

ORIGINAL

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 81-1859

TITLE ILLINOIS, Petitioner
v.

RALPH LAFAYETTE

PLACE Washington, D. C.

DATE April 20, 1983

PAGES 1 - 50



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C O N T E N T S

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
MICHAEL A. FICARO, ESQ., on behalf of the Petitioner	3
PETER A. CARUSONA, ESQ., on behalf of the Respondent	23
MICHAEL A. FICARO, ESQ., on behalf of the Petitioner -- Rebuttal - - -	48

1
2
3
4
5
6
7
8
9
10
11
12
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14
15
16
17
18
19
20
21
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P R O C E E D I N G S

CHIEF JUSTICE BURGER: Mr. Ficaro, you may proceed whenever you are ready.

ORAL ARGUMENT OF MICHAEL A. FICARO, ESQ.

ON BEHALF OF THE PETITIONER

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

The Fourth Amendment, through the requirement of warrants based upon probable cause, seeks to protect citizens and their effects from governmental intrusions by unreasonable searches and seizures. But not all searches and seizures without warrant offend the limits imposed by the Fourth Amendment.

We submit that Illinois v. Lafayette is one such case that does not offend the limits of the Fourth Amendment. We urge this Court to find that the delayed search at the station house of the purse of the Respondent, Ralph Lafayette, after a valid custodial arrest was reasonable under the Fourth Amendment.

We submit to this Court that this post-arrest warrantless search was permissible both as incidental to arrest and as a valid inventory search.

QUESTION: Now, Mr. Ficaro, you did not make that search incident to an arrest argument below, did you?

1 MR. FICARO: Yes, Your Honor, that argument
2 was made in the trial court. Although in one line of
3 the Appellate Court opinion, the Appellate Court found
4 that it was waived, the Court went on to discuss the
5 issue citing Ross, Belton, Sanders, Chadwick, Edwards,
6 and then in its conclusion in the holding of the case
7 the Court said that we find that this search is not
8 incidental to arrest and thus violates the Fourth
9 Amendment. So under Jenkins v. Georgia, the Appellate
10 Court of Illinois reached and decided the constitutional
11 issue.

12 The fact --

13 QUESTION: Before it got to the end of its
14 opinion on page 3A of the cert petition it said we find
15 the state has waived this argument for the purposes of
16 appeal by failing to raise it at the suppression
17 hearing. Don't we have to take that at face value?

18 MR. FICARO: There are three ways that this
19 case is before this Court. One is on the theory of
20 valid -- the inventory search which was not --

21 QUESTION: I understand. This only goes, as
22 Justice O'Connor's question, only to the question of
23 search incident to arrest. On that they say in so many
24 words you waived that.

25 MR. FICARO: Although they said that under

1 Jenkins v. Georgia, they reached the issue. The
2 question of waiver, whether or not this is an
3 independent and adequate ground -- this is not an
4 independent ground, the issue of waiver. The Illinois
5 courts follow procedural and substantive laws to find
6 under the Fourth Amendment. In People v. Clark, in
7 appellate courts, People v. Renke, the courts of
8 Illinois have said that their interpretation of the
9 Fourth Amendment is coextensive with the scope of the
10 federal interpretation by this Court of the Constitution.

11 QUESTION: But that has nothing to do with
12 whether an argument might be waived, does it, the fact
13 that the two constitutions might be coterminous?

14 MR. FICARO: The Illinois courts follow the
15 procedural rules, so this Court under the holdings of
16 Steagald which establishes the standard for waiver in
17 Illinois -- the Illinois courts in People v. Keller
18 which explicitly says we follow the federal guideline of
19 Steagald for the waiver principles, thereby allows this
20 Court to reach the question of whether or not it was
21 waived. By a clear examination of the record in this
22 case, the issue was not waived although the Appellate
23 Court in one simple sentence said it was waived.

24 QUESTION: But assuming we ought to take the
25 word of the Illinois Appellate Court in this particular

1 case on these particular facts as to whether something
2 was waived under Illinois law, shouldn't we?

3 MR. FICARO: I believe, Your Honor, it is not
4 an independent ground because they use the federal
5 standard of waiver in Steagald, and, therefore, in
6 applying the federal standard in Steagald this issue was
7 not waived because it was raised in a timely fashion.

8 QUESTION: Without getting into all this
9 Steagald underbrush, didn't your Illinois Appellate
10 Court go on and say and reach the issue anyway --

11 MR. FICARO: Yes, that is correct.

12 QUESTION: -- by saying that we assume
13 arguendo that it was not waived and then went ahead and
14 decided it. Is that enough for you?

15 MR. FICARO: That is enough under Jenkins v.
16 Georgia if they reach the constitutional issue and more
17 significantly --

18 QUESTION: But you have not mentioned it in so
19 many words.

20 MR. FICARO: I apologize to the Court. I
21 thought that was my first reference. But what they have
22 said is, in applying the principles of the Supreme Court
23 cases, we find that this was not a search incidental to
24 arrest.

25 The facts of this case are that on September 1

1 a sergeant of the Kankakee City Police was called to a
2 disturbance at a movie theater in Kankakee. Upon his
3 arrival he saw the Respondent at the theater having
4 words with the theater manager. As he approached the
5 theater manager, the manager requested that the sergeant
6 file a complaint against the Respondent, Ralph
7 Lafayette, for disorderly conduct.

8 Sergeant Mitzner tried to straighten out the
9 matter there, in his own words, but the Respondent
10 continued yelling and screaming and Sergeant Mitzner
11 then placed him under arrest, did not search him at that
12 time, handcuffed him, took him to his car, and brought
13 him to the police station. At the police station the
14 Respondent was unhandcuffed and taken into the booking
15 room where the standard police booking procedure began.

16 The Respondent was told to remove his
17 clothing, to put on jail garb, to take the things out of
18 his pockets, and he began filling out forms. Then,
19 according to Sergeant Mitzner, the Petitioner or the
20 Respondent placed his purse on the counter before him,
21 took out a pack of cigarettes. The sergeant touched
22 that purse, felt something inside and reached in.

23 According to the Petitioner, the purse was
24 taken from his shoulder and searched. But it was
25 uncontested that inside that purse at the time -- after

1 a valid custodial arrest, were ten amphetamine pills.

2 A motion to suppress was heard, was taken under
3 advisement by the trial court. Twenty days after being
4 taken under advisement, the state filed a brief in
5 opposition to the motion to suppress. The Appellate
6 Court then affirmed the holding of the trial court
7 suppressing the evidence. Leave to appeal to the
8 Supreme Court of Illinois was denied, and this matter is
9 before the Court on a writ of certiorari.

