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Abstract

On May 8, 1973, Amtrack officials in San Diego observed Gregory Machado and Bridget Leary loading a brown footlocker onto a Boston-bound train.

KEYWORDS: privacy, amendment, footlocker

Constitutional Law: Expectation of Privacy Invokes Fourth Amendment Warrant Clause Protection for Search of Sealed Footlocker: United States v. Chadwick

On May 8, 1973, Amtrack officials in San Diego observed Gregory Machado and Bridget Leary loading a brown footlocker onto a Boston-bound train. The trunk was unusually heavy and leaking talcum powder, a substance often used to disguise the odors of marihuana and hashish. Their suspicions aroused,[1] the railroad officials reported the circumstances to federal authorities who in turn relayed the information to their counterparts in Boston.[2] Two days later, when the train reached Boston, federal narcotics agents were waiting at the station. While they had not obtained arrest or search warrants, they had with them a police dog trained to detect marihuana.[3] The agents released the dog near the footlocker and, without alerting Machado and Leary, the dog signaled the presence of a controlled substance inside. Joseph Chadwick then joined Machado and Leary and they moved the footlocker into the

1. United States v. Chadwick, 97 S. Ct. 2476, 2479 (1977). Machado matched a profile used by the Amtrack officials to spot drug traffickers. Profiles are used extensively in connection with airport searches and are especially used for the detection of potential hijackers. *See generally* United States v. Bell, 464 F.2d 667 (2d Cir. 1972); Note, *The Antiskyjack System: A Matter of Search—or Seizure,* 48 NOTRE DAME LAWYER 1261 (1973).

2. Agents also sent detailed personal descriptions of the two suspects and the footlocker. 97 S. Ct. at 2479.

3. *Id.* The courts are unsure as to whether the use of a canine's olfactory sense constitutes a search. In United States v. Bronstein, 521 F.2d 459 (2d Cir. 1975), a canine was used to detect marihuana in defendant's suitcase at an airline terminal. The Second Circuit held that the canine's "sniffing, nipping and biting at the defendant's luggage" did not constitute a search. *Id.* at 461. A California case, United States v. Solis, 393 F. Supp. 325 (C.D. Cal. 1975), *rev'd,* 536 F.2d 880 (9th Cir. 1976), originally held the use of a canine to be a search, but was reversed by the Ninth Circuit. The cases purport to speak to the reasonableness of the defendants' expectations of privacy, *i.e.,* whether the defendants had taken steps to protect their privacy, and also the degree of intrusion involved by the use of the canine. *See generally* Comment, 42 Mo. L. REV. 331 (1977); Note, *Constitutional Limitations on the Use of Canines to Detect Evidence of Crime,* 44 FORDHAM L. REV. 973 (1976).

trunk of Chadwick's waiting automobile. While the trunk of the car was still open and before the car engine had been started, the officers arrested all three.[4]

Chadwick, Machado, and Leary, together with the footlocker and car, were taken to the federal building. One and one-half hours after the arrests, the agents opened the footlocker and found in it a large quantity of marihuana. The three suspects were subsequently charged in a two-count indictment with possessing marihuana with intent to distribute,[5] and with conspiring to possess with intent to distribute.[6] Prior to their trial, the defendants moved to suppress evidence of marihuana seized from the footlocker.[7] After an evidentiary hearing, the district court ruled in the defendants' favor.[8] It later reaffirmed and amplified its ruling after hearing the Government's motion for reconsideration.[9]

4. 97 S. Ct. at 2479. The dissent noted that "[p]robable cause for the arrest was present from the time . . . the agents' dog signalled the presence of marihuana." *Id.* at 2489 (Blackmun, J., dissenting).

5. *Id.* at 2480. 21 U.S.C. § 841(a)(1)(1970) provides: "Except as authorized . . . it shall be unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."

6. 97 S. Ct. at 2480. 21 U.S.C. § 846(1970) provides: "Any person who attempts or conspires to commit any offense . . . is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

7. 97 S. Ct. at 2480. Marihuana was also found in suitcases carried by the respondents. *Id.* at n.1. The federal authorities sought to justify the search of the locked suitcases as "inventory searches" according to established DEA procedure. United States v. Chadwick, 532 F.2d 773, 782-83 (1st Cir. 1976). The court of appeals suppressed the evidence, finding no justification for the warrantless suitcase search. *Id.* The petition for certiorari was framed only on the question of the footlocker search, *i.e.*, whether a search warrant was required before federal agents could open a lawfully seized footlocker when there was probable cause to believe that the footlocker contained contraband. Therefore, the Court did not discuss the legality of Chadwick's arrest or the search of the suitcases. 97 S. Ct. at 2480 n.1.

8. United States v. Chadwick, 393 F. Supp. 763 (D. Mass. 1975), noting that "[w]arrantless searches are per se unreasonable, subject to a few carefully delineated and limited exceptions." *Id.* at 771. The court rejected the automobile exception analogy as well as the exception applicable to a search incident to an arrest, saying that the footlocker was not part of the area from which the respondents might gain possession of a weapon or destructible evidence. *Id.* at 771-75.

9. *Id.* at 773. "The Government's original opposition to defendant's motion to suppress the fruits of the footlocker search was based exclusively on the automobile exception to the search warrant requirement. (See [*Id.* at] 767-68). The Government now asserts that [the] search should be justified as one incident to arrest." *Id.* at 774.

A divided First Circuit Court of Appeals affirmed the suppression of the seized marihuana.[10] While the court agreed that the agents had probable cause to believe that the footlocker contained a controlled substance, it held that probable cause alone was insufficient to sustain a warrantless search.[11] On the premise that warrantless searches are per se unreasonable unless they fall within some established exception to the warrant requirement, the court of appeals agreed with the district court that the footlocker search was justified neither as an automobile search nor as a search incident to a lawful arrest.[12]

The United States Supreme Court affirmed and HELD: (1) the warrant clause does not protect only dwellings and other specifically designated locales; (2) by placing personal effects inside a footlocker, the defendants manifested an expectation that the contents would remain private; (3) the footlocker's mobility did not justify the application of the warrant exception which applies in cases involving automobiles; and (4) a warrantless search of luggage or other property confiscated at the time of arrest cannot be based on the exception which applies to a search incident to an arrest if the search is remote in time or place from the arrest or if no exigency exists.[13]

There is no constitutional rule under the fourth amendment[14] more basic than that which makes a warrantless search unreasonable except in a few "jealously and carefully drawn" unique circumstances.[15] The first clause of the fourth amendment requires that all searches and seizures—even without a warrant—be reasonable. Reasonableness

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The district court, in a supplemental opinion, disagreed with this latest contention and reaffirmed its opinion of Jan. 13, 1975, denying the motion to vacate. *Id.* at 778.

