10-1983

United States v. Jacobsen

Lewis F. Powell Jr.

After there was probable cause to believe a substance (found in a broken Fed. Express package) & DEA agents conducted a "field test" - on the ground - to determine whether suspicions were justified.

CA8's decision is wrong. It relied on our divided decisions in Walter v U.S. (film discovered when a broken parcel arrived)

PRELIMINARY MEMORANDUM

We should Grant to clarify Walter - a case I thought was wrongly decided here

March 4, 1983 Conference
List 1, Sheet 2

No. 82-1167-CFY

UNITED STATES

v.

JACOBSEN, et ux.

Cert to CA8
(Lay [CJ], Heaney, Becker [Sr.DJ, conc.])

Federal/Criminal

Timely (w/extn)

1. SUMMARY: Where a search by a private parcel carrier's employees of a damaged package has resulted in the employees' observation a white powder contained in the package, and the employees then turn over the package, with the white substance in plain view, to law enforcement officers: whether the officers must obtain a search warrant before conducting a chemical field test to determine whether

Grant. This is not a summary reversal; since there →

the substance is cocaine.

2. FACTS AND PROCEEDINGS BELOW: Employees of Federal Express, a private company that delivers parcels, discovered that a parcel entrusted to them for delivery to one D. Jacobs, Apple Valley, Minn., had been damaged in transit. Pursuant to company policy, the employees opened the package to view its contents. Inside, they discovered a 10 inch cardboard tube, sealed with "duct tape," cushioned by wads of newspaper. The employees opened the tube, and discovered that it contained a packet of white powder enclosed in four clear plastic baggies. Suspecting that the powder was a controlled substance, they contacted the DEA. They reinserted the plastic packet in the cardboard tube, but did not reseal the tube. The white substance remained visible.

When the DEA agent arrived, he removed the plastic bags from the tube and extracted from the packet a small portion of the powder. He tested it chemically on the spot, and determined from the chemical field test test that the substance was cocaine. He also checked by computer the address on the package, and determined that it was resps'. Resp Bradley Jacobsen's name appeared on several DEA reports suspecting him of trafficking in cocaine. The DEA agent obtained a warrant to search Jacobsen's residence on the basis of the field test and the DEA reports. He then re-wrapped the package, and dressed in civilian clothes delivered the package to Jacobsen's residence. An hour later, he returned to make the search with other DEA agents and the warrant.

Bradley Jacobsen answered the door. The agents announced that they had a warrant to search. Jacobsen slammed the door in their face, yelling "It's the police -- flush it!" The police broke down

the door, and seized the remains of the cocaine, which included paraphernalia, cocaine traces, and the burned remnants of the package that had earlier been delivered. Jacobsen and his wife Donna were arrested. Both were charged with a single count of possession with intent to distribute cocaine and Bradley was charged with assault on a federal officer. The DC (D. Minn. MacLaughlin) denied resps' suppression motion and permitted the seized materials to be introduced against them. They were convicted on an all counts.

3. DECISION BELOW: The CA8 reversed, relying on Walter v. United States, 447 U.S. 649 (1980). In Walter, a private carrier delivered a package to the wrong company. Employees of the company opened the package, and discovered a number of film boxes purporting to contain sexually explicit movies. They opened some of the boxes and held the film up to the light, but could not see what they depicted. They then contacted the FBI, which took the films back to headquarters and screened them. Determining that they were obscene, they had them delivered, arrested the correct addressees, and introduced the films in evidence against them. This Court reversed the conviction, finding that the FBI needed a warrant to screen the films, even though they had come into government possession lawfully. JUSTICE STEVENS' plurality opinion, said CA8, found that projection of the films was a significant expansion of the search that had been conducted previously by a private party. Therefore, absent any exigency, it could only be undertaken with a warrant.

Applying Walter to this case, the CA8 said:

> "The DEA agents' extension of the private search precisely parallels that in Walter. In both cases, viewing

> the objects with unaided vision produced only an inference of criminal activity. In both cases, government agents went beyond the scope of the private search by using mechanical or chemical means to discover the hidden nature of the objects. The governmental activity represents a significant extension of the private searches because it revealed the content of the films in Walter and, here, the composition of the powder. In the absence of exigent circumstances, which the government does not allege, we hold the agents were required to obtain a warrant authorizing the taking of samples and analysis thereof." Pet. App. 6.

The CA8 acknowledged that, "[i]n almost identical circumstances," the CA6 held that a warrant was not required to conduct a chemical analysis. United States v. Barry, 673 F.2d 912, 920 (CA6 1982), cert. denied, No. 81-6942 (Oct. 12, 1982). The CA8 rejected Barry's contention that Walter should be understood as a First Amendment case.

The chemical testing was necessary to obtaining the warrant to search resps' home, and therefore the search and everything obtained thereby was fruits of an unlawful search.

Sr. DJ Becker concurred, finding Walter to be controlling, although he said he generally agreed with the views of the four dissenters in that case.

4. CONTENTIONS: On the strength of the conflict with Barry, its assertion that the CA8 decision is plainly wrong, and its claim that reasonable law enforcement efforts will be unduly burdened by this decision, the SG requests a grant. The substance had lawfully come into the possession of the law enforcement agents, and when it was delivered it was in plain view. The chemical test to which the substance was subjected was capable of revealing only this: whether the substance was cocaine. Surely in these circumstances, the test invaded no reasonable privacy expectations. The decision casts a cloud over the legality of all field testing for narcotics, since in a

search incident to arrest, or a normal search based upon a warrant, the officer does not have a warrant to test chemically any seized materials.

For these reasons, Walter is distinguishable. Viewing a film discloses far more information than a chemical test of a white powder -- a film may reveal much about the ideas and attitudes of the person who made it and the recipient. Moroever, the opinion of JUSTICE STEVENS, with whom Justice Stewart joined, did rely at least in part on the fact that First Amendment concerns were there implicated.

Field tests are important to law enforcement; in many cases, requiring a warrant will unduly delay the progress of an investigation.

Resps argue that the decision below is compelled by Walter, and therefore cert. should not be granted. Walter stands for the proposition that the police may not, without a warrant or exigent circumstances, go beyond the scope of a private search. The officers plainly did so here. Barry is not in conflict, because the CA6 there relied upon the fact that the methaqualone pills tested by the DEA were discovered, once the package had been opened by Federal Express, in bottles that were clearly labelled "methaqualone." Because the defendant had taken insufficient steps to protect against the risk of exposure, the CA6 reasoned that he had no reasonable expectation of privacy. Here, resps took many steps to keep secret the contents of the package, even once it was opened.

Finally, law enforcement interests will not be severely hampered here. This case deals only with whether a warrant must be obtained for a chemical test where such would exceed the scope of a preceding

private search on which the government relies to make its own. This does not implicate the "plain view" cases, search incident to warrant cases, etc. These are cases where the materials have been "lawfully seized," which resps consider to be different from this case.

5. DISCUSSION: Despite the CA8's admission that its decision conflicts with Barry, although there is tension, the peculiar nature of the Barry decision makes the conflict less than square. The CA6 there first reasoned that the law enforcement officers should have obtained a warrant before they went to the Federal Express office to view the opened package; the search was therefore illegal if Barry had any reasonable expectation of privacy in the package. Then the CA6 reasoned that, because Barry had not attempted to disguise the fact that the pill bottles contained contraband, he had no reasonable expectation in the package once it was opened by Federal Express. Walter was distinguished because it was a First Amendment case. Therefore, once the officers had the pill bottles, they could make their "routine" chemical testing without violating that case. Thus, the CA6 found a peculiar sort of unlawful warrantless search, but held that Barry's Fourth Amendment rights were not violated. Its interpretation of Walter is at odds with the CA8's, however.

Walter may bear further explanation. The five Justices voting to reverse there were divided. Justices Stevens and Stewart were together on one opinion, Justices White and Brennan on another, and Justice Marshall simply concurred in the judgment. The Chief Justice, and Justices Powell and Rehnquist joined Justice Blackmun's dissent. The Walter decision has First Amendment overtones, but the CA8's interpretation of that decision was not wholly unreasonable given the

divergence of opinion in Walter. Still, the SG's argument that the CA8 erred here is persuasive: there is little to distinguish the chemical testing here from the chemical field testing in typical plain view seizures and even seizures incident to a warrant. The intrusion does seem lesser, perhaps, than screening a film.

Finally, the facts here may not be as unusual as one might suppose. In addition to this case and Barry, resps inform the Court that the CA9 is now considering a case on similar facts.

6. RECOMMENDATION: For these reasons I recommend a grant. Although the SG suggests that the Court might consider summary reversal, I do not recommend it because the CA8's may be a reasonable interpretation of Walter. Moreover, plenary review in this case would give the Court an opportunity to clarify the confusion created by the lack of a majority opinion in the Walter case.

There is a response.

February 23, 1983 Ogden opn in petn

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

Argued ....., *19*... *Assigned* ....., *19*... No. 82-1167

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

UNITED STATES

vs.

