NEW MEXICO LAW REVIEW

Volume 2
Issue 2 *Summer*

Summer 1972

Chimel v. California--Its Effect on Search and Seizure

Patricia Madrid

CHIMEL v. CALIFORNIA—ITS EFFECT ON SEARCH AND SEIZURE

The Fourth Amendment of the United States Constitution[1] allows a limited right of search and seizure and proscribes unreasonable searches. The question is, what constitutes an unreasonable search? In the Supreme Court's attempts to develop a coherent body of Fourth Amendment law there has been a constant conflict over the importance of requiring law enforcement officers to secure warrants. Although the tendency has been to predicate the reasonableness of a search on the existence of a warrant, it should not be presumed that this is always the case. There are several limited exceptions which allow an officer to conduct a reasonable search without a warrant.[2]

1. The Amendment provides: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonble 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." U.S. Const. Amend. IV applicable to the states through Amend. XIV. *See* Mapp v. Ohio, 367 U.S. 643 (1961).

2. The other exceptions which allow an officer to search without a warrant are:

a. *Plain View.* 390 U.S. 234 (1968); Ker v. California, 374 U.S. 23 (1963); United States v. Lee, 274 U.S. 559 (1927); Hester v. United States, 265 U.S. 57 (1924).

b. *Consent to the Search.* "When a householder consents to a warrantless search by the police, he in effect waives his Constitutional rights and cannot later object to the use in court of any incriminating evidence uncovered." J. Landynski, Search and Seizure and the Supreme Court: A Study in Constitutional Interpretation, 168 (1966).

The obtaining of a search warrant may be waived by an individual and he may give his consent to search and seizure but such waiver or consent must be proven by clear and positive testimony and there must be no duress or coercion, actual or implied, and the Government must show a consent that is unequivocal and specific, freely and intelligently given and the burden of the government is particularly heavy where the individual is under arrest. Judd v. United States, 190 F.2d 649 at 650, 651 (1951). *See also* Amos v. United States, 255 U.S. 313 (1921); State v. Aull, 78 N.M. 607, 435 P.2d 437 (1967); State v. Herring, 77 N.M. 232, 421 P.2d 767 (1966); State v. Torres, 81 N.M. 521, 469 P.2d 166 (1970); State v. Harrison, 81 N.M. 324, 466 P.2d 890 (1970); State v. Kennedy, 80 N.M. 152, 452 P.2d 486 (1969).

c. *Vehicular Searches* in which the automobile is mobile and capable of being quickly moved out of the locality or jurisdiction in which the warrant must be sought. For cases *see* discussion of vehicular searches, *infra.*

d. *Protection Weapons Search* or Stop and Frisk search. The police are allowed to "stop" a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity. Upon suspicion that the person may be armed, the police have the power to "frisk" him for weapons. If this gives rise to probable cause to believe that the suspect has committed a crime, then the police should be empowered to make a formal "arrest" and a full incident search of the person. Terry v. Ohio, 392 U.S. 1 (1968).

e. *Hot Pursuit.* In *Warden v. Hayden,* 387 U.S. 294 (1967) it was held that when police are in hot pursuit of a suspected criminal, that speed is essential to protect the officers and prevent the suspect's escape and therefore a warrantless search of a house is permissable, so long as the scope is as broad as may reasonably be necessary to prevent the danger that the suspect at large in the house may resist or escape.

f. *Danger of Destruction of the Evidence.* In *Schmerber v. California,* 384 U.S. 757

Chimel v. California[3] deals with such an exception, a search incident to a lawful arrest. *Chimel* is significant because it defines the permissible limits of such a search. Although the court attempted to be as specific as possible, subsequent cases have shown that *Chimel* is ambiguous in various areas. This comment will discuss a few of these unclear areas, particularly *Chimel's* effect on the Plain View Doctrine and on vehicular searches.