10 The reasonableness of a post-arrest
11 warrantless search of the Respondent's purse is
12 predicated upon the right of the state to search the
13 Respondent after his valid custodial arrest for
14 disorderly conduct. The validity of Sergeant Mitzner's
15 authority to search this individual after the arrest has
16 remained virtually unchallenged in this Court. As this
17 Court noted in Robinson, the right to search is not to
18 be doubted.

19 The arrest is a reasonable intrusion as this
20 Court has said in the initial stage of prosecution which
21 may lead to the ultimate relinquishment of liberty of
22 this individual. When Sergeant Mitzner observed the
23 Respondent's disorderly conduct and arrested him for
24 that, Ralph Lafayette's expectation of privacy in the
25 contents of his purse became subordinated to the

1 legitimate and overriding interests of the state to
2 search that purse.

3 Those interests, as stated in this Court, that
4 are monitored by police officers each day are the
5 interests to disarm the person arrested, to protect the
6 police officers and those around them, to remove the
7 means of escape from the arrested person, and to prevent
8 destruction of evidence that can be used against the
9 person arrested. Now these interests that were
10 monitored by Sergeant Mitzner were not tailored
11 specifically for Ralph Lafayette. These are the
12 interests served in every arrest and search incidental
13 thereto.

14 The interests served are not the justification
15 for the search of Ralph Lafayette. The valid custodial
16 arrest as this Court has indicated is the justification
17 for that search, and the search needs no further
18 justification.

19 The breadth of authority to search is not
20 limited, as this Court has held, by the crime arrested
21 for. Despite the trivial nature of a crime that a
22 police officer arrests an individual for, an officer
23 never knows if he is facing the infamous, as this Court
24 put it, trojan horse.

25 It is of no moment to a post-arrest

1 warrantless search that there may be an absence of the
2 fruits of the crime arrested for or no evidence of the
3 crime that can be seized in relation to the crime,
4 although in this case the bizarre behavior of the
5 Respondent could have been found in the evidence of
6 amphetamines found in his purse. The justification to
7 search is not based upon the probability of finding
8 weapons and evidence and means of escape in each and
9 every case, but is based upon the valid custodial arrest.

10 The state's interests to be protected after a
11 valid custodial arrest are constant whether or not in a
12 hindsight glance we can say that the interests were
13 unlikely to have been served in that particular search
14 incidental to arrest.

15 QUESTION: What was this man custodial
16 arrested for?

17 MR. FICARO: He was arrested for, Your Honor,
18 disorderly conduct which was a city ordinance which was
19 subject to incarceration.

20 QUESTION: And what evidence could you find of
21 disorderly conduct by searching him?

22 MR. FICARO: I do not believe that is an
23 issue, Your Honor. However in this case --

24 QUESTION: But it is a question --

25 MR. FICARO: Yes, it is.

1 QUESTION: -- which I am asking.

2 MR. FICARO: And the answer to that question
3 is that the evidence of his bizarre behavior may have
4 resulted from the use of narcotics, in this case
5 amphetamines. So in this particular case there could be
6 established evidence of his bizarre behavior, that his
7 yelling and screaming in a public place and acting as
8 what is described as disorderly in this specific case.

9 It was conceded by the Respondent if Sergeant
10 Mitzner arrested him at the movie station, he could have
11 conducted a search contemporaneous with that arrest, but
12 because the search was at the station, the Respondent
13 says it violated the Fourth Amendment. The Court has
14 ruled in United States v. Abel that a valid custodial
15 arrest can justify a search in a place other than the
16 place of arrest, and the Court has allowed a delay of
17 ten hours in a search after a valid custodial arrest, in
18 Edwards.

19 The delayed station house search in this case
20 does not change the fact that the arrest justifies the
21 search. It does not impose on Ralph Lafayette in any
22 manner greater than it would have imposed upon him at
23 the time of his arrest at the movie house. It does not
24 enlarge the scope of permissible search of Ralph
25 Lafayette.

1 QUESTION: May I ask you one question about
2 the scope of the permissible search? Supposing that the
3 purse that this man was carrying contained a lot of
4 letters in envelopes, some of which were sealed and some
5 were not. Could the police open and read the mail?

6 MR. FICARO: I believe the answer to that
7 question is if it is pursuant to a valid custodial
8 arrest, the police have a right to examine the contents,
9 not to read the contents of the letters, as this Court
10 has indicated in other decisions, that there is a
11 certain amount of scrutiny available to the police.
12 What is reasonable and what may shock the conscience by
13 a broaching --

14 QUESTION: Suppose the envelopes were sealed,
15 could they rip open the seals and look inside?

16 MR. FICARO: I believe they could, Your Honor,
17 and it is the arrest that justifies this intrusion
18 because the expectation of privacy of an arrested
19 individual is diminished and the contents of his
20 personal belongings are also diminished.

21 QUESTION: Do we have to go that far in this
22 case?

23 MR. FICARO: No, Your Honor, we do not have to
24 go that far in this case.

25 QUESTION: What if in feeling the envelopes

1 they felt some kind of a granulated powder inside. It
2 might be sugar, and it might be salt, and it might be
3 narcotics. Would they be able to open that one?

4 MR. FICARO: I believe they would, Your Honor,
5 in this case under these facts because the valid
6 custodial arrest, just like searching into the pocket of
7 Robinson to find a cigarette pack and then opening a
8 cigarette pack to find narcotics inside would be the
9 same as the Court's example or hypothetical to me.

10 Allowing searches incidental to arrest at a
11 place other than and a time other than the arrest has
12 been recognized by this Court based upon the practical
13 considerations that a police officer has to face every
14 day.

15 QUESTION: Is incident to arrest your
16 principle submission?

17 MR. FICARO: No, Your Honor, that is the first
18 submission.

19 The reasonableness of what a police officer
20 does in light of the facts and circumstances of each
21 case is the basis of this practical consideration the
22 Court has in allowing a search at a place other than and
23 at a time other than arrest. The Court has found
24 warrantless searches reasonable that took place seconds
25 after the arrest as in Lavinson and Gustafson, minutes

1 later as in Belton, or hours later in Edwards. What
2 these searches incidental to arrest share in common with
3 the search of Ralph Lafayette is the reasonableness
4 under all the circumstances of the time and place of the
5 search.

