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Granite State represents a significant and positive attempt on the part of the Court to bring order and light to the "swamp" of section 8(b)(1)(A), the decision raises further important questions with respect to the unions' internal regulatory powers as authorized by that section. Not until these questions have been resolved by subsequent clarifying decisions will "the genie . . . return to the bottle and section 8(b)(1) . . . again be confined to cases of union pressure on non-union employees and others rather than on its own rank and file."⁵⁰

John S. Strickland

CRIMINAL LAW—WARRANTLESS SEARCH AND SEIZURE—A SEARCH WARRANT IS NOT REQUIRED WHERE THERE IS PROBABLE CAUSE TO SEARCH A CHATTEL CONSIGNED TO A CARRIER. *People v. McKinnon*, 500 P.2d 1097, 103 Cal. Rptr. 897 (1972), *cert. denied*, 41 U.S.L.W. 3554 (U.S. Apr. 17, 1972) (No. 72-857).

Lloyd McKinnon and John Turk brought five cardboard cartons to the United Airlines freight counter at the San Diego airport. McKinnon tendered the cartons for shipment to Seattle, named himself as consignee, and described the contents as personal effects. Gos, the freight agent, became suspicious and received permission from a supervisor to open one of the cartons for inspection.¹ From the carton, he withdrew a package which he unwrapped, and believing the contents to be marijuana, called the police. Officer McLaughlin, a state narcotics officer, arrived shortly thereafter. He entered the back room behind the counter and observed the opened carton lying on the floor. The brick-shaped packages were wrapped, however, and the marijuana was not in plain view. The officer recognized the distinctive odor of marijuana as well as the shape, size, and wrapping of the packages. He then proceeded to open them and verify his suspicions. After obtaining a description of McKinnon and Turk, he was able to locate and arrest them

foregoing problems suggest that Section 8(b)(1) may plunge the Board into a dismal swamp of uncertainty. Its vagueness alone, not to mention the broad interpretations put upon it during the debates in Congress, encourages the filing of great numbers of charges A long period of uncertainty and heavy volume of litigation will be necessary before the questions of interpretation can be resolved."

50. Silard, *Labor Board Regulation of Union Discipline after Allis-Chalmers, Marine Workers and Scofield*, 38 GEO. WASH. L. REV. 187, 198 (1969).

1. "All shipments are subject to inspection by the carrier, but the carrier shall not be obligated to perform such inspection." C.A.B. No. 96, Rule 24 (Nov. 8, 1967). This rule is incorporated by reference into the "rapid airbill" signed by the consignor.

at the airport. At the pretrial hearing,² defendants moved to suppress the evidence. On the basis of *People v. McGrew*,³ the court granted the motion. Held—*Reversed*. A search warrant is not required where there is probable cause to search a chattel consigned to a common carrier, even where exigent circumstances may not be present.

With the achievement of independence and the adoption of the Constitution, the framers included in the Bill of Rights, the fourth amendment, which was designed to safeguard the citizen from the unreasonable intrusions of the state.⁴ To this end, the search warrant was adopted to insure "that the deliberate, impartial judgment of a judicial officer . . . be interposed . . . between the citizen and the police"⁵ Thus a search conducted outside of the judicial process, "without prior approval of a judge or magistrate is per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions."⁶ The automobile is the subject of one of these specialized exceptions.⁷

Because of the mobility of vehicles, the United States Supreme Court initially recognized that it was not necessary to obtain a search warrant where there was probable cause to believe that an automobile on the open highway contained contraband.⁸ A warrantless search is justified because of the need for immediate action, lest the automobile be "quickly moved out of the locality or jurisdiction in which the warrant must be sought."⁹ The scope of this "automobile exception" has since been modified and expanded in several directions.

A Supreme Court decision in 1931 allowed the warrantless search of a parked vehicle where the owner was at large and the officer had no means of knowing when he might return.¹⁰ Another warrantless search was later permitted by the high court where the automobile was garaged.¹¹ In this case, the police had followed the owner to his home; their right to search his

2. Search and seizure issues in California are litigated prior to trial. CAL. PENAL CODE § 1538.5(i) (Deering Supp. 1972).

