

ORIGINAL

OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE

SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 81-1802

TITLE UNITED STATES,  
Petitioner

v.  
PLACE LEROY CARLTON KNOTTS  
Washington, D. C.

DATE December 6, 1982

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

2                    CHIEF JUSTICE BURGER: We will hear arguments  
3 next in the United States against Knotts.

4                    Mr. Frey, you may proceed whenever you are  
5 ready.

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

7                    ON BEHALF OF THE PETITIONER

8                    MR. FREY: Thank you, Mr. Chief Justice, and  
9 may it please the Court, this case is here on the  
10 government's petition for a writ of certiorari to the  
11 United States Court of Appeals for the Eighth Circuit.

12                   The issues in this case began when a drug task  
13 force in Minnesota was investigating the activities of  
14 one of Respondent's co-conspirators, one Armstrong, who  
15 they had reason to believe was engaged in the  
16 manufacture of illegal drugs. They acquired information  
17 that Armstrong was making purchases of certain precursor  
18 chemicals used in the manufacture of amphetamine from a  
19 particular drug company, and with the cooperation -- or  
20 chemical company -- and with the cooperation of that  
21 company, they placed a beeper or radio transmitter in a  
22 false bottom in a five-gallon container of chloroform  
23 which Armstrong was scheduled to pick up.

24                   Armstrong came to the chemical company, picked  
25 up the chloroform, loaded it in his car, and was then



1 followed by physical visual surveillance to the home of  
2 co-defendant Petschen, where the container was seen to  
3 be transferred into Petschen's vehicle. Petschen then  
4 left and was followed both visually and with the use of  
5 the beeper as he drove from Minnesota to Wisconsin. At  
6 one point during his travels on the road, the officers  
7 lost both visual and beeper contact, but they regained  
8 it while he was still in the course of his trip, and  
9 then they lost it for a second time.

10           At that point, with the aid of an aircraft,  
11 and after the passage of perhaps a half an hour to an  
12 hour, the beeper was located emitting signals from the  
13 property of Respondent Knotts. There followed a visual  
14 surveillance over the course of a couple of days, and  
15 then a warrant, search warrant was obtained to search  
16 the property and the search disclosed a clandestine  
17 laboratory to manufacture these chemicals, and of course  
18 the chloroform container which contained the beeper and  
19 various other precursor chemicals.

20           The issue in this case is whether a warrant is  
21 required to monitor the signals emitted by a beeper from  
22 a container that has arrived at an individual's  
23 property. The answer to this question involves  
24 potentially two different kinds of inquiries. First,  
25 whether the use of this investigative technique is a

1 search or seizure at all, regulated by the Fourth  
2 Amendment, and if the answer is no, that would, I think,  
3 end this case. Secondly, if it is a search or seizure,  
4 what quantum of suspicion must exist to support the use  
5 of this technique, and must such use be accompanied by a  
6 warrant.

7           Now, before turning to these issues, I would  
8 like to tell the Court briefly something about how  
9 beepers or beacons, as they are called, operate, and how  
10 they are used. It is basically an FM transmitter that  
11 emits a radio signal which, when monitored, discloses  
12 the location of the beeper. There are some beepers, not  
13 the one in this case, that will also disclose when the  
14 package is being moved or opened.

15           A beeper is a fairly expensive device. I am  
16 told it costs somewhere between \$700 and \$1,200. The  
17 kind of beeper used in this case is fairly small. It  
18 weighs about a half a pound, and is about three inches  
19 long.

20           There are essentially two ways in which these  
21 devices are used. One is attached to a vehicle or  
22 vessel, car, plane, or boat, for purposes of following  
23 the movements of that, and the second is placed in some  
24 way inside a container or other object. Now, in either  
25 case, the basic purpose of this device is to be employed

1 as an aid to surveillance to track movement.

2 Now, the container beeper is sometimes  
3 employed for an additional purpose, in addition to  
4 tracking the movement, which is to determine whether the  
5 object, the container remains located at a particular  
6 place or, as I mentioned, in some instances, whether it  
7 has been opened.

8 Now, car beepers are useful in a wide variety  
9 of cases, kidnapping cases, espionage cases, extortion  
10 cases, any kind of case where visual surveillance might  
11 be important. The container beeper --

12 QUESTION: Is this device operated on a  
13 particular wavelength or something? In other words, can  
14 others hear it besides those who are monitoring?

15 MR. FREY: Yes, it is a radio signal, and it  
16 could be picked up by others. It is just a beep, beep,  
17 beep.

18 QUESTION: Yes, but it is a --

19 QUESTION: Only FM can pick it up?

20 MR. FREY: I think you would need an  
21 appropriate receiver. I am not sure of the technology,  
22 but I think a receiver tuned to the right frequency  
23 will, if it was close enough --

24 QUESTION: Is it any different fundamentally  
25 from the directional signals given to airplanes to guide

1   them?

2                   MR. FREY:  I don't think it is.  It is much  
3   less powerful.  The range of these things --

4                   QUESTION:  But I take it -- could everyone in  
5   the -- was it a house, wherever the chloroform vat was?  
6   Where was that?  A barn or --

7                   MR. FREY:  It was -- it was discovered when  
8   the search took place outside the cabin in a barrel,  
9   under a barrel.

10                  QUESTION:  Yes, but anyone in the cabin ought  
11   to have been able to hear it?

12                  MR. FREY:  If they had the right equipment and  
13   tuned it to the right frequency.

14                  QUESTION:  But not without the equipment.

15                  MR. FREY:  No, but I think the equipment --

16                  QUESTION:  It is a very high frequency signal,  
17   isn't it?

18                  MR. FREY:  I am not sure what frequency it --

19                  QUESTION:  And you would have to -- you would  
20   really have to have some equipment that is tuned right  
21   on that frequency.

22                  MR. FREY:  Well, but there are scanners that  
23   will scan a wavelength and pick up --

24                  QUESTION:  But you would have to have that.

25                  MR. FREY:  I suppose, yes.



1                   QUESTION: I expect that will be the next  
2 step.

3                   MR. FREY: You mean, in the way of  
4 countersurveillance.

5                   QUESTION: Everybody in this business will  
6 have something like this?

7                   MR. FREY: Well, it could be. There are some  
8 kinds of beepers called transponders which do not emit a  
9 continuous signal, and only emit a signal when you  
10 activate them, and they are less subject to being  
11 discovered by these means.

12                  QUESTION: Intercepted.

13                  MR. FREY: In any event, fortunately, this  
14 mode of countersurveillance is not extensive at this  
15 point.

16                  QUESTION: It will be if it is sustained.

17                  MR. FREY: Well, that may be, although for a  
18 number of years these devices have been being used, and  
19 with considerable success.

20                  QUESTION: Mr. Frey, do we focus in this case  
21 on the use of the beeper to locate the cabin, or the use  
22 of the beeper to locate the barrel on the premises?

