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PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: MINNESOTA, Petitioner, V.

ROBERT DARREN OLSON

CASE NO: 88-1916

PLACE: Washington, D.C.

DATE: February 26, 1990

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IN THE SUPREME COURT OF THE UNITED STATES

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MINNESOTA, :
Petitioner, :
v. : No. 88-1916
ROBERT DARREN OLSON :
-----X

Washington, D.C.
Monday, February 26, 1990

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
11:51 o'clock a.m.

APPEARANCES:

ANNE E. PEEK, ESQ., Assistant Hennepin County Attorney,
Minneapolis, Minnesota; on behalf of the Petitioner.
STEPHEN J. MARZEN, ESQ., Assistant to the Solicitor
General, Department of Justice, Washington, D.C.; on
behalf of United States as amicus Curiae, supporting
the Petitioner.
GLENN P. BRUDER, ESQ., Minneapolis, Minnesota; appointed
by this Court on behalf of the Respondent.

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1 prisoner? each this issue? Why isn't this just an

2 admissible MS. PEEK: That's correct, Your Honor.

3 QUESTION: Well then, how is it that this
4 statement is really related to what occurred in the
5 dwelling in any event? and we've never really argued --

6 MS. PEEK: Well, the respondent is claiming that
7 his arrest was illegal under the Fourth Amendment and that
8 his statement was a fruit of the illegal arrest.

9 QUESTION: Well, there would have been a right,
10 I take it, to let him go for 30 seconds and re-arrest him
11 after he got outside of the dwelling. his Court would not

12 need to MS. PEEK: I suppose that's true, Your Honor.
13 The state, however, has never -- privacy interest in the

14 home, MS. PEEK: QUESTION: There's no right to be free from
15 custody once they are in the station house just because
16 there has been an unlawful entry in the dwelling, is it
17 there? defendant in an armed robbery of a gas station and

18 the cold MS. PEEK: I'm sorry, Your Honor? attendant. Was

19 respondent QUESTION: There is no right to an immediate
20 release at the station house, a release from custody, privacy
21 merely because there has been an unlawful entry into the
22 dwelling, even assuming the entry to the dwelling was
23 unlawful? a one's home under certain circumstances. This

24 case is MS. PEEK: I suppose that's true, Your Honor.

25 QUESTION: Well, then, why is it that we really

1 have to reach this issue? Why isn't this just an
2 admissible statement?

3 MS. PEEK: Well, the state, of course, has
4 always felt that this is an admissible statement because
5 the arrest was legal, and we've never really argued --

6 QUESTION: Yes, but you don't -- but you
7 don't -- you don't argue the point that the statement's
8 not tainted in any event.

9 MS. PEEK: No. It was never argued below and
10 we've never argued it through the process, Your Honor.
11 It's also the state's position that this Court would not
12 need to reach the exigent circumstances issue if it ruled
13 that the respondent did not have privacy interest in the
14 home, also, and that's been the state's main contention
15 all along.

16 Respondent was a getaway driver involved with
17 his co-defendant in an armed robbery of a gas station and
18 the cold-blooded murder of the gas station attendant. Was
19 respondent's temporary hideout his home? It's clear that
20 a person has a constitutionally protected right to privacy
21 in one's own home. It's also clear that one can have a
22 constitutionally protected right to privacy in a place
23 other than one's home under certain circumstances. This
24 case is about when.

25 This Court has stated --

1 QUESTION: Well, doesn't an ordinary house guest
2 have some expectation that he won't be bothered by
3 strangers while within the home? Isn't there some
4 reasonable expectation there, when I'm a guest in someone
5 else's home?

6 MS. PEEK: I think there's some expectation,
7 although whether it's --

8 QUESTION: And isn't it a reasonable one, one
9 that society is prepared to accept?

10 MS. PEEK: Well, I think it depends on all the
11 circumstances of the case. Certainly, if a visitor -- for
12 instance a relative, if I stay in my parents' home for a
13 period of time, I would have an expectation of privacy in
14 that home. However, if I were just a casual visitor to
15 the home, my expectation of privacy would be much less.

16 QUESTION: Well, don't we need some fairly clear
17 rules for the police, things that aren't so fact specific?
18 How's the policeman going to know the length of the visit,
19 or whether a key has been given, or who has given
20 permission? I mean, why shouldn't we try to craft and
21 follow fairly simple rules to govern the police action?

22 MS. PEEK: I agree with you that a simple rule
23 would be nice.

24 QUESTION: Well, you're certainly not asking us
25 to craft one here. It's very fact-specific and very

1 complex.

2 MS. PEEK: Well, I have two responses to that.
3 One is that I think that we probably don't want the
4 policeman to be making standing decisions, that in fact
5 what we would want in the society is for policemen to be
6 concerned with public safety issues and --

7 QUESTION: Why, here, shouldn't the police go
8 get a warrant?

9 MS. PEEK: The police in this case didn't get a
10 warrant because they felt that --

11 QUESTION: Because it was Sunday. It was a
12 "never on Sunday" rule, apparently.

13 MS. PEEK: I think if this case had occurred on
14 the weekday that they would have done the same thing.
15 They were faced with a murderer, someone who they felt was
16 dangerous, someone who they felt was armed --

17 QUESTION: Well, that's the exigent
18 circumstances. But just on -- on the right of the police
19 to enter the dwelling, Justice O'Connor indicates that the
20 rule you argue is fact specific, and I might add it's all
21 post hoc. You don't know about the key, and how long he's
22 been there, and whether he has the right to exclude guests
23 until after he is arrested and it comes out in
24 suppression, so it's a very unworkable rule, it seems to
25 me.

1 MS. PEEK: Well, presumptively, if the police
2 are entering the home they want them to get a warrant,
3 that's right, but if --

4 QUESTION: Ms. Peek, your answer is, it doesn't
5 matter, does it? The police are breaking the law. The
6 only thing we're arguing about -- there's no doubt that
7 they violated the Constitution. The question we are
8 arguing about today is, have they violated your right as
9 well as his right? It's clear that they're violating the
10 right of the person who owns the premises. The only
11 question is, whether they, in addition, are violating any
12 right of the guest, isn't that right?

13 MS. PEEK: Well, that's correct.

14 QUESTION: So predictability has nothing to do
15 with this. The -- the police don't -- the police are in
16 the wrong no matter what, isn't that right?

17 MS. PEEK: Well, presumptively they should get a
18 warrant if they're going into a private home. Later --

19 QUESTION: They have clearly violated somebody's
20 constitutional right. The only thing we're arguing about
21 is whether they've violated the guests as well as what
22 they clearly have violated -- the owners.

23 MS. PEEK: Well, that is -- that is the crux of
24 the issue in this case.

25 QUESTION: So police predictability is really

1 out of the case.

