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The Inventory Search and the Arrestee's Privacy Expectation

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When a person is arrested and taken to jail for incarceration, it is standard procedure for jail employees to conduct a warrantless search of the arrestee and take custody of his clothes and personal effects.[1] The items found on the person of the arrestee are placed in an envelope, which is sealed and taken to the property room of the jail for safekeeping.[2] Although the warrantless inventory search has consistently been upheld as constitutional,[3] its permissible scope is as yet undetermined.[4] Courts have been inconsistent in dealing with the question of what types of searches are permitted by the inventory exception and under what circumstances such searches may take place.[5]

An area in which courts have parted company in interpreting the inventory search exception to the warrant requirement is the investigatory search of the arrestee's inventoried personal effects.[6] There is little question that police may subject the arrestee to a search prior to placing him in the cell. However, the issue arises when a police officer later conducts a second warrantless search of the arrestee's inventoried personal effects in order to uncover evidence of the crime for which the arrestee is incarcerated or of unrelated criminal activity.

This Note begins with an examination of the nature of the inventory search and the purposes which justify its existence. Following a discussion of investigatory searches and the warrant requirement, the Note describes the situations in which warrantless investigatory searches of arrestees' personal effects take place, and the manner in which courts have reacted to such searches. The Note then turns to the privacy interests involved in investigatory searches of the arrestee's inventoried personal effects and the arguments advanced by those who contend that no warrant should be required before conducting the search, and concludes that police may conduct a warrantless search of the

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1. South Dakota v. Opperman, 428 U.S. 364, 369 (1976). *See generally* Stroud, *The Inventory Search and the Fourth Amendment*, 4 IND. LEGAL F. 471 (1971).

2. In addition to taking custody of the arrestee's personal effects, police administrative procedure may include listing the items for police records. Illinois v. Lafayette, 51 U.S.L.W. 4829, 4831 (U.S. June 20, 1983).

3. *Lafayette*, 51 U.S.L.W. at 4830; United States v. Robinson, 414 U.S. 218, 224 (1973).

4. *See* A MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, § 230.6, at 529 (Proposed Official Draft) (commentary).

5. *See infra* notes 32-33.

6. Two types of inventory searches are routinely conducted by police. The first is the inventory search of an impounded automobile. For an example of a case involving this situation, see *Opperman*, 428 U.S. 364. The second is the search of an arrestee's person at the jail subsequent to arrest. For example, see *Lafayette*, 51 U.S.L.W. 4829; *Robinson*, 414 U.S. 218. This Note is concerned solely with the search of the arrestee's person, although it will rely in part upon principles applicable to automobile searches.

arrestee's person[7] subsequent to a valid arrest; however, a warrant must be obtained or an established exception[8] to the warrant requirement must be demonstrated before police may conduct subsequent searches of the arrestee's inventoried personal effects.

I. THE INVENTORY SEARCH

The inventory search has developed as a result of routine police procedure in protecting both the police and the arrestee.[9] By conducting an inventory search of the arrestee and taking possession of his personal effects before placing him in the jail cell, three distinct needs are fulfilled. First, the arrestee's property is protected while it remains in police custody.[10] If the arrestee were allowed to maintain possession of his personal effects in the jail cell, items of value may be lost or stolen. Second, the police are protected against claims or disputes over lost or stolen property.[11] When the arrestee's personal effects are stored in a sealed envelope in the police property room, it is less likely that the arrestee can legitimately allege that his effects were stolen or mishandled by police or jail employees. Third, the police are protected from potential danger.[12] By removing the arrestee's effects from his person, it is less likely that he may possess concealed weapons which may be used against the police.[13]

The term "inventory search" is in a sense a misnomer[14] in that generally it is not intended to uncover evidence of a crime.[15] While searches for evidence are criminal in nature, inventory searches are considered noncriminal, routine administrative caretaking functions.[16] Moreover, while items seized as evidence

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7. For a discussion of the requirements imposed before police may search luggage seized pursuant to arrest, see *Lafayette*, 51 U.S.L.W. 4829; Arkansas v. Sanders, 442 U.S. 753 (1979); United States v. Chadwick, 433 U.S. 1 (1977).

8. The established exceptions are hot pursuit, stop and frisk, plain view, consent, automobile, and search incident to arrest. Moylan, *The Automobile Exception: What It Is And What It Is Not—A Rationale in Search of a Clearer Label*, 27 MERCER L. REV. 987, 988 (1976); *Lafayette*, 51 U.S.L.W. 4829 (inventory); Air Pollution Variance Bd. v. Western Alfalfa Corp., 416 U.S. 861 (1974) (open fields).

9. Illinois v. Lafayette, 51 U.S.L.W. 4829, 4830 (U.S. June 20, 1983).

10. South Dakota v. Opperman, 428 U.S. 364, 369 (1976); Farrie v. State, 255 Ind. 681, 683, 266 N.E.2d 212, 216 (1971) (dissenting opinion). Although *Opperman* discussed the propriety of an inventory of an automobile, the opinion provides guidelines to determine the constitutionality of any type of inventory. Dearing v. State, 393 N.E.2d 167, 171 (Ind. 1979).

11. *Opperman*, 248 U.S. at 369.

12. *Id.*

13. By removing all of the arrestee's effects from his person, other prisoners are protected as well. Even common items such as keys and combs may be converted into dangerous weapons in a jail cell. In *Lafayette*, 51 U.S.L.W. at 4831, Chief Justice Burger noted that arrested persons have been known to injure themselves or others with belts, knives, drugs or other items on their person while being detained.

14. A "search" may be defined as "[t]he act of seeking or looking diligently; [i]nquiry; investigation." FUNK & WAGNALL'S NEW STANDARD DICTIONARY OF THE ENGLISH LANGUAGE 1135 (1956).

15. While the inventory search is justified in part by the need to preserve evidence, United States v. Robinson, 414 U.S. 218, 234 (1973), its basic function is that of a caretaking procedure.

16. *Opperman*, 428 U.S. at 370.

are intended for further examination, items taken pursuant to an inventory search are held by police as bailees.[17] The items taken by police pursuant to an inventory search are surrendered to the arrestee when he is released on bail,[18] whereas items seized as evidence of a crime are held by police pending trial and are not surrendered to the arrestee.

