If It Moves, Search It: California v. Carney Applies the Automobile Exception to Motor Homes

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Abstract

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I. Introduction

The fourth amendment is a revolutionary construct. It was intended by the constitutional framers to safeguard the people of the republic from the arbitrary exercise of governmental authority. Among the most offensive abuses during colonial history which motivated its ratification were writs of assistance and general warrants. Under color of the crown, agents of the sovereign exposed the colonists to indiscriminate general rummaging and ransacking. At will, and oftentimes without a whisper of suspicion, petty tyrants could enter homes and destroy possessions under guise of a sanctioned contraband search. A man's home was, to be sure, no longer his castle.

The attitude of the constitutional framers was forcefully restated by the Supreme Court ninety five years later in *Boyd v. United States*:

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

   U.S. Const. amend. IV.


3. Writs of assistance were used by custom house officers for the purpose of detecting goods smuggled into the colonies. The writ was not returnable to the sovereign's magistrate following its execution, operated as a continuing license to search and seize, and empowered the executing official to search wherever goods were suspected. N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 59-60 (1937).

4. See id. at 81 n.10 and E. Corwin, The Constitution and What It Means Today 301 (13th ed. 1973). General warrants are defined as English process which was issued for the arrest of persons charged with having libeled the state. The warrants were issued officially and without naming an individual sought. In 1766, the House of Commons voided their further usage. Black's Law Dictionary 1422 (5th ed. 1979).

a person's security, liberty, and the privacy of his property were sacred rights, not to be defeased by the invasions of government. The use of warrants might seem inimical when the Court has so clearly interpreted the fourth amendment as subordinating the authority of the government to the rights of its citizens. The amendment, however, does not proscribe all searches, only those which are unreasonable. And when a warrant to search is sought, the neutrality of the judiciary is interposed between public authority and the individual. In recent times, the rationale of the warrant process has been explained simply in the following manner. The requirement that a warrant be secured from a magistrate before a search, is justified on the theoretical premise that a neutral and detached magistrate is more impartial than an officer whose duty is to zealously enforce criminal laws. This requirement also provides some assurance that the information giving rise to the search request was not manufactured after the event.

In 1919, with the attention of the nation no longer diverted to the war in Europe, its focus was drawn to another conflict, the war of prohibition at home. The eighteenth amendment was ratified in that year as a proscription against the "manufacture, sale, or transportation of intoxicating liquors." That addition was anomalous to the Constitution. To the mind of one observer, it was ill-considered and had nothing to do with regulating the exercise of the federal powers, or with the

6. The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its ambitious circumstances; they apply to all invasions, on the part of the Government and its employees, of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offense. 


9. "After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to jurisdiction thereof for beverage purposes is hereby prohibited." U.S. CONST. amend. XVIII, § 1.
framework of government. To augment the eighteenth amendment, Congress passed the National Prohibition Act. This enactment provided, in part, a directive to seize, take possession, and arrest any person discovered in the act of transporting illegal intoxicating liquor. In 1925, the Supreme Court was asked to consider an arrest made under authority of the Act. At the horns of the legal dilemma was a basic contradiction represented by the fourth amendment on the one hand and the National Prohibition Act as the handmaid of the eighteenth amendment on the other. It was against the backdrop of the fourth amendment’s time honored protections from unreasonable searches and the Court’s later restatement of those guarantees in Boyd that the arrest would be measured.

In its 1925 landmark decision, United States v. Carroll, the Supreme Court favored federal agents engaged in the war against the transportation of intoxicating liquors and thereby sharpened the teeth of the National Prohibition Act. When a federal agent had probable cause to believe that a particular vehicle was transporting contraband, the vehicle’s ready mobility practically precluded the agent’s securing a warrant to search. Automobiles, the Court concluded, must necessarily be excepted from the warrant requirement.

Although sixty years have passed, Carroll’s principal tenet has survived. The lynchpin which continues to justify warrantless automobile searches is mobility of the vehicle. It should be noted in passing that the eighteenth amendment and the National Prohibition Act

12. When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof.
14. The eighteenth amendment was repealed effective December 5, 1933 by U.S. Const. amend. XXI.
15. The National Prohibition Act was repealed in large part by ch. 740 title I, §
which gave form to the opinion were repealed in the 1930's. *Carroll's* continuing viability serves to underscore the significance of the Supreme Court's contribution to the evolving character of the fourth amendment.

It is not surprising that the automobile exception would one day be tested on what has in the 1980's become a common place user of the roadways — the motor home. The Court in *California v. Carney*\(^\text{16}\) recently concluded that a motor home, within the context of the fourth amendment, is more like a car than a home. Although the decision attempts to define an objective standard under which a motor home may be searched without a warrant, it must appear to some that the fourth amendment protections against the indiscriminate and arbitrary exercise of governmental authority — those evils which fired the cauldron of revolution — have paled in significance.

This Case Comment will examine the *Carney* decision and offer an historical recounting of the automobile exception in the context of its fourth amendment origin.

II. The Automobile Exception

Only under limited circumstances have warrantless searches received the Court's imprimatur. In *Katz v. United States*, Justice Stewart wrote, "[s]earches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions."\(^\text{17}\) Among those appears the automobile exception, which was established by the Court in *Carroll*. Excepted from the warrant requirement was the search of an 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."\(^\text{18}\) This language provides

\(^{1}\) 49 Stat. 872 (1935).


\(^{17}\) Katz v. United States, 389 U.S. 347, 357 (1967). For a commentary on the circumstances when warrantless searches and seizures have been authorized, see W. La Fave, Search and Seizure 3-6 (1978). Major exceptions to the warrant requirement were noted to be, search incident to a lawful arrest, search under an emergency setting where loss or destruction of evidence is feared, and search with consent. See also Comment, *The Automobile Exception: A Contradiction in Fourth Amendment Principles* 17 San Diego L. Rev. 933, 934-935 (1980).