FACTS AND BACKGROUND OF CHIMEL

In *Chimel* the defendant was arrested in his home for the burglary of a coin shop. Although the officers were armed with an arrest warrant, they did not have a search warrant and, despite defendant's objections, conducted a search of his entire three-bedroom house, including the attic, garage, a small workshop, and various drawers. The evidence found during the search was admitted at trial and resulted in defendant's conviction on two charges of burglary. On certiorari, the Supreme Court reversed (7-2) holding the search to be unreasonable and in violation of the Fourth Amendment. The Court reasoned that without a search warrant an arresting officer, conducting a search incident to a lawful arrest, may search only the arresting individual's person and the area within his "immediate control" to discover and remove weapons and to seize evidence to prevent its concealment or destruction.[4]

Prior to this decision, more extensive searches incident to arrest had been justified by the independent existence of probable cause to search. *Chimel,* however, made it clear that even though probable cause to search was independently established after the arrest, the necessity of obtaining a search warrant remained.[5] The court expressly overruled *United States v. Rabinowitz*[6] and *Harris v. United States*[7] which allowed a much broader scope of search incident to

(1966) the defendant was arrested for driving under the influence of alcohol. He claimed that the taking or "seizure" of his blood was an unconstitutional search and seizure. The court rejected this argument and permitted the seizure because given the time necessary to obtain a search warrant, the percentage of alcohol in the blood would have diminished thus destroying the evidence.

3. 395 U.S. 752 (1969) (hereinafter cited as Chimel).

4. *Id.* at 765.

5. *Id.* at 766, n. 12.

6. United States v. Rabinowitz, 339 U.S. 56 (1950) held that the search of a desk, safe, and file cabinet in a one-room office, lasting about 1½ hours was reasonable as incident to a valid arrest, where the office was small and under the "immediate" and complete control of the arrestee.

7. Harris v. United States, 331 U.S. 145 (1947). Pursuant to a valid arrest warrant, the defendant was arrested in his living room for federal crimes involving mail fraud and forgery. Defendant was handcuffed, and a search of the entire apartment was undertaken. The purpose of the search was to find two cancelled checks. The searched lasted five hours and

arrest. *Harris* and *Rabinowitz* had their beginnings as dictum in a 1914 case, *Weeks v. United States.*[8] Even in *Weeks*, however, the court limited the search to the person and not the place. Eleven years later, in *Carroll v. United States,*[9] the court expanded the *Weeks* dictum to extend the search of a person to whatever was in his "control."

> When a man is legally arrested for an offense, whatever is found upon his person or *in his control* which is unlawful for him to have and which may be used to prove the offense may be seized and held as evidence in the prosecution.[10]

In overruling *Harris* and *Rabinowitz* the court was merely redefining and narrowing the concept of "control." *Harris* and *Rabinowitz* had expanded the area of permissible search by basing the standard on a property concept of "control." For example, the idea of control included areas that were not necessarily under the defendant's physical or actual control, but were deemed to be in his "constructive possession." Using this criteria, assuming a defendant had a key to his residence, he was said to be in "control" of it, and a general search of the entire house could be made.[11] In addition, the *Rabinowitz* court attached independent significance to the reasonableness clause of the Fourth Amendment. The warrant requirement of the second clause was not viewed as critical or mandatory, but was construed as merely a suggestion of one possible means of assuring that a search be reasonable.[12] The Fourth Amendment was thus interpreted as prohibiting unreasonable searches in the abstract. The major flaw in *Harris* and *Rabinowitz* is the vagueness of "reasonable" and "control." In following these cases courts were forced to make

inside a desk drawer they found a sealed envelope marked "personal papers." The envelope was found to contain altered Selective Service documents, and those documents were used to secure Harris' conviction for violating the Selective Training and Service Act of 1940. The warrantless search was held valid as incident to an arrest.

8. 232 U.S. 383, 392 (1914), quoted in *Chimel* at 755.

9. 267 U.S. 132 (1925) (hereinafter cited as Carroll).

10. Chimel at 755, quoting Carroll at 158.

11. United States v. Beigel, 254 F. Supp. 923 (S.D.N.Y. 1966), aff'd 370 F.2d 751 (2d Cir. 1967). *See also*, State v. Sedillo, 79 N.M. 289, 442, P.2d 601 (1968).

