

The Burger Court Opinion Writing Database

Robbins v. California

453 U.S. 420 (1981)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

May 6, 1981

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

MEMORANDUM TO THE CONFERENCE

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

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

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

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

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

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

Regards,

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

CHAMBERS OF
THE CHIEF JUSTICE

June 10, 1981

RE: 80-148 - Robbins v. California

Dear Potter:

I contemplate joining but with a few
"observations."

Regards,

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

Justice Stewart

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 12, 1981

RE: Robbins v California (#80-148)

Dear Potter:

I join your opinion in this case. I will add the following concurring statement.

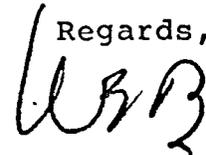
THE CHIEF JUSTICE, concurring: I join Justice Stewart's opinion for the Court. I write separately simply to underscore the fact that our earlier decisions in United States v Chadwick, 433 U.S. 1, and Arkansas v Sanders, 442 U.S. 753, were not decided under the "automobile exception".

Justice Stewart accurately notes, ante at 3-4, that in both Chadwick and Sanders, it was argued by the prosecution that the "automobile exception" somehow justified a warrantless search of the containers involved in those two cases. And he also notes that in both cases this Court rejected the suggestion. In doing so, the Court emphasized that the mere happenstance that an automobile was mentioned in the fact pattern of the cases was irrelevant.

Chadwick turned on the legitimate expectation of privacy in the contents of a footlocker shipped on an interstate common carrier and signalled by two padlocks securing the container. The Court explicitly noted that the case was not an "automobile exception" case; the presence of the taxi was purely a coincidence and had no bearing on the holding. 433 U.S. at 11-12. The taxi entered the picture only because the agents deferred making the arrest until Chadwick exercised dominion over the footlocker by helping to lift it into the trunk of the cab. The situation would have been no different for probable cause analysis if Chadwick had undertaken to carry the footlocker to some distant point without a vehicle.

In Sanders too, it was the luggage being transported by Sanders at the time of his arrest, not the automobile in which it was carried, that was the focus of the Court's inquiry and holding. Once again, the Court's opinion stressed 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 765 n.13. (emphasis added).

Regards,



Justice Stewart
Copies to the Conference

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

From: The Chief Justice

1st DRAFT

Circulated: _____
 JUN 15 1981

SUPREME COURT OF THE UNITED STATES

No. 80-148

Jeffrey Richard Robbins, Petitioner, v. State of California.	}	On Writ of Certiorari to the Court of Appeal of California, First Appellate District.
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[June —, 1981]

THE CHIEF JUSTICE, concurring.

I join JUSTICE STEWART's opinion for the Court. I write separately simply to underscore the fact that our earlier decisions in *United States v. Chadwick*, 433 U. S. 1, and *Arkansas v. Sanders*, 442 U. S. 753, were not decided under the "automobile exception."

JUSTICE STEWART accurately notes, *ante*, at 3-4, that in both *Chadwick* and *Sanders*, it was argued by the prosecution that the "automobile exception" somehow justified a warrantless search of the containers involved in those two cases. And he also notes that in both cases this Court rejected the suggestion. In doing so, the Court emphasized that the mere happenstance that an automobile was mentioned in the fact pattern of the cases was irrelevant.

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

CHAMBERS OF
THE CHIEF JUSTICE

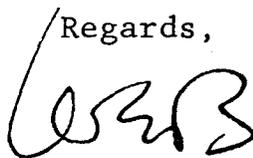
June 22, 1981

RE: No. 81-48 Robbins v. California

Dear Potter:

I am having some "second thoughts" on my concurring opinion in this case, but I will resolve them before Thursday's Conference.

Regards,



Justice Stewart

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

PERSONAL

June 23, 1981

Re: No. 80-148 - Robbins v. California

Dear Lewis:

I hope you will be agreeable to an insert along the following lines, somewhere in the revised concurring opinion.

The evolution of 4th Amendment jurisprudence has been a long and tortuous road on which courts have tended to give too little weight to the key term "unreasonable" in that amendment. That term has made "bright lines" in this field difficult to achieve; such a yardstick cannot be applied with the precision of the literal linear yardstick of 36 inches. Hence what has seemed unreasonable to some judges was perceived differently by others.

It tends to anticipate the standard criticism that we "zig and zag" on 4th Amendment search law.

Regards,

WJP

Justice Powell

✓
Advised
CJ 9
preferred
not
to do
this.