23                  MR. FREY: No, the cabin itself. What was  
24 held to be improper by the court of appeals was the  
25 monitoring of the beeper while it was on the property.

1 The only piece of information that was used, that was  
2 garnered from the beeper that was relevant to the search  
3 warrant application, and this is a fruits case -- nobody  
4 questions that the warrant itself was supported by  
5 probable cause -- was the knowledge that the container  
6 of chloroform was on Respondent Knotts's property.

7           Now, the beepers are, as I say, expensive.  
8 Their use is hardly an everyday occurrence. Its use is  
9 usually accompanied by airplane surveillance, car  
10 surveillance by a number of agents. But although it is  
11 not frequent, it is hard to estimate its utilities. It  
12 is absolutely essential in investigations like this that  
13 the existence of surveillance not be discovered by the  
14 suspects.

15           And in this case, as in many others, suspects  
16 do use countersurveillance techniques, erratic driving,  
17 sudden U-turns, and various other things to try to  
18 detect the presence of and to throw off visual  
19 surveillance. With the use of the beeper, you do not  
20 need to maintain eye contact with the vehicle that you  
21 are following and are able to mount a more effective  
22 surveillance of the public movements of the car on the  
23 highway.

24           Also in the drug manufacturing cases such as  
25 this, it is common practice for the suspects to acquire

1 chemicals gradually, store them at various locations,  
2 move them from place to place. Sometimes the chemicals  
3 will be acquired 1,000 miles from where the laboratory  
4 is to which they are ultimately transported, and the  
5 maintenance over a period of time of physical  
6 surveillance would be incredibly costly and very  
7 difficult to do without being detected.

8           Now, turning to the specific legal issues in  
9 this case, there are two somewhat different types of  
10 issues raised, as I mentioned, one, whether there is a  
11 search, and second, what procedures and quantum of  
12 suspicion would be necessary if it was.

13           QUESTION: Do you mean whether there is a  
14 search when the beeper is affixed to the --

15           MR. FREY: No, there is no issue in this case  
16 of that, and indeed at the time it would belong to the  
17 chemical company. The question is whether the  
18 monitoring of the airwaves by the receiver which picks  
19 up the signal which is being emitted by the beeper is a  
20 search.

21           QUESTION: Without giving notice to the other  
22 party.

23           MR. FREY: Well, obviously, notice would  
24 render the whole investigation impossible. This is not  
25 a search in the traditional sense. It is not the

1 uninvited eye or uninvited ear that is seeing or hearing  
2 what is going on in private areas. In fact, all that is  
3 examined in this search is the airwaves around the  
4 receiver being operated by the officers.

5 Now, of course, Katz teaches that even such  
6 activity may be considered a search regulated by the  
7 Fourth Amendment, but whether it is depends on whether  
8 what is disclosed by this kind of activity is private or  
9 non-private information.

10 QUESTION: What is the range of this signal?  
11 Does the record show that?

12 MR. FREY: I am told that it is normally, in  
13 open country, about two to four miles on the road, and  
14 in the city it may be only several blocks.

15 QUESTION: Any open field questions in this  
16 case?

17 MR. FREY: No, I don't believe the Court has  
18 to deal with any in this case. Aircraft are used  
19 because from the air the signal can be picked up at a  
20 longer distance, and the range, I am told, is 20 to 50  
21 miles, and that is why you often lose track in the  
22 automobile surveillance, because you are not keeping eye  
23 contact, and if the suspect gets two or three miles away  
24 from you, you may lose the signal.

25 QUESTION: I take it it is not just a matter



1 of distance, but it is a direct line from the  
2 transmitter to the receiver, so if you had obstacles in  
3 the way --

4 MR. FREY: And whether there are obstacles in  
5 the way, yes.

6 Now, this question of whether this use of the  
7 beeper in this case was a search is quite similar to the  
8 issue the Court confronted in Smith against Maryland,  
9 which involved the monitoring by use of a pen register  
10 of phone numbers dialed from the suspect's home. The  
11 Court held that it was not a search, in large part  
12 because the information acquired was not private  
13 information. Now, so here, the monitoring of the  
14 transmitter to follow the co-defendant's car while it  
15 moved on the public highways would not be a search, and  
16 indeed neither the court of appeals nor Respondent has  
17 suggested otherwise.

18 QUESTION: Do you see any analogy between this  
19 and having an airplane, a helicopter just follow them by  
20 visual contact?

21 MR. FREY: Well, it is similar.

22 QUESTION: Are these searches?

23 MR. FREY: Of course, if you followed them  
24 closely, they would know that they were being followed,  
25 and it would affect the effectiveness, but it is --

1                   QUESTION: Well, let's make it an automobile  
2 then.

3                   MR. FREY: It is similar to, let's say,  
4 painting a stripe, a fluorescent stripe on the top of  
5 the car to facilitate visual surveillance. What is  
6 being learned from an automobile beeper or from the use  
7 of the container beeper in this case was the movements  
8 of a vehicle on the public highway, including the  
9 turning onto any private property. Those things are not  
10 private events. Nobody has a right to keep people from  
11 knowing those things, and under the analysis in Smith,  
12 those things are not a search.

13                  Now, I think the court of appeals even  
14 suggests, and I am not sure that Respondent contests  
15 that if they had managed in this case to maintain  
16 continuous surveillance, beeper surveillance of the  
17 vehicle as it went across the roads and ultimately onto  
18 Knotts's property, there would have been no Fourth  
19 Amendment problem.

20                  The problem arose because they lost track of  
21 the vehicle and of the beeper, and by the time they  
22 turned it on, it was situated on Knotts's property, and  
23 the court in effect takes a strict liability position,  
24 that the government has no way of knowing, of course,  
25 where the container is, because only by using the beeper

1 do you find that, but the government is out of luck if  
2 when they use the beeper the container is then located  
3 on private property.

4 Now, the situation that Respondent wishes to  
5 analogize this case to is the situation in which a  
6 beeper is used to monitor, let's say, the continued  
7 presence over an extended period of time of a container  
8 inside somebody's house, or to monitor such activity  
9 inside somebody's house as the opening of a container.  
10 Those things are different, because those are not public  
11 events, and arguably those things would properly be  
12 classified as a search under the Katz test.

13 But in this case, the only fact that was used,  
14 the court of appeals held was tainted in getting the  
15 warrant was the fact that Petschen's car had driven with  
16 the container onto Knotts's property.

17 Now, I will assume from now on that something  
18 that happened here is held to be a search, and I want to  
19 discuss the questions that arise in that event, and  
20 there are basically two. The first question --

21 QUESTION: Before you go on to the second  
22 issue, Mr. Frey --

23 MR. FREY: Yes.

24 QUESTION: -- can I ask you this question?  
25 You have described it as though the question is whether

1 the monitoring of the beeper is the focus of the  
2 inquiry.

