CRIMINAL PROCEDURE—SEARCH AND SEIZURE—PARKED MOTOR HOME HELD TO BE WITHIN SCOPE OF AUTOMOBILE EXCEPTION TO WARRANT REQUIREMENT—*California v. Carney*, 471 U.S. 386 (1985).

The United States Supreme Court has developed a number of exceptions to the fourth amendment warrant requirement.[1] No exception has created more confusion than the automobile exception.[2] The Supreme Court has sought to justify this exception through two rationales: exigency[3] and the lesser expectation of privacy afforded to motor vehicles.[4] Inconsistent utilization of

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[1] The fourth amendment to the United States Constitution provides:

> 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.

U.S. CONST. amend. IV.

The United States Supreme Court has maintained that governmental searches and seizures conducted without a prior judicial warrant are presumptively unreasonable and therefore unconstitutional. *See, e.g.*, United States v. Chadwick, 433 U.S. 1, 15-16 (1977); Coolidge v. New Hampshire, 402 U.S. 443, 454-55, 478-82 (1971); Chimel v. California, 395 U.S. 752, 762 (1969); Katz v. United States, 389 U.S. 347, 357 (1967). The Court, however, has permitted warrantless searches and seizures in "a few specifically established and well-delineated exceptions." *Katz*, 389 U.S. at 357 (footnote omitted). The main exceptions to the warrant requirement are search incident to arrest, the automobile exception, consent, plain view, hot pursuit, stop and frisk, and border searches. *See* Note, *Warrantless Vehicle Searches and the Fourth Amendment: The Burger Court Attacks the Exclusionary Rule*, 68 CORNELL L. REV. 105, 107-08 (1982).

[2] In Cady v. Dombrowski, 413 U.S. 433 (1973), Justice Rehnquist found the Court's interpretation of the automobile exception to be "something less than a seemless web." *Id.* at 440. Justice Powell in a concurring opinion in Robbins v. California, 453 U.S. 420, 430 (1981) found the automobile exception to be "intolerably confusing" and stated that "[t]he Court apparently cannot agree even on what it has held previously, let alone on how these cases should be decided." *Robbins*, 453 U.S. at 430 (Powell, J., concurring).

[3] In Carroll v. United States, 267 U.S. 132 (1925), the Court recognized that the privacy interests in an automobile are constitutionally protected. Nevertheless, the Court held that automobiles' ready mobility justify a lesser degree of protection. The Court reasoned:

> [T]he guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be *quickly moved* out of the locality or jurisdiction in which the warrant must be sought.

Id. at 153 (emphasis added).

[4] In South Dakota v. Opperman, 428 U.S. 364 (1976), the Court noted that

these two rationales, however, has complicated the application of the automobile exception.[5] The Court has upheld warrantless vehicle searches by relying on either one[6] or both rationales[7]. The Court has also justified these searches based solely on probable cause.[8] The Court's failure, however, to develop a definitive standard for the automobile exception, has resulted in an area of law which perplexes lawyers and judges alike.[9] The complexities surrounding the use of this exception are heightened when the vehicle in question is a motor home.[10] The Court confronted this issue in *California v. Carney*.[11]

On May 31, 1979, two agents from the Drug Enforcement Administration (DEA) undertook surveillance in downtown San

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"[b]esides the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office." *Id.* at 367 (footnote omitted).

5 *See* Gardner, *Searches and Seizures of Automobiles and Their Contents: Fourth Amendment Considerations in a Post-Ross World*, 62 NEB. L. REV. 1, 2 (1983). The author notes:

> The Court has attempted in these cases to clarify the scope of the exception, particularly as it relates to searches of containers found within automobiles. Unfortunately, such efforts have failed to clearly define the scope of the authority to conduct warrantless searches of vehicles. Moreover, the Court has seemed uncertain about the rationale supporting the automobile exception, vascillating between theories which focused on the impracticality of obtaining search warrants given the mobility of vehicles, and those which excused warrantless vehicular searches because such intrusions supposedly offend only minimal privacy expectations.

Id.; *see also* Robbins v. California, 453 U.S. 420, 430 (1980), where Justice Powell observed: "The law of search and seizure with respect to automobiles is intolerably confusing." *Id.* (Powell, J., concurring).

6 *See, e.g.*, Cardwell v. Lewis, 417 U.S. 583 (1974) (plurality opinion) (lesser expectation of privacy rationale); Carroll v. United States, 267 U.S. 132 (1925) (exigency rationale). For a detailed discussion of *Cardwell*, see *infra* notes 74-91 and accompanying text. For a detailed discussion of *Carroll*, see *infra* notes 40-48 and accompanying text.

7 *See, e.g.*, United States v. Ross, 456 U.S. 798 (1982). For a discussion of *Ross*, see *infra* notes 99-102 and accompanying text.

8 *See, e.g.*, Texas v. White, 423 U.S. 67 (1975) (per curiam). For a discussion of *White*, see *infra* note 73.

9 In Cady v. Dombrowski, 413 U.S. 433 (1973), Justice Rehnquist found the Court's interpretation of the automobile exception to be "something less than a seemless web." *Id.* at 440. Justice Powell, in a concurring opinion in Robbins v. California, 453 U.S. 420, 430 (1981), found the automobile exception to be "intolerably confusing" and stated that "[t]he Court apparently cannot agree even on what it has held previously, let alone on how these cases should be decided." *Id.* (Powell, J., concurring).

10 *See infra* notes 139-42 and accompanying text for a discussion of why a motor home should provide greater privacy rights to its owners.

11 471 U.S. 386 (1985).

Diego of suspected drug dealer, Lee Bowman.[12] During the surveillance, agent Williams observed Charles Carney approach a Mexican boy.[13] Carney and the youth walked to a nearby parking lot and entered a Dodge Mini Motor Home.[14] Carney closed all curtains in the motor home including the one across the front windshield.[15] The license number on the motor home was consistent with uncorroborated anonymous information that Williams had received from an organization known as WeTIP.[16] Williams then called for additional assistance to aid in the surveillance of the motor home.[17]

The youth left the motor home approximately an hour and fifteen minutes later.[18] The two DEA agents along with James Clem, a San Diego narcotics officer, approached the boy and asked him what had happened in the motor home.[19] The boy told the agents that he had received marijuana from the occupant of the vehicle in return for sexual favors.[20] Upon the agents' request, the boy knocked on the door of the motor home and asked

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12 People v. Carney, 34 Cal.3d 597, 602, 668 P.2d 807, 808, 194 Cal.Rptr. 500, 501-02 (1983), *rev'd*, 386 U.S. 471 (1985).

13 *Id.* Agent Williams stated that he had taken notice of Carney because "he did not look like he fit in the area there, and he was approaching a Mexican boy and talking to him." *Id.*, 668 P.2d at 808, 194 Cal.Rptr. at 502.

14 *Carney*, 471 U.S. at 388. Several factors suggest that the officers might have been able to obtain a search warrant. People v. Carney, 34 Cal.3d 597, 610 n.8, 668 P.2d 807, 814 n.8, 194 Cal.Rptr. 500, 507 n.8 (1983). First, the incident took place on a weekday afternoon. *Id.* Second, the mobile home was located in a parking lot only a few blocks from the courthouse. *Id.*

15 *Carney*, 471 U.S. at 388.