12. Landynski, *supra* note 2, at 42. "The amendment divides naturally into two parts, the first containing a general guarantee of freedom from unreasonable searches, the second specifying the conditions under which a warrant authorizing a search may be issued. Nowhere in the amendment is the term "unreasonable' defined as the relationship of the two parts clarified. Three possible interpretations emerge: (1) That the reasonable search is one that meets the warrant requirements specified in the second clause; (2) That the first clause provides an additional restriction by implying that some searches may be unreasonble, and therefore not permissible, even when made under a warrant; or (3) That the first clause provides an additional search power, authorizing the judiciary to find some searches reasonable even when carried out without a warrant." *See also* Note, Search and Seizure Since Chimel v. California, 55 Minn. L. Rev. 1011 (1970).

an after-the-fact determination of the reasonableness of a specific search without adequate guidelines. *Chimel* provides a more objective test for defining "reasonable," and thus responds to Justice Frankfurther's dissent in *Rabinowitz*, where he stated, "To say that the search must be reasonable is to require some criterion of reason. . . . It is no criterion of reason to say that the district court must find it reasonable."[13] Thus *Chimel* is helpful to law enforcement officers as it provides specific guidelines for conducting proper searches and lessens the risk that evidence so found will be excluded.

NEW GUIDELINES

Chimel introduces two new guidelines. It qualifies control with the word "immediate," and makes a warrantless search outside the area of a suspect's immediate control *per se* unreasonable. In so doing, *Chimel* returns to the original purposes of a search incident to an arrest which are prevention of the destruction of evidence, officer protection, and prevention of the suspect's escape.[14] In effect, *Chimel* revives the idea that the purpose of the search ought to be the guide in determining its scope. *Chimel* attempts to do away with the abuses that were sanctioned by *Harris* and *Rabinowitz*. For example, since the standard of probable cause to make a warrantless arrest is somewhat less in practice than the probable cause necessary to conduct a warrantless search, arrests were utilized when the officers did not have sufficient probable cause to conduct a search.[15] Searches incident to arrest were often conducted where an arrest would not ordinarily have been made were it not for the desire to search. Officers often timed the arrest to coincide with the defendant's presence at home or in some other area they desired to search. Thus they could search the entire area since he was deemed to "constructively control" it.[16] Another common abuse was the arrest

13. Justice Frankfurter's dissent in *Rabinowitz, supra* note 6, at 83.

14. Abel v. United States 362 U.S. 217 at 236 (1960) and Weeks v. United States, 232 U.S. 283 (1914). In *Weeks* the Supreme Court recognized the common law right of search without a warrant as incident to arrest.

15. Although both a warrantless arrest and a warrantless search technically require the existence of probable cause and exigent circumstances, the exigent circumstances are so often presumed in the arrest situation that the officers often need only to prove the existence of probable cause. In the warrantless search situation, however, both requirements must be met and the existence of exigent circumstances is not presumed, but rather, must be asserted or the search will be per se unreasonable. Thus in practice, higher standards must be met for a warrantless search than an arrest. *See also* Chevigny, *Police Abuses in Connection with the Law of Search and Seizure*, 5 Crim. L. Bull. 323 (1969), and Comment, *Philadelphia Police Practice and the Law of Arrest*, 100 U. Pa. L. Rev. 1182 (1958).

16. McKnight v. United States, 183 F.2d 977 (D.C. Cir. 1950) and Niro v. United States, 388 F.2d 535 (1st Cir. 1968).

for a minor offense, such as a traffic violation, which was carried out as a pretext because the officer suspected the person of a more serious offense and wanted to search for possible evidence.[17] These abuses were effectuated because officers were under the impression that once probable cause for an arrest was established, they could dispense with other requirements normally necessary for a search. *Chimel* attempts to correct this misimpression by separating the arrest and the subsequent search into two independent acts, each with its own constitutional safeguards. *Chimel* governs the second act, i.e., the search; even if the officers have independently established probable cause to search after the arrest, they are still required to obtain a search warrant.

Once the incident search is viewed as separate from the arrest, one must examine its various stages, and not just its initial validity, to determine if it has been properly conducted. Beginning a search properly does not allow officers to proceed as they please.