3 MR. FREY: Yes.

4 QUESTION: What if we focused instead on the  
5 question of whether the installation of the beeper was  
6 not the act which gives rise to the question whether  
7 there is an invasion of privacy of some kind?

8 MR. FREY: Well, there would be in these  
9 chemical company cases no standing, if I may use that  
10 term, to complain about the installation, and in the  
11 automobile cases where there is a nominal --

12 QUESTION: Confining it to container beepers  
13 for the moment, would your argument be just as strong,  
14 do you think, if instead of having the consent of the  
15 manufacturer and so forth, you had waited until there  
16 had been a transfer of title to the purchaser, and then  
17 somehow it was left in an abandoned place and an agent  
18 was able to insert a beeper. Would you say that would  
19 be the same case?

20 MR. FREY: I think it would depend on whether  
21 the insertion of the beeper required an opening and --

22 QUESTION: Assume it did not. Assume there is  
23 some way to stick it on the bottom or something.

24 MR. FREY: I think it would be the same case.

25 QUESTION: You think it would be the same



1 case?

2 MR. FREY: It would --

3 QUESTION: It would be the same case as the  
4 automobile case.

5 MR. FREY: It would be the same as the  
6 automobile case, and in both cases I would say that --

7 QUESTION: But the difference is, in the  
8 automobile it is not going to go in anybody's home,  
9 whereas by hypothesis this may.

10 MR. FREY: Well, but whether it -- the  
11 importance of it being in somebody's home has to do with  
12 the monitoring of activities inside the home. The fact  
13 that it goes into the home is of no consequence except  
14 insofar as you learn something that is going on inside  
15 the home by virtue of use of the beeper.

16 QUESTION: Well, you learned here by using the  
17 beeper that the chemicals went into this cabin, I guess  
18 it was, and you are pretty sure --

19 MR. FREY: We don't know whether it went into  
20 the cabin. What we know is only what we could have  
21 learned if we had been able to maintain visual  
22 surveillance, which is that they were carried to this  
23 cabin. We don't know whether they were in the cabin or  
24 outside the cabin, and we did not in this case use, as  
25 has been done in some other cases, use the beeper to

1 monitor continued presence over a period of time.

2 QUESTION: Well, the information gained by use  
3 of the beeper plus your additional information was  
4 rather persuasive that the thing was inside the cabin.  
5 I mean, because you had probable cause to go in the  
6 cabin.

7 MR. FREY: It was persuasive to establish that  
8 there was a clandestine -- probably a clandestine  
9 laboratory present at the cabin. In fact, we expected  
10 and found --

11 QUESTION: That's how you got the warrant.

12 MR. FREY: -- much more than just the can of  
13 chloroform. We found thousands of dollars of equipment,  
14 and --

15 QUESTION: The question I am leading up to is  
16 whether -- I wonder whether you think, given all the  
17 information you had, at the time the beeper was  
18 installed, you might have then gotten a warrant which  
19 would authorize an entry into the place where the  
20 container went.

21 MR. FREY: Well, I have a couple of  
22 difficulties that I think should be pointed out about  
23 the warrants in this case. I was going to get to that  
24 later, but I will get to it now.

25 One of the problems is that you cannot comply

1 with the particularity requirement of the Fourth  
2 Amendment, because you cannot particularly describe the  
3 place to be searched. Now, a second problem under Rule  
4 41 is that it will often be the case that the magistrate  
5 or judge to whom you go will not have authority to  
6 authorize a search wherever the container may end up.  
7 In this case, the only time we could have gotten a  
8 warrant was in Minnesota. We would have gone to a  
9 magistrate in Minneapolis. He has no authority to issue  
10 a warrant to search a house in Wisconsin. We didn't  
11 know whether this was going to Wisconsin or where.

12 Now, the court could craft, or Congress, if it  
13 wished, I think, would clearly have the power to craft  
14 some procedures to regulate the use of beepers, but it  
15 is certainly not easy without bending the Fourth  
16 Amendment's warrant clause somewhat to have a beeper  
17 warrant in this kind of case.

18 QUESTION: Well, the beeper sort of ends up as  
19 the -- what do you call it, the affidavit in a search  
20 warrant.

21 MR. FREY: Excuse me?

22 QUESTION: The beeper ends up as a sort of  
23 affidavit in support of a search warrant.

24 MR. FREY: The beeper provides us with a fact  
25 that is useful --

1 QUESTION: That's what I mean.

2 MR. FREY: -- in obtaining a search warrant.

3 This is another point about the warrant that I think is  
4 important, is that in the vast majority of these cases,  
5 when a real search takes place, there will be a warrant  
6 procured, and all the information that would have been  
7 presented to the magistrate to get the beeper warrant  
8 will be reviewed, and if that information did not make  
9 out probable cause, unless more information has been  
10 acquired that does contribute to probable cause, a  
11 warrant won't be obtained.

12 In any event, this whole procedure will not  
13 ordinarily be free of some kind of meaningful judicial  
14 review before there is a really intrusive search into  
15 private property. Now --

16 QUESTION: Well, you have already invaded the  
17 private property with the beeper.

18 MR. FREY: Well, yes.

19 QUESTION: That could be argued, couldn't it?

20 MR. FREY: We have placed the beeper in and  
21 the property becomes at some point the Respondent's  
22 private property, although not until it went through  
23 several hands and landed at his property. But I  
24 understand the graviman of Respondent's argument in this  
25 case to be that it was the search of his home from



1 monitoring the beeper signal that violated the Fourth  
2 Amendment, and so I have been addressing my argument  
3 principally to that contention, and that, I think, is  
4 what the court of appeals found.

5           And I do believe that that is the only viable  
6 contention that could be made in this area.

7           Now, if this is a search, there are two  
8 questions. Is probable cause necessary to support the  
9 search, or can it be done on reasonable suspicion, or  
10 something less? And if probable cause is required, is a  
11 warrant required? Now, of these two questions, by far  
12 the most important as a practical matter is the question  
13 of whether it can be conducted on reasonable suspicion.

14           And in fact, as a practical matter, if the  
15 Court holds there is a search, it will cause no problems  
16 if it allows it to proceed on the basis of reasonable  
17 suspicion, because this simply is not a device that is  
18 used on a random basis without a substantial basis for  
19 expecting that it will produce evidence useful in a  
20 criminal investigation.

21           So, as a practical matter, although there are  
22 theoretical problems with holding this a search, as a  
23 practical matter, the important question for us is  
24 whether these devices can be used on the basis of a  
25 reasonable suspicion of criminal activity --

1           QUESTION: Mr. Frey, I don't mean to interrupt  
2 too often, but I want to be sure I understand. When you  
3 say holding this to be a search, you are saying holding  
4 the monitoring of the beeper as opposed to the  
5 installation of the beeper.

