



10-1981

United States v. Ross

Lewis F. Powell Jr.

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/casefiles>

 Part of the [Constitutional Law Commons](#), [Courts Commons](#), and the [Fourth Amendment Commons](#)

Recommended Citation

U.S. v. Ross. Supreme Court Case Files Collection. Box 88. Powell Papers. Lewis F. Powell Jr. Archives, Washington & Lee University School of Law, Virginia.

This Manuscript Collection is brought to you for free and open access by the Lewis F. Powell Jr. Papers at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Supreme Court Case Files by an authorized administrator of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

June 4 to Grant

There is Robbins revisited!

CADC applied Chadwick & Sanders to a brown paper, unsealed bag in trunk of car.

In response stated in my Robbins concurrence, I'd be willing to reconsider this issue. The law

Preliminary Memo now is in a shambles.

SEP 28 1981
Summer List 15
Sheet 3

No. 80-2209

UNITED STATES

v.

ROSS

Cert to CA DC
(Ginsburg; McGowan,
Wright, Robinson,
Wald, Mikva
& Edwards; Tamm,
McKinnon, Robb
& Wilkey, dis-
senting)
(en banc)
Federal Criminal

Timely
(with
extension)

7 to 4

SUMMARY: Whether a warrantless search, based upon probable cause, of a closed but unsealed paper bag, found in the trunk of resp's automobile during a lawful search of the automobile, was permissible under the Fourth Amendment.

FACTS: A D.C. police detective was told by a reliable informant that he had observed a man selling narcotics from the DENY, unless there is reason to think the Court

Response emphasizes
need to clear up
uncertainty
left by
Robbins. Adds
Nothing else.
R.C.

trunk of an automobile. Upon arriving in the area, the detective and two other police officers observed a vehicle being driven by resp matching the informant's description. The officers determined that it was registered to resp. They then stopped the vehicle, identified themselves, and asked resp to step out. A police officer spotted a round of ammunition on the front seat of the car and, upon searching the interior of the vehicle for weapons, found a pistol in the glove compartment.

After resp was arrested, another officer unlocked and searched the vehicle's trunk. In it he discovered a brown paper lunch bag with a folded but unsealed top, and a zippered leather pouch. He opened the paper bag and discovered in it a number of glassine envelopes, each containing a white powder. Leaving the paper bag and the leather pouch in the trunk, the officers drove resp's automobile to the police station. At the station the officers reopened the paper bag and upon analysis it was found to contain a quantity of heroin. One of the officers then opened the leather pouch and found that it contained \$3,200 in currency. No search warrant had been obtained at any point in this sequence of events.

The resp was indicted by a federal grand jury on charges including possession with intent to distribute a controlled substance. A motion to suppress evidence was made and denied after a hearing by the district judge. Resp was convicted of the possession with intent to distribute charge. On appeal, a panel of the CA DC reversed the conviction, holding that the search of the leather pouch without a warrant violated resp's Fourth

Amendment rights. Arkansas v. Sanders, 442 U.S. 753 (1979). A majority of the panel upheld legality of the warrantless search involving the paper bag because paper bags offer only minimal protection against intrusion and, given their conventional uses, are not inevitably associated with an expectation of privacy.

DECISION BELOW: Acting upon resp's suggestion, the CA granted rehearing en banc. In an opinion joined by seven of its members, the majority of the court rejected the panel's conclusion that the warrantless search of the unsealed paper bag was permissible.¹ In an opinion by Judge Ginsburg, the majority of the en banc court agreed that although resp's car was properly stopped and searched and that the paper bag and leather pouch properly seized, no "special exigencies" justified opening the pouch or the bag without a warrant and that no other "established, well-drawn exception" to the warrant requirement was applicable. The court declined to adopt what was termed "an unworthy container rule," in part because of the administrative infeasibility of such a rule and in part because "it would snare those without the means or the sophistication to use worthy containers." The en banc court thus perceived no distinction between the pouch and the bag in a manner that "makes theoretical

¹ On rehearing en banc the Government did not challenge the panel's ruling regarding the warrantless search of the leather pouch on its merits. The Government did argue that Arkansas v. Sanders, 442 U.S. 753 (1979), should not have been applied retroactively to the search in issue, and that, for that reason, none of the evidence should have been suppressed. The CA rejected that argument, and the Government has not sought review of that decision in this petition.

or practical sense." They concluded that the contents of the paper bag, as well as those of the leather pouch, should have been suppressed.

Four members of the court dissented. Judge Tamm, who had written the panel opinion, adhered to his original reasoning and conclusions in an opinion joined by Judges McKinnon and Robb, each of whom wrote separately as well. Judge McKinnon would have upheld the warrantless search of the leather pouch as well as the paper bag and would accordingly have affirmed a conviction. Judge Robb thought that this Court's decisions required suppression of the leather pouch but that "this result does not make sense." Judge Wilkey issued a separate 67-page dissent on the ground that Arkansas v. Sanders, 442 U.S. 753 (1979), was not properly applied retroactively to the search at issue. He, however, would have joined the majority as to the issues on the merits, reluctantly concluding that Arkansas v. Sanders controls this case and criticizing both the decision in Sanders and the exclusionary rule. Judge McKinnon joined Judge Wilkey's dissent with respect to the retroactivity issue.

CONTENTIONS: The SG, in a petition filed before this Court's decision in Robbins v. California, 49 U.S.L.W. 4906 (July 1, 1981), contends that the case presents an important and recurring question similar to that in Robbins. The decision of the en banc CA DC that there is no distinction between conventional types of luggage and an unsealed paper bag is contrary to the decisions of eight other CA's, which have declined to extend a warrant requirement to paper bags and

similar insubstantial containers.² While acknowledging that this Court has twice held that a warrant is required before law enforcement officials may search "luggage" found in a vehicle, Arkansas v. Sanders, 442 U.S. at 762-766 (suitcase); United States v. Chadwick, 433 U.S. 1 (1977) (double locked footlocker), the Court has cautioned that "not all containers and packages found by police during the course of a search will deserve the full protection of the Fourth Amendment." 442 U.S. at 764, 765 n. 13. } Sanders

Factors traditionally employed to determine the scope of Fourth Amendment protection suggests that the very nature of unsealed paper bags and similar containers is inconsistent with the reasonable expectation that their contents will be protected from public exposure. Paper bags and similar packages offer at best only minimal protection against accidental or deliberate intrusion. Moreover, while a common bag may at times be pressed into services or a repository for personal effects, such unrepresentative use is not part of the conventional

² See United States v. Goshorn, 628 F.2d 697 (1st Cir. 1980) (plastic and paper bags); United States v. Mannino, 635 F.2d 110 (CA 2 1980) (plastic bag); United States v. Markland, 635 F.2d 174 (CA 2 1980) (beverage bag); United States v. Bush, No. 80-1116 (CA 3 Mar. 24, 1981) (unsealed cardboard box); United States v. Sutton, 636 F.2d 96 (CA 5 1981) (pharmacy bag); United States v. Brown, 635 F.2d 1207 (CA 6 1980) (closed paper bag); United States v. Jimenez, 626 F.2d 39 (CA 7 1980) (paper bag); United States v. Mackey, 626 F.2d 684 (CA 9 1980) (paper bag); United States v. Gooch, 603 F.2d 122 (CA 10 1979) (plastic bags of marijuana); but see United States v. Moschetta, 646 F.2d 955 (CA 5 1981) (paper bag); United States v. Dien, 609 F.2d 1038 (CA 2 1979) (sealed box, warrant required), adhered to on rehearing, 615 F.2d 10 (1980).

"understandings that are recognized and permitted by society," which are the touchstone for assessing the scope of Fourth Amendment protection. Rakas v. Illinois, 439 U.S. 128, 144 n. 12 (1978).

Resp Ross, writing after this Court decided Robbins and New York v. Belton, 49 U.S.L.W. 4915 (July 1, 1981), argues that given these recent cases, along with Chadwick and Sanders, the circuit courts now have sufficient guidance from this Court in determining whether warrants are necessary to search various containers located in the trunk areas of vehicles. Robbins, which held that a closed opaque container found in a vehicle cannot be searched without a warrant, unless its contents are in plain view or could be inferred from their outward appearance, should control this case. Resp notes the plurality opinion's reference to United States v. Ross in commenting "what one person may put into a suitcase, another may put into a paper bag." It should not matter whether the paper bag was merely closed as opposed to being taped shut. Resp also thinks it significant that the paper bag was stored in the locked trunk of the vehicle, since containers placed in the luggage compartment should be entitled to a greater expectation of privacy after New York v. Belton held that police may examine the contents of any containers found in the passenger compartment of a car upon a lawful custodial arrest. In short, resp contends that the instant case was properly decided.

✓ DISCUSSION: I believe that the case is controlled by the plurality opinion in Robbins. Both there and here the container

at issue was closed and opaque. The rationale of Robbins -- that it is difficult, if not impossible, to establish objective criteria by which to distinguish between substantial and insubstantial containers -- applies here with equal force. Footnote 13 of the Sanders' opinion, upon which the SG relies, was interpreted in Robbins to exclude only containers whose contents can be inferred from their outward appearance or which are open to plain view. I do not see how Robbins allows for a distinction between an unsealed paper bag and a taped parcel.

you The only justification for review, therefore, would be to consider whether the automobile exception, Chambers v. Maroney, 399 U.S. 42 (1970), should be expanded to allow for the warrantless search of all containers found within an automobile. The difficulty inherent in distinguishing between permissible and impermissible warrantless searches and the burden on law enforcement officials to hold and transport automobiles while seeking warrants push in this direction. This might be a case which affords "an opportunity for more thorough consideration of the basic principles" leading to "some better, if more radical, solution to the confusion that infects this benighted area of the law." Robbins v. California, 49 U.S.L.W. at 4910 (Opinion of POWELL, J., concurring in the judgment).

Unless the Court wishes to engage in such basic reconsideration, I believe that cert should be denied.

There is a response.

8/5/81

Singer

Opinion in
Petition

ME

UNITED STATES

vs.

Police had probably
cause to stop car.
Search of "unsealed paper
bag" ^{ROSS}
Cg + ~~WNR~~ WNR would go back
to Carroll (everything in a car
where probable cause to search car)
G.P.S. would re-examine Q & draw
no lines between any part of
car if there is probable cause
to search car.
Sandra ~~to~~ agrees with WTR & G.P.S.

Grant
(G.P.S. will
circulate a
proposed order)

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.												
O'Connor, J.	✓											

I would not vote
to grant unless
there are four
votes to
reconsider
P.S.'s opinion
re Robbins

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

September 29, 1981

JP MEMORANDUM TO THE CONFERENCE

Re: 80-2209 - United States v. Ross, p. 27

In order to implement Byron's suggestion, I
propose the following form of order:

"Certiorari granted. The parties are directed
to address the question whether the Court should
reconsider Robbins v. California, ___ U.S. ___."

Respectfully,

JP

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

September 30, 1981

RE: No. 80-2209 United States v. Ross

Dear John:-

Your Order of September 29 in the above is agreeable
with me.

Sincerely,

Bill

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

September 30, 1981

Re: No. 80-2209 United States v. Ross

Dear John:

The order you propose in your memo of September 29th
is agreeable to me.

Sincerely,

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

September 30, 1981

Re: No. 80-2209 - United States v. Ross

Dear John:

The proposed form of order has my approval.

Sincerely,

Harry
—

Mr. Justice Stevens

cc: The Conference

The proposed language -- inviting briefing
on whether the Court should "reconsider"
Robbins -- seems fine to me. RF

September 30, 1981

80-2209 United States v. Ross

Dear John:

The proposed form of order has my approval.

Sincerely,

Mr. Justice Stevens

lfp/ss

cc: The Conference

give
approved
order
10/8

September 30, 1981

MEMO TO: Justice John Paul Stevens
FROM: Justice Sandra D. O'Connor
RE: 80-2209 - United States v. Ross

I agree with the proposed form of order. Perhaps it
would help to add the following language at the end:

"in addition to any other questions
raised in the petition."

Respectfully,

SO'C

SO'C

cc: The Chief Justice
Justice Brennan
Justice Stewart
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist

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

CHAMBERS OF
THE CHIEF JUSTICE

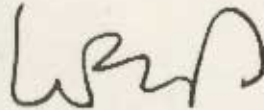
October 7, 1981

Re: No. 80-2209 - United States v. Ross

Dear John:

I agree with the September 29 proposed order.

Regards,

A handwritten signature in dark ink, appearing to be 'W. Stevens', written in a cursive style.

Justice Stevens
Copies to the Conference

Court
Argued 19...
Submitted 19...

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

No. 80-2209

UNITED STATES

vs.

ROSS

Order
Lent

[illegible]

Caldwell

6

November 13, 1981 Conference
List 3, Sheet 4

No. 80-2209

Motion to Dispense with
Printing the Joint Appendix

UNITED STATES

v.

ROSS

SUMMARY: The SG, as petr, seeks leave to dispense with the requirement of a joint appendix. The SG maintains that the facts of this search and seizure case are fully set forth in the en banc CA opinion which already appears in the appendix of the cert petn. Resp consents to the SG's request.

DISCUSSION: Grant.

11/10/81

Caldwell

PJC

Grant RF

jsw 02/25/82

Analyses 4 possible alternatives -
none free of genuine infirmities either
of doctrine or feasibility of administration.

I am unwilling to endorse P.S.'s
"bright line" view in Robbins.

I still prefer my Robbins/Sanderson
analyses grounded in privacy expectations.
But this may not be admin. feasible
- as police would be making
subjective judgments "on the spot".

Perhaps the "auto search" exhibition
is best of an unhappy choice of alternatives.

BENCH MEMORANDUM I am not at rest.

To: Mr. Justice Powell
From: John Wiley

February 25, 1982

No. 80-2209: U.S. v. Ross

Question Presented

Whether police were required to obtain a warrant to
search a paper bag found in the trunk of a car that they had
probable cause to search.

Discussion

This area of law has been very troubling for the
Court. As you have made clear, the Court faces the dual re-
sponsibility of principled decisionmaking as well as minimal
institutional unity -- so as to provide daily guidance for the
hundreds of thousands of law enforcement personnel who are ex-
pected to abide by this Court's dictates.

I see four alternative ways to resolve this case. I list and discuss each.

1. Robbins theory

This resolution would simply reaffirm Robbins' holding that search of any closed and opaque container require a warrant. This position is urged by resp and by the ACLU as amicus. WJB, BRW, and TM also can be expected to adhere to their Robbins plurality vote for this theory.

The advantage of this theory is its "bright line" character. It makes the empirical generalization that persons have an expectation of privacy in any closed and opaque container. People vary in their assessment about this generalization's validity, and hence its cost (in terms of inaccuracy stemming from protecting packages that embody little or no expectation of privacy). My own view is that the generalization probably is quite valid. I think one safely can assume that most closed containers -- by their very nature -- do evidence the owner's expectation of privacy.

I expect you will disagree. Your Robbins statement, together with materials in the Chamber's Robbins file, makes clear you view many containers as too flimsy or inconsequential to support this "privacy of container contents" generalization. Under this view, the generalization creates high law enforcement costs with no corresponding or offsetting benefit from protection of privacy expectations. The "bright line" thus is

5.
simply too costly to justify whatever administrative savings it may make possible.

The other great problem with this position is votes. You have made plain your laudable concern with the Court's institutional responsibility to provide unified guidance in this area. Only four Justices wholeheartedly supported the Robbins theory last Term. One of these votes -- PS's -- may well change; SOC, one may speculate, is apt to depart from PS's perspective on this issue. Therefore, even if you changed your view and supported it, the Robbins theory probably could not provide a basis for consensus in this case.

2. Arkansas v. Sanders theory

This theory reasons that ability to search containers does not depend on whether a container is or is not in a car. The theoretical framework is that set forth (eloquently, I think) in Chadwick (requiring warrant for police station search of 200 lb. locker placed in open car trunk) and Arkansas v. Sanders (requiring warrant for search of green suitcase full of marihuana in taxicab trunk). That is, whether a warrant is required would depend on whether an expectation of privacy inheres in the container to be searched, not on whether the container was near an auto. A vote to reverse in this case would employ this logic but would distinguish the result in Chadwick and Sanders on the grounds you set forth in your Robbins statement: that double-locked footlockers and personal luggage con-

vey evidence of an expectation of privacy that a paper bag does not. The SG advocates this approach (in the alternative). See SG brief at 9, 14-37. Although this approach could be made consistent with Robbins' result (because the package there was wrapped and sealed, and hence could be said to exhibit an expectation of privacy), it would require the overruling of Robbins' expansive "all containers are inviolate" reasoning.

The great advantage of this position is that it rests solidly on sound Fourth Amendment theory: the centrality of expectation of privacy as a guide to the reasonableness of searches. Also, the approach is perfectly consistent with the result and the reasoning in Chadwick and with your opinion in Sanders.

A disadvantage of this approach is administrability. Because of the infinite variety of containers, close factual distinctions would be unavoidable. The concept of "expectation of privacy" necessarily is abstract. And the competence of courts to judge general social attitudes about privacy is limited. Therefore some of the distinctions courts will have to make will begin to appear arbitrary (as in this case, for instance, where a zippered leather pouch has been found private, but a paper bag has been found not private). This arbitrariness and unpredictability makes law enforcement difficult for police. It may increase general cynicism about the overall state of search and seizure law. Additionally, there is a possible economic aspect; the poor may utilize flimsy containers

more frequently because they cannot afford more expensive receptacles. The Court no doubt should avoid warrant rules that can be accused of determining privacy rights on grounds that correlate with income level.

These objections can be exaggerated. Moreover, even if the Court can avoid the need to make such container distinctions in the auto context, presumably it still will have to make such distinctions in non-auto search contexts. To that extent the problem is inevitable.

Nevertheless, in the auto context these concerns apparently have moved WJB, BRW, TM, HAB, WHR, and JPS to seek "bright line" rules (of some type) to avoid the "substantial container" inquiry. Significantly, no other Justice joined your Robbins concurrence, which advocated this general approach. I therefore conclude that the Sanders theory, despite its advantages, is unlikely to produce consensus in this case.

3. Carroll theory

This approach is the "auto exception." It reasons that the rationale of Carroll v. United States, 267 U.S. 132 (1925) (creating the "auto exception") applies also to any containers found within an auto. Under this approach, police who properly could search an auto also properly could search containers that they discover anywhere in the auto. This course is advocated by the SG in the alternative (SG brief at 13-14; 41-47) and by the amici Americans for Effective Law Enforcement

and International Ass'n of Chiefs of Police. This theory would require the reversal of Robbins in both reasoning and result.

The transcendent advantage of this approach is its popularity. ✓HAB, ✓WHR, and ✓JPS have already endorsed this approach. It would not surprise me if SOC was similarly inclined. In this case, you would be the fifth vote. I also would not be surprised if the CJ went along with this theory. He concurred without public comment in the Robbins result. Privately he expressed his dissatisfaction with the exclusionary rule, according to our file, and stated he was "about prepared to support an 'automobile exception' that leaves little room for confusion" See 6/26/81 WEB memo in Robbins file. This, of course, was before his final decision simply to concur in the result without comment. Nonetheless, I think the prospects for a 6 vote majority are reasonably good, if you decide this course is palatable.

The main problem with this course is your opinion in Sanders. You previously have noted that the holdings in both Sanders and Chadwick can be squared with an expansion of the auto exception to cover cases like that at bar. The police in Sanders and Chadwick suspected the particular container before there was any contact with a car.¹ Police apprehended the car

¹The factual settings in both cases did involve cars in limited ways. In Chadwick the police suspected the 200 lb. footlocker -- through observation and dog alert -- before the footlocker was placed (and "arrested") in the open car trunk. In Sanders the police had information leading them to suspect the green suitcase

Footnote continued on next page.

only in order to obtain the container, not the car itself. In this case, however, police suspected that Ross' car contained contraband but had no reason to believe that that contraband was secreted inside a container that would have enjoyed an expectation of privacy outside of the car.

