

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 84-1717

TITLE UNITED STATES, Petitioner V. MICHAEL ROBERT QUINN

PLACE Washington, D. C.

DATE March 5, 1986

PAGES 1 thru 52



(202) 628-9300
20 F STREET, N.W.
WASHINGTON, D.C. 20001

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

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -x
UNITED STATES, :
Petitioner, :
V. : No. 84-1717
MICHAEL ROBERT QUINN :
- - - - -x

Washington, D.C.
Wednesday, March 5, 1986

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 11:52 o'clock a.m.

APPEARANCES:
MARK I. LEVY, ESQ., Assistant to the Solicitor General,
Department of Justice, Washington, D.C.; on behalf of
the petitioner.
EUGENE G. IREDALE, ESQ., San Diego, California; on behalf
of the respondent.

C O N T E N T S

ORAL ARGUMENT OF

PAGE

MARK I. LEVY, ESQ.,

on behalf of the petitioner

3

EUGENE G. IREDALE, ESQ.,

on behalf of the respondent

28

MARK I. LEVY, ESQ.,

on behalf of the petitioner - rebuttal

48

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

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

4 Mr. Levy, you may proceed when you are ready.

5 ORAL ARGUMENT OF MARK I. LEVY, ESQ.,

6 ON BEHALF OF THE PETITIONER

7 MR. LEVY: Thank you, Mr. Chief Justice, and
8 may it please the Court, this case is here on writ of
9 certiorari to the United States Court of Appeals for the
10 Ninth Circuit.

11 The question presented by our petition is
12 whether under the Fourth Amendment respondent had a
13 reasonable expectation of privacy in a fishing boat, the
14 Sea Otter, and thus was entitled to challenge the search
15 of the boat as the basis for seeking the suppression of
16 evidence.

17 The District Court held that respondent had no
18 such standing to move for suppression. On respondent's
19 appeal pursuant to a conditional guilty plea that
20 reserved the issue of his standing to challenge the
21 cert, a divided panel of the Court of Appeals reversed
22 and held that respondent did have an expectation of
23 privacy in the Sea Otter.

24 Now, the facts relevant to this issue are set
25 forth in the government's submission in the District

1 Court. Although respondent is the proponent of the
2 motion, had the burden of proof on the issue of his
3 privacy interest, he neither made a factual presentation
4 of his own in the District Court nor contested the
5 government's factual statement.

6 In 1978, respondent solicited one George
7 Mayberry Hunt to participate in a drug smuggling
8 scheme. Pursuant to that plan, respondent was to
9 purchase a boat that Hunt and his crew would use to
10 transport marijuana from Colombia, South America, to
11 respondent's ranch on the coast of northern California.

12 After delivering the marijuana, Hunt and the
13 crew were to take the boat and go to Mexico. Pursuant
14 to that plan, respondent thereafter purchased the Sea
15 Otter. In the spring of 1979, respondent turned over
16 the Sea Otter to a crew that had been recruited by
17 Hunt. The crew sailed to Mexico to meet Hunt, and then
18 on to Columbia to pick up the cargo of marijuana. The
19 Sea Otter then returned to California and delivered the
20 marijuana to respondent's ranch in June of 1979.

21 Following delivery of the marijuana, Hunt and
22 the crew started to sail the Sea Otter southward, but
23 were delayed by bad weather. At that point, California
24 fish and game officials boarded the Sea Otter because of
25 suspected illegal fishing activities.

1 The state officials saw things that led them
2 to believe the Sea Otter had been engaged in marijuana
3 smuggling, and they so notified the federal
4 authorities. Coast Guard and Customs officers then went
5 aboard the Sea Otter and found a number of suspicious
6 circumstances, including admitted violations of Customs
7 and Immigration requirements, a lack of documentation
8 for the vessel, and evidence that two large rafts had
9 recently been used, even though Hunt and the crew denied
10 that they had been ashore.

11 The Sea Otter was placed under seizure, and
12 escorted to a nearby Coast Guard station where its cargo
13 holds were pumped out and marijuana residue was found.
14 No formal charges were brought against Hunt and the
15 crew. Hunt remained in the San Francisco area for
16 approximately nine months while the Sea Otter underwent
17 repairs. He then took the boat to Costa Rica and used
18 it for commercial fishing. Hunt turned over the Sea
19 Otter to respondent in Costa Rica in November, 1981.

20 Now, our submission here is straightforward.
21 Respondent did not have an expectation of privacy in the
22 Sea Otter, and therefore the search of the boat did not
23 implicate any Fourth Amendment right of his.

24 QUESTION: Mr. Levy, the respondent, of
25 course, has changed the whole attack now that he is in

1 this Court, and says, well, the real problem is the
2 seizure of the boat and possibly the seizure of the
3 marijuana revenue. It is no longer a challenge to the
4 search as such, and I wonder whether the respondent --
5 whether you think the respondent can properly raise
6 those issues here.

7 MR. LEVY: We think he cannot. We have
8 addressed that issue in the reply brief, and in our reply
9 brief we have traced the course of this litigation in
10 considerable detail, and that discussion demonstrates
11 that the entire focus of this case is on respondent's
12 standing to challenge the search of the Sea Otter, not
13 the seizure. The seizure issue is not raised in the
14 District Court. It was not preserved in the conditional
15 guilty plea, and it was not submitted to or decided by
16 the Court of Appeals.

17 QUESTION: Is it quite clear that it is
18 precluded under the terms of the reserved issue under
19 the plea?

20 MR. LEVY: Absolutely clear. We have quoted
21 it in our reply brief, and it is set out in the joint
22 appendix, and the traditional guilty plea is at Page 21
23 of the joint appendix, and it says there, enters a
24 conditional guilty plea, an order to preserve his right
25 to appeal the District Court's decision that he had no

1 standing to contest the search of the Sea Otter.

2 The defendant's appeal will be limited to that
3 one issue. As I say, we discussed all this in
4 considerable detail in our reply brief, and we think
5 that the entire course of the proceedings --

6 QUESTION: Well, I suppose his argument is
7 that there is no right to search, because the search was
8 the product of the illegal seizure, so that is the
9 concern.

10 MR. LEVY: That may be an argument that would
11 have been open to him in the District Court, but it is
12 certainly a different argument. A challenge to the
13 seizure is certainly a different argument from a
14 challenge to the search. The seizure argument was not
15 raised or preserved below, either in the District Court
16 or in the Court of Appeals, and we don't think it is
17 properly presented here as an alternative ground.

18 QUESTION: What if we disagree with you on
19 that?

20 MR. LEVY: Well, we have also argued the
21 merits of the seizure issue in our reply brief. I
22 wanted to come to that at the end.

23 QUESTION: All right, you go ahead.

24 MR. LEVY: Let me return to the search issue,
25 since that is the issue that the Court of Appeals

1 decided and the question presented in our certiorari
2 petition, and one that we think warrants the
3 consideration of this Court.