6 Looking through this -- looking at this search
7 rather through the eyes of Sergeant Mitzner, it would
8 have been unreasonable and impractical for him to
9 conduct a search in a movie theater lobby where he had
10 been called to quell the disturbance, where a
11 disturbance was taking place, where the defendant may
12 have other friends or associates among the patrons of
13 the theater. It was unreasonable, and the Court has
14 recognized this unreasonableness in demanding that the
15 search incidental to arrest be at the time and place of
16 the search incident.

17 Now the Respondent also concedes that the
18 arrest in this case was valid. Now the Court has
19 reasoned in Robinson that a search into a pocket to get
20 a pack of cigarettes and then searching the cigarette
21 pack to get a container crushed around narcotics is
22 reasonable.

23 Then in this case the search into a purse
24 after a valid custodial arrest to take out a cellophane
25 with narcotics in it is also reasonable. Both the

1 pocket and the purse are repositories of personal
2 effects. There can be no distinction, as this Court has
3 indicated in *Ross*, between worthy and unworthy
4 containers in relation to the unreasonableness of a
5 search and seizure in the protections of the Fourth
6 Amendment.

7 When Sergeant Mitzner placed the Respondent
8 under arrest in that lobby, the Respondent had a
9 diminished expectation of privacy in the contents of his
10 purse because --

11 QUESTION: Is it limited to the purse or --

12 MR. FICARO: No, Your Honor.

13 QUESTION: -- diminished expectation of
14 privacy of everything on his person?

15 MR. FICARO: Everything on his person and
16 within the scope of allowable search, under *Chimel*.

17 QUESTION: How about a separate locked trunk
18 as in *Chadwick*:

19 MR. FICARO: It depends upon the association
20 of that locked trunk with the person at the time of his
21 arrest. But we do not have to reach that issue in this
22 case --

23 QUESTION: You mean if it were nearby it could
24 be opened and searched?

25 MR. FICARO: If it were in the permissible

1 scope of Chimel if Chimel is -- if the language of
2 Chimel means a foot locker.

3 QUESTION: Even if it is locked?

4 MR. FICARO: If that is what the
5 interpretation of Chimel means, even if it is locked.
6 Under the valid custodial arrest theory, there is really
7 no distinction between going into someone's pocket and a
8 foot locker that they are carrying down the street.

9 But in Chadwick that issue was not addressed
10 because it was not a search incidental to arrest.

11 QUESTION: Are you suggesting that -- in
12 Chadwick didn't the encounter begin when they were
13 standing in the depot or the station?

14 MR. FICARO: The encounter began in an
15 observation in another city, I believe, but the arrest
16 took place -- there was probable cause to search --

17 QUESTION: From where? Where was there
18 probable cause?

19 MR. FICARO: Based upon observations by agents
20 in, I believe, San Diego following it through to Boston
21 where the foot locker was observed. A dog was used to
22 verify the presence of narcotics --

23 QUESTION: As soon as the dog sniffed the foot
24 locker, where were the people when the dog sniffed the
25 foot locker?

1 MR. FICARO: That was unclear, Your Honor, but
2 that issue --

3 QUESTION: They were close by, weren't they?

4 MR. FICARO: That issue was not addressed.

5 QUESTION: Do you think they could have --
6 suppose the dog had sniffed the foot locker when they
7 were sitting on the foot locker and they arrested them
8 right then. Could you have searched the foot locker?

9 MR. FICARO: I believe within the holding of
10 Chimel that foot locker could have been searched as
11 valid, incident to a custodial arrest.

12 The question is whether or not this Court in
13 their language of Chadwick meant closely associated with
14 the person to be a foot locker, but certainly under this
15 situation a purse is an item both closely associated
16 with the person as well as within the scope of Chimel.

17 QUESTION: In Chadwick the police did not know
18 of any -- of the connection between Chadwick and the
19 foot locker until he exercised dominion over it --

20 MR. FICARO: That is correct.

21 QUESTION: -- by taking possession, and the
22 police deferred their arrest until he claimed the
23 container that the dog had indicated had drugs in it.

24 MR. FICARO: But I believe this Court has
25 distinguished Chadwick in that it was not a search

1 incidental to arrest.

2 QUESTION: And it was not an automobile search.

3 MR. FICARO: That is correct. So then based
4 upon the necessity for probable cause under the facts
5 and circumstances of Chadwick, the Court's holding in
6 relation to the search of that item was correct.

7 QUESTION: Did the Ross case possibly have
8 some impact on Chadwick?

9 MR. FICARO: I believe Ross merely indicated
10 the worthiness and unworthiness of containers for the
11 purposes of describing, as I have, a purse or a double
12 locked foot locker. It is the nature of the container
13 -- it is not the nature of the container that retains
14 the expectation of privacy in the container. It is what
15 is done with that container, it is our position, that
16 reduces the expectation of privacy.

17 QUESTION: Are you going to come to your
18 theory on the inventory search --

19 MR. FICARO: Yes, Your Honor.

20 QUESTION: --or have you said all you were
21 going to say about that?

22 MR. FICARO: No, Your Honor, I will.

23 The search of the Respondent's purse at the
24 station house after his valid arrest was a post-arrest
25 warrantless search of property under his control and

1 immediately associated with his person. The authority
2 to seize was not questioned by the Respondent.

3 The justification to search is based upon the
4 valid custodial arrest. The search of the purse was
5 also justified as a valid inventory search because the
6 Respondent was carrying it when the police took him into
7 custody. When Sergeant Mitzner reached into that purse,
8 his stated intent was to conduct an inventory search
9 according to standard police booking procedures.

10 This Court has said in Opperman --

11 QUESTION: Do we know from the record in this
12 case what the details of the standard procedure were
13 that were used by the Kankakee Police Department?

14 MR. FICARO: We do not know from the record,
15 Your Honor, other than the facts of removing the
16 contents from the pockets of the individual, placing
17 this individual in jail garb or jail attire, and taking
18 all the personal belongings of that individual in
19 inventory.

20 QUESTION: And we do not know to what property
21 it extends or whether a form is filled out or anything
22 of the kind?

23 MR. FICARO: In the amicus brief filed before
24 the Court, there is a copy of the inventory form used by
25 the Kankakee Police Department which line by line

1 designates questions to be answered and items to be
2 inventoried and property to be received and that the
3 Respondent in each and every case or the person arrested
4 must sign that inventory to verify the contents.

5 QUESTION: What is in the course of the
6 inventory process?

7 MR. FICARO: The inventory process, Your
8 Honor, Mr. Justice, is a caretaking administrative
9 practice. It is not based upon the probable cause, but
10 it is based upon serving the legitimate interests of the
11 state as well as an arrestee.

