10-1980

New York v. Belton

Lewis F. Powell Jr.

Proper standards were applied

PRELIMINARY MEMORANDUM

October 31, 1980 Conference
List 1, Sheet 3

No. 80-328

STATE OF NEW YORK

v.

BELTON

Cert to NY CA
(Cooke; Gabrielli, Jasen, dissenting)

State/Civil Timely

1. SUMMARY: Petr, the State of New York, contends that the New York CA improperly concluded that a warrantless search and seizure of a jacket inside a car could not be justified as a search incident to a lawful arrest.

2. FACTS AND DECISION BELOW: In April 1978, resp and three companions were travelling in a car which was stopped by a state

I recommend a denial. Perhaps the NY. CA. second-guessed the policeman; but this Ct could only second-guess the NY CA., for this case turns wholly on applying facts to the well-known standard. Gay

trooper for speeding. Upon approaching the vehicle, the officer discerned the distinct odor of marijuana emanating from within and recognized on the floor an envelope that is commonly used to sell the substance. At that point, the officer ordered the occupants out of the vehicle, patted each down, removed the envelope from the floor and discovered that it did contain marijuana. The officer then placed the occupants, who were standing outside the car, under arrest. He then reentered the vehicle, searched the passenger compartment and seized marijuana cigarette butts lying in the ashtrays. He also looked through the pockets of the five jackets that were lying on the back seat, opened the zippered pocket of one of them, and discovered cocaine and resp's identification.

The trial court denied resp's motion to suppress the cocaine, and resp pled guilty to attempted possession of a criminal substance. A unanimous appellate court affirmed, holding the warrantless search of the jacket lawful as incident to resp's arrest for possession of marijuana. Chimel v. California, 395 U.S. 752 (1969).

The New York CA reversed. Under Chimel, it is reasonable for the arresting officer to conduct a prompt, warrantless "search of the arrestee's person and the area within his immediate control - construing that phrase to mean the area within which he might gain possession of a weapon or destructable evidence". Thus, the critical inquiry is whether the jacket was within an area where resp could reasonably gain access to it or whether the jacket was within an area within the exclusive

control of the police. Citing United States v. Chadwick, 433 U.S. 1 (1977) and Arkansas v. Sanders, 442 U.S. 753 (1978), the CA concluded that the area was within the exclusive control of the officer and that resp retained an expectation of privacy in his jacket pockets. Given that the car was in a secure place where it could easily have been guarded and given that the occupants were under arrest and safely away from the car, there was no reason why the search could not have awaited the issuance of a warrant.

Judge Gabrielli dissented on the grounds that there was sufficient evidence in the record to support the lower courts' finding that the jackets were within the reach of the four suspects and had not yet been reduced to the exclusive control of the officer. The majority erred in finding as a matter of law that merely because the suspects were under arrest and were standing outside the car at the time of the search, both their persons and their property had thereby conclusively and safely been reduced to the complete control of the officer. To the contrary, this is the type of case where a warrantless search is most appropriate. At the time of the search, conducted by a lone officer who had arrested four unknown individuals for possession of a controlled substance, the situation was still fluid. The suspects were standing by the side of the car and neither they nor their property had as yet been reduced to the exclusive control of the officer. The officer was still in danger and any evidence remaining in the car could easily have been destroyed.

Under these circumstances, it can not be said that the officer acted improperly in searching the jackets.

3. CONTENTIONS: Petr first contends that Judge Gabrielli's dissent is correct. Because the suspects were all standing at various points around the car, it would have been imminently possible and plausible for one or more of the four to lunge inside the car to grab a weapon or to destroy evidence. The trooper acted in an entirely appropriate fashion under the circumstances. He could not immobilize all four defendants. He had the right and duty to make certain that his safety was not threatened by the four men whom he had just arrested and that any evidence secreted in the car was not destroyed.

Second, petr asserts that the New York CA interpretation of the search incident to a lawful arrest doctrine is inconsistent with the decision of other state and federal courts. In United States v. Wilkerson, 598 F.2d. 621 (DC Cir. 1978), for example, a search of a jacket on the front seat of a car was held proper where two suspects were outside the car and one was seated in the car amid five police officers. In United States v. Agostino, 608 F.2d. 1035 (CA 5 1979), the court held proper the seizure of contraband on the floor of the car which the defendant had just left. In North Carolina v. Hunter, 261 S.E.2d. 189 (1980), the court upheld the search of a car where each arrestee was near the car and his hands placed on the car's roof.

Resp first notes that when the trooper conducted a pat down search of the jacket he felt no dangerous instruments hidden inside the jacket. Holding the jacket in one hand and thus

reducing it to his exclusive possession, he nevertheless unzipped and opened all of the pockets. Thus, the decision below was correct. Moroever, the cases relied on by petr are distinguishable. In United States v. Wilkerson, the court upheld the search because after the defendant had alighted from the vehicle, the officer reached into the front seat and placed his hand on a coat, pressed it and felt something like a shotgun. In United States v. Agostino, the court upheld the warrantless seizure of cocaine because it was in plain view or, alternatively, because it found that the defendant driver could reach the floor of the front seat of the vehicle. Here, in contrast, there was no finding in the trial court that the jacket lying in the middle of the back seat of a two-door vehicle, was accessible to any of the four defendants, all of whom were standing outside of the automobile. In State v. Hunter, there existed a probable cause to believe that a gun was present in the vehicle.

4. DISCUSSION: The cases relied on by petr are distinguishable from this one. The trooper here apparently had no reason to believe that a weapon was contained inside the jacket pocket. Also militating against granting cert here is that there appears to be no dispute over the appropriate legal standard to be applied, only a factual dispute as to whether the jacket was in the exclusive control of the police. On the other hand, to the extent the CA adopted a rule of law prohibiting warrantless searches whenever the suspects are standing outside a vehicle, the rule is probably too restrictive. It may be too

easy for a court to second quess a police officer as to what is or is not within the officer's "exclusive control".