\(^{18}\) *Carroll*, 267 U.S. at 153.
the precise point from which the automobile exception developed. Because a motor home can be quickly moved, Carroll's principal holding, the Court reasoned, was equally applicable to motor homes. Carroll's precedential value demands its review in this Comment.

The Carroll decision arose out of the prohibition era seizure of bootleg whisky. Carroll and his companion were stopped by prohibition agents and a state officer as their Oldsmobile roadster was enroute from Detroit to Grand Rapids, Michigan on December 15, 1921. A search of the vehicle was conducted without a warrant. The search extended behind the seat upholstery of the lazyback where the agents uncovered sixty-eight bottles of concealed contraband whisky and gin.

Appealing their convictions, the defendants contended that the search and seizure violated their fourth amendment rights. The Court affirmed the convictions and held that the officers were justified in conducting the search and seizure, though no precedent was cited. It further held that the National Prohibition Act expressly provided for the seizure and arrest.

The Carroll Court's creativity appears in its analysis of Congress' intent. Congress, the Court inferred, intended to except road vehicles from the warrant requirement. The Court acknowledged that fourth amendment constructions since the founding of the republic focused upon the reasonableness of searches while also distinguishing searches

21. Id. at 136. On redirect examination, one officer who was present at the scene, described the Carroll roadster search in the following manner: "[t]he lazyback was awfully hard when I struck it with my fist. It was harder than upholstery ordinarily is in those backs; a great deal harder. It was practically solid. Sixty-nine [sic] quarts of whiskey in one lazyback." Id. at 174 (Reynolds, J., separate opinion).
22. Id. at 135.
23. Id. at 162. The Court took judicial notice of the fact that Detroit's position on the international border with Canada made it an active smuggling center. See Brinegar v. United States, 338 U.S. 160, 166 (1949). The Carroll court found probable cause existed because Carroll and his companion were known to have been principals in a proposed undercover sale two months previous, the automobile was identical to that Carroll was seen in the night of the proposed sale, and the automobile was traveling westerly from the direction of Detroit. Carroll, 267 U.S. at 160. In Almeida-Sanchez v. United States, 413 U.S. 266 (1973), Justice Powell (concurring) adds clarification, noting that a Carroll search necessarily requires that probable cause be supported by "specific knowledge about a particular automobile." Id. at 281.
24. Carroll, 267 U.S. at 149.
of structures and vehicles.\textsuperscript{27} An amendment to the Act imposed misdemeanor penalties upon officers who conducted building searches “maliciously and without probable cause.”\textsuperscript{28} However, both the Act and its Amendment were mute as to searches of vehicles. Congress was inferred therefore to have left the way open for the holding in \textit{Carroll}.'\textsuperscript{29} Because Carroll’s roadster could be quickly moved, prohibition agents were justified in conducting a search of the entire vehicle for contraband liquor and foregoing the rigors of the warrant process.'\textsuperscript{30}

One interesting development in the \textit{Carroll} analysis was fashioned by a divided Court in \textit{Chambers v. Maroney}.\textsuperscript{31} In 1970, the Justices considered a challenge to the admission of evidence which had been seized without a warrant from the defendant’s automobile. It is noteworthy that the vehicle was impounded at the police station at the time of the search,\textsuperscript{32} and not on the open road. What exigencies existed to justify the vehicle search in \textit{Carroll} all but evaporated with the vehicle seizure in \textit{Chambers}. Police had probable cause however to arrest the defendant.\textsuperscript{33} Justice White wrote: “[f]or 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.”\textsuperscript{34} Justice Stewart later characterized \textit{Chambers} in the following way: “where the police may stop and search an automobile under \textit{Carroll}, they may also seize it and search it later at the police station.”\textsuperscript{35}

In 1974, a second prong in the search analysis emerged. Justice Blackmun, writing for a plurality in \textit{Cardwell v. Lewis}, reasoned that since a car’s occupants and contents were in plain view and cannot evade public scrutiny, one’s expectation of privacy was less than in a

\begin{itemize}
\item \textsuperscript{27} \textit{Id.} at 153.
\item \textsuperscript{28} An Act Supplemental to the National Prohibition Act, ch. 134, § 6, 42 Stat. 222, 223-224 (1921).
\item \textsuperscript{29} \textit{Carroll}, 267 U.S. at 147.
\item \textsuperscript{30} For a reference of other Supreme Court decisions which relied upon vehicular mobility, see \textit{infra} note 56 and accompanying text.
\item \textsuperscript{31} \textit{Chambers v. Maroney}, 399 U.S. 42 (1970).
\item \textsuperscript{32} \textit{Id.} at 44.
\item \textsuperscript{33} \textit{Id.} at 46-47. Observers in addition to the victim of the armed robbery reported to police that one of the four suspects was wearing a sweater, another a trench coat, and that they had fled in a “light blue compact station wagon.” Within an hour, police stopped a vehicle which, along with its occupants, matched the description provided.
\item \textsuperscript{34} \textit{Id.} at 52.
\item \textsuperscript{35} Coolidge v. New Hampshire, 403 U.S. 443, 463 (1971).
\end{itemize}
home. The case differed factually from all car search cases which had been decided to that point. The defendant was requested to appear at the Office of the Division of Criminal Activities for questioning in connection with a murder investigation. Later police executed an arrest warrant. The defendant released his car keys and claim check from a nearby public lot in which his car was parked. The car was then impounded. Without a warrant, police examined the car's exterior by matching tire tread impressions and paint scrapings with crime scene samples. The defendant objected unsuccessfully to the admission of evidence from this "search." Justice Blackmun concluded that the examination of a car's exterior was not unreasonable under the circumstances.