II. THE INVESTIGATORY SEARCH

The fourth amendment reads:

> 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.[19]

Investigative searches conducted outside the judicial process, without prior approval by a judge or magistrate, are considered to be *per se* unreasonable under the fourth amendment.[20] A few well-delineated exceptions[21] have been established to provide for those cases where the societal costs of obtaining a warrant, such as danger to law officers or the risk of loss or destruction of evidence, outweigh the reasons for prior recourse to a neutral judicial officer.[22] The reach of each exception is limited to those intrusions which are necessary to accommodate the identified needs of society.[23]

While the inventory search serves primarily a custodial purpose,[24] the investigatory search is intended to uncover evidence of a crime.[25] Moreover, while inventory searches do not require any showing of probable cause and do not require a warrant,[26] police must either demonstrate that an exception to the fourth amendment warrant requirement exists, or seek the advance

17. *See* Mozzetti v. Superior Court of Sacramento County, 484 P.2d 84, 89-90, 94 Cal. Rptr. 412 (1971) (statute imposing liability on police only on showing of gross negligence); Motion for Leave to File a Brief Amicus Curiae and Brief Amicus Curiae in Support of the Petitioner, of Americans For Effective Law Enforcement, Inc. at 7, *Opperman*, 428 U.S. 364 ("[S]ound public policy demands that police officers, when exercising custodial control, even for a brief period, over the property of private citizens, be held to a greater standard of care than that which would excuse all but gross negligence.").

18. Given the noncriminal nature of the inventory search and the role of police as bailees, the arrestee may be allowed to designate a third party to take possession of his personal effects, rather than allowing them to remain in police custody. *See generally Opperman*, 428 U.S. at 392-95 (Marshall, J., dissenting).

19. U.S. CONST. amend. IV.

20. Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971) (plurality opinion); Katz v. United States, 389 U.S. 347, 357 (1967).

21. *Id.*

22. Arkansas v. Sanders, 442 U.S. 735, 759 (1979); United States v. United States District Court, 407 U.S. 297, 318 (1972).

23. Arkansas v. Sanders, 442 U.S. at 760; Mincey v. Arizona, 437 U.S. 385, 393 (1978).

24. *See supra* note 15 and accompanying text.

25. South Dakota v. Opperman, 428 U.S. 364, 370 n.5 (1976).

26. Illinois v. Lafayette, 51 U.S.L.W. 4829, 4830 (U.S. June 20, 1983); United States v. Robinson, 414 U.S. 218, 224 (1973).

approval of a judicial officer before conducting an investigatory search.[27] The judicial officer determines whether probable cause under the fourth amendment exists by asking whether the facts and circumstances within the police officer's knowledge are sufficient to warrant a person of reasonable caution to believe that an offense has been or is being committed.[28] The judicial officer's scrutiny is intended to eliminate searches not based upon probable cause and to limit searches to those intrusions which are necessary under the circumstances.[29]

Although the investigating police officer may be in the position to exercise his judgment to determine probable cause, the fourth amendment requires that in most situations the determination be made by a judicial officer. By requiring the judicial officer to make the determination of probable cause, rather than allowing the determination to be made by the police officer engaged in the "often competitive enterprise of ferreting out crime,"[30] society is ensured that an objective mind is interposed between the citizen and the police.[31] The Supreme Court has consistently rejected arguments that a law enforcement officer's own determination of probable cause to conduct a search should excuse his otherwise unexplained failure to procure a warrant beforehand.[32]

III. THE SECOND SEARCH

When the arrestee is subjected to the inventory search, items police believe to be evidence of the crime for which he was arrested or related to other criminal activity are taken from the arrestee and held as evidence. The remainder of the arrestee's personal effects are placed in the inventory envelope and held for safekeeping. Uncertainty arises when subsequent investigation indicates that further evidence of a crime may be found in the inventory envelope among the arrestee's personal effects. The courts confronted with this situation have been forced to decide whether police, after conducting a non-investigatory inventory search of the arrestee's personal effects, may later conduct an investigatory search of the inventory envelope without first obtaining a warrant.[33]

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27. Katz v. United States, 389 U.S. at 357.

28. The facts and circumstances within the officer's knowledge must be based upon reasonably trustworthy information and not merely upon the officer's intuition. Berger v. New York, 388 U.S. 41, 55 (1967). In Illinois v. Gates, 51 U.S.L.W. 4709, 4711 (U.S. June 8, 1983), the Court overruled the "two-pronged" test of Spinelli v. United States, 393 U.S. 410 (1969), and substituted the traditional "totality of the circumstances" test employed in probable cause determinations.

29. *Coolidge*, 403 U.S. at 467.

30. Johnson v. United States, 333 U.S. 10, 13 (1948).

31. *Katz*, 389 U.S. at 357; Wong Sun v. United States, 371 U.S. 471, 481 (1963); McDonald v. United States, 335 U.S. 451, 455 (1948).

32. United States v. Watson, 423 U.S. 411, 427 (1976) (Powell, J., concurring). *But see* United States v. Ross, 456 U.S. 798 (1982) (allowing warrantless search of container found in automobile being searched pursuant to automobile exception when officer had probable cause to believe the container held evidence of a crime).

33. Police may seek to avoid allegations that they conducted a search by placing the arrestee's effects in a transparent container. An officer could thereby use his visual senses to examine

The issue of whether a warrant is required before police may conduct an investigatory search of an inventory envelope was addressed in *People v. Rivard*.[34] In *Rivard*, the defendant was arrested for armed robbery and subjected to an inventory search at the police station. The following morning after reviewing a list of the property taken in the robbery, a detective realized that a ring found on the arrestee's finger might match one taken in the robbery. Without first obtaining a warrant, the detective went to the jail and obtained the ring from the arrestee's personal property locker.

In affirming the trial court's denial of the defendant's motion to suppress the ring, the Michigan Court of Appeals concluded:

> Defendant concedes that no warrant would have been required to seize the ring during the inventory. Thus, a search warrant to again look at the ring, already in police custody, does not make sense. Once the ring had been exposed to police view under unobjectionable circumstances and lawfully taken by the police for safekeeping, any expectation of privacy with respect to that item had at least partially dissipated so that no reasonable expectation of privacy was breached by Detective Van Alstine taking a "second look."[35]

While some courts have concluded that a warrant is required before police may conduct an investigatory search of the arrestee's inventoried personal property,[36] the majority of the courts confronted with the question have adopted the approach taken in *Rivard* and have allowed such investigatory searches to take place without a warrant.[37] Courts which have held that no warrant is required before police may conduct an investigatory search of the

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the container's contents without opening it. Such activity should be deemed impermissible, however, for it would serve as a pretext for an otherwise illegal investigatory search. Inherent in the duty of police to protect the arrestee's property interest is the duty to safeguard against unnecessary invasions of the arrestee's privacy. This interest cannot be protected if the arrestee's personal effects are placed in a transparent container where they are readily subject to public view.