Return to W45

File copy: further reflections on No. 80-148 - Robbins v. California

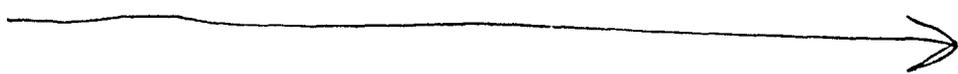
My further pondering on this case relates to whether I can join with a concurring opinion or, join the judgment in this case recognizing that the blurred signals from the Court on 4th Amendment cases are by no means wholly removed by today's holdings in this case State of New York v. Belton. A third course could be to dissent reflecting these "second and third" thoughts.

We have been many years in evolving the confused state of search and seizure law. We cannot extricate ourselves in one stroke so long as we adhere to the Exclusionary Rule.

The urge for "bright line" rules relating to the 4th Amendment is at best illusory for the very language of that clause turns on the word "unreasonable." The 4th Amendment guarantees "against unreasonable searches and seizures" and this has resulted in case by case adjudication. The confusion in judicial utterances flows from the reality that a literally infinite variety of situations confront police and ultimately the courts. What seems "unreasonable" to some is perceived as reasonable to others. The increasing complexity and mobility of society, the enormous expansion of certain criminal activity - drug traffic in particular - brings a flood tide of cases into the courts.

Of course we place high value on our privacy but some privacy must yield, as today's holding in Belton suggests, if we are not to become impotent in control of crime.

The Court sought a "bright line" rule as to trunks and containers by relying on the double locking of the footlocker in Chadwick but some think we diluted that somewhat in Sanders. It is now suggested that the quality of the container or the nature of the sealing should control. Thus a supermarket shopping bag - not sealed in any way - would not require a search warrant if the



*proposed
Revised from
Chief Justice
but never
published*

Return to W&S

person carrying it was subject to a lawful arrest. This leaves open the status of a comparable bag closed with Scotch tape or staples - which is not uncommon. But these are artificial criteria and if we here cannot agree, how can the policeman on the beat function?

Returning to the present case, the record is cloudy on the nature of the "sealing." There was no lock as in Chadwick but only some form of wrapping with an opaque material. The Officer said he had "heard" that marijuana was sometimes transported that way - but he had never seen such packaging.

I am about prepared to support an "automobile exception" that leaves little room for confusion, i.e., that when an automobile is stopped on probable cause and there is some objective evidence of an offense - other than a minor traffic violation - and if the officer smells drugs, sees them, or sees drug paraphernalia or weapons, the ^{interior of the} car can be searched without a warrant from the ^{of the car or} inside of the tires to every place and part of the vehicle. Obviously a total "French Connection" search could not be conducted on the street. But under Opperman I think I would allow an inventory search at the police garage - assuming those in the car are taken in arrest status. Here we come to the practical matter raised by Chadwick: if the "container" and the ostensible owner are securely in custody, getting a warrant is no real burden - except perhaps in Wyoming, Idaho, Utah, et al. where it might well be many hours and many miles travel to secure a warrant.

As a "trade off" or balancing to make our complex system work, I think I am now ready to say that if I am stopped either on the street or in my car, even with my briefcase full of circulating opinions, and there is probable cause for my arrest, the police can open and run their hands through the briefcase to make sure there is no weapon - or contraband. If - like some - the briefcase has a combination lock, should that invoke Chadwick?

Probably yes, in which case the officer should take custody of the person (having first carried out a "Terry" patdown) and control of the locked briefcase and all proceed to the police cellblock. At that point, the Chadwick lock barrier becomes somewhat academic. Most people will consent to opening the container - especially if they are not carrying illegal material. I am now less concerned about an officer peering and feeling into the briefcase than I was previously. If no weapon or "suspicious" package is found the officer will close it. Even if he glanced at one of our circulating opinions, the risk of breaking our security is minimal. I don't like anyone reading my papers, but we must give up some things to protect higher values.

All the problems in this area flow, of course, from an across-the-board enforcement of the Exclusionary Rule. Without that "monster," our problems would evaporate, ^{or at least be manageable.} That is another, albeit related, subject. As I stated in my Bivens dissent, that Rule should be modified along the British lines but with a "tort claims" suit allowed against the government for damages. As Alan Barth wrote for the Post when I advanced this thesis 17-18 years

06/26/81

Robbins v. Califor a

Page 54

ago, judge and juries would be unlikely to give awards to hoodlums found with a packet of heroin as a result of an "illegal" search.

He grieved over that more than I can bring myself to grieve. But an innocent citizen might well recover and soon officers would be compelled to mend their ways to protect the public fisc - if for no better reason.