4 Now, let me begin with the recognition that
5 this area of the law does not generally lend itself to
6 hard and fast legal rules. Inherently, the concept of a
7 reasonable expectation of privacy will frequently depend
8 on all the facts and circumstances of the particular
9 case. Close questions involving shades of gray rather
10 than black and white differences will frequently be
11 presented, and bright lines and categorical distinctions
12 will sometimes be difficult to draw, but there are
13 principles that guide that resolution of the privacy
14 issue, and it is important for this Court to make clear
15 the legal significance and proper application of those
16 principles.

17 The decision below establishes a Fourth
18 Amendment standard that rests on a fundamental
19 misunderstanding of those guiding principles. Now, in
20 this case, respondent from the very outset had no
21 expectation of privacy in the Sea Otter. Our position
22 is not so much as respondent characterizes in his brief
23 that he abandoned the privacy interest. Rather, it is
24 that respondent had no privacy interest at all.

25 First, respondent never personally used the

1 Sea Otter. For example, he never maintained living
2 quarters on the boat, but kept his personal effects
3 there. On the contrary, he specifically purchased the
4 boat for the purpose of having others use it.

5 In addition, respondent had turned over
6 custody and control of the Sea Otter to Hunt for a
7 period of some two months at the time the search
8 occurred, and respondent also contemplated that Hunt
9 would retain the boat for an extended, indefinite period
10 thereafter, which in fact proved to be more than two
11 years.

12 Nor did respondent take any steps to preserve
13 the privacy interest in the Sea Otter that he now
14 asserts. In these circumstances, where respondent did
15 nothing that would give rise to an expectation of
16 privacy and relinquish control over the Sea Otter for a
17 considerable length of time, he had no Fourth Amendment
18 privacy interest in the boat.

19 CHIEF JUSTICE BURGER: We will resume there at
20 1:00 o'clock, counsel.

21 (Whereupon, at 12:00 p.m., the Court was
22 recessed, to reconvene at 12:59 o'clock p.m. of the same
23 day.)

1 AFTERNOON SESSION

2 (12:59 P.M.)

3 CHIEF JUSTICE BURGER: Mr. Levy, you may
4 resume.

5 ORAL ARGUMENT OF MARK I. LEVY, ESQ.,
6 ON BEHALF OF THE PETITIONER - RESUMING

7 MR. LEVY: Thank you, Mr. Chief Justice, and
8 may it please the Court, before the luncheon recess I
9 was discussing that respondent had no Fourth Amendment
10 privacy interest in the Sea Otter.

11 Now, in holding that respondent did have a
12 privacy interest, the Court of Appeals majority relied
13 on four factors. However, those factors do not give
14 rise to a privacy interest on respondent's part. The
15 Court of Appeals first relied on respondent's ownership
16 of the Sea Otter, but the Fourth Amendment prohibition
17 against unreasonable searches protects personal privacy,
18 not property rights, and this Court has made clear that
19 ownership of the searched area or object does not as
20 such create the requisite Fourth Amendment privacy
21 interest.

22 Bare title does not itself create an
23 expectation of privacy. Now, this is not to suggest
24 that the Court has abandoned all reference to property
25 interests in analyzing privacy or that the fact of

1 ownership is invariably irrelevant.

2 Ownership will often be associated with some
3 use or occupancy or control of the property, including
4 the exclusion of others that raises an expectation of
5 privacy, but it is the expectation of privacy deriving
6 from the use or control of the property and not the
7 abstract fact of ownership as such that is the governing
8 Fourth Amendment consideration.

9 Where, as here, the property was never used by
10 the owner, who bought it for the purpose of having other
11 people use it, and had been turned over to the custody
12 and control of others, the owner's paper title does not
13 establish a privacy interest on his part.

14 QUESTION: May I ask, Mr. Levy, supposing the
15 respondent here had entered some kind of an instruction
16 to the people who were using the boat and said, don't
17 let anybody on the boat except the people working in our
18 -- whatever we are up to, and just don't let people
19 generally on it. Would that give them any kind of --

20 MR. LEVY: No, I don't believe so. That would
21 not have given him any privacy interest in the boat,
22 given him any personal connection with it that would
23 have --

24 QUESTION: What if he gave it to somebody and
25 said, I don't want anybody except you to use it. You

1 can have it for two years as long as nobody else gets on
2 the boat.

3 MR. LEVY: Again, where he had no previous
4 connection, no prior privacy interest, that kind of
5 reservation would not by itself create one.

6 QUESTION: What if he said I have got some
7 papers in the desk I don't want anybody to look at, so
8 please don't let anybody on the boat.

9 MR. LEVY: Well, that would start to present a
10 closer question, because there the owner had made use of
11 the boat in a way that --

12 QUESTION: Say he had -- please put these
13 papers in the desk, and I don't want people to look at
14 them, but I figure that is a safe place where nobody can
15 get in and out unless you let people wander onto the
16 boat.

17 MR. LEVY: That may give him an expectation of
18 privacy in the deck. It would not give him an
19 expectation of privacy in the boat as a whole.

20 QUESTION: But I take it it would not be true
21 if he said, please put this gun and this marijuana or
22 this contraband in the desk. Then that would not have
23 done it.

24 MR. LEVY: I think not. I think the nature of
25 the property that is put into place is relevant to the

1 kind of expectation of privacy that one might have in
2 it. I think that's correct. But let me say in this
3 case all that is far removed from the facts here, where
4 the respondent did nothing.

5 Let me also add that even if the owner had
6 made some use of the property prior to turning it over
7 to someone else, the duration of the relinquishment here
8 would be such that we think he would have lost any
9 privacy interest he might previously have had as the
10 result of use, but our primary position here is that he
11 never had any expectation of privacy in the first
12 instance.

13 Now, the second factor relied on by the Court
14 of Appeals was respondent's possessory interest in the
15 marijuana that was seized. This Court's decisions in
16 Salvucci and in Rawlings unmistakably hold that a
17 possessory interest in the items seized neither
18 establish the necessary privacy interest in the areas
19 searched nor serves as a substitute or a surrogate for
20 that privacy interest.

21 The Court of Appeals opinion confuses the
22 analytically distinct concepts of an interference with a
23 possessory interest in the seized items, which is the
24 defining characteristic of a seizure, and the intrusion
25 upon a privacy interest in the searched area which is

1 the hallmark of a search.

2 Now, once again, this is not to say that the
3 fact that a person keeps his possessions in a place may
4 not be relevant to whether he has an expectation of
5 privacy. The use one makes of a place, including its
6 use as a repository for personal effects, is one
7 indication of a privacy interest, and thus a possessory
8 interest in the items found can be evidential of a
9 person's expectation of privacy because of the use he
10 made of the searched area.

11 But in this case it is clear the respondent
12 never used the Sea Otter in a way that would in fact
13 give rise to an expectation of privacy, and the Court of
14 Appeals did not conclude otherwise. Rather, it relied
15 on the simple fact that respondent had a possessory
16 interest in the seized marijuana, and it is that
17 approach that was legally erroneous.