12 The interests served are those listed in
13 Opperman, to protect the valuables of the arrestee from
14 theft, loss or damage, to protect also the police
15 officer from any harm due to the contents of that
16 property seized. We are not talking about the
17 subjective fear of a particular police officer. What we
18 are talking about is the objective harm that may occur
19 if that item and the contents are not inventoried.

20 The interests served by inventory include
21 protecting against false claims that the property of the
22 arrestee was either stolen, damaged, or lost by the
23 police, and this cannot be underestimated, the problem
24 this causes both in morale and in the drain of resources
25 in responding to frivolous claims by persons arrested.

1 We cannot also deny the fact that an interest
2 served by the inventory search of an arrestee is to
3 secure the security of the jail cell or the jail house.

4 QUESTION: May I ask you a question? Is this
5 the inventory card that was used in this case? Is that
6 the --

7 MR. FICARO: I believe that is the inventory
8 card.

9 QUESTION: It describes the property as b-l-k,
10 black shoes, \$79 U.S.C., brown pouch, three keys, pants,
11 I guess, vest, and something else. Does this -- the
12 three keys, is that within the pouch or are they three
13 keys outside the pouch?

14 MR. FICARO: It is not clear from the record,
15 Your Honor, where those keys --

16 QUESTION: Can you tell what was in the pouch
17 from the inventory card?

18 MR. FICARO: I do not believe so, Your Honor --

19 QUESTION: Did they just inventory the pouch
20 and I assume they leave the contents inside it?

21 MR. FICARO: If that would not --

22 QUESTION: I mean, this is their regular
23 procedure, I guess.

24 MR. FICARO: That is their regular procedure.

25 QUESTION: But you cannot tell from the card

1 what is in the pouch and what is not in the pouch?

2 MR. FICARO: I do not think it is of
3 significance whether it is in the pouch or not. The
4 significance is whether it remains the property of this
5 arrestee.

6 QUESTION: The other side argues that all you
7 really have to do is describe the pouch and keep that
8 separate, and you are arguing you have got to know what
9 is in the pouch --

10 MR. FICARO: Yes, Your Honor.

11 QUESTION: -- and if the ordinary record does
12 not even show what is in the pouch, I wonder how valid
13 your argument is.

14 MR. FICARO: I believe in the record it
15 indicates that every item of property of an arrestee
16 must be inventoried. That would include by its very
17 nature the contents of the pouch.

18 QUESTION: So if he had a pouch with nothing
19 in it but three keys? They did not even inventory the
20 drugs.

21 MR. FICARO: I do not believe that I
22 understand the question, Your Honor, in that they
23 inventoried all items of personal property in his
24 possession. It did not have to indicate from where
25 those items came because it serves no purpose.

1 QUESTION: And I am saying they apparently do
2 not inventory the contents of the pouch. They just
3 inventory the pouch as one item.

4 MR. FICARO: You mean they do not specifically
5 indicate that the contents are the following?

6 QUESTION: If this is your regular form, they
7 do not.

8 MR. FICARO: But they do, which is the basic
9 consideration, inventory each and every item taken from
10 the arrestee at the time of his arrest.

11 QUESTION: Including the pouch but not the
12 contents of the pouch, which would seem to suggest you
13 do not have to look inside the pouch to comply with your
14 inventory regulations.

15 MR. FICARO: I believe you would have to look
16 into the pouch or you cannot list each and every item
17 taken from the arrestee at the time of his arrest. In
18 weighing the state's interests in the Respondent's
19 expectation of privacy in the contents of his purse,
20 there is no doubt that the Respondent who is a pre-trial
21 detainee has a lesser expectation of privacy that
22 justifies the overriding state interests to search and
23 inventory the contents of that purse.

24 I would seek leave of this Court to retain the
25 remaining portion of my argument for rebuttal.

1 CHIEF JUSTICE BURGER: Mr. Carusona.

2 ORAL ARGUMENT OF PETER A. CARUSONA, ESQ.

3 ON BEHALF OF THE RESPONDENT

4 MR. CARUSONA: Mr. Chief Justice, and may it
5 please the Court.

6 The Petitioner, the State of Illinois, asks
7 this honorable Court to reverse the decision on two
8 grounds. It alleges two grounds, that it is a valid
9 inventory in this case, or there is a valid delayed
10 search incident to the arrest.

11 It is our position as developed in part two of
12 our brief that the question of whether the search can be
13 justified as one incident to the arrest is not properly
14 before this Court since the Appellate Court held that
15 that issue was waived. The fact that after the Court
16 held that it was waived, as the state concedes in both
17 its petition for certiorari and its brief, and then went
18 on to note and discuss the issue, that is purely a
19 hypothetical discussion prefaced with the phrase,
20 assuming arguendo, that the state had not waived the
21 issue.

22 QUESTION: Why did they indulge in that waste
23 of time?

24 MR. CARUSONA: I do not know, Your Honor. It
25 is just common for them to do that.

1 (Laughter)

2 MR. CARUSONA: Not to waste their time, but to
3 go on to discuss that.

4 QUESTION: We won't push you.

5 MR. CARUSONA: Thank you.

6 Hypothetical discussions do occur perhaps even
7 in this Court's decisions, but in Herb v. Pitcairn that
8 is one case where this Court recognized that there was a
9 hypothetical discussion in the case, as there was in
10 this case, and the Court said that we are not in the
11 business of issuing advisory opinions. Any opinion by
12 this Court would be purely advisory since it was waived
13 under state law.

14 QUESTION: How about Jenkins v. Georgia which
15 the other side relies on?

16 MR. CARUSONA: In that case the Court in that
17 case went on to reach and decide the question. There is
18 nothing in there to the -- there is no waiver holding in
19 that case. There is no question that that case was
20 decided on the merits of the Fourth Amendment or the
21 Constitution.

22 Since the focus of this case really should be
23 inventory, I would like to limit my comments to that. I
24 would rely on part three of our brief where we discuss
25 the search incident to arrest question, and there is

1 another reason in this case why the focus of the case
2 should be on inventory. That is what the facts show it
3 is.

4 The officer testified he searched the contents
5 of this shoulder bag because, pursuant to Kankakee
6 Police Department policy, everything had to be
7 inventoried. As Your Honors will recall, there was an
8 arrest in this case, and I must dispute the facts as
9 supported by the Petitioner this morning.

