

ORIGINAL

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 81-1843  
TITLE ILLINOIS, Petitioner  
v.  
JOHN ANDREAS  
PLACE Washington, D. C.  
DATE March 30, 1983  
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(202) 628-9300  
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IN THE SUPREME COURT OF THE UNITED STATES

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ILLINOIS, :  
Petitioner :  
v. : No. 81-1843  
JOHN ANDREAS :  
- - - - -x

Washington, D.C.  
Wednesday, March 30, 1983

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States  
at 11:11 a.m.

APPEARANCES:

RICHARD A. DEVINE, ESQ., First Assistant State's  
Attorney, Cook County, Chicago, Illinois; on behalf of  
the Petitioner.  
PATRICK G. REARDON, ESQ., Chicago, Illinois; on behalf  
of the Respondent.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We'll hear argument next in Illinois versus Andreas. Mr. Devine, you may proceed whenever you're ready.

ORAL ARGUMENT OF RICHARD A. DEVINE, ESQ.

ON BEHALF OF PETITIONER

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

The issue presented by this case is whether law enforcement officials must obtain a search warrant after a controlled delivery has been made to Respondent following a lawful customs search revealing marijuana within the container delivered.

The essential facts are as follows. On February 21st, 1979, a customs agent stationed at O'Hare International Airport inspected a shipment from Calcutta, India, to Respondent consignee. He did this in a customs bonded area. The container inspected was sheet metal, approximately four feet square and 12 to 18 inches thick.

There were two locks affixed to the container, which the customs agent opened by keys which were accompanying the airline documents. Inside the container he found a table top approximately three feet in diameter and eight to ten inches thick. He removed



1 the table from the container and drilled several holes  
2 in it, removing from inside a substance, which he field  
3 tested and found to be marijuana.

4 He then contacted agents of the Drug  
5 Enforcement Administration. Soon thereafter DEA Agent  
6 Labek arrived at O'Hare Airport. He saw both the table  
7 and the container in the customs bonded area. He also  
8 performed his own field test on contents from the table  
9 top, which again showed marijuana.

10 On February 22nd, the next day, DEA Agent  
11 Labek picked up the container, which had been resealed  
12 at that time, from the customs area at O'Hare. He was  
13 dressed as a delivery man and took the table and the  
14 container to 61 East Goethe Street in Chicago, Illinois,  
15 the address of Respondent given on the airline  
16 documents.

17 There he met officers of the Chicago Police  
18 Department, including Police Officer Wayne Lipsek, who  
19 was also dressed as a delivery man. Agent Labek met an  
20 individual in the apartment building at that address who  
21 identified himself as Respondent. The two walked  
22 outside and met Officer Lipsek. While they were  
23 unloading the container from the back of the van,  
24 Respondent noted that there was a table top inside and  
25 that he had helped pack it.

1           The three carried the container into the  
2 apartment building and took it to the second floor.  
3 Respondent directed the officers to leave the container  
4 in the hallway immediately outside his apartment. They  
5 did so.

6           After leaving the container outside the  
7 apartment, they went around the corner and observed  
8 Respondent take the container inside the apartment.  
9 While Officer Lipsek left to obtain a state search  
10 warrant, Agent Labek maintained surveillance within the  
11 apartment building. Soon after Respondent took the  
12 container into the apartment, Agent Labek saw him come  
13 out of the apartment, go to a window in the hallway,  
14 look to the side and look down, turn and go back into  
15 the apartment.

16           Approximately 30 to 45 minutes later,  
17 Respondent came out of the apartment with the  
18 container. At that time he was arrested. Agent Labek  
19 was present at time time of the arrest and Agent Labek  
20 later testified that the container with Respondent at  
21 that time was the same container that had been delivered  
22 to him.

23           Officer Lipsek was radioed and told to return  
24 to the scene. He did so, and Officer Lipsek and Agent  
25 Labek accompanied the container to Chicago police

1     headquarters. At Chicago police headquarters the  
2     container was opened, the table top was found within,  
3     the substance was removed from within the table top and  
4     again field tested and found to be marijuana.

5             Officer Lipsek was present during this entire  
6     process and testified that the container which was  
7     opened was the same container that had been delivered to  
8     Respondent. Respondent was charged with possession of  
9     controlled substances and with possession of a  
10    controlled substance with intent to deliver.

11            The trial court granted Respondent's motion to  
12    suppress evidence. The Illinois appellate court  
13    affirmed that decision. The State's petition for leave  
14    to appeal to the Illinois Supreme Court was denied, and  
15    this Court granted certiorari.

16            It is the State's position that no warrant was  
17    required for the second opening of the container at  
18    police headquarters. There had been a lawful customs  
19    search which clearly established that contraband was  
20    within the container, and this knowledge was within law  
21    enforcement's area of understanding. There was then a  
22    controlled delivery of the container and its contents,  
23    during which the officers maintained reasonably  
24    continuous surveillance. Thus the second search  
25    constituted not a new search but a reassertion of

1 control over that which the Government had already  
2 seized.

3 This Court has for many years and in many  
4 cases held that a search at customs is reasonable by the  
5 fact that it occurs at the border. It does not require  
6 probable cause, it does not require a warrant. Thus any  
7 individual shipping a container which will cross a  
8 border has no legitimate expectation of privacy that the  
9 container will not be searched.

10 At the time that the search took place here at  
11 customs, it was performed by a customs agent, it was  
12 performed in a customs area. It revealed contents which  
13 were contraband and field tests confirmed that it was  
14 contraband. At that stage the Government had the right  
15 to seize the container and its contents.

16 They also had the right to conduct a  
17 controlled delivery, which they did. A controlled  
18 delivery is an accepted police activity where there is  
19 delivery by law enforcement and there is a serving of a  
20 legitimate law enforcement purpose. In this case, two  
21 purposes could be to confirm the identity of the  
22 recipient of the container and also to identify any  
23 confederates which might be involved in the criminal  
24 enterprise.

25 Thus the seizure had taken place at the time



1 of the initial legal search and it remained in the  
2 Government's constructive control throughout. Here  
3 there was a valid controlled delivery. Markings were  
4 not necessary on this container because it was of a  
5 distinctive type. It was a four by four metal container  
6 used for shipping, used to ship large objects.  
7 Therefore it was sufficiently distinctive that no  
8 special markings on the outside or in the interior were  
9 necessary.

10           The law enforcement agencies involved had  
11 collective knowledge that was sufficient through the  
12 continuum of delivery here so that there was no break.  
13 All relevant actions taken from the time of the search  
14 at customs were by customs agents, Chicago police  
15 department officers, or agents of the Drug Enforcement  
16 Administration.