3. 82 Cal. Rptr. 473 (1969), *cert. denied*, 398 U.S. 909 (1970).

4. *See Weeks v. United States*, 232 U.S. 383, 390, 34 S. Ct. 341, 343, 58 L. Ed. 652, 654 (1914).

5. *Wong Sun v. United States*, 371 U.S. 471, 481-82, 83 S. Ct. 407, 414, 9 L. Ed. 2d 441, 451 (1963); *accord*, *Johnson v. United States*, 333 U.S. 10, 13-14, 68 S. Ct. 367, 369, 92 L. Ed. 436, 440 (1947); *United States v. Lefkowitz*, 285 U.S. 452, 464, 52 S. Ct. 420, 423, 76 L. Ed. 877, 882 (1932).

6. *Katz v. United States*, 389 U.S. 347, 355-57, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576, 585 (1967).

7. *See United States v. Ventresca*, 380 U.S. 102, 107 n.2, 85 S. Ct. 741, 745 n.2, 13 L. Ed. 2d 684, 688 n.2 (1965).

8. *Carroll v. United States*, 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543 (1925).

9. *Id.* at 153, 45 S. Ct. at 285, 69 L. Ed. at 551.

10. *Husty v. United States*, 282 U.S. 694, 51 S. Ct. 240, 75 L. Ed. 629 (1931).

11. *Scher v. United States*, 305 U.S. 251, 59 S. Ct. 174, 83 L. Ed. 151 (1938).

car on the open highway was not defeated by the fact that he had garaged his car and it was no longer truly mobile.

A further extension has been made where the police did not search the car at the time and place it was stopped, but rather impounded the car and made a subsequent search at the station house. In *Chambers v. Maroney*,¹² this distinction was held to be of no constitutional significance. The search was justifiable because “[t]he probable-cause factor still obtained at the station house and so did the mobility of the car. . . . [T]here is little to choose in terms of practical consequences between an immediate search without a warrant and the car’s immobilization until a warrant is obtained.”¹³ Other cases involving the station house search seem to regard the legality of a later search in light of the initial right to make an on-the-scene search and seizure.¹⁴

The most contested issue in drawing the outer limits of the “automobile exception” involves the requirements that must be necessarily found before a warrantless search will be upheld. While the courts agree that there must be probable cause to search, they cannot agree whether there need be certain “exigent circumstances” that demand immediate action and make it impractical to obtain a warrant. In 1971 the Supreme Court was presented with a fact situation where the existence of such “exigent circumstances” was in dispute.

In *Coolidge v. New Hampshire*,¹⁵ petitioner’s automobile was parked in

12. 399 U.S. 42, 90 S. Ct. 1975, 26 L. Ed. 2d 419 (1970). In *Chambers*, officers received a description of an automobile and four men believed to be responsible for a service station robbery and stopped the vehicle fitting the description some 2 miles from the scene of the robbery. The four were arrested, and the car was driven to the station house where it was searched hours later. Evidence found therein was used against petitioner at his trial.

13. *Id.* at 52, 90 S. Ct. at 1981, 26 L. Ed. 2d at 429. “For constitutional purposes we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.” *Id.* at 52, 90 S. Ct. at 1981, 26 L. Ed. 2d at 428. While it is technically true that a search without a warrant is no greater an intrusion than a seizure pending a warrant, this conclusion bypasses the real issue: the purpose of the warrant is to have a judicial determination of whether a search should be made at all.

14. See *Dyke v. Taylor Implement Co.*, 391 U.S. 216, 88 S. Ct. 1472, 20 L. Ed. 2d 538 (1968) (seizure invalid where there was no probable cause for the initial intrusion); *Cooper v. California*, 386 U.S. 58, 87 S. Ct. 788, 17 L. Ed. 2d 730 (1967) (seizure justified under a California forfeiture statute and the later search was related to the reason for the arrest); *Preston v. United States*, 376 U.S. 364, 84 S. Ct. 881, 11 L. Ed. 2d 777 (1964). *Preston* involved a car search unrelated to the driver’s arrest for vagrancy. It is suggested that the circumstances present would not have justified an immediate search either. See *Cooper v. California*, 386 U.S. 58, 61, 87 S. Ct. 788, 791, 17 L. Ed. 2d 730, 733 (1967).