But while consistent in result, Sanders' reasoning squarely rejected the precise Carroll theory now under discussion. 442 U.S. at 762. This rejection was made for reasons that ring very true to my ear in 1982. See 442 U.S. at 762-65. I think your Sanders opinion is dead right, and is an important protection for personal rights. I am very proud of the United States' constitutional control on the coercive power of police authority. The admittedly high cost of upholding the principle has measured its importance to us as a nation. Few, if any, other countries can boast of such careful regard for individual liberty and autonomy. I therefore would grieve over the renunciation of Sanders' reasoning. yes

Another difficulty with Carroll approach to this case is the logical tangle that will result from barring warrantless container searches outside but permitting them inside of cars. Obviously there will be messy factual lines for ^{DCs to} draw when cars are searched just as containers enter or exit an auto. More troubling is the possibility that police may abuse a Car-

before it was carried to a taxi and placed in the taxi's trunk.

roll auto container search exception by waiting to pounce until a suspected container is placed inside a car. JPS faced this problem in footnote 9 of his Robbins dissent. See 101 S.Ct. at 2857-58 n.9. He stated that:

Of course, a proper application of the automobile exception will uphold a search of a container located in a car only if the police have probable cause to search the entire car. If, as in Sanders, the police have probable cause only as to a suitcase, and not as to the entire car, then the automobile exception is inapplicable and a warrant is required unless some other exigency exists. Thus police would not be able to avoid a warrant requirement simply by waiting for the suspect to place an object in a car and then invoking the automobile exception. If, however, the occupants of a car have an opportunity to take contraband out of a suitcase and secrete it somewhere else in a car, see Sanders . . . (Blackmun, J., dissenting), then I would conclude that police have probable cause to search the entire car, including the suitcase, without a warrant (emphasis added).

This approach has its difficulties. It may take but a few seconds to "take contraband out of a suitcase and secrete it" Therefore the potential for police to abuse this extension of the auto exception seems quite large, given that most contraband is movable and that virtually everything in our society moves by motor vehicle. Police need only watch a suspect container of contraband enter a car and then wait a few seconds. Then they can inspect without a warrant a container that they could have searched only with a warrant a few seconds earlier. Thus the "bright line" advantage carried by the Car-roll theory brings some costs (in terms of consistency) as well.

4. Chimel/Belton theory

Chimel v. California permits searches of the area within the "immediate control" of an arrested person. Last term Belton extended Chimel to hold that a search incident to arrest permits police to search the passenger compartments of car -- including any containers and closed glove compartments. Belton's thinking was that the passenger compartment is the region of an arrestee's "immediate control" during an arrest of one from a car.

Resp Ross was arrested in this case. Thus Chimel and Belton could be extended to assert that the trunk, as well as the passenger compartment, is within the Chimel "immediate control" area. *But is this true of trunk?*

*Ross
was
arrested
here*

No party advocates this theory in this case, even though it offers some attractions. One advantage is that it would permit reversal in this case on grounds that are consistent with reasoning and result in Chadwick and Sanders. This Chimel logic also would permit Robbins to remain undisturbed; Robbins explicitly did not involve a lawful arrest. See 101 S.Ct. at 2847 n.3. These doctrinal consistencies, however, are offset by two other problems.

First, this extension would stretch the Chimel reasoning to the breaking point. It is very difficult to say with a straight face that the interior of a locked trunk is within the area of immediate control of one just arrested from the passenger compartment.

yes!

Perhaps more importantly, this reasoning splits the focus of the search justification and the search scope. The rationale for the search is arrest. But nothing requires the arrest to be related to the container suspicion. In other words, such a rule could tempt police into making pretextual arrests for trivial traffic offenses, simply to gain the right to search containers in a car and its trunk. Justice Stevens used logic of this sort to criticize effectively this Chimel approach in his Robbins dissent. See 101 S.Ct. at 2858-59.

Conclusion

In the best of all possible worlds, my personal view is that the Robbins approach should be reaffirmed and thus the CADC judgment in this case should itself be affirmed. But you have made clear your view that insubstantial containers in fact do not inevitably evidence an expectation of privacy. Given your belief that paper bags may be searched without a warrant, the CADC must be reversed.

In the best of all possible worlds, I expect that you would prefer to reverse on the Arkansas v. Sanders theory of container-type-by-container-type of weighing of privacy interests. But this approach, despite its doctrinal appeal, has a very slight chance of commanding majority support.

The second next position is expansion of the Carroll auto exception. This requires overruling the result in Robbins and the reasoning in Arkansas v. Sanders, and it is not free of

True

logical ironies. But in general it seems a workable approach. Importantly, it stands a good chance of winning 6-3 support.

Finally, I think the Court should reject any reliance on a Chimel theory. No party advocates this view. It would tear doctrine and reduce personal liberties with the advantage only of preserving consistency with Chadwick, Sanders, and Robbins.

You may wish to remain flexible at Conference. A possible course would be to express a preference for what I have labelled the Sanders theory, but to mention that you will join 4 or 5 to reverse on a Carroll approach.

80-2209 U. S. v. ROSS

Argued 3/1/82

"Paper Bag" case

~~July (SG)~~

my
notes

The war "probably" came to search the car. Officers had reliable tip that narcotics were being sold from this car (license no given). ~~the~~ Ammunition (cartridges) were observed on front seat when car was stopped. When car was searched, pistol was found in glove compartment. Resp. was then arrested.

Thus, under ~~the~~ Carroll, & even before the arrest, the car & its contents could be searched.

But the rationale of search incident to arrest, relied upon in Belton, would be inapplicable to contents of trunk.

July (SG)

Two inquiries:

1. Substantive requirement - in there "probable cause"?
2. Procedural - in a warrant requirement

The former is more important as it affords the basis 4th amendment protection

Frey (cont). (Balancing of benefits vs costs,
relying on Mathews, is good.)
Relent on Mathews - as relevant to
the "procedural" inquiry.

Benefits of a magistrate's judg.:

1. Limits scope of search. But
this is not relevant where
search is of a container.
2. Notice benefit - i.e. the person
whose home is to be searched is notified.
Not important here.

(Responding to O'Connor, Frey supported
my analysis - "expectation of privacy" -
rather than "auto search". He thinks we
could fall back on "auto search")

TM noted in this case, Risk had
been arrested & would be taken to Station
House. There, TM said bag could have
been taken also, & at Station House bag
could have been part of "Inventory Search".
Frey answered that a container in
trunk is not w/in rule of Inventory Search

If auto exception allows search of
locked trunk, little reason to distinguish
containers in trunk.

3. Third benefit is to protect
4th amend interests by a magistrate
judg. This is relevant, but these
interests are less in an auto
than in a home or office.

Against benefits, must weigh costs

Garber (Reck) (good argument)
Relied on Chadwick & Sauders

Consider that opening of trunk was lawful. There was probable cause & exigent circumstances. Probable cause to believe contraband was in the car. When trunk was opened, contraband here was not in "plain view".

"Exigent circumstances" ended when everything in "plain view" had been examined.

Officer here spent 5 hrs processing the charge vs Ross.

Robbins was right. Ct. would have to overrule it to reverse this case.

Should apply "exigent ~~circumstances~~" analysis. This is better than "auto search" analysis. *

Chambers is the "problem" in this area.

→ If the stop is in a rural area, there may be "exigent circumstances" to search even containers in trunk.
(~~Problem with this is~~

* Problem with "ex. circ" analysis is that officers who have to make a guess as to whether they exist, & if so - when they cease to exist.

Frey (Reply)

As to JPS Q about a "blanket" over contents of trunk. Frey comments that this illustrates ~~an~~ ambiguity in Robbins: Is a blanket ~~in~~ a container?

Agrees with my analysis - but not my application of it.

"Telephonic warrant" is permitted only in special circumstances.

Reef's counsel (Garber) argument for an "emergency circumstances" analysis would require overruling of Chambers:

Here the basic protection in the auto search situation is probable cause to search auto.

A luggage still is protected. Does not ask us to overrule Chadwick & Sanders.

The Chief Justice *Revere*

No valid distinction bet. interior & trunk of car, especially in view of station wagons, etc. There is difference as to safety of officer, but not in privacy interest.

Under present state of law, criminals will use opaque packages in trunk to transport narcotics.

Will join any other 4 that adopts a bright line

Justice Brennan *Aff'm*

SG doesn't urge overruling of Robbins
Agrees with Robbins

Justice White *Rev.*

~~Whereas~~ such case is involved, same rule should apply wherever it is found -

Justice Marshall *Off'm*

Rusk was under arrest & had to take him to station. Should have taken bag with him

Justice Blackmun *Rev.*

Confusion abounds.

Could say Carroll was right & go for auto exception.

Also would overrule Chadwick & Sanders but unnecessary & could

Justice Powell *Pass*

Justice Rehnquist Rev.

No perfect bright line rule.

SG offers two rationales.

1. May search anything there is probable cause to search. (This is Saunders)
 2. Auto search - if probable cause to search car, can search everything in it.
- WHR prefers #2.

Justice Stevens Rev.

~~SG~~

All Justices except LFP have rejected a case by case examination based on ~~the~~ the nature of the container.

Before ~~Chadwick~~ Chadwick & Saunders, settled law was the auto ~~search~~ search exception. And both Chadwick & Saunders can be reconciled with auto search.

Auto exception depends on probable cause to search the vehicle.

Justice O'Connor Rev.

Illogical to draw line between interior & trunk.

Saunders can be distinguished

Adapt auto exception

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

RECEIVED
CHAMBERS OF THE
CHIEF JUSTICE

1982 MAR 4 AM 9 24

March 3, 1982

80-2209 United States v. Ross

Dear Chief:

My vote in this case is to reverse.

I would reach this conclusion under the analysis of my concurring opinion last Term in Robbins. I agree with the SG that one has no reasonable expectation of privacy in a paper bag of the type involved in this case. It was not sealed and there was no other evidence of a privacy expectation.

There are five votes to adopt the Carroll automobile exception: that wherever there is probable cause to search an automobile, the entire vehicle and all of its contents may be searched without a warrant. I do not think this would require reversal of Chadwick and Sanders for the reasons you and I have stated. It would require reversal of Robbins, as well as a rejection of the line of reasoning stated in my concurring opinion in that case.

In these circumstances, I must decide whether to adhere to the views I expressed last Term in Robbins or join an opinion that defines the scope of the automobile search as indicated above. I am not at rest as between these choices and will await the writing of the Court opinion.

Sincerely

The Chief Justice

Copies to the Conference

lfp/ss

Lewis
Good!
Did you see the Barbarelli piece in the Post? Silly or not, it is a problem which the Bar is also raising. The question: more and more, if my letters are any measure.
yes
CRB

March 3, 1982

80-2209 United States v. Ross

Dear Chief:

My vote in this case is to reverse.

I would reach this conclusion under the analysis of my concurring opinion last Term in Robbins. I agree with the SG that one has no reasonable expectation of privacy in a paper bag of the type involved in this case. It was not sealed and there was no other evidence of a privacy expectation.

There are five votes to adopt the Carroll automobile exception: that wherever there is probable cause to search an automobile, the entire vehicle and all of its contents may be searched without a warrant. I do not think this would require reversal of Chadwick and Sanders for the reasons you and I have stated. It would require reversal of Robbins, as well as a rejection of the line of reasoning stated in my concurring opinion in that case.

In these circumstances, I must decide whether to adhere to the views I expressed last Term in Robbins or join an opinion that defines the scope of the automobile search as indicated above. I am not at rest as between these choices and will await the writing of the Court opinion.

Sincerely

The Chief Justice

Copies to the Conference

lfp/ss

[C. MAY 5, 1982]

When Justice Stevens
gets Court want to
write concurring opinion
Justice with him were
Chief, White, Blackmun
Rehnquist & O'Connor.

Facts in Sanders similar to
those in Chadwick - 14

LFP did not rest solely on
Chadwick - 15. Wrote John

Robbier - 16

Dissemin my opinion - 17

→ Can't agree with p 24

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackman
Justice Powell
Justice Rehnquist
Justice O'Connor

L.F.P.

16

From: Justice Stevens

Circulated: _____

MAY 5 '81

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER v. ALBERT ROSS, JR.

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

[May —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

In *Carroll v. United States*, 267 U. S. 132, the Court held that a warrantless search of an automobile stopped by police officers who had probable cause to believe the vehicle contained contraband was not unreasonable within the meaning of the Fourth Amendment. The Court in *Carroll* did not explicitly address the scope of the search that is permissible. In this case, we consider the extent to which police officers—who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it—may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view. We hold that they may conduct a search of the vehicle that is as thorough as a magistrate could authorize in a warrant “particularly describing the place to be searched.”¹

& weapons?

I

In the evening of November 27, 1978, an informant who had previously proved to be reliable telephoned Detective

¹ “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U. S. Const., Amdt. 4.

Marcum of the District of Columbia Police Department and told him that an individual known as "Bandit" was selling narcotics kept in the trunk of a car parked at 439 Ridge Street. The informant stated that he had just observed "Bandit" complete a sale and that "Bandit" had told him that additional narcotics were in the trunk. The informant gave Marcum a detailed description of "Bandit" and stated that the car was a "purplish maroon" Chevrolet Malibu with District of Columbia license plates.

Accompanied by Detective Cassidy and Sergeant Gonzales, Marcum immediately drove to the area and found a maroon Malibu parked in front of 439 Ridge Street. A license check disclosed that the car was registered to Albert Ross; a computer check on Ross revealed that he fit the informant's description and used the alias "Bandit." In two passes through the neighborhood the officers did not observe anyone matching the informant's description. To avoid alerting persons on the street, they left the area.

The officers returned five minutes later and observed the maroon Malibu turning off Ridge Street onto Fourth Street. They pulled alongside the Malibu, noticed that the driver matched the informant's description, and stopped the car. Marcum and Cassidy told the driver—later identified as Albert Ross, the respondent in this action—to get out of the vehicle. While they searched Ross, Sergeant Gonzales discovered a bullet on the car's front seat. He searched the interior of the car and found a pistol in the glove compartment. Ross then was arrested and handcuffed. Detective Cassidy took Ross' keys and opened the trunk, where he found a closed brown paper bag. He opened the bag and discovered a number of glassine bags containing a white powder. Cassidy replaced the bag, closed the trunk, and drove the car to Headquarters.

At the police station Cassidy thoroughly searched the car. In addition to the "lunch-type" brown paper bag, Cassidy found in the trunk a zippered red leather pouch. He un-

zipped the pouch and discovered \$3,200 in cash. The police laboratory later determined that the powder in the paper bag was heroin. No warrant was obtained.

Ross was charged with possession of heroin with intent to distribute, in violation of 21 U. S. C. § 841(a). Prior to trial, he moved to suppress the heroin found in the paper bag and the currency found in the leather pouch. After an evidentiary hearing, the District Court denied the motion to suppress. The heroin and currency were introduced in evidence at trial and Ross was convicted.

A three-judge panel of the Court of Appeals reversed the conviction. It held that the police had probable cause to stop and search Ross' car and that, under *Carroll v. United States*, *supra*, and *Chambers v. Maroney*, 399 U. S. 42, the officers lawfully could search the automobile—including its trunk—without a warrant. The court considered separately, however, the warrantless search of the two containers found in the trunk. On the basis of *Arkansas v. Sanders*, 442 U. S. 753, the court concluded that the constitutionality of a warrantless search of a container found in an automobile depends on whether the owner possesses a reasonable expectation of privacy in its contents. Applying that test, the court held that the warrantless search of the paper bag was valid but the search of the leather pouch was not. The court remanded for a new trial at which the items taken from the paper bag, but not those from the leather pouch, could be admitted.²

The entire Court of Appeals then voted to rehear the case en banc. A majority of the court rejected the panel's conclusion that a distinction of constitutional significance existed between the two containers found in respondent's trunk; it

²The court rejected the Government's argument that the warrantless search of the leather pouch was justified as incident to respondent's arrest. App. to Pet. for Cert. 137a. The Government has not challenged this holding.

held that the police should not have opened either container without first obtaining a warrant. The court reasoned:

"No specific, well-delineated exception called to our attention permits the police to dispense with a warrant to open and search 'unworthy' containers. Moreover, we believe that a rule under which the validity of a warrantless search would turn on judgments about the durability of a container would impose an unreasonable and unmanageable burden on police and courts. For these reasons, and because the Fourth Amendment protects all persons, not just those with the resources or fastidiousness to place their effects in containers that decision-makers would rank in the luggage line, we hold that the Fourth Amendment warrant requirement forbids the warrantless opening of a closed, opaque paper bag to the same extent that it forbids the warrantless opening of a small unlocked suitcase or a zippered leather pouch." 655 F. 2d 1159, 1161 (CA DC 1981) (footnote omitted).

The en banc Court of Appeals considered, and rejected, the argument that it was reasonable for the police to open both the paper bag and the leather pouch because they were entitled to conduct a warrantless search of the entire vehicle in which the two containers were found. The majority concluded that this argument was foreclosed by *Sanders*.

Three dissenting judges interpreted *Sanders* differently.³ Other courts also have read the *Sanders* opinion in different

³Judge Tamm, the author of the original panel opinion, reiterated the view that *Sanders* prohibited the warrantless search of the leather pouch but not the search of the paper bag. Judge Robb agreed that this result was compelled by *Sanders*, although he stated that in his opinion "the right to search an automobile should include the right to open any container found within the automobile, just as the right to search a lawfully arrested prisoner carries with it the right to examine the contents of his wallet and any envelope found in his pocket, and the right to search a room includes authority to open and search all the drawers and containers found within

ways.⁴ Moreover, disagreement concerning the proper interpretation of *Sanders* was at least partially responsible for the fact that *Robbins v. California*, — U. S. —, was decided last Term without a Court opinion.

There is, however, no dispute among judges about the importance of striving for clarification in this area of the law. For countless vehicles are stopped on highways and public streets every day and our cases demonstrate that it is not uncommon for police officers to have probable cause to believe that contraband may be found in a stopped vehicle. In every such case a conflict is presented between the individual's constitutionally protected interest in privacy and the public interest in effective law enforcement. No single rule of law can resolve every conflict, but our conviction that clarification is feasible led us to grant the Government's petition for certiorari in this case and to invite the parties to address the question whether the decision in *Robbins* should be reconsidered. — U. S. —.

II

We begin with a review of the decision in *Carroll* itself. In the fall of 1921, federal prohibition agents obtained evidence that George Carroll and John Kiro were "bootleggers" who frequently traveled between Grand Rapids and Detroit

the room." 655 F. 2d, at 1180. Judge MacKinnon concurred with Judge Tamm that *Sanders* did not prohibit the warrantless search of the paper bag. Concerning the leather pouch, he agreed with Judge Wilkey, who dissented on the ground that *Sanders* should not be applied retroactively.

⁴Many courts have held that *Sanders* requires that a warrant be obtained only for personal luggage and other "luggage-type" containers. See, e. g., *United States v. Goshorn*, 628 F. 2d 697 (CA1 1980); *United States v. Brown*, 635 F. 2d 1207 (CA6 1980); *United States v. Jiminez*, 626 F. 2d 39 (CA7 1980). One court has held that *Sanders* does not apply if the police have probable cause to search an entire vehicle and not merely an isolated container within it. Cf. *State v. Bible*, 389 So. 2d 42 (La. 1980), remanded, — U. S. —; *State v. Hernandez*, 408 So. 2d 911 (La. 1981); see also *United States v. Ross*, 655 F. 2d, at 1180 (Robb, J., dissenting).

in an Oldsmobile Roadster.⁵ On December 15, 1921, the agents unexpectedly encountered Carroll and Kiro driving west on that route in that car. The officers gave pursuit, stopped the roadster on the highway, and requested Carroll and Kiro to get out of the car.

No contraband was visible in the front seat of the Oldsmobile and the rear portion of the roadster was closed. One of the agents raised the rumble seat but found no liquor. He raised the seat cushion and again found nothing. The officer then struck at the "lazyback" of the seat and noticed that it was "harder than upholstery ordinarily is in those backs." 267 U. S., at 174. He tore open the seat cushion and discovered 68 bottles of gin and whiskey concealed inside. No warrant had been obtained for the search.

Carroll and Kiro were convicted of transporting intoxicating liquor in violation of the National Prohibition Act. On review of those convictions, this Court ruled that the warrantless search of the roadster was reasonable within the meaning of the Fourth Amendment. In an extensive opinion written by Chief Justice Taft, the Court held:

"On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The Fourth Amendment is to be con-

⁵ On September 29, 1921, Carroll and Kiro met the agents in Grand Rapids and agreed to sell them three cases of whiskey. The sale was not consummated, however, possibly because Carroll learned the agents' true identity. In October, the agents discovered Carroll and Kiro driving the Oldsmobile Roadster on the road to Detroit, which was known as an active center for the introduction of illegal liquor into this country. The agents followed the roadster as far as East Lansing, but there abandoned the chase.

strued in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens." *Id.*, at 149.

