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## POLICE INVENTORIES OF THE CONTENTS OF VEHICLES AND THE EXCLUSIONARY RULE

Police officers are authorized to take custody of motor vehicles for many reasons,<sup>1</sup> ranging from use of the vehicle in the commission of a felony<sup>2</sup> to illegal parking.<sup>3</sup> It is a common practice for the police to take an inventory of the personal property contained in these vehicles.<sup>4</sup> The inventories often involve a thorough examination of the vehicle and its contents,<sup>5</sup> perhaps including the opening of suitcases or other closed pack-

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<sup>1</sup>For example, the California Vehicle Code authorizes the police to remove from the highways vehicles which are:

- (a) left unattended and obstructing traffic on any bridge or viaduct, or in any tube or tunnel;
- (b) left standing so as to obstruct traffic or otherwise create a hazard on a highway;
- (c) stolen or embezzled;
- (d) left illegally parked and blocking a driveway;
- (e) left illegally parked at a fire hydrant;
- (f) left unattended for more than four hours on the right-of-way of a controlled access highway;
- (g) in the charge of persons who are unable to provide for removal of the vehicle because of illness or physical injury;
- (h) driven by a person who is arrested for an offense which requires that he is brought before a magistrate without delay;
- (i) of foreign registration and have too many parking tickets outstanding;
- (j) illegally parked and have no license or registration.

CAL. VEHICLE CODE § 22651 (West 1971).

The California Code further states that the officer may provide for the storage of such a vehicle in "the nearest garage or other place of safety or [in] a garage designated or maintained by the governmental agency of which the officer . . . is a member . . ." CAL. VEHICLE CODE § 22850 (West 1971).

<sup>2</sup>*See, e.g., State v. Bean*, 280 Minn. 35, 157 N.W.2d 736, *cert. denied*, 393 U.S. 1003 (1968).

<sup>3</sup>For example, New York authorizes police to remove and store in a garage, automobile pound or other place of safety an unattended vehicle which constitutes any obstruction to traffic or is left where stopping, standing, or parking is prohibited. N.Y. VEH. & TRAF. LAW § 1204(b)(1) (McKinney 1970).

<sup>4</sup>*See, e.g., Mozzetti v. Superior Court*, 4 Cal. 3d 699, 484 P.2d 84, 94 Cal. Rptr. 412 (1971); *Godbee v. State*, 224 So. 2d 441 (Fla. Dist. Ct. App. 1969); *St. Clair v. State*, 1 Md. App. 605, 232 A.2d 565 (1967); *State v. Bean*, 280 Minn. 35, 157 N.W.2d 736, *cert. denied*, 393 U.S. 1003 (1968); *Heffley v. State*, 83 Nev. 100, 423 P.2d 666 (1967); *State v. Hock*, 54 N.J. 526, 257 A.2d 699 (1969), *cert. denied*, 399 U.S. 930 (1970); *People v. Robinson*, 36 App. Div. 2d 375, 320 N.Y.S.2d 189 (1971); *State v. Olsen*, 43 Wash. 2d 726, 263 P.2d 824 (1953); *Warrix v. State*, 50 Wis. 2d 368, 184 N.W.2d 189 (1971).

<sup>5</sup>*See, e.g., Pigford v. United States*, 273 A.2d 837, 838 (D.C. Mun. Ct. App. 1971); *St. Clair v. State*, 1 Md. App. 605, 232 A.2d 565, 567 (1967); *People v. Robinson*, 36 App. Div. 2d 375, 320 N.Y.S.2d 665, 667 (1971).

ages found in the vehicle,<sup>6</sup> and it is not uncommon for evidence of a crime or for contraband to be discovered during this examination.<sup>7</sup> The question arises whether the admission of evidence found in an inventory of the vehicle<sup>8</sup> is consistent with fourth amendment safeguards against unreasonable searches and seizures<sup>9</sup> where a vehicle is taken into police custody under conditions which will not justify a search either incident to an arrest<sup>10</sup> or based on probable cause,<sup>11</sup> and there is no consent<sup>12</sup> to an inventory by the owner and no evidence or contraband is discoverable under the plain sight rule.<sup>13</sup> The United States Supreme Court has held that the fourth amendment requires the sanction of exclusion to be invoked against evidence obtained as a result of an unreasonable search,<sup>14</sup> and the Supreme Court of California, in *Mozzetti v. Superior Court*,<sup>15</sup> has

