on the street.

11 QUESTION: Well, I don't quite follow you as to the  
12 confusion that you say has been generated. Doesn't the legiti-  
13 mate expectation of privacy govern as to whether or not your  
14 materials, or your possessions are protected from seizure by the  
15 police?

16 MR. KRAUSE: That is not the test that the policeman  
17 should use.

18 QUESTION: Well, how about Katz and Rakas? Isn't that  
19 what it adds up to?

20 MR. KRAUSE: That's the test that the Court used, but  
21 that's not the test the policeman should use. The policeman  
22 should use a test of, is this in plain view? If it's not in  
23 plain view, I'd better go get a warrant.

24 QUESTION: Well, I would have thought that the police-  
25 man should have used the test that the courts had laid down.

1 MR. KRAUSE: I think that the test that the courts  
2 have laid down is to determine whether the person asserting  
3 privacy has the right to claim it. It's a standing question.

4 QUESTION: Well, but in Rakas we held that it was not  
5 a standing question, that it was a substantive question of what  
6 was and what was not protected by the Fourth Amendment.

7 MR. KRAUSE: It's quite true, but it's not the kind  
8 of test that you anticipate a policeman to use on the street.  
9 The test that you want a policeman to use on the street is whe-  
10 ther there is some exception, whether there's plain view or  
11 whether there's consent. If not, when he's dealing with a  
12 sealed package, he should take it to a magistrate. He should --

13 QUESTION: Well, then, Rakas was wrongly decided,  
14 in your view?

15 MR. KRAUSE: No, I wouldn't -- no.

16 QUESTION: Because you say a policeman shouldn't  
17 follow?

18 QUESTION: No, I would say a policeman shouldn't have  
19 anything to do with that test. I would say the courts should  
20 follow it. That is the test for courts to follow, not for the  
21 policeman on the field. And that's where the respondents have  
22 confused the issue. They have asked the policeman on the field  
23 to make a judgment on reasonable expectation of privacy. They  
24 have asked the policeman on the field to look at my folder here  
25 and decide whether I have a reasonable expectation of privacy

1 in these papers or whether I don't. The Solicitor General  
2 would say I don't because this isn't strong enough, it's only  
3 paper.

4 QUESTION: Well, but, you have a right to raise that  
5 in a suppression motion, and if the policeman is wrong you win.

6 MR. KRAUSE: That's right. And if the lower court is  
7 wrong I have the right to raise it here. That's exactly what  
8 I'm doing. I'll reserve the rest of my time. Thank you.

9 MR. CHIEF JUSTICE BURGER: Very well. Mr. Niver.

10 ORAL ARGUMENT OF RONALD E. NIVER, ESQ.,

11 ON BEHALF OF THE RESPONDENT

12 MR. NIVER: Mr. Chief Justice and may it please the  
13 Court:

14 The search in this case, a roadside search of an auto-  
15 mobile early in the morning, based on probable cause to believe  
16 that the car and its contents contained marijuana, occurred  
17 6-1/2 years ago. At the time of the search California and  
18 federal law was clear, it was unanimous, that probable cause to  
19 search an automobile for evidence of crime gave to the searching  
20 officer the justification to search containers for the same evi-  
21 dence of crime. It was in reasonable reliance upon this rule,  
22 this California and federal rule, that the warrantless search  
23 took place. And it's for this reason alone that the judgment  
24 of the lower court should be affirmed. The officer reasonably  
25 relied on the law in existence at the time, in conducting the



1 search. But even if the search took place today, even if the  
2 search took place in 1981, we believe that the search was still  
3 lawful. Petitioner has contended otherwise, arguing that this  
4 Court in Chadwick and Sanders announced a per se rule that all  
5 containers, all opaque containers, may not be searched without  
6 a warrant. In this case, of course, since the officer could  
7 not see into any of the containers, petitioner concludes that he  
8 should have gotten a warrant and his failure to do so requires  
9 the suppression of the evidence.

10 We read the case as not to go nearly as far as peti-  
11 tioner. In Arkansas v. Sanders, in this Court's Footnote 13,  
12 the Court said that not all containers and packages found by  
13 police during the course of a search will deserve the full pro-  
14 tection of the Fourth Amendment. And this Court acknowledged  
15 that it would be difficult to determine which parcels taken from  
16 a car require the issuance of a warrant and which do not.

17 So, the task in this case is to determine which con-  
18 tainers are protected by the warrant requirement and which con-  
19 tainers may be searched upon probable cause alone. And at this  
20 point it should be made clear that we are talking by hypothesis  
21 about probable cause searches. California is not arguing that  
22 a search of a container may be made without probable cause.  
23 Again, by hypothesis, there is probable cause in all search  
24 cases.

25 So, then, we have to determine what standard should

1 be employed to decide when a warrant is required and when it is  
2 not, and we believe that we should return to the rule in Katz,  
3 Katz v. United States, the formulation set down by Mr. Justice  
4 Harlan. And that is, whether the possessor the container has a  
5 reasonable expectation of privacy in the container so great  
6 that before the governmental intrusion can occur a warrant must  
7 be issued. It brings us then to the question, just what expec-  
8 tations of privacy are reasonable? And this Court in Katz  
9 and in Justice Harlan's dissent in United States v. White and  
10 in Rakas v. Illinois has told us that an expectation of privacy  
11 is reasonable when society deems it to be reasonable, when it is  
12 prepared to accept that expectation as legitimate.

13 Now, the societal determination is based on the  
14 customs and values of past and present and the extent to which a  
15 reasonable person's sense of security would be breached by the  
16 governmental conduct. Or, to put the matter even more simply,  
17 will the search diminish the amount of freedom and privacy to  
18 a level inconsistent with the goals and values of this society?