17           The critical point here is the 30 to 45-minute  
18 interval during which Respondent had the container in  
19 his apartment. It is our position that this did not  
20 create any legitimate expectation of privacy on the part  
21 of Respondent in the contents of the container. The  
22 fact of possession clearly does not defeat a controlled  
23 delivery, because it takes place in almost every  
24 controlled delivery. At least for some point, the  
25 individual recipient does have the package.

1           Constant observation of the package and the  
2   recipient are not required in a controlled delivery.  
3   Quite frequently during this process, there is transfer  
4   from one agent to another, law enforcement agency to  
5   another, by a common carrier. It is not required and it  
6   has never been required in these cases that there be  
7   continuous Government observation of the object while it  
8   is being transferred.

9           QUESTION: In this case would your analysis be  
10   any different had it been a small suitcase?

11           MR. DEVINE: I think, Your Honor, the  
12   situation might be different if you had a common  
13   suitcase which could not be clearly identified and which  
14   would allow readily easy transfer of the contents. We  
15   submit, however, that when you have a container which is  
16   clearly identified and there is reasonably continuous  
17   surveillance by law enforcement officials, with that  
18   knowledge and then a retaking after a relatively short  
19   interval, that the second taking is merely a reassertion  
20   of control.

21           QUESTION: So in this case much depends on the  
22   facts, then.

23           MR. DEVINE: I think, Your Honor, that the  
24   Court could, because of the unusual nature of the type  
25   of search which can occur at customs under the law and

1    which can give law enforcement officials specific  
2    knowledge of the contents of the container, could take  
3    the position that once the Government finds contraband  
4    in such containers and the container is identified, even  
5    if it were a suitcase, were clearly identifiable, then  
6    Government, if it maintained reasonably continuous  
7    surveillance, could retake that container and open it up  
8    because there had been that specific knowledge and there  
9    had not been a legitimate expectation of privacy about  
10   the contents in placing it at an international border.

11            QUESTION: That would be true, following up in  
12   Justice Blackmun's question, only so long as there were  
13   probable cause to believe that whatever had been in the  
14   container was still in it. If it had been in the guy's  
15   apartment for two days and he comes out with a  
16   container, he may just be throwing it in the trash.

17            MR. DEVINE: I think that the time factor,  
18   Justice Rehnquist, plus the type of container are items  
19   to consider. But I think the basic standard which the  
20   Court could look at is one that is premised on the  
21   actual knowledge at customs.

22            Of course, if it were a container that could  
23   easily be changed and were in the specific control of  
24   Respondent for a long period of time, those are  
25   considerations which the Court would have to apply to

1 the case.

2 QUESTION: Counsel, while you're interrupted,  
3 you said the keys were along with the shipment papers?

4 MR. DEVINE: That's correct, Justice  
5 Marshall.

6 QUESTION: I don't understand that.

7 MR. DEVINE: At the time -- the shipment was  
8 made from Calcutta, India, to Chicago via Lufthansa  
9 Airlines. The Lufthansa documents for the shipment  
10 included the keys to open the container.

11 QUESTION: For anybody to open it?

12 MR. DEVINE: Presumably for customs to open  
13 it, Your Honor.

14 QUESTION: I see.

15 MR. DEVINE: Here both Chadwick and Sanders,  
16 which were cases cited by the Illinois appellate court  
17 in ruling on this matter, both noted that a reasonable  
18 expectation of privacy relates to what is known about  
19 the container. Chadwick specifically refers to the fact  
20 that the container itself is known to the public and can  
21 be seen by the public.

22 Here law enforcement had seen the contents of  
23 the container. In the Sanders decision it was noted  
24 that certain types of containers, such as gun cases, do  
25 not create a reasonable expectation of privacy because



1 of their nature. If that is true with a gun case where  
2 the contents are not known, it is certainly true of a  
3 situation such as this, where law enforcement has with  
4 validity gone into the container in a reasonable way and  
5 determined what the contents are.

6 QUESTION: Mr. Devine, can I ask you a  
7 question there? The question I guess that Justice  
8 Rehnquist focused on is you said it would have to be at  
9 least probable cause. How would you frame the standard  
10 of the degree of certainty that there hasn't been a  
11 changing in the contents of the container? Here you've  
12 got 30 minutes to deal with and that's the problem I  
13 guess the appellate court had, the interval.

14 MR. DEVINE: I certainly think -- pardon me,  
15 Your Honor.

16 I certainly think in this case if one applied  
17 just about any reasonable test, such as the substantial  
18 likelihood test suggested by the Solicitor General --

19 QUESTION: Do you endorse that test?

20 MR. DEVINE: I think it is a narrow but proper  
21 holding in this case, Your Honor. I think if applied to  
22 this case with the type of container you have, with a  
23 table inside it, and inside of the table, hardly easily  
24 accessible, you find the contraband, and if you couple  
25 that with the suspicious behavior of Respondent in going

1 to the window, looking out, making a -- whether a coast  
2 is clear look, and then coming out with the container,  
3 coupling all those items together, plus the fact that  
4 the police after seizing the container could tell  
5 whether it weighed relatively the same, I think all  
6 those things clearly suggest here that there is very  
7 little likelihood of change.

8 QUESTION: Well, I understand that, but their  
9 test, and I guess you're willing to endorse it, is quite  
10 different from merely a probable cause test. It's a  
11 higher standard, and you say on these facts you meet  
12 it.

13 MR. DEVINE: We think we meet that test, yes,  
14 Your Honor.

15 QUESTION: You're not arguing for a probable  
16 cause standard, is what I'm really trying to find out.

17 MR. DEVINE: Well, I would argue -- I would  
18 argue for more, Mr. Justice Stevens, yes. I would  
19 suggest that where you have a situation of actual  
20 knowledge by law enforcement, finding contraband --

21 QUESTION: Once you have actual knowledge, is  
22 that all you need at any time after that, is probable  
23 cause to believe there hasn't been a change in the  
24 contents?

25 MR. DEVINE: If the container is identified,

1 either because it's distinctive, because it's marked, or  
2 because a beeper, for example, might be placed in it.  
3 Yes, if law enforcement at that point has nothing  
4 affirmative presented to them to take away their  
5 legitimate expectation that that container still has  
6 contraband within, we think it can be searched without a  
7 warrant.

8           QUESTION: I think you responded to one  
9 question by saying that if there had been a lapse of two  
10 or three days that would make it quite a different  
11 case. From that is it correct to assume that you are  
12 saying that the observation of the officers, plus the  
13 short lapse of time, was sufficient to give them  
14 probable cause to believe that the container was in the  
15 same condition and had the same contents when it came  
16 out of the apartment as when it went in?