What I am pondering on is whether to use this occasion to raise, once again, the utter fallacy of the Exclusionary Rule and the distortion it has produced on the whole jurisprudence.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 29, 1981

Re: 80-148 - Robbins v. California

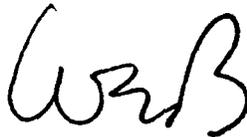
MEMORANDUM TO THE CONFERENCE:

I have concluded to be simply shown as joining the judgment, without more. I have done several separate opinions, but looking at the whole picture I have decided none of them will add to the jurisprudence.

The clarification of the confusion on the 4th Amendment is overdue and cannot be accomplished in any one opinion. The Exclusionary Rule, as I observed in Bivens and other cases, is the albatross we must re-examine.

This case should be ready for Wednesday or Thursday, since all but Lewis' latest writing is in print.

Regards,



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 2, 1981

RE: No. 80-148 Robbins v. California

Dear Potter:

I'm generally with you in this case (I'm dissenting in Belton) but I have two suggestions.

In your discussion of footnote 13 in Arkansas v. Sanders, you state that a container may be searched without a warrant under a "variation" of the plain view doctrine, if its "distinctive configuration . . . proclaims its contents, . . . if the container were transparent, or were labelled to reveal its contents." Thus, "to fall within the second exception of the footnote in question a container must so clearly announce its contents, whether by its distinctive configuration, its transparency, or its label, that its contents are obvious to a non-expert observer." Doesn't it go too far to conclude that the label of a container puts the contents of the container in plain view? Didn't we just decide in Walter v. Sanders, 48 U.S.L.W. 4807, that F.B.I. agents needed a warrant before searching film containers even though the containers were labelled with explicit descriptions of their obscene contents?

I am also concerned about your footnote 3. You are quite correct that the State did not argue that the opening of the packages was incident to a lawful custodial arrest. Having made that statement, is it necessary to go on with "Such an argument . . ."? In light of my dissent in Belton, I could not join that discussion. Could you see your way to deleting it?

Sincerely,

Bill

Justice Stewart

① Brennan JD

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 3, 1981

RE: No. 80-148 Robbins v. California

Dear Potter:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Stewart

cc: The Conference

No. 80-148, Robbins v. California

JUSTICE STEWART delivered the opinion of the Court.

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

I

From: Mr. Justice Stewart

Circulated: 30 MAY 1981

On the early morning of January 5, 1975, Recirculated: _____

California Highway Patrol officers stopped the petitioner's car--a 1966 Chevrolet station wagon--because he had been driving erratically. He got out of his vehicle and walked towards the patrol car. When one of the officers asked him for his driver's license and the station wagon's registration, he fumbled with his wallet. When the petitioner opened the car door to get out the registration, the officers smelled marijuana smoke. One of the officers patted the petitioner down, and discovered a vial of liquid. The officer then searched the passenger compartment of the car, and found marijuana as well as equipment for using it.

PP. 4-8

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

From: Mr. Justice Stewart

1st PRINTED DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Sealed: 3 JUN 1981

No. 80-148

Jeffrey Richard Robbins, Petitioner, v. State of California.	}	On Writ of Certiorari to the Court of Appeal of California, First Appellate District.
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JW

[June —, 1981]

JUSTICE STEWART delivered the opinion of the Court.

I

On the early morning of January 5, 1975, California Highway Patrol officers stopped the petitioner's car—a 1966 Chevrolet station wagon—because he had been driving erratically. He got out of his vehicle and walked towards the patrol car. When one of the officers asked him for his driver's license and state wagon's registration, he fumbled with his wallet. When the petitioner opened the car door to get out the registration, the officers smelled marihuana smoke. One of the officers patted the petitioner down, and discovered a vial of liquid. The officer then searched the passenger compartment of the car, and found marihuana as well as equipment for using it.

After putting the petitioner in the patrol car, the officers opened the tailgate of the station wagon, located a handle set flush in the deck, and lifted it up to uncover a recessed luggage compartment. In the compartment were a tote bag and two packages wrapped in green opaque plastic.¹ The

¹ A photograph was made of one of the packages, and it was later described as follows:

"The package visible in the photograph is apparently wrapped or boxed in an opaque material covered by an outer wrapping of transparent, cello-

P. 1,618

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

From: Mr. Justice Stewart

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

~~REPRODUCED~~ 23 JUN 1981

No. 80-148

Jeffrey Richard Robbins, Petitioner, v. State of California.	}	On Writ of Certiorari to the Court of Appeal of California, First Appellate District.
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[June —, 1981]

JUSTICE STEWART delivered the opinion of the Court.

