The Burger Court Opinion Writing Database

United States v. Place

462 U.S. 696 (1983)

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 11, 1983

Re: No. 81-1617, U.S. v. Place

Dear Byron:

If there are four others I could go the whole route with your "dog view" in this case and settle one issue. This is not an area where argument would add anything for me.

Regards,

WEB

Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

May 18, 1983

Re: 81-1617 - United States v. Place

Dear Sandra:

I join.

Regards,

WEB

Justice O'Connor
Copies to the Conference

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

From: **Justice Brennan**

Circulated: 6/15/83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1617

UNITED STATES, PETITIONER *v.*
RAYMOND J. PLACE

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

[June ——, 1983]

JUSTICE BRENNAN, concurring in the result.

In this case, the Court of Appeals assumed both that the officers had the "reasonable suspicion" necessary to justify an "investigative" stop of respondent under *Terry* v. *Ohio*, 392 U. S. 1 (1968), and its progeny, and that the principles of *Terry* apply to seizures of property. See *United States* v. *Place*, 660 F. 2d 44, 50 (CA2 1981); *ante*, at 3–4. The court held simply that "the prolonged seizure of [respondent's] baggage went far beyond a mere investigative stop and amounted to a violation of his Fourth Amendment rights." *United States* v. *Place*, 660 F. 2d, at 50. See also *id.*, at 52, 53. I would affirm the Court of Appeals' judgment on this ground.

Instead of simply affirming on this ground and putting an end to the matter, the Court decides to reach, and purportedly to resolve, the constitutionality of the seizure of respondent's luggage on less than probable cause and the exposure of that luggage to a narcotics detection dog. See *ante*, at 10–11. Apparently, the Court finds itself unable to "resist the pull to decide the constitutional issues involved in this case on a broader basis than the record before [it] imperatively requires." *Street* v. *New York*, 394 U. S. 576, 581 (1969). Because the Court reaches issues unnecessary to its judgment and because I cannot subscribe to the Court's anal-

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

From: **Justice White**

Circulated: MAY 5 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1617

UNITED STATES, PETITIONER *v.*
RAYMOND J. PLACE

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

[May ——, 1983]

JUSTICE WHITE, concurring.

Dealing first with the legality of the initial seizure of Place's luggage, the Court affirms the right of the government to seize the luggage without a warrant and on less than probable cause, "for the purpose of pursuing a limited course of investigation." *Ante*, at 5. This conclusion would plainly be foreclosed if the investigative procedure to be carried out was itself illegal or would violate the Fourth Amendment.[1]

I take it, therefore, that the Court is of the view that the purpose of the seizure—to carry out a canine sniff—was consistent with the Fourth Amendment, either because the use of the dogs would not constitute a search or otherwise impli-

[1] In reviewing the reasonableness of investigative detentions, the Court has always looked at the purpose to be served by the detention. Whether a seizure is lawful when initiated depends both on the existence of reasonable suspicion and on whether the course of investigation to be pursued during the detention is itself lawful. See *Terry* v. *Ohio*, 392 U. S. 1, 20 (1963); *United States* v. *Cortez*, 449 U. S. 411, 421 (1981); *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 881–882 (1975); *Adams* v. *Williams*, 407 U. S. 143, 146 (1972). In *Michigan* v. *Summers*, 452 U. S. 692 (1981), the Court held that reasonable suspicion was sufficient to support a detention for the purpose of maintaining the status quo during a search of the person's residence pursuant to a valid search warrant. There is little doubt that the detention in *Summers* would not have been considered "reasonable" if its purpose was to maintain the status quo during an illegal search.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 12, 1983

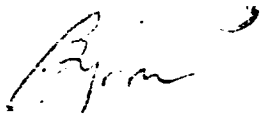
Re: 81-1617 -

United States v. Place

Dear Sandra,

Please join me. I shall file my separate opinion in the unfiled opinion file.

Sincerely,



Justice O'Connor

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 1, 1983

Re: No. 81-1617-United States v. Place

Dear Harry:

Please join me in your concurring opinion.

Sincerely,

T.M.

Justice Blackmun

CC: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 15, 1983

Re: No. 81-1617-United States v. Place

Dear Bill:

Please join me in your opinion.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 28, 1983

Re: No. 81-1617 - United States v. Place

Dear Sandra:

I am glad to join your second draft circulated April 14.