17           Is that your argument?

18           MR. DEVINE: I think essentially, Chief  
19 Justice Burger, it would amount to that, but I would  
20 phrase it in the sense, there is nothing that happened  
21 that took away from their actual knowledge because of  
22 the reasonably continuous surveillance, the type of  
23 container, and the amount of time that was involved  
24 here.

25           Having had actual knowledge, it was certainly

1 legitimate for them after this container came out, with  
2 all the facts that I've described, for law enforcement  
3 to seize the container and to search it without a  
4 warrant.

5 QUESTION: Well, certainly if it had been a  
6 cardboard carton, for example, and a half an hour had  
7 elapsed, it would be pretty easy, if it were not within  
8 the officer's view, to change the contents of the  
9 container, would it not?

10 MR. DEVINE: I think the ease of ability to  
11 change the contents, Justice O'Connor, is a factor to  
12 consider. And it is one of the things that I would  
13 suggest could be brought forward as an affirmative  
14 statement by Defendant or Respondent to show that there  
15 were reasonable factors that law enforcement people  
16 could be aware of to change their understanding of what  
17 might be in that container.

18 However, if there were a beeper inside the  
19 cardboard box that might create a different situation.  
20 I think this kind of case does require an examination of  
21 all the circumstances that are involved, but I think the  
22 standard I suggested provides a basis for looking at  
23 those various factors.

24 QUESTION: Was the container here one to which  
25 items could have been added within the half hour or so?



1 Perhaps not possible to take out all of the contents of  
2 the table, but could other items have been added?

3 MR. DEVINE: I would expect that, based on the  
4 size of the container and the size of the table, it  
5 might have been possible to put something in. But at  
6 the same time, I would, looking at the type of  
7 container, not expect that someone would readily use  
8 that as a piece of hand luggage.

9 It is obviously designed for shipping large  
10 items and, based on the circumstances of this case, I  
11 think it is highly remote that anything was done that  
12 would have been a transfer of a large item of contraband  
13 or something other than that inside that container, and  
14 then have it come out and be approximately the same  
15 weight it was when it went in.

16 QUESTION: How much did they get out of the  
17 table?

18 MR. DEVINE: The street value estimate by the  
19 Chicago police officer on the scene was \$100,000.

20 QUESTION: How much -- what was the weight?

21 MR. DEVINE: The weight does not show up on  
22 any of the common law record at this stage, Your Honor.

23 QUESTION: Was it all the same material?

24 MR. DEVINE: Yes, hashish.

25 QUESTION: Was a drill required to get to the

1 inside of the table?

2 MR. DEVINE: It is my understanding from the  
3 record, Justice Powell, that a drill was used by the  
4 customs agent, probably on the underneath side of the  
5 table, to open up holes, first to determine if it was  
6 hollow, and then to remove an amount of substance that  
7 could be field tested.

8 QUESTION: Were any drills found in  
9 Respondent's apartment?

10 MR. DEVINE: There is no evidence in the  
11 record that anything such as a drill was found with the  
12 container.

13 QUESTION: Was it openable in some other way  
14 besides a drill?

15 MR. DEVINE: Well --

16 QUESTION: Do you know?

17 MR. DEVINE: We don't know from the record,  
18 Justice White.

19 QUESTION: What authority did they have to  
20 drill into my furniture?

21 QUESTION: When you're bringing it in customs,  
22 they can take it apart and make a French Connection  
23 search, can't they?

24 MR. DEVINE: It is our understanding from  
25 Ramsey and other cases that go back to Boyd, Justice

1 Marshall --

2 QUESTION: Can you give me any better,  
3 authoritative answer than a moving picture?

4 MR. DEVINE: Than a -- I didn't give you that  
5 authority, Justice Marshall.

6 (Laughter.)

7 MR. DEVINE: I think the case --

8 QUESTION: Customs just has that broad  
9 authority, right, it's your position?

10 MR. DEVINE: There may be -- certainly this  
11 Court commented in Ramsey in a footnote that allowing  
12 the customs agent to inspect in effect any baggage, any  
13 person that comes across the international border --

14 QUESTION: But this is drilling, this is  
15 drilling.

16 MR. DEVINE: Yes, and then replugging the  
17 holes by the customs agent after the drilling took  
18 place.

19 But the case is quite clear that customs can  
20 inspect a table top or anything that comes through to  
21 determine if in fact, as here, there is contraband  
22 inside.

23 QUESTION: My question is, what case or what  
24 other authority do you have to drill into a piece of  
25 furniture?

1           MR. DEVINE: Well, I think that I would cite  
2 to Ramsey, which this Court has made, a decision which  
3 this Court has made. I would cite to Section 1582 of  
4 the U.S. Statutes, the U.S. Code, and the regulations  
5 adopted thereunder. They don't specifically say you can  
6 drill inside, but they do give customs the clear power  
7 to search any baggage and any person that comes in.

8           Now, that has to be done reasonably, I would  
9 suggest, and that to just bash open any piece of baggage  
10 that came through, as this Court perhaps noted in  
11 Ramsey, is not something which the Court has approved.  
12 But this was done reasonably. Drills were used which  
13 customs agents apparently frequently use. The table was  
14 plugged up again. Presumably it was done on the under  
15 side so it would not damage the table. And in fact, if  
16 you did not do that, if you did not have the authority  
17 to do that, any time someone wanted to be sure they  
18 could smuggle something into the country they would put  
19 it inside something like a table top.

20           So I think it is historically and under the  
21 case law quite well established that customs can do what  
22 is necessary to make a reasonable inspection.

23           We are not arguing here for a controlled  
24 delivery exception to the warrant requirement. Rather,  
25 we are arguing that the customs exception quite clearly



1 applies here and that after that inspection at customs  
2 had revealed contraband within the table top and it was  
3 placed back in the container, law enforcement could  
4 carry out a controlled delivery of that container by  
5 maintaining reasonably continuous surveillance, and  
6 under all the circumstances that have been described  
7 here allow for a second search, which is not a new  
8 search but rather a reassertion of control by  
9 Government.

10           This Court has in other contexts, such as  
11 Edwards and Tyler, noted that constant possession,  
12 constant visual surveillance of an area searched, is not  
13 necessary in order to retain the custody that is  
14 sufficient to allow Government to go in. Specifically,  
15 in Tyler this Court noted that a second search several  
16 hours later of an arson scene constituted a continuation  
17 of the fire personnel's activity on the scene, and that  
18 it was not a new search and not subject to a warrant  
19 requirement.

20           QUESTION: But in that case the individual  
21 searched was still on the premises.

22           MR. DEVINE: The firemen had left the scene,  
23 Chief Justice Burger, and came back some four hours  
24 later after the smoke and steam had cleared away, made  
25 one search, went away again and came back an hour

1 later. And the Court held that the early morning  
2 searches several hours later were a continuation of the  
3 first search.