In what was prophetic dictum, Justice Blackmun observed that a motor vehicle "seldom serves as one's residence." As a legal conclusion, the Justice's prescience was realized eleven years later in Carney. The rationale of the two decisions differed in one major respect, however. Since the clear emphasis of the Court's reasoning in Carney was on vehicular mobility, Cardwell's plain view rationale serves little to advance one's understanding of how the Carney motor home exhibited a reduced expectation of privacy with the interior drapes drawn. A reasonable conclusion is that, as to motor homes, mobility and not plain view justifies the application of the warrant exception.

One further automobile case, Coolidge v. New Hampshire, helps to make clear the foundation upon which Carney was formed. In yet another plurality opinion, Justice Stewart applied the brakes to the automobile exception. Carroll, the Justice concluded, was not intended

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36. Cardwell v. Lewis, 417 U.S. 583 (1974). Justice Blackmun was joined by Chief Justice Burger, Justice White and Justice Rehnquist. Justice Powell filed a concurrence. General guidelines in this area were provided in Katz v. United States, 389 U.S. 347 (1967). "What a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection . . . [b]ut what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." Id. at 351.
37. Cardwell, 417 U.S. at 588.
38. Id. at 587.
39. Id. at 588.
40. Id. at 592.
41. Id. at 590.
42. See infra note 67.
44. Justice Stewart delivered the opinion, parts of which were joined by Justices Douglas, Brennan and Marshall.
to extend to the *Coolidge* facts.\(^{45}\) Approximately two hours after the defendant's arrest pursuant to a magistrate's warrant, police impounded his two automobiles under authority of a search warrant.\(^ {46}\) Over the following fourteen months, police conducted three vehicle searches.\(^ {47}\) Both the seizure and subsequent station house searches were held unconstitutional.\(^ {48}\) In what has become often quoted rhetoric, Justice Stewart remarked that "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."\(^ {49}\) The absence of exigent circumstances rendered the *Carroll* search standard inappropriate.\(^ {50}\) The defendant posed no police threat because he had been cooperative throughout the police murder investigation although he was presented with sufficient opportunity to have destroyed incriminating evidence. Furthermore, because police suspected for a period of time that the defendant's car was related to the crime,\(^ {51}\) ample opportunity existed to secure a valid search warrant.\(^ {52}\)

## III. *California v. Carney,* The Case

The Drug Enforcement Agency (DEA) received uncorroborated information that a motor home had been used for the purpose of exchanging marijuana for sex.\(^ {53}\) A private organization known as "We Tip," an acronym for We Turn In Pushers, furnished DEA with this information in previous communications by letter and telephone.\(^ {54}\) As the Dodge Mini Motor Home stood parked in a downtown San Diego public lot on May 31, 1979, surveilling agents noted the correspondence of its license plate and that of the motor home described in the earlier tips.\(^ {55}\) Mr. Carney and another person entered the home and drew the interior window shades.\(^ {56}\) The companion exited one and one-

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45. *Coolidge,* 403 U.S. at 458.
46. *Id.* at 447.
47. *Id.* at 448.
48. *Id.* at 473.
49. *Id.* at 461.
50. *Id.* at 462.
51. *Id.* at 460.
52. *Id.* at 472.
53. *Carney,* 105 S. Ct. at 2067.
55. *Carney,* 34 Cal. 3d at 602, 668 P.2d at 809, 194 Cal. Rptr. at 502.
56. *Carney,* 105 S. Ct. at 2067.
quarter hours later, and when challenged by the agents, related the account of an exchange. Sexual contacts had been bartered for marijuana.\textsuperscript{57} At the agents' request, the companion returned and knocked on the door.\textsuperscript{58} The knock brought Carney who then stepped outside where the waiting agents confronted him.\textsuperscript{59}

An initial search was immediately made of the motor home's interior without a warrant and without consent.\textsuperscript{60} The agent observed "marijuana, plastic bags, and a scale of the kind used in weighing drugs on a table,"\textsuperscript{61} and then placed Carney in custody.\textsuperscript{62} A subsequent search at the police station revealed additional marijuana concealed in the cupboards and refrigerator.\textsuperscript{63}

\textit{Carney}'s state court history began in the Superior Court of San Diego County by information charging possession of marijuana for sale.\textsuperscript{64} At the preliminary hearing, Carney sought unsuccessfully to suppress the evidence of the two searches. The magistrate concluded that the evidence seized in the initial search was admissible because the agent who entered the vehicle was entitled to ascertain the presence or absence of others.\textsuperscript{65} The subsequent search, the magistrate concluded, was a permissible routine inventory search.\textsuperscript{66} The sole evidentiary basis upon which the superior court later denied Carney's motion to suppress was the reporter's transcript of testimony taken at the preliminary hearing.\textsuperscript{67} From that record, the superior court decided that probable

\begin{itemize}
  \item 57. \textit{Id.}
  \item 58. \textit{Id.}
  \item 59. \textit{Id.}
  \item 60. \textit{Id.} An agent testified at the preliminary hearing that he "stepped one step up" to determine for "safety reasons" whether other persons were present. People v. Carney, 117 Cal. App. 3d 36 (opinion omitted), 172 Cal. Rptr. 430, 433 (1981).
  \item 61. \textit{Carney}, 105 S. Ct. at 2067.
  \item 62. \textit{Id.}
  \item 63. \textit{Id.}
  \item 64. The specific section provides as follows: "[e]very person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment in the state prison." \textsc{Cal. Health \& Safety Code} § 11359 (Deering 1984).
  \item 65. \textit{Carney}, 105 S. Ct. at 2068. Federal courts justify protective sweep searches as a means of preventing the destruction of evidence and also when particular circumstances pose a threat to police or third persons. See United States v. Kunkler, 679 F.2d 187, 191-192 (9th Cir. 1982). For a good analysis of the merits of a general versus a \textit{per se} rule authorizing protective sweep searches and practical concerns for their application, see Joseph, \textit{The Protective Sweep Doctrine: Protecting Arresting Officers from Attack by Persons Other than the Arrestee}, 33 \textsc{Cath. U.L. Rev.} 95 (1983).
  \item 66. \textit{Carney}, 105 S. Ct. at 2068.
  \item 67. Petitioner's Brief on the Merits at 4, n.2, California v. Carney, 105 S. Ct.
cause existed,\textsuperscript{68} that the warrantless search was authorized by the automobile exception, and as an instrumentality of the crime, the motor home was subject to seizure.\textsuperscript{69}

