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**OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE**

**THE SUPREME COURT  
OF THE  
UNITED STATES**

**CAPTION:** FLORIDA, Petitioner v. MICHAEL A. RILEY  
**CASE NO:** 87-764  
**PLACE:** WASHINGTON, D.C.  
**DATE:** October 3, 1988  
**PAGES:** 1 - 49

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IN THE SUPREME COURT OF THE UNITED STATES

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FLORIDA, :

Petitioner :

v. : No. 87-764

MICHAEL A. RILEY :

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Washington, D.C.

Monday, October 3, 1988

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States  
at 11:07 o'clock a.m.

1 APPEARANCES:

2 PARKER D. THOMSON, Special Assistant Attorney General of  
3 Florida, Miami, Florida,  
4 on behalf of the Petitioner.

5 MARC H. SALTON, New Port Richey, Florida,  
6 on behalf of the Respondent.  
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C O N T E N T S

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
PARKER D. THOMSON, ESQ.	
ON BEHALF OF THE PETITIONER	4
MARC H. SALTON, ESQ.	
ON BEHALF OF THE RESPONDENT	28

(11:07 a.m.)

P R O C E E D I N G S

CHIEF JUSTICE REHNQUIST: We'll hear argument now in Case No. 87-764, Florida against Riley.

Mr. Thomson, you may proceed whenever you're ready.

ORAL ARGUMENT OF PARKER D. THOMSON  
ON BEHALF OF PETITIONER

MR. THOMSON: Mr. Chief Justice, and may it please the Court, the barebones facts in this case are set forth in the trial court's order granting a motion to suppress the evidence in this case. They were reprinted in the text of the intermediate appellate order which reached the contrary conclusion. And they were described by the Supreme Court in reversing again.

These facts were, first, that Defendant Riley had leased an over five acre parcel in Pasco County, Florida on which he placed his mobile home and nearby constructed a shed, described by the trial court as a greenhouse. The greenhouse was some 10 to 20 feet from the mobile home.

The greenhouse, as constructed by the defendant, was enclosed on two sides and open on two sides. Trees and shrubbery obscured one of the open sides from view. The mobile home and one or more other

1 trees obscured the other open side from view from the  
2 nearby road.

3 QUESTION: Does the record show the dimensions  
4 of the greenhouse, Mr. Thomson?

5 MR. THOMSON: It does not, your Honor.

6 QUESTION: Does it show how far from the road?

7 MR. THOMSON: Nor does it show how far from the  
8 road. It is a barebones record. It does not show --  
9 there are six photographs in the record which are mainly  
10 concentrated on the mobile home and the greenhouse.

11 The roof of the greenhouse was corrugated  
12 roofing, partly translucent, partly opaque. There were  
13 two openings caused by either removing or not installing  
14 the roof panels. The open portion was about ten percent  
15 of the roof.

16 A "Do Not Enter" sign was posted in front of  
17 the mobile home. The area containing the mobile home  
18 and the greenhouse was enclosed or partially enclosed by  
19 a net wire fence.

20 A Pasco County deputy received a tip about  
21 possible drug manufacture on the property. That deputy  
22 and Deputy Gell, a police officer for 14 years, went to  
23 look from the road nearby. They could not see into the  
24 greenhouse.

25 Gell did not attempt to walk on the property

1 outside of the fenced area to a point where he would be  
2 able to see through one of the two open sides of the  
3 greenhouse nor did he enter property adjoining the Riley  
4 tract to see what he could see from there. Instead, he  
5 got a police pilot to fly him over the property in the  
6 police helicopter.

7 The helicopter circled the greenhouse twice at  
8 about 400 feet. Gell, who had viewed cannabis some  
9 hundred times and some six times from the air,  
10 identified by naked eye viewing the tall marijuana  
11 plants through the roof openings and through the open  
12 sides. He took two pictures of them with a camera. The  
13 helicopter then left.

14 A warrant was issued on the basis of Gell's  
15 affidavit. The premises were entered and 44 plants  
16 seized.

17 QUESTION: Did the affidavit refer to the  
18 photographs?

19 MR. THOMSON: It apparently did, your Honor.  
20 The affidavit --

21 QUESTION: (inaudible)

22 MR. THOMSON: (inaudible)

23 QUESTION: Was it ever alleged that there was  
24 telescopic lens in that camera?

25 MR. THOMSON: No. There is -- the camera had a

1 zoom lens. Gell testified that he had no particular  
2 experience on how to use a camera of that sort and what  
3 he did was in effect to memorialize what he saw. The  
4 affidavit that he gave, as representative --

5 QUESTION: Well, is there any claim that the  
6 human eye was enhanced --

7 MR. THOMSON: No, your Honor.

8 QUESTION: -- by the camera?

9 MR. THOMSON: No, your Honor.

10 QUESTION: All right.

11 MR. THOMSON: It is accepted by all courts,  
12 including the trial court which, of course, heard his  
13 testimony, that Detective Gell could see what he  
14 testified about and what was the basis of the warrant.

15 QUESTION: At what height, the detective made  
16 these observations?

17 MR. THOMSON: It is 400 feet, your Honor. 400  
18 feet. The helicopter was at 400 feet above. Yes, your  
19 Honor.

20 QUESTION: Could it be accurately said that the  
21 use of the helicopter was to do something that he  
22 couldn't do otherwise?

23 MR. THOMSON: It's hard to answer that question.

24 QUESTION: Is it? Well, didn't he try to do it?

25 MR. THOMSON: Well, he saw -- he looked from

1 the road. He did not walk through the open fields  
2 around the fence and attempt to look from there. He did  
3 not go on adjacent property. There is a greenhouse with  
4 two open sides. We know what he did.

5 QUESTION: He didn't have enough to get a  
6 search warrant?

7 MR. THOMSON: Not on the basis of what he saw  
8 from the road.

9 QUESTION: So he got a helicopter to find what  
10 he couldn't find otherwise.

11 MR. THOMSON: He could not see it from the  
12 road. There may have been other ways to see it. We  
13 only know what he did, Justice Marshall.

14 QUESTION: To get evidence that he couldn't get  
15 otherwise?

16 MR. THOMSON: That is correct, your Honor. As  
17 I said, 44 plants were seized. Their height was  
18 somewhere from six to 12 feet. Riley guesses eight feet  
19 high. Riley was charged with manufacture and possession.