6           MR. FREY: Yes, sir. I don't understand there  
7 to be a contention in these cases -- in this case that  
8 the installation of the beeper is a search, and indeed,  
9 I don't -- it does not disclose any fact. It is  
10 completely blind until you turn on your receiver and  
11 listen to it. So I --

12          QUESTION: So your argument is directed to the  
13 case in which we assume sort of as a starting premise  
14 that there is nothing wrong with the installation, it is  
15 just how long can you listen to it, and when, if ever,  
16 does listening to it become a search.

17          MR. FREY: Yes, it is addressed to that. And  
18 I might note that where, for instance, with aircraft  
19 transponders, where you have to enter the aircraft in  
20 order to implant the device, we normally do get a  
21 warrant, and we would recognize the entry into the  
22 aircraft and the exposure to official view of the  
23 interior of the aircraft as being a search.

24          QUESTION: Would the installation of this  
25 electronic device be in principle different from

1 planting an undercover agent in the laboratory who would  
2 then send out signals to locate the place?

3 MR. FREY: Well, there is not the same --  
4 There are two differences. One is, the undercover agent  
5 sees an awful lot more than this beeper discloses. On  
6 the other hand, the undercover agent is presumably there  
7 with some kind of knowing consent that the defendants in  
8 this case did not have. That is, they may not know that  
9 he is an undercover agent.

10 Now, there is an analogy. I mean, you might  
11 say that they know that this is a can of chloroform that  
12 they are taking, but they don't know that it is a  
13 disloyal can of chloroform. I have some difficulty  
14 under Katz with the notion that that argument would  
15 really carry the day for us.

16 QUESTION: Well, you did monitor this beeper  
17 when it was in the house, as far as you --

18 MR. FREY: No, we don't know whether it was in  
19 the house or not.

20 QUESTION: Well, you don't know that it  
21 wasn't.

22 MR. FREY: We don't know. That's right.

23 QUESTION: I mean, the last time you heard it,  
24 you don't know --

25 MR. FREY: We heard it one time when it was

1 somewhere on Knotts's property.

2 QUESTION: What happened after that?

3 MR. FREY: What happened after that was, we  
4 established visual surveillance for a couple of days to  
5 -- It is very important in these manufacturing cases --

6 QUESTION: Yes, yes.

7 MR. FREY: -- to catch as many conspirators as  
8 possible together, and because they have to get pretty  
9 far along before there is a prosecutable attempt, you  
10 preferably want to catch them when they are in the  
11 process of manufacturing.

12 QUESTION: In fact, it was found outside the  
13 house, was it not --

14 MR. FREY: It was.

15 QUESTION: -- the can? Do you agree, Mr.  
16 Frey, that if the beeper had been used to monitor at the  
17 location of the barrel on the premises, to tell you  
18 where it physically was located, for example, within the  
19 house, that that would constitute a search?

20 MR. FREY: Well, I would certainly say that  
21 that would be a different case, and I think there would  
22 be a much stronger argument for the proposition that  
23 that would be a search.

24 QUESTION: Well, would you agree that it is or  
25 is not, rather than just a tougher case?



1           MR. FREY: Well, I would prefer to have to  
2 argue that case when it arose, but I think a lot depends  
3 on what information is actually learned, but I think --

4           QUESTION: You locate it in the bedroom of the  
5 house.

6           MR. FREY: Well, I will say tentatively, if I  
7 may, that that is a search subject to the right to  
8 withdraw any such concession if a case came along and --

9           QUESTION: Is that practical to locate -- to  
10 have a directional finding that accurately?

11          MR. FREY: I don't know enough about the  
12 technology to know that, but this case does not involve  
13 learning anything except that this container was taken  
14 to Knotts's property.

15          QUESTION: Why don't you let us be the judge  
16 of what this case involves knowing about? I for one  
17 would like to know a little bit more about the beeper  
18 than you've told us so far, about how it does monitor  
19 and that sort of thing. I think this kind of broad,  
20 general statements about, it was in the house, it wasn't  
21 in the house, we don't know where it was, light might be  
22 shed upon it if we had some idea of the -- what happens,  
23 how far away is the thing that is monitoring the thing,  
24 how does it monitor?

25          MR. FREY: Well, what I can tell you about

1 this is that the beeper emits a signal at regular  
2 intervals, just a blip that may be at a two-second  
3 interval, and by the strength and direction of that  
4 signal, you can locate the -- where it's coming from.

5 Now, as I mentioned before, from ground  
6 surveillance, normally it will carry about two to four  
7 miles in open country, so that if -- anybody who was  
8 tuned to the right frequency within that distance could  
9 pick up this signal. From the air, I am told 20 to 50  
10 miles is the distance on which you can monitor it. All  
11 you get is blip, blip, blip, which says, I am here, I am  
12 here --

13 QUESTION: And when you are away from it, your  
14 task is simply to hone in on it, I suppose, or to keep  
15 track of it.

16 MR. FREY: Well, that's what -- what you do is  
17 by the direction and strength of the signal, you are  
18 able to identify where the signal is coming from. It is  
19 like radar, I suppose.

20 QUESTION: Or sonar.

21 QUESTION: Mr. Frey, I think I misconstrued  
22 it. There is nothing wrong with transporting the  
23 chloroform. That wasn't a crime.

24 MR. FREY: Unless it was -- There was  
25 something wrong in this case, because it was an act in

1 furtherance of a conspiracy to commit a crime, but there  
2 is not intrinsically anything wrong with transporting  
3 it.

4 QUESTION: The transporting of chloroform qua  
5 transporting chloroform is not a crime.

6 MR. FREY: No.

7 QUESTION: Well, what I was saying, the crime  
8 did not occur any place in Minnesota. No crime occurred  
9 in Minnesota.

10 MR. FREY: Well, I can't -- In that sense, no  
11 crime occurred even when they conducted the search,  
12 because the chloroform was still sitting there  
13 innocently under the barrel with the laboratory 30 yards  
14 away. But there was still a crime. The crime was  
15 attempted manufacturing of meth amphetamine --

16 QUESTION: And they went all the way back to  
17 Minnesota.

18 MR. FREY: That crime took place both in  
19 Minnesota and in Wisconsin. I would want to make the  
20 point that even perfectly innocent activity, walking  
21 down the street to have lunch, is subject without being  
22 regulated by the Fourth Amendment to visual  
23 surveillance, bloodhounds, radar, night glasses, many --

24 QUESTION: Don't try it on Sam Irvin.

25 QUESTION: Don't try any of them on me. Don't

1 try any of them on me.

2 (General laughter.)

3 MR. FREY: I am sure we would have no occasion  
4 to do so.

5 I would like to reserve the balance of my  
6 time.

7 CHIEF JUSTICE BURGER: Very well.

8 Mr. Peterson.

9 ORAL ARGUMENT OF MARK W. PETERSON, ESQ.,  
10 ON BEHALF OF THE RESPONDENT

11 MR. PETERSON: Mr. Chief Justice, may it  
12 please the Court, before going to the issues and facts  
13 involved in this case, I would like to identify two  
14 things which in my view represent the -- or reflect the  
15 extreme position which the government is taking in this  
16 case.