The first part of a search may generally be called the "initial intrusion" which is considered proper if it falls into any of the following categories: pursuant to a valid warrant; incident to arrest; hot pursuit; vehicular search; stop and frisk, etc; etc. The initial intrusion most commonly occurs after an officer has shown probable cause and obtained a warrant. Other types of initial intrusions require exigent circumstances which render it impractical to obtain a warrant. The second part of a search can be called the exploratory stage which determines the scope of the search. This stage is governed by the particularity requirement of the warrant, the distinct objective of which is, "that those searches deemed necessary should be as limited as possible. Here the specific evil is the general warrant. The problem is not that of intrusion *per se*, but of a general, exploratory rummaging in a person's belonging."[18] It is to this stage of the search that *Chimel* is addressed. Although one's first impression may be that *Chimel* concerns only searches incident to arrest, *Chimel* limitations have also been applied to searches in which the initial intrusion has fallen into another category, such as entry with a search warrant or in hot pursuit. Given this broad application of *Chimel*, it is not surprising that its interpretation in subsequent cases has often been inconsistent and confusing.[19] Although *Chimel* attempts to set

17. Amador-Gonzales v. United States, 391 F.2d 308 (5th Cir. 1968); Handley v. State, 430 P.2d 830 (1967). *See also* Minn. L. Rev. *supra*, note 12, at 1014.

18. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971) (hereinafter cited as *Coolidge*).

19. In State v. Paul, 80 N.M. 521, 458 P.2d 594 (1969) the court applied Chimel and excluded the fruits of a search in which the police had a warrant for x, but during that search saw y and seized it. The court held that Chimel was a reaffirmation of Marron v.

stringent guidelines for the proper scope of a search, state courts, lower Federal courts, and the Supreme Court, in subsequent decisions, have been plagued by questions left open by *Chimel.* Since police practices are affected to a great extent by lower court interpretations of the new standards, it will be helpful to look into the interpretation given *Chimel* in subsequent decisions.

THE PLAIN VIEW DOCTRINE

An area that remains unclear in spite of *Chimel* is the status of the Plain View Doctrine, the supplement or concomitant of any search. This doctrine allows officers to seize any incriminating evidence without a warrant if it is within plain view. It is reasoned that if an officer has made a proper initial intrusion, and is thus legally in a place which affords him plain view of the evidence, then technically it is not a "search" as he did not have to "look for it."[20] The following language in *Chimel* seems to have left the doctrine intact:

> There is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs—or, for that matter, for searching through all the desk drawers or other closed or concealed area in that room itself.[21]

Since plain sight does not mean concealed, *Chimel* impliedly permits the seizure of something in plain view in the room where the arrest occurs, or at least in close proximity, even though it may be beyond the defendant's control.[22]

The problem with the Plain View Doctrine is that its limits have never been specifically defined. It has great potential for abuse as it can easily be used as a vehicle to conduct a general exploratory search.[23] If one extends this doctrine, any evidence discovered by the police can be considered to be in plain view at the moment of seizure.[24] ". . . To permit warrantless plain view searches without

United States, 275 U.S. 192 (1927). *Marron* had formally been modified by *Harris* and *Rabinowitz, supra* at notes 6 and 7, which allowed officers to search pursuant to a warrant and seize items not described in the warrants, indirectly it reaffirms the importance of the particularity requirement of a warrant and the fact that nothing should be left to the discretion of the officer executing the warrant.

20. The Plain Sight Doctrine allows the seizure of the objects in the plain sight of the officer if he has a right to be in a position to see them. Thy doctrine does not apply where the officer's presence is illegal. Harris v. United States, 390 U.S. 236 (1968); Ker v. California, 374 U.S. 23 at 42 (1963); United States v. Lee, 274 U.S. 559 (1927); United States v. Scott, 149 F. Supp. 837 (D.D.C. 1957).

21. *Chimel* at 763.

22. *Coolidge,* at 465-6, n. 24.

23. Stanley v. Georgia, 394 U.S. 557 (1969).

24. *Coolidge* at 465.

limit would be to undo much of what was decided in *Chimel.*"[25] The question remains, what are the limits imposed by *Chimel?*

When the object in plain view is in the room where the arrest is made the item can be properly seized.[26] In *State v. Sero,*[27] the court not only condoned seizure of items within the same room, but also of items in an adjoining room seen *from* the first room through a window in a partition. If one followed this holding to its logical conclusion, it would mean that after the initial viewing from the first room, the officers could properly enter the second room to seize evidence, and from there glance into a third room, and so on. This would defeat the intended limits of *Chimel.* With this in mind, it can be argued that *Chimel* should be applied literally and the officer's glimpse be limited to the room of the arrest, and not be extended to include items seen from that room.