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<sup>6</sup>In *Mozzetti v. Superior Court*, 4 Cal. 3d 699, 484 P.2d 84, 94 Cal. Rptr. 412 (1971), the inventory included the opening of a suitcase found on the car's back seat. The Chicago Police Department has indicated that it will open a suitcase found in a car if it is unlocked. Letter from Lt. William J. Nicholl, Automotive Pound Section, Chicago Police Department to James W. Brown, Nov. 15, 1971, on file with the *Washington and Lee Law Review*.

<sup>7</sup>See cases cited at note 4 *supra*.

<sup>8</sup>The requirements set forth in the text accompanying notes 10-13, *infra* were not met in *Mozzetti*, where an inventory search was made of a vehicle which police had taken into custody following an accident after the owner had been removed in an ambulance.

<sup>9</sup>U.S. CONST. amend. IV provides:

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

<sup>10</sup>In order to protect police officers from physical danger and prevent the frustration of arrests when officers make an arrest without a warrant, the person of the arrestee and the area within his immediate control may be searched for weapons that might be used to resist arrest or effect an escape and for evidence which he might conceal or destroy. *Chimel v. California*, 395 U.S. 752, 762-63 (1969).

<sup>11</sup>Police officers will have the necessary probable cause to conduct a warrantless search of a vehicle if the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that evidence or contraband was being transported in the vehicle which they stopped and searched. *Carroll v. United States*, 267 U.S. 132, 162 (1925). These searches may take place at the scene of an arrest or later at a different place. *Chambers v. Maroney*, 399 U.S. 42, 52 (1970).

<sup>12</sup>A person's fourth amendment rights may be waived by his consent. *Zap v. United States*, 328 U.S. 624, 628 (1946), *vacated on other grounds*, 330 U.S. 800 (1947); see *Frazier v. Cupp*, 394 U.S. 731, 740 (1969).

<sup>13</sup>Police may use as evidence anything which appears in plain sight while they are engaged in the lawful performance of their duties. *Harris v. United States*, 390 U.S. 234, 236 (1968).

<sup>14</sup>The exclusionary rule was adopted in *Weeks v. United States*, 232 U.S. 383 (1914), and extended to cover state as well as federal courts in *Mapp v. Ohio*, 367 U.S. 643 (1961).

<sup>15</sup>4 Cal. 3d 699, 484 P.2d 84, 94 Cal. Rptr. 412 (1971).

applied this rule to a police inventory of the contents of a vehicle lawfully in their custody for safekeeping.

Sharon Rae Mozzetti was involved in a two car accident in Sacramento on August 28, 1970 in which she sustained injuries and was promptly removed to a hospital by ambulance. When the police arrived on the scene, they determined that her vehicle was blocking the road and arranged to have it removed and stored in a police garage. In accordance with standard procedure, an officer of the Sacramento Police Department took an inventory of the contents of Sharon Mozzetti's convertible, listing the vehicle's equipment, such as mirrors and radio, and all of the contents of the front and back seats, glove compartment, and trunk. In the course of the inventory, the officer opened a small, unlocked suitcase found on the back seat of the car, apparently to determine if it contained any articles of value. Inside he found a plastic bag containing a quantity of marijuana. The suitcase and other items found in the car's interior were locked in the trunk at the conclusion of the inventory, but the marijuana was seized and used as evidence against Sharon Mozzetti. In a preliminary hearing her motion to suppress this evidence was denied; she then sought mandamus to accomplish this purpose.<sup>16</sup>

The Supreme Court of California granted the writ suppressing the evidence on the grounds that the police inventory was a search<sup>17</sup> of Sharon Mozzetti's property without a warrant<sup>18</sup> which could not be justified in this case,<sup>19</sup> since

[t]he search was not incident to a lawful arrest, based on probable cause to believe the vehicle contained contraband, or justified by the peculiar nature of the police custody involved. Nor were there exigent circumstances which made the search reasonable and necessary.<sup>20</sup>

In order to reach this decision, the California court had first to settle the threshold question whether a police inventory of the contents of a vehicle lawfully in their possession was a "search" and thus subject to fourth amendment scrutiny.<sup>21</sup> The United States Supreme Court has ex-

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<sup>16</sup>484 P.2d at 85-86.