2 QUESTION: Well, except for the fact that they
3 know this man isn't the owner, and they don't care if they
4 violate the owner's constitutional rights because they're
5 not worried about introducing any evidence against him.
6 They don't even care about this -- the guy they're looking
7 for.

8 MS. PEEK: Well, I don't think they felt that
9 they were violating anyone's rights because they felt they
10 had exigent circumstances to make the warrant --

11 QUESTION: Well, forgetting exigent
12 circumstances for the moment, is it not your position that
13 the police can arrest a person in a dwelling if that
14 person has no reasonable expectation of privacy there?

15 QUESTION: That's your position, isn't it?

16 MS. PEEK: No, no. What we've been saying all
17 along is that -- that we want the policemen to concern
18 themselves not with standing but with probable cause and
19 with exigent circumstances and the other things that they
20 need to decide, and that they should try to proceed
21 legally based on those facts.

22 Later, a judge can decide whether or not they
23 were right, and whether or not whose rights were --

24 QUESTION: If they were right, was there not --
25 did they not have the authority to enter the home and make

1 the arrest, or do you concede that they were violating the
2 rights of the owner of this home?

3 MS. PEEK: Well, the state has never conceded.
4 It hasn't been an issue, because there's been no evidence
5 against the owners and the owners haven't raised it. The
6 issue all along has been the defendant's rights, and so
7 the state has never conceded that the arrest was illegal,
8 but if the arrest was illegal, the issue is, whose rights
9 were violated? I think --

10 QUESTION: If there were exigent circumstances,
11 the arrest was not illegal.

12 MS. PEEK: That's correct, Your Honor. I think
13 our position has been that societal -- the societal --
14 public policy would indicate that we do not want policemen
15 to make arrests based -- to make entries based on whether
16 or not someone has standing. We want them to
17 presumptively get a warrant if they need to, and if they
18 don't need to they go in, and later they find out who's in
19 the house and who has interest and later the court can
20 sort out who has standing to object to whatever happens.

21 QUESTION: Quite so, and in -- in a way a vague
22 and unpredictable rule is even better, right, isn't it,
23 because then they can never be sure that even though
24 they're violating the Constitution there will be no
25 harmful consequence following from it? We should really

1 have a very, very unpredictable rule.

2 MS. PEEK: I don't think -- I think the problem
3 is it's very difficult to -- to formulate a simple rule in
4 this case.

5 QUESTION: We'll resume there at 1:00.

6 (Whereupon, at 12:00 noon, the oral argument was
7 recessed, to reconvene at 1:00 p.m. this same day.)

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1 AFTERNOON SESSION

2 (1:01 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll resume the
4 argument in Minnesota against Olson.

5 Ms. Peek.

6 MS. PEEK: I would like to, if I could, briefly
7 summarize why the state should win in both issues.

8 With respect to the privacy issue, respondent
9 has the burden of proof to show that he had a legitimate
10 expectation of privacy in the duplex.

11 However, he was not the owner, he was not
12 related to the owner, he had no key, he stayed there one
13 night, he had no possessions there other than a few
14 clothes, he had no toothbrush, he'd never slept there
15 before, he was never left alone there, there was no area
16 designated for his exclusive use, and he had no right to
17 exclude others. The most that can be said for respondent
18 is that he was --

19 QUESTION: But I thought -- I thought the
20 Minnesota Supreme Court concluded that the respondent had
21 the right to exclude others.

22 MS. PEEK: The Minnesota Supreme Court did not
23 make a finding that he had a right to exclude. What it
24 merely did was state what it said the record said.
25 However, the record in fact did not say that.

1 QUESTION: Well, are we bound by that
2 determination, do you suppose?

3 MS. PEEK: I don't believe so, Your Honor.

4 QUESTION: Don't we normally accept
5 determinations of that type by state courts?

6 MS. PEEK: It's not a factual finding that's due
7 deference from this Court. It was merely a statement of
8 what the record revealed. If the record is not in fact --
9 that's not in fact what the record does show.

10 QUESTION: Well, what did the -- what did one of
11 the owners say about this matter?

12 MS. PEEK: I quote from the record: "And if
13 somebody came over to see Mr. Olson, did he have your
14 permission to admit them or refuse to admit them?" Louann
15 Bergstrom answered, "I don't know. It was never
16 discussed."

17 Question: "Had somebody come over to visit Mr.
18 Olson, would you have allowed him to decide if that person
19 would visit with him?"

20 Answer: "If I saw no reason not to."

21 We would contend, Your Honor, that that is not
22 the type of right to exclude that this Court has required
23 in its numerous cases on right -- right to privacy.

24 QUESTION: Ms. Peek, I don't understand what
25 you're saying. Is it your position that if somebody

1 knocked at the door and the person said, "I want to come
2 in," that he would have had to let them in?

3 MS. PEEK: If he and Mrs. Bergstrom were in the
4 home and --

5 QUESTION: No. He's the only one home and
6 somebody, some stranger knocks on the door and says hi, I
7 was just passing by. I thought I'd like to walk around
8 and see what this apartment looks like. Do you think he
9 would have had to say hey, I have no right to exclude
10 anybody? Do you really think --

11 MS. PEEK: He may or may not have had the right
12 to exclude in that circumstance, but in this case he was
13 never left alone so he never had an opportunity to do
14 that. He was never -- unlike Jones, in the Jones case,
15 who had a key and who was left alone in the duplex, he
16 therefore could let people in and out. Olson never had --
17 he was never left alone there, and that's -- that's real
18 important.

19 QUESTION: It all depends on the accident about
20 whether he happened to have been left alone?

21 MS. PEEK: Well, I think it depends on all the
22 facts and circumstances. In this case --

23 QUESTION: What if you had a teenager home with
24 the parent, would the teenager -- and the parent says come
25 on in, would that mean the teenager has no privacy

1 interest in the home?

2 MS. PEEK: No, not necessarily.

3 QUESTION: Well, then, why is that different?

4 MS. PEEK: Well, we're saying that -- that Olson
5 had basically nothing but legitimate --

6 QUESTION: Then you would have to answer Justice
7 Scalia saying even if he were all alone he couldn't have
8 said no. Don't you have to look at it as though this
9 person were the only person answering the door?

10 MS. PEEK: When you are in someone else's home,
11 your right to exclude will always be subservient to the
12 owner's --

13 QUESTION: Sure.

14 MS. PEEK: And certainly as long as the owner is
15 there. Had Olson been left alone there, we might have a
16 different case. We are not saying that for sure that the
17 answer would be different --

18 QUESTION: Well, if you concede that he had
19 standing when he was alone, wouldn't he have had precisely
20 the same privacy interest just because someone he is
21 familiar with is present? Why does that lessen his
22 privacy interest?