4 QUESTION: Why are you arguing an extended  
5 border search rather than a controlled delivery? I  
6 don't understand.

7 MR. DEVINE: That argument, Justice O'Connor,  
8 was made by the Solicitor General and, while we  
9 certainly believe we could withstand analysis under an  
10 extended border search theory, Illinois is basically  
11 arguing the customs exception plus the controlled  
12 delivery.

13 We think the difference here is there was an  
14 actual search at the border, whereas in the extended  
15 border search cases there has not been and you are  
16 setting forth --

17 QUESTION: You are arguing the controlled  
18 delivery?

19 MR. DEVINE: We are not arguing a controlled  
20 delivery exception, Your Honor. We are arguing a  
21 customs exception plus a legitimate controlled  
22 delivery.

23 QUESTION: I suppose analytically one might  
24 have a controlled delivery in connection with some other  
25 valid search that wasn't based on customs.

1           MR. DEVINE: I think that's certainly correct,  
2 Justice Rehnquist. In fact, I think the most common way  
3 they occur is if a common carrier has for some reason  
4 had cause to inspect an item coming aboard a train or a  
5 plane and the police officials see it in plain view.  
6 That seems to be numberwise the most common way that  
7 this happens.

8           Here the search at the police headquarters was  
9 not an incremental intrusion into an area of privacy  
10 concerning which Respondent had legitimate  
11 expectations. When one is balancing that lack of  
12 intrusion, lack of any further intrusion beyond what had  
13 already been searched, against the burden which would be  
14 placed on law enforcement by requiring that a warrant be  
15 obtained, the balance clearly is in the favor of law  
16 enforcement.

17           We would therefore pray that this Court  
18 reverse the judgment of the Illinois appellate court and  
19 remand this matter to the Circuit Court of Cook County  
20 for further proceedings.

21           Thank you.

22           CHIEF JUSTICE BURGER: Mr. Reardon.

23           ORAL ARGUMENT OF PATRICK G. REARDON, ESQ.

24           ON BEHALF OF RESPONDENT

25           MR. REARDON: Mr. Chief Justice and may it

1 please the Court:

2           The Petitioners have reiterated today that the  
3 facts of this case show what they've called a controlled  
4 delivery, and I agree with some of the questions and  
5 with the Petitioner when he said this case is controlled  
6 by the facts. I think the facts in this case do not  
7 show that a controlled delivery occurred, regardless of  
8 whether we accept the reasoning of the controlled  
9 delivery as an exception to needing a warrant.

10           The facts that we look to to that position are  
11 the following --

12           QUESTION: What do you understand -- at some  
13 point will you give your definition of what you think a  
14 controlled delivery is?

15           MR. REARDON: Well, I think they have based,  
16 and I think the Illinois appellate court based its  
17 understanding of a controlled delivery upon the cases in  
18 the various courts of appeals, such as --

19           QUESTION: What I was driving at is, when you  
20 use the term what do you mean by it, not what the courts  
21 meant.

22           MR. REARDON: I think that a controlled  
23 delivery, if there is one, must entail a constant, close  
24 surveillance and control over the contents that are to  
25 be seized, at whatever time they are eventually seized



1 and taken into police control permanently.

2 QUESTION: How do you keep control over the  
3 contents? How do you observe the contents when they're  
4 sealed?

5 MR. REARDON: Well, I think that over the  
6 years the cases have given us imaginative ways that the  
7 Government has found to do that. One is that when a  
8 package is found the Government, either by virtue of  
9 plain view doctrine or customs search or whatever, sees  
10 the contents of the container, they then mark that  
11 container in such a way so that at a later time when  
12 they have delivered the container into someone else's  
13 possession and watched it closely, as all the courts  
14 have demanded, they can then tell whether that container  
15 has been opened or closed, therefore whether the  
16 contents of that container are the same.

17 QUESTION: What problem, if any, do you have  
18 with the fact that they also had the keys?

19 MR. REARDON: Well, at the time of the customs  
20 search apparently the keys were attached by Lufthansa as  
21 a part of the shipment and were with the tin package, so  
22 that when it came to customs all the customs agent had  
23 to do was to take the keys and open the package. Once  
24 the package --

25 QUESTION: Did the customs -- did the

1 Government keep the keys?

2 MR. REARDON: Well, there's no evidence as to  
3 even whether the container at the time it was delivered  
4 was in fact locked. All that's said is the container  
5 was closed and opaque at the time it was delivered.

6 I suggest to the Court that, on the issue of  
7 bringing the container from the customs depot to the  
8 address on Goethe Street, that there are several  
9 occasions when we have problems with the analysis of the  
10 facts that has gone before. For example --

11 QUESTION: Mr. Reardon, would you want us to  
12 draw a bright line where there is any period of time  
13 whatsoever when the package is out of eyesight of the  
14 authorities?

15 MR. REARDON: Well, I think you're asking me  
16 to go beyond the facts in this case, which I think give  
17 us an opportunity to clearly see a line.

18 QUESTION: Well, at least that would be an  
19 easy approach, a bright line is drawn and it's easy to  
20 be enforced that way.

21 MR. REARDON: Well, possibly that would be the  
22 way this Court could go. But in this case there is such  
23 a bright line that I don't think there's any problem  
24 with drawing it.

25 QUESTION: 45 minutes?

1                   MR. REARDON: There's at least a half hour to  
2 45 minutes where the container is not just handed to  
3 someone and then that someone, as in many cases, walks  
4 out of the airport with agents trailing him and  
5 following him by radio. The container is handed to him  
6 at the door of his own home, an apartment but  
7 nevertheless a home, a Fourth Amendment protected area.

8                   He went inside that home with a closed  
9 container and closed the door, and at that moment I  
10 think that he manifested an expectation of privacy that  
11 is protected by the Fourth Amendment. And during an  
12 interim of a half an hour, there was no evidence in this  
13 case that there was any particular problem emptying out  
14 that container. I take exception to the statements of  
15 the Petitioner on that score.

16                  There was no information given to us that  
17 there was any difficulty in opening this ordinary  
18 shipping container that Lufthansa uses to ship furniture  
19 and to take out the table. There was no evidence at any  
20 time as to the fact that this is a heavy object or a  
21 difficult object to move. That is not in the record.

22                  In fact, if we are to look to the record for  
23 anything at all, it is the statement given to us by  
24 Agent Labek that he says the Respondent gave him, and  
25 that is: Oh, it's not heavy, I'll take it myself. I

1 packed it myself before. Now that's what Agent Labek  
2 tells us.

3 QUESTION: So he may open it up and empty it,  
4 and then he had to fill it up again.

5 MR. REARDON: There's no evidence that it was  
6 even full at the time it was seized, other than it was,  
7 of course, later opened.

