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SEARCH AND SEIZURE: FROM CARROLL TO ROSS, THE ODYSSEY OF THE AUTOMOBILE EXCEPTION

The fourth amendment is in large part a reaction to the general warrants and warrantless searches prevalent in pre-Revolutionary America. The basic purpose of the amendment is to prevent government officials from arbitrarily invading the privacy and security of the individual. The first clause of the amendment clearly provides that all searches and seizures must be reasonable. The second clause states the warrant requirement and the conditions upon which a warrant shall issue. There is nothing in either clause to suggest that a warrantless search and a reasonable search are mutually exclusive. The well known rule, however, is that warrantless searches and seizures are per se unreasonable subject to a few well delineated exceptions.

The six recognized exceptions are consent, plain view, etc.

1. For a review of the origin and development of the fourth amendment, see generally Grano, Rethinking the Fourth Amendment Warrant Requirement, 19 AM. CRIM. L. REV. 603, 617-21 (1982).


3. The fourth amendment provides:

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

   U.S. CONST. amend. IV.


5. Schneckloth v. Bustamonte, 412 U.S. 218 (1973) (when a person voluntarily consents, the police may search without a warrant and without probable cause); Chambers v. Maroney, 399 U.S. 42, 64 (1970) (Harlan, J., concurring and dissenting).

6. The plain view doctrine applies to warrantless seizures as opposed to warrantless searches. Items that a person knowingly exposes to the public are not protected by the fourth amendment. Katz v. United States, 389 U.S. 347, 351 (1961). Thus, the plain view exception is irrelevant to warrantless searches because there is no search at all. Plain view does permit the warrantless seizure of such items under certain circumstances. Coolidge v. New Hampshire, 403 U.S. 443, 465 (1971). Whether the item in plain view may be seized without a warrant depends upon whether the police had a prior lawful justification to be in a position to observe the item that was in plain view. Id. at 466. See also Harris v. United States, 390 U.S. 234 (1968) (objects plainly visible to police who have a lawful right to be in a position to view them are subject to seizure).
stop and frisk, emergency, search incident to arrest, and the automobile. Practical application of the exceptions is a complex and often conflicting area of the law. The warrantless search of the automobile is illustrative. Most warrantless searches of automobiles are conducted under the search incident to arrest exception or the automobile exception. Historically, the automobile exception allowed warrantless searches under certain conditions. These conditions are probable cause to believe the vehicle is carrying incriminating evidence accompanied by exigent circumstances. A pre-

7. Terry v. Ohio, 392 U.S. 1 (1968) (a policeman who identifies himself may conduct a protective search of outer clothing incident to interrogation when it reasonably appears that the suspect is armed and presently dangerous). See also Sibron v. New York, 392 U.S. 40 (1968).

8. See, e.g., Warden v. Hayden, 387 U.S. 294 (1967) (police in hot pursuit of an offender may enter premises without a warrant); Ker v. California, 374 U.S. 23 (1963) (plurality opinion) (police may lawfully enter premises without notice when it appears from defendant's earlier furtive conduct that he was expecting the police and that the evidence could easily have been destroyed).


10. Chambers v. Maroney, 399 U.S. 42 (1970) (given probable cause, police may conduct an immediate search of a moving automobile); Carroll v. United States, 267 U.S. 132 (1925) (police may search a moving automobile without a warrant when there is probable cause to believe the vehicle contains contraband).


12. Moylan, The Automobile Exception: What It Is And What It Is Not—A Rationale in Search of a Clearer Label, 27 MERCER L. REV. 987 (1976). Exigent circumstances are emergency situations where the potentially incriminating evidence would be lost, destroyed, or removed from the jurisdiction if the police were required to leave the scene and secure a warrant before searching the vehicle. In such a situation it is virtually impossible for the police to comply with the warrant requirement without losing the evidence. The primary rationale behind the exigent circumstances portion of the automobile exception is the inherent mobility of the vehicle. 2 W. RINGEL, SEARCHES AND SEIZURES: ARRESTS AND CONFESSIONS, § 11.1(b) at 11-3 (1979). See also Arkansas v. Sanders, 442 U.S. 753, 763 (1979); United States v. Chadwick, 433 U.S. 1, 12 (1977); Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. United States, 267 U.S. 132, 153 (1925). Once the police have stopped a vehicle on probable cause, the occupants are obviously aware that they are under suspicion and they cannot be expected to wait passively for the police to return with a warrant. See Chambers v. Maroney, 399 U.S. 42, 51 (1970). Thus, exigent circumstances serve as justification for the failure to obtain a warrant when this requirement would force the police to lose valuable
cise statement of the scope of the automobile exception has proved elusive. Supreme Court rulings have been confusing and contradictory. Some of the Court's holdings have sustained a warrantless search of an automobile despite the absence of probable cause or exigent circumstances. Other cases have held that a warrantless search violated the fourth and fourteenth amendments when either probable cause or exigency was absent. Another line of cases recognized that probable cause and exigent circumstances were both present, thus creating a legitimate automobile exception search of the automobile itself, yet held that the warrantless search of a closed container found within the automobile was unreasonable. The frequency of plurality opinions testifies to the extreme difficulty the Court has had in accommodating its conflicting views on the scope of the automobile exception rule.

Recent Supreme Court decisions demonstrate that major changes in the automobile exception are underway. Initially, this effort focused on police authority to conduct a warrantless search within a warrantless search, that is, the warrantless search of closed containers found during the warrantless search of the automobile. Unfortunately, these early attempts compounded rather than simplified the problem. As a result, police officers still could not be confident whether the situation at hand justified a warrantless search. Courts found themselves in a "labyrinth of judicial uncertainty" that required a case-by-case review of ad hoc police judgments. Recently, in United States v. Ross, the Court articulated a clear rule concerning the warrantless search of closed containers found in an automobile.

evidence. However, what circumstances constitute an exigency, making a warrant unnecessary, is an issue that continues to divide the Court. See infra note 192.


14. The fourth amendment was incorporated into the fourteenth amendment and made applicable to the states in Mapp v. Ohio, 367 U.S. 643 (1961).


Albert Ross was convicted of possession of heroin with intent to distribute, based on evidence police obtained during two warrantless searches of Ross' automobile. The police conducted the first search immediately after stopping the moving vehicle. The officers searched the trunk and opened a brown paper bag containing a white powder that was later determined to be heroin. The automobile was taken to headquarters where a second warrantless search yielded a zipped leather pouch containing $3,200 in cash. The United States Court of Appeals for the District of Columbia reversed the trial court, holding that the car itself had been legitimately searched without a warrant, but that the two subsequent warrantless searches of the paper bag and pouch violated the fourth amendment. The court reasoned that none of the specific exceptions to the fourth amendment applied, and that the warrantless searches were, therefore, unconstitutional. The Supreme Court reversed, holding that when an automobile is legitimately stopped on probable cause to believe it contains contraband, the police may search the entire vehicle, including compartments and closed containers, as thoroughly as if a magistrate had issued a warrant. The Court reasoned that the scope of the automobile exception is not limited by the fact that the potential evidence is located in a closed container, but rather "is defined by the object of the search and the places in which there is probable cause to believe that it may be found."

Ross clarifies the authority of the police to conduct a warrantless search of closed containers found during a legitimate automobile exception search. Despite its clarity on this point, Ross is not without problems. For example, it completely avoids any reference to the requirement of exigency for a valid warrantless search. This Comment will explore whether Ross can logically permit, in the absence of exigent circumstances, a warrantless search...
The automobile exception was first articulated in *Carroll v. United States*. In that case, federal prohibition agents were on a regular tour of duty patrolling the highway between Detroit and Grand Rapids, looking for violators of the Prohibition Act, when they spotted a car driven by George Carroll and John Kiro, two suspected bootleggers. The agents stopped the vehicle and conducted a warrantless search on the belief that the car contained bootleg liquor hidden inside the seat. The police found that the upholstery seat filling had been removed, and discovered a substantial amount of liquor. Carroll and Kiro were convicted of transporting "intoxicating spirituous liquor." The defendants claimed that the warrantless search violated the fourth amendment, and that the evidence was therefore improperly admitted.

The Supreme Court affirmed, holding that the agents did have authority to conduct the warrantless search. The Court held that the search itself was reasonable because the agents had probable cause to believe that the vehicle was transporting contraband liquor. Writing for the majority, Chief

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27. The prohibition agents had reason to suspect Carroll and Kiro. These same agents had posed as employees of the Michigan Chair Company at a meeting with Carroll and attempted to buy three cases of whiskey from him. A price of $130 per case was quoted. The transaction, however, was never completed. The Court speculated that the deal fell through because Carroll suspected the true identity of the prospective purchasers. *Id.* at 135.
28. *Id.* at 134.
29. *Id.* at 155-56.
Justice Taft stated that the reasonableness of a warrantless search depended upon what was deemed an unreasonable search and seizure at the time the fourth amendment was adopted. The Chief Justice concluded with the well-known phrase that the fourth amendment provision guaranteeing freedom from unreasonable searches "has been construed, practically since the beginning of Government, as recognizing a necessary difference between a search of a store, dwelling, house or other structure," in which case a warrant must be obtained, and the 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 . . . ."31

The defendants had argued that the search was unreasonable because the prohibition agents did not have probable cause to arrest until after the search had been completed and the liquor discovered.32 The Court rejected the argument that the right to search was dependent upon the right to arrest. Rather, the Court concluded that the validity of the search and seizure depended upon the agents' reasonable "cause to believe" that the contents of the vehicle violated the law.33 Since the agents had such probable cause, the Court held that the warrantless search was reasonable.