16 People v. Carney, 172 Cal.Rptr. 430, 432 (Cal. Dist. Ct. App. 1981). WeTIP stands for "We Turn In Pushers." *Id.* at 432 n.2. It is an organization that provides telephone services whereby people may anonymously call up and provide information about drug transactions. *Id.* The information would then be passed on to a law enforcement agency by WeTIP. *Id.*

In *Carney*, the information came from a letter and anonymous telephone calls. *Id.* at 432. This information alleged that narcotics were being distributed from this particular mobile home. *Id.* Carney was linked as the vehicle's driver, along with Lee Bowman and Louis A. Gonzales. *Id.* The information stated that these men gave narcotics to young boys in exchange for sexual services. *Id.* Bowman and his cohorts conducted their business in downtown San Diego near the Horton Plaza. *Id.* WeTIP further charged that the curtains of the mobile home would be closed during the activities which would last anywhere between ten minutes and two hours. *Id.* at 432.

17 People v. Carney, 34 Cal.3d 597, 602, 668 P.2d 807, 809, 194 Cal.Rptr. 500, 502 (1983). Officer Clem, a San Diego narcotics officer, responded to agent Williams' call for assistance. People v. Carney, 172 Cal.Rptr. 430, 432-33 (1981).

18 *Carney*, 471 U.S. at 388.

19 *Id.*

20 *Id.*

Carney to come out.[21] As Carney stepped out, Officer Clem entered the motor home to check for other occupants.[22] Clem observed in plain view two bags of marijuana, a scale and some ziploc bags.[23] Carney was arrested and the motor home was taken to the police station.[24] A warrantless inventory search of the motor home led to the discovery of additional marijuana.[25] Thereafter, Carney was charged with possession of marijuana with intent to distribute.[26]

At the preliminary hearing, Carney moved to suppress the

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21 *Id.*

22 *Id.* The following excerpts from the trial record help illustrate what had transpired after the boy knocked on the door of the mobile home:

Cross examination of agent Williams:

Q. Did [Carney] then step outside?

A. Yes, sir.

Q. And prior to stepping outside did you tell him something?

A. Possibly, yes, very possibly, we asked him to step out. I don't remember for sure that we asked him to step out, but — whether he stepped voluntarily or we asked him, I don't remember.

Q. Did you then ask him to face you?

A. I don't remember that per se, no.

Q. Well, what was Mr. Carney's position at the time that Agent Clem stepped into the vehicle?

A. I believe as Mr. Carney stepped out, Agent Clem stepped up on the steps, looked in, and stepped back out and told me what was observed, to the best of my knowledge.

Q. And the first step is inside the van, is it not?

A. Yes, sir. Well

Q. In other words, there is an exterior door on the van, is there not?

A. Yes, it is probably an exterior step that would be outside the van. Whether it was down or not, I don't know. From what I remember, Agent Clem stepped in where the door would have locked, stepped on that step and looked in.

Q. So he had his body and feet inside the van at the time when he looked, did he not?

A. I believe so. You would have to ask Agent Clem.

Joint Appendix at 19-21, *California v. Carney*, 471 U.S. 386 (1985) (No. 83-859).

Direct Examination of Agent Clem:

Q. What did you do when the defendant answered the door?

A. The first thing, I identified myself as a police officer. The defendant then stepped down out of the motor home at about the same time I stepped in the motor home to check to see if there were any other occupants in the vehicle.

Q. Now, why did you do that?

A. Safety reasons, to see if anybody else was in there.

Id. at 21-22.

23 *Carney*, 471 U.S. at 388.

24 *Id.*

25 *Id.* The marijuana was found in both the cupboards and the refrigerator. *Id.*

26 *Id.*

evidence that was seized in the motor home.[27] The magistrate denied Carney's motion and determined that the initial search was justified because agent Clem had probable cause to look for other occupants.[28] In addition, the magistrate upheld the subsequent search, reasoning that it was an inventory search.[29] Carney renewed his motion to suppress the evidence in the superior court, but was again unsuccessful.[30] He then pleaded *nolo contendere* to the charges and was subsequently placed on probation.[31]

On appeal from the probation order, the California Court of Appeal determined that since motor homes possess the same mobility as other vehicles, they are within the scope of the automobile exception.[32] The court then held that the existence of probable cause and exigent circumstances justified the search inside the motor home for other occupants and the subsequent seizure of evidence in plain view.[33] The California Supreme Court reversed, maintaining that the prime justification for the automobile exception was not mobility, but that automobiles had a diminished expectation of privacy.[34] The court further stated that the expectation of privacy in a motor home was more similar to that of a residence than that of an automobile.[35] Accordingly,

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27 *Id.*

28 *Id.*

29 *Id.* Carney moved in the California Superior Court to suppress the evidence on the basis that it was obtained through an illegal search and seizure. *Id.*

30 *Id.* The superior court, in denying Carney's motion to suppress the evidence, held that: "(1) there was sufficient probable cause to arrest defendant; (2) the search of the motor home was authorized under the automobile exception; and (3) the motor home itself could be seized as an instrumentality of the crime." People v. Carney, 34 Cal.3d 597, 603, 668 P.2d 807, 809, 194 Cal.Rptr. 500, 502 (1983).

31 *Carney*, 471 U.S. at 388-89.

32 People v. Carney, 172 Cal.Rptr. 430, 434-35, (Cal. Ct. App. 1981), *rev'd*, 34 Cal.3d 597, 668 P.2d 807, 194 Cal.Rptr. 500 (1983), *rev'd*, 471 U.S. 386 (1985).

33 *Carney*, 172 Cal.Rptr. at 434-35.

34 People v. Carney, 34 Cal.3d at 614, 668 P.2d at 817, 194 Cal.Rptr. at 510.

35 *Id.* at 606-07, 668 P.2d at 812, 194 Cal. Rptr. at 504-05. In finding that mobile homes were generally used as a residence, the California Supreme Court reviewed the CAL. VEH. CODE § 396 and the HEALTH & SAFETY CODE § 18008. *Id.* at 606, 668 P.2d at 812, 194 Cal.Rptr. at 505. CAL. VEH. CODE § 396 (West Supp. 1984) provides that:

> "Mobile home" is a structure as defined in section 18008 of the Health and Safety Code. *** For the purposes of enforcement of highway safety laws and regulations, a mobile home is a trailer coach which is in excess of eight feet in width or in excess of 40 feet in length ***.

CAL. HEALTH & SAFETY CODE § 18008 (West 1984) provides that:

> "Mobile home," for the purposes of this part, means a structure transportable in one or more sections, designed and equipped to contain not more than two dwelling units to be used with or without a foundation

the court held that the automobile exception did not apply.[36]

The United States Supreme Court reversed, holding that the motor home was within the scope of the automobile exception to the warrant requirement.[37] The Court determined that the motor home was readily mobile[38] and as with all other vehicles was afforded a lesser expectation of privacy due to its governmental regulation and the need for effective law enforcement.[39]

The automobile exception to the warrant requirement was first considered by the Supreme Court in 1925 in *Carroll v. United States*.[40] In *Carroll*, two federal prohibition agents stopped an automobile suspected of transporting contraband.[41] Although the agents had probable cause to believe that there was contraband inside the automobile,[42] they were unable to detain their suspects

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system. Mobilehome does not include a recreational vehicle, commercial coach, or factory-built housing, as defined in § 19971.

