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THE AUTOMOBILE EXCEPTION: WHAT IT IS AND WHAT IT IS NOT — A RATIONALE IN SEARCH OF A CLEARER LABEL*

By Judge Charles E. Moylan, Jr.**

The so-called "automobile exception" to the warrant requirement of the fourth amendment would pose few conceptual difficulties but for the simplistic assumption on the part of many lawyers and judges that the "automobile exception" has something to do with automobiles. It is the burden of this article to establish that that is not necessarily so. There are many legitimate warrantless searches of automobiles that do not remotely involve the "automobile exception." Conversely, there are some legitimate warrantless searches of non-automobiles that do. Our only real problem is that of coming to grips with the word "automobile."

"Automobile" means one thing to teen-aged sons and to garage mechanics. It is a means of transportation. It connotes wheels and engines and flat tires and speeding tickets. "Automobile" in the phrase "automobile exception" means something very different to a constitutional lawyer. It connotes a legitimate warrantless search of a constitutionally protected area whenever (1) probable cause to believe that that area contains evidence of crime conjoins with (2) an exigency arising out of the mobility and imminent disappearance of that very constitutionally protected area itself.

Notwithstanding the clear linguistic dichotomy between the mode of transportation on the one hand and the constitutionally significant combination of preconditions on the other hand, there is all too frequently a conditioned reflex that assumes the latter from the former. There is a semantic inertia that remains fixed within a rigid mental set unless and until the verbal symbol itself changes—a semantic inertia that refuses to shift gears analytically with the more subtle change of connotation within an unchanged verbal symbol.

The judicial community and the academic community alike have labored to fit every warrantless search of a movable vehicle onto a procrustean couch of analysis under the "automobile exception." It is, of course, possible to stretch the statement of the "automobile exception" so thin as to cover every legitimate warrantless probe into the interior of the family Chevrolet. Such a statement would be tantamount, however, to a virtual restatement of the entire fourth amendment. The statement would lose all utility, for once it says everything, it says nothing.

* This article will appear as a chapter in a forthcoming book by the author, who retains full copyright privileges herein.

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Once we have unfettered ourselves from the semantic inertia, however, we are free to appreciate that an investigative search into the interior of an automobile or an automobile equivalent may proceed warrantlessly and legitimately not simply upon the predicate of probable cause plus exigency but upon half a dozen other predicates involving other combinations of constitutionally significant phenomena. The initial passkey to the analytical unfettering is to trade in the linguistically troubling label “automobile exception” for the original, and semantically unencumbered, label of the “Carroll Doctrine.”

The thesis of this article has now been fully stated. The rest is but elaboration.

I. WHAT THE CARROLL DOCTRINE IS

The eponymic case for the doctrine was, of course, *Carroll v. United States*.1 *Carroll* is today one of at least six well-recognized exceptions to the warrant requirement. The base proposition giving life to that requirement is that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.”2 When *Carroll* was decided on March 2, 1925, it became the second oldest of those exceptions, deferring in seniority only to the warrantless search incident to lawful arrest.3 Among the more junior of the exceptions are hot pursuit,4 stop and frisk,5 the Plain View Doctrine6 and consent.7 The common thread running through at least the four older of the six exceptions is some variety of exigency.8

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8. A warrantless seizure under the Plain View Doctrine does not require exigency but is permitted simply to avoid “a needless inconvenience” to the police, because, on the other side of the balance scales, there is no peril to either of “the two distinct constitutional protections served by the warrant requirement” — the sanctity of the threshold itself or the protection against “a general, exploratory rummaging.” Coolidge v. New Hampshire, 403 U.S. 443, 467-68, 91 S.Ct. 2022, 2039, 29 L.Ed.2d 576, 584 (1971). A search by virtue of a valid consent given by the person enjoying the fourth amendment protection is not predicated upon exigency or any other circumstance empowering a policeman to do anything. It is rather a
A. *Carroll v. United States*

During the great national experiment of Prohibition, parched and thirsty midwesterners looked covetously across the Detroit River into more libertarian Ontario where spirits still flowed freely. It was inevitable that some of those spirits would ultimately flow westward and southward into the United States. In December, 1921, an Oldsmobile roadster, driven by George Carroll and John Kiro, was driving westward from Detroit toward Grand Rapids, when it was stopped by federal agents at a point 16 miles east of Grand Rapids. The roadster was searched without a warrant. Behind the upholstering of the seats, the filling of which had been removed, the agents found 68 bottles. Their labels held them out to be blended Scotch whiskey and Gordon's gin. While chemical analysis would not vouch for the prestigious quality of the contents, it established that the contents were, at least, whiskey and gin of some variety. On the basis largely of the recovered contraband, Carroll and Kiro were convicted of “transporting in an automobile intoxicating spirituous liquor, to wit, 68 quarts of so-called bonded whiskey and gin, in violation of the National Prohibition Act.”

The question squarely before the Supreme Court was whether a warrantless search could ever be made under any circumstances in a constitutionally protected area. There was no dispute over an automobile's being a constitutionally protected area. Writing for seven members of the Court, Chief Justice Taft pointed out:

> that the guaranty of freedom from unreasonable searches and seizures by the 4th Amendment has been construed, practically since the beginning of the 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.\(^9\)\(^\text{1976}\)\(^{18}\)


\(^10\) Id. at 134, 45 S.Ct. at 281, 69 L.Ed. at 544.

\(^11\) Justice McReynolds, joined by Justice Sutherland, dissented, insisting that the propriety of the automobile search depended upon the propriety of a necessarily antecedent arrest.

\(^12\) 267 U.S. at 153, 45 S.Ct. at 285, 69 L.Ed. at 551.
In supporting his argument, the Chief Justice looked to the legislative history of the acts supplementing and enforcing the National Prohibition Act. To one of the supplemental acts, the Senate added what became known as the Stanley Amendment, which proscribed all warrantless searches of all protected areas. The House of Representatives rejected this amendment and restricted the prohibition to the warrantless searches of fixed premises. Chief Justice Taft quoted from that section of the House Judiciary Committee report, which focused upon the inappropriateness of proscribing warrantless searches of automobiles:

[W]hat is perhaps more serious, it will make it impossible to stop the rum-running automobiles engaged in like illegal traffic. It would take from the officers the power that they absolutely must have to be of any service, for if they cannot search for liquor without a warrant they might as well be discharged. It is impossible to get a warrant to stop an automobile. Before a warrant could be secured the automobile would be beyond the reach of the officer with its load of illegal liquor disposed of.\(^3\)

The Chief Justice then put the official imprimatur of the Constitution upon the distinction between vehicles and fixed premises which had been drawn by the Congress:

The intent of Congress to make a distinction between the necessity for a search warrant in the searching of private dwellings and in that of automobiles and other road vehicles in the enforcement of the Prohibition Act is thus clearly established by the legislative history of the Stanley Amendment. Is such a distinction consistent with the 4th Amendment? We think that it is.\(^4\)

In contrasting warrantless searches of movable vehicles or vessels with the more rigid requirement of a search warrant where fixed premises were concerned, the \textit{Carroll} decision looked again to history. It pointed out that the first session of the first Congress, which proposed the fourth amendment, also passed the Act of 1789. The 24th section thereof provided that certain collectors and other officials

shall have full power and authority, to enter any ship or vessel, in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed; and therein to search for, seize, and secure any such goods, wares or merchandise. . . .\(^5\)

That same section provided, however, that if the "cause to suspect a concealment" was focused upon "any particular dwelling house, store, building, or other place,"\(^6\) the permitted investigation would be that the offi-

\(^{13}\) \textit{Id.} at 146, 45 S.Ct. at 283, 69 L.Ed. at 548.
\(^{14}\) \textit{Id.} at 147, 45 S.Ct. at 283, 69 L.Ed. at 549.
\(^{15}\) \textit{Id.} at 150, 45 S.Ct. at 284, 69 L.Ed. at 550.
\(^{16}\) \textit{Id.} at 150-51, 45 S.Ct. at 284, 69 L.Ed. at 550.
cials should "upon application on oath or affirmation to any justice of the peace, be entitled to a warrant to enter such house, store, or other place (in the daytime only) and there to search for such goods." Subsequent enactments dealing with the same subject matter contained similar provisions. The Carroll decision emphasized this historic distinction:

Thus contemporaneously with the adoption of the 4th Amendment, we find in the first Congress, and in the following second and fourth Congresses, a difference made as to the necessity for a search warrant between goods subject to forfeiture, when concealed in a dwelling house or similar place, and like goods in course of transportation and concealed in a movable vessel where they readily could be put out of reach of a search warrant.

Historical reference was also made to the Act of May 6, 1822, and its successor provisions, which empowered "any Indian agent, subagent, or commander of a military post in the Indian country" to search any "boats, stores, packages, wagons, sleds, and places of deposit" whenever the officials had "reason to suspect" that the subject was introducing "any spirituous liquor or wine into the Indian country." Warrantless searches and seizures under these conditions were recognized as justifiable by the Supreme Court in American Fur Co. v. United States. The statute took on a distinctly more modern flavor when the Indian Appropriation Act of March 2, 1917, expanded the category of boats, wagons and sleds and provided that "automobiles used in introducing or attempting to introduce intoxicants into the Indian territory may be seized, libeled, and forfeited."

After the "somewhat extended reference to these statutes" to supply the authority of history to the fourth amendment distinction between fixed premises and movable vehicles, the Court turned to the necessary conditions for a warrantless search of the latter. "Having thus established that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant, we come now to consider under what circumstances such search may be made."

The first of the two necessary conditions, and the one on which the

17. Id. at 151, 45 S.Ct. at 284, 69 L.Ed. at 550.
18. Id.
19. 3 Stat. 682 (1822), later codified as §2140 of the Revised Statutes.
20. 267 U.S. at 152, 45 S.Ct. at 285, 69 L.Ed. at 551.
21. Id.
22. Id.
23. Id.
24. 27 U.S. (2 Pet.) 358, 7 L.Ed. 450 (1829).
26. 267 U.S. at 153, 45 S.Ct. at 285, 69 L.Ed. at 551.
27. Id.
28. Id.
Carroll opinion lavished the most attention, was that of probable cause to believe that the vehicle or vehicle equivalent indeed contained evidence of crime. The Supreme Court pointed out that it would be "intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search." The opinion pointed out that such routine inspections are permissible when one is crossing an international boundary but that those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise.

The Court clearly drew "the line of distinction between legal and illegal seizures of liquor in transport in vehicles":

The measure of legality of such a seizure is, therefore, that the seizing officer shall have reasonable or probable cause for believing that the automobile which he stops and seizes has contraband liquor therein which is being illegally transported.

Carroll emphasized that this was "certainly a reasonable distinction." It pointed out that if probable cause were lacking, the owner of the automobile was entitled to have the automobile restored to him, was entitled to have all evidence seized therefrom suppressed and was entitled to sue the officer for damages. Conversely, if probable cause were present, the investigative officials "are given the opportunity which they should have, to make the investigation necessary to trace reasonably suspected contraband goods and to seize them."

In its constitutional fact-finding capacity, the Supreme Court went on to hold that probable cause did exist for the warrantless search of the

29. Id. at 153-54, 45 S.Ct. at 285, 69 L.Ed. at 551.
30. Id. at 154, 45 S.Ct. at 285, 69 L.Ed. at 552.
31. Id. at 156, 45 S.Ct. at 286, 69 L.Ed. at 552.
32. Id. at 155-56, 45 S.Ct. at 286, 69 L.Ed. at 552. The Carroll opinion both collected and articulated definitions of probable cause. It quoted from Stacey v. Emery, 97 U.S. 642, 645, 24 L.Ed. 1035, 1036 (1878), which held that probable cause has been established "[i]f 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. . . ." Carroll went on to lay down the definition that officers had probable cause to search whenever "the facts and circumstances within their knowledge, and of which they had reasonably trustworthy information, were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched." 267 U.S. at 162, 45 S.Ct. at 288, 69 L.Ed. at 555.
33. Id. at 156, 45 S.Ct. at 286, 69 L.Ed. at 552.
34. Id.
Oldsmobile roadster in which Carroll and Kiro were driving. It pointed out that as early as September 29, several federal agents had had contact with both defendants in an apartment in Grand Rapids, whereat it was agreed that Carroll and Kiro would deliver three cases of bootleg whiskey to the undercover agents. A price was agreed upon and the agents got a good look at the car in which the two bootleggers were driving. Apparently suspicious as to the status of their would-be customers, the ultimate defendants never consummated the sale. On a subsequent date, October 6, the agents observed both Carroll and Kiro driving eastward from Grand Rapids toward Detroit in the same Oldsmobile roadster. They attempted to trail the vehicle but lost it in the vicinity of Lansing. Taking judicial notice of the heavy bootlegging traffic between Detroit and Grand Rapids, the Supreme Court concluded that the agents had probable cause to believe that the Oldsmobile roadster contained bootleg whiskey when they spotted that automobile, driven by the two defendants, moving westward from Detroit toward Grand Rapids on December 15.35

The second necessary condition for a warrantless search of a vehicle under the Carroll Doctrine is exigency. This requirement, spelled out more fully in later cases, was more implicit than explicit in the Carroll decision itself. The facts of Carroll do establish such exigency. The federal agents maintained a routine patrol looking for bootleggers along the Detroit-Grand Rapids axis. When they spotted the Oldsmobile roadster driven by Carroll and Kiro on December 15, they had had no prior knowledge that the roadster would be coming along the highway that day. Indeed, they had not seen the car since October 6.36 The automobile was observed fortuitously as it was moving along a highway. There was clearly no opportunity to obtain a warrant. In discussing the subject of probable cause, the Court alluded to the absolute necessity of obtaining a warrant when it is reasonably practical to do so:

In cases where the securing of a warrant is reasonably practicable, it must be used, and, when properly supported by affidavit, and issued after judicial approval, protects the seizing officer against a suit for damages. In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.37

It is not the purpose of this article to examine what combinations of facts and circumstances do or do not establish the two elements of probable cause and exigency. It is rather to establish that whenever those two criteria are satisfied, the warrantless search of a vehicle may proceed under the Carroll Doctrine. Whenever a warrantless search of a vehicle is predi-

35. Id. at 160-61, 45 S.Ct. at 288, 69 L.Ed. at 554.
36. Id. at 160, 45 S.Ct. at 287-88, 69 L.Ed. at 554.
37. Id. at 156, 45 S.Ct. at 286, 69 L.Ed. at 552-53.
ated upon the satisfaction of other criteria, the warrantless search may be constitutional under some other doctrine, but it is most emphatically not a Carroll Doctrine case.

In the Carroll opinion itself, the distinction was clearly drawn between the search of an automobile qua search of an automobile, on the one hand, and the search of an automobile as an incident of the arrest of a driver or passenger, on the other hand. Both the defense argument and the dissenting opinion sought to confine the warrantless automobile search to something dependent upon the constitutionality of an underlying arrest. The Carroll majority clearly rejected that position and established that the warrantless search of an automobile, based upon probable cause plus exigency, stands upon its own feet doctrinally and is totally independent of “search incident” criteria:

When a man is legally arrested for an offense, whatever is found upon his person or in his control which it is unlawful for him to have, and which may be used to prove the offense, may be seized and held as evidence in the prosecution . . . . The argument of defendants is based on the theory that the seizure in this case can only be thus justified. If their theory were sound, their conclusion would be. The validity of the seizure then would turn wholly on the validity of the arrest without a seizure. But the theory is unsound. The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law. The seizure in such a proceeding comes before the arrest . . . . [I]t is evident that if the person arrested is ignorant of the contents of the vehicle, or if he escapes, proceedings can be had against the liquor for destruction or other disposition . . . . The character of the offense for which, after the contraband liquor is found and seized, the driver can be prosecuted, does not affect the validity of the seizure.38

Carroll blazed the trail. What has followed in its wake? Although it is the burden of this piece that there are a substantial number of warrantless searches of automobiles that do not remotely involve the Carroll Doctrine, it is nonetheless indisputably true that there are also a substantial number that do. The first of these—with the automobile equivalent in the case being a motorboat—was the case of United States v. Lee.39

B. United States v. Lee

In a frustratingly brief opinion, Justice Brandeis wrote for a unanimous court in 1927 in affirming the conviction of James Lee for conspiring to violate the revenue laws and for violating the National Prohibition Act. The conclusion that warrantless investigative activity of some sort by the

38. Id. at 158-59, 45 S.Ct. at 287, 69 L.Ed. at 553-54. (citations omitted).
boatswain of a Coast Guard patrol boat was constitutional is clear, but the doctrinal underpinnings of that conclusion are not clearly differentiated. On the afternoon of February 16, 1925, the boatswain in the case saw Lee's motorboat proceed in a southeasterly direction from Gloucester Harbor. "He followed her at a distance of 500 yards; lost sight of her after sundown, apparently in a fog, at a point about 20 miles east of Boston Light; and discovered her later alongside the schooner L'Homme in a region commonly spoken of as Rum Row, at a point 24 miles from land."40 The boatswain turned a searchlight upon the motorboat and there observed Lee with two associates. He ordered all three men to put up their hands and then he boarded the suspect vessel. He observed on the boat 71 cases of grain alcohol. The liquor was not physically offered in evidence. The testimony of the boatswain, along with that of the deputy surveyor of the Port of Boston, constituted the State's case.

Justice Brandeis appears to have rested his decision that the fourth amendment was not violated upon three distinct and independent rationales, any one of which would have sufficed to sustain the legitimacy of the conviction. The first of these rationales is that the fourth amendment did not protect those things clearly observable on the deck of the motorboat from the surveying gaze of the Coast Guard officer as he stood upon his own boat and simply turned a searchlight upon the motorboat:

But no search on the high seas is shown. The testimony of the boatswain shows that he used a searchlight. It is not shown that there was any exploration below decks or under hatches. For aught that appears, the cases of liquor were on deck and, like the defendants, were discovered before the motorboat was boarded. Such use of a searchlight is comparable to the use of a marine glass or a field glass. It is not prohibited by the Constitution. Compare *Hester v. United States*. . . A later trespass by the officers, if any, did not render inadmissible in evidence knowledge legally obtained.41

Justice Brandeis went further and indicated that even if a search had taken place, that search would have been constitutional as an incident of the arrest of Lee and his companions. Those things observed by the boatswain from the deck of his own vessel gave him probable cause for the warrantless arrest of the three men aboard the motorboat. The further search of the motorboat, if one were assumed to have been made, would have followed as a legitimate incident thereto:

Moreover, search, if any, of the motorboat at sea did not violate the Constitution, for it was made by the boatswain as an incident of a lawful arrest. *Agnello v. United States* . . . 42

40. *Id.* at 560, 47 S.Ct. at 747, 71 L.Ed. at 1203.
41. *Id.* at 563, 47 S.Ct. at 748, 71 L.Ed. at 1204. (citation omitted).
42. *Id.* (citation omitted).
Finally, Justice Brandeis seems to hold that even if a search had occurred and even if an arrest had not, the same probable cause that would have legitimated an arrest would quite independently have legitimated a warrantless search of the vessel qua search of the vessel under the infant Carroll Doctrine:

In the case at bar, there was probable cause to believe that our revenue laws were being violated by an American vessel and the persons thereon, in such manner as to render the vessel subject to forfeiture. Under such circumstances, search and seizure of the vessel, and arrest of the persons thereon, by the Coast Guard on the high seas, are lawful, as like search and seizure of an automobile, and arrest of the persons therein, by prohibition officers on land, are lawful. Compare Carroll v. United States. . .

In terms of the growth of the doctrine, it is clear, in the wake of Lee, that automobile equivalents have evolved from land creatures into marine species as well.

C. Gambino v. United States

In Gambino v. United States, the main emphasis of the opinion was on the question whether state troopers were operating in cooperation with federal officials when they perpetrated what would have been a fourth amendment violation if done by federal agents themselves. The Court, in passing, did acknowledge the Carroll Doctrine. Without supplying any analysis, Justice Brandeis held for the Court that the New York state troopers in the case did not have probable cause:

The government contends that the evidence was admissible, because there was probable cause, Carroll v. United States. . . The defendants contend that there was not probable cause. . . We are of opinion on the facts, which it is unnecessary to detail, that there was not probable cause.46

The only difficulty with the opinion is that it later referred collectively to "arrest, search and seizure" and did not expressly distinguish between probable cause for the arrest and probable cause for the warrantless search of the automobile.

D. Husty v. United States

In 1931 Husty v. United States applied the Carroll Doctrine but did not alter its dimensions in any way. Richard Husty and Charles Laurel both

43. Id. (citation omitted).
44. 275 U.S. 310, 48 S.Ct. 137, 72 L.Ed. 293 (1927).
45. Id. at 313, 48 S.Ct. at 137, 72 L.Ed. at 295 (citation omitted).
were convicted in the District Court for western Michigan of both transporting and possessing intoxicating liquors in violation of the National Prohibition Act. At issue was the constitutionality of a warrantless search of their automobile which produced 18 cases of contraband whiskey. The evidence at the suppression hearing established both elements for a legitimate warrantless search under the *Carroll* Doctrine.