18 QUESTION: Well, how do you distinguish it
19 from Jeffers? Was that the case where someone had a
20 possessory interest in drugs in a hotel room --

21 MR. LEVY: That's correct. It was Jeffers.
22 But Jeffers went well beyond that, as the Court has
23 already recognized in Salvucci and in Rakas. In
24 Jeffers, the hotel room was rented by the defendant's
25 aunts. He had permission to use the room. He had a key

1 to the room. He in fact entered it at various times for
2 a variety of purposes, including the stores, the hiding
3 of his drugs. The Court held that in that circumstance
4 the defendant's access to use of the room gave him a
5 sufficient expectation of privacy that he could move for
6 the suppression of received evidence.

7 QUESTION: Because of items other than the
8 drugs, you think?

9 MR. LEVY: Not just because of items other
10 than drugs, but because of his access to and use of the
11 room in ways that essentially made him a person who had
12 a sufficient connection or had an expectation of privacy
13 in the room even though he did not have a common law
14 property right interest. As I said, it was rented by
15 his aunts, but he did have a key, he had their
16 permission to use it, and in fact entered it at will for
17 a variety of purposes.

18 We have no quarrel with that interpretation of
19 Jeffers as the Court has construed it in Rakas and in
20 Salvucci. We do not think Jeffers even at the time but
21 certainly in light of Rakas and Salvucci, we don't think
22 Jeffers can stand for the proposition that possessory
23 interest in the item seized itself is enough to entitle
24 defendant to challenge the search.

25 The Court held squarely to the contrary in

1 Salvucci and in Rawlings.

2 Now, I should also say that Salvucci disposes
3 of the respondent's argument that he was entitled to
4 challenge the search because he was in constructive
5 possession of the Sea Otter and its cargo of marijuana.
6 Salvucci, in overturning the automatic standing rule of
7 Jones versus United States, held that a possessory
8 interest sufficient to establish criminal liability
9 under substantive criminal law principles is not
10 equivalent to a privacy interest protected under the
11 Fourth Amendment.

12 The doctrine of constructive possession is
13 probably the best example of the distinction recognized
14 by the Court's analysis in Salvucci between criminal
15 possession and Fourth Amendment privacy. Now, as a
16 third factor, the Court of Appeals pointed to
17 respondent's coventure status in the drug smuggling
18 operation, but it is well settled by the decisions of
19 this Court that a defendant cannot vicariously assert
20 the Fourth Amendment's rights of his confederates, and
21 respondent concedes that proposition in his brief.

22 Nor did respondent acquire any expectation of
23 his own in the Sea Otter by virtue of the smuggling
24 activities of his co-venturers. Nothing in Hunt's
25 actions in this case created a privacy interest on

1 respondent's part that did not otherwise exist.

2 Fourth Amendment privacy rights are personal
3 rights. And whatever the privacy rights those aboard
4 the Sea Otter may have had cannot be claimed by or
5 attributed to respondent. And the Court of Appeals
6 lastly considered the presence of water in the Sea
7 Otter's hold which had to be pumped out in order to
8 recover the marijuana debris to be a sign that steps had
9 been taken to hide the marijuana and preserve privacy.

10 This reasoning is flawed on several grounds.
11 First, the fact that a criminal strived to conceal his
12 acts from the authorities in the hopes that he will not
13 get caught is scarcely the same thing as an expectation
14 of privacy, let alone an expectation that society would
15 recognize as reasonable and legitimate.

16 Moreover, there is no indication in this case
17 that respondent had anything to do with the asserted
18 attempt to conceal the marijuana or that it was intended
19 to maintain his privacy interest. Furthermore, the most
20 likely explanation for the presence of the water is not
21 that it was used to conceal the marijuana that was being
22 transported, but rather that it served as ballast after
23 the multi-ton shipment of marijuana had been unloaded.

24 And as the government stated in its
25 uncontested submission in the District Court, marijuana

1 debris was observed on the Sea Otter in plain view. And
2 finally --

3 QUESTION: That fact is contested by the other
4 side, isn't it?

5 MR. LEVY: Well, he didn't contest it in the
6 District Court, and we submit that it is too late at
7 this juncture. It was the defendant's obligation to
8 carry the burden of proof and put on the facts that he
9 submitted were relevant to the disposition of the --

10 QUESTION: What is the fact about the dispute
11 as to a loss of six tons by fire? The other side denies
12 that, too.

13 MR. LEVY: I don't think that is significant
14 to the outcome of the case. The reason we put it in our
15 brief was simply to explain --

16 QUESTION: Now, it is in your footnote, and
17 you make a flat statement to that effect, and I want to
18 know what is true.

19 MR. LEVY: I am informed by the U.S.
20 Attorney's office that the grand jury transcript in this
21 case contains testimony by Hunt that there was a fire
22 aboard the Sea Otter and it destroyed approximately half
23 the cargo of the marijuana. The reason it is put in the
24 brief is not because it is relevant to the legal issue
25 before the Court, but rather that there was an apparent

1 discrepancy between the size of the shipment that was
2 taken on in Colombia and the quantity that was
3 attributed to respondent in the indictment, and we were
4 simply trying to reconcile and make it clear that those
5 figures could be explained in that fashion.

6 Now, let me also say, and perhaps most
7 importantly on this point, that there was no reasonable
8 expectation of privacy in the cargo hold of a fishing
9 boat, which is an area open to common access and subject
10 to routine inspections by a variety of federal and state
11 officials.

12 Now, in reaching its holding, the Court of
13 Appeals purported to rely on the conjunction of the
14 foregoing four factors, but in this case none of those
15 factors indicates that respondent had an expectation of
16 privacy in the Sea Otter. Whether we take it
17 individually or cumulatively, these factors do not
18 suffice to give rise to a privacy interest for
19 respondent.

20 Now, let me turn briefly to the seizure
21 issue. As I have discussed with Justice O'Connor
22 before, respondent now places primary reliance on the
23 brief in this Court, not on the issue of his expectation
24 of privacy and the standing to challenge the cert, but
25 rather on the argument that he was entitled as the owner

1 to challenge the government's seizure of the Sea Otter
2 and taking it to the Coast Guard station, and therefore
3 can challenge the ensuing search as the fruit of that
4 seizure.

5 As I have discussed, we don't think that issue
6 is properly preserved here. It was not raised in the
7 District Court. It was not preserved in the conditional
8 plea agreement. It was not argued or decided by the
9 Court of Appeals, and we think it plain that the issue
10 of the validity of the search and the issue of the
11 validity of the seizure are separate issues, and that
12 the defendant had a legal obligation to raise and
13 preserve that separate point below.

14 QUESTION: Let me just stop you there for just
15 a second. Isn't it true, though, that if he did have
16 standing to challenge the seizure, he could as an
17 incident to that have also argued that the subsequent
18 search was improper?

19 MR. LEVY: That would be under the traditional
20 fruits analysis, but it would not be because there was
21 anything independently wrong with the search. The
22 search in and of itself could have been perfectly proper
23 under the --

24 QUESTION: What if he had come into court and
25 said, my standing rests on the seizure, I don't care,

1 you can keep the boat, it is a lousy boat, I don't want
2 it back, but having standing in that way, I still want
3 the evidence suppressed, and therefore I still have
4 standing to -- that gives me standing to challenge the
5 cert.