The Court further noted that the mobile home, in the case at bar, had "at least a bed, a refrigerator, a table, chairs, curtains and storage cabinets[,]" thus illustrating the vehicle's similarities to a residence. People v. Carney, 34 Cal.3d at 606-07, 668 P.2d at 812, 194 Cal.Rptr. at 505. Accordingly, the court concluded that "the configuration of the furnishings, together with the use of the motor home for *all* manner of strictly personal purposes, strongly suggests that the structure at issue is more properly treated as a residency than a mere automobile." *Id.* (emphasis added).

36 *Id.*

37 *Carney*, 471 U.S. at 390-92.

38 *Id.* at 390-93. The Court noted that "ready mobility [is] one of the principle bases of the automobile exceptions." *Id.* at 390 (citations omitted). Moreover, Chief Justice Burger recognized that "the mobility of automobiles . . . 'creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible.' " *Id.* at 391 (citation omitted).

39 *Id.* at 392-93. Chief Justice Burger posited that the "reduced expectations of privacy derive not from the fact that the area to be reached is in plain view, but from the pervasive regulation of vehicles capable of traveling on the public highways." *Id.* at 392. Moreover the Court noted:

> "Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order."

Id. (quoting South Dakota v. Opperman, 428 U.S. 364, 368 (1976)).

40 267 U.S. 132 (1925).

41 *Id.* at 136. The federal prohibition agents did not expect to encounter the defendants at that particular time. *Id.*

42 *Id.* at 160. The Supreme Court's finding of probable cause was based on the agents' previous encounters with Carroll and his cohorts. *Id.* Months earlier, the occupants of the vehicle offered to sell liquor to undercover agents, however, the deal was never completed. *Id.* Subsequently, the agents observed these individuals

without a warrant.[43] Rather than allowing the suspects to drive away with possible evidence, the agents conducted a warrantless search of the automobile that resulted in the seizure of contraband.[44] The Supreme Court upheld both the search and the convictions.[45]

The *Carroll* Court set forth two requirements for a valid warrantless automobile search. First, the officer must have probable cause to search the vehicle.[46] Second, there must be an exigent circumstance preventing the officer from obtaining a warrant prior to conducting the search.[47] The *Carroll* Court recognized that the mobility of the automobile created such an exigency since valuable evidence could be moved prior to the issuance of a search warrant.[48]

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traveling on the road between Grand Rapids and Detroit, a route known for liquor trafficking. *Id.*

In dissent, Justice McReynolds challenged the Court's finding of probable cause. *Id.* at 171 (McReynolds, J., dissenting). Justice McReynolds contended that the only circumstance which would have given the agents a reasonable suspicion was their previous encounter, but that even then, no sale took place. *Id.* at 174 (McReynolds, J., dissenting). With the subsequent arrest occurring over two months later, Justice McReynolds questioned whether a man who once promised to deliver liquor, but had not, would be subject to arrest whenever he drove on a Detroit road. *Id.*

Professor Katz suggests that the Court's finding of probable cause may have been based on hindsight supported by the contraband found in the automobile. *See* Katz, *Automobile Searches and Diminished Expectations in the Warrant Clause*, 19 AM. CRIM. L. REV. 557, 564 n.40 (1982).

43 *Carroll*, 267 U.S. at 156-58. At common law, in order to arrest a person for a misdemeanor, the officer needed a warrant or had to witness the commission of the offense. *Id.* at 157. The defendants' claimed that an "offense is not committed in an [officer's] presence unless he can by his senses detect that the liquor is being transported." *Id.* Under this theory, the suspects could not be arrested until the liquor was discovered. *See* 3 W. LAFAVE, SEARCH AND SEIZURE 24 (2d ed. 1987). Today, however, the preferred view is that an "officer needs only probable cause to believe [that the misdemeanor] is being committed in his presence; detection by the natural senses is not required." Katz, *supra* note 42, at 564 n.42.

44 *Carroll*, 267 U.S. at 136.

45 *Id.* at 162.

46 *Id.* at 156. Probable cause has been defined as follows: "If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offense has been committed, it is sufficient." Stacey v. Emery, 97 U.S. 642, 645 (1878). For a detailed discussion on the topic of probable cause, see generally 1 W. LAFAVE, *supra* note 43, at 539-749, 2 W. LAFAVE, *supra* note 43, at 1-115.

47 *Carroll*, 267 U.S. at 153-54.

48 *Id.* at 150-54. The Court discussed various acts of Congress since the adoption of the fourth amendment to

> show that the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference

For the next forty-five years, however, the Supreme Court rarely referred to the *Carroll* doctrine.[49] Instead, the Court relied on the "search incident to arrest" rationale for cases involving warrantless automobile searches.[50] This reasoning was based on the Court's liberal interpretation of the "search incident to arrest" doctrine to justify warrantless searches of areas beyond the immediate control of the arrested person.[51] Then in 1969, in *Chimel v. California*,[52] the Court limited the scope of the "search incident to arrest" doctrine by sanctioning warrantless searches of the area only within the *immediate control* of the arrested person.[53] As a result of *Chimel*'s effect on the "search incident to arrest" doctrine, *Carroll* was given a renewed importance.[54]

In 1970, the Supreme Court considered the *Carroll* doctrine in *Chambers v. Maroney*.[55] In *Chambers*, the police received a detailed description of a vehicle and four men suspected of armed robbery.[56] The officers stopped an automobile meeting the description.[57] The occupants were arrested and the police impounded the vehicle to the police station, where a warrantless

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between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Id. at 153.

49 *See* Note, *supra* note 1, at 112-13. The automobile exception was used for warrantless searches conducted prior to arrests. 3 W. LAFAVE, *supra* note 43, at 24. Most of these cases involved the enforcement of prohibition laws. *Id. See, e.g.*, Brinegar v. United States, 338 U.S. 160 (1949); Scher v. United States, 305 U.S. 251 (1938); Husty v. United States, 282 U.S. 694 (1931).

50 *See* 3 W. LAFAVE, *supra* note 43, at 24-25.

51 *Id. See, e.g.*, Harris v. United States, 331 U.S. 145 (1947) (valid search of multi-room apartment); Harris v. Stephens, 361 F.2d 888 (8th Cir. 1966), *cert. denied*, 386 U.S. 964 (1967) (valid search of car parked in driveway while suspect was arrested at front door of his house).

52 395 U.S. 752 (1969).

53 *Id.* at 762-63. *Chimel* limited the search incident to arrest to the area within the immediate control of the arrested person, thereby encompassing the area in which a suspect might reach for a weapon or attempt to destroy evidence. *See id.*

54 *See generally* 3 W. LAFAVE, *supra* note 43, at 25.

55 399 U.S. 42 (1970).

56 *Id.* at 44. In *Chambers*, a service station was robbed by two armed men. *Id.* Two teenagers who had earlier noticed a blue station wagon circling around the block by the service station, saw it speed away. *Id.* At about the same time, the teenagers heard about the robbery. *Id.* The teenagers called the police and provided detailed descriptions of the vehicle and its occupants. *Id.*

57 *Id.* Within an hour, the police stopped a vehicle meeting the description approximately two miles from the service station. *Id.*

search was conducted.[58] The Court maintained that there was probable cause and sufficient exigent circumstances to justify a warrantless search of the automobile at the time the vehicle was initially pulled over.[59] The Court, therefore, reasoned that since the search would have been valid at the scene of the incident, it was also permissible at the police station.[60] The Court then held that given probable cause, there was no difference between seizing and holding a vehicle in order to procure a warrant and conducting an immediate warrantless search.[61] Thus, the Court sanctioned a warrantless search of the vehicle, even though that vehicle had been effectively immobilized.[62]

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58 *Id.* In conducting the warrantless automobile search, the police found two revolvers, as well as business cards of another service station that had been robbed the previous week. *Id.* The owner of the automobile and one of his cohorts were indicted for both robberies. *Id.* at 45 n.1.