On the issue of probable cause, it was brought out that one of the arresting officers had known Husty as a "bootlegger" for a number of years and had arrested him in both 1922 and 1928 for violations of the National Prohibition Act. Both arrests had resulted in convictions. On the day of the arrest and search, a fully reliable informant passed the word that "Husty had two loads of liquor in automobiles of a particular make and description, parked in particular places on named streets." The officer "found one of the cars described, at the point indicated, and unattended." The officer maintained a surveillance until Husty, Laurel and a third man arrived and entered the car. When Husty started the engine, the officers moved in. Laurel and the third man fled. As to probable cause, the Court held:

> Here the information, reasonably believed by the officer to be reliable, that Husty, known to him to have been engaged in the illegal traffic, possessed liquor in an automobile of particular description and location; the subsequent discovery of the automobile at the point indicated, in the control of Husty; and the prompt attempt of his two companions to escape when hailed by the officers, were reasonable grounds for his belief that liquor illegally possessed would be found in the car. 49

The Court also touched upon the distinct element of exigency, holding that it had not been dissipated in this case simply because the officers might have had time to get a warrant:

> The search was not unreasonable because, as petitioners argue, sufficient time elapsed between the receipt by the officer of the information and the search of the car to have enabled him to procure a search warrant. He could not know when Husty would come to the car or how soon it would be removed. In such circumstances we do not think the officers should be required to speculate upon the chances of successfully carrying out the search, after the delay and withdrawal from the scene of one or more officers which would have been necessary to procure a warrant. The search was, therefore, on probable cause, and not unreasonable; and the motion to suppress the evidence was rightly denied. *Carroll v. United States*. . . .50

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47. *Id.* at 700, 51 S.Ct. at 241, 75 L.Ed. at 632.
48. *Id.*
49. *Id.* at 701, 51 S.Ct. at 242, 75 L.Ed. at 632.
50. *Id.*, 51 S.Ct. at 242, 75 L.Ed. at 632-33 (citation omitted).
The Court also reaffirmed that a Carroll Doctrine warrantless search is not dependent on an underlying arrest but stands upon its own distinct predicate. "The 4th Amendment does not prohibit the search, without warrant, of an automobile, for liquor illegally transported or possessed, if the search is upon probable cause; and arrest for the transportation or possession need not precede the search. Carroll v. United States. . . ."

E. Scher v. United States

Scher v. United States in 1938 applied the Carroll Doctrine in a very routine manner, contributing nothing to the doctrine itself by its meager analysis. Officers had received information from a confidential informant that "about midnight, December 30, 1935, a Dodge automobile with specified license plate would transport 'phony' whiskey from a specified dwelling in Cleveland, Ohio." The officers observed the described car at the described house at 9:30 p.m., saw it leave that location at 10:30 p.m., saw it return at about midnight and remain for half an hour. During that half hour, the officers heard sounds as if the car were being loaded. They saw it drive away at about 12:30 a.m., "apparently heavily loaded." Scher drove the car to his own residence. As he was pulling the automobile into a rear garage, the officers moved in. They immediately accused him of hauling bootleg whiskey; he replied that it was "just a little for a party." When asked whether the tax on the whiskey had been paid, Scher replied "that it was Canadian whiskey." The issue of probable cause was given short shrift:

Considering the doctrine of Carroll v. United States . . . and the application of this to the facts there disclosed, it seems plain enough that just before he entered the garage the following officers properly could have stopped petitioner's car, made search and put him under arrest. So much was not seriously controverted at the argument.

The Court then held that the "[p]assage of the car into the open garage closely followed by the observing officer did not destroy this right. No search was made of the garage." The Court's further observation that the "[e]xamination of the automobile accompanied an arrest, without objection and upon admission of probable guilt" appears to have been completely gratuitous.

51. Id. at 700, 51 S.Ct. at 241, 75 L.Ed. at 632 (citation omitted).
52. 305 U.S. 251, 59 S.Ct. 174, 83 L.Ed. 151 (1938).
53. Id. at 253, 59 S.Ct. at 175, 83 L.Ed. at 153.
54. Id., 59 S.Ct. at 175, 83 L.Ed. at 154.
55. Id., 59 S.Ct. at 176, 83 L.Ed. at 154.
56. Id. at 254-55, 59 S.Ct. at 176, 83 L.Ed. at 154 (citation omitted).
57. Id. at 256, 59 S.Ct. at 176, 83 L.Ed. at 154.
58. Id. What difference would it have made if Scher had not been arrested? If none, why muddy the waters of stare decisis with an irrelevant factor? One can readily picture dozens
F. Brinegar v. United States

Factually, Brinegar v. United States is the "little federal" analogue of Carroll. Even after the great national experiment of Prohibition had ended, parched and thirsty residents of Oklahoma—still "dry" by its own choice—looked covetously across the Ozarks into more libertarian Missouri where spirits once again flowed freely. It was inevitable that some of those spirits would ultimately flow westward and southward into Oklahoma.

At about 6 p.m. on the evening of March 3, 1947, two agents of the Alcohol Tax Unit were parked beside a highway near the Quapaw Bridge in northeastern Oklahoma. The bridge was about five miles west of the Missouri-Oklahoma line. They saw Brinegar drive by, headed west in his Ford coupe. One of the agents had arrested Brinegar five months earlier for illegally transporting liquor. He had, in addition, observed Brinegar loading liquor into a car or truck in Joplin, Missouri, on at least two occasions during the preceding six months. He also knew Brinegar's reputation as one who hauled liquor illegally across the line. As Brinegar's car passed them, it appeared to be "heavily loaded" and "weighted with something." Brinegar increased his speed as he passed the officers. They chased him for approximately a mile at top speed, gaining on him as he skidded around a curve, sounded their siren and ultimately forced his car to the side of the road. A search of Brinegar's car revealed 13 cases of whiskey under and behind the front seat. Brinegar was convicted of "importing intoxicating liquor into Oklahoma."

The element of exigency was not in dispute in Brinegar, and the Supreme Court did not touch upon it. The question before the Court was the existence of probable cause to believe that Brinegar's automobile contained contraband whiskey. The majority opinion of Justice Rutledge held that the case was virtually indistinguishable from Carroll and that, therefore, probable cause did exist. The Court analyzed the Carroll decision at some length. The Court then went to even greater lengths in analogizing the case before it to the Carroll case. Upon the facts as above outlined, a five-man majority of the Court concluded:

60. Id. at 163, 69 S.Ct. at 1304, 93 L.Ed. at 1884.
61. Id. at 161, 69 S.Ct. at 1301, 93 L.Ed. at 1883.
62. Id. at 164-65, 69 S.Ct. at 1305, 93 L.Ed. at 1884-85.
63. Id. at 165-71, 69 S.Ct. at 1306-08, 93 L.Ed. at 1885-88.
64. The majority of the Supreme Court relied upon these facts alone as sufficient to establish probable cause. The trial court and the U.S. Court of Appeals, on the other hand, had held that these facts did not establish probable cause. They looked rather to certain damaging admissions made by Brinegar immediately after his car was forced to the side of the road as establishing probable cause just prior to the search of his automobile. Believing that probable cause had been established prior to these admissions, however, the Supreme
The evidence here is undisputed, is admissible on the issue of probable cause, and clearly establishes that the agent had good ground for believing that Brinegar was engaged regularly throughout the period in illicit liquor running and dealing.

. . . Each of the ultimate facts found in Carroll to constitute probable cause, when taken together, is present in this case and is fully substantiated by the proof. Accordingly the Carroll decision must be taken to control this situation, unless it is now to be overruled.\footnote{338 U.S. at 170-71, 69 S.Ct. at 1308, 93 L.Ed. at 1888.}

Brinegar was a straightforward and unremarkable application of the Carroll Doctrine. The dissenting opinion of Justice Jackson, joined by Justices Frankfurter and Murphy, simply disputed the establishment of probable cause under the Carroll guidelines. Under the circumstances, the statement of Justice Rutledge at the outset of the opinion that "[t]he crucial question is whether there was probable cause for Brinegar's arrest, in the light of prior adjudications on this problem, more particularly Carroll v. United States . . . which on its face most closely approximates the situation presented here"\footnote{Id. at 164, 69 S.Ct. at 1305, 93 L.Ed. at 1884 (citation omitted).} appears to have been an analytical lapse. As Carroll itself (and Husty) had made clear, an underlying arrest is not a necessary condition for a warrantless automobile search under Carroll.

In terms of an evolving doctrine, the net effect of Lee, Gambino, Husty, Scher and Brinegar upon the archetype case of Carroll itself had been absolutely zero. Carroll had been applied but not significantly fleshed out. Indeed, as an exception to the warrant requirement, the Carroll Doctrine was over most of its early decades very much a neglected backwater. The reason is not hard to find. In the ordinary run of criminal investigations, the same probable cause that points to a particular automobile as a likely container of evidence also points to the criminality of its owner, driver or passenger. Far more frequently than not, warrantless searches of automobiles involve an analytical overlap between the "search incident" exception and the Carroll Doctrine exception. During much of the early life of the Carroll Doctrine, our fourth amendment law was in one or another of the broad-scope phases of "search incident" law.\footnote{For the ebb and flow between a broad search perimeter and a narrow search perimeter during the 42-year "great geography battle" of search incident law, see Moylan, supra note 3.} Since a lawful arrest gave rise automatically, during those phases, to an incidental search of an entire premises, it followed that when the underlying arrest occurred in or near a vehicle, it gave rise automatically to a search of the entire vehicle. Since cases could almost always be disposed of under the more fully articulated "search incident" law, there was little resort to the less fully devel-
oped Carroll Doctrine. Only with the pulling back of the search incident perimeter in Chimel v. California to a point where it did not necessarily extend to all parts of a vehicle—where some or all of the vehicle was beyond the reach, lunge or grasp of the arrestee at the moment of the search—did it become necessary to look more carefully at the Carroll Doctrine as providing an independent rationale for a warrantless automobile search. Chimel was decided in 1969. The fuller development of the Carroll Doctrine followed within the year with the case of Chambers v. Maroney.

G. Chambers v. Maroney

In Chambers, Justice White wrote for a seven-man majority of the Court in that section of the opinion dealing with the warrantless search of the defendant's automobile. In terms of doctrinal significance, Chambers may be cited for three propositions.

Whereas earlier cases had simply articulated the thought that a Carroll Doctrine search was independent of any "search incident" rationale, that distinction was critical to the holding in Chambers. Chambers held flat out that the warrantless search of the automobile in that case could not be justified as an incident of the arrest of Chambers himself or of any of his fellow passengers:

[T]he search that produced the incriminating evidence was made at the police station some time after the arrest and cannot be justified as a search incident to an arrest: "Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest." Preston v. United States . . . Dyke v. Taylor Implement Mfg. Co. . . . is to the same effect; the reasons that have been thought sufficient to justify warrantless searches carried out in connection with an arrest no longer obtain when the accused is safely in custody at the station house.

Notwithstanding the inability to rest the warrantless automobile search upon a "search incident" predicate, the Supreme Court went on to point out that "[t]here are, however, alternative grounds arguably justifying the search of the car in this case." Exploring the alternative ground of a warrantless Carroll Doctrine search, the Court looked to the two elements of probable cause and exigency.

70. Only Justice Harlan dissented from this part of the opinion. Justice Blackmun took no part in the consideration of the case.
71. 399 U.S. at 47, 90 S.Ct. at 1979, 26 L.Ed.2d at 426 (citations omitted).
72. Id. The Chambers majority also characterized Carroll as having clearly delineated between justifying theories: "The Court also noted that the search of an auto on probable cause proceeds on a theory wholly different from that justifying the search incident to an arrest . . . ." Id. at 49, 90 S.Ct. at 1980, 26 L.Ed.2d at 427.
Probable cause presented no difficulty. On the evening of May 20, 1963, two men held up a Gulf service station in North Braddock, Pennsylvania. The robbers took currency from a cash register and demanded that the attendant turn over to them a gloveful of coins. "Two teen-agers, who had earlier noticed a blue compact station wagon circling the block in the vicinity of the Gulf station, then saw the station wagon speed away from a parking lot close to the Gulf station." When the police arrived, they learned from the teen-agers that four men were in the station wagon and that one of them was wearing a green sweater. The service station attendant confirmed that one of the robbers was wearing a green sweater and that the other was wearing a trench coat. An immediate description of the car and of the dress of two of the robbers went out over the police radio. Within the hour and about two miles away, Chambers' light blue compact station wagon, occupied by himself and three other men, was stopped by the police. Chambers was wearing a green sweater and there was a trench coat in the car. The Supreme Court, agreeing with the lower courts' rulings in the case, concluded that "[h]aving talked to the teen-age observers and to the victim Kovacich, the police had ample cause to stop a light blue compact station wagon carrying four men and to arrest the occupants, one of whom was wearing a green sweater and one of whom had a trench coat with him in the car." The Court then went on to hold that the probable cause which justified the warrantless arrest of the four men also served to justify, quite independently, the warrantless search of the automobile:

[T]he police had probable cause to believe that the robbers, carrying guns and the fruits of the crime, had fled the scene in a light blue compact station wagon which would be carrying four men, one wearing a green sweater and another wearing a trench coat. As the state courts correctly held, there was probable cause to arrest the occupants of the station wagon that the officers stopped; just as obviously was there probable cause to search the car for guns and stolen money.

It is with respect to the second element of exigency that the Chambers opinion breaks new ground. In Chambers, unlike the predecessor cases under the Carroll Doctrine, the automobile was removed to the station house before the warrantless search was executed. In answering the defense contention that the car could be seized, immobilized or guarded until a warrant for its search could be obtained, the Supreme Court announced; as an axiom, that there is no constitutional qualitative difference between a search and a seizure. A equals B. If, therefore, a warrantless seizure is permitted, a warrantless search is also permitted by definition. Conversely, if a warrantless search is not permitted, neither would be the

73. Id. at 44, 90 S.Ct. at 1977, 26 L.Ed.2d at 424.
74. Id.
75. Id. at 46-47, 90 S.Ct. at 1979, 26 L.Ed.2d at 425-426.
76. Id. at 47-48, 90 S.Ct. at 1979, 26 L.Ed.2d at 426.
warrantless seizure. Granted the major premise, the conclusion does at least follow validly. The Court's reasoning in this regard was as follows:

Arguably, because of the preference for a magistrate's judgment, only the immobilization of the car should be permitted until a search warrant is obtained; arguably, only the "lesser" intrusion is permissible until the magistrate authorizes the "greater." But which is the "greater" and which the "lesser" intrusion is itself a debatable question and the answer may depend on a variety of circumstances. For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.

On the facts before us, the blue station wagon could have been searched on the spot when it was stopped since there was probable cause to search and it was a fleeting target for a search. The probable-cause factor still obtained at the station house and so did the mobility of the car unless the Fourth Amendment permits a warrantless seizure of the car and the denial of its use to anyone until a warrant is secured. In that event there is little to choose in terms of practical consequences between an immediate search

77. Justice Harlan's dissent questions, with penetrating analysis, the truth of this major premise. He argues initially that in the vast majority of the crime-oriented cases, the search—with its great potentiality for putting its victim behind bars—is definitely a greater intrusion than a mere seizure of the automobile, which in and of itself only works an inconvenience upon its owner:

However, in the circumstances in which this problem is likely to occur, the lesser intrusion will almost always be the simple seizure of the car for the period—perhaps a day—necessary to enable the officers to obtain a search warrant. In the first place, as this case shows, the very facts establishing probable cause to search will often also justify arrest of the occupants of the vehicle. Since the occupants themselves are to be taken into custody, they will suffer minimal further inconvenience from the temporary immobilization of their vehicle. Even where no arrests are made, persons who wish to avoid a search—either to protect their privacy or to conceal incriminating evidence—will almost certainly prefer a brief loss of the use of the vehicle in exchange for the opportunity to have a magistrate pass upon the justification for the search.

Id. at 63-64, 90 S.Ct. at 1987, 26 L.Ed.2d at 435, (Harlan, J., concurring and dissenting).

Justice Harlan goes on to point out that in those rare cases where the seizure might represent the greater intrusion, the device of consent is always available to obviate the inconvenience:

To be sure, one can conceive of instances in which the occupant, having nothing to hide and lacking concern for the privacy of the automobile, would be more deeply offended by a temporary immobilization of his vehicle than by a prompt search of it. However, such a person always remains free to consent to an immediate search, thus avoiding any delay. Where consent is not forthcoming, the occupants of the car have an interest in privacy that is protected by the Fourth Amendment even where the circumstances justify a temporary seizure.

Id. at 64, 90 S.Ct. at 1987-1988, 26 L.Ed.2d at 435-436, (Harlan, J., concurring and dissenting).

According to Justice Harlan, A most definitely does not equal B. If the premise is not sound, the conclusion falls with it.
without a warrant and the car's immobilization until a warrant is obtained. 78

Despite the overbreadth with which Chambers was initially read by police and prosecutors, it did not do away with the requirement of exigency. It still required the initial exigency to have been present which, along with probable cause, would have justified a warrantless automobile search at curbside. It went to pains, however, to point out that sometimes such a curbside search is neither convenient nor safe:

It was not unreasonable in this case to take the car to the station house. All occupants in the car were arrested in a dark parking lot in the middle of the night. A careful search at that point was impractical and perhaps not safe for the officers . . . 79

The import of Chambers on the question of exigency seems to be that if the right to make a warrantless search once vests at the curbside, it will not be divested simply because the police choose to execute that search a short time later and a short distance away under safer and more commodious circumstances.

H. Coolidge v. New Hampshire

Coolidge v. New Hampshire 80 is a veritable encyclopedia of fourth amendment law. Part IIB thereof 81 deals with the Carroll Doctrine. Coolidge did nothing to constrict the warrantless station-house-search rationale of Chambers, but it did throw a dash of cold water upon the police and prosecutors who had, during the intervening year, been reading that aspect of Chambers overbroadly. "The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." 82

The most prominent feature to be noted about Coolidge is that it was a strange vehicle by which to examine various warrantless theories for the simple reason that it came to the Supreme Court as a warrant case. Ample probable cause had been accumulated to justify the issuance of an arrest warrant for Edward Coolidge and the issuance of search and seizure warrants for his home and for both of his automobiles. Those warrants were issued and were executed. Every "i" was dotted and every "t" was crossed. The only defect, and so the Supreme Court found in Part I of the Coolidge opinion, was that the warrants were issued by the Attorney General of New Hampshire who was not a "neutral and detached magistrate." 83 The State of New Hampshire put forth at the Supreme Court level three alternative

78. Id. at 51-52, 90 S.Ct. at 1981, 26 L.Ed.2d at 428, 429.
79. Id. at 52, 90 S.Ct. at 1981, 26 L.Ed.2d at 429, n. 10.
81. Id. at 458-64, 91 S.Ct. at 2033-37, 29 L.Ed.2d at 578-81.
82. Id. at 461, 91 S.Ct. at 2035, 29 L.Ed.2d at 580.
83. Id. at 449-53, 91 S.Ct. at 2029-31, 29 L.Ed.2d at 572-575.
warrantless theories as “drop back” positions to be resorted to only in case the warrant was held to be defective.

When the warrant was held to be defective, the plurality opinion of Justice Stewart turned attention to the alternative warrantless theories. The first of these was that the search of the Pontiac in question would have been permissible warrantlessly as an incident of Coolidge’s arrest. The third of these was that the search of the car would have been permissible warrantlessly under the Plain View Doctrine. Both of these alternative theories were found wanting. The “search incident” rationale was of no avail because the search was not contemporaneous in time with the arrest and because it was, in any event, beyond the permitted search perimeter as measured from the arrestee.84 The Plain View Doctrine was of no avail primarily because the search in question ran afoul of the inadvertence requirement.85

As an arguable alternative theory, the “search incident” argument can, of course, be made consistently with an argument based upon the search warrant.86 The same probable cause that would support the warrant would also support, for the proper crimes, a warrantless arrest. A search, appropriately contemporaneous and appropriately limited in geographic scope, could follow as a warrantless incident of that arrest.

It is the second of the alternative warrantless theories put forth by the State of New Hampshire which concerns us here. This was the argument that a warrantless search of the Pontiac could be justified under the Carroll Doctrine. The argument did not merit the attention which it received because it was, under the facts of the Coolidge case, untenable on its face. The bedrock foundation of the Carroll Doctrine is that a warrantless “search of a ship, motor boat, wagon or automobile”87 is sometimes permissible under circumstances “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.”88 It is permissible because the car is “movable, the occupants are alerted, and the car’s contents may never be found again if a warrant must be obtained.”89 It was simply an absurdity
for the State of New Hampshire to argue that it was unable to get a warrant in a situation where it in fact got a warrant (albeit a defective one). An argument based upon the Carroll Doctrine was patently incompatible with the undisputed facts and with the main thrust of New Hampshire’s case. Nonetheless, the plurality opinion did consider this alternative theory upon its merits and, in the course of that consideration, gave us the clearest exposition to date of the Carroll Doctrine itself and its rationale and an articulate explanation of the effect of Chambers upon Carroll.

The first of Carroll’s necessary conditions—probable cause—presented no problem in Coolidge. There was ample probable cause to believe that the Pontiac contained evidence of crime. The same probable cause that supported the defective search warrant for the automobile also would have supported a warrantless search under Carroll if the other condition of exigency had also been satisfied.