There is a response.

10/9/80 Knauss Op in petn.
JBP

Court ..... Voted on ....., 19...

Argued ....., 19... Assigned ....., 19... No. 80-328

Submitted ....., 19... Announced ....., 19...

NEW YORK

vs.

BELTON

Also motion of respondent for leave to proceed ifp.

BRW says there clearly was a substantial question. We should reverse.

Grant

Related for C.J. to reconsider.

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.		✓			Join 3								
Brennan, J.			✓										
Stewart, J.			✓										
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.		✓											
Powell, J.			✓		or Grant & Rev.								
Rehnquist, J.		✓											
Stevens, J.			✓										

November 7, 1980

Court .....
Argued ....., *19*...
Submitted ....., *19*...

Voted on....., *19*...
Assigned ....., *19*...
Announced ....., *19*...

No. 80-328

NEW YORK

vs.

BELTON

Also motion of respondent for leave to proceed ifp. Relisted for the Chief Justice.

Relist
for
~~[illegible]~~
C. J.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
Stewart, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.			V or Grant & Rev.										
Rehnquist, J.													
Stevens, J.													

November 26, 1980

Court ..... *Voted on* ....., *19*...

Argued ....., *19*... *Assigned* ....., *19*... No. 80-328

Submitted ....., *19*... *Announced* ....., *19*...

NEW YORK

vs.

BELTON

Also motion of respondent for leave to proceed ifp. Relisted for the Chief Justice.

Related
for
C. J.
who was 4th
vote

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.													
Brennan, J.													
Stewart, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.			✓	vr	Grant	&	Rev	(9th	not	Grant)			
Rehnquist, J.													
Stevens, J.													

Court ..... *Voted on* ....., *19*...

Argued ....., *19*... *Assigned* ....., *19*... No. 80-328

Submitted ....., *19*... *Announced* ....., *19*...

NEW YORK

vs.

BELTON

Relisted for the Chief Justice.

D

Relist for W.H.R. to mtl

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.			✓										
Brennan, J.			✓										
Stewart, J.			✓										
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.		✓											
Powell, J.			✓										
Rehnquist, J.		✓											
Stevens, J.			✓										

Court ..... *Voted on*....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 80-328

Submitted ....., 19... *Announced* ....., 19...

NEW YORK

vs.

BELTON

Relisted for Mr. Justice Rehnquist.

Relisted
for
W.H.R.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
Stewart, J.													
White, J.													
Marshall, J.													
Blackmun, J.				✓									
Powell, J.			✓										
Rehnquist, J.													
Stevens, J.													

Court ..... Voted on ....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 80-328

Submitted ....., 19... *Announced* ....., 19...

NEW YORK

vs.

BELTON

Relisted for Mr. Justice Rehnquist.

Grant

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.		✓											
Brennan, J.			✓										
Stewart, J.			✓										
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.		✓	± Rev.										
Powell, J.			✓										
Rehnquist, J.		✓											
Stevens, J.			✓										
.....													

jpb 4/23/81

Following valid arrest of 4 occupants of a car, & with them standing outside, officer (having smelled marijuana & seen "butts" on floor), searched pockets of 5 jackets on back seat & floor of car.

NY Ct/Appls held search invalid. Under Chimel a search incident to arrest must be motivated by safety (guns) or preservation of ev. In Robinson we held an arrestee's person may be searched without suspicion (articulable) either of weapons or loss of ev - tho both would be plausible. I emphasized no expectation of privacy.

SG suggest extension of Robinson to allow search of interior of auto - thus eliminating the vast uncertainty of present rule. Peter would adhere to Chimel rule.

BENCH MEMORANDUM

TO: Mr. Justice Powell

FROM: Peter Byrne

DATE: April 23, 1981

RE: No. 80-328, New York v. Belton

Question Presented

May an officer, without a warrant but pursuant to a valid arrest, search closed containers within an automobile after the arrested persons have been removed form the automobile?

I

This case raises an issue, the resolution of which has bedeviled the Court for 60 years: upon arrest how wide an area around the person of an arrestee may a policeman search without a warrant. In United States v. Robinson, 414 U.S. 218 (1973), the Court conclusively determined that the officer may search the entire person of the arrestee. Dispute about the area around the arrestee traces back to Carroll v. United

Sec may concur

States, 267 U.S. 132 (1925). At one time, the rule was that upon arrest the officers could search "the place" where the arrest was made; thus, it was proper for officers to search an entire four room house where the arrest was made, including desk, safe, and file cabinets, United States v. Rabinowitz, 339 U.S. 56 (1950).

Today, the general rule is stated by Chimel v. California, 395 U.S. 752 (1969), which overruled Rabinowitz. A prime principle expressed in Chimel is that a warrantless search should be no broader in scope thn necessary to satisfy the interests that justify it. Id., at 762; Terry v. Ohio, 392 U.S. 1, 19 (1968). Thus, the search incident to arrest should should be only as broad as necessary to permit vindication of pertinent interests: safety of the officer during a dangerous operation and preservation of evidence that the arrestee might conceal or destroy.

> "There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' - construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.
>
> There is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs--or, for that matter, for searching through all the desk drawers or other closed or concealed areas within that room itself." Chimel, supra, 763.

There is, of course, a degree of ambiguity about how many closed containers within the room where the search is effectuated may be searched; the opinion does indicate that a desk drawer closed in front of the arrestee may be immediately

searched because it is in the grabbable area. Id. Obviously, there will be circumstances where it is difficult to say whether an area within a room is within a grabbable area. Resolution of these question, analogous to the question now before the Court, requires a sensitivity to the circumstances of the officer, who must make quick decisions while safely retaining custody of the arrestee, and the evils of too loose an interpretation of the rule. The chief evil of a broad search after arrest is that such a search is similar to a general warrant: the officer need have no clear idea of what he is looking for or where to look. The happenstance of being at a certain place when arrested gives little justification for generally searching the place. See generally United States v. Kirschenblatt, 16 F.2d 202, 203 (2d Cir. 19)(L.Hand, J.).