10 The arrest in this case was for disturbing the
11 peace. It was not subject to incarceration. That was a
12 petty offense punishable by a fine only. It was a
13 violation of the Kankakee Municipal Code, and petty
14 offenses in Illinois are punishable by fine only.

15 QUESTION: How about the custodial nature of
16 an arrest made for a violation of that ordinance? Is it
17 totally unknown to make a custodial arrest?

18 MR. CARUSONA: Certainly not, Your Honor, and
19 this is the -- you can have a custodial arrest for a
20 misdemeanor, and this is not even a misdemeanor. It is
21 even lower. It is simply a petty offense carrying no
22 subject of incarceration. In fact, there is a bail
23 schedule for this offense, and the defendant could have
24 obtained his release by posting \$35 bond money.

25 QUESTION: If he had it. If he had it.

1 MR. CARUSONA: If he had it. That is correct,
2 Your Honor. In that regard, there has been some
3 discussion this morning of his property index card in
4 the brief of the amicus. That is not in the record.
5 That card apparently was obtained by the amicus writing
6 to the Kankakee Police Department. That is not evidence
7 in the record, and I wanted to point that out.

8 But, however, that card indicates that he did
9 have \$79 and enough to make bond. Following the arrest
10 in this case --

11 QUESTION: May I ask you if the record tells
12 us what he had in the purse other than the cigarettes,
13 which I guess are mentioned, and the --

14 MR. CARUSONA: The record does not show.

15 QUESTION: Because neither the cigarettes nor
16 the drugs are listed on the card. Was there anything
17 else in the purse?

18 MR. CARUSONA: There is no indication in the
19 record.

20 Following the arrest in this case, the
21 Defendant was taken down to the police station. At that
22 point, he was allowed to fill out some forms. After he
23 filled out some forms it eventually was determined that
24 he was going to spend the night in jail or going to
25 spend some time in jail. They took all of his

1 belongings, and at that point they decided that they
2 were going to search them because they were safeguarding
3 them.

4 I would like to point out what this search is
5 not, in this case. This is not a search based on
6 probable cause. This is not a search based on any
7 exigency. This is not a search of any property that was
8 going to accompany the Defendant into the jail cell.

9 What this is is simply a search pursuant to
10 the Kankakee Police Department policy to inventory
11 everything that they are going to be safeguarding, and I
12 would also point out that this is not a search which
13 could ever be justified by a warrant. With respect to
14 this inventory question, the state --

15 QUESTION: What did you say? Suppose right at
16 the time of arrest, would they have been able to search
17 the purse?

18 MR. CARUSONA: Perhaps as a search incident to
19 arrest under the Fourth Amendment, yes.

20 QUESTION: So --

21 MR. CARUSONA: We are not disputing a
22 contemporaneous search.

23 QUESTION: All right. Thank you.

24 MR. CARUSONA: I might add, however, that such
25 a search might be illegal under Illinois law because it

1 is controlled by state statute.

2 With respect to this inventory question, the
3 state asked the Court to fashion a rule which requires
4 the police, just as the Kankakee Police Department
5 policy, to open up every container, every repository of
6 personal effects, and this would have to include an
7 envelope because you would have to open up an envelope
8 to check to see whether or not there was currency in it
9 or some type of bearer bond.

10 Our position, on the other hand, is that this
11 Court should approve or affirm the decision in this case
12 and approve the majority rule and that is that the
13 contents of these containers should not be searched as
14 part of an inventory.

15 QUESTION: Now, you have said, if I understood
16 you correctly, that the police would not even have been
17 able to obtain a search warrant for that bag that he was
18 carrying.

19 MR. CARUSONA: That is correct, Your Honor.

20 QUESTION: What if, in fact, there was \$20,000
21 worth of raw heroin in it and the police do not know
22 that when they arrest him but his conduct was such that
23 they might reasonably think he was influenced by drugs.
24 Are you telling us that under Illinois law there was no
25 way that the police could ever search that shoulder bag

1 to see, either to inventory it or for any other purpose?

2 MR. CARUSONA: What we are saying, Your Honor,
3 is that such a search would not be an inventory search.
4 That would be a criminal search, and it would have to go
5 by the Court's normal standard and perhaps the warrant
6 would apply as in Chadwick.

7 QUESTION: Suppose -- you are suggesting that
8 they should have put it in a sealed wrapper and put it
9 away and not looked inside of it. That is part of your
10 point, is it not?

11 MR. CARUSONA: As far as the inventory issue
12 is concerned.

13 QUESTION: Now suppose after he posted his
14 bond and had been fined he then claimed that he had had
15 \$10,000 in currency in it but that the \$10,000 in
16 currency was missing. Are you suggesting the police did
17 not have the right to protect themselves from such a
18 claim?

19 MR. CARUSONA: What we are suggesting, Your
20 Honor, is the right -- the police do have a right to
21 protect themselves from a claim, and they could have
22 done it exactly as the officer testified in this case by
23 placing the shoulder bag in an inventory bag, which were
24 available, and securing it in a locker.

25 QUESTION: Would that prevent this gentleman

1 from claiming afterward that he had \$10,000 when he put
2 it in, that the \$10,000 was missing when he was released?

3 MR. CARUSONA: Your Honor, absolutely no
4 procedure would prevent that from happening.

5 QUESTION: Well, the inventory at the time and
6 place at the police station, spreading the things all
7 out on the table and counting the money would protect
8 them, would it not?

9 MR. CARUSONA: That would not protect a false
10 claim. I mean, a claim could be made at that time that
11 the money was taken when it was handled.

12 QUESTION: Even if the person arrested had to
13 sign the form and say I acknowledge this is what I had
14 and here it is and you have listed it on the inventory
15 and yes that is right?

16 MR. CARUSONA: Well, Your Honor, in this case
17 the shoulder bag could have been placed in an inventory
18 bag and that could have been sealed and the Defendant
19 could have initialed that and then --

20 QUESTION: Yes, but that does not do away with
21 the type of claim the Chief Justice was inquiring about.

22 MR. CARUSONA: I understand. Perhaps Your
23 Honors may even feel that it is slightly better to
24 search every thing, but that slight interest cannot
25 outweigh the privacy that we are talking about here,

1 and, in fact --

2 QUESTION: Well, it is not the function of
3 judges to try to say how it should be done. The only
4 function of this Court would be to say is the way they
5 are doing is the procedure they are following, a
6 reasonable procedure given all the circumstances.

7 MR. CARUSONA: I agree with Your Honor. In a
8 majority of the jurisdictions today they do not search
9 these contents. They do not search the contents of
10 these containers. They are the ones that are faced with
11 these false claims, and they do not find them
12 significant. For the moment or during this discussion
13 we have been assuming that they are, in fact,
14 significant.