8 QUESTION: Well, later. But when it was  
9 taken -- when it was searched at the police station it  
10 certainly had something in it.

11 MR. REARDON: Oh, it certainly did. But at  
12 the time of arrest --

13 QUESTION: And there's no indication -- and if  
14 there was something in it, it was either put in it in  
15 his apartment or before?

16 MR. REARDON: But at the time that is relevant  
17 to the seizure and to the opening of that container, no  
18 evidence has been given to us that the police weighed  
19 it, checked the weight against any earlier time when it  
20 was --

21 QUESTION: Well, all we're talking about is  
22 probable cause. We're not talking about, I would think,  
23 the kind of chain of possession that you have for a  
24 chemist to testify at a trial. This is strictly  
25 probable cause.



1           MR. REARDON: Well, first of all, if we are  
2 talking --

3           QUESTION: More likely than not is the  
4 standard, is it not, more likely than not, as  
5 distinguished from beyond a reasonable doubt?

6           MR. REARDON: Well, if we are talking about  
7 probable cause, obviously the standard is less than  
8 reasonable doubt. But I suggest to you that under the  
9 cases that the Illinois appellate court relied on and  
10 that I believe applied in this situation, both U.S. v.  
11 Chadwick and Arkansas versus Sanders, the doctrine there  
12 is that probable cause does not excuse the warrant  
13 requirement.

14          QUESTION: I got an impression that you've  
15 suggested that when this man took the container out of  
16 the hall and took it into the apartment, then it  
17 achieved some new changed status or cloak of privacy.

18          MR. REARDON: I suggest that that --

19          QUESTION: Is that your position?

20          MR. REARDON: I do say that, yes. And I say  
21 that because that has been an attack made by the  
22 Petitioners, that for some reason there can be no  
23 objective expectation of privacy in a package, in a  
24 container once it has gone through customs. Apparently  
25 Petitioners feel that an objective expectation lies upon

1 the package, rather than on the possessor or recipient,  
2 and that there's some sort of halo that surrounds a  
3 suitcase or container once it goes through customs, that  
4 halo is erased and forever more that container can never  
5 be an object of privacy again.

6 QUESTION: Well, I think their argument is  
7 that you lose the expectation of privacy so long as  
8 there's some surveillance of it thereafter until the  
9 point that it's seized. That's how I understand the  
10 argument. And the tough part of this case is that break  
11 in time and the level of certainty that's required to be  
12 sure something hasn't been taken out or added.

13 MR. REARDON: Well, I agree with that. I  
14 think --

15 QUESTION: What level of certainty do you  
16 think the cases show has to be applied?

17 MR. REARDON: Well, Justice O'Connor, once  
18 that door closes to a private Fourth Amendment area --  
19 that is why I responded as I did to Chief Justice Burger  
20 --

21 QUESTION: Well, do you think if the door were  
22 closed for 30 seconds that that would somehow magically  
23 change this case?

24 MR. REARDON: Well, let's assume that --  
25 you're making me do things that are not in the case, and

1 that I find difficult because then I would be in a  
2 different position, of course.

3 QUESTION: But that's the fun we have in  
4 asking questions.

5 (Laughter.)

6 QUESTION: That's what we're here for, to test  
7 your arguments with hypothetical questions.

8 QUESTION: Counsel, when you get a package  
9 from overseas and you are an average intelligent person,  
10 don't you assume that someplace along the line the  
11 customs agents have taken a look at it?

12 MR. REARDON: Well, I think that it would be a  
13 reasonable assumption, yes.

14 QUESTION: Well, how do you escape it here?

15 MR. REARDON: Well, let us assume --

16 QUESTION: As of right now, with what your  
17 associate tells me, I have to also assume that somebody  
18 drilled into my furniture. Don't you have to assume  
19 that?

20 MR. REARDON: Both at the trial level and at  
21 the appellate level and in our briefs in this Court, we  
22 have specifically prescinded from any discussion of  
23 whether or not the customs search was a lawful search by  
24 a governmental agency. We have conceded for purposes of  
25 argument that it was.

1           QUESTION: Could there be any possible  
2 question about it?

3           MR. REARDON: Well, I think Justice Marshall  
4 raised one, whether or not --

5           QUESTION: Well, do you raise a question?

6           MR. REARDON: I suggest that a customs search  
7 must be reasonable. I think that that at least must be  
8 a standard. I think that customs --

9           QUESTION: Well, are you aware that they  
10 sometimes take a suitcase and take the lining out?  
11 First they take the contents out, then they tear the  
12 lining out, and --

13          MR. REARDON: Oh, I think great latitude is  
14 given --

15          QUESTION: Unlimited latitude.

16          MR. REARDON: -- but nonetheless there could  
17 be such a thing as an unreasonable customs search.  
18 That's all I'm suggesting. And I'm not suggesting in  
19 this Court that the search of the table at the O'Hare  
20 customs depot was such an unreasonable search.

21          QUESTION: And with a person they sometimes  
22 take the people into a private area and have a physician  
23 or a nurse strip them and examine them.

24          Now, is there any question about the right of  
25 customs to check everything they want to check?



1           MR. REARDON: Well, once again you're asking  
2 me to go into hypotheticals.

3           QUESTION: Yes.

4           MR. REARDON: But I suggest that there may be  
5 a Rochin versus California situation at a customs depot  
6 some day that could be so extreme that it would offend  
7 this Court. On the other hand, I am aware that there  
8 are far, far greater latitude given to customs agents  
9 than in any other search that I know of. I agree with  
10 the Court on that basis.

11          QUESTION: Well, could I return to a question  
12 I asked you a while ago. This won't be a hypothetical.

13          I take it there was hashish found in the table  
14 at the police station?

15          MR. REARDON: That is correct, that was the  
16 evidence that was elicited.

17          QUESTION: And is it a fair inference from the  
18 record that the hashish was either placed in the table  
19 in your client's house or it was -- or what was found in  
20 the table, whatever it was might have been taken out,  
21 was there before it got there?

22          MR. REARDON: Oh, it's quite possible that  
23 the --

24          QUESTION: Possible? I mean, aren't there  
25 only two alternatives as to where that hashish came

1 from? It was either added in his house or it was there  
2 before it got there.

3 MR. REARDON: Or it was there before the  
4 customs search, correct. Because customs found that  
5 hashish at the airport.

6 QUESTION: Well, suppose it had never been out  
7 of anybody's sight, and suppose a friend of your  
8 client's who was -- this is a hypothetical. Suppose a  
9 friend of your client went in the house with him and he  
10 just happened to be an informer for the police, so it  
11 was always under observation and he testifies that  
12 nothing was taken out or put in. And then it was  
13 searched at the police station.