6 MR. LEVY: For this purpose, I can assume,
7 although I will come back to it later, but I can assume
8 that if he had raised this in this District Court and
9 included it in the conditional --

10 QUESTION: What you are just saying is, he
11 made the wrong argument, but nevertheless, if he is
12 right, it would sustain the judgment, wouldn't it?

13 MR. LEVY: But it is not a question that only
14 a -- to sustain the judgment. To be an alternative
15 ground it would have had to have been properly raised
16 and preserved below. Rule 12 of the Federal Rules of
17 Criminal Procedure says that any argument not raised in
18 the District Court is waived, and Rule 11 on the
19 conditional guilty pleas -- the matter that is being
20 reserved by the --

21 QUESTION: The matter that is being reserved
22 is whether he has standing to challenge the search.

23 MR. LEVY: That is right. That is a different
24 question.

25 QUESTION: And if the evidence shows that he

1 had standing to challenge the seizure and as an incident
2 thereto the search as well, doesn't he have standing to
3 challenge the search

4 MR. LEVY: No, we submit he did not have
5 standing to challenge the search. The issue of his
6 standing to challenge the search and the validity of the
7 search are different from the question of his standing
8 to challenge the seizure. Now, it may be that as an
9 incident, as a consequence --

10 QUESTION: Supposing he had, instead of
11 arguing on the basis of four factors, he just forgot to
12 argue that he was the owner of the Sea Otter, but the
13 records show that he in fact was. Could he in this
14 Court say, well, I fail to make that point, but that
15 would sustain the judgment, and therefore you should
16 look at the fact that I own the boat.

17 MR. LEVY: On the search question?

18 QUESTION: Well, all the search. I am just
19 saying that we are not -- it is still a search even
20 though it followed the seizure. That is what he says he
21 has got standing to do, and one argument in support of
22 that is that he says he has standing to challenge the
23 seizure because he owned it, and that gives him standing
24 to be before the magistrate arguing that the evidence be
25 suppressed as well. Why is that different than an

1 argument, failing to argue about ownership of the
2 boat?

3 MR. LEVY: I am not sure if he didn't rely on
4 his ownership in the District Court that he would be
5 free to raise that on appeal.

6 QUESTION: Even though the record showed it.

7 MR. LEVY: Even though the record showed it.
8 There are different obligations. One is to adduce the
9 facts relevant to the issue, and the other is to make
10 the legal arguments that one relies on.

11 QUESTION: You cannot introduce a new legal
12 argument in this Court that would sustain the judgment
13 based on the record that is already made.

14 MR. LEVY: Not if it weren't raised and
15 preserved below. I would think that is true both under
16 Rule 12, which requires that arguments be raised and
17 preserved in the District Court, I think it is true
18 under the conditional guilty plea --

19 QUESTION: What about our rule?

20 MR. LEVY: -- and I think it is also true
21 under the rules of this Court on alternative grounds for
22 affirmance. Just yesterday in Whitley against Albers --

23 QUESTION: What does it say? What does the
24 rule say?

25 MR. LEVY: My understanding of the rule is

1 that the defendant is free to raise an alternative
2 ground that would not change the judgment if that ground
3 was properly raised and preserved below.

4 QUESTION: Doesn't it say if the record
5 supports it?

6 MR. LEVY: I think there is a separate
7 requirement that it had been properly raised and
8 preserved in accordance with the usual legal procedures,
9 and the Court said as much yesterday in Whitley against
10 Albers, if I read the opinion correctly.

11 QUESTION: Of course, if it has been preserved
12 below, it doesn't have to just sustain the judgment.
13 You can argue -- the petitioner can do that if he has
14 preserved --

15 MR. LEVY: The petitioner can. The question
16 is whether respondent can --

17 QUESTION: The theory of this rule is that
18 respondent has a little greater latitude than petitioner
19 does.

20 MR. LEVY: That's correct, but his latitude is
21 limited by --

22 QUESTION: And the limitation on petitioner's
23 right is, he has to have made the objection below and
24 preserved it.

25 MR. LEVY: That's right, but the limitation on

1 the --

2 QUESTION: You are saying the same
3 limitation --

4 MR. LEVY: -- on the respondent's right is
5 that it has to not alter the judgment and that he had
6 properly presented it and preserved it below. That is
7 my understanding of this Court's -- of alternative
8 grounds.

9 Now, having said all of that, let me also say
10 that we think respondent's argument is without merit in
11 this case even if it is properly before the Court. A
12 seizure of an item is a governmental intrusion with a
13 person's possessory interest in the item. Here, the
14 government's brief detention of the Sea Otter to take it
15 to port temporarily restrained the immediate use of the
16 boat, but that action did not interfere with any
17 interest of respondents.

18 At the time of the seizure, respondent had
19 turned over custody and control of the Sea Otter to Hunt
20 for a period of some two months, and Hunt's control was
21 also to continue for an extended indefinite period
22 thereafter as well. Respondent is the owner, had no
23 cognizable interest in the immediate freedom of movement
24 of the Sea Otter, nor did the brief detention interfere
25 with respondent's residual right to the return of the

1 boat at some indeterminate time in the extended future,
2 nor given its relative brevity did the detention deprive
3 respondent of his ability as the owner to determine the
4 use that would be made of the Sea Otter.

5 That would be true even if the detention had
6 occurred before the marijuana was delivered to
7 respondent's ranch. The few-hour delay that was
8 occasioned by that detention in comparison to the
9 two-month duration of the South American voyage was
10 quite inconsequential, and did not impair the purpose to
11 which respondent had put the Sea Otter, and beyond that,
12 since the seizure in fact occurred after the marijuana
13 delivery, we think it quite plain that the detention did
14 not deprive respondent of any interest to determine the
15 use of the Sea Otter.

16 In sum, the brief temporary detention to take
17 the Sea Otter to port did not affect any interest of
18 respondents as the owner of the boat. If marijuana had
19 not ultimately been found, the short delay that resulted
20 from that detention would have been of no moment to
21 respondent. Accordingly, that --

22 QUESTION: Yes, but isn't it true, Mr. Levy,
23 in fact marijuana was found, and couldn't you have then
24 permanently seized the vessel as a result of that
25 ten-minute -- that short detention?

1 MR. LEVY: Well, we could based on the
2 subsequent discovery of the marijuana, but the seizure
3 that respondent seeks to challenge here is not the
4 ultimate seizure.

5 QUESTION: Yes, but as a consequence of that
6 seizure, you have got the right to take his boat away
7 from him.

8 MR. LEVY: Because of new evidence that was
9 found, but his argument would be the same if -- or his
10 right to make the argument would be the same if we had
11 temporarily detained the Sea Otter, pumped out the
12 holds, and found nothing.

13 His interest in that interim detention should
14 be exactly the same --

15 QUESTION: If had been an unlawful pumping
16 out, I suppose he then -- and he wanted to sue you for,
17 you know -- of course, it is federal, not 1983, but I
18 would suppose that is right, yes.