15. 403 U.S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971).

the driveway by his house. He had been under surveillance for some time, and after an arrest in his home, his car was impounded and towed to the station house, where it was searched 2 days later, and twice thereafter. The evidence obtained from the warrantless searches was used to convict petitioner. The issues raised brought sharp disagreement on the Court as to the proper interpretation of that Court's recent decisions in this area. Writing a four-one-four opinion for the Court,¹⁶ Justice Stewart found that the search had been planned, that the automobile was not in danger of being removed, and that consequently there were no exigent circumstances that would have justified either an immediate search or the later search at the station house. Since there was no demand for immediate action, the police were not justified in proceeding without a warrant. The Court held that to apply the doctrine of *Chambers v. Maroney* under these facts would extend the automobile exception far beyond its original rationale.¹⁷ Against this background of conflict, the California Supreme Court approached the searches in question.

*People v. McGrew*¹⁸ and *People v. McKinnon*¹⁹ are factually similar. In *McGrew*, however, the footlockers were consigned on a "space available" basis. Finding no exigent circumstances present, the court concluded that "probable cause to believe contraband will be found concealed in certain property does not justify a warrantless search . . . 'absent an emergency.'"²⁰ Because the officers had ample time to obtain a warrant but failed to do so, the search was ipso facto unreasonable. On the strength of *Chambers*, however, the *McKinnon* court held that this logic will no longer control.²¹

The court first examined the rationale of that case to determine if it could be applied to a chattel consigned to a carrier. *Carroll v. United States*,²² the seminal case in *Chambers*, had first pronounced that there was "a necessary difference between the search of a store, dwelling house, or other structure . . . and a search of . . . [an] automobile, for contraband goods"²³ As chattels consigned to a common carrier are no less movable

16. Justices Douglas, Brennan, and Marshall, joined with Justice Stewart in the plurality opinion. Justice Harlan concurred in Parts I, III, and II-D of the opinion, and in the judgment. Parts II-A,B,C,D concerned the automobile search in question.

17. *Coolidge v. New Hampshire*, 403 U.S. 443, 458, 91 S. Ct. 2022, 2034, 29 L. Ed. 2d 564, 578 (1971).

18. 82 Cal. Rptr. 473 (1969).

19. 103 Cal. Rptr. 897 (1972).

20. *People v. McKinnon*, 103 Cal. Rptr. 897, 902 (1972), *construing* *People v. McGrew*, 82 Cal. Rptr. 473 (1969).

21. *People v. McKinnon*, 103 Cal. Rptr. 897, 902 (1972).

22. 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543 (1925).

23. *Id.* at 153, 45 S. Ct. at 285, 69 L. Ed. at 551; *see* *State v. Fassler*, 503 P.2d 807, 811 (Ariz. 1972). "The courts have tended to treat differently warrantless searches or seizures of items in transit or capable of being spirited away before a warrant can be obtained."

than an automobile, the court reasoned that the rule permitting a warrantless search of a vehicle upon probable cause is equally applicable to the search of a chattel.²⁴

The analogy had been previously alluded to in scattered opinions.²⁵ The concept has been slow in developing, however, because most chattel searches take place subsequent to a search of persons or premises and have been governed by the applicable rules in that context. The recent rapid growth of air travel and air freight has spawned an orphan body of case law that as of yet has no relevant and authoritative decision to follow. As a result, the principles of the automobile search are often applied.²⁶

In the instant case, the court went yet a step further to complete its analogy and justify the search. It held that under the logic of the Supreme Court, the mobile characteristics of the chattel were retained even where the cartons were "entrusted to the 'custody' of the carrier."²⁷ The mobile nature of the chattel justifies a warrantless search, according to the court, even where this "mobility" presents no exigent circumstances that demand an immediate search.

The practicality of obtaining a warrant has been removed from issue in *McKinnon*. In *Carroll*, however, this issue seemed to influence the Court's decision. On its face, *Carroll* permitted a search because of the mobility of the vehicle.²⁸ The mobility was relevant, however, because this made it impractical to both obtain a warrant and prevent the contraband from leaving the "locality or jurisdiction."²⁹ Confronted with this choice, reason dictated a warrantless search. Thus courts have held similar searches valid where there were both probable cause and an exigency.³⁰ *Chambers*, in fol-

24. *People v. McKinnon*, 103 Cal. Rptr. 897, 904 (1972).