15 QUESTION: Well, in Opperman we said that an
16 inventory search is a constitutional means for several
17 purposes, one of which is the protection of the police
18 from false claims, but that is only one of the purposes.

19 MR. CARUSONA: That is correct, Your Honor,
20 and we feel that that interest is served exactly as the
21 majority of courts have been holding. It is better
22 served by simply putting it in a bag and initialing it.

23 They find that -- Actually the courts are
24 saying that claims are more likely when the contents are
25 handled, and, in fact, in regard to whether that is a

1 significant risk there is no evidence that it is a
2 significant risk in this case. The state has cited some
3 federal cases in their reply brief, but none of those
4 involve a claim from a container and most of them
5 involve property taken from someone's cell, not property
6 which was being stored.

7 The evidence that it is not significant comes
8 from two Supreme Courts and that is Minnesota and
9 Delaware, excuse me, and Wisconsin where the courts have
10 indicated that they have never seen such a claim. They
11 were sure they existed, but they had never heard of one.

12 QUESTION: Is that the sort of a record upon
13 which this Court could say that as a matter of
14 constitutional law you have to inventory one way rather
15 than another?

16 MR. CARUSONA: Certainly not, Your Honor. We
17 are not asking this Court to do that. What we are
18 asking in this case is to apply the balancing test of
19 Opperman and that is what is the need to search and
20 balance that against the high privacy interest involved,
21 and there is no need to search to prevent these false
22 claims. Even if there is a slight need or even if it is
23 better by having some type of rummaging through letters
24 and everything, and as I said you would have to open up
25 a letter to check it and read papers to make sure they

1 were not a stock certificate or some type of bearer bond
2 --

3 QUESTION: But we do not reach the question of
4 opening up letters in this case.

5 MR. CARUSONA: That is correct, Your Honor,
6 but that is the rule that the Petitioner is advocating.

7 QUESTION: Well, we do not have to take in
8 haec verba either your submission or Petitioner's, I
9 take it, to decide the case.

10 MR. CARUSONA: That is correct, Your Honor.

11 QUESTION: Would you say that if the arrestee
12 has in his pocket a little box that is wrapped up with
13 strings, it looks like a little box with a present in it
14 or something, would the police be permitted to open that
15 or not?

16 MR. CARUSONA: No, Your Honor. We are saying
17 that they should not be able to open any container.

18 QUESTION: And, how about his wallet?

19 MR. CARUSONA: The same goes to that, Your
20 Honor. Again, we are talking about containers which the
21 police have in their custody, and the Defendant is going
22 off to jail.

23 QUESTION: They get him into the station.
24 They have arrested him and take him to the station house
25 and they tell him to empty his pockets and he does, and

1 there is his wallet, and you say they just must put the
2 wallet in a bag and not look in it.

3 MR. CARUSONA: That is correct, Your Honor.

4 QUESTION: But why isn't the wallet like the
5 cigarette package in Robinson?

6 MR. CARUSONA: Well, Robinson was a search
7 incident to arrest case, and it involved a
8 contemporaneous search. It was a criminal search. We
9 are not talking about any type of criminal search in
10 this case.

11 QUESTION: So you are saying -- What case is
12 it that holds, do you think, that -- You would think
13 that if they arrested him out on the street corner they
14 could then search his wallet. They take it out of his
15 pocket and search him right then and there, and say this
16 is a search incident to arrest. Now, you say that is
17 permissible, and they find this little package in his
18 pocket when they arrest him out on the street. May they
19 search the box right then?

20 MR. CARUSONA: Sometimes they can, Your Honor.

21 QUESTION: And it was because of incident to
22 arrest, --

23 MR. CARUSONA: Right.

24 QUESTION: But they would not have to have
25 probable cause or anything to believe anything is in the

1 box.

2 MR. CARUSONA: That is correct. Under
3 Robinson in search incident to arrest, we excuse the
4 need for the moment because actually as Justice
5 Frankfurter --

6 QUESTION: Now, tell me the case that says
7 that with respect to a personal article that is
8 intimately connected with a person like a wallet that
9 could be searched in the field, the arrest was in the
10 field. Tell me the case that says you cannot search
11 that at the station house if you have not searched it
12 before.

13 MR. CARUSONA: We would submit as far as
14 search incident to arrest goes that that would be
15 controlled by Sanders and Chadwick. I realize that it
16 is an extension of those cases perhaps.

17 QUESTION: What about Opperman?

18 MR. CARUSONA: Opperman for inventory
19 purposes, we submit that Opperman does not allow opening
20 containers that are to be stored in the station house.

21 QUESTION: Why should Justice White's
22 hypothetical be controlled by Sanders and Chadwick
23 rather than, which you consider to be extensions, rather
24 than by Robinson for purposes of search incident to
25 arrest?

1 MR. CARUSONA: Because Robinson is a case
2 which allows -- There is no need. There is no -- There
3 has to be no justification other than the fact of
4 arrest. In other words --

5 QUESTION: I thought Chadwick carefully put
6 aside those items that were intimately connected with
7 the person and did not say that those could not be
8 searched at the station house.

9 MR. CARUSONA: There is some language in
10 Chadwick to that effect, but it is our position that
11 that just applies to clothing. There is no need for
12 this Court to make any kind of container rule on
13 clothing, and, in fact, I think as the Chief Justice
14 wrote in Sanders is what we are talking about here and
15 that is that items carried on, accompanied or being
16 carried by the person when they are arrested that a
17 search of those items cannot be justified by any reduced
18 expectation of privacy.

19 QUESTION: Let me take you back to the wallet
20 that Justice White postulated to you. A man puts the
21 wallet down on the table, and you say they must wrap
22 that up in some kind of a seal and not look inside of
23 it. All right, they do that. Two days later he is
24 released and they hand him his billfold and ask him to
25 sign a receipt. He looks at it and said, well, I had

1 \$10,000 in here when I left it, and now there is only
2 \$3. You mean to tell me that they cannot inventory the
3 contents of that wallet in order to protect the police
4 from that kind of a claim?