The Court explained at length the basis for this rule. The Court noted that historically warrantless searches of vessels, wagons, and carriages—as opposed to fixed premises such as a home or other building—had been considered reasonable by Congress. After reviewing legislation enacted by Congress between 1789 and 1799,⁶ the Court stated:

"Thus contemporaneously with the adoption of the Fourth Amendment we find in the first Congress, and in the following Second and Fourth Congresses, a difference made as to the necessity for a search warrant between goods subject to forfeiture, when concealed in a dwelling house or similar place, and like goods in course of transportation and concealed in a movable vessel where they readily could be put out of reach of a search warrant." *Id.*, at 151.

The Court reviewed additional legislation passed by Congress⁷ and again noted that

"the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Govern-

⁶ The legislation authorized customs officials to search any ship or vessel without a warrant if they had probable cause to believe that it concealed goods subject to duty. The same legislation required a warrant for searches of dwelling places. 267 U. S., at 150-151.

⁷ In particular, the Court noted an 1815 statute that permitted customs officers not only to board and search vessels without a warrant "but also to stop, search and examine any vehicle, beast or person on which or whom they should suspect there was merchandise which was subject to duty or had been introduced into the United States in any manner contrary to law." *Id.*, at 151.

ment, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id.*, at 153.

Thus, since its earliest days Congress had recognized the impracticability of securing a warrant in cases involving the transportation of contraband goods.⁸ It is this impracticability, viewed in historical perspective, that provided the basis for the *Carroll* decision. Given the nature of an automobile in transit, the Court recognized that an immediate intrusion is necessary if police officers are to secure the illicit substance. In this class of cases, the Court held that a warrantless search of an automobile is not unreasonable.⁹

⁸ In light of this established history, individuals always had been on notice that movable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband, without the protection afforded by a magistrate's prior evaluation of those facts.

⁹ Subsequent cases make clear that the decision in *Carroll* was not based on the fact that the only course available to the police was an immediate search. As Justice Harlan later recognized, although a failure to seize a moving automobile believed to contain contraband might deprive officers of the illicit goods, once a vehicle itself has been stopped the exigency does not necessarily justify a warrantless search. *Chambers v. Maroney*, 399 U. S. 42, 62-64 (opinion of Harlan, J.). The Court in *Chambers*, however—with only Justice Harlan dissenting—refused to adopt a rule that would permit a warrantless seizure but prohibit a warrantless search. The Court held that if police officers have probable cause to justify a warrantless seizure of an automobile on a public roadway, they may conduct an immediate search of the contents of that vehicle. "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth

In defining the nature of this "exception" to the general rule that "[i]n cases where the securing of a warrant is reasonably practicable, it must be used," *id.*, at 156, the Court in *Carroll* emphasized the importance of the requirement that officers have probable cause to believe that the vehicle contains contraband.

"Having thus established that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant, we come now to consider under what circumstances such search may be made. It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travellers may be so stopped in crossing an international boundary because of national self protection reasonably requiring one entering the country to identify himself as entitled to

Amendment." *Chambers v. Maroney*, 399 U. S., at 52.

The Court also has held that if an immediate search on the street is permissible without a warrant, a search soon thereafter at the police station is permissible if the vehicle is impounded. *Chambers, supra*; *Texas v. White*, 428 U. S. 67. These decisions are based on the practicalities of the situations presented and a realistic appraisal of the relatively minor protection that a contrary rule would provide for privacy interests. Given the scope of the initial intrusion caused by a seizure of an automobile—which often could leave the occupants stranded on the highway—the Court rejected an inflexible rule that would force police officers in every case either to post guard at the vehicle while a warrant is obtained or to tow the vehicle itself to the station. Similarly, if an immediate search on the scene could be conducted, but not one at the station if the vehicle is impounded, police often simply would search the vehicle on the street—at no advantage to the occupants, yet possibly at certain cost to the police. The rules as applied in particular cases may appear unsatisfactory. They reflect, however, a reasoned application of the more general rule that if an individual gives the police probable cause to believe a vehicle is transporting contraband, he loses the right to proceed on his way without official interference.

come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise." *Id.*, at 153-154.

Moreover, the probable cause determination must be based on objective facts that could justify the issuance of a warrant by a magistrate and not merely on the subjective good faith of the police officers. "[A]s we have seen, good faith is not enough to constitute probable cause. That faith must be grounded on facts within knowledge of the [officer], which in the judgment of the court would make his faith reasonable." *Id.*, at 161-162 (quoting *Director General v. Kastenbaum*, 263 U. S. 25, 28).¹⁰

It is also clear that the doctrine of *Carroll* itself applies only to a vehicle stopped "in the course of transportation." 267 U. S., at 149. Nothing in the opinion in that case suggests that an automobile parked in a private driveway could be searched without a warrant, absent other circumstances justifying a warrantless search. Cf. *Coolidge v. New Hampshire*, 403 U. S. 443.¹¹ In short, the exception to the warrant requirement established in *Carroll*—the scope of which we

¹⁰ After reviewing the relevant authorities at some length, the Court concluded that the probable cause requirement was satisfied in the case before it. The Court held that "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched." *Id.*, at 162. Cf. *Brinegar v. United States*, 338 U. S. 160, 176-177; *Henry v. United States*, 361 U. S. 98, 102.

¹¹ At page 6 of their brief *amicus curiae*, the Americans for Effective Law Enforcement and the International Association of Chiefs of Police also state that it is clear that the *Carroll* exception does not extend to a house trailer or camper used for residential purposes.

consider in this case—applies only to vehicles stopped in the course of transportation and to searches that are supported by probable cause.¹² In this class of cases, a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained.¹³

III

The rationale justifying a warrantless search of an automobile that is believed to be transporting contraband arguably applies with equal force to any movable container that is believed to be carrying an illicit substance. That argument, however, was squarely rejected in *United States v. Chadwick*, 433 U. S. 1.

Chadwick involved the warrantless search of a 200-pound

¹² See *Husky v. United States*, 282 U. S. 694; *Scher v. United States*, 305 U. S. 251; *Brinegar v. United States*, 338 U. S. 160; *Henry v. United States*, 361 U. S. 98; *Dyke v. Taylor Implement Co.*, 391 U. S. 216; *Chambers v. Maroney*, 399 U. S. 42; *Texas v. White*, 423 U. S. 67; *Colorado v. Bannister*, 449 U. S. 1.

Warrantless searches of automobiles have been upheld in a variety of factual contexts quite different from that presented in *Carroll*. Cf. *Cooper v. California*, 386 U. S. 58; *Cady v. Dombrowski*, 413 U. S. 433; *South Dakota v. Opperman*, 428 U. S. 364. Many of these searches do not require a showing of probable cause that the vehicle contains contraband. We are not called upon—and do not—consider in this case the scope of the warrantless search that is permitted in those cases.

¹³ As the Court in *Carroll* concluded:

“We here find the line of distinction between legal and illegal seizures of liquor in transport in vehicles. It is certainly a reasonable distinction. It gives the owner of an automobile or other vehicle seized under Section 28, in absence of probable cause, a right to have restored to him the automobile, it protects him under the *Weeks* and *Amos* cases from use of the liquor as evidence against him, and it subjects the officer making the seizures to damages. On the other hand, in a case showing probable cause, the Government and its officials are given the opportunity which they should have, to make the investigation necessary to trace reasonably suspected contraband goods and to seize them.” 267 U. S., at 156.

footlocker. Federal railroad officials in San Diego became suspicious when they noticed that a brown footlocker loaded onto a train bound for Boston was unusually heavy and leaking talcum powder, a substance often used to mask the odor of marijuana. Narcotics agents met the train in Boston and a trained police dog signaled the presence of a controlled substance inside the footlocker. While the agents awaited further developments, respondent Chadwick arrived and the footlocker was placed in the trunk of Chadwick's automobile. At that point, while the trunk of the car was still open and before the engine had been started, the agents seized the footlocker. They later searched the footlocker without a warrant and discovered a large quantity of marijuana.

In a subsequent criminal proceeding, Chadwick claimed that the warrantless search of the footlocker violated the Fourth Amendment. In the District Court, the Government argued that as soon as the footlocker was placed in the automobile a warrantless search was permissible under *Carroll*. The District Court rejected that argument,¹⁴ and the Government did not pursue it on appeal.¹⁵ Rather, the Government contended in this Court that the warrant requirement of the Fourth Amendment applied only to searches of homes and

¹⁴ The District Court noted:

"In this case, there was no nexus between the search and the automobile, merely a coincidence. The challenged search in this case was one of a footlocker, not an automobile. The search took place not in an automobile, but in [the federal building]. The only connection that the automobile had to this search was that, prior to its seizure, the footlocker was placed on the floor of an automobile's open trunk." *United States v. Chadwick*, 393 F. Supp. 763, 772 (Mass. 1975).

¹⁵ This Court specifically noted: "The Government does not contend that the footlocker's brief contact with Chadwick's car makes this an automobile search, but it is argued that the rationale of our automobile search cases demonstrates the reasonableness of permitting warrantless searches of luggage; the Government views such luggage as analogous to motor vehicles for Fourth Amendment purposes." 433 U. S., at 11-12.

other "core" areas of privacy. The Court unanimously rejected that contention.¹⁸ Writing for the Court, THE CHIEF JUSTICE stated:

"[I]f there is little evidence that the Framers intended the Warrant Clause to operate outside the home, there is no evidence at all that they intended to exclude from protection of the Clause all searches occurring outside the home. The absence of a contemporary outcry against warrantless searches in public places was because, aside from searches incident to arrest, such warrantless searches were not a large issue in colonial America. Thus, silence in the historical record tells us little about the Framers' attitude toward application of the Warrant Clause to the search of respondents' footlocker. What we do know is that the Framers were men who focused on the wrongs of that day but who intended the Fourth Amendment to safeguard fundamental values which would far outlast the specific abuses which gave it birth." 433 U. S., at 8-9 (footnote omitted).

The Court in Chadwick specifically rejected the argument that the warrantless search was "reasonable" because a footlocker has some of the mobile characteristics that support warrantless searches of automobiles. The Court recognized that "a person's expectations of privacy in personal luggage are substantially greater than in an automobile," *id.*, at 13, and noted that the practical problems associated with the temporary detention of a piece of luggage during the period of time necessary to obtain a warrant are significantly less than those associated with the detention of an automobile. *Id.*, at 13, n. 7. In ruling that the warrantless search of the footlocker was unjustified, the Court reaffirmed the general principle that closed packages and containers may not be searched without a warrant. Cf. *Ex parte Jackson*, 96 U. S.

*Expectations
of privacy*

¹⁸ See *id.*, at 17 (BLACKMUN, J., dissenting).

727; *United States v. Leeuwen*, 397 U. S. 249. In sum, the Court in *Chadwick* declined to extend the rationale of the "automobile exception" to permit a warrantless search of any movable container found in a public place.¹⁷

The facts in *Arkansas v. Sanders*, 442 U. S. 753, were similar to those in *Chadwick*. In *Sanders*, a Little Rock police officer received information from a reliable informant that Sanders would arrive at the local airport on a specified flight that afternoon carrying a green suitcase containing marijuana. The officer went to the airport. Sanders arrived on schedule and retrieved a green suitcase from the airline baggage service. Sanders gave the suitcase to a waiting companion who placed it in the trunk of a taxi. Sanders and his companion drove off in the cab; police officers followed and stopped the taxi several blocks from the airport. The officers opened the trunk, seized the suitcase, and searched it on the scene without a warrant. As predicted, the suitcase contained marijuana.

The Arkansas Supreme Court ruled that the warrantless search of the suitcase was impermissible under the Fourth Amendment, and this Court affirmed. As in *Chadwick*, the mere fact that the suitcase had been placed in the trunk of the vehicle did not render the automobile exception of *Carroll* applicable; the police had probable cause to seize the suitcase before it was placed in the trunk of the cab and did not have probable cause to search the taxi itself.¹⁸ Since the

Similar

*As in
Chadwick*

¹⁷ The Court concluded that there is a significant difference between the seizure of a sealed package and a subsequent search of its contents; the search of the container in that case was "a far greater intrusion into Fourth Amendment values than the impoundment of the footlocker." *Id.*, at 13, n. 8. A temporary seizure of a package or piece of luggage often may be accomplished without as significant an intrusion upon the individual—and without as great a burden on the police—as in the case of the seizure of an automobile. See n. 9, *supra*.

¹⁸ The Arkansas Supreme Court carefully reviewed the facts of the case and concluded: "The information supplied to the police by the confidential

suitcase had been placed in the trunk, no danger existed that its contents could have been secreted elsewhere in the vehicle.¹⁹ As THE CHIEF JUSTICE noted in his opinion concurring in the judgment:

"Because the police officers had probable cause to believe that respondent's green suitcase contained marijuana before it was placed in the trunk of the taxicab, their duty to obtain a search warrant before opening it is clear under *United States v. Chadwick*, 433 U. S. 1 (1977).

* * *

Here, as in *Chadwick*, it was the *luggage* being transported by respondent at the time of the arrest, not the automobile in which it was being carried, that was the suspected locus of the contraband. The relationship between the automobile and the contraband was purely coincidental, as in *Chadwick*. The fact that the suitcase was resting in the trunk of the automobile at the time of respondent's arrest does not turn this into an 'automobile' exception case. The Court need say no more." *Id.*, at 766-767.

The Court in *Sanders* did not, however, rest its decision solely on the authority of *Chadwick*. In rejecting the State's argument that the warrantless search of the suitcase was jus-

informant [was] adequate to support the State's claim that the police had probable cause to believe that appellant's green suitcase contained a controlled substance when the police confiscated the suitcase and opened it," 262 Ark. 595, 599, 559 S.W. 2d 704, 706 (1977). The court also noted: "The evidence in this case supports the conclusion that the relationship between the suitcase and the taxicab [was] coincidental." *Id.*, at 600, n. 2, 559 S.W. 2d, at 706.

¹⁹ Moreover, none of the practical difficulties associated with the detention a vehicle on a public highway that made the immediate search in *Carroll* reasonable could justify an immediate search of the suitcase, since the officers had no interest in detaining the taxi or its driver.

*But I did
not rest
solely on
Chadwick*

tified on the ground that it had been taken from an automobile lawfully stopped on the street, the Court broadly suggested that a warrantless search of a container found in an automobile could never be sustained as part of a warrantless search of the automobile itself.²⁰ The Court did not suggest that it mattered whether probable cause existed to search the entire vehicle. It is clear, however, that in neither *Chadwick* nor *Sanders* did the police have probable cause to search the vehicle or anything within it except the footlocker in the former case and the green suitcase in the latter.

Robbins v. California, — U. S. —, however, was a case in which suspicion was not directed at a specific container. In that case the Court for the first time was forced to consider whether police officers who are entitled to conduct a warrantless search of an automobile stopped on a public roadway may open a container found within the vehicle. In the early morning of January 5, 1975, police officers stopped Robbins' station wagon because he was driving erratically. Robbins got out of the car, but later returned to obtain the vehicle's registration papers. When he opened the car door, the officers smelled marijuana smoke. One of the officers searched Robbins and discovered a vial of liquid; in a search of the interior of the car the officer found marijuana. The police officers then opened the tailgate of the station wagon and raised the cover of a recessed luggage

²⁰ The Court stated that "the extent to which the Fourth Amendment applies to containers and other parcels depends not at all upon whether they are seized from an automobile." 442 U. S., at 764, n. 13. This general rule was limited only by the observation that "[n]ot all containers and packages found by police during the course of a search will deserve the full protection of the Fourth Amendment. Thus, some containers (for example a kit of burglar tools or a gun case) by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance. Similarly, in some cases the contents of a package will be open to 'plain view,' thereby obviating the need for a warrant." *Ibid.*

? Verifies that
Did I
was any
container
Rationale,
as I was
clear in
Robbins
was
'expectation
of privacy'
See
↓
Sanders

compartment. In the compartment they found two packages wrapped in green opaque plastic. The police unwrapped the packages and discovered a large amount of marijuana in each.

Robbins was charged with various drug offenses and moved to suppress the contents of the plastic packages. The California Court of Appeal held that "[s]earch of the automobile was proper when the officers learned that appellant was smoking marijuana when they stopped him,"²¹ and that the warrantless search of the packages was justified because "the contents of the packages could have been inferred from their outward appearance, so that appellant could not have held a reasonable expectation of privacy with respect to the contents." 103 Cal. App. 3d 34, 40, 162 Cal. Rptr. 780, 783 (1980).

This Court reversed. Writing for a plurality, Justice Stewart rejected the argument that the outward appearance of the packages precluded Robbins from having a reasonable expectation of privacy in their contents. He also squarely rejected the argument that there is a constitutional distinction between searches of luggage and searches of "less worthy" containers. Justice Stewart reasoned that all containers are equally protected by the Fourth Amendment unless their contents are in plain view. The plurality concluded that the warrantless search was impermissible because *Chadwick* and *Sanders* had established that "a closed piece of luggage found in a lawfully searched car is constitutionally protected to the same extent as are closed pieces of luggage found anywhere else." — U. S., at —.

In a concurring opinion, JUSTICE POWELL, the author of the Court's opinion in *Sanders*, stated that "[t]he plurality's approach strains the rationales of our prior cases and imposes substantial burdens on law enforcement without vindicating any significant values of privacy." *Id.*, at —.²² He noted

²¹ 103 Cal. App. 3d 34, 39, 162 Cal. Rptr. 780, 782 (1980).

²² "While the plurality's blanket warrant requirement does not even pur-

u

~
1.

Powell

that possibly "the controlling question should be the scope of the automobile exception to the warrant requirement," *id.*, at —, and explained that under that view

"when the police have probable cause to search an automobile, rather than only to search a particular container that fortuitously is located in it, the exigencies that allow the police to search the entire automobile without a warrant support the warrantless search of every container found therein. See *post*, at — and n. 13 (STEVENS, J., dissenting). This analysis is entirely consistent with the holdings in *Chadwick* and *Sanders*, neither of which is an 'automobile case,' because the police there had probable cause to search the double-locked footlocker and the suitcase respectively before either came near an automobile." *Ibid.*

The parties in *Robbins* had not pressed that argument, however, and JUSTICE POWELL concluded that institutional con-

port to protect any privacy interest, it would impose substantial new burdens on law enforcement. Confronted with a cigar box or a Dixie cup in the course of a probable cause search of an automobile for narcotics, the conscientious policeman would be required to take the object to a magistrate, fill out the appropriate forms, await the decision, and finally obtain a warrant. Suspects or vehicles normally will be detained while the warrant is sought. This process may take hours, removing the officer from his normal police duties. Expenditure of such time and effort, drawn from the public's limited resources for detecting or preventing crimes, is justified when it protects an individual's reasonable privacy interests. In my view, the plurality's requirement cannot be so justified. The aggregate burden of procuring warrants whenever an officer has probable cause to search the most trivial container may be heavy and will not be compensated by the advancement of important Fourth Amendment values." — U. S., at — (POWELL, J., concurring).

The substantial burdens on law enforcement identified by JUSTICE POWELL would, of course, not be affected by the character of the container found during an automobile search. No comparable practical problems arise when the official suspicion is confined to a particular piece of luggage, as in *Chadwick* and *Sanders*. Cf. n. 19, *supra*.

straints made it inappropriate to re-examine basic doctrine without full adversary presentation. He concurred in the judgment, since it was supported—although not compelled—by the Court's opinion in *Sanders*, and stated that a future case might present a better opportunity for thorough consideration of the basic principles in this troubled area.

That case has arrived. Unlike *Chadwick* and *Sanders*, in this case police officers had probable cause to search respondent's entire vehicle.²⁵ Unlike *Robbins*, in this case the parties have squarely addressed the question whether, in the course of a legitimate warrantless search of an automobile, police are entitled to open containers found within the vehicle. We now address that question. Its answer is determined by the scope of the search that is authorized by the exception to the warrant requirement set forth in *Carroll*.

scope of
the
search

IV

In *Carroll* itself, the whiskey that the prohibition agents seized was not in plain view. It was discovered only after an officer opened the rumble seat and tore open the upholstery of the lazyback. The Court did not find the scope of the search unreasonable. Having stopped *Carroll* and *Kiro* on a public road and subjected them to the indignity of a vehicle

²⁵The en banc Court of Appeals stated that "[b]ased on the tip the police received, Ross's car was properly stopped and searched, and the pouch and bag were properly seized." 655 F. 2d, at 1168 (footnote omitted). The court explained:

"[W]e believe it clear that the police had ample and reasonable cause to stop Ross and to search his car. The informer had supplied accurate information on prior occasions, and he was an eyewitness to sales of narcotics by Ross. He said he had just seen Ross take narcotics from the trunk of his car in making a sale and heard him say he possessed additional narcotics." *Id.*, at 1168, n. 22.