17 First of all, in their main brief, they assert  
18 that neither the history nor the language of the Fourth  
19 Amendment reflects any intention to require warrants as  
20 a precondition to a lawful search and seizure. Now, it  
21 is difficult for me to imagine any constitutional rule  
22 which has been established by this Court other than that  
23 searches without warrants are per se unreasonable,  
24 subject only to a few specifically established and well  
25 delineated exceptions, none of which, by the way, are



1 claimed here.

2           Second, in their reply brief, the government  
3 strongly criticizes an observation which we made in our  
4 main brief to the effect that if this Court allows  
5 warrantless beeper monitoring in any situation, which is  
6 in essence what the government is asking for here, that  
7 rule would allow virtually unlimited monitoring of our  
8 private lives.

9           Pursuing that, in their reply brief, the  
10 government suggests that what we are attempting to do is  
11 to divert the inquiry which is made in this case into a  
12 question of potential for abuse, further accuses us of  
13 conjuring up what they call a pessimistic vision of  
14 police activities which is far removed from reality.

15           QUESTION: What would you say, Mr. Peterson,  
16 if in a kidnapping case, for example, all of the bills  
17 were impregnated with some chemical which would get onto  
18 the fingers and hands of anyone who touched it and could  
19 not be removed for quite a long time, but was something  
20 that could not be observed? And that led ultimately to  
21 the unfolding that we have here? Would you say that was  
22 an invasion of privacy, too?

23           MR. PETERSON: I would not call that an  
24 invasion of privacy, at least not an illegal --

25           QUESTION: Would it have a negative -- Would

1 it have the consequences you are arguing for here?

2 MR. PETERSON: No, it would not have the  
3 consequences I am arguing here, because that would be a  
4 permissible police or bank practice which would be  
5 allowed under the exigencies of the situation.  
6 Obviously, when someone goes in to rob a bank, whether  
7 it was the bank or the police officers responsible for  
8 placing this material on the bills which would end up on  
9 the hands, there would have been no time to get a  
10 warrant.

11 QUESTION: All right. Now let's change it to  
12 money bags, a whole lot of money bags that are in a  
13 Brinks truck or in a bank. And the bags are equipped in  
14 some way with an electronic device such as was used  
15 here, and then the property was stolen either from the  
16 bank or from the Brinks truck, and it is followed, just  
17 as it was here. What would be your analysis of that?

18 MR. PETERSON: Well, no warrant would be  
19 possible in that case, Your Honor, because once again we  
20 would have an exigent circumstance where it would not be  
21 possible to obtain a warrant. We have conceded in this  
22 case that following --

23 QUESTION: Well, but the warrant -- let's  
24 assume that just as here, after this signal came to rest  
25 in one place, in the same manner as it was monitored

1 here, then the police or the agents move in with a  
2 warrant which they have got on the basis of the  
3 electronic signal.

4 MR. PETERSON: We would have a more difficult  
5 case in that instance, Mr. Chief Justice, because of the  
6 fact, number one, the bag of bank money would be  
7 contraband in itself. The person who took it --

8 QUESTION: Why is it contraband? Money is  
9 innocent in and of itself, and very good in the minds of  
10 most of us.

11 MR. PETERSON: It is stolen property, though,  
12 and in that situation he would have no right to possess  
13 it, whereas in our situation here, the defendant had the  
14 right to possess the can of chloroform.

15 QUESTION: Mr. Peterson --

16 QUESTION: For the purposes that he purchased  
17 it and ultimately was using it?

18 MR. PETERSON: He certainly, and again, we  
19 don't have it in the record. He certainly did not have  
20 the right to use chloroform to make meth amphetamine or  
21 amphetamine, but --

22 QUESTION: Well, are you challenging that that  
23 is part of this whole package?

24 MR. PETERSON: Oh, certainly not.

25 QUESTION: Well, then, why is it different

1 from the money?

2 MR. PETERSON: Because it is -- stolen money  
3 is contraband per se. Chloroform which is lawfully  
4 purchased is contraband only when it is used for an  
5 illegitimate or illicit purpose.

6 QUESTION: Well, when it is found in the  
7 laboratory where they are making prohibited drugs, is it  
8 not as much contraband as the money, assuming the money  
9 is contraband, which I am not sure of?

10 MR. PETERSON: Well, the money, Mr. Chief  
11 Justice, is something which the defendant in that case  
12 would clearly have no right to possess. The chloroform  
13 here was a material lawfully possessed which was subject  
14 to forfeiture because it could be and obviously was  
15 going to be utilized in the illegal drug factory, so --

16 QUESTION: Well, what you have persuaded me of  
17 by that response is that the money and the chloroform  
18 are identically the same under the Fourth Amendment.

19 MR. PETERSON: I would submit that they are  
20 not, Your Honor, because one is contraband per se and  
21 one is not.

22 QUESTION: I thought you said that when it is  
23 in the laboratory for use in making illegal drugs, that  
24 it is contraband, part of an illegal operation.

25 MR. PETERSON: If I said that, Mr. Chief



1 Justice, I meant to say --

2 QUESTION: You said --

3 MR. PETERSON: -- that it is subject to  
4 forfeiture, which means that it could have been taken  
5 away from him if it were determined that it was going to  
6 be used for an illegal purpose.

7 QUESTION: But you have just previously said  
8 you do not challenge that it was to be used for that  
9 illegal purpose.

10 MR. PETERSON: I do not challenge that, and  
11 for purposes of this case, I don't think that it makes  
12 any difference.

13 QUESTION: Mr. Peterson, I suppose the state  
14 of origin could require a purchaser of precursor  
15 chemicals to give their name and the destination of the  
16 chemicals as part of the regulatory scheme, could it  
17 not?

18 MR. PETERSON: I would imagine that they  
19 could, Justice O'Connor.

20 QUESTION: So how is use of the beeper to  
21 determine where the chemicals went different from the  
22 state requiring that disclosure in the first instance?

23 MR. PETERSON: Well, the mere fact, Justice  
24 O'Connor, that someone would write down their name and  
25 their address and where a particular chemical is going

1 obviously does not mean that it would necessarily end up  
2 there, but --

3           QUESTION: Well, they might lie about it, I  
4 suppose, but we are talking about the basic interests at  
5 stake here, and what greater interest in the ultimate  
6 destination of the chemicals does the owner of the  
7 property have than he would have if the state asked in  
8 the first instance when they were purchased where it was  
9 going.

10           MR. PETERSON: He does not have any greater  
11 interest than he would have in that situation, and the  
12 government would still have to get a search warrant  
13 before they went into his house to seize those --

14           QUESTION: Sure, and the government did that,  
15 based on this information.

16           Let me ask you another question, Mr.  
17 Peterson. I guess you agree that if the narcotics  
18 agents had been better drivers, they would have been  
19 able to follow the vehicle in the first place, and  
20 discover that it had arrived at the cabin with the  
21 barrel of chemicals.