The Carroll Court did not address the question of whether the automobile exception would apply in a "seize now search later" situation, in which the police stop an automobile and, rather than conducting an immediate search, seize the car, remove it to the police station, and conduct a warrantless search there. The Supreme Court addressed the subject of a search under these circumstances in Chambers v. Maroney.34

In Chambers, the police stopped a vehicle and arrested the occupants, who matched an eyewitness description of the armed suspects in a gas station robbery. The vehicle was seized without a warrant and then driven to the police station where the police conducted a warrantless search. Chambers did not raise a fourth amendment issue at trial as to the validity of the search, nor did he take a direct appeal from his conviction. Instead, he sought a writ of habeas corpus, which was denied after an evidentiary hearing.35 The Supreme Court granted certiorari to consider whether evi-

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30. Id. at 149.
31. Id. at 153.
32. Id. at 158.
33. Id. at 158-59. The agents had probable cause to believe the vehicle contained liquor because they were aware of the defendants' bootlegging activities. Detroit was known to be an active center for liquor, and the agents had previously spotted the defendants on the rum-running highway. Id. at 160.
34. 399 U.S. 42 (1970).
35. Id. at 44-45.
idence seized in a warrantless search of an automobile at a time and place other than that of the arrest was properly admissible at trial.36

The Supreme Court affirmed, holding that when there is probable cause, an automobile, because of its mobility, may be subjected to a warrantless search in circumstances that would not justify a search of a house.37 The Court quickly passed over the notion that the search incident to arrest exception justified a warrantless search at headquarters because the search was not contemporaneous with the arrest.38 Rather, alternative grounds existed to justify the search. The Court construed this case as falling within the Carroll rule and it distinguished other cases in which it had held that a warrantless search after the automobile had been removed from the road violated the fourth amendment.39 Chambers, like Carroll, presented probable cause to search for contraband. The only difference between the two was that the Carroll search took place on the highway and the Chambers search did not. Thus, the question facing the Chambers Court was whether the exigent circumstances element of the automobile exception should be extended to include searches of vehicles already in the physical custody of the police. The Court answered that question in the affirmative. Justice White, writing for the majority, noted that given the exigencies of stopping a car on the highway,40 the police have only two options if an effective search is to be made: either a warrantless search must be con-

36. Id. at 46.
37. Id. at 51.
38. Id. at 47. "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, 376 U.S. 364, 367 (1964). Accord Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968). The search incident to arrest exception to the fourth amendment's warrant requirement is based upon the fact that without a search, the suspect could either destroy evidence close at hand or reach for a weapon and inflict harm on the arresting officer. Once the accused is in custody at the station house, the reasons justifying the warrantless search no longer exist, and a warrant is constitutionally necessary before any further search is attempted. For a discussion of warrantless searches of automobiles incident to an arrest, see infra notes 75-91 and accompanying text.
39. 399 U.S. at 47. See Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, 220 (1968) (evidence obtained from warrantless search of automobile at a time and place other than that of the arrest inadmissible in a criminal prosecution because police lacked probable cause to search); Preston v. United States, 376 U.S. 364, 367 (1964). Justice White noted that the situation in Chambers was different. "Here . . . the 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 station wagon which carried four men, one wearing a green sweater and another wearing a trench coat." 399 U.S. at 47.
40. 399 U.S. at 51. Chambers does not explain how or why the exigencies continued once the police had taken all of the suspects and the vehicle into custody. With the vehicle safely in police possession there was no chance that the evidence would disappear or be destroyed. A possible explanation is that a confederate of the suspects might gain access to the vehicle and remove or destroy the evidence.
ducted immediately after the car is stopped, or the car must be seized and held but not searched, until the police have a warrant in hand. Determining which option was the "greater" intrusion on fourth amendment values and which was the "lesser" proved to be a debatable proposition, with the majority concluding that for constitutional purposes there was no real difference between the two. "Given probable cause to search, either course is reasonable under the Fourth Amendment."

Chambers unquestionably expanded the concept of exigent circumstances. The Chambers rule states that if the Carroll criteria of probable cause and exigency are met on the highway, the police may legitimately conduct a warrantless search. This authority does not evaporate merely because the search occurs in a safer place. The Chambers rationale appears to be grounded on the generic mobility of automobiles as a class as opposed to the mobility of a particular car. Given this rationale, it was inevitable that the Court would eventually disagree on the scope of the Carroll-Chambers doctrine. That disagreement surfaced one year later in Coolidge v. New Hampshire.

41. Id
42. Id. at 52. Justice Harlan's dissent attacked the majority's premise that under the fourth amendment there is no qualitative difference between a search and a seizure. He argued that in the vast majority of criminal cases, the search itself is the greater fourth amendment intrusion because it has the potential to put the suspect behind bars. Since the suspect is already in custody, the seizure and immobilization of the car is only a minimal inconvenience. Id. at 63-64 (Harlan, J., concurring and dissenting).
43. Moylan, supra note 12, at 1004.
44. W. Ringel, supra note 12, §11.1(b) at 11-4. The generic mobility rationale does not require true exigent circumstances. Rather, it views the car as an inherently exigent item, and permits a warrantless search in circumstances where there is no danger that the evidence will disappear. See infra note 63, discussing the lack of any real exigency in Cardwell v. Lewis, 417 U.S. 583 (1974). One of the puzzling aspects of Chambers is that it abandons true exigent circumstances while simultaneously emphasizing exigency as the rationale for the automobile exception. "Only in exigent circumstances will the judgment of the police as to probable cause serve as sufficient justification for a [warrantless] search." 399 U.S. at 51. The reasoning in Chambers that the automobile exception is justified only by exigent circumstances but not necessarily by true exigent circumstances has caused considerable disagreement among the lower courts. See infra note 192. The Supreme Court has not directly addressed the issue of what constitutes exigent circumstances, and its previous attempts to define the limits of Chambers have only confused the issue. See infra text accompanying notes 64-74. At least one commentator has argued that the Chambers decision is responsible for the chaos surrounding the automobile exception and should be overruled. Grano, supra note 1, at 645-46.
45. 403 U.S. 443 (1971).
B. *The Scope of Carroll-Chambers Becomes Unclear: Coolidge and Cardwell*

Fourteen year old Pamela Mason left her home in the middle of a heavy snowstorm. Two days later, after a thaw, her body was found several miles from her home. The police obtained an arrest warrant and a warrant to search Coolidge's automobile on probable cause to believe that the car itself was evidence of the crime. Coolidge was arrested in his home. His car, which was parked in the driveway, was towed to the police station and searched on three separate occasions. Vacuum sweepings from the car indicated that it was highly probable that the young girl had been in the vehicle. Pretrial motions to suppress the evidence were denied, and a jury subsequently found Coolidge guilty.\footnote{Id. at 445-48.}

The Supreme Court reversed, holding that the search warrant was invalid because it had not been issued by a detached and neutral magistrate.\footnote{Id. at 471-73.} The Court also held that the automobile exception could not be used to justify the search.\footnote{Id. at 462.} The state had argued that *Carroll* permitted a warrantless search of an automobile whenever there was probable cause, and that under *Chambers*, whenever the police are permitted to make a *Carroll*-type search, they may also seize the vehicle and take it to the police station before conducting the search. A divided Court rejected the argument, stating that application of the *Carroll* doctrine to this case would extend the automobile exception far beyond its original rationale.\footnote{Id. at 458.} Justice Stewart, writing for the plurality, claimed that the underlying rationale

\footnote{Id. at 445-48.}
of the automobile exception is the constitutional difference between a house and a vehicle, and that a warrantless search of the latter is permissible only when it is not practical to obtain a warrant.\textsuperscript{50} The plurality emphasized that the \textit{Carroll-Chambers} exigencies arose because the car was stopped on the highway and the opportunity to search was fleeting.\textsuperscript{51} Because Coolidge’s car was parked in his driveway, the opportunity to search it was not “fleeting.”\textsuperscript{52} The Court stated that “[t]he word ‘automobile’ is not a talisman in whose presence the Fourth Amendment fades away and disappears,”\textsuperscript{53} and concluded that this was not a case where exigent circumstances made it impossible to obtain a warrant.

Three years later, in \textit{Cardwell v. Lewis},\textsuperscript{54} the Supreme Court issued its second plurality opinion regarding the scope of the automobile exception. In \textit{Cardwell}, the defendant was arrested for the murder of an accountant who had been hired by a third party to inspect the defendant’s business records. During the course of their investigation, the police towed the defendant’s car from a public lot to a police impoundment lot where they conducted a warrantless search of the exterior of the car. Paint samples and tire impressions taken during the search were introduced as evidence at the trial to link the defendant to the crime. The defendant was convicted of murder and the conviction was affirmed on appeal. The defendant subsequently filed a habeas corpus petition in federal court. The district court held that the warrantless search violated the fourth amendment and that the evidence obtained from the search should not have been admitted at trial.\textsuperscript{55}

The Supreme Court reversed, holding that the warrantless search of the car was reasonable because it was based upon probable cause and invaded no right of privacy protected by the fourth amendment.\textsuperscript{56} The plurality opinion had two premises. First, \textit{Cardwell} could be distinguished from other automobile searches because the case involved a search of only the exterior of the vehicle.\textsuperscript{57} Second, automobile searches are inherently dif-

\textsuperscript{50} \textit{Id.} at 459-60.
\textsuperscript{51} \textit{Id.} at 460. The Court listed several factors that indicated a lack of exigency. First, Coolidge had ample opportunity to destroy the evidence. Second, Coolidge gave no indication that he intended to flee even after he learned he was a suspect. Third, the police had known for some time that the car had played a role in the crime. Fourth, the case was distinguished because the car was parked on private property. \textit{Id.}
\textsuperscript{52} \textit{Id.}
\textsuperscript{53} \textit{Id.} at 461-62.
\textsuperscript{54} 417 U.S. 583 (1974).
\textsuperscript{55} \textit{Id.} at 588.
\textsuperscript{56} \textit{Id.} at 591-92.
\textsuperscript{57} \textit{Id.} at 588-89.
The Automobile Exception

Different from other searches and seizures because there is a lesser privacy expectation in an automobile; its main function is transportation, and it is seldom used as a residence or a place to store personal effects. Based upon these premises, the plurality concluded that no privacy interest had been violated and, therefore, the search of the car was reasonable.

The plurality then turned its attention to the question of whether the warrantless seizure of the car was constitutional. Again, it found no fourth amendment violation. The defendant argued that there were no exigent circumstances because probable cause had existed for some time prior to impoundment of the vehicle. Therefore, he claimed that the search of his vehicle was indistinguishable from the warrantless search the Court found unconstitutional in Coolidge. The plurality rejected the argument on the ground that Chambers and not Coolidge provided the pertinent case law. The Court stated that no case or principle suggested that failure to obtain a warrant at the first available moment foreclosed the reasonable seizure of a car under exigent circumstances. The Court also noted that, in automobile searches, an exigency can arise at any time, "and the fact that the police might have obtained a warrant earlier does not negate the possibility of a current situation's necessitating prompt police action."

58. Id. at 590. The Court cited Almeida-Sanchez v. Powell, 413 U.S. 266 (1973) for the proposition that "[t]he search of an automobile is far less intrusive on the rights protected by the fourth amendment than the search of one's person or of a building." Id. at 279. The Cardwell plurality reasoned that this lesser expectation of privacy can be attributed to the fact that the main function of an automobile is transportation, and that an automobile is seldom used as a dwelling or as a repository for personal possessions. When an individual operates an automobile, he or she exposes it to public view and the fourth amendment does not protect what a person knowingly exposes to the public. Katz v. United States, 389 U.S. 347, 351 (1967). The plurality in Cardwell was careful to point out that it had not stated that the interior of the automobile did not enjoy fourth amendment protection. "[T]he exercise of a desire to be mobile does not, of course, waive one's right to be free of unreasonable government intrusion. But insofar as Fourth Amendment protection extends to a motor vehicle, it is the right to privacy that is the touchstone of our inquiry." 417 U.S. at 591.