Carney pled \textit{nolo contendere} and was placed on probation for three years. The state's appellate court affirmed the trial court's order.\textsuperscript{70}

Holding that Carney enjoyed fourth amendment protections which were violated by the warrantless search, the California Supreme Court reversed Carney's conviction.\textsuperscript{71} The state's high court perceived a shift in the line of cases extending from \textit{Carroll}. The automobile exception was no longer principally justified by mobility; instead, the emerging rationale was the diminished expectation of privacy associated with the automobile.\textsuperscript{72} In addition, the prosecution failed its burden of justifying the warrantless entry of Carney's motor home under the facts presented.\textsuperscript{73}

When confronted with the prospect of enlarging the automobile exception to include motor homes, the California Supreme Court recognized their hybrid nature — motor homes possess a car's attributes of mobility as well as a home's privacy characteristics.\textsuperscript{74} Ultimately, the court concluded that "a motor home is fully protected by the fourth amendment and is not subject to the 'automobile exception.'"\textsuperscript{75} This conclusion rested squarely on its opinion that the "essential purpose [of a motor home] is to provide the occupant with living quarters."\textsuperscript{76}

On review granted to the State of California, a six to three justice majority of the United States Supreme Court rejected the state court's

\textsuperscript{68} \textit{Carney}, 105 S. Ct. at 2068. Specifically, the superior court found that probable cause to arrest and a reasonable belief that the motor home contained contraband were adequately supported by the anonymous phone calls, We Tip information, and the statement of Carney's companion. Joint Appendix at JA-6-JA-8, \textit{Carney}, 105 S. Ct. at 2066.

\textsuperscript{69} \textit{Carney}, 105 S. Ct. at 2068.

\textsuperscript{70} \textit{People v. Carney}, 117 Cal. 3d 36, 172 Cal. Rptr. 430 (1981).

\textsuperscript{71} \textit{Carney}, 34 Cal. 3d at 610, 668 P.2d at 814, 194 Cal. Rptr. at 507.

\textsuperscript{72} \textit{Id.} at 605, 668 P.2d at 811, 194 Cal. Rptr. at 504.

\textsuperscript{73} \textit{Id.} at 612, 668 P.2d at 816, 194 Cal. Rptr. at 509.


\textsuperscript{75} \textit{Id.} at 610, 668 P.2d at 814, 194 Cal. Rptr. at 507. The court noted that while motor homes were potentially subject to warrantless searches, the justification must be founded on criteria other than the automobile exception.

\textsuperscript{76} \textit{Id.} at 606, 668 P.2d at 812, 194 Cal. Rptr. at 505.
According to California v. Carney, law enforcement officers need not secure a warrant to search a motor home as long as probable cause to believe the vehicle contains contraband and exigent circumstances coexist. Although it was a case of first impression, the decision was clearly premised upon those tenets fashioned by the Court sixty years earlier in Carroll.

A. The Burger Majority

Writing for the majority, Chief Justice Burger commenced with a review of the cases adhering to Carroll as their precedent. In so doing, the majority exposed its predisposition for resolving Carney along the identical lines used to judge the reasonableness of warrantless searches of automobiles. The opinion recites earlier decisions which traditionally justified such searches.

A vehicle’s potential for mobility distinguishes it from a stationary structure. Consequently different considerations have been furthered to justify the vehicle’s being accorded a lesser degree of fourth amendment protection. While a warrant to search one’s home may be presumptively required, the exigent circumstances created by a vehicle with contraband serve to justify its search without one. The litany recited by Carroll and its line — including Chambers v. Maroney, Cady v. Dombrowski, Cardwell v. Lewis, South Dakota v. Opperman, and United States v. Ross — has done little to alter this conclusion over the past sixty years.

78. Id. at 2069.
79. Cited for this proposition are the following cases, each of which expressly relies upon Carroll: Chambers v. Maroney, 399 U.S. 42, 51 (1970) (“the opportunity to search is fleeting since a car is readily movable”); Cady v. Dombrowski, 413 U.S. 433, 441 (1973) (“the original justification advanced for treating automobiles differently from houses, insofar as warrantless searches of automobiles by federal officers was concerned, was the vagrant and mobile nature of the former”); Cardwell v. Lewis, 417 U.S. 583, 590 (1974) (plurality) (“[a]n underlying factor in the ‘Carroll-Chambers’ line of decisions has been the exigent circumstances that exist in connection with movable vehicles”); South Dakota v. Opperman, 428 U.S. 364, 367 (1976) (“the inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible”); United States v. Ross, 456 U.S. 798, 806-807 (1982) (“[g]iven the nature of an automobile in transit . . . an immediate intrusion is necessary if police officers are to secure the illicit substance”). Also cited is Cooper v. State of California, 386 U.S. 58 (1967), but it is properly distinguished from the rest. The Cooper Court opined “that searches of cars...
Chambers provides an appropriate case model to illustrate these points. Justice White expressly declined to indicate "every conceivable circumstance" when a warrantless automobile search could be conducted."