22           MR. PETERSON: In the hypothetical sense, that  
23 is true, Justice O'Connor, but in this situation, I  
24 don't think it can be shown to be true by the record,  
25 because as the record will show here, the reason that

1 surveillance was terminated in the first place was  
2 because the co-defendant was engaged in what the agents  
3 determined to be evasive driving, and therefore they cut  
4 it off.

5           From that, I think it is fair to assume that  
6 had they continued to follow him as he drove in the  
7 rural area of Wisconsin, he probably never would have  
8 gone to the Respondent's home in this case.

9           QUESTION: Mr. Peterson, help me a little.  
10 Why didn't you object to putting the beeper in in the  
11 first place?

12           MR. PETERSON: Justice Marshall, I am not sure  
13 I understand at what point --

14           QUESTION: I understand that you have no  
15 Fourth Amendment problem with the putting of the beeper  
16 in the container.

17           MR. PETERSON: No. I am sorry --

18           QUESTION: And your Fourth Amendment problem  
19 does not come up until the private home is involved.  
20 That is your position.

21           MR. PETERSON: The reason that no objection to  
22 installation of the beeper in the drum of chemicals was  
23 made is that it was purchased by a second co-defendant,  
24 then transferred to the first co-defendant, and  
25 therefore we would have no "standing" to object to

1 something that happend to someone else's property. That  
2 is why it was not raised at an earlier stage.

3 QUESTION: Well, I am not sure that is an  
4 adequate answer, because he was held not to have any  
5 standing, either. In fact, he was convicted, wasn't he,  
6 because he -- the one who actually bought the stuff?

7 MR. PETERSON: The one who actually bought the  
8 stuff, Justice Stevens, was convicted by a plea of  
9 guilty. The one who drove it to my client's house was  
10 found to have no "standing" to object to the search  
11 because it wasn't his house.

12 QUESTION: I see.

13 QUESTION: Mr. Peterson, you have used the  
14 words "house" and "home." Does the record show this was  
15 Mr. Knotts' resident?

16 MR. PETERSON: Yes, it does, Justice  
17 Blackmun.

18 QUESTION: A permanent residence up in the  
19 Shell Lake area?

20 MR. PETERSON: It doesn't show whether it was  
21 permanent, Justice Blackmun, but it does show that it  
22 was his residence. In fact, that was conceded by the  
23 government below.

24 QUESTION: What is the difference between  
25 residence and permanent residence, in the way you have



1 used them?

2 MR. PETERSON: I don't mean anything by using  
3 different terms, Justice Blackmun. I mean by residence  
4 or premises a place where a person resides, and is  
5 clearly entitled to Fourth Amendment protection, and we  
6 submit that he was entitled to that protection here.

7 QUESTION: What does the record show, Mr.  
8 Peterson, about the nature of his use of that building?

9 MR. PETERSON: Justice Rehnquist, the record  
10 only shows that he lived at this premises with his wife  
11 as his home.

12 QUESTION: Where did it show that? Or could  
13 you just tell me generally? I can find it myself. Are  
14 there findings or something like that?

15 MR. PETERSON: I believe in the district  
16 court's opinion which is appended to the petition for  
17 writ of certiorari, it is shown there. I don't believe  
18 in the Joint Appendix that that particular fact is  
19 shown.

20 QUESTION: The question is whether he was  
21 living in his factory or had his factory in his home.

22 MR. PETERSON: Justice Marshall --

23 QUESTION: And it looks to me like he was  
24 living in his factory.

25 MR. PETERSON: He had his factory in his home,

1 Your Honor.

2 QUESTION: Well, it looks to me like he was  
3 living in his factory. That is why I was interested in  
4 the question. Is there any way to find that out?  
5 Judging from what you say, there is nothing in the  
6 record on it.

7 MR. PETERSON: There is nothing in the record,  
8 Justice Marshall.

9 QUESTION: For purposes of the Fourth  
10 Amendment, a person could have three or four homes,  
11 could he not? If he is living in the place, then does  
12 it not fall under the Fourth Amendment?

13 MR. PETERSON: Yes, it does, Mr. Chief  
14 Justice.

15 QUESTION: And he might have four of those  
16 places.

17 MR. PETERSON: He might have.

18 QUESTION: May I go back, please, to Justice  
19 Marshall's question of a moment ago, about you are not  
20 challenging installation itself? Is it correct then  
21 that for purposes of our analysis, we should take the  
22 case as though someone without any government  
23 participation at all had placed the beeper on the can,  
24 say a volunteer working for the chemical company, who  
25 later on told the police officers, I was suspicious of

1 these people, and I put a beeper on it, and then the  
2 question is, the monitoring is the only issue. Would  
3 that be a fair analysis?

4 MR. PETERSON: That would not be, Justice  
5 Stevens. It is clear that the state narcotics agents  
6 supplied the --

7 QUESTION: Oh, I know they in fact did it. I  
8 am not questioning that. But I mean for purposes of  
9 your Fourth Amendment claim, which as I understand your  
10 response to Justice Marshall, arises after the beeper  
11 was installed, and therefore involves no attack on the  
12 installation of the beeper itself. Therefore, it seems  
13 to me the issue must be the same as if an innocent third  
14 party put it on and later told the police, this is what  
15 I have done, if you want to follow this thing, go ahead  
16 and listen to it.

17 MR. PETERSON: No, Justice Stevens, I don't  
18 think you can look at it that way, because if it arose  
19 in the scenario that you have just described, then we  
20 would have no state action, and therefore the Fourth  
21 Amendment would not be applicable.

22 QUESTION: You would have state action. They  
23 have listened. And as I understand it, the listening  
24 when the monitor -- when the device goes inside a  
25 private premises, it is actually out in front, I guess,

1 but that that is the search that troubled the court of  
2 appeals.

3 MR. PETERSON: Perhaps I --

4 QUESTION: It was state action. I don't think  
5 there is any doubt about that. They followed it, and  
6 they turned on the right frequency, and they kept track  
7 of it, and sent an airplane to look for it, and all that  
8 sort of stuff.

9 MR. PETERSON: I guess my only answer is that  
10 I am not so certain that that would constitute state  
11 action, but if it does in the view of the Court, then  
12 for the purposes of the decision in this case, it makes  
13 no difference.

14 One thing the government has claimed here in  
15 their brief is that they suggest that warrants should  
16 not be required for beepers here, because in any case  
17 the police would have no way of knowing in advance where  
18 the beeper would end up. Now, in a vacuum, that is  
19 true, that the police would have no way of knowing where  
20 a beeper which is installed either on a car, in a  
21 chemical drum, or have you, would end up, but I think  
22 that it is rather disingenuous to assert that here,  
23 because prior to installation of the beeper in this  
24 case, they had already located one clandestine drug  
25 laboratory at a residence, and two, they obviously know



1 that most people who engage in this type of activity do  
2 not manufacture their product in a public place.