More ambiguity arises when the officers enter a room in the house other than the one in which the arrest takes place. This could happen in a variety of circumstances. For example, the officers may have to walk through several rooms before reaching the defendant.[28] In *Warden v. Hayden*[29] the court admitted evidence found in the course of the search for the suspect. As in *Chimel,* the court in *Warden* looked to the purpose of the search to define the permissible scope. Since the search was to find the suspect and his weapons, the court limited the places that could be searched to those large enough to contain or conceal the suspect or his weapons. The court was careful to point out that the broad search was permissible only prior to, or immediately contemporaneous with, Hayden's arrest.[30]

25. *Id.* at 482.

26. United States v. Badilla, 434 F.2d 170 (9th Cir. 1970), State v. Miller, 80 N.M. 227, 453 P.2d 590 (1969), State v. Rhodes, 80 N.M. 729, 460 P.2d 259 (1969). In this case thirty-one marijuana cigarettes were held to be inadmissible under *Chimel* becase they were not within the defendant's immediate control. The cigarettes were found after the officers observed a dark spot in the bowl of a light fixture. Although the state did not try to argue the Plain View exception, one can imply that in order to come under that exception, the officer must be able to identify what he is seeing for it to be in plain view.

See also United States v. Avey, 428 F.2d 1159 (9th Cir. 1970), and State v. Anaya, 82 N.M. 531, 484 P.2d 373 (1971). Both of these cases involved the seizure of incriminating evidence in Plain View within the vehicle in which the defendants were arrested. Somehow the courts have analogized this to the seizure of evidence in the same room in which an arrest takes place. Some weight seems to be given to the proximity of the arrestee to the evidence seized, which gives rise to the question: Can the arrestee circumvent the Plain View exception to the warrant requirement by getting out of and far enough away from his car before the officer gets close enough to look inside?

27. 82 N.M. 17, 474 P.2d 503 (1971).

28. People v. Mann, 305 N.Y.S.2d 226 (1969). In this case officers were permitted an overall glance of the defendant's apartment because they followed him around while he was dressing and saw stolen items which were in plain sight.

29. 287 U.S. 294 (1967). *See also supra* note 2.

30. *Id.* at 299.

Assumedly, as soon as the arrest is effectuated, the narrow limitations of *Chimel* would come into play and the officers could then search no farther than the area within the arrestee's immediate control. Once again it must be stressed that the validity of the search does not depend only on the character of the initial intrusion. In *Warden,* the initial intrusion was proper because the officers were in hot pursuit. However, the moment a suspect is apprehended, the scope of the permissible search may change.[31]

Officers may also enter rooms other than where the arrest occurs to search for other dangerous persons. It could be argued that anything in plain view could be seized. *Chimel,* however, does not make it clear whether such a practice is permissible. If "immediate control" is given a literal interpretation, officers could not go into other rooms, since the defendant would not have control of any other area other than the room in which he is detained. On the other hand, if one considers the underlying purposes of *Chimel,* protection of police officers and prevention of destruction of evidence, it would seem that under certain circumstances officers would be allowed a cursory glance into other rooms to prevent a possible accomplice from harming them or destroying evidence. In *Chimel,* for example, if the police had returned for a search warrant, the defendant's wife would have had an opportunity to dispose of the coins. Indeed Justice White in his dissent in *Chimel,* saw this problem as one of the chief shortcomings of the decision:

> . . . assuming that there is probable cause to search premises at the spot where a suspect is arrested, it seems to me unreasonable to require the police to leave the scene in order to obtain a search warrant when they are already legally there to make a valid arrest, and when there must almost always be a strong possibility that confederates of the arrested man will in the meanwhile remove items for which the police have probable cause to search.[32]

The possibility that a dangerous accomplice may be hiding in another

31. In United States v. Miller, 449 F.2d 974 (D.C. Cir. 1971) the court made the mistake of characterizing a search only in terms of the initial intrusion. Here the police were in hot pursuit of the defendant and finally found him in the waiting room of a dentist's office. Although the defendant was in view from the moment the door was opened and they arrested him immediately, the court upheld the subjsequent warrantless search of the other rooms and admitted a stolen bottle of whiskey which was in plain view in the dentist's laboratory. The court based its decision on *Warden v. Hayden, supra,* but failed to note that *Warden* required the search to be prior to or contemporaneous with the arrest, which it was not in this case. The court in *Miller* expressly said that *Chimel* did not apply as it was a search in hot pursuit. It would seem however, that as soon as the suspect was arrested and apprehended that the search would no longer be one in hot pursuit, but one incident to arrest and thus Chimel would apply.