59 *Id.* at 52. The *Chambers* Court maintained that there was sufficient probable cause to search the vehicle when it was stopped and that the exigency requirement was fulfilled because the vehicle was a "fleeting target." *Id.* Furthermore, the court stated that:

> In enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution. As a general rule, it has also required the judgment of a magistrate on the probable-cause issue and the issuance of a warrant before a search is made. Only in exigent circumstances will the judgment of the police as to probable cause serve as a sufficient authorization for a search.

Id. at 51.

60 *Id.* at 52. The Court maintained that the probable cause and mobility of the vehicle were still present at the police station "unless the Fourth Amendment permits a warrantless seizure of the car and the denial of its use to anyone until a warrant is secured." *Id.*

The Court also noted that the suspects were arrested in a dark parking lot at night. *Id.* at 52 n.10. The Court, therefore, remarked that it was neither safe, nor practical for the police to conduct a proper search, and that it was reasonable to impound the vehicle. *Id.*

Justice Harlan, however, asserted in his dissent that a warrant should have been obtained after the seizure of the vehicle. *Id.* at 63-65 (Harlan, J., dissenting). He maintained that the occupants of a vehicle should have a choice to either consent to an immediate search or have the vehicle seized and a magistrate justify a search. *Id.*

61 *Id.* at 52.

62 *Id.* at 51-52. To many commentators, *Chambers* had emasculated the exigency requirement by sanctioning a warrantless search of an immobilized vehicle. *See, e.g.*, Katz, *supra* note 42, at 568; Gardner, *supra* note 5, at 8-9. This view, however, was complicated by the Court's decision in Coolidge v. New Hampshire, 403 U.S. 443 (1971). The *Coolidge* Court, in a plurality opinion, held a warrantless search of an impounded automobile to be invalid and not within the scope of the automobile exception. *Id.* at 458-64. For a discussion of *Coolidge* and its significance, see *infra* notes 63-73 and accompanying text.

One year later, the Supreme Court again reviewed the automobile exception in *Coolidge v. New Hampshire*.[63] In *Coolidge*, the accused was suspected of murdering a young girl.[64] The police were issued warrants for Coolidge's arrest and for the search of his vehicles.[65] Although Coolidge was arrested in his home, the police impounded the vehicles which were parked on his driveway.[66] Subsequently, the police conducted a search of the vehicles at the police station.[67] The Court found that the search warrant was invalid because it was not issued by a "neutral and detached magistrate."[68] The Court then held that this search was outside the scope of the automobile exception and thus invalid.[69]

In so holding, the Court distinguished *Coolidge* from *Chambers*.[70] In *Coolidge*, unlike *Chambers*, the police could not have conducted a valid search at the scene of the incident.[71] The Court also determined that the suspect in *Coolidge* had no access to his automobile and thus the opportunity to search was not fleeting.[72] The Court, therefore, maintained that exigent circumstances, as well as probable cause were necessary for a valid warrantless au-

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63 403 U.S. 443 (1971) (plurality opinion).

64 *Id.* at 446.

65 *Id.* at 446-47.

66 *Id.* at 447.

67 *Id.* The vehicles were impounded approximately two and one-half hours after the arrest. *Id.* One of the vehicles was searched three times: once two days after the arrest, then a year later and finally six months after that. *Id.* at 447-48.

68 *Id.* at 449.

69 *Id.* at 461-64. The Court stated that:

> The word "automobile" is not a talisman in whose presence the Fourth Amendment fades away and disappears. And surely there is nothing in this case to invoke the meaning and purpose of the rule of *Carroll v. United States*—no alerted criminal bent on flight, no fleeting opportunity on an open highway after a hazardous chase, no contraband or stolen goods or weapons, no confederates waiting to move the evidence. . . .

Id. at 461-62.

70 *Id.* at 463-64. In *Chambers*, the Court held that if a warrantless search could have been conducted at the time of the incident, it may also occur later at the police station. *Chambers*, 399 U.S. at 52. The *Coolidge* Court, on the other hand, held that since a warrantless search would have been invalid at the time of arrest, the search at the police station was not valid. *Id.* at 463-64.

71 *Id.*

72 *Id.* at 460. The Court found that there were no exigent circumstances. *Id.* Coolidge had been a suspect for some time and yet remained cooperative throughout the investigation. *Id.* He had had the opportunity to flee or destroy evidence for some time and had failed to do so. *Id.* Furthermore, the Court remarked that "[t]he opportunity to search was thus hardly 'fleeting.' " *Id.* When the police arrived at Coolidge's residence, two officers guarded the back door while the others entered through the front. Coolidge was arrested without resistance and he had no opportunity to get to his vehicle. *Id.*

tomobile search.[73]

In the 1974 case of *Cardwell v. Lewis*,[74] the Court, in a plurality opinion, adopted the lesser expectation of privacy rationale for the automobile exception.[75] In *Cardwell*, a murder victim was found laying next to his automobile.[76] The police took tire prints from the area, as well as paint scrapings from the vehicle.[77] Several months later, Lewis, the prime suspect in the case, was arrested after being interrogated at the investigating authorities' office.[78] His vehicle, which had been parked in a public lot, was impounded by the police.[79] Without a warrant, the officers made a cast impression of the tires and took paint samples from the vehicle.[80] The Court upheld the officers' inspection of the exterior of the automobile finding that the police had probable cause

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[73] *Id.* at 458-59. The *Coolidge* plurality's requirement of exigency has not been followed. *See* Gardner, *supra* note 5, at 12-13. In light of the lesser expectation of privacy rationale, and the Court's justification of inherent mobility, the exigency requirement has been severely emasculated. *See id.*, *supra* note 5, at 12-13.

In 1975, the Court seemingly upheld a warrantless vehicle search on probable cause alone in Texas v. White, 423 U.S. 67 (1975) (per curiam). There, White was arrested while he was trying to cash bad checks at a bank drive-through window. *Id.* at 67. An officer saw White try to hide something. *Id.* The police then impounded his vehicle and conducted a warrantless search. *Id.* at 68. The Court upheld the search because the police had probable cause to believe evidence was in the vehicle. *Id.* The opinion made no mention of either lesser expectation of privacy or exigent circumstances.

Since *White*, however, the Court has looked to the inherent mobility of a vehicle. *See, e.g.*, Robbins v. California, 453 U.S. 420, 424 (1981) (plurality opinion); United States v. Chadwick, 433 U.S. 1, 12 (1977).

[74] 417 U.S. 583 (1974) (plurality opinion).

[75] *Id.* at 589-91. Justice Harlan originally proposed the reasonable expectation of privacy analysis in his concurring opinion in Katz v. United States, 389 U.S. 347 (1967) where he set forth a two part test to determine whether an individual's expectation of privacy should be protected. *Katz*, 389 U.S. at 361 (Harlan, J., concurring). Justice Harlan stated, that first, "a person [must] have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" *Id.* This approach was later adopted by the Supreme Court in Smith v. Maryland, 442 U.S. 735, 740-41 (1979).