23 MS. PEEK: It has to do with the control that he
24 has of the apartment. In this case, he was given no
25 express and had no implied authority to exclude or --

1 QUESTION: What is your position on whether he
2 could have refused to let somebody in if he'd been there
3 alone? Don't you agree he had that authority?

4 MS. PEEK: I'm sorry?

5 QUESTION: What is your position with regard to
6 his privacy interest had he been alone?

7 MS. PEEK: I think if he'd been alone that would
8 have been a factor that would have been in his favor. I
9 think you have to look at all the rest of the factors to
10 determine whether it's reasonable -- a reasonable
11 expectation that he would have the right to exclude. It's
12 the state's position that the right to exclude is not the
13 only factor that should be looked at.

14 QUESTION: Well, Ms. Peek, may not the factor
15 that he was never left alone have some bearing on what
16 authority the people who owned the house wanted him to
17 have?

18 MS. PEEK: I think that's true, Your Honor.
19 Certainly, when I give a visitor a key, or I say, "Make
20 yourself at home; we're leaving for several hours," that
21 type of thing confers more authority and raises your
22 expectation with respect to your privacy in that home.

23 QUESTION: It doesn't bother you that all of
24 this inquiry is post hoc, consisting of facts that the
25 police will never know one way or the other until after

1 the arrest has been made?

2 MS. PEEK: No, Your Honor, because I think in
3 every case we want the -- we want policemen to assume that
4 the defendant has standing. We want police to not enter
5 homes unless they have a warrant, unless they have exigent
6 circumstances or some exception to the warrant
7 requirement. We don't want them to decide whether to
8 enter a home or not --

9 QUESTION: Well then, why don't we just enact a
10 rule to that effect? If that's what you want, that's what
11 you get.

12 MS. PEEK: A rule to that effect, that is the
13 rule, but presumptively they must have a warrant if they
14 enter a private home. Later --

15 QUESTION: Well, and then we'll enforce the rule
16 by saying that if you don't have a warrant it's an illegal
17 arrest.

18 MS. PEEK: Well, subject to the exceptions of
19 the warrant requirement, in this case, exigent
20 circumstances was the --

21 QUESTION: Well, let's forget exigent
22 circumstances for the moment. I mean, if you're saying
23 that what we want the police to assume that they must
24 always have warrant, absent exigent circumstances, then
25 why don't we just enact that as the rule? That's what

1 exclusionary rules are for.

2 MS. PEEK: Well, I think that is the rule. That
3 is the rule.

4 With respect to standing, the decision is when
5 the cops make a mistake as to the rule, if they violate
6 the Fourth Amendment, which we do not concede that they
7 did in this case, the issue then is whose rights were
8 violated?

9 And in this case the state's contending that while
10 the Bergstroms' rights, if that arrest was illegal, may
11 have been violated, the respondent's rights were not,
12 because all he could show was legitimately on the
13 premises, and that this Court has expressly rejected that
14 as a basis for legitimate expectation of privacy in the
15 Rakas case, and I think subsequent cases have reaffirmed
16 that holding.

17 I'd like to just briefly mention the exigent
18 circumstances case. It's the state's position that the
19 entry was not illegal because respondent was armed -- was
20 dangerous, believed to be armed, and had been in
21 continuous flight since the crime had been committed, and
22 under those circumstances -- the exigent circumstances --
23 exception to the warrant requirement would apply.

24 The facts of this case are not unusual. Felons
25 sought by police frequently do not return to their homes

1 but hide out briefly with a friend, or succession of
2 friends to elude police. Under the Minnesota Supreme
3 Court's holding, wherever a felon hides out overnight is
4 his home for Fourth Amendment purposes, as long as he has
5 permission to be there.

6 To broaden Fourth Amendment protection to
7 persons like respondent who have such a tenuous connection
8 to a place is to severely hamper law enforcement without
9 creating any meaningful privacy protection increase.
10 While felons deserve privacy protection in their homes,
11 they should not be allowed to use the Fourth Amendment as
12 a shield to escape apprehension wherever they flea.

13 QUESTION: It doesn't hamper law enforcement,
14 because as you've before, the police should not have gone
15 in, right, on the assumption that there were no exigent --

16 MS. PEEK: We do not concede that the police
17 should not have gone in.

18 QUESTION: No, but on the assumption that there
19 were no exigent circumstances, you concede that the police
20 should not have gone in, if there were no exigent
21 circumstances.

22 MS. PEEK: That's correct.

23 QUESTION: So whatever we say about this rule
24 about who can assert the right of privacy here, it's not
25 going to hamper law enforcement.

1 MS. PEEK: Sure it is, because defendant's --
2 evidence taken out of defendant's -- will not -- his
3 confession will be suppressed and his --

4 QUESTION: Oh, okay. That's it. I see.

5 MS. PEEK: He will not be allowed to -- the
6 state will not be able to prosecute him for crimes.
7 Clearly, the social cost of the exclusionary rule is such
8 that we have to balance the law enforcement interest and
9 the privacy interest. When the privacy interests are so
10 thin, as they are in this case, the balance must shift to
11 law enforcement.

12 If I may reserve the remainder of my time for
13 rebuttal?

14 QUESTION: Very well, Ms. Peek.

15 Mr. Marzen?

16 ORAL ARGUMENT OF STEPHEN J. MARZEN

17 ON BEHALF OF UNITED STATES

18 AS AMICUS CURIAE SUPPORTING THE PETITIONER

19 MR. MARZEN: Mr. Chief Justice and may it please
20 the Court:

21 Exigent circumstances justified the entry of the
22 Bergstroms' unit in order to search for Olson because
23 Olson was a dangerous suspect who knew that he had been
24 cornered by police.

25 In dealing with cornered felons, the police

1 should be allowed to move in fast and in force, before the
2 suspect is able to have time to think of dangerous
3 countermeasures, such as evidence destruction --

4 QUESTION: What's a cornered -- what's a
5 cornered felon?

6 MR. MARZEN: For purposes of this case we have a
7 very narrow definition, which is one who was actually
8 tipped off, who knew that the police were on to him. One
9 could construe it a bit more broadly, as we would, and say
10 that felons who the police can reasonably anticipate will
11 discover that the police are on to them --

12 QUESTION: Suppose the police come out with
13 their sirens and their lights blaring, is he then
14 cornered, because the police have let him know that
15 they're there?

16 MR. MARZEN: The next step in the inquiry, of
17 course, as respondent argues, is that there was in fact no
18 exigency here because it was manufactured by police.

19 There is an insinuation in that that it was
20 improper, what the police did, in telephoning the
21 Bergstroms' residence, in talking to Julie Bergstrom and
22 in having Respondent Olson overhear that conversation.