34. 59 Mich. App. 530, 230 N.W.2d 6 (Ct. App. 1976).

35. *Id.* at 533-34, 230 N.W.2d at 8 (citations omitted).

36. *See* Brett v. United States, 412 F.2d 401 (5th Cir. 1969); United States v. Jones, 317 F. Supp. 856 (E.D. Tenn. 1970); Reeves v. State, 599 P.2d 727 (Alaska 1979) (relying upon Alaska state Constitution); People v. Smith, 103 Cal. App. 3d 840, 163 Cal. Rptr. 322 (Ct. App. 1980), *cert. denied*, 451 U.S. 993 (1981); State v. Kaluna, 55 Haw. 361, 520 P.2d 51 (1974) (relying upon Hawaii state Constitution); People v. Trudeau, 385 Mich. 276, 187 N.W.2d 890 (1971); State v. Simpson, 95 Wash. 2d 170, 622 P.2d 1199 (1980) (relying upon Washington state Constitution).

37. United States v. Oaxaca, 569 F.2d 518 (9th Cir. 1978); United States v. Jenkins, 496 F.2d 57 (2d Cir. 1974), *cert. denied*, 420 U.S. 925 (1975); United States v. Grill, 484 F.2d 990 (5th Cir. 1973), *cert. denied*, 416 U.S. 989 (1974); Evalt v. United States, 382 F.2d 424 (9th Cir. 1967); Baskerville v. United States, 227 F.2d 454 (10th Cir. 1955); United States v. Smith, 340 F. Supp. 1023 (D. Conn. 1972); Mooney v. State, 243 Ga. 373, 254 S.E.2d 337, *cert. denied*, 444 U.S. 886 (1979); People v. Richards, 94 Ill. 2d 92, 445 N.E.2d 319 (1983); Farrie v. State, 255 Ind. 681, 266 N.E.2d 212 (1971); State v. Costello, 231 Kan. 337, 644 P.2d 447 (1982); State v. Bryant, 325 So. 2d 255 (La. 1975); Gee v. State, 435 A.2d 1387 (Md. 1981); People v. Brooks, 405 Mich. 225, 274 N.W.2d 430 (1979); People v. Rivard, 59 Mich. App. 530, 230 N.W.2d 6 (Ct. App. 1975); State v. Adams, 132 N.J. Super. 256, 333 A.2d 304 (1975); People v. Perel, 34 N.Y.2d 462, 325 N.E.2d 452, 358 N.Y.S.2d 383 (1974); State v. Nelson, 298 N.C. 573, 260 S.E.2d 629 (1979); State v. Gelvin, 318 N.W.2d 302 (N.D. 1982), *cert. denied*, 103 S. Ct. 341 (1983).

defendant's inventoried personal effects have relied primarily on three arguments.

First, a valid search of the arrestee's personal effects has already taken place.[38] The argument is that the exception which justified the warrantless search at the outset will continue to justify subsequent searches. Second, the personal effects have been exposed to the plain view of police officers.[39] The argument relies upon the "plain view" exception to the warrant requirement.[40] Third, the inventoried personal effects are already in police custody.[41] This argument proceeds upon the theory that because the police already exercise dominion over the personal effects, they have the right to subject the items to further examination, as they would items seized as evidence of a crime.

IV. THE WARRANT REQUIREMENT AND THE SECOND SEARCH

Before evaluating the validity of the arguments advanced by those courts asserting that no warrant is required to conduct an investigatory search of an arrestee's inventoried personal effects, two fourth amendment issues must be addressed using principles set forth by the Supreme Court.[42] The first issue is whether the inventory envelope is an area in which the arrestee may claim a constitutionally protected privacy interest.[43] The second issue is whether requiring police to obtain a warrant before conducting an investigatory search of inventoried personal effects safeguards the arrestee's fourth amendment interests.[44] As this Note demonstrates, the arrestee does have a legitimate expectation of privacy in his inventoried personal effects, and requiring a warrant before these effects may be searched will serve to protect his fourth amendment interests.

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38. Gee v. State, 435 A.2d 1387, 1390-91 (Ct. App. Md. 1981).

39. State v. Costello, 231 Kan. 337, 341, 644 P.2d 447, 450-51 (1982) ("essentially the equivalent of a plain view case").

40. *See infra* notes 95-97 and accompanying text.

41. *Rivard*, 59 Mich. App. at 533, 230 N.W.2d at 8.

42. Doctrines set forth by the United States Supreme Court are controlling in fourth amendment issues. Opinions by the Supreme Court establish minimum standards of fourth amendment protection. States, through their own constitutions, are empowered to impose higher standards on searches and seizures than required by the federal Constitution if they so choose. Cooper v. California, 386 U.S. 58, 62 (1967).

43. A person may not claim a legitimate expectation of privacy if the fourth amendment's protection does not extend to the area in which his effects are located. Examples of areas not afforded fourth amendment protection are open fields, Air Pollution Variance Bd. v. Western Alfalfa Corp., 416 U.S. 861 (1974), and another person's purse, Rawlings v. Kentucky, 448 U.S. 98 (1980).

44. The warrant requirement would be merely a futile technicality if requiring police to obtain a warrant would only serve to hinder law enforcement while providing no legitimate protection to the arrestee. If characterized as a futile technicality, the only purpose the warrant requirement would serve would be to unjustly provide the arrestee with grounds for asserting a fourth amendment violation which could render evidence excludable. Because the primary justification for the exclusionary rule is the deterrence of police conduct that violates fourth amendment rights, Stone v. Powell, 428 U.S. 465, 486 (1976), the arrestee could not argue that evidence should be excluded if the police conduct did not result in a diminution of his rights.

A. *The Arrestee's Privacy Interest in His Inventoried Personal Effects*

When an arrestee surrenders his personal effects pursuant to an inventory search, both the arrestee and the police may reasonably anticipate that the effects will be placed in the inventory envelope and remain undisturbed for the duration of the arrestee's incarceration.[45] Given the administrative caretaking function [46] of the inventory search, it is reasonable for the arrestee to maintain a subjective expectation that his effects will remain private for the duration of his incarceration.