19 MR. LEVY: And we submit that he as the
20 absentee owner had no interest that was infringed by
21 that interim detention when the boat was out of his
22 control for such an extended period of time.

23 If the Court has no further questions, I will
24 reserve the balance of my time for rebuttal.

25 CHIEF JUSTICE BURGER: Mr. Iredale.

1 ORAL ARGUMENT OF EUGENE G. IREDALE, ESQ.,

2 ON BEHALF OF THE RESPONDENT

3 MR. IREDALE: Mr. Chief Justice, and may it
4 please the Court, the question presented to the Court of
5 Appeals by the appellant, Mr. Quinn, in this case was
6 whether defendant Michael Robert Quinn had standing to
7 contest the seizure and search of the vessel Sea Otter
8 in 1979, when he was the owner of the vessel which was
9 seized and searched, and the owner of the items seized.

10 The government, which here says that the
11 seizure has no part of this case, presented this issue
12 for the Court of Appeals resolution before the Ninth
13 Circuit, and this is from their brief on the first page,
14 "Question, whether the District Court's ruling that
15 defendant Quinn did not have standing to contest the
16 seizure and search of the fishing vessel Sea Otter when
17 he relinquished control of the vessel and its contents
18 to others was clearly erroneous.

19 QUESTION: That is a broader question than was
20 preserved in the conditional plea, wasn't it?

21 MR. IREDALE: With respect to that, Justice
22 Rehnquist, I have to say that we use imprecise
23 language. What we meant to preserve, and I think --

24 QUESTION: I was curious about what you
25 actually did preserve.

1 MR. IREDALE: What both parties intended to
2 preserve was the Fourth Amendment issue in the case as
3 distinguished --

4 QUESTION: What does it say? That is what I
5 am asking.

6 MR. IREDALE: I cannot recall the precise
7 language.

8 QUESTION: Is it in the record?

9 MR. IREDALE: It is. It is before the
10 Court.

11 QUESTION: Is it in the printed --

12 MR. IREDALE: Yes.

13 QUESTION: It referred only to search, didn't
14 it?

15 MR. IREDALE: Yes, it did, Justice O'Connor,
16 and that was because there was one motion filed under
17 the Fourth Amendment, and I filed about 12 or 15 other
18 motions, and we intended to limit it to that one issue.

19 QUESTION: Have you ever made this argument
20 about the seizure of the boat has given you standing to
21 challenge the search of the boat in the courts below
22 this Court?

23 MR. IREDALE: We raised the seizure issue,
24 but --

25 QUESTION: Did you ever make the argument?

1 MR. IREDALE: The search being the fruit of
2 it, in that precise form, no.

3 QUESTION: Thank you.

4 QUESTION: Now, going back to the appendix,
5 you were about to tell us what page that material could
6 be found.

7 MR. IREDALE: The language can be found on
8 Pages 21 through 24. With respect, however, to whether
9 this issue is properly before the Court, it is framed in
10 terms of the facts of the case. I think that the
11 substance of the seizure issue was fairly raised before
12 the Court of Appeals, and the government recognized that
13 and addressed the seizure in their briefs, and in our
14 reply brief, for example, we also indicated that Mr.
15 Quinn, for instance, in the reply brief Mr. Quinn
16 clearly had standing to contest the seizure of the Sea
17 Otter because he was the owner of the vessel.

18 That is on Page 1 of the reply brief. And
19 finally, under the Court's rules and under numerous
20 decisions, including Helvering versus Galrin, 302 US 238
21 245, California Bankers Association versus Schultz, and
22 the case of U.S. versus Demas Compasarano, the
23 prevailing party in the court below can raise any
24 grounds which fairly supports the judgment of the court
25 below.

1 QUESTION: Whether or not they were presented
2 to the court low?

3 MR. IREDILE: I believe whether or not they
4 were presented to the court below, if they were involved
5 in the facts of the case, and I believe that this was
6 clearly and fairly presented to the court below.

7 Having said that, let me now turn to the
8 issue. At 10:10 in the morning on the 28th of June of
9 1979, the fishing vessel Sea Otter was approached by a
10 Coast Guard cutter. Three men from the Coast Guard
11 cutter boarded the Sea Otter, seized it at a distance
12 that may have been on the high seas, but the record is
13 not precisely clear, took it under seizure, under
14 detention some 15 miles into San Francisco Bay, under
15 the Golden Gate Bridge, and still detaining the vessel,
16 they put it in a berth at the Coast Guard facility at
17 Urba Buena Island in San Francisco Bay.

18 For an undetermined period, a fair inference
19 would be between several hours and up to a day, both the
20 crew and the vessel were detained. At some point during
21 that seizure, and as a fruit and direct result of the
22 seizure, the Coast Guard pumped out the holds of the
23 vessel. Pumping out the water, and apparently by some
24 mechanism straining the contents of the marijuana, at
25 the conclusion of which they had a little less than a

1 handful of alleged marijuana residue, actually less than
2 half a gram.

3 QUESTION: What difference would it have made
4 if there were a handful or a ton for these purposes?

5 MR. IREDALE: None.

6 QUESTION: I wondered, because you emphasized
7 the handful so much.

8 MR. IREDALE: Except to say that this case in
9 many ways is much ado about nothing, because they came
10 up with a very small quantity of contraband, the only
11 relevance of which in the case before the District Court
12 would have been to corroborate the testimony of their
13 chief witness, George Mayberry Hunt. In any event --

14 QUESTION: Well, since you can't point out how
15 much, how many many tons did the vessel hold?

16 MR. IREDALE: How many tons did it hold?

17 QUESTION: Yes.

18 MR. IREDALE: There is nothing in the record
19 concerning that, and I don't know, Justice Marshall. I
20 don't know.

21 QUESTION: Well, it held more than a handful.

22 MR. IREDALE: Oh, yes. Yes.

23 QUESTION: The vessel had a nine-foot beam.
24 Was that not so?

25 MR. IREDALE: Yes, sir. Yes, Mr. Chief

1 Justice.

2 QUESTION: And fifty-four length?

3 MR. IREDALE: A good many tons.

4 QUESTION: It was a fishing vessel, and it was
5 a substantial size. The issue before the Court is very
6 narrow, whether Mr. Quinn's ownership possessory rights
7 of the vessel gave him standing to contest the seizure
8 which produced the ultimate search to which we object,
9 or whether independently Mr. Quinn's conjunction of
10 interest in the vessel and his relationship with the
11 members of the crew give him a privacy interest, but we
12 should not and need not get to the ultimate inquiry if
13 it can be satisfactorily answered by an analysis of the
14 seizure issue. Why, first of all, because a temporal
15 analysis requires that you look at events in the way in
16 which they occur, and in this case the seizure was
17 first, the seizure was prerequisite to and antecedent to
18 the ultimate search of which we complained.

19 In United States versus Place, the Court held
20 that although no privacy interest of the defendant in
21 that case were infringed, the fact that there was a
22 seizure, an illegal seizure by virtue of its prolonged
23 nature vitiated the subsequent opening of the luggage
24 even though the dog sniff violated no reasonable
25 expectation of privacy.