10. United States v. Chadwick, 532 F.2d 773 (1st Cir. 1976).

11. *Id.* at 778-82.

12. *Id.* at 782. The court of appeals conceded that personalty shared some characteristics of mobility which support warrantless automobile searches, but felt that a rule permitting a search of personalty on probable cause alone had not "received sufficient recognition by the Supreme Court outside the automobile area . . . for us to recognize it as a valid exception to the fourth amendment warrant requirement." *Id.* at 781.

13. 97 S. Ct. 2476.

14. The fourth amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

15. United States v. Watson, 423 U.S. 411, 427 (1976) (Powell, J., concurring), quoting Jones v. United States, 357 U.S. 493, 499 (1958). *See* Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971).

implies a weighing of the interests presented in each case.[16] The fourth amendment's second clause provides for the issuance of warrants only upon probable cause.[17] The Supreme Court has rejected the argument that a law enforcement officer's own determination of probable cause to search a private place for contraband or evidence of a crime should excuse his failure to procure a warrant beforehand.[18] Mr. Justice Jackson explained this principle in *Johnson v. United States:*

> Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers. . . . When the right of privacy must reasonably yield to the right of a search is, as a rule, to be decided by a judicial officer, not by a policeman or a government agent.[19]

While a warrant from a "neutral and detached" magistrate is preferred,[20] there are a few well-recognized exceptions permitting warrantless intrusions where circumstances make it impossible or impractical to obtain a warrant.[21] The *Chadwick* decision discusses several of these exceptions to the warrant requirement, but, more important, it generally traces the extensive history of search and seizure. The majority opinion can be readily divided into three areas: (1) the reasonable expectation of privacy; (2) the automobile exception; and (3) the search incident to an arrest analogy. The latter two areas are also directed to issues of privacy.

The Court first turned its attention to the question of whether the

16. *See* Camara v. Municipal Court, 387 U.S. 523, 535 (1967).

17. The Court has not attempted a definition of probable cause more precise than the one in Carroll v. United States, 267 U.S. 132, 161 (1925), where the standard was defined as "facts and circumstances . . . such as to warrant a man of [reasonable] prudence and caution in believing that the offense has been committed."

18. *See, e.g.,* Coolidge v. New Hampshire, 403 U.S. at 450; Katz v. United States, 389 U.S. 347, 356-58 (1967).

19. 333 U.S. 10, 14 (1948).

20. *Id.*

21. The recognized exceptions to the warrant requirement are (1) hot pursuit, Warden v. Hayden, 387 U.S. 294 (1967); (2) plain view doctrine, Coolidge v. New Hampshire, 403 U.S. 443 (1971); (3) stop and frisk, Terry v. Ohio, 392 U.S. 1 (1968); (4) automobile search, Carroll v. United States, 267 U.S. 132 (1925); (5) consent, Schneckloth v. Bustamonte, 412 U.S. 218 (1973); and (6) search incident to lawful arrest, Chimel v. California, 395 U.S. 752 (1969).

warrantless search of the footlocker was reasonable. The Government contended that the fourth amendment "protects only [those] interests traditionally identified with the home," and in this context, "the determination [of] whether a search or seizure is reasonable should turn on whether a warrant has been obtained."[22] According to this argument, the Government asserted that seizures of personal effects outside the home, based on probable cause but without a warrant, are not "unreasonable."[23] The Court disputed the Government's claim by noting language in *Katz v. United States*:[24] "[T]he Fourth Amendment protects people, not places."[25] Stating that the warrant clause does not protect only dwellings and other specifically designated locales, the Court wrote:

> [T]he Warrant Clause does not in terms distinguish between searches conducted in private homes and other searches. There is also a strong historical connection between the Warrant Clause and the initial clause of the Fourth Amendment which draws no distinctions among "persons, houses, papers, and effects" in guarding against unreasonable searches and seizures.[26]

22. 97 S. Ct. at 2481.

23. *Id.*

24. 389 U.S. 347 (1967). The landmark case of *Katz* established the reasonable-expectation-of-privacy test to determine whether a particular intrusion comes within the fourth amendment. In *Katz*, the petitioner was convicted of transmitting wagering information by telephone across state lines. The conversations were overheard by FBI agents who had attached an electronic listening and recording device to the telephone booth from which the calls were made. The Court held that the Government's activities violated the petitioner's privacy and thus constituted a search and seizure within the meaning of the fourth amendment. *Id.* at 350-53. However, *Katz* stated that the fourth amendment could not be translated into a general constitutional right to privacy. While people, not places, are protected under the fourth amendment, "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of fourth amendment protection." *Id.* at 351. "But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Id.* at 351-52.

25. 97 S. Ct. at 2481. The *Chadwick* Court accentuated the fact that the fourth amendment protects people from unreasonable governmental intrusions into their legitimate expectations of privacy and that the warrant clause contributes to that protection. *Id. See* Cardwell v. Lewis, 417 U.S. 583, 589 (1974), citing Jones v. United States, 357 U.S. 493, 498 (1958). No concise definition of "expectation of privacy" was offered, nor has the Court concretely defined it in the past. Long ago, the Court in Boyd v. United States, 116 U.S. 616, 635 (1886), did say that "constitutional provisions for the security of person and property should be liberally construed."

26. 97 S. Ct. at 2482.

Analysis of past decisions involving search and seizure situations reveals that "[t]he ultimate standard set forth is reasonableness."[27] And in examining the fourth amendment, the Court has considered whether a search and seizure is reasonable under the circumstances.[28] In *Camara v. Municipal Court* it stated: "[T]here can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails."[29] Further, "*[t]he test of reasonableness cannot be fixed by per se rules; each case must be decided on its own facts.*"[30] Justice Frankfurther wrote in his vigorous dissent in *United States v. Rabinowitz*:

> To tear "unreasonable" from the content and history and purpose of the Fourth Amendment . . . is to disregard *the* reason to which reference must be made when a question arises under the Fourth Amendment. . . . The test by which searches and seizures must be judged is whether conduct is consonant with the aim of the Fourth Amendment. The main aim . . . is against invasion of the right of privacy to one's effects and papers without regard to the result of such invasion.[31]

The Court in *Cady v. Dombrowski* said:

> In construing this command [for reasonableness], there has been general agreement that "except in certain carefully defined classes of cases a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant."[32]

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27. Cady v. Dombrowski, 413 U.S. 433, 439 (1973). *See* Camara v. Municipal Court, 387 U.S. 528-29.