A mere subjective expectation of privacy alone is insufficient to demand fourth amendment protection. The arrestee must also maintain an expectation which society is prepared to recognize as legitimate and reasonable.[47] A mechanism for determining whether an individual maintains a legitimate expectation of privacy in an item is his property interest in the item.[48] Clearly, the items taken from the person of the arrestee are deemed his property.[49] One of the principal rights attaching to property is the right to exclude others.[50] Because of the circumstances justifying the inventory search,[51] the arrestee's privacy interest is insufficient to preclude the police from conducting the search. Once the search of the arrestee and the seizure of his personal effects have taken place and the effects are stored in the police property room, however, the justifications for the initial intrusion are no longer present, and he should again have a sufficient privacy expectation in his personal property to outweigh the police interest in conducting a search.

While every container that conceals its contents from plain view provides an individual with an expectation of privacy in its contents, the protection varies in different settings.[52] An automobile provides a minimal expectation of privacy because it travels public thoroughfares where its contents are in

45. While the arrestee does not necessarily surrender his personal effects voluntarily, he nevertheless surrenders them with the expectation that they will remain undisturbed for the duration of his incarceration. The fact that the arrestee is compelled to engage in the bailment is immaterial for purposes of determining his privacy expectation.

46. *See supra* text accompanying note 16.

47. *See* Rakas v. Illinois, 439 U.S. 128, 143-44 n.12 (1978) ("A burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate'.").

48. Although the premise that the government asserts a superior property interest at common law has been discredited for purposes of denying an individual the right to claim a privacy interest, Warden v. Hayden, 337 U.S. 294, 304 (1967), property concepts may be relied upon to determine the presence of protected privacy interests. *See* Rakas v. Illinois, 439 U.S. at 144 n.12 ("[t]he court has not altogether abandoned use of property concepts in determining the presence or absence of the privacy interests protected by that Amendment.").

49. In some instances, police may contend that the items taken during the inventory search were stolen and therefore are not the property of the arrestee. The determination of property interests is not the type of ad hoc decision police make, but rather the determination is made by a judicial officer who will decide if the police possess sufficient evidence and information to establish a probable cause belief that the items do not indeed belong to the arrestee.

50. Rakas v. Illinois, 439 U.S. at 144 n.12 (citing W. Blackstone).

51. *See supra* notes 10-13 and accompanying text.

52. United States v. Ross, 456 U.S. 798, 823 (1982).

53. Cardwell v. Lewis, 417 U.S. 583, 590 (1974) (plurality opinion).

plain view.[53] Another person's purse does not guarantee a privacy interest because the individual exercises no control over it and has no standing to complain when it is exposed to others.[54] The question necessarily arises whether an inventory envelope provides the arrestee with an expectation of privacy in its contents.

It is well settled that containers that serve as common repositories for personal effects are inevitably associated with the expectation of privacy.[55] The inventory envelope is supplied by jail officials[56] for the sole purpose of holding and protecting the arrestee's personal effects. The envelope conceals its contents from plain view, is safely stored in the police property room, and is not held by the police for investigatory purposes. The inventory envelope, in short, serves precisely the same functions as an item of luggage or any other repository for personal effects.

The fact that the inventory envelope is not a piece of luggage[57] or an item that the Supreme Court has already recognized as a repository of personal effects[58] is inconsequential. The envelope conceals its contents from plain view and serves the same functions as items of luggage.[59] To suggest that an inventory envelope does not provide a fourth amendment privacy expectation because of its nonpermanent nature would be to contend that it is an "unworthy" container, a distinction that the Supreme Court has rejected as illegitimate.[60]

B. The Effect of a Warrant in Safeguarding the Arrestee's Fourth Amendment Interests

Any interpretation of the fourth amendment warrant requirement should effectively protect citizens from unreasonable searches and seizures.[61] In deciding whether a warrant should be required, one should consider the impact of the search on the individual's sense of security[62] and the likelihood

54. Rawlings v. Kentucky, 448 U.S. 98, 106 (1980).

55. Arkansas v. Sanders, 442 U.S. 753, 762 (1979); United States v. Chadwick, 433 U.S. 1, 11 (1977).

56. Although technically the arrestee does not own the inventory envelope, it has been assigned for his sole use. The fact that jail officials technically own the envelope should not diminish the arrestee's privacy expectation in its contents.

57. *Sanders*, 442 U.S. 753 (1979).

58. *Chadwick*, 433 U.S. 1 (1977) (privacy interest in locked footlocker).

59. While an item of luggage often may be locked, an inventory envelope only safeguards against intrusions by the presence of a seal. However, the fact that a suitcase is unlocked does not affect the reasonableness of a privacy expectation. *Sanders*, 442 U.S. at 762-63 n.9. The person who conceals his effects from view in a container manifests an expectation that its contents will remain free from public examination. United States v. Chadwick, 433 U.S. at 11.

60. *Ross*, 456 U.S. at 822 ("For just as the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion, so may a traveler who carries a toothbrush and a few articles of clothing in a paper bag or knotted scarf claim an equal right to conceal his possessions from official inspection as the sophisticated executive with the locked attache case") (citations omitted).

61. For the text of the fourth amendment, see *supra* text accompanying note 19.

62. United States v. White, 401 U.S. 745, 786 (1971) (Harlan, J., dissenting).

that the burden of obtaining a warrant will frustrate the governmental purpose behind the search.[63] Mere technical formalities which provide no legitimate protection to the individual but which place an unreasonable burden on law enforcement should be avoided. In assessing whether requiring police to obtain a warrant before conducting an investigatory search of an arrestee's inventoried personal effects will provide the arrestee with any legitimate fourth amendment protections, one should consider the functions served by the warrant requirement.

