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CHAMBERS V. MARONEY: NEW DIMENSIONS IN THE LAW OF SEARCH AND SEIZURE

In *Chambers v. Maroney*,[1] the Supreme Court held that a warrantless search of an automobile, based upon probable cause, and undertaken at a place not the scene of the legal arrest while the occupants were secure in a jail cell, was a valid search under the fourth amendment.[2] Six years earlier, in *Preston v. United States*,[3] the Court had ruled that the search of an automobile, not based upon probable cause and conducted at a point remote in time and place from the scene of a lawful arrest, was not incident to the arrest and was therefore invalid without a search warrant. The *Chambers* decision diminishes the effect of several leading cases relating to the reasonableness of searches under the fourth amendment[4] and raises important questions regarding the permissible scope of police activity in relation to the conduct of such searches.

Traditionally, there have been two methods by which police could execute a valid search without a warrant: incident to a valid arrest or upon probable cause to search under "exigent circumstances." These two situations are the only exceptions to the strict requirement that a search warrant be issued under the scrutiny of a magistrate in order to meet the fourth amendment reasonableness test.[5] The rationale for the

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1. 399 U.S. 42 (1970) [hereinafter cited as *Chambers*].

2. U.S. CONST. amend. IV states:

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

For the Supreme Court's interpretation of the fourth amendment as to various aspects of the amendment's freedoms *see* Griswold v. State of Connecticut, 381 U.S. 479 (1965); Weeks v. United States, 232 U.S. 383 (1914); Silverman v. United States, 365 U.S. 505 (1961); Lopez v. United States, 373 U.S. 427 (1963); Berger v. State of New York, 388 U.S. 41 (1967); Rios v. United States, 364 U.S. 253 (1960); Ex Parte Jackson, 96 U.S. 727 (1877); Time Inc. v. Hill, 385 U.S. 374 (1967); Warden v. Hayden, 387 U.S. 294 (1967); Agnello v. United States, 269 U.S. 20 (1925); Wong Sun v. United States, 371 U.S. 471 (1963); United States v. Jeffers, 342 U.S. 48 (1951); Beck v. Ohio, 379 U. S. 89 (1964); Zap v. United States, 328 U.S. 624 (1946). *See generally* LaFave, *Search and Seizure: The Course of True Law . . . Has Not . . . Run Smooth*, 1966 U. ILL. L.F. 255; Kaplan, *Search and Seizure: A No-Man's Land in The Criminal Law*, 49 CALIF. L. REV. 474 (1961); Note, *Scope Limitations for Searches Incident to Arrest*, 78 YALE L.J. 433 (1969); Comment, *Search and Seizure in the Supreme Court: Shadows on the Fourth Amendment*, 28 U. CHI. L. REV. 664 (1961).

3. 376 U.S. 364 (1964) [hereinafter cited as *Preston*].

4. *See, e.g.*, Katz v. United States, 389 U.S. 347 (1967); Chimel v. California, 395 U.S. 752 (1969); Preston v. United States, 376 U.S. 364 (1964).

5. In Katz v. United States, 389 U.S. 347 (1967) Justice Stewart, speaking for the majority stated:

search warrant exception to searches incident to arrest is generally stated to be for protecting the arresting officer, depriving the arrestee of any potential means of escape, and avoiding destruction of evidence by the arrested person.[6] Thus, the police may search a suspect they have arrested at the scene of the arrest. The great majority of police searches are conducted in this manner.[7] The exigent circumstances exception to the warrant requirement arises when the police have the requisite probable cause to obtain a warrant, but certain circumstances make that course of action impractical.[8]

In *Chambers,* the defendant, accompanied by three men, was riding in an automobile when stopped by police shortly after a service station hold-up. Two teenagers had observed the hold-up and supplied information to the police.[9] All occupants were arrested, and the automobile was towed to the police station and parked.[10] While the suspects were incarcerated, the police conducted a search of the automobile which uncovered incriminating evidence.[11] The search at the station was con-

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> Over and again this court has emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes, . . . and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.