The critical failing of the Carroll Doctrine alternative in Coolidge was the absence of exigency. Coolidge is the first and last case in the 51-year history of the Carroll Doctrine where a warrantless automobile search was held to be unconstitutional because of the absence of exigency. It is a good vehicle in this regard, for it illustrates the principle that we must look both forward and backward in time from the point where the confrontation between the policeman and the suspect vehicle occurs. Normally, as is well illustrated by Carroll and Brinegar and Chambers, the police come upon the suspect vehicle and its occupants suddenly and unexpectedly. As they arrest or otherwise accost the occupants, their critical question becomes, “Do we now have a reasonable opportunity to get a search warrant or is the vehicle likely to disappear if we do not search it immediately?” The evaluation of exigency is made by looking forward. As Coolidge well illustrates, however, where the police-vehicle encounter is neither random nor chance but is deliberately initiated by the police on the basis of pre-existing probable cause, exigency must be evaluated by looking backward as well as forward. The critical question becomes, “Was there a reasonable opportunity to obtain a search warrant before bringing on this encounter?” Were this not so, the police could always obviate the warrant requirement by deliberately creating exigent circumstances. No matter how long they had possessed their probable cause to search the vehicle, they could always move in and arrest the vehicle’s owner, request a consent to search which would not be forthcoming, or otherwise alert him as to their suspicions and then claim a real exigency measured only from that moment forward. Palpably, exigency must be evaluated by looking in both directions along the time scale. A reasonable opportunity to obtain a warrant either before or after the critical encounter will negate exigency.

Maroney, 399 U.S. at 51, 90 S.Ct. at 1981, 26 L.Ed.2d at 428.

90. That probable cause was most fully set out by Justice Black in his concurring and dissenting opinion at 403 U.S. 493-495, 91 S.Ct. at 2051-52, 29 L.Ed.2d at 598-600 (Black, J., concurring and dissenting).
The critical encounter from which we look forward and back in this case was the daytime arrest of Ed Coolidge just inside the front door of his home on February 19, 1964. He was placed in custody and taken to the station house. His 1951 Pontiac was parked in the driveway in front of the house. Mrs. Coolidge was at home.

Because of the unusual posture in which the alternative warrantless theories had to be considered, Coolidge's conclusion of non-exigency measured from the arrest forward is analytically very unsatisfying. If we are asked to hypothesize the nonexistence of the warrant, an exigent threat to the automobile posed by Mrs. Coolidge would appear to have been very real. The historic facts relied upon by Justice Stewart to obviate this threat would have represented unconstitutionally heavy-handed police conduct if there had been no warrant and if there was no right for the police to seize the automobile warrantlessly under Carroll and Chambers. Mrs. Coolidge asked initially whether she and her child might remain in the house. With no apparent justification, she was told that she must stay elsewhere. She then asked whether she might take her car. She was informed that both cars had been "impounded." It is clear that we cannot hypothesize what might have happened had there been no warrant. The very existence of the warrant makes a warrantless analysis in this situation impossible. The police seized the automobile under what they believed to be a validly issued search and seizure warrant. The validity of that warrant was later twice upheld by the Supreme Court of New Hampshire. Indeed, more than seven years went by between the issuance of the warrant on February 19, 1964, and the Supreme Court decision on June 21, 1971, before anyone realized that the warrant, under authority of which the police seized the Pontiac, was not a valid one. The police refusal of the right to use the car to Mrs. Coolidge was based upon their belief that they had seized the car under a valid warrant. We are guilty of circular reasoning if we predicate the absence of a peril that would justify a police seizure of the vehicle upon the fact that the police had already seized the vehicle. It is tantamount to saying that it is no longer necessary to do that which is already done. If the warrant was invalid for the search and seizure of the Pontiac, it was invalid to deny Mrs. Coolidge the right to use that Pontiac. Absent that denial, she would have posed a threat to the car and its contents. We cannot predicate non-exigency upon unlawful police behavior.

The conclusion of non-exigency in Coolidge is far more satisfying, however, when looking from the moment of arrest backward in time. The

91. Id. at 447, 91 S.Ct. at 2028, 29 L.Ed.2d at 572.
92. Id.
93. In State v. Coolidge, 106 N.H. 186, 208 A.2d 322 (1965), the New Hampshire Supreme Court ruled that the evidence was admissible, after the trial judge referred the pretrial motion to suppress the evidence to that court. After Coolidge was convicted in the trial court, the New Hampshire Supreme Court affirmed that conviction in State v. Coolidge, 109 N.H. 403, 260 A.2d 547 (1969).
opinion makes it clear that the probable cause for the arrest of Coolidge and for the search of his home and vehicles had been accumulating for 2 1/2 weeks before February 19. The investigation had been completed in ample time to put the probable cause down on paper, as was done, and submit it to an appropriate judicial figure, as was not done. New Hampshire could not claim to have been unable to have obtained a proper warrant since it clearly had time to obtain an improper one. The improper one was no less time-consuming than a proper one would have been.

Coolidge is instructive for the light which it throws upon Chambers. It makes it clear that simply towing an automobile to the station house does not legitimate a warrantless search of the automobile. Chambers stands only for the principle that if, based upon probable cause plus exigency, the right to make a warrantless Carroll Doctrine search once accrues, that police prerogative will not be lost by virtue of the trip to the station house. In Coolidge, had the police possessed the right to make a warrantless search of the Pontiac as it was parked in the driveway, that right would have continued even after the car was towed to the station house, under the authority of Chambers. The critical factor in Coolidge, making Chambers inapplicable, is that there was no right under the Carroll Doctrine to make a warrantless search of the Pontiac even if it had been done immediately after the arrest right where it was parked in the driveway. The Court reasoned:

Since Carroll would not have justified a warrantless search of the Pontiac at the time Coolidge was arrested, the later search at the station house was plainly illegal, at least so far as the automobile exception is concerned. Chambers, supra, is of no help to the State, since that case held only that, where the police may stop and search an automobile under Carroll, they may also seize it and search it later at the police station. Justice Stewart went on, in answering a dissenting argument by Justice Black, to make very clear the limits of the Chambers doctrine:

On its face, Chambers purports to deal only with situations in which the police may legitimately make a warrantless search under Carroll v. United States . . . . Since the Carroll rule does not apply in the circumstances of this case, the police could not have searched the car without a warrant when they arrested Coolidge. . . . It is true that the actual search of the automobile in Chambers was made at the police station many hours after the car had been stopped on the highway, when the car was no longer movable, any “exigent circumstances” had passed, and, for all the record shows, there was a magistrate easily available. Nonetheless, the analogy to this case is misleading. The rationale of Chambers is that given a justified initial intrusion, there is little difference between a search on the

94. 403 U.S. at 446-47, 91 S.Ct. at 2027-28, 29 L.Ed.2d at 571-72.
95. Id. at 463, 91 S.Ct. at 2036, 29 L.Ed.2d at 581.
open highway and a later search at the station. Here, we deal with the prior question of whether the initial intrusion is justified.\textsuperscript{96}

Upon a close reading, there is no remote incompatibility between 
Chambers and Coolidge.

I. Almeida-Sanchez v. United States

Almeida-Sanchez \textit{v. United States}\textsuperscript{97} in 1973 dealt primarily with the circumstances under which more latitudinous investigative techniques were and were not permitted when dealing with border searches and functional equivalents of borders. In passing, however, the opinion did treat briefly the \textit{Carroll} Doctrine, in holding that the warrantless automobile search before it could not be justified under that doctrine.

Almeida-Sanchez was stopped by the United States Border Patrol as he was driving along a California highway which paralleled the Mexican border and which was about 25 miles north of the border. The Border Patrol searched his automobile without a warrant. Marijuana was found and Almeida-Sanchez was convicted of "having knowingly received, concealed and facilitated the transportation of a large quantity of illegally imported marijuana."\textsuperscript{98} Before going on to the border search prerogatives, which the Court held were not available to the governmental officials in this case, the Court pointed out that "there was no probable cause of any kind for the stop or the subsequent search."\textsuperscript{99} It held unequivocally that the \textit{Carroll} Doctrine had not been complied with as a possible legitimation for the warrantless search in this case:

No claim is made, nor could one be, that the search of the petitioner's car was constitutional under any previous decision of this Court involving the search of an automobile. It is settled, of course, that a stop and search of a moving automobile can be made without a warrant. That narrow exception to the warrant requirement was first established in \textit{Carroll v. United States}. . . . \textit{Carroll} has been followed in a line of subsequent cases, but the \textit{Carroll} doctrine does not declare a field day for the police in searching automobiles. Automobile or no automobile, there must be probable cause for the search.\textsuperscript{100}

J. Texas v. White

The most recent treatment of the \textit{Carroll} Doctrine by the Supreme Court was its decision in \textit{Texas v. White},\textsuperscript{101} handed down on December 1, 1975.

\textsuperscript{96} \textit{Id.} at 463, 91 S.Ct. at 2036, 29 L.Ed.2d at 581, n.20 (citation omitted).
\textsuperscript{97} 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596 (1973).
\textsuperscript{98} \textit{Id.} at 267, 93 S.Ct. at 2536, 37 L.Ed.2d at 599.
\textsuperscript{99} \textit{Id.} at 268, 93 S. Ct. at 2537, 37 L.Ed.2d at 599-600.
\textsuperscript{100} \textit{Id.} at 269, 93 S. Ct. at 2537-38, 37 L.Ed.2d at 600-601 (citation omitted).
\textsuperscript{101} 423 U.S. \textit{---}, 96 S.Ct. 304, 46 L.Ed.2d 209 (1975).
It was a per curiam opinion speaking for six members of the Court. White was arrested at 1:30 in the afternoon as he was attempting to pass fraudulent checks at a drive-in window of the First National Bank in Amarillo, Texas. Ten minutes before arresting White, the Amarillo police had been informed by another bank that a man meeting White's description and driving an automobile exactly matching that of White had tried to pass four checks drawn on a nonexistent account. The arresting officers ordered White to park his automobile at the curb. While parking the car, he was observed attempting to "stuff" something between the seats. As he was being removed from the scene, one of the officers drove his car to the station house. There it was searched without a warrant, and four wrinkled checks were recovered and later were introduced in evidence.

Neither the majority nor the two-man dissent \textsuperscript{102} questioned the existence of probable cause, nor did the dissent question the exigency which would have justified a warrantless search at the curbside at the place where the arrest was made. The dispute between the majority and the dissent was over the interpretation of \textit{Chambers}. Justice Marshall read \textit{Chambers} as permitting a station house warrantless search only after the State had demonstrated the necessity for removing the vehicle from the curbside to the station house. He interpreted \textit{Chambers} as follows:

\textit{Chambers} did not hold, as the Court suggests, "that police officers with probable cause to search an automobile on the scene where it was stopped could constitutionally do so later at the station house without first obtaining a warrant." ... \textit{Chambers} simply held that to be the rule when it is reasonable to take the car to the station house in the first place.\textsuperscript{104}

Applying that interpretation to the facts of the case, Justice Marshall reasoned that the police had not demonstrated any reasonable grounds justifying the removal of the car from the curbside to the station house:

In this case, the arrest took place at 1:30 in the afternoon, and there is no indication that an immediate search would have been either impractical or unsafe for the arresting officers.\textsuperscript{105}

... .

The seizure and removal here was not for the purpose of immobilizing the car until a warrant could be secured, nor was it for the purpose of facilitating a safe and thorough search of the car.\textsuperscript{106}

Rejecting the dissenting argument, the majority implied that the police

\textsuperscript{102} Id. at ____, 96 S.Ct. at 305, 46 L.Ed.2d at 211.
\textsuperscript{103} Justice Marshall wrote a dissenting opinion, joined in by Justice Brennan, 423 U.S. at ____, 96 S.Ct. at 305, 46 L.Ed.2d at 212.
\textsuperscript{104} 423 U.S. at ____, 96 S.Ct. at 305-06, 46 L.Ed.2d at 212 (Marshall, J., dissenting) (citation omitted).
\textsuperscript{105} Id. at ____, 96 S.Ct. at 306, 46 L.Ed.2d at 212-13 (Marshall, J., dissenting).
\textsuperscript{106} Id. at ____, 96 S.Ct. at 307, 46 L.Ed.2d at 214 (Marshall, J., dissenting).
option of a station house search instead of a curbside search is automatically available with no further justification required:

In *Chambers v. Maroney* we held that police officers with probable cause to search an automobile on the scene where it was stopped could constitutionally do so later at the station house without first obtaining a warrant. There, as here, "[t]he probable cause factor" that developed on the scene "still obtained at the station house." . . . The Court of Criminal Appeals erroneously excluded the evidence seized from the search at the station house in light of the trial judge's finding, undisturbed by the appellate court, that there was probable cause to search respondent's car.\(^{107}\)

One could quarrel not so much with the result but with the careless non sequitur that supported it. The key issue in the *Chambers* extension of *Carroll* was not whether the probable cause "still obtained at the station house" (obviously it must, unless some sneak thief slips into the car under the eyes of the police and pirates away the evidence while the car is in transit), but rather whether the exigency "still obtained at the station house." The *Chambers* battle was fought over that element of the doctrine, not over the element of probable cause.

This then is the *Carroll* Doctrine.\(^{108}\) As an exception to the warrant requirement, it establishes that the police may make a warrantless search of an automobile or an automobile equivalent whenever there is (1) probable cause to believe that the automobile contains evidence of crime and

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107. Id. at ___, 96 S.Ct. at 305, 46 L.Ed.2d at 211-12 (emphasis supplied).

108. Although it deals with an issue tangential to the run-of-the-mill automobile search cases, the Supreme Court decision in *United States v. Di Re*, 332 U.S. 581, 68 S.Ct. 222, 92 L.Ed. 210 (1948), unquestionably involves an aspect of the *Carroll* Doctrine and will be summarized here for the sake of completeness. The issue there was whether the right to make a warrantless search of an automobile confers the incidental right to "search any occupant of such car when the contraband sought is of a character that might be concealed on the person." 332 U.S. at 584, 68 S.Ct. at 223, 92 L.Ed. at 215. The Supreme Court, with Justice Jackson writing for seven members of the Court, held unequivocally that no such incidental right was conferred. He posed the question squarely:

Assuming, however, without deciding, that there was reasonable cause for searching the car, did it confer an incidental right to search Di Re? It is admitted by the Government that there is no authority to that effect, either in the statute or in precedent decision of this Court, but we are asked to extend the assumed right of car search to include the person of occupants because "common sense demands that such right exist in a case such as this where the contraband sought is a small article which could easily be concealed on the person."

332 U.S. at 586, 68 S.Ct. at 224, 92 L.Ed. at 216.

He then answered the question squarely:

We see no ground for expanding the ruling in the *Carroll* case to justify this arrest and search as incident to the search of a car. We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled.

332 U.S. at 587, 68 S.Ct. at 225, 92 L.Ed. at 216.
an exigency arising out of the imminent or likely disappearance of the automobile. The Chambers addition to that doctrine provides that once the right to make the warrantless search accrues at the curbside, it will not be lost by the simple police expedient of removing the car to the station house before executing the warrantless search.

In this survey of Supreme Court case law on the Carroll Doctrine, there was scrupulous avoidance of any mention of Preston v. United States, Cooper v. California, Harris v. United States, Dyke v. Taylor Implement Mfg. Co., Cady v. Dombrowski or Cardwell v. Lewis. This was not an oversight. They are not (or are not primarily) Carroll Doctrine cases. To attempt to squeeze them into the mold of the Carroll Doctrine would serve only to stretch that doctrine so hopelessly out of shape as to render it absolutely meaningless as a legal principle and to strip it of all possible utility.

They all, to be sure, involved searches of or seizures from what our mechanics and teen-aged sons would recognize as automobiles, but they involved constitutional criteria other than probable cause and exigency. If "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears," neither is the word "automobile" a talisman in whose presence every exception to the warrant requirement other than the automobile exception—every doctrine other than the Carroll Doctrine—fades away and disappears. Let us now examine some of the other exceptions to the warrant requirement—some of the other doctrines—that sometimes justify investigative probes into the four-wheeled chariot that symbolizes life in 20th century America.

II. WHEN THE CARROLL DOCTRINE BOTH APPLIES AND APPLIES NOT: THE FREQUENT OVERLAP BETWEEN THE CARROLL DOCTRINE AND THE "SEARCH INCIDENT" EXCEPTION

One of the worst sources of the law's confusion is the uncritical mixing of doctrines that do not combine. This uncritical mixing frequently occurs when "search incident" analysis overlaps Carroll Doctrine analysis. In the typical case of a warrantless automobile search, the same probable cause that points to the likely presence of evidence in the vehicle points also to the likely guilt of the driver or one of the passengers. Both "search incident" law and Carroll Doctrine law have possible utility in analyzing the warrantless search. The fact that two rationales may have applicability to a given set of circumstances does not imply, however, that the rationales

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110. 386 U.S. 58, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967).
115. 403 U.S. at 461, 91 S.Ct. at 325, 29 L.Ed.2d at 580.
merge into some super-rationale. They retain their separate identities. Each is measured by a different set of constitutional criteria. Each involves distinct guidelines. Even when they overlap, they must be analyzed independently. Between the resolution and the act, however, falls the shadow.

It is the particular responsibility of appellate judges who create the precedents to keep the analysis clean—to keep the compartments watertight. If the thought is clean in the first instance, the devices for putting the thought cleanly upon paper are not wanting. They include not simply words but punctuation, paragraphing, numbering and even subheads. All too frequently, however, search incident criteria and Carroll Doctrine criteria are intertwined in one analytically inextricable mess. A sound rule of thumb for the common law reader would be to take any opinion in which reference to both Carroll and Chimel is made in a single paragraph, let alone in a single sentence, and to consign that opinion politely but expeditiously to the nearest trashcan. It is a sure sign that someone has scrambled the eggs of doctrinal analysis. Once those eggs are scrambled, no reader on earth, in search of precedential guidance, can ever unscramble them again.

We must remember that although the two exceptions to the warrant requirement may overlap in a given case, they do not combine. They may not justify together what one could not justify separately. All confusion could be avoided if we would apply two analyses sequentially instead of one analysis collectively.

No matter how tangled a set of facts, when we analyze those facts under the Carroll Doctrine we are interested in but two things: (1) Was there probable cause to believe that the automobile contained evidence? and (2) Was there an exigency requiring an immediate warrantless search? Stick to the checklist! We do not care one whit whether the driver or any of his passengers were arrested at all, let alone whether they were arrested lawfully. We do not care where the driver or passengers are located at the time of the search. They may still be in the car; they may be shackled in a police car a hundred yards away; they may be shot dead in the middle of the street; they may be in jail. Such questions are irrelevant under the Carroll Doctrine.

When we have finished that analysis and move on to a distinct analysis under the “search incident” exception, however, such questions suddenly become important. We are looking to the legality of an underlying arrest. We are looking to that floating zone of reachability, lungeability or graspsability—that Chimel wingspread—which radiates like an eight-foot halo out from the person of the arrestee. His location becomes vitally important. On the other hand, probable cause to believe that evidence will be found loses its significance. No such justification is required for a search incident, which follows automatically from a lawful arrest. Similarly, the question

of exigency loses all relevance. It is not a necessary condition to a warrant-
less arrest or to its attendant search incident. All the opportunity in the
world to obtain a warrant will not defeat a warrantless arrest or a warrant-
less search incident to that arrest.\footnote{117} We are concerned only with the
status, as a lawful arrestee, of the person searched and with the restricted
compass of the search incident—the two things which suddenly take on a
significance under "search incident" law which they lacked under Carroll
Doctrine analysis.

The tricky thing to remember about a "search incident" in an automo-
bile is that the automobile itself has no significance at all except insofar
as it constricts the ability of the arrestee to reach, lunge or grasp for
weapons or destructible evidence. The arrest of a driver does not confer the
right to search the interior of his automobile as an incident of the arrest.
The automobile of the arrested motorist is neither automatically included
in whole, automatically included in part and excluded in part, nor auto-
matically excluded in whole from the permissible search perimeter.
Rather, each case must be analyzed individually in light of the purposes
giving life to the "search incident" exception, as one measures the perime-
ter necessary to serve those purposes. The area within the reach, the lunge
or the grasp of the arrestee—the area "which may fairly be deemed to be
an extension of his person"\footnote{118}—may intrude upon some, or even all,
amtobile space, just as it intrudes upon non-automobile space. Con-
versely, it may not. The word "automobile" is also not a talisman for
purposes of automatic inclusion or exclusion of an automobile after the
arrest of its driver. It is simply so much cubic footage of air space through
which a perimeter measured from an arrestee—be he motorist, passenger
or pedestrian—may or may not pass.