JACOBSEN

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.			✓										
White, J.			✓										
Marshall, J.			✓										
Blackmun, J.		✓											
Powell, J.		✓											
Rehnquist, J.		✓											
Stevens, J.		✓	✓										
O'Connor, J.		✓											

lfp/ss 10/17/83

82-1167 U.S. v. Jacobsen

Memo to My Clerk:

Over the weekend I read preliminarily the briefs in this case, and I do not think it necessary for me to have a bench memo.

The Court below, CA8, relied on the plurality opinion in Walter v. U.S., where federal officers viewed a film that had been seized lawfully by a private party. I dissented in Walter, and still think it was wrongly decided. Perhaps Walter can be distinguished, as is argued, on the ground that viewing a film is more intrusive than making a chemical "field test" on a substance that already is exposed.

In any event, I am quite familiar with the area. I will, of course, want my clerk's views before I go to Conference.

L.F.P., Jr.

ss

82-1167 UNITED STATES v. JACOBSEN Argued 12/7/83

Straus (SG)

~~B R W asked~~ :
"Would make a difference if bag were opaque". B R W asked why Straus ~~not~~ made this concession. Straus cited Sanders v Ark.

"Plain view" exception authorized the "opening" of the plastic bags.

B. R.W. noted this doesn't answer Q as to the "field test."

Note { Straus said there was "probable cause" to believe powder was contraband — but contend of probable cause is not necessary. Reasonable suspicion would be sufficient. B. R. W. observed that if there was probable cause, don't need to ~~a~~ consider ~~is~~ sufficiency of "reasonable suspicion".

SG's main point

Field test implicates no reasonable ~~e~~ expectation of privacy.

Strauss (continued)

Record doesn't show exactly how Fed Express disclosed to Agents the clear sacks: whether they were within the damaged panel ~~or~~ had been removed.

Less than a gram was removed for testing – only a few grains. This was minimal. Also could be viewed as a "seizure" – not a "search" – hence only probable cause – not sufficient.

Peterson (Resh) (answered questions from bench

Disagrees with way 56 framed issue.

There was no probable cause prior to the testing. ~~But~~ But concede that presence of white powder visible would justify a warrant to "seize" not "search"

Peterson (cont.)

The ~~wrapped~~ wrapped package should not have been opened w/o a warrant.

Relies on J P S' op. in Walter

Standard should be the Walter's rule: police may examine a damaged package only to extent it was damaged by private party.

Rest

In this case, ~~conceded~~ conceded that in view of the powder in clear sacks, there was probable cause to "seize" the bags. But should not have opened bags & tested w/o obtaining a "search" warrant.

Place recently held there is a valid expectation of privacy in packages shipped by private or public carriers. Also Chadwick.

"Plain view" doctrine is inapplicable. It applies only to "seizure"; & Rest doesn't challenge right to "seize" & holding pending obtaining of search warrant.

Strauss (Reply)

Even if there was a "seizure" here, ~~he~~ a warrant was not necessary to "search" – i.e. conduct field test.

Rev 8-1

No. 82-1167, United States v. Jacobsen Conf. 12/9/83

The Chief Justice Rev.

Resp. conceded agent could have seized bags & then obtained a warrant.

Govt said "field test" protects public.

Once Govt agent could see that clear plastic there was reasonable cause to test.

T~~stopped~~. The legitimate privacy interest (if any) ended when bags became visible.

CJ thinks "controlled delivery" case is relevant.

Justice Brennan Affirm

On Walter.

Not like dog-sniffing case & Place

Not like "gun case" mentioned in Sanders

Should write no new exception to warrant Clause. A warrant should have been obtained.

Justice White Rev.

Magistrate found that bags were visible for 4th. DC did not accept his finding - but CA did. We should accept magistrate's finding & Hold testing OK ~~as~~ OK where the object ~~was~~ is visible.

Write narrowly } Should not say agents always search what a private person has found. Walter does not control

Justice Marshall Rev. - tentatively

If a person puts something in a clear plastic bag, he can't complain if police test it.

Would not say inspection was to protect the citizen.

But don't want

Justice Blackmun Rev.

Walter was wrong but does not control.

Justice Powell Reverse - not a search.

Pre Conference notes

Federal Express employee, when checking a damaged parcel, opened a container + observed 4 clear bags of white powder. He called DEA agent who "field tested" small portion + found it was marijuana.

CA 8, relying on Walter v U.S. (film viewed that was found in broken parcel), held ev. should be suppressed. This was error. Not a search.

Walter divided the Ct. into several opinions. There may be more of expectation of privacy on a film. Walter was wrong, but does not control here

Justice Rehnquist Rev

Not a "search" – one way to analyze it but Rev would require another exception to ~~con~~ warrant clause.

~~Could~~ Would prefer to decide on a common sense basis. Silly to hold the bags until warrant was obtained.

Justice Stevens Rev.

Walter does not control.

White ~~power~~ powder was visible – but this is immaterial. Once a package is broken & its contents disclosed there is no longer any interest in privacy. There was probable cause.

Key question

Cutting into ~~bag~~ was a "seizure" – an invasion of property ~~cause~~ interest. But as to testing, the privacy interest was negligible.

Justice ~~O'Connor~~ This was analogous to ~~close~~ plain view case. Both search & seizure OK

O'Connor: Rev.

Seizure was valid but there was a search. It was not search that rises to 4th Amend. dimension – no expectation of privacy.

Open fields cases should be cited on pg 3 - write ? PS

p 11 - appears to require at ~~least~~ eight probable cause in all cases to "seize"

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: JAN 17 1984

Recirculated: _____

Reviewed.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1167

UNITED STATES, PETITIONER *v.* BRADLEY THOMAS JACOBSEN AND DONNA MARIE JACOBSEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[January —, 1984]

Unnecessarily long & with citations of more marginal cases than in a Law Review Article.

JUSTICE STEVENS delivered the opinion of the Court.

During their examination of a damaged package, the employees of a private freight carrier observed a white powdery substance, originally concealed within eight layers of wrappings. They summoned a federal agent, who removed a trace of the powder, subjected it to a chemical test and determined that it was cocaine. The question presented is whether the Fourth Amendment required the agent to obtain a warrant before he did so.

The relevant facts are not in dispute. Early in the morning of May 1, 1981, a supervisor at the Minneapolis-St. Paul airport Federal Express office asked the office manager to look at a package that had been damaged and torn by a forklift. They then opened the package in order to examine its contents pursuant to a written company policy regarding insurance claims.

The container was an ordinary cardboard box wrapped in brown paper. Inside the box five or six pieces of crumpled newspaper covered a tube about about 10 inches long; the tube was made of the silver tape used on basement ducts. The supervisor and office manager cut open the tube, and found a series of four zip-lock plastic bags, the outermost enclosing the other three and the innermost containing about six and a half ounces of white powder. When they observed the white powder in the innermost bag, they notified the

Drug Enforcement Administration. Before the first DEA agent arrived, they replaced the plastic bags in the tube and put the tube and the newspapers back into the box.

When the first federal agent arrived, the box, still wrapped in brown paper, but with a hole punched in its side and the top open, was placed on a desk. The agent saw that one end of the tube had been slit open; he removed the four plastic bags from the tube and saw the white powder. He then opened each of the four bags and removed a trace of the white substance with a knife blade. A field test made on the spot identified the substance as cocaine.[1]

In due course, other agents arrived, made a second field test, rewrapped the package, obtained a warrant to search the place to which it was addressed, executed the warrant, and arrested respondents. After they were indicted for the crime of possessing an illegal substance with intent to distribute, their motion to suppress the evidence on the ground that the warrant was the product of an illegal search and seizure was denied; they were tried and convicted, and appealed. The Court of Appeals reversed. It held that the validity of the search warrant depended on the validity of the agents' warrantless test of the white powder,[2] that the testing constituted a significant expansion of the earlier private search,

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[1] As the test is described in the evidence, it involved the use of three test tubes. When a substance containing cocaine is placed in one test tube after another, it will cause liquids to take on a certain sequence of colors. Such a test discloses whether or not the substance is cocaine, but there is no evidence that it would identify any other substances.

[2] The Court of Appeals did not hold that the facts would not have justified the issuance of a warrant without reference to the test results; the court merely held that the facts recited in the warrant application, which relied almost entirely on the results of the field tests, would not support the issuance of the warrant if the field test was itself unlawful. "It is elementary that in passing on the validity of a warrant, the reviewing court may consider *only* information brought to the magistrate's attention." *Spinelli* v. *United States*, 393 U. S. 410, 413, n. 3 (1969) (emphasis in original) (quoting *Aguilar* v. *Texas*, 378 U. S. 108, 109, n. 1 (1964)). See *Illinois* v. *Gates*, —— U. S. ——, —— (1983).

and that a warrant was required. 683 F. 2d 296 (8th Cir. 1982).

As the Court of Appeals recognized, its decision conflicted with a decision of another court of appeals on comparable facts, *United States* v. *Barry*, 673 F. 2d 912 (6th Cir.), cert. denied, 459 U. S. —— (1982).[2] For that reason, and because field tests play an important role in the enforcement of the narcotics laws, we granted certiorari, —— U. S. ——.