I

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"The package visible in the photograph is apparently wrapped or boxed in an opaque material covered by an outer wrapping of transparent, cello-

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

From: Mr. Justice Stewart

Circulated: _____

3rd DRAFT

Re-circulated: 29 JUN 1981

SUPREME COURT OF THE UNITED STATES

No. 80-148

Jeffrey Richard Robbins, }
 Petitioner, }
 v. }
 State of California, }
 On Writ of Certiorari to the Court
 of Appeal of California, First
 Appellate District,

[June —, 1981]

JUSTICE STEWART announced the judgment of the Court and delivered an opinion, in which JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE MARSHALL joined.

I

On the early morning of January 5, 1975, California Highway Patrol officers stopped the petitioner's car—a 1966 Chevrolet station wagon—because he had been driving erratically. He got out of his vehicle and walked towards the patrol car. When one of the officers asked him for his driver's license and the station wagon's registration, he fumbled with his wallet. When the petitioner opened the car door to get out the registration, the officers smelled marihuana smoke. One of the officers patted the petitioner down, and discovered a vial of liquid. The officer then searched the passenger compartment of the car, and found marihuana as well as equipment for using it.

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¹ A photograph was made of one of the packages, and it was later described as follows:

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1981

Re: 80-148 - Robbins v. California

Dear Potter,

I shall await Bill Brennan's
suggestions to you if he has any.

Sincerely yours,



Justice Stewart

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 11, 1981

Re: 80-148 - Robbins v. California

Dear Potter,

Please join me.

Sincerely yours,



Justice Stewart

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 17, 1981

Re: No. 80-148 - Robbins v. California

Dear Potter:

Please join me.

Sincerely,

JM.

T.M.

Justice Stewart

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: JUN 10 1981

Recirculated: _____

No. 80-148 - Robbins v. California

JUSTICE BLACKMUN, dissenting.

I must dissent for the reasons stated in my respective writings in United States v. Chadwick, 433 U.S. 1, 17 (1977), and Arkansas v. Sanders, 442 U.S. 753, 768 (1979). I also agree with much of what JUSTICE REHNQUIST says, post, at 5-10, in his dissenting opinion in the present case. The anticipated confusion that Chadwick and Sanders spawned for the Nation's trial and appellate courts is well illustrated by the Court's listing, ante, at 5, of cases decided by federal courts of appeals since Chadwick was announced in 1977.

10

The Court's decision in the present case at least has the merit of a "bright line" rule that should serve to eliminate the opaqueness and to dissipate some of the confusion. See 442 U.S., at 771-772. Nonetheless, under today's holding, an arresting officer will still be forced, despite a concededly lawful search

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

From: Mr. Justice Blackmun

1st PRINTED DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Re-circulated: JUN 10 1981

No. 80-148

Jeffrey Richard Robbins, Petitioner, v. State of California.	}	On Writ of Certiorari to the Court of Appeal of California, First Appellate District.
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[June —, 1981]

JUSTICE BLACKMUN, dissenting.

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The Court's decision in the present case at least has the merit of a "bright line" rule that should serve to eliminate the opaqueness and to dissipate some of the confusion. See 442 U. S., at 771-772. Nonetheless, under today's holding, an arresting officer will still be forced, despite a concededly lawful search of the automobile, to go to the magistrate, whether near or far, for the search warrant inevitably to be issued when the facts are like those presented here. And only time will tell whether the Court's "test," *ante*, at 6-7, for determining whether a package's exterior "announce[s] its contents" will lead to a new stream of litigation.

I continue to think the Court is in error and that it would have been better, see 442 U. S., at 772, "to adopt a clear-cut rule to the effect that a warrant should not be required to seize and search any personal property found in an automo-

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: JUN 29 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-148

Jeffrey Richard Robbins, }
 Petitioner, } On Writ of Certiorari to the Court
 v. } of Appeal of California, First
 State of California. } Appellate District.

[June —, 1981]

JUSTICE BLACKMUN, dissenting.

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I continue to think the Court is in error and that it would have been better, see 442 U. S., at 772, "to adopt a clear-cut rule to the effect that a warrant should not be required to

June 2, 1981

80-148 Robbins v. California

Dear Potter:

Although I will join the judgment and agree with your resolution of the case on its facts, I have trouble with some of the language in your opinion.