Sincerely,

Harry

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 2, 1983

Re: No. 81-1617 - United States v. Place

Dear Sandra:

On April 28, I joined your second draft circulated April 14. Changes made in your third draft, which I assume were made to attract Bill Rehnquist's vote (judging by his immediate joinder on April 29) are somewhat disturbing to me.

I feel, for example, that the first sentence of the first full paragraph on page 7 is somewhat out of context from the Terry material that immediately preceded your Terry quote. In addition, as I read the revision of page 11, you have shifted the departure test to a subjective one. Does this mean that if the Government can prove that Place did not determine that it was necessary for him to remain with the luggage or otherwise disrupt his travel, there is no Fourth Amendment violation? Place, of course, in this case left the airport without his luggage. Further, the addition of the sentence on page 12 beginning with "Moreover" focuses upon diligent police procedures. I doubt if the Court has ever held this. In Dunaway, there was no bow whatsoever in the direction of diligence.

If the third draft remains as it is, I withdraw my joinder and you may record me as concurring only in the result.

Sincerely,

Harry

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 1, 1983

Re: No. 81-1617 - United States v. Place

Dear Sandra:

Because of the changes effected in your drafts subsequent to the second, I now formally withdraw my joinder of April 28.

This concurrence in the judgment expresses my views.

Sincerely,

Harry

Justice O'Connor

cc: The Conference

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

From: **Justice Blackmun**

Circulated: JUN 1 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1617

UNITED STATES, PETITIONER *v.*
RAYMOND J. PLACE

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

[June ——, 1983]

JUSTICE BLACKMUN, concurring in the judgment.

For me, the Court's analysis in Part III of its opinion is quite sufficient to support its judgment. I agree that on the facts of this case, the detention of Place's luggage amounted to, and was functionally identical with, a seizure of his person. My concern with the Court's opinion has to do (a) with its general discussion in Part II of seizures of luggage under the *Terry* v. *Ohio*, 392 U. S. 1 (1968), exception to the warrant and probable cause requirements, and (b) with the Court's haste to resolve the dog-sniff issue.

I

In providing guidance to other courts, we often include in our opinions material that, technically, constitutes dictum. I cannot fault the Court's desire to set guidelines for *Terry* seizures of luggage based on reasonable suspicion. I am concerned, however, with what appears to me to be an emerging tendency on the part of the Court to convert the *Terry* decision into a general statement that the Fourth Amendment requires only that any seizure be reasonable.[1]

[1] The Court states that the applicability of the *Terry* exception "rests on a balancing of the competing interests to determine the reasonableness of the type of seizure involved within the meaning of 'the Fourth Amendment's general proscription against unreasonable searches and seizures.'" *Ante*, at 6, quoting *Terry*, 392 U. S., at 20. As the context of the quotation from *Terry* makes clear, however, this balancing to determine reasonableness occurs only under the exceptional circumstances that justify the

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 8, 1983

81-1617 United States v. Place

Dear Sandra:

Please join me.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 11, 1983

81-1617 United States v. Place

Dear Sandra:

I agree that a dog sniff is not a search within the meaning of the Fourth Amendment, and I think we should say so.

Also, the suggestions in John's letter of the 5th seem reasonable.

Sincerely,

Lewis

Justice O'Connor

Copies to the Conference

LFP/vde

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 17, 1983

81-1617 United States v. Place

Dear Sandra:

This will reaffirm my join of your opinion.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 29, 1983

Re: No. 81-1617 United States v. Place

Dear Sandra,

Please join me.

Sincerely,

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 5, 1983

Re: No. 81-1617 United States v. Place

Dear Sandra:

I approve of your proposal to treat the "dog sniff" issue as indicated in your memorandum of May 5th.

Sincerely,

WHR

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 13, 1983

Re: No. 81-1617 United States v. Place

Dear Sandra:

Please join me in your most recent circulation.

Sincerely,

WHR

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 14, 1983

Re: 81-1617 - United States v. Place

Dear Sandra:

Please join me.