3 We are submitting that the result which we  
4 seek in this case would not prevent the warrantless use  
5 of beepers only to assist surveillance which is  
6 generally the use to which beepers are put. Our only  
7 contention is that if there is a possibility that the  
8 item to which a beeper is attached on or installed in is  
9 likely to end up at a person's residence, then a warrant  
10 is required.

11 QUESTION: When would the warrant be  
12 required? At the time they put it on the drum of  
13 chloroform in the warehouse of the pharmaceutical  
14 company?

15 MR. PETERSON: I believe that would be the --

16 QUESTION: Or at the time of the transfer?

17 MR. PETERSON: Normally when a beeper is  
18 installed in a chemical drum or what have you, they  
19 already have previous knowledge that someone who is  
20 apparently involved in illegal drug activity is going to  
21 pick it up. Therefore, it makes no difference whether  
22 the warrant were obtained prior to the time that that  
23 person came to pick it up or at the time of the transfer  
24 to that person. The same type of limitations and  
25 presumably the same type of probable cause for

1 installation of the beeper would obtain.

2 QUESTION: What is the illegal activity that  
3 is going on, and to which this warrant would be aimed,  
4 when the chloroform drum is sitting in the warehouse of  
5 the drug company?

6 MR. PETERSON: There is none, Mr. Chief  
7 Justice.

8 QUESTION: On what basis would a magistrate  
9 issue a warrant for a lawful, innocent drum of  
10 chloroform in a warehouse?

11 MR. PETERSON: Well, once again, these cases  
12 do not arise generally or at least in my experience  
13 until the agents already have some substantial  
14 information that one or more people are apparently  
15 engaged in the illegal manufacturing of drugs, or at  
16 least they are purchasing large quantities of chemicals  
17 which are consistent with the manufacture of drugs.

18 QUESTION: Well, do you say that they should  
19 get the warrant to put the electronic device on the  
20 drum, or get a warrant to monitor, to listen to the  
21 signal? Which is it?

22 MR. PETERSON: Our contention here, Mr. Chief  
23 Justice, is that they should get a warrant and the  
24 Constitution requires them to get a warrant if they are  
25 going to use the beeper which has been installed either

1 to determine the location of non-contraband property at  
2 a person's residence or to monitor its continued  
3 presence at that location. Those are the circumstances  
4 under which we are --

5 QUESTION: Well, what if is a beeper that is  
6 sought to be put on a plane by undercover agents down in  
7 Bogota, Colombia, because they know that a couple of  
8 million dollars worth of heroin or something is going to  
9 be transported on an airplane? Any authority on a U.S.  
10 magistrate or any magistrate in the United States to put  
11 a beeper on an airplane down in Bogota, Colombia?

12 MR. PETERSON: I am not aware of any such  
13 authority, Your Honor.

14 QUESTION: Is that fundamentally different  
15 from the problems we have here?

16 MR. PETERSON: I think it is fundamentally  
17 different, Mr. Chief Justice, because --

18 QUESTION: Well, if the agents were putting it  
19 on the airplane down at some air base there, air force  
20 port in Bogota, or on the outskirts, they would be doing  
21 it for the purpose of following that airplane to see if  
22 it landed in the United States with its contraband  
23 drugs.

24 MR. PETERSON: That's correct, Your Honor, but  
25 again, this goes back to the fact that you can follow

1 vehicles, whether they be airplanes or automobiles, in a  
2 public space, in this case public air space, because  
3 there is no legitimate expectation of privacy as you are  
4 traveling in that particular area.

5 QUESTION: But then it lands in an airport, a  
6 concealed airport out in the Everglades of Florida, and  
7 they run it into a hangar, to conceal it from the air,  
8 and the hangar is where four or five people live, and  
9 unload the illegal drugs.

10 MR. PETERSON: I have to admit --

11 QUESTION: Parallel to this case, or not?

12 MR. PETERSON: Pardon me?

13 QUESTION: Parallel to this case?

14 MR. PETERSON: Well, there certainly are a  
15 number of similarities. The case that you have posed  
16 would be a far more difficult one for me to argue than  
17 this case is, but I still would submit that there is a  
18 colorable claim that even in that hangar, assuming that  
19 it was the person's living quarters, he would have a  
20 colorable claim of Fourth Amendment protection.

21 I would like to comment just briefly on a  
22 couple of things that came up during the government's  
23 argument. First, Mr. Frey has asserted that in cases  
24 like this, in other words, drug manufacturing cases,  
25 beepers are essential. I have no doubt as to the



1 accuracy of that statement, but that certainly is no  
2 justification and no reason for claiming that it is  
3 difficult to get a warrant.

4           Secondly, the government asserts that all that  
5 was learned through use of the beeper was that Mr.  
6 Petschen went to the cabin after they lost surveillance  
7 contact with him. I think it is important to note that  
8 in this case, the basis of the search warrant was the  
9 fact that the beeper drum had been -- had become  
10 stationary at the Respondent's residence, and that was  
11 one of the bases upon which they obtained the warrant.

12           I want to make it clear that we do not  
13 necessarily concede that merely because Petschen may  
14 have arrived at Knotts' property, even assuming that the  
15 state agent saw that, that that would have established  
16 probable cause.

17           One thing that also came up during the  
18 government's argument in questioning by Justice  
19 O'Connor, your questions to the effect that, does it  
20 make any difference where the beeper drum is located on  
21 the property for purposes of determining whether or not  
22 there was constitutional protection. It would be our  
23 position in this case that once the drum was on the  
24 curtilage of this property, which, as the record shows,  
25 contained No Trespassing signs on the front and was in a

1 secluded area, it doesn't make any difference whether  
2 the drum was located inside the house, close to the  
3 house, or any place else in the curtilage. It seems  
4 clear --

5           QUESTION: If you go to the curtilage, you are  
6 confronted with the open fields doctrine of the Hester  
7 case, aren't you? If you say it didn't make any  
8 difference if it was 100 yards away from any structure,  
9 so long as it was within the bounds of his real  
10 property?

11           MR. PETERSON: That's what the Hester case  
12 says, Your Honor, and I am not really sure whether the  
13 rule which was announced in Hester has really survived  
14 the decision of this Court in Coolidge versus New  
15 Hampshire.

16           QUESTION: Well, it was quoted with approval  
17 in at least two cases that have been decided by this  
18 Court since Coolidge.