25. *E.g.*, *Parrish v. Peyton*, 408 F.2d 60, 63-64 (4th Cir.), *cert. denied*, 395 U.S. 984 (1969); *People v. Superior Court*, 90 Cal. Rptr. 123, 127 (Dist. Ct. App. 1970); *State v. Mejia*, 242 So. 2d 525, 531 (La. 1970); *Chaires v. State*, 480 S.W.2d 196, 199 (Tex. Crim. App. 1972). *But cf.* *People v. Hawkins*, 78 Cal. Rptr. 286, 290 (Dist. Ct. App. 1969). "[A]lthough the jacket was not a 'fixed piece of property' we do not think that we may exempt a search of it from this requirement on this basis, because unlike an automobile, an article of clothing, such as this jacket, is not a self-propelled object of great intrinsic mobility." (Citations omitted.)

26. *See, e.g.*, *People v. Gordon*, 89 Cal. Rptr. 214 (Dist. Ct. App. 1970); *Chaires v. State*, 480 S.W.2d 196 (Tex. Crim. App. 1972); *State v. Wolfe*, 486 P.2d 1143 (Wash. Ct. App. 1971). *Contra*, *United States v. Valen*, 348 F. Supp. 1163, 1168 (M.D. Pa. 1972).

27. *People v. McKinnon*, 103 Cal. Rptr. 897, 904 (1972). "[I]f the high court can say, as it does, that under those circumstances 'the mobility of the car' still obtained at the stationhouse, a fortiori a chattel such as here involved remains 'mobile' in the constitutional sense despite its limited and voluntary bailment to a common carrier." *Id.* at 904 (court's emphasis) (citations omitted).

28. *Carroll v. United States*, 267 U.S. 132, 153, 45 S. Ct. 280, 285, 69 L. Ed. 543, 551 (1925).

29. *Id.* at 153, 45 S. Ct. at 285, 69 L. Ed. at 551.

30. *E.g.*, *United States v. Cohn*, 12 Crim. L. Rep. 2345 (9th Cir., Jan. 3, 1973);

lowing *Carroll*, held that “[o]nly in exigent circumstances will the judgment of the police as to probable cause serve as a sufficient authorization for a search.”³¹ However, in that case, the Court upheld a search where the exigent circumstances had long vanished at the time and place of the station house search. The Court in *Coolidge* did not take this to mean that probable cause alone would always justify a search, but that where the police could make an initial search under the *Carroll* rule, they could also seize the car and make a later search.³²

In the instant case, the California Supreme Court was not willing to accept this interpretation.³³ Indeed, the court refused to follow *Coolidge* at all on the justification that the relevant parts of its opinion were decided by an equally divided court and were thus without value as precedent.³⁴

Neither the weight of authority nor a detailed reading of *Chambers* would support such a rule. There is no indication that the Court reduced the requirements of a search to mere probable cause; *Chambers* can exist, if tenuously, with *Coolidge*.³⁵ Despite the merits of any argument as to the binding effect of Part II-B of Justice Stewart’s opinion in *Coolidge*,³⁶ many courts

Harless v. Turner, 456 F.2d 1337, 1338 (10th Cir. 1972); *Parrish v. Peyton*, 408 F.2d 60, 64 (4th Cir.), *cert. denied*, 395 U.S. 948 (1969); *Hernandez v. United States*, 353 F.2d 624 (9th Cir. 1965) (reaching the same result on other authority); *People v. Temple*, 80 Cal. Rptr. 885, 890 (Dist. Ct. App. 1969); *State v. Birdwell*, 492 P.2d 249, 253 (Wash. Ct. App. 1972).

31. *Chambers v. Maroney*, 399 U.S. 42, 51, 90 S. Ct. 1975, 1981, 26 L. Ed. 2d 419, 428 (1970); *accord*, *Lederer v. Tehan*, 441 F.2d 295, 297 (6th Cir. 1971); *United States v. Capps*, 435 F.2d 637, 642 (9th Cir. 1970); *United States v. Curwood*, 338 F. Supp. 1104, 1114 (D. Mass. 1972).