A "search incident" that takes place totally or partially inside an auto-
mobile is no different analytically than any other "search incident." A
driver arrested behind his steering wheel may or may not be able to lunge
beneath the passenger seat or into the back seat just as a homeowner
arrested on his sofa may or may not be able to lunge beneath the cushions
at the far end of the sofa or into a nearby desk. A driver removed to some
safe distance from his car may no longer reach, lunge or grasp into it for
weapons or to destroy evidence anymore than a homeowner removed to a
safe distance from his house may any longer reach, lunge or grasp into it
for weapons or to destroy evidence. A closed trunk may be beyond the
driver's \textit{Chimel} wingspan just as an adjacent room is beyond the home-
owner's \textit{Chimel} wingspan. A \textit{Chimel} perimeter obviously radiates out over
a greater portion of a small house than of a large house, just as it radiates
out over a greater portion of a Volkswagen than of a Lincoln Continental

118. United States v. Rabinowitz, 339 U.S. 56, 73, 70 S.Ct. 430, 438, 94 L.Ed. 653, 664
(1950) (Frankfurter, J., dissenting).}
or a stationwagon. The point is that the automobile is simply the coincidental locus in which we apply a Chimel analysis and not a crucial factor calling for some special analysis of its own under Carroll. Carroll, which deals with the warrantless search of an automobile as the search of the automobile, has nothing whatsoever to do with the coincidental fact that an automobile may fall within a Chimel perimeter under "search incident" law.

As with the crossbreeding of a black chicken and a white chicken under Mendel's law, so also with the overlap of "search incident" analysis and Carroll Doctrine analysis when an automobile has been searched warrantlessly. There are four possible products. The warrantless search may be good under both theories; it may be good under the first but bad under the second; it may be bad under the first but good under the second; it may be bad under both.

Happiness is a professor with a chart:

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<thead>
<tr>
<th>Good Search Incident and Good Carroll Doctrine</th>
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Overlap of "Search Incident" Law and the Carroll Doctrine

Four instances of the overlap will be offered as illustrations of the possible combinations of results. They are taken from actual cases decided by the Maryland Court of Special Appeals, but they deal with general constitutional law and not with parochial Maryland law. They have been selected because the author is intimately familiar with them and because the opinion writer in the cases had no choice but to practice what the author of this article preaches.

A. Good Search Incident and Good Carroll Doctrine

The case of Peterson v. State\textsuperscript{119} well illustrates a situation where the warrantless search of two automobiles was good under each of the two rationales independently. A veteran of the Narcotics Section of the Prince George's County Police Department established a discreet observation point overlooking the parking lot of a shopping center in an area known

for its heavy narcotics traffic. Shortly after 9:30 a.m. he observed first one and then a second automobile park themselves side by side upon the lot. One was occupied by four individuals, the other by two. Throughout a long day of observation that continued until 3:30 p.m., a heavy and consistent traffic pattern was observed as a number of probable customers, some known narcotics addicts, approached one or the other of the vehicles, handed over currency, received in return what appeared to be aluminum foil packets, and departed after encounters of approximately one minute in duration. By 3:30 p.m., the observing detective had seen enough to convince him that all six individuals were engaged in the business of dispensing narcotic drugs and that both automobiles were being used as dispensing stations. He placed a call to his waiting cavalry and they, in squad cars, immediately moved in. Simultaneously, all six suspects were arrested and ordered to "spread-eagle" with their hands against the roof of the car as each stood by the door from which he had alighted. As they were being searched, the interiors of the two automobiles were also being searched and the automobiles yielded a significant "stash" of heroin. After convictions in the trial court, the question before the Court of Special Appeals was the constitutionality of the warrantless searches of the two automobiles. The court prefaced its analysis by announcing its holding that "the search for and the seizure of [the evidence] . . . is constitutionally sound upon either of two independent rationales." The court then proceeded to analyze the warrantless search according to the "search incident" exception:

Detective Beavers' search of the automobile was a legitimate incident of the lawful arrests of its occupants. *Chimel v. California* . . . makes clear that a "search incident" extends not simply to the person of the arrestee but also to the surrounding area within "his immediate control"—the fair "extension of his person"—the area within his reasonable grasp or reach within which he might grab or lunge for a weapon or within which he might be able to destroy evidence. Where four arrestees are ordered from a vehicle and are braced against it for a search, where two others are being arrested several feet away, and where the doors of the vehicle are still open, the contemporaneous survey by Detective Beavers of the interior of that automobile is, we hold, within the legitimate search perimeter of these particular lawful arrests. This is particularly so with evidence as readily destructible as heroin. The search here followed the arrests instantaneously and was of the very spot where Peterson was sitting at the moment of his arrest and was within several feet of where he was standing at the moment of the search. The seizure here was the product of a legitimate "search incident." The underlying arrests had already been held to have been lawful. Scrupul-

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120. *Id.* at 489, 292 A.2d at 721.
121. *Id.* (citation omitted).
lously, no mention was made of any such extraneous consideration as exigency.

A change of paragraph then signaled the analytical shifting of gears:

Completely independent of the “search incident” rationale, the search of the Pontiac here was constitutional, we hold, under the so-called “automobile exception” to the warrant requirement. *Carroll v. United States* . . . . The first of the two necessary preconditions—the existence of probable cause to believe that the automobile contained contraband or other evidence of crime—has already been broadly discussed hereinbefore. We hold that the second necessary precondition—the existence of exigent circumstances—was also present. The automobile was upon a parking lot open to the public. Four persons were arrested from that automobile immediately prior to its search. It was mobile. Even with its occupants moving into custody, it was vulnerable in its position to confederates in the well-organized underworld of the narcotics traffic. Its suspected contents were readily destructible. In that bustling marketplace of narcotics users, it was further an inviting target for theft by any tempted or opportunistic “junkie.”

The aforegoing demonstrated exigency measured from the moment of the crucial encounter forward. The court also considered exigency measured from that point backward, finding that there had been no reasonable opportunity to obtain a warrant before signaling for “the charge” at 3:30 p.m.:

[W]e are, by no means, persuaded that it was feasible in the case at bar to obtain a search warrant for the Pontiac. Detective Snow was in a tactically difficult field situation. His probable cause was slowly, if surely, accumulating over the course of the day’s observations. He could not be certain when he had enough and could safely curtail the accumulation. New parties were entering into the illicit picture. Departures from the crime scene could be sudden. His had to be the tactical judgment of when to spring the trap, a decision wherein dispatch was of the essence and where delay might well have imperiled the success of the mission. The situation at bar does not remotely resemble that in *Coolidge*.123

Of the Supreme Court cases which have involved the overlapping of the two exceptions to the warrant requirement, that of *United States v. Lee*124 is the one where a warrantless search of an automobile equivalent (a motorboat) was good both as a search incident to lawful arrest and, quite independently, under the *Carroll* Doctrine.

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122. *Id.* at 491, 292 A.2d at 722. (citation omitted).
123. *Id.* at 492, 292 A.2d at 723.
B. Bad Search Incident and Bad Carroll Doctrine

At the antipodes of the chart of possibilities is the case of *Martin v. State.* At issue in *Martin* was the warrantless search of an automobile driven by Martin which produced a stolen gun which linked him to an armed robbery which had been perpetrated 5 ½ months earlier in Charles County, Maryland. The search in issue was perpetrated by members of the Metropolitan Police Department of the District of Columbia. Two officers were on routine patrol at approximately 11 p.m. in a commercial area. As they passed the Capitol Cadillac storage lot, a fenced-in area with a chain across the entrance, they observed two individuals, one of whom turned out to be Martin, duck down behind a vehicle stored on the lot. The officers proceeded onward out of view. They reversed their direction and returned. They saw the two men previously observed leaving the lot. They stopped them and frisked them. Winning the "stop and frisk" battle did the State no ultimate good since the court held that "[t]he difficulty with the State's 'stop and frisk' theory is that it 'dead ends' and does not carry them the next necessary step. The search of the appellant's nearby automobile cannot be justified as part of the 'stop and frisk.'" The frisk of Martin produced nothing incriminating.

Both Martin and his companion were arrested. Parked across the street was a 1971 Plymouth. Martin acknowledged that the car was in his possession. It was unnecessary to decide the legality of the, at best, questionable underlying arrest, since the court held that the parked automobile was not, in any event, within the arrestee's *Chimel* perimeter and could not be searched as an incident of the arrest:

It is clear, however, that even a valid arrest upon the street will not justify, as an incident of that arrest, the thorough search of an automobile some appreciable distance away. *Chimel v. California.*

The court then went on and held, quite independently, that the warrantless search of the automobile could not be justified under the *Carroll* Doctrine since, although exigency may have been present at that time and place, there was no probable cause to believe that the automobile contained evidence of crime.

Two of the Supreme Court cases which have involved the overlapping of the two exceptions to the warrant requirement have been ones where the warrantless search of an automobile was bad both under search incident theory and under the *Carroll* Doctrine. They were *Dyke v. Taylor Implement Mfg. Co.* and *Coolidge v. New Hampshire.*

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126. Id. at 114, 305 A.2d at 199.
127. Id. at 115, 305 A.2d at 199 (citation omitted).
128. Id. at 115-16, 305 A.2d at 199-200.
C. Bad Search Incident But Good Carroll Doctrine

The case of *Soles v. State* is a good factual example of a warrantless automobile search which cannot be justified under "search incident" theory but which is nonetheless good under the *Carroll* Doctrine. Narcotics officers of the District of Columbia and of nearby Prince George's County, Maryland, received reliable information from a tested informant, buttressed by independent information of their own, that Soles would be making a "midnight run" from Washington to New York City in the early morning hours of September 19, 1971. They trailed him and intercepted him shortly after he had crossed the Maryland line. A warrantless search of the trunk of his automobile produced about $32,000 worth of high-quality cocaine. He was convicted. In analyzing the constitutionality of that warrantless search, the Maryland Court of Special Appeals scrutinized it initially under the microscope of the "search incident" exception and found it to be wanting:

The appellant was alone in his automobile when he was stopped. He was arrested and ordered to alight from his vehicle. He was directed to produce the keys to the trunk, with which the police opened the locked trunk. Underneath some clothing, they discovered a dark-colored briefcase. It was locked. After the appellant failed to produce a key for the briefcase, the police snapped it open. Much of the incriminating evidence was found inside the briefcase. The rest had been found inside the locked trunk. In any event, the search could not qualify as a "search incident" to a lawful arrest, which must be limited in geographic scope to the person of the arrestee and the immediately surrounding area "which may fairly be deemed to be an extension of his person." *Chimel v. California* ...

Losing a battle, however, is not losing the war. The court then placed the problem under the very different analytical scrutiny of the *Carroll* Doctrine:

If the warrantless search of the automobile is to pass constitutional muster, it must qualify rather under the so-called "automobile exception," *Carroll v. United States* ... to the basic proposition that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment." *Katz v. United States*. ... The necessary conditions for such qualification are 1) probable cause to believe that the automobile contains evidence of crime and 2) exigent circumstances making the warrant procedure impractical and making the resort to the warrantless search reasonable and necessary. *Chambers v. Maroney* ... *Coolidge v. New Hampshire*

132. *Id.* at 659-60, 299 A.2d at 505. (citation omitted).
133. *Id.* at 660, 299 A.2d at 505. (citations omitted).
After an extended analysis\(^{134}\) of the informant's "credibility" and "basis of knowledge" under *Aguilar*\(^{135}\) and *Spinelli*,\(^{136}\) the court weighed his very detailed information, combined with three additional items of independent police knowledge, and found that there was "probable cause to believe that the appellant's automobile contained cocaine and other evidence of narcotics violations."\(^{137}\) The court then had to consider, under *Carroll*, the independent element of exigency. Having stopped a car on a well-traveled thoroughfare at approximately 3 a.m. just outside Washington, D.C., exigency measured from that moment forward was not difficult to find. It was the exigency measured from that point backward in time that required a more detailed analysis to demonstrate that there had not been a reasonable opportunity to obtain a warrant:

Probable cause having been established, we look to the question of exigency. On the record before us, the only information properly available to the police prior to 12:30 a.m. on September 19, was that a late model blue convertible with New York license tags was on a single occasion parked in the unit block of Sheridan Street. That was palpably not enough to establish probable cause for an automobile search. The threshold of probable cause was crossed only with the call to Officer Womack at 12:30 a.m. on September 19. At that point, Womack was at his home in Alexandria. Officer Polzin was also at home. The information from the informant was that the appellant would be moving at some time "before 3 a.m."

Even in the face of such exigency, Officer Polzin placed a telephone call to Assistant U.S. Attorney Robert Crimmins, who was at home in bed. Mr. Crimmins advised the officer to proceed against the appellant and his automobile without a warrant. Mr. Crimmins testified at the suppression hearing. He testified that the obtaining of a search warrant in the middle of the night in the District of Columbia would probably take between two and three hours. He stated that, under ideal conditions, it would take an absolute minimum of one hour. He pointed out that the officers in this case would have had to get dressed and then driven to their headquarters to begin typing up an affidavit. He outlined the necessity for then going to the Superior Court Building to try to locate the necessary warrant forms. He then pointed out that the officers would have to ascertain the identity of and make contact with the "nighttime judge." The officers would then have to travel to that judge's home to present the warrant application to him.

It is clear to us that Officer Womack and Officer Polzin were faced with exigent circumstances, not only permitting but demanding immediate action.\(^{138}\)

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\(^{134}\) *Id.* at 660-665, 299 A.2d at 505-08.


\(^{137}\) 16 Md.App. at 667, 299 A.2d at 509.

\(^{138}\) *Id.* at 667-68, 299 A.2d at 509.
Of the Supreme Court cases which have involved the overlapping of the two exceptions to the warrant requirement, *Chambers v. Maroney* is the one wherein a warrantless search of an automobile was held to be bad under search incident theory but nonetheless good under *Carroll* Doctrine analysis.

### D. Good Search Incident But Bad Carroll Doctrine

The final of the four possibilities—a warrantless search inside an automobile good as an incident of lawful arrest but bad under the *Carroll* Doctrine—is illustrated by the case of *Howell v. State*. A breaking and entering and an assault were perpetrated by Howell on May 16, 1972. Although he made a clean getaway, the victim picked out his photograph. A lookout for the appellant and his automobile, including a description of the car and its license tag number, was broadcast via police teletype. Three days later, at approximately 1 p.m. on May 19, the appellant was arrested in his automobile on the parking lot of a drive-in restaurant. A warrantless probe into the car produced from beneath the right front seat a bag of marijuana. The issue before the court was the constitutionality of that warrantless search and seizure. The court determined initially that the search could not be justified under the *Carroll* Doctrine. Although exigency may have been present, probable cause was not:

In many cases where a motorist is arrested and his car is searched, a search incidental to a lawful arrest under *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), and a search pursuant to the "automobile exception" under *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925), may overlap. They do not, however, necessarily overlap. A search may at times be good upon both theories, at times good upon either one of the theories but not upon the other, and at times good upon neither theory. In the case at bar, the search of the automobile cannot be predicated upon the "automobile exception" because of the failure of Corporal Raymon to establish probable cause to believe that the automobile contained evidence of crime, one of the two necessary preconditions for the invocation of this exception to the basic proposition that all searches carried out without a warrant are per se unreasonable. *Carroll v. United States* . . . *Chambers v. Maroney* . . . *Coolidge v. New Hampshire* . . .

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140. 18 Md.App. 429, 306 A.2d 554 (1973). The decision in this case was reversed by Howell v. State, 271 Md. 378, 318 A.2d 189 (1974), on factual grounds, but not disturbed was the frame of analysis, which held that there could be a good "search incident" inside an automobile even though a search of the automobile would not be permitted under the *Carroll* Doctrine. The court of appeals, in reversing the decision, held that the record was factually too skimpy to permit a determination of precisely where Howell was standing in relation to his car door when he was arrested and of whether that door and/or its window were open or closed.

141. 18 Md.App. at 431-32, 306 A.2d at 557. (citations omitted).
Again with a change of paragraph signaling the shifting of gears of analysis, the court turned its attention to the "search incident" exception and found (1) that there was a lawful underlying arrest and (2) that the search was sufficiently contemporaneous therewith not to run afoul of Preston\(^{142}\) in that regard:

If the search here is to be found legitimate, it must be as a valid search incident to a lawful arrest under Chimel...\(^{143}\) The appellant was formally arrested by Corporal Raymon moments after the corporal arrived upon the scene. There is no question but that the search was sufficiently contemporaneous with the arrest to satisfy the strictures of Preston v. United States...\(^{143}\)

The critical question dealt with the permissible scope—the range in space or the perimeter—of the admittedly proper "search incident." The court held that the place of search fell within that perimeter:

In the case at bar, the arrestee, not yet thoroughly searched, was standing, unshackled, by the door of his automobile. His female companion, who was also arrested, was seated upon the right front seat. The area beneath the right front seat, from which the marihuana was recovered, was, we hold, within the legitimate search perimeter emanating from the appellant. Peterson v. State...\(^{144}\) It was within the range from which a weapon could easily have been recovered to endanger the officer or to make good an escape. It was within the range from which readily destructible evidence could easily have been grabbed and destroyed. It was a proper "search incident" to a lawful arrest. There was, therefore, no constitutional impediment to the introduction into evidence of the seized marihuana.\(^{144}\)

There is no Supreme Court decision involving the overlapping of the theories wherein a warrantless search was held to be good under "search incident" analysis but bad under the Carroll Doctrine.

Let the sermon be once more repeated. In dealing with the overlapping of one or more doctrines, we must keep the analysis clean—we must keep the compartments of thought watertight.

III. WHEN THE CARROLL DOCTRINE DOES NOT APPLY: SOME SEARCHES OF AUTOMOBILES THAT DO NOT INVOLVE THE "AUTOMOBILE EXCEPTION"

A. "SEARCH INCIDENT" INSIDE A VEHICLE

A number of Supreme Court cases have dealt with warrantless searches inside an automobile, the legitimacy of which rose or fell according to analysis under the "search incident" exception to the warrant require-

\(^{143}\) 18 Md.App. at 432, 306 A.2d at 557 (citations omitted).
\(^{144}\) Id. at 434, 306 A.2d at 558 (citation omitted).
ment. The merely coincidental and purely peripheral fact that an automobile happened to be the locus of the "search incident to lawful arrest" did not transform the warrantless search into one that called for analysis under the Carroll Doctrine. A thoughtful reading of the Supreme Court cases should make this apparent.

1. Preston v. United States

Preston v. United States was preeminently a "search incident" case. It was, indeed, the harbinger for the more fully articulated ultimate "search incident" doctrine that would appear five years later in Chimel v. California. In Preston, three men were arrested in their automobile at shortly after 3 a.m. in the small town of Newport, Kentucky, after local police had received a complaint that they had been parked in their car in a business district since 10 o'clock the evening before. When the police arrived to investigate further, the three men gave unsatisfactory, evasive answers as to why they were there, why they could not produce any title for the automobile and why they had only 25 cents among them. They were arrested for vagrancy and were carried to the local police headquarters.

One of the officers drove the car in which the suspects had been parked to the police station. It was subsequently towed to a garage. After the three men had been booked for vagrancy, several of the officers went to the garage, searched the car and found two loaded revolvers in the glove compartment. They were not able to open the trunk, and they returned to the station. A detective ordered them to go back and make a further effort to get into the trunk. They did so and effected entry through the back seat of the car. They recovered from the trunk caps, stocking masks, an illegally manufactured snap-on license place, rope and pillow slips. Confronted with this physical evidence, one of the three confessed that he and his companions had been planning to rob a bank in a town 51 miles away. The local police turned the evidence and the information over to the F.B.I. Preston was convicted in federal court for conspiracy to rob a federally insured bank.

After the United States Court of Appeals for the Sixth Circuit had affirmed the conviction, certiorari was granted by the Supreme Court. The issue there was the legitimacy of the warrantless search of the automobile.

In holding that the warrantless search was bad, Justice Black wrote for a unanimous court. He was not totally innocent of a tendency to "scramble the eggs" of analysis, but the scrambling was minimal and the character of the opinion as an exclusively "search incident" opinion is unobscured. Several references to Carroll were clearly introductory in nature and did

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147. 376 U.S. at 365, 84 S.Ct. at 882, 11 L.Ed.2d at 779.
148. Id. at 364-66, 84 S.Ct. at 882, 11 L.Ed.2d at 779.
not transform the case remotely into one calling for analysis under the "Carroll Doctrine."

Before proceeding to analyze the warrantless search under the merits of the fourth amendment, Justice Black, in a clearly introductory paragraph, disposed briefly and preliminarily of two threshold questions. Because the search had been effected by local rather than federal officials, it was necessary for him to point out that the search, under *Elkins v. United States,*\(^{149}\) would nonetheless be judged by federal standards. He then went on, in the same preliminary paragraph, to point out:

Our cases make it clear that searches of motorcars must meet the test of reasonableness under the Fourth Amendment before evidence obtained as a result of such searches is admissible. E. g., *Carroll v. United States.*\(^{150}\)

The unmistakable import of that sentence is simply that an automobile is a constitutionally protected area. It would, therefore, not be possible to avoid the merits of the fourth amendment question by treating the warrantless search inside the automobile as the equivalent of the "open fields doctrine"—as an instance of the fourth amendment inapplicable.

The purely gratuitous sentence that followed was a correct statement of the law but was an irrelevant observation in the *Preston* case, since an application of "search incident" law would be "identical" in cases of "motorcars" and "fixed structures" alike:

Common sense dictates, of course, that questions involving searches of motorcars or other things readily moved cannot be treated as identical to questions arising out of searches of fixed structures like houses. For this reason, what may be an unreasonable search of a house may be reasonable in the case of a motorcar. See *Carroll v. United States.*\(...\)\(^{151}\)

Since the Supreme Court was still groping its way toward *Chimel,* however, one cannot take it too harshly to task for not culling out an unnecessary sentence.