I

The first clause of the Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. . . ." This text protects two types of expectations, one involving "searches," the other "seizures." A "search" occurs when an expectation of privacy that society is prepared to consider reasonable is infringed.[4] A "seizure" of property occurs when a there is some meaningful interference with an individual's possessory interests in that property.[5] This Court has also consistently

Our open fields cases

[2] See also *People* v. *Adler*, 50 N. Y.2d 730, 409 N. E. 2d 888, 431 N. Y.S. 2d 412, cert. denied, 449 U. S. 1014 (1980); cf. *United States* v. *Andrews*, 618 F. 2d 646 (10th Cir.) (upholding warrantless field test without discussion), cert. denied, 449 U. S. 824 (1980).

[4] See *Illinois* v. *Andreas*, —— U. S. ——, —— (1983); *United States* v. *Knotts*, —— U. S. ——, —— (1983); *Smith* v. *Maryland*, 442 U. S. 735, 739–741 (1979); *Terry* v. *Ohio*, 392 U. S. 1, 9 (1968).

[5] See *United States* v. *Place*, —— U. S. ——, (1983); *id.*, at —— (BRENNAN, J., concurring in the result); *Texas* v. *Brown*, —— U. S. ——, —— (STEVENS, J., concurring in the judgment); see also *United States* v. *Chadwick*, 433 U. S. 1, 13–14, n. 8 (1977); *Hale* v. *Henkel*, 201 U. S. 43, 76 (1906). While the concept of a "seizure" of property is not much discussed in our cases, this definition follows from our oft-repeated definition of the "seizure" of a person within the meaning of the Fourth Amendment—meaningful interference, however brief, with an individual's freedom of movement. See *Michigan* v. *Summers*, 452 U. S. 692, 696 (1981); *Reid* v. *Georgia*, 448 U. S. 438, 440, n. * (1980) (*per curiam*); *United States* v. *Mendenhall*, 446 U. S. 544, 551–554 (1980) (opinion of Stewart, J.); *Brown* v. *Texas*, 443 U. S. 47, 50 (1979); *United States* v. *Brignoni-Ponce*, 422

1983

construed this protection as proscribing only governmental action; it is wholly inapplicable "to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official." *Walter* v. *United States*, 447 U. S. 649, 662 (1980) (BLACKMUN, J., dissenting).[6]

When the wrapped parcel involved in this case was delivered to the private freight carrier, it was unquestionably an "effect" within the meaning of the Fourth Amendment. Letters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy; warrantless searches of such effects are presumptively unreasonable.[7] Even when government agents may lawfully seize such a package to prevent loss or destruction of suspected contraband, the Fourth Amendment requires that they obtain a warrant before examining the contents of such a package.[8] Such a warrantless search could not be characterized as reasonable simply because, after the official invasion of privacy occurred, contraband is discovered.[9] Con-

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U. S. 878, 878 (1975); *Cupp* v. *Murphy*, 412 U. S. 291, 294–295 (1973); *Davis* v. *Mississippi*, 394 U. S. 721, 726–727 (1969); *Terry* v. *Ohio*, 392 U. S. 1, 16, 19, n. 16 (1968).

[6] See *id.*, at 656 (opinion of STEVENS, J.); *id.*, at 660–661 (WHITE, J., concurring in part and concurring in the judgment); *United States* v. *Janis*, 428 U. S. 433, 455–456, n. 31 (1976); *Coolidge* v. *New Hampshire*, 403 U. S. 443, 487–490 (1971); *Burdeau* v. *McDowell*, 256 U. S. 465 (1921).

[7] *United States* v. *Chadwick*, 433 U. S. 1, 10 (1977); *United States* v. *Van Leeuwen*, 397 U. S. 249, 251 (1970); *Ex parte Jackson*, 96 U. S. 727, 733 (1878); see also *Walter*, 447 U. S., at 654–655 (opinion of STEVENS, J.).

[8] See, *e. g.*, *United States* v. *Place*, —— U. S. ——, —— (1983); *United States* v. *Ross*, 456 U. S. 798, 809–812 (1982); *Robbins* v. *California*, 453 U. S. 420, 426 (1981) (plurality opinion); *Arkansas* v. *Sanders*, 442 U. S. 753, 762 (1979); *United States* v. *Chadwick*, 433 U. S. 1, 13 and n. 8 (1977); *United States* v. *Van Leeuwen*, 397 U. S. 249 (1970). There is, of course, a well recognized exception for customs searches; but that exception is not involved in this case.

[9] See *Whiteley* v. *Warden*, 401 U. S. 560, 567, n. 11 (1971); *Wong Sun* v. *United States*, 371 U. S. 471, 484 (1963); *Rios* v. *United States*, 364 U. S.

versely, in this case the fact that agents of the private carrier independently opened the package and made an examination that might have been impermissible for a government agent cannot render otherwise reasonable official conduct unreasonable. The reasonableness of an official invasion of the citizen's privacy must be appraised on the basis of the facts as they existed at the time that invasion occurred.

The initial invasions of respondents' package were occasioned by private action. Those invasions revealed that the package contained only one significant item, a suspicious looking tape tube. Cutting the end of the tube and extracting its contents revealed a suspicious looking plastic bag of white powder. Whether those invasions were accidental or deliberate,[10] and whether they were reasonable or unreasonable, they did not violate the Fourth Amendment because of their private character.

true

The additional invasions of respondents' privacy by the government agent must be tested by the degree to which they exceeded the scope of the private search. That standard was adopted by a majority of the Court in *Walter* v. *United States*, 447 U. S. 649 (1980). In *Walter* a private party had opened a misdirected carton, found rolls of motion picture films that appeared to be contraband, and turned the carton over to the Federal Bureau of Investigation. Later, without obtaining a warrant, FBI agents obtained a projector and viewed the films. While there was no single opinion of the Court, a majority did agree on the appropriate analysis of a governmental search which follows on the heels of a private one. Two Justices took the position that,

I did not join Walter

253, 261–262 (1960); *Henry* v. *United States*, 361 U. S. 98, 103 (1959); *Miller* v. *United States*, 357 U. S. 301, 312 (1958); *United States* v. *Di Re*, 332 U. S. 581, 595 (1948); *Byars* v. *United States*, 273 U. S. 28, 29 (1927).

[10] A post-trial affidavit indicates that an agent of Federal Express may have opened the package because he was suspicious about its contents, and not because of damage from a forklift. However, the lower courts found no governmental involvement in the private search, a finding not challenged by respondents. The affidavit thus is of no relevance to the issue we decide.

> "If a properly authorized official search is limited by the particular terms of its authorization, at least the same kind of strict limitation must be applied to any official use of a private party's invasion of another person's privacy. Even though some circumstances—for example, if the results of the private search are in plain view when materials are turned over to the Government—may justify the Government's reexamination of the materials, surely the Government may not exceed the scope of the private search unless it has the right to make an independent search. In these cases, the private party had not actually viewed the films. Prior to the Government's screening one could only draw inferences about what was on the films. The projection of the films was a significant expansion of the search that had been conducted previously by a private party and therefore must be characterized as a separate search." *Id.*, at 657 (opinion of STEVENS, J., joined by Stewart, J.) (footnote omitted).[11]

Four additional Justices, while disagreeing with this characterization of the scope of the private search, were also of the view that the legality of the governmental search must be tested by the scope of the antecedant private search.

> "Under these circumstances, since the L'Eggs employees so fully ascertained the nature of the films before contacting the authorities, we find that the FBI's subsequent viewing of the movies on a projector did not 'change the nature of the search' and was not an additional search subject to the warrant requirement." *Id.*,

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[11] See also *id.*, at 658–659 (footnotes omitted) ("The fact that the cartons were unexpectedly opened by a third party before the shipment was delivered to its intended consignee does not alter the consignor's legitimate expectation of privacy. The private search merely frustrated that expectation in part. It did not simply strip the remaining unfrustrated portion of that expectation of all Fourth Amendment protection.").

at 663–664 (BLACKMUN, J., dissenting, joined by BURGER, C. J., POWELL & REHNQUIST, JJ.) (footnote omitted) (quoting *United States* v. *Sanders*, 592 F. 2d 788, 793–794 (5th Cir. 1979), rev'd *sub nom. Walter* v. *United States*, 447 U. S. 649 (1980)).[12]

This standard follows from the analysis applicable when private parties' reveal other kinds of private information to the authorities. It is well-settled that when an individual reveals private information to another, he assumes the risk that his confidant will reveal that information to the authorities, and if that occurs the Fourth Amendment does not prohibit governmental use of that information. Once frustration of the original expectation of privacy occurs, the Fourth Amendment does not prohibit governmental use of the now-nonprivate information: "This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in a third party will not be betrayed." *United States* v. *Miller*, 425 U. S. 435, 443 (1975).[13] The Fourth Amendment is implicated only if the authorities use information with respect to which the expec-

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[12] In *Walter*, a majority of the Court found a violation of the Fourth Amendment. For present purposes, the disagreement between the majority and the dissenters in that case with respect to the comparison between the private search and the official search is less significant than the agreement on the standard to be applied in evaluating the relationship between the two searches.