<sup>17</sup>*Id.* at 88.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.* at 92.

<sup>20</sup>*Id.*

<sup>21</sup>*Id.* at 86.

pressed the view that the fourth amendment governs all intrusions by agents of the public upon personal security.<sup>22</sup> In *Terry v. Ohio*,<sup>23</sup> the Court expanded the definition of the term "search" by expressly rejecting the notion that the fourth amendment did not cover official conduct short of a full-blown inquiry,<sup>24</sup> and held that the purpose of the fourth amendment was to protect the individual from unreasonable governmental intrusion wherever he had a reasonable expectation of privacy.<sup>25</sup> It is thus apparent that if a person may have a reasonable expectation of privacy in an automobile and the type of police action contemplated by the term "inventory" is an invasion of that privacy, an inventory must be a "search" within the purview of the fourth amendment.

The Supreme Court included automobiles in a list of areas protected by fourth amendment prohibitions in *Lanza v. New York*<sup>26</sup> and has often examined searches of automobiles in the light of requirements of reasonableness.<sup>27</sup> It is thus clear that the Supreme Court considers a person's privacy within an automobile eligible for protection under the fourth amendment, and that a person may therefore reasonably expect to keep the contents of his vehicle private.

The type of police conduct involved in an inventory is just as certainly an invasion of this privacy. Inventories can involve checking the glove compartment, underneath the seats and in the trunk of the vehicle for valuables,<sup>28</sup> possibly including opening closed packages or suitcases within the vehicles.<sup>29</sup> The Supreme Court has made it clear that such acts may be the type of invasion of privacy necessary to constitute a search. For

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<sup>22</sup>In *Terry v. Ohio*, 392 U.S. 1 (1968), the Court in making the point that it found consideration of the scope of an intrusion more important than whether an intrusion met a definition of "search," stated:

In our view the sounder course is to recognize that the Fourth Amendment governs all intrusions by agents of the public upon personal security, and to make the scope of the particular intrusion, in light of all the exigencies of the case, a central element in the analysis of reasonableness.

392 U.S. at 18 n.15.

<sup>23</sup>392 U.S. 1 (1968).

<sup>24</sup>The Court stated:

"Search" and "seizure" are not talismans. We therefore reject the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a "technical arrest" or a "full blown search."

392 U.S. at 19.

<sup>25</sup>*Id. Accord*, *Katz v. United States*, 389 U.S. 347, 351-52 (1967).

<sup>26</sup>370 U.S. 139, 143 (1962).

<sup>27</sup>*See, e.g.*, *Chambers v. Maroney*, 399 U.S. 42 (1970); *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968); *Cooper v. California*, 386 U.S. 58 (1967); *Preston v. United States*, 376 U.S. 364 (1964); *Carroll v. United States*, 267 U.S. 132 (1925).

<sup>28</sup>Note 5 *supra*.

<sup>29</sup>Note 6 *supra*.

example, in *Dyke v. Taylor Implement Manufacturing Co.*,<sup>30</sup> it was held that looking under the front seat of an automobile was a search,<sup>31</sup> and the Court in *Frazier v. Cupp*<sup>32</sup> deemed an examination of the contents of a closed duffel bag to be a search.

Further, it appears unnecessary that this intrusion be made with a view towards obtaining evidence of a crime in order to constitute a search.<sup>33</sup> In *Camara v. Municipal Court*,<sup>34</sup> the Court rejected the notion that the strictures of the fourth amendment applied only to "the typical police search for the fruits and instrumentalities of a crime,"<sup>35</sup> stating that it was "anomalous to say that an individual and his property would be fully protected by the fourth amendment only when he was suspected of criminal behavior,"<sup>36</sup> and proceeded to apply the fourth amendment to administrative inspections for the purpose of discovering building code violations.<sup>37</sup> It is thus evident that as the California court held in *Mozzetti*,<sup>38</sup> an inventory is a governmental intrusion into an area where a person may reasonably expect privacy and therefore a search. Since the Supreme Court has held that the fourth amendment precludes unreasonable searches,<sup>39</sup> it is necessary to examine the question whether an inventory is reasonable in order to determine whether evidence discovered in such a search will be admissible.