The opinion promptly got back on the track and concluded its introductory paragraph by making it clear that a search inside a motorcar would be judged according to the merits of the fourth amendment and that the analysis must proceed to see if any of the exceptions to the warrant requirement had been satisfied:

But even in the case of motorcars, the test still is, was the search unreasonable. Therefore we must inquire whether the facts of this case are such as to fall within any of the exceptions to the constitutional rule that a search warrant must be had before a search may be made.\(^{152}\)

\(^{149}\) 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960).
\(^{150}\) 376 U.S. at 366, 84 S.Ct. at 883, 11 L.Ed.2d at 780 (citation omitted).
\(^{151}\) Id. at 366-67, 84 S.Ct. at 883, 11 L.Ed.2d at 780 (citation omitted).
\(^{152}\) Id. at 367, 84 S.Ct. at 883, 11 L.Ed.2d at 780.
Any reference to Carroll and Brinegar up to that point was simply for the purpose of pointing out that an automobile was a constitutionally protected area and called for further consideration under the merits of the fourth amendment. It was not an analysis under the Carroll Doctrine exception to the warrant requirement.

The analysis that followed those preliminary observations was indisputably a "search incident" analysis and a "search incident" analysis alone: "It is argued that the search and seizure was justified as incidental to a lawful arrest."153

The rest of the opinion proceeded to analyze the warrantless search in Preston under the rationale which might justify a search incidental to lawful arrest. In summarizing "search incident" law, the Court pointed out that the police have the right to make a warrantless "search incident" of the person of the arrestee, citing Weeks154 and Agnello.155 It continued the summary by pointing out that the right to make the warrantless "search incident" extended "to things under the accused's immediate control,"156 citing the dictum in Carroll that dealt with "search incident" law and not that part of Carroll which established the Carroll Doctrine.157 The Preston summary of antecedent "search incident" law concluded by making reference "to the place where he is arrested,"158 citing Agnello again, Marron159 and Rabinowitz.160 The analysis went on to point out that the rule allowing contemporaneous searches is justified, for example, by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime—things which might easily happen where the weapon or evidence is on the accused's person or under his immediate control.161

Moving closer to the situation immediately before it, the opinion then pointed out, by way of contrast, that "these justifications are absent where a search is remote in time or place from the arrest. Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest."162

For half a sentence, Justice Black seems ready to wander from the strict "search incident" track:

153. Id.
156. 376 U.S. at 367, 84 S.Ct. at 883, 11 L.Ed.2d at 780.
158. 376 U.S. at 367, 84 S.Ct. at 883, 11 L.Ed.2d at 780.
161. 376 U.S. at 367, 84 S.Ct. at 883, 11 L.Ed.2d at 780-81.
162. Id., 84 S.Ct. at 883, 11 L.Ed.2d at 780-81.
Here, we may assume, as the Government urges, that, either because the arrests were valid or because the police had probable cause to think the car stolen, the police had the right to search the car when they first came on the scene.\textsuperscript{163}

The analysis that followed, however, reverted strictly to "search incident" guidelines, demonstrating that the arrestees were no longer in a position either to grab weapons from the car or to destroy evidence contained in the car:

But this does not decide the question of the reasonableness of a search at a later time and at another place. . . . The search of the car was not undertaken until petitioner and his companions had been arrested and taken in custody to the police station and the car had been towed to the garage. At this point there was no danger that any of the men arrested could have used any weapons in the car or could have destroyed any evidence of a crime—assuming that there are articles which can be the "fruits" or "implements" of the crime of vagrancy. . . . Nor, since the men were under arrest at the police station and the car was in police custody at a garage, was there any danger that the car would be moved out of the locality or jurisdiction. . . .\textsuperscript{164}

The conclusion and holding of \textit{Preston} left no room for doubt that the only exception to the warrant requirement analyzed by it was that of a "search incident to lawful arrest":

\begin{quote}
We think that the search was too remote in time or place to have been made as incidental to the arrest and conclude, therefore, that the search of the car without a warrant failed to meet the test of reasonableness under the Fourth Amendment, rendering the evidence obtained as a result of the search inadmissible.\textsuperscript{165}
\end{quote}

If an internal examination of \textit{Preston} itself left any room for doubt, the later interpretations and characterizations of \textit{Preston} by the Supreme Court removed that doubt. If the uncritical half sentence of Justice Black left room for anyone to believe that \textit{Preston} was dealing alternatively with a warrantless seizure of the car based upon probable cause to believe that it was stolen,\textsuperscript{166} Justice Black himself dispelled any such notion in his majority opinion for the Court in \textit{Cooper v. California}\textsuperscript{167} three years later. He there pointed out that no such authority had been claimed by the police and that no arrest for theft had been made, making it unnecessary to analyze the warrantless seizure upon those grounds:

\textsuperscript{163} \textit{Id.} at 367-68, 84 S.Ct. at 883, 11 L.Ed.2d at 781 (emphasis supplied).
\textsuperscript{164} \textit{Id.} at 368, 84 S.Ct. at 883-84, 11 L.Ed.2d at 781 (citations omitted).
\textsuperscript{165} \textit{Id.}, 84 S.Ct. at 884, 11 L.Ed.2d at 781 (emphasis supplied).
\textsuperscript{166} \textit{See} text at note 163 \textit{supra}.
\textsuperscript{167} 386 U.S. 58, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967).
In the *Preston* case, it was alternatively argued that the warrantless search, after the arrest was over and while Preston's car was being held for him by the police, was justified because the officers had probable cause to believe the car was stolen. But the police arrested Preston for vagrancy, not theft, and no claim was made that the police had authority to hold his car on that charge. The search was therefore to be treated as though his car was in his own or his agent's possession, safe from intrusions by the police or anyone else.\(^{166}\)

Justice Black reiterated that the search in *Preston* "was sought to be justified primarily on the ground that it was incidental to and part of a lawful arrest."\(^{167}\)

*Chambers v. Maroney*\(^{170}\) cited *Preston* as controlling authority for that part of the *Chambers* opinion analyzing "search incident" law and concluding that it would not serve to justify the warrantless automobile search in that case.\(^{171}\) In moving on to its analysis under the *Carroll* Doctrine, *Chambers* pointed out that the automobile search in *Preston* could never have been legitimated under that doctrine because of the lack of probable cause. "In *Preston*, ... the arrest was for vagrancy; it was apparent that the officers had no cause to believe that evidence of crime was concealed in the auto."\(^{172}\)

In *Coolidge v. New Hampshire*,\(^ {173}\) *Preston* is again cited as controlling authority\(^{174}\) in Part IIA of the opinion,\(^ {175}\) dealing with the analysis of the warrantless automobile search under "search incident" law. When the *Coolidge* opinion moves on, however, in Part IIB thereof,\(^ {176}\) to a distinct analysis of the same warrantless automobile search under the *Carroll* Doctrine, the very thorough exposition of that doctrine makes no mention whatsoever of *Preston*.

In *Cady v. Dombrowski*,\(^ {177}\) the majority opinion, written by Justice Rehnquist, distinguished *Preston*. It could not have been more emphatic in characterizing *Preston* as a "search incident" case and nothing but a "search incident" case:

> In that case the respondent attempted to justify the warrantless search of the trunk and seizure of the items therein "as incidental to a lawful arrest." ... The Court rejected the asserted "search incident" justification

\(^{166}\) Id. at 59-60, 87 S.Ct. at 790, 17 L.Ed.2d at 732.

\(^{167}\) Id. at 59, 87 S.Ct. at 790, 17 L.Ed.2d at 732.


\(^{169}\) Id. at 47, 90 S.Ct. at 1979, 26 L.Ed.2d at 426. See text accompanying note 71 supra.

\(^{170}\) Id.

\(^{171}\) 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971).

\(^{172}\) Id. at 457, 91 S.Ct. at 2033, 29 L.Ed.2d at 577-78.

\(^{173}\) Id. at 455-457, 91 S.Ct. at 2032-33, 29 L.Ed.2d at 576-77.

\(^{174}\) Id. at 458-64, 91 S.Ct. at 2033-37, 29 L.Ed.2d at 578-81.

\(^{175}\) 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973).
for the warrantless search in the following terms: "But these justifications are absent where a search is remote in time or place from the arrest. Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest." . . . It would be possible to interpret Preston broadly, and to argue that it stands for the proposition that on those facts there could have been no constitutional justification advanced for the search. But we take the opinion as written, and hold that it stands only for the proposition that the search challenged there could not be justified as one incident to an arrest.178

2. Henry and Rios

Even prior to the Court's opinion in Preston, it had dealt in Henry v. United States179 and Rios v. United States180 with warrantless searches of automobiles under an exclusively "search incident" analysis.

In Henry, a warrantless search of Henry's automobile produced three cartons of stolen radios,181 which led to his conviction for the unlawful possession of goods stolen from an interstate shipment.182 Justice Douglas, writing for six members of the Court, framed the question before the Court squarely: "The issue in the case is whether there was probable cause for the arrest leading to the search that produced the evidence on which the conviction rests."183 All of the subsequent analysis dealt with the legality of the underlying arrest. After disposing of the case on those grounds alone, only a parting comment alluded to the Carroll Doctrine, pointing out in passing that the lack of probable cause which was fatal to the arrest would also have been fatal to an analysis under the Carroll Doctrine:

The fact that the suspects were in an automobile is not enough. Carroll v. United States . . . liberalized the rule governing searches when a moving vehicle is involved. But that decision merely relaxed the requirements for a warrant on grounds of practicality. It did not dispense with the need for probable cause.184

In Rios v. United States,185 the defendant was convicted of "unlawful receipt and concealment of narcotics."186 A warrantless search of the taxi-cab in which Rios was riding produced the package of heroin which formed the basis for the charge. The main thrust of the Rios opinion, in conjunc-

178. Id. at 444, 93 S.Ct. at 2529-30, 37 L.Ed.2d at 716 (citation omitted, emphasis supplied).
180. 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960).
181. 361 U.S. at 99-100, 80 S.Ct. at 169, 4 L.Ed.2d at 136-37.
182. Id. at 98, 80 S.Ct. at 169, 4 L.Ed.2d at 136.
183. Id.
184. Id. at 104, 80 S.Ct. at 172, 4 L.Ed.2d at 140.
185. 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960).
186. Id. at 254, 80 S.Ct. at 1433, 4 L.Ed.2d at 1690.
tion with its companion case of *Elkins v. United States*, was a constitutional rejection of the "silver platter doctrine." The district court which had convicted Rios had relied primarily upon the "silver platter doctrine" and only secondarily upon a finding that Rios had been lawfully arrested prior to the recovery of the heroin from the taxicab. The U.S. Court of Appeals, affirming the conviction in the district court, gave no consideration to the question of the legality of the state's search and seizure and relied exclusively upon the continuing vitality of the "silver platter doctrine." In remanding the case for a fuller consideration of the legality of the arrest, the Supreme Court made it clear that the issue was the time when the arrest occurred. If the arrest took place before the heroin was spotted, both the arrest and its search incident were bad:

Here justification is primarily sought upon the claim that the search was an incident to a lawful arrest. Yet upon no possible view of the circumstances revealed in the testimony of the Los Angeles officers could it be said that there existed probable cause for an arrest at the time the officers decided to alight from their car and approach the taxi in which the petitioner was riding. . . . This the Government concedes.

If, therefore, the arrest occurred when the officers took their positions at the doors of the taxicab, then nothing that happened thereafter could make that arrest lawful, or justify a search as its incident.

If, on the other hand, Rios had voluntarily revealed the packet of heroin to the officers as they approached the taxicab for purposes of a routine interrogation, the subsequent arrest would have been constitutional. In either event, the analysis clearly proceeded under "search incident" law. The *Carroll* Doctrine was not remotely involved, notwithstanding the fact that the heroin was found by the police inside a taxicab which was stopped by them upon the street.


In *Dyke v. Taylor Implement Mfg. Co.*, Dyke and his two companions were found guilty of criminal contempt. A labor dispute in McMinn County, Tennessee, had led to the issuance of an injunction which prohibited the inflicting of harm upon or the damaging of the persons or property

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188. Under the "silver platter doctrine," the fourth amendment was not offended when agents of state governments, rather than federal agents, violated a defendant's fourth amendment rights, and the fruits of that search and seizure were turned over to federal authorities for prosecution in a federal court. The doctrine had held that the evidence would not be excluded in the federal trial so long as federal agents themselves had not violated the Constitution.
189. 364 U.S. at 261-62, 80 S.Ct. at 1436, 4 L.Ed.2d at 1693-94 (citations omitted).
190. *Id.* at 262, 80 S.Ct. at 1437, 4 L.Ed.2d at 1694.
of the Taylor Implement Manufacturing Co. or its employees, customers or visitors. After one of the non-striking employees of that company was fired upon on the night of February 25, 1966, suspicion centered upon Dyke and his two companions and the Dodge automobile in which they were driving. Shortly after the shooting occurred in adjacent Monroe County, a police radio alert went out for the car. After a high-speed chase, the car was stopped near Athens, Tennessee. Its three occupants were arrested. Their car was parked outside the jail while they were being processed on the inside. The police searched the car without a warrant and found an air rifle under the front seat. At ultimate issue was the constitutionality of this warrantless search and seizure.

In finding the search and seizure to have been unconstitutional, the Supreme Court applied sequentially an analysis under "search incident" law and then, distinctly and independently, analysis under the Carroll Doctrine. Relying upon Preston (Chimel was still a year in the future), the Supreme Court held that the search was not good as an incident of arrest, even assuming the arrests to have been lawful:

While the record is not entirely clear, petitioners appear to have been arrested for reckless driving. Whether or not a car may constitutionally be searched "incident" to arrest for a traffic offense, the search here did not take place until petitioners were in custody inside the courthouse and the car was parked on the street outside. Preston v. United States...

The Supreme Court, to be sure, then did go on to look at the same warrantless automobile search under an alternative analysis according to the Carroll Doctrine. That the two analyses are distinct, however, is not to be denied. The critical question under the "search incident" analysis was the distance between the arrestees and their automobile and the time that had transpired since they had left the automobile. The warrantless search was also held to be unconstitutional under the Carroll Doctrine, but for the very different reason there that there was no probable cause to believe that the automobile contained evidence of crime.

4. Lee and Chambers

Although United States v. Lee and Chambers v. Maroney were primarily Carroll Doctrine cases, they both analyzed their warrantless vehicular searches, alternatively, under "search incident" law. In Lee, the warrantless search of the motorboat was held to have been as a search incident

192. Id. at 220, 88 S.Ct. at 1475, 20 L.Ed.2d at 543 (citation omitted).
193. Id. at 221-22, 88 S.Ct. at 1475-76, 20 L.Ed.2d at 543-44.
to a lawful arrest. In Chambers, on the other hand, the warrantless search of the automobile, albeit good under the Carroll Doctrine, was held to have been bad under “search incident” law.


Coolidge v. New Hampshire is the outstanding example of how analyses under separate exceptions to the warrant requirement can be kept in watertight compartments. Part IIA of that opinion analyzes the warrantless search of Coolidge’s Pontiac and finds it to be wanting under pre-Chimel “search incident” analysis. It relies primarily on Preston and considers the critical factors to be the lack of geographic proximity between Coolidge and his Pontiac at the time of its search and the lack of contemporaneity between the time of arrest and the time of search. Part IIB goes on, independently, to analyze the same warrantless search of the same automobile according to Carroll Doctrine criteria—the element found wanting being that of exigency. Part IIC of the opinion then goes on, independently, and analyzes the same search of the same automobile under the Plain View Doctrine exception to the warrant requirement. It is again found wanting, but this time essentially because of the lack of inadvertence.

B. Hot Pursuit Inside a Vehicle

The second of the recognized exceptions to the warrant requirement, in terms of seniority, is, of course, the Carroll Doctrine itself. We shall, therefore, move on to the third oldest of the exceptions. This is the exception created in 1967 by the Supreme Court’s decision of Warden v. Hayden. The Supreme Court has been inclined to call this the “hot pursuit” exception. The academic community has recognized that it may have broader implications and has generally labeled it the “emergency circumstances” exception, hot pursuit simply being one instance of emergency circumstances. The thrust of the exception is that the threshold even of a fixed

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196. 274 U.S. at 563, 47 S.Ct. at 748, 71 L.Ed. at 1204. See text accompanying note 42 supra.
197. See text accompanying notes 72-79 supra.
198. 399 U.S. at 47, 90 S.Ct. at 1979, 26 L.Ed.2d at 426. See text accompanying note 71 supra.
199. 403 U.S. 443, 91 S.Ct. at 2027, 29 L.Ed.2d 564 (1971).
200. Id. at 455-57, 91 S.Ct. at 2032-33, 29 L.Ed.2d at 576-78.
202. 403 U.S. at 458-64, 91 S.Ct. at 2033-37, 29 L.Ed.2d at 578-81.
203. Id. at 464-73, 91 S.Ct. at 2037-42, 29 L.Ed.2d at 581-87.
204. 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967).
205. The broader implications had been examined by Chief Justice Burger when he was sitting on the U.S. Court of Appeals for the District of Columbia in the case of Wayne v.
premises will yield to the exigency of saving or protecting life. Involved may be the hot pursuit of an armed and dangerous felon, as in Warden v. Hayden, who might well endanger the lives of the policemen themselves or the lives of others if not promptly apprehended. Involved might be the crossing of the threshold to put out a fire or save an occupant from the fire, to quell a disturbance, to offer aid or to rush a stricken or bleeding occupant to the hospital. Warden v. Hayden is the first and last Supreme Court decision to deal with this exception. It authorized the warrantless crossing of the threshold of a fixed premises.

Although there has been no Supreme Court decision applying this exception to the warrantless crossing of the threshold—the running board—of a vehicle, there can be no doubt that if even the greater threshold of a fixed premises would yield to such benign or otherwise lifesaving purposes, a fortiori the lesser threshold would also yield. Hypothesizing from the facts of Warden v. Hayden alone, it cannot be doubted that if Bennie Joe Hayden had fled into a mobile home, into a large van, or into the bowels of a seagoing vessel, the police would have been permitted to maintain their “hot pursuit” into those constitutionally protected places just as surely as they were permitted to maintain their “hot pursuit” into a row house. Bennie Joe Hayden could not have obtained safe haven by jumping into his automobile and shuttling the door behind him.

It also follows ineluctably that the analysis of the crossing of such a threshold would proceed according to the criteria of the “hot pursuit” or “emergency circumstances” exception to the warrant requirement and not according to the Carroll Doctrine.

C. “Stop and Frisk” Inside a Vehicle

Terry v. Ohio\textsuperscript{206} and Sibron v. New York\textsuperscript{207} carved out yet a fourth exception to the warrant requirement in 1968. They established initially that a stop and a frisk, albeit lesser intrusions than their seizure and search counterparts, were permissible under the fourth amendment. They went on to establish that because the stop and the frisk were lesser intrusions than their seizure and search counterparts, they would be constitutionally permitted upon predicates less substantial than probable cause. They further established that a frisk is a search operating only under the limitation that it be limited in its intensity and scope to that which is necessary to detect the presence of dangerous weapons.\textsuperscript{208}

It is now firmly established by Adams v. Williams\textsuperscript{209} and United States

\textsuperscript{206} United States, 318 F.2d 205 (D.C. Cir. 1963) and in an excellent article by Bacigal, \textit{The Emergency Exception to the Fourth Amendment}, 9 U. Richmond L. Rev. 249 (1975).
\textsuperscript{207} 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).
\textsuperscript{209} 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972).
v. Brignoni-Ponce\textsuperscript{210} that a stop and an attendant frisk may be made of a motorist or of an occupant of an automobile just as surely as it may be made of a pedestrian.\textsuperscript{211} Our focus for present purposes is upon the limited-scope search—the frisk—that intrudes into an automobile or automobile equivalent.

A frisk and a “search incident” to lawful arrest share many characteristics. The “search incident” has two purposes—the detection and recovery of weapons and the prevention of the destruction of evidence. The frisk serves only the first of those two purposes. For that reason, the frisk may not be as intensive in scope as the “search incident.” A mere pat down of the exterior of the clothing serves to detect the presence of weapons. A “search incident” may be more intensive, going into pockets, wallets and other hidden areas to detect destructible evidence. This greater intensity is not permitted the frisk.

The frisk and the “search incident” enjoy the same scope in terms of how extensive they may be, however. It is logically inevitable that the geographical range in space of a frisk must be the Chimel “search incident” perimeter. The ability to reach, lunge or grasp for a weapon to harm an arresting officer cannot be different than the ability to reach, lunge or grasp for a weapon to harm a “stopping” officer. Depending upon the position of a “stopped” suspect in or near an automobile, the frisk perimeter may intrude into none, into all or into some portion of that automobile just as in the case of a “search incident” made in the same position.\textsuperscript{212} The wingspread of the possibly dangerous suspect is not affected by the distinction between his status as an arrestee and his status as a “stoppee.”