6. *See* United States v. Rabinowitz, 339 U.S. 56 (1950). Justice Minton, speaking for the majority, upheld the search of the petitioner's desk and file cabinets incident to the arrest although there was ample time to obtain a search warrant. The majority stated:

> It is not disputed that there may be reasonable searches, incident to an arrest, without a search warrant. Upon acceptance of this established rule that some authority to search follows from lawfully taking the person into custody, it becomes apparent that such searches turn upon the reasonableness under all the circumstances and not upon the practicability of procuring a search warrant, for the warrant is not required . . . .

7. During 1966, in the city of San Francisco 29,084 serious crimes were reported to the police. In an effort to solve these crimes, the police engaged in thousands of searches. The great majority of these searches were conducted incident to the arrest as evidenced by the fact that only 17 search warrants were obtained by the police during the entire year. For similar statistics *see* Graham, *The Court May Propose but the Police Dispose,* N.Y. Times, Dec. 1, 1968, § 4, at 9, Col. 1 *and also L. Tiffany, D. McIntyre, and D. Rotenberg,* DETECTION OF CRIME, 100-05 (1967).

8. *See* note 20 *infra.*

9. The hold-up occurred May 20, 1963, in North Braddock, Pennsylvania. The teenagers told the police that the robbers were riding in a light blue compact station wagon and that one of the robbers was wearing a green sweater. Frank Chambers' light blue compact station wagon was the auto stopped by the police. At the time of his arrest, Chambers was wearing a green sweater.

10. Pennsylvania, unlike a number of other states, does not have a statute that gives the police the right to impound the vehicle of an arrested individual. Therefore, in *Chambers,* the car was not officially impounded, but it was parked in front of the police station.

11. The evidence found was a pair of .38 caliber revolvers, a hand glove filled with small change, and business cards bearing the name of a gasoline station attendant who had been robbed one week earlier.

duced without a search warrant. The evidence thus obtained was introduced at Chambers' trial which resulted in his conviction for robbery on two separate counts.[12] A habeas corpus petition, initiated by Chambers, was denied by a United States District Court[13] and the denial was affirmed by the court of appeals.[14] Petition for certiorari was granted.[15] Chambers contended that the damaging evidence should not have been admitted at trial. He rested his claim on the fourth amendment prohibition against unreasonable searches. The determinative issue thus became whether the exclusionary rule[16] prohibited introduction at trial of the incriminating evidence found during the warrantless search of the auto.

The first major case to come before the Supreme Court involving a

12. The second count arose from the robbery of a service station in McKeesport, Pennsylvania one week earlier. After a mistrial, the Court of Oyer and Terminer of Allegheny County convicted Chambers of robbery on both counts.

13. 281 F. Supp. 96, (W.D. Pa. 1968). The court denied the petition because the error complained of, late appointment of counsel, was harmless; the district court based its decision on Young v. Boles, 270 F. Supp. 847 (N.D. W. Va. 1967).

Since 1961, federal courts have entertained petitions for habeas corpus filed by state prisoners alleging that evidence unconstitutionally seized under the fourth amendment was admitted at their trials. In Mapp v. Ohio, 367 U.S. 643 (1961), Justice Clark speaking for the majority stated:

> In extending the substantive protections of due process to all constitutionally unreasonable searches—state or federal—it was logically and constitutionally necessary that the exclusion doctrine—an essential part of the right to privacy—be also insisted upon as an essential ingredient of the right newly recognized by the *Wolf* case. In short, the admission of the new constitutional right by *Wolf* could not consistently tolerate denial of its most important constitutional privilege, namely, the exclusion of the evidence which an accused had been forced to give by reason of the unlawful seizure. To hold otherwise is to grant the right but in reality withhold its privilege and enjoyment.

Id. at 655.

14. 408 F.2d 1186 (1969). The circuit court of appeals agreed with the district court since "the 'record' contains 'adequate *affirmative* evidence to overcome the presumption of harm from the lack of time for preparation' by appointed counsel." *Id.* at 190. The appellate court relied on Fields v. Payton, 375 F.2d 624 (4th Cir. 1967).

15. 396 U.S. 900 (1969).

16. The Supreme Court did not hold that the exclusionary rule applied to state trials until Mapp v. Ohio, 367 U.S. 643 (1961). In *Mapp* the appellant was convicted for knowingly having had in her possession lewd and lascivious books, pictures, and photographs. The Supreme Court of Ohio found that her conviction was valid though based upon the introduction into evidence of the books and photos which had been seized during an unlawful search of the defendant's home. Speaking for the majority, Justice Clark found the exclusionary rule to be applicable to the states. Clark stated:

> The ignoble shortcut to conviction left open to the state tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise . . . we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment.