Inventories are conducted without a warrant,<sup>40</sup> and the Supreme Court has held that warrantless searches, with certain well-defined exceptions, are per se unreasonable.<sup>41</sup> It has been mentioned that the inventory situation will not provide a justification for a search under the probable cause exception or the search incident to an arrest rule,<sup>42</sup> and the California court's decision in *Mozzetti* is in accord with this view.<sup>43</sup> Thus, if these

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<sup>30</sup>391 U.S. 216 (1968).

<sup>31</sup>*Id.* at 219-20.

<sup>32</sup>394 U.S. 731, 740 (1969).

<sup>33</sup>There have been divergent views in lower courts on this subject. The Sixth Circuit held that where there was no intent to look for evidence, a police inventory of an arrestee's personal effects was not a search in *United States v. Blackburn*, 389 F.2d 93, 95 (6th Cir.), *cert. denied*, 393 U.S. 882 (1968); *cf.* *United States v. Lipscomb*, 435 F.2d 795, 800 (5th Cir. 1970). The California Supreme Court took the opposite view in *Mozzetti*.

<sup>34</sup>387 U.S. 523 (1967).

<sup>35</sup>*Id.* at 530.

<sup>36</sup>*Id.*

<sup>37</sup>387 U.S. at 534; *see* *See v. City of Seattle*, 387 U.S. 541 (1967).

<sup>38</sup>484 P.2d at 88.

<sup>39</sup>*Elkins v. United States*, 364 U.S. 206, 222 (1959).

<sup>40</sup>There was no warrant in any of the cases cited in note 4 *supra*.

<sup>41</sup>*E.g.*, *Katz v. United States*, 389 U.S. 347, 357 (1967).

<sup>42</sup>*See* notes 10 & 11 and accompanying text *supra*.

<sup>43</sup>484 P.2d at 92.

inventories are to be considered reasonable some other basis upon which to justify the practice must be found.

The Supreme Court held in *Cooper v. California*<sup>44</sup> that mere lawful custody of an automobile did not give police the right to search it,<sup>45</sup> although the reason for and nature of this custody could constitutionally justify the search.<sup>46</sup> It may be assumed that the nature and purpose of the custody of a vehicle in an inventory situation is the safekeeping of that vehicle and any property contained therein for the owner.<sup>47</sup> When the Court of Appeals for the Fifth Circuit held in *United States v. Boyd*,<sup>48</sup> that evidence obtained from the inventory of an automobile was admissible, it stated that the custody of the vehicle created a duty on the part of the police to itemize the property contained in the vehicle, both to protect that property and to protect the police from false claims of liability.<sup>49</sup> The California court in *Mozzetti* rebuts the contention that the inventory is necessary for the protection of the owner's property by weighing the owner's interest in protecting the property against his countervailing interest in preventing anyone, including the police, from prying into the private areas of his automobile or opening his suitcases and other closed containers.<sup>50</sup> The court took the position that the property in the automobile could be adequately protected by locking the car with the goods inside, or, since the car was a convertible in the particular case of Sharon Mozzetti, removing the items to the trunk and then locking the car.<sup>51</sup> The court pointed out that the owner himself could do no more than this to protect his property if he were required to leave his car temporarily.<sup>52</sup> Since the object of protecting the owner's property could be adequately achieved in this fashion, the California court found unpersuasive the contention that an inventory was necessary for the protection of that property.<sup>53</sup>

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<sup>44</sup>386 U.S. 58 (1967).

<sup>45</sup>*Id.* at 61.

<sup>46</sup>*Id.*

<sup>47</sup>See cases cited note 5 *supra*.

<sup>48</sup>436 F.2d 1203 (5th Cir. 1971).

<sup>49</sup>In *Boyd*, the Fifth Circuit stated that the officers were under a duty to itemize the property in the automobile and store it for safekeeping, applying its previous decision in *United States v. Lipscomb*, 435 F.2d 795 (5th Cir. 1970), where it held that an inventory of the personal property of an arrested person was necessary both to protect the property of the accused while he was in jail, and to forestall the possibility that the accused might later claim that some item has not been returned to him. *Id.* at 800.