There are two other ingredients to the analysis, both stemming originally from Robinson, supra. First, there is the question of the diminished expectation of privacy that an arrestee is left with. Id., at 237 (Powell, J., concurring). There you wrote that once that state has intruded into the privacy of a person by taking him into custodial arrest, the additional intrusion of a search of the person is so small that a full search of the person is justified "even if that search is is not narrowly limited by the twin rationales of seizing evidence and disarming the arrestee."

Does this rationale help decide the scope of the area around the arrestee that may be searched? I think not. While arrest diminishes the arrestee's reaonable expectation of

privacy in his own person, of which the state takes custody, it does not diminish his privacy in his papers and effects outside his immediate control. While the arrest may prevent the arrestee from using his possessions himself, it does not give others license to use them. If it did, his possessions wherever situated would be open to inspection. Thus, the diminshed sense of privacy in one's own person caused by arrest is irrelevant to the arrestee's other privacy interests.

Second, Robinson urged that an officer always could search the person of the arrestee; the question of whether one of the justifications for the search existed in fact need not be litigated in every case. The Court emphasized that the offcier must make a quich judgment under pressure, and the propriety of the search of an individual should "not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence of evidence would in fact be found upon the person of the suspect." 414 U.S., at 235. I think this point is quite pertinent to the scope of the area subject to the search incident to arrest. It would be intolorable to require the officer to make nice calculations about the probability that an arrestee would reach for a certain drawer or briefcase for a weapon in a tense situation, subject to being second guessed in court. The officer must be given some leaway and he should be guided by a clear rule, like allowing him always to search the person of the arrestee, to the extent feasible. The problem is not to swallow the salutary restraint in making a rule to cover

the myriad circumstances and places where arrests occur. This problem is vividly illustrated by the facts of this case. After stating them I will address the complications created here by Yet Arkansas v. Sanders, 442 U.S. 753 (1979).

II

In this case The officer stopped a car for speeding on a lonely road. Four men were inside and the offcer detected the oder of burnt marijuana. He ordered them out, patted them down, and ordered themn to stand apart near the car. He then returned to examine a suspicious envelope on the floor of the car and found marijuana therein. He formally placed the indivuals under Under arrest arrest, read them their Miranda rights, and searched their persons. He then proceeded to seach the interior of the car. He found jackets in the back seat; in the zippered pockets of one he found cocaine and resp's ID card.

The N.Y. App. Div. upheld the search. It held that the search was jusitifed as a search incident to arrest, in that the search of the "immediate area" where the search occurred was "reasonable in scope, intensity and duration. The N.Y. Ct. App. reversed. It relied on a statement from United States v. Chadwick, 433 U.S. 1, 15 (1977): "Once ... oficers have reduced luggage or other personal property not immediaetly associated with the person of the arrestee to their exclusive control and their is no longer any danger that the arrestee might gain access to the property to seize a weapon or destriy evidence, a search of that property is no longer an incident of the arrest." The ct then held that 1) the jacket is a private

receptacle desrerving the same protection as a suitcase; 2) "[o]nce defendant has been removed from the automobile and placed under arrest, a search of the interiors of a private receptacle safely within the exclusive custody and control of the police may not be upheld as incident to his arrest." The dissenter simply disagreed with the majority about whether there was an exigncy jusitfying an immediate search of the jacket pockets; he emphaisizes that there were 4 arrestees standing proximate to the car and one officer to control them. "The situation was still fluid, and neither the suspects themselves nor their property had as yet been reduced to the exclusive and certain control of the police." Thus, it would appear that the majority and the dissent below agreed on the principle to be applied, but disputed the characterization to give the facts: was there a reasonable chance that one of the suspects could reach into the car to remove soething from the jacket poceket.

It will be observed that the problem presened here is created by Chadwick and Sanders. If the police could open private containers found in a car they could have searhced the pockets here without a warrant regardless of the scope of the privilege to seacrh incident to arrest. Nonetheless, as my memo on Robbins perhaps indicates, I think that those decisions are plainly compelled by the policies of the Fourth Amendment.

The first holding of the N.Y. Ct. of App. open to question, but not addressed by the parties is whether the arrest quite simply extinguished resp's privacy interest in the

If jacket had had been worn at time

pockets of his jacket. If there had been no arrest, I would easily conclude that resp has the same privacy interest in his zippered pocket that he would have in a suitcase or a wrapped and sealed package, see my Robbins memo. However, it is plain that if resp had been wearing the jacket at the time of the arrest the officer could have searched the zippered pocket without further ado. See Robinson, supra; United States v. Edwards, 415 U.S. 800 (1974). It is arguable that his loosely lying jacket at the scene of the arrest, even if physically inaccessible at the time of the seacrh because within the car, is no less open to immediate seacrh. In the language of Chadwick, the jacket is subject to search upon the same terms as the aresstee's person becuase so "immediately associated with [his] person." Upon consideration, I would reject an attempt to treat clothing as a class of containers different from luggage. The truely salient fact in each situation is whether the container is within the reach of the arrestee. If the arrestee requests his jacket, it may be searched at that time, of course, because the rationales for search incident to arrest become pertinent.

Yes

?