20 The Florida Supreme Court reinstituted the  
21 trial court's order to suppress the evidence here. In  
22 so doing, the Florida Supreme Court purported to follow  
23 this Court's 1986 decision in Circolo and concluded that  
24 the helicopter, because it had flown below the minimum  
25 limit for a fixed-wing aircraft was not at a location

1 where Ciraolo permitted the helicopter to be for  
2 purposes of making lawful observation. But the Florida  
3 Supreme Court acknowledged that the helicopter was where  
4 it was entitled to be.

5 Florida seeks reversal and adoption of a rule  
6 that warrantless, naked eye, aerial observation by law  
7 enforcement personnel is permissible under the Fourth  
8 Amendment so long as the observer is where he has the  
9 legal right to be for all other purposes, provided there  
10 is no physical intrusion, examples of which have been  
11 interminable hovering, raising clouds of dust, creating  
12 unreasonable noise, and those sorts of things, nor  
13 harassment, as there is in certain other cases raised by  
14 the respondent in the amicus on that side.

15 Florida submits that this is a rule simple of  
16 application. It says that a pilot may go for purposes  
17 of aerial observation of possible criminal activity  
18 where he can go for all other purposes. Pilots are  
19 licensed personnel who know where they can go and where  
20 they cannot.

21 The rules governing where they go are  
22 determined by the Federal Aviation Administration for  
23 the safety of the aircraft piloted, other aircraft, and  
24 the surface.

25 QUESTION: Well, Mr. Thomson, do you think that

1 for purposes of the Fourth Amendment, at least, that it  
2 should necessarily mirror Federal Aviation Authority  
3 regulations?

4 MR. THOMSON: Not necessarily, Justice  
5 O'Connor, but pilots will -- pilots under what I suggest  
6 will go where they are entitled to absent physical  
7 intrusion or harassment. Both are issues, of course,  
8 that a judge would determine in response to a motion to  
9 suppress. The pilot would, of course, make the initial  
10 determination of where it was safe to go.

11 A helicopter pilot is free to go and stay off  
12 the surface to the extent needed to protect and insure  
13 the safety of person and property. Obviously --

14 QUESTION: I suppose in your position one could  
15 pass by a house in a vehicle with a lift on it, such as  
16 are used for trimming trees, and peer in a second or  
17 third floor window. He's where he has a right to be.

18 MR. THOMSON: Justice Blackmun, the issue  
19 there, of course, is the objectively reasonable  
20 expectation of privacy from that kind of activity. If  
21 that is what is the activity that is normally conducted  
22 there and people proceed in that fashion, yes, that  
23 would be the result of that application.

24 QUESTION: Similarly, a policeman could just  
25 get a tall ladder, I suppose, and put it up on the

1 sidewalk and look over the top of the roof --

2 MR. THOMSON: Well, I submit --

3 QUESTION: -- or into the patio.

4 MR. THOMSON: Well, I would submit, Justice  
5 O'Connor, that that involves at least far different  
6 considerations than the one posed by Justice Blackmun.  
7 I do not necessarily believe that it is within the  
8 objectively reasonable expectations of privacy that  
9 people are going to carry ladders around and stick them  
10 from a public sphere against a wall for the specific  
11 purpose of going up and looking over.

12 The question that was asked me before is if --

13 QUESTION: Well, using a device other than a  
14 ladder, Justice Blackmun suggests. You think that's all  
15 right, but not a ladder?

16 MR. THOMSON: Proceeding on the public road,  
17 yes, I would think so. If that is what is normally done  
18 on that road. And that is a normal activity --

19 QUESTION: Well, it's not a normal police  
20 activity, is it?

21 MR. THOMSON: Well, I don't believe that the  
22 standard is any more in this case than in any other.  
23 When you choose to look at the expectations of the  
24 person who is the subject of the observation, he either  
25 expects reasonably or does not expect that certain

1 things are going to happen, certain people are going to  
2 see him. Whether it's his neighbor, whether it is a  
3 policeman, whether it is a telephone repairman. That is  
4 his expectation.

5 And that is what this Court has the directed --  
6 the focus to. Once you direct it to his expectation,  
7 subjectively who that person may be I submit is  
8 irrelevant.

9 QUESTION: May I ask -- you said you want a  
10 bright-line rule in effect and the helicopter was in  
11 lawful air space, therefore, it's okay. How far down  
12 could the helicopter go under your bright-line rule?

13 MR. THOMSON: Your Honor, I would submit that  
14 the helicopter can go, as stated in the regulations, as  
15 close to the surface as not to create a hazard to person  
16 or property. And, in addition, so as not, under the  
17 circumstances of that particular helicopter -- of  
18 course, helicopters are all different in size and noise,  
19 and so forth like that -- so that it did not create a  
20 physical intrusion on the surface or to the property.

21 QUESTION: Well, supposing you went down to 50  
22 feet and it would be perfectly safe. You know, it's  
23 been tested out. Of course, it would be rather noisy  
24 and rather windy, I suppose.

25 MR. THOMSON: Well, whether --

1 QUESTION: Would that violate your bright-line  
2 rule?

3 MR. THOMSON: It could. It depends, your  
4 Honor, on the degree -- on the degree of noise and the  
5 degree of --

6 QUESTION: Well, is this a bright-line rule if  
7 it depends on a degree of noise?

8 MR. THOMSON: Your Honor, rules are set for the  
9 bulk of the cases.

10 QUESTION: Well, how far can it go down?

11 MR. THOMSON: It would depend on the size of  
12 the helicopter. It would depend upon the amount of  
13 noise it kicked up. It would depend upon its impact on  
14 the ground.

15 QUESTION: Then it does not depend on the fact  
16 that it's in lawful air space.

17 MR. THOMSON: That is -- If it is --

18 QUESTION: See, that is not your rule, as I  
19 understand it.

20 MR. THOMSON: The rule is that it be within  
21 lawful air space and --

22 QUESTION: And that it not be annoying.

23 MR. THOMSON: And it not be, as the rule itself  
24 says, it not be a hazard to person or property on the  
25 surface.

1 QUESTION: No. But I'm assuming it's not  
2 hazardous to person or property on the surface when  
3 you're 60 or 50 or 60 feet above the ground.

4 MR. THOMSON: Then, your Honor, the helicopter  
5 can --

6 QUESTION: But it's quite noisy and it's windy.

7 MR. THOMSON: The helicopter can go to the  
8 point that it is not a hazard to person or property.

9 QUESTION: So you have abandoned your notion  
10 that there is a limit based on the degree of noise and  
11 wind?

12 MR. THOMSON: I have said, across open fields,  
13 your Honor --

14 QUESTION: No, no. Over a congested area here.

15 MR. THOMSON: You cross open fields with no  
16 problem. When you reach a congested area, I have said  
17 that if in fact, despite compliance with the rule, it  
18 constitutes a physical intrusion in certain cases --

19 QUESTION: Well, then --

20 MR. THOMSON: -- which would be --

21 QUESTION: -- then just leave it noise and  
22 wind. Is there a point at which a helicopter is  
23 perfectly lawful but nevertheless is too noisy to be  
24 constitutionally in the proper place?