Respectfully,

JPS

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 5, 1983

Re: 81-1617 - United States v. Place

Dear Sandra:

Your exchange of correspondence with Harry prompted me to reread your opinion in this case. I am not troubled by the changes on pages 7 and 11 but I do share Harry's concern about the added emphasis on diligence on page 12. Perhaps you could take the word "must" out of the "Moreover" sentence and make it read something like this:

> "Moreover, in assessing the effect of the length of the detention, we take into account the character of the diligence with which the police pursued their investigation."

My rereading also caused me to recognize three minor points that I would like to suggest for your consideration. These are all purely suggestions and if you find none of them persuasive that is perfectly satisfactory with me.

First, in the last line on page 5 you refer to the Government asking us "to extend" the principles of Terry and again in the fourth line on page 6 to such an "extension." I wonder if you might not want to consider substituting the word "construe" on page 5 and the words "a construction" on page 6. I actually do not believe you are departing from the principle that is already implicit in Terry and other decided cases and this slight change in wording makes us look a little more like judges and a little less like lawmakers.

In footnote 6 on page 8 you indicate that "we have observed" whereas you are really quoting a separate

opinion by JUSTICE POWELL. Should you not change it to "JUSTICE POWELL has observed"?

On page 9, it has occurred to me that there is an additional response to the argument that even a temporary dispossession of property is absolute that you may wish to make. It is the obvious but often overlooked point that the brief dispossession of a locked suitcase involves no invasion of the privacy interests protected by the Fourth Amendment. (My concern about the differences between the privacy interest and the possessory interest is what took me so long in figuring out what to say in Texas v. Brown.) I wonder if you might want to insert something like this immediately after the words "We disagree" at the outset of the second paragraph.

> "It is perfectly clear that a temporary dispossession of a locked suitcase involves no examination of its contents and therefore no invasion of the owner's interest in privacy. See Texas v. Brown, STEVENS, J., concurring, slip op., at p. 2."

It may be that you are reluctant to mention the interest in privacy because the very reason for the seizure of the suitcase is to allow the trained dog to take a sniff which itself might be regarded as an intrusion on privacy. Implicitly, however, we must be deciding that such a sniff is perfectly okay or there would be no point in allowing the temporary seizure for the purpose of locating the dog.

Respectfully,

Justice O'Connor

Copies to the Conference

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

From: **Justice O'Connor**

Circulated: APR 5 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1617

UNITED STATES, PETITIONER *v.*
RAYMOND J. PLACE

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

[April ——, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the issue whether the Fourth Amendment prohibits law enforcement authorities from temporarily detaining personal luggage for exposure to a trained narcotics detection dog on the basis of reasonable suspicion that the luggage contains narcotics. Given the strength of the public interest in detecting narcotics trafficking and the minimal intrusion that a properly limited detention would entail, we conclude that the Fourth Amendment does not prohibit such a detention. On the facts of this case, however, we hold that the police conduct exceeded the bounds of a permissible investigative detention of the luggage.

I

Respondent Raymond J. Place's nervous behavior aroused the suspicions of law enforcement officers as he waited in line at the Miami International Airport to purchase a ticket to New York's LaGuardia Airport. As Place proceeded to the gate for his flight, the agents approached him and requested his airline ticket and some identification. Place complied with the request and consented to a search of the two suitcases he had checked. Because his flight was about to depart, however, the agents decided not to search the luggage.

Prompted by Place's parting remark that he had recog-

pp. 1, 2, 5, 6, 7, 8

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: APR 14 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1617

UNITED STATES, PETITIONER *v.*
RAYMOND J. PLACE

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

[April ——, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

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Prompted by Place's parting remark that he had recog-

pp. 5, 7, 11, 12-13

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

From: **Justice O'Connor**

Circulated: APR 30 1983

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–1617

UNITED STATES, PETITIONER *v.*
RAYMOND J. PLACE

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

[May ——, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the issue whether the Fourth Amendment prohibits law enforcement authorities from temporarily detaining personal luggage for exposure to a trained narcotics detection dog on the basis of reasonable suspicion that the luggage contains narcotics. Given the enforcement problems associated with the detection of narcotics trafficking and the minimal intrusion that a properly limited detention would entail, we conclude that the Fourth Amendment does not prohibit such a detention. On the facts of this case, however, we hold that the police conduct exceeded the bounds of a permissible investigative detention of the luggage.