14 MR. REARDON: Then I agree --

15 QUESTION: Then you would have no -- then you  
16 might be in --

17 MR. REARDON: Then we are in an extremely  
18 different case than we are today.

19 QUESTION: All that would then show is that  
20 the hashish was in there when it was delivered to him and  
21 it was never taken out. That's all it would show.

22 MR. REARDON: Yes.

23 QUESTION: Now, on the facts of this case it  
24 seems to me that you are stuck with the unquestionable  
25 fact that hashish was either put there by him in the

1 house or it was there when it was delivered.

2 MR. REARDON: Well, the question, though, I  
3 believe is whether at the time he walked out of that  
4 door --

5 QUESTION: Yes.

6 MR. REARDON: -- into the hallway with a  
7 closed opaque container, that at that point the police  
8 agents who seized the package had a right to search it  
9 under Chadwick, because at that point, did they have  
10 such certainty? First of all, did they have such close  
11 control as the cases require for them to say that this  
12 is nothing more than a continuation of our earlier  
13 customs search or this is nothing more than a  
14 reassertion of immediate control versus surveillance  
15 control.

16 QUESTION: Well, you certainly then, you  
17 certainly want to cut off a so-called controlled search,  
18 a controlled surveillance. You just want to put that  
19 aside and say that this expectation of privacy takes  
20 over as soon as the door closes and that's the end of  
21 the case.

22 MR. REARDON: Well, I do for the following  
23 reasons, because --

24 QUESTION: Well, why would you then -- why  
25 would you say that you would lose the case if a friend

1 was there with him and later testified that they never  
2 touched the table? Because as soon as the door closed  
3 there was an expectation of privacy that the police  
4 should not --

5 MR. REARDON: I'm sorry if I misunderstood  
6 your hypothetical, but I assumed that this friend was  
7 continuing the surveillance on behalf of the police.

8 QUESTION: Well, he was, he was. But  
9 nevertheless, the door was closed, and in his house an  
10 expectation of privacy should cut off the entire customs  
11 rationale excuse.

12 MR. REARDON: Well, the question then for this  
13 Court would be whether the controlled delivery cases of  
14 the courts of appeals should be ratified in this Court.  
15 I don't think that question has ever been answered and I  
16 think Justice Rehnquist pointed that out in a grant of  
17 stay to a California case, that this Court has never  
18 addressed the problem directly.

19 QUESTION: Well, let's suppose we do adopt  
20 it. Then the question still becomes whether that break  
21 in time is sufficient to say that there isn't a  
22 controlled delivery.

23 MR. REARDON: Well, your original hypothetical  
24 was to me how long a break in time is necessary, and  
25 I --



1           QUESTION: Might that not depend on the nature  
2 of the container and the likelihood that it could have  
3 been -- something taken out or added in that interval?

4           MR. REARDON: I suggest that if that would be  
5 the rationale upon which the lower court or this Court  
6 should rule, then that should have been developed by the  
7 state as a way of showing that this container had to be  
8 in the same condition that it always was.

9           QUESTION: Well, why shouldn't the question  
10 be, was there an opportunity for somebody else to put in  
11 the table what was later found in the table? Why  
12 shouldn't that be the question if there's going to be a  
13 -- if you're going to examine a break, you should  
14 examine it from that standpoint.

15           They unquestionably found something later in  
16 the table, and if somebody else might have put it there  
17 that's another matter. But if you know it's always been  
18 in your client's possession --

19           MR. REARDON: The question, however, is not  
20 whether it's been in my client's possession, but whether  
21 the contents of that table are available for search  
22 without a warrant.

23           QUESTION: Your theory is that it's perfectly  
24 conceivable that he himself might have taken it out in  
25 his house, in the apartment, and emerged with the thing

1 just unchanged, at any rate, from the way it had been  
2 delivered to him?

3 MR. REARDON: I think that's true.

4 QUESTION: But it wasn't empty. It wasn't  
5 empty. It was full.

6 QUESTION: Yes, but you don't find out until  
7 you search it.

8 QUESTION: That's right.

9 MR. REARDON: But no one at the time that that  
10 package was seized outside his door at the time of  
11 arrest, no one ever testified that the contents of that  
12 container were the same, nor could they have, if you  
13 examine the facts, because that was an ordinary shipping  
14 container. All you had to do was take the top off as  
15 the customs agent did, take out the contents, put in  
16 anything else you wanted.

17 QUESTION: None of the controlled delivery  
18 cases have required absolute certainty. That's just not  
19 an argument that's a winner. It's a question of the  
20 level of certainty you're going to require. Is it going  
21 to be probable cause, is it going to be substantial  
22 likelihood, is it going to be reasonable certainty, what  
23 is it?

24 MR. REARDON: Well, I suggest to the Court  
25 that the controlled delivery cases that I have seen have

1 required such close surveillance that there could be no  
2 change in the contents of the package. That's what U.S.  
3 v. DeBerry said, that's what Ford said. In all of those  
4 cases --

5 QUESTION: It's almost a chain of possession  
6 reasoning, like you have to have --

7 MR. REARDON: That's what the courts have  
8 searched for in the Court of Appeals, and I think it is  
9 reasonable because --

10 QUESTION: But when you're talking about  
11 probable cause -- I mean, the whole gist of what you can  
12 search in the Fourth Amendment area depends on probable  
13 cause. Why should a different standard apply in this  
14 one little nook of the Fourth Amendment?

15 MR. REARDON: I'm not sure that that is the  
16 standard as I read it in Arkansas versus Sanders. The  
17 probable cause by itself does not excuse the warrant  
18 requirement. That is the way I read Sanders, and I  
19 believe that is the way -- that is what the Illinois  
20 court relied on, that probable cause is not a sufficient  
21 standard for excusing a law enforcement official from  
22 obtaining a warrant, except where there are exigent  
23 circumstances, and there were none here.

24 So that I'm not sure that I can agree with  
25 that understanding of the --

1           QUESTION: But you treat this as if it were  
2 simply a probable cause like they had to search the  
3 suitcase in Arkansas against Sanders. But here you have  
4 a customs search which demonstrates beyond peradventure  
5 of a doubt that at that point there's contraband in the  
6 package, and so the question is what standard of  
7 knowledge are you going to require to assume that the  
8 package is still in the condition it was in at customs  
9 some time later.

10           I don't see why probable cause shouldn't be  
11 that standard.

12           MR. REARDON: Well then, of course we are  
13 backing away, I believe, from the standard in Chadwick,  
14 which was that probable cause is insufficient.

15           QUESTION: But certainty wouldn't have been  
16 sufficient in Arkansas against Sanders. A warrant --  
17 certainty without a warrant would have done the officers  
18 no good.