28. Cooper v. California, 386 U.S. 58, 59 (1967).

29. 387 U.S. 523, 536-37. In *Camara,* the appellant was charged with violating the San Francisco Housing Code for refusing, after efforts to secure his consent, to allow a warrantless inspection of the ground-floor quarters which were used for residential purposes. The Court held that warrantless administrative searches cannot be justified on the grounds that they make demands on occupants; that warrants in such cases are unfeasible; or that area inspection programs could not function under reasonable search warrant requirements. The Court wrote: "The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable public interest. . . . [R]easonableness is still the ultimate standard. . . . It [the warrant] merely gives full recognition to the competing government and private interests . . . and, in so doing, best fulfills the historic purpose behind the constitutional right to be free from unreasonable government invasions of privacy." *Id.* at 539.

30. Coolidge v. New Hampshire, 403 U.S. at 509-10 (Black, J., concurring, and dissenting) (emphasis added).

31. 339 U.S. 56, 80 (1950) (Frankfurter, J., dissenting).

32. Cady v. Dombrowski, 413 U.S. at 439, quoting language from Camara v.

In this context, the *Chadwick* Court looked to the role of the judicial warrant and the safeguards that a neutral magistrate provides.[33] The Court has always emphasized the preference for a warrant issued by a "neutral and detached" magistrate.[34] It wrote in *McDonald v. United States:*

> We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. . . . The right of privacy was deemed to be too precious to entrust to the discretion of those whose job is the detection of crime and arrest of criminals. . . .[35]

In *Chadwick,* the Court stressed that the judicial warrant protections are effective whether applied in or out of the home.[36] As such, judicial warrants have been required for searches in areas other than the home.[37] These instances "reflect the settled constitutional principle . . . that a fundamental purpose of the Fourth Amendment is to safeguard individuals from unreasonable government invasions of legitimate privacy interests, and not simply those interests found inside the four walls of the home."[38]

In recognizing that a citizen's privacy interests extend beyond the home, the Court pointed out that by placing their personal property inside a double-locked footlocker, the defendants had "manifested an expectation that the contents would remain free from public examina-

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Municipal Court, 387 U.S. at 528-29; *see also* Coolidge v. New Hampshire, 403 U.S. at 454-55.

33. 97 S. Ct. at 2482.

34. *See* Johnson v. United States, 333 U.S. 10, 14 (1948).

35. 335 U.S. 451, 455-56 (1948).

36. 97 S. Ct. at 2482. The Court has considered warrantless searches in a variety of settings, further emphasizing that the fourth amendment is not limited to dwellings. *See, e.g.,* United States v. Van Leeuwen, 397 U.S. 249 (1970) (first class mail search); Rios v. United States, 364 U.S. 253 (1960) (package search).

37. 97 S. Ct. at 2483. The Court cited Katz v. United States, 389 U.S. 347 (electronic interception of conversation in a public telephone booth); Coolidge v. New Hampshire, 403 U.S. 443 (automobile on private premises); Preston v. United States, 376 U.S. 364 (1964) (automobile in custody); United States v. Jeffers, 342 U.S. 48 (1951) (hotel room); Mancusi v. De Forte, 392 U.S. 364 (1968) (office).

38. 97 S. Ct. at 2483. *See also* Wolf v. Colorado, 338 U.S. 25, 27 (1949), where Justice Frankfurter wrote: "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society."

tion."[39] The Court wrote: "No less than one who locks the doors of his home against intruders, one who safeguards his personal possessions in this manner is due the protection of the Fourth Amendment Warrant Clause."[40] Since the Government could find no exigency calling for an immediate search, the Court felt "it was unreasonable for the Government to conduct [the] search without the safeguards a judicial warrant provides."[41]

While examining the warrantless search of the footlocker, the Court also looked at the issue of whether the warrantless search fit within one of the exceptions to the constitutional requirement of a warrant.[42] The Court has held on numerous occasions that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions."[43] The exceptions are "jealously and carefully drawn,"[44] requiring "a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative."[45]

In *Chadwick* the Government sought to justify the warrantless search of the footlocker under the so-called automobile exception[46] and alternatively as a search incident to arrest.[47] It argued that since the

39. 97 S. Ct. at 2483.

40. *Id.*

41. *Id.*

42. A search without a warrant can be justified if it meets the criteria of some exception to the warrant requirement: (1) hot pursuit or exigent circumstances; (2) plain view; (3) stop and frisk; (4) automobile search; (5) consent; and (6) search incident to lawful arrest. *See* note 21, *supra.*

43. Katz v. United States, 389 U.S. 347, 357, quoted in Coolidge v. New Hampshire, 403 U.S. 443, 454-55. *See also* Almeida-Sanchez v. United States, 413 U.S. 266 (1973); Camara v. Municipal Court, 387 U.S. 523, 528-29; United States v. Watson, 423 U.S. 411, 425 (1976) (Powell, J., concurring).

44. Jones v. United States, 357 U.S. 493, 499 (1958).

45. McDonald v. United States, 335 U.S. 451, 456 (1948).

46. 97 S. Ct. at 2483-84. The lower courts noted that there was no nexus between the search and the automobile, merely a coincidence. Both courts emphasized that the search was of a footlocker, not an automobile; and the search itself did not take place in the automobile. 393 F. Supp. at 772; 532 F.2d at 778. After finding no exigency that would justify the search based on the automobile exception requirement, the district court wrote: "To rule otherwise would be to establish a per se rule permitting a warrantless search any time an automobile was even remotely involved in an arrest." 393 F. Supp. at 773.

47. 97 S. Ct. at 2485. In dealing with the Government's argument that the footlocker could be searched as incident to arrest, both lower courts found that the 200-

vehicle itself could have been searched without a warrant, so could the footlocker, as it was "analogous to motor vehicles for Fourth Amendment purposes."[48] The Government drew this analogy by arguing to the Court that both automobiles and footlockers are mobile "effects."[49] The Government's other argument was that since "the footlocker was seized contemporaneously with the defendants' arrests and searched shortly thereafter, such a search should be viewed as falling within the exception of a search incident to arrest."[50]

In examining the Government's two contentions, the Court first focused on the automobile exception analogy. The history of the automobile exception[51] cases is intricate and extensive. Beginning with *Carroll*[52] and the exigent circumstances of mobility,[53] the Court has

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pound footlocker could not be encompassed in the phrase "area within his immediate control." The courts pointed out that (1) the footlocker was not hand-carried luggage and (2) at the time of arrest the defendants had been handcuffed and surrounded by law enforcement officials. 393 F. Supp. at 775; 532 F.2d at 780.