25 MR. THOMSON: I would submit, your Honor, under

1 certain circumstances huge helicopters, military type  
2 helicopters without --

3 QUESTION: No. Just the traffic --

4 MR. THOMSON: -- could without question --

5 QUESTION: The traffic helicopter we've all  
6 seen flying around.

7 MR. THOMSON: I doubt, your Honor, that it  
8 would cause, let us say in that case below a hundred  
9 feet, sufficient physical intrusion and I include noise  
10 within that to be a problem. A small helicopter holding  
11 two people.

12 QUESTION: But your rule -- I want to be clear  
13 on it. Your rule that you advocate is not a rule that  
14 says as long as it's in the lawful air space it's okay?

15 MR. THOMSON: No, your Honor, that is correct.  
16 It is not that. It says -- that's where you start and  
17 --

18 QUESTION: And how do you know 400 feet wasn't  
19 too noisy?

20 MR. THOMSON: Excuse me, your Honor?

21 QUESTION: How do we know 400 feet wasn't too  
22 noisy?

23 MR. THOMSON: Well, too noisy to whom?

24 QUESTION: Well, to people on the ground. If  
25 you're sitting in your back yard, you want helicopters

1 400 feet up?

2 MR. THOMSON: There is absolutely no contention  
3 whatsoever in this record, nor have I seen a contention  
4 in the record of any reported case involving helicopters  
5 that at 400 feet they are causing disturbance to the  
6 ground. Four hundred feet is virtually the height of  
7 the Washington Monument. I do not believe --

8 QUESTION: It's less than the height of the  
9 Washington Monument.

10 MR. THOMSON: Five hundred and twelve feet I  
11 believe is the Washington Monument. It is --

12 QUESTION: So it's 80 percent of the height of  
13 the Washington Monument.

14 MR. THOMSON: There is none here, no record in  
15 this case, no suggestion in this case, your honor, nor  
16 in any other reported case that I have seen that 400  
17 feet -- a helicopter flying at 400 feet is in any way a  
18 problem to the ground or creates any kind of physical  
19 intrusion.

20 QUESTION: Mr. Thomson, would the rule that  
21 you're talking about govern all of the six acres of this  
22 property? What was it, five or six acres?

23 MR. THOMSON: A little over five, your Honor.  
24 The record simply says over five acres.

25 QUESTION: Well, supposing it were on a part of

1 the property, say, the furthest of that acreage away  
2 from the house, no difference?

3 MR. THOMSON: Your Honor, the rule would be the  
4 same. That is, I do not say in the open fields portion  
5 of this, of the clear open fields portion of this  
6 property that it could create any physical intrusion.  
7 Obviously, when it comes over trees and so forth near  
8 the greenhouse, it may have to lift up. It can probably  
9 go lower, in accordance with the FAA regulations in the  
10 open area. But that's hard to tell without looking at a  
11 picture of it.

12 QUESTION: And, Mr. Thomson, barring noise or  
13 dust, or that sort of disturbance, you would think that  
14 it's perfectly reasonable for a helicopter, police  
15 helicopter, to hover of a -- let's say, a southwestern  
16 type house with an inner courtyard or patio that isn't  
17 roofed?

18 MR. THOMSON: No, I think you have some --

19 QUESTION: That's all right?

20 MR. THOMSON: What I think you're -- I think  
21 when you have interminable hovering of that sort, you  
22 could have different, you could have a different rule.  
23 But I would suggest generally not. Helicopters can fly  
24 over -- not just police helicopters, people taking  
25 pictures for real estate, people taking -- news

1 photographers. There are helicopters all over Florida  
2 and all over the United States today for a whole variety  
3 of purposes.

4 And it is the submission of the State of  
5 Florida that that is today one of the factors that are  
6 to be considered in what is an objectively reasonable  
7 expectation of privacy. People may not like it, and  
8 they may not like all other kinds of helicopters up  
9 there, but that is part of life today. And it is our  
10 submission that police helicopters can do what other  
11 helicopters can do.

12 QUESTION: And under Florida law, would there  
13 be a civil cause of action for an invasion of privacy --

14 MR. THOMSON: There could be.

15 QUESTION: -- in circumstances such as this?

16 MR. THOMSON: There could be. The --

17 QUESTION: Well, I'm asking you about Florida  
18 law.

19 MR. THOMSON: There are, it seems to me, two  
20 possible contentions of a civil cause of action. One  
21 would be for a nuisance and one would be for invasion of  
22 privacy. Depending upon what was seen and what was done  
23 with it, yes, I think there could be a cause of action  
24 for invasion of privacy.

25 QUESTION: And is that consistent with your

1 view that there is an objective -- that there is no  
2 objective expectation of privacy? I don't see now that  
3 fits.

4 MR. THOMSON: There is no more --

5 QUESTION: If Florida permits a civil cause of  
6 action, for an invasion of privacy in circumstances such  
7 as this, how does that comport with your premise that  
8 there is no objective expectation of privacy?

9 MR. THOMSON: I believe that this Court for  
10 Fourth Amendment standards has said that violations of  
11 local law are not the factors to be determined in --

12 QUESTION: I'm well aware of that, but I'm just  
13 asking you about the objective expectation that a  
14 property owner has. Does Florida law protect people  
15 that have no objective expectations to privacy and then  
16 gives them a cause of action anyway?

17 MR. THOMSON: No, your Honor. It would have to  
18 be an unreasonable interference with privacy. And it  
19 would have to be utilized in a certain way so that it  
20 was damage to the person.

21 QUESTION: Mr. Thomson, I think --

22 MR. THOMSON: Those are the standard rules for  
23 a civil case for privacy.

24 QUESTION: I think you said a moment ago that  
25 there is no different rule for police officers than the

1 private individual.

2 MR. THOMSON: That is correct, your Honor.

3 QUESTION: You don't really mean that, do you?

4 MR. THOMSON: I believe, your Honor, the pilot  
5 of a police helicopter can fly wherever the pilot of any  
6 other helicopter can fly.

7 QUESTION: Well, do you think that a police  
8 officer can go anyplace that a private car can go,  
9 including the basement of this building? You don't  
10 really mean that. You don't --

11 MR. THOMSON: No, I --

12 QUESTION: -- need that, do you?

13 MR. THOMSON: No, I did not -- I do not need  
14 that and I do not argue for that. But I do not think I  
15 can go to the basement of this building either. That's  
16 why the rule I suggested was that a police officer could  
17 do what a member of the public could do.