1 This Court's cases in recent years have made
2 explicit and clear that the Fourth Amendment protects
3 the people against not only unreasonable searches, but
4 also unreasonable seizures. In Jacobson and Maryland
5 versus Macon the Court made clear the distinction
6 between the interests protected by the proscription on
7 improper searches as opposed to improper seizures.

8 Seizures and the proscription on improper
9 seizures protects people's interest in property, their
10 possessory interest in things, and therefore it follows
11 as a logical matter, as indeed Footnote 6 of the
12 Salvucci opinion suggests, and I think Place on Pages
13 707 to 710 rather clearly holds that one need not show
14 an expectation of privacy to object to a seizure, and
15 also as Place tells us.

16 If the search which is complained of comes
17 about as a fruit of the improper seizure which precedes
18 it, the rule of Wong Sun means that the search must
19 follow independent of any separate judicial inquiry as
20 to the privacy interest involved in the search of which
21 defendant has complained.

22 In this case it is very simple, and I think
23 although the government makes pro forma protestations to
24 the contrary, and I won't make their concessions for
25 them, it is clear. Mr. Quinn's possessory and

1 proprietary interest in the vessel here give him
2 standing to object to its seizure, which was of a
3 prolonged nature.

4 His mere absence from the scene does not
5 constitute a constitutional relinquishment of his right,
6 because the owner of property can object to its improper
7 procedure whether or not he is present at the time of
8 the seizure.

9 In order to object to the seizure, Mr. Quinn
10 need not show an expectation of privacy in the item
11 seized. Indeed, the Fourth Amendment prohibition on
12 improper seizures protects not a privacy interest but a
13 possessory one, just as, for instance, in my briefcase
14 here.

15 I have two interests in it of a constitutional
16 nature. It is mine. I own it. Somebody gave it to me
17 as a gift. I have a right to the privacy of what is
18 inside it, assuming that I don't do anything improper to
19 give up my right, so the contents of it are protected by
20 the Fourth Amendment's proscription on improper
21 searches.

22 And thus, if someone were to come in, a
23 government official, and look inside, and rummage
24 through and find my rather messy notes inside, I could
25 say I object. You violated my right to be free from

1 improper seizures and either sue the person, if
2 appropriate, or if evidence was found which the
3 government sought to use against me, move to suppress
4 it, and in order to do that, I need only show that my
5 reasonable expectation of privacy, to use the language
6 of Rakas, Rawlings, and Salvucci, was infringed by the
7 governmental action or interfered with.

8 But suppose the government on the other hand
9 does not open the briefcase, but a District of Columbia
10 policeman on no basis whatsoever, let us assume for
11 purposes of discussion, comes in here and seizes the
12 briefcase, takes it out, puts it in a locker in the
13 District of Columbia police headquarters, and keeps it
14 there for three days, at the conclusion of which they
15 bring Rex, the D.C. sniffer dog, up to my briefcase, and
16 he takes a sniff, and terrible for me, Rex's tail points
17 toward the sky. I am in serious trouble.

18 And based on Rex's tail going up, and his
19 sniffing and whining and the other information that he
20 gives us as a trained, keen-eyed investigator, the
21 District of Columbia police, having that probable cause,
22 opens it up, and instead of finding mere old Xeroxes of
23 1800 cases, they find a quantity of a controlled
24 substance, or a 1040 form which has been tampered with
25 and suggests improper manipulation of the Internal

1 Revenue Code by yours truly.

2 I have not had my privacy expectations
3 improperly violated because they had probable cause to
4 open it up, but do I have a motion to suppress? Do I
5 have a right to say I object, I move to suppress, or
6 even a civil suit, assuming maliciousness of bad faith
7 on the part of the police officer? Absolutely. Place
8 tells us so. Jacobson tells us so.

9 QUESTION: Is there any briefcase or dog in
10 this case?

11 MR. IREDALE: No. I was using it as
12 illustrative.

13 QUESTION: Well, what in the world are you
14 talking about?

15 MR. IREDALE: In this case it is the same.
16 Mr. Quinn owned --

17 QUESTION: A fishing boat is the same as a
18 briefcase?

19 MR. IREDALE: It is similar in certain
20 respects as a container of things. It is sometimes in
21 the possession or presence of the owner and sometimes
22 out of the presence of possession of the owner. It
23 shares certain characteristics that are similar --

24 QUESTION: Queen Elizabeth II is also a
25 container.

1 MR. IREDALE: Please, Your Honor?

2 QUESTION: A battleship is also a container.

3 MR. IREDALE: Yes, and in many cases, for
4 instance, in a battleship, I would submit, if I owned a
5 battleship or a fishing vessel, it may be that in
6 certain areas, at least the common areas of the deck,
7 that is open to public view.

8 QUESTION: You could carry a whole lot more
9 marijuana than in a fishing ship.

10 QUESTION: I suppose your briefcase example
11 would be on point if you had, before all this happened,
12 say three years ago, you gave it to your law partner or
13 friend, and he had been using it for the last three
14 years, and then the sequence happened. Would you then
15 have the right to --

16 MR. IREDALE: Well, you hurt me with your
17 hypothetical.

18 QUESTION: That is the fact here, isn't it?

19 MR. IREDALE: No. With respect, let me get
20 into that, but let me answer you first, if I might,
21 Justice Stevens. If I had given to my law partner or
22 associate the briefcase here, I had some very important
23 cases in here, don't lose it, and I want you, if you
24 would, to take it from San Diego to Washington port.

25 QUESTION: Counsel, you had better stay near

1 the microphone here, if you want to be on record.

2 QUESTION: You gave it to him, but you didn't
3 say anything to him. You just gave him the briefcase,
4 and it happened to have in the corner of it something
5 that you don't want him to look at.

6 MR. IREDALE: And I didn't say anything to
7 it? If that were the case, then I have relinquished it.
8 If I say, here, this is your briefcase now, or you can
9 use my briefcase for a month, and during that time it is
10 yours absolutely, then I would probably not have a
11 reasonable expectation of privacy.

12 On the other hand, if I gave it to him and I
13 said, I am going to give it to you for two months,
14 because I have to go on vacation, and I want you two
15 months from now to bring it from San Diego to
16 Washington, D.C., don't open it up, and please don't
17 lose anything inside, and he --

18 QUESTION: Does the record show that your
19 client said that about the boat?

20 MR. IREDALE: The record shows that there was
21 a plan, and that everything that was done in this case
22 by Mr. Hunt was done in accordance with the plan, the
23 agreement, the joint venture, the mutual understanding,
24 and while I shudder to confess before the Court that the
25 mutual understanding involved was an illegal one, and I

1 do not stand up before the Court in support of a
2 necessarily -- person who is innocent as the driven
3 ~~show~~.

4 I do say that that understanding, like the
5 understandings, for instance, in Jeffers or Bumpers, was
6 an understanding between people which has its source
7 outside the Fourth Amendment, but which gives rise to
8 protected interests.

9 QUESTION: Mr. Iredale, who had the burden of
10 proof below on the expectation of privacy?

11 MR. IREDALE: On the expectation of privacy
12 issue and on the ownership of property interest, we bore
13 the burden of proof.