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Prompted by Place's parting remark that he had recog-

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 2, 1983

No. 81-1617 United States v. Place

Dear Harry,

I regret that the changes made in my third draft were unacceptable to you. I had thought they were not inconsistent with the second draft. I am willing to make a few more modifications if they will answer your concerns.

With respect to page 7, it is helpful, I think, to refer to the language of the Fourth Amendment in connection with describing the balancing standard for justifiying an exception to the probable cause requirement. I would be willing to delete the first sentence of the first full paragraph, and add the following phrase to the end of the next sentence, "... within the meaning of 'the Fourth Amendment's general proscription against unreasonable searches and seizures.'"

With regard to page 11, it was not my intention to shift to a subjective test. Perhaps your concern can be met by a return to the following language in the last sentence on page 11:

"Nevertheless, such a seizure can effectively restrain the person since he is subjected to the possible disruption of his travel plans in order to remain with his luggage or to arrange for its return. 9/"

The addition of the sentence on page 12 beginning with "Moreover" also does not represent a new thought that appeared for the first time in the third draft. That thought previously appeared in footnote 10 of the second draft to explain why adoption of a rigid time limitation for

permissible Terry stops would not be appropriate. In my view, whether the police diligently pursue their investigation can affect, in either direction, the determination whether the detention was impermissibly long--i. e., even a relatively short detention might impermissibly intrude upon an individual's Fourth Amendment interests if the police do not make an effort to confirm or dispel their suspicion during that time. In this case, as the opinion points out, the police did not make efforts reasonably at their disposal to conduct the investigation expeditiously and thereby minimize the intrusion on Place's Fourth Amendment interests. This factor exacerbates the critical fact that the luggage was held for the prolonged 90-minute period.

Although only a plurality opinion, the opinion in Florida v. Royer does support the notion that the diligence with which the police pursue their investigation is relevant to the Fourth Amendment inquiry. There, the opinion notes: "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." Slip op. at 9.

If my explanation and proposed adjustments will allay your concerns, I will gladly make the changes.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 5, 1983

No. 81-1617 United States v. Place

MEMORANDUM TO THE CONFERENCE

Byron has circulated a persuasive concurring opinion which would address and resolve the question of whether the dog sniff is a search within the meaning of the Fourth Amendment.

My draft had reserved the question because it had not been argued or addressed below. I am willing to address the question and to adopt Byron's reasoning if there are sufficient votes in the Conference.

Sincerely,

Sandra

pp. 3, 5, 6, 8, 10-11, 12

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: MAY 11 1983

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1617

UNITED STATES, PETITIONER *v.*
RAYMOND J. PLACE

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

[May ——, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the issue whether the Fourth Amendment prohibits law enforcement authorities from temporarily detaining personal luggage for exposure to a trained narcotics detection dog on the basis of reasonable suspicion that the luggage contains narcotics. Given the enforcement problems associated with the detection of narcotics trafficking and the minimal intrusion that a properly limited detention would entail, we conclude that the Fourth Amendment does not prohibit such a detention. On the facts of this case, however, we hold that the police conduct exceeded the bounds of a permissible investigative detention of the luggage.

I

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Prompted by Place's parting remark that he had recog-

pp. 10

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: JUN 16 1983

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1617

UNITED STATES, PETITIONER *v.*
RAYMOND J. PLACE

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

[June ——, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the issue whether the Fourth Amendment prohibits law enforcement authorities from temporarily detaining personal luggage for exposure to a trained narcotics detection dog on the basis of reasonable suspicion that the luggage contains narcotics. Given the enforcement problems associated with the detection of narcotics trafficking and the minimal intrusion that a properly limited detention would entail, we conclude that the Fourth Amendment does not prohibit such a detention. On the facts of this case, however, we hold that the police conduct exceeded the bounds of a permissible investigative detention of the luggage.

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Prompted by Place's parting remark that he had recog-

pp. 10

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

From: Justice O'Connor

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 81-1617

Recirculated: JUN 17 1983

UNITED STATES, PETITIONER *v.*
RAYMOND J. PLACE

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

[June 20, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the issue whether the Fourth Amendment prohibits law enforcement authorities from temporarily detaining personal luggage for exposure to a trained narcotics detection dog on the basis of reasonable suspicion that the luggage contains narcotics. Given the enforcement problems associated with the detection of narcotics trafficking and the minimal intrusion that a properly limited detention would entail, we conclude that the Fourth Amendment does not prohibit such a detention. On the facts of this case, however, we hold that the police conduct exceeded the bounds of a permissible investigative detention of the luggage.