48. 97 S. Ct. at 2484.

49. *Id.*

50. *Id.* at 2485.

51. The automobile exception is one of the six exceptions to the warrant requirement. *See* Note, *Warrantless Searches and Seizures of Automobiles*, 87 HARV. L. REV. 835 (1974).

52. The "automobile exception" was specifically established in 1925 in Carroll v. United States, 267 U.S. 132 (1925). In this case, George Carroll and John Kiro were stopped by federal prohibition agents on a road between Detroit and Grand Rapids, having been suspected of carrying contraband liquor. They had been seen traveling the same road before, and two of the agents had previously tried to buy liquor from the two suspects. Having stopped the car, the agents searched it and found bottles of gin and whiskey stashed inside the seats. The Court held that the "facts and circumstances within [the agents'] knowledge and of which they had reasonable trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched." *Id.* at 162.

53. In *Carroll*, the moving car on an open highway created exigent circumstances justifying a warrantless search and seizure. *Id.* at 153. The "automobile exception" has since been well-delineated in Chambers v. Maroney, 399 U.S. 42 (1970) and Coolidge v. New Hampshire, 403 U.S.443. *Coolidge*, citing *Chambers*, mentioned the established *Carroll* doctrine: exigent circumstances justify the warrantless search of an automobile stopped on the highway, where there is probable cause, because the car is "movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained." The Court emphasized that the "opportunity to search is fleeting." *Id.* at 460.

In *Chambers*, the Court seemed to expand *Carroll* by implying that potential mobility of the car was sufficient to create exigent circumstances. The petitioner was

continued to expand the area of automobile search and seizure in the recent cases involving state forfeiture statutes[54] and automobile inventory situations.[55]

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arrested after the auto in which he was riding was stopped by the police shortly after the robbery of a service station. The car was driven to the police station and was later searched. The Court validated the search, saying that exigent circumstances existed because the car was readily movable. 399 U.S. at 51. Mr. Justice White claimed that "[t]he probable cause factor still obtained at the station house and so did the mobility of the car. . . ." *Id.* at 52.

In *Coolidge,* which also established the doctrine of plain view and the requirement of inadvertent discovery, the decision asserted that there had to be some real possibility of the car's being moved in order for *Carroll* to apply. The Court wrote: "The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." 403 U.S. at 461-62. In *Coolidge,* the petitioner was being held in jail on a first-degree murder charge and his car, suspected of being an instrumentality of the crime, was parked in the driveway of his home. The Court felt that no amount of probable cause could justify a warrantless search or seizure in the absence of exigent circumstances. Since the petitioner had no access to his car and the police had ample opportunity to obtain a warrant, the seizure was held unconstitutional, as was the search of the car at the station house. *Id.* at 472-73. In this case, contraband, stolen goods, or objects dangerous in themselves were not involved.

54. In Cooper v. California, 386 U.S. 58 (1967), the Court held legitimate a search conducted long after any exigency had passed on the basis that the police had a possessory interest in the vehicle under a state forfeiture statute. The defendant was arrested for violation of narcotics laws, and his automobile was seized by police officers pursuant to a California statute authorizing any state officer making an arrest for a narcotics violation to seize and deliver to the State Division of Narcotic Enforcement any vehicle used to store, conceal, transport, or facilitate the possession of narcotics. The vehicle was then to be held as evidence until a forfeiture had been declared or a release ordered. The Court held that in the particular circumstances involved, the police did not violate the fourth amendment by conducting a search of a car which they validly held for use as evidence in a forfeiture proceeding. *Id.* at 61-62.

55. In an inventory search, the contents of the car are thoroughly cataloged and criminal evidence is seized, if discovered, without a warrant. The police seek to justify their intrusion as based on a benign purpose, *i.e.*, the protection of public safety, protection of the driver's property, or the protection of the police from danger against theft. *See Lawfulness of "Inventory Search" of Motor Vehicle Impounded by Police,* 48 A.L.R. 3d 537 (1973); and Moylan, *The Inventory Search of an Automobile: A Willing Suspension of Disbelief,* 5 U. OF BALT. L. REV. 203 (1976).

The Court held in Cady v. Dombrowski, 413 U.S. 433, that warrantless searches are permissible to "discharge community caretaking functions" and found the search of the car justified by reason of concern for the safety of the general public. *Id.* at 447-48.

In this case, the police arrested an off-duty policeman for drunken driving, after a late-night accident. The vehicle was towed to a private garage at the police's direction, and the trunk was searched pursuant to standard procedures of that police department.

Throughout the automobile exception cases, the Court has drawn a distinction between automobiles, homes, and offices. Although automobiles are "effects" and thus within the reach of the fourth amendment,[56] warrantless examinations have been upheld in circumstances where a search of a home or office would not be.[57] The reason for this

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While no probable cause existed to indicate that the vehicle contained fruits of a crime, the protective search was instituted because the local police were under the impression that the incapacitated Chicago police officer was required to carry his service revolver at all times; the police had reasonable ground to believe a weapon might be in the car and thus susceptible to vandals. In the process of the search, the police uncovered blood-stained objects which led to Dombrowski's conviction for murder.

The Court in South Dakota v. Opperman, 428 U.S. 364 (1976), divided 5-4 on the issue of whether an inventory of a car towed in for multiple parking violations was a search. The opinion indicated that even if the inventory was a search, it was reasonable. *Id.* at 376. The Court's determination of the reasonableness of the search was predicated on the assumption that inventories were standard procedure in the police community. *Id.*

In a concurring opinion, Mr. Justice Powell indicated that "routine inventories of automobiles intrude upon an area in which the private citizen has a 'reasonable expectation of privacy'; thus despite their benign purpose when conducted by government officials they constitute 'searches' for the purpose of the Fourth Amendment." *Id.* at 377 n.1.