19 Now, we submit that the answer to this question is,  
20 no, the search in this case would not offend society's sense of  
21 security.

22 QUESTION: Well, is that the sort of test -- harking  
23 back to the colloquy that my brother Rehnquist had with your pre-  
24 decessor here at the podium, is that the sort of test that we can  
25 expect an officer on the beat to apply?

1 MR. NIVER: No, not without guidance from this Court  
2 and from, of course, lower courts. The question is, what is  
3 in what containers. Does --

4 QUESTION: When do you need a warrant and when don't  
5 you?

6 MR. NIVER: Exactly.

7 QUESTION: Doesn't the officer on the beat, shouldn't  
8 he welcome clearcut rules one way or the other?

9 MR. NIVER: He should welcome --

10 QUESTION: Rather than a test that depends upon the  
11 expectations of society and for him to evaluate that?

12 MR. NIVER: He should welcome a test which is clearcut  
13 but the test must also be faithful to the history and the pur-  
14 poses of the Fourth Amendment. You have to accommodate both  
15 the values that the Fourth Amendment was intended to protect;  
16 you have to accommodate the interests of the private citizen in  
17 a sense of security.

18 QUESTION: That's what courts must do, but what an enforce-  
19 ment officer wants and needs, I should suppose, is working rules.

20 MR. NIVER: That's right. That's right. And so we  
21 first turn to this Court's cases to determine just what are  
22 working rules, and we believe that a working rule and a value  
23 which is granted a high preference by the society are those re-  
24 positories which are intended to contain personal effects. This  
25 phrase "repository of personal effects" has been used in at



1 least three of this court's cases as a determining factor in  
2 whether or not a warrant is required. In Cardwell v. Lewis, in  
3 the plurality opinion in 417 U.S., the search of the automobile  
4 was upheld because the Court said that it was not intended to be  
5 a person's residence or a repository of personal effects.

6 The same phrase was also used in Chadwick in condemn-  
7 ing the search of a footlocker, and in Arkansas v. Sanders, in  
8 overturning the search of a suitcase. I think that this phrase  
9 "repository of personal effects" is a rubric which tells us,  
10 which this Court has reflected the societal preference in a  
11 warrant to search such a receptacle. That is to say, that  
12 a society, this society is --

13 QUESTION: Mr. Niver, I know it's not in issue on  
14 this particular posture of this particular case but under that  
15 test, would the officer have the right to open the trunk of the  
16 car?

17 MR. NIVER: The trunk of the car? Yes.

18 QUESTION: Because that is not normally a repository  
19 of personal effects?

20 MR. NIVER: This Court has upheld the search of the  
21 car --

22 QUESTION: But that's then -- this test is one you  
23 would have proposed just for containers?

24 MR. NIVER: That's right.

25 QUESTION: That are within a car.

1 MR. NIVER: Correct. Not the -- all integral parts of  
2 the car may be searched upon probable cause. Cases: Carroll,  
3 Chambers, Bannister v. Colorado. All those cases teach us  
4 that. It's, as Justice Stewart would have it, it is a simple  
5 test for police officers to follow. Even though it is true  
6 that personal effects are kept in glove boxes and in trunks of  
7 cars, nevertheless, the case is now over 50 years old that cars  
8 may be searched.

9 QUESTION: Aren't glove compartments for personal ef-  
10 fects?

11 MR. NIVER: Yes.

12 QUESTION: But you can go in there?

13 MR. NIVER: I distinguish containers of --

14 QUESTION: I mean, isn't a glove compartment espe-  
15 cially made for personal effects?

16 MR. NIVER: That's right.

17 QUESTION: But he can go into it if he wants to?

18 MR. NIVER: That's right. Under this Court's cases.

19 QUESTION: So what does that do with your theory then,  
20 if it's personal, you can't go in?

21 MR. NIVER: What this does with this theory is that  
22 in Arkansas v. --

23 QUESTION: What about any locked compartment? Wouldn't  
24 that be an easy one to enforce?

25 MR. NIVER: Locked?

1 QUESTION: L-o-c-k-e-d.

2 MR. NIVER: Yes, sir, a locked container.

3 QUESTION: Wouldn't that be an easy one to understand?

4 MR. NIVER: No. The lock merely indicates --

5 QUESTION: You're just saying people just lock for  
6 the sake of locking.

7 MR. NIVER: Yes, but I don't think that the mere fact  
8 that there is a lock on the container indicates an interest in  
9 the privacy of the -- as opposed to the value of the --

10 QUESTION: Well, what do you think the purpose of the  
11 lock is for?

12 MR. NIVER: To protect one's valuables.

13 QUESTION: Well, that's their personal property,  
14 isn't it?

15 MR. NIVER: Yes. For example, a tool box. A person  
16 puts a lock on his tool box because his tools are expensive, not  
17 because he has a privacy interest in the tools. Most people do  
18 not care if other people see their tools.

19 QUESTION: I don't know how you draw this line. I have trou-  
20 ble along this line of trying to say it's so simple. I guess the  
21 police have to decide what's best for society. And do you have  
22 a course in California teaching police what's best for society?

23 MR. NIVER: We have training for --

24 QUESTION: For what's best for society?

25 MR. NIVER: No, we try to teach them what is a



1 lawful search. Turning to this question, what is the difference  
2 between a repository of personal effects and other repositories,  
3 I think that society places a great importance in protecting  
4 the suitcases, briefcases, and the like from a warrantless  
5 search, but I don't think that society has a stake anywhere near  
6 as great in a tool box or a cookie tin or a candy box or a dixie  
7 cup or a grocery bag. I think that society is less threatened  
8 by the searches of those containers because the contents are  
9 less intimate and society has less need for constitutional pro-  
10 tection.