Clearly when there is a "fleeting target" or when the "opportunity to search is fleeting since a car is readily movable," a search of an auto for particular articles under circumstances of probable cause must be made immediately. Alternatively, the auto must be seized and held pending receipt of the magistrate's warrant. In Chambers, police were on the lookout for a "light blue compact station wagon" within an hour of an armed robbery. At the time it was stopped, probable cause existed to arrest the occupants and search the passenger compartment for weapons and stolen property. The vehicle, however, was not searched until its impoundment and the arrest of its occupants an unspecified time afterward. Justice White concluded: "[t]he probable-cause factor still obtained at the station house and so did the mobility of the car." This clear reference to mobility patronizes its historical utility as a justification for warrantless open road searches. Of curiosity, however, is its relevance in the setting of a station house impoundment yard.

Two additional rationale explain warrantless vehicle searches. Because a vehicle's use on the public roadways necessarily exposes it to pervasive regulation, such as state and local vehicle codes, an occupant that are constantly movable may make the search of a car without a warrant a reasonable one." Id. at 59. No reliance upon Carroll was expressed nor necessary since the impounding of the defendant's vehicle was compelled by state statute. Other cases complete the Carroll line but were not cited. See also Husty v. United States, 282 U.S. 694 (1931); Brinegar v. United States, 338 U.S. 160 (1949); Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968); and Almeida-Sanchez v. United States, 413 U.S. 266 (1973).

80. Chambers, 399 U.S. at 50.
81. Id. at 52.
82. Id. at 51.
83. Id.
84. Id.
85. Id. at 44.
86. Id.
87. Id. at 47-48.
88. Id. at 47.
89. Id. at 52.
90. For instances of federal official contact with vehicles on public highways, Carroll, 267 U.S. 132, and Opperman, 428 U.S. 577, serve to illustrate activity pursuant to express statutory authority. More pervasive contacts occur at state and local levels as a result of motor vehicle regulation codes, vehicle registration, and operator...
pant does not enjoy the same expectation of privacy she would in her home. Another explanation is premised upon the vehicle’s configuration; since the car’s passenger compartment is in plain view it is subject to public scrutiny. Of the two explanations the former proved more applicable to Carney. The majority was direct in noting that vehicle regulation arises out of a “compelling governmental need” and derives its justification from “overriding societal interests in effective law enforcement.”

The Court also took note of its prior statements on the scope of vehicle searches. A Carroll search would appear to extend to the entire interior of the vehicle. In other cases, the Court has upheld searches of concealed compartments and repository areas within the vehicle. Inquiry into the scope of a search may also take into account the legal status of the occupants relative to the vehicle. Carney’s connection with the motor home is unclear. He was known to have been inside the living quarters before his arrest. There is also a suggestion that he was not the registered owner. If the incidence of governmental regulation upon owners and operators is offered to explain their reduced privacy expectations, it does not necessarily follow that other individuals’ expectations are concomitantly reduced. This contention is irrelevant, however, in those jurisdictions which hold that no occupant of a vehicle

licensure requirements.

91. Cardwell, 417 U.S. at 590.
92. Carney, 105 S. Ct. at 2070.
93. See supra text accompanying note 21. The Carroll search was conducted under express authority of the National Prohibition Act. The reduced expectation of privacy rationale was unnecessary to justify the search without a warrant.
94. See, Ross, 456 U.S. at 825 (“[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search”); Cady, 413 U.S. at 433 (police, without a warrant, conducted a search of the locked trunk to locate a comatose accident victim’s service revolver. The search of the trunk was justified because police exercised custody of the vehicle which had been disabled along the highway and, according to standard departmental procedure, such a search was designed to avert the potential that the weapon would fall into irresponsible hands); Chambers, 399 U.S. at 47 (police had probable cause to arrest the occupants of a car suspected of being involved in a recent robbery and the search of a compartment beneath the dashboard for weapons and fruits of the crime was justified); United States v. Johns, 105 S. Ct. 881 (1985) (the initial search of a pickup truck was conducted by customs agents in removing sealed packages from the vehicle and since the vehicle was reasonably believed to contain contraband, the warrantless search was held to be not unreasonable).
95. See supra note 54.
may object to its search by a peace officer.\textsuperscript{96} As to Carney's circumstances, the majority concluded that the search of the motor home was not unreasonable and was conducted with abundant probable cause.

Despite the similarities between a motor home and a stationary home, the majority was convinced that a motor home was aptly suited to the rationale offered by \textit{Carroll} and its line of cases.\textsuperscript{97} The Dodge Mini Motor Home was readily mobile, its license subjected the vehicle to governmental regulation, and an objective observer could conclude from its location in a public lot that the motor home was being used for transportation, as distinguished from residential use.\textsuperscript{98}

As evidenced by the lack of unanimity in the \textit{Carney} Court, decisions concerning warrantless vehicle searches have engendered disparate positions. Commentators, as well as the Court itself, chronicle confusion in this area.\textsuperscript{99} In an apparent attempt to reduce potential uncertainty, the majority did speculate as to indicia which might objectively indicate whether or not a warrant need be secured. Objective factors suggesting the use of a motor home as a residence appear in a terse footnote. These include its placement on blocks; lack of a license; connection to utilities; and difficulty in accessing public roads.\textsuperscript{100}

\textbf{B. The Stevens Dissent}

The dissent\textsuperscript{101} attacked the majority on several bases. The automobile exception doctrine relied upon by the majority impliedly favors governmental interests. Without the exception, government officers would be hamstrung in their efforts to enforce laws\textsuperscript{102} in those settings.


\textsuperscript{97} \textit{See supra} note 79.