The point, for present purposes, is that the coincidental presence of an automobile as the locus of the frisk does not serve to transform the case from one requiring analysis under the “stop and frisk” exception into one calling for analysis under the Carroll Doctrine exception. Illustrative is the case of Adams v. Williams.\textsuperscript{213} In that case, an officer on routine patrol in a high-crime district during early morning hours developed reasonable grounds to suspect that Williams, then seated in his automobile, was armed and was carrying narcotics. Although Sgt. Connolly did not have sufficient probable cause to make an arrest, he had reasonable suspicion to stop Williams and subject him to further interrogation and to frisk him for weapons. Sgt. Connolly approached the car, tapped on the car window and asked Williams to open the door. “When Williams rolled down the window instead, the sergeant reached into the car and removed a fully loaded revolver from Williams’ waistband. The gun had not been visible to Connolly from outside the car. . . .”\textsuperscript{214} The recovery of the gun was held

\textsuperscript{210} 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975).
\textsuperscript{211} In this regard see Williams v. State, 19 Md.App. 204, 310 A.2d 593 (1973).
\textsuperscript{212} See text accompanying note 118 supra.
\textsuperscript{213} 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972).
\textsuperscript{214} Id. at 145, 92 S.Ct. at 1922-23, 32 L.Ed.2d at 616.
to be constitutional. Of present significance is the fact that the analysis
leading to that holding of constitutionality was exclusively a "stop and
frisk" analysis. The mere fact that the frisk intruded into an automobile
did not remotely invoke the Carroll Doctrine.\footnote{215}

In United States v. Brignoni-Ponce,\footnote{216} a roving patrol of the U.S. Border
Patrol stopped the defendant's vehicle on a California highway at a point
not far north of the Mexican border. Observed in the car were the defen-
dant and two passengers, all of whom were apparently of Mexican descent.
The questioning of the three occupants of the automobile developed that
the two passengers were in the act of entering the country unlawfully.
Brignoni-Ponce was convicted "of knowingly transporting illegal immi-
grants."\footnote{217} The point for present purposes is that the constitutional analy-
sis by Justice Powell, for a majority of the Court, of the stopping of the
vehicle and the observation of the persons inside the vehicle was made in
the analytical context of the "stop and frisk" exception. Although holding
that the Border Patrol had in this case no reasonable and articulable
suspicion for the stop, the opinion held that where such articulable suspi-
cion is present, under the guidelines of Terry v. Ohio, a warrantless stop
of a motorist or of a passenger in an automobile may be effected.\footnote{218} Since
Terry is the applicable bench mark, it would follow that a frisk, based upon
appropriately articulable suspicion, could attend such a stop and could
intrude into the automobile if the stoppee was in or up against the automo-
bile at the moment when the officer reasonably apprehended that such
stoppee might be armed. Once again, the mere coincidental involvement
of an automobile did not thrust the constitutional analysis into a Carroll
Doctrine mode.

D. Border Searches Inside a Vehicle

Before proceeding onto the next of the well-recognized exceptions to the
warrant requirement, it is appropriate at this juncture to point out that a
number of the "border search" cases have involved searches of automo-
biles. Among them are United States v. Peltier,\footnote{219} United States v. Ortiz,\footnote{220}
Bowen v. United States,\footnote{221} as well as the primary thrust of Almeida-
Sanchez v. United States.\textsuperscript{222} Again, the point is that, notwithstanding that an automobile was the subject of the warrantless search, the analysis has proceeded strictly according to the criteria governing border searches and has not been crammed into a distended Carroll Doctrine.\textsuperscript{223}

E. Forfeitures of Vehicles

Before returning to the running of the catalogue of the exceptions to the warrant requirement, one further tangent may be conveniently disposed of at this point. Where automobiles have been warrantlessly seized and made subject to forfeiture because of their involvement in the traffic in contraband liquor, the analysis of the merits and demerits of those cases has proceeded within its own constitutional framework and has not obtruded into analysis under the Carroll Doctrine. Among such cases are One 1958 Plymouth Sedan v. Pennsylvania,\textsuperscript{224} United States v. One Ford Coupe Automobile\textsuperscript{225} and Dodge v. United States.\textsuperscript{226}

F. The Plain View Doctrine Inside a Vehicle

In at least four Supreme Court decisions, warrantless searches or seizures from automobiles have explicitly or implicitly been analyzed under the Plain View Doctrine exception to the warrant requirement rather than under the Carroll Doctrine. In two of these, Harris v. United States\textsuperscript{227} and Coolidge v. New Hampshire (Part IIC),\textsuperscript{228} the analysis is commendably clean. In the other two cases, Cooper v. California\textsuperscript{229} and Cady v. Dombrowski,\textsuperscript{230} the distinctions were not made as crisply as they might have been, but the identification of the genus is unmistakable from the telltale characteristics of the significant constitutional criteria.

1. Harris v. United States

James H. Harris was convicted in the District of Columbia of robbery. A critical piece of incriminating evidence was an automobile registration card belonging to the robbery victim. The card was taken warrantlessly from Harris’s automobile. The trial court ruled that the warrantless seizure

\textsuperscript{222} 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596 (1973). See text accompanying notes 97-100 supra.
\textsuperscript{223} For an excellent survey of this entire category of cases, see Comment, Almeida-Sanchez and Its Progeny: The Developing Border Zone Search Law, 17 ARIZ. L. REV. 214 (1975).
\textsuperscript{224} 380 U.S. 693, 85 S.Ct. 1246, 14 L.Ed.2d 170 (1965).
\textsuperscript{225} 272 U.S. 321, 47 S.Ct. 154, 71 L.Ed. 279 (1926).
\textsuperscript{226} 272 U.S. 530, 47 S.Ct. 191, 71 L.Ed. 392 (1926).
\textsuperscript{227} 380 U.S. 693, 85 S.Ct. 1246, 14 L.Ed.2d 170 (1965).
\textsuperscript{228} 272 U.S. 321, 47 S.Ct. 154, 71 L.Ed. 279 (1926).
\textsuperscript{229} 403 U.S. at 464-73, 91 S.Ct. at 2037-42, 29 L.Ed.2d at 581-87.
\textsuperscript{230} 386 U.S. 58, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967).
was constitutional. The U.S. Court of Appeals reversed, ruling that the seizure was unlawful. The critical issue before the Supreme Court was the validity of that warrantless seizure.

Harris's automobile had been observed leaving the scene of the robbery. Its ownership was traced and Harris was arrested as he was entering the car near his home. He was taken to the police station. The car was impounded as evidence and was towed to the police parking lot. When it arrived at the police lot approximately one hour and 15 minutes after Harris had arrived at the police station, its windows were open and its doors were unlocked. It had begun to rain. Under a regulation of the Metropolitan Police Department, officers are required to inventory an impounded vehicle, to remove all valuables from it and to place a property tag on it. An officer had already placed a tag on the steering wheel and was in the act of rolling up the windows against the rain, when he moved to the front door on the passenger's side. As he opened that door preparatory to rolling up the window, he saw the registration card in question lying face up on the metal stripping over which the door closes. He seized the card.

The Supreme Court held that the seizure was good. Its analysis is significant:

The sole question for our consideration is whether the officer discovered the registration card by means of an illegal search. We hold that he did not. The admissibility of evidence found as a result of a search under the police regulation is not presented by this case. The precise and detailed findings of the District Court, accepted by the Court of Appeals, were to the effect that the discovery of the card was not the result of a search of the car, but of a measure taken to protect the car while it was in police custody. Nothing in the Fourth Amendment requires the police to obtain a warrant in these narrow circumstances.

Once the door had lawfully been opened, the registration card, with the name of the robbery victim on it, was plainly visible. It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence.

The admirable thing about the Harris opinion is that it made no effort to squeeze its rationale into some bloated version of the Carroll Doctrine. It was the harbinger which announced the coming of the Plain View Doctrine three years hence in Coolidge. Under the guidelines that would be more fully articulated at that time, it was a classic Plain View Doctrine case. The perfectly proper opening of the right front car door for the benign purpose of rolling up the window against the rain was a prior valid intru-

231. 390 U.S. at 235-36, 88 S.Ct. at 993, 19 L.Ed.2d at 1069.
232. Id. at 236, 88 S.Ct. at 993, 19 L.Ed.2d at 1069.
When probable evidence of crime was then inadvertently spotted in plain view, it was seizable warrantlessly under the Plain View Doctrine.

2. **Coolidge v. New Hampshire, Part IIC**

Part IIC of *Coolidge* was, by definition, an analysis exclusively under the Plain View Doctrine which it was fully articulating for the first time. All analysis of the warrantless search of Coolidge’s Pontiac under “search incident” law had been neatly confined to Part IIA of the opinion.233 Similarly, all analysis of the same warrantless search under *Carroll* Doctrine law had been scrupulously isolated within Part IIB of the opinion.234 The warrantless seizure of the Pontiac was not upheld under the Plain View Doctrine because of its failure to satisfy the inadvertence requirement. The significance of the case for present purposes, however, is that the Plain View Doctrine phase of the analysis was kept absolutely watertight from all other possible analyses.

3. **Cooper v. California**

*Cooper v. California*235 is an unsatisfactory opinion. The Court was split 5 to 4. Justice Black, writing for the majority, disposed of the case in a bare four pages. (The Justice, so sharp and incisive in so many other areas, was generally unsatisfactory in handling the fourth amendment because of the undifferentiated character of his analytical approach.)

*Cooper* did not come to the Supreme Court as a search and seizure case. The California District Court of Appeal had held that the search was bad but that the error was, in any event, harmless.236 The California Supreme Court declined to hear the case. The Supreme Court granted certiorari237 in this case along with *Chapman v. California*238 to consider the question of harmless error where a constitutional provision had been violated. *Chapman v. California* became the vehicle for the Supreme Court’s harmless error doctrine. It found it unnecessary to reach the question of harmless error in *Cooper*, however, because of its holding that the lower California court was wrong in ruling that the search and seizure violated the fourth amendment.239

*Cooper* is furthermore a bad vehicle for analyzing exceptions to the warrant requirement because its holding was ultimately framed very

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234. 403 U.S. at 458-64, 91 S.Ct. at 2033-37, 29 L.Ed.2d at 578-81. See text accompanying notes 80-96 supra.
238. 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967).
239. 386 U.S. at 59, 87 S.Ct. at 789, 17 L.Ed.2d at 732.
squarely in terms of the now discredited Rabinowitz\textsuperscript{240} approach. It expressly eschewed analysis in terms of a search warrant as the norm with exceptions thereto constitutionally permissible only upon a showing of exceptional good cause:

It is no answer to say that the police could have obtained a search warrant, for "[t]he relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable." \textit{United States v. Rabinowitz}. . . . Under the circumstances of this case, we cannot hold unreasonable under the Fourth Amendment the examination or search of a car validly held by officers for use as evidence in a forfeiture proceeding.\textsuperscript{241}

Joe Nathan Cooper ultimately was convicted of selling heroin to a police informer. The evidence seized from his automobile was peripheral in the extreme. It was a small piece of a brown paper sack taken from the glove compartment.\textsuperscript{242} It appeared to have been torn from a grocery bag. It matched the brown paper in which the heroin had been wrapped, which Cooper sold to an undercover police agent.\textsuperscript{243} At issue was the warrantless search of the glove compartment which produced the scrap of brown paper.

At the time of Cooper's arrest, his automobile was seized and was towed to a police garage. It was there being held under a California statute\textsuperscript{244} which provided that "any officer making an arrest for a narcotics violation shall seize . . . any vehicle used to store, conceal, transport, sell or facilitate the possession of narcotics."\textsuperscript{245} The vehicle was to be held as evidence "until a forfeiture has been declared or a release ordered."\textsuperscript{246} The automobile had been in police hands upon the police lot for one week when the police searched it and found the incriminating scrap of paper.\textsuperscript{247}

The main thrust of Justice Black's opinion was the distinguishing of \textit{Preston v. United States}.\textsuperscript{248} The California District Court of Appeal had relied upon \textit{Preston} in ruling the search unconstitutional.\textsuperscript{249} Fully half of Justice Black's analysis was devoted to showing that \textit{Preston} was exclusively a "search incident" case and was not a broad authority controlling every automobile search resembling \textit{Preston} in surface characteristics.\textsuperscript{250}

\textsuperscript{240} United States v. Rabinowitz, 339 U.S. 56, 70 S.Ct. 430, 94 L.Ed. 653 (1950).
\textsuperscript{241} 386 U.S. at 62, 87 S.Ct. at 791, 17 L.Ed.2d at 733-34 (citation omitted).
\textsuperscript{242} Id. at 58, 87 S.Ct. at 789, 17 L.Ed.2d at 732.
\textsuperscript{243} Id. at 63, 87 S.Ct. at 791-92, 17 L.Ed.2d at 734 (Douglas, J., dissenting).
\textsuperscript{244} CALIF. HEALTH AND SAFETY CODE § 11611.
\textsuperscript{245} 386 U.S. at 60, 87 S.Ct. at 790, 17 L.Ed.2d at 733.
\textsuperscript{246} Id.
\textsuperscript{247} Id. at 58, 87 S.Ct. at 789, 17 L.Ed.2d at 732.
\textsuperscript{249} 386 U.S. at 59, 87 S.Ct. at 789, 17 L.Ed.2d at 732.
\textsuperscript{250} Id. at 59-60, 87 S.Ct. at 790, 17 L.Ed.2d at 732-33. See text accompanying notes 167-169 supra.
Indeed, the full thrust of Justice Douglas's dissenting opinion, joined by Chief Justice Warren and Justices Brennan and Fortas, was to the effect that *Preston* was controlling and that the search of Cooper's automobile could not be legitimated as an incident of his arrest.\(^\text{251}\) After putting *Preston* to rest as a controlling precedent, Justice Black indicated that the analysis must proceed in another direction: "Here, California's Attorney General concedes that the search was not incident to an arrest. It is argued, however, that the search was reasonable on other grounds."\(^\text{252}\)

In searching for other grounds, it is clear that Justice Black did not look to the *Carroll* Doctrine. Neither *Carroll* nor any of its progeny—*Husty*, *Scher* and *Brinegar*—are even alluded to in the *Cooper* opinion. The *Carroll* Doctrine is not there even by implication. Not one word is said suggesting any exigency arising out of the mobility or likely disappearance of Cooper's automobile. Not one word is said about any probable cause to believe that the automobile contained evidence of crime. Neither element, let alone both, necessary to a *Carroll* Doctrine warrantless search is even arguably established. There is simply nothing in the *Cooper* opinion to cause later commentators artificially to engraft it onto the *Carroll* Doctrine—unless, of course, the mere coincidental fact of an automobile as the situs of the warrantless search destroys all capacity for analytical discrimination.

To place *Cooper* in a proper analytical context, two approaches are possible. We may consign *Cooper* to the fog-shrouded and diffuse Limbo of *Rabinowitz*\(^\text{253}\) and forget it. Alternatively, we may look for an explanation in later and more precisely defined case law. The explanation that immediately commends itself is the superbly reasoned Plain View Doctrine of Justice Stewart in *Coolidge*.\(^\text{254}\)

What *Cooper* unmistakably suggests is not a search of the car as such for incriminating evidence but rather a routine processing of the car because the police were required by law to maintain control of the vehicle pending the forfeiture proceedings:

Here the officers seized petitioner's car because they were required to do so by state law. . . . They seized it to impound it and they had to keep it until forfeiture proceedings were concluded. . . . The forfeiture of petitioner's car did not take place until over four months after it was lawfully seized. It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it.\(^\text{255}\)

\(^{251}\) Id. at 62-65, 87 S.Ct. at 791-93, 17 L.Ed.2d at 734-36 (Douglas, J., dissenting).

\(^{252}\) Id. at 60, 87 S.Ct. at 790, 17 L.Ed.2d at 733.


\(^{255}\) 386 U.S. at 61-62, 87 S.Ct. at 791, 17 L.Ed.2d at 733.
If such a routine processing is mandated (or permitted) "for their own protection" or otherwise, this is preeminently a prior valid intrusion, the first of the necessary preconditions for a warrantless Plain View Doctrine seizure. When, following that prior valid intrusion, probable evidence of crime is inadvertently spotted in plain view, it is seizable.

There are intimations here, to be sure, of later inventory search rationale, but with limitations. The inventory "thing," which has had a tendency in the hands of overzealous investigators to run amok,\(^{256}\) is far more frequently than not a discretionary police tactic where the taking of custody of a vehicle is not compelled by law. Far less drastic alternatives—having a defendant park and lock his vehicle, having a friend or relative or attorney come and retrieve the vehicle, or having the defendant absolve the policemen of all responsibility for his personal property—are generally available, and the protective custody of the vehicle and subsequent inventory of personal property contained therein smacks resoundingly of investigative opportunism with little more than a wink of the eye to a willingly gullible judiciary. In *Cooper*, by way of contrast, the police had no alternative but to maintain custody of the vehicle pendente lite. In this limited situation, an inventory may be constitutionally legitimate even if its paler reflections under more discretionary circumstances are not. As will be more fully articulated in the following section, however, an inventory search is, by definition, not a search for incriminating evidence but a more innocuous processing and listing of personal property of any character (criminal or non-criminal) for the protection of the owner. The initial intrusion into the otherwise constitutionally protected area made in its name is valid. Condition number one of the Plain View Doctrine is satisfied. When probable evidence is then inadvertently spotted, it may be seized.

The *Cooper* opinion manages to drag several red herrings across the scent. Justice Black, in distinguishing *Preston* (which was already adequately distinguished on other grounds), pointed out:

They seized it because of the crime for which they arrested petitioner. . . . Their subsequent search of the car—whether the State had "legal title" to it or not—was closely related to the reason petitioner was arrested, the reason his car had been impounded, and the reason it was being retained.\(^{257}\)

With due deference to Justice Black, one is prompted to say, "So what?" If a vehicle is subject to seizure and subsequent forfeiture proceedings because the police believe it to have been used in the narcotics traffic, do

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257. 385 U.S. at 61, 87 S.Ct. at 791, 17 L.Ed.2d at 733.
we care whether the driver was arrested for some unrelated charge such as filing a false tax return or committing a statutory rape, whether the driver was arrested at all, whether the driver was a totally innocent "fall guy" and unsuspecting chauffeur, or whether the driver had successfully fled to Brazil or Costa Rica? The arrest vel non of anybody for anything simply does not appear to be a crucial and necessary precondition to the in rem forfeiture proceeding.

Some glossators have attached significance to the fact that the police custody of the car was compelled by statute. Again, this factor appears to be more descriptive than pivotal. If holding a car for forfeiture were unconstitutional, could a statute overrule the Constitution? If, on the other hand, the proceeding is constitutional if statutory, would it be any less constitutional if authorized by rule of court, by state judicial interpretation of the common law, by some administrative policy or by standing local tradition? Indeed, Justice Black denigrated the significance of the statute as such, which, as authoritatively construed by the state court, did not authorize the subsequent search even though it did authorize the initial seizure:

The lower court concluded, as a matter of state law, that the state forfeiture statute did not by "clear and express language" authorize the officers to search petitioner's car. . . . But the question here is not whether the search was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment. Just as a search authorized by state law may be an unreasonable one under that amendment, so may a search not expressly authorized by state law be justified as a constitutionally reasonable one."259

When all is said and done, a valid initial intrusion was made for a purpose other than looking for incriminating evidence as such. Although not fully articulated as such in Cooper, the subsequent warrantless seizure of the piece of brown paper would be legitimate within the contemplation of the Plain View Doctrine. At least by such a construction, the case fits

258. Calif. Health and Safety Code § 11610 does not seem to require an arrest as predicate:

The interest of any registered owner of a vehicle used to unlawfully transport or facilitate the unlawful transportation of any narcotic, or in which any narcotic is unlawfully kept, deposited, or concealed or which is used to facilitate the unlawful keeping, depositing or concealment of any narcotic, or in which any narcotic is unlawfully possessed by an occupant thereof or which is used to facilitate the unlawful possession of any narcotic by an occupant thereof, shall be forfeited to the State.

See 386 U.S. at 60, 87 S.Ct. at 790, 17 L.Ed.2d at 733, n. 1.
The "owner" who is subject to losing his "interest" may have had no knowledge of the unlawful activities of the offending "occupant."

259. 386 U.S. at 60-61, 87 S.Ct. at 790, 17 L.Ed.2d at 733 (citation omitted, emphasis supplied).
into a well-ordered fourth amendment universe. There is no reason not to strive at least for the "seamless web." Indeed, Cady v. Dombrowski grouped Cooper analytically with Harris v. United States, a classic Plain View Doctrine case.

What is clear is that Cooper is not a Carroll Doctrine case. In thoroughly reviewing the Carroll Doctrine, Chambers v. Maroney cited Cooper only for its characterization of Preston as a "search incident" case. That part (Part IIB) of the Coolidge opinion dealing with the Carroll Doctrine does not cite or rely on Cooper in any way. It is mentioned only in a footnote which points out that for Carroll Doctrine purposes, Cooper "is no more in point here than in the context of a search incident to a lawful arrest."