First, the warrant provides guidance to the police conducting the search by defining its permissible scope, thereby keeping the search within constitutional bounds.[64] A distinct objective of the warrant requirement is to avoid the "general warrant" which results in the general, exploratory rummaging through a person's belongings.[65] A warrant accomplishes this objective by requiring a "particular description" of the things to be seized.[66] The judicial officer will issue the warrant, authorizing the police to search the inventory envelope for a specific item, thereby limiting the intrusion into the items not considered to be evidence.[67] Moreover, allowing a general warrantless investigatory search of the arrestee's personal effects to try to establish his connection with another crime "bestows upon the police an undeserved windfall and provides them with a temptation to make subterfuge arrests."[68]

A second purpose of the warrant requirement is to ensure that the probable cause determination is made by a neutral and detached judicial officer, rather than by the police officer who is "engaged in the often competitive enterprise of ferreting out crime."[69] Because the police officer's duty is to detect crime and arrest criminals, he may not be entrusted to protect an individual's right to privacy.[70] Rather, that determination is to be made through a separation of powers and division of functions among the different bran-

63. Camara v. Municipal Court, 387 U.S. 523, 533 (1967).

64. Note, *Persons Lawfully Arrested for Alleged Possession of Narcotics Have a Privacy Interest in a Footlocker in Their Possession at the Time of Their Arrest Which is Protected by the Warrant Clause of the Fourth Amendment*, 6 AM. J. CRIM. L. 81, 90 (1978) [hereinafter referred to as *Persons Lawfully Arrested*].

65. Payton v. New York, 445 U.S. 573, 583 (1980); Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971).

66. *Coolidge*, 403 U.S. at 467.

67. Obtaining a warrant will decrease the likelihood that evidence will be excluded, particularly in those states where the "good faith exception" has been adopted. If a valid warrant has been obtained in a state with the "good faith exception," the defendant must show that the police acted in bad faith in obtaining an improvidently issued warrant.

68. *See*, 2 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 5.3(b), at 320 (1978) (citations omitted) [hereinafter referred to as LAFAVE]. Police would be able to arrest an individual for a minor offense, and seize the contents of his pockets, briefcase and car for safekeeping purposes, and use the items in a general investigation for evidence of criminal conduct unrelated to the offense for which the person was arrested. Farrie v. State, 266 N.E.2d 212, 216 (Ind. 1971) (dissenting opinion).

69. Johnson v. United States, 333 U.S. 10, 14 (1948); *see also Persons Lawfully Arrested, supra* note 64, at 90.

70. McDonald v. United States, 335 U.S. 451, 455-56 (1948) ("Power is a heady thing; and history shows that the police acting on their own cannot be trusted.").

ches of government.[71] The duty of the often biased police officer is to obtain information and present it to the neutral judicial officer, who in turn will make the probable cause determination.

A third function served by requiring police to obtain a warrant before conducting a search of the arrestee's inventoried personal effects is to prevent hindsight from coloring the evaluation of the reasonableness of the search.[72] If evidence is obtained pursuant to a warrantless search without probable cause, judicial review may focus upon the fact that evidence was found in the inventory envelope, rather than the officer's lack of information to support a showing of probable cause. Requiring police to obtain a warrant before conducting a search of the inventory envelope will ensure that the determination of probable cause is based upon information known to the police and the judicial officer prior to the search, and not upon information gathered during the search.

While in some instances the warrant requirement may be a mere formality in that the court will issue a warrant based upon conclusory statements made by a police officer, at least one purpose will be served by requiring a warrant prior to the search. If the warrant is later challenged as being improvidently issued, judicial review will be facilitated by requiring a prior sworn statement of police justifications for conducting the search.[73] The prior sworn statement will prevent the police from conducting general exploratory searches and will limit the use of hindsight to evaluate the reasonableness of the search.

Requiring a warrant before allowing an investigatory search of an inventory envelope is not intended to protect criminals or to make the envelope a haven for contraband or evidence of a crime. Rather, the warrant is required so that an objective mind might weigh the need to invade the arrestee's privacy against the need for effective law enforcement.[74] While an individual may incur a diminution in his privacy expectation subsequent to arrest, that diminution is limited to his person.[75] The diminution in the arrestee's privacy expectation in his person is brought about by the exigencies created by his arrest and incarceration. Those exigencies are not present in the case of a sealed inventory envelope in the police property room. Courts should be reluctant to discard an individual's privacy rights merely because he has been charged with a crime.[76] Those privacy rights may be safeguarded by requiring police to obtain a warrant before inspecting his personal effects.

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71. United States v. United States District Court, 407 U.S. 297, 317 (1972).

72. Katz v. United States, 389 U.S. 347, 358 (1967); Beck v. Ohio, 379 U.S. 89, 96 (1964); *Persons Lawfully Arrested, supra* note 64, at 90.

73. Note, *Scope Limitations for Searches Incident to Arrest*, 78 YALE L.J. 433, 437 (1969). Police will be prevented from making after-the-fact justifications for the search. Rather, they will be compelled to rely upon the information contained in the record in justifying the search warrant.

74. *McDonald*, 335 U.S. at 455-56.

75. United States v. Chadwick, 433 U.S. 1, 16 n.10 (1977).

76. It is noteworthy that the arrestee has only been charged with an offense and is clothed with a presumption of innocence. To suggest that an arrestee has no privacy interest in his personal effects because of the arrest would mean that the effects could be rummaged through

Although requiring police to obtain a warrant before conducting an investigatory search of the envelope will impose a burden on police, that burden does not outweigh the need to protect the arrestee's privacy rights in his personal effects. The mere fact that law enforcement may be made more efficient cannot justify the disregard of the fourth amendment.[77] Moreover, the burden on police does not appear to be excessive. If the police are concerned that the arrestee may be released along with his personal effects, they may detain the inventory envelope for a reasonable period of time pending a judicial ruling on a search warrant request.[78]

Having established that the arrestee maintains a legitimate privacy interest in his personal effects which may be protected by the warrant requirement, the question remains whether the circumstances surrounding the inventory search call for an exception to the warrant requirement. The arguments advanced by courts that have allowed warrantless investigatory searches of the arrestee's inventoried personal effects must be considered.

C. *The Search Incident to Arrest and Inventory Search Exceptions*

There is little doubt that a valid arrest provides police with the authority to conduct a warrantless search of the arrestee at the jail prior to incarceration.[79] The inventory search exception, however, does not permit all future searches of the arrestee or his personal effects without imposing limitations upon the scope of the search.

A fundamental objective to be pursued in any search is to limit the intrusion as much as possible.[80] The scope of a warrantless search must be strictly tied to and justified by the circumstances which rendered its initiation permissible.[81] The inventory search is justified by the need to protect the owner's property while it remains in police custody, to protect the police against claims or disputes over lost or stolen property, and to protect police from potential danger.[82] Once the arrestee's personal effects are in the custody of the police in the property room, each of the above goals has been effectuated[83]

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at will, even if the arrestee is later found to be innocent. *See* People v. Smith, 103 Cal. App. 3d 840, 845-46, 163 Cal. Rptr. 322, 325 (1980), *cert. denied*, 451 U.S. 993 (1981) (rejecting this conclusion).