The court further noted that "[i]n this case, the informant told the police that Ross had narcotics in the trunk of his car. No specific container was identified." *Id.*, at 1166.

search—which the Court found to be a reasonable intrusion on their privacy because based on probable cause that their vehicle was transporting contraband—prohibition agents were entitled to tear open a portion of the roadster itself. The scope of the search was no greater than a magistrate could have authorized by issuing a warrant based on the probable cause that justified the search. Since such a warrant could have authorized the agents to open the rear portion of the roadster and to rip the upholstery in their search for concealed whiskey, the search was constitutionally permissible.

In *Chambers v. Maroney* the police found weapons and stolen property “concealed in a compartment under the dashboard.” 399 U. S., at 44. No suggestion was made that the scope of the search was impermissible. It would be illogical to assume that the outcome of *Chambers*—or the outcome of *Carroll* itself—would have been different if the police had found the secreted contraband enclosed within a secondary container and had opened that container without a warrant. If it was reasonable for prohibition agents to rip open the upholstery in *Carroll*, it certainly would have been reasonable for them to look into a burlap sack stashed inside; if it was reasonable to open the concealed compartment in *Chambers*, it would have been equally reasonable to open a paper bag crumpled within it. A contrary rule could produce absurd results inconsistent with the decision in *Carroll* itself.

In its application of *Carroll*, this Court in fact has sustained warrantless searches of containers found during a lawful search of an automobile. In *Husty v. United States*, 282 U. S. 694, the Court upheld a warrantless seizure of whiskey found during a search of an automobile, some of which was discovered in “whiskey bags” that could have contained other goods.²⁴ In *Scher v. United States*, 305 U. S. 251, federal of-

²⁴At the suppression hearing, defense counsel asked the police officer who had conducted the search: “Isn’t it possible to put other goods in a bag that has the resemblance of a whiskey bag?” The officer responded: “I

ficers seized and searched packages of unstamped liquor found in the trunk of an automobile searched without a warrant. As described by a police officer who participated in the search: "I turned the handle and opened the trunk and found the trunk completely filled with packages wrapped in brown paper, and tied with twine; I think somewhere around thirty packages, each one containing six bottles."²⁵ In these cases it was not contended that police officers needed a warrant to open the whiskey bags or to unwrap the brown paper packages. The fact that no such argument was even made illuminates the profession's understanding of the scope of the search permitted under *Carroll*.²⁶ Indeed, prior to the decisions in *Chadwick* and *Sanders*, courts routinely had held that containers and packages found during a legitimate warrantless search of an automobile also could be searched without a warrant.²⁷

suppose it is. I did not think of that at that time. I knew it was whiskey, I was sure it was." App., O.T. 1930, No. 477, p. 27.

²⁵ App., O.T. 1938, No. 49, p. 33. The brief of then Solicitor General Robert Jackson noted that the items searched "were wrapped in very heavy brown wrapping paper with at least two wrappings and with a heavy cord around them cross-wise so that they could readily be lifted." Brief for United States, O.T. 1938, No. 49, p. 6.

²⁶ It is noteworthy that the early legislation on which the Court relied in *Carroll* concerned the enforcement of laws imposing duties on imported merchandise. See nn. 6 and 7, *supra*. Presumably such merchandise was shipped then in containers of various kinds, just as it is today. Since Congress had authorized warrantless searches of vessels and beasts for imported merchandise, it is inconceivable that it intended a customs officer to obtain a warrant for every package discovered during the search; certainly Congress intended customs officers to open shipping containers when necessary and not merely to examine the exterior of cartons or boxes in which smuggled goods might be concealed. During virtually the entire history of our country—whether contraband was transported in a horse drawn carriage, a 1921 roadster, or a modern automobile—it has been assumed that a lawful search of a vehicle would include a search of any container that might conceal the object of the search.

²⁷ See, e. g., *United States v. Soriano*, 497 F. 2d 147, 149-150 (CA5 1974) (en banc); *United States v. Vento*, 533 F. 2d 838, 867, n. 101 (CA2 1976);

As we have stated, the decision in *Carroll* was based on the Court's appraisal of practical considerations viewed in the perspective of history. It is therefore significant that the practical consequences of the *Carroll* decision would be largely nullified if the permissible scope of a warrantless search of an automobile did not include containers and packages found inside the vehicle. Contraband goods rarely are strewn across the trunk or floor of a car; since by their very nature such goods must be withheld from public view, they rarely can be placed in an automobile unless they are enclosed within some form of container. The Court in *Carroll* held that "contraband goods *concealed* and illegally transported in an automobile or other vehicle may be searched for without a warrant." 267 U. S., at 153 (emphasis added). As we noted in *Henry v. United States*, 361 U. S. 98, 104, the decision in *Carroll* "merely relaxed the requirements for a warrant on grounds of impracticability." It neither broadened nor limited the scope of a lawful search based on probable cause.

A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search.²⁸

United States v. Tramunti, 513 F. 2d 1087, 1104 (CA2 1975); *United States v. Issod*, 508 F. 2d 990, 993 (CA7 1974); *United States v. Evans*, 481 F. 2d 990, 994 (CA9 1973); *United States v. Bowman*, 487 F. 2d 1229 (CA10 1973). Many courts continued to apply this rule following the decision in *Chadwick*. Cf. *United States v. Milhollan*, 599 F. 2d 518, 526-527 (CA3 1979); *United States v. Gaultney*, 581 F. 2d 1137, 1144-1145 (CA5 1978); *United States v. Finnegan*, 568 F. 2d 637, 640-641 (CA9 1977). In ruling that police could search luggage and other containers found during a legitimate warrantless search of an automobile, courts often assumed that the "automobile exception" of *Carroll* applied whenever a container in an automobile was believed to contain contraband. That view, of course, has since been qualified by *Chadwick* and *Sanders*.

²⁸ In describing the permissible scope of a search of a home pursuant to a warrant, Professor LaFave notes:

Thus, a warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found. A warrant to open a footlocker to search for marijuana would also authorize the opening of packages found inside. A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search. When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.²⁰

This rule applies equally to all containers, as indeed we believe it must. One point on which the Court was in virtual unanimous agreement in *Robbins* was that a constitutional

²⁰Places within the described premises are not excluded merely because some additional act of entry or opening may be required. "In countless cases in which warrants described only the land and the buildings, a search of desks, cabinets, closets and similar items has been permitted." 2 LaFave, *Search and Seizure* 152 (1978) (quoting *Massey v. Commonwealth*, 305 S.W. 2d 755, 756 (Ky. 1957)).

²¹The practical considerations that justify a warrantless search of an automobile continue to apply until the entire search of the automobile and its contents has been completed. Arguably, the entire vehicle itself could be searched without a warrant, with all containers found during that search then taken to a magistrate. Certainly no privacy interest is served, however, by prohibiting police from opening immediately a container in which the object of the search may most likely be found and instead forcing them first to comb the entire vehicle. Moreover, until the container itself was opened the police could never be certain that the contraband was not secreted in a yet undiscovered portion of the vehicle; thus in every case in which a container was found, the vehicle would need to be secured while a warrant was obtained. Such a requirement would be directly inconsistent with the decisions in *Carroll* and *Chambers*. Cf. nn. 19 and 22, *supra*.

distinction between "worthy" and "unworthy" containers would be improper.³⁰ Even though such a distinction perhaps could evolve in a series of cases in which paper bags, locked trunks, lunch buckets, and orange crates were placed on one side of the line or the other,³¹ the central purpose of the Fourth Amendment forecloses such a distinction. For just as the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion,³² so also may a traveler who carries a toothbrush and a few articles of clothing in a paper bag or knotted scarf claim an equal right to conceal his possessions from official inspection as the sophisticated executive with the locked attaché case.

As Justice Stewart stated in *Robbins*, the Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view. — U. S., at — (plurality opinion). But the protection afforded by the Amendment varies in different settings. The luggage carried by a traveler entering the country may be searched at

³⁰ Cf. — U. S., at — (plurality opinion); *id.*, at — (BLACKMUN, J., dissenting); *id.*, at — (REHNQUIST, J., dissenting); *id.*, at — (STEVENS, J., dissenting).

³¹ If the distinction is based on the proposition that the Fourth Amendment protects only those containers that objectively manifest an individual's reasonable expectation of privacy, however, the propriety of a warrantless search necessarily would turn on much more than the fabric of the container. A paper bag stapled shut and marked "private" might be found to manifest a reasonable expectation of privacy, as might a cardboard box stacked on top of two pieces of heavy luggage. The propriety of the warrantless search seemingly would turn on an objective appraisal of all the surrounding circumstances.

³² "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his forces dares not cross the threshold of the ruined tenement!" *Miller v. United States*, 357 U. S. 301, 307; cf. *Payton v. New York*, 445 U. S. 573, 601 n. 54.

no
not
reasonable
expectation

? no

?

random by a customs officer; the luggage may be searched no matter how great the traveler's desire to conceal the contents may be. A container carried at the time of arrest often may be searched without a warrant; the owner's expectation of privacy must yield if the police might be endangered or if evidence might be destroyed. A container that may conceal the object of a search authorized by a warrant may be opened immediately; the individual's interest in privacy must give way to the magistrate's official determination of probable cause.

In the same manner, an individual's expectation of privacy in a vehicle and its contents may not survive if probable cause is given to believe that the vehicle is transporting contraband. Certainly the privacy interests in a car's trunk or glove compartment may be no less than those in a movable container; an individual undoubtedly has a significant interest that the upholstery of his automobile will not be ripped or a hidden compartment within it opened. These interests must yield to the authority of a search, however, which—in light of *Carroll*—does not itself require the prior approval of a magistrate. The scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.

The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi contains contraband does not justify a search of the entire cab.

V

Our decision today is inconsistent with the disposition in *Robbins v. California* and with some of the reasoning in *Arkansas v. Sanders*. Nevertheless, the doctrine of *stare decisis* does not preclude this action. Although we have rejected some of the reasoning in *Sanders*, we adhere to our holding in that case; moreover, although we reject the precise holding in *Robbins*, there was no Court opinion supporting a single rationale for its judgment and the reasoning we adopt today was not presented by the parties in that case. Furthermore, we reaffirm the plurality's rejection of a constitutional distinction between worthy and unworthy containers. Moreover, it is clear that no legitimate reliance interest can be frustrated by our decision today. Of greatest importance, we are convinced that the rule we apply in this case is faithful to the interpretation of the Fourth Amendment that the Court has followed with substantial consistency throughout our history.

We reaffirm the basic rule of Fourth Amendment jurisprudence stated by Justice Stewart for a unanimous Court in *Mincey v. Arizona*, 437 U. S. 385, 390:

"The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.' *Katz v. United States*, 389 U. S. 347, 357 (footnotes omitted)."

The exception recognized in *Carroll* is unquestionably one that is "specifically established and well-delineated." We hold that the scope of the warrantless search authorized by that exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable

cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

The judgment of the Court of Appeals is reversed.

It is so ordered.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL



May 6, 1982

Re: No. 80-2209 - United States v. Ross

Dear John:

"In due course" I shall circulate a dissent.

Sincerely,

A handwritten signature in blue ink, consisting of the letters 'T.M.' in a cursive style.

T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 7, 1982

Re: No. 81-2209 United States v. Ross

Dear John,

Subject to the making of the minor changes we have discussed, I join your opinion.

Sincerely,

WHR

Justice Stevens

cc: The Conference

STYLISTIC CHANGES THROUGHOUT. ✓

SEE PAGES: 10, 11, 21, 22, 25, 26, 27 for substantive changes

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: MAY - 8 '81

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER v. ALBERT ROSS, JR.

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

[May —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

In *Carroll v. United States*, 267 U. S. 132, the Court held that a warrantless search of an automobile stopped by police officers who had probable cause to believe the vehicle contained contraband was not unreasonable within the meaning of the Fourth Amendment. The Court in *Carroll* did not explicitly address the scope of the search that is permissible. In this case, we consider the extent to which police officers—who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it—may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view. We hold that they may conduct a search of the vehicle that is as thorough as a magistrate could authorize in a warrant “particularly describing the place to be searched.”¹

I

In the evening of November 27, 1978, an informant who had previously proved to be reliable telephoned Detective

¹“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U. S. Const., Amdt. 4.

Changes

Received.

Do not
affect
my
views.

See

letter
to John
& his
reply.

LJP
5/10

Marcum of the District of Columbia Police Department and told him that an individual known as "Bandit" was selling narcotics kept in the trunk of a car parked at 439 Ridge Street. The informant stated that he had just observed "Bandit" complete a sale and that "Bandit" had told him that additional narcotics were in the trunk. The informant gave Marcum a detailed description of "Bandit" and stated that the car was a "purplish maroon" Chevrolet Malibu with District of Columbia license plates.

Accompanied by Detective Cassidy and Sergeant Gonzales, Marcum immediately drove to the area and found a maroon Malibu parked in front of 439 Ridge Street. A license check disclosed that the car was registered to Albert Ross; a computer check on Ross revealed that he fit the informant's description and used the alias "Bandit." In two passes through the neighborhood the officers did not observe anyone matching the informant's description. To avoid alerting persons on the street, they left the area.

The officers returned five minutes later and observed the maroon Malibu turning off Ridge Street onto Fourth Street. They pulled alongside the Malibu, noticed that the driver matched the informant's description, and stopped the car. Marcum and Cassidy told the driver—later identified as Albert Ross, the respondent in this action—to get out of the vehicle. While they searched Ross, Sergeant Gonzales discovered a bullet on the car's front seat. He searched the interior of the car and found a pistol in the glove compartment. Ross then was arrested and handcuffed. Detective Cassidy took Ross' keys and opened the trunk, where he found a closed brown paper bag. He opened the bag and discovered a number of glassine bags containing a white powder. Cassidy replaced the bag, closed the trunk, and drove the car to Headquarters.

At the police station Cassidy thoroughly searched the car. In addition to the "lunch-type" brown paper bag, Cassidy found in the trunk a zippered red leather pouch. He un-

zipped the pouch and discovered \$3,200 in cash. The police laboratory later determined that the powder in the paper bag was heroin. No warrant was obtained.

Ross was charged with possession of heroin with intent to distribute, in violation of 21 U. S. C. § 841(a). Prior to trial, he moved to suppress the heroin found in the paper bag and the currency found in the leather pouch. After an evidentiary hearing, the District Court denied the motion to suppress. The heroin and currency were introduced in evidence at trial and Ross was convicted.

A three-judge panel of the Court of Appeals reversed the conviction. It held that the police had probable cause to stop and search Ross' car and that, under *Carroll v. United States*, *supra*, and *Chambers v. Maroney*, 399 U. S. 42, the officers lawfully could search the automobile—including its trunk—without a warrant. The court considered separately, however, the warrantless search of the two containers found in the trunk. On the basis of *Arkansas v. Sanders*, 442 U. S. 753, the court concluded that the constitutionality of a warrantless search of a container found in an automobile depends on whether the owner possesses a reasonable expectation of privacy in its contents. Applying that test, the court held that the warrantless search of the paper bag was valid but the search of the leather pouch was not. The court remanded for a new trial at which the items taken from the paper bag, but not those from the leather pouch, could be admitted.²

The entire Court of Appeals then voted to rehear the case en banc. A majority of the court rejected the panel's conclusion that a distinction of constitutional significance existed between the two containers found in respondent's trunk; it

² The court rejected the Government's argument that the warrantless search of the leather pouch was justified as incident to respondent's arrest. App. to Pet. for Cert. 137a. The Government has not challenged this holding.

held that the police should not have opened either container without first obtaining a warrant. The court reasoned:

"No specific, well-delineated exception called to our attention permits the police to dispense with a warrant to open and search 'unworthy' containers. Moreover, we believe that a rule under which the validity of a warrantless search would turn on judgments about the durability of a container would impose an unreasonable and unmanageable burden on police and courts. For these reasons, and because the Fourth Amendment protects all persons, not just those with the resources or fastidiousness to place their effects in containers that decision-makers would rank in the luggage line, we hold that the Fourth Amendment warrant requirement forbids the warrantless opening of a closed, opaque paper bag to the same extent that it forbids the warrantless opening of a small unlocked suitcase or a zippered leather pouch." 655 F. 2d 1159, 1161 (CA DC 1981) (footnote omitted).

The en banc Court of Appeals considered, and rejected, the argument that it was reasonable for the police to open both the paper bag and the leather pouch because they were entitled to conduct a warrantless search of the entire vehicle in which the two containers were found. The majority concluded that this argument was foreclosed by *Sanders*.

Three dissenting judges interpreted *Sanders* differently.³ Other courts also have read the *Sanders* opinion in different

³Judge Tamm, the author of the original panel opinion, reiterated the view that *Sanders* prohibited the warrantless search of the leather pouch but not the search of the paper bag. Judge Robb agreed that this result was compelled by *Sanders*, although he stated that in his opinion "the right to search an automobile should include the right to open any container found within the automobile, just as the right to search a lawfully arrested prisoner carries with it the right to examine the contents of his wallet and any envelope found in his pocket, and the right to search a room includes authority to open and search all the drawers and containers found within

ways.⁴ Moreover, disagreement concerning the proper interpretation of *Sanders* was at least partially responsible for the fact that *Robbins v. California*, — U. S. —, was decided last Term without a Court opinion.

There is, however, no dispute among judges about the importance of striving for clarification in this area of the law. For countless vehicles are stopped on highways and public streets every day and our cases demonstrate that it is not uncommon for police officers to have probable cause to believe that contraband may be found in a stopped vehicle. In every such case a conflict is presented between the individual's constitutionally protected interest in privacy and the public interest in effective law enforcement. No single rule of law can resolve every conflict, but our conviction that clarification is feasible led us to grant the Government's petition for certiorari in this case and to invite the parties to address the question whether the decision in *Robbins* should be reconsidered. — U. S. —.

II

We begin with a review of the decision in *Carroll* itself. In the fall of 1921, federal prohibition agents obtained evidence that George Carroll and John Kiro were "bootleggers" who frequently traveled between Grand Rapids and Detroit

the room." 655 F. 2d, at 1180. Judge MacKinnon concurred with Judge Tamm that *Sanders* did not prohibit the warrantless search of the paper bag. Concerning the leather pouch, he agreed with Judge Wilkey, who dissented on the ground that *Sanders* should not be applied retroactively.

⁴ Many courts have held that *Sanders* requires that a warrant be obtained only for personal luggage and other "luggage-type" containers. See, e. g., *United States v. Goshorn*, 628 F. 2d 697 (CA1 1980); *United States v. Brown*, 635 F. 2d 1207 (CA6 1980); *United States v. Jiminez*, 626 F. 2d 39 (CA7 1980). One court has held that *Sanders* does not apply if the police have probable cause to search an entire vehicle and not merely an isolated container within it. Cf. *State v. Bible*, 389 So. 2d 42 (La. 1980), remanded, — U. S. —; *State v. Hernandez*, 408 So. 2d 911 (La. 1981); see also *United States v. Ross*, 655 F. 2d, at 1180 (Robb, J., dissenting).

in an Oldsmobile Roadster.⁵ On December 15, 1921, the agents unexpectedly encountered Carroll and Kiro driving west on that route in that car. The officers gave pursuit, stopped the roadster on the highway, and directed Carroll and Kiro to get out of the car.

No contraband was visible in the front seat of the Oldsmobile and the rear portion of the roadster was closed. One of the agents raised the rumble seat but found no liquor. He raised the seat cushion and again found nothing. The officer then struck at the "lazyback" of the seat and noticed that it was "harder than upholstery ordinarily is in those backs." 267 U. S., at 174. He tore open the seat cushion and discovered 68 bottles of gin and whiskey concealed inside. No warrant had been obtained for the search.

Carroll and Kiro were convicted of transporting intoxicating liquor in violation of the National Prohibition Act. On review of those convictions, this Court ruled that the warrantless search of the roadster was reasonable within the meaning of the Fourth Amendment. In an extensive opinion written by Chief Justice Taft, the Court held:

"On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The Fourth Amendment is to be con-

⁵ On September 29, 1921, Carroll and Kiro met the agents in Grand Rapids and agreed to sell them three cases of whiskey. The sale was not consummated, however, possibly because Carroll learned the agents' true identity. In October, the agents discovered Carroll and Kiro driving the Oldsmobile Roadster on the road to Detroit, which was known as an active center for the introduction of illegal liquor into this country. The agents followed the roadster as far as East Lansing, but there abandoned the chase.

strued in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens." *Id.*, at 149.