[76] *Cardwell*, 417 U.S. at 586. The victim died as a result of gun shot wounds. *Id.* The vehicle, which had been driven over an embankment, was found in the brush along the Olentangy River in Delaware County, Ohio. *Id.*

[77] *Id.* Shortly after the victim's death, the police questioned Lewis at his place of business. *Id.* While there, the police observed Lewis' vehicle. *Id.*

[78] *Id.* Several months had passed before the police asked Lewis to appear at the Office of the Division of Criminal Activities for interrogation. *Id.*

[79] *Id.* at 587-88.

[80] *Id.* at 588. The day after the arrest, a police technician examined Lewis's vehicle. *Id.* He determined that the tread on the vehicle's tire matched a cast impression taken at the scene of the incident. *Id.* The technician further maintained that the paint samples taken from Lewis's vehicle were the same "color, texture [and] order of layering" as the paint chips taken from the deceased's vehicle. *Id.*

and the search was conducted in a reasonable manner.[81] In so doing, the Court maintained that people have lesser expectations of privacy in their automobiles than in their homes.[82] In support of this proposition, the Court reasoned that a vehicle's principle function is transportation which is conducted in public view.[83] Moreover, the Court distinguished the exterior of a vehicle from the interior.[84] The Court noted that the interior of a vehicle can contain personal effects warranting further protection.[85]

The *Cardwell* Court also found that there was no constitutional violation for searching a vehicle after it had been impounded.[86] The Court distinguished *Coolidge* on two grounds.[87] First, the scope of the search was more extensive in *Coolidge* because it involved the interior of the vehicle.[88] Second, the automobile in *Coolidge* was parked on private property, whereas, in *Cardwell*,[89] the vehicle was seized from a public location where access was less restricted.[90] The *Cardwell* Court further held that

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81 *Id.* at 592.

82 *Id.* at 589-91.

83 *Id.* The *Cardwell* Court noted that "[t]he search of an automobile is far less intrusive on the rights protected by the Fourth Amendment than the search of one's person or of a building." *Id.* at 590 (quoting Almeida-Sanchez v. United States, 413 U.S. 266, 279 (1973) (Powell, J., concurring)). The Court observed that a vehicle is always in the public eye because its main function is to travel on public roads. *Id.* at 590.

In United States v. Chadwick, 433 U.S. 1 (1977), the Court maintained that the governmental regulation of vehicles further diminished the public's expectation of privacy. *Id.* at 12-13.

84 *Cardwell*, 417 U.S. at 591-92.

85 *Id.* With regard to the exterior of a vehicle, the Court found that such an invasion of privacy "if it can be said to exist [would be] abstract and theoretical." *Id.* at 592 (quoting Air Pollution Variance Board v. Western Alfalfa Corp., 416 U.S. 861, 865 (1974)). The Court, thus concluded that "where probable cause exists, a warrantless examination of the exterior of a car is not unreasonable under the Fourth and Fourteenth Amendments." *Id.* at 592. The Court observed that the fourth amendment had traditionally protected the interior of vehicles. *Id.* at 591.

86 *Id.* at 592-93.

87 *Id.* at 593.

88 *Id.* The Court maintained that *Coolidge* involved "a thorough and extensive search of the entire automobile including the interior. . . ." *Id.* at 593 n.9. On the other hand, *Cardwell* only involved a search of the vehicle's exterior which consisted of an inspection of a tire and the taking of paint samples. *Id.* Thus, the court noted that the search in *Coolidge* warranted additional considerations as to the defendant's expectation of privacy. *Id.*

89 *Id.* at 593. *Chambers* presented the same situation that existed in *Cardwell*. *Id.* In both cases, the defendants' vehicles were seized from unrestricted public areas. *Id.*

90 *Id.* at 593. The *Cardwell* Court observed that in *Coolidge*, the vehicle was on private property, whereas in *Cardwell* and *Chambers*, the vehicle was on public property. *Id.*

a warrantless search is not rendered unconstitutional because there was an opportunity to obtain a search warrant.[91]

The lesser expectation of privacy rationale has also been used by the Court in determining whether a warrantless search of containers located inside a vehicle was within the scope of the automobile exception.[92] The Supreme Court addressed this issue in *United States v. Chadwick*.[93] In *Chadwick*, the defendants were arrested immediately after they had placed a footlocker in the trunk of an automobile.[94] The federal agents had probable cause to believe that the footlocker contained marijuana.[95] The agents impounded the vehicle and then, without a warrant, opened the sealed container and discovered marijuana.[96] The Court held that the automobile exception was not applicable because the agents had probable cause to search the footlocker but not the vehicle itself.[97] Moreover, the Court maintained that a footlocker was not open for public view and had a greater expectation of privacy than an automobile.[98]

In 1982, the Supreme Court extended the automobile ex-

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91 *Id.* at 595-96.

92 *See, e.g.*, United States v. Ross, 456 U.S. 798 (1982); Robbins v. California, 453 U.S. 420 (1981); Arkansas v. Sanders, 442 U.S. 753 (1979); United States v. Chadwick, 433 U.S. 1 (1977).

93 433 U.S. 1 (1977).

94 *Id.* at 3-4.

95 *Id.* at 3. The agents had been notified by their counterparts from another state that an individual named Machado, a suspected drug trafficker, would be arriving on a train carrying a footlocker. *Id.* Moreover, the footlocker was leaking talcum powder, which is used to disguise the smell of marijuana. *Id.* The agents' suspicions were further verified when their trained drug-sniffing dog indicated that there was a controlled substance inside the footlocker. *Id.* at 3-4.

96 *Id.*

97 *See id.* at 11-13.

98 *Id.* The Court maintained that:

> The factors which diminish the privacy aspects of an automobile do not apply to [luggage]. Luggage contents are not open to public view . . . nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile.

Id. at 13.

Chadwick was later upheld in Arkansas v. Sanders, 442 U.S. 753 (1979) and in Robbins v. California, 453 U.S. 420 (1981) (plurality opinion). In *Sanders*, the Court upheld *Chadwick*, stating that a warrantless search of luggage does not come under the automobile exception. *Sanders*, 442 U.S. at 763-65. The *Sanders* Court observed that there are greater expectations of privacy in regards to personal luggage and that it was easier to seize and hold luggage while waiting for a warrant than an automobile. *Id.* The Court, however, did hold that if the contents of the

ception to include containers transported in vehicles in *United States v. Ross*.[99] In *Ross*, two officers stopped a vehicle which they had probable cause to believe contained contraband.[100] An officer, without a warrant, opened a closed paper bag that was inside the vehicle's trunk and found heroin.[101] The Court upheld the search, finding that if probable cause justified the warrantless search of a vehicle, the officer could search every part of that vehicle including its contents for the object of the search.[102]

Despite the Supreme Court's holdings, the standard used to determine when the automobile exception was applicable remained unsettled.[103] As a result, the circuit courts were split in their decisions regarding the automobile exception's applicability to mobile homes.[104] The Supreme Court resolved this conflict in *California v. Carney*.[105]

In *Carney*, the Supreme Court upheld a warrantless search of a motor home located in a public parking lot.[106] The Court looked to the "ready mobility" of the motor home,[107] as well as

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luggage can be inferred from its appearance, a warrantless search of that container could be conducted. *Id.* at 764 n.13.