1. I do not read either Chadwick or Sanders as going as far as your opinion. Neither case said that every "closed container" (except where the "plain view rule applies") in an automobile trunk is protected. Chadwick involved a trunk in which personal belongings customarily are carried. Sanders repeatedly referred only to "luggage," also historically the repository of personal belongings. I could not say, therefore, that the SG's argument "squarely conflicts" with these cases. P. 8. I do agree that, on principle, Chadwick and Sanders require reversal here.

2. Pages 10 and 11 particularly give me trouble. I would find it difficult to agree that a warrant to search is required for any "gym bag, tote bag, travel bag, duffle bag, candy tin, plastic cooler, pillow case, tool box, lunch box, cardboard box, or paper bag." I would draw a line somewhere along this continuum, because many of these implicate no reasonable expectation of privacy.

3. On page 14 I suggest two language changes. In the second line of the first full paragraph, I would eliminate "and nothing else." And in the last line on page 14, I would change "common knowledge" to read "known to experienced police officers." I have no idea what marijuana smells like. Yet police officers, trained to know, are better informed.

* * *

I agree for the most part with your discussion of my note 13 in Sanders, and your elaboration of the "plain view" doctrine when applied to packages and parcels. You could meet most - perhaps all - of my concerns with respect to the reach of your opinion if you eliminated the string of examples and recognized explicitly that the characteristics of the container vary widely and are relevant to what I think is the fundamental question whether there is a reasonable expectation of privacy.

This case involves carefully sealed, opaque, and somewhat unusual packages. But few bags, packages, and miscellaneous containers carried in the back of a car are protected so carefully. Bags may be open or loosely tied, and boxes of merchandise usually will have nothing more than wrapping paper and a string around them. Many of the containers mentioned on page 11 will quite obviously not be places where one normally has an expectation of privacy, e.g., a tool box, lunch box, candy tin, or each and every cardboard box or paper bag. Some containers are just too insubstantial to require the protection of a warrant. The test should be whether there is a reasonable expectation of privacy.

I appreciate that the qualification I would make to your opinion may not diminish line drawing problems for police and courts. Yet, this is a task that law enforcement undertakes in many Fourth Amendment cases.

My concern is heightened by the practicalities. Absent the right to search on the scene bags and boxes that are not securely sealed or locked and that typically are not used to transport personal or private items, law enforcement will face more serious problems. Police officers will be taking automobiles and people to police stations for trifles. The police also will be removed from their more important patrolling duties, sometimes for hours.

* * *

I appreciate the difficulty of writing this opinion, and regret adding to your problem. Yet, I do think the line must be drawn more narrowly to protect the public interest than your opinion does now - if I read it correctly.

If you should be disposed, Potter, to accept the substance of the views expressed above, or perhaps leave room for them in a later case, I will join you. Otherwise, I will circulate something along the lines of this letter and write separately.

Sincerely,

Mr. Justice Stewart

lfp/ss

✓

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 3, 1981

80-148 Robbins v. California

Dear Potter:

Although I will join the judgment and agree with your resolution of the case on its facts, I have considerable trouble with the extremely broad scope of your opinion.

While recognizing the difficulty of line drawing in Fourth Amendment cases, and particularly with respect to what one may transport in the trunk of an automobile, I would find it difficult to agree that the "contents" of a container must be "obvious to an observer" before an officer with probable cause to stop the automobile may examine the contents.

In a broad sense, the purpose of the "search" provision of the Fourth Amendment is to protect privacy. An almost infinite variety of parcels, packages, bags, etc., are transported in automobiles. There usually is little or no expectation of privacy such as that evidenced in this case by the careful wrapping and sealing of an unusual type package. I probably will write a brief opinion concurring in the judgment.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Confernce

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

From: Mr. Justice Powell

Circulated: JUN 19 1981

Recirculated: _____

No. 80-148, Robbins v. California

JUSTICE POWELL, concurring in the judgment.

I concur in the Court's judgment because I believe that petitioner had a reasonable expectation of privacy in the opaquely wrapped and sealed package in the rear compartment of his automobile. I cannot join the Court's opinion because it would require officers to obtain warrants in order to examine the contents of insubstantial containers in which no one had a reasonable expectation of privacy. The Court's approach strains the rationales of our prior cases and imposes substantial burdens on law enforcement without vindicating any significant values of privacy.

I

Petitioner does not argue that the Fourth Amendment prohibited the officers from searching thoroughly the interior of his station wagon. The officers had smelled and seen marijuana within the passenger

2, 4, 5, 7

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

6-23-81

From: Mr. Justice Powell

Circulated: JUN 24 1981

1st PRINTED DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 80-148

Jeffrey Richard Robbins, Petitioner, v. State of California,	}	On Writ of Certiorari to the Court of Appeal of California, First Appellate District.
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[June —, 1981]

JUSTICE POWELL, concurring in the judgment.