32. *Chimel* at 774.

room presents another set of exigent circumstances that may justify a warrantless search. The problem, however, is that the police can always "suspect" a third person to be present and thus always be justified in a general exploratory search. This will again present courts with concomitant plain view problems and could undo much of what *Chimel* sought to do.[33]

In a recent lengthy and multifaceted decision, the Supreme Court tried to clarify some of the confusion surrounding *Chimel* and the Plain View Doctrine. *Coolidge v. New Hampshire*[34] involved the warrantless search and seizure of an automobile parked in the driveway of the house where the defendant was arrested. The state argued several theories to support the admission of evidence found in the car, one of which was that the car was an "instrumentality" of the crime, and as such could be seized on Coolidge's property because it was in plain view. The court rejected this argument and held, *inter alia,* that under certain circumstances the police may seize evidence in plain view, but not for that reason *alone* and only when the discovery is "inadvertent."[35] The Court reasoned that if the officers had prior knowledge of what might be in plain view, then they would also have had ample opportunity to obtain a search warrant.[36] The court expressly related *Chimel* to the plain view doctrine as follows:

> The plain view exception to the warrant requirement is not in conflict with the law of search incident to a valid arrest expressed in *Chimel*. . . . Where . . . the arresting officer inadvertently not concealed, although outside the area under the immediate control of the arrestee, the officer may seize it, so long as the plain view was obtained in the course of an appropriately limited search of the arrestee.[37]

By adding the requirement of "inadvertence" to the Plain View Doctrine, the court sought to abolish "planned warrantless

33. In addition to the hiding accomplice dilemma, there is also the question of what to do with any other persons who may be in the same room where the arrest takes place, but who are not arrested themselves. The court in United States v. Manarite, 314 F.Supp. 607 (S.D.N.Y. 1970), attempted to solve this problem by creating a legal fiction to accomodate the *Chimel* standards. In *Manarite* the defendant was in custody of an agent, but was not physically restrained. There were two other men in the room. They were also unrestrained and within their reach were two tables that were searched and yielded incriminating evidence. Since weapons had already been found in the room, the officers went ahead and searched not only the area within the defendant's immediate control, but also that of the two accomplices. The court held that these two accomplices were in effect extensions of the defendant's physical presence, constructively placing the defendant within reach of the two men and thus the two tables. By creating this fiction of "constructive reach" the court seems to have been reverting to the broader *Harris-Rabinowitz* standard of constructive possession.

34. Coolidge v. New Hampshire, 403 U.S. 443 (1971).

35. *Id.* at 469.

36. *Id.* at 470.

37. *Id.* at n. 24, p. 465.

seizures."[38] But the requirement presents many difficulties, and as Justice White observed the "inadvertence" rule actually limits *Chimel*. Before *Coolidge*, it was clear that while making searches incident to arrest, the police could seize anything in plain view in the same room, or if a view of it was obtained in the course of an appropriately limited search of the arrestee. After *Coolidge*, the evidence seen in this situation could not be seized unless the view was "inadvertently" obtained.[39]

Another difficulty involves the interpretation of "inadvertent." Justice Black, in his dissent in *Coolidge* remarked:

> Only rarely can it be said that evidence seized incident to an arrest is truly unexpected or inadvertent. Indeed, if the police officer had no expectation of discovering weapons, contraband, or other evidence, he would make no search.[40]

It is not clear whether "inadvertence" means that the officer had no expectation of finding anything at all or no expectation of finding something specific.

The main problem with the "inadvertence" requirement of *Coolidge* is that it is a subjective test that requires a court to decide the state of mind of the officer prior to a warrantless seizure. While *Chimel* sought to change an after-the-fact court decision as to the reasonableness of a search, the *Coolidge* inadvertence test reinstates this approach. In effect, *Coolidge* does not answer any of the questions left open by *Chimel* regarding the Plain View Doctrine. If anything, it creates more confusion.