18 QUESTION: Well, you know --

19 MR. THOMSON: I don't believe that a member of  
20 the public can go into this --

21 QUESTION: The open field doctrine didn't  
22 contemplate this.

23 MR. THOMSON: Did not contemplate --

24 QUESTION: Because they didn't have helicopters.

25 MR. THOMSON: Oh, actually, it --

1 QUESTION: Did they?

2 MR. THOMSON: -- it depends on the  
3 formulation. Actually, in the Oliver case, both sides  
4 argued to this case that aerial surveillance of the open  
5 fields was not a problem and used helicopters as an  
6 example during argument. And the court notes it in the  
7 case.

8 QUESTION: The case -- the case was -- that's  
9 Justice Holmes' case.

10 MR. THOMSON: That's not Justice Holmes' case  
11 of Hester; helicopters have been around for a long, long  
12 time but they were not in normal use until the 1940s and  
13 1950s.

14 QUESTION: What year was it that helicopters  
15 had been around a long time?

16 MR. THOMSON: Well, helicopters have been  
17 around the whole 20th Century but it did not come into  
18 normal regular use until the '50s and into heavy police  
19 use until the '60s and forward. It was not normally  
20 around at the time of the Hester case, your Honor.

21 QUESTION: Mr. Thomson, in discussing with  
22 Justice Kennedy the possibility of a private cause of  
23 action for violation of privacy under Florida law, did  
24 you mean to say that on these facts a Florida court  
25 would have awarded --

1 MR. THOMSON: Absolutely not.

2 QUESTION: -- damages or --

3 MR. THOMSON: Absolute not. I was trying to  
4 respond to a hypothetical question of whether there  
5 could, under certain circumstances, be an invasion of  
6 privacy claim. I said, yes, it's a tort in the State of  
7 Florida and it could be used on this set of facts. I  
8 would submit absolutely not. Not a shred of a basis for  
9 an invasion of privacy claim.

10 QUESTION: Mr. Thomson, just to get things into  
11 perspective, I have here a brochure about this building  
12 and it says that this room has a height of 44 feet.

13 MR. THOMSON: I suspect, your Honor, that's  
14 right.

15 QUESTION: I would have guessed it was maybe  
16 closer to 50, but at least that gives us some indication  
17 of where your helicopter was flying.

18 MR. THOMSON: Helicopters go down --  
19 helicopters can go down to where they will not be a  
20 hazard to surface or property. That is correct. And it  
21 depends on the helicopter, the size of the helicopter,  
22 and so forth, how far that helicopter can go down.

23 The submission that we make to this Court is  
24 that the Florida Supreme Court incorrectly drew a line  
25 based upon the words "navigable airspace" and contended

1 that the minimum altitudes that would be allowed for a  
2 fixed-wing aircraft, 500 feet in rural areas, and a  
3 thousand feet in urban areas, must be the test for  
4 helicopters.

5 They drew those rules, of course, from the FAA  
6 regulations with respect to fixed-wing aircraft. They  
7 contended that the helicopter flight below that was  
8 barred by this Court's reference in *Ciraolo* to navigable  
9 airspace.

10 However, a look at *Ciraolo* in our opinion does  
11 not justify that conclusion. The reference in *Ciraolo*  
12 to navigable airspace was in the context of the  
13 airplanes involved in that and to show that the pilot in  
14 that case was where that pilot was lawfully entitled to  
15 be.

16 That, we submit, is the crux of the issue in  
17 *Ciraolo*, and that is the crux of the issue in this  
18 case. This pilot went exactly where he was lawfully  
19 entitled to be, 400 feet, took two swings around the  
20 property, was able to identify through two open sides  
21 and a ten percent open roof of this greenhouse what was  
22 inside it, to identify it sufficiently to sign the  
23 affidavit and get the warrant issued.

24 We submit that both -- that the supreme court  
25 was wrong as to this case and this case is facts. we

1 submit that it also was in error with respect to not --  
2 to looking at a rule based upon what a fixed-wing  
3 aircraft can do rather than one that looks to where the  
4 pilots of police helicopters may lawfully be.

5 QUESTION: There is no question that this was  
6 within the curtilage, is there?

7 MR. THOMSON: Florida questions -- seriously  
8 questions that it was within the curtilage. It seems to  
9 me, Justice Blackmun, that this Court in Dunn divided  
10 curtilage issues into two. One distance and one use.

11 The distance of the greenhouse from the mobile  
12 home, the trailer, was ten to twenty feet. Certainly,  
13 on the issue, that would imply that that factor of a  
14 curtilage test was met.

15 QUESTION: Shorter than this bench?

16 MR. THOMSON: That is correct. Secondly, the  
17 mobile home and the greenhouse were both within a fenced  
18 or partially fenced area. That is, they appeared to  
19 have been within a common enclosure. That, too, would  
20 meet the factor of distance as one of the four factors  
21 of the Dunn case.

22 The third -- the third and fourth factors apply  
23 to the issue of use. The issue of use, of course, is  
24 where the concept of curtilage came from. That was an  
25 extension of the domestic uses of the house.

1           The first of these is that this particular  
2 greenhouse was used for the manufacture of an illegal  
3 substance. We do not submit -- we submit that,  
4 therefore, it does not meet that factor of Dunn.

5           And, fourthly, the -- I believe it to be a  
6 carry forward of the use factor. The question was  
7 whether or not reasonable precautions had been taken to  
8 obscure the vision of that from passersby. In this  
9 particular case, two sides were open, ten percent of the  
10 roof was missing, and patently it did not obscure from a  
11 person passing by in a helicopter at 400 feet.

12           It is our submission that, therefore, it does  
13 not meet the two use factors of the Dunn test. Of  
14 course, there are four factors. It has seemed to us on  
15 reviewing these cases that this Court in Dunn has  
16 indicated a turn more towards the use considerations and  
17 whether in fact what is being done there is an extension  
18 of the domestic trailer.

19           QUESTION: Well, don't we --

20           MR. THOMSON: And we submit that this was not.

21           QUESTION: Do you think the curtilage issue is  
22 here?

23           MR. THOMSON: Yes, your Honor.

24           QUESTION: You think that's subsumed in your  
25 one question you raised?

1 MR. THOMSON: No, your Honor, it is not within  
2 the one question we raised. We believe it is here. It  
3 is not within the specific terms of that test. The  
4 issue, your Honor, is one of the objective manifestation  
5 --

6 QUESTION: Well, did you claim it wasn't within  
7 the curtilage in the Florida courts?

8 MR. THOMSON: Your Honor, the trial court held  
9 that it was within the curtilage and it was held that in  
10 each of the courts in Florida.