59. 417 U.S. at 592.
60. Id. at 593.
61. Id. The Court distinguished Coolidge on its facts; Coolidge's car had been taken from private property, while Cardwell's automobile was seized from a public lot.
62. Id. at 595.
63. Id. at 595-96. The plurality opinion does not mention the precise exigencies in this case. Indeed, there was no true exigency. The suspect was already under arrest so that access to the car was impossible. The exigencies of Chambers were not present since the exigency in that case stemmed from the fact that the vehicle had been stopped on the highway. The Cardwell car was parked. The only reference to a possible exigency is that at the time the suspect was arrested inside police headquarters, he knew that the car constituted potentially incriminating evidence against him. Testimony at the federal hearing revealed that the defendant asked his attorney to make sure that his wife got the car, and that the attorney only released the keys to the police in order to avoid a physical confrontation. 354
Carroll, Chambers, Coolidge, and Cardwell are the primary automobile exception cases.\footnote{Texas v. White, 423 U.S. 67 (1975) (per curiam) is another automobile exception case. In a brief opinion the Court upheld the warrantless seizure of an automobile and the subsequent warrantless search at police headquarters. The situation in White was no different than that in Chambers, and the Court held that Chambers controlled. Id. at 68.} Carroll and Chambers state the rule; Coolidge and Cardwell are corollaries that attempt to define its scope. Under Carroll, probable cause combined with exigent circumstances give rise to an automobile exception to the fourth amendment.\footnote{Chambers holds that when police legitimately conduct a warrantless search under Carroll, they may remove the car to the police station before conducting the search.} The confusion surrounding the automobile exception arises from the Court's plurality efforts to define the outer boundaries of the rule. The Coolidge corollary is that the automobile exception applies only when probable cause is unforeseeable. If it is sufficiently foreseeable that probable cause exists, then the failure to obtain a warrant will not be excused.\footnote{Under Coolidge, the constitutionality of an automobile search depends upon a judicial preference.}

The opinion does not address the fact that in reality there was no opportunity to remove the car for the simple reason that the police were in possession of the keys. The dissenting opinion presents a very convincing analysis of the lack of exigency. \footnote{F. Supp. at 33. The Cardwell plurality concluded therefore that "the incentive and potential for the car's removal substantially increased." 417 U.S. at 595.}

The confusion surrounding the automobile exception arises from the Court's plurality efforts to define the outer boundaries of the rule. The Coolidge corollary is that the automobile exception applies only when probable cause is unforeseeable. If it is sufficiently foreseeable that probable cause exists, then the failure to obtain a warrant will not be excused. Under Coolidge, the constitutionality of an automobile search depends upon a judicial preference.

There are many automobile search cases that appear to be automobile exception cases but actually are not. Whether the Supreme Court sustained or invalidated the particular searches depended upon factors other than the probable cause plus exigency elements of the automobile exception rule. See, e.g., Delaware v. Prouse, 440 U.S. 648 (1979) (random stop of vehicle to check for driver's license and registration); South Dakota v. Opperman, 428 U.S. 364 (1976) (routine inventory search of vehicle impounded for parking violations); Cady v. Dombrowski, 413 U.S. 433 (1973) (standard police practice); Harris v. United States, 390 U.S. 234 (1968) (protection of the car itself); Cooper v. California, 386 U.S. 58 (1967) (car subject to forfeiture proceedings). The most recent case is Michigan v. Thomas, 73 L. Ed. 2d 750 (June 28, 1982) (per curiam) (absence of exigent circumstances does not preclude the warrantless search of a vehicle after the police have discovered contraband and are conducting a legitimate inventory search). The common characteristic which removes these cases from the automobile exception is that in none of them were the police actually seeking the incriminating evidence they found; the police were inspecting the car for reasons other than probable cause. Search incident to arrest and consent searches are also outside the automobile exception. For a discussion of these cases see supra note 11.

\footnote{See supra note 12 and accompanying text.}
for obtaining a warrant prior to the search.\textsuperscript{68}

If this corollary states the limits that the Court had in mind for the proper scope of the automobile exception, Cardwell gives contradictory signals. The Cardwell corollary is that foreseeable probable cause does not negate an otherwise valid warrantless search.\textsuperscript{69} Under Cardwell the constitutionality of a warrantless search depends on the reasonableness of the search itself, not on the reasonableness of obtaining a warrant.\textsuperscript{70}

Thus, Coolidge and Cardwell contradict each other on the scope of the automobile exception.\textsuperscript{71} When probable cause is foreseeable, Coolidge requires a warrant.\textsuperscript{72} Under Cardwell, foreseeable probable cause does not necessarily prohibit a warrantless search.\textsuperscript{73} There is no convincing way to reconcile the two plurality opinions. A possible explanation is that no principle had emerged delineating the scope of the automobile exception to which a majority could subscribe. The Coolidge plurality emphasized that once the Carroll criteria were met, the reasonableness of the search depended upon a subsequent reasonable opportunity to procure a warrant. The Cardwell plurality emphasized that once the Carroll criteria were met, the reasonableness of the ensuing search alone determined its constitutionality.\textsuperscript{74}

II. THE CONFUSION CONTINUES: SEARCH INCIDENT TO ARREST IMPROPERLY EQUATED WITH THE AUTOMOBILE EXCEPTION

The automobile exception is only one of several exceptions to the fourth amendment that permit a warrantless search of a vehicle.\textsuperscript{75} The search incident to arrest exception is often confused with the automobile excep-

\textsuperscript{68} See Moylan, supra note 12, at 1006. The corollary arises from the Coolidge plurality's unstated linkage of the two clauses of the fourth amendment. The first clause mandates that all searches be reasonable, the second states the warrant requirement. The unstated premise of Coolidge is that where it is reasonable for the police to secure a warrant and they fail to do so, any search of the automobile is unreasonable and therefore unconstitutional. Clearly, this unstated premise serves to emphasize the reasonableness of obtaining a warrant over the reasonableness of the search itself.

\textsuperscript{69} 417 U.S. at 595.

\textsuperscript{70} See id. at 592-93.

\textsuperscript{71} W. Ringel, supra note 12, § 11.1(b) at 11-5.

\textsuperscript{72} See Coolidge, 403 U.S. at 460.

\textsuperscript{73} See Cardwell, 417 U.S. at 595.

\textsuperscript{74} See supra note 68 and accompanying text. The tension between these two schools of thought is discussed infra notes 213-227 and accompanying text.

\textsuperscript{75} See supra note 11. The search of an automobile incident to a valid arrest is a very small part of the general search incident to arrest doctrine. For a thorough discussion of search incident to arrest in settings other than automobile cases see W. LaFave, supra note 11, at § 6.4.
tion,\textsuperscript{76} thus leading to poor fourth amendment analysis. The confusion arises because the two exceptions are sometimes improperly equated when the area searched happens to be an automobile. The fact that the area searched is an automobile, however, is irrelevant to the search incident to arrest doctrine.

The immateriality of the existence of a vehicle is underscored by the fact that \textit{Chimel v. California},\textsuperscript{77} the leading case governing search of an automobile incident to arrest, did not concern an automobile search. In \textit{Chimel}, the defendant was arrested in his home on charges of burglarizing a coin shop. The defendant refused to consent to a search of the premises, but was advised that the arresting officers would search nevertheless as a search incident to the arrest. The police searched the entire house and on several occasions directed the defendant’s wife to open drawers and move the contents from side to side. The defendant was convicted, partially on the basis of the evidence taken from the warrantless search of his home. The appellate court affirmed, holding that the evidence was properly admissible under the search incident to arrest exception to the warrant requirement.\textsuperscript{78}

Holding that a valid warrantless search incident to arrest was limited to a search of the arrestee’s person and to the area within his immediate control, the Supreme Court reversed.\textsuperscript{79} Justice Stewart, who wrote the majority opinion, took pains to define what he meant by “immediate control” and construed it “to mean the area from within which he might gain possession of a weapon or destructible evidence.”\textsuperscript{80} Justice Stewart articulated two reasons for limiting the scope of the search incident to arrest. First, it is reasonable to search the person for any weapons that might be used to resist arrest, effect an escape, or harm the arresting officer. Second, it is also reasonable to search the person for any evidence that might be concealed or destroyed. Similar reasons governed the potential area an arrestee might be able to reach to grab a weapon or evidence.\textsuperscript{81} The Court noted that there was no comparable justification for extending the warrantless search beyond the immediate control zone. Any search beyond this area would have to be conducted pursuant to a warrant, or if there was no warrant, the justification would have to be provided by one of the ex-

\begin{itemize}
  \item \textsuperscript{76} Moylan, \textit{supra} note 12, at 1012.
  \item \textsuperscript{77} 395 U.S. 752 (1969).
  \item \textsuperscript{78} \textit{Id}. at 754.
  \item \textsuperscript{79} \textit{Id}. at 763.
  \item \textsuperscript{80} \textit{Id}.
  \item \textsuperscript{81} \textit{Id}.
\end{itemize}
ceptions to the warrant requirement other than search incident to arrest.\textsuperscript{82}

The search incident to arrest exception has two elements. The first, limiting the scope of the search to the \textit{Chimel} immediate control zone, has already been discussed. The second element requires that a warrantless search be contemporaneous with the arrest. A search conducted at a time and place other than the arrest is unconstitutional, and any evidence obtained therefrom is inadmissible in a subsequent trial.\textsuperscript{83}

There can be little doubt that the \textit{Chimel} doctrine applies to the search of an automobile.\textsuperscript{84} Indeed, the Court noted that the \textit{Chimel} rationale was the underpinning of an earlier decision in an automobile search case.\textsuperscript{85} \textit{Chimel} also stated that the search incident limitations were entirely consistent with the automobile exception.\textsuperscript{86} Prior to \textit{Chimel}, it was generally accepted that the entire vehicle could be searched incident to arrest, including the trunk area.\textsuperscript{87} The automobile exception was therefore infrequently used, and then primarily in prohibition cases.\textsuperscript{88} The practical effect of \textit{Chimel}, with its immediate control zone, was to restrict the use of the search incident doctrine in automobile cases. Consequently, the automobile exception was relied upon more frequently after \textit{Chimel}. Indeed, it was only one year after \textit{Chimel} that the Court gave a boost to the automobile exception in \textit{Chambers} by expanding the exigent circumstances portion of that rule.\textsuperscript{89}

Perhaps the post-\textit{Chimel} surge in the use of the automobile exception is at the root of the tendency to confuse the automobile exception with the search incident to arrest exception. Nevertheless, each proceeds on wholly

\textsuperscript{82} \textit{Id.}


\textsuperscript{85} \textit{Chimel}, 395 U.S. at 763 (citing \textit{Preston v. United States}, 376 U.S. 364 (1964)). In \textit{Preston}, the Court held that the search incident to arrest exception could not justify the warrantless search of an automobile when the search was remote in time and place from the arrest. The Court reasoned that the rationale of the search incident to arrest doctrine, i.e., the need to seize weapons that might be used to either assault an officer or effect an escape, and the need to prevent destruction of evidence of the crime, is absent when the search takes place after the suspect is in custody. "Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to arrest." \textit{Preston}, 376 U.S. at 367 (citing \textit{Agnello v. United States}, 269 U.S. 20, 31 (1925)).