[13] See *Smith* v. *Maryland*, 442 U. S. 735, 743–744 (1979); *United States* v. *White*, 401 U. S. 745, 749–753 (1971) (plurality opinion); *Osborn* v. *United States*, 385 U. S. 323, 326–331 (1966); *Hoffa* v. *United States*, 385 U. S. 293, 300–303 (1966); *Lewis* v. *United States*, 385 U. S. 206 (1966); *Lopez* v. *United States*, 373 U. S. 427, 437–439 (1963); *On Lee* v. *United States*, 343 U. S. 747, 753–754 (1952). See also *United States* v. *Henry*, 447 U. S. 264, 272 (1980); *United States* v. *Caceres*, 440 U. S. 741, 744, 750–751 (1979).

tation of privacy has not already been frustrated. In such a case the authorities have not relied on what is in effect a private search, and therefore presumptively violate the Fourth Amendment if they act without a warrant.[14]

In this case, the federal agents' invasions of respondents' privacy involved two steps: first, they removed the tube from the box, the plastic bags from the tube and a trace of powder from the innermost bag; second, they made a chemical test of the powder. Although we ultimately conclude that both actions were reasonable for essentially the same reason, it is useful to discuss them separately.

II

When the first federal agent on the scene initally saw the package, he knew it contained nothing of significance except a tube containing plastic bags and, ultimately, white powder. It is not entirely clear that the powder was visible to him before he removed the tube from the box.[15] Even if the white powder was not itself in "plain view" because it was still enclosed in so many containers and covered with papers, there was a virtual certainty that nothing else of significance was in

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[14] See *Katz* v. *United States*, 389 U. S. 347 (1967); *Berger* v. *New York*, 388 U. S. 41 (1967); *Silverman* v. *United States*, 365 U. S. 505 (1961).

[15] Daniel Stegemoller, the Federal Express office manager, testified at the suppression hearing that the white substance was not visible without reentering the package at the time the first agent arrived. Joint App. 42–43; 58. The magistrate's report contained a finding that the gray tube and powder were in plain view, which respondents challenged before the District Court. The District Court declined to resolve respondents' objection, ruling that fact immaterial and assuming for purposes of its decision "that the newspaper in the box covered the gray tube and that neither the gray tube nor the contraband could be seen when the box was turned over the the DEA agents." App. to Pet. for Cert. 12a–13a. At trial, the federal agent first on the scene testified that the powder was not visible until after he pulled the plastic bags out of the tube. Joint App. 71–72. As our discussion will make clear, we agree with the District Court that it does not matter whether the loose piece of newspaper covered the tube at the time the agent first saw the box.

the package and that a manual inspection of the tube and its contents would not tell him anything more than he already had been told. Respondents do not dispute that the Government could utilize the Federal Express employees' testimony concerning the contents of the package. If that is the case, it hardly infringed respondents' privacy for the agents to reexamine the contents of the package. The advantage the Government gained thereby was merely avoiding the risk of a flaw in the employees' recollection, rather than in further infringing respondents' privacy. Protecting the risk of misdescription hardly enhances any legitimate privacy interest, and is not protected by the Fourth Amendment.[16]

Thus, the removal of the plastic bags from the tube and the agent's visual inspection of their contents enabled the agent to learn nothing that had not previously been learned during the private search.[17] It infringed no legitimate expectation of privacy and hence was not a "search" within the meaning of the Fourth Amendment.

While the agents' assertion of dominion and control over

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[16] See *United States* v. *Caceres*, 440 U. S. 741, 750–751 (1979); *United States* v. *White*, 401 U. S. 745, 749–753 (1971) (plurality opinion); *United States* v. *Osborn*, 385 U. S. 323, 326–331 (1966); *On Lee* v. *United States*, 343 U. S. 747, 753–754 (1952). For example, in *Lopez* v. *United States*, 373 U. S. 427 (1963), the Court wrote: "Stripped to its essentials, petitioner's argument amounts to saying that he has a constitutional right to rely on possible flaws in the agent's memory, or to challenge the agent's credibility without being beset by corroborating evidence . . . . For no other argument can justify excluding an accurate version of a conversation that the agent could testify to from memory. We think the risk that petitioner took in offering a bribe to Davis fairly included the risk that the offer would be accurately reproduced in court . . . ." *Id.*, at 439 (footnote omitted).

[17] Moreover, since the Federal Express employees had of their own accord invited the federal agent to their offices for the express purpose of viewing the contents of the package, the agent's viewing of what a private party had freely made available for his inspection did not violate the Fourth Amendment. See *Coolidge* v. *New Hampshire*, 403 U. S. 443, 487–490 (1971); *Burdeau* v. *McDowell*, 256 U. S. 465, 476–476 (1921).

the package and its contents did constitute a "seizure," [18] that seizure was not unreasonable. The fact that, prior to the field test, respondents' privacy interest in the contents of the package had been largely compromised, is highly relevant to the reasonableness of the agents' conduct in this respect. The examination of the tube and the powder it contained was comparable to the police officer's observation of a balloon "the distinctive character [of which] itself spoke volumes as to its contents, particularly to the trained eye of the officer." *Texas* v. *Brown*, —— U. S. ——, —— (1983) (plurality opinion); see also *id.*, at —— (POWELL, J., concurring in the judgment). The balloon was like the hypothetical gun case in *Arkansas* v. *Sanders*, 442 U. S. 753 (1979), both of which are containers which "by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance." *Id.*, at 764–765, n. 13. Such containers may be seized, at least temporarily, without a warrant on probable cause.[19] Accordingly, since it was apparent that the tube and plastic bags contained contraband and little else, this warrantless seizure was reasonable.[20] It is well-settled that it is constitutionally reasonable for law enforcement officials may seize "effects" that cannot support a justifiable expectation of privacy with-

i.e. containers that on visual inspection suggest crime

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[18] Both the Magistrate and the District Court found that the agents took custody of the package from Federal Express after they arrived. Although respondents had entrusted possession of the items to Federal Express, the decision by governmental authorities to exert dominion and control over the package for their own purposes clearly constituted a "seizure," though not necessarily an unreasonable one. See *United States* v. *Van Leeuwen*, 397 U. S. 249 (1970). Indeed, this is one thing on which the entire Court appeared to agree in *Walter*.

[19] See also *United States* v. *Ross*, 456 U. S. 798, 822–823 (1982); *Robbins* v. *California*, 453 U. S. 420, 428–428 (1981) (plurality opinion).

[20] Respondents concede that the agents had probable cause to believe the package contained contraband.

[1] See *Place*, —— U. S., at ——; *Texas* v. *Brown*, —— U. S., at ——;

21

Belongs on next page

what about reasonable suspicion

out a warrant based on probable cause to believe they contain contraband.[21]

III

The question remains whether the additional intrusion occasioned by the field test, which had not been conducted by the Federal Express agents and therefore exceeded the scope of the private search, was an unlawful "search" or "seizure" within the meaning of the Fourth Amendment.

The field test at issue could disclose only one fact previously unknown to the agent—whether or not a suspicious white powder was cocaine. It could tell him nothing more, not even whether the substance was sugar or talcum powder. We must first determine whether this can be considered a "search" subject to the Fourth Amendment—did it infringe an expectation of privacy that society is prepared to consider reasonable?

The concept of an interest in privacy that society is prepared to recognize as reasonable is, by its very nature, critically different from the mere expectation, however well justified, that certain facts will not come to the attention of the authorities.[22] Indeed, this distinction underlies the rule that

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id., at —— (STEVENS, J., concurring in the judgment); *Payton* v. *New York*, 445 U. S. 573, 587 (1980); *G.M. Leasing Corp.* v. *United States*, 429 U. S. 338, 354 (1977); *Harris* v. *United States*, 390 U. S. 234, 236 (1968) (*per curiam*).

[22] "Obviously, however, a 'legitimate' expectation of privacy by definition means more than a subjective expectation of not being discovered. A burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate.' His presence, in the words of *Jones* [v. *United States*, 362 U. S. 257, 267 (1960)], is 'wrongful,' his expectation of privacy is not one that society is prepared to recognize as 'reasonable.' *Katz* v. *United States*, 389 U. S., at 361 (Harlan, J., concurring). And it would, of course, be merely tautological to fall back on the notion that those expectations of privacy which are legitimate depend primarily on cases deciding exclusionary-rule issues in criminal cases. Legitimation of expectations of privacy by law must have a source outside of the Fourth

Government may utilize information voluntarily disclosed to a governmental informant, despite the criminal's reasonable expectation that his associates would not disclose confidential information to the authorities. See *United States* v. *White*, 401 U. S. 745, 751–752 (1971) (plurality opinion).