When the Court in Part IIC of Coolidge moves on to a consideration of the Plain View Doctrine, however, Cooper does appear as a relevant bench mark. In setting forth the State's argument, Justice Stewart points out that the State initially urges that the seizure of Coolidge's Pontiac was lawful. He then sets forth the next rung in the State's ladder of logic:

Supposing the seizure to be thus lawful, the case of Cooper v. California . . . is said to support a subsequent warrantless search at the station house, with or without probable cause.

Justice Stewart pointed out that since the State's predicate of a lawful seizure of the automobile in the first instance was found wanting, the examination of the next step under Cooper was unnecessary:

But, for the reasons that follow, we hold that the "plain view" exception to the warrant requirement is inapplicable to this case. Since the seizure was therefore illegal, it is unnecessary to consider the applicability of Cooper, supra, to the subsequent search.

What emerges clearly is that Cooper was being considered within the context of the Plain View Doctrine.

261. Id. at 442 and 445, 93 S.Ct. at 2528 and 2530, 37 L.Ed.2d at 716 and 717.
264. Id. at 49-50, 90 S.Ct. at 1980, 26 L.Ed.2d at 427.
265. 403 U.S. at 464, 91 S.Ct. at 2037, 29 L.Ed.2d at 581, n. 21. The footnote went on to point out that the initial seizure of the automobile in Cooper was not questioned:
In Cooper, the seizure of the petitioner's car was mandated by California statute, and its legality was not questioned. The case stands for the proposition that, given an unquestionably legal seizure, there are special circumstances that may validate a subsequent warrantless search. Cf. Chambers, supra. The case certainly should not be read as holding that the police can do without a warrant at the police station what they are forbidden to do without a warrant at the place of seizure.
266. Id. at 464-73, 91 S.Ct. at 2037-42, 29 L.Ed.2d at 551-87.
267. Id. at 464, 91 S.Ct. at 2037, 29 L.Ed.2d at 582 (citation omitted).
268. Id. at 464-65, 91 S.Ct. at 2037, 29 L.Ed.2d at 582.
The four dissenting justices in *Coolidge* all would have affirmed the warrantless search of Coolidge’s Pontiac on the authority of *Cooper*. A close reading makes it apparent, however, that the plurality opinion of Justice Stewart in this regard and the dissenting opinion of Justice Black (concurred in on this point by Chief Justice Burger and Justice Blackmun) and the dissenting opinion of Justice White (concurred in on this point by the Chief Justice) differ not as to the applicability of *Cooper* to the warrantless search of a vehicle already in police custody but rather over the threshold question of the lawfulness of the initial seizure of the vehicle itself. The quarrel is over the predicate which *Cooper* itself never had to deal with.

The debate generated by *Cooper* is not over the warrantless Plain View Doctrine seizure of probable evidence following a prior valid intrusion, but with the validity of that prior valid intrusion itself. That intrusion, be it valid or invalid, did not purport to rely upon the combination of probable cause and exigency. As one commentator has lucidly pointed out:

> The most sensible interpretation of *Cooper* is that the police may search a car, with or without probable cause, if they have a continuing right to possess it. . . . [T]he reference to self-protection does seem to indicate that a search in furtherance of the police possessory interest, rather than a probable cause search for evidence, was seen by the Court as the central feature of the case. On that basis, it is hard to see what probable cause would add to a possessory right in justifying the intrusion. Rather, *Cooper*, in Justice Brennan’s phrase, stands for the proposition that the police, under a forfeiture statute, are “authorized to treat the car in their custody as if it were their own.”

*Cooper* is preeminently not a *Carroll* Doctrine case.

4. Automobile Inventory Searches

Leaving aside the very pertinent question of whether an unsolicited inventory “to protect a suspect’s personalty” can ever be bona fide and not an unconscionable sham, an inventory search is the antithesis of a *Carroll* Doctrine search. The inventory search, by definition, is a mere listing of personal property and not a deliberate search for evidence; a *Carroll* Doctrine search is a deliberate search for evidence. An inventory search is not based upon probable cause—probable cause is, indeed, an irrelevant no-

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269. *Id.*
270. *Id.* at 504-05, 91 S.Ct. at 2056-57, 29 L.Ed.2d at 605 (Black, J., concurring and dissenting).
271. *Id.* at 522, 91 S.Ct. at 2065-66, 29 L.Ed.2d at 615-16 (White, J., concurring and dissenting).
tion; a Carroll Doctrine search must rest upon probable cause. The inventory search need not depend upon any exigency—indeed, the non-likeness that the owner's relatives or agents will call for the car ostensibly heightens the need for the protective inventory; a Carroll Doctrine search is absolutely dependent upon exigency. Once one gets beyond the surface similarity that a policeman took a gander around the interior of the family Chevrolet, the inventory search and the Carroll Doctrine search are diametrically opposed in every doctrinal respect.

If an inventory search of an automobile is not a Carroll Doctrine search, just what is it? Assuming for the moment that the making of an inventory is a legitimate excuse for intruding into the constitutionally protected area of a person's automobile, it is clear that the crossing of the threshold is a prior valid intrusion within the contemplation of Coolidge, one of the necessary conditions to bring into play the Plain View Doctrine. If, following the valid intrusion for this innocuous and non-investigative purpose, there is then an inadvertent spotting of probable evidence in plain view, such evidence is seizable under the Plain View Doctrine. Seizures in the course of inventory searches must, therefore, be reviewed under a Plain View Doctrine analysis.

5. Cady v. Dombrowski

Implicitly if not explicitly, Cady v. Dombrowski273 is a Plain View Doctrine case and not a Carroll Doctrine case. The ultimate issue that split the five-man majority274 from the four-man dissent275 was the validity of a warrantless intrusion into the trunk of an automobile which inadvertently revealed probable evidence of crime in plain view. The intrusion in question was not made for the purpose of finding any evidence of crime.

The prime difficulty with the majority opinion of Justice Rehnquist is that it wandered rather casually back and forth across the line between the Carroll Doctrine and the Plain View Doctrine and tended, therefore, to blur the distinction between the two. Indeed, Carroll Doctrine precedents were invoked to demonstrate the reasonableness of the prior valid intrusion even though that intrusion was not made for the purpose of discovering evidence of crime, was not made upon probable cause to believe that evidence of crime would be present in the vehicle, and was not predicated upon any clear-cut finding of exigency.

Chester J. Dombrowski, an off-duty Chicago policeman, was convicted in a Wisconsin state court of the first-degree murder of Herbert McKinney.276 He had been arrested, however, and was under police guard at a

274. Justice Rehnquist wrote the majority opinion. He was joined by the Chief Justice and Justices White, Blackmun and Powell.
275. Justice Brennan wrote the dissenting opinion. He was joined by Justices Douglas, Stewart and Marshall.
276. 413 U.S. at 434, 93 S.Ct. at 2524, 37 L.Ed.2d at 710-11.
hospital; his rented 1967 Thunderbird had already been searched, producing the State's evidence in issue in the case, well before the Wisconsin police authorities knew or remotely suspected that the murder had occurred. The first contact that the police had with Dombrowski was late on the evening of September 11, 1969, after he, in an apparently drunken condition, had driven his Thunderbird through a guard rail and crashed into a bridge abutment. A passing motorist drove him into the town of Kewaskum, from which Dombrowski telephoned the police. Two officers picked him up and drove him back to the scene of the accident. They noticed his drunken condition as he offered them three conflicting versions of how the accident occurred.277 After taking measurements at the accident scene, the officers took Dombrowski to the police station; after interviewing him there, they took him to a local hospital. There he lapsed into a coma and was hospitalized overnight. In the meantime, the officers had had a wrecker tow the Thunderbird to a privately owned garage in Kewaskum, some seven miles from the police station, where it was parked outside without a police guard.

The officers had learned from Dombrowski that he was a Chicago policeman. They believed that Chicago police officers were required by departmental regulation to carry a service revolver at all times. The officers did not find a revolver on Dombrowski's person. Neither did they find one on the front seat or in the glove compartment of his car before having it towed away.278 At approximately 2 a.m. on September 12, 2 1/2 hours after Dombrowski was arrested for drunken driving, one of the officers went to the garage and searched the automobile for the revolver which he believed it must contain. The revolver was not evidence of crime. It would, so the Wisconsin police thought, have been a violation of the law if Dombrowski had not had the revolver with him. Justice Rehnquist described the purpose of the police in searching for the missing gun:

The purpose of going to the Thunderbird, as developed on the motion to suppress, was to look for respondent's service revolver. Weiss testified that respondent did not have a revolver when he was arrested, and that the West Bend authorities were under the impression that Chicago police officers were required to carry their service revolvers at all times. He stated that the effort to find the revolver was "standard procedure in our department."279

It is readily apparent that Justice Rehnquist did not approach the case in a traditional Carroll Doctrine mode. There was no evidence of a crime, let alone probable cause to believe that the Thunderbird contained evidence of crime. In overturning the conviction, the Seventh Circuit had

277. Id. at 435-36, 93 S.Ct. at 2525, 37 L.Ed.2d at 711.
278. Id. at 436, 93 S.Ct. at 2525, 37 L.Ed.2d at 711-12.
279. Id. at 437, 93 S.Ct. at 2526, 37 L.Ed.2d at 712.
concluded, for no apparent reason, that the “search must therefore have been for incriminating evidence of other offenses.” Justice Rehnquist explicitly repudiated this conclusion and pointed out that the Court of Appeals “was not free on this record to disregard” the findings of fact made by the state court and the district court which had affirmed the conviction:

[B]oth the state courts and the District Court found as a fact that the search of the trunk to retrieve the revolver was “standard procedure in [that police] department,” to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands. Although the trunk was locked, the car was left outside, in a lot seven miles from the police station to which respondent had been taken, and no guard was posted over it.

The Supreme Court held that the evidence clearly established that “at the time the search was conducted Officer Weiss was ignorant of the fact that a murder, or any other crime, had been committed.” Self-evidently, a key element was missing for the invocation of the Carroll Doctrine.

When the police searched the automobile, however, they found in the trunk blood-soaked garments which ultimately led to the discovery of the murder and the conviction of Dombrowski. At issue was the warrantless search which produced these items.

The dissent of Justice Brennan squarely posed the question before the Court:

In the present case, however, the sole purpose for the initial intrusion into the vehicle was to search for the gun. Thus, the seizure of the evidence from the trunk of the car can be sustained under the “plain view” doctrine only if the search for the gun was itself constitutional. Reliance on the “plain view” doctrine in this case is therefore misplaced since the antecedent search cannot be sustained.

There was no doubt that the incriminating evidence was found inadvertently while the police were bent upon another, unrelated mission. There was no doubt that the evidence was in plain view. There was no doubt that there was probable cause to believe that the blood-soaked items were evidence of crime. At issue was simply the validity of the prior intrusion into the trunk. The argument between the majority and the dissent was

280. Id. at 443, 93 S.Ct. at 2529, 37 L.Ed.2d at 716, quoting from Dombrowski v. Cady, 471 F.2d 280, 283.
281. Id. at 443, 93 S.Ct. at 2529, 37 L.Ed.2d at 716. The Wisconsin Supreme Court had affirmed the conviction at 44 Wis.2d 486, 171 N.W.2d 349 (1969). The U.S. District Court denied a petition for a writ of habeas corpus.
282. 413 U.S. at 443, 93 S.Ct. at 2529, 37 L.Ed.2d at 715-16.
283. Id. at 447, 93 S.Ct. at 2531, 37 L.Ed.2d at 718.
284. Id. at 452, 93 S.Ct. at 2533, 37 L.Ed.2d at 721 (Brennan, J., dissenting).
squarely framed in terms of that first element of the Plain View Doctrine—the validity of the prior intrusion.

The majority opinion also recognized the appropriateness of the Plain View Doctrine as a mode of analysis:

Arguing that the officer's conduct constituted an "inspection" rather than a "search," petitioner relies on our decision in *Harris v. United States*, 390 U.S. 234 . . . (1968), to validate the initial intrusion into the trunk, and then the plain-view doctrine to justify the warrantless seizure of the items.

We need not decide this issue. Petitioner conceded in the Court of Appeals that this intrusion was a search. Inasmuch as we believe that *Harris* and other decisions control this case even if the intrusion is characterized as a search, we need not deal with petitioner's belated contention."

The "belated contention" which did not have to be reached was not the ultimate warrantless seizure under the Plain View Doctrine but only the question of whether the prior intrusion antecedent to that seizure would be treated as a non-searching "inspection" not requiring further analysis under the fourth amendment or as a "search" the reasonableness of which would be judged by fourth amendment standards. If the intrusion was deemed valid by either approach, it would then trigger the Plain View Doctrine seizure.

The remainder of the Rehnquist opinion looks clearly to the question of the validity of this non-crime-oriented intrusion. It found it to be reasonable. It looked to the frequent "contact with vehicles for reasons related to the operation of vehicles themselves"286 which state and local police officers, unlike federal officials, have routinely experienced. It stressed the noncriminal nature of much of this contact:

Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office. Some such contacts will occur because the officer may believe the operator has violated a criminal statute, but many more will not be of that nature. Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.287

285. *Id.* at 442, 93 S.Ct. at 2528, 37 L.Ed.2d at 715, note.
286. *Id.* at 441, 93 S.Ct. at 2528, 37 L.Ed.2d at 714.
287. *Id.*, 93 S.Ct. at 2528, 37 L.Ed.2d at 714-15.
The message is unmistakable that this reasonable "community caretaking function" may provide the prior valid intrusion giving rise to a Plain View Doctrine warrantless seizure: "[E]xtensive and often noncriminal contact with automobiles will bring local officials in 'plain view' of evidence, fruits, or instrumentalities of a crime, or contraband".  

In terms of which exception to the warrant requirement was before the court in Cady v. Dombrowski, the Court gave further light as it approached its final holding. "We believe that the instant case is controlled by principles that may be extrapolated from Harris v. United States, supra, and Cooper v. California, supra." All the Plain View Doctrine signals were being sounded.

Assessing the validity of an intrusion made not for purposes of criminal investigation—even if that intrusion is a search of sorts—one commentator has distilled the teaching of the case as follows:

The rule of Dombrowski is that warrants are not required for searches conducted with a benign purpose. This holding is equivalent to the statement that the warrant requirement contained in the second clause of the fourth amendment applies only to criminal investigations. Considerable support can be marshalled for this interpretation. Warrants may only be issued upon probable cause, which has usually been thought to connote a reasonable suspicion that criminal evidence will be found. In addition, the justification for a warrant has often been based on the idea that the search for criminal evidence gives rise to special temptations for offensive activity by the police. "Its protection consists in requiring that those inferences [regarding probable cause] be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime."

Dombrowski thus makes the need for a warrant turn on the intent of the police in conducting the search, and indicates that intent is a question of fact to be determined in each case.

The bottom line was that the warrantless intrusion into the trunk of the Thunderbird, motivated not by a desire to detect or preserve evidence of crime but by a "concern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle," was not unreasonable.

The antecedent prior valid intrusion was thus established for the resulting warrantless seizure of the ultimate evidence found inadvertently in plain view during the search for the service revolver. This, by definition, is not the Carroll Doctrine but the Plain View Doctrine.

288. Id. at 442, 93 S.Ct. at 2528, 37 L.Ed.2d at 715.
289. Id. at 444-45, 93 S.Ct. at 2530, 37 L.Ed.2d at 716-17.
291. 413 U.S. at 447, 93 S.Ct. at 2531, 37 L.Ed.2d at 718.
G. Consent Searches Inside a Vehicle

Strangely, those who insist on expanding the Carroll Doctrine into a restatement of the entire fourth amendment have resisted the temptation to take consent searches of automobiles out of general consent law and to try to cram them too into a grotesquely overblown Carroll Doctrine. Obviously, some warrantless probes into the interior of an automobile may be analyzed under the consent exception to the warrant requirement rather than under the Carroll Doctrine.

The "proof of the pudding" is Schneckloth v. Bustamonte. The interior of an automobile, stopped on a highway, was searched by police without a warrant. Recovered from "under the left rear seat" were three stolen checks which were used to convict Bustamonte. That the warrantless search was found to have been constitutional is beside the point for present purposes. What is to the point is that the analysis was exclusively an analysis under the consent exception to the warrant requirement. The Carroll Doctrine was not remotely involved.

H. A Vehicle Search Where the Fourth Amendment Is Inapplicable

Cardwell v. Lewis is probably the most doctrinally unsatisfying opinion ever written in the fourth amendment area. It, to be sure, is not the law of the land. Justice Blackmun wrote for a plurality of four members of the Court. Justice Powell concurred in the result, but only because of his belief that federal collateral review should not be available on the merits of a fourth amendment question. Justice Stewart's dissent mustered as many votes as Justice Blackmun's plurality opinion mustered. For whatever persuasive value it may have, however, we will look to the plurality opinion in Cardwell v. Lewis and see where it seems to fit in the fourth amendment scheme of things.

The prime fault with the plurality opinion is that it failed to appreciate the difference between a case of the fourth amendment being inapplicable and a case of the fourth amendment being satisfied. These are the two overriding threshold questions which should guide us as we approach any search and seizure problem:

1. Is the fourth amendment even applicable?
2. If applicable, has the fourth amendment been complied with?

Unless and until the first question is answered in the affirmative, we do

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293. Id. at 220, 93 S.Ct. at 2044, 36 L.Ed.2d at 859
295. The Chief Justice and Justices White and Rehnquist joined in the Blackmun opinion.
not even go on to the second question. If the fourth amendment is not applicable, the question of compliance is utterly immaterial.

The plurality opinion in Cardwell v. Lewis seems to lack the courage of its convictions. Its main thrust is that the fourth amendment is not applicable. It then bootstraps that position, however, by attempting to show compliance with the fourth amendment. It does not present these two aspects of its analysis as alternative holdings. It rather tries to add together two things that do not combine. They are alternative ways of defeating a defendant’s claim of constitutional error. One cannot go five miles down the route of showing that the fourth amendment did not apply and five miles down the route of showing that the fourth amendment was satisfied and add them up to get ten miles of constitutional progress. A little bit of inapplicability and a little bit of compliance do not add up to a whole lot of anything.

Arthur Ben Lewis Jr. was convicted in an Ohio state court of the first-degree murder of Paul Radcliffe. The murder was discovered on the afternoon of July 19, 1967, when Radcliffe’s body was found near his car on the banks of the Olentangy River in Delaware County, Ohio. “The car had gone over the embankment and had come to rest in brush. Radcliffe had died from shotgun wounds. Casts were made of tire tracks at the scene and foreign paint scrapings were removed from the right rear fender of Radcliffe’s automobile.”

A number of circumstances cast suspicion on Lewis. That suspicion had focused as early as July 24. The police questioned Lewis at his place of business and observed the model and color of his automobile. They already suspected that it may have been used to push the Radcliffe vehicle over the embankment. Several months later, in late September, Lewis again was questioned.

The critical date for constitutional purposes was October 10, 1967. Lewis was asked to appear at the Office of the Division of Criminal Activities in Columbus at 10 a.m. on that morning for further interrogation. He had received the request the night before. As of 8 a.m., a warrant had been obtained for Lewis’s arrest.

The District Court for the Southern District of Ohio found that “at this time, in addition to probable cause for the arrest, the police also had probable cause to believe that Lewis’s car was used in the commission of the crime.” In addition to the suspicion which focused directly upon Lewis himself, an automobile similar to his had been observed leaving the vicinity of the crime. The color of his vehicle was similar to the color of

297. 417 U.S. at 586, 94 S.Ct. at 2467, 41 L.Ed.2d at 332.
298. Id.
299. Id., 94 S.Ct. at 2467, 41 L.Ed.2d at 333.
301. 417 U.S. at 586-87, 94 S.Ct. at 2467, 41 L.Ed.2d at 333.
the foreign paint scrapings taken from the victim’s car. It had been established that Lewis had had body repair work done on the grill, hood, right front fender and other parts of his car on the day following the crime.\textsuperscript{302}

Lewis drove to the Office of the Division of Criminal Activities and parked his car in a public commercial parking lot half a block away. Although the police were in the possession of the arrest warrant throughout the day, Lewis was neither served with the warrant nor otherwise arrested until approximately 5 p.m. Without a warrant, the police towed his automobile from the commercial parking lot to their impounding lot. Its exterior was there examined on the next day. The tread of the right rear tire matched the cast of a tire impression found at the crime scene. The paint on Lewis’s car matched the foreign paint found on the fender of the victim’s car.\textsuperscript{303} At issue was the warrantless examination of Lewis’s automobile for paint scrapings and the observation of the tire treads.