The Court explained at length the basis for this rule. The Court noted that historically warrantless searches of vessels, wagons, and carriages—as opposed to fixed premises such as a home or other building—had been considered reasonable by Congress. After reviewing legislation enacted by Congress between 1789 and 1799,⁶ the Court stated:

"Thus contemporaneously with the adoption of the Fourth Amendment we find in the first Congress, and in the following Second and Fourth Congresses, a difference made as to the necessity for a search warrant between goods subject to forfeiture, when concealed in a dwelling house or similar place, and like goods in course of transportation and concealed in a movable vessel where they readily could be put out of reach of a search warrant." *Id.*, at 151.

The Court reviewed additional legislation passed by Congress⁷ and again noted that

"the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Govern-

⁶ The legislation authorized customs officials to search any ship or vessel without a warrant if they had probable cause to believe that it concealed goods subject to duty. The same legislation required a warrant for searches of dwelling places. 267 U. S., at 150-151.

⁷ In particular, the Court noted an 1815 statute that permitted customs officers not only to board and search vessels without a warrant "but also to stop, search and examine any vehicle, beast or person on which or whom they should suspect there was merchandise which was subject to duty or had been introduced into the United States in any manner contrary to law." *Id.*, at 151.

ment, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id.*, at 153.

Thus, since its earliest days Congress had recognized the impracticability of securing a warrant in cases involving the transportation of contraband goods.⁸ It is this impracticability, viewed in historical perspective, that provided the basis for the *Carroll* decision. Given the nature of an automobile in transit, the Court recognized that an immediate intrusion is necessary if police officers are to secure the illicit substance. In this class of cases, the Court held that a warrantless search of an automobile is not unreasonable.⁹

⁸In light of this established history, individuals always had been on notice that movable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband, without the protection afforded by a magistrate's prior evaluation of those facts.

⁹Subsequent cases make clear that the decision in *Carroll* was not based on the fact that the only course available to the police was an immediate search. As Justice Harlan later recognized, although a failure to seize a moving automobile believed to contain contraband might deprive officers of the illicit goods, once a vehicle itself has been stopped the exigency does not necessarily justify a warrantless search. *Chambers v. Maroney*, 399 U. S. 42, 62-64 (opinion of Harlan, J.). The Court in *Chambers*, however—with only Justice Harlan dissenting—refused to adopt a rule that would permit a warrantless seizure but prohibit a warrantless search. The Court held that if police officers have probable cause to justify a warrantless seizure of an automobile on a public roadway, they may conduct an immediate search of the contents of that vehicle. "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth

In defining the nature of this "exception" to the general rule that "[i]n cases where the securing of a warrant is reasonably practicable, it must be used," *id.*, at 156, the Court in *Carroll* emphasized the importance of the requirement that officers have probable cause to believe that the vehicle contains contraband.

"Having thus established that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant, we come now to consider under what circumstances such search may be made. It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travellers may be so stopped in crossing an international boundary because of national self protection reasonably requiring one entering the country to identify himself as entitled to

Amendment." *Chambers v. Maroney*, 399 U. S., at 52.

The Court also has held that if an immediate search on the street is permissible without a warrant, a search soon thereafter at the police station is permissible if the vehicle is impounded. *Chambers, supra*; *Texas v. White*, 423 U. S. 67. These decisions are based on the practicalities of the situations presented and a realistic appraisal of the relatively minor protection that a contrary rule would provide for privacy interests. Given the scope of the initial intrusion caused by a seizure of an automobile—which often could leave the occupants stranded on the highway—the Court rejected an inflexible rule that would force police officers in every case either to post guard at the vehicle while a warrant is obtained or to tow the vehicle itself to the station. Similarly, if an immediate search on the scene could be conducted, but not one at the station if the vehicle is impounded, police often simply would search the vehicle on the street—at no advantage to the occupants, yet possibly at certain cost to the police. The rules as applied in particular cases may appear unsatisfactory. They reflect, however, a reasoned application of the more general rule that if an individual gives the police probable cause to believe a vehicle is transporting contraband, he loses the right to proceed on his way without official interference.

come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise." *Id.*, at 153-154.

Moreover, the probable cause determination must be based on objective facts that could justify the issuance of a warrant by a magistrate and not merely on the subjective good faith of the police officers. "[A]s we have seen, good faith is not enough to constitute probable cause. That faith must be grounded on facts within knowledge of the [officer], which in the judgment of the court would make his faith reasonable." *Id.*, at 161-162 (quoting *Director General v. Kastenbaum*, 263 U. S. 25, 28).¹⁰

The Court in *Carroll* also emphasized that the vehicle had been stopped "in the course of transportation." 267 U. S., at 149. Nothing in the opinion in that case suggests that an automobile parked in a private driveway could be searched without a warrant, absent other circumstances justifying a warrantless search. Cf. *Coolidge v. New Hampshire*, 403 U. S. 443.¹¹ In short, the exception to the warrant requirement established in *Carroll*—the scope of which we consider in this case—applies only to vehicles stopped on the public

¹⁰ After reviewing the relevant authorities at some length, the Court concluded that the probable cause requirement was satisfied in the case before it. The Court held that "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched." *Id.*, at 162. Cf. *Brinegar v. United States*, 338 U. S. 160, 176-177; *Henry v. United States*, 361 U. S. 98, 102.

¹¹ At page 6 of their brief *amicus curiae*, the Americans for Effective Law Enforcement and the International Association of Chiefs of Police also state that it is clear that the *Carroll* exception does not extend to a house trailer or camper used for residential purposes.

highways and to searches that are supported by probable cause.¹² In this class of cases, a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained.¹³

III

The rationale justifying a warrantless search of an automobile that is believed to be transporting contraband arguably applies with equal force to any movable container that is believed to be carrying an illicit substance. That argument, however, was squarely rejected in *United States v. Chadwick*, 433 U. S. 1.

Chadwick involved the warrantless search of a 200-pound footlocker. Federal railroad officials in San Diego became suspicious when they noticed that a brown footlocker loaded

¹² See *Husky v. United States*, 282 U. S. 694; *Scher v. United States*, 305 U. S. 251; *Brinegar v. United States*, 338 U. S. 160; *Henry v. United States*, 361 U. S. 98; *Dyke v. Taylor Implement Co.*, 391 U. S. 216; *Chambers v. Maroney*, 399 U. S. 42; *Texas v. White*, 423 U. S. 67; *Colorado v. Bannister*, 449 U. S. 1.

Warrantless searches of automobiles have been upheld in a variety of factual contexts quite different from that presented in *Carroll*. Cf. *Cooper v. California*, 386 U. S. 58; *Cady v. Dombrowski*, 413 U. S. 433; *South Dakota v. Opperman*, 428 U. S. 364. Many of these searches do not require a showing of probable cause that the vehicle contains contraband. We are not called upon—and do not—consider in this case the scope of the warrantless search that is permitted in those cases.

¹³ As the Court in *Carroll* concluded:

“We here find the line of distinction between legal and illegal seizures of liquor in transport in vehicles. It is certainly a reasonable distinction. It gives the owner of an automobile or other vehicle seized under Section 26, in absence of probable cause, a right to have restored to him the automobile, it protects him under the *Weeks* and *Amos* cases from use of the liquor as evidence against him, and it subjects the officer making the seizures to damages. On the other hand, in a case showing probable cause, the Government and its officials are given the opportunity which they should have, to make the investigation necessary to trace reasonably suspected contraband goods and to seize them.” 267 U. S., at 156.

onto a train bound for Boston was unusually heavy and leaking talcum powder, a substance often used to mask the odor of marijuana. Narcotics agents met the train in Boston and a trained police dog signaled the presence of a controlled substance inside the footlocker. While the agents awaited further developments, respondent Chadwick arrived and the footlocker was placed in the trunk of Chadwick's automobile. At that point, while the trunk of the car was still open and before the engine had been started, the agents seized the footlocker. They later searched the footlocker without a warrant and discovered a large quantity of marijuana.

In a subsequent criminal proceeding, Chadwick claimed that the warrantless search of the footlocker violated the Fourth Amendment. In the District Court, the Government argued that as soon as the footlocker was placed in the automobile a warrantless search was permissible under *Carroll*. The District Court rejected that argument,¹⁴ and the Government did not pursue it on appeal.¹⁵ Rather, the Government contended in this Court that the warrant requirement of the Fourth Amendment applied only to searches of homes and other "core" areas of privacy. The Court unanimously rejected that contention.¹⁶ Writing for the Court, THE CHIEF JUSTICE stated:

¹⁴The District Court noted:

"In this case, there was no nexus between the search and the automobile, merely a coincidence. The challenged search in this case was one of a footlocker, not an automobile. The search took place not in an automobile, but in [the federal building]. The only connection that the automobile had to this search was that, prior to its seizure, the footlocker was placed on the floor of an automobile's open trunk." *United States v. Chadwick*, 393 F. Supp. 763, 772 (Mass. 1975).

¹⁵This Court specifically noted: "The Government does not contend that the footlocker's brief contact with Chadwick's car makes this an automobile search, but it is argued that the rationale of our automobile search cases demonstrates the reasonableness of permitting warrantless searches of luggage; the Government views such luggage as analagous to motor vehicles for Fourth Amendment purposes." 433 U. S., at 11-12.

¹⁶See *id.*, at 17 (BLACKMUN, J., dissenting).

"[I]f there is little evidence that the Framers intended the Warrant Clause to operate outside the home, there is no evidence at all that they intended to exclude from protection of the Clause all searches occurring outside the home. The absence of a contemporary outcry against warrantless searches in public places was because, aside from searches incident to arrest, such warrantless searches were not a large issue in colonial America. Thus, silence in the historical record tells us little about the Framers' attitude toward application of the Warrant Clause to the search of respondents' footlocker. What we do know is that the Framers were men who focused on the wrongs of that day but who intended the Fourth Amendment to safeguard fundamental values which would far outlast the specific abuses which gave it birth." 433 U. S., at 8-9 (footnote omitted).

The Court in *Chadwick* specifically rejected the argument that the warrantless search was "reasonable" because a footlocker has some of the mobile characteristics that support warrantless searches of automobiles. The Court recognized that "a person's expectations of privacy in personal luggage are substantially greater than in an automobile," *id.*, at 13, and noted that the practical problems associated with the temporary detention of a piece of luggage during the period of time necessary to obtain a warrant are significantly less than those associated with the detention of an automobile. *Id.*, at 13, n. 7. In ruling that the warrantless search of the footlocker was unjustified, the Court reaffirmed the general principle that closed packages and containers may not be searched without a warrant. Cf. *Ex parte Jackson*, 96 U. S. 727; *United States v. Leeuwen*, 397 U. S. 249. In sum, the Court in *Chadwick* declined to extend the rationale of the "automobile exception" to permit a warrantless search of any movable container found in a public place.¹⁷

¹⁷The Court concluded that there is a significant difference between the

The facts in *Arkansas v. Sanders*, 442 U. S. 753, were similar to those in *Chadwick*. In *Sanders*, a Little Rock police officer received information from a reliable informant that Sanders would arrive at the local airport on a specified flight that afternoon carrying a green suitcase containing marijuana. The officer went to the airport. Sanders arrived on schedule and retrieved a green suitcase from the airline baggage service. Sanders gave the suitcase to a waiting companion who placed it in the trunk of a taxi. Sanders and his companion drove off in the cab; police officers followed and stopped the taxi several blocks from the airport. The officers opened the trunk, seized the suitcase, and searched it on the scene without a warrant. As predicted, the suitcase contained marijuana.

The Arkansas Supreme Court ruled that the warrantless search of the suitcase was impermissible under the Fourth Amendment, and this Court affirmed. As in *Chadwick*, the mere fact that the suitcase had been placed in the trunk of the vehicle did not render the automobile exception of *Carroll* applicable; the police had probable cause to seize the suitcase before it was placed in the trunk of the cab and did not have probable cause to search the taxi itself.¹⁸ Since the

seizure of a sealed package and a subsequent search of its contents; the search of the container in that case was "a far greater intrusion into Fourth Amendment values than the impoundment of the footlocker." *Id.*, at 13, n. 8. A temporary seizure of a package or piece of luggage often may be accomplished without as significant an intrusion upon the individual—and without as great a burden on the police—as in the case of the seizure of an automobile. See n. 9, *supra*.

¹⁸ The Arkansas Supreme Court carefully reviewed the facts of the case and concluded: "The information supplied to the police by the confidential informant is adequate to support the State's claim that the police had probable cause to believe that appellant's green suitcase contained a controlled substance when the police confiscated the suitcase and opened it." 262 Ark. 595, 599, 559 S.W. 2d 704, 706 (1977). The court also noted: "The evidence in this case supports the conclusion that the relationship between the suitcase and the taxicab is coincidental." *Id.*, at 600, n. 2, 559 S.W.

suitcase had been placed in the trunk, no danger existed that its contents could have been secreted elsewhere in the vehicle.¹⁹ As THE CHIEF JUSTICE noted in his opinion concurring in the judgment:

"Because the police officers had probable cause to believe that respondent's green suitcase contained marijuana before it was placed in the trunk of the taxicab, their duty to obtain a search warrant before opening it is clear under *United States v. Chadwick*, 433 U. S. 1 (1977).

* * *

Here, as in *Chadwick*, it was the *luggage* being transported by respondent at the time of the arrest, not the automobile in which it was being carried, that was the suspected locus of the contraband. The relationship between the automobile and the contraband was purely coincidental, as in *Chadwick*. The fact that the suitcase was resting in the trunk of the automobile at the time of respondent's arrest does not turn this into an 'automobile' exception case. The Court need say no more." *Id.*, at 766-767.

The Court in *Sanders* did not, however, rest its decision solely on the authority of *Chadwick*. In rejecting the State's argument that the warrantless search of the suitcase was justified on the ground that it had been taken from an automobile lawfully stopped on the street, the Court broadly suggested that a warrantless search of a container found in an automobile could never be sustained as part of a warrantless search of the automobile itself.²⁰ The Court did not suggest

¹⁹2d, at 706.

²⁰Moreover, none of the practical difficulties associated with the detention of a vehicle on a public highway that made the immediate search in *Carroll* reasonable could justify an immediate search of the suitcase, since the officers had no interest in detaining the taxi or its driver.

²¹The Court stated that "the extent to which the Fourth Amendment ap-

that it mattered whether probable cause existed to search the entire vehicle. It is clear, however, that in neither *Chadwick* nor *Sanders* did the police have probable cause to search the vehicle or anything within it except the footlocker in the former case and the green suitcase in the latter.

Robbins v. California, — U. S. —, however, was a case in which suspicion was not directed at a specific container. In that case the Court for the first time was forced to consider whether police officers who are entitled to conduct a warrantless search of an automobile stopped on a public roadway may open a container found within the vehicle. In the early morning of January 5, 1975, police officers stopped Robbins' station wagon because he was driving erratically. Robbins got out of the car, but later returned to obtain the vehicle's registration papers. When he opened the car door, the officers smelled marijuana smoke. One of the officers searched Robbins and discovered a vial of liquid; in a search of the interior of the car the officer found marijuana. The police officers then opened the tailgate of the station wagon and raised the cover of a recessed luggage compartment. In the compartment they found two packages wrapped in green opaque plastic. The police unwrapped the packages and discovered a large amount of marijuana in each.

Robbins was charged with various drug offenses and moved to suppress the contents of the plastic packages. The California Court of Appeal held that "[s]earch of the

plies to containers and other parcels depends not at all upon whether they are seized from an automobile." 442 U. S., at 764, n. 13. This general rule was limited only by the observation that "[n]ot all containers and packages found by police during the course of a search will deserve the full protection of the Fourth Amendment. Thus, some containers (for example a kit of burglar tools or a gun case) by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance. Similarly, in some cases the contents of a package will be open to 'plain view,' thereby obviating the need for a warrant." *Ibid.*

automobile was proper when the officers learned that appellant was smoking marijuana when they stopped him"²¹ and that the warrantless search of the packages was justified because "the contents of the packages could have been inferred from their outward appearance, so that appellant could not have held a reasonable expectation of privacy with respect to the contents." 103 Cal. App. 3d 34, 40, 162 Cal. Rptr. 780, 783 (1980).

This Court reversed. Writing for a plurality, Justice Stewart rejected the argument that the outward appearance of the packages precluded Robbins from having a reasonable expectation of privacy in their contents. He also squarely rejected the argument that there is a constitutional distinction between searches of luggage and searches of "less worthy" containers. Justice Stewart reasoned that all containers are equally protected by the Fourth Amendment unless their contents are in plain view. The plurality concluded that the warrantless search was impermissible because *Chadwick* and *Sanders* had established that "a closed piece of luggage found in a lawfully searched car is constitutionally protected to the same extent as are closed pieces of luggage found anywhere else." — U. S., at —.

In a concurring opinion, JUSTICE POWELL, the author of the Court's opinion in *Sanders*, stated that "[t]he plurality's approach strains the rationales of our prior cases and imposes substantial burdens on law enforcement without vindicating any significant values of privacy." *Id.*, at —.²² He noted

²¹ 103 Cal. App. 3d 34, 39, 162 Cal. Rptr. 780, 782 (1980).

²² "While the plurality's blanket warrant requirement does not even purport to protect any privacy interest, it would impose substantial new burdens on law enforcement. Confronted with a cigar box or a Dixie cup in the course of a probable cause search of an automobile for narcotics, the conscientious policeman would be required to take the object to a magistrate, fill out the appropriate forms, await the decision, and finally obtain a warrant. Suspects or vehicles normally will be detained while the warrant is sought. This process may take hours, removing the officer from his

that possibly "the controlling question should be the scope of the automobile exception to the warrant requirement," *id.*, at —, and explained that under that view

"when the police have probable cause to search an automobile, rather than only to search a particular container that fortuitously is located in it, the exigencies that allow the police to search the entire automobile without a warrant support the warrantless search of every container found therein. See *post*, at — and n. 13 (STEVENS, J., dissenting). This analysis is entirely consistent with the holdings in *Chadwick* and *Sanders*, neither of which is an 'automobile case,' because the police there had probable cause to search the double-locked footlocker and the suitcase respectively before either came near an automobile." *Ibid.*

The parties in *Robbins* had not pressed that argument, however, and JUSTICE POWELL concluded that institutional constraints made it inappropriate to re-examine basic doctrine without full adversary presentation. He concurred in the judgment, since it was supported—although not compelled—by the Court's opinion in *Sanders*, and stated that a future case might present a better opportunity for thorough consideration of the basic principles in this troubled area.

normal police duties. Expenditure of such time and effort, drawn from the public's limited resources for detecting or preventing crimes, is justified when it protects an individual's reasonable privacy interests. In my view, the plurality's requirement cannot be so justified. The aggregate burden of procuring warrants whenever an officer has probable cause to search the most trivial container may be heavy and will not be compensated by the advancement of important Fourth Amendment values." — U. S., at — (POWELL, J., concurring).

The substantial burdens on law enforcement identified by JUSTICE POWELL would, of course, not be affected by the character of the container found during an automobile search. No comparable practical problems arise when the official suspicion is confined to a particular piece of luggage, as in *Chadwick* and *Sanders*. Cf. n. 19, *supra*.

That case has arrived. Unlike *Chadwick* and *Sanders*, in this case police officers had probable cause to search respondent's entire vehicle.²⁸ Unlike *Robbins*, in this case the parties have squarely addressed the question whether, in the course of a legitimate warrantless search of an automobile, police are entitled to open containers found within the vehicle. We now address that question. Its answer is determined by the scope of the search that is authorized by the exception to the warrant requirement set forth in *Carroll*.

IV

In *Carroll* itself, the whiskey that the prohibition agents seized was not in plain view. It was discovered only after an officer opened the rumble seat and tore open the upholstery of the lazyback. The Court did not find the scope of the search unreasonable. Having stopped *Carroll* and *Kiro* on a public road and subjected them to the indignity of a vehicle search—which the Court found to be a reasonable intrusion on their privacy because it was based on probable cause that their vehicle was transporting contraband—prohibition agents were entitled to tear open a portion of the roadster itself. The scope of the search was no greater than a magistrate could have authorized by issuing a warrant based on the

²⁸ The en banc Court of Appeals stated that "[b]ased on the tip the police received, Ross's car was properly stopped and searched, and the pouch and bag were properly seized." 655 F. 2d, at 1168 (footnote omitted). The court explained:

"[W]e believe it clear that the police had ample and reasonable cause to stop Ross and to search his car. The informer had supplied accurate information on prior occasions, and he was an eyewitness to sales of narcotics by Ross. He said he had just seen Ross take narcotics from the trunk of his car in making a sale and heard him say he possessed additional narcotics." *Id.*, at 1168, n. 22.