11 QUESTION: The problem is that what you and I might  
12 carry in a suitcase, people in a different socio-economic strata  
13 carry in a grocery bag.

14 MR. NIVER: Perhaps. Yes. There is that possibility.

15 QUESTION: And yet, we're all protected by the Consti-  
16 tution.

17 MR. NIVER: That's right. I think that the test that  
18 we have proposed is that if the officer reasonably believes  
19 that a grocery bag is being used as a repository for such con-  
20 tents, it may not be searched without a warrant. But, for  
21 example, if the officer saw somebody come out of a grocery store  
22 with a grocery bag and also had probable cause to believe that  
23 drugs were in the bottom of the grocery bag, he would have no  
24 reason to believe that it was that person's suitcase.

25 QUESTION: If he came out of the grocery store with a

1 little small brown bag, you wouldn't have much trouble, would  
2 you?

3 MR. NIVER: Even a large brown bag.

4 QUESTION: No, you know which little small bag I'm  
5 talking about. With a little glassine bag inside of it.

6 MR. NIVER: I see. Yes.

7 QUESTION: He wouldn't have much trouble with it?

8 MR. NIVER: No, he wouldn't have any trouble with that,  
9 nor would he have any trouble with a larger brown bag into which  
10 he could not see, because, again, there would be no expectation  
11 of privacy so intense as to require a warrant. Now, it is true  
12 that this is a value choice that we are proposing but we believe  
13 that it's supported by this Court's cases, from Katz through  
14 Rakas, Chadwick, Sanders, and the like.

15 QUESTION: When we talk about an expectation of  
16 privacy, do we need to distinguish between a legitimate expect-  
17 ation of privacy and an expectation in the abstract? Let me  
18 enlarge on that a little. I suppose, if you've got marijuana  
19 in the bag, you certainly have a hope that it's going to be  
20 private. Is that not so?

21 MR. NIVER: That's true.

22 QUESTION: Suppose it's a pistol, loaded pistol? You  
23 certainly hope that that is not going to be detected by anyone.  
24 The question is, whether there is a legitimate expectation of  
25 privacy if you're carrying a pistol or a piece of contraband,

1 marijuana or opium or cocaine.

2 MR. NIVER: That's right, sir.

3 QUESTION: I don't see, I don't recall in your brief  
4 that you have undertaken to treat the difference between the  
5 legitimate expectation of privacy and a hope, what might be  
6 called a hope of privacy. Do you care to comment on that?

7 MR. NIVER: Yes, I think, Your Honor, that we did dis-  
8 cuss the fact that under the Katz expectation of privacy formu-  
9 lation there are two considerations. First, the discussion is  
10 contained on pages 32 through 37 of the Respondent's brief,  
11 and that is that there is a two-fold requirement, see Mr. Justice  
12 Harlan's statement: first, that a person have exhibited an  
13 actual or subjective expectation of privacy and second, that  
14 the expectation be one that society is prepared to recognize as  
15 reasonable.

16 QUESTION: That was just a concurring opinion in that  
17 rule, wasn't it?

18 MR. NIVER: That's right, but the formulation also  
19 appeared in the Court's majority opinion in Rakas v. Illinois.

20 QUESTION: Tell me, I'm still worried about this pur-  
21 pose. You've got a briefcase with a lock on it, but it's not  
22 locked, it's open. And you've got a package that's wrapped up  
23 with sealing wax and tape and all. The briefcase has more  
24 privacy than that package?

25 MR. NIVER: Probably.



1 QUESTION: Yes, but I have trouble with that.

2 MR. NIVER: If there is no reason for the officer to  
3 believe that the plastic bag contains personal effects. That's  
4 right.

5 QUESTION: Even if it's all sealed up and everything,  
6 that he can --

7 MR. NIVER: For example, the plastic bag in this case  
8 could be seized by the officer. There is no dispute about that.  
9 Once it is seized, the thing inside is -- a tactile inspection  
10 of the package would reveal that the thing is of the weight,  
11 shape, consistency of a 15-pound block of marijuana. Now,  
12 though it was not litigated in the trial court, it could not be  
13 because this was a pre-Chadwick search, it is inferrable that  
14 it emitted a smell of marijuana. Now --

15 QUESTION: That's in the record?

16 MR. NIVER: It is not in the record. It is an infer-  
17 ence that we draw from the fact that the marijuana brick weighed  
18 15 pounds. Under these circumstances there is absolutely no  
19 reason for the officer to believe that that was any kind of a  
20 personal effect other than a marijuana brick. There was no  
21 reason for the officer to believe that this was luggage or that  
22 it contained a man's clothing, his papers, or anything remotely  
23 similar to personal effects.

24 QUESTION: Are you suggesting that the profile or  
25 silhouette of a marijuana block is comparable to the profile or

1 silhouette of a fifth of a gallon bottle that liquor is normally  
2 contained in?

3 MR. NIVER: Well, of course, a profile of a bottle  
4 does not necessarily tell you that it contains liquor.

5 QUESTION: Well, but you start with the profile and then  
6 you find that it's got some brown liquid in it, and then by tak-  
7 ing the cork out you draw some inferences as to what kind of  
8 brown liquid -- you detect the difference between iced tea or  
9 tea, and bourbon.

10 MR. NIVER: Oh, I see.

11 QUESTION: Now, I'm asking whether you're arguing that  
12 the shape of that block, which a policeman understood is the  
13 way marijuana is transported, is something like the shape of a  
14 bottle that sets him off on the series of deciding whether he  
15 can make a search.