The main thrust of the plurality opinion, which is our concern for present cataloguing purposes, began its analysis by pointing out that there was no intrusion in this case into any zone of privacy protected by the fourth amendment:

The evidence with which we are concerned is not the product of a “search” that implicates traditional considerations of the owner’s privacy interest. It consisted of paint scrapings from the exterior and an observation of the tread of a tire on an operative wheel. The issue, therefore, is whether the examination of an automobile’s exterior… invades a right to privacy which the interposition of a warrant requirement is meant to protect.\textsuperscript{304}

This analysis went on to quote \textit{Katz v. United States}\textsuperscript{305} on the utter lack of fourth amendment coverage under certain circumstances: “‘What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.’”\textsuperscript{306}

The plurality opinion went on to demonstrate that a citizen had no constitutional expectation of privacy in the exterior of an automobile:

[I]nsofar as Fourth Amendment protection extends to a motor vehicle, it is the right to privacy that is the touchstone of our inquiry. In the present case, nothing from the interior of the car and no personal effects, which the Fourth Amendment traditionally has been deemed to protect, were searched or seized and introduced in evidence. With the “search” limited to the examination of the tire on the wheel and the taking of paint scrapings from the exterior of the vehicle left in the public

\textsuperscript{302} \textit{Id.} at 587, 94 S.Ct. at 2468, 41 L.Ed.2d at 333.
\textsuperscript{303} \textit{Id.} at 587-88, 94 S.Ct. at 2468, 41 L.Ed.2d at 333.
\textsuperscript{304} \textit{Id.} at 588-89, 94 S.Ct. at 2468, 41 L.Ed.2d at 334.
\textsuperscript{305} 389 U.S. at 351, 88 S.Ct. at 511, 19 L.Ed.2d at 582 (1967).
\textsuperscript{306} 417 U.S. at 591, 94 S.Ct. at 2469-70, 41 L.Ed.2d at 335, \textit{quoting from} 389 U.S. at 351, 88 S.Ct. at 511, 19 L.Ed.2d at 582.
parking lot, we fail to comprehend what expectation of privacy was infringed.  

The Court then added the “clincher” in terms of making it clear that it was speaking of fourth amendment inapplicability and not fourth amendment satisfaction: “Stated simply, the invasion of privacy, ‘if it can be said to exist, is abstract and theoretical.’ *Air Pollution Variance Board v. Western Alfalfa Corp.* . . .”  

This is classic “open fields” doctrine “stuff.” *Air Pollution Variance Board v. Western Alfalfa Corp.*  

was the 1974 decision which reaffirmed the “open fields” doctrine, first enunciated by Justice Holmes in *Hester v. United States*  in 1924. *Hester* had pointed out that “the special protection accorded by the 4th Amendment to the people in their ‘persons, houses, papers, and effects’ is not extended to the open fields.”  

The unmistakable import of such language is not that the fourth amendment is satisfied but that the fourth amendment is not even “out there” to be satisfied or violated.

At that point, the plurality opinion in *Cardwell v. Lewis*, if it believed in itself, should have stopped. In terms of the central theme of this article, this main thrust of the *Cardwell v. Lewis* plurality opinion illustrates that some warrantless examinations of automobiles may be catalogued not simply outside the *Carroll* Doctrine but outside all of the exceptions to the warrant requirement in the aggregate. Where the fourth amendment is inapplicable, nothing more need be shown. Where there is no fourth amendment, there is no warrant requirement and therefore no need to show any exemption from that nonexistent requirement.

The *Cardwell* opinion did not have the courage of its convictions, however. It went on to demonstrate that there had been probable cause to believe that Lewis’s car contained evidence of the crime. It went on further to try to demonstrate a strained theory of exigency. The question one would like to ask, however, is if the fourth amendment was inapplicable, why bother with such irrelevancies as probable cause and exigency? What difference would it make if the police had been on a non-exigent “fishing expedition” out where the fourth amendment doesn’t apply? Conversely, if probable cause and exigency were, indeed, established, why did the plurality opinion go to such lengths to show the limited scope of the intrusion? If all *Carroll* Doctrine criteria were satisfied, would not a painstaking

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307. *Id.* at 591, 94 S.Ct. at 2470, 41 L.Ed.2d at 335.

308. *Id.* at 591-92, 94 S.Ct. at 2470, 41 L.Ed.2d at 335-36 (citation omitted).


311. *Id.* at 59, 44 S.Ct. at 446, 68 L.Ed. at 900.

312. 416 U.S. at 865, 94 S.Ct. at 2116, 40 L.Ed.2d at 611.
examination of the automobile's interior have been legitimate? In a nutshell, the opinion is far from satisfying.

I. A Bit of Unfinished Business

Although it is beyond the purview of this article to do the exploring, it may be appropriate to point out for others virgin territories of analysis that call for further exploration. Has not some of our confusion in dealing with the Carroll Doctrine been caused by our simple failure to appreciate the vast conceptual difference between an automobile as a place or container in which other, smaller items of evidence enjoy a constitutional protection and an automobile as the very item of evidence itself? Does not an automobile—as an intermediate thing smaller than the average building but larger than the average chattel—possess a dual character? Must we not make the distinction between the two characters?

Is an automobile not for some purposes an approximate equivalent of a house, office, barn or garage—a place, a repository, a container—in which we and our possessions enjoy a constitutionally safeguarded zone of privacy? Is it not for other purposes, however, the equivalent of a gun, knife or club—the very weapon sought rather than the place in which the weapon is sought? Is not an entirely different analysis called for when dealing with a stolen car and when dealing with a non-stolen car used to hide a stolen wallet? Is not analysis under the Carroll Doctrine appropriate for the latter but not for the former?

Where an automobile is used deliberately to run down a pedestrian or to push a victim's car off a cliff, is it not seizable on sight parked on a public street or on a public lot under the “open fields” doctrine just as any other weapon—be it gun, knife or blackjack—would be seizable from the same “open field”? Is exigency or any other precondition a material consideration when the very object sought is spotted in a constitutionally non-protected area? When such evidence is seized by the police, is any other justification required to process the evidence in the crime laboratory? Is examining an automobile, which has been used as a weapon, for paint scrapings or indentations or identifying characteristics or victim's fingerprints, blood type, hairs, or textile fibers, any different from examining the interior of a gun barrel for ballistically significant striations? When the automobile is the instrumentality itself, is more required to examine its interior than to examine its exterior? Does not the whole issue of “exterior versus interior” have significance only if the interior examination is of the automobile as a container of other evidence and not of the automobile as the piece of evidence itself?

As we hone our tools of analysis, there are dangers. The notion of “instrumentality” must not be pushed too far. If an automobile used to transport contraband is deemed to be not a mere repository but the instrumentality itself in an unlawful transportation case, would not a house used to store contraband then logically be an instrumentality in an unlawful possession
case? If an automobile which is the situs of a kidnaping, a murder or a rape is deemed to be an instrumentality thereof, why logically would not a garage or office used for the same purposes also be an instrumentality? Do not both sites provide necessary concealment? If we turn movable "places" into instrumentalties too heedlessly, may not the precedent come back to haunt us with respect to fixed "places"? Then again, does a fixed premises which is itself the probable crime scene enjoy the same fourth amendment protection as a fixed premises which is merely the safe haven for the criminal and his incriminating chattels?

Is not the body of our jurisprudence still painfully skimpy in this regard? Has not our case law and our academic literature alike been derelict? Is there not a yet unexplored but very real conceptual distinction between an automobile as the place of search and an automobile as the thing sought? When we look at the same thing for two different purposes, is not an undifferentiated analysis a devastating disservice to the state of the art? Although it appeared to be groping in that direction, the Supreme Court in Cardwell v. Lewis may have missed a golden opportunity to add to the depth of our fourth amendment jurisprudence. For search and seizure purposes, was not Lewis's automobile a smoking gun and not a constitutionally protected place? Such may have been intimated but was not unequivocally articulated. The territory is yet to be charted. As we chart, do we not need to spend less time looking up cases and more time just thinking?

IV. When the Carroll Doctrine Does Apply: Some Searches of Non-Automobiles That Do Involve the "Automobile Exception"

Just as there are many warrantless searches of automobiles that do not involve the "automobile exception," so too are there many warrantless searches of non-automobiles that do.

Although the Supreme Court has not yet had occasion to deal squarely with this issue, a growing body of case law is recognizing, with no discernible dissent, that the Carroll Doctrine should and does apply to warrantless searches of suitcases, cartons, boxes and other containers. The conclusion is irresistible.

We begin with the familiar proposition that "for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars."313 The simple question then becomes, "Is a suitcase more like a house or more like a car?" When we weigh the nature of the sanctuary against the investigative imperative, the conclusion is inevitable that a suitcase is "more like a car."

What are the relevant considerations as we determine whether probable

cause to believe that a suitcase (or its easily carried equivalents) contains contraband may ever justify a warrantless search thereof? The two poles between which we steer have long been fixed. On the one hand, no amount of probable cause (even in the presence of exigency) will ever justify a warrantless intrusion into a fixed premises for the purpose of searching for evidence of crime. This is the undisputed teaching of Agnello v. United States, Taylor v. United States, Johnson v. United States, Jones v. United States, and Vale v. Louisiana. As the Supreme Court said in Coolidge v. New Hampshire:

Incontrovertible testimony of the senses that an incriminating object is on premises belonging to a criminal suspect may establish the fullest possible measure of probable cause. But even where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure.

On the other hand, as this article has already fully discussed, it has been recognized since 1925 that there is

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.

The reasoning behind the different treatment was well articulated by Chambers v. Maroney. "Exigent circumstances" justify the warrantless search of an automobile, where there is probable cause, because the car is "movable" and because "the car's contents may never be found again if a warrant must be obtained." “[T]he opportunity to search is fleeting...

314. In this regard, consideration is not being given to permissible warrantless intrusions into fixed premises to effect an arrest (with its attendant search incident) or under some other person-related exigency, as in Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967), but only to a pure search for evidence qua search for evidence, where the search for tangible items is the primary purpose of the intrusion and is not a subsidiary incident of some other purpose.

316. 286 U.S. 1, 52 S.Ct. 466, 76 L.Ed. 951 (1932).
320. 403 U.S. 443, 468, 91 S.Ct. 2022, 2039, 29 L.Ed.2d 564, 584 (citations omitted).
322. Id. at 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970).
323. Id. at 51, 90 S.Ct. at 1981, 26 L.Ed.2d at 428.
324. Id.
Between these two fixed points, where does a suitcase lie? Even armed with probable cause and faced with exigent circumstances, what may a policeman do about a piece of luggage?

The Maryland Court of Special Appeals had no difficulty determining what a policeman might do:

Although the Carroll Doctrine has frequently been referred to by the Supreme Court as "the so-called automobile exception," we are persuaded that its logic is more far-reaching. The reasons of necessity which permit warrantless searches of automobiles and other vehicles, upon the combination of probable cause and exigent circumstances, apply with equal force to suitcases and other readily movable containers. This is particularly so when they are consigned to a carrier and are, therefore, literally in transit, but the logical extension is not limited to situations where a common carrier is involved. The ultimate justification arises out of the exigency presented by actual or imminent mobility on a case-by-case basis.229

Throughout the Carroll opinion, the Supreme Court relied heavily on the historical example of warrantless seizures that were permitted of contraband "goods in the course of transportation."327 It reviewed in detail a number of early statutes and concluded that

contemporaneously with the adoption of the 4th Amendment, we find in the first Congress, and in the following second and fourth Congresses, a difference made as to the necessity for a search warrant between goods subject to forfeiture, when concealed in a dwelling house or similar place, and like goods in course of transportation and concealed in a movable vessel, where they readily could be put out of reach of a search warrant.328

The language of Preston v. United States indicated that "automobiles" did not exhaust the category on the less restrictive side of the search and seizure dichotomy: "Common sense dictates, of course, that questions involving searches of motorcars or other things readily moved cannot be treated as identical to questions arising out of searches of fixed structures like houses."329

Cooper v. California330 intimated that an essential characteristic of the more restrictive side of the search and seizure dichotomy was the "fixed"

325. The discussion, though phrased for the sake of convenience in terms of suitcases, applies with equal validity to cartons, boxes and other readily movable containers. See Note, Criminal Law—Warrantless Search and Seizure—A Search Warrant It Not Required Where There Is Probable Cause to Search a Chattel Consigned to a Carrier, 5 St. Mary's L. J. 187 (1973).


327. 267 U.S. at 149, 45 S.Ct. at 283, 69 L.Ed. at 549.

328. Id. at 151, 45 S.Ct. at 284, 69 L.Ed. at 550.


nature of the property searched, in citing Preston for the proposition that
because cars are "constantly movable" they may be searched with proba-
ble cause but without a warrant "although the result might be the opposite
in the search of a home, a store, or other fixed piece of property." 331

The Supreme Court of California in People v. McKinnon 332 faced the
question of whether the Carroll rationale should "be limited to searches of
automobiles and similar self-propelled 'vehicles' such as trucks, trains,
boats, or airplanes." It concluded that neither "reason nor precedent com-
pels such a narrow, mechanistic reading of Chambers and its predeces-
sors." 333 The analysis leading up to its holding is as logically impeccable
as it is eloquent:

Is a box or trunk consigned to a common carrier for shipment to a
remote destination a "thing readily moved" or a "fixed piece of property"?
The answer, self-evidently, is the former. To be sure, such a box has
neither wheels nor motive power; but these features of an automobile are
legally relevant only insofar as they make it movable despite its dimen-
sions. A box, which is a fraction of the size and weight of an automobile,
is movable without such appurtenances. It is also true that a box or trunk,
as distinguished from an automobile, may serve the double purpose of
both storing goods and packaging them for shipment. But whenever such
a box is consigned to a common carrier, there can be no doubt that it is
intended, in fact, to be moved.

What is true of a box or trunk is true of all goods or chattels consigned
to a common carrier for shipment. As they are no less movable than an
automobile, the reasons for the rule permitting a warrantless search of a
vehicle upon probable cause are equally applicable to the search of such
a chattel. 334

A similar result was reached by the Third Circuit in United States v.
Valen. 335 There two suitcases were searched in Tucson, Arizona, shortly
before their flight east and were found to contain marijuana. The ultimate
seizures were made in the east. The U.S. District Court for the Middle
District of Pennsylvania overturned the conviction on the grounds that the
warrantless search in Tucson was unconstitutional. In reversing that deci-
sion and reinstating the conviction, the Third Circuit reasoned that proba-
ble cause plus exigent circumstances did justify the warrantless search of
the suitcases in Tucson:

[T]he government relies on the "exigent circumstances" exception to the
warrant requirement announced in Carroll v. United States . . . and re-
fined in Chambers v. Maroney . . . This exception to the warrant require-

331. Id. at 59, 87 S.Ct. at 790, 17 L.Ed.2d at 732 (emphasis supplied).
332. 7 Cal.3d 899, 103 Cal.Rptr. 897, 500 P.2d 1097 (1972).
333. Id. at ___, 103 Cal.Rptr. at 903, 500 P.2d at 1103.
334. Id. at ___, 103 Cal.Rptr. at 904, 500 P.2d at 1104.
335. 479 F.2d 467 (3rd Cir. 1973).
ment, authorized for certain automobile searches, is premised on the theory that the mobility of the automobile presents a danger that contraband will move or disappear. Justice White put it succinctly: "But when there are exigent circumstances, and probable cause, then the search may be made without a warrant, reasonably." *Chimel v. California* . . .

. . . [T]he government emphasizes the extremely high mobility factor of the suitcases confronting Agent Clements. They were due to leave Tucson by air within the hour. They were destined for Scranton, Pennsylvania, with at least one plane change at New York. . . . Thus, it was reasonable for him to conclude that a very real possibility existed that the government could lose the contraband, important evidence of a possible violation of federal laws. . . . Under the totality of these circumstances, we hold that there were “exigent circumstances” to make the search without the warrant.338

In its legitimizing as well the warrantless seizure of the suitcases in Scranton after they had been placed in the trunk of the defendant’s automobile, the court made clear that the “exigent circumstances plus probable cause” rationale was not restricted to movables consigned to a common carrier, a point left in doubt by the California Supreme Court in *People v. McKinnon*:

Unlike the BNDD search in Arizona, the Scranton search is distinguishable from Clements’ search. First, the suitcases must be viewed as no longer in the exclusive custody of the government at the time of the search. Although agents continued to observe the movement of the suitcases, Valen had asserted a possessory interest over them. Second, the suitcases were removed from the locked trunk of Valen’s automobile. The opening of the trunk, even though for the singular purpose of obtaining the suitcases, was a separate search; and we have concluded that this search is controlled by *United States v. Menke*. . . .

. . . The order of the district court suppressing the marijuana evidence will be reversed.337

The decision of the Second Circuit in *United States v. Johnson*338 is interesting, if only because it removes the suitcases, which it held were legitimately searched without a warrant, from common carriers specifically and from airline situations generally. Three bank robbers had been arrested. A “trustworthy” tip established that two suitcases, one of which contained a shotgun, could be found outside the rear door of a certain apartment building. The court held:

We find little difficulty in concluding that the officers were justified in seizing the closed suitcases. It was not practical to secure a warrant be-

336. Id. at 470-71 (citations omitted).
337. Id. at 471-72 (citation omitted).
338. 467 F.2d 630 (2nd Cir. 1972).
cause the suitcases could have been removed from their position outside
the apartment building at any moment. The suitcases in this situation
were similar to mobile automobiles. See, *Carroll v. United States*. 339

The Ninth Circuit in *United States v. Mehciiz* 340 upheld the warrantless
search of a “gray overnight suitcase” taken from the defendant as he
alighted from an interstate flight and searched after he had been hand-
cuffed. The court wobbled a bit in terms of supporting doctrine, posing
the question in terms of a “search incident” (citing *Chimel*) and then answer-
ing the question in terms of “exigency plus probable cause” (citing
*Chambers*). Notwithstanding the doctrinal fluidity, the answer is instruc-
tive:

The Supreme Court has expressly held that “for the purposes of the
Fourth Amendment there is a constitutional difference between houses
and cars.”. 341 [W]e think it only reasonable to conclude that there is a
corresponding “constitutional difference” between a house and a suit-
case. 341

The Court of Criminal Appeals of Texas in *Chaires v. State* 342 upheld the
warrantless search of two suitcases and a footlocker (found to contain
marijuana) after they had been turned over to airline attendants for a
flight from Austin, Texas, to Washington, D.C. The court held:

When the Austin police were informed that the contraband was aboard
an airliner, due to depart in minutes, they had probable cause to inspect
the suspect cargo and, after verifying the agents' suspicions, to seize it and
arrest its owners, before one or all were flown from their jurisdiction.

We are further inclined to conclude that the rationale of the United
States Supreme Court in *Chambers v. Maroney* 343 should control here.
In dealing with the propriety of an on-the-spot warrantless search of a
moveable vehicle, the court concluded that the requisite “exigent” cir-
cumstance for a warrantless search existed where peace officers had suffi-
cient probable cause and the moveable object was “a fleeting target for a
search.” 343

Even as with automobiles, it is important to keep a *Carroll Doctrine

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339. *Id.* at 639 (citation omitted).
340. 437 F.2d 145 (9th Cir. 1971).
341. *Id.* at 147. *See also* United States v. Maynard, 439 F.2d 1086 (9th Cir. 1971), and
Hernandez v. United States, 353 F.2d 624 (9th Cir. 1965).
343. *Id.* at 190 (citation omitted). *See also* Hattersley v. State, 487 S.W.2d 354 (Tex.Cr.
App. 1972); People v. Bleile, 133 Cal.App.3d 203, 108 Cal.Rptr. 682 (1973); and State v. Wolfe,
5 Wash.App. 123, 486 P.2d 1143 (1971). For a fuller discussion of the underlying principles,
see Note, *Mobility Reconsidered: Extending the Carroll Doctrine to Movable Items*, 58 Iowa
L. Rev. 1134 (1973). *See also* Note, *The Warrantless Search of a Suitcase Carried by Arrestee
Is Constitutionally Permissible Even Though There Is No Danger That the Arrestee Will Get
to the Suitcase to Obtain a Weapon or Destroy Evidence*, 9 Houston L. Rev. 140 (1971).
search of a suitcase distinct from any question involving the arrest of its carrier. It was the importance of this distinction which caused the Maryland Court of Special Appeals in *Waugh v. State*\textsuperscript{344} to point out:

Looking forward in point of time from 11:24 p.m., the exigency facing Corporal Pitt was apparent. A civilian was walking away with the two suspect suitcases. In this regard, it was immaterial whether the person walking off with the suitcases was the ultimate arrestee or someone else. That would be a critical factor only under the "search incident" theory, not under the "probable cause plus exigency" theory. In terms of exigency, the threat of removal and subsequent loss would be just as dire whether the removing agent was the appellant, an airline employee, a taxicab driver, an innocent relative or friend of the appellant, a confederate for whom no probable cause existed, an airport thief, or simply an unwitting stranger who picked up the wrong luggage by mistake. The common denominator is that the evidence was disappearing.\textsuperscript{345}

V. CONCLUSION

The *Carroll Doctrine* applies to non-automobiles as surely as it does to automobiles and automobile-equivalents. Conversely, there are many warrantless searches of automobiles to which it does not apply.

Analysis under the *Carroll Doctrine* must be triggered not by that coincidental presence of a motor, four wheels and a drive shaft, but by the constitutionally significant combination of probable cause to believe that a movable container (automobile or otherwise) contains evidence of crime and an exigency arising out of the imminent disappearance of that container (automobile or otherwise). The semantic inertia would be significantly reduced if we could trade in the misleading label of "automobile exception" for the less linguistically encumbered label of *Carroll Doctrine*. And this above all: Keep the analysis clean!

\textsuperscript{344} 20 Md.App. 682, 318 A.2d 204 (1974).
\textsuperscript{345} *Id.* at 704, 318 A.2d at 216-17.