In *Opperman,* the Court upheld the warrantless seizure of an item from an unlocked glove compartment. The search occurred while the police were inventorying the personal items in an automobile which they had impounded because it was illegally parked. The inventory was prompted by the presence of a number of valuables inside the car which were in plain view. The Court addressed itself only to the inventory of the unlocked glove compartment and did not deal with the question of inventorying locked or closed containers found in the vehicle. (This unsettled question came back to haunt the Court in the *Chadwick* decision. Mr. Justice Brennan briefly discusses it in the concurring opinion, 97 S. Ct. at 2486 n.1.) However, the reasoning applied by the majority and Mr. Justice Powell would permit inventories of locked or closed containers for security purposes if the vehicle was to be impounded for a significant period of time.

56. Cady v. Dombrowski, 413 U.S. at 439.

57. Cardwell v. Lewis, 417 U.S. 583, 589 (1974) (plurality opinion). *See* Cady v. Dombrowski, 413 U.S. at 439-40; Chambers v. Maroney, 399 U.S. 48. In Cooper v. California, 386 U.S. 58 (1967), the Court read Preston v. United States, 376 U.S. 364 (1964), as dealing primarily with a search incident to arrest and cited that case for the proposition that the mobility of a car may make the search of a car without a warrant reasonable "although the result might be the opposite in a search of a home, a store, or other fixed piece of property." 386 U.S. at 59.

In *Cardwell,* law enforcement officers interviewed the respondent in connection with a murder and viewed his automobile, which was thought to have been used in the commission of a crime. Several months later he was questioned again at the office of investigating authorities. At this time, he had parked his car at a nearby public commercial parking lot. After his arrest his car was impounded and later examined.

distinction is two-fold. First, the inherent mobility of automobiles creates exigent circumstances which, as a practical necessity, make strict adherence to the warrant requirement impossible.[58] The Court has also sustained warrantless searches where no immediate danger existed that the car would be removed from the jurisdiction.[59] Besides the exigency of mobility, other reasons exist to justify the application of less rigorous warrant requirements to automobile searches. For one thing, the expectation of privacy in a car is significantly less than in one's home or office.[60] Automobiles, unlike homes, are subjected to governmental regulations such as licensing and inspections.[61] In the interest of public safety and as part of what the Court has called "community care-taking functions," automobiles are frequently taken into police custody.[62] Police will also remove and impound automobiles which violate parking ordinances, thereby jeopardizing both public safety and the efficient movement of traffic.[63] The expectation of privacy is further diminished by the public nature of automobile travel.[64] The Court noted in *Cardwell*

The warrantless search revealed that tire-prints taken from the scene of the crime and paint samples from the victim's car matched those found on respondent's car. While there was only a remote possibility of anyone's destroying the evidence or moving the car, the Court reasoned that the automobile was located in a "public place where access was not meaningfully restricted." 417 U.S. at 593, following *Chambers* but distinguishing *Coolidge*. Citing from Warden v. Hayden, 387 U.S. 294 (1967), the Court said that the primary object of the fourth amendment is the protection of privacy, but the search in this case, made on the basis of probable cause, infringed no expectation of privacy. 417 U.S. at 591-92.

58. Carroll v. United States, 267 U.S. 132, 153-54; Coolidge v. New Hampshire, 403 U.S. at 459-60.

59. Cady v. Dombrowski, 413 U.S. at 441-42. *See* Chambers v. Maroney, 399 U.S. 48; Cooper v. California, 386 U.S. 58; and Texas v. White, 423 U.S. 67 (1975) (auto exception case reasoned on the rationale of *Chambers*).

60. Cardwell v. Lewis, 417 U.S. at 590-91.

61. "In Camara v. Municipal Court, 387 U.S. 523 (1967), and See v. City of Seattle, 387 U.S. 541 (1967), the Court held that a warrant was required to effect an unconsented administrative entry and inspection of private dwellings or commercial premises to ascertain health or safety conditions. In contrast, this procedure has never been held applicable to automobile inspections for safety purposes." South Dakota v. Opperman, 428 U.S. at 367-68 n.2.

62. Cady v. Dombrowski, 413 U.S. at 441.

63. South Dakota v. Opperman, 428 U.S. 364. *See* Harris v. United States, 390 U.S. 234 (1968) (inventory situation), where the Court held that an intrusion was justifiable since it was "taken to protect the car while it was in police custody." *Id.* at 236.

64. Cardwell v. Lewis, 417 U.S. at 591.

v. Lewis:[65] "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldoms serves as one's residence or as the repository of personal effects. . . . It travels public thoroughfares where both its occupants and its contents are in plain view."[66]

In the present case, the Court would not analogize luggage to motor vehicles, even though both automobiles and the footlocker could be termed "effects" under the fourth amendment.[67] In stating that a "person's expectations of privacy in personal luggage are substantially greater than in an automobile,"[68] the Court distinguished between the diminished expectations of privacy in an automobile and the fact that luggage contents are not generally open to public view (except as a condition to border entry); nor is luggage required to be regularly inspected; and finally, luggage (unlike a car) is intended as a "repository of personal effects."[69]

The Court also rejected the argument that by "analogy to the automobile exception" the footlocker's mobility justified dispensing with the need for a search warrant.[70] While the Court noted that the size

65. 417 U.S. 583.

66. 97 S. Ct. at 2484.

67. *Id.* The Court would not broaden the moving vehicle exception to include other mobile chattels. It noted that automobiles are typically subject to wide regulation but that locked trunks are not.

68. 97 S. Ct. at 2484. In its reasoning, the Court cited to many "automobile exception" cases which illustrate the various factors and situations wherein the expectation of privacy in automobiles is diminished. However, the Court did not specifically analyze any particular case in relation to the situation presented in *Chadwick*.

69. "[The defendants'] principal privacy interest in the footlocker was of course not in the container itself, which was exposed to public view, but in its contents." *Id.* at 2485 n.8.

70. *Id.* at 2484. The First Circuit Court of Appeals examined the mobility of luggage and wrote: "Admittedly baggage or goods in transit present some of the same characteristics as automobiles." United States v. Chadwick, 532 F.2d at 781. The court of appeals noted that other circuits had liberalized luggage search rules, drawing heavily on the rationale underlying the automobile search exception in Chambers v. Maroney, 399 U.S. 42. Those courts would allow the warrantless search of luggage for contraband upon the individual officer's determination of probable cause. (The *Chambers* automobile search exception itself is of a somewhat broader character than other exceptions; it does not, for example, require an accompanying arrest.)