16 MR. NIVER: The shape of the package -- in this case,  
17 the shape of the package would certainly tell the officer, toge-  
18 ther with the surrounding circumstances, that it was marijuana.  
19 That gives him probable cause; there's no question about that.  
20 But also, the shape of the marijuana together with what was  
21 almost certainly an odor of marijuana would defeat any legiti-  
22 mate expectation of privacy in the contents of that bag, of the  
23 green plastic bag. So, yes, Your Honor, there is an analogy to  
24 be drawn between the shape of the brick and the shape of  
25 a liquor bottle.

1 QUESTION: Now, you haven't made any claim, I take it,  
2 that when this gentleman said, "What you are looking for is in  
3 the back," by which apparently everyone concedes he meant in the  
4 trunk, that that was a formal consent to the search?

5 MR. NIVER: It was never litigated as consent. Once  
6 again, it bears repeating, because in 1975 we did not think that  
7 it was necessary to argue consent. It was only necessary to  
8 establish probable cause. It does not -- we can't argue at this  
9 point that there was consent, because there was no finding. It  
10 was never argued. We do argue, however, that it defeats not  
11 only the reasonable expectation of privacy which we have been  
12 arguing; also, it defeats a subjective expectation of privacy  
13 on the part of the petitioner.

14 QUESTION: Mr. Niver, this car was a station wagon,  
15 as I understand it. And I've heard repeated reference by both  
16 you and your cocounsel to the trunk of the station wagon. The  
17 station wagons I've been familiar with, and perhaps I'm just not  
18 up to date on them, have had decks, and you can get into them  
19 by the rear door, by unlocking and raising the door. But they  
20 don't have a trunk the way an ordinary car has.

21 MR. NIVER: No, that's right. The rear door had to be  
22 brought down and then the floor board panel was brought up, re-  
23 vealing the, what is effectively a trunk in the station wagon.

24 QUESTION: Which is under the open deck?

25 QUESTION: So that it had a well, basically, underneath



1 the deck?

2 MR. NIVER: Yes.

3 QUESTION: You left out something. There's also a  
4 rug over it.

5 MR. NIVER: Yes, that's right.

6 QUESTION: That probably explains why he said, "What  
7 you are looking for is in the back," rather than, what you're  
8 looking for is in the trunk, the back of the car.

9 MR. NIVER: Yes, that's right. In the back of the car  
10 which, if he had presence of mind to say, back, instead of,  
11 trunk. The question, then, just whether he ever was unconscious  
12 as counsel has argued.

13 So, getting back to our standard, repository of per-  
14 sonal effects, I think that this is supported by this Court's  
15 cases, the cases which we have enumerated, Cardwell, Chadwick,  
16 and Sanders. And it is also -- although somewhat openended --  
17 is nevertheless a rational test, because there is -- it is incon-  
18 gruous, I would think, to permit an officer to search the trunk  
19 of a car or a glove box of a car, but yet if he finds, for  
20 example, a cookie tin or a candy box or a soda cup in the trunk,  
21 to have him take it to a magistrate, put it before the magistrate,  
22 for written permission to open it, to look at it.

23 QUESTION: Well, this case doesn't involve cookie tins  
24 or dixie cups, but rather sealed packages, from the appearance  
25 of which you cannot determine what that package contains.

1 It's unlike a gun case, in other words.

2 MR. NIVER: That's right. But the rule that the  
3 petitioner is arguing for would cover all of the containers  
4 which I have just enumerated.

5 QUESTION: But the rule that you're arguing for would  
6 obviously cover it because that's what involved in this case,  
7 sealed packages.

8 MR. NIVER: What we are arguing for is luggage or its  
9 functional equivalent. That would include suitcases, briefcases,  
10 and the like. It would not include a green plastic bag with a  
11 15-pound marijuana brick in it.

12 QUESTION: Well, we're not talking about what's in it.  
13 We're talking about how do you determine what's in it. Do you  
14 need a warrant?

15 MR. NIVER: If what is in it is at least determined  
16 from -- partially can be determined from the outside, from a  
17 tactile --

18 QUESTION: Well, could it, in this case?

19 MR. NIVER: It was clear that it was a brick and that  
20 it weighed 15 pounds, or thereabouts.

21 QUESTION: Well, I asked you a question. Is it your  
22 claim that this is akin to a gun case, that one could determine  
23 that there was probable reason to believe that there was mari-  
24 juana inside this?

25 MR. NIVER: Based solely on the outside of the

1 package, no.

2 QUESTION: When this seizure was made, did they have  
3 dogs who could smell the marijuana?

4 MR. NIVER: Did they have dogs?

5 QUESTION: Who could smell the marijuana?

6 MR. NIVER: No, these were two California Highway  
7 Patrol officers. They did not have dogs.

8 MR. NIVER: I said, did the State of California have  
9 them? Anywhere in their police department, where they could  
10 have been called in?

11 MR. NIVER: I don't know.

12 QUESTION: That would have settled it, wouldn't it?

13 MR. NIVER: The record is silent on that point.

14 QUESTION: Mr. Niver, may I ask under your rule, what  
15 do you do about the very large, heavy piece of luggage? Or say,  
16 two or three big, heavy suitcases in the trunk? Now, they would,  
17 I take it, normally be not only the function -- but this was their  
18 luggage. Does he have to haul those out of the car and haul  
19 them down to the police station to get a warrant?

20 MR. NIVER: Of course it depends on the facts in the  
21 individual case. If it is highly impractical to haul such a  
22 container down to the police station, that might very well be  
23 exigent circumstances such as we recognized in Katz.