\textsuperscript{86} \textit{Chimel}, 395 U.S. at 764 n.9.

\textsuperscript{87} W. LAFAYE, supra note 11, § 7.2(b), at 511-12.

\textsuperscript{88} Id. See also \textit{Brinegar v. United States}, 338 U.S. 160 (1949); \textit{Scher v. United States}, 305 U.S. 251 (1938); \textit{Husty v. United States}, 282 U.S. 694 (1931).

\textsuperscript{89} Moylan, supra note 12, at 1004.
different theories and each requires a different set of inquiries. The automobile exception inquiry is twofold: first, there must be probable cause to believe that the car contains evidence of a criminal nature, and second, the situation must be such that it would be impractical to obtain a warrant. Arrest of the occupants is immaterial to the automobile exception.

Search incident to arrest analysis poses a different set of questions. First, is the arrest lawful, and second, is the search confined to the Chimel zone? Probable cause to believe that evidence of a crime will be found is immaterial, as is exigency. Even if both are lacking, a warrantless search incident to arrest will be constitutional. Conversely, under the automobile exception, if either is missing, the search is unconstitutional. The factual situation dictates the applicable exception, which in turn affects the extent of the search. Search incident to arrest constitutionally prohibits the search of a trunk, as it is beyond the permissible Chimel zone. On the other hand, a trunk search under the automobile exception is not so limited.

III. "Further Ventures Into the ‘Quagmire’": The Warrantless Search Within the Warrantless Search

A. Chadwick and Sanders

The Supreme Court did not have an opportunity to address the issue of whether a legitimate automobile search under Carroll-Chambers included the authority to search any closed containers found within the vehicle until the 1977 case of United States v. Chadwick. In Chadwick, federal agents in San Diego notified their counterparts in Boston that two people suspected of carrying marijuana in a footlocker had boarded a train bound for that city. Chadwick met the travelers at the station and they moved the footlocker to Chadwick’s automobile. The federal agents arrested all three while the trunk was still open, and before the car had been started. The District Court granted the defendants’ pretrial motion to suppress the evidence taken from the warrantless search of the footlocker.

The Supreme Court affirmed, holding that the fourth amendment protects the contents of a locked footlocker, and in the absence of exigent circumstances a magistrate must issue a warrant before any search can

90. Id. at 1012-15.
92. LaFave, Warrantless Searches and the Supreme Court, Further Ventures Into the "Quagmire", 8 CRIM. L. BULL. 9 (1972).
94. Id. at 5.
The Court reasoned that the acts of placing and locking personal effects into a footlocker manifested an expectation of privacy equal to that expressed in locking the doors of a home.\footnote{Id. at 11.}

The government argued that the protection of the fourth amendment extended only to items traditionally identified with the home, and that the rationale of the automobile exception should be extended by analogy to luggage placed in an automobile.\footnote{Id.} Writing for the majority, Chief Justice Burger rejected the analogy noting that while luggage and automobiles are both "effects"\footnote{Chadwick, 433 U.S. at 12.} under the fourth amendment, the significant differences between automobiles and other kinds of property permitted a warrantless search of the automobile.\footnote{Chadwick, 433 U.S. at 12 (quoting Cardwell v. Lewis, 417 U.S. 583, 590 (1974)). See Cady v. Dombrowski, 413 U.S. 433, 439-40 (1973) (quoting Chambers v. Maroney, 399 U.S. 42, 52 (1970)).} The most important distinction between an automobile and other types of property is the diminished expectation of privacy in the automobile.\footnote{Id. at 12 (quoting Katz v. United States, 389 U.S. 347, 351 (1967)). The Court also found that the fourth amendment particularly protects an individual's legitimate privacy expectations against all unreasonable government intrusion. Id.}

Individuals have a lesser expectation of privacy in an automobile because its main function is transportation and it is seldom used as a residence or repository for personal possessions. State registration and licensing requirements and codes regulating the use of motor vehicles also contribute to the lesser expectation of privacy in the automobile.\footnote{Chadwick, 433 U.S. at 13.}

Unlike automobiles, the privacy expectation in luggage is much higher; the contents of luggage are not open to public view, luggage is not subject to inspection at regular intervals, and it is not subject to official scrutiny.\footnote{Id.} In addition, the Chief Justice noted that the mere mobility of luggage does not nullify fourth amendment protection. The Chief Justice observed that this is especially true where, as in \textit{Chadwick}, the warrantless seizure was valid and police custody had rendered the suitcase immobile.\footnote{Id. at 12 (quoting Cardwell v. Lewis, 417 U.S. 583, 590 (1974)). See Cady v. Dombrowski, 413 U.S. 433, 439-40 (1973) (quoting Chambers v. Maroney, 399 U.S. 42, 52 (1970)).} In short, the two policy reasons behind the automobile exception—the inherent mobility and lesser privacy expectation—do not apply to luggage. The Court, therefore, concluded that the warrantless search of the footlocker was un-
reasonable, and thus unconstitutional.\textsuperscript{104}

The \textit{Chadwick} Court addressed only the issue of whether luggage was sufficiently analogous to automobiles to merit extending the \textit{Carroll-Chambers} line of reasoning. The Court did not discuss the question of whether the scope of a legitimate automobile exception search also carried with it the authority to conduct a warrantless search of closed containers found during the search. Up to this point, all of the Court's rulings pertained only to the warrantless search of some integral part of the car itself.\textsuperscript{105} The warrantless search within the warrantless search, however, was squarely presented to the Court in \textit{Arkansas v. Sanders}.\textsuperscript{106}

In \textit{Sanders}, a reliable informant told the police that Sanders would be arriving at the Little Rock airport with a green suitcase containing marijuana. Sanders met an accomplice who placed the suitcase in the trunk of a waiting taxi. Police officers stopped the taxi several blocks from the airport and requested that the driver open the trunk. The police found ten plastic bags of marijuana in the unlocked suitcase. The trial court denied Sanders' motion to suppress the evidence, and he was convicted of possession of marijuana with intent to deliver.\textsuperscript{107} The Supreme Court of Arkansas reversed on the basis of the \textit{Chadwick} and \textit{Coolidge} holdings.\textsuperscript{108}

The Supreme Court of the United States affirmed, holding that absent exigent circumstances, the police must obtain a warrant before searching any luggage taken from an automobile even when the automobile itself is searched legitimately under the \textit{Carroll} criteria.\textsuperscript{109} The Court reasoned that luggage is a repository for personal effects and therefore "inevitably associated with the expectation of privacy."\textsuperscript{110} The Court refused to extend the scope of the automobile exception to include luggage merely because the owner happens to put it in an automobile.

The Court noted that it had sustained warrantless searches under \textit{Carroll} and \textit{Chambers}, but that only two years earlier \textit{Chadwick} had held that a footlocker taken from the trunk of an automobile could not be searched lawfully without a warrant. Thus, the Court had to decide whether the luggage in \textit{Sanders} was more similar to the car in \textit{Carroll-Chambers} or

\textsuperscript{104} \textit{Id}. at 11.
\textsuperscript{106} 442 U.S. 753 (1979).
\textsuperscript{107} \textit{Id}. at 756.
\textsuperscript{108} 559 S.W.2d 704 (Ark. 1977).
\textsuperscript{109} 442 U.S. at 766.
\textsuperscript{110} \textit{Id}. at 762.
more similar to the footlocker in Chadwick.\textsuperscript{111} The State argued that Carroll controlled because, unlike Chadwick, the vehicle in Sanders was in motion when the police stopped it and the suitcase was not locked. The Court rejected the State's argument despite the valid Carroll search. The Court, echoing Chadwick, noted that the automobile exception permits a warrantless search of an automobile for two reasons: the lesser expectation of privacy in the automobile itself,\textsuperscript{112} and the inherent mobility of automobiles which often makes compliance with the warrant process impracticable.\textsuperscript{113} The Court stated that neither of these reasons applies to luggage. The Court reasoned that the first justification of the automobile exception was inapplicable because there is a higher privacy expectation in luggage than in a car. The purpose of a suitcase is to transport personal property, and one is not less likely to put personal property in a suitcase simply because it is to be carried in an automobile.\textsuperscript{114} Similarly, the Court acknowledged that a suitcase is just as mobile as the car in which it rides, but noted that Chadwick requires the exigency of mobility to be assessed immediately before the search, i.e., "after the police have seized the object to be searched and have it clearly within their control."\textsuperscript{115} Once the police have control of the suitcase it cannot be said to pose an exigency simply because it was taken from an automobile. The Court stated that "as a general rule there is no greater need for warrantless searches of luggage taken from automobiles than of luggage taken from other places."\textsuperscript{116} Thus, the Court chose Chadwick rather than Carroll-Chambers as the departure point for analyzing the warrantless search within the warrantless search. In short, the Court held that luggage, when placed in an automobile, is an exception to the automobile exception; the fourth amendment protects it as fully as luggage found elsewhere.\textsuperscript{117}

Justice Blackmun dissented, noting that the Court's journey down the Chadwick road would only create more confusion for all involved in the criminal process: police, prosecutors, suspects, and the courts themselves. He claimed that the majority's principles were opaque\textsuperscript{118} and stated that

\textsuperscript{111} Id. at 757.
\textsuperscript{113} 442 U.S. at 757 (citing Chambers v. Maroney, 399 U.S. 42, 49-50 (1970); Carroll v. United States 267 U.S. 132, 153 (1925)).
\textsuperscript{114} Id. at 764.
\textsuperscript{115} Id. at 763 (citing Chadwick, 433 U.S. at 13).
\textsuperscript{116} Id. at 763-64.
\textsuperscript{117} Id.
\textsuperscript{118} Id. at 771 (Blackmun, J., dissenting).
“[s]till hanging in limbo, and probably soon to be litigated, are the briefcase, the wallet, the package, the paper bag, and every other kind of container.” Justice Blackmun’s prediction proved to be accurate; the courts did have problems applying Chadwick-Sanders and found themselves making worthy-unworthy container distinctions, with some courts extending fourth amendment protection only to the former. Simultaneously, the courts were experiencing difficulty in determining the scope of the search incident to arrest exception when the search happened to involve an automobile. To resolve the uncertainties surrounding the constitutional boundaries of both the automobile exception and the search incident to arrest exception, the Court heard the companion cases of Robbins v. California and New York v. Belton.