77. Mincey v. Arizona, 437 U.S. 385, 393 (1978).

78. In United States v. Place, 51 U.S.L.W. 4844, 4845 (U.S. June 20, 1983), the Court explained that "where law enforcement authorities have probable cause to believe that a container holds contraband or evidence of a crime, but have not secured a warrant, they may seize the property, pending issuance of a warrant to examine its contents, if the exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present." And in United States v. Van Leeuwen, 397 U.S. 249 (1970), the Court upheld the detention of a package sent through the mails until a search warrant could be obtained.

79. *See supra* note 3 and accompanying text.

80. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971).

81. *Mincey*, 437 U.S. at 393; Terry v. Ohio, 392 U.S. 1, 17 (1967).

82. *See supra* notes 10-13 and accompanying text.

83. The arrestee's personal effects are isolated from the police and the jail population, protecting the arrestee's interest in these effects and diminishing the possibility that police personnel

and no recognized goal of the inventory search would be furthered by allowing an investigatory search. Indeed, allowing a post-inventory search of the arrestee's personal effects may actually undermine the established goals of the inventory search. The possibility that the arrestee's personal effects may be stolen or that he may claim items were stolen is enhanced when the effects are repeatedly handled by police personnel.[84]

The Supreme Court has been further compelled to legitimate inventory searches because they are a part of the routine procedure incident to incarcerating an arrested person.[85] The Court has noted that if a search is carried out in accordance with standard procedures in the local police department, it tends to ensure that the intrusion is limited in scope to the extent necessary to carry out the caretaking function.[86] Alternatively, warrantless investigatory searches of an arrestee's inventoried personal effects are not conducted pursuant to any routine procedure, but are left solely to the discretion of police. Such investigatory searches could be conducted in a haphazard manner, and no mechanism exists to ensure that they are properly limited in scope.

In order to accept the foregoing arguments, they must first be reconciled with the Supreme Court's 1974 decision in *United States v. Edwards*.[87] In *Edwards*, the defendant was arrested late at night and charged with attempting to break into the city post office. He was taken to the local jail and placed in a cell, but was allowed to retain the clothing he was wearing when arrested. Subsequent investigation revealed that paint chips remained on the window sill where the attempted entry took place. The defendant's clothing was taken from him and held as evidence. Examination of the clothing revealed paint chips matching those found on the window sill.

In holding that the seizure of Edwards' clothing was constitutionally permissible, the majority first noted that the administrative booking process incident to custodial arrest had not ended by the time Edwards was placed in the cell.[88] The later search of Edwards' clothing was not a second search subsequent to booking, but rather was a delayed search incident to arrest.[89]

The *Edwards* majority was further compelled to uphold the search because the defendant retained possession of the clothes containing evidence. It is reasonable for an officer to search for and seize any evidence on the arrestee's

may steal or damage the personal effects. Moreover, the danger that the arrestee will have a weapon in his possession is reduced by holding his personal effects in the property room for the duration of his incarceration.

84. LAFAVE, *supra* note 68, § 5.5, at 360 n.50.

85. Illinois v. Lafayette, 51 U.S.L.W. 4829, 4831 (U.S. June 20, 1983); United States v. Robinson, 414 U.S. 218 (1973).

86. South Dakota v. Opperman, 428 U.S. 364, 374-75 (1976).

87. 415 U.S. 800 (1974).

88. *Id.* at 804.

89. The majority stated:

> This was and is a normal incident of a custodial arrest, and reasonable delay in effectuating it does not change the fact that Edwards was no more imposed upon than he could have been at the time and place of the arrest or immediately upon arrival at the place of detention.

Edwards, 415 U.S. at 805.

person in order to prevent its concealment or destruction.[90] In *Edwards*, Justice White noted that the clothes could have been brushed down and vacuumed while Edwards had them in the cell.[91]

The circumstances that justified the warrantless search in *Edwards* are not present when police seek to conduct an investigatory search of the arrestee's inventoried personal effects. In *Edwards*, the administrative booking process had not yet been completed and the arrestee maintained possession of destructible evidence. When the arrestee's personal effects are inventoried and stored for safekeeping, however, the administrative booking process has been completed and there is no longer any possibility that the arrestee can gain possession of destructible evidence.

The *Edwards* Court was apparently referring only to searches of personal items still in the arrestee's possession at the place of detention, such as his clothing.[92] In a later decision, the Court recognized that during a custodial search the threat that weapons or destructible evidence may be involved necessitates a warrantless search of items within the arrestee's immediate control.[93] The Court further stated, however, that when no exigency is present to demand an immediate search, the warrant clause of the fourth amendment prohibits searches of property that has come under the exclusive dominion of police authority.[94] Once an inventory search has taken place, the personal effects which may contain evidence are in the exclusive control of the police and no exigent circumstances are present to justify a warrantless search.

D. The Plain View Doctrine

A common justification for warrantless seizures of evidence or contraband discovered during an inventory search is the plain view exception.[95] Under the plain view doctrine, an object that comes into view during a search incident to arrest that is appropriately limited in scope may be seized without a warrant.[96] It has been suggested that the plain view doctrine allows warrantless

90. Chimel v. California, 395 U.S. 752, 763 (1969).

91. *Edwards*, 415 U.S. at 806.

92. United States v. Schleis, 582 F.2d 1166, 1171 (8th Cir. 1978).

93. United States v. Chadwick, 433 U.S. 1, 14-15 (1977).

94. *Id.* at 15. The *Chadwick* opinion has been interpreted as limiting *Edwards* to its facts. United States v. Monclavo-Cruz, 662 F.2d 1285, 1290 (9th Cir. 1981); United States v. Berry, 560 F.2d 861, 864 (7th Cir. 1977), *vacated on other grounds*, 571 F.2d 2 (7th Cir.), *cert. denied sub nom.*, Wilson v. United States, 439 U.S. 840 (1978).