Id. at 659.

warrantless search of an automobile was *Carrol v. United States.*[17] In that case, two individuals riding in an automobile were stopped on a highway by federal agents who had probable cause to believe the pair were acting in violation of the National Prohibition Act.[18] After stopping the automobile, the police immediately conducted a search and found 68 bottles of whiskey and gin. The Court, in upholding the conviction based upon this evidence, ruled the bottles properly admissible as the fruit of a reasonable search, since the vehicle could have been driven out of the jurisdiction while a warrant was being procured.[19] There was thus established an exception to the fourth amendment warrant requirement founded upon the mobility of the object to be searched; the "mobility" gave rise to an exigency[20] thereby negating the need for a warrant.

In *Preston v. United States,*[21] the Court denied the exception to the warrant requirement. The defendant had been arrested for vagrancy while seated in his auto. There was no immediate search at the time of arrest. Instead, the police towed the auto to a garage and took the defendant to the police station. Sometime thereafter, the police, without a warrant, searched the auto and discovered two loaded revolvers, as well as other evidence, later relied upon to convict Preston of conspiracy

17. 267 U.S. 132 (1925) [hereinafter cited as *Carroll*].

18. In *Carroll* the arrest was for violation of the National Prohibition Act, title 2, § 25, ch. 85, 41 Stat. 305, 315 (*repealed in* 1933). The subsequent conviction was for violation of that statute.

19. To substantiate its reasoning, the Supreme Court in *Carroll* relied on a number of statutes to show that the guaranty of freedom from unreasonable searches and seizures by the fourth amendment traditionally had been construed as distinguishing the search of an auto from the search of a home. The statutes cited by the Court include Act of July 31, 1789, ch. 5, §§24-27, 1 Stat. 29, 43-44; Act of August 4, 1790, ch. 35, §§ 48-51, 1 Stat. 145, 170; Act of February 18, 1793, ch. 8, § 27, 1 Stat. 305, 315; Act of March 2, 1799, ch. 22, §§ 68-71, 1 Stat. 677-78; Act of February 28, 1865, ch. 67, §§ 1-3, 13 Stat. 441-42; Act of July 18, 1866, ch. 201, § 1-3, 14 Stat. 178-79; Act of March 3, 1899, ch. 429, § 174, 30 Stat. 1253, 1280. *But see* Justice Harlan's dissent in *Chambers* where he notes that the *Carroll* decision upheld a warrantless search for contraband.

20. The reasons for granting the police this expanded discretion in exigent circumstances are the same as those for granting the police the right to search incident to an arrest, *i.e.* to protect the officer and to avoid the chance of destruction of evidence. For an example of an exigent circumstance case *see* Schmerber v. California, 384 U.S. 757 (1966). Schmerber had been convicted in municipal court of driving while under the influence of alcohol. Evidence of intoxication had been based on a blood test taken by a physician at a hospital after Schmerber had been injured in a collision. The defendant objected to the use of the evidence against him on three grounds—one of which was unlawful search and seizure. The court concluded that under the circumstances the officer was not required to get a warrant before the blood test because of the time required to obtain a warrant and the rapid rate at which the body eliminates alcohol from the blood.

See also Johnson v. United States, 333 U.S. 10 (1948); Trupiano v. United States, 334 U.S. 699 (1948); Warden v. Hayden, 387 U.S. 294 (1967); *and* McDonald v. United States, 335 U.S. 451 (1948).

21. 376 U.S. 364.

to rob a federally insured bank.[22] The search in this case was sought to be upheld as "incident" to the arrest since it was clear the police had no probable cause to search for evidence of the crime of vagrancy. The conviction was reversed on the grounds that the admitted evidence was the product of an illegal search. Mr. Justice Black stated:

> The rule allowing contemporaneous searches is justified, for example, by the need to seize weapons and other things which might be used to assault an officer or effect an escape. . . . But these justifications are absent where a search is remote in time or place from the arrest. Once an accused is under arrest . . . [w]e think that the search was too remote in time or place to have been made as incidental to the arrest and conclude, therefore, that the search of the car without a warrant failed to meet the test of reasonableness under the Fourth Amendment, rendering the evidence obtained as a result of the search inadmissible.[23]

While the search in *Carroll* was justified as an exception to the warrant requirement because of the auto's mobility, the search in *Preston* was deemed unreasonable since the police had removed the auto from the scene of arrest.