B. Robbins and Belton

In Robbins, the California Highway Police smelled marijuana smoke when they stopped a meandering station wagon. A search of the passenger compartment produced marijuana and drug paraphernalia. The police put Robbins in the squad car and returned to the station wagon where they opened the tailgate and uncovered a recessed luggage compartment containing a totebag and two packages wrapped in green opaque plastic. Each package contained fifteen pounds of marijuana. Robbins’ pretrial motion to suppress the evidence was denied and he was convicted by the jury of various drug offenses. The Supreme Court granted certiorari in order to address the continuing confusion surrounding the warrantless search within the warrantless search. The Court reversed, holding that the opening of the green plastic packages without a warrant was unconstitutional. Justice Stewart, writing for the plurality, rejected the worthy-unworthy container distinction as having no basis in either the language or

119. Id. at 768.
120. The worthy-unworthy container distinction was a tremendous source of judicial disagreement. The cases confirm the fact that Sanders confused rather than clarified the container issue. For a discussion of at least 70 cases on containers ranging from wallets to cigar boxes, as well as plastic, paper, and burlap bags, see United States v. Ross, 655 F.2d 1159, 1174-76 nn.3 & 4 (D.C. Cir. 1981) (Tamm, J., dissenting in part) (en banc).
121. Compare cases holding constitutional a warrantless search of an automobile as incident to lawful arrest, i.e., United States v. Sanders, 631 F.2d 1309 (8th Cir. 1980); United States v. Dixon, 558 F.2d 919 (9th Cir. 1977); United States v. Frick, 490 F.2d 666 (5th Cir. 1973) with cases holding similar searches unconstitutional, i.e., United States v. Benson, 631 F.2d 1336 (8th Cir. 1980); United States v. Rigales, 630 F.2d 364 (5th Cir. 1980).
purpose of the fourth amendment.\(^{125}\)

The government's amicus brief argued that the Chadwick-Sanders higher expectation of privacy rule should be limited to luggage-type containers because they are normally used to transport "personal effects."\(^{126}\) The plurality rejected the notion that the right to privacy turned on the type or durability of container used, noting that the fourth amendment "protects people and their effects . . . whether . . . 'personal' or 'imper-
sonal.'"\(127\) Justice Stewart reasoned that placing objects in an opaque container and closing it are acts that manifest an expectation that the contents will remain private, thereby making them immune from warrantless searches, and stated that "[o]nce placed within such a container, a diary and a dishpan are equally protected by the Fourth Amendment."\(^{128}\) In addition, the Court noted that even if a worthy-unworthy container distinction could be read into the amendment, it would be impossible to administer because "[w]hat one person may put into a suitcase another may put into a paper bag."\(^{129}\)

The plurality explained that portion of Sanders which stated that the fourth amendment does not fully protect all containers and packages found during a lawful Carroll search.\(^{130}\) The Court made it clear, however, that only two types of containers are excused from the Chadwick-Sanders rule: an open container, and a container so distinctive that it allows the police reasonably to infer its contents.\(^{131}\) Justice Stewart noted that the green plastic wrapping in the instant case did not fit either category,\(^{132}\) and thus held that opening the packages without a warrant was unconstitutional.\(^{133}\)

The Court used Robbins as its vehicle for holding that the right to privacy would not be confined to luggage and would not turn on the durability of the container. The rule of Robbins was simple and straightforward: the warrantless search within the warrantless search is unconstitutional. Noticeably absent from the opinion is any discussion of the search of the

\(^{125}\) Id. at 426.

\(^{126}\) Id. at 425 (i.e., "property worn on or carried about the person or having some intimate relation to the person").

\(^{127}\) Id. at 426.

\(^{128}\) Id.

\(^{129}\) Id. (citing United States v. Ross, 655 F.2d 1159 (D.C. Cir. 1981) (en banc)).

\(^{130}\) Id. at 427 (citing Robbins, 442 U.S. at 764 n.13).

\(^{131}\) Id. The Court noted that the plain view exception to the warrant clause justified the warrantless search of these items.

\(^{132}\) 453 U.S. at 428.

\(^{133}\) See id. at 426.
passenger compartment of Robbins' car.\textsuperscript{134} The search of the passenger compartment involved no containers, but the fact that it was searched while Robbins was outside the vehicle raised a real question as to whether the search of this area exceeded the \textit{Chimel} immediate control zone. The lack of discussion on this point is not an oversight; rather, it is the Court's careful attempt to keep search incident to arrest and the automobile exception separate. The Court reserved its discussion of the proper scope of the search incident to arrest exception, as it pertains to automobiles, to the companion case of \textit{New York v. Belton.}\textsuperscript{135}

In \textit{Belton}, a state trooper stopped a speeding car and noticed an envelope on the floor marked "Supergold."\textsuperscript{136} The trooper ordered all four men from the car and physically separated them from each other and from the car. He then opened the envelope and found it contained marijuana. He arrested the men and went back to the car to search the passenger compartment. A black leather jacket belonging to Belton, one of the arrestees, was on the back seat. The trooper unzipped one of the pockets and discovered heroin. The trial court denied Belton's motion to suppress the evidence taken from his jacket.\textsuperscript{137} Belton then pleaded guilty to a lesser offense but preserved his fourth amendment claim.\textsuperscript{138} The New York Court of Appeals reversed, holding that the search incident to arrest had exceeded the \textit{Chimel} zone because there was no danger that any of the arrestees could have reached the jacket.\textsuperscript{139} The Supreme Court reversed, holding that when an automobile is searched incident to arrest, the entire passenger compartment, including any containers present, is within the \textit{Chimel} zone of immediate control.\textsuperscript{140}

Justice Stewart, writing for the majority, noted that although the principles behind \textit{Chimel} (the safety of the arresting officer and the preservation of destructible evidence) could be stated clearly, the lower courts had found the principles difficult to apply in specific instances.\textsuperscript{141} The Court

\begin{itemize}
\item\textsuperscript{134} \textit{Robbins} is a good illustration of how the automobile exception and the search incident to arrest exception can overlap and cause confusion. The police inspected both the trunk and the passenger compartment of Robbins' vehicle. The green plastic packages were in the trunk and obviously beyond the \textit{Chimel} zone. Thus, search incident to arrest did not apply. The automobile exception would have justified the search of the trunk only if the Court had accepted the worthy-unworthy container concept.
\item\textsuperscript{135} 453 U.S. 454 (1981).
\item\textsuperscript{136} The trooper associated the word "Supergold" with marijuana. \textit{Id.} at 456.
\item\textsuperscript{137} \textit{Id.}
\item\textsuperscript{138} \textit{See} Lefkowitz v. Newsome, 420 U.S. 283 (1975).
\item\textsuperscript{139} 453 U.S. at 456.
\item\textsuperscript{140} \textit{Id.} at 460.
\item\textsuperscript{141} \textit{Id.} at 458. Justice Stewart noted that no straightforward rule had emerged from the litigated cases. \textit{See supra} note 121 and accompanying text.
\end{itemize}
stated that a reading of the prior cases suggested the generalization that "articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within [the Chimel zone]." The authority to search containers followed automatically once the Court had defined the Chimel automobile zone. Justice Stewart acknowledged a privacy interest in containers, but noted that the lawful custodial arrest justified infringement of that interest. The Court concluded that because Belton's jacket was inside the passenger compartment the search was within the Chimel zone, and was therefore constitutional.

Belton and Robbins articulate clear, easily applicable rules. Belton held that the search of an automobile under the search incident to arrest exception includes the entire passenger compartment. Robbins held that a search under the automobile exception does not include the authority to search closed containers. Belton expanded the search incident to arrest exception, at least as it pertains to automobiles; Robbins constricted the automobile exception. The rule of Robbins is just as easy to apply as Belton, yet its strength is somewhat diminished because it is yet another plurality opinion in the troubled automobile exception area. With no clear majority support, it was questionable how long the rule of Robbins would survive. The Supreme Court answered that question only a year later in United States v. Ross.

IV. RETHINKING THE CLARIFICATION: United States v. Ross

In Ross, a reliable informant told the District of Columbia Police that a man named "Bandit" was selling narcotics from the trunk of a "purplish-maroon" automobile. The informant stated that he had just witnessed "Bandit" complete a sale, and that "Bandit" had told him he had more drugs in the car. A detective and two other policemen immediately drove to the scene and found the car. The police drove through the neighborhood twice, but did not see anyone matching Ross' description. The police

142. 453 U.S. at 460.
143. Id. at 461. The Court distinguished the container cases on the ground that they did not involve the search incident to arrest exception.
144. Id. at 462. The Court made clear that the rule applied to all containers whether open or closed, as well as luggage, boxes, and bags. The Court, however, refused to extend the Belton rule to the trunk of the car. Id. at 460-61 n.4.
145. Id. at 460.
146. 423 U.S. at 428.
147. 102 S. Ct. 2157 (1982).
148. A license check revealed that Albert Ross, Jr., owned the car; a computer check confirmed that Ross' alias was "Bandit."
left the neighborhood to avoid arousing suspicion, but returned five minutes later, in time to see a vehicle matching the description of the car they were looking for turn the corner. The police stopped the car, searched it, and found a bullet on the front seat and a revolver in the glove compartment. They took Ross’ keys and opened the trunk, where they found a closed but unsealed brown paper sack about the size of a lunch bag. The police opened the paper sack and found glassine bags containing a white powder. The car was searched again at headquarters where the police opened a red leather zippered pouch and found $3,200 in cash. At no point did the police obtain a search warrant. Ross’ pretrial motion to suppress the evidence was denied after an evidentiary hearing. The heroin and currency were both accepted into evidence at trial, and Ross was convicted of possession of heroin with intent to distribute.\textsuperscript{4}

On appeal, the Supreme Court held that a legitimate Carroll-Chambers search included the authority to search any movable containers found in the automobile. The Court reasoned that the scope of the automobile exception is defined by the object of the search itself, and the places in which there is probable cause to believe evidence will be found.\textsuperscript{5} The majority opinion retraced the reasoning of Carroll, noting that Carroll emphasized probable cause as an essential element of the automobile exception.\textsuperscript{6} The Court concluded that the rationale of the automobile exception applies equally to any closed container found during a legitimate Carroll search.\textsuperscript{7} The Court used a three-pronged analysis in Ross to support its conclusion: the scope of the warrant clause, precedent, and analogy.