11 QUESTION: Well, did you object to that finding  
12 in the appellate courts? That it was within the  
13 curtilage or not?

14 MR. THOMSON: Only to the extent, your Honor,  
15 that the objectively reasonable manifestations of this  
16 subject and intent for privacy was --

17 QUESTION: So your argument really was that  
18 even if it was within the curtilage, it's still  
19 reasonable?

20 MR. THOMSON: That is correct, which was of  
21 course, the conclusion of Ciruolo.

22 QUESTION: And you didn't -- at least you  
23 didn't split off the curtilage issue here.

24 MR. THOMSON: We in no way split the curtilage  
25 off. We comprehended it within the general issue.

1 QUESTION: So, we should -- do you think we  
2 should judge this case on the basis that the greenhouse  
3 was within the curtilage?

4 MR. THOMSON: Your Honor, that is for your  
5 ultimate determination.

6 QUESTION: Well, I know it is, but what do you  
7 think? How do you think we should judge it?

8 MR. THOMSON: My answer is that Florida  
9 seriously questions on the basis of what was -- that it  
10 was within the curtilage.

11 QUESTION: Well, do you think that's open to us  
12 here?

13 MR. THOMSON: Well, I believe that it is --

14 QUESTION: Perhaps it is. Maybe that's part of  
15 the reasonableness inquiry. I don't --

16 MR. THOMSON: Well, that is how it seems to get  
17 into the cases as to the question of the reasonableness  
18 of the expectation of privacy, and, of course, it has  
19 been extended -- it has been argued to this court by the  
20 amicus on the other side that if it is within the  
21 curtilage, there absolutely must be a determination made  
22 -- to that effect a determination which I believe this  
23 Court rejected in *Ciraolo*.

24 I'd like to reserve the rest of my time.

25 CHIEF JUSTICE REHNQUIST: Thank you, Mr.

1 Thomson.

2 we'll hear now from you, Mr. Salton.

3 ORAL ARGUMENT OF MARC H. SALTON

4 ON BEHALF OF THE RESPONDENT

5 MR. SALTON: Thank you, Mr. Chief Justice. If  
6 it pleases the Court, it is the position of the  
7 respondent that this case should be determined within  
8 the framework of Katz versus the United States. And  
9 under Katz versus the United States, the two controlling  
10 questions are whether Michael Riley manifested an  
11 expectation of privacy in the contents of his  
12 greenhouse, and, two, whether that expectation is one  
13 that society is prepared to recognize as reasonable.

14 In answering the first question, of whether  
15 Riley manifested that expectation of privacy, we would  
16 submit that the record is complete with facts showing  
17 that manifestation. The wooded area, the fence around  
18 the mobile home and greenhouse, the positioning of that  
19 greenhouse directly behind the mobile home so it was  
20 viewable from the roadway, and, as Mr. Riley testified,  
21 from any adjoining property.

22 QUESTION: Do we ever even get into this kind  
23 of an inquiry if it is conceded -- unless we have to  
24 determine curtilage? I mean, I'm not aware of any cases  
25 that say, yes, this was within the curtilage but there

1 was no reasonable expectation of privacy. Isn't that  
2 question automatically answered if we accept that it was  
3 within the curtilage?

4 MR. SALTON: I would submit that if it's within  
5 the curtilage there the expectations -- he has  
6 heightened expectations and there is an indicia of  
7 reason to his expectation if we're dealing with the  
8 curtilage.

9 The curtilage bears directly upon the  
10 reasonableness of the privacy expectations. And the only  
11 reason I'm mentioning the manifestation of those  
12 expectations is apparently Florida, at least in their  
13 brief, appeared to contest that.

14 Our submission, of course, is with the roof,  
15 the enclosed two sides, the fact that shrubbery and the  
16 mobile home blocked view from the unenclosed sides.

17 QUESTION: Well, Mr. Salton, suppose that what  
18 had happened here is that the owner of the home had  
19 simply left the curtains slightly ajar looking into the  
20 home. Now, a police officer going by on the sidewalk or  
21 road can look in through that window. Isn't that right?

22 MR. SALTON: Yes.

23 QUESTION: And that's perfectly reasonable even  
24 though it's within the curtilage.

25 MR. SALTON: Yes. As Katz teaches us, the fact

1 that something is in the curtilage or the home, if an  
2 activity or an object is knowingly exposed to the  
3 public, it will lose the Fourth Amendment protection.

4 QUESTION: Well, if the curtains are left open  
5 and the policeman is there on the sidewalk, he doesn't  
6 have to turn his eyes aside, he can look in the window  
7 and what he sees he can use to get a warrant.

8 MR. SALTON: Yes, he can.

9 QUESTION: Now, is the flying over the roof  
10 where they've left two panels off similar to that? Is  
11 it like looking into a window where the curtains have  
12 been left ajar?

13 MR. SALTON: No, I would submit it's not.

14 QUESTION: And why not?

15 MR. SALTON: Because the viewing is from a  
16 non-public place. When the curtains are left --

17 QUESTION: Well, but the air space above --  
18 maybe that's like a public thoroughfare for use by  
19 aircraft.

20 MR. SALTON: It's our submission that 400 feet  
21 and circling a private residence is not like a public  
22 thoroughfare. The --

23 QUESTION: Well, 400 feet for a helicopter is a  
24 lawful use apparently. You concede that the helicopter  
25 was lawfully at 400 feet, do you?

1 MR. SALTON: I would concede that it's arguably  
2 that it was, assuming FAA regulations are not violated,  
3 that it is a lawful place.

4 QUESTION: But you made no allegation that at  
5 400 feet it was a hazard to anybody?

6 MR. SALTON: No, we have not --

7 QUESTION: No.

8 MR. SALTON: -- made that allegation.

9 QUESTION: Ten times the height of this room,  
10 approximately.

11 MR. SALTON: Approximately. A lawful place,  
12 though, does not equate, Justice O'Connor, to continue  
13 the answer to your question, with a public place. And I  
14 think it goes back to your first question. If the  
15 curtains are left open and the police officer views it  
16 from the sidewalk leading to the house or from the  
17 roadway, that's from the public place. But if the  
18 police officer, to view into the open curtain, has to  
19 climb a tree on a neighbor's yard, that may be a lawful  
20 place, but it's not a public place.