23 In this case, there was no manufacturing of
24 exigent circumstances, Justice Kennedy. The homicide
25 detective had every reason to call upstairs to the unit to

1 confirm that Olson was in fact present.

2 Prior to that telephone call, the only
3 information that he had that Olson was in fact upstairs
4 was the uncorroborated tip from the occupant of the lower
5 unit that said that Olson had returned. That may well not
6 have been sufficient probable cause to justify going out
7 for a search warrant to search the Bergstroms' unit for
8 Olson. In any event, the homicide detective was certainly
9 reasonable in not pushing the limits of probable cause and
10 either trying to go in or get a search warrant on that
11 basis.

12 The only alternative to calling upstairs, in
13 fact, would have been to mount an impromptu stakeout to
14 try to find out -- to try to hold -- preserve the status
15 quo.

16 QUESTION: Mr. Marzen, let me just be sure I
17 understand one thing. Assume they did not have probable
18 cause at the time of the entry. Would the exigent
19 circumstance doctrine have defended -- to justify the
20 entry?

21 MR. MARZEN: No. My understanding of exigent
22 circumstances is that you need probable cause and the
23 urgent need or emergency situation in order to make
24 that --

25 QUESTION: So it is your position there was

1 probable cause at the time of the entry, but arguably not
2 before the phone call?

3 MR. MARZEN: Arguably not before the phone call,
4 so that is why he needed to call up. In fact, you could
5 see that without any basis, other than someone saying
6 that, by the way, in the apartment next door there's a
7 dangerous felon, you wouldn't want the police, in the
8 ordinary run of the situation, to go into homes on that
9 basis.

10 In this case, there's arguably a little bit
11 more, because the police had talked to the occupant of
12 the lower unit before, and what she said was corroborated
13 by what the telephone tipster said. So there's arguably a
14 little more corroboration there. But I think the
15 police -- the homicide detective was -- was justified in
16 not pushing that probable cause to the limits.

17 If the detective had not called inside, he would
18 have had to mount an impromptu stakeout. That was not
19 reasonable, because the detective could reasonably
20 anticipate that Olson would have discovered it.

21 There were eight uniformed police officers in
22 marked patrol cars outside the unit. The odds were
23 overwhelmingly likely that Olson, a fugitive from justice
24 and on notice that the police were after him because he
25 had just escaped from them the morning before, would have

1 peeked outside and discovered the stakeout.

2 In that event, you would have -- all the
3 dangerous things would have happened of evidence taking,
4 armed resistance -- or evidence destruction, excuse me --
5 or hostage taking, or armed resistance.

6 Nor should, I think, the loan homicide detective
7 on duty that Saturday and Sunday be faulted for failing to
8 seek an arrest warrant, because the police did not plan
9 the arrest of Olson at any home.

10 Even if the police thought that Olson would
11 return to the Bergstroms' unit for some reason, an arrest
12 warrant would not have been sufficient to justify the
13 intrusion on the Bergstroms' privacy. They would have
14 needed a search warrant to search for Olson under *Steagald*
15 *v. United States*.

16 And again, there would not have been probable
17 cause to obtain that warrant at least until the occupant
18 of the lower unit had called detective -- the homicide
19 detective at the police station at 2:30 p.m., at which
20 time, of course, it was too late to have the couple of
21 hours it would have taken to get a search warrant, enter
22 the Bergstroms' unit, and find Olson in that case.

23 Therefore, we submit that in this circumstance,
24 where the police reasonably believed that Respondent Olson
25 was armed, that he was implicated in a violent crime --

1 you know, felony murder, for which he was convicted -- and
2 knew that the police were within moments of surrounding
3 him and getting him, that exigent circumstance justified
4 the immediate entry.

5 QUESTION: Mr. Marzen, do most jurisdictions
6 today have provisions for getting search warrants by
7 telephone?

8 MR. MARZEN: Yes, Justice O'Connor, they do, and
9 Minnesota in fact has that availability.

10 QUESTION: So why -- why are you saying it
11 inevitably would take hours to get the warrant?

12 MR. MARZEN: Well, Detective DeConcini actually
13 testified, I believe it was on either 116 or 118 of the
14 record, that even during the normal business hours of 8:00
15 to 4:00 it takes an hour or two to get a warrant. In this
16 case, I think there was only --

17 QUESTION: Using the telephonic procedure?

18 MR. MARZEN: He spoke generally. There's no
19 specific information in the suppression hearing transcript
20 about specifically how long it would take to get a
21 telephone warrant.

22 In this case, even if it was during normal
23 business hours and they had the telephone warrant
24 available, the only time there was was the time between
25 the homicide detective at the station got the phone call

1 from the occupant of the lower unit to the time that he --
2 the police officers actually converged on the scene. That
3 was an extremely short amount of time, and no one, not
4 even respondent, has contended that in that short time
5 frame there would have been time to get a warrant by any
6 means, including by telephone.

7 Even if exigent circumstances did not exist in
8 this case, we would submit that the exclusionary rule
9 should not be applied, because Olson, as an overnight
10 guest in the Bergstroms' unit, did not have a legitimate
11 expectation of privacy.

12 The legal standard for defining an expectation
13 of privacy, in our view, should be principally determined
14 by whether the defendant had a right to exclude.

15 Rather than revisit the reasons in our brief why
16 we maintain that that is supported by history in the text
17 of the Fourth Amendment, I would like to address the
18 principal argument by respondent, which is that the right
19 to exclude test is simply inadministerable.

20 In our view of this Court's cases, that would
21 not be the case. In fact, the Court already applies the
22 right to exclude test, in -- at least as we view it, in
23 determining whether parties can consent to a search.
24 Consent, or a right to admit, is really just the corollary
25 or converse of a right to exclude.

1 Put another way, consenting to a search is just
2 another way of saying that a person has waived his or her
3 legitimate expectation of privacy. So that in adopting
4 the government's submission, it would be -- all the cases
5 interpreting consent searches would apply to this case as
6 well. There is a whole body of case law.

7 The right to exclude test is also easier to
8 apply even in consent doctrine in joint control
9 situations. Because no one has consented in a case like
10 this one where police think that they have exigent
11 circumstances to enter, everyone who could have consented
12 to the search has a legitimate expectation of privacy.

13 QUESTION: I -- I am not sure that they are flip
14 sides of the same coin. I may have a right to admit
15 without having a right to exclude, which is always the
16 case where there is joint occupancy. I have a right to
17 admit -- and let's assume I -- I'm leasing an apartment
18 jointly with a friend.