It might be argued that upon arrest of the drivers of a car, the car and its entire contents are subject to imediate search. This would mark a return to the rule of Rabinowitz as least as it pertains to cars. Significantly, Sanders and Chadwick tend to refute the argument that their basic protection for containers should not apply during arrest. In both those cases, the luggage was seized by the police during

In Sanders, luggage[8] was opened at time of arrest

an arrest. A warrant was required by the Court in both instances. In Chadwick, this was an easy question, since the luggage there was not opened until 10 days after the arrest; no exigency jusitifed that search. Nonetheless, this seems potentially of limited import given the rule of United States v. Edwards, supra, inexplicably not cited in Chadwick, that clothing subject to search at the time of the arrest can later be searched. Moreover, in Sanders, the luggage was seized and opened contemporaneous with the arrest. The Court noted it was not considering the search of luggage pursuant to arrest, but went on to note that "it appears that the bag was not within [resp's] immediate control at the time of the search." 442 U.S., at 764, n. 11. While both cases are potentially distinguishable, they give no indication that containers outside the arrestee's immediate control are subject to warrantless search.

If the only issue in this case was whether the arrestees could have reached the jacket, the case would not be certworthy. The general rule of Chimel would apply and the only issue would be whether the N.Y. Ct. of App. struck the right balance between protection of privacy and of the necessities of law enforcement in this particular fact situation. Petr and resp do argue about this at some legnth. The state repeats the arguments of the dissenter and contends that necessary discretion of the officer was unduly confined. The situation was "fluid", there were four suspects and one officer, etc. Resp repeats the arguments of the majority and emphasizes that

the search was plainly not conducted to prevent resp from grabbing a weapon or destructible evidence but to look for more incriminating evidence. This question seems essentially unimportant because the circumstances of a search would vary so much. I would tend to agree with the majority below because it seems plain that the search was conducted to gain evidence, not to prevent its desruction.

The U.S. offers another resolution of the case. It suggests that the scope of the area around the arrestee subject to warrantless search should not be decided by asking what area is within the arrestee's immediate control. Such a rule confronts the officer with a difficult calculation likly to later be subject to second guessing by a court. Also, the "immediate control" rule would preclude the search of almost all containers because the officer will secure "immediate control" of the container before beginning to open it. It would be better to adopt a rule unrelated to the particular exigencies of a situation but tailored to the spatial and temporal proximity of the search to the arrest, just as the Court did in Robinson when it held that the person of an arrestee may be searched without inquiry into the actual exigencies. The SG says: "We submit it is reasonable under the Fourth Amendment to permit the police, when a lawful arrest has occurred, to conduct a warrantless search of a container at the place of arrest if the search is substantially contemporaneous with the arrest and is confined to those containers within the

arrestee's potential reach at the time of the arrest." Brief at 12.

Thge SG's rule has a number of advatages. It is roughly consistent with Chimel. It replaces its focus on the reasons for the warrantless search with a spatial chart generally responsive to those reasons. This is consistent with Robinson. In Chimel, the Court said officers could search a desk drawer immediately in front of the arrested person, but did not ~~this~~ this power to a suspicion by the officer that the arrestee would rech into it for a waepon or evidence. The rule would be easier to administer both by the officer and the court becaus eht factual question is easier. There is some plausibility to the contention, not made by the government, that the loss of privacy the arrestee has in his person upon arrest should extend to some area beyond his fingertips. Sanders may be distinguished because the suitcase there was taken from the trunk of the car rather than the interior.

There are disadvantages. The rule would in practice eliminate any warrant protection for containers in the interior of a car when a passenger or driver is arrested, because all such luggage is within the arrestee's potential reach. Also, it would give the police carte blanche to conduct a general search, albeit within a limited time and place. This would encourage the practice of arresting a suspect at a location where you wish to conduct a search.

III

Although the SG's view is plausible, I would retain the Chimel rule with one elaboration. The Chimel rule focusses on the reason we permit an exception to the warrant requirement in these circumstances. The exception is narrowly drawn to allow for valid exigencies associated with arrest. I would hold that an officer may search any containers "potentially grabbable" by the arrestee if he has a reasonable, good faith belief that immediate search is necessary (1) to recover a weapon or (2) prevent the destruction of evidence. In my view, this limits the search to its proper scope, but gives the officer sufficient leaway that he may take the steps he believes are necessary to secure the scene without having to balance his safety against the threat that a court will suppress the evidence he finds. This rule is entirely consistent with Chadwick and Sanders.

Peter's "Rule"

Applied to the facts of this case, my test would indicate that the judgment of the N.Y. Ct of App should be affirmed. A reading of the officer's testimony at the suppression hearing strongly suggests that jacket was searched in a general hunt for evidence of drug use rather than to secure the scene of the arrest. Once the scene is secure there is no further law enforcement interest in generally searching the area without a warrant. Nonetheless, my emphasis on the reaonable subjective judgment of the officer about what steps are required, rather than an "objective", post-hoc assessment of whether the search was necessary, will give officers more disretion and reduce the amount of suppressed evidence.

80-328 NEW YORK V. BELTON

Argued 4/27/81

Harvey (Petr - New York)

None of 4 occupants admitted to ownership of jacket & so all 4 were arrested. An I.D. card later identified Resp. as owner.

No Q here as to lawful stop & lawful search of Resp - including control of area within reach.

Altho the 4 men were out of car, there was only one officer w/ one pr. of cuffs. Officer could have been overpowered. Thus he was justified in checking for weapons.

Officer later took all 4 men to Station.

Leading cases on arrest incident to search include Draper v U.S. 358 U.S. 307 (search of bag caused by arrestee), Robinson (drugs of auto - cigarette package in pocket)

Re. "search incident to arrest" we don't get to expectation of privacy rationale*. Regardless of expectation, search is valid

---

* But see my op. in ~~Robert~~ Robinson.

Frey ~~Wallace~~ (SG)

A search incident to arrest must meet "spatial + temporal" requirements - i.e. physically located where person ~~arrest~~ arrestee reasonably could get to it., & also in point of time is associated with process of arrest. See Draper v U.S

Neither Chadwick nor Sanders involved a search incident to arrest in above sense.