The court further noted that "[i]n this case, the informant told the police that Ross had narcotics in the trunk of his car. No specific container was identified." *Id.*, at 1166.

probable cause that justified the search. Since such a warrant could have authorized the agents to open the rear portion of the roadster and to rip the upholstery in their search for concealed whiskey, the search was constitutionally permissible.

In *Chambers v. Maroney* the police found weapons and stolen property "concealed in a compartment under the dashboard." 399 U. S., at 44. No suggestion was made that the scope of the search was impermissible. It would be illogical to assume that the outcome of *Chambers*—or the outcome of *Carroll* itself—would have been different if the police had found the secreted contraband enclosed within a secondary container and had opened that container without a warrant. If it was reasonable for prohibition agents to rip open the upholstery in *Carroll*, it certainly would have been reasonable for them to look into a burlap sack stashed inside; if it was reasonable to open the concealed compartment in *Chambers*, it would have been equally reasonable to open a paper bag crumpled within it. A contrary rule could produce absurd results inconsistent with the decision in *Carroll* itself.

In its application of *Carroll*, this Court in fact has sustained warrantless searches of containers found during a lawful search of an automobile. In *Husty v. United States*, 282 U. S. 694, the Court upheld a warrantless seizure of whiskey found during a search of an automobile, some of which was discovered in "whiskey bags" that could have contained other goods.²⁴ In *Scher v. United States*, 305 U. S. 251, federal officers seized and searched packages of unstamped liquor found in the trunk of an automobile searched without a warrant. As described by a police officer who participated in

²⁴ At the suppression hearing, defense counsel asked the police officer who had conducted the search: "Isn't it possible to put other goods in a bag that has the resemblance of a whiskey bag?" The officer responded: "I suppose it is. I did not think of that at that time. I knew it was whiskey, I was sure it was." App., O.T. 1930, No. 477, p. 27.

the search: "I turned the handle and opened the trunk and found the trunk completely filled with packages wrapped in brown paper, and tied with twine; I think somewhere around thirty packages, each one containing six bottles."²⁶ In these cases it was not contended that police officers needed a warrant to open the whiskey bags or to unwrap the brown paper packages. The fact that no such argument was even made illuminates the profession's understanding of the scope of the search permitted under *Carroll*. Indeed, prior to the decisions in *Chadwick* and *Sanders*, courts routinely had held that containers and packages found during a legitimate warrantless search of an automobile also could be searched without a warrant.²⁷

As we have stated, the decision in *Carroll* was based on the Court's appraisal of practical considerations viewed in the perspective of history. It is therefore significant that the practical consequences of the *Carroll* decision would be largely nullified if the permissible scope of a warrantless

²⁶ App., O.T. 1938, No. 49, p. 33. The brief of then Solicitor General Robert Jackson noted that the items searched "were wrapped in very heavy brown wrapping paper with at least two wrappings and with a heavy cord around them cross-wise so that they could readily be lifted." Brief for United States, O.T. 1938, No. 49, p. 6.

²⁷ See, e. g., *United States v. Soriano*, 497 F. 2d 147, 149-150 (CA5 1974) (en banc); *United States v. Venta*, 533 F. 2d 888, 867, n. 101 (CA8 1976); *United States v. Tramunti*, 513 F. 2d 1087, 1104 (CA2 1975); *United States v. Issod*, 508 F. 2d 990, 993 (CA7 1974); *United States v. Evans*, 481 F. 2d 990, 994 (CA9 1973); *United States v. Bowman*, 487 F. 2d 1229 (CA10 1973). Many courts continued to apply this rule following the decision in *Chadwick*. Cf. *United States v. Milhollan*, 599 F. 2d 518, 526-527 (CA3 1979); *United States v. Gaultney*, 581 F. 2d 1137, 1144-1145 (CA5 1978); *United States v. Finnegan*, 568 F. 2d 637, 640-641 (CA9 1977). In ruling that police could search luggage and other containers found during a legitimate warrantless search of an automobile, courts often assumed that the "automobile exception" of *Carroll* applied whenever a container in an automobile was believed to contain contraband. That view, of course, has since been qualified by *Chadwick* and *Sanders*.

footnote moved to p. 22

footnote renumbered

search of an automobile did not include containers and packages found inside the vehicle. Contraband goods rarely are strewn across the trunk or floor of a car; since by their very nature such goods must be withheld from public view, they rarely can be placed in an automobile unless they are enclosed within some form of container.²⁷ The Court in *Carroll* held that "contraband goods *concealed* and illegally transported in an automobile or other vehicle may be searched for without a warrant." 267 U. S., at 153 (emphasis added). As we noted in *Henry v. United States*, 361 U. S. 98, 104, the decision in *Carroll* "merely relaxed the requirements for a warrant on grounds of impracticability." It neither broadened nor limited the scope of a lawful search based on probable cause.

A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search.²⁸

²⁷ It is noteworthy that the early legislation on which the Court relied in *Carroll* concerned the enforcement of laws imposing duties on imported merchandise. See nn. 6 and 7, *supra*. Presumably such merchandise was shipped then in containers of various kinds, just as it is today. Since Congress had authorized warrantless searches of vessels and beasts for imported merchandise, it is inconceivable that it intended a customs officer to obtain a warrant for every package discovered during the search; certainly Congress intended customs officers to open shipping containers when necessary and not merely to examine the exterior of cartons or boxes in which smuggled goods might be concealed. During virtually the entire history of our country—whether contraband was transported in a horse drawn carriage, a 1921 roadster, or a modern automobile—it has been assumed that a lawful search of a vehicle would include a search of any container that might conceal the object of the search.

²⁸ In describing the permissible scope of a search of a home pursuant to a warrant, Professor LaFare notes:

"Places within the described premises are not excluded merely because some additional act of entry or opening may be required. 'In countless cases in which warrants described only the land and the buildings, a search

Thus, a warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found. A warrant to open a footlocker to search for marijuana would also authorize the opening of packages found inside. A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search. When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.²⁹

This rule applies equally to all containers, as indeed we believe it must. One point on which the Court was in virtually unanimous agreement in *Robbins* was that a constitutional distinction between "worthy" and "unworthy" containers would be improper.³⁰ Even though such a distinction per-

of desks, cabinets, closets and similar items has been permitted.'" 2 LaFave, *Search and Seizure* 152 (1978) (quoting *Massey v. Commonwealth*, 305 S.W. 2d 755, 758 (Ky. 1957)).

²⁹The practical considerations that justify a warrantless search of an automobile continue to apply until the entire search of the automobile and its contents has been completed. Arguably, the entire vehicle itself could be searched without a warrant, with all containers found during that search then taken to a magistrate. Certainly no privacy interest is served, however, by prohibiting police from opening immediately a container in which the object of the search may most likely be found and instead forcing them first to comb the entire vehicle. Moreover, until the container itself was opened the police could never be certain that the contraband was not secreted in a yet undiscovered portion of the vehicle; thus in every case in which a container was found, the vehicle would need to be secured while a warrant was obtained. Such a requirement would be directly inconsistent with the decisions in *Carroll* and *Chambers*. Cf. nn. 19 and 22, *supra*.

³⁰Cf. — U. S., at — (plurality opinion); *id.*, at — (BLACKMUN, J.,

haps could evolve in a series of cases in which paper bags, locked trunks, lunch buckets, and orange crates were placed on one side of the line or the other,³¹ the central purpose of the Fourth Amendment forecloses such a distinction. For just as the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion,³² so also may a traveler who carries a toothbrush and a few articles of clothing in a paper bag or knotted scarf claim an equal right to conceal his possessions from official inspection as the sophisticated executive with the locked attaché case.

As Justice Stewart stated in *Robbins*, the Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view. — U. S., at — (plurality opinion). But the protection afforded by the Amendment varies in different settings. The luggage carried by a traveler entering the country may be searched at random by a customs officer; the luggage may be searched no

dissenting); *id.*, at — (REHNQUIST, J., dissenting); *id.*, at — (STEVENS, J., dissenting).

³¹ If the distinction is based on the proposition that the Fourth Amendment protects only those containers that objectively manifest an individual's reasonable expectation of privacy, however, the propriety of a warrantless search necessarily would turn on much more than the fabric of the container. A paper bag stapled shut and marked "private" might be found to manifest a reasonable expectation of privacy, as could a cardboard box stacked on top of two pieces of heavy luggage. The propriety of the warrantless search seemingly would turn on an objective appraisal of all the surrounding circumstances.

³² "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his forces dares not cross the threshold of the ruined tenement!" *Miller v. United States*, 357 U. S. 301, 307 (quoting remarks attributed to William Pitt); cf. *Payton v. New York*, 445 U. S. 573, 601 n. 54.

matter how great the traveler's desire to conceal the contents may be. A container carried at the time of arrest often may be searched without a warrant and even without any specific suspicion concerning its contents. A container that may conceal the object of a search authorized by a warrant may be opened immediately; the individual's interest in privacy must give way to the magistrate's official determination of probable cause.

In the same manner, an individual's expectation of privacy in a vehicle and its contents may not survive if probable cause is given to believe that the vehicle is transporting contraband. Certainly the privacy interests in a car's trunk or glove compartment may be no less than those in a movable container. An individual undoubtedly has a significant interest that the upholstery of his automobile will not be ripped or a hidden compartment within it opened. These interests must yield to the authority of a search, however, which—in light of *Carroll*—does not itself require the prior approval of a magistrate. The scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.

The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed

in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab. JL

V

Our decision today is inconsistent with the disposition in *Robbins v. California* and with some of the reasoning in *Arkansas v. Sanders*. Nevertheless, the doctrine of *stare decisis* does not preclude this action. Although we have rejected some of the reasoning in *Sanders*, we adhere to our holding in that case; although we reject the precise holding in *Robbins*, there was no Court opinion supporting a single rationale for its judgment and the reasoning we adopt today was not presented by the parties in that case. ~~Moreover, it is clear that no legitimate reliance interest can be frustrated by our decision today.~~³³ Of greatest importance, we are convinced that the rule we apply in this case is faithful to the interpretation of the Fourth Amendment that the Court has followed with substantial consistency throughout our history. omission

We reaffirm the basic rule of Fourth Amendment jurisprudence stated by Justice Stewart for a unanimous Court in *Mincey v. Arizona*, 437 U. S. 385, 390:

"The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.' *Katz v. United States*, 389 U. S. 347, 357 (footnotes omitted)."

The exception recognized in *Carroll* is unquestionably one that is "specifically established and well-delineated." We

³³ Any interest in maintaining the status quo that might be asserted by persons who may have structured their business of distributing narcotics or other illicit substances on the basis of judicial precedents clearly would not be legitimate. JL

hold that the scope of the warrantless search authorized by that exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

The judgment of the Court of Appeals is reversed. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

May 10, 1982

80-2209 United States v. Ross

Dear John:

In effect, my vote at Conference was to "join five" to give a strong Court for a uniform rule in an area where law enforcement and courts need clear guidance.

I think you have written an excellent opinion. For the present, however, I will await the writing by other Justices.

If I join you, I probably will write briefly in concurrence. Your opinion rejects some of the reasoning in Sanders, and particularly rejects the view I have expressed several times as to the relevance of a "reasonable expectation of privacy". I continue to think that this is a relevant factor in Fourth Amendment analysis. I therefore would not agree with all that you say in Part IV, but would try to join enough of your opinion to leave its basic holding supported by six Justices.

I am sending this letter only to you for your information.

Sincerely,

Justice Stevens

lfp/ss

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS



May 10, 1982

Re: 80-2209 - United States v. Ross

Dear Lewis:

Many thanks for your note. I hope it will be possible for you to join at least portions of the opinion. You are certainly correct in stating that I reject some of the reasoning in Sanders, but I did not intend to reject the relevance of a reasonable expectation of privacy. Indeed, perhaps without being as clear as I should have, I intended to direct pages 24 and 25 at that concept and to note that an individual's expectation of privacy in a vehicle and its contents varies dramatically in different settings. If specific language changes in that section might either satisfy your concerns or narrow any possible disagreement between us, I surely would do my best to accommodate you in the interest of making our disposition as unanimous as possible. (The changes between the first and second draft were at Bill Rehnquist's suggestion.)

Sincerely,

Justice Powell



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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 11, 1982



Re: 80-2209 - United States v. Ross

Dear John,

I shall await the dissent.

Sincerely yours,

Justice Stevens

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 11, 1982

No. 80-2209 United States v. Ross

Dear John,

Please join me in your opinion.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

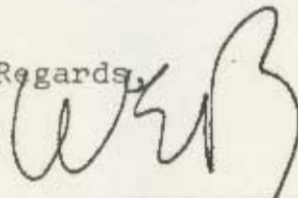
May 19, 1982

Re: No. 80-2209 - U.S. v. Ross

Dear John:

I will be joining you in this case, subject to a few suggestions which I doubt will give you any problems.

Regards,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 20, 1982

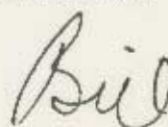


RE: No. 80-2209 United States v. Ross

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

cc: The Conference



ROSSS25 SALLY-POW

Although an officer may establish that he acted in good faith in conducting the search by other evidence, a warrant issued by a magistrate normally suffices to establish it.

John - I don't particularly like like the quote from Carroll, expressing the rule negatively and not mentioning exigent circumstances. L.F.P.

authorize.²²

The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab.

²²In choosing to search without a warrant on their own assessment of probable cause, police officers of course lose the protection that a warrant would provide to them in an action for damages brought by an individual claiming that the search was unconstitutional. Cf. *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U. S. 388. A warrant issued by a magistrate will generally establish that officers acted in good faith in conducting the search. Cf. *Carroll, supra*, at 156 ("In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.").

normally suffices to establish it.

special

Rider A

1

2

5/25/82

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: MAY 25 1982

Recirculated: _____

80-2209 United States v. Ross

JUSTICE POWELL, concurring.

In my opinion in Robbins v. California, _____ U.S. _____ (1981), concurring in the judgment, I stated that the judgment was justified, though not compelled, by the Court's opinion in Arkansas v. Sander, 442 U.S. 756 (1979). I did not agree, however, with the "bright line" rule articulated by the plurality opinion. Rather, I repeated the view I long have held that one's "reasonable expectation of privacy" is a particularly relevant factor in determining the validity of a warrantless search. I have recognized, that with respect to automobiles in general, this expectation can be only a limited one. See Arkansas v. Sanders, supra, at 761; Almeida-Sanchez v. United States, 413 U.S. 266, 279 (Powell, J., concurring). I continue to think that in many situations one's

reasonable expectation of privacy may be a decisive factor in a search case.

It became evident last Term, however, from the five opinions written in Robbins - in none of which the Chief Justice joined - that it is essential to have a Court opinion in automobile search cases that provides "specific guidance to police and courts in this reoccurring situation". Robbins v. California, ____ U.S. ____ (1981) (Powell, J., concurring). The Court's opinion today, written by Justice Stevens and now joined by four other Justices, will afford this needed guidance. It is fair also to say that, given Carroll v. United States, 267 U.S. 132 (19__) and Chambers v. Maroney, 399 U.S. 42 (19__), the Court's decision does not depart substantially from Fourth Amendment doctrine in automobile cases. Moreover, in enunciating a readily understood and applied rule, today's decision is consistent with the similar step taken last Term in Belton v. New York, ____ U.S. ____ (1981).

I join the Court's opinion.

May 25, 1982

80-2209 United States v. Ross

Dear John:

I am circulating an Atex copy of a brief concurring opinion. This will give you a solid Court for a final opinion.

I would appreciate your adding a sentence in n. 32, p. 25, along the lines of the rider that I have attached to the enclosed copy of p. 25.

Sincerely,

Justice Stevens

LFP/vde

lfp/ss 05/24/82

Rider A, p. 25 (Ross)

ROSSS25 SALLY-POW

Although an officer may establish that he acted in good faith in conducting the search by other evidence, a warrant issued by a magistrate normally suffices to establish it.

Sent to John
with my letter of
5/25

File

80-2209-OPINION

Jenny - attach
this to carbon
of letter to JPS
& file it.

authorize."

The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab.

"In choosing to search without a warrant on their own assessment of probable cause, police officers of course lose the protection that a warrant would provide to them in an action for damages brought by an individual claiming that the search was unconstitutional. Cf. *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U. S. 388. ~~A warrant issued by a magistrate will generally establish that officers acted in good faith in conducting the search.~~ Cf. *Carroll, supra*, at 156 ("In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.").

special

Rider

normally
suffices
to establish it.

W

1

2

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

MAY 26 1982

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER v.
ALBERT ROSS, JR.

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

[May —, 1982]

JUSTICE POWELL, concurring.

In my opinion in *Robbins v. California*, — U. S. — (1981), concurring in the judgment, I stated that the judgment was justified, though not compelled, by the Court's opinion in *Arkansas v. Sander*, 442 U. S. 756 (1979). I did not agree, however, with the "bright line" rule articulated by the plurality opinion. Rather, I repeated the view I long have held that one's "reasonable expectation of privacy" is a particularly relevant factor in determining the validity of a warrantless search. I have recognized, that with respect to automobiles in general, this expectation can be only a limited one. See *Arkansas v. Sanders*, *supra*, at 761; *Almeida-Sanchez v. United States*, 413 U. S. 266, 279 (POWELL, J., concurring). I continue to think that in many situations one's reasonable expectation of privacy may be a decisive factor in a search case.

It became evident last Term, however, from the five opinions written in *Robbins*—in none of which THE CHIEF JUSTICE joined—that it is essential to have a Court opinion in *automobile* search cases that provides "specific guidance to police and courts in this reoccurring situation". *Robbins v. California*, — U. S. — (1981) (POWELL, J., concurring). The Court's opinion today, written by JUSTICE STEVENS and now joined by four other Justices, will afford this needed

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

File
copy

From: **Justice Stevens**

Circulated: _____

MAY 26 '82

Recirculated: _____

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER v.
ALBERT ROSS, JR.

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

[May —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

In *Carroll v. United States*, 267 U. S. 132, the Court held that a warrantless search of an automobile stopped by police officers who had probable cause to believe the vehicle contained contraband was not unreasonable within the meaning of the Fourth Amendment. The Court in *Carroll* did not explicitly address the scope of the search that is permissible. In this case, we consider the extent to which police officers—who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it—may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view. We hold that they may conduct a search of the vehicle that is as thorough as a magistrate could authorize in a warrant “particularly describing the place to be searched.”¹

I

In the evening of November 27, 1978, an informant who

¹ “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U. S. Const., Amdt. 4.

JPS tones down his n. 32 some.
You have joined.

my change

ju

had previously proved to be reliable telephoned Detective Marcum of the District of Columbia Police Department and told him that an individual known as "Bandit" was selling narcotics kept in the trunk of a car parked at 439 Ridge Street. The informant stated that he had just observed "Bandit" complete a sale and that "Bandit" had told him that additional narcotics were in the trunk. The informant gave Marcum a detailed description of "Bandit" and stated that the car was a "purplish maroon" Chevrolet Malibu with District of Columbia license plates.

Accompanied by Detective Cassidy and Sergeant Gonzales, Marcum immediately drove to the area and found a maroon Malibu parked in front of 439 Ridge Street. A license check disclosed that the car was registered to Albert Ross; a computer check on Ross revealed that he fit the informant's description and used the alias "Bandit." In two passes through the neighborhood the officers did not observe anyone matching the informant's description. To avoid alerting persons on the street, they left the area.

The officers returned five minutes later and observed the maroon Malibu turning off Ridge Street onto Fourth Street. They pulled alongside the Malibu, noticed that the driver matched the informant's description, and stopped the car. Marcum and Cassidy told the driver—later identified as Albert Ross, the respondent in this action—to get out of the vehicle. While they searched Ross, Sergeant Gonzales discovered a bullet on the car's front seat. He searched the interior of the car and found a pistol in the glove compartment. Ross then was arrested and handcuffed. Detective Cassidy took Ross' keys and opened the trunk, where he found a closed brown paper bag. He opened the bag and discovered a number of glassine bags containing a white powder. Cassidy replaced the bag, closed the trunk, and drove the car to Headquarters.