19 MR. MARZEN: Uh-huh.

20 QUESTION: I have a right to admit my guests.
21 He has a right to admit his guests. I don't have a right
22 to exclude his guests, and he doesn't have a right to
23 exclude mine.

24 MR. MARZEN: Well, in the absence of the other
25 co-tenant or occupant you have a -- you clearly have the

1 right to admit and exclude. In a joint control situation
2 where -- you would also have the right to admit his
3 guests, too. The only question that arises in the case
4 law is if you are both present and one says that I want to
5 admit person X and the other co-tenant says I want to
6 exclude person X, then you get into a difficult situation
7 of whose consent trumps another's but --

8 QUESTION: So the right to admit does not -- I
9 mean, that's the point. You're saying the right to admit
10 is just the flip side of the right to exclude, and it
11 isn't.

12 MR. MARZEN: Well, if you -- for just purposes
13 of a thought experiment, eliminated the other persons
14 there, they have a right to admit or exclude on their -- I
15 guess I don't fully understand the question in that you do
16 have a right to admit and exclude.

17 It can be subject to or conditioned by rights of
18 other people who use the property, but one doesn't have to
19 get into those sticky things for purposes of determining a
20 legitimate expectation of privacy. Because no one has
21 been asked to admit a certain person on the property, they
22 all have a legitimate expectation of privacy for purposes
23 of the Fourth Amendment.

24 QUESTION: It seems to me your flip side
25 argument suggests that we should analyze this as though

1 he's the only person with an interest to be examined.

2 MR. MARZEN: Yes, and --

3 QUESTION: And if that's true --

4 MR. MARZEN: -- my answer to your question --

5 QUESTION: What's your answer to the question?

6 MR. MARZEN: My answer to the question you gave
7 my co-counsel is that Olson would not -- if a stranger
8 knocked at the door, Olson would not have had any right to
9 admit that person and therefore would have had no right to
10 exclude him or her either. If a door-to-door salesman had
11 dropped by, or a motor cycle gang, or whomever, he would
12 not have been able to allow them in the house, no more
13 than if you had a baby sitter, or a plumber, or anyone
14 else working on your home, that you have given them some
15 part of your right to admit and exclude people so that
16 they can have other parties on the premises.

17 This is not to say that you may not have -- as
18 your agent you may have told your baby sitter or someone
19 that you would expect the plumber to come by and, you
20 know, they would be able to admit the person to that
21 extent, but they do not have any of your rights that they
22 are exercising.

23 If the Bergstroms had left Olson at their house
24 while they went to church on Sunday morning, Olson would
25 not have been allowed to let people in.

1 Thank you.

2 QUESTION: Thank you, Mr. Marzen.

3 Mr. Bruder?

4 ORAL ARGUMENT OF GLENN P. BRUDER

5 ON BEHALF OF THE RESPONDENT

6 MR. BRUDER: Mr. Chief Justice Rehnquist and may
7 it please the Court:

8 Before beginning my argument today, I'd like to
9 respond briefly to a question that was raised by Justice
10 O'Connor with respect to the telephone search warrant.
11 The only testimony with respect to the time involved in
12 obtaining a warrant I believe appears at page 130 of the
13 transcript. It is in response to my questioning and it is
14 dealing with an arrest warrant. There was never any
15 testimony directly from Detective DeConcini with respect
16 to the time necessary to obtain a search warrant.

17 That aside, the seminal issue before the Court
18 today is whether an overnight guest can have a reasonable
19 expectation of privacy sufficient to invoke the protection
20 of the Fourth Amendment. Respondent's position is that an
21 overnight house guest can, and does, have a legitimate
22 expectation of privacy which this society, through custom
23 and practice, is prepared to honor.

24 QUESTION: You refer to him as an overnight
25 guest, Mr. Bruder. Was he given a bed to sleep on?

1 MR. BRUDER: No, Your Honor. The testimony is
2 that he slept in the living room. Whether he slept on the
3 couch or the floor, I don't recall if the record indicates
4 that.

5 QUESTION: Well, was the living room a place
6 where he, and he alone, had dominion, so to speak?

7 MR. BRUDER: I believe the living room was a
8 common area. I think there was some testimony that they
9 had had common activities there the night before and that
10 he and another house guest had stayed in the living room
11 that particular night.

12 QUESTION: This is not quite like the case,
13 then, where one goes to someone's house to visit and they
14 say, here's your room and here are your towels and so
15 forth, and you're given at least a room over which you
16 have some dominion?

17 MR. BRUDER: Well, in some ways, Your Honor, I
18 think it's exactly like that. It depends on the size of
19 the house, and I don't think that we can qualify
20 somebody's right to invoke the Fourth Amendment based on
21 the size of the dwelling that he resides in.

22 From personal experience, I can tell you that
23 the last time I had an overnight house guest, it was my
24 former roommate from California and he slept in the living
25 room because we don't have a spare room for him. And I

1 would suggest that the mere fact that he doesn't have a
2 bedroom that they made available to him doesn't
3 necessarily impact on his right to have an expectation of
4 privacy in that dwelling that society is willing to honor.

5 Typically speaking, an overnight house guest is
6 somewhat different from a mere transitory visitor. An
7 overnight house guest is treated as more akin to a member
8 of the family. He has a right to go throughout the common
9 areas of the house, to go into the kitchen, to go into
10 adjacent areas, areas that a mere transitory visitor might
11 not normally be expected to stay at.

12 QUESTION: Can you really generalize that much
13 about an overnight house guest, that you have the run of
14 the house? I have certainly visited in people's homes
15 where I didn't feel I had the run of the house. I --
16 haven't you had a similar experience?

17 MR. BRUDER: I hate to disagree with the Chief
18 Justice of the United States, but no, Your Honor, I have
19 not had that experience.

20 (Laughter.)

21 QUESTION: And you say you think that a common
22 experience is much more like yours than like mine?

23 (Laughter.)

24 MR. BRUDER: I would suggest, trying to get out
25 of this as diplomatically as I can, Your Honor, I would

1 suggest that common experience has to take in all gambits
2 of society, large houses as well as small houses, and that
3 there are certainly situations, and quite common
4 circumstances in this country, where an overnight house
5 guest may not have an area segregated to them, but
6 nonetheless has, in essence, rights that are akin to
7 members of the household and in those circumstances it's
8 our position that that house guest has a reasonable
9 expectation --

10 QUESTION: Is this man truly an overnight house
11 guest? Didn't he have a whole extra suit of clothing
12 there?

13 MR. BRUDER: He did indeed, Your Honor. He had
14 an extra suit of clothing.

15 QUESTION: Does the average overnight guest have
16 an extra suit of clothing?

17 MR. BRUDER: I think it depends on the
18 circumstances by which they arrive at the house.

19 QUESTION: How many overnights did he stay?

20 MR. BRUDER: He stayed there one night. He was
21 there approximately a day and a half before his arrest,
22 Your Honor.