95. Coolidge v. New Hampshire, 403 U.S. at 465.

96. It has been suggested that the "plain view" doctrine does not necessarily establish an exception to the warrant requirement in that Coolidge v. New Hampshire, 403 U.S. 443, was a plurality opinion and the prior case law did not clearly establish "plain view" as an exception. *See* Moylan, *The Plain View Doctrine: Unexpected Child of the Great "Search Incident" Geography Battle*, 26 MERCER L. REV. 1047 (1975) [hereinafter referred to as Moylan]. Justice Rehnquist has suggested that "plain view" may be better understood not as an independent "exception" to the warrant requirement, but simply as an extension of whatever the prior justification for an officer's "access to an object" may be. Texas v. Brown, 51 U.S.L.W. 4361, 4364 (U.S. April 19, 1983) (plurality opinion). However, a majority of the justices still adhere to the characteriza-

investigatory searches of the arrestee's inventoried personal effects because those effects have already come into the plain view of the police conducting the search.[97]

To be a permissible search and seizure under the plain view doctrine, three conditions must be satisfied. First, there must be a prior valid intrusion.[98] When the police legitimately enter an area and observe an item that is obviously evidence of a crime, it may be needlessly inconvenient, and sometimes dangerous, to require them to ignore it until they have obtained a warrant particularly describing it.[99] Second, the discovery must be inadvertent.[100] The plain view exception never permits the legitimation of a planned warrantless seizure.[101] Third, it must be immediately apparent to the police that they have evidence before them.[102] The police must have probable cause[103] at the time they view the item to believe that it is evidence of a crime.

When the arrestee is subjected to a valid inventory search pursuant to an arrest, all of the required conditions may be met. The police are authorized to conduct the inventory search,[104] they are not conducting the search to uncover specific items, and their observations can provide them with a probable cause belief that items are evidence of a crime.[105] Items discovered during a valid inventory search may thus be seized if they are immediately apparent as contraband or evidence of a crime. However, in an investigatory search

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tion of the exception established by the plurality in *Coolidge*. *See, e.g., id.* at 4366 (1983) (Powell, J., concurring) ("Whatever my view might have been when *Coolidge* was decided, I see no reason at this late date to imply criticism of its articulation of this exception.").

97. Professor LaFave suggests, "[t]he only question which arguably might deserve prior judicial scrutiny is whether the object in question is probably of evidentiary value, but that is precisely the kind of determination which is regularly left to the police under the plain view doctrine." LAFAVE, *supra* note 68, at 316. *See also* People v. Richards, 94 Ill. 2d 92, 445 N.E.2d 319 (1983); State v. Costello, 231 Kan. 337, 644 P.2d 447 (1982).

98. *Coolidge*, 403 U.S. at 466. The prior valid intrusion may be pursuant to a warrant to search for other items, pursuant to a valid warrantless search for other items, during a search incident to arrest inside a protected area or following any other valid intrusion. *See* Moylan, *supra* note 96, at 1075-78.

99. *Coolidge*, 403 U.S. at 467-68.

100. *Id.* at 469.

101. *Id.* at 479 n.27.

102. *Id.* at 466. The plurality in Texas v. Brown, 51 U.S.L.W. 4361, characterized the "immediately apparent" language of *Coolidge* as an "unhappy choice of words." However, a majority of the court refused to acquiesce in the plurality's characterization of the doctrine. *See supra* note 96.

103. *Coolidge* did not define the degree of certainty required, but "[t]he broad and evolving consensus [of lower courts] . . . is that the standard of certainty must be that of probable cause." Moylan, *supra* note 96, at 1084.

104. *See supra* note 3 and accompanying text.

105. If the officer immediately recognizes an item as contraband or evidence of a crime, but nevertheless places it in the inventory envelope for safekeeping, the requirements for the plain view exception have technically been fulfilled. Courts should be cautious in accepting such an explanation from police, for it may serve as a pretext for an illegal investigatory search. The question must always be asked in such a situation why the officer did not isolate the item as evidence, rather than place it with the arrestee's other personal effects which may be surrendered to him if he is released on bail.

of the arrestee's inventoried personal effects, none of the requirements of the plain view doctrine are met.

To assert that the plain view doctrine provides the officer with the initial justification to conduct a warrantless search of the inventory envelope begs the question. The plain view doctrine comes into play only when another initial justification exists for the intrusion.[106] Because a search incident to arrest is no longer appropriate after the arrestee's personal effects are taken from him,[107] there is no prior valid intrusion. The second requirement is that the discovery must be inadvertent. When police conduct an investigatory search of the arrestee's inventoried personal effects, however, it is not an inadvertent discovery, but rather a planned warrantless seizure which the plain view doctrine can never justify.[108] The third plain view requirement is that it must be immediately apparent to police that the item is contraband or evidence of a crime. During an inventory of the arrestee's personal effects, items that fulfill the immediately apparent requirement are not placed in the inventory envelope.[109] Rather, such items are seized by police as evidence, with the envelope being reserved for those personal items immediately thought to be of no harm and no evidentiary value.

Aside from the fact that the procedural safeguards of the plain view doctrine have not been complied with in the investigatory search of an arrestee's personal effects, strong policy reasons exist for not allowing such warrantless searches to take place under the auspices of the plain view doctrine. The plain view doctrine merely justifies the seizure of evidence[110] and is not intended to expand the situations in which a search can be initiated.[111] To expand the plain view doctrine to include all situations in which items have previously been exposed to police would extend the doctrine well beyond the point which it was intended to reach.[112]

Moreover, the requirement that the item be immediately apparent as evidence serves a vital function in determining probable cause. When the officer is aware of the characteristics of an item sought as evidence, he can make a valid probable cause determination based upon his contemporaneous observation of the item found on the arrestee's person. However, when the officer becomes aware of the characteristics of an item in question after the inventory has taken place, days or weeks may have passed since he observed

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106. *See supra* note 98 and accompanying text.

107. *See* United States v. Prescott, 599 F.2d 103, 105 (5th Cir. 1979) ("Inventory searches must be limited to effectuation of the recognized purposes for which they are conducted . . . .").

108. *Coolidge*, 403 U.S. at 471 n.27.

109. *See supra* note 105.

110. Note, *"Plain View" and the "Plain View Doctrine,"* 10 FLA. ST. U. L. REV. 290, 291 (1982).

111. A valid intrusion must already be in progress. *See supra* notes 98-99 and accompanying text.

112. The *Coolidge* plurality stated that "the mere fact that the police have legitimately obtained a plain view of a piece of incriminating evidence is not enough to justify warrantless seizure." *Coolidge*, 403 U.S. at 471 n.27.

the item found on the arrestee's person.[113] The officer's probable cause determination may be affected by his desire to obtain evidence of a crime.