The restriction of police authority, as evidenced by *Preston,* is in consonance with the Supreme Court's recent application of fourth amendment principles. Historically, the Court has mandated that where ample time exists to obtain a warrant, a search conducted without prior judicial scrutiny will be held invalid.[24] In *Katz v. United States*[25] this mandate was reaffirmed. The petitioner, Charles Katz, was convicted for transmitting wagering information by telephone in violation of a federal statute.[26] At trial the government was permitted, over objection, to

22. *Id.* The evidence found in the search of Preston's auto included two loaded revolvers, which were found in the glove compartment, caps, women's stockings, rope, pillow slips, an illegally manufactured license plate and other items uncovered in the trunk. The police were unable to open the trunk so they entered the trunk through the back seat.

23. *Id.* at 368.

24. Agnello v. United States, 269 U.S. 20 (1925); Olmstead v. United States, 277 U.S. 438 (1928); Go-Bart v. United States, 282 U.S. 344 (1930); United States v. Jeffers, 342 U.S. 48 (1951); Wong Sun v. United States, 371 U.S. 471 (1963).

25. 389 U.S. 347 (1967) [hereinafter cited as *Katz*].

26. Charles Katz was convicted by the Disrict Court for the Southern District of California under an eight count indictment for violation of 18 U.S.C. § 1084 (1961). That statute provides in part:

> (a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or

introduce evidence of the petitioner's conversations overheard by federal agents. The agents had attached an electronic listening and recording device to the outside of a pubilc telephone booth enabling them to hear the conversation. The prosecution argued that the agents had probable cause to "search" the petitioner's words, but Justice Stewart, speaking for the majority, reversed the conviction. The Court held that searches "conducted without prior judicial approval" were unreasonable except in a few well-deliniated situations.[27] The judicial preference for search warrants is so strong that, according to *Katz,* even if probable cause is present the search is unlawful without a warrant.[28] While the subject of the search in *Katz* was not an auto, the Court's language and broad mandate are indicative of a strong judicial attitude applicable to all types of searches. *Katz* and *Preston,* therefore, have had substantially the same effect on fourth amendment freedoms, since both cases severely limit the prerogatives of the police to engage in warrantless searches.[29]

There is one further case which requires discussion prior to a closer analysis of the *Chambers* decision. The scope of permissible searches incident to arrest have usually depended upon the circumstances of each case.[30] For example, if a suspect was legally arrested in his apartment,

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wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than $10,000 or imprisoned not more than two years or both.

27. The exceptions are: whenever the automobile can be easily driven out of the jurisdiction or the existence of exigent circumstances or hot pursuit.

28. In *Katz,* the F.B.I. agents had probable cause to place a wiretap on the phone booth that Katz was using. The Court admitted that the agents would have been able to satisfy the prerequisites for a search warrant. The majority opinion stated:

> [The Government] argues that surveillance of a telephone booth should be exempted from the usual requirement of advance authorization by a magistrate upon a showing of probable cause. We cannot agree. Omission of such authorization,
>
> > 'bypasses the safeguards provided by an objective predetermination of probable cause, and substitutes instead the far less reliable procedure of an after-the-event-justification for the . . . search, too likely to be subtly influenced by the familiar shortcomings of hindsight judgment.'
>
> Beck v. Ohio.

389 U.S. at 358.

29. *Preston* limits the leeway allowed police to search extensively in that it forbids searches remote in time and place from the arrest, while *Katz* forbids warrantless searches where ample time exists to obtain a warrant.