23 QUESTION: Well, he was a day-and-a-half
24 nighter.

25 MR. BRUDER: He was a day and a half, Your

1 Honor, and he did also testify at the pretrial suppression
2 hearing that he had no other place to reside and he
3 intended to stay there.

4 QUESTION: (Inaudible) stayed there one night.

5 MR. BRUDER: I don't give up to -- well, Your
6 Honor, the fact is, unfortunately he was arrested before
7 he could stay there more than one night --

8 (Laughter.)

9 MR. BRUDER: But there was testimony -- there
10 was testimony before the -- at the suppression hearing
11 that indicated that he intended to stay there for an
12 indeterminate future. Unfortunately, in the interim the
13 police decided --

14 QUESTION: Did his host indicate that he could
15 have stayed longer?

16 MR. BRUDER: Yes, Your Honor. Both Mrs.
17 Bergstrom and her daughter Julie, who had given him
18 permission to stay at the house, indicated that as far as
19 they were concerned he was welcome to stay for the
20 indeterminate future.

21 QUESTION: Well, you don't need to go that far.

22 MR. BRUDER: No, but my position is that one
23 night gives him enough standing, so to speak, to come
24 before this Court and avail himself of his Fourth
25 Amendment privilege.

1 In challenging the Minnesota Supreme Court's
2 decision, both the petitioner's counsel and the Solicitor
3 General emphasize the fact that the respondent did not
4 have a formal tenancy interest or an ownership interest in
5 the duplex where he was arrested, and while those might
6 certainly be factors, I don't believe that they're wholly
7 determinative factors.

8 In Jones and Rakas and in Katz, this Court
9 repeatedly rejected the notion that concepts of property
10 law control an individual's right to assert a Fourth
11 Amendment claim. Nonetheless, the Solicitor General in
12 particular argues that an individual does not have
13 sufficient right to assert a Fourth Amendment claim unless
14 he has some type of property interest or quasi-property
15 interest in the dwelling where he was arrested. That
16 particular model is not --

17 QUESTION: It's not any Fourth Amendment claim,
18 it's the particular Fourth Amendment claim that your home
19 has been invaded.

20 MR. BRUDER: I believe that the -- what the
21 Solicitor General is in essence arguing is that unless
22 it's your home or your tenancy, you don't have a right to
23 object to your arrest in that particular dwelling, and
24 that particular model does not work very well based on the
25 common sense living arrangements that we have in society.

1 We have to recognize the simple fact is that
2 couples choose to cohabit, that individuals take on
3 roommates to share rental tenancies, and that friends may
4 briefly reside with one another for a day or longer. And
5 in each of those models, to some degree the person coming
6 into the living situation has to subordinate his or her
7 right to exclude others to that -- to the desires of the
8 people that they're with at the time, and under the
9 Solicitor General's model, that would suggest that those
10 individuals' privacy expectation should be swept aside.
11 I'd suggest that that -- that is unsupported.

12 Our position is that where an individual is
13 claiming Fourth Amendment protection and is part of a
14 sufficiently small and intimate group sharing living
15 quarters, that he or she has an expectation of privacy
16 that should be recognized by this Court. That particular
17 expression will not extend Fourth Amendment protection
18 beyond its reasonable scope.

19 For example, it's not going to suggest that
20 everyone living in a homeless shelter has a right to
21 invoke the cloak of the Fourth Amendment, because that is
22 neither a small, a private nor an intimate setting.
23 Similarly, it will not necessarily extend it to persons
24 who are casual or transitory guests who are there for a
25 very brief duration, but it will preserve the respondent's

1 cloak of Fourth Amendment protection.

2 QUESTION: Why -- why should it make any
3 difference whether you're transient or not?

4 MR. BRUDER: Your Honor, I --

5 QUESTION: Well, let's -- let's assume you're --
6 you're in the same -- you know, the friend's house that
7 you say you occasionally stay at. You're just there for
8 dinner. Why -- why should your expectation that you won't
9 be burst in upon be any different?

10 MR. BRUDER: I would welcome the Court holding
11 that, but realistically I think that the difference is
12 that when you're there for dinner, again, it deals with
13 the freedom that you're given over the premises. When
14 you're an overnight house guest, if you wake up in the
15 middle of the night, you go into the kitchen, you fix
16 yourself a snack, you may go into the living room and
17 watch TV if you're restless and can't sleep.

18 When you're a visitor for dinner, your use of
19 the premises is basically restricted to the dining room,
20 to the den if you have an after-dinner drink, in
21 essence --

22 QUESTION: What if you've been given the run of
23 the place, if the person said *mi casa es su casa*, and
24 really meant it?

25 MR. BRUDER: That's correct, Your Honor.

1 QUESTION: Then you'd be all right. You'd have
2 the whole run of it.

3 MR. BRUDER: That's correct, Your Honor.

4 QUESTION: (Inaudible).

5 MR. BRUDER: I think that that would obviously
6 be a very fact-specific circumstance, and I don't know if
7 this Court, in laying down broader holdings, can
8 necessarily articulate that in any sort of a general
9 standard, but I certainly think that that would be, you
10 know, a foreseeable result if that were the circumstance.

11 However, obviously we have to be concerned about
12 the -- you know, the -- whether or not that is in fact
13 something that's commonly found in the situation where you
14 do have a transitory visitor, or something that's just
15 derived solely for the purpose of invoking a Fourth
16 Amendment claim for a person's self-interest.

17 QUESTION: What was the relationship here? I
18 don't mean necessarily, you know, blood or marital
19 relations, but factual relationship here between the
20 defendant and the people who owned the house?

21 MR. BRUDER: They were friends. Julie Bergstrom
22 was a friend of Robert Olson, and Robert Olson was also
23 acquainted with the mother, Louann Bergstrom. Both of
24 them gave him permission to stay there, and he intended to
25 stay for the indeterminate future.

1 Contrary to the claims advanced by petitioner,
2 exclusive, or even primary control of a given area, I
3 believe has never been regarded as a prerequisite for the
4 assertion of Fourth Amendment rights.

5 In particular, in *Jones v. United States*, this
6 Court recognized that Jones had standing to contest the
7 search even though his interest in the property was
8 subordinate to that of his friend Evans, and although the
9 petitioner argues mightily to the contrary, I believe this
10 case amounts -- by the prosecution amounts to a direct
11 attack on the factual holding of *Jones v. United States*,
12 as subsequently limited by *Rakas*, and only by expressly
13 overturning *Jones* can this Court overrule the Minnesota
14 Supreme Court.