14 QUESTION: Right, and the factual record is a
15 bit murky on any elements of an intent to exercise
16 control over the boat by your client, and there are a
17 lot of things missing. I was just curious why we have
18 such a sketchy record that you are now trying to --

19 MR. IREDALE: There are three reasons for
20 that, Justice O'Connor. Number One is that we elected
21 to rely on the government's submission as we have a
22 right to do. In other words, we are entitled to rely on
23 the state of the record, and if we feel that it is
24 sufficient, we need not add to it. The burden is ours
25 in the first instance, but if the Court has before it

1 facts of record, we can rely upon it.

2 Second, with respect to this Court's decisions
3 in Rakas, Salvucci, and Rawlings, have put defense
4 counsel in a terrible box, because in every case we have
5 to analyze the situation and determine under the Court's
6 holdings whether we should put our client on the witness
7 stand or the witnesses on the witness stand and evaluate
8 whether we have enough without that or whether that is
9 necessary and what strategic advantage, if any, you give
10 up to the government.

11 And I felt that in this case I did not want to
12 put my client on the stand because the government's
13 submission was sufficient, and I elected to rest upon
14 it.

15 Third and finally, the real problem here is
16 that standing, although in Rakas the Court noted its
17 standing and the substantive issue really merged, they
18 are always theoretically and temporally separate.
19 Standing is a threshold issue, and on many cases the
20 record that comes before you is a record after plenary
21 evidentiary hearing, so that you have a transcript which
22 gives you a full set of the facts.

23 In this case, the District Court judge denied
24 us an evidentiary hearing, and therefore many of the
25 facts that would have been adduced had we been allowed

1 to go forward would have been established and would be
2 before you, and there are facts left out that hurt both
3 sides. For instance, you cannot rely upon a fact which
4 is not in the record that this vote was apparently under
5 constructive seizure for weeks and months afterwards.
6 It is not in the record.

7 And on the seizure issue, for instance, that
8 would help us greatly. But it is not in the record. So
9 I am not going to urge it before you. But that is the
10 reason why.

11 QUESTION: On what issue did the District
12 Court deny you an evidentiary hearing?

13 MR. IREDALE: We said Mr. Quinn was the owner
14 of the vessel, and the District said, sir, well -- and
15 then I said I would also like, if I might, to call
16 George Mayberry Hunt. He is in Costa Rica. He is
17 subject to the government's power. I would like to call
18 him as a witness, and the District Court judge in effect
19 said, what is your offer of proof? Will he testify to
20 me that Mr. Quinn was on board the vessel at the time of
21 the seizure commanding the vessel? No, Your Honor, he
22 will not. Fine. I find Mr. Quinn has no standing.

23 It was as quick and as brusque as that.

24 QUESTION: What was your offer of proof then
25 of the Costa Rican -- what did you say he would have

1 testified to?

2 MR. IREDALE: He would have testified --

3 QUESTION: In the offer of proof that you made
4 to the District Court.

5 MR. IREDALE: Essentially I said Mr. Quinn was
6 the owner of the vessel, and we want to call Hunt as a
7 witness, and the District Court judge said, unless he
8 will say Quinn was on the vessel, I am going to find no
9 standing, and then also I wanted Hunt to in effect
10 amplify the government's statement that was submitted in
11 the special agent's affidavit and the statement of fact
12 submitted before the Court.

13 QUESTION: But you didn't put in the record
14 the specific things that the absent witness would have
15 said.

16 MR. IREDALE: No. You have the record before
17 you. I believe that -- and we rely on the government's
18 submission and the fact of the ownership, which was
19 stipulated to and uncontested. Mr. Quinn purchased this
20 vessel. It was within his exclusive custody and control
21 for a matter of months. He turned it over to Hunt only
22 within the scope of the joint venture. He retaken the
23 vessel at a later time. He had exclusive custody and
24 control of the vessel for two years. He was arrested
25 living on the vessel in San Diego on August 8, 1983.

1 With respect to this case, the government's
2 position comes down essentially to this. Presence at
3 the scene of the seizure, at the time of the seizure is
4 the sine qua non for standing. In Rakas the Court says
5 mere presence on the scene is not enough absent some
6 other interest, and clearly for the government contend
7 that would require everybody in order to protect their
8 Fourth Amendment rights to run from place to place or
9 thing to thing. Presence at the scene is not the sine
10 qua non. It is in some cases an important fact.

11 With respect to the constitutional protection
12 which Mr. Quinn invokes which gives rise to his rights
13 to object to the improper seizure of his vessel, the
14 Court has said that history, although not determinative,
15 is often illustrative in giving us an idea of the Fourth
16 Amendment's scope and of its protection. The history of
17 our country and indeed of the whole Revolution was one
18 which in large part came about because of improper
19 seizures of vessels.

20 In researching the brief, I was gratified to
21 find that one of the incentive for the Revolutionary War
22 was the seizure of John Hancock's sloop Liberty by the
23 British because -- it didn't have marijuana, it had
24 Madeira wines on which the British allege that Mr.
25 Hancock had not paid the appropriate tax.

1 The history of the Fourth Amendment is steeped
2 in the right of maritime ship owners to object to the
3 seizure of their vessels, and Wong Sun tells us that Mr.
4 Quinn as a ship owner who has not relinquished any
5 interest has a right to object to the seizure and to any
6 fruits of that seizure.

7 Finally, there is one point that I wish to
8 make that is suggested by the government's reply brief.
9 In this case, if the government had gone to Mr. Quinn,
10 an agent of some kind, a DEA agent, a Customs agent, and
11 said, Mr. Quinn, we want permission to seize your
12 vessel, bring it to Urba Buena Island and pump the
13 holds, do we have your permission? Sure, go ahead. If
14 at that time instead of Mr. Quinn having been charged in
15 the District Court, the crew members had been charged, I
16 think neither the prosecutor nor the District Court
17 judge would have properly permitted an objection to be
18 made by those persons.

19 He would have said, after hearing the facts to
20 make sure there was a full and voluntary consent, he
21 would have said, no, I find that Quinn had the capacity
22 to consent, and therefore you are bound by his consent
23 under Matlock, Bumper, and the other cases. It would
24 appear to be only logical and fair that if a person has
25 the capacity and power to consent to a seizure or

1 search, they should have a correlative right to object.

2 I would submit to the Court that under the
3 Matlock case if reason, logic, and a Fourth Amendment
4 analysis tells us that a person has the capacity and
5 ability to consent, then that same person has the
6 capacity under the Fourth Amendment standing to raise an
7 objection.

8 Finally, if I could briefly address the issue
9 of Mr. Quinn's privacy interest, in this regard, we rely
10 on the Jeffers case and on Bumper. In Rakas the Court
11 cited Jeffers and Bumper with approval for the
12 proposition that ownership of the property searched
13 coupled -- ownership or possessory interest in the
14 property searched coupled with the possessory interest
15 in the property seized gives a reasonable expectation of
16 privacy to allow one to object to a search.