30. Harris v. United States, 331 U.S. 145 (1947). In *Harris,* F.B.I. agents searched the suspect's 4-room apartment under the authority of an arrest warrant charging him with mail fraud. Although he was arrested in his living room, the search of the entire apartment was upheld since, according to Chief Justice Vinson, "his control extended quite as much to the bedroom in which the draft cards were found as to the living room in which he was arrested." *Id.* at 152. *See also* United States v. Rabinowitz, 339 U.S. 56 (1950); United States v. Lefkowitz, 285 U.S. 452 (1931); Davis v. United States, 328

the search for evidence could extend throughout the apartment if the object sought could be concealed within the premises.[31] However, if it were impossible for the object sought to be concealed in the apartment, the search could only extend to the suspect's person and his immediate vicinity in order to prevent access to weapons or destructible evidence.[32] In 1969, the Supreme Court altered this doctrine in *Chimel v. California.*[33] In that case the police, after a lawful arrest, searched the defendant's entire three bedroom house for a number of stolen coins. The Court found that this warrantless search incident to Chimel's arrest went beyond its permissible scope:

> Application of sound Fourth Amendment principles to the facts of this case produces a clear result. The search here went far beyond the petitioner's person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him. There was no Constitutional justification in the absence of a search warrant, for extending the search beyond that area. The scope of the search was, therefore, "unreasonable" under the Fourth and Fourteenth Amendments . . . .[34]

Like *Preston* and *Katz, Chimel* also restricted the area of constitutionally permissible searches. Furthermore, it is arguable that while the search in *Chimel* was that of a house, the Court's rationale should also apply in automobile searches.[35] In light of *Chambers,* however, these restrictions appear to have lost a great deal of their potency.

The majority in *Chambers* initially concedes that the search of the car, as in *Preston,* was not incident to the arrest. Justice White, for the majority, distinguishes *Preston* on the grounds that in that case the police had no probable cause to search at the scene of the arrest, while in

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U.S. 609 (1946); Agnello v. United States, 269 U.S. 20 (1925); Abel v. United States, 362 U.S. 217 (1960).

31. Therefore, if the object sought was a stolen check, the search could extend throughout the entire apartment.

32. The rationale being that it is impossible for a large object, like an auto, to be hidden in an apartment.

33. 395 U.S. 752 (1969) [hereinafter cited as *Chimel*].

34. 395 U.S. at 768.

35. *See* Note, *Chimel v. California: A Potential Roadblock to Vehicle Searches,* 17 U.C.L.A. L. REV. 626 (1970). The author states:

> In *Chimel* the court provided relatively workable criteria for determining the constitutionality of an incidental search of a residence. Clearly, however, the new standard was to be applicable to searches under a broader range of circumstances than those encountered in *Chimel* alone.

Id. at 626. The author then argues that *Chimel* does apply to auto searches.

Chambers that element was clearly present.[36] Given this distinction, Justice White disposes of *Preston* as useful precedent. At the outset, his reasoning follows the traditional *Carroll* exception that since it was not practicable to secure a warrant for the search of the car on the highway because of its "mobility", and since the police had probable cause to search at that time and place, the warrant requirement should be waived. But, as Justice White recognized, that reasoning by itself does not resolve the *Chambers* situation, since the auto had been moved from the scene of the arrest and was in police custody. The resolution of this distinction is the critical and most problematic link in the logic of the opinion. The Court indulges in balancing constitutional values and in creating legal fictions to overcome the crucial distinction. This judicial technique succeeded in shifting the focus of the opinion from an inquiry into the basic validity or invalidity of the search in light of permissible police conduct as defined in prior decisions, to one of measuring degrees of intrusions on fourth amendment freedoms.

Justice White determines that there were two courses of action open to the police in *Chambers*: they could search the car immediately or they could temporarily immobilize the car until a warrant was issued. Weighing the two, he finds the former to be the most expedient and least intrusive.[37] He reasons that since the constitution gave the police no authority to seize Chambers' car, the fact that it was taken to the police station and parked is immaterial, since *in theory* the car could have been moved from the jurisdiction before a warrant could be obtained. The car thus remained "mobile" at the police station and within the *Carroll* rationale. Therefore, Justice White concludes that the police took the least intrusive action, and as a result the warrantless search was reasonable under the fourth amendment.

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36. The police had no probable cause in *Preston* since there could be no probable cause to search for the "fruits" of the crime of vagrancy.

Justice White also disposed of Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968) as precedent. In *Dyke,* the defendant was convicted of criminal contempt which resulted from shots fired at a non-striker in violation of an injunction. Defendant's car was stopped in another town for speeding and the car's occupants were taken to jail. While they were being booked, their car was searched and a rifle was found and later introduced at trial. The search was held unconstitutional because probable cause to search never existed. Justice White points out, however, that probable cause to search did exist in *Chambers.*

37. Justice White reasoned,

> 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.