19           MR. REARDON: Well, my response to that would  
20 be that if we then wish to be consistent, if that is the  
21 consistency that the Court wishes, then we should say  
22 that under controlled delivery cases a warrant is  
23 required.

24           QUESTION: You're free to argue that if you  
25 want to.



1           MR. REARDON: I can only say that I believe  
2 that is the logical consistency that I'm confronted with  
3 by the decisions in this Court, and I suggest that,  
4 whatever we look to as a standard in this case, the  
5 facts of this case -- I think I agree with counsel --

6           QUESTION: May I ask you a question about your  
7 theory on the time interval? Do you think there's any  
8 relevance to the reason why the police did not apprehend  
9 him immediately upon the delivery? As I understand the  
10 facts, what they did was they did then take the time to  
11 send someone out to get a warrant and then he  
12 unexpectedly emerged from the apartment before they  
13 could get the warrant.

14           Is that relevant at all in the analysis?

15           MR. REARDON: I think the fact that the  
16 officers went to get a warrant once that apartment door  
17 was closed indicates to me that those officers, as well  
18 as I, knew that they had lost control at that point and  
19 that they need a warrant at that point to reassert  
20 control and to research that package.

21           QUESTION: Well, they hadn't lost control at  
22 the time they handed him the package and he said, it's  
23 not too heavy, I can handle it myself.

24           MR. REARDON: But they didn't reseize it at  
25 that point. That's my point.

1                   QUESTION: But apparently the reason they  
2 didn't at that point in time was they decided that it  
3 would be better police procedure to get a warrant, and I  
4 certainly don't think you'd criticize them for doing  
5 that.

6                   MR. REARDON: No, I don't think I'd criticize  
7 for going and getting a warrant. That's what I'm  
8 arguing for.

9                   QUESTION: And certainly while the table was  
10 in the house there's no way they could get in the house  
11 without a warrant. The warrant they went to get was to  
12 search the house.

13                  MR. REARDON: Well, and to --

14                  QUESTION: And you couldn't enter the house, I  
15 guess, without a warrant.

16                  MR. REARDON: For the purpose of seizing a  
17 container within which was another container, within  
18 which was the object of the warrant.

19                  QUESTION: Suppose they'd waited until he had  
20 taken the package out, put it in his automobile, and  
21 then started off. Given the background, given the  
22 background, would you say there was no probable cause  
23 for the officers to believe that when he was  
24 transporting that package he was transporting an  
25 unlawful drug, and that therefore if there was no

1 probable cause to believe that, that they couldn't stop  
2 him without a warrant?

3 MR. REARDON: I suggest that they could stop  
4 the car under case law relating to cars, Carroll, et  
5 cetera, and the new cases on that point. I suggest,  
6 however, that the probable cause that they would have  
7 even under the most recent cases of this court on the  
8 searches of autos would give them probable cause for a  
9 package, rather than for the generalized search of the  
10 auto, and that since it was a package it would then need  
11 a warrant.

12 QUESTION: But don't you read our cases as  
13 having, recent cases, as having largely, very, very  
14 largely, expanded what can be searched in the car  
15 without a warrant?

16 MR. REARDON: I do.

17 QUESTION: Once the car has been lawfully  
18 stopped.

19 MR. REARDON: I do.

20 QUESTION: I do.

21 MR. REARDON: So you concede the car would be  
22 lawfully stopped on the belief that it was probably  
23 transporting drugs, but you say they couldn't open the  
24 package without a warrant?

25 MR. REARDON: I suggest that even under Ross

1 the package would be the object of the probable cause,  
2 rather than the generalized interior of the vehicle, and  
3 on that basis Ross would not authorize a generalized  
4 search of the car or opening of any or all packages or  
5 compartments, but would rather require a seizure of the  
6 package and a reduction of that package to the  
7 immobility and total security of the Chadwick situation  
8 and an obtaining of a warrant, as in Chadwick and as in  
9 Sanders, which distinguished specifically the Carroll  
10 doctrine from this type of container situation.

11 I suggest that, like Chadwick, when John  
12 Andreas had a half hour with that package or more alone  
13 in his home and when he came out that package was  
14 seized, the same as it was in Chadwick, he stood in the  
15 same relative position as the defendants in Chadwick.  
16 And like in Chadwick, that package was taken to the  
17 police station and reduced to total police control and  
18 security.

19 The police had no reason to suspect that that  
20 package contained explosives or other dangerous  
21 articles. The police had no exigent circumstances.  
22 They opened it without a warrant. The warrant was  
23 required under both Arkansas versus Sanders and under  
24 United States versus Chadwick.

25 And our position is that once agent Labek left



1 the floor of that building, if there were any vestige of  
2 surveillance going on, he said he didn't even keep the  
3 apartment under his personal surveillance during that  
4 half hour. There was no evidence in this case that the  
5 package could have had any problem being opened or  
6 changed or whatever. There was no certainty at all by  
7 that point.

8 CHIEF JUSTICE BURGER: We'll resume there at  
9 1:00 o'clock.

10 (Whereupon, at 12:00 noon, the argument in the  
11 above-entitled case was recessed, to resume at 1:00 p.m.  
12 the same day.)  
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1 AFTERNOON SESSION

2 (1:00 p.m.)

3 CHIEF JUSTICE BURGER: You may continue,  
4 counsel.

5 ORAL ARGUMENT OF PATRICK G. REARDON, ESQ.,  
6 ON BEHALF OF RESPONDENT - RESUMED

7 MR. REARDON: Thank you.

8 In the remaining moments, I would like once  
9 again, if I may, to address the question of Justice  
10 O'Connor's as to the time lapse, the short time lapse  
11 after the closing of the door. I think perhaps a review  
12 of the Petitioner's reasoning that they urge us to  
13 accept relating to the expectation of privacy may help  
14 us in this area, and that is, the Petitioner urges us  
15 that there is no expectation of privacy.

16 We have urged that there is and that the  
17 Respondent at the point that he closed the door to his  
18 apartment stood in the same position relative to an  
19 expectation of privacy as Mr. Katz did in Katz versus  
20 United States when he closed the door to that telephone  
21 booth.

22 The Court said in that case that up until the  
23 moment that Mr. Katz entered that phone booth there was  
24 no expectation of privacy that he could have in that  
25 booth. But when he went in, closed the door and paid

1 his dime, the Government could not enter, and it was at  
2 that moment that the Government could no longer violate  
3 that expectation of privacy.

4 I suggest that John Andreas at the time he  
5 took the closed opaque container from the Government  
6 agents and rolled it into the closed door of his own  
7 apartment, that at that moment he manifested the  
8 expectation of privacy and that it wouldn't matter from  
9 that moment on how long we talk about or whether there's  
10 a short time gap or a long time gap, because at that  
11 moment the Government does not have control, there is no  
12 longer any exception that they can claim to the  
13 otherwise always supreme warrant requirement.