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Prompted by Place's parting remark that he had recog-

HAB

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 17, 1983

MEMORANDUM TO THE CONFERENCE

Case Held for United States v. Place, No. 81-1617

No. 81-307, West v. United States

Petitioner was approached by detectives in the Miami Airport because of petitioner's suspicious behavior. The officers requested and received petitioner's ticket and identification. Petitioner refused to consent to a search of the bag he was carrying but was permitted to board his flight to Boston. In Boston, DEA agents who had been alerted by the Miami authorities approached petitioner as he was waiting for a connecting flight to Burlington. Petitioner produced his identification on request but refused to permit a search of his bag. The agents then told him that they would keep his bag long enough to have a trained narcotics dog brought over to sniff it. Petitioner was given the choice of staying in Boston with the bag or leaving on his Vermont flight without it. Petitioner chose to leave without the bag. The agents brought it back to their office, and the dog arrived approximately 1 hour later. The dog alerted upon sniffing the bag, which was found to contain cocaine after being searched pursuant to a warrant.

The District Court denied a motion to suppress, and petitioner was convicted. CA1 affirmed. That court rejected petitioner's contention that the encounter with police in Miami was a seizure that had to be supported by reasonable suspicion. It also concluded that reasonable suspicion was sufficient to justify the detention of the suitcase in Boston.

In this Court, petitioner repeats his challenge to the Miami encounter. On this issue, this case was held for Florida v. Royer, No. 80-2146. The hold memorandum written after decision in Royer concluded that CA1's decision on this issue was consistent with Royer. Petitioner further contends that the one-hour seizure of his bag from him as he was about to make a connecting flight can be supported only

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 17, 1983

MEMORANDUM TO THE CONFERENCE

Case Held for United States v. Place, No. 81-1617

No. 81-1772, Martell, et al. v. United States

A DEA agent in Anchorage contacted a colleague in San Diego to inform him that the petitioners, one of whom was a known drug trafficker, had made arrangements to fly to San Diego. DEA agents began surveillance of the San Diego airport and observed petitioner Minneci arrive that evening and check into a hotel. They also observed petitioner Martell arrive the following morning and check into the same hotel. Petitioner Martell then left the hotel with an unknown man and drove away in an erratic manner, possibly to avoid surveillance. Martell returned to the hotel a few minutes later. At the hotel, Minneci made several phone calls. The petitioners then returned to the airport and bought tickets for Anchorage. DEA agents approached petitioners as they were about to board their flight and asked permission to search their luggage. When petitioners refused, the agents detained petitioners and the luggage they had with them for approximately 20 minutes while the agents obtained a trained canine to sniff the luggage. After the dog reacted positively, the agents detained petitioners another 3-4 hours while a search warrant was obtained. The luggage contained cocaine.

The District Court denied a motion to suppress, and petitioners were convicted. CA9 affirmed. The court concluded that the agents had reasonable suspicion that petitioners were engaged in drug trafficking when they were stopped. Relying on United States v. Van Leeuwen, 397 U.S. 249 (1970) (approving 29-hour detention of mailed packages based on reasonable suspicion), CA9 further held that the 20-minute detention of petitioners' suitcases, based on reasonable suspicion, was permissible under the Fourth Amendment.

In this Court, petitioners contend that the temporary detention of luggage for exposure to a trained canine, based

HAB

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 17, 1983

MEMORANDUM TO THE CONFERENCE

Case Held for United States v. Place, No. 81-1617

No. 82-674, United States v. Beale

A detective at the Fort Lauderdale airport observed respondent and one Pulvano arrive at the terminal, check their luggage with a skycap, and separate once inside to buy tickets. The detective approached the two and asked to see their identification. Pulvano displayed nervous behavior. The detective then went to the baggage area, where he had a trained narcotics detection dog sniff respondent's and Pulvano's luggage. The dog alerted on respondent's suitcase. After respondent and Pulvano had arrived at the San Diego airport and were stopped by agents, a trained canine also sniffed respondent's shoulder bag and alerted. A search warrant for respondent's suitcase and shoulder bag was subsequently obtained, and cocaine and marijuana were discovered in the bags.