To see how little *Coolidge* aids lower courts in their interpretation of *Chimel*, one need only look at *United States v. Welsch*.[41] In that case, two agents, one posing as a prospective purchaser of drugs and the other as his chemist, observed the defendant removing a suitcase containing drugs from under a bed in a motel room where the purchase was to take place. The agent-chemist subsequently left the motel room to analyze the drugs. During his absence, the defendant replaced the suitcase under the bed. The agent returned to the motel within twenty minutes, arrested the defendant, and seized the suitcase. The court held the suitcase and its contents admissible under the Plain View Doctrine because the officers had seen its contents twenty minutes before, and it was "constructively" in plain view.[42] Whatever that may mean is uncertain. Considering how easily use of the Plain View Doctrine can circumvent the *Chimel* guidelines and

38. *Id.* at 471.
39. *Id.* at 519.
40. *Id.* at 508-9, n. 5.
41. 446 F.2d 220 (10th Cir. 1971).
42. *Id.* at 223.

allow a general exploratory search, one can only shudder at the possibility of what a Constructive Plain View Doctrine would do to Fourth Amendment protections. The *Welsch* court mentions that it based its decision to admit the evidence on *Coolidge* and *Chimel,* but it is clear that it followed them incorrectly. Had *Chimel* and *Coolidge* been properly applied, the warrantless seizure would have been invalid. The suitcase was out of the defendant's immediate control. It was also hidden under the bed and therefore not in plain view. As for the inadvertence requirement of *Coolidge,* the *Welsch* court mentions it, but then somehow equates it with the impracticality of obtaining a warrant within twenty minutes. Obviously, if the officers went to the motel in the guise of prospective purchasers, they must have had some expectation of finding drugs. It is difficult to see how the court could have called their actions "inadvertent" and thus admit evidence under the *Coolidge* requirements for Plain View. This case is a good example of the confusion generated by *Coolidge.*

VEHICULAR SEARCHES

Another unanswered question is *Chimel's* effect on vehicular searches. *Chimel* did not deal with the question specifically, but it was alluded to in the following note:

> Our holding today is of course entirely consistent with the recognized principle that, assuming the existence of probable cause, automobile and other vehicles may be searched without warrants "where it is not practical to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."[43]

One's first impression may be that all vehicular searches are exempt from the *Chimel* guidelines because of *Carroll v. United States, supra.*[44] "However, the word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."[45] To say that an automobile is inherently different from a fixed structure, such as a house, because it is moveable is a simplistic distinction. At best, one could say that they have the possibility of being different, but not that they always are. The circumstances of each case involving a vehicular search must be examined. A vehicle should only be deemed mobile when there is a possibility it may be moved. If no such possibility exists, then it should take on the character of a house and the *Chimel* standards should apply. *Chimel*

43. *Chimel* at 764, n. 9, quoting Carroll.
44. *See also supra* note 2.
45. *Coolidge* at 461.

seems to support this approach to vehicular searches since the court based its decision on *Preston v. United States.*[46] In *Preston* the defendants were arrested for vagrancy while sitting in their car. Their automobile was not searched at the time or place of arrest. Without obtaining a warrant, the police took it to a garage where it was thoroughly searched. The court held this search illegal and 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, as well as by the need to prevent the destruction of evidence . . . but these justifications are absent where a search is remote in time or place from the arrest.[47]

As in *Chimel,* the court in *Preston* adhered to the idea that the scope of a warrantless search ought to be limited by its purposes. The usual purposes of search incident to arrest are protection of the officer and prevention of destruction of evidence. These purposes cease to exist when the search is too remote from the arrest. Thus under both *Preston* and *Chimel,* if an automobile is taken into custody, or if the defendant is unable to drive it away because he is under arrest, the police cannot search further than the area within his immediate control and would have to obtain a search warrant to search the entire vehicle.

The application of *Preston-Chimel* guidelines on vehicular searches may have become somewhat limited since the Supreme Court ruling in *Chambers v. Maroney.*[48] Here the defendant was driving his automobile when the police stopped him and arrested him for robbery. His car was not searched at that time but was taken to the police station and thoroughly searched. The officers had not obtained a warrant. The court held the fruits of that search to be admissible and based its decision on *Carroll, supra,* which states that an officer can search a vehicle incident to arrest when he has probable cause and if the car is in danger of being moved. The court reasoned that since the officers could have searched the defendant immediately after the arrest under the *Carroll* criteria, it made no difference if they moved the car to the police station and searched it there.