14 And on that basis I hope my answer at least  
15 clarifies it, whether or not it is acceptable to all  
16 members.

17 QUESTION: Well, having observed him putting  
18 some contraband drugs into the apartment in an  
19 identifiable package and then 30 minutes later seeing  
20 him take that same package out, was there reasonable  
21 grounds to believe that there might be drugs in the  
22 package that he carried out?

23 MR. REARDON: I think it's possible to make an  
24 argument that there's probable cause at that point in  
25 fact for believing that there may be some contraband in

1 that package, based on earlier knowledge. The Illinois  
2 court said that that's a possible argument, but it  
3 doesn't apply here because probable cause does not  
4 excuse the warrant requirement as long as there is no  
5 controlled delivery in this case. We go back to the  
6 standard of Chadwick and Sanders, and in this situation  
7 that standard is that a warrant is required absent  
8 exigent circumstances.

9           It is our position that this is not a  
10 controlled delivery case, the facts do not demonstrate  
11 it. And so to begin to elaborate as to how much control  
12 or how little, this purely and simply is not a  
13 controlled delivery case, and in that setting the  
14 Government or the State of Illinois relies on an  
15 improper premise in asking us to excuse the otherwise  
16 necessary warrant.

17           QUESTION: Well, it certainly could fit the  
18 definition of a controlled delivery under any view,  
19 couldn't it, until the arrival at the apartment?

20           MR. REARDON: No. We have alleged that there  
21 are two reasons for the loss of control. There is  
22 certainly the loss of control at the door of the  
23 apartment, but we have alleged an earlier reason. The  
24 State never did establish that on February 22nd, when  
25 Agent Labek went to the customs depot, that he had any



1 direct knowledge of what was inside the package that he  
2 told us was closed and opaque at the time he picked it  
3 up on February 22nd.

4 So there really is a gap from February 21st at  
5 some point during the day up until the search the  
6 following evening of the 22nd at the police station.

7 QUESTION: Don't you think he can rely on what  
8 customs officials told him?

9 MR. REARDON: There's no evidence that they  
10 told him anything. Facts in this case were never  
11 brought forward by the prosecution at the trial level to  
12 show any communication --

13 QUESTION: Well, what were they following him  
14 for?

15 MR. REARDON: I'm sorry?

16 QUESTION: What were they following him for?

17 MR. REARDON: What were they --

18 QUESTION: You answered Justice O'Connor, said  
19 the customs agents never told him they had contraband in  
20 the --

21 MR. REARDON: The customs agents told the  
22 agent Labek on the 21st to come out to the airport and  
23 see the package that we opened. He then tells us he  
24 did. He went out, he looked at the package. It was  
25 already open. The table was out of the package and he

1 made a test that confirmed to his satisfaction  
2 contraband as part of that shipment.

3 He never repackaged the table. There's never  
4 any testimony by either Agent Labek or Agent Grosek of  
5 customs --

6 QUESTION: The question is, why are they  
7 wasting the time and the manpower to conduct  
8 surveillance on this fellow?

9 MR. REARDON: Well, perhaps they had what  
10 you've already described as probable cause to know  
11 what's in that package. But it seems to me that under  
12 the cases relating to controlled delivery more is  
13 needed. We cannot just assume that Agent Labek at the  
14 time he takes the package on the 22nd has any direct  
15 knowledge of what's inside that package, without  
16 evidence on that point. And none was presented to the  
17 court at any time.

18 QUESTION: This didn't trouble -- the point  
19 you make did not trouble the Illinois appellate court,  
20 did it?

21 MR. REARDON: Oh, it did. It did. The  
22 Illinois appellate court related two specific areas  
23 where there was a problem, and they suggested that the  
24 main one was at the time, the 30 to 45 minutes. But  
25 they also in the opinion point to the fact that at the

1 time of the initial pickup during the early afternoon  
2 hours on the 22nd Agent Labek received no communication  
3 and therefore had no direct knowledge. And they were  
4 troubled by that as well. That is, I believe, in the  
5 opinion.

6 CHIEF JUSTICE BURGER: Thank you.

7 ORAL ARGUMENT OF RICHARD A. DEVINE, ESQ.,  
8 ON BEHALF OF PETITIONER - REBUTTAL

9 MR. DEVINE: Thank you, Mr. Chief Justice.

10 I'd just like to respond to two points. With  
11 regard to the earlier so-called interval in the  
12 controlled delivery, the only point really that  
13 Respondent is making is that Agent Labek was not present  
14 watching the container at the time that the customs  
15 agent picked up the table top and put it back in. The  
16 container was resealed and remained in a customs bonded  
17 area, from which Agent Labek picked it up the next  
18 morning.

19 He had, as we have noted, seen that table top,  
20 seen that container the prior day, in fact tested the  
21 substance from the table top. To impose the kind of  
22 standard of continuity by one individual in law  
23 enforcement to justify a controlled delivery, as  
24 Respondent would, would in effect remove controlled  
25 deliveries. It's a totally absurd standard, I think is

1 the only way to really characterize it.

2 The second point is that Respondent refers to  
3 Katz and going into the telephone booth. Well, the man  
4 going into the telephone booth did not bring a container  
5 with him which had been inspected and which had shown  
6 that the contents were contraband.

7 The only reason at all that there was any  
8 added factor here by going into the apartment was under  
9 Payton principles. There was nothing about the  
10 container or the contents that required the police to go  
11 for a warrant. It was the location of that container in  
12 the apartment which the police, in exercising  
13 professional judgment and acting as we would want them  
14 to act, sought a warrant to enter. It had nothing to do  
15 with the container, the contents, or anything that might  
16 have happened to either the container or the contents.

17 Thank you very much.

18 CHIEF JUSTICE BURGER: Thank you, gentlemen.

19 The case is submitted.

20 (Whereupon, at 1:08 p.m., the case in the  
21 above-entitled matter was submitted.)

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CERTIFICATION

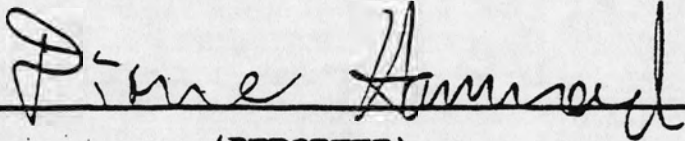
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# 81-1843 - ILLINOIS, Petitioner v. JOHN ANDREAS

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BY

A handwritten signature in cursive script, appearing to read "Pina Amador", written over a horizontal line.

(REPORTER)

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