21 QUESTION: Well, in today's world do we have to  
22 define what's a public thoroughfare in the air? Is that  
23 what we have to do?

24 MR. SALTON: No. I think we have to look at it  
25 under the facts of the particular case and determine

1 whether in fact that is an area that the public would  
2 reasonably be expected to be or is normally in that  
3 place.

4 QUESTION: Well, most of us are accustomed to  
5 helicopters flying overhead rather frequently these  
6 days, aren't we?

7 MR. SALTON: Flying overhead but not at 400  
8 feet or less and circling private residence. Or be  
9 accustomed to air traffic, whether helicopter or  
10 fixed-wing airplanes, is in the higher altitudes. I  
11 mean, altitudes talked about in Ciruolo and --

12 QUESTION: Mr. Salton, is 400 feet above, right  
13 straight up here, public property?

14 MR. SALTON: I'm not so sure it's public  
15 property. Congress has given the public a right of  
16 transit through navigable air space.

17 QUESTION: Is it public?

18 MR. SALTON: I would submit it's not public  
19 property.

20 QUESTION: Can a helicopter fly through it?

21 MR. SALTON: A helicopter may fly through it.

22 QUESTION: May fly through it?

23 MR. SALTON: Yes.

24 QUESTION: Well, could it take a picture from  
25 it?

1 MR. SALTON: I would submit if they could fly  
2 through it, they can take a picture from it.

3 QUESTION: Could that person taking the picture  
4 be a policeman?

5 MR. SALTON: Yes, that person can be a  
6 policeman.

7 QUESTION: May I ask you, on this question of  
8 the public use of this particular air space, who flies  
9 helicopters? I know police departments have them, the  
10 military has them, weather has them. Do the -- does the  
11 private citizen normally fly around in a helicopter?

12 MR. SALTON: I would say a private citizen does  
13 not normally fly around in a helicopter. But, of  
14 course, I think common knowledge is that some private  
15 citizens do use helicopters for --

16 QUESTION: Well, is there anything in the  
17 record that tells us how many helicopter are operated by  
18 private citizens for their own personal use?

19 MR. SALTON: No, there is nothing in the record  
20 to indicate that.

21 QUESTION: Mr. Salton, suppose I have a house  
22 that's way out in the country. It's on a road but it's  
23 very far removed. It's in the mountains somewhere. And  
24 I choose to leave my curtains open and my blinds up.  
25 The fact is the public can look in. But there's never

1 any of the public up there, or very rarely is. Could a  
2 police officer choose to go by and look in?

3 MR. SALTON: I would submit that your question  
4 goes to the reasonableness of a person's expectations of  
5 privacy.

6 QUESTION: Right. Is the mere fact that there  
7 are not many people normally on that street enough to  
8 create in me an expectation that's valid against the law?

9 MR. SALTON: Yes. I would submit that it is  
10 enough to create that expectation of privacy.

11 QUESTION: Oh, so the police cannot look into  
12 open windows in country homes? Only in city homes?

13 MR. SALTON: If they position themselves in a  
14 non-public vantage point where the public --

15 QUESTION: It's a public road, it's just not  
16 used very often.

17 MR. SALTON: Oh, I'm sorry. I thought you  
18 meant --

19 QUESTION: It's sort of like the air space.

20 MR. SALTON: -- you meant -- I misunderstood  
21 your question. If he's on the public road --

22 QUESTION: It's a public road but the public  
23 rarely uses it. There is almost never anybody up there.

24 MR. SALTON: If the public uses that road, then  
25 I would submit that the police could look at it.

1 QUESTION: Why is that different from the  
2 helicopter example then?

3 MR. SALTON: Because --

4 QUESTION: There are very rarely helicopters up  
5 there, but they are free to be there.

6 MR. SALTON: But they don't fly at that  
7 altitude and circle private residences.

8 QUESTION: Just as the public very rarely goes  
9 up this mountain road I'm talking about.

10 MR. SALTON: If 400 feet was the particular  
11 viewing in this case -- or, at least, we know at least  
12 400 feet. It may have been lower, but that's unclear.  
13 We know that the contents of that greenhouse were not  
14 viewable from the altitude that the police helicopter  
15 first flew to arrive over Riley's residence. It was not  
16 until -- and the record indicates that the pilot  
17 indicated that they were a lot higher when they flew in  
18 than when they circled.

19 That did not become visible until they lowered  
20 to 400 feet, or possibly less, and circled the  
21 residence. At that time, he was able to be in a  
22 position that he could see. And what I am submitting is  
23 that that is different than the individual on the public  
24 road seeing into a window, even if the public road is  
25 not used frequently.

1 QUESTION: But, could the -- In Justice  
2 Scalia's example, a policeman you say could look in the  
3 window from the road, from the public road. Well, would  
4 he have to drive on? Could he stop and stare at the  
5 window saying, "I can't believe my eyes; I'd better make  
6 sure"?

7 MR. SALTON: If the window is open to the  
8 public road, I would assume the police officer could  
9 stop.

10 QUESTION: So, it isn't the circling by the  
11 helicopter that really gets you, is it? It's just --  
12 would be all right if the helicopter just flew across at  
13 400 feet and took a picture which permitted the warrant  
14 to be issued?

15 MR. SALTON: My position is that at 400 feet it  
16 would not because helicopters don't normally fly at 400  
17 feet.

18 QUESTION: And so your answer -- your position  
19 would be the same if the helicopter just flew across --

20 MR. SALTON: Just flew over.

21 QUESTION: -- the property at 400 feet --

22 MR. SALTON: At that altitude.

23 QUESTION: -- and took a single picture, which  
24 was adequate to get a warrant?

25 MR. SALTON: Yes, that would be still my

1 position because I think public can normally stop and  
2 does stop on public roads, but they don't do the  
3 circling maneuvers and so forth in the airways.

4 I think, as Justice Scalia indicated in his  
5 concurrent opinion in O'Connor versus Ortega, the Fourth  
6 Amendment protects privacy, not solitude. And I would  
7 submit that it's not the public. I think our society  
8 does not require the public to close up their homes,  
9 their windows from the chance or the non-public areas,  
10 shut out light, shut out nature, on the fear that  
11 somebody is going to surveil their home. I don't think  
12 society requires that.

13 Society requires people to take normal  
14 precautions. And that is precautions from where the  
15 public is expected to be.

16 QUESTION: Mr. Salton, if we do reach the  
17 curtilage issue in our disposition of this case, do you  
18 think it makes some difference, or does it make no  
19 difference, the fact that there was a commercial raising  
20 of contraband going on in the greenhouse? It wasn't  
21 just a kitchen garden, so to speak.