Wallace doesn't include extend inside of a car. Q is whether it was w/in reach of driver, if he is person arrested. (I think this is difficult position because

Interior of car is within spatial area. (If jackets had not been searched, what should officer do? He was alone)

Frey's view

Cases in area of search incident to arrest have been fairly consistent Sanders & Chadwick were not incident to arrest case. Chadwick search was not contemporaneous with arrest, ~~so~~ - thus not "temporal". Sanders would have flunked "spatial" test as luggage was in trunk.

Cambria (Rest) (urges a "grabable" test)

I'm surprised by this → { Agreed officer could open glove compartment. Oppelman

No claim on this case of probable cause to search jacket. Indeed, if officer had sought a warrant, there would have been no probable cause.

~~The actual~~

"No need to depart from Draper" (The actual issue in Draper was whether there was probable cause to arrest. It was not challenged that if arrest was valid, the search of zipper bag carried by Draper could be searched)

In Robinson, WHR drew line on "what was w/in reach" of arrestee searched.

Cambria argument is that test is "grabable reach". (This is a slippery fact quest. ~~The~~ What constitutes "reach" will vary widely & so will judgment of officers. Moreover, ~~so w/~~ where jacket was could vary - & "grabability" could vary depending on whether person arrested was in or out of car.

lfp/ss 4/29/81

File

80-328 Belton

Miscellaneous Notes on Cases

Chambers v. Maroney, 399 U.S. 42.

An automobile was stopped and occupants arrested on probable cause and the car was driven to the police station. There "in the course of a thorough search of the car, the police found concealed in a compartment under the dashboard" pistols and other evidence. p. 44.

BRW, writing for the Court, noted that since the search occurred "sometime after the arrest" it was not a "search incident to arrest". There was "probable cause to believe that the robbers, carrying guns . . had fled the scene in a light blue station wagon". There was "probable cause to search the car for guns and stolen money", just as there was to stop the car and arrest the occupants - 47, 48. BRW wrote:

> "The Court has long distinguished between an automobile and a home of office." (Citing Carroll v. United States, 267 U.S. 132, at 153-154, 155, 156.

BRW stated that "the search of an automobile on probable cause proceeds on a theory wholly different from that justifying the search incident to an arrest" (p. 49). He then quoted from Carroll as follows:

> "The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizure officer has for belief that the contents of the automobile offend against the law. 267 U.S., at 158, 159."

Although recognizing that "every conceivable circumstance" does not justify an auto search, BRW further observed that "the circumstances that furnish probable cause to search a particular automobile for a particular article are most often unforeseeable." p. 51.

Justice Harlan, dissenting, distinguished between search incident to arrest and the facts in Chambers. He said:

> "The Court has recognized that an arrest creates an emergency situation justifying a warrantless search of the arrestee's person and of the area from within which he might gain possession of a weapon or destructible evidence." Citing Chimel and Terry.

Justice Harlan went on to say that:

> "Where officers have probable cause to search a vehicle on a public way, a further limited exception to the warrant requirement is reasonable because 'the vehicle can be quickly moved out of the locality or jurisdiction'". Carroll v. U.S. Because the officers might be deprived of valuable evidence if required to obtain a warrant before effecting any search or seizure, I agree with the Court that they should be permitted to take the steps necessary to preserve evidence and to make a search possible."

lfp/ss 4/29/81

80-328 Belton

Miscellaneous Notes on Cases

Chambers v. Maroney, 399 U.S. 42.

An automobile was stopped and occupants arrested on probable cause and the car was driven to the police station. There "in the course of a thorough search of the car, the police found concealed in a compartment under the dashboard" pistols and other evidence. p. 44.

BRW, writing for the Court, noted that since the search occurred "sometime after the arrest" it was not a "search incident to arrest". There was "probable cause to believe that the robbers, carrying guns . . had fled the scene in a light blue station wagon". There was "probable cause to search the car for guns and stolen money", just as there was to stop the car and arrest the occupants - 47, 48. BRW wrote:

> "The Court has long distinguished between an automobile and a home of office." (Citing Carroll v. United States, 267 U.S. 132, at 153-154, 155, 156.

BRW stated that "the search of an automobile on probable cause proceeds on a theory wholly different from that justifying the search incident to an arrest" (p. 49). He then quoted from Carroll as follows:

> "The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizure officer has for belief that the contents of the automobile offend against the law. 267 U.S., at 158, 159."

Although recognizing that "every conceivable circumstance" does not justify an auto search, BRW further observed that "the circumstances that furnish probable cause to search a particular automobile for a particular article are most often unforeseeable." p. 51.

Justice Harlan, dissenting, distinguished between search incident to arrest and the facts in Chambers. He said:

> "The Court has recognized that an arrest creates an emergency situation justifying a warrantless search of the arrestee's person and of the area from within which he might gain possession of a weapon or destructible evidence." Citing Chimel and Terry.

Justice Harlan went on to say that:

> "Where officers have probable cause to search a vehicle on a public way, a further limited exception to the warrant requirement is reasonable because 'the vehicle can be quickly moved out of the locality or jurisdiction'". Carroll v. U.S. Because the officers might be deprived of valuable evidence if required to obtain a warrant before effecting any search or seizure, I agree with the Court that they should be permitted to take the steps necessary to preserve evidence and to make a search possible."

Affirm - 4
Reverse - 4

CJ - Passed

80-328 New York v. Belton Conf. 4/29/81

The Chief Justice Passed

Mr. Justice Brennan Affirm

No longer any danger of arrest to the article. Thus controls.

Mr. Justice Stewart Reverse

This is a def. case from Robbins. Only issue here is scope of search incident to arrest.

When persons are arrested in a car, the permissible scope of search is interior of auto - when it was a movable auto. No of persons & no of police are immaterial.