In *Robbins*, police opened the trunk of an automobile after they had discovered marijuana in its passenger compartment. Robbins v. California, 453 U.S. 420, 422 (1981) (plurality opinion). They opened two packages found inside the trunk, which contained marijuana. *Id.* In a plurality opinion, the Court held that the search was invalid under *Sanders*. *Id.* at 428. *Robbins* was later overruled in United States v. Ross, 456 U.S. 798, 824 (1982).

99 456 U.S. 798 (1982).

100 *Id.* at 800-01. In *Ross*, a reliable informant contacted a detective and told him that an individual known as the "Bandit" was selling drugs out of his vehicle's trunk at a certain address. *Id.* at 801. The information also included a description of the suspect and the vehicle. *Id.*

101 *Id.* The officers noticed a bullet on the front seat. *Id.* They then found a gun in the glove compartment. *Id.* The officers then arrested Ross, took his car keys and opened the trunk. *Id.* An officer found a closed paper bag, opened it and discovered contraband. *Id.*

102 *Id.* at 825.

103 Gardner, *supra* note 5, at 2. Since *Chambers*, there has been much confusion over the automobile exception. 3 W. LAFAVE, *supra* note 43, at 27-28.

104 Several cases have upheld warrantless searches of mobile homes based on the automobile exception: *See, e.g.*, United States v. Holland, 740 F.2d 878 (11th Cir. 1984); United States v. Kelly, 683 F.2d 871 (5th Cir.), *cert. denied*, 459 U.S. 972 (1982); United States v. Combs, 672 F.2d 574 (6th Cir.), *cert. denied*, 458 U.S. 1111 (1982); United States v. Hudson, 601 F.2d 797 (5th Cir. 1979); United States v. Miller, 460 F.2d 582 (10th Cir. 1972). The Ninth Circuit, however, has found such searches unconstitutional because mobile homes have a greater expectation of privacy than automobiles. *See, e.g.*, United States v. Wiga, 662 F.2d 1325 (9th Cir. 1981); United States v. Williams, 630 F.2d 1322 (9th Cir. 1980).

105 471 U.S. 386 (1985).

106 *Id.* at 393.

107 *Id.* at 390-93.

the reduced expectation of privacy which stems from the governmental regulation of motor vehicles.[108] The Court further found that the search was not unreasonable because the agents had "abundant" probable cause to search the vehicle.[109]

Chief Justice Burger, writing for the majority,[110] reviewed the mobility rationale set forth in *Carroll*[111] and noted the "long-recognized distinction between stationary structures and vehicles."[112] The Chief Justice observed that this dichotomy was premised on the theory that a vehicle could be quickly moved before a warrant was obtained.[113] The majority also noted that mobility was not the sole justification for the automobile exception.[114] The *Carney* Court reaffirmed the lesser expectation of privacy accorded to motor vehicles[115] maintaining that government regulation of motor vehicles caused this reduced expectation of privacy.[116]

In *Carney*, Chief Justice Burger found both rationales applicable.[117] Although the motor home was found stationary in a location not normally used for residential purposes, it was nevertheless capable of being driven away.[118] The majority, thus,

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108 *Id.* at 392-93.

109 *Id.* at 395. The Court concluded:

> This search was not unreasonable; it was plainly one that the magistrate could authorize if presented with these facts. The DEA agents had fresh, direct, uncontradicted evidence that the respondent was distributing a controlled substance from the vehicle, apart from evidence of other possible offenses. The agents thus had abundant probable cause to enter and search the vehicle for evidence of a crime notwithstanding its possible use as a dwelling place.

Id.

110 *Id.* at 387. Chief Justice Burger's opinion was joined by Justices White, Blackmun, Powell, Rehnquist and O'Connor. *Id.*

111 *Carney*, 471 U.S. at 390-92. For a discussion of the *Carroll* doctrine, see *supra* notes 40-51 and accompanying text.

112 *Id.* at 390.

113 *See id.* at 390-94.

114 *Id.* at 391.

115 *Id.* The Court stated that:

> [b]esides the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office.

Id. (quoting South Dakota v. Opperman, 428 U.S. 364, 367 (1976)).

116 *Id.* at 392. The *Carney* Court noted that motor vehicles are subject to various government regulations. *Id.* Some examples of these regulations include periodic inspections, licensing requirements, and every day police stops for various violations or for notification of faulty safety equipment. *Id.* (citing South Dakota v. Opperman, 428 U.S. at 368).

117 *Id.* at 392-93.

118 *Id.* Chief Justice Burger maintained that the vehicle could be readily moved

refused to distinguish the motor home from other vehicles.[119] The Court further noted that such a distinction would require a differentiation in accordance with a vehicle's size or appointments.[120] While observing that the motor home had some of the attributes of a residence,[121] Chief Justice Burger maintained that the automobile exception never turned on a vehicle's other possible uses.[122] Rather, the Court determined that the crucial issue was whether the vehicle was readily mobile and whether it was located in a setting which would objectively indicate that it was being used for transportation purposes.[123]

In conclusion, the Court maintained that the search was not unreasonable.[124] The Court observed that the agents possessed "fresh, direct, and uncontradicted evidence" that Carney was distributing narcotics.[125]Thus, the majority held that the agents had sufficient probable cause to enter and search the motor home.[126]

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by the mere turn of a key. *Id.* at 393. The Chief Justice further stated that the lesser expectation of privacy given to a vehicle was not applicable to a fixed dwelling. *Id.*

119 *Id.* at 393-94. The Court reasoned:

> In our increasingly mobile society, many vehicles used for transportation can be and are being used not only for transportation but for shelter, *i.e.*, as a "home" or "residence." To distinguish between respondent's motor home and an ordinary sedan for purposes of the vehicle exception would require that we apply the exception depending upon the size of the vehicle and the quality of its appointments. Moreover, to fail to apply the exception to vehicles such as a motor home ignores the fact that a motor home lends itself easily to use as an instrument for illicit drug traffic and other legal activity.

Id.

120 *Id.* Chief Justice Burger remarked that in *Ross*, the Court "declined to distinguish between 'worthy' and 'unworthy' containers." *Id.* at 394 (citing *Ross*, 456 U.S. at 822). Thus, he declined to distinguish "between 'worthy' and 'unworthy' vehicles" which are either located on public roadways or situated in a manner where one could reasonably see that it was not being used as a residence. *Id.*

121 *Id.* at 393. The dissent observed that the motor home had "substantial living space inside: stuffed chairs surround[ing] a table; cupboards provid[ing] room for storage of personal effects; bunkbeds provid[ing] sleeping space; and a refrigerator provid[ing] ample space for food and beverages." *Id.* at 406 (Stevens, J., dissenting).

122 *Id.* at 394.

123 *Id.* Chief Justice Burger maintained that these requirements ensured that law enforcement officers' efforts in detecting criminal activity are not unnecessarily delayed and that the public's privacy interests are protected. *Id.*

124 *Id.* at 395. The Court noted that the automobile exception waives "[o]nly the prior approval of the magistrate" and that the search must be consistent with how a magistrate would have authorized it. *Id.* at 394 (quoting *Ross*, 456 U.S. at 823).