17 In Salvucci, the Court in, I believe, Footnote
18 5, cited Bumper and Jeffers for the same proposition.
19 In this case, Mr. Quinn was the owner of both the item
20 searched, the place searched, and the item seized.
21 Under the holding of Jeffers and Bumpers, he has
22 standing.

23 Finally, the government appears, although they
24 do not urge it here today, in their brief to raise an
25 issue that one can never have an interest in contraband

1 to permit the assertion of a Fourth Amendment interest.
2 While it is undoubtedly true that contraband in plain
3 view, such as in Texas versus Brown, gives right to no
4 fault amendment claim, it is also clear that in
5 Rawlings, for instance, the Court held that Rawlings'
6 ownership of the contraband was plainly a factor to be
7 considered on the expectation of privacy issue, and in
8 Trupiano and specifically in Jeffers the government made
9 an identical argument, the very same argument that they
10 made here today, urging that because Title 21 at that
11 time provided that no person shall have an interest in
12 contraband, that meant that no person could raise a
13 Fourth Amendment objection to the seizure of
14 contraband. The Court in Jeffers very plainly and
15 conclusively held that that was erroneous, and that was
16 in 1951.

17 In sum, Mr. Quinn as the owner and a person
18 who had a possessory interest which was not relinquished
19 by his giving or entrusting the vessel to a joint
20 venture, has standing, has a right to object to the
21 seizure of the vessel because it infringed his
22 possessory right, just as any tuna fleet owner in a
23 similar circumstance could raise an objection to the
24 seizure and pumping of the hold of his vessel, so, too,
25 does Mr. Quinn.

1 An analysis of the facts and this Court's
2 holding in Bumper and Jeffers show also independently of
3 the seizure issue that Mr. Quinn has a reasonable
4 expectation of privacy. However, proper Fourth
5 Amendment analysis and this Court's holding in Jacobson,
6 Macon, and Place would suggest that the resolution of
7 the seizure issue alone takes care of the subsequent
8 search.

9 QUESTION: Mr. Levy, do you have anything
10 further?

11 ORAL ARGUMENT OF MARK I. LEVY, ESQ.,

12 ON BEHALF OF THE PETITIONER - REBUTTAL

13 MR. LEVY: I have a few brief points, Mr.
14 Chief Justice, none of which is central to the
15 resolution of the case, but may help clarify the Court's
16 consideration. First, the District Court in this case
17 did not deny an evidentiary hearing to respondent.
18 After the events that Mr. Iredale described, Mr. Iredale
19 then asked the Court, will the court allow us to call
20 Mr. Hunt in order to establish standing on that issue.
21 This is on Page 9A of the appendix to the petition, will
22 the Court allow us to call Mr. Hunt? The court said,
23 sure. Then Mr. Iredale said that Hunt was in Costa Rica
24 and would be brought back by the government for trial,
25 at which point he would like to call Hunt on the

1 standing issue. The court said, make any motion you
2 like. The respondent chose to enter a conditional
3 guilty plea at that point, and Hunt was never called as
4 a witness by either party, but the District Court did
5 not cut off respondent's opportunity in any way to make
6 the record that he desired.

7 Now, in his argument today, as in his brief,
8 respondent's attorney has relied on a number of facts
9 outside the record. Again, we don't think any of them
10 is particularly important to the disposition of the
11 case, but it does illustrate the problem that arises
12 when a defendant does not meet his burden as outlined in
13 this Court's decisions. It is the defendant's burden to
14 make the record and to advance the proper legal
15 arguments.

16 As an example, Mr. Iredale today referred to
17 the constructive seizure of the Sea Otter that continued
18 after the hold had been pumped out and marijuana was
19 found. I simply don't understand that. At that point
20 the government could have seized, that is, forfeited the
21 boat because it had been used in marijuana smuggling.
22 So the fact that the government retained the boat at
23 that point simply has nothing to do with the issue here.

24 Now, contrary to Mr. Iredale's
25 characterization, our argument is not that a defendant

1 has to be present at the time of the search. Aldermand
2 and Jeffers and countless other cases make that clear as
3 we acknowledge in our reply brief. Our argument here is
4 much different. It is that respondent never in any way
5 for any reason had an expectation of privacy in the Sea
6 Otter.

7 QUESTION: What do you say to his argument
8 that Quinn could have consented to a search?

9 MR. LEVY: Well, I am not sure it is as clear
10 as Mr. Iredale suggested. It is not clear to me whether
11 Mr. Quinn might have consented to a search of certain
12 parts of the boat. It is possible he might have as the
13 owner, that he had the proper standing. It is clear to
14 me, though, for example, that he probably could not have
15 consented to a search of the private living quarters --

16 QUESTION: Well, but consented to precisely
17 the steps the government took in this case, taking it
18 into port and pumping out the water. Could he have
19 consented to that?

20 MR. LEVY: It is not so clear on these facts.

21 QUESTION: Why not? What would have denied
22 him the authority to grant such consent?

23 MR. LEVY: The question would be whether --
24 the basis for the consent --

25 QUESTION: Is there anything in the record

1 which would show he did not have authority to grant such
2 consent if he owned the boat?

3 MR. LEVY: There is nothing in the record
4 either way. The basis for that consent is not the
5 abstract property right. It is the use and possession
6 of the boat. Our quotation from Matlock in our brief
7 makes that clear.

8 QUESTION: But his legal right to grant that
9 consent would flow simply from the fact that he owned
10 the boat, wouldn't it?

11 MR. LEVY: If it was an area in which no one
12 else --

13 QUESTION: We know what we are talking about.
14 Taking it into the port for ten days or whatever, ten
15 minutes, pumping the water out, that is all, just to do
16 that?

17 MR. LEVY: He might have had consent to --

18 QUESTION: Well, he would have had power to
19 consent, wouldn't he?

20 MR. LEVY: Well, if, for example, taking it
21 into the port would constitute a Perry stop or a seizure
22 of the people on board the boat and interfere with their
23 freedom of movement and their right to use the boat, it
24 is not so clear that he would have been able to consent
25 to that. I think there would be a question about that.

1 But in the end, the question -- I agree with Mr. Iredale
2 to this extent. The question of consent and the
3 question of expectation of privacy are very similar, and
4 Matlock makes that clear. What is not so clear is what
5 Quinn as the owner would have had authority to consent
6 to.

7 QUESTION: Put a little differently, if you
8 say he couldn't -- could he have gotten on the radio
9 wireless or something and talked to the skipper of the
10 boat and said, take it into port for ten days? Couldn't
11 he have done that as the owner of the boat?

12 MR. LEVY: From all that the record appears, I
13 assume that he could have done that.

14 QUESTION: I would think so.

15 CHIEF JUSTICE BURGER: Than you, gentlemen.
16 The case is submitted.

17 (Whereupon, at 11:48 o'clock a.m., the case in
18 the above-entitled matter was submitted.)
19
20
21
22
23
24
25

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#84-1717 - UNITED STATES, Petitioner V. MICHAEL ROBERT QUINN

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)

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

'86 MAR 12 P5:13