The warrant clause limits the scope of a constitutional search by requiring that every search warrant “particularly describ[e] the place to be searched and the . . . things to be seized.”\textsuperscript{8} The Court noted that in both Carroll and Chambers the police had probable cause to believe that the respective automobiles contained illicit objects, but in neither case was the evidence in plain view.\textsuperscript{9} Justice Stevens, writing for the majority, stated

\textsuperscript{149} 102 S. Ct. at 2158-59.
\textsuperscript{150} Id. at 2169-72.
\textsuperscript{151} Id. at 2163-64. The Court argued that Carroll itself emphasized the probable cause requirement, pointing to the maxim that “where the securing of a warrant is reasonably practicable, it must be used . . . .” Carroll, 267 U.S. at 156.
\textsuperscript{152} 102 S. Ct. at 2172.
\textsuperscript{153} See supra note 3.
\textsuperscript{154} In both Carroll and Chambers the contraband was secreted in an integral part of the car itself rather than in a container. The bootleg liquor in Carroll was found only after the police had ripped open the seat cushions, while the fruits of the Chambers crime were found in a concealed compartment under the dashboard. See Carroll, 267 U.S. at 136; Chambers, 399 U.S. at 44.
that the *Carroll* search was reasonable since it was based upon probable cause and did not exceed the area a magistrate could have authorized to be searched, had a warrant been issued particularly describing the place to be searched and the things to be seized. Justice Stevens applied the same reasoning to *Chambers* and hypothesized a situation under both *Carroll* and *Chambers* where the object of the search was in a closed container, thus presenting a warrantless search within a warrantless search question. The Court reasoned that it would be illogical to assume that the result in either case would have been different, stating that since it was reasonable to tear open the upholstery in *Carroll*, it would have been equally reasonable to open a hypothetical burlap bag found inside. The Court concluded that "a contrary rule could produce absurd results inconsistent with . . . *Carroll* itself," and observed that any other reading of the automobile exception would nullify the practical consequences of *Carroll*, because contraband by its very nature is usually shielded from public view. The Court underscored its point by emphasizing the statement in *Carroll* that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched without a warrant.

The *Ross* Court analogized a closed container search in an automobile to a search of fixed premises. A lawful fixed premises search is generally not limited by the fact that separate acts of entry or opening may be necessary to complete the search. Justice Stevens contended that in a legitimate search, the distinctions between a closed container found in a home and one found in an automobile must give way to the completion of the task at hand. Justice Stevens also indicated his agreement with that por-

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155. 102 S. Ct. at 2169.
156. Id.
157. Id.
158. Id. at 2170. The Court reasoned that the practical considerations allowing the warrantless search of the automobile continue to exist for as long as it takes to complete the search of the car and its contents. The majority conceded the feasibility of procuring a warrant to open any closed containers found during a *Carroll* search. However, the majority argued that such a rule would only exacerbate the intrusion on the right to privacy by forcing the police to first comb the entire vehicle rather than immediately opening the single container most likely to hold the object of the search. *Id.* at 2171 n.28.
159. *Id.* at 2170 (citing *Carroll*, 267 U.S. at 153 (emphasis in Court opinion)).
160. *Id.* at 2170 (as cited in W. *LaFave, supra* note 11, § 4.10, at 152 (quoting Massey v. Commonwealth, 305 S.W.2d 755 (Ky. 1957))).
161. Justice Stevens wrote that:

When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.

*Id.* at 2170-71.
tion of the Robbins rationale that rejected the worthy-unworthy container distinction as being against the central purpose of the fourth amendment. The Court stated that the new container rule must likewise apply to all containers found during an automobile exception search. The majority acknowledged that the fourth amendment protects closed containers, but noted that the protection varies with the circumstances. For example, luggage can be inspected by customs officials, and the police can search a container carried at the time of arrest despite the owner's desire to keep the contents private. Similarly, the Court reasoned that the privacy expectation in a car and its contents must give way where probable cause exists. Thus, the Court concluded that the scope of the automobile exception search is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe it will be found.

Justice Marshall, joined by Justice Brennan, dissented, arguing that the majority opinion was not grounded in the automobile exception rationale, that reliance on Carroll for the scope of the automobile exception was misplaced, and that the opinion was contrary to the letter and spirit of the automobile exception cases.

Justice Marshall argued that the majority erroneously relied on Carroll for the premise that the scope of the automobile exception is as broad as the search a magistrate could authorize by warrant. He referred to the

162. Id. at 2171.
163. Id.
164. Id. at 2172. Finally, the Court noted that Ross is inconsistent with Robbins and with that portion of Sanders on which the Robbins plurality relied, but stated that the doctrine of stare decisis did not preclude its present holding because the plurality rule in Robbins had never enjoyed majority support. The Court noted that it was adhering to the holding of Sanders, rejecting only its reasoning. The Court distinguished Chadwick and Sanders by noting the limitations it had placed on Ross in order that Ross would not conflict with these precedents. In Chadwick and Sanders the police did not have probable cause to search the entire vehicle because the police already suspected that Chadwick's footlocker and Sanders' green suitcase were the particular containers carrying drugs. In Ross, the Court argued that the police did have probable cause to search the entire vehicle because they did not have a suspicion as to the precise location of the drugs. Id. at 2168. Therefore, Chadwick and Sanders were distinguished as limiting the scope of a Ross search only when the police suspect the precise location of the contraband. The Court stated that "just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase." Id. at 2172.
165. Justice White dissented separately on the ground that Robbins should not be overruled. He indicated his agreement with much of Justice Marshall's dissent. Id. at 2173 (White, J., dissenting).
166. Id. at 2176-77. The dissent restated the familiar rationales of probable cause plus
majority premise as a sleight of hand that "assumes what has never been the law," and one that ignores the obvious distinction between the function of the magistrate and the function of the automobile exception. The dissenters noted that the magistrate's sole concern is to determine whether the probable cause, as the police relate it, is sufficient to merit a warrant. Exigent circumstances, such as the mobility of the container or the possibility that evidence will be destroyed or removed from the jurisdiction, are irrelevant to the magistrate's evaluation of probable cause. In contrast, a police search under the automobile exception has two concerns; probable cause and exigent circumstances. Only when the threshold criteria are met may the police proceed without a warrant. Thus, the dissent argued that the scope of the automobile exception actually is narrower than the scope of the search that a magistrate could authorize. The dissent concluded that "the scope of a warrantless search should depend on the scope of the justification for dispensing with a warrant," and since containers do not present exigent circumstances the majority's premise failed to support its conclusion.

The majority opinion was also criticized for the statement that Carroll and Chambers supported the new container rule. The dissent argued that the Court had previously allowed warrantless searches of integral compartments of cars, but not containers, because an integral compartment is just as mobile as the car itself. The exigent circumstances rationale, therefore, justified a search of these compartments. The same cannot be said of containers, however. Justice Marshall reasoned that "[t]he fact that there may be a high expectation of privacy in both containers and compartments is irrelevant, since the privacy rationale is not, and cannot be, the justification for the warrantless search of compartments." The diss

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167. Id.
168. See id. at 2176-77. The dissent noted that the majority premise would have changed the result in Coolidge, where the Court held that probable cause alone was not sufficient to search an automobile without having the magistrate issue a warrant.
169. Id. at 2177 (emphasis in original).
170. Id.
171. Id. at 2179.
172. Id.
sent concluded, therefore, that a rule which permits the warrantless search of integral compartments while excluding containers is not "illogical" and "absurd," as the majority suggested.\(^\text{173}\)

The dissent also attacked the majority's argument that the new container rule preserves the practical consequences of *Carroll*. Justice Marshall conceded that there are practical problems in seizing and storing automobiles, but argued that the practical problems of securing a container found during a *Carroll* search and taking it to a magistrate simply do not rise to the same level. He contended that the majority implicitly conceded this point when it cited *Chadwick* with approval as reaffirming the general principle that closed containers may not be opened without a warrant.\(^\text{174}\)

Justice Marshall characterized the majority's effort to reconcile *Ross* with *Chadwick* and *Sanders*\(^\text{175}\) as one which would have "peculiar and unworkable consequences."\(^\text{176}\) He argued that simply because the police have been able to localize their suspicion to a particular container in a car, that container is not more private and more subject to the warrant requirement than containers found when the police have only a more generalized suspicion and must search the entire car to find the contraband.\(^\text{177}\) The dissent therefore concluded that the only explanation for the new container rule was expediency, and argued that it is well established that "the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment."\(^\text{178}\)

**V. Expediency Trumps Exigency**

*Sanders, Robbins,* and *Ross* all focused on the warrantless search of closed containers found during a legitimate automobile exception search. *Sanders* was limited to "personal luggage taken . . . from automobiles,"\(^\text{179}\) suggesting that the nature of the container determined the scope of the automobile exception. Only high privacy containers were

\(^{173}\) *Id.*

\(^{174}\) See *id.* (citing opinion of the Court at 2169).

\(^{175}\) See *supra* note 164.

\(^{176}\) 102 S. Ct. at 2180 (Marshall, J., dissenting).

\(^{177}\) *Id.* at 2179-80. Alternatively, the dissent pointed out that the majority's effort to square *Ross* with *Chadwick* and *Sanders* may have suggested that where probable cause is foreseeable, the police may not wait until the container is placed in the car and then take advantage of the automobile exception. *Id.* at 2180. The dissent argued that the exception carved out in *Ross* for localized suspicion containers might well turn out to swallow the majority's new container rule and charged that the majority's reasoning hardly clarified this area of the law. *Id.*

\(^{178}\) *Id.* at 2181 (quoting Mincey v. Arizona, 437 U.S. 385, 393 (1978)).