24 QUESTION: Well, what would be the exigent circum-  
25 stance such as recognized in Chadwick?

MR. NIVER: The nature of the package itself, if it's

**North American Reporting**

GENERAL REPORTING, TECHNICAL, MEDICAL, LEGAL, GEN. TRANSCRIPTION



1 just simply impossible to haul it anyplace. The alternative,  
2 I suppose, would be to isolate it, be to isolate it on the highway  
3 and call for additional help, some sort of a large van. But of  
4 course that is not the problem in this case.

5 QUESTION: Well, instead of one large suitcase, say  
6 there are about eight medium-sized suitcases, any one of which  
7 would be easy to handle, but you kind of convert a police offi-  
8 cer into a bellboy, lugging all this stuff back and forth,  
9 filling up his car. It's your view that he would have to do  
10 that, if there's a lot of luggage in the car, and he wanted to  
11 look in any of the suitcases?

12 MR. NIVER: It's my view that at that, we have to  
13 decide that on the basis of the particular circumstances. In  
14 this case of eight suitcases, perhaps if it could be done, if  
15 it could be carried to the police station, then I suppose that  
16 that's what he would be required to do. If it was simply too  
17 impractical, too inconvenient to do it, then I would argue that  
18 it creates an exigent circumstance.

19 QUESTION: Well, what happened in this case, when they  
20 locked him up? Didn't they take those packages?

21 MR. NIVER: Oh, yes.

22 QUESTION: They looked at them first.

23 MR. NIVER: They looked inside first.

24 QUESTION: You don't ask us to take another look at  
25 Arkansas v. Sanders, do you?

1 MR. NIVER: I think that Arkansas v. Sanders is cor-  
2 rectly decided on its facts, the facts being that luggage may  
3 not without exigent circumstances be searched without a warrant.  
4 What we are arguing is that luggage does not include every sin-  
5 gle opaque package within the memory -- within the ability of man to  
6 conceive, that there are certain packages which society has de-  
7 cided are so important, that contain articles of intrinsic  
8 value, intrinsic privacy, that they may not be searched without  
9 a warrant. In this case we don't have such packages.

10 The argument has been made by counsel that  
11 such a test which we have proposed is open-ended, is unpredict-  
12 able, it would be difficult for a police officer to apply in  
13 each individual case. I think that can be answered by reference  
14 to the hypothetical in the dissent in Sanders, at page 772.  
15 Mr. Justice Blackmun listed eight containers and asked, would a  
16 warrant be required to search these? And he listed orange  
17 crate, lunch bucket, attache case, duffle bag, cardboard box,  
18 backpack, tote bag, and paper bag. I think that under the test  
19 we propose the orange crate and the lunch bucket could be  
20 searched without a warrant upon probable cause. An attache  
21 case and a duffle bag could not be. A cardboard box probably  
22 could be searched without a warrant, depending on the circum-  
23 stances under which it was found. A backpack and a tote bag  
24 could not be searched, and a paper bag could be searched without  
25 a warrant. Now, again, returning to the facts of this case,

1 there was absolutely no reason for the officer to believe that  
2 this contained anything remotely in the way of personal effects.

3 But returning to the issue which we first raised at  
4 the beginning of the argument, retroactivity, I think that it  
5 bears repeating that this search occurred 2-1/2 years before  
6 Chadwick and 4-1/2 years before Arkansas v. Sanders. And apply-  
7 ing the test of Peltier, 422 U.S., unless we are to hold that  
8 parties may not reasonably rely upon any legal pronouncement em-  
9 anating from sources other than this Court, we cannot regard  
10 as blameworthy those parties who conform their conduct to the  
11 prevailing constitutional or statutory norms.

12 QUESTION: Well, isn't it accurate that the original  
13 decision in this case by the California court was founded upon a  
14 theory that was later found to be invalid in Chadwick, and that  
15 that decision, that judgment, was set aside by this Court and  
16 the case was remanded to the California court to reconsider the  
17 case in the light of Chadwick. And upon reconsideration, they  
18 totally abandoned the theory that since this was found in an  
19 automobile it could be searched, and espoused a quite different  
20 theory, on which their judgment is now founded. And therefore,  
21 aren't we faced, regardless of the retroactivity, vel non, of  
22 Chadwick, aren't we faced now with determining the validity  
23 of the foundation upon which the judgment of the California  
24 court now rests?

25 MR. NIVER: No, I don't think so. We have argued in



1 the past that Chadwick and Sanders were prospective. If the  
2 judgment --

3 QUESTION: But even if that's true --

4 MR. NIVER: Yes?

5 QUESTION: This judgment no longer is founded upon  
6 the theory found to be invalid in Chadwick.

7 MR. NIVER: But if the judgment in this case may be  
8 sustained, may be affirmed on the grounds of the prospectivity  
9 of Chadwick, then this Court need not reach the correctness of  
10 the theory of the lower court.

11 QUESTION: I'm sorry, I understand your argument.

12 QUESTION: Do you have some suggestions as to what  
13 case in this Court Chadwick and Sanders overruled or upset or --  
14 do you think those were changes in the law?

15 MR. NIVER: It overruled no prior case but neither  
16 did Almeida-Sanchez found to be prospective --

17 QUESTION: Well, that isn't what I asked you, about  
18 Almeida-Sanchez. I'm just asking you about Chadwick and  
19 Sanders. Do you think either one of them overruled anything?

20 MR. NIVER: No.

21 QUESTION: And weren't they quite consistent with past  
22 cases with respect to luggage?

23 MR. NIVER: They were cases of first impression.

24 QUESTION: Well, I don't know whether they were or  
25 not. There certainly, in both cases, that argued that personal

1 effects like briefcases and luggage, you should be able to  
2 search them like you should be able to search a car, because  
3 they were mobile. But that had never been the law before with  
4 respect to luggage, had it?