Unlike the *Chimel-Preston* decisions, the court did not place emphasis on the actual mobility of the vehicle or the remoteness of the search from the arrest. Instead, the *Chambers* court distinguished *Preston* on the grounds that no probable cause to search existed,

46. 376 U.S. 364 (1964).
47. *Id.* at 367.
48. 399 U.S. 42 (1970).

while it did in *Chambers.*[49] *Chambers* quoted the *Carroll* court which, "noted that the search of an auto on probable cause proceeds on a theory wholly different from that justifying the search incident to an arrest."[50] Thus the *Chimel* warrant requirement to search the entire automobile does not apply. As it stands, *Chimel-Preston* requirements are applicable only to those vehicular searches incident to arrest where there is no probable cause to search, and if probable cause to search does exist, then *Chambers* applies.

For example, in the New Mexico case of *State v. Courtright*[51] the court based its decision on *Chambers* and admitted evidence taken during a warrantless search of the defendant's car. The defendant was arrested for robbery at a filling station where his car was stopped, having just been involved in a collision with another car parked there. After the arrest, the automobile was removed to the police station and was searched two hours later. The court justified the search as follows:

> The evidence is sufficient to show that the police officers had reasonable or probable cause to search the automobile at the place of arrest, and therefore this right continued to a search at the police station shortly after.[52]

Prior to the ruling in *Chambers,* the court may have looked to *Chimel-Preston* to decide the case.[53] This would have made the evidence inadmissible regardless of the existence of probable cause as the auto was immobile and the subsequent search at the garage too remote from the arrest. *Chambers,* however, has exempted *Chimel* from the vehicular search area where there is probable cause and therefore limited its application considerably.

CONCLUSION

Prior to *Chimel,* Fourth Amendment law regarding search and seizure was at best a group of seemingly subjective decisions based on an amorphous standard of reasonableness. Using this very pliable criteria, the court was able in each decision to completely change its

49. *Id.* at 47.
50. *Id.* at 49.
51. 10 N.M. Bar Bulletin 481 (Jan. 27, 1972).
52. *Id.* at 482.
53. If the Supreme Court had not ruled as it did in Chambers v. Maroney, *supra, Chimel* may have rendered the evidence seized in Courtright inadmissible. This is based on the court opinion in State v. Reyes, 81 N.M. 404, 467 P.2d 730 (1970) which involved a similar vehicular search. In that case the court held the evidence admissible, but stated that the search occurred before *Chimel* and that since *Chimel* was not applied retroactively that the search was reasonable. The court stated that had this been a post-*Chimel* case, the evidence would definitely have been inadmissible. *Reyes* at 405-6.

position on the importance of search warrants. Indeed, the history of the cases in this area as outlined in *Chimel* takes on a pendulum-like pattern which is illustrative of the Supreme Court's indecision in the area. *Chimel* seemed to be the end of such indecision and inconsistency; it was objective, specific, and definitive in its strong insistence that reasonableness should only be predicated on the existence of a warrant. But alas, is the pendulum to swing again? The ruling in *Chambers* was certainly a swing in the direction of easily dispensing with the warrant requirement. The ruling in *Coolidge* was intended to clarify *Chimel,* but actually made it confusing and difficult to apply. Perhaps the court is wavering in the strong position it expressed in *Chimel.* The majority opinion in *Coolidge* admits:

> Of course, it would be nonsense to pretend that our decision today reduces Fourth Amendment law to complete order and harmony. The decisions of the court over the years point in differing directions and differ in emphasis. No trick of logic will make them all perfectly consistent.[54]

While the *Chimel* court led one to believe that the Fourth Amendment requires officers to obtain warrants whenever possible, the *Coolidge* court leaves the requirement uncertain.

> I perceive in these inconsistent cases the essential tension that springs from the *uncertain mandate* which this provision of the Constitution gives to this court.[55]

Any prediction about the fact of *Chimel* would only be speculation, but one can hope that it will not be sacrificed to maintain that "essential tension."

PATRICIA MADRID

54. *Coolidge* at 483.
55. *Id.* at 484 quoting J. Harlan in California v. Byers, 402 U.S. 424, 449-50 (1970).