A chemical test that merely discloses whether or not a particular substance is cocaine does not compromise any legitimate interest in privacy. This conclusion is not dependent on the result of any particular test. It is probably safe to assume that virtually all of the tests conducted under circumstances comparable to those disclosed by this record would result in a positive finding; in such cases, no legitimate interest has been compromised. But even if the results are negative—merely disclosing that the substance is something other than cocaine—such a result reveals nothing of special interest. Congress has decided—and there is no question about its power to do so—to treat the interest in "privately" possessing cocaine as illegitimate; thus governmental conduct that can reveal whether a substance is cocaine, and no other arguably "private" fact, compromises no legitimate privacy interest.[23]

This conclusion is dictated by *United States* v. *Place*, —— U. S. —— (1983), in which the Court held that subjecting luggage to a "sniff test" by a trained narcotics detection dog

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Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." *Rakas* v. *Illinois*, 439 U. S. 128, 143–144, n. 12 (1978). See also *United States* v. *Knotts*, —— U. S. —— (1983) (use of a beeper to track car's movements infringed no reasonable expectation of privacy); *Smith* v. *Maryland*, 442 U. S. 735 (1979) (use of a pen register to record phone numbers dialed infringed no reasonable expectation of privacy).

[23] See Loewy, The Fourth Amendment as a Device for Protecting the Innocent, 81 Mich. L. Rev. 1229 (1983). Our discussion, of course, is confined to possession of contraband. It is not necessarily the case that the purely "private" possession of an article that cannot be distributed in commerce is itself illegitimate. See *Stanley* v. *Georgia*, 394 U. S. 557 (1969).

was not a "search" within the meaning of the Fourth Amendment:

> "A 'canine sniff' by a well-trained narcotics detection dog, however, does not require opening of the luggage. It does not expose noncontraband items that otherwise would remain hidden from public view, as does, for example, an officer's rummaging through the contents of the luggage. Thus, the manner in which information is obtained through this investigative technique is much less intrusive than a typical search. Moreover, the sniff discloses only the presence or absence of narcotics, a contraband item. Thus, despite the fact that the sniff tells the authorities something about the contents of the luggage, the information obtained is limited." *Id.*, at ——.[24]

Here, as in *Place*, the likelihood that official conduct of the kind disclosed by the record will actually compromise any legitimate interest in privacy seems much too remote to characterize the testing as a search subject to the Fourth Amendment.

We have concluded, in part II, *supra*, that the initial "seizure" of the package and its contents was reasonable. Nevertheless, as *Place* also holds, a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the the Fourth Amendment's prohibition on "unreasonable seizures."[25] Here, the field test did affect re-

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[24] Respondents attempt to distinguish *Place* arguing that it involved no physical invasion of Place's effects, unlike the conduct at issue here. However, as the quotation makes clear, the *reason* this did not intrude upon any legitimate privacy interest was that the governmental conduct could reveal nothing about noncontraband items. That rationale is fully applicable here.

[25] In *Place*, the Court held that while the initial seizure of luggage for the purpose of subjecting it to a "dog sniff" test was reasonable, the seizure

spondents' possessory interests protected by the Amendment, since by destroying a quantity of the powder it converted what had been only a temporary deprivation of possessory interests into a permanent one. To assess the reasonableness of this conduct, "[w]e must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Id.*, at ——.[26]

Applying this test, we conclude that the destruction of the powder during the course of the field test was reasonable. The law enforcement interests justifying the procedure were substantial; the suspicious nature of the material made it virtually certain that the substance tested was in fact contraband. Conversely, because only a trace amount of material was involved, the loss of which appears to have gone unnoticed by respondents, and since the property had already been lawfully detained, the "seizure" could, at most, have only a *de minimis* impact on any protected property interest. Cf. *Cardwell* v. *Lewis*, 417 U. S. 583, 591–592 (1974) (plurality opinion) (examination of automobile's tires and taking of paint scrapings was a *de minimis* invasion of constitutional interests).[27] Under these circumstances, the safeguards of a warrant would only minimally advance Fourth Amendment interests. This warrantless "seizure" was reasonable.[28]

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became unreasonable because its length unduly intruded upon constitutionally protected interests. See *id.*, at ——.

[26] See, *e. g.*, *Michigan* v. *Long*, —— U. S. ——, —— (1983); *Delaware* v. *Prouse*, 440 U. S. 648, 654 (1979); *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 878 (1975); *Terry* v. *Ohio*, 392 U. S. 1, 20–21 (1968); *Camara* v. *Municipal Court*, 387 U. S. 523, 536–537 (1967).

[27] In fact, respondents do not contend that the amount of material tested was large enough to make it possible for them to have detected its loss. The only description in the record of the amount of cocaine seized is that "[i]t was a trace amount." Joint App. 75.

[28] See *Cupp* v. *Murphy*, 412 U. S. 291, 296 (1973) (warrantless search and seizure limited to scraping suspect's fingernails justified even when full

In sum, the federal agents did not infringe any constitutionally protected privacy interest that had not already been frustrated as the result of private conduct. To the extent that a protected possessory interest was infringed, the infringement was *de minimis* and constitutionally reasonable. The judgment of the Court of Appeals is

Reversed.

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search may not be). Cf. *Place*, —— U. S., at —— (approving brief warrantless seizure of luggage for purposes of "sniff test" based on its minimal intrusiveness and reasonable belief that the luggage contained contraband); *Van Leeuwen* v. *United States*, 397 U. S. 249, 252–253 (1970) (detention of package on reasonable suspicion was justified since detention infringed no "significant Fourth Amendment interest"). Of course, where more substantial invasions of constitutionally protected interests are involved, a warrantless search or seizure is unreasonable in the absence of exigent circumstances. See, *e. g.*, *Steagald* v. *United States*, 451 U. S. 204 (1981); *Payton* v. *New York*, 445 U. S. 573 (1980); *Dunaway* v. *New York*, 442 U. S. 200 (1979); *United States* v. *Chadwick*, 433 U. S. 1 (1977). We do not suggest, however, that any seizure of a small amount of material is necessarily reasonable. An agent's arbitrary decision to take the "white powder" he finds in a neighbor's sugar bowl, or his medicine cabinet, and subject it to a field test for cocaine, might well work an unreasonable seizure.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 17, 1984

No. 82-1167 United States v. Jacobsen

Dear John,

Please join me.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

January 23, 1984

81-1167 United States v. Jacobsen

Dear John:

Although I will join your opinion, I would appreciate your considering one clarification.

As probable cause is conceded in this case, I would not think it necessary to restate the applicable standard as is done on pp. 10-11 of your opinion. In any event, the sentence that begins on the bottom of page 10 may be read as implying that at least probable cause is a necessary predicate to any valid seizure. In Sandra's recent decision in Place we held that some seizures may be justified by an articulable suspicion of criminal activity. Of course, you do cite Place in footnote 21, as well as at other points in the opinion.

With respect to the reasonableness of an expectation of privacy, addressed on page 3, I have a Court for the judgment in the open-fields cases. If they should come down before your decision in this case, you may wish to add them to the citations in footnote 4 on page 3.

Sincerely,

Justice Stevens

lfp/ss

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 23, 1984

Re: No. 82-1167 - United States v. Jacobsen

Dear John:

Please join me.

Sincerely,

Harry

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 23, 1984

Re: No. 82-1167 United States v. Jacobsen

Dear John:

Please join me.

Sincerely,

WHR

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 24, 1984

Re: 82-1167 - United States v. Jacobsen

Dear Lewis:

Thank you for your suggestions. I will certainly add a citation to the open field cases if they come down before this opinion does. Also, I think you are correct that the opinion might be read as implying that probable cause is a necessary predicate for any valid seizure. As Place holds, that would not be correct. I wonder, therefore, if this might be an adequate solution to the problem. After the single sentence now in footnote 20, add::

> "Therefore we need not decide whether the agents could have seized the package based on something less than probable cause. Some seizures can be justified by an articulable suspicion of criminal activity. See United States v. Place, ____ U.S. ____ (1983)."

If you don't think that is adequate, please let me know and I'll try again.

Respectfully,

Justice Powell

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: JAN 3 0 1984

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1167

UNITED STATES, PETITIONER *v.* BRADLEY THOMAS JACOBSEN AND DONNA MARIE JACOBSEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[January ——, 1984]

Join L.F.P.

JUSTICE STEVENS delivered the opinion of the Court.

During their examination of a damaged package, the employees of a private freight carrier observed a white powdery substance, originally concealed within eight layers of wrappings. They summoned a federal agent, who removed a trace of the powder, subjected it to a chemical test and determined that it was cocaine. The question presented is whether the Fourth Amendment required the agent to obtain a warrant before he did so.

John made change I suggested

The relevant facts are not in dispute. Early in the morning of May 1, 1981, a supervisor at the Minneapolis-St. Paul airport Federal Express office asked the office manager to look at a package that had been damaged and torn by a forklift. They then opened the package in order to examine its contents pursuant to a written company policy regarding insurance claims.

The container was an ordinary cardboard box wrapped in brown paper. Inside the box five or six pieces of crumpled newspaper covered a tube about 10 inches long; the tube was made of the silver tape used on basement ducts. The supervisor and office manager cut open the tube, and found a series of four zip-lock plastic bags, the outermost enclosing the other three and the innermost containing about six and a half ounces of white powder. When they observed the white

powder in the innermost bag, they notified the Drug Enforcement Administration. Before the first DEA agent arrived, they replaced the plastic bags in the tube and put the tube and the newspapers back into the box.