However, the First Circuit argued that *Carroll* and its progeny had not mentioned baggage as being comparable to vehicles and further noted that exceptions to the warrant rule are "specially established" and "well-delineated." 532 F.2d at 781.

and inherent mobility of a vehicle make it susceptible to theft or intrusion by vandals,[71] it wrote in *Chadwick:*

> [O]nce the federal agents had seized it [the footlocker] at the railroad station and had safely transferred it to the Boston federal building under their exclusive control there was not the slightest danger that the footlocker or its contents could have been removed before a valid search warrant could be obtained. . . . With the footlocker safely immobilized, it was unreasonable to undertake the additional and greater intrusion of a search without a warrant.[72]

Secondly, the Court examined whether the footlocker search in *Chadwick* could be viewed as being a search incident to arrest. A search incident to a custodial arrest has long been recognized as an exception to the warrant requirement.[73] *Chimel v. California,*[74] overruling the earlier decisions of *Harris v. United States*[75] and *United States v.*

71. 97 S. Ct. at 2484 n.7.

72. *Id.* at 2484-85. *See also* n.8, distinguishing *Chadwick* from *Chambers.*

73. Approval of a warrantless search incident to a lawful arrest seems to have been first articulated by the Court in 1914 as dictum in Weeks v. United States, 232 U.S. 383, 392 (1914). *Weeks* made no reference to any right to search the place where the arrest occurs, but was limited to a right to search the person.

In Agnello v. United States, 269 U.S. 20 (1925), citing to dicta in *Carroll* and *Weeks,* the Court wrote:

> The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody is not to be doubted.

Id. at 30. *See also* the cases following *Agnello* involving search incident to arrest: Marron v. United States, 275 U.S. 192 (1927); Go-Bart Importing Co. v. United States, 282 U.S. 344 (1931); United States v. Lefkowitz, 285 U.S. 452 (1932).

74. 395 U.S. 752 (1969). In *Chimel,* the petitioner was arrested at his home for the burglary of a coin shop. While the police had a valid arrest warrant, no search warrant had been issued. The officers looked through the three-bedroom house, directing Chimel's wife to open drawers in the master bedroom and sewing room. After they completed the search they seized numerous items—primarily coins, but also medals, tokens, and other objects. The Court held that the scope of the search was unreasonable under the fourth and fourteenth amendments, as it "went far beyond petitioner's person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him." *Id.* at 768. *Chimel* pointed out that what is "reasonable" in a particular situation "must be viewed in the light of established fourth amendment principles." *Id.* at 765.

75. 331 U.S. 145 (1947). Harris was arrested in his apartment, having allegedly been involved with the cashing and interstate transportation of a forged check. The

Rabinowitz,[76] held that an arresting officer may search the arrested person and the area "within his immediate control"—construing that phrase to mean the area from which he might gain possession of a weapon or destructible evidence.[77]

In *Chimel* the majority sought to establish guidelines for a search incident to an arrest. In doing so the Court used two previous decisions, *Terry v. Ohio*[78] and a companion case, *Sibron v. New York*,[79] conclud-

officers, in an attempt to recover two cancelled checks thought to have been used in effecting the forgery, undertook a thorough search of the apartment. In the course of the search, the officers found altered Selective Service documents, and Harris was later convicted for violating the Selective Service Act of 1940. The Court rejected Harris's fourth amendment claim, sustaining the search as "incident to arrest." *Id.* at 150-51.

76. 339 U.S. 56 (1950). This case introduced the "broad scope" search incident phase which replaced the "narrow scope" phase of Trupiano v. United States, 334 U.S. 699 (1948). The theory formerly espoused by the Court held that a search warrant must always be obtained, unless it was impractical to do so. *Trupiano* set forth the "necessity" rationale.

Rabinowitz was arrested at his office by federal authorities who had been informed that the defendant was dealing in stamps bearing forged overprints. At the time of the arrest the officers searched the desk, file cabinets, and safe in the office, seizing a large number of stamps with forged overprints. The Court held that the search in its entirety fell within the principle giving law enforcement authorities "[t]he right to search the place where the arrest is made in order to find and seize things connected with the crime. . . ." 339 U.S. at 61 (quoting *Weeks*, 232 U.S. at 392). According to the language of *Rabinowitz*, the ultimate fourth amendment test "is not whether it is reasonable to procure a search warrant, but whether the search was reasonable." *Id.* at 66. *Chimel* defined *Rabinowitz* as standing for the proposition that "a warrantless search incident to a lawful arrest may generally extend to the area that is considered to be in the possession or under the control of the person arrested." 395 U.S. at 760.

77. *Id.* at 762-63. The Court applied the basic rule that the "search incident to arrest" is an exception to the warrant requirement and that its scope must be strictly confined in terms of the "justifying" exigent circumstances. The exigency in question arises from the dangers of harm to the arresting officer and of destruction of evidence within the reach of the arrestee.

78. 392 U.S. 1 (1968). In *Terry*, the Court upheld a protective "stop and search" of the petitioner where it was limited to a pat-down of the defendant's outer clothing. *Id.* at 29-30. *Terry* dealt with a permissible "frisk" incident to an investigative stop based on less than probable cause to arrest. A police officer stopped Terry and his companions because they had been behaving "suspiciously." The officer questioned the men and, believing them to be carrying weapons, engaged in a pat-down of their outer garments. The Court held that the search is reasonable if the officer concludes that the person may be armed and dangerous and that preventive action is necessary to protect himself and others. Under these conditions, the officer is entitled to conduct a carefully limited search of the outer clothing for weapons. Such a search is constitutionally privileged, even though the officer does not have probable cause to effect a search.

ing that a search incident to a custodial arrest must be related to the purpose for which the arrest was effected.[80]

The *Chimel* opinion also addressed itself to the issue of contemporaneity,[81] meaning the search should occur at the time and place of the arrest. The Court had previously discussed the contemporaneous requirement in *Preston v. United States*,[82] where a parked car in which the defendants were arrested was later towed to the police garage and subsequently searched. There the Court noted that the justifications for a seizure in accordance with a search incident to an arrest are "absent where a search is remote in time or place from the arrest."[83]

Several years after *Chimel*, the trend became somewhat different. As evidenced by the recent case of *United States v. Robinson*[84] and its companion case, *Gustafson v. Florida*,[85] the Burger Court seems to have retreated from *Chimel*. In the *Gustafson* and *Robinson* cases, illegal drugs were seized during a full search of the defendants following an arrest for a traffic violation.[86] These two cases seemed to reduce the

79. 392 U.S. 40 (1968). In *Sibron*, the Court invalidated a seizure of heroin resulting from a police officer's going beyond an exterior pat-down and thrusting his hand into defendant's pocket when the officer had no probable cause to arrest and no reason to believe defendant was armed and dangerous. *Id.* at 63-65.