32. *Coolidge v. New Hampshire*, 403 U.S. 443, 463 n.20, 91 S. Ct. 2022, 2036 n.20, 29 L. Ed. 2d 564, 581 n.20 (1971). *But see* 6 SUFF. L. REV. 695, 702 (1972).

33. “Thus we are bound to apply the *Carroll-Chambers* rule according to our present understanding of its scope.” *People v. McKinnon*, 103 Cal. Rptr. 897, 905 (1972) (emphasis added).

34. *Id.* at 905. “Where members of the court by majority vote reach a decision but cannot, even by a majority, agree on the reasoning therefor, no point of law is established by the decision.” 20 AM. JUR. COURTS § 195 (1965); *see* *United States v. Pink*, 315 U.S. 203, 216, 62 S. Ct. 552, 558, 86 L. Ed. 796, 810 (1942); *Meredith v. Board of Pub. Instruction*, 112 F.2d 914, 916 (5th Cir. 1940).

35. The Court did not attempt to dispose of the exigent circumstances issue. “Neither *Carroll* nor other cases in this court require or suggest that in every conceivable circumstance the search of an auto even with probable cause may be made without . . . a warrant . . .” *Chambers v. Maroney*, 399 U.S. 42, 50, 90 S. Ct. 1975, 1980-81, 26 L. Ed. 2d 419, 428 (1970). Indeed, the Court found an exigency. Justice White wrote: “[T]he blue station wagon could have been searched on the spot when it was stopped since there was probable cause to search and it was a fleeting target for a search.” *Id.* at 52, 90 S. Ct. at 1981, 26 L. Ed. 2d at 429 (emphasis added). The threshold to the subsequent “reasonable” search at the station house lay in the presence of these factors at the time of initial intrusion.

36. *See* *People v. McKinnon*, 103 Cal. Rptr. 897, 910 (1972) (Peters, J., dissenting); *In re J.R.M.*, 487 S.W.2d 502, 511 (Mo. 1972). One likely indicator of the vitality of *Coolidge* is *Harless v. Turner*, 456 F.2d 1337 (10th Cir. 1972). The Supreme Court had vacated and remanded the earlier opinion in *Harless* (404 U.S. 932 (1971)) for reconsideration in light of *Coolidge*. *Harless* was also an automobile

have chosen to follow that decision's rationale as to the automobile exception.³⁷ This seems to be in accord with *Hernandez v. United States*,³⁸ a leading decision concerning the search of a chattel consigned to a carrier. In that case, the court reviewed the search of a passenger's bags that had been checked in to the airline prior to flight. The search involved was not considered valid unless there were "exceptional circumstances" which threatened the contraband with "imminent removal or destruction."³⁹ Similarly, the cases that purport to follow *Chambers* attempt to justify an immediate search made without a warrant on the presence of exigent circumstances.⁴⁰

The issue normally in contention is the degree of emergency necessary to justify immediate action. A circumstance often considered is the amount of time available to obtain a warrant. Exigent circumstances have been found where shipment was to proceed in 30 minutes,⁴¹ 2 hours and 20 minutes,⁴² and where the chattel was not on a "space available" basis.⁴³ This factor is sometimes considered in relation to the availability of a magistrate.⁴⁴ The time factor was not a problem in *McGrew*. In the instant case, the officer had 1 hour to make his investigation; arguably this was sufficient. A common carrier has a duty "not to knowingly allow its property to be used for criminal purposes . . . [and] it is not bound to accept freight which it is illegal to possess or transport . . ." ⁴⁵ The statutory prohibition raises an issue as to the airline's contractual obligation with the shipper to place the contraband in the course of transportation.

search where the question of exigent circumstances was in issue. Thus it appears that Part II of *Coolidge* does have value as precedent.