When the first federal agent arrived, the box, still wrapped in brown paper, but with a hole punched in its side and the top open, was placed on a desk. The agent saw that one end of the tube had been slit open; he removed the four plastic bags from the tube and saw the white powder. He then opened each of the four bags and removed a trace of the white substance with a knife blade. A field test made on the spot identified the substance as cocaine.[1]

In due course, other agents arrived, made a second field test, rewrapped the package, obtained a warrant to search the place to which it was addressed, executed the warrant, and arrested respondents. After they were indicted for the crime of possessing an illegal substance with intent to distribute, their motion to suppress the evidence on the ground that the warrant was the product of an illegal search and seizure was denied; they were tried and convicted, and appealed. The Court of Appeals reversed. It held that the validity of the search warrant depended on the validity of the agents' warrantless test of the white powder,[2] that the testing con-

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[1] As the test is described in the evidence, it involved the use of three test tubes. When a substance containing cocaine is placed in one test tube after another, it will cause liquids to take on a certain sequence of colors. Such a test discloses whether or not the substance is cocaine, but there is no evidence that it would identify any other substances.

[2] The Court of Appeals did not hold that the facts would not have justified the issuance of a warrant without reference to the test results; the court merely held that the facts recited in the warrant application, which relied almost entirely on the results of the field tests, would not support the issuance of the warrant if the field test was itself unlawful. "It is elementary that in passing on the validity of a warrant, the reviewing court may consider *only* information brought to the magistrate's attention." *Spinelli* v. *United States*, 393 U. S. 410, 412, n. 2 (1969) (emphasis in original) (quoting *Aguilar* v. *Texas*, 378 U. S. 108, 109, n. 1 (1964)). See *Illinois* v. *Gates*, 462 U. S. ——, —— (1983).

stituted a significant expansion of the earlier private search, and that a warrant was required. 683 F. 2d 296 (8th Cir. 1982).

As the Court of Appeals recognized, its decision conflicted with a decision of another court of appeals on comparable facts, *United States* v. *Barry*, 673 F. 2d 912 (6th Cir.), cert. denied, 459 U. S. —— (1982).[3] For that reason, and because field tests play an important role in the enforcement of the narcotics laws, we granted certiorari, 460 U. S. ——.

I

The first clause of the Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. . . ." This text protects two types of expectations, one involving "searches," the other "seizures." A "search" occurs when an expectation of privacy that society is prepared to consider reasonable is infringed.[4] A "seizure" of property occurs when a there is some meaningful interference with an individual's possessory interests in that property.[5] This Court has also consistently

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[3] See also *People* v. *Adler*, 50 N. Y. 2d 730, 409 N. E. 2d 888, 431 N. Y. S. 2d 412, cert. denied, 449 U. S. 1014 (1980); cf. *United States* v. *Andrews*, 618 F. 2d 646 (CA 10) (upholding warrantless field test without discussion), cert. denied, 449 U. S. 824 (1980).

[4] See *Illinois* v. *Andreas*, 463 U. S. ——, —— (1983); *United States* v. *Knotts*, 460 U. S. ——, —— (1983); *Smith* v. *Maryland*, 442 U. S. 735, 739–741 (1979); *Terry* v. *Ohio*, 392 U. S. 1, 9 (1968).

[5] See *United States* v. *Place*, 462 U. S. ——, (1983); *id.*, at —— (BRENNAN, J., concurring in the result); *Texas* v. *Brown*, 460 U. S. ——, —— (1983) (STEVENS, J., concurring in the judgment); see also *United States* v. *Chadwick*, 433 U. S. 1, 13–14, n. 8 (1977); *Hale* v. *Henkel*, 201 U. S. 43, 76 (1906). While the concept of a "seizure" of property is not much discussed in our cases, this definition follows from our oft-repeated definition of the "seizure" of a person within the meaning of the Fourth Amendment—meaningful interference, however brief, with an individual's freedom of movement. See *Michigan* v. *Summers*, 452 U. S. 692, 696 (1981); *Reid* v. *Georgia*, 448 U. S. 438, 440, n. * (1980) *(per curiam)*; *United States* v. *Mendenhall*, 446 U. S. 544, 551–554 (1980) (opinion of Stewart, J.); *Brown*

construed this protection as proscribing only governmental action; it is wholly inapplicable "to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official." *Walter* v. *United States*, 447 U. S. 649, 662 (1980) (BLACKMUN, J., dissenting).[6]

When the wrapped parcel involved in this case was delivered to the private freight carrier, it was unquestionably an "effect" within the meaning of the Fourth Amendment. Letters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy; warrantless searches of such effects are presumptively unreasonable.[7] Even when government agents may lawfully seize such a package to prevent loss or destruction of suspected contraband, the Fourth Amendment requires that they obtain a warrant before examining the contents of such a package.[8] Such a warrantless search could not be characterized as reasonable simply because, after the official inva-

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v. *Texas*, 443 U. S. 47, 50 (1979); *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 878 (1975); *Cupp* v. *Murphy*, 412 U. S. 291, 294–295 (1973); *Davis* v. *Mississippi*, 394 U. S. 721, 726–727 (1969); *Terry* v. *Ohio*, 392 U. S. 1, 16, 19, n. 16 (1968).

[6] See *id.*, at 656 (opinion of STEVENS, J.); *id.*, at 660–661 (WHITE, J., concurring in part and concurring in the judgment); *United States* v. *Janis*, 428 U. S. 433, 455–456, n. 31 (1976); *Coolidge* v. *New Hampshire*, 403 U. S. 443, 487–490 (1971); *Burdeau* v. *McDowell*, 256 U. S. 465 (1921).

[7] *United States* v. *Chadwick*, 433 U. S. 1, 10 (1977); *United States* v. *Van Leeuwen*, 397 U. S. 249, 251 (1970); *Ex parte Jackson*, 96 U. S. 727, 733 (1878); see also *Walter*, 447 U. S., at 654–655 (opinion of STEVENS, J.).

[8] See, *e. g.*, *United States* v. *Place*, 462 U. S. ——, —— (1983); *United States* v. *Ross*, 456 U. S. 798, 809–812 (1982); *Robbins* v. *California*, 453 U. S. 420, 426 (1981) (plurality opinion); *Arkansas* v. *Sanders*, 442 U. S. 753, 762 (1979); *United States* v. *Chadwick*, 433 U. S. 1, 13 and n. 8 (1977); *United States* v. *Van Leeuwen*, 397 U. S. 249 (1970). There is, of course, a well recognized exception for customs searches; but that exception is not involved in this case.

sion of privacy occurred, contraband is discovered.[9] Conversely, in this case the fact that agents of the private carrier independently opened the package and made an examination that might have been impermissible for a government agent cannot render otherwise reasonable official conduct unreasonable. The reasonableness of an official invasion of the citizen's privacy must be appraised on the basis of the facts as they existed at the time that invasion occurred.

The initial invasions of respondents' package were occasioned by private action. Those invasions revealed that the package contained only one significant item, a suspicious looking tape tube. Cutting the end of the tube and extracting its contents revealed a suspicious looking plastic bag of white powder. Whether those invasions were accidental or deliberate,[10] and whether they were reasonable or unreasonable, they did not violate the Fourth Amendment because of their private character.

The additional invasions of respondents' privacy by the government agent must be tested by the degree to which they exceeded the scope of the private search. That standard was adopted by a majority of the Court in *Walter* v. *United States*, 447 U. S. 649 (1980). In *Walter* a private party had opened a misdirected carton, found rolls of motion picture films that appeared to be contraband, and turned the carton over to the Federal Bureau of Investigation. Later, without obtaining a warrant, FBI agents obtained a projector

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[9] See *Whiteley* v. *Warden*, 401 U. S. 560, 567, n. 11 (1971); *Wong Sun* v. *United States*, 371 U. S. 471, 484 (1963); *Rios* v. *United States*, 364 U. S. 253, 261–262 (1960); *Henry* v. *United States*, 361 U. S. 98, 103 (1959); *Miller* v. *United States*, 357 U. S. 301, 312 (1958); *United States* v. *Di Re*, 332 U. S. 581, 595 (1948); *Byars* v. *United States*, 273 U. S. 28, 29 (1927).

[10] A post-trial affidavit indicates that an agent of Federal Express may have opened the package because he was suspicious about its contents, and not because of damage from a forklift. However, the lower courts found no governmental involvement in the private search, a finding not challenged by respondents. The affidavit thus is of no relevance to the issue we decide.

and viewed the films. While there was no single opinion of the Court, a majority did agree on the appropriate analysis of a governmental search which follows on the heels of a private one. Two Justices took the position:

> "If a properly authorized official search is limited by the particular terms of its authorization, at least the same kind of strict limitation must be applied to any official use of a private party's invasion of another person's privacy. Even though some circumstances—for example, if the results of the private search are in plain view when materials are turned over to the Government—may justify the Government's reexamination of the materials, surely the Government may not exceed the scope of the private search unless it has the right to make an independent search. In these cases, the private party had not actually viewed the films. Prior to the Government's screening one could only draw inferences about what was on the films. The projection of the films was a significant expansion of the search that had been conducted previously by a private party and therefore must be characterized as a separate search." *Id.*, at 657 (opinion of STEVENS, J., joined by Stewart, J.) (footnote omitted).[11]

Four additional Justices, while disagreeing with this characterization of the scope of the private search, were also of the view that the legality of the governmental search must be tested by the scope of the antecedent private search.