Plain view is immaterial: the test is permissible area of search incident to arrest. Probably would include trunk.

No probably cause is needed for any particular object when search is incident to arrest.

Mr. Justice White Affirm

Doesn't agree with 11th Cir/appr or with W. J. B. that once officer gains control, there can be no search.

But can't go as far as Potter would. What if green package was on back seat.

Would agree that any wearing apparel in car can be searched.

Potter's view is broader than auto search.

Would stay with Draper

Mr. Justice Marshall Affirm - Lankford

Are sending for record. Something peculiar about facts - one officer approaching 4 people at night not in country.

Mr. Justice Blackmun Reverse

could ~~be~~ agree with Potter.

Mr. Justice Powell Reverse

Search here was incident to arrest. Most relevant cases are Chimel & Robinson

I am close to Potter.

Merit in bright line. Interior of car is finite area. Little expectation of privacy.

Robinson held can search person & anything w/in her control.

Interior of car normally w/in control of occupants.

Mr. Justice Rehnquist Reverse

Agrees with P. S. & L. F. P.

Mr. Justice Stevens ~~Reverse~~ Affirm

Rule of P S would apply in Robbins also applies here.

This search can't be justified under prior cases involving arrest incidental to search

No difference bet. interior & trunk. Contraband & guns usually in trunk.

But if Court decides Robbins as we have voted, that would control & J. P. S. will vote to affirm here.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 6, 1981

File

The story behind this letter is that the C.J. did not understand P.S.'s position, & talked to me twice about these cases before P.S. and I met with the Chief on the 6th.

Re: 80-148, Robbins v. California
80-328, New York v. Belton

MEMORANDUM TO THE CONFERENCE

I have reviewed all the relevant materials and a great many cases -- because, as I said at Conference, we are at an important "crossroad" where the courts, and police, need clearer guidance than we have probably given them.

Whether that is true or not, I am now persuaded that Potter's position -- shared by others -- that once probable cause is established for the arrest of any occupant of a vehicle, the interior of that vehicle in which the occupants are found, and all that is found in that interior, may be searched. This means, for me, jackets, pockets, packages, containers, glove compartments, etc. It does not include the trunk or the area under the hood. What the application to a truck or a van will be remains open. (For me, the cab and carrying area of such vehicles is the "interior".)

This leads me to vote to reverse in Robbins and reverse in Belton. Potter will take these cases.

Given the time of the year and Bill Brennan's vote in Lehman v. Nakshian (80-242), Bill has agreed to take it as "least persuaded". As of now, his vote would be dispositive.

A revised assignment list is enclosed, with 80-802, National Gerimedical Hospital and Gerontology Center v. Blue Cross of Kansas City being reassigned to Lewis. Why?!

Given the uncertainty of one or two other cases, further reassignments could evolve.

Regards,

WEB

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 29 MAY 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-328

State of New York, Petitioner, v. Roger Belton. | On Writ of Certiorari to the Court of Appeals of New York.

[June —, 1981]

JUSTICE STEWART delivered the opinion of the Court.

When the occupant of an automobile is subjected to a lawful custodial arrest, does the constitutionally permissible scope of a search incident to his arrest include the passenger compartment of the automobile in which he was riding? That is the question at issue in the present case.

I

On April 9, 1978, Trooper Douglas Nicot, a New York State policeman driving an unmarked car on the New York Thruway, was passed by another automobile travelling at an excessive rate of speed. Nicot gave chase, overtook the speeding vehicle, and ordered its driver to pull it over to the side of the road and stop. There were four men in the car, one of whom was Roger Belton, the respondent in this case. The policeman asked to see the driver's license and automobile registration, and discovered that none of the men owned the vehicle or was related to its owner. Meanwhile, the policeman had smelled burnt marihuana and had seen on the floor of the car an envelope marked "Supergold" that he associated with marihuana. He therefore directed the men to get out of the car, and placed them under arrest for the unlawful possession of marihuana. He patted down each of the men and "split them up into four separate areas of the

Renewed
I'll
join
& probably
write a
brief P.C.

Thruway at this time so they would not be in physical touching area of each other." He then picked up the envelope marked "Supergold" and found that it contained marihuana. After giving the arrestees the warnings required by *Miranda* v. *Arizona*, 384 U. S. 436, the state policeman searched each one of them. He then searched the interior of the body of the car. On the back seat of the car he found a black leather jacket belonging to Belton. He unzipped one of the pockets of the jacket and discovered cocaine. Placing the jacket in his automobile, he drove the four arrestees to a nearby police station.

Belton was subsequently indicted for criminal possession of a controlled substance. In the trial court he moved that the cocaine the trooper had seized from the jacket pocket be suppressed. The court denied the motion. Belton then pleaded guilty to a lesser included offense, but preserved his claim that the cocaine had been seized in violation of the Fourth and Fourteenth Amendments. See *Lefkowitz* v. *Newsome*, 420 U. S. 283. The Appellate Division of the New York Supreme Court upheld the validity of the search and seizure, reasoning that "[o]nce defendant was validly arrested for possession of marihuana, the officer was justified in searching the immediate area for other contraband." 68 App. Div. 2d 198, 201.

The New York Court of Appeals reversed, holding that "[a] warrantless search of the zippered pockets of an unaccessible jacket may not be upheld as a search incident to a lawful arrest where there is no longer any danger that the arrestee or a confederate might gain access to the article." 50 N. Y. 2d 447, 449. Two judges dissented. They pointed out that the "search was conducted by a lone peace officer who was in the process of arresting four unknown individuals whom he had stopped in a speeding car owned by none of them and apparently containing an uncertain quantity of a controlled substance. The suspects were standing by the side of the car as the officer gave it a quick check to confirm

his suspicions before attempting to transport them to police headquarters . . ." *Id.*, at 545. We granted certiorari to consider the constitutionally permissible scope of a search in circumstances such as these. — U. S. —.