37. *E.g.*, *United States v. Ragsdale*, 470 F.2d 24, 28 (5th Cir. 1972); *United States v. Miles*, 468 F.2d 482 (3d Cir. 1972); *United States v. Ellis*, 461 F.2d 962 (2d Cir. 1972); *Cook v. Johnson*, 459 F.2d 473 (6th Cir. 1972); *Harless v. Turner*, 456 F.2d 1337 (10th Cir. 1972); *United States v. Castaldi*, 453 F.2d 506 (7th Cir. 1971), *cert. denied*, 405 U.S. 992 (1972); *United States v. Brewer*, 343 F. Supp. 468 (D. Hawaii 1972); *United States v. Menke*, 339 F. Supp. 1023 (W.D. Pa. 1972).

38. 353 F.2d 624 (9th Cir. 1965).

39. *Id.* at 627, *citing* *United States v. Ventresca*, 380 U.S. 102, 106-07, 85 S. Ct. 741, 745, 13 L. Ed. 2d 684, 688 (1965).

40. *E.g.*, *United States v. Ellis*, 461 F.2d 962, 966 (2d Cir. 1972); *United States v. Castaldi*, 453 F.2d 506, 510 (7th Cir. 1971), *cert. denied*, 405 U.S. 992 (1972); *People v. Bukoski*, 200 N.W.2d 373, 377 (Mich. Ct. App. 1972); *Chaires v. State*, 480 S.W.2d 196, 199 (Tex. Crim. App. 1972); *State v. Shields*, 503 P.2d 848, 849 (Utah 1972).

41. *Chaires v. State*, 480 S.W.2d 196, 199 (Tex. Crim. App. 1972).

42. *Hernandez v. United States*, 353 F.2d 624, 626 (9th Cir. 1965).

43. *People v. Gordon*, 89 Cal. Rptr. 214, 218 (Dist. Ct. App. 1970); *see* *State v. Wolfe*, 486 P.2d 1143 (Wash. Ct. App. 1971), where the suitcase was to be shipped by R.E.A. in 3 to 5 hours, and the investigation took 3 hours, the court held it impracticable to obtain a warrant. *See also* *Caldwell v. Cannady*, 340 F. Supp. 835 (N.D. Tex. 1972) (auto search where 3 hours held reasonable time to obtain a warrant).

44. *United States v. Davis*, 461 F.2d 1026, 1031 (3d Cir. 1972); *Caldwell v. Cannady*, 340 F. Supp. 835 (N.D. Tex. 1972) (automobile searches).

45. *People v. McKinnon*, 103 Cal. Rptr. 897, 907 (1972); *see* CAL. HEALTH & SAFETY CODE, §§ 11530, 11531, 11014 (*Deering Supp.* 1972).

The courts will also consider the likelihood that the contraband might be removed. Where the agent is operating alone, it has been held relevant that his absence to procure a warrant might allow removal of the contraband.⁴⁶ This prospect did not create an emergency in *McGrew*: the contraband was destined for San Francisco, well within the warrant jurisdiction of the state.⁴⁷ In that case, and in *McKinnon*, there was an extra officer available to secure custody while a warrant was obtained.⁴⁸

The Court in *Chambers* conceded that more often than not, the utility in searching a particular vehicle will not be foreseen to the extent that a warrant is practicably obtainable.⁴⁹ This factor was also persuasive in *Coolidge*, wherein the advance police knowledge of the existence and location of the evidence and their intention to seize it were considered material.⁵⁰ Where, as here, McLaughlin was informed by a clerk experienced in uncovering caches of marijuana, that a new discovery had been made, there was probable cause for the issuance of a warrant which the agent could have brought to the airport.⁵¹

McGrew, although overruled by *McKinnon*, was entirely congruent in its logic with *Coolidge*. *McKinnon* was a much closer case on its facts. There were, indeed, circumstances present that could have justified the decision under the standards set by *Coolidge*. Yet this was not deemed controlling; the court chose instead to deny those very standards, and rest the holding on its interpretation of *Chambers*. The court obviously did not consider Part II-D of the *Coolidge* opinion, which was concurred in by Justice Harlan

46. *Romero v. United States*, 318 F.2d 530, 532 (5th Cir. 1963); see *Clayton v. United States*, 413 F.2d 297, 298 (9th Cir. 1969), cert. denied, 399 U.S. 911 (1970); *Parrish v. Peyton*, 408 F.2d 60, 64 (4th Cir.), cert. denied, 395 U.S. 984 (1969). See also *State v. Fassler*, 503 P.2d 807, 812 (Ariz. 1972), where carrier received calls from shipper who wanted the chattels returned.