19           MR. PETERSON: Yes, Justice Pehnguist.

20           QUESTION: Do you still think that?

21           MR. PETERSON: It is generally cited for the --

22           QUESTION: Cited by whom?

23           MR. PETERSON: By the courts which cite it.

24           QUESTION: Well, would you take their view in  
25 preference to ours?

1 MR. PETERSON: Oh, certainly not, Justice  
2 Rehnquist. I was just indicating that Hester is  
3 generally cited for the open fields doctrine, and I  
4 haven't seen anything in this Court's decision which has  
5 dealt with the trespassory aspects of that case where  
6 the IR agents assumedly trespassed when they were on Mr.  
7 Hester's property and observed the conduct between  
8 Hester and another that they observed.

9 The reason I suggest that I am not sure that  
10 the trespassory part of Hester has survived Coolidge  
11 versus New Hampshire is because in that case, this Court  
12 dealt with, among other things, the search of the  
13 automobile which was located in plain view --

14 QUESTION: Well, do you think Coolidge versus  
15 New Hampshire has survived, might be a more appropriate  
16 question.

17 MR. PETERSON: For this proposition, I do,  
18 Justice Rehnquist. There is language in that opinion to  
19 the effect that absent exigent circumstances, you cannot  
20 go on private property to conduct a search without a  
21 warrant, and it makes no difference how much probable  
22 cause you have got, and as far as I know, that language  
23 has not been disapproved by this Court.

24 The government also takes the position in this  
25 case that just because the beeper says, here I am, and

1 nothing more, that the invasion of privacy, if any,  
2 which occurs is thereby minimal, and it should not be  
3 called a search, and no search warrant should be  
4 required.

5 I would submit to this Court that "here I am"  
6 is exactly what the invasion of privacy is about. It is  
7 the right to be let alone, and it means that the  
8 government cannot find out either what you are doing or  
9 what you are possessing on your premises without a judge  
10 authorizing them to do so, and I --

11 QUESTION: Would you tell me in that -- if you  
12 had -- if we had a warrant requirement for this sort of  
13 thing, what exactly would the government ask for  
14 permission to do?

15 MR. PETERSON: They would ask for permission  
16 to monitor the travels of the item to which the beeper  
17 is attached. They might also ask to monitor the  
18 location of the item. Whether or not they would ask for  
19 that, I don't know, but there might be some difficulties  
20 in a judge authorizing that without some showing that  
21 the location was likely to be a place where criminal  
22 activity was involved.

23 Obviously, the issuing magistrate would have  
24 to put a time limit upon the beeper, the permissible  
25 time for monitoring, whether it could be used for just



1 -- just to assist surveillance or location monitoring as  
2 well.

3 QUESTION: To define the scope of the  
4 monitoring, in other words.

5 MR. PETERSON: Correct.

6 QUESTION: Mr. Peterson, suppose these people  
7 had put a little gadget on this chloroform which when  
8 you opened the can an alarm goes off. Would you make  
9 the same argument?

10 MR. PETERSON: And the beeper which was --

11 QUESTION: No, there is no beeper. This is an  
12 alarm. A bell ringing.

13 MR. PETERSON: As long as the chemical drum  
14 was located at the Respondent's residence, and obviously  
15 that there is no warrant, I would make the same  
16 argument, because once again the government is learning  
17 something about you that it has no right to learn  
18 without a warrant. And I assume in that case if the  
19 alarm went off, that would show that you were using the  
20 chemical drum for -- or at least opening it presumably  
21 for illegal purposes, and I think that a warrant would  
22 be required under that situation as well.

23 In conclusion, ever since this Court's  
24 decision in Boyd versus the United States, the Court has  
25 recognized that the Fourth Amendment was primarily

1 enacted to protect the citizens' indefeasible right of  
2 personal security, personal liberty, and private  
3 property.

4 In his famous dissent in the Olmstead case,  
5 Justice Brandeis elaborated on the concept of privacy in  
6 dissenting over the warrantless use of electronic  
7 surveillance. He wrote essentially that whenever and  
8 however the government unjustifiably intrudes upon a  
9 citizen's privacy, the Fourth Amendment is violated.

10 Now, ever since Olmstead, much constitutional  
11 doctrine has changed, but I don't think the wisdom of  
12 Justice Brandeis's dissent has, and neither has the rule  
13 that searches without warrants are presumptively  
14 invalid. We submit that what took place in this case  
15 was a search, that there is no basis for distinguishing  
16 it from any other search on the grounds that it was  
17 minimally intrusive, and therefore a warrant should have  
18 been required.

19 Thank you.

20 CHIEF JUSTICE BURGER: Very well.

21 Mr. Frey?

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

23 ON BEHALF OF THE PETITIONER - REBUTTAL

24 MR. FREY: Just briefly, I want to make an  
25 important point, if I can come to something more mundane

1 than my colleague closed on. If you are going to  
2 require a warrant, presumably you have determined that  
3 probable cause is necessary to use this investigative  
4 technique. The problem you are confronted with is like  
5 the all or nothing problem in Terry against Ohio. If  
6 automatically -- if you call it a search, it requires  
7 probable cause, the question is whether it is reasonable  
8 to bar the government from using this aid to  
9 surveillance techniques, keeping in mind that most kinds  
10 of physical surveillance do not require any kind of  
11 reasonable suspicion or probable cause. Is it  
12 reasonable to insist that the government have probable  
13 cause to believe that a crime is being committed and  
14 that this is being used, or is it satisfactory and  
15 adequately protective of individual interests, balancing  
16 the intrusion against the societal needs to allow this  
17 to be conducted on reasonable suspicion?

18           That is involved in the decision of whether or  
19 not a warrant is to be required.

20           Finally, if I can come back to the question  
21 that Justice Stevens asked about the installation of the  
22 beeper, installation of the beeper is not a search, and  
23 I don't think it's a seizure. It does not disclose to  
24 government eyes or ears or knowledge any fact, any  
25 information. It is an act. There are many acts that

1 the government does in the course of its investigations.

2 QUESTION: Neither does installing a wire tap.

3 MR. FREY: Excuse me?

4 QUESTION: Neither does installing a wire  
5 tap.

6 MR. FREY: Well, I don't know whether if you  
7 never turned it on, there would be a Fourth Amendment  
8 violation, and we have not had a case in which the Court  
9 has said it violates the Fourth Amendment to attach it  
10 to the wire without listening to the conversations.

11 If there are no further questions.

12 CHIEF JUSTICE BURGER: The case is submitted.

13 (Whereupon, at 3:02 o'clock p.m., the case in  
14 the above-entitled matter was submitted.)

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# CERTIFICATION

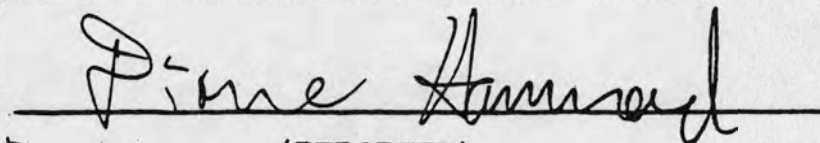
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UNITED STATES, Petitioner v. LEROY CARLTON KNOTTS  
# 81-1802

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