15 The Minnesota Supreme Court at great length
16 expressly relied on *Jones v. United States* in making its
17 determination. The factual circumstances of *Jones* are
18 that Jones, on the day of the incident in question,
19 admitted himself with a key, had a suit and a shirt at the
20 apartment, that his home was elsewhere, that he paid
21 nothing for the use of the apartment, and that he'd slept
22 there for but a single night.

23 The only distinguishing factor between this case
24 and *Jones* is that Jones had possession of a key. And
25 while that was certainly one of the factors examined by

1 the Court in that decision, I don't think that it can be
2 elevated to the sort of crucible level that the state
3 would suggest.

4 For example, if possession of a key was wholly
5 determinative, it could lead to bizarre and absurd
6 results. The cleaning woman who comes in and cleans my
7 house every other week has -- has a key to the premises,
8 and since she's there during work hours, she has exclusive
9 dominion and control over the premises, and under the
10 model constructed by the Solicitor General and by the
11 petitioner, my cleaning woman would presumably have a
12 greater privacy expectation than would Mr. Olson at the
13 home of his friends. And I would suggest that this is an
14 untenable result from this model, and that accordingly it
15 should be rejected. I think that consequently --

16 QUESTION: Suppose we changed it and just added
17 the one qualifier, that you have to have had a key which
18 you were permitted to use generally and not for the one
19 specific purpose that your cleaning woman is allowed to
20 use it -- that is, to come in and clean.

21 MR. BRUDER: Your Honor, I think there are
22 some --

23 QUESTION: Surely, when you give somebody a key
24 and say here, the apartment is yours, it means the
25 apartment's yours.

1 MR. BRUDER: Your Honor, I think there are
2 several problems with that. First of all, it's not going
3 to give any guidance to the police officers because
4 they're not going to know whether or not the individual
5 involved has a key.

6 Second, it elevates --

7 QUESTION: For the first -- we've gone over it
8 again and again. It doesn't matter. They shouldn't have
9 gone in, anyway.

10 MR. BRUDER: Right.

11 QUESTION: Okay?

12 MR. BRUDER: Well, the second problem is that it
13 to some degree supplants privacy expectations for a
14 mechanistic concept, and it evaluates -- it makes standing
15 from Fourth Amendment purposes basically a luck of the
16 draw situation. If you happen to be let alone and have a
17 key, you have standing, but if you don't, because your
18 guest is -- your host is showing you around town for the
19 entire duration of your stay, you don't have standing, and
20 that doesn't seem to be a particularly sensible result.

21 So I'd say that at least from those two
22 measures, there are significant problems with giving the
23 key that kind of primacy importance, and I'd add that
24 because Mr. Olson, in contrast to Mr. Jones, indicated
25 that he intended to stay at this particular dwelling for

1 the indeterminate future, that any attempt to reverse the
2 Minnesota Supreme Court's decision is implicitly an attack
3 on the remaining validity of Jones v. United States.

4 QUESTION: Mr. Bruder, the state also argues
5 there were exigent circumstances. Did you intend to
6 address that issue?

7 MR. BRUDER: I will do so right now, Justice
8 O'Connor.

9 Assuming that the Court affirms the respondent's
10 right to challenge his warrantless arrest, that seizure
11 under Payton and under Welsh is presumptively unlawful
12 unless accompanied by exigent circumstances. Generally,
13 the type of urgent need that constitutes exigent
14 circumstances is some sort of demonstrable danger to the
15 public or the police which will be minimized by a
16 warrantless arrest, and it's the state's burden to come
17 forward with proof that there was an exigent circumstance
18 here.

19 At the outset, let me point out that I'm not
20 certain that this is a very good case for this Court to
21 decide whether or not exigent circumstances existed,
22 because the Solicitor General and the petitioner both
23 agree that one of the prerequisites for the determination
24 of an exigency is that there be probable cause at the time
25 of the respondent's arrest.

1 In its decision, the Minnesota Supreme Court
2 expressly decide -- determined that they would not decide
3 the probable cause issue but simply assume that probable
4 cause existed for the purpose of answering his
5 constitutional challenges and ultimately reversed his
6 conviction.

7 Accordingly, if this Court wishes to look at
8 exigent circumstances, I think that the appropriate
9 resolution here would be to remand it -- remand this
10 decision back to the Minnesota Supreme Court with
11 instructions to determine whether or not probable cause in
12 fact existed.

13 QUESTION: What is your position, Mr. Bruder?
14 Was there or was there not probable cause?

15 MR. BRUDER: My position is there was not
16 probable cause, Your Honor.

17 QUESTION: There was not. So you don't claim
18 they should have gotten a warrant earlier, then. They
19 couldn't have, obviously.

20 MR. BRUDER: My position is, Your Honor, there
21 was not probable cause, and even assuming there was
22 probable cause, as did the Minnesota Supreme Court, that
23 there were no exigent circumstances that warranted my
24 client's arrest.

25 QUESTION: Are you saying we could decide the

1 exigent circumstances question on the same basis that the
2 Supreme Court of Minnesota did? I.e., assume there was
3 probable cause without deciding it, and then remand to the
4 Supreme Court of Minnesota to see whether there was
5 probable cause?

6 MR. BRUDER: I think that would be very
7 difficult for this Court to do, because in -- yes, Your
8 Honor. The answer to that question is yes. You could
9 assume for the purposes of this opinion that there was
10 probable cause, but ultimately remand it back to the state
11 court to determine whether in fact that was the case.

12 What I ask you to do, obviously, is to simply
13 affirm the Minnesota Supreme Court.

14 QUESTION: But we wouldn't -- we wouldn't do
15 that unless we decided that there were exigent
16 circumstances.

17 MR. BRUDER: That's correct. You'd have to make
18 two decisions, Your Honor. First, you'd have to decide
19 that my client had standing, and second you'd have to
20 decide that there were exigent circumstances.

21 QUESTION: Was it ever suggested in this case,
22 or ever -- did the state ever -- ever make the claim that
23 this statement that the after arrest was not a fruit of
24 the illegal arrest?

25 MR. BRUDER: Your Honor, that was -- the state

1 never made that claim. It was argued at the trial court
2 level, and I was furiously flipping through my trial court
3 memorandum. I relied on Dunaway v. New York, which is a
4 1979 decision of this Court, to suggest that if his arrest
5 was unlawful that the statement that he made was the fruit
6 of that arrest. It was never contested by the state
7 throughout the proceeding, so I submit that it's -- it's
8 not an issue that's before this Court.

9 QUESTION: I take it you agree that a search
10 warrant would have been necessary to effect this arrest?
11 An arrest warrant would not have sufficed, would it?