5 MR. CARUSONA: That is correct, Your Honor,
6 because we feel that they are protected by sealing --

7 QUESTION: Well, then that is -- You are
8 running counter to Opperman.

9 MR. CARUSONA: Excuse me, Your Honor?

10 MR. CARUSONA: You are running counter to
11 Opperman.

12 MR. CARUSONA: Opperman allowed the search of
13 an automobile --

14 QUESTION: The entire of everything in the
15 automobile including things that were in the --

16 MR. CARUSONA: Glove compartment.

17 QUESTION: --glove compartment.

18 MR. CARUSONA: That is correct, Your Honor,
19 but there was essential need in that case. In fact, the
20 state courts -- This is the reverse of Opperman. The
21 state courts have said -- In Opperman, the majority said
22 the search was essential. Why? Because of the need to
23 protect from vandalism.

24 QUESTION: Also to protect the police.

25 MR. CARUSONA: That is correct, Your Honor,

1 but the idea was that a car is stored outside. That
2 involves significant burdens. There are two key factors
3 why the courts have not found Opperman to extend to this
4 situation, and again one is the significantly higher
5 expectation of privacy in the contents of these
6 repositories, and the second one is that it involves no
7 burden to secure them. In this case they simply put it
8 in a locker.

9 An automobile, on the other hand, is subject
10 to vandalism, and when there is vandalism that is when
11 false claims are even more likely because you have an
12 insurance fraud type claim. But the idea of the
13 security of the station house and this higher
14 expectation of privacy is what has made the scales tip
15 the other way. Again, we are talking about -- The test
16 here is the need to search versus the privacy interest
17 involved, and we must consider as one of those factors
18 the scope of the search, and as I pointed out the
19 state's search is virtually unlimited in scope. The
20 scope of their rule is unlimited.

21 Another interest which has been advanced is
22 normally the idea that you have to protect the police
23 from injury and so on. In other words, that interest,
24 too, is served by securing the property in a locker.
25 Once you have secured the property in the locker, you

1 have maintained jail security. You have protected the
2 owner's property from theft and vandalism. You have
3 also protected the police from the idea that someone is
4 going to obtain a weapon from the container and use it
5 against the police.

6 QUESTION: And to you it would not make any
7 difference if they had a probable cause to search the
8 purse?

9 MR. CARUSONA: Probable cause would be a
10 different case, Your Honor. It would not be an
11 inventory case.

12 QUESTION: But you would just say they would
13 have to go get a warrant. You would not say they could
14 make a warrantless search?

15 MR. CARUSONA: If there were probable -- That
16 is correct, Your Honor. If there were probable cause to
17 search for contraband, this case would be controlled by
18 Chadwick and Sanders at the station house now. Again,
19 this is something that is securely in their control.

20 But once -- We are not suggesting that there
21 cannot be a search for these other reasons once you get
22 out of inventory context. One example is the idea that
23 there is a bomb in every type of container. That is
24 true. Every container is a potential bomb. However, it
25 is very remote that the Defendant would have planned his

1 arrest with a bomb in there and secondly, we have to
2 understand that it is foolhardy to routinely open up
3 containers looking for a bomb because it may be
4 boobytrapped, and you would have one injured officer.

5 QUESTION: In Washington just recently a young
6 man was arrested and he had a package and it was
7 discovered that there were two venomous, poisonous
8 snakes which had inflicted very serious injury on him
9 endangering his life. Now would you suggest that police
10 should not have done a little checking on that, the
11 contents of that bag?

12 MR. CARUSONA: Certainly, I do not think it
13 would be wise --

14 QUESTION: In this case it was a translucent
15 bag, and they could see what was there, but suppose it
16 had been a bag that was not translucent.

17 MR. CARUSONA: If the officer has reason to
18 think that there is a poisonous snake in there or any
19 other dangerous instrumentality --

20 QUESTION: The whole point is that he might
21 not have any reason to think there was a bomb or a
22 poisonous snake any more than you would have any reason
23 to think there was \$10,000 in the man's wallet, but is
24 it not the business of the police to find out?

25 MR. CARUSONA: Yes, Your Honor, and I submit

1 it would be foolhardy to open up a container where a
2 snake jumps out and bites you.

3 (Laughter)

4 QUESTION: It would be embarrassing. The young
5 man nearly died as a result of this.

6 QUESTION: Fortunately, the policeman knew
7 what to do with the snake, but I think the Chief Justice
8 means if an ordinary policeman had put his hand in there
9 he would be dead.

10 MR. CARUSONA: That is correct.

11 QUESTION: So what is your answer?

12 MR. CARUSONA: That he should not be opening
13 -- He is better protected by putting it in a locker.

14 (Laughter)

15 QUESTION: Letting the custodian deal with
16 them.

17 MR. CARUSONA: Excuse me, Your Honor?

18 QUESTION: Letting the custodian deal with
19 them.

20 QUESTION: Let the Attorney General get in
21 there.

22 (Laughter)

23 MR. CARUSONA: It is -- I do not know how else
24 to answer this potential bomb or potential dangerous
25 instrumentality except to say that it is foolhardy to

1 routinely open these up and how it should be dealt with
2 is if there is a reasonable suspicion then, of course,
3 he should do something. He should not open it up. He
4 should have an expert come and take it.

5 Your Honors, I would like to talk a little
6 about the waiver question in this case and that is
7 review of the search as incident to the arrest should be
8 precluded because the Appellate Court rejected that
9 theory on an adequate and independent state ground which
10 served legitimate state interest, and as I noted the
11 Court's discussion was purely hypothetical. And I think
12 it is important to note here that are extreme legitimate
13 state interests in this case.

14 We have the normal state interest that there
15 is an inadequate record. We do not know exactly what
16 this container is. It is called a shoulder bag or a
17 purse. We do not know the exact circumstances at the
18 time of the search whether or not the Defendant was in
19 the middle of taking off his clothes --

20 QUESTION: Who are you talking about? The
21 state? You say state interest?

22 MR. CARUSONA: That is right. The waiver rule
23 serves legitimate state interest.

24 QUESTION: Well, we have the state represented
25 here.

1 MR. CARUSONA: The legitimate state interest
2 served, Your Honor, is that the courts should not be
3 deciding --

4 QUESTION: So the state gets a judicial
5 interest?

6 MR. CARUSONA: A judicial interest as the
7 interest that this Court recognizes in Tyler. It is a
8 judicial interest. They should not decide cases on
9 piece meal litigation or with an inadequate record.

10 QUESTION: Well, they did. It was not the --
11 The burden was on your client to show that the evidence
12 should be suppressed, I take it, and that would be the
13 rule in Illinois as elsewhere, and if you were to make a
14 claim that could be sustained on appeal, it is up to you
15 to make the record that would justify sustaining the
16 claim. If the Illinois Appellate Court upholds that
17 claim on the basis of a record that will not support it,
18 then it seems to me it is you who suffer and not the
19 other side.