\textsuperscript{98} \textit{Carney}, 105 S. Ct. at 2070.

\textsuperscript{99} \textit{See}, e.g., \textit{Cady}, 413 U.S. at 440 (referred to this subject as "something less than a seamless web"); \textit{Ross}, 456 U.S. at 817 (characterized the topic as a "troubled area"); W. \textit{LA FAVE}, \textit{2 SEARCH AND SEIZURE} 509 (1978) (noted that several decisions in this area are difficult to reconcile, for example, the \textit{Chambers'} warrantless vehicle search at the station house lacked those exigent circumstances which were the gravamen of \textit{Carroll}, 267 U.S. at 514); and Gardner, \textit{Searches and Seizures of Automobiles and Their Contents: Fourth Amendment Considerations in a Post-Ross World}, 62 \textit{NEB. L. REV.} 1, 5 (1983).

\textsuperscript{100} \textit{Carney}, 105 S. Ct. at 2071 n.3.

\textsuperscript{101} \textit{Carney}, 105 S. Ct. at 2071 (Stevens, J., Brennan, J., and Marshall, J., dissenting).

\textsuperscript{102} \textit{Ross}, 456 U.S. at 806.
where a vehicle was transporting contraband. The majority erred for the following reasons. Because Carney presents facts which concern the search of a home, albeit motorized, the traditional rationale supporting the automobile exception is not applicable. Furthermore, the absence of valuable trial court experience and precedent delimiting motor home searches necessarily foregoes the evolution of reasoned guiding principles. Controlling precedent, the dissent offered, was established by the Court's earlier decision of Payton v. New York, with its bright line test holding that warrantless searches of a home are presumptively unreasonable. Evaluation of the reasonableness of any search must necessarily include the surroundings in which it is executed.

Justice Stevens criticized the majority's general willingness to entertain minimally significant fourth amendment cases, such as Carney. By having granted discretionary review of a state court decision which would only modestly extend precedent in the subject area, the decision was improvident. In addition, principles of sound court administration militated against granting review because the conflict was not then fully percolated.

Motor homes are hybrids which possess characteristics of both permanent structures and vehicles. This prompted Justice Stevens to encourage the delineation of meaningful guidelines to denote the presence of fourth amendment interests. Relevant lines of separation in-

103. In no setting are fourth amendment protections of one's privacy clearer than in one's home. Except under exigent circumstances, a warrant is required to breach the threshold. Payton v. New York, 445 U.S. 573, 589 (1980).
104. Carney, 105 S. Ct. at 2073.
106. Id. at 586.
109. Id. at 2073. Justification for immediate intervention is rare. The Court should decline review until a conflict has fully percolated. Such a strategy assures that its decision on matters of national significance will have the benefit of a conflict which has developed as a result of trial court experimentation and explanation. See, Estreicher & Sexton, New York University Supreme Court Project, Appendix to the Executive Summary A-4 at 22-23 (198_) as cited in Carney, 105 S. Ct. at 2073, n. 8. This epoch undertaking on the Supreme Court's workload appears in published form. See, Estreicher and Sexton, New York University Supreme Court Project, 59 N.Y.U. L. Rev. (1984). The authors address two points of contention argued by the Carney dissent for declining to accept jurisdiction (i.e. the conflict was not "fully percolated" and was "improvident"). Id. at 720-744.
110. Carney, 105 S. Ct. at 2073.
clude noting whether the vehicle is in motion or at a standstill; the manner in which it is fixed to the land and its potential to be quickly moved; characteristics lending to its service as a residence, and the means of mobility; and finally, whether it is fashioned for use on land or water. Lines of distinction can be drawn. The California Vehicle Code offers evidence. Instead, the majority's categorical treatment of motor homes summarily denies distinctions which might be applied to differentiate the diverse lifestyles known to benefit from mobile living and the variety of uses to which motor homes are suited.

The focal point of the dissent's argument is the recognition that at the time a motor home's owner dwells within, there exists a "substantial and legitimate expectation of privacy." No doubt such vehicles are susceptible to warrantless searches, but only when traveling on a public thoroughfare or when an immediate search is necessitated by exigent circumstances. The Carney facts were noted to lack exigency for three reasons: first, the motor home was parked in a public lot and not traveling on a public roadway; second, a warrant could have been secured from a magistrate available in the courthouse only a few blocks distant; and third, a statutory procedure existed to secure a warrant over the telephone.

111. Id.
112. See, e.g., CAL. VEH. CODE § 243 (Deering 1984) ("A 'camper' is a structure designed to be mounted upon a motor vehicle and to provide facilities for human habitation or camping purposes. A camper having one axle shall not be considered a vehicle"); and CAL. VEH. CODE § 362 (Deering 1984) ("'[a] house car' is a motor vehicle originally designed, or permanently altered, and equipped for human habitation, or to which a camper has been permanently attached. . . .").
113. Carney, 105 S. Ct. at 2073.
114. Id. at 2075.
115. Id.
116. Id. at 2076.
117. Id. at n. 16. This argument does not appear in Respondent's briefs. The dissent relied upon CAL. PENAL CODE § 1526(b) (Deering 1983) ("[i]n lieu of the written affidavit . . . the magistrate may take an oral statement under oath which shall be recorded and transcribed. The transcribed statement shall be deemed to be an affidavit for the purposes of this chapter."). This telephone warrant procedure was considered sufficient to protect fourth amendment rights as well as satisfy police concerns regarding loss of evidence. Significantly, exigent circumstances which give rise to warrantless searches necessarily are limited by this procedure. People v. Morrongiello, 145 Cal. App. 3d 1, 12-13, 193 Cal. Rptr. 105, 111 (Cal. Ct. App. 1983). By way of further illustration, the federal courts also permit the issuance of a warrant upon oral testimony. FED. R. CRIM. P. 41(c)(2)(D). The procedure is "intended for situations in which it is not practicable to present a written affidavit to a magistrate or judge, and is
Because no exigency existed, the dissenters argued that the majority's decision rested upon a conclusive presumption. That is, exigency arises solely as a result of a motor home's inherent mobility. This conclusion, they insist, offends Carroll\textsuperscript{118} where exigency arose not from mere mobility but due to practical necessity. It also is contrary to the Court's holding in United States v. Chadwick,\textsuperscript{119} where a footlocker stored in a car trunk was subjected to a warrantless search by federal agents. Like a motor vehicle, a footlocker is inherently mobile. However, the Chadwick Court noted that the footlocker was double-locked and as such demonstrated the owner's desire that its contents remain free from public inspection. Mobility alone offers an insufficient basis for abandoning the warrant requirement.\textsuperscript{120}