II

It is a first principle of Fourth Amendment jurisprudence that the police may not conduct a search unless they first convince a neutral magistrate that there is probable cause to conduct it. This Court has recognized, however, that "the exigencies of the situation" may sometimes make exemption from the warrant requirement "imperative." *McDonald* v. *United States*, 335 U. S. 451, 456. Specifically, the Court held in *Chimel* v. *California*, 395 U. S. 752, that a lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant of the person arrested and of the immediately surrounding area. Such searches have long been considered valid because of the need "to remove any weapons that [the arrestee] might seek to use in order to resist arrest or effect his escape" and the need to prevent the concealment or destruction of evidence. *Id.*, at 763.

The Court's opinion in *Chimel* emphasized the principle that, as the Court had said in *Terry* v. *Ohio*, 392 U. S. 1, 19, "The scope of [a] search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." Quoted in *Chimel*, *supra*, at 762. Thus while the Court in *Chimel* found "ample justification" for a search of "the area from within which [an arrestee] might gain possession of a weapon or destructible evidence," the Court found "no comparable justification . . . for routinely searching any room other than that in which an arrest occurs—or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself." *Id.*, at 763.

Although the principle that limits a search incident to a lawful custodial arrest may be stated clearly enough, courts

have discovered the principle difficult to apply in specific cases. Yet, as at least one commentator has pointed out, the protection of the Fourth and Fourteenth Amendments "can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement." LaFave, "Case-by-Case Adjudication" versus "Standardized Procedures": The Robinson Dilemma, 1974 Sup. Ct. Rev. 127, 142. This is because

> "Fourth Amendment doctrine, given force and effect by the exclusionary rule, is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophiscated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.'" *Id.*, at 141.

In short, "A single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Dunaway* v. *New York*, 442 U. S. 200, 213–214.

So it was that, in *United States* v. *Robinson*, 414 U. S. 218, the Court hewed to a straightforward rule, easily applied, and predictably enforced: "[I]n the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement, but it is also a 'reasonable' search under that amendment." In so holding, the Court rejected the suggestion "that there must be litigated in each case the issue of whether or not there was present one of the reasons

supporting the authority for a search of the person incident to a lawful arrest." 414 U. S. at 235.

But no straightforward rule has emerged from the litigated cases respecting the question involved here—the question of the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupants. The difficulty courts have had is reflected in the conflicting views of the New York judges who dealt with the problem in the present case, and is confirmed by a look at even a small sample drawn from the narrow class of cases in which courts have decided whether, in the course of a search incident to the lawful custodial arrest of the occupants of an automobile, police may search inside the automobile after the arrestees are no longer in it. On the one hand, cases such as *United States* v. *Sanders*, 631 F. 2d 1309 (CA8 1980); *United States* v. *Dixon*, 558 F. 2d 919 (CA9 1977); and *United States* v. *Frick*, 490 F. 2d 666 (CA5 1973), have upheld such warrantless searches as incident to lawful arrests. On the other hand, cases such as *United States* v. *Benson*, 631 F. 2d 1336 (CA8 1980), and *United States* v. *Rigales*, 630 F. 2d 364 (CA5 1980), have held such searches constitutionally invalid.[1]

When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority. While the *Chimel* case established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee, courts have found no workable definition of "the area within the immediate control of the arrestee" when that area arguably includes the interior of an automobile and the arrestee is its recent occupant. Our reading of the cases suggests the generalization that articles inside the relatively

[1] The state court cases are in similar disarray. See, *e. g.*, *Hinkel* v. *Anchorage*, 618 P. 2d 1069 (Alaska 1980), and *Ulesky* v. *Florida*, 379 So. 2d 121 (Fla. App. 1979).

narrow compass of the passenger compartment of an automobile are in fact commonly, even if not inevitably, within "the area into which an arrestee might reach in order to grab a weapon or evidentiary item." *Chimel, supra*, at 763. In order to establish the workable rule this category of cases requires, we read *Chimel*'s definition of the limits of the area that may be searched in light of that generalization. Accordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile,[2] he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.[3]

It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach.[4] *United States* v. *Robinson, supra; Draper* v. *United States*, 358 U. S. 307. Such a container may, of course, be searched whether it is open or closed, since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have. Thus, while the Court in *Chimel* held that the police could not search all the drawers in an arrestee's house simply because the police had arrested him at home,

? ? interest is diminished

[2] The validity of the custodial arrest of Belton has not been questioned in this case. Cf. *Gustafson* v. *Florida* 424 U. S. 260, 266 (concurring opinion).

[3] Our holding today does no more than determine the meaning of *Chimel*'s principles in this particular and problematic content. It in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests.

[4] "Container" here denotes any object capable of holding another object. It thus includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like. Our holding encompasses only the interior of the passenger compartment of an automobile and does not encompass the trunk.

the search therefore cannot be viewed as incidental to the arrest or as justified by any other exigency." 433 U. S. at 15. And in the *Sanders* case, the Court explicitly stated that it did not "consider the constitutionality of searches of luggage incident to the arrest of its possessor. See, *e. g.*, *United States* v. *Robinson*, 414 U. S. 218 (1973). The State has not argued that respondent's suitcase was searched incident to his arrest, and it appears that the bag was not within his 'immediate control' at the time of the search." 442 U. S., at 764, n. 11. (The suitcase in question was in the trunk of the taxicab. See n. 4, *supra*.)

III

It is not questioned that the respondent was the subject of a lawful custodial arrest on a charge of possessing marihuana. The search of the respondent's jacket followed immediately upon that arrest. The jacket was located inside the passenger compartment of the car in which the respondent had been a passenger just before he was arrested. The jacket was thus within the area which we have concluded was "within the arrestee's immediate control" within the meaning of the *Chimel* case. The search of the jacket, therefore, was a search incident to a lawful custodial arrest, and it did not violate the Fourth and Fourteenth Amendments. Accordingly, the judgment is reversed.