80. The *Chimel* Court wrote: "Only last term in Terry v. Ohio . . . we emphasized that 'the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure' . . . and that '[t]he scope of [a] search must be strictly tied to and justified by the circumstances which rendered its initiation permissible.'" 395 U.S. at 762.

81. 395 U.S. at 764.

82. 376 U.S. 364 (1964).

83. *Id.* at 367. In the same term as *Preston*, the Court noted in Stoner v. California, 376 U.S. 483, *reh. denied*, 377 U.S. 940 (1964), that "a search can be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest." 376 U.S. at 486.

84. 414 U.S. 218 (1973).

85. 414 U.S. 260 (1973).

86. In *Robinson*, a police officer, having probable cause to arrest the respondent for driving while his license was revoked (as a result of his having previously checked respondent's operator permit, made a full custodial arrest). In the pat-down search of defendant's body, the officer found a crumpled cigarette package containing heroin in his coat pocket.

In *Gustafson*, the defendant, driving a car with out-of-state license tags, was observed by a policeman on a routine patrol. It appeared to the officer that the car was weaving back and forth across the center lines of the road. After being stopped, the petitioner could not produce his driver's license, explaining that he was a college student and that his license was in his dormitory room. The officer took the petitioner into

Terry rationale that a search must be related to the circumstances surrounding the arrest, since the searches in *Gustafson* and *Robinson* were unrelated to the circumstances of the arrests, and the officers had no reason to believe the defendants were armed and dangerous.[87] The Court in *Robinson* relied upon a "reasonableness test," not unlike the one used earlier in the *Rabinowitz* decision,[88] and found that a custodial arrest is a "reasonable intrusion under the Fourth Amendment [and] that intrusion being lawful, a search incident to the arrest requires no additional justification."[89]

The Court again broadened the scope of the search-incident exception in *United States v. Edwards,*[90] where it loosely interpreted the requirement that a search and seizure be contemporaneous with the arrest. In *Edwards* the clothing worn by the defendant was seized ten hours after his arrest and incarceration.[91] Mr. Justice White, writing for the majority, said that "[a] reasonable delay in effectuating [the seizure] does not change the fact that [the defendant] was no more imposed upon than he could have been at the time and place of the arrest or immediately upon arrival at the place of detention."[92]

In *Chadwick,* the Government argued that the Constitution permits a warrantless search of any property in the possession of a person arrested in public as long as there is probable cause to believe that the property contains contraband or evidence of a crime.[93] The Court rejected this argument by finding no exigencies which would have justified

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custody for further questioning and engaged in a pat-down search of the defendant, placing his hand inside the defendant's belt and pockets. A cigarette box containing marihuana was found in the petitioner's left front coat pocket.

87. 414 U.S. at 228; 414 U.S. at 264.

88. 339 U.S. at 65-66.

89. 414 U.S. at 235. Mr. Justice Rehnquist stated:

> It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under the Amendment.

90. 415 U.S. 800 (1974).

91. The defendant was arrested and charged with the attempted breaking and entering of a United States Post Office. He and a companion were seen walking near the Post Office after police had been notified that a secret alarm had been activated. Edwards was arrested, and ten hours after his incarceration his clothes were seized without a warrant and paint chips were found on the clothing which matched those samples taken from the Post Office.

92. 415 U.S. at 805.

93. 97 S. Ct. at 2485.

an immediate search. Chief Justice Burger, writing for the Court, distinguished searches incident to an arrest (as in custodial arrest) and those searches where items are seized contemporaneously with the arrest.[94] Referring to *Robinson* and *Terry,* the majority opinion stated: "The potential dangers lurking in all custodial arrests make warrantless searches of items within the 'immediate control' area reasonable without requiring the arresting officer to calculate the probability that weapons or destructible evidence may be involved."[95]

The Court pointed out that the situation in *Chadwick* was different from that of *Robinson* and *Terry.* Since the luggage was in the exclusive control of the law enforcement officers and no danger existed that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property was no longer incident to the arrest.[96] Expanding its reasoning further, the Court cited *Preston v. United States*[97] and said: "Warrantless searches of luggage or other property seized at time of an arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest.' "[98]

The Court emphasized the fact in *Chadwick* that the search was conducted more than an hour after the agents had gained exclusive control of the footlocker.[99] As a consequence, the Court could not view the search "as incidental to the arrest or as justified by any other exigency."[100] Because there was no exigency which would have supported the need for an immediate search, the Court reasoned that the defendants were entitled to the protection of the warrant clause.[101] In conclusion, the Court said that in this case an evaluation by a neutral magistrate was needed before the defendants' privacy interests in the contents of the footlocker could be invaded.[102]

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94. *Id.*

95. *Id.* at 2485. The Court mentioned justifications for a warrantless search of luggage taken from a suspect at the time of his arrest; for example, if the officers have reason to believe that the luggage contains some immediately dangerous instrumentality such as explosives. *Id.* at 2485 n.9.

96. *Id.* at 2485.

97. 376 U.S. at 367.

98. 97 S. Ct. at 2485.

99. *Id.*

100. *Id.* at 2485-86.

101. *Id.*

102. *Id.* The Court distinguished searches of possessions within an arrestee's immediate control and searches of the person. The Court said that the defendants' expectation of privacy in possessions (contents of the footlocker) was not reduced or

The dissenting members,[103] applying the rationale of the warrant exceptions concerning automobiles and searches incident to custodial arrests, would hold generally that "a [search] warrant is not required to seize and search any movable property in the possession of a person properly arrested in a public place."[104] The dissent distinguished *Camara v. Municipal Court*[105] and *United States v. Watson*[106] by saying: "A search warrant serves additional functions where an arrest takes place in a home or office. . . . But a warrant would serve none of these functions where the arrest takes place in a public area and the authorities are admittedly empowered to seize the objects in question."[107]

The dissent then suggested that a clear-cut rule be adopted permitting property (seized in conjunction with a valid arrest in a public place) to be searched without a warrant.[108]

While the dissenting members agreed with the majority in their discussion of the privacy interest generally,[109] they were critical of the opinion's failure to define explicitly the narrow line between searches of possessions and searches of the person in relation to expectations of privacy.[110] As a possible limitation to the impact of the decision, the dissent pointed out that other doctrines are frequently available to sustain warrantless searches of objects in police custody.[111]

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eliminated simply because they were under arrest. *Id.* n.10.