A related question is whether the arrestee maintains a legitimate expectation of privacy in the contents of a container previously exposed to police.[114] This question was presented to the United States Supreme Court in *Illinois v. Andreas*.[115] In *Andreas*, authorities discovered illegal drugs inside a table during a valid customs search. In order to arrest the consignee in possession of the table, police effected a "controlled delivery" of the table. After the table was delivered to the defendant, police searched the table without a warrant and again discovered the illegal drugs. In holding the search to be permissible under the fourth amendment, the Court said that "absent a substantial likelihood that the contents have been changed, there is no legitimate expectation of privacy in the contents of a container previously opened under lawful authority."[116]

The peculiar circumstances which justified the warrantless search in *Andreas* are not present in the search of an arrestee's inventoried personal effects. In *Andreas*, the authorities were aware at the time of the first search that the packages found in the table contained illegal drugs and were reasonably certain that the contents of the table had not changed in any way before the second search. Because the police only delayed the seizure of the packages in order to effect the controlled delivery, the Court was able to rely upon the plain view doctrine to validate the search.[117]

On the other hand, when an arrestee's personal effects are placed in an inventory envelope, police have no reason to suspect that the items are contraband or evidence of a crime, and do not subject those items to special scrutiny. Moreover, while the police resealed the container in *Andreas* in order to effect the controlled delivery, police seal the inventory envelope solely to protect the arrestee's interest in the items and do not anticipate examining the envelope's contents again. The Court in *Andreas* stated that "[t]he simple act of resealing the container *to enable the police to make a controlled delivery* does not operate to revive or restore the lawfully invaded privacy rights."[118]

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113. The problem is further compounded when an officer receives information regarding an item found on the person of the arrestee from another officer who conducted the inventory search. For an example of that fact pattern, see *Richards*, 94 Ill. 2d 92, 445 N.E.2d 319 (finding second search reasonable).

114. In Illinois v. Andreas, 51 U.S.L.W. 5157, 5159 (U.S. July 5, 1983), the Court noted that "[t]he plain view doctrine is grounded on the proposition that once police are lawfully in a position to observe an item first-hand, its owner's privacy interest in that item is lost. . . ." *But see supra* note 112.

115. 51 U.S.L.W. 5157, 5159 (U.S. July 5, 1983).

116. *Id.* at 5159.

117. The Court noted that "once a container has been found *to a certainty* to contain illicit drugs, the contraband becomes like objects physically within the plain view of the police, and the claim to privacy is lost. Consequently, the subsequent reopening of the container is not a 'search' within the intendment of the Fourth Amendment." *Id.* (footnote omitted) (emphasis added).

118. *Id.* (emphasis added).

Andreas may thus be read as permitting police to conduct a warrantless second search of a container as part of a controlled delivery, but may not be extended to every instance in which police have previously viewed an item.[119]

E. Police Possession of a Container

When the police conduct an inventory search of an arrestee pursuant to a valid arrest, they rightfully maintain possession of the arrestee's personal effects as bailees. To determine whether rightful possession of the inventory envelope entitles police to search its contents, one should consider the nature of both the inventory search and the process of holding the effects for safekeeping. While searches for evidence based upon probable cause are criminal in nature, inventory searches are considered noncriminal, routine administrative caretaking functions.[120] The justification for the police to possess the envelope is unrelated to any evidence-finding function. Unlike police possession of items seized as evidence, items held pursuant to an inventory search are surrendered to the arrestee when he is released. To ensure that the arrestee's privacy interests are protected, the authority of police to possess and inspect an arrestee's personal effects should be limited to the terms which authorized the police to take possession at the outset.[121] Because police possession of an inventory envelope is authorized by the need to protect the interests of both the arrestee and the police, the terms of the possession should be limited to the effectuation of these goals, and should not extend to investigatory searches.

The United States Supreme Court has refused to allow warrantless searches based solely upon police possession of a container. In *Walter v. United States*,[122] federal agents obtained possession of sealed packages containing films which were mistakenly delivered to a third party rather than to the consignee. Without attempting to obtain a warrant, the agents viewed the films with a projector and discovered that the films were of an obscene nature. The Court held that the viewing of the films without a warrant constituted an illegal search, emphasizing that an officer's authority to possess a package is distinct from his authority to examine its contents.[123] The agents in *Walter* were authorized to possess the packages containing films, but were required to obtain a warrant before inspecting the contents. Similarly, the terms that authorize

119. This conclusion is consistent with the Court's opinion in Michigan v. Tyler, 436 U.S. 499 (1978), where the Court held that even though firemen have legally entered a house, their subsequent entries may require a warrant. *See also* Michigan v. Clifford, 52 U.S.L.W. 4056 (U.S. Jan. 11, 1984); United States v. Hoffman, 607 F.2d 280 (9th Cir. 1979). An additional factor tending to support the Court's decision in *Andreas* is that controlled deliveries are conducted pursuant to routine police procedure. Thus, the intrusion is limited in scope to the extent necessary to carry out the controlled delivery. Because searches of inventory envelopes are not conducted pursuant to routine procedure, they do not have such safeguards. *See supra* notes 85-86.

120. South Dakota v. Opperman, 428 U.S. 364, 370 n.5 (1976).

121. *See generally* cases cited *supra* notes 80-81 and accompanying text.

122. 447 U.S. 649 (1980) (plurality opinion).

123. *Id.* at 654-55 (citing Arkansas v. Sanders, 442 U.S. 753, 758 (1978)); United States v. Chadwick, 433 U.S. 1, 10 (1977)).

police to possess the inventory envelope are limited to an administrative caretaking function, and those terms do not enable them to search the envelope without prior recourse to a judicial officer.

CONCLUSION

The process of inventorying an arrestee's personal effects has developed as the result of legitimate needs to protect the interests of both the police and the arrestee. The policy reasons for allowing warrantless inventory searches are distinct from those justifying warrantless investigatory searches in that inventory searches are noncriminal in nature. The investigatory search of the arrestee's inventoried personal effects is criminal in nature, however, and should not be treated in the same manner as the noncriminal inventory search. Rather, police should be required to obtain advance approval from a judicial officer or be prepared to demonstrate that an established exception to the warrant requirement is applicable.

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