22 MR. SALTON: Well, I would have to take issue  
23 with the commercial raising of --

24 QUESTION: It was just home consumption?

25 MR. SALTON: We are talking basically 44

1 marijuana plants, and I would submit that 44 marijuana  
2 plants does not make a commercial operation. The court  
3 in Circolo indicated they had little difficulty  
4 determining that his back yard was curtilage, and that  
5 contained 73 marijuana plants.

6 There is absolutely no evidence in the record  
7 that Michael Riley ever distributed, sold, or intended  
8 to distribute or sell one ounce of marijuana.

9 QUESTION: Is there any testimony at all in the  
10 record on that point?

11 MR. SALTON: None at all. And --

12 QUESTION: So, all we know then is that the  
13 greenhouse was devoted to the raising of contraband?

14 QUESTION: The greenhouse had 44 marijuana  
15 plants.

16 QUESTION: Which are contraband.

17 MR. SALTON: Which are illegal.

18 QUESTION: Yeah. Do you think we should take  
19 that into consideration in deciding whether or not this  
20 complies with the curtilage rule?

21 MR. SALTON: No. Not the fact that it  
22 contained a plant that was illegal. If we were dealing  
23 with the phencyclidine laboratory that's depicted in  
24 Dunn where sophisticated chemicals are used, trucks are  
25 going in and out, where we do have a large scale

1 production of drugs --

2 QUESTION: What if there were hundreds of  
3 marijuana plants in this greenhouse?

4 MR. SALTON: If there was a showing that we  
5 were dealing with the same type of situation in Dunn,  
6 then that would be a factor for the Court to consider.  
7 But the mere presence of an illegal plant, I submit,  
8 does not take it out of the realm of the curtilage.

9 QUESTION: Does the record show anything else  
10 in the greenhouse except those 43 plants?

11 MR. SALTON: The record just shows 44 marijuana  
12 plants were in the greenhouse. And our position is that  
13 it's a gardening activity; obviously an illegal  
14 activity, but still activity associated with the home.

15 QUESTION: Well, how is it associated with the  
16 home in the sense that the phencyclidine was not  
17 associated with the home. They are both close  
18 physically.

19 MR. SALTON: Well, one of the factors in Dunn  
20 was the -- I think the court's determination that the  
21 barn where the laboratory was, was outside the perimeter  
22 of the home, the fence perimeter of the home, and at  
23 least 60 yards from the home. And determined that that  
24 was a factor to show that it was not connected or close  
25 to the home, like our greenhouse house is.

1 QUESTION: Well, do you think the result in  
2 Dunn would have been different if the phencyclidine  
3 operation in the barn were as close as this greenhouse?

4 MR. SALTON: I think it would be a factor that  
5 the Court would consider. The Court indicated that it  
6 was not so that was more reason to consider it not part  
7 of the curtilage, but --

8 QUESTION: You think a marijuana garden is as  
9 connected with the domestic activities as an herb garden  
10 or a bunch of tomato plants or something like that?

11 MR. SALTON: I think unless it's a commercial  
12 operation, it's a gardening activity.

13 QUESTION: Part of the domestic activities of  
14 the house, raising marijuana?

15 MR. SALTON: Unless it's shown as a commercial  
16 activity, I would submit it is. And it's no different  
17 -- the structure in that location is no different than  
18 the bathhouse, than the workshop, whatever you would see  
19 at that location.

20 The importance, obviously, of curtilage is that  
21 it bears on Riley's reasonableness of his expectations  
22 of privacy because society has long recognized the home  
23 and curtilage as harboring a fundamental right to be  
24 free from government intrusion. And unless Riley does  
25 some act to expose the contents of that greenhouse to

1 the general public, he's entitled to the reasonableness  
2 of the privacy expectations.

3 If we look at Florida's bright-line rule, which  
4 is what they're requesting, and that is basically that  
5 the helicopter should be able to fly wherever FAA  
6 regulations allow it to fly, what you then have are FAA  
7 regulations which are safety regulations dictating or  
8 having a significant bearing on Fourth Amendment privacy  
9 rights. And I would submit that those regulations have  
10 no bearing on privacy and on the Fourth Amendment.

11 The FAA can change those regulations and  
12 basically what you have is a member of part of the  
13 Executive Branch of the government dictating Fourth  
14 Amendment privacy rights.

15 An interesting aspect of that would be that the  
16 FAA regulations under visual flight regulations, called  
17 VFR, restrict helicopters to 300 feet in congested  
18 areas. In rural areas, they have no limitations as far  
19 as height limitations. Which would basically mean that  
20 an individual in an urban area where homes are right on  
21 top of each other, at least under the FAA, would have  
22 more legitimate privacy expectations than someone in a  
23 rural area. And I would submit that that defines common  
24 sense and defies the purposes of the Fourth Amendment.

25 QUESTION: In Ciraolo the court found --

1 MR. SALTON: Yes. I think the court found that  
2 Ciruolo was within the curtilage.

3 QUESTION: It was?

4 MR. SALTON: It was within the curtilage.

5 QUESTION: Yes.

6 MR. SALTON: They made that finding. I think  
7 the Import of Ciruolo, and this again goes to the public  
8 nature of the view, of the vantage point of the  
9 observation, at least eight times within that case there  
10 were phrases such as "public thoroughfare", "public  
11 vantage point", "public nature of the view", and the  
12 fact that Ciruolo had opened his marijuana garden to the  
13 sky, so to speak -- there was no enclosure, he took no  
14 precautions to view or to stop any member of the public  
15 who happened to fly over in the air where the public  
16 normally flies from viewing the marijuana -- was a  
17 distinction in that case.

18 And, as the court said, the police are simply  
19 not required to avert their eyes if they're in the same  
20 place the public is in normally.

21 And here, Riley took precautions to avert the  
22 viewing of this from the sky. The fact that he was not  
23 completely successful, the fact that the police were  
24 able to position themselves in a position that again the  
25 public doesn't ordinarily use to view these plants does

1 not make his expectation unreasonable.

2 QUESTION: Mr. Salton, do you rely on the fact  
3 that they were specifically looking at this piece of  
4 property? Would the case be any different if they had a  
5 routine practice of flying up and down through this area  
6 at 400 feet --

7 MR. SALTON: I think the Court --

8 QUESTION: -- when they found this stuff?

9 MR. SALTON: The Court pretty well rejected  
10 that argument in Ciruolo and made the determination that  
11 the fact that that was a focused viewing had no  
12 distinctions under the Fourth Amendment.