Carney's Dodge Mini Motor Home exhibited both exterior and interior clues that it contained a living space.\textsuperscript{121} These indications were sufficient to communicate the need for obtaining a warrant, failing which the search without coexistent exigency became "presumptively unreasonable."\textsuperscript{122}

IV. The Carney Search Standard

Searches of motor homes are justified only to the extent that they are reasonable.\textsuperscript{123} The standard of reasonableness articulated by the Carney Court demands an inquiry by the prospective searcher into circumstances regarding the vehicle's mobility and its location.\textsuperscript{124}

A vehicle's ready mobility has been used to justify warrantless searches for sixty years.\textsuperscript{125} Although the degree of mobility\textsuperscript{126} was un-

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\textsuperscript{118} Carroll, 267 U.S. at 132.
\textsuperscript{119} United States v. Chadwick, 433 U.S. 1, 4 (1977).
\textsuperscript{120} Carney, 105 S. Ct. at 2076 citing Chadwick, 433 U.S. at 1.
\textsuperscript{121} Carney, 105 S. Ct. at 2077. The dissent noted appointments within the vehicle which were designed to accommodate habitation, such as stuffed chairs, table, bunk-beds, kitchen, etc.
\textsuperscript{123} See supra note 1.
\textsuperscript{124} Carney, 105 S. Ct. at 2070-2071.
\textsuperscript{125} Carroll, 267 U.S. at 132.
\textsuperscript{126} Note, Warrantless Searches and Seizures of Automobiles, 87 Harv. L. Rev. 835, 842 (1974).
defined in the seminal case of *United States v. Carroll*, this aspect of the inquiry is clearly founded upon long established precedent. The record’s silence concerning mobility of the *Carney* motor home and the Court’s bare conclusion that it evidenced ready mobility suggest that *Carney*’s contribution to the notion of mobility must await case-by-case decision making. Adding to the uncertainty are interpretive difficulties with the search standard. The dissent interpreted the Court’s opinion as creating a *per se* rule: if a motor home is mobile, treat it like a car. Period. Or restated, a motor home’s inherent mobility creates a conclusive presumption of exigency. Another interpretation defines mobility as active use for transportation. Between the two interpretations lie the as yet unreported questions of fact. The following points serve to illustrate. One can easily distinguish a motor home on the move and a motor home at a standstill. The former satisfies the standard yet the latter may not. If a parked motor home possesses the capacity for ready mobility, arguably the standard is met. If a motor home lacks the capacity for ready mobility, as when it is mechanically disabled, a warrantless search under *Carney* is, arguably, unreasonable. These distinctions between ready mobility and immobility are more than academic. Because they may reveal the existence of a protected constitutional interest, inquiry cannot be made cavalierly.

To justify a warrantless search of a motor home, in addition to its being readily mobile, Chief Justice Burger implied that it must be situated in a location which objectively indicates active use for transportation rather than residence. Because the Carney motor home was parked in a public lot, its setting objectively indicated its use for transportation. Consequently, the majority found it unnecessary to consider the application of the warrant exception to a motor home found in a setting which objectively indicated its use as a residence. The decision however did propose distinctions to aid in identifying residential versus transportation use. Indicia of a motor home’s use for transportation include the display of a license and convenient access to public roads. A motor home elevated on blocks and hooked up to utilities

128. *Carney*, 105 S. Ct. at 2071. Historically, the automobile exception has turned on the vehicle’s presence in a “setting that objectively indicates that [it] is being used for transportation” (emphasis supplied). Id. at 2070-2071.
129. Id. at 2071 n.3.
130. Id.
131. Id.
suggests its use for residential purposes. However, the Court expressly declined to decide which motor homes were "worthy" or "unworthy" of fourth amendment protections. Because a Carney search demands objective analysis on the part of the prospective searcher, the general nature of the standard theoretically permits its practical use in the varied circumstances in which a motor home might be found. Nevertheless, for the explanations offered above, practitioners must look beyond the limited Carney facts and opinion to find reasoned guiding principles.

More fundamental than the concerns for the conceptual and mechanical application of the Carney search standard is the impact of the Burger Court's decision upon fourth amendment doctrine. How do protected individual interests fare under the standard? Two cases suggest the answer. In Cardwell v. Lewis, the Court considered the search of the automobile which was found in a public parking lot. Though seized from a public setting, the Cardwell auto posed no threat of flight. The search consisted of paint scrapings taken from the exterior and a tire tread observation made while the vehicle was impounded and its owner in police custody. There was no privacy infringement. Nor was there any impermissible privacy infringement in Carney where an interior cabin search was conducted in a public parking lot for "safety reasons." The motor home did exhibit a potential for ready movement. In combination, these two cases expose an ever broadening perspective from which the Court will assess future warrantless vehicle searches. Ultimately, critical fourth amendment analysis will not be lost on distinctions between interior and exterior searches, between automobile and mobile residence searches, for they will have become one. Carroll and Carney however most vividly illustrate the extent to which individual interests have yielded to the Court's construction of the fourth amendment.