5 MR. NIVER: Not as to this Court, but --

6 QUESTION: Were there cases like that in the 9th Cir-  
7 cuit?

8 MR. NIVER: There were cases like that in most of the  
9 federal circuits, cases which are recited in the brief, the  
10 cases in the State of California, according to the California  
11 Supreme Court, and cases in other states. Cases prior to  
12 Chadwick were unanimous. The probable cause to search the car  
13 gave probable cause to search the luggage, the luggage

14 QUESTION: The luggage compartment. The luggage

15 MR. NIVER: And, again, this was stronger than Peltier,  
16 because cases were unanimous and, again, in -- unless --

17 QUESTION: But we've never had a case here on it, have we?

18 MR. NIVER: No, you've never had.

19 QUESTION: Well, but, Chadwick was not a case in which  
20 there was probable cause to search any car.

21 MR. NIVER: That's right.

22 QUESTION: And neither was Sanders.

23 MR. NIVER: There was probable cause to search the  
24 car in Sanders.

25 QUESTION: Well, both -- but both involved probable --

1 QUESTION: The only contraband was in luggage. It was  
2 known to be in the luggage. There was no reason to believe --  
3 in fact, that was a taxicab, if I remember it. There was no  
4 reason to believe that there was any probable cause to search  
5 any area of the car other than the particular piece of luggage.

6 QUESTION: The probable cause in Chadwick arose be-  
7 fore the trunk was ever put in the taxicab.

8 MR. NIVER: Correct.

9 QUESTION: So the fact that it was an automobile is  
10 irrelevant, is it not, in Chadwick? In other words, it isn't  
11 an automobile case at all.

12 MR. NIVER: That's right.

13 QUESTION: Just a coincidence that they had the taxi  
14 instead of carrying it by hand or with a wheelbarrow.

15 MR. NIVER: That's correct.

16 QUESTION: And there weren't any cases -- were there  
17 a lot of cases in the courts of appeals and in the 9th Circuit,  
18 that if you had probable cause to believe that there was contra-  
19 band in a suitcase that a man was carrying in a railroad sta-  
20 tion, that you can seize the suitcase and search it without a  
21 warrant?

22 MR. NIVER: I believe so; yes. That's Draper. That's  
23 this Court's --

24 QUESTION: I know it is Draper. That was a search  
25 incident to an arrest, wasn't it?



1 MR. NIVER: That's right.

2 QUESTION: Well, bear in mind that at least a couple  
3 of us in Chadwick thought it was an automobile case.

4 MR. NIVER: Oh, I'm aware of that, Your Honor.  
5 Thank you.

6 QUESTION: But if the probable cause had not existed  
7 before the trunk was put in the taxicab, did anything about the  
8 movement from the loading platform to the taxicab add to the  
9 probable cause for arrest?

10 MR. NIVER: In Sanders, you mean?

11 QUESTION: In Chadwick?

12 MR. NIVER: In Chadwick. I don't believe so.

13 QUESTION: The character of the material that fur-  
14 nished the probable cause existed before any taxicab was even  
15 in sight, presumably. Is that not so?

16 MR. NIVER: That is a fair statement of the facts of  
17 Chadwick, as I recall them.

18 QUESTION: So, perhaps you should have answered me  
19 that we in effect overruled Draper in Chadwick and Sanders?

20 MR. NIVER: Perhaps so.

21 QUESTION: But Draper has been cited since then, with  
22 approval.

23 MR. NIVER: Yes, it has.

24 MR. CHIEF JUSTICE BURGER: Mr. Frey.

25 ORAL ARGUMENT OF ANDREW L. FREY, ESQ.,

AS AMICUS CURIAE  
**North American Reporting**

GENERAL REPORTING, TECHNICAL, MEDICAL, LEGAL, GEN. TRANSCRIPTION

1 QUESTION: Right while we're on that point, what's  
2 your view of whether the probable cause was enhanced in any way  
3 in Chadwick by virtue of an automobile being involved or was the  
4 probable cause complete before the automobile came into the  
5 picture?

6 MR. FREY: It was complete before the automobile came  
7 into the picture. But it was complete in Sanders before the  
8 automobile came into the picture, and you still could say that  
9 once it was placed in the automobile, I think it's a matter of  
10 semantics whether you would say there was probable cause to  
11 search the automobile or to search the bag. There's probable  
12 cause to search the bag whether or not it's in the automobile. The  
13 rationale of Sanders, which I think is important here, is that  
14 luggage and automobiles have very different privacy characteris-  
15 tics and values that are assigned to them by our society, so  
16 that the fact that the rule allows the search of the automobile  
17 on probable cause but without a warrant will not carry the day  
18 when what is inside the automobile is something which has more  
19 substantial privacy attributes than the automobile.

20 Now, I would like, in the limited time I have today,  
21 first to discuss why petitioner is wrong in saying that privacy  
22 expectations have nothing to do with the Warrant Clause. Now,  
23 the Fourth Amendment does not -- its terms require warrants as a  
24 precondition for searches, but the Court has held that certain  
25 classes of searches will be unreasonable per se under the

1 Reasonableness Clause of the Fourth Amendment, unless a warrant  
2 is procured in advance.

3 QUESTION: Well, what the Court has really said, that  
4 all searches are unreasonable without a warrant, with certain  
5 well-defined and limited exceptions, hasn't it? Not that only  
6 certain classes are --

7 MR. FREY: Well, the Court has said several things, and  
8 I suppose we could go back and forth. I think there are state-  
9 ments that look in several directions, and what I would like to  
10 do is try to explain what I think underlies the reasons why  
11 warrants are required in certain classes of cases and explain  
12 to the Court why, when you're dealing with containers that have  
13 lesser societal privacy values attached to them, it is appro-  
14 priate for the Court not to require a warrant but to permit --