103. Mr. Justice Blackmun, with whom Mr. Justice Rehnquist joined, dissenting.

104. 97 S. Ct. at 2487. The dissent relies particularly on United States v. Robinson (no warrant is required for the arresting officer to search the clothing and effects of one placed in custodial arrest); and United States v. Edwards (search of personal effects need not be contemporaneous with the arrest). The dissent also paid close attention to the cases where a car may be impounded and, with probable cause, the contents (including locked compartments) may be examined without a warrant. *See, e.g.*, Cady v. Dombrowski, 413 U.S. at 439-48; Chambers v. Maroney, 399 U.S. at 47-52; Texas v. White, 423 U.S. 67 (1975). *See also* South Dakota v. Opperman, 428 U.S. 364 (1976) (police may follow standard procedures of inventorying contents of an impounded vehicle without any showing of probable cause).

105. 387 U.S. 523.

106. 423 U.S. 411.

107. 97 S. Ct. at 2488 n.1.

108. *Id.* at 2489.

109. *Id.* at 2488.

110. *Id.*

111. *Id.* at 2488-89. The dissent speaks of the routine inventory established by South Dakota v. Opperman, and also of instances where the impounded object has dangerous contents. *Id.* at 2485 n.9. Citing to Warden v. Hayden, 387 U.S. 294, 298-300 ("hot pursuit" exception case), the Court wrote: "[E]xigent circumstances may often justify an immediate search of property seized in conjunction with an arrest, in

Part II of the dissenting opinion suggested a number of alternative courses of action that the agents could have followed without violating the Constitution.[112] For example, if the agents had waited until the respondents started driving away before seizing the car, all of its contents could have been searched without a warrant under the automobile exception.[113] "Alternatively, [the dissent said that] the agents could have made a search of the footlocker at the time and place of the arrests, [since] Machado and Leary were standing next to an open automobile trunk containing the footlocker, and thus it was within the area of 'their immediate control.' "[114]

The concurring opinion, written by Mr. Justice Brennan to comment on the two points made by Mr. Justice Blackmun's dissent, stated: "In my view, it is not at all obvious that the agents could legally have searched the footlocker had they seized it after [the defendants] had driven away with it in their car or 'at the time and place of the arrests.'"[115]

Mr. Justice Brennan argued that it is not clear that "the contents of locked containers found inside a car are subject to search under [the automobile] exception."[116] Secondly, he wrote: "I would think that the footlocker in this case hardly was 'within [defendants'] immediate control'—construing that phrase to mean the area from within which they might gain possession of a weapon or destructible evidence."[117]

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order to facilitate the apprehension of confederates or the termination of continuing criminal activity." 97 S. Ct. at 2489.

112. *Id.* at 2489-90. No decision of the Court is cited directly to support these conclusions; but the dissent does cite some decisions from the courts of appeals.

113. *Id.* at 2489. The dissent relies on the fact that "[t]he scope of the 'automobile search' exception extends to the contents of locked compartments, including glove compartments and trunks. . . . The courts of appeals have construed this doctrine to include briefcases, suitcases and footlockers inside automobiles." 97 S. Ct. at 2489 n.4.

114. *Id.* at 2489-90. Here, the dissent gathers its argument from several viewpoints. First, Draper v. United States, 358 U.S. 307, 310-11 (1959) emphasized the established principle that an immediate search of packages or luggage carried by the arrested person is proper. Such searches have been sustained by the courts of appeals, even if they occurred after the arrested person has been handcuffed. Finally, searches under *Chimel* have also been upheld when a suitcase or briefcase was nearby, but not touching the arrested person. 97 S. Ct. at 2490 n.5. *See* United States v. French, 545 F.2d 1021 (5th Cir. 1977) (suitcase within arm's length); United States v. Frick, 490 F.2d 666 (5th Cir. 1973), *cert. denied*, 419 U.S. 831 (1974) (briefcase lying on seat of automobile next to which person was arrested).

115. 97 S. Ct. at 2486 (Brennan, J., concurring).

116. *Id.* at n.1.

117. *Id.* at n.2, citing from Chimel v. California, 395 U.S. at 763.

While the Burger Court has been gradually strengthening the hands of law enforcement officials, especially in the warrantless searches of automobiles pursuant to arrest, it is significant to note one case in which the Court finally applied the "brakes" to warrantless searches and seizures. The Burger Court has, in the last several years, changed and lowered the perception and expectation of the right of privacy. In the past, the Court has failed to furnish or articulate guidelines applicable to fourth amendment concerns. Again, as the dissent points out in the *Chadwick* case, the Court has failed to accept the challenge to develop an unequivocal doctrine regarding the permissible consequences of a custodial arrest.

The Court's opinion in *Chadwick* merely skims the issues. It fails to show in any significant way how the Court reached its conclusion. Rather, it cites to numerous cases in the applicable areas of search and seizure and leaves it to the reader to determine how these prior opinions apply to the circumstances in *Chadwick*. On examining the opinions of both the district court and the court of appeals, it would appear that the lower courts did a far better job of analyzing and clarifying the issues, raising subtle questions which the Supreme Court ignored.

Unfortunately, by failing to write a concise, direct opinion, the Court left many questions unanswered. The Court did not discuss in any great detail the problem of luggage mobility. The First Circuit pointed out that luggage searches have raised many queries in the various circuits. It hinted that it should be left to the Supreme Court to determine whether this could ever be a valid exception to the warrant requirement. Secondly, under the search incident to an arrest exception, the Court was afforded an opportunity to discus further, as the courts of appeal have done, when it is proper for the police to seize a suitcase, briefcase, or package in a suspect's possession at the time of arrest and, subsequently, to search the property without a warrant after the person has been taken into custody. The Court does not explain in its opinion why a possession carried in a person's clothing is subject to "reduced expectations of privacy"—but not the footlocker. Further, as in *South Dakota v. Opperman*,[118] the Court did not deal with a solution to the problems of searches of locked containers found in automobiles. Perhaps the Court found it easier to ignore these issues by rationalizing that these questions were not directly on appeal. However, these unanswered

118. 428 U.S. 364 (1976).

questions appear to detract from the strength of the opinion, since they underlie some of the basic premises that the Court does examine.

The *Chadwick* decision seems to take a step backward in time by attempting again to refuel the fires under the expectation of privacy doctrine. Like the dissent, one wonders how effective this holding will be in different circumstances, since so many other doctrines are used to sustain warrantless searches of objects in police custody.

Robin K. Williams