<sup>50</sup>484 P.2d at 88-89.

<sup>51</sup>*Id.*

<sup>52</sup>*Id.*

<sup>53</sup>*Id.* The court also points out that any evidence uncovered in the process of locking the car or moving articles to the trunk would be admissible under the plain sight rule. *Id.* See also note 11 *supra*.

This point of view seems to be bolstered by the apparent policy underlying the Supreme Court's creation of exceptions to the rule that warrantless searches of a person or his property are unreasonable, which has been to allow such searches only where they have been made necessary by the exigencies of the situation. Searches will be allowed when they are required for protection from physical harm as in *Terry v. Ohio*,<sup>54</sup> prevention of the loss of evidence in the "probable cause" automobile search cases<sup>55</sup> and protection from physical harm, prevention of escapes, and prevention of the loss of evidence in the search incident to arrest cases.<sup>56</sup> By way of dictum in *Cooper* the Supreme Court alluded to the possibility of the existence of such a need in situations where police have custody of an automobile, saying that it would be unreasonable to hold that the police, having to retain an automobile in their custody for a long period of time, had no right to search it even for their own protection.<sup>57</sup> Since the Court has in this manner indicated that it might approve a search of a vehicle based upon a need by police for protection, it is necessary to examine what that term could encompass.

Protection of the police from physical harm would evidently be within the scope of this justification, since the Supreme Court has indicated in *Terry v. Ohio*<sup>58</sup> that police will be permitted to make limited searches for that purpose. In *Terry*, the Court held that police officers are permitted to "stop and frisk" people whom they might reasonably expect to be engaged in criminal activity in light of the facts viewed from the perspective of the policeman's experience.<sup>59</sup> The search in this case must be reasonably limited to a search for weapons, and its purpose is the protection of the policeman and others in the area from harm.<sup>60</sup> The officer's belief that the individual is armed and presently dangerous<sup>61</sup> must be justified according to the "specific reasonable inferences which he is entitled to draw from the facts in the light of his experience."<sup>62</sup>

The facts surrounding police custody of vehicles would not, however,

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<sup>54</sup>392 U.S. 1 (1968).

<sup>55</sup>*E.g.*, *Chambers v. Maroney*, 399 U.S. 42 (1970); *Carroll v. United States*, 267 U.S. 132 (1925).

<sup>56</sup>*See, e.g.*, *Chimel v. California*, 398 U.S. 752, 762-63 (1969). Although the search was disallowed in this case, the Court stated that a search properly incident to an arrest could be made in order to discover weapons that might be used to effect an escape or evidence which might be concealed or destroyed.

<sup>57</sup>*Cooper v. California*, 386 U.S. 58, 61-62 (1967).

<sup>58</sup>392 U.S. 1 (1968).

<sup>59</sup>*Id.* at 27, 30.

<sup>60</sup>*Id.* at 27.

<sup>61</sup>*Id.* at 24.

<sup>62</sup>*Id.* at 27.



appear to justify a reasonable apprehension of danger since there are apparently few instances of harm having come to the police from this source.<sup>63</sup> This may be contrasted with 47 police deaths between 1960 and 1967 arising out of the type of situation the Supreme Court thought would justify a "stop and frisk" in *Terry*.<sup>64</sup> Thus, it seems that in most instances police would not be justified in taking an inventory for the purpose of protecting themselves from physical harm.

It is possible, however, that when the Supreme Court spoke of protection in *Cooper* it was contemplating protection of the police from liability for the contents of the vehicle.<sup>65</sup> Since it is thus conceivable that the Court would view protection from liability as a legitimate end, the question becomes whether an inventory of a vehicle would be justified in order to achieve that end.