In 1925, the Carroll Court considered a roadside warrantless search of an Oldsmobile roadster smuggling bootleg whiskey. In 1985, the Carney Court considered a warrantless search of a parked Dodge

132. Id.
133. Id. at 2070.
134. Cardwell, 417 U.S. at 585.
135. See supra text accompanying note 39.
137. Id. at 591.
138. See supra text accompanying note 60.
139. Carney, 105 S. Ct. at 2070.
Mini Motor Home containing marijuana. In each case, the Court justified the respective search principally on the grounds that the vehicle's potential for ready movement forewarned potential for flight. This logic derives from an historic anomaly and is inapposite to the fourth amendment protections which were designed to insulate the individual from arbitrary and indiscriminate exercise of governmental authority. Insofar as one's home happens to be mobile, the Carney search formulation seems to have left a gaping hole in his constitutional guarantees against such an exercise.

What privacy interests a motor home owner may have, are protected, if at all, by the requirement that a prospective searcher objectively conclude that the vehicle's location in a setting suggests its use as a residence. With that thread, Carney has sought to restitch the constitutional protective fabric left tattered by the unfortunate application of the Carroll automobile exception to a modern-day phenomenon, the motor home.

V. Summary

California v. Carney is a bold addition to fourth amendment doctrine. Since the early history of our Republic, the home has been regarded as the area most deserving protection from governmental intrusion. In 1985, however, to the extent one's home evinces ready mobility, the Supreme Court by the force of a 6:3 decision held that such protection is no longer assured.

Carney's holding is uncomplicated. In the context of the fourth amendment, a motor home is more like a car than a home. And like a car, a motor home is presumptively susceptible to being searched without a warrant, assuming the presence of probable cause to search in the first place.

In the main, the fourth amendment requires law enforcement officers to secure a warrant before conducting a search. To uphold the warrantless search in Carney, the Court relied upon the automobile exception doctrine. Automobiles are excepted for essentially two reasons. The same rationale now obtains to motor home searches. First, a vehi-
cle's intrinsic mobility oftentimes makes securing a warrant futile.\textsuperscript{144} Potential for ready movement forewarns potential for flight. Second, a vehicle's exposure to pervasive governmental regulation of the roadways creates a reduced expectation of privacy.\textsuperscript{145} Similarly, a vehicle's configuration exposes the passenger compartment to public view which in turn reduces the privacy expectations of the occupant.\textsuperscript{146}

The challenged governmental actions in \textit{Carney} were the warrantless search of the Dodge Mini Motor Home, as it stood parked in a public lot in downtown San Diego, and the seizure of an unspecified quantity of marijuana from the living area.\textsuperscript{147} The \textit{Carney} search standard required that Drug Enforcement Administration agents secure a warrant to search unless circumstances permitted two objective conclusions — that the motor home was readily mobile and that the vehicle's location indicates its active use for transportation rather than residence.\textsuperscript{148}

The sole evidentiary basis for Carney's conviction appears in a suppression hearing transcript.\textsuperscript{149} That probable cause existed to search is abundantly clear.\textsuperscript{150} Left unclear are facts which convincingly support the Court's reliance upon the automobile exception. To the contrary, the following suggest that this doctrine is illsuited to the \textit{Carney} record; for example, drawn interior window shades reflect the occupants' heightened, not reduced, privacy expectations; a motor home parked within the confines of a public lot, in excess of the 75 minutes from the time agents first suspected ongoing illicit activity, failed to present exigency of such practical necessity that the rule requiring the securing of a search warrant should be circumvented. The outcome compels support from an altogether different rationale.\textsuperscript{151}

The automobile exception is a judicial creation. Its aim — to aid legitimate law enforcement interests — was first expressed in the prohibition era case, \textit{United States v. Carroll}.\textsuperscript{152} In that decision, the Court sharpened the teeth of the National Prohibition Act\textsuperscript{153} by upholding

\begin{itemize}
\item \textsuperscript{144} \textit{Carroll}, 267 U.S. at 153.
\item \textsuperscript{145} See supra note 90.
\item \textsuperscript{146} \textit{Cardwell}, 417 U.S. at 590.
\item \textsuperscript{147} \textit{Carney}, 105 S. Ct. at 2067.
\item \textsuperscript{148} Id. at 2070-2071.
\item \textsuperscript{149} See supra note 67.
\item \textsuperscript{150} See supra note 68.
\item \textsuperscript{151} See supra note 65 and accompanying text.
\item \textsuperscript{152} \textit{Carroll}, 267 U.S. at 153.
\item \textsuperscript{153} See supra note 11.
\end{itemize}
federal agents' action in conducting a warrantless roadside search of an Oldsmobile roadster transporting bootleg whiskey. Though both the Act and the constitutional mandate which authorized it have long since been repealed, the legacy continues. Sixty years after Carroll, Chief Justice Burger reasserted its aim by allowing "the essential purposes served by the exception to be fulfilled."

Carney's contribution to the evolving character of the fourth amendment suggests a paradoxical result. Despite its boldness, the Court's predisposed assertion favoring governmental anti-crime pursuits will likely yield only nominal influence on law enforcement practice. As the record demonstrates, other exceptions may more clearly legitimize warrantless searches. Carney's principal legacy is the shift which it reflects in the doctrinal perspective of the Court. Traditional safeguards respecting the search of one's home are today less assured. The decision offers a head-on challenge to the certainty of Justice Brandeis' caveat — "in every extention of governmental functions lurks a new danger to civil liberty."

David C. Hawkins

155. See supra notes 14 and 15.
156. Carney, 105 S. Ct. at 2071.