At the police station Cassidy thoroughly searched the car. In addition to the "lunch-type" brown paper bag, Cassidy

found in the trunk a zippered red leather pouch. He unzipped the pouch and discovered \$3,200 in cash. The police laboratory later determined that the powder in the paper bag was heroin. No warrant was obtained.

Ross was charged with possession of heroin with intent to distribute, in violation of 21 U. S. C. § 841(a). Prior to trial, he moved to suppress the heroin found in the paper bag and the currency found in the leather pouch. After an evidentiary hearing, the District Court denied the motion to suppress. The heroin and currency were introduced in evidence at trial and Ross was convicted.

A three-judge panel of the Court of Appeals reversed the conviction. It held that the police had probable cause to stop and search Ross' car and that, under *Carroll v. United States*, *supra*, and *Chambers v. Maroney*, 399 U. S. 42, the officers lawfully could search the automobile—including its trunk—without a warrant. The court considered separately, however, the warrantless search of the two containers found in the trunk. On the basis of *Arkansas v. Sanders*, 442 U. S. 753, the court concluded that the constitutionality of a warrantless search of a container found in an automobile depends on whether the owner possesses a reasonable expectation of privacy in its contents. Applying that test, the court held that the warrantless search of the paper bag was valid but the search of the leather pouch was not. The court remanded for a new trial at which the items taken from the paper bag, but not those from the leather pouch, could be admitted.²

The entire Court of Appeals then voted to rehear the case en banc. A majority of the court rejected the panel's conclusion that a distinction of constitutional significance existed

²The court rejected the Government's argument that the warrantless search of the leather pouch was justified as incident to respondent's arrest. App. to Pet. for Cert. 137a. The Government has not challenged this holding.

between the two containers found in respondent's trunk; it held that the police should not have opened either container without first obtaining a warrant. The court reasoned:

"No specific, well-delineated exception called to our attention permits the police to dispense with a warrant to open and search 'unworthy' containers. Moreover, we believe that a rule under which the validity of a warrantless search would turn on judgments about the durability of a container would impose an unreasonable and unmanageable burden on police and courts. For these reasons, and because the Fourth Amendment protects all persons, not just those with the resources or fastidiousness to place their effects in containers that decision-makers would rank in the luggage line, we hold that the Fourth Amendment warrant requirement forbids the warrantless opening of a closed, opaque paper bag to the same extent that it forbids the warrantless opening of a small unlocked suitcase or a zippered leather pouch." 655 F. 2d 1159, 1161 (CADC 1981) (footnote omitted).

The en banc Court of Appeals considered, and rejected, the argument that it was reasonable for the police to open both the paper bag and the leather pouch because they were entitled to conduct a warrantless search of the entire vehicle in which the two containers were found. The majority concluded that this argument was foreclosed by *Sanders*.

Three dissenting judges interpreted *Sanders* differently.³ Other courts also have read the *Sanders* opinion in different

³Judge Tamm, the author of the original panel opinion, reiterated the view that *Sanders* prohibited the warrantless search of the leather pouch but not the search of the paper bag. Judge Robb agreed that this result was compelled by *Sanders*, although he stated that in his opinion "the right to search an automobile should include the right to open any container found within the automobile, just as the right to search a lawfully arrested prisoner carries with it the right to examine the contents of his wallet and any envelope found in his pocket, and the right to search a room includes

ways.⁴ Moreover, disagreement concerning the proper interpretation of *Sanders* was at least partially responsible for the fact that *Robbins v. California*, — U. S. —, was decided last Term without a Court opinion.

There is, however, no dispute among judges about the importance of striving for clarification in this area of the law. For countless vehicles are stopped on highways and public streets every day and our cases demonstrate that it is not uncommon for police officers to have probable cause to believe that contraband may be found in a stopped vehicle. In every such case a conflict is presented between the individual's constitutionally protected interest in privacy and the public interest in effective law enforcement. No single rule of law can resolve every conflict, but our conviction that clarification is feasible led us to grant the Government's petition for certiorari in this case and to invite the parties to address the question whether the decision in *Robbins* should be reconsidered. — U. S. —.

II

We begin with a review of the decision in *Carroll* itself. In the fall of 1921, federal prohibition agents obtained evidence that George Carroll and John Kiro were "bootleggers"

authority to open and search all the drawers and containers found within the room." 655 F. 2d, at 1180. Judge MacKinnon concurred with Judge Tamm that *Sanders* did not prohibit the warrantless search of the paper bag. Concerning the leather pouch, he agreed with Judge Wilkey, who dissented on the ground that *Sanders* should not be applied retroactively.

⁴Many courts have held that *Sanders* requires that a warrant be obtained only for personal luggage and other "luggage-type" containers. See, e. g., *United States v. Goshorn*, 628 F. 2d 697 (CA1 1980); *United States v. Brown*, 635 F. 2d 1207 (CA6 1980); *United States v. Jiminez*, 626 F. 2d 39 (CA7 1980). One court has held that *Sanders* does not apply if the police have probable cause to search an entire vehicle and not merely an isolated container within it. Cf. *State v. Bible*, 389 So. 2d 42 (La. 1980), remanded, 453 U. S. 918; *State v. Hernandez*, 408 So. 2d 911 (La. 1981); see also *United States v. Ross*, 655 F. 2d, at 1180 (Robb, J., dissenting).

who frequently traveled between Grand Rapids and Detroit in an Oldsmobile Roadster.⁶ On December 15, 1921, the agents unexpectedly encountered Carroll and Kiro driving west on that route in that car. The officers gave pursuit, stopped the roadster on the highway, and directed Carroll and Kiro to get out of the car.

No contraband was visible in the front seat of the Oldsmobile and the rear portion of the roadster was closed. One of the agents raised the rumble seat but found no liquor. He raised the seat cushion and again found nothing. The officer then struck at the "lazyback" of the seat and noticed that it was "harder than upholstery ordinarily is in those backs." 267 U. S., at 174. He tore open the seat cushion and discovered 68 bottles of gin and whiskey concealed inside. No warrant had been obtained for the search.

Carroll and Kiro were convicted of transporting intoxicating liquor in violation of the National Prohibition Act. On review of those convictions, this Court ruled that the warrantless search of the roadster was reasonable within the meaning of the Fourth Amendment. In an extensive opinion written by Chief Justice Taft, the Court held:

"On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and sei-

⁶ On September 29, 1921, Carroll and Kiro met the agents in Grand Rapids and agreed to sell them three cases of whiskey. The sale was not consummated, however, possibly because Carroll learned the agents' true identity. In October, the agents discovered Carroll and Kiro driving the Oldsmobile Roadster on the road to Detroit, which was known as an active center for the introduction of illegal liquor into this country. The agents followed the roadster as far as East Lansing, but there abandoned the chase.

zure are valid. The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens." *Id.*, at 149.

The Court explained at length the basis for this rule. The Court noted that historically warrantless searches of vessels, wagons, and carriages—as opposed to fixed premises such as a home or other building—had been considered reasonable by Congress. After reviewing legislation enacted by Congress between 1789 and 1799,⁶ the Court stated:

"Thus contemporaneously with the adoption of the Fourth Amendment we find in the first Congress, and in the following Second and Fourth Congresses, a difference made as to the necessity for a search warrant between goods subject to forfeiture, when concealed in a dwelling house or similar place, and like goods in course of transportation and concealed in a movable vessel where they readily could be put out of reach of a search warrant." *Id.*, at 151.

The Court reviewed additional legislation passed by Congress⁷ and again noted that

"the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been con-

⁶ The legislation authorized customs officials to search any ship or vessel without a warrant if they had probable cause to believe that it concealed goods subject to duty. The same legislation required a warrant for searches of dwelling places. 267 U. S., at 150-151.

⁷ In particular, the Court noted an 1815 statute that permitted customs officers not only to board and search vessels without a warrant "but also to stop, search and examine any vehicle, beast or person on which or whom they should suspect there was merchandise which was subject to duty or had been introduced into the United States in any manner contrary to law." *Id.*, at 151.

strued, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id.*, at 153.

Thus, since its earliest days Congress had recognized the impracticability of securing a warrant in cases involving the transportation of contraband goods.⁸ It is this impracticability, viewed in historical perspective, that provided the basis for the *Carroll* decision. Given the nature of an automobile in transit, the Court recognized that an immediate intrusion is necessary if police officers are to secure the illicit substance. In this class of cases, the Court held that a warrantless search of an automobile is not unreasonable.⁹

⁸ In light of this established history, individuals always had been on notice that movable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband, without the protection afforded by a magistrate's prior evaluation of those facts.

⁹ Subsequent cases make clear that the decision in *Carroll* was not based on the fact that the only course available to the police was an immediate search. As Justice Harlan later recognized, although a failure to seize a moving automobile believed to contain contraband might deprive officers of the illicit goods, once a vehicle itself has been stopped the exigency does not necessarily justify a warrantless search. *Chambers v. Maroney*, 399 U. S. 42, 62-64 (opinion of Harlan, J.). The Court in *Chambers*, however—with only Justice Harlan dissenting—refused to adopt a rule that would permit a warrantless seizure but prohibit a warrantless search. The Court held that if police officers have probable cause to justify a warrantless seizure of an automobile on a public roadway, they may conduct an immediate search of the contents of that vehicle. "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given

In defining the nature of this "exception" to the general rule that "[i]n cases where the securing of a warrant is reasonably practicable, it must be used," *id.*, at 156, the Court in *Carroll* emphasized the importance of the requirement that officers have probable cause to believe that the vehicle contains contraband.

"Having thus established that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant, we come now to consider under what circumstances such search may be made. It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travellers may be so stopped in crossing an international boundary because of national self protection reasonably requiring one

probable cause to search, either course is reasonable under the Fourth Amendment." *Chambers v. Maroney*, 399 U. S., at 52.

The Court also has held that if an immediate search on the street is permissible without a warrant, a search soon thereafter at the police station is permissible if the vehicle is impounded. *Chambers, supra*; *Texas v. White*, 423 U. S. 67. These decisions are based on the practicalities of the situations presented and a realistic appraisal of the relatively minor protection that a contrary rule would provide for privacy interests. Given the scope of the initial intrusion caused by a seizure of an automobile—which often could leave the occupants stranded on the highway—the Court rejected an inflexible rule that would force police officers in every case either to post guard at the vehicle while a warrant is obtained or to tow the vehicle itself to the station. Similarly, if an immediate search on the scene could be conducted, but not one at the station if the vehicle is impounded, police often simply would search the vehicle on the street—at no advantage to the occupants, yet possibly at certain cost to the police. The rules as applied in particular cases may appear unsatisfactory. They reflect, however, a reasoned application of the more general rule that if an individual gives the police probable cause to believe a vehicle is transporting contraband, he loses the right to proceed on his way without official interference.

entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise." *Id.*, at 153-154.

Moreover, the probable cause determination must be based on objective facts that could justify the issuance of a warrant by a magistrate and not merely on the subjective good faith of the police officers. "[A]s we have seen, good faith is not enough to constitute probable cause. That faith must be grounded on facts within knowledge of the [officer], which in the judgment of the court would make his faith reasonable." *Id.*, at 161-162 (quoting *Director General v. Kastenbaum*, 263 U. S. 25, 28).¹⁰

In short, the exception to the warrant requirement established in *Carroll*—the scope of which we consider in this case—applies only to searches of vehicles that are supported by probable cause.¹¹ In this class of cases, a search is not un-

¹⁰ After reviewing the relevant authorities at some length, the Court concluded that the probable cause requirement was satisfied in the case before it. The Court held that "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched." *Id.*, at 162. Cf. *Brinegar v. United States*, 338 U. S. 160, 176-177; *Henry v. United States*, 361 U. S. 98, 102.

¹¹ See *Husky v. United States*, 282 U. S. 694; *Scher v. United States*, 305 U. S. 251; *Brinegar v. United States*, 338 U. S. 160; *Henry v. United States*, 361 U. S. 98; *Dyke v. Taylor Implement Co.*, 391 U. S. 216; *Chambers v. Maroney*, 399 U. S. 42; *Texas v. White*, 423 U. S. 67; *Colorado v. Bannister*, 449 U. S. 1.

Warrantless searches of automobiles have been upheld in a variety of factual contexts quite different from that presented in *Carroll*. Cf.

reasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained.¹²

III

The rationale justifying a warrantless search of an automobile that is believed to be transporting contraband arguably applies with equal force to any movable container that is believed to be carrying an illicit substance. That argument, however, was squarely rejected in *United States v. Chadwick*, 433 U. S. 1.

Chadwick involved the warrantless search of a 200-pound footlocker. Federal railroad officials in San Diego became suspicious when they noticed that a brown footlocker loaded onto a train bound for Boston was unusually heavy and leaking talcum powder, a substance often used to mask the odor of marijuana. Narcotics agents met the train in Boston and a trained police dog signaled the presence of a controlled substance inside the footlocker. While the agents awaited further developments, respondent Chadwick arrived and the footlocker was placed in the trunk of Chadwick's automobile.

Cooper v. California, 386 U. S. 58; *Cady v. Dombrowski*, 413 U. S. 433; *South Dakota v. Opperman*, 428 U. S. 364. Many of these searches do not require a showing of probable cause that the vehicle contains contraband. We are not called upon—and do not—consider in this case the scope of the warrantless search that is permitted in those cases.

¹² As the Court in *Carroll* concluded:

"We here find the line of distinction between legal and illegal seizures of liquor in transport in vehicles. It is certainly a reasonable distinction. It gives the owner of an automobile or other vehicle seized under Section 28, in absence of probable cause, a right to have restored to him the automobile, it protects him under the *Weeks* and *Amos* cases from use of the liquor as evidence against him, and it subjects the officer making the seizures to damages. On the other hand, in a case showing probable cause, the Government and its officials are given the opportunity which they should have, to make the investigation necessary to trace reasonably suspected contraband goods and to seize them." 267 U. S., at 156.

At that point, while the trunk of the car was still open and before the engine had been started, the agents seized the footlocker. They later searched the footlocker without a warrant and discovered a large quantity of marijuana.

In a subsequent criminal proceeding, Chadwick claimed that the warrantless search of the footlocker violated the Fourth Amendment. In the District Court, the Government argued that as soon as the footlocker was placed in the automobile a warrantless search was permissible under *Carroll*. The District Court rejected that argument,¹³ and the Government did not pursue it on appeal.¹⁴ Rather, the Government contended in this Court that the warrant requirement of the Fourth Amendment applied only to searches of homes and other "core" areas of privacy. The Court unanimously rejected that contention.¹⁵ Writing for the Court, THE CHIEF JUSTICE stated:

"[I]f there is little evidence that the Framers intended the Warrant Clause to operate outside the home, there is no evidence at all that they intended to exclude from protection of the Clause all searches occurring outside the home. The absence of a contemporary outcry against

¹³The District Court noted:

"In this case, there was no nexus between the search and the automobile, merely a coincidence. The challenged search in this case was one of a footlocker, not an automobile. The search took place not in an automobile, but in [the federal building]. The only connection that the automobile had to this search was that, prior to its seizure, the footlocker was placed on the floor of an automobile's open trunk." *United States v. Chadwick*, 393 F. Supp. 763, 772 (Mass. 1975).

¹⁴This Court specifically noted: "The Government does not contend that the footlocker's brief contact with Chadwick's car makes this an automobile search, but it is argued that the rationale of our automobile search cases demonstrates the reasonableness of permitting warrantless searches of luggage; the Government views such luggage as analagous to motor vehicles for Fourth Amendment purposes." 433 U. S., at 11-12.

¹⁵See *id.*, at 17 (BLACKMUN, J., dissenting).

warrantless searches in public places was because, aside from searches incident to arrest, such warrantless searches were not a large issue in colonial America. Thus, silence in the historical record tells us little about the Framers' attitude toward application of the Warrant Clause to the search of respondents' footlocker. What we do know is that the Framers were men who focused on the wrongs of that day but who intended the Fourth Amendment to safeguard fundamental values which would far outlast the specific abuses which gave it birth." 433 U. S., at 8-9 (footnote omitted).

The Court in *Chadwick* specifically rejected the argument that the warrantless search was "reasonable" because a footlocker has some of the mobile characteristics that support warrantless searches of automobiles. The Court recognized that "a person's expectations of privacy in personal luggage are substantially greater than in an automobile," *id.*, at 13, and noted that the practical problems associated with the temporary detention of a piece of luggage during the period of time necessary to obtain a warrant are significantly less than those associated with the detention of an automobile. *Id.*, at 13, n. 7. In ruling that the warrantless search of the footlocker was unjustified, the Court reaffirmed the general principle that closed packages and containers may not be searched without a warrant. Cf. *Ex parte Jackson*, 96 U. S. 727; *United States v. Leeuwen*, 397 U. S. 249. In sum, the Court in *Chadwick* declined to extend the rationale of the "automobile exception" to permit a warrantless search of any movable container found in a public place.¹⁶

¹⁶The Court concluded that there is a significant difference between the seizure of a sealed package and a subsequent search of its contents; the search of the container in that case was "a far greater intrusion into Fourth Amendment values than the impoundment of the footlocker." *Id.*, at 13, n. 8. A temporary seizure of a package or piece of luggage often may be accomplished without as significant an intrusion upon the individual—and

The facts in *Arkansas v. Sanders*, 442 U. S. 753, were similar to those in *Chadwick*. In *Sanders*, a Little Rock police officer received information from a reliable informant that Sanders would arrive at the local airport on a specified flight that afternoon carrying a green suitcase containing marijuana. The officer went to the airport. Sanders arrived on schedule and retrieved a green suitcase from the airline baggage service. Sanders gave the suitcase to a waiting companion who placed it in the trunk of a taxi. Sanders and his companion drove off in the cab; police officers followed and stopped the taxi several blocks from the airport. The officers opened the trunk, seized the suitcase, and searched it on the scene without a warrant. As predicted, the suitcase contained marijuana.

The Arkansas Supreme Court ruled that the warrantless search of the suitcase was impermissible under the Fourth Amendment, and this Court affirmed. As in *Chadwick*, the mere fact that the suitcase had been placed in the trunk of the vehicle did not render the automobile exception of *Carroll* applicable; the police had probable cause to seize the suitcase before it was placed in the trunk of the cab and did not have probable cause to search the taxi itself.¹⁷ Since the suitcase had been placed in the trunk, no danger existed that its contents could have been secreted elsewhere in the vehicle.¹⁸ As THE CHIEF JUSTICE noted in his opinion concurring in the judgment:

without as great a burden on the police—as in the case of the seizure of an automobile. See n. 9, *supra*.

¹⁷ The Arkansas Supreme Court carefully reviewed the facts of the case and concluded: "The information supplied to the police by the confidential informant is adequate to support the State's claim that the police had probable cause to believe that appellant's green suitcase contained a controlled substance when the police confiscated the suitcase and opened it." 262 Ark. 595, 599, 559 S.W. 2d 704, 706 (1977). The court also noted: "The evidence in this case supports the conclusion that the relationship between the suitcase and the taxicab is coincidental." *Id.*, at 600, n. 2, 559 S.W. 2d, at 706.

¹⁸ Moreover, none of the practical difficulties associated with the detention of a vehicle on a public highway that made the immediate search in

"Because the police officers had probable cause to believe that respondent's green suitcase contained marijuana before it was placed in the trunk of the taxicab, their duty to obtain a search warrant before opening it is clear under *United States v. Chadwick*, 433 U. S. 1 (1977).

Here, as in *Chadwick*, it was the *luggage* being transported by respondent at the time of the arrest, not the automobile in which it was being carried, that was the suspected locus of the contraband. The relationship between the automobile and the contraband was purely coincidental, as in *Chadwick*. The fact that the suitcase was resting in the trunk of the automobile at the time of respondent's arrest does not turn this into an 'automobile' exception case. The Court need say no more." *Id.*, at 766-767.

The Court in *Sanders* did not, however, rest its decision solely on the authority of *Chadwick*. In rejecting the State's argument that the warrantless search of the suitcase was justified on the ground that it had been taken from an automobile lawfully stopped on the street, the Court broadly suggested that a warrantless search of a container found in an automobile could never be sustained as part of a warrantless search of the automobile itself.¹⁹ The Court did not suggest

Carroll reasonable could justify an immediate search of the suitcase, since the officers had no interest in detaining the taxi or its driver.