The majority position in lower courts is that it is not unreasonable for police to inventory the contents of a vehicle in order to protect themselves from liability.<sup>66</sup> This position has apparently been based on the assumption that the police would be liable for those contents if any were missing when the vehicle was returned to the owner.<sup>67</sup> The California court, however, explored this assumption in *Mozzetti*<sup>68</sup> and reached the conclusion that there was no need for such protection as the police could not be held liable for those contents under the circumstances of that case.<sup>69</sup> In the light of the Supreme Court's apparent approval of protection from liability as a valid end of police action in *Cooper*,<sup>70</sup> it might be possible to justify an

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<sup>63</sup>While research has disclosed no instances of policemen being killed, several police departments have indicated that harm has arisen from this source. *E.g.*, Response to questionnaire from Richmond Police Department on file with the *Washington and Lee Law Review*; Letter from Lt. William J. Nicholl, Chicago Police Department to the author, Nov. 15, 1971, on file with the *Washington and Lee Law Review*.

<sup>64</sup>Forty-seven policeman, or 11% of the total of 411 killed from 1960 to 1967, were killed while investigating suspicious persons or circumstances; 1967 UNIFORM CRIME REPORT at 48. However, it is not unreasonable to suggest that a vehicle parked in an unauthorized manner across the street from a police station in a neighborhood where police have been recently assaulted would give rise to a reasonable apprehension of danger.

<sup>65</sup>The issue of protection from liability was raised in the Respondent's brief, and the circumstances of the case support the inference that this was the type of protection contemplated, as there was no apparent physical danger. Brief for Respondent, *Cooper v. California*, 386 U.S. 58 (1967) (found in 17 L. Ed. 2d 1188).

<sup>66</sup>*E.g.*, *Godbee v. State*, 224 So. 2d 441 (Fla. Dist. Ct. App. 1969); *St. Clair v. State*, 1 Md. App. 605, 232 A.2d 565 (1967); *Heffley v. State*, 83 Nev. 100, 423 P.2d 666 (1967); *People v. Robinson*, 36 App. Div. 2d 375, 320 N.Y.S.2d 189 (1971); *Warrix v. State*, 50 Wis. 2d 368, 184 N.W.2d 189 (1971).

<sup>67</sup>The issue was not explored in any of the cases cited in note 66 *supra*.

<sup>68</sup>484 P.2d at 89.

<sup>69</sup>*Id.* at 90-91.

<sup>70</sup>See note 65 *supra*.

inventory search of a vehicle if such protection were necessary and the need could be met by an inventory.

Whether there will be any need for protection from liability will depend upon the legal relationship between the police and the vehicle in their custody. If no charge is made for the storage of the car, the police will have no greater duty than that of a gratuitous bailee, which is not to be grossly negligent.<sup>71</sup> The California court, applying the state's civil code, held that the police were in the position of "involuntary bailee" of Sharon Mozzetti's car,<sup>72</sup> which imposed on them a like duty.<sup>73</sup> The court then held that this duty would be satisfied by placing loose items into the trunk and locking up the car,<sup>74</sup> and that, therefore, no inventory was necessary.<sup>75</sup> It would thus seem that an inventory could not be justified on the basis of need where the vehicle is stored free of charge.

The situation becomes somewhat altered if the police charge a fee for the storage, as they may then be bound to a duty of ordinary care for the bailed property<sup>76</sup> and its normal appurtenances,<sup>77</sup> and for any contents of the vehicle of which they have actual or constructive notice.<sup>78</sup> The care required has been described as "that degree of care which might be expected from ordinarily prudent persons in similar circumstances,"<sup>79</sup> and the police may be held liable if this duty is not discharged.<sup>80</sup> It is thus possible that the police could have a need for protection where this situation exists, and the question arises whether an inventory will supply this protection.

If the vehicle is stored in an area where there is a danger that articles inside it may be lost or stolen,<sup>81</sup> it would not be unreasonable to assume that a reasonable man would take some steps to protect the property in the car. The obvious solution would be to guard the vehicle adequately so that there would be no danger of such loss or theft. This would alleviate

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<sup>71</sup>9 S. WILLISTON, CONTRACTS § 1038 at 900 (3d ed. 1967).

<sup>72</sup>484 P.2d at 89.

<sup>73</sup>*Id.* at 89-90, *accord*, 9 S. WILLISTON, CONTRACTS § 1038A at 905 (3d ed. 1967).

<sup>74</sup>484 P.2d at 89.

<sup>75</sup>*Id.*

<sup>76</sup>9 S. WILLISTON, CONTRACTS § 1045 at 954-55 (3d ed. 1967).