I concur in the Court's judgment because I believe that petitioner had a reasonable expectation of privacy in the opaquely wrapped and sealed package in the rear compartment of his automobile. I cannot join the Court's opinion because it could require officers to obtain warrants in order to examine the contents of insubstantial containers in which no one had a reasonable expectation of privacy. The Court's approach strains the rationales of our prior cases and imposes substantial burdens on law enforcement without vindicating any significant values of privacy.

I

Petitioner does not argue that the Fourth Amendment prohibited the officers from searching thoroughly the interior of his station wagon. The officers had smelled and seen marijuana within the passenger compartment and thus had probable cause to search the remainder of the automobile, including the recessed luggage compartment in the rear of the station wagon. We have held in numerous cases that police need not obtain a warrant to search an automobile when they have probable cause to believe that evidence of a crime will be found therein, both because an automobile is inherently mobile and because drivers enjoy only a limited privacy interest in the interior of an automobile. See, *e. g.*, *South*

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

June 27th

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

80-148 Robbins

Dear Chief,

Here is a revised draft of my opinion concurring in the judgment.

I have retained most of my circulated opinion, but have condensed some of it. The only new elements are additions in response to John's critical dissent, and language at the end that leaves us open for reconsideration in the future.

My understanding is that you also will join the judgment. You reserved decision, properly, whether you would write separately or join me. We should get all of this to the printer early Monday, as time is running out. Love

I am delivering a copy of this to Potter

June 29, 1981

PERSONAL

80-148 Robbins v. California

Dear Chief:

Knowing how troubled you have been about the correct decision in this case, I hesitate to say anything further. Yet, I write to suggest consideration by you of what would be a quite minor change in your present tentative position.

At present, there are four votes for Potter's opinion, plus yours and mine making a total of six for the judgment. There are three votes in dissent, favoring a new "bright line" interpretation of the automobile exception.

This case will be read with care and concern by prosecuting attorneys, U.S. Attorneys, by police departments, and by lower courts. Searches with respect to the contents of automobiles are made perhaps by the scores every day.

The question that will be puzzling is how the diversity of views in this case should be interpreted. As we agree, Potter's opinion (with four Justices on it) will impose a heavy new burden on law enforcement. The opinions of the three dissenting Justices, being a clear minority, will have to be ignored. This leaves you and me "in the middle". My opinion sets forth a middle position that still allows police and courts quite substantial latitude in the various circumstances of automobile searches. If you simply "concur in the judgment", and say no more, law enforcement authorities and lower courts may speculate as to your present views. Some may think it necessary to follow the plurality opinion.

My question is this: in the interest of affording somewhat clearer guidance would it be better if you joined

my opinion, adding whatever you wish. Or you could say simply that until we have an opportunity to reconsider the scope of the automobile search exception, you join my opinion as being more consistent with the language - if not the holdings - of prior cases.

I added the last paragraph of my opinion specifically in light of your wish to make clear that we were inviting a reconsideration when a proper case is presented.

If you decide to go no further than simply concurring in the judgment, I will, of course, understand.

I am sending this letter only to you, and no reply is necessary.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 29, 1981

80-148 Robbins v. California

MEMORANDUM TO THE CONFERENCE:

The dissenting opinions have prompted me to make substantial revisions in my concurring opinion.

Although its substance is much the same, it is not feasible - because of rewriting - to indicate where the changes have been made.

L. F. P.
L.F.P., Jr.

SS

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

Second Draft

From: Mr. Justice Powell

Circulated: _____

Recirculated: JUN 29 1979

No. 80-148, Robbins v. California

JUSTICE POWELL, concurring.

The Court's judgment is justified, though not compelled, by the Court's opinion in Arkansas v. Sanders, 442 U.S. 756 (1979). Accordingly, I join the judgment. As the Court today goes well beyond Sanders or any other prior case to establish a new "bright line" rule, I cannot join its opinion.¹ It would require officers to obtain warrants in order to examine the contents of insubstantial containers in which no one had a reasonable expectation of privacy. The Court's approach strains the rationales of our prior cases and imposes substantial burdens on law

¹ The Court's "bright-line" rule would extend the warrant clause of the Fourth Amendment to every "closed, opaque container," without regard to size, shape or whether common experience would suggest that the owner was asserting a privacy interest in the contents. The Court would exempt from the broad reach of its rule only those "closed, opaque containers" where, because of shape or some other characteristic, the "contents may be said to be in plain view." In accordance with the Court's usage I use the term "container" to include any and all packages, bags, boxes, tins, bottles and the like.