399 U.S. at 52.

Justice Harlan, dissenting on the fourth amendment issue, considered the majority opinion as ignoring the principles set forth by past decisions circumscribing permissible searches without warrants.[38] While not denying that where an arrest is accompanied with a warrantless search of the arrestee's person and of "the area from within which he might gain possession of a weapon or destructible evidence" is permissible, Harlan believes "the search may go no further."[39] Nor, does Harlan deny that an exigency occurs in a *Carroll* situation based upon mobility. Harlan, however, sees *Chambers* as an unwarranted expansion of *Carroll* because the requisite exigent circumstances which would have justified the search were absent: "I cannot agree that this result is consistent with our insistence in other areas that departures from the warrant requirement strictly conform to the exigency presented."[40]

Justice Harlan prefers to dispose of *Chambers* on the authority of *Preston,* as he finds the cases indistinguishable. He states that *Preston* expressly did not rely on a lack of probable cause in finding the search remote in time and place from the scene of the arrest. To the contrary, *Preston* was based upon the premise that the more reasonable course for the police was to retain custody of the car for the short time necessary to obtain a warrant. In contrast to Justice White's result in weighing constitutional values, Justice Harlan finds that a warrantless search involves "a greater sacrifice of Fourth Amendment values" when compared to the minimal inconvenience suffered by the occupants, already in custody, from the temporary seizure required to obtain the warrant.

The Court's rationale in *Chambers* necessitates a re-evaluation of the latitude permitted police in search and seizure activities since the broad pronouncements of *Preston, Katz* and *Chimel* appear to be on tenuous ground. By finding the presence of exigent circumstances in *Chambers,* the Supreme Court has modified the trend of restricting police activities under the fourth amendment. If an exigency of mobility exists while the suspects are incarcerated and the object of the search is in police custody, it becomes difficult to predict those circumstances which would not qualify as exigent. In light of *Chambers,* it is conceivable that successful arguments will be advanced in the future alleging that exigent circumstances exist, thus permitting warrantless searches in fact situations similar to *Katz, Chimel* and *Preston.*

38. Chimel v. California, 395 U.S. 752 (1969); Katz v. United States, 389 U.S. 347 (1967); Warden v. Hayden, 387 U.S. 294 (1967); Preston v. United States, 376 U.S. 364 (1964); United States v. Jeffers, 342 U.S. 48 (1951); McDonald v. United States, 335 U.S. 451 (1948); Agnello v. United States, 269 U.S. 20 (1925).

39. 399 U.S. at 61.

40. *Id.* at 62-63.

The Court in *Katz* held that whatever one seeks to preserve as private should be kept private in the absence of a search warrant. Even though Katz's conversations concerned illegal activities, he sought to keep those conversations private. In the same manner, although the evidence found in the search of Chambers' auto was incriminating, it is reasonable to assume that Chambers also sought to keep that evidence out of the police's possession. Considering that the place of the search in *Chambers* was a police station and that the mode utilized by the police was a warrantless search,[41] the decision apparently conflicts with the privacy rationale of *Katz*. In summary, because of *Chambers*, it could be argued that *Katz's* mandate for search warrants has been weakened.

The impact of *Chambers* on the *Chimel* doctrine must also be considered. *Chimel* narrowed the scope of a constitutional warrantless search to the suspect's person and the area from within which he might obtain a weapon or destructible evidence. Since the exclusionary rule is aimed at preventing police abuses,[42] the restrictive effects of *Chimel* should apply to all warrantless searches, including those of automobiles.[43] However, by expanding the exigent circumstances rationale to a

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41. *See* Note, *From Private Places to Personal Privacy: A Post-Katz Study of Fourth Amendment Protecion*, 43 N.Y.U. L. REV. 968 (1968). In this Note, the author puts forth his interpretation of the meaning of *Katz*. He states:

> The fourth amendment protects the personal privacy of each individual from unreasonable intrusion by the government. The focus of deliberation in this area has properly shifted from the protection *against* governmental invasions of characteristically private places to the protection of a *positive* right of privacy of the individual under the circumstances. In determining the limits of the intended privacy which is entitled to protection from official intrusions, it is not sufficient to weigh the element of risk and conclude that a reasonable man under the circumstances would expect his privacy to be undisturbed. Such expectation must be of a type that society would respect in the face of the kind of intrusion which has ocurred [sic]. Thus, both the place and the mode of search must be considered in light of prevaling social conventions to determine their effect on the validity of the individual's intended exclusive control over personal information.