125 *Id.* at 395. *See supra* note 16 and accompanying text for a description of the evidence which the agents had prior to the search.

126 *Id.* at 395.

In a dissenting opinion, Justice Stevens characterized the motor home as a "hybrid."[127] The Justice contended that the vehicle's hybrid character placed it somewhere between the privacy interests forbidding warrantless searches of the home and the law enforcement interests justifying the "warrantless searches of automobiles based on probable cause."[128] Justice Stevens maintained that the majority erred in three respects by upholding the search under the automobile exception.[129]

First, the dissent contended that the Court had lost confidence in the state and federal courts' ability to enforce the fourth amendment.[130] Justice Stevens stated that this lack of confidence had resulted in the Court's "improvident exercise of discretionary jurisdiction."[131] Thus, the Court had been overburdened with cases offering fact bound errors of little significance.[132] Justice Stevens then asserted that the Court had prematurely decided this issue without allowing possible development of alternative principles in the lower courts.[133] The dissent maintained that this development of various approaches should have taken place in the lower courts before the Court adopted a nationwide rule.[134]

Second, the dissent posited that the Court had given priority

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127 *Id.* (Stevens, J., dissenting). Justice Stevens' dissenting opinion was joined by Justices Brennan and Marshall. *Id.* Justice Stevens contended that the "character of 'the place to be searched' " was an important factor in Fourth Amendment analysis. *Id.* (Stevens, J., dissenting) (footnote omitted). He therefore thought that the California Supreme Court had correctly characterized the motor home as a "hybrid." *Id.* (citing People v. Carney, 34 Cal.3d 597, 606, 668 P.2d 807, 812, 194 Cal. Rptr. 500, 606 (1983)).

128 *Id.* (Stevens, J., dissenting).

129 *Id.* at 395-96 (Stevens, J., dissenting).

130 *Id.* at 396 (Stevens, J., dissenting). Justice Stevens stated that unless a correct order suppressing evidence has been granted, a petition for certiorari was likely to receive the necessary four votes for plenary review. *Id.* Accordingly, Justice Stevens stated that many state legal officers have filed petitions for certiorari in "even the most frivolous search and seizure cases." *Id.*

131 *Id.* at 396-97 (Stevens, J., dissenting).

132 *Id.* at 396 (Stevens, J., dissenting). In justification of this claim, the dissent cited Oklahoma v. Castleberry, 471 U.S. 146 (1985); United States v. Sharpe, 470 U.S. 675 (1985); and United States v. Johns, 469 U.S. 778 (1985).

133 *Carney*, 471 U.S. at 399 (Stevens, J., dissenting).

134 *Id.* at 400 (Stevens, J., dissenting). Justice Stevens maintained that the lower courts should have had more time to debate various approaches in deciding whether a motor home was within the scope of the automobile exception. *Id.* Thus, the dissent posited that the majority's holding established a nationwide rule before the conflict had fully developed, whereas if the lower court was affirmed, only one state would be governed by that decision. *Id.* at 398-99.

to the exception, rather than the rule.[135] Justice Stevens noted that the *Carroll* Court had held that "in cases where the securing of a warrant is reasonably practicable, it must be used."[136] The Justice, therefore, asserted that if a motor home was a hybrid which fell between the rule requiring a warrant and the mandates of the automobile exception, priority should have been given to the warrant requirement.[137]

Finally, the dissent argued that a warrantless search of a motor home was reasonable only when it was traveling on public roads or when other exigent circumstances were present.[138] Justice Stevens maintained that the majority relied on the inherent mobility of the motor home to "create a conclusive presumption of exigency."[139] The Justice then added that inherent mobility alone cannot justify a warrantless search.[140] Moreover, Justice Stevens contended that the owner of a motor home has a substantial expectation of privacy when it is used as a residence.[141] Thus, Justice Stevens concluded that a warrantless search of the "living quarters" in a motor home was "presumptively unreasonable absent exigent circumstances."[142]

Carney is significant for more than the extension of the automobile exception to mobile homes. The *Carney* Court essentially expanded the automobile exception to parked vehicles. Moreover, the Court finally developed a clear view of the automobile exception and the confusion surrounding the exigency require-

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135 *Id.* at 401 (Stevens, J., dissenting). Justice Stevens recited the general rule that " 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established well delineated exceptions.' " *Id.* (quoting Katz v. United States, 389 U.S. 347, 357 (1967)).

136 *Id.* at 401 (Stevens, J., dissenting) (quoting *Ross*, 456 U.S. at 807).

137 *Id.* at 402 (Stevens, J., dissenting).

138 *Id.* (Stevens, J., dissenting).

139 *Id.* at 404 (Stevens, J., dissenting). Justice Stevens noted that the vehicle was parked in an "off-the-street lot" and that the agents had the element of surprise because curtains were covering the windshield. *Id.* The Justice thus asserted that there was no real threat of mobility. *Id.*

140 *Id.* at 402 (Stevens, J., dissenting).

141 *Id.* Justice Stevens observed that this motor home was designed to "accommodate a breadth of ordinary everyday living." *Id.* at 406 (Stevens, J., dissenting). He maintained that although a motor home "may not be a castle, it is usually the functional equivalent of a hotel room, a vacation and retirement home, or a hunting and fishing cabin." *Id.* at 407 (Stevens, J., dissenting). Thus, Justice Stevens contended a motor home deserves a higher expectation of privacy. *Id.* at 407-08 (Stevens, J., dissenting).

142 *Id.* at 408 (Stevens, J., dissenting) (citation omitted).

ment was resolved.[143] Furthermore, the question of whether to apply the exigency or lesser expectation of privacy rationale is no longer a consideration. The *Carney* Court had for all intents and purposes eliminated both rationales. *Carney* finalizes the position held by some courts and commentators who had maintained that probable cause alone was sufficient for a valid warrantless vehicle search.

After *Carney*, a law enforcement officer may conduct a warrantless search of a vehicle based solely upon probable cause. No longer must a vehicle be in transit to be considered mobile because all vehicles are viewed by the Court as inherently mobile.[144] In other words, a vehicle can be made readily mobile by the mere turn of the ignition key.[145] Moreover, since all vehicles are under governmental regulation, they all possess a reduced expectation of privacy.[146] The Court further held that there is no distinction between a motor home and an automobile; both are vehicles, both are readily mobile, and both have reduced expectations of privacy.[147] Probable cause, therefore, is the sole requirement to conduct a warrantless vehicle search.

The requirement that a warrant to search a vehicle must be obtained when reasonably practicable is no longer applicable.[148]

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[143] Many commentators viewed *Chambers* as a severe limitation on the exigency requirement. *See* Note, *supra* note 1, at 111-12; Gardner, *supra* note 5, at 8-10. *See supra* notes 55-62 and accompanying text for a detailed discussion of *Chambers*. The *Coolidge* decision further obfuscated the situation. *See* Gardner, *supra* note 5, at 10-13. Decided a year after *Chambers*, the *Coolidge* Court invalidated the warrantless search of an impounded vehicle which had been parked on the suspect's driveway while he was in the house. *Id.* The status of the exigency requirement was further in doubt with the adoption of the lesser expectation of privacy rationale in *Cardwell*. *See supra* notes 74-91 and accompanying text. Moreover, the Court seemed at times to have upheld a warrantless search on probable cause alone. *See* Texas v. White, 423 U.S. 67 (1975) (per curiam). Since *White*, however, the Court has looked to the inherent mobility of a vehicle. *See* Robbins v. California, 453 U.S. 420, 424 (1981) (plurality opinion); United States v. Chadwick, 433 U.S. 1, 12 (1977).