13 Of course, this was a much more focused viewing  
14 than that in which occurred in Ciruolo. We went much  
15 lower and they could see much more. And --

16 QUESTION: But, again, you don't rely on that  
17 though? It would have been the same case if --

18 MR. SALTON: No, I --

19 QUESTION: -- they had just been flying by at  
20 400 feet?

21 MR. SALTON: I'm not relying on that. And  
22 that's based on this Court's decision in the Ciruolo  
23 case.

24 As far as bright-line rule, basically it would  
25 allow a helicopter to view everything before it as long

1 as it's flying in a safe manner. And that basically is  
2 from 50 feet to 100 feet. Not only the views of our  
3 curtilage is open to the police, but the inside of our  
4 homes. If the helicopter could fly at 25 feet with  
5 safety within the FAA regulations and then could see the  
6 interior of a home -- and I think of the California  
7 contemporary homes or, as Justice O'Connor indicated,  
8 the southwestern homes with open areas, all that is open  
9 to the view of the police.

10 QUESTION: I expect a lot of people don't  
11 engage in nude sunbathing in their back yards because of  
12 helicopters, I would expect. Certainly in urban areas  
13 they probably don't engage in that practice on apartment  
14 house roofs for that reason.

15 So, I mean, what's so extraordinary about the  
16 fact that if you want to have privacy, even inside your  
17 home, you'd better put a roof over it?

18 MR. SALTON: Well, how about a large glass  
19 opened area of a window? A helicopter would have a view  
20 into the interior of the home where the intimacies of  
21 private lives take place. And I don't think society is  
22 prepared to say that we need to shut ourselves up in  
23 lock-tight, airtight boxes so that the government can't  
24 look in.

25 And basically that's what would happen under

1 the theory of the government's case of a public vantage  
2 point. I submit that it would be no different if the  
3 police took the Goodyear blimp and hovered it 400 feet  
4 or 300 feet over a house and from there could view  
5 everything that was before it, everything that the  
6 family was doing, the private lives of the individuals.  
7 There wouldn't be any noise, there wouldn't be any  
8 disruptions, and conceivably the blimp was in a lawful  
9 place.

10 But is society prepared to require everybody to  
11 shut ourselves off from light, from nature, from the  
12 beauty of their surroundings and basically --

13 QUESTION: Just to stop you from growing  
14 marijuana, that's all.

15 (Laughter.)

16 MR. SALTON: Well, the fact that marijuana was  
17 growing here obviously resulted in this case. But the  
18 point is that if the police can do it in this case, they  
19 can look at people's associations, the political  
20 associations that they have.

21 Noncriminal activity is also an issue here.  
22 The privacy of an individual in the home and in his yard  
23 is what is at stake in this particular case. And if you  
24 allow the police, whether by means of a helicopter,  
25 whether by means of a hot air balloon, whether by means

1 of climbing a tree, and being in a public place and  
2 looking into the home and the protected area around the  
3 home, society suffers.

4 And it suffers for what I submit are not  
5 legitimate law enforcement purposes. And obviously  
6 society needs to balance their privacy with legitimate  
7 law enforcement concerns, but that's not at stake here.

8 As the very well researched brief of petitioner  
9 indicates, they found approximately 50--some reported  
10 cases dealing with aerial surveillance. Well,  
11 approximately nine, or ten or eleven, dealt with  
12 surveillance of the curtilages and only five or six  
13 dealt with surveillance of structures within the  
14 curtilage. The vast majority of those cases dealt with  
15 marijuana production in the open fields where large  
16 acreage, with large tracts of marijuana are being grown,  
17 whether on hillsides, whether in the woods.

18 That is the marijuana production in which the  
19 law enforcement needs to have its legitimate concerns.  
20 The backyard marijuana plots, so to speak, is an  
21 insignificant aspect of helicopter use.

22 A determination by this court that a viewing by  
23 the police from a helicopter any other area of the home  
24 or the curtilage when privacy precautions have been  
25 taken is a search requiring a search warrant, and does

1 not affect the surveillance of the open fields. It does  
2 not affect the helicopter use to apprehend fleeing  
3 felons.

4 QUESTION: Let's talk about that a minute.  
5 Isn't there rather wide use these days of police  
6 helicopters to apprehend suspects in cases of violent  
7 crime in urban areas?

8 MR. SALTON: It is used.

9 QUESTION: And don't they come down fairly  
10 close to the ground to try to see if someone is fleeing  
11 or around in an area where some serious crime has been  
12 committed?

13 MR. SALTON: I wouldn't call it frequent.

14 QUESTION: And the rule you'd have us -- well,  
15 fairly often one reads about it. The rule you'd have us  
16 adopt might discourage that kind of use, I suppose.

17 MR. SALTON: I think the helicopter can fly  
18 there lawfully. So, the police can do that in terms of  
19 --

20 QUESTION: Just wouldn't be able to use the  
21 evidence that they saw the suspect running down the  
22 alley or something of that sort?

23 MR. SALTON: No, because there you have a  
24 fleeing felon situation and I believe that has always  
25 been or frequently found to be an exception to the

1 search warrant requirement, the apprehension of a  
2 fleeing felon. Consequently, there wouldn't be a  
3 requirement for a warrant in that situation.

4 So, the ruling in this case would not affect  
5 the use of helicopters. We're simply talking about the  
6 use of helicopter to look into our homes. And I would  
7 submit that society, balancing that off, the interests  
8 of the home, the privacy of the families and individuals  
9 in the home or the curtilage, outweighs the limited law  
10 enforcement use that we have in this particular  
11 situation.

12 The fact that a helicopter is intrusive or  
13 non-intrusive is not necessarily the factor itself. The  
14 viewing of our intimate activities is just as  
15 disturbing, is just as violative of privacy rights to  
16 whether it's accompanied by noise or not. And I would  
17 submit to this court that allowing surveillance at low  
18 altitudes, below the altitudes normally used by the  
19 public, in such a manner to view into the curtilages and  
20 the privacies of our home is repugnant to the Fourth  
21 Amendment, it's repugnant to a free society, and I would  
22 urge this Court to affirm the decision of the Florida  
23 Supreme Court.

24 Thank you.

25 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Salton.

1 Mr. Thomson, you have one minute remaining.

2 MR. THOMSON: No rebuttal, your honor.

3 CHIEF JUSTICE REHNQUIST: Well, the case is  
4 submitted and we'll resume at one o'clock.

5 (Whereupon, at 12:02 p. m., the case in the  
6 above entitled matter was submitted.)  
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# 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:

#87-764 - FLORIDA, Petitioner V. MICHAEL A. RILEY

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

BY Judy Freilicher

(REPORTER)

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