12 MR. BRUDER: I'm a little troubled by the
13 question, because from the construct that I began this
14 defense at, it was with the notion that Mr. Olson simply
15 had no other place to reside, so that an arrest warrant
16 would probably be the appropriate one, because this is as
17 close as he had to a dwelling. But upon reflection and
18 upon reading the Solicitor General's brief, and upon
19 rereading Steagald, I think perhaps a search warrant may
20 have been the appropriate warrant for the police to
21 procure. But then it doesn't --

22 QUESTION: I wonder if that's -- is that really
23 right? What you're saying is that he has a reasonable
24 expectation of privacy in the house.

25 MR. BRUDER: That's correct, Your Honor.

1 QUESTION: And -- but the owner of a house, if
2 you want to go arrest him in his house, all you need is an
3 arrest warrant.

4 MR. BRUDER: That is -- that is correct.

5 QUESTION: So why wouldn't you -- all you'd need
6 is an arrest warrant, insofar as your client is concerned?

7 MR. BRUDER: I don't have any problem with the
8 finding that all that would be needed in this case is an
9 arrest warrant. I began the defense with the assumption
10 that all that was necessary was an arrest warrant.

11 However, even if a search warrant was necessary,
12 that doesn't very well -- that doesn't very much help the
13 state's claims as far as exigent circumstances, because
14 their entire position in this proceeding is that an arrest
15 warrant is very difficult to get it and a search warrant
16 is very easy to get. So if all that was necessary was a
17 search warrant, it would have been very easy for them to
18 get one to arrest my client. Certainly on the day before
19 the police were able to obtain one in a relatively brief
20 period of time.

21 As far as the state's argument is concerned that
22 an arrest warrant was more difficult to obtain, they're
23 very hard-pressed to come forward with any proof of that,
24 Your Honor, because they made no effort to obtain one.
25 Indeed, the investigating detective testified that in his

1 20 years as a police officer, he'd never before tried to
2 obtain an arrest warrant on a weekend.

3 So there is nothing before this Court that
4 suggests that respondent's arrest would have been delayed,
5 if the police would have simply taken the step of
6 approaching a neutral and detached magistrate and
7 requesting some type of warrant be issued. More than
8 that, I would suggest that it's basically conjectural to
9 believe that the respondent was armed at -- when the
10 police made the decision to arrest him.

11 Certainly the crime involved was a grave one.
12 I'm not about to deny that. But at the time he fled from
13 the police, the respondent was observed to be unarmed, and
14 even the police anonymous tipster made no allegation that
15 the respondent was armed.

16 In essence, what we have here is a situation
17 whereas the prosecution and the Solicitor General hope to
18 define exigent circumstances, it will in effect strike
19 away at the heart of *Payton v. New York*.

20 The Solicitor General comes in here and says
21 that whenever a dangerous felon is known to be -- knows
22 that he's cornered by the police, the police have a right
23 to go in and arrest him without making the presumption --
24 without going before a judge and attempting to obtain a
25 warrant.

1 But consider the implications of that. In this
2 case, the police called up the respondent and said, come
3 out and surrender yourself to us, and when he refused to
4 do that, they used that as an exigency to suggest, having
5 done that, now that he knows we're here, we can come in
6 and arrest him, rather than simply trying to go before a
7 judge at the outset and obtaining a warrant to authorize
8 to authorize the respondent's arrest.

9 If exigency is defined as the Solicitor General
10 hopes to define it, there will be no situation --
11 absolutely no situation -- where an arrest warrant will be
12 required for a felon, because in every instance, the
13 prosecution will be able to establish an exigency simply
14 based on a phone call demanding that the suspect surrender
15 himself voluntarily. And if he refuses to cooperate, then
16 there's an exigency and they can go in and make an arrest.
17 That will in essence sweep away most of the protection
18 offered by the Fourth Amendment, at least in an arrest
19 context.

20 I would like to briefly conclude by mentioning
21 something to the Court that occurred to me as I was rather
22 nervously preparing for this argument yesterday. It's
23 almost exactly two years ago that I stood before a jury
24 and that I told that jury that they had a young man's
25 future in their live -- in their hands. Well, this

1 Court's decision will still have an immediate impact on
2 Rob Olson's future. This case is now about something more
3 than Rob Olson. It's about us. It's about what authority
4 our Constitution gives to police officers. It's about who
5 is protected by the Fourth Amendment, and it's about the
6 judiciary's role in supervising the police exercise of
7 their authority.

8 I submit to this Court, the Fourth Amendment
9 protects and cloaks me when I travel to California later
10 this spring and stay with my friend and former roommate.
11 I suggest that it cloaks my friends and associates who
12 have come to watch me make this argument and are staying
13 with their friends in Virginia, and I contend that it
14 protects petitioner's counsel when she visits the home of
15 her own parents.

16 I suggest and suspect that each one of us has a
17 privacy expectation in these living arrangements, and I
18 suggest that it is one that our society is prepared to
19 honor, and that I ask that this Court recognize in its
20 decision.

21 Thank you.

22 QUESTION: Thank you, Mr. Bruder.

23 Ms. Peek, you have two minutes remaining.

24 REBUTTAL ARGUMENT OF ANNE E. PEEK
25 ON BEHALF OF THE PETITIONER

1 MS. PEEK: Your Honor, it's not the state's
2 position that Mr. Bruder's privacy expectations will be
3 eliminated by -- when he stays with a friend. Not all
4 guests have no expectation of privacy. It's important,
5 however, to realize what the facts were in this case.

6 In answer to the Chief Justice's question, he
7 slept on the floor. There was no evidence that he'd been
8 given the run of the place. Although he said that he had
9 permission to stay indefinitely, the Bergstroms testified
10 that he asked if he could stay a couple of days, and
11 Louann Bergstrom testified that he could stay until she
12 asked him to leave. He could have been evicted at any
13 point.

14 That, I think, is different than the situation
15 when you stay at a relative's home, or you stay at a
16 friend's for a specific length of time. In this case,
17 furthermore, the Bergstroms were asked: "Miss Bergstrom,
18 counsel just said that Mr. Olson was living there. Was he
19 living there?" Answer: "No, he wasn't living there. He
20 stayed there one night."

21 Moreover, it's true that police bear a heavy
22 burden when attempting to demonstrate an urgent need for a
23 warrantless home entry arrest -- to arrest. Such an
24 urgent need is shown, however, when police must prevent an
25 armed suspect, wanted for murder, from escaping into the

1 community.

2 We ask that this Court reverse the holding of
3 the Minnesota Supreme Court.

4 CHIEF JUSTICE REHNQUIST: Thank you, Ms. Peek.
5 The case is submitted.

6 (Whereupon, at 1:44 p.m. o'clock, the case in
7 the 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:

No. 88-1916 - MINNESOTA, Petitioner V. ROBERT DARREN OLSON

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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