P. 6 +

Stylistic Changes Throughout

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

6-30-81

From: Mr. Justice Powell

3rd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

ulated: JUN 30 1981

No. 80-148

Jeffrey Richard Robbins, }
 Petitioner, } On Writ of Certiorari to the Court
 v. } of Appeal of California, First
 State of California. } Appellate District.

[June —, 1981]

JUSTICE POWELL, concurring in the judgment.

The Court's judgment is justified, though not compelled, by the Court's opinion in *Arkansas v. Sanders*, 442 U. S. 756 (1979). Accordingly, I join the judgment. As the plurality today goes well beyond *Sanders* or any other prior case to establish a new "bright line" rule, I cannot join its opinion.¹ It would require officers to obtain warrants in order to examine the contents of insubstantial containers in which no one had a reasonable expectation of privacy. The plurality approach strains the rationales of our prior cases and imposes substantial burdens on law enforcement without vindicating any significant values of privacy. I nevertheless concur in the judgment because the manner in which the package at issue was carefully wrapped and sealed evidenced petitioner's expectation of privacy in its contents. As we have stressed in prior decisions, a central purpose of the Fourth Amendment is to safeguard reasonable expectations of privacy.

15

3

¹The plurality "bright-line" rule would extend the warrant clause of the Fourth Amendment to every "closed, opaque container," without regard to size, shape or whether common experience would suggest that the owner was asserting a privacy interest in the contents. The plurality would exempt from the board reach of its rule only those "closed, opaque containers" where, because of shape or some other characteristic, the "contents may be said to be in plain view." In accordance with the plurality's usage I use the term "container" to include any and all packages, bags, boxes, tins, bottles and the like.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 1, 1981

Re: No. 80-148 Robbins v. California

Dear Potter:

I will either dissent or, if someone senior to me elects to write a dissent (which I prayerfully hope may be the case) will await that dissent.

Sincerely,



Justice Stewart

Copies to the Conference

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

From: Mr. Justice Rehnquist

Circulated: 6/5/81

Recirculated: _____

Re: No. 80-148 Robbins v. California

JUSTICE REHNQUIST, dissenting.

I have previously stated why I believe that the so-called "exclusionary rule" created by this Court imposes a burden out of all proportion to the Fourth Amendment values which it seeks to advance by seriously impeding the efforts of the national, state, and local governments to apprehend and convict those who have violated their laws. See California v. Minjares, 443 U.S. 916 (1979) (REHNQUIST, J., joined by BURGER, C.J., dissenting from the denial of a stay). I have in no way abandoned those views, but believe that the Court's opinion in the present case compounds the evils of the "exclusionary rule" by engrafting subtleties into the jurisprudence of the Fourth Amendment itself that are neither required nor desirable under our previous decisions. As Justice Harlan stated in his concurring opinion in Coolidge v. New Hampshire, 403 U.S. 443, 490-491 (1971):

STYLISTIC CHANGES THROUGHOUT

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

1st PRINTED DRAFT

From Mr. Justice [unclear]

Circulated: [unclear]
 JUN 18 1981
 Received: [unclear]

SUPREME COURT OF THE UNITED STATES

No. 80-148

Jeffrey Richard Robbins, }
 Petitioner, } On Writ of Certiorari to the Court
 v. } of Appeal of California, First
 State of California. } Appellate District.

[June —, 1981]

JUSTICE REHNQUIST, dissenting.

I have previously stated why I believe the so-called "exclusionary rule" created by this Court imposes a burden out of all proportion to the Fourth Amendment values which it seeks to advance by seriously impeding the efforts of the national, state, and local governments to apprehend and convict those who have violated their laws. See *California v. Minjares*, 443 U. S. 916 (1979) (REHNQUIST, J., joined by BURGER, C. J., dissenting from the denial of a stay). I have in no way abandoned those views, but believe that the Court's opinion in the present case compounds the evils of the "exclusionary rule" by engrafting subtleties into the jurisprudence of the Fourth Amendment itself that are neither required nor desirable under our previous decisions. As Justice Harlan stated in his concurring opinion in *Coolidge v. New Hampshire*, 403 U. S. 443, 490-491 (1971):

"State and federal law enforcement officers and prosecutorial authorities must find quite intolerable the present state of uncertainty, which extends even to such an every day question as the circumstances under which police may enter a man's property to arrest him and seize a vehicle believed to have been used during the commission of a crime.