Id. at 986-87.

42. The *Chimel* majority stated in footnote 12 of the opinion:

> We cannot accept the view that Fourth Amendment interests are vindicated so long as "the rights of the criminal" are "protect[ed] . . . against introduction of evidence seized without probable cause." The Amendment is designed to prevent, not simply redress, unlawful police action . . . .

395 U.S. at 767 n. 12.

43. *See* Note, *Chimel v. California: A Potential Roadblock to Vehicle Searches*, 17 U.C.L.A. L. REV. 626 (1970). The author states:

> This comment has further focused on the prospective application of *Chimel* to the area of vehicular searches and concluded that the application of the rule in that area should be much the same as in the area of residential searches. In reaching that conclusion . . . the "exceptions" to the fourth amendment warrant requirements . . . in searches on probable cause alone, and in the "moving vehicle exception" of *Carroll v. United States* should be reconsidered in light of *Chimel*.

Id. at 650. The author also states:

remote and warrantless search, *Chambers* has ignored the *Chimel* proposition that the warrant requirement of the fourth amendment was designed to have a deterrent effect on police activity.[44]

The continuing validity of *Preston* is, likewise, in doubt. Justice Black, author of the unanimous opinion in *Preston,* joined with the majority in *Chambers.* Initially *Preston* and *Chambers* differ with respect to the issue of exigent circumstances. Black, finding the warrantless search in *Preston* remote and unconstitutional also must have found a lack of an exigency. In *Chambers,* however, Black must have found an exigency since the warrantless search was remote but held constitutional. Consequently, *Preston* is left on tenuous ground since it is difficult to see how an exigency existed on the facts of *Chambers,* while no such exigency existed in *Preston.* In both cases the search of the vehicle took place while the vehicle was in police custody. The second aspect distinguishing *Preston* and *Chambers* is the issue of probable cause: *Preston* lacked such, whereas *Chambers* did not. When probable cause is present, a search is valid if it is either conducted with a warrant or under exigent circumstances. Since the searches in both *Preston* and *Chambers* were conducted without a warrant, they were justified only if exigent circumstances were present. *Preston* apparently found that since the police had custody of the car, it was not mobile and, therefore, there was no exigency. *Chambers,* however, found mobility and hence an exigency even though the car was in police custody.

> If nothing else, *Chimel* should require a closer perusal of the facts to insure that a *Carroll* situation in fact exists. The fact that it is an automobile which is searched without a warrant should no longer justify the search, even where there is probable cause to believe that evidence will be found . . . where the police have gained control of the automobile by acquiring the keys, the element of mobility is non-existent, and the probability that the evidence will be destroyed is no greater—if not less—than that which did not justify a search in *Chimel.*

Id. at 648. *But cf.* State v. Royal, 255 La. 651, 232 So.2d 465 (1970), where the Supreme Court of Louisiana upheld the warrantless search of the defendant's car after it had been towed to the police station. At the time of the arrest the auto was on a busy street, and to have conducted an immediate search would have been impracticable. In State v. Keith, —Ore. App.—, 465 P.2d 724 (1970), the warrantless search of an auto, an instrumentality of the crime, after its removal to the police station was upheld since there was probable cause to believe that an immediate search without a warrant was necessary to protect the safety of the arresting officer. The problem with the Court's rationale in *Keith* is that the search was *not* immediate.

44. After setting forth the facts of *Chimel* the majority reasoned:

> The search here went far beyond the petitioner's person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area. The scope of the search was, therefore, "unreasonable" under the Fourth and Fourteenth Amendments . . . .