47. See *United States v. Valen*, 348 F. Supp. 1163, 1169 (M.D. Pa. 1972), for the significant difference in state and federal warrant jurisdiction.

48. It could be argued that the owner might have returned and secured his cartons by force or stealth. Under the circumstances, however, this sort of mobility is without "constitutional significance." See *Coolidge v. New Hampshire*, 403 U.S. 443, 462 n.18, 91 S. Ct. 2022, 2034 n.18, 29 L. Ed. 2d 564, 580 n.18 (1971).

49. *Chambers v. Maroney*, 399 U.S. 42, 50-51, 90 S. Ct. 1975, 1981, 26 L. Ed. 2d 419, 428 (1970).

50. *Coolidge v. New Hampshire*, 403 U.S. 443, 482, 91 S. Ct. 2022, 2046, 29 L. Ed. 2d 564, 592 (1971); accord, *Caldwell v. Cannady*, 340 F. Supp. 835 (N.D. Tex. 1972). But cf. *State v. Fassler*, 503 P.2d 807 (Ariz. 1972), where the searching officer knew of the impending arrival of the chattel; this was not held material to exigency.

51. See *State v. Birdwell*, 492 P.2d 249 (Wash. Ct. App. 1972). It is interesting to note that officer McLaughlin, the investigating narcotics officer in *McKinnon*, obviously aware of the *McGrew* case, was confronted with a similar tip from a freight agent on May 8, 1970. McLaughlin took the time to get a warrant prior to this airport search, and the result was a conviction in *Birdwell*. Query: Had McLaughlin known of the outcome of *McKinnon* in the Supreme Court, would he have felt the necessity to obtain a warrant in the *Birdwell* case?

to form a five-to-four majority, as relevant to the limitation of any purported expansion of *Chambers*. In concurring in this portion of the opinion, which contained a strong affirmation of the "exigent circumstances doctrine," Justice Harlan noted that "a contrary result in this case would . . . go far toward relegating the warrant requirement of the Fourth Amendment to a position of little consequence"⁵²

It is suggested that the *McKinnon* court proved too much. If the analogy relied upon therein is correct, then the decision not only abrogates the search warrant for chattels consigned to a carrier, but also negates the warrant requirement for all movables.⁵³ There is no language in the fourth amendment to indicate that "effects" are to be so treated. This distinction accords protection on the basis of property; it does not measure the citizen's right to the privacies of life—his "right to be left alone."⁵⁴

To be sure, the necessity of finding exigent circumstances means that the particular facts of each situation must be examined. Such a *post hoc* evaluation may be detrimental to both judicial economy and efficient law enforcement. The lack of a clear guideline for police searches, however, has the beneficial effect of forcing officers to obtain a warrant where practical, inasmuch as they cannot be expected to undertake the detailed appraisal that the *Coolidge* Court requires.⁵⁵ It has been often said that to promote neutral and objective determination of the necessity to invade one's privacy, law enforcement officers should be encouraged to seek warrants.⁵⁶ The requirement of "exigent circumstances" serves this end.

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52. *Coolidge v. New Hampshire*, 403 U.S. 443, 492, 91 S. Ct. 2022, 2051, 29 L. Ed. 2d 564, 598 (1971) (Harlan, J.).

53. See *People v. Laursen*, 104 Cal. Rptr. 425, 431 (1972).

54. *United States v. Johnson*, 431 F.2d 441, 444 (5th Cir. 1970) (dissenting opinion); see *Katz v. United States*, 389 U.S. 347, 351, 88 S. Ct. 507, 511, 19 L. Ed. 2d 576, 582 (1967): "For the Fourth Amendment protects people, not places."

55. In this regard, the preference for a warrant is also fostered by the assurance to officers that when a warrant is obtained in a close case, its validity will be upheld. *United States v. Ventresca*, 380 U.S. 102, 109, 85 S. Ct. 741, 746, 13 L. Ed. 2d 684, 689 (1965).

56. *E.g.*, *United States v. Lewis*, 392 F.2d 377, 379 (2d Cir.), *cert. denied*, 393 U.S. 891 (1968).