<sup>77</sup>*Id.* § 1038A at 906. Normal appurtenances would probably include such things as a spare tire and a jack.

<sup>78</sup>*See* Hallman v. Federal Parking Serv., Inc., 134 A.2d 382 (D.C. Mun. Ct. App. 1957); Campbell v. Portsmouth Hotel Co., 91 N.H. 390, 20 A.2d 644 (1941); Palotto v. Hanna Parking Garage Co., 46 Ohio L. Abs. 18, 68 N.E.2d 170 (Ct. App. 1946); Barnette v. Casey, 124 W. Va. 143, 19 S.E.2d 621 (1942).

<sup>79</sup>Hale v. Massachusetts Parking Auth., 265 N.E.2d 494, 496 (Mass. 1970).

<sup>80</sup>Notes 76-78 and accompanying text *supra*.

<sup>81</sup>This situation is present in some areas. *See, e.g.*, Brief for Appellee at 4, Cabbler v. Commonwealth, \_\_\_ Va. \_\_\_, \_\_\_ S.E.2d \_\_\_ (1971).

any need to inventory the contents of the vehicle since such an examination could not increase the protection given the contents and thus would not contribute to the discharge of the duty of due care which the officers must exercise.

Assuming, however, that the police are unable to guard the vehicle adequately, a likely course would be to remove the articles to a safe place. It might further be reasonable to make an itemized list of the articles which are removed for safekeeping in order to keep track of them so that they may later be properly returned to their owner.<sup>82</sup> However, it would not be necessary to open any closed suitcases or packages found in the car since such articles can be adequately protected by removing them unopened to a safe place.<sup>83</sup> It would therefore be unjustifiable to inventory the contents of such packages or suitcases. An inventory which involves no more than an itemized list of the unopened contents of a vehicle where the police have a duty to protect those contents and cannot do so by guarding the vehicle might therefore be justifiable on the basis that such an inventory serves a function in protecting the police from liability; where this line is crossed, however, the justification does not seem to be present and evidence discovered in the process of taking an inventory would be inadmissible.

The conclusion reached by the *Mozzetti* court on the issue of protection of the storage bailee from liability is in line with this rationale. The court held not only that the inventory was unnecessary, but that it might result in increasing the duty of the storage bailee by making him aware of the contents of a vehicle he is storing,<sup>84</sup> as he would not ordinarily be liable for articles not in plain sight in that vehicle.<sup>85</sup>

Protection of the police from false claims of liability and the resulting bad publicity might be raised as an additional possible justification of police inventories,<sup>86</sup> but it is doubtful that inventories could furnish protection in this area. While an inventory might provide police with evidence in their behalf, the false charges could still be made and published.<sup>87</sup> Thus

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<sup>82</sup>This course was followed by the police in the case of *Cabber v. Commonwealth*, \_\_\_ Va. \_\_\_, \_\_\_ S.E.2d \_\_\_ (1971).

<sup>83</sup>See 9 S. WILLISTON, CONTRACTS § 1038A, at 906 (3d ed. 1967).

<sup>84</sup>484 P.2d at 90-91.

<sup>85</sup>*Id.*

<sup>86</sup>The Court of Appeals for the Fifth Circuit stated in *United States v. Lipscomb*, 435 F.2d 795, 800 (5th Cir. 1970), that inventories of an arrestee's property were necessary to forestall the possibility of later false claims of loss, and state courts have indicated the same thought. See cases cited in note 66 *supra*. While actual protection from liability in such cases would generally be unnecessary (text accompanying notes 66-85 *supra*), it might be possible to include in this theory protection from the bad publicity that might result from such claims.

<sup>87</sup>Police departments apparently do not find this to be a significant problem. See Letters cited in note 63 *supra*.

the inventory would not answer any need for protection and could not be justified on those grounds.

Thus, in the absence of a situation in which the police will be held liable for the loss of articles within a vehicle, where an itemized list of those articles may be justified if it would aid in avoiding such liability, it seems that there is little justification for police inventories of vehicles lawfully in their custody for safekeeping. In any event, the position of the California court in *Mozzetti* that inventories of the contents of closed containers found within a vehicle cannot be justified as an exception to the rule that warrantless searches are unreasonable seems quite persuasive.

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