395 U.S. at 768.

The question therefore remains open as to whether *Chambers* has *sub silentio* overruled *Preston.* This question is of importance in light of the favor that the remoteness rationale has met in the lower courts. That *Chambers* has in fact overruled *Preston* is evidenced by the case of *Wood v. Crouse.*[45] In *Wood,* the defendant was arrested on a highway and his car was towed to a nearby police station. Twenty minutes after the car had been secured by the police, a warrantless search of the vehicle was conducted which the police had probable cause to undertake. In that search, incriminating evidence was found and later introduced at Wood's trial. The United States Court of Appeals for the Tenth Circuit, relying specifically on *Preston,* found the search to be invalid since it was remote in time and place from the arrest. On July 1, 1970, less than two weeks after the *Chambers* decision, the Supreme Court vacated judgment in *Wood* in light of *Chambers.*[46]

Immediately after the Court handed down *Chambers,* a number of lower court decisions began to appear which used the rationale of *Chambers* as a basis for extending further the prerogative of the police. In *United States v. Free,*[47] the defendant was arrested and taken approximately fifteen feet from his car while an officer engaged in a warrantless search of the defendant's car. The Court of Appeals for the District of Columbia Circuit found that the search was not "incident to the arrest" but proceeded to uphold the validity of the search on the grounds of *Chambers.* Speaking for the majority, Judge Leventhal found that *Chambers* articulated an exception to the warrant requirement which permitted warrantless search of the auto without considering the possibility of immobilizing it pending application for a warrant. Had *Free* been decided prior to *Chambers,* it is possible that *Chimel* would have controlled the court's decision. The majority opinion recognized this but decided that *Chimel* was inapplicable in light of the "lesser intrusion" theory[48] of *Chambers.*

Chambers has also been broadly interpreted by state courts. In *Middleton v. Maryland,*[49] the Maryland Court of Special Appeals held that Baltimore police officers, who had probable cause to believe the armed robbery suspects' automobile contained a weapon, were justfied in search-

45. 417 F.2d 394 (10th Cir. 1969).

46. There are several other cases in which the lower courts have relied on the remoteness doctrine of *Preston* even though probable cause to search was present. *See, e.g.,* Derby v. Cupp, 302 F. Supp. 686 (1969); Thomas v. United States, 376 F.2d 564 (1967); Gorman v. United States, 380 F.2d 158 (1967; Slade v. United States, 331 F.2d 596 (1964) *and* Sisk v. Lane, 331 F.2d 235 (1964).

47. 7 Crim. L. Rptr. 2458 (D.C. Cir. Aug. 12, 1970).

48. *See* note 37 *supra* and accompanying text.

49. —Md. App.—, 267 A.2d 759 (1970).

ing the car without a warrant after the suspects had been removed to police headquarters. The court found that the search was permitted by *Chambers.*

Chambers has also been applied by the California Court of Appeals, Second District, in *Bethune v. Superior Court.*[50] In *Bethune,* the defendants were arrested for alleged narcotics violations. While in custody their cars were taken by the police to another location. The cars were searched without a warrant and a purse of one of the defendants was found which contained narcotics. The court found that the search of the purse was constitutional and admitted the evidence at trial. The court's majority opinion illustrates the pervasive effect that *Chambers* has had on the law of search and seizure:

> We readily agree with her that the search of her purse after she had become separated from it cannot be justified on the basis that it was incident to her arrest. (*Chimel v. California* . . .) Until the Supreme Court decided *Chambers v. Maroney* . . . , we could not have said with complete confidence that the search of the purse could be upheld on any other ground. . . . In *Chambers,* however, the court held that the rule that permits warrantless searches of automobiles because of their mobility if the police have probable cause to believe that they contain contraband and other seizable items, extends to the warrantless search of a car which has been immobilized by the arrest of its occupants. . . . Given the right to search an automobile, we can perceive no constitutional limitation on the right to search the purse which petitioner had left in it.[51]

Free, Middleton, and *Bethune* demonstrate how the courts will utilize *Chambers* to modify the effects of earlier cases that have narrowed the power of the police to engage in extensive investigatory activities. If the post-*Chambers* trend continues, the law of search and seizure will take on a new dimension.

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50. 8 Crim. L. Rptr. 2048 (Cal. App. Sept. 17, 1970).

51. *Id.* The defendant in *Bethune* had a reasonable expectation that her purse, probably her most private possession, would not be searched. This California case convincingly demonstrates not only how *Chambers* has reduced the potency of *Preston* and *Chimel,* but also how the mandate of *Katz* has been weakened.