[144] *Carney*, 471 U.S. at 390-93.

[145] *Id.* at 393.

[146] *Id.*

[147] *Id.* at 393-94. The Court, however, stated that its holding did not encompass those motor homes situated in a manner that would "objectively indicate[] it was being used as a residence." *Id.* at 394 n.3. In this situation, the Court remarked that it would look at such factors as whether the motor home was up on blocks, licensed as a vehicle, connected to public utilities, and if it had convenient access to a public roadway. *Id.*

[148] *See id.* at 401-02 (Stevens, J., dissenting). Justice Stevens noted in his dissent that the *Carroll* Court had held that "[i]n cases where the securing of a warrant is reasonably practicable, it must be used." *Id.* at 401 (quoting *Ross*, 456 U.S. at 807). This is no longer the rule, but rather is now the exception. *See id.* at 402. An officer who can reasonably obtain a warrant without any fear of losing evidence is no

In essence, the Court has given priority to the exception rather than to the rule.[149] Since a law enforcement officer needs only probable cause to conduct a warrantless vehicle search, there is no incentive to obtain a warrant. In *Carney*, two agents maintained surveillance over a parked motor home for over an hour.[150] Although the motor home was located two blocks from the court house, the agents never attempted to obtain a search warrant.[151] Since this conduct is now permissible, one must wonder about the status of the search warrant in regard to all other vehicle searches.

It is apparent that the *Carney* majority and dissent have adopted extreme views without finding a common ground. The ultimate policy behind the automobile exception is to provide law enforcement officials with an easier means of obtaining evidence and arresting criminals, while still protecting individuals' fourth amendment rights. In *Carney*, however, the majority has expanded the automobile exception to the point of sacrificing the true meaning of the fourth amendment. The dissent, on the other hand, sought to return to the *Carroll* doctrine. Yet, if one believes that there should be a balance between the need for effective law enforcement and the protection of individual fourth amendment rights, the court should have adopted an approach somewhere between the two divergent views.

The Court's inability to strike this balance resulted from the disagreement over the proper scope of the exigency and lesser expectation of privacy rationales. The majority looked to the inherent mobility of the vehicle,[152] whereas the dissent maintained that absent exigent circumstances, a warrantless search could be conducted only when the vehicle had been stopped in transit.[153] The majority clearly lost sight of the purpose of the automobile exception, as well as an individual's fourth amendment rights. The most significant reason for the automobile exception was to prevent the loss of valuable evidence due to the exigency caused by a vehicle's mobility. The question arises—is it enough to say

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longer required to get that warrant for vehicle searches. Rather, all that officer needs is probable cause and he may conduct a warrantless vehicle search. *See id.*

149 *See supra* notes 134-142 and accompanying text for Justice Stevens' view that the Court has followed the exception, rather than the rule. For a discussion of whether the Court has given priority to the rule or the exception prior to the *Carney* decision, *see* Katz, *supra* note 42, at 558-62.

150 *Carney*, 471 U.S. at 388.

151 *See supra* notes 11-20 and accompanying text.

152 *Carney*, 471 U.S. at 390-93.

153 *Id.* at 402 (Stevens, J., dissenting).

that a parked vehicle is readily mobile and thus satisfies the purpose for the exception just because it could be started by the mere turn of an ignition key? The answer to this question is no. Justice Stevens was correct in recognizing the need for some exigency prior to the stopping of a vehicle in transit. Absent these circumstances, there is an insignificant difference between a parked motor home and a residence to justify a bright line approach sanctioning warrantless searches. In essence, by eliminating the mobility requirement, the *Carney* Court expanded the automobile exception while simultaneously forgetting its purpose.

A further dispute between the majority and dissent concerned the status of the lesser expectation of privacy rationale. The *Carney* Court held that a motor home was accorded a reduced expectation of privacy due to its governmental regulation,[154] as well as the need for effective law enforcement.[155] Alternatively, the dissent maintained that the majority's opinion conflicted with prior law under *United States v. Chadwick*.[156] Justice Stevens reasoned that a parked motor home had a greater expectation of privacy than a movable footlocker.[157] Thus, since a warrantless search of a moveable container was held invalid in *Chadwick*,[158] the dissent asserted that such a search of a parked motor home should also be invalid.[159]

In reviewing the lesser expectation of privacy rationale, the majority seems to have taken a better approach. It would be improper for a court to differentiate between vehicles, unless one could objectively state that the vehicle was being used primarily as a residence, rather than as a means of transportation. While

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154 *Id.* at 392.

155 *Id.* at 394.

156 *Id.* at 404-06 (Stevens, J., dissenting); *see supra* notes 93-98 and accompanying text for a detailed discussion of *Chadwick*.

157 *Carney*, 471 U.S. at 404-06 (Stevens, J., dissenting). Justice Stevens reviewed how the *Ross* Court had interpreted *Chadwick*:

> The Court in *Chadwick* specifically rejected the argument that the warrantless search was "reasonable" because a footlocker has some of the mobile characteristics that support warrantless searches of automobiles. The Court recognized that a "person's expectations of privacy in personal luggage are substantially greater than in an automobile," [], and noted that the practical problems associated with the temporary detention of a piece of luggage during the period of time necessary to obtain a warrant are significantly less than those associated with the detention of an automobile.

Carney, 471 U.S. at 405 (Stevens, J., dissenting) (quoting *Ross*, 456 U.S. at 811).

158 *Id.* at 404-05 (Stevens, J., dissenting).

159 *Id.* at 405-06 (Stevens, J., dissenting).

the dissent is correct in maintaining that a mobile home has a greater expectation of privacy than a movable footlocker, it failed to persuasively illustrate why the Court should differentiate mobile homes from other vehicles. While conceding a mobile home often has many of the amenities of a residence, the dissent failed to provide a method for differentiating between the vehicles. The dissent could not have meant that all mobile homes are outside the scope of the automobile exception. If this were so, litigation would arise over custom style vans, as well as other motor vehicles similar to mobile homes. Clearly, the majority has adopted a more consistent stance by treating all vehicles alike, unless the vehicle could be objectively viewed as being used primarily as a residence.

In analyzing the *Carney* opinions, it is, therefore, apparent that the Court should have adopted an approach more consistent with the meaning of the automobile exception. While the Court was correct in not differentiating between types of vehicles, the Court should not have extended the exception to parked vehicles. The Court could have returned to the true intent of the automobile exception by reinstating the mobility requirement, while at the same time recognizing, although not expanding, the lesser expectation of privacy rationale.

The Court, however, has chosen a different route. Priority has been given to the automobile exception, rather than to the warrant requirement. *Carney* has been interpreted as extending the automobile exception to parked vehicles.[160] How much more, however, can this exception be expanded? It now applies to all vehicles, parked or mobile and the only requirement for a warrantless search is probable cause. Thus, the only move left is back toward *Carroll*. While such a shift does not appear imminent, one would hope that it is inevitable.

Edward T. Kole

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[160] *See* United States v. Bagley, 765 F.2d 836 (9th Cir. 1985) (warrantless search of parked vehicle in public place justified solely on probable cause).