It is so ordered.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 1, 1981

Re: 80-328 - New York v. Belton

Dear Potter:

In stating the question in the first sentence of your opinion, and also in stating your conclusion at the end of the opinion, you use the term "custodial arrest." Is there a distinction of constitutional significance between a "custodial arrest" and an ordinary arrest? In other words, is it within the power of the State or local community to direct every law enforcement officer to bring every traffic offender into the police station for purposes of booking and setting a hearing date? I am inclined to think that the State has such power and that your opinion therefore extends, at least potentially, to every traffic arrest.

I share your view that we need clearly defined rules for the guidance of police officers and the public, but because I believe an officer's right to open a passenger's briefcase must require something more than a speeding infraction by the driver of the car, I will not be able to join your opinion.

Respectfully,

Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 1, 1981

Re: No. 80-328 New York v. Belton

Dear Potter:

While I agree with the result your opinion reaches in this case, I may well write separately.

Sincerely,

Justice Stewart

Copies to the Conference

Belton 1- Ashe

File

Not placed in final form & not circulated.

lfp/ss 6/2/81

80-328 State of New York v. Belton

JUSTICE POWELL, concurring. I wanted to write

This is one of many cases involving application of the Fourth and Fourteenth Amendments to automobile searches. Although the principles remain constant, we often have recognized the diminished expectation of privacy with respect to what one usually carries in an automobile. In this case, the Court properly relies on Terry v. Ohio, 392 U.S. 1 (1970), Chimel v. California, 395 U.S. 752 (1971); and United States v. Robinson, 414 U.S. 218 (1973) for the applicable general principles. Yet, the setting in which the principles were applied differed. In Chimel, the scope of a search incident to an arrest in a residence was at issue. In Terry, there was a stop of an individual on a street for a pat down. Robinson was the only one of these cases involving an automobile. As we said in United States v. Martinez-Fuertes, 428 U.S. 543, at 561, (1976), "one's expectation of privacy in an automobile and of freedom in its operation are significantly different from

the traditional expectations of privacy and freedom in one's residence." See United States v. Oritz, 422 U.S. 891, at 896, n. 2 (1975); Chambers v. Maroney, 399 U.S. 42, at 48 (1970).

In Arkansas v. Sanders, 442 U.S. 753, decided only two years ago, after citing Carroll v. United States, 267 U.S. 132, 153, we observed:

> "There are essentially two reasons for the distintion between automobiles and other private property. First, as the Court repeatedly has recognized, the inherent mobility of automobiles often makes it impracticable to obtain a warrant. See, e.g., United States v. Cnadwick, 453 U.S., at 12; Chambers v. Maroney, 399 U.S., at 49-50; Carroll v. United States, supra. In addition, the configuration, use and regulation of automobiles often may dilute the reasonable expectation of privacy that exists with respect to differently situated property. See Rakas v. Illinois, 439 U.S. 128, 155 (1978)(Powell, J., concurring); United States v. Chadwick, supra; South Dakota v. Opperman, 428 U.S. 364, 368 (1978); Cardwell v. Lewis, 417 U.S. 583, 590 (1974)(plurality opinion); Cady v. Dombrowski, 413 U.S. 433, 441-442 (1973); Almeida-Sanchez v. United States, 413 U.S. 266, 279 (1973) (Powell, J., concurring."

Automobiles are driven and parked on public streets and in public places; they stop at traffic lights, are subject to being stopped for traffic violations, and friends and even strangers often are invited to ride in them. Moreover, the interior of an automobile is a finite area customarily within the complete control of the driver or passengers within it.

In sum, in applying the general principles of search and seizure law, courts also properly take into consideration the "distinction between automobiles and other private property". Arkansas v. Sanders, id., at 753.*

If I join the opinion of the Court.

*Cf. Robbins v. California, No. 80-148, decided today. There, we recognized the distinction between the "automobile exception" applicable in certain circumstances to the search of an automobile stopped with probable cause, and search of an automobile incident to a lawful arrest. There may be, however, a diminished expectation of privacy in either case - depending on the circumstances.

June 2, 1981

80-328 New York v. Belton

Dear Potter:

Please join me.

I may write briefly to emphasize the diminished expectation of privacy with respect to what one usually carried in an automobile.

Sincerely,

Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 2, 1981

RE: Nos. 80-328 New York v. Belton
80-148 Robbins v. California

Dear Potter:

I'll undertake a dissent in Belton, No. 80-328, and I may have a few suggestions in Robbins.

Sincerely,

Bill

Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1981

Re: No. 80-328 - State of New York v. Belton

Dear Potter:

I await the dissent.

Sincerely,

T.M.

Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1981

Re: 80-328 - New York v. Belton

Dear Potter,

I shall await the dissent.

Sincerely yours,

Justice Stewart

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 10, 1981

Re: No. 80-328 - New York v. Belton

Dear Potter:

Please join me.

Sincerely,

HAB.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 10, 1981

RE: 80-328 - New York v. Belton

Dear Potter:

I join.

Regards,

WEB

Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 16, 1981

Re: No. 80-328 - New York v. Belton

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
Join PS 6/10/81	will dissent 6/2/81	1st draft 5/29/81 2nd draft 6/1/81 3rd draft 6/5/81	await dissent 6/3/81	await dissent 6/2/81	Join PS 6/10/81	Join PS 6/2/81	will write separately 6/1/81	typed draft - con. in judgment 6/23/81
	typed draft 6/15/81		dissent typed draft 6/16/81	join WJB 6/16/81			typed draft concurring opinion 6/5/81 1st printed draft 6/9/81	
	1st printed draft 6/19/81		2nd draft 6/18/81	join BRW 6/17/81				
				80-328 New York v. Belton				