> "Under these circumstances, since the L'Eggs employees so fully ascertained the nature of the films before contacting the authorities, we find that the FBI's subse-

[11] See also *id.*, at 658–659 (footnotes omitted) ("The fact that the cartons were unexpectedly opened by a third party before the shipment was delivered to its intended consignee does not alter the consignor's legitimate expectation of privacy. The private search merely frustrated that expectation in part. It did not simply strip the remaining unfrustrated portion of that expectation of all Fourth Amendment protection").

quent viewing of the movies on a projector did not 'change the nature of the search' and was not an additional search subject to the warrant requirement." *Id.*, at 663–664 (BLACKMUN, J., dissenting, joined by BURGER, C. J., POWELL and REHNQUIST, JJ.) (footnote omitted) (quoting *United States* v. *Sanders*, 592 F. 2d 788, 793–794 (5th Cir. 1979), rev'd *sub nom. Walter* v. *United States*, 447 U. S. 649 (1980)).[12]

This standard follows from the analysis applicable when private parties reveal other kinds of private information to the authorities. It is well-settled that when an individual reveals private information to another, he assumes the risk that his confidant will reveal that information to the authorities, and if that occurs the Fourth Amendment does not prohibit governmental use of that information. Once frustration of the original expectation of privacy occurs, the Fourth Amendment does not prohibit governmental use of the now-nonprivate information: "This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in a third party will not be betrayed." *United States* v. *Miller*, 425 U. S. 435, 443 (1975).[13] The Fourth Amendment is implicated only if the

[12] In *Walter*, a majority of the Court found a violation of the Fourth Amendment. For present purposes, the disagreement between the majority and the dissenters in that case with respect to the comparison between the private search and the official search is less significant than the agreement on the standard to be applied in evaluating the relationship between the two searches.

[13] See *Smith* v. *Maryland*, 442 U. S. 735, 743–744 (1979); *United States* v. *White*, 401 U. S. 745, 749–753 (1971) (plurality opinion); *Osborn* v. *United States*, 385 U. S. 323, 326–331 (1966); *Hoffa* v. *United States*, 385 U. S. 293, 300–303 (1966); *Lewis* v. *United States*, 385 U. S. 206 (1966); *Lopez* v. *United States*, 373 U. S. 427, 437–439 (1963); *On Lee* v. *United States*, 343 U. S. 747, 753–754 (1952). See also *United States* v. *Henry*,

authorities use information with respect to which the expectation of privacy has not already been frustrated. In such a case the authorities have not relied on what is in effect a private search, and therefore presumptively violate the Fourth Amendment if they act without a warrant.[14]

In this case, the federal agents' invasions of respondents' privacy involved two steps: first, they removed the tube from the box, the plastic bags from the tube and a trace of powder from the innermost bag; second, they made a chemical test of the powder. Although we ultimately conclude that both actions were reasonable for essentially the same reason, it is useful to discuss them separately.

II

When the first federal agent on the scene initally saw the package, he knew it contained nothing of significance except a tube containing plastic bags and, ultimately, white powder. It is not entirely clear that the powder was visible to him before he removed the tube from the box.[15] Even if the white powder was not itself in "plain view" because it was still en-

447 U. S. 264, 272 (1980); *United States* v. *Caceres*, 440 U. S. 741, 744, 750–751 (1979).

[14] See *Katz* v. *United States*, 389 U. S. 347 (1967); *Berger* v. *New York*, 388 U. S. 41 (1967); *Silverman* v. *United States*, 365 U. S. 505 (1961).

[15] Daniel Stegemoller, the Federal Express office manager, testified at the suppression hearing that the white substance was not visible without reentering the package at the time the first agent arrived. Joint App. 42–43; 58. The magistrate's report contained a finding that the gray tube and powder were in plain view, which respondents challenged before the District Court. The District Court declined to resolve respondents' objection, ruling that fact immaterial and assuming for purposes of its decision "that the newspaper in the box covered the gray tube and that neither the gray tube nor the contraband could be seen when the box was turned over the the DEA agents." App. to Pet. for Cert. 12a–13a. At trial, the federal agent first on the scene testified that the powder was not visible until after he pulled the plastic bags out of the tube. Joint App. 71–72. As our discussion will make clear, we agree with the District Court that it does not matter whether the loose piece of newspaper covered the tube at the time the agent first saw the box.

closed in so many containers and covered with papers, there was a virtual certainty that nothing else of significance was in the package and that a manual inspection of the tube and its contents would not tell him anything more than he already had been told. Respondents do not dispute that the Government could utilize the Federal Express employees' testimony concerning the contents of the package. If that is the case, it hardly infringed respondents' privacy for the agents to reexamine the contents of the package. The advantage the Government gained thereby was merely avoiding the risk of a flaw in the employees' recollection, rather than in further infringing respondents' privacy. Protecting the risk of misdescription hardly enhances any legitimate privacy interest, and is not protected by the Fourth Amendment.[16]

Thus, the removal of the plastic bags from the tube and the agent's visual inspection of their contents enabled the agent to learn nothing that had not previously been learned during the private search.[17] It infringed no legitimate expectation of privacy and hence was not a "search" within the meaning of the Fourth Amendment.

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[16] See *United States* v. *Caceres*, 440 U. S. 741, 750–751 (1979); *United States* v. *White*, 401 U. S. 745, 749–753 (1971) (plurality opinion); *United States* v. *Osborn*, 385 U. S. 323, 326–331 (1966); *On Lee* v. *United States*, 343 U. S. 747, 753–754 (1952). For example, in *Lopez* v. *United States*, 373 U. S. 427 (1963), the Court wrote: "Stripped to its essentials, petitioner's argument amounts to saying that he has a constitutional right to rely on possible flaws in the agent's memory, or to challenge the agent's credibility without being beset by corroborating evidence. . . . For no other argument can justify excluding an accurate version of a conversation that the agent could testify to from memory. We think the risk that petitioner took in offering a bribe to Davis fairly included the risk that the offer would be accurately reproduced in court. . . ." *Id.*, at 439 (footnote omitted).

[17] Moreover, since the Federal Express employees had of their own accord invited the federal agent to their offices for the express purpose of viewing the contents of the package, the agent's viewing of what a private party had freely made available for his inspection did not violate the Fourth Amendment. See *Coolidge* v. *New Hampshire*, 403 U. S. 443, 487–490 (1971); *Burdeau* v. *McDowell*, 256 U. S. 465, 476–476 (1921).

While the agents' assertion of dominion and control over the package and its contents did constitute a "seizure," [18] that seizure was not unreasonable. The fact that, prior to the field test, respondents' privacy interest in the contents of the package had been largely compromised, is highly relevant to the reasonableness of the agents' conduct in this respect. In light of what the agents already knew about the contents of the package, it was as if the contents were in plain view. The examination of the tube and the powder it contained was comparable to the police officer's observation of a balloon "the distinctive character [of which] itself spoke volumes as to its contents, particularly to the trained eye of the officer." *Texas* v. *Brown*, —— U. S. ——, —— (1983) (plurality opinion); see also *id.*, at —— (POWELL, J., concurring in the judgment). The balloon was like the hypothetical gun case in *Arkansas* v. *Sanders*, 442 U. S. 753 (1979), both of which are containers which "by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance." *Id.*, at 764–765, n. 13. Such containers may be seized, at least temporarily, without a warrant on probable cause.[19] Accordingly, since it was apparent that the tube and plastic bags contained contraband and little else, this warrantless seizure was reasonable,[20] for it is well-settled that it is constitution-

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[18] Both the Magistrate and the District Court found that the agents took custody of the package from Federal Express after they arrived. Although respondents had entrusted possession of the items to Federal Express, the decision by governmental authorities to exert dominion and control over the package for their own purposes clearly constituted a "seizure," though not necessarily an unreasonable one. See *United States* v. *Van Leeuwen*, 397 U. S. 249 (1970). Indeed, this is one thing on which the entire Court appeared to agree in *Walter*.

[19] See also *United States* v. *Ross*, 456 U. S. 798, 822–823 (1982); *Robbins* v. *California*, 453 U. S. 420, 428–428 (1981) (plurality opinion).

[20] Respondents concede that the agents had probable cause to believe the package contained contraband. Therefore we need not decide whether the agents could have seized the package based on something less than proba-

ally reasonable for law enforcement officials may seize "effects" that cannot support a justifiable expectation of privacy without a warrant based on probable cause to believe they contain contraband.[21]

III

The question remains whether the additional intrusion occasioned by the field test, which had not been conducted by the Federal Express agents and therefore exceeded the scope of the private search, was an unlawful "search" or "seizure" within the meaning of the Fourth Amendment.