\(^{179}\) 442 U.S. at 765.
put beyond its pale. The Court's purpose in granting certiorari in Robbins was to alleviate the uncertainty created by Sanders. Once the Court held, as it did in Robbins, that the warrant clause protected all closed containers, the next logical step was to exclude them from the reach of the automobile exception. While Ross also rejected the worthy-unworthy container argument, it held that the automobile exception reaches all containers found therein, and is, therefore, diametrically opposed to Sanders-Robbins. The import of this is that under Sanders and Robbins, no container found during an automobile exception search may be opened without a warrant, while under Ross, all such containers may be opened without a warrant. The difference is explained by the different analytical frameworks.

A. The Ross Framework

Ross stated that Carroll did not define the scope of the automobile exception, but suggested that its nature and scope is nonetheless contained within the Carroll opinion. Ross construed the statement in Carroll which requires that "[i]n cases where the securing of a warrant is reasonably practicable, it must be used," to mean that Carroll had emphasized probable cause. Thus, Ross concluded that the automobile exception "applies only to searches of vehicles that are supported by probable cause," but nowhere mentioned exigent circumstances as an element of the automobile exception. This omission raises the question of whether Ross completely eliminates the exigent circumstances requirement, thereby reducing the automobile exception from a two element rule to only one. If Ross intended to include only probable cause and not exigent circumstances, then the dissent is correct in stating that Ross is an unprecedented probable cause exception to the warrant clause, and that a

181. The Court viewed Sanders and Robbins as closed container cases and based its analysis on the protection the fourth amendment affords such items. For Sanders-Robbins analysis the place in which a closed container is found is immaterial. A warrant is required to search a closed container despite the fact that it is found during an automobile exception search. Thus, Sanders-Robbins used Chadwick as the framework for analyzing the protection afforded closed containers found in automobiles. On the other hand, Ross viewed the closed container in the automobile as an automobile exception case governed by Carroll. In Ross, any protection that the fourth amendment may extend to a container is immaterial precisely because it is found during an automobile exception search.
182. See 102 S. Ct. at 2159.
183. Id. at 2163 (quoting Carroll, 267 U.S. at 156).
184. Id. at 2163-64.
185. Id. at 2164.
186. Id. at 2176 (Marshall, J., dissenting).
warrant would never be required to search an automobile. The police would have blanket authority to search on probable cause alone.

Ross does not explicitly reject exigent circumstances as part of the automobile exception. It simply fails to mention the role of exigency. However, it is possible to read Ross as impliedly conceding the necessity for a two element rule. Ross makes a latent reference to a two element rule. In a footnote, the majority cites with approval Justice Harlan's separate opinion in *Chambers* for the proposition that exigency alone does not justify an automobile exception search. If exigency by itself is not sufficient to trigger the automobile exception, then by definition there must be more than one element. The other element is, of course, probable cause.

Alternatively, Ross can be read to assume without discussion that probable cause alone is sufficient to trigger the automobile exception. Precedent and logic, however, demonstrate that such an assumption is unfounded. In *Chambers*, the Court stated that "[n]either Carroll nor any other cases in this Court require or suggest that in every conceivable circumstance the search of an auto even with probable cause may be made without . . . a warrant. . . . But the circumstances that furnish probable cause . . . are most often unforeseeable; [and] the opportunity to search is fleeting . . . ." This passage from *Chambers* suggests that the Ross Court misread Carroll when it cited that case's "warrant whenever practicable" rule as manifestly emphasizing probable cause. Chambers makes it clear that the automobile exception does not grant blanket authority to search on probable cause alone. Similarly, *Coolidge* invalidated a warrantless search, holding that even though there had been probable cause, there were no exigent circumstances.

Finally, the warrant clause itself establishes probable cause as the criterion for obtaining a warrant. If probable cause is the standard for ob-

187. See id. at 2163 n.9 (citing *Chambers*, 399 U.S. at 62-64 (Harlan, J., concurring and dissenting)).
188. See also Moylan, *supra* note 12 and accompanying text (arguing that the automobile exception is a two-element rule). A second obscure reference in Ross to a two-element rule is found in the portion of the opinion that extends the probable cause rationale of the automobile exception to movable containers. The Court stated that "[t]he rationale justifying a warrantless search of an automobile that is believed to be transporting contraband arguably applies with equal force to any movable container that is believed to be carrying an illicit substance." 102 S. Ct. at 2165 (emphasis added). The Court's use of the word "transporting" implicitly recognizes the exigent circumstances portion of the automobile exception. Had Ross intended to eliminate the exigency portion of the rationale, there was language available to do so.
189. 399 U.S. at 50-51.
190. See *supra* text accompanying note 183.
191. 403 U.S. at 464.
taining the warrant, it would be illogical to state that it is also the standard for dispensing with the warrant. An exception to the warrant clause would have to be based on something other than, or in addition to, probable cause. In the case of the automobile exception, that additional element is, obviously, the familiar phrase "exigent circumstances." The question, then, is whether the automobile exception, when stated in full, justifies the warrantless search of closed containers.

Ross claimed that its new container rule was supported by Chambers. However, Ross failed to mention that the holding in Carroll was based upon the mobility or exigent circumstances rationale. Moreover, Carroll itself indicates that the automobile exception requires true exigent circumstances. Although it did not expressly use the term, the Court in

192. *Carroll* did not expressly use the term "exigent circumstances," and the Court did not make clear whether the search there was sustained because the object searched was an automobile or because it was a moving automobile presenting exigent circumstances. W. Laffae, supra note 11, § 7.2(a)(1) at 510-11. However, it is clear that exigency was a factor in Carroll because the Court noted that the mobility of an automobile makes it impracticable to obtain a warrant. See Carroll, 267 U.S. at 153. See also supra text accompanying note 31. In addition, Carroll has been interpreted to mean that the mobility exigency is the rationale behind the automobile exception. See Chambers, 399 U.S. at 50-51; W. Ringel, supra note 12, at § 10.2. The main problem with the mobility rationale is defining what constitutes an exigent circumstance. Supreme Court decisions subsequent to Chambers are unclear as to whether the mobility rationale is based on the inherent mobility of automobiles as a generic class, in which case the automobile itself is an exigency, or whether there must be a real possibility that the evidence will be lost. Id., § 11.1(b) at 11-4. The Supreme Court has not specifically addressed this question. The Court has attempted in Coolidge and Cardwell, however, to set the outer boundaries of the exigent circumstances-mobility rationale. But, as previously noted, these two plurality opinions cannot be convincingly reconciled. See supra notes 71-74 and accompanying text. The result is that lower courts disagree as to what constitutes exigent circumstances. Some courts do require a particular showing of truly exigent circumstances. See cases collected in W. Ringel, supra note 12, § 11.1(b) at 11-5 nn.15-16.

It is clear that these courts require a showing of some form of exigency. The almost universal requirement of exigent circumstances can be attributed to the fact that the Supreme Court has consistently relied upon exigency in its automobile exception cases. See, e.g., Carroll, 267 U.S. at 153; Chambers, 399 U.S. at 51; Cardwell, 583 U.S. at 594-95. Where no exigency was found, the Supreme Court refused to uphold the warrantless search. Coolidge, 403 U.S. at 464. Texas v. White, did not mention exigent circumstances, but merely affirmed the warrantless search on the authority of Chambers. The recent case of Michigan v. Thomas, 73 L. Ed.2d 750 (June 28, 1982), did uphold a warrantless search of an automobile even though there were no exigent circumstances. But, Thomas is not an automobile exception case. See supra note 64. In Thomas, the police were properly in possession of the automobile for a routine inventory search prior to impoundment. Probable cause to believe that the vehicle contained contraband did not arise until the search was well underway.

193. *Carroll* noted that mobility of the automobile is what makes it impracticable for the police to obtain a warrant and is what distinguishes the warrantless search of an automobile from the warrantless search of a dwelling or other structure. Carroll, 267 U.S. at 153; Chambers, 399 U.S. at 52; Cady v. Dombrowski, 413 U.S. 433, 442 (1973).
Carroll observed that "[i]t 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 . . . ." 194 Thus, Ross' claim that Carroll permits a warrantless search based upon probable cause is inaccurate. Carroll permits a warrantless search based upon probable cause where true exigent circumstances are present. 195 Ross also asserts that it preserves the practical consequences of Carroll. One of the practical problems of an automobile search, in addition to the mobility problem, is deciding what to do with the car and its occupants while a warrant is being obtained. This problem is not totally insignificant, as Chambers recognized. 196 Arguably, the storage and safekeeping of containers found during a Carroll-Chambers search is not a burden at all, or if it is, it simply does not rise to the same level as the problems of storing and safeguarding vehicles. 197 "The practical mobility problem—deciding what to do with both the car and the occupants if an immediate search is not conducted—is simply not present in the case of movable containers, which can easily be seized and brought to the magistrate." 198 Thus, contrary to what Ross suggests, the practical

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194. Carroll, 267 U.S. at 146 (quoting House Judiciary Committee Report to accompany ch. 134, § 6, 42 Stat. 222, 223 (1921) supplementing the National Prohibition Act, ch. 85, § 25, 41 Stat. 305, 315 (1919)).

195. As used here, true exigent circumstances are intended to mean the very real possibility that the evidence will be lost or destroyed if the police must leave the scene and secure a warrant. For a cogent argument that exigent circumstances is the only acceptable rationale for the automobile exception, see Grano, supra note 1, at 638-46. According to Grano, exigent circumstances can be defined in two ways: first, exigent circumstances exist only when the police could not have obtained a warrant before probable cause arose; or second, exigent circumstances exist only when the evidence cannot be preserved by making a warrantless seizure. Id. at 642. Under the second formulation, the warrantless search in Carroll would have been unreasonable because the police could have seized the car to preserve the evidence. Grano suggests that the second definition is preferable because the exigent circumstances rationale imports a need for immediate action. Hence, a warrantless seizure is justified to prevent loss of the evidence. Once the property is safely in police custody the need for immediate action disappears. Id. at 643.

196. Had Chambers required the police to seize a car but obtain a warrant before the search it would have established a constitutional requirement that all police departments, no matter what their size or capabilities, maintain the staff and equipment to transport impounded vehicles to a central location where they could be kept safely until a magistrate ruled on the warrant. Sanders, 442 U.S. at 765 n.14. The Court observed in Sanders that such a constitutional requirement would have imposed "severe, even impossible, burdens on many police departments." Id. But see Grano, supra note 1, at 643-44 (storing a vehicle does not present any special difficulties). See also, Chambers, 399 U.S. at 64-65 (Harlan, J., concurring and dissenting) (the probable cause to search often justifies arrest, and when the occupants are taken into custody they are not inconvenienced by the immobilization of the vehicle).

197. See 102 S. Ct. at 2176 (Marshall, J., dissenting).

198. Id. See also infra notes 200-04 and accompanying text, arguing that closed containers are not exigent items.
consequences of seizing a car and seizing a container can be quite distinct.