The District Court denied respondent's motion to suppress, and he was convicted of possession with intent to distribute and conspiracy to possess with intent to distribute cocaine. CA9 vacated and remanded. It held that the "sniff" of respondent's suitcase at the Fort Lauderdale airport was a Fourth Amendment intrusion, but that it was a limited intrusion that may be conducted on the basis of reasonable suspicion. It remanded to the District Court for a determination of whether the police had reasonable suspicion to subject respondent's luggage to a sniff test.

Because, contrary to CA9's decision below, our opinion in Place concludes that a canine sniff of luggage is not a search within the meaning of the Fourth Amendment, I will vote to GVR on Place.

Sincerely,

Sandra

HAB

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 17, 1983

MEMORANDUM TO THE CONFERENCE

Case Held for United States v. Place, No. 81-1617

No. 82-5491, Waltzer v. United States

A police officer at the Fort Lauderdale Airport observed petitioner acting suspiciously. The officer noted petitioner's name on his baggage and phoned agents at Kennedy Airport. At Kennedy Airport, a trained canine--with a perfect record for alerting for drugs--sniffed petitioner's luggage after it was unloaded and signalled that the suitcases contained narcotics. Agents approached petitioner after he had retrieved his luggage from the baggage claim area and questioned him for about 10 minutes. When petitioner refused to consent to a search of his luggage, the officers arrested him and gave him Miranda warnings. After obtaining a search warrant, the agents opened the luggage and discovered cocaine.

The District Court denied a motion to suppress, and petitioner was convicted. CA2 affirmed. It rejected petitioner's contention that the officer's initial stop of him at Kennedy Airport was based on little more than a flimsy suspicion generated by overreliance upon the drug courier profile. The court concluded that the trained canine's designation of the luggage established probable cause for the arrest and, a fortiori, more than enough for the stop and that the canine sniff was not a search for purposes of the Fourth Amendment. The court also rejected the contention that the initial stop constituted an arrest and thus triggered the need to advise him of his Miranda rights at that point.

In his petition, petitioner contends that the dog sniff is a search and that the agents should have given Miranda warnings at an earlier point. CA2's conclusion that a canine sniff of petitioner's luggage did not constitute a search is consistent with our opinion in Place. The Miranda issue does not merit review.

I recommend the petition be denied.

Sincerely,

Sandra

HA.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 17, 1983

MEMORANDUM TO THE CONFERENCE

Case Held for United States v. Place, No. 81-1617

No. 82-1519, Goose Creek Indep. School Dist. v. Horton, et al.

In an attempt to combat growing alcohol and drug abuse in the schools, the petitioning school district contracted with a security services firm that provides dogs trained to alert their handlers to the presence of substances such as alcohol and drugs. Petitioner informed the students of the program and conducted assemblies to acquaint the younger children with the dogs. On a random and unannounced basis, the dogs are taken to a school, where they sniff students' lockers and cars. They also go into classrooms on leashes and sniff the students themselves, touching each child with its nose as the child is sniffed. Respondents are students in the school district who had been subjected to the sniffing, two of whom had been searched following alerts by the dogs but found to be carrying no illicit substances. They brought suit alleging a violation of the Fourth Amendment and the Due Process Clause.

The DC denied a motion for class certification and, on cross-motions for summary judgment, held that the sniffing, while a search, was not unreasonable and that the alerts provided reasonable cause for the further searches of clothing, pockets, lockers, and cars. CA5 affirmed in part, reversed in part, and remanded. It held that sniffing of the students' lockers and cars was not a search. On the issue of relevance to the present petition, however, CA5 concluded that the dogs' sniffing of the students themselves was a search within the meaning of the Fourth Amendment. It noted that the decision of CA7 in Doe v. Renfrow, 631 F. 2d 91, cert. denied, 451 U.S. 1022 (1981) (No. 80-1306), was to the contrary. It also observed, however, that in Renfrow there was no evidence the dogs had actually touched the children and that the Renfrow decision had been universally criticized by commentators. CA5 further held that, in a school setting, the sniff search of students must be supported by individualized reasonable suspicion.