The field test at issue could disclose only one fact previously unknown to the agent—whether or not a suspicious white powder was cocaine. It could tell him nothing more, not even whether the substance was sugar or talcum powder. We must first determine whether this can be considered a "search" subject to the Fourth Amendment—did it infringe an expectation of privacy that society is prepared to consider reasonable?

The concept of an interest in privacy that society is prepared to recognize as reasonable is, by its very nature, critically different from the mere expectation, however well justified, that certain facts will not come to the attention of the authorities.[22] Indeed, this distinction underlies the rule that

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ble cause. Some seizures can be justified by an articulable suspicion of criminal activity. See *United States* v. *Place*, 462 U. S. —— (1983).

[21] See *Place*, 462 U. S., at ——; *Texas* v. *Brown*, 460 U. S., at ——; *id.*, at —— (STEVENS, J., concurring in the judgment); *Payton* v. *New York*, 445 U. S. 573, 587 (1980); *G. M. Leasing Corp.* v. *United States*, 429 U. S. 338, 354 (1977); *Harris* v. *United States*, 390 U. S. 234, 236 (1968) (*per curiam*).

[22] "Obviously, however, a 'legitimate' expectation of privacy by definition means more than a subjective expectation of not being discovered. A burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate.' His presence, in the words of *Jones* [v. *United States*, 362 U. S. 257, 267 (1960)], is 'wrongful,' his expectation of privacy is not one that society is prepared to recognize as 'reasonable.' *Katz* v. *United States*, 389 U. S., at 361 (Harlan, J., concurring).

Government may utilize information voluntarily disclosed to a governmental informant, despite the criminal's reasonable expectation that his associates would not disclose confidential information to the authorities. See *United States* v. *White*, 401 U. S. 745, 751–752 (1971) (plurality opinion).

A chemical test that merely discloses whether or not a particular substance is cocaine does not compromise any legitimate interest in privacy. This conclusion is not dependent on the result of any particular test. It is probably safe to assume that virtually all of the tests conducted under circumstances comparable to those disclosed by this record would result in a positive finding; in such cases, no legitimate interest has been compromised. But even if the results are negative—merely disclosing that the substance is something other than cocaine—such a result reveals nothing of special interest. Congress has decided—and there is no question about its power to do so—to treat the interest in "privately" possessing cocaine as illegitimate; thus governmental conduct that can reveal whether a substance is cocaine, and no other arguably "private" fact, compromises no legitimate privacy interest.[22]

And it would, of course, be merely tautological to fall back on the notion that those expectations of privacy which are legitimate depend primarily on cases deciding exclusionary-rule issues in criminal cases. Legitimation of expectations of privacy by law must have a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." *Rakas* v. *Illinois*, 439 U. S. 128, 143–144, n. 12 (1978). See also *United States* v. *Knotts*, 460 U. S. —— (1983) (use of a beeper to track car's movements infringed no reasonable expectation of privacy); *Smith* v. *Maryland*, 442 U. S. 735 (1979) (use of a pen register to record phone numbers dialed infringed no reasonable expectation of privacy).

[22] See Loewy, The Fourth Amendment as a Device for Protecting the Innocent, 81 Mich. L. Rev. 1229 (1983). Our discussion, of course, is confined to possession of contraband. It is not necessarily the case that the purely "private" possession of an article that cannot be distributed in commerce is itself illegitimate. See *Stanley* v. *Georgia*, 394 U. S. 557 (1969).

This conclusion is dictated by *United States* v. *Place*, 462 U. S. —— (1983), in which the Court held that subjecting luggage to a "sniff test" by a trained narcotics detection dog was not a "search" within the meaning of the Fourth Amendment:

> "A 'canine sniff' by a well-trained narcotics detection dog, however, does not require opening of the luggage. It does not expose noncontraband items that otherwise would remain hidden from public view, as does, for example, an officer's rummaging through the contents of the luggage. Thus, the manner in which information is obtained through this investigative technique is much less intrusive than a typical search. Moreover, the sniff discloses only the presence or absence of narcotics, a contraband item. Thus, despite the fact that the sniff tells the authorities something about the contents of the luggage, the information obtained is limited." *Id.*, at ——.[24]

Here, as in *Place*, the likelihood that official conduct of the kind disclosed by the record will actually compromise any legitimate interest in privacy seems much too remote to characterize the testing as a search subject to the Fourth Amendment.

We have concluded, in Part II, *supra*, that the initial "seizure" of the package and its contents was reasonable. Nevertheless, as *Place* also holds, a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the the Fourth Amendment's prohibition on

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[24] Respondents attempt to distinguish *Place* arguing that it involved no physical invasion of Place's effects, unlike the conduct at issue here. However, as the quotation makes clear, the *reason* this did not intrude upon any legitimate privacy interest was that the governmental conduct could reveal nothing about noncontraband items. That rationale is fully applicable here.

"unreasonable seizures."[25] Here, the field test did affect respondents' possessory interests protected by the Amendment, since by destroying a quantity of the powder it converted what had been only a temporary deprivation of possessory interests into a permanent one. To assess the reasonableness of this conduct, "[w]e must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Id.*, at ——.[26]

Applying this test, we conclude that the destruction of the powder during the course of the field test was reasonable. The law enforcement interests justifying the procedure were substantial; the suspicious nature of the material made it virtually certain that the substance tested was in fact contraband. Conversely, because only a trace amount of material was involved, the loss of which appears to have gone unnoticed by respondents, and since the property had already been lawfully detained, the "seizure" could, at most, have only a *de minimis* impact on any protected property interest. Cf. *Cardwell* v. *Lewis*, 417 U. S. 583, 591–592 (1974) (plurality opinion) (examination of automobile's tires and taking of paint scrapings was a *de minimis* invasion of constitutional interests).[27] Under these circumstances, the safeguards of a

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[25] In *Place*, the Court held that while the initial seizure of luggage for the purpose of subjecting it to a "dog sniff" test was reasonable, the seizure became unreasonable because its length unduly intruded upon constitutionally protected interests. See *id.*, at ——.

[26] See, *e. g.*, *Michigan* v. *Long*, 463 U. S. ——, —— (1983); *Delaware* v. *Prouse*, 440 U. S. 648, 654 (1979); *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 878 (1975); *Terry* v. *Ohio*, 392 U. S. 1, 20–21 (1968); *Camara* v. *Municipal Court*, 387 U. S. 523, 536–537 (1967).

[27] In fact, respondents do not contend that the amount of material tested was large enough to make it possible for them to have detected its loss. The only description in the record of the amount of cocaine seized is that "[i]t was a trace amount." Joint App. 75.

warrant would only minimally advance Fourth Amendment interests. This warrantless "seizure" was reasonable.[28]

In sum, the federal agents did not infringe any constitutionally protected privacy interest that had not already been frustrated as the result of private conduct. To the extent that a protected possessory interest was infringed, the infringement was *de minimis* and constitutionally reasonable. The judgment of the Court of Appeals is

Reversed.

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[28] See *Cupp* v. *Murphy*, 412 U. S. 291, 296 (1973) (warrantless search and seizure limited to scraping suspect's fingernails justified even when full search may not be). Cf. *Place*, 462 U. S., at —— (approving brief warrantless seizure of luggage for purposes of "sniff test" based on its minimal intrusiveness and reasonable belief that the luggage contained contraband); *Van Leeuwen* v. *United States*, 397 U. S. 249, 252–253 (1970) (detention of package on reasonable suspicion was justified since detention infringed no "significant Fourth Amendment interest"). Of course, where more substantial invasions of constitutionally protected interests are involved, a warrantless search or seizure is unreasonable in the absence of exigent circumstances. See, *e. g.*, *Steagald* v. *United States*, 451 U. S. 204 (1981); *Payton* v. *New York*, 445 U. S. 573 (1980); *Dunaway* v. *New York*, 442 U. S. 200 (1979); *United States* v. *Chadwick*, 433 U. S. 1 (1977). We do not suggest, however, that any seizure of a small amount of material is necessarily reasonable. An agent's arbitrary decision to take the "white powder" he finds in a neighbor's sugar bowl, or his medicine cabinet, and subject it to a field test for cocaine, might well work an unreasonable seizure.

January 30, 1984

82-1167 United States v. Jacobsen

Dear John:

Please join me.

Sincerely,

Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 30, 1984

Re: No. 82-1167-U.S. v. Jacobsen

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

&82-1167 United States v. Jacobsen (David)

JPS for the Court
1st draft 1/17/84
2nd draft 1/25/84
3rd draft 1/30/84
4th draft 3/12/84
Joined by SOC 1/19/84
Joned by HAB 1/23/84
Joined by WHR 1/23/84
Joined by LFP 1/30/84
Joined by CJ 2/1/84

BRW concurring in part and concurring in the judgment
1st draft 3/8/84

WJB dissenting
1st draft 3/28/84
Joined by TM 330/84