¹⁹The Court stated that "the extent to which the Fourth Amendment applies to containers and other parcels depends not at all upon whether they are seized from an automobile." 442 U. S., at 764, n. 13. This general rule was limited only by the observation that "[n]ot all containers and packages found by police during the course of a search will deserve the full protection of the Fourth Amendment. Thus, some containers (for example a kit of burglar tools or a gun case) by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance. Similarly, in some cases the contents of a package will be open to 'plain view,' thereby obviating the need for a war-

that it mattered whether probable cause existed to search the entire vehicle. It is clear, however, that in neither *Chadwick* nor *Sanders* did the police have probable cause to search the vehicle or anything within it except the footlocker in the former case and the green suitcase in the latter.

Robbins v. California, 453 U. S. 420, however, was a case in which suspicion was not directed at a specific container. In that case the Court for the first time was forced to consider whether police officers who are entitled to conduct a warrantless search of an automobile stopped on a public roadway may open a container found within the vehicle. In the early morning of January 5, 1975, police officers stopped Robbins' station wagon because he was driving erratically. Robbins got out of the car, but later returned to obtain the vehicle's registration papers. When he opened the car door, the officers smelled marijuana smoke. One of the officers searched Robbins and discovered a vial of liquid; in a search of the interior of the car the officer found marijuana. The police officers then opened the tailgate of the station wagon and raised the cover of a recessed luggage compartment. In the compartment they found two packages wrapped in green opaque plastic. The police unwrapped the packages and discovered a large amount of marijuana in each.

Robbins was charged with various drug offenses and moved to suppress the contents of the plastic packages. The California Court of Appeal held that "[s]earch of the automobile was proper when the officers learned that appellant was smoking marijuana when they stopped him"²⁰ and that the warrantless search of the packages was justified because "the contents of the packages could have been inferred from their outward appearance, so that appellant could not have held a reasonable expectation of privacy with respect to the contents." 103 Cal. App. 3d 34, 40, 162 Cal. Rptr. 780, 783 (1980).

rant." *Ibid.*

²⁰ 103 Cal. App. 3d 34, 39, 162 Cal. Rptr. 780, 782 (1980).

This Court reversed. Writing for a plurality, Justice Stewart rejected the argument that the outward appearance of the packages precluded Robbins from having a reasonable expectation of privacy in their contents. He also squarely rejected the argument that there is a constitutional distinction between searches of luggage and searches of "less worthy" containers. Justice Stewart reasoned that all containers are equally protected by the Fourth Amendment unless their contents are in plain view. The plurality concluded that the warrantless search was impermissible because *Chadwick* and *Sanders* had established that "a closed piece of luggage found in a lawfully searched car is constitutionally protected to the same extent as are closed pieces of luggage found anywhere else." 453 U. S., at 425.

In a concurring opinion, JUSTICE POWELL, the author of the Court's opinion in *Sanders*, stated that "[t]he plurality's approach strains the rationales of our prior cases and imposes substantial burdens on law enforcement without vindicating any significant values of privacy." *Id.*, at 429.²¹ He noted

²¹ "While the plurality's blanket warrant requirement does not even purport to protect any privacy interest, it would impose substantial new burdens on law enforcement. Confronted with a cigar box or a Dixie cup in the course of a probable cause search of an automobile for narcotics, the conscientious policeman would be required to take the object to a magistrate, fill out the appropriate forms, await the decision, and finally obtain a warrant. Suspects or vehicles normally will be detained while the warrant is sought. This process may take hours, removing the officer from his normal police duties. Expenditure of such time and effort, drawn from the public's limited resources for detecting or preventing crimes, is justified when it protects an individual's reasonable privacy interests. In my view, the plurality's requirement cannot be so justified. The aggregate burden of procuring warrants whenever an officer has probable cause to search the most trivial container may be heavy and will not be compensated by the advancement of important Fourth Amendment values." 453 U. S., at 433-434 (POWELL, J., concurring).

The substantial burdens on law enforcement identified by JUSTICE POWELL would, of course, not be affected by the character of the container found during an automobile search. No comparable practical problems arise when the official suspicion is confined to a particular piece of luggage,

that possibly "the controlling question should be the scope of the automobile exception to the warrant requirement," *id.*, at 435, and explained that under that view

"when the police have probable cause to search an automobile, rather than only to search a particular container that fortuitously is located in it, the exigencies that allow the police to search the entire automobile without a warrant support the warrantless search of every container found therein. See *post*, at 451 and n. 13 (STEVENS, J., dissenting). This analysis is entirely consistent with the holdings in *Chadwick* and *Sanders*, neither of which is an 'automobile case,' because the police there had probable cause to search the double-locked footlocker and the suitcase respectively before either came near an automobile." *Ibid.*

The parties in *Robbins* had not pressed that argument, however, and JUSTICE POWELL concluded that institutional constraints made it inappropriate to re-examine basic doctrine without full adversary presentation. He concurred in the judgment, since it was supported—although not compelled—by the Court's opinion in *Sanders*, and stated that a future case might present a better opportunity for thorough consideration of the basic principles in this troubled area.

That case has arrived. Unlike *Chadwick* and *Sanders*, in this case police officers had probable cause to search respondent's entire vehicle.²² Unlike *Robbins*, in this case the par-

as in *Chadwick* and *Sanders*. Cf. n. 19, *supra*.

²²The en banc Court of Appeals stated that "[b]ased on the tip the police received, Ross's car was properly stopped and searched, and the pouch and bag were properly seized." 655 F. 2d, at 1168 (footnote omitted). The court explained:

"[W]e believe it clear that the police had ample and reasonable cause to stop Ross and to search his car. The informer had supplied accurate information on prior occasions, and he was an eyewitness to sales of narcotics by Ross. He said he had just seen Ross take narcotics from the trunk of

ties have squarely addressed the question whether, in the course of a legitimate warrantless search of an automobile, police are entitled to open containers found within the vehicle. We now address that question. Its answer is determined by the scope of the search that is authorized by the exception to the warrant requirement set forth in *Carroll*.

IV

In *Carroll* itself, the whiskey that the prohibition agents seized was not in plain view. It was discovered only after an officer opened the rumble seat and tore open the upholstery of the lazyback. The Court did not find the scope of the search unreasonable. Having stopped *Carroll* and *Kiro* on a public road and subjected them to the indignity of a vehicle search—which the Court found to be a reasonable intrusion on their privacy because it was based on probable cause that their vehicle was transporting contraband—prohibition agents were entitled to tear open a portion of the roadster itself. The scope of the search was no greater than a magistrate could have authorized by issuing a warrant based on the probable cause that justified the search. Since such a warrant could have authorized the agents to open the rear portion of the roadster and to rip the upholstery in their search for concealed whiskey, the search was constitutionally permissible.

In *Chambers v. Maroney* the police found weapons and stolen property “concealed in a compartment under the dashboard.” 399 U. S., at 44. No suggestion was made that the scope of the search was impermissible. It would be illogical to assume that the outcome of *Chambers*—or the outcome of

his car in making a sale and heard him say he possessed additional narcotics.” *Id.*, at 1168, n. 22.

The court further noted that “[i]n this case, the informant told the police that Ross had narcotics in the trunk of his car. No specific container was identified.” *Id.*, at 1166.

Carroll itself—would have been different if the police had found the secreted contraband enclosed within a secondary container and had opened that container without a warrant. If it was reasonable for prohibition agents to rip open the upholstery in *Carroll*, it certainly would have been reasonable for them to look into a burlap sack stashed inside; if it was reasonable to open the concealed compartment in *Chambers*, it would have been equally reasonable to open a paper bag crumpled within it. A contrary rule could produce absurd results inconsistent with the decision in *Carroll* itself.

In its application of *Carroll*, this Court in fact has sustained warrantless searches of containers found during a lawful search of an automobile. In *Husty v. United States*, 282 U. S. 694, the Court upheld a warrantless seizure of whiskey found during a search of an automobile, some of which was discovered in "whiskey bags" that could have contained other goods.²³ In *Scher v. United States*, 305 U. S. 251, federal officers seized and searched packages of unstamped liquor found in the trunk of an automobile searched without a warrant. As described by a police officer who participated in the search: "I turned the handle and opened the trunk and found the trunk completely filled with packages wrapped in brown paper, and tied with twine; I think somewhere around thirty packages, each one containing six bottles."²⁴ In these cases it was not contended that police officers needed a warrant to open the whiskey bags or to unwrap the brown paper

²³ At the suppression hearing, defense counsel asked the police officer who had conducted the search: "Isn't it possible to put other goods in a bag that has the resemblance of a whiskey bag?" The officer responded: "I suppose it is. I did not think of that at that time. I knew it was whiskey, I was sure it was." App., O.T. 1930, No. 477, p. 27.

²⁴ App., O.T. 1938, No. 49, p. 33. The brief of then Solicitor General Robert Jackson noted that the items searched "were wrapped in very heavy brown wrapping paper with at least two wrappings and with a heavy cord around them cross-wise so that they could readily be lifted." Brief for United States, O.T. 1938, No. 49, p. 6.

packages. These decisions nevertheless "have much weight, as they show that this point neither occurred to the bar or the bench." *Bank of the United States v. Deveaux*, 5 Cranch 61, 88 (Marshall, C. J.). The fact that no such argument was even made illuminates the profession's understanding of the scope of the search permitted under *Carroll*. Indeed, prior to the decisions in *Chadwick* and *Sanders*, courts routinely had held that containers and packages found during a legitimate warrantless search of an automobile also could be searched without a warrant.²⁵

As we have stated, the decision in *Carroll* was based on the Court's appraisal of practical considerations viewed in the perspective of history. It is therefore significant that the practical consequences of the *Carroll* decision would be largely nullified if the permissible scope of a warrantless search of an automobile did not include containers and packages found inside the vehicle. Contraband goods rarely are strewn across the trunk or floor of a car; since by their very nature such goods must be withheld from public view, they rarely can be placed in an automobile unless they are enclosed within some form of container.²⁶ The Court in *Carroll*

²⁵ See, e. g., *United States v. Soriano*, 497 F. 2d 147, 149-150 (CA5 1974) (en banc); *United States v. Vento*, 533 F. 2d 838, 867, n. 101 (CA3 1976); *United States v. Tramunti*, 513 F. 2d 1087, 1104 (CA2 1975); *United States v. Issod*, 508 F. 2d 990, 993 (CA7 1974); *United States v. Evans*, 481 F. 2d 990, 994 (CA9 1973); *United States v. Bowman*, 487 F. 2d 1229 (CA10 1973). Many courts continued to apply this rule following the decision in *Chadwick*. Cf. *United States v. Milhollan*, 599 F. 2d 518, 526-527 (CA3 1979); *United States v. Gaultney*, 581 F. 2d 1137, 1144-1145 (CA5 1978); *United States v. Finnegan*, 568 F. 2d 637, 640-641 (CA9 1977). In ruling that police could search luggage and other containers found during a legitimate warrantless search of an automobile, courts often assumed that the "automobile exception" of *Carroll* applied whenever a container in an automobile was believed to contain contraband. That view, of course, has since been qualified by *Chadwick* and *Sanders*.

²⁶ It is noteworthy that the early legislation on which the Court relied in *Carroll* concerned the enforcement of laws imposing duties on imported

held that "contraband goods *concealed* and illegally transported in an automobile or other vehicle may be searched for without a warrant." 267 U. S., at 153 (emphasis added). As we noted in *Henry v. United States*, 361 U. S. 98, 104, the decision in *Carroll* "merely relaxed the requirements for a warrant on grounds of impracticability." It neither broadened nor limited the scope of a lawful search based on probable cause.

A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search.²⁷ Thus, a warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found. A warrant to open a footlocker to search for marijuana would also authorize the opening of packages found in-

merchandise. See nn. 6 and 7, *supra*. Presumably such merchandise was shipped then in containers of various kinds, just as it is today. Since Congress had authorized warrantless searches of vessels and beasts for imported merchandise, it is inconceivable that it intended a customs officer to obtain a warrant for every package discovered during the search; certainly Congress intended customs officers to open shipping containers when necessary and not merely to examine the exterior of cartons or boxes in which smuggled goods might be concealed. During virtually the entire history of our country—whether contraband was transported in a horse drawn carriage, a 1921 roadster, or a modern automobile—it has been assumed that a lawful search of a vehicle would include a search of any container that might conceal the object of the search.

²⁷ In describing the permissible scope of a search of a home pursuant to a warrant, Professor LaFave notes:

"Places within the described premises are not excluded merely because some additional act of entry or opening may be required. 'In countless cases in which warrants described only the land and the buildings, a search of desks, cabinets, closets and similar items has been permitted.'" 2 LaFave, *Search and Seizure* 152 (1978) (quoting *Massey v. Commonwealth*, 305 S.W. 2d 755, 756 (Ky. 1957)).

side. A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search. When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.²⁸

This rule applies equally to all containers, as indeed we believe it must. One point on which the Court was in virtually unanimous agreement in *Robbins* was that a constitutional distinction between "worthy" and "unworthy" containers would be improper.²⁹ Even though such a distinction perhaps could evolve in a series of cases in which paper bags, locked trunks, lunch buckets, and orange crates were placed on one side of the line or the other,³⁰ the central purpose of

²⁸ The practical considerations that justify a warrantless search of an automobile continue to apply until the entire search of the automobile and its contents has been completed. Arguably, the entire vehicle itself (including its upholstery) could be searched without a warrant, with all wrapped articles and containers found during that search then taken to a magistrate. But prohibiting police from opening immediately a container in which the object of the search is most likely to be found and instead forcing them first to comb the entire vehicle would actually exacerbate the intrusion on privacy interests. Moreover, until the container itself was opened the police could never be certain that the contraband was not secreted in a yet undiscovered portion of the vehicle; thus in every case in which a container was found, the vehicle would need to be secured while a warrant was obtained. Such a requirement would be directly inconsistent with the rationale supporting the decisions in *Carroll* and *Chambers*. Cf. nn. 19 and 22, *supra*.

²⁹ Cf. 453 U. S., at 426-427 (plurality opinion); *id.*, at 436 (BLACKMUN, J., dissenting); *id.*, at 443 (REHNQUIST, J., dissenting); *id.*, at 447 (STEVENS, J., dissenting).

³⁰ If the distinction is based on the proposition that the Fourth Amendment protects only those containers that objectively manifest an individual's reasonable expectation of privacy, however, the propriety of a war-

the Fourth Amendment forecloses such a distinction. For just as the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion,³¹ so also may a traveler who carries a toothbrush and a few articles of clothing in a paper bag or knotted scarf claim an equal right to conceal his possessions from official inspection as the sophisticated executive with the locked attaché case.

As Justice Stewart stated in *Robbins*, the Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view. 453 U. S., at 427 (plurality opinion). But the protection afforded by the Amendment varies in different settings. The luggage carried by a traveler entering the country may be searched at random by a customs officer; the luggage may be searched no matter how great the traveler's desire to conceal the contents may be. A container carried at the time of arrest often may be searched without a warrant and even without any specific suspicion concerning its contents. A container that may conceal the object of a search authorized by a warrant may be opened immediately; the individual's interest in privacy must give way to the magistrate's official determination of probable cause.

In the same manner, an individual's expectation of privacy

rantless search necessarily would turn on much more than the fabric of the container. A paper bag stapled shut and marked "private" might be found to manifest a reasonable expectation of privacy, as could a cardboard box stacked on top of two pieces of heavy luggage. The propriety of the warrantless search seemingly would turn on an objective appraisal of all the surrounding circumstances.

"The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his forces dares not cross the threshold of the ruined tenement!" *Miller v. United States*, 357 U. S. 301, 307 (quoting remarks attributed to William Pitt); cf. *Payton v. New York*, 445 U. S. 573, 601 n. 54.

in a vehicle and its contents may not survive if probable cause is given to believe that the vehicle is transporting contraband. Certainly the privacy interests in a car's trunk or glove compartment may be no less than those in a movable container. An individual undoubtedly has a significant interest that the upholstery of his automobile will not be ripped or a hidden compartment within it opened. These interests must yield to the authority of a search, however, which—in light of *Carroll*—does not itself require the prior approval of a magistrate. The scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.³²

The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab.

V

Our decision today is inconsistent with the disposition in

³²In choosing to search without a warrant on their own assessment of probable cause, police officers of course lose the protection that a warrant would provide to them in an action for damages brought by an individual claiming that the search was unconstitutional. Cf. *Monroe v. Pape*, 365 U. S. 167. Although an officer may establish that he acted in good faith in conducting the search by other evidence, a warrant issued by a magistrate normally suffices to establish it.

Robbins v. California and with the portion of the opinion in *Arkansas v. Sanders* on which the plurality in *Robbins* relied. Nevertheless, the doctrine of *stare decisis* does not preclude this action. Although we have rejected some of the reasoning in *Sanders*, we adhere to our holding in that case; although we reject the precise holding in *Robbins*, there was no Court opinion supporting a single rationale for its judgment and the reasoning we adopt today was not presented by the parties in that case. Moreover, it is clear that no legitimate reliance interest can be frustrated by our decision today.³⁹ Of greatest importance, we are convinced that the rule we apply in this case is faithful to the interpretation of the Fourth Amendment that the Court has followed with substantial consistency throughout our history.

We reaffirm the basic rule of Fourth Amendment jurisprudence stated by Justice Stewart for a unanimous Court in *Mincey v. Arizona*, 437 U. S. 385, 390:

"The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.' *Katz v. United States*, 389 U. S. 347, 357 (footnotes omitted)."

The exception recognized in *Carroll* is unquestionably one that is "specifically established and well-delineated." We hold that the scope of the warrantless search authorized by that exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable

³⁹ Any interest in maintaining the status quo that might be asserted by persons who may have structured their business of distributing narcotics or other illicit substances on the basis of judicial precedents clearly would not be legitimate.

cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

The judgment of the Court of Appeals is reversed. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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

CHAMBERS OF
THE CHIEF JUSTICE

✓

May 26, 1982

Re: No. 80-2209 - U.S. v. Ross

Dear John:

This will confirm my "private" join subject
to the minor suggestions I made.

Regards,

WWS

Justice Stevens

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2209

UNITED STATES, PETITIONER *v.*
ALBERT ROSS, JR.

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

[June —, 1982]

JUSTICE POWELL, concurring.

In my opinion in *Robbins v. California*, 453 U. S. 420, 429 (1981), concurring in the judgment, I stated that the judgment was justified, though not compelled, by the Court's opinion in *Arkansas v. Sander*, 442 U. S. 753 (1979). I did not agree, however, with the "bright line" rule articulated by the plurality opinion. Rather, I repeated the view I long have held that one's "reasonable expectation of privacy" is a particularly relevant factor in determining the validity of a warrantless search. I have recognized, that with respect to automobiles in general, this expectation can be only a limited one. See *Arkansas v. Sanders*, *supra*, at 761; *Almeida-Sanchez v. United States*, 413 U. S. 266, 279 (1973) (POWELL, J., concurring). I continue to think that in many situations one's reasonable expectation of privacy may be a decisive factor in a search case.

It became evident last Term, however, from the five opinions written in *Robbins*—in none of which THE CHIEF JUSTICE joined—that it is essential to have a Court opinion in *automobile* search cases that provides "specific guidance to police and courts in this reoccurring situation". *Robbins v. California*, 453 U. S. at, 435 (POWELL, J., concurring). The Court's opinion today, written by JUSTICE STEVENS and now joined by four other Justices, will afford this needed guid-

ance. It is fair also to say that, given *Carroll v. United States*, 267 U. S. 132 (1925) and *Chambers v. Maroney*, 399 U. S. 42 (1970), the Court's decision does not depart substantially from Fourth Amendment doctrine in automobile cases. Moreover, in enunciating a readily understood and applied rule, today's decision is consistent with the similar step taken last Term in *Belton v. New York*, 453 U. S. 454 (1981).

I join the Court's opinion.

Let Quaker know when CG, & Nut,
HAB & Soc have voted

THE C. J.	W. J. B.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. F. S.	S. D. OC.
Maybe 5/26/82	John John TH 5/20/82	arrived dissect 5/11/82	will dissect 5/6/82	1st draft concurres opinion	letter to JPS 5/10/82	join JPS 5/7/82	3/8/82 1st draft 5/5/82	join JPS 5/11/82
		typed draft 5/21/82	1st draft 5/18/82	5/19/82	typed draft con opinion 5/25/82		2nd draft 5/10/82	
		1st draft 5/24/82			1st draft 5/26/82		3rd draft 5/24/82	
					2nd draft 5/27/82		5th draft 5/26/82	
							6th draft 5/28/82	