"I would begin [the] process of re-evaluation by overruling *Mapp v. Ohio*, 367 U. S. 643 (1961), and *Ker v. California*, 374 U. S. 23 (1963). . . .

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

80-148 - Robbins v. California

From: Mr. Justice Stevens

Circulated: JUN 23 '81

Recirculated: _____

JUSTICE STEVENS, dissenting.

It is quite clear to most of us that this case and New York v. Belton, post, at __, should be decided in the same way.¹ Both cases involve automobile searches. In both cases, the automobiles had been lawfully stopped on the highway, the occupants had been lawfully arrested, and the officers had probable cause to believe that the vehicles contained contraband. In my opinion, the "automobile exception" to the warrant requirement therefore provided each officer the authority to make a thorough search of the vehicle--including the glove compartment, the trunk, and any containers in the vehicle that might reasonably contain the contraband.

¹ JUSTICE BLACKMUN, JUSTICE REHNQUIST and I would uphold the searches in both cases; JUSTICE BRENNAN, JUSTICE WHITE and JUSTICE MARSHALL would invalidate both searches. Only the CHIEF JUSTICE, JUSTICE STEWART and JUSTICE POWELL reach the curious conclusion that a citizen has a greater privacy interest in a package of marijuana enclosed in a plastic wrapper than in the pocket of a leather jacket.

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

pp. 5, 6, 8, 9

From: Mr. Justice Stevens

Circulated: _____

1st PRINTED DRAFT

Recirculated: JUN 26 '81

SUPREME COURT OF THE UNITED STATES

No. 80-148

Jeffrey Richard Robbins, Petitioner, v. State of California.	}	On Writ of Certiorari to the Court of Appeal of California, First Appellate District,
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[June —, 1981]

JUSTICE STEVENS, dissenting.

It is quite clear to most of us that this case and *New York v. Belton*, *post at* —, should be decided in the same way.¹ Both cases involve automobile searches. In both cases, the automobiles had been lawfully stopped on the highway, the occupants had been lawfully arrested, and the officers had probable cause to believe that the vehicles contained contraband. In my opinion, the “automobile exception” to the warrant requirement therefore provided each officer the authority to make a thorough search of the vehicle—including the glove compartment, the trunk, and any containers in the vehicle that might reasonably contain the contraband.

Such was the state of the law prior to the Court’s discursive writing in *Arkansas v. Sanders*, 442 U. S. 753.² Be-

¹ JUSTICE BLACKMUN, JUSTICE REHNQUIST, and I would uphold the searches in both cases; JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE MARSHALL would invalidate both searches. Only THE CHIEF JUSTICE, JUSTICE STEWART, and JUSTICE POWELL reach the curious conclusion that a citizen has a greater privacy interest in a package of marihuana enclosed in a plastic wrapper than in the pocket of a leather jacket.

² Prior to the Court’s decision in *United States v. Chadwick*, 433 U. S. 1, courts routinely relied on the automobile exception to uphold the search of a container found in a car. The court in *United States v. Soriano*, 497 F. 2d 147, 149 (CA5 1974), cited *Chambers v. Maroney*, 399 U. S. 42, and stated:

“And though it is true that the Court spoke of an automobile while we

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

PP. 4-5

From: Mr. Justice Stevens

Circulated: _____

2nd DRAFT

Recirculated: JUN 27 81

SUPREME COURT OF THE UNITED STATES

No. 80-148

Jeffrey Richard Robbins, Petitioner, v. State of California.	}	On Writ of Certiorari to the Court of Appeal of California, First Appellate District.
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[June —, 1981]

JUSTICE STEVENS, dissenting.

It is quite clear to most of us that this case and *New York v. Belton*, *post* at —, should be decided in the same way.¹ Both cases involve automobile searches. In both cases, the automobiles had been lawfully stopped on the highway, the occupants had been lawfully arrested, and the officers had probable cause to believe that the vehicles contained contraband. In my opinion, the “automobile exception” to the warrant requirement therefore provided each officer the authority to make a thorough search of the vehicle—including the glove compartment, the trunk, and any containers in the vehicle that might reasonably contain the contraband.

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¹ JUSTICE BLACKMUN, JUSTICE REHNQUIST, and I would uphold the searches in both cases; JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE MARSHALL would invalidate both searches. Only THE CHIEF JUSTICE, JUSTICE STEWART, and JUSTICE POWELL reach the curious conclusion that a citizen has a greater privacy interest in a package of marihuana enclosed in a plastic wrapper than in the pocket of a leather jacket.

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“And though it is true that the Court spoke of an automobile while we