15 QUESTION: The question is, what does the Constitu-  
16 tion require? Isn't that it?

17 MR. FREY: Exactly. Yes.

18 QUESTION: And the basic constitutional provision  
19 speaks in terms of reasonable, not in terms of what.

20 MR. FREY: Exactly. But the Court has, in some circumstances,  
21 and in the case of the search of a home, to take the paradigma-  
22 tic cases, it is unreasonable to search a home without a war-  
23 rant because of the way our society views the interests of the  
24 individual in the home, and the costs that are involved in  
25 giving the police free rein to go into the home based on their



1 own judgment. Now, this case --

2 QUESTION: Well, just last week, or within the last  
3 two weeks, we have indicated that point, have we not, in terms  
4 of the home being a place entitled to greater protection than  
5 an automobile or some other vehicle, a moving vehicle?

6 MR. FREY: Yes. Now, this case, I'd like to begin by  
7 stressing that this case is not about the substantive criteria  
8 that govern a search. The police officer and the magistrate are  
9 looking for the same question, whether there is probable cause.  
10 The question therefore is not whether there is no expectation  
11 of privacy, in which case you're dealing with no search, but  
12 the magnitude of the privacy expectation. So the case is about  
13 Fourth Amendment procedure.

14 Now, the decision whether or not to require a warrant  
15 involves, I believe, weighing the costs of requiring the police  
16 to secure a warrant against the potential benefits to be derived  
17 from the procedures. Let me talk first about the costs.

18 I think people sometimes assume that the warrant  
19 procedure is entirely cost-free. That is not in fact true.  
20 Now, the costs are not prohibitive, and in many circumstances  
21 the costs are well worthwhile. But the most obvious cost is  
22 the cost in police time. When a police officer seizes an item  
23 and it's required that he procure a warrant, he must carefully  
24 be sure that he puts in his search warrant application all the  
25 facts that he knows in order to make sure that he's shown

1 probable cause. He must be sure not to include inaccuracies  
2 or misstatements. It is a time-consuming procedure. During  
3 the time that this is happening, if he were not required to  
4 procure a warrant, he could be on the street performing law en-  
5 forcement and community caretaking functions. The question is  
6 whether this cost, which I don't want to exaggerate its magni-  
7 tude, but whether this cost is worthwhile in certain classes of  
8 cases. Now, there is also a cost to innocent suspects, I be-  
9 lieve. And I'd like to refer to Footnote 12 in Sanders.

10 The state made the argument that for an individual  
11 who is stopped on the street and is about to be arrested because  
12 the police have probable cause to believe that a package, container,  
13 or item that he has with him has contraband, the state said, it's bet-  
14 ter for the police to make that determination then and there  
15 than arrest him and take him down to the station house. And  
16 the court's response was, well, he can simply consent.

17 Now, I'll just mention one difficulty with that and  
18 that is that a police officer does not have to accept a consent  
19 and if a police officer has probable cause and he came to me  
20 for advice in an important case, I would tell him to decline  
21 the consent, arrest the individual, and take him and the con-  
22 tainer down to the magistrate, because the consent is a question  
23 of fact which will be litigated at the suppression hearing and  
24 may provide a basis for suppression of evidence that would not  
25 be available if the officer went ahead and obtained a warrant.

1 Now, turning to the benefit side of the equation, the  
2 courts --

3 QUESTION: Well, are you saying any more there than  
4 that it is the shrewd, the safe thing to do, is always get a  
5 warrant, if you've immobilized the contraband or the object of  
6 your search?

7 MR. FREY: If you believe you have probable cause. If  
8 you don't have probable cause, then you would accept the consent  
9 if a voluntary one is secured.

10 QUESTION: You're not suggesting that you always must  
11 have a warrant if it's convenient to get a warrant?

12 MR. FREY: I'm suggest that requiring -- no, no,  
13 definitely not. But I'm suggesting that requiring the offi-  
14 cer to procure a warrant will result in some class of cases in  
15 people actually being arrested and detained for a considerable  
16 period of time while the warrant is procured, even though either  
17 the warrant application will be rejected or in most cases will  
18 be granted, and it may turn out that there was nothing in the  
19 container after all that justified the arrest.

20 QUESTION: By that do you mean, if he's arrested on  
21 Saturday afternoon, he might be detained until Monday?

22 MR. FREY: I would hope not.

23 QUESTION: Well, that's the practical --

24 MR. FREY: It's possible here at one, two o'clock in  
25 the morning, although there were independent grounds for



1 the arrest, he might have been detained.

2 Well, let me move over to the benefit side, because I  
3 think that is even more important to focus on. The benefits of  
4 the warrant that involve elimination of general searches by  
5 specifying what is to be searched and seized are wholly inappli-  
6 cable, it seems to me, when you're dealing with a container  
7 which has already been seized, and you know exactly what it is  
8 that's to be searched. The benefit of the warrant that it pro-  
9 vides notice of authority to the homeowner or person whose pro-  
10 perty is to be searched is again wholly immaterial. That per-  
11 son has in most of these cases seen the seizure and he is  
12 sitting in the jail while the warrant application is being pre-  
13 pared.

14 Now, the third and the most important and relevant one  
15 here, of course, and I think generally the most important bene-  
16 fit of the warrant requirement, is that it serves a prophylactic  
17 function, and when the magistrate performs his role properly  
18 there will be a certain number of cases in which the determina-  
19 tion by an overzealous police officer that there is probable  
20 cause will be corrected by the magistrate, and an unreasonable  
21 search will be prevented.