20 MR. CARUSONA: That is not the rule in
21 Illinois, Your Honor.

22 QUESTION: The rule is that the burden is on
23 the state to defeat a motion to suppress?

24 MR. CARUSONA: The burden on the state is to
25 raise questions in a timely fashion. The Defendant

1 walked into the hearing in this case with a case in his
2 hand, and that was People v. Bayles, an inventory case.
3 The discovery says this was an inventory search. He did
4 everything he had to do to win.

5 Had the state brought up this question, he
6 could have asserted the state statute which controls
7 this question.

8 QUESTION: You are talking about the waiver
9 argument now?

10 MR. CARUSONA: That is correct.

11 QUESTION: I am sorry. I misunderstood you.

12 MR. CARUSONA: The important legitimate state
13 interest here is that he could have asserted a state
14 statute. Searches incident to arrest in Illinois are
15 controlled by statute, and in a strikingly similar case,
16 People v. Helm, decided by the Supreme Court, the
17 Illinois Supreme Court, they held that a search almost
18 identical to this one violated that statute.

19 QUESTION: Well, when the Illinois court,
20 though, said even if it was not waived this is not a
21 search incident to arrest, it did not talk about
22 Illinois law did it?

23 MR. CARUSONA: That is correct, Your Honor.
24 They went on to hypothetically --

25 QUESTION: Why didn't it? Why didn't it? I

1 would think it certainly could have avoided a lot of
2 talk about federal law if it was controlled by an
3 Illinois statute.

4 MR. CARUSONA: There was no need for the court
5 to talk about -- I mean, what we are talking about is in
6 the trial court we were denied our opportunity to
7 present that statute.

8 QUESTION: Yes.

9 MR. CARUSONA: In the Appellate Court we
10 contended that the state had waived the theory --

11 QUESTION: Yes, and your court said it had.

12 MR. CARUSONA: That is correct.

13 QUESTION: And then it nevertheless decided
14 the question?

15 MR. CARUSONA: We did not decide the question,
16 Your Honor, and, in fact, the --

17 QUESTION: Well, what did they say?

18 MR. CARUSONA: Exactly what the state says
19 they said, and they held that it was waived and then
20 they went on to note --

21 QUESTION: Assuming it was not waived, it
22 nevertheless -- We reject the state's position.

23 MR. CARUSONA: That is correct.

24 QUESTION: They did not say a word about
25 Illinois law during that discussion.

1 MR. CARUSONA: That is correct.

2 QUESTION: I am not sure it is right to call
3 that a hypothetical, that alternative ground, because
4 they were subject to review by the Illinois Supreme
5 Court which might have disagreed with them on waiver so
6 they had a perfectly good reason for putting another
7 reason in the record if they wanted to avoid review by
8 their superior court.

9 MR. CARUSONA: I think Your Honor brings up a
10 good point, and that is that in the petition for leave
11 to appeal the state did not raise the waiver question.
12 In fact, they never disputed the waiver contention until
13 the brief that they filed in this Court, and that is
14 something that this Court noted in Tyler was significant.

15 With respect to this search incident to arrest
16 question, it is our position that we must look at what
17 Justice Frankfurter stated in United States v. Rubinowitz
18 and that is that the exception has its basic root on
19 need, and there was no need to conduct a search in this
20 case. That need exists at the time of arrest as in
21 Robinson, but once the item, the container, is secured
22 at the station, is in custody of the police that there
23 is no need then to conduct a search for that reason.
24 And if we just facially look at this case compared with
25 Chadwick and Sanders, this is a stronger case. There is

1 no probable cause to search in this case. There is no
2 exigency.

3 The idea that the Defendant in Sanders could
4 have got to his suitcase was much greater than in this
5 case. Accordingly, Your Honors, we would ask that this
6 Court affirm the decision of the Appellate Court finding
7 that the inventory question was rightly decided, and
8 also we think review of the search incident to arrest
9 question is precluded.

10 Thank you.

11 CHIEF JUSTICE BURGER: Mr. Ficaro, do you have
12 anything further?

13 ORAL ARGUMENT OF MICHAEL A. FICARO, ESQ.

14 ON BEHALF OF THE PETITIONERS -- REBUTTAL

15 MR. FICARO: Brief response, Mr. Chief
16 Justice. Whether we wish to call this a search
17 incidental to arrest or a valid inventory search, the
18 search is based upon the validity of that arrest, and
19 the justification then is existent in an inventory
20 search the same as it is in the search incidental to
21 arrest.

22 When Justice White addressed the question of
23 what do we do with the wallet, if we follow the
24 counsel's least restrictive rules test, we must ignore
25 that there are 10 million arrests annually that involve

1 custodial taking of a person into custody or taking him
2 into custody.

3 QUESTION: In Chicago do you mean or --

4 MR. FICARO: In the United States --

5 QUESTION: --the United States.

6 MR. FICARO: --according to the FBI uniform
7 crime statistics, although at times it seems that there
8 are that many in Chicago.

9 (Laughter)

10 MR. FICARO: If we take counsel's less
11 intrusive means test, we do not balance the state's
12 interests because we are dealing with a pre-trial
13 detainee whose expectation of privacy in the contents of
14 his purse or wallet have been severely restricted. So
15 we must balance the state's interest to search as
16 provided for in the interest named in Opperman versus
17 the rights of a pre-trial detainee.

18 And finally as this Court has questioned the
19 waiver issue by the state, the importance in my
20 statement of facts and the relation to a brief being
21 filed after the court took this matter under advisement
22 in the trial court was that the state raised this issue
23 of search incident to arrest eight days before the court
24 decided this matter, and, therefore, it was timely
25 raised in the trial court below.

1 Thank you very much.

2 CHIEF JUSTICE BURGER: Thank you, gentlemen.

3 The case is submitted.

4 (Whereupon, at 3:11 p.m., the case in the
5 above-entitled matter was submitted.)

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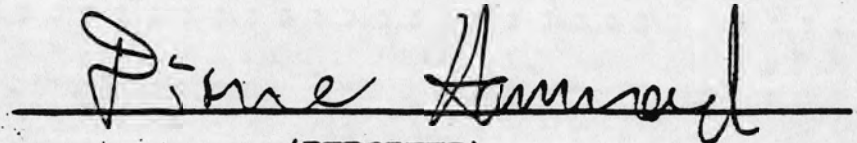
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Illinois, Petitioner V. Ralph Lafayette No. 81-1859

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