If the proposition is accepted that the proper interpretation of the automobile exception as enunciated in *Carroll* is probable cause combined with exigent circumstances, it becomes apparent that the automobile exception is not the proper framework for analyzing the right to privacy in closed containers.

*Chadwick* conceded that cars and containers are alike in that both are mobile. However, the similarity is immaterial for purposes of fourth amendment analysis. The mobility rationale of the automobile exception is based on the very real probability that valuable evidence will be lost if police must secure a warrant before searching or seizing a car. The question of mobility does not arise in the case of containers found during an automobile exception search because *Chadwick* requires that the exigency as to a closed container be determined at the point in time immediately before the search. The police can easily seize a container without creating serious problems for themselves because there is no danger that the contents of the container will disappear. In short, containers do not present exigent circumstances, and therefore the mobility portion of the automobile exception cannot justify their searching them without a warrant.

What *Ross* seems to suggest is that the exigencies which permit a

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199. 433 U.S. at 12.
200. The Court stated that the mobility rationale could not justify the warrantless search of the 200 pound footlocker because once it was in police control any danger that the evidence would disappear ceased. Since the police had in fact immobilized the footlocker and deprived the owner of possession, it was unreasonable to search it without a warrant. *Id.* at 13. The Court reasoned that the principal privacy interest at stake was not the container itself but its contents, and concluded that the search of the footlocker was the greater intrusion on fourth amendment values, and its impoundment the lesser intrusion. *Id.* at n.8. The *Chadwick* majority noted that a line had to be drawn between reasonable and unreasonable searches, and the fact that it was reasonably predictable that a magistrate would have issued a warrant, had one been requested, could not save the search. It added that "[i]n our view, when no exigency is shown to support the need for an immediate search, the Warrant Clause places the line at the point where the property to be searched comes under the exclusive dominion of police authority." *Id.* at 15. According to the *Chadwick* reasoning, a container ceases to be an "exigent circumstance" at the moment the police seize it. At that moment any mobility rationale for dispensing with a warrant also ceases. The *Chadwick* reasoning can be applied to the automobile itself. *See supra* note 195 arguing that an automobile is not inherently exigent.
201. *See Ross*, 102 S. Ct. at 2175 (Marshall, J., dissenting); *Cardwell*, 417 U.S. at 590; *Chambers*, 399 U.S. at 50-51.
204. *Chadwick*, 433 U.S. at 13. Arguably, the mobility rationale is inapplicable to a warrantless search of a closed container, irrespective of whether it is placed in an automobile or elsewhere. *Ross* implicitly admits that the automobile exception framework is inappropriate for analyzing closed container questions. *Ross* cites *Chadwick* as reaffirming "the general
warrantless search of a car also support the warrantless search of any container found therein. By this reasoning, the container itself becomes exigent which, of course, cannot be true.205.

Once it is recognized that cars and containers are separate questions for purposes of fourth amendment analysis, the remainder of Ross loses much of its force,206 and its attempt to carve out an exception for Chadwick and Sanders type containers is unconvincing. The majority distinguished Chadwick and Sanders because in both cases suspicion as to the location

principle that closed packages and containers may not be searched without a warrant,” 102 S. Ct. at 2166, and states further that the seizure of a container can be accomplished without great inconvenience to either the individual or the police. Id. at n.16. In light of Ross' recognition of the Chadwick principles, the insistence in Ross that the automobile exception justifies the warrantless search of containers is inconsistent. Chadwick rejected that very notion. Chadwick, 433 U.S. at 13.

205. An argument that the container itself is exigent can be made by way of analogy to decisions that hold that the automobile is a generically exigent item. See supra notes 44 & 192. However, the Supreme Court refused to equate cars and containers in Chadwick, on the ground that they were different both in function and in expectation of privacy. While the main function of an automobile is transportation, the main function of the closed container is to carry personal property. See Chadwick, 433 U.S. at 12-13.

206. The Court's analogy to the lawful search of fixed premises has surface appeal. Ross is correct when it notes that a warrant to search a home “is not limited by the possibility that separate acts of entry or opening may be required to complete the search,” 102 S. Ct. at 2170. A warrant to search fixed premises unquestionably includes authority to search closed containers. W. LAFAVE, supra note 11, § 4.10 at 152 (quoting Massey v. Commonwealth, 305 S.W.2d 755, 756 (Ky. 1957)). The analogy is, however, inapplicable for the simple reason that automobile exception searches are conducted without a warrant.

The lesser expectation of privacy rationale that is sometimes used to justify warrantless searches of automobiles is also inapplicable to closed containers. See Chadwick, 433 U.S. at 13. The lesser privacy expectation, as noted previously, is not properly a part of the automobile exception. Rather, it has been used to justify warrantless searches of automobiles that the Court deemed reasonable despite the fact that exigent circumstances or probable cause were virtually nonexistent. See supra note 64. Since the lesser expectation of privacy in the car is not part of the automobile exception, it certainly cannot be piped into that exception for the sole purpose of justifying the warrantless search of higher privacy items such as containers. As the Court noted in Sanders, “[o]ne is not less inclined to place . . . personal possessions in a suitcase merely because the suitcase is to be carried in an automobile rather than transported by other means or temporarily checked or stored.” Sanders, 442 U.S. at 764. The maxim that “[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears,” Coolidge, 403 U.S. at 461-62, becomes all the more true when applied to higher privacy items that happen to be placed in an automobile. Thus, the right to privacy is not diminished, as Ross suggests, simply because the container is placed in an automobile. See also Grano, supra note 1, at 637-38 (lesser expectation of privacy rationale does not support an automobile exception search of a car or of closed containers). The Court's analogies to searches by customs officials and searches of luggage with a warrant to illustrate the various degrees of fourth amendment protection of containers are again irrelevant. The latter example, like the analogy to fixed premises, is a search warrant illustration; the customs search, while lawful, is not conducted as an exception to the warrant requirement.
of the drugs was confined solely to the footlocker in the former and the green suitcase in the latter. Because the police knew the precise location of the evidence, they did not have probable cause to search the entire vehicle.207 Accordingly, Chadwick and Sanders could not properly be viewed as automobile exception cases.208 This reasoning suggests that the automobile exception applies only when the police do not know the exact location of the evidence and must search the entire vehicle to find it. If the majority reasoning is accepted, it appears that the result in Ross would have been different had the police informant explicitly said that “Bandit” was storing heroin in a brown paper bag in the trunk rather than ambiguously stating that the drugs were in the car. In this situation the police would have known the precise location of the contraband, thus placing the facts squarely within the Chadwick-Sanders exception to Ross. Ultimately, the majority, while claiming to preserve the practical consequences of Carroll, creates its own set of practical problems and places police officers with probable cause in a peculiar situation: when the precise location of the evidence is known, the warrant clause applies; when there is only a generalized suspicion, the automobile exception applies. In the former, the police must seize the container and secure a warrant to search it; in the latter, they need not do so. Faced with a container rule that turns on the degree of suspicion, the government, as Justice Marshall stated, “must show that the investigating officer knew enough but not too much, that he had sufficient knowledge to establish probable cause but insufficient knowledge to know exactly where the contraband was located.”209 Ross does not explain why precise location containers are more deserving of constitutional protection than generalized suspicion containers. The distinction reinstates

207. 102 S. Ct. at 2166-67.
208. See Sanders, 442 U.S. at 767 (Burger, C.J., concurring).
209. 102 S. Ct. at 2180 (Marshall, J., dissenting) (quoting United States v. Ross, 655 F.2d 1159, 1202 (D.C. Cir. 1981) (en banc) (Wilkey, J., dissenting)). The “worthy-unworthy” container distinction creates its own internal inconsistency. The preference for having a neutral and detached magistrate pass on the sufficiency of probable cause prior to infringing fourth amendment interests, see supra note 47, would seemingly require the exception carved out in Ross for Chadwick-Sanders type “precise-location” containers to be the opposite of what the Court states. The more the police know about the contents of a container and its location, the less the need for the magistrate’s judgment. Conversely, the less that is known about the container and its whereabouts in the car, the greater the need for the impartial and neutral magistrate to weigh the facts. Ultimately, the effort to square Ross with Chadwick and Sanders proves too much. Ross cannot be squared with Chadwick precisely because Chadwick holds the rationale of the automobile exception inapplicable to the warrantless search of a closed footlocker. Thus, Chadwick refused to mix cars and containers for purposes of fourth amendment analysis. Arguably, the Chadwick principle would hold regardless of whether the footlocker was a precise location or generalized suspicion container.
a worthy-unworthy container concept that turns on the quality of the policeman's knowledge rather than on the character of the container itself, and thus directly contradicts Ross' own rejection of such a notion. 210

The logic of Ross is seriously flawed. It misstates the automobile exception as originally envisioned in Carroll. Consequently, the major premise of Ross fails to support the conclusion that the automobile exception permits the warrantless search of closed containers. In Ross, the Court fell into the pitfalls it had carefully avoided in Belton and Robbins. Those two cases took care to keep the automobile exception and the search incident to arrest exception conceptually distinct. 211 Unfortunately, Ross indiscriminately mixes cars and containers. However, Ross does provide the police with a clear, easily applicable automobile exception rule. By emphasizing expediency over exigency, Ross joins the trend of other recent fourth amendment cases that standardize the rules governing the law of search and seizure. 212

B. The Trend Toward Standardization

The fourth amendment has two clauses; the first prohibits all unreasonable searches and seizures, the second states the criteria for obtaining a search warrant. The key word "unreasonable" is not defined, and the amendment does not give any indication of how the two clauses relate to each other. The confusion and complexity of search and seizure law stems, in part, from a judicial difference of opinion as to whether the word unreasonable applies only to the first clause or to both. 213 The automobile exception cases illustrate this point. When the issue is the authority of police to conduct a warrantless search of containers found during a legitimate automobile exception search, a Robbins-type rule results when the reasonableness of securing a warrant is emphasized. Under Robbins, the search of a closed container, no matter how reasonable, will be unconstitutional

210. 102 S. Ct. at 2171.

211. See supra notes 124-35 and accompanying text. Justice Powell's concurring opinion in Robbins noted that the search incident to arrest and automobile exceptions proceed on wholly different theories and that "[i]ntelligent analysis cannot proceed unless the issues are addressed separately." Robbins, 453 U.S. at 430 (Powell, J., concurring). See also supra note 209 (arguing that Chadwick correctly refused to mix cars and containers).


because the police could easily seize the container and take it to the magistrate for a determination of probable cause