22 Now, this benefit fully justifies the warrant require-  
23 ment in case where the costs associated with the unreasonable  
24 search are substantial in terms of an invasion of privacy values.  
25 On the other hand, it does not, it seems to us, justify the

1 costs of the warrant procedure when you are dealing with con-  
2 tainers that have lower privacy value. For instance, the dis-  
3 senting judge in this case likened this container to a package  
4 of highway flares that he had recently purchased at a store that  
5 were similarly wrapped.

6 Now, I think the point that the Court has to focus  
7 on is, suppose that a police officer thinking that it was  
8 marijuana, but not having probable cause, searched and found a  
9 package of highway flares. How much benefit would have been  
10 obtained to society and to the important privacy interests that  
11 the Fourth Amendment is designed to protect by going through  
12 the warrant procedure with the magistrate?

13 So that I do think that the warrant requirement must  
14 be assessed in terms of the magnitude and nature of the privacy  
15 interest. I don't have time to get into whether these kinds of  
16 containers are of that nature, but I would like to address a  
17 point that Justice Stewart raised earlier, which is the clarity  
18 point.

19 It's been suggested that if the rule is that you must  
20 always get a warrant for any search of a container, that will  
21 clarify things and make it easier for the officer on the beat.  
22 I agree that clarity is desirable but I have two difficulties,  
23 I guess, with that. The first is that you must find that the  
24 Constitution requires that clarity alone is not a sufficient  
25 virtue to require it under the Fourth Amendment unless the

1 Constitution does.

2           The second point, however, is that it will not elimi-  
3 nate the uncertainties that are associated because it will sim-  
4 ply move the focus of inquiry from the present focus, which the  
5 courts of appeals, we submit, have done a reasonably good job  
6 with, to a different place, to a shopping bag, a blanket, a  
7 paper bag, and so on.

8           I see my time has expired. Thank you.

9           MR. CHIEF JUSTICE BURGER: You have four minutes left,  
10 Mr. Krause.

11           ORAL ARGUMENT OF MARSHALL W. KRAUSE, ESQ.,

12           ON BEHALF OF THE PETITIONER -- REBUTTAL

13           MR. KRAUSE: I would like to -- I thought I had ten  
14 extra minutes, but in any event --

15           MR. CHIEF JUSTICE BURGER: You have four.

16           MR. KRAUSE: Okay. Police are using warrants.  
17 I would like to report to Your Honors that they are being really  
18 used, and because of your decisions, and I think the whole  
19 country should be grateful for that, and they can be used, and  
20 they can be used effectively.

21           On the retroactivity point, there are lots of things  
22 to say. First, Chadwick and Sanders, by their own language,  
23 say that they are applying existing warrant requirements. And  
24 they are not new law. Secondly, the states are free to decide  
25 whether a particular decision of this Court shall or shall not



1 be applied retroactively.

2 QUESTION: Well, if you're correct in your first  
3 point, then the retroactivity question doesn't even exist, be-  
4 cause retroactivity, vel non, arises only if there's a  
5 change in the law.

6 MR. KRAUSE: Yes, that's my feeling also, and I agree  
7 with you, Justice Stewart, but some justices don't agree, and  
8 there are two cases that say that regardless of retroactivity  
9 the states have the right to choose themselves, and I'd just  
10 like to mention that.

11 QUESTION: Well, states certainly, if there was  
12 no change in the law, no state has the right or the freedom or  
13 the privilege to disregard a constitutional decision of this  
14 Court, does it?

15 MR. KRAUSE: No. No state does have the right to do  
16 that. And I'm sure they wouldn't. What is a legitimate expec-  
17 tation of privacy is something that's come up quite often and  
18 Justice Rehnquist has defined it in the Rakas case in a way  
19 which is very good, and I don't think it has -- it's the kind  
20 of test, Justice Rehnquist, that you would want the policeman  
21 in the street to apply. It's in Footnote 12. "Legitimation of  
22 expectations of privacy by law must have a source outside of the  
23 Fourth Amendment either by reference to concepts of real or  
24 personal property law, or to understandings that are recognized  
25 and permitted by society."

1           Now, those -- that's a delicate, delicate concept.  
2   And the best test for the policeman on the street is whether  
3   he can see what's in the package or not. If he can't, he should  
4   go get a warrant. And that's an easy test that he can apply.

5           QUESTION: Was the bag in this case, referred to as  
6   opaque, is it the kind that Jonathan Winters advertises on  
7   television, the kind of dark green, hefty type?

8           MR. KRAUSE: No, you can't say that it was a bag at  
9   all. All you can say is that they are oblong-shaped packages  
10   that are sealed with masking tape and they are covered with  
11   something like burlap and then over that there is a green plas-  
12   tic. We don't know where the green plastic came from, so they  
13   were not garbage bags, and it would be a misstatement of the  
14   records to say that they are.

15           And also, it's a misstatement of the record to say  
16   that there was any smell in connection with these packages,  
17   Justices. There was not any smell in connection, nor was there  
18   any feel in connection with this package. And nor, Chief  
19   Justice Burger, was there any evidence that any tests were done,  
20   that there was any, that this met any profile of marijuana. As  
21   we have pointed out, the courts have gone to great lengths to  
22   say that marijuana is normally wrapped in butcher paper and  
23   marijuana is normally wrapped in burlap and marijuana is normally  
24   in 2.2-pound, kilo packages.

25           Well, the 15-minute -- my time is up. Thank you.

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

3 (Whereupon, at 11:27 o'clock a.m., the case in the  
4 above-described case was submitted.)  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 80-148

JEFFREY RICHARD ROBBINS

V.

CALIFORNIA

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY:

Lill G. Gholson

RECEIVED  
SUPREME COURT, U.S.  
MARSHAL'S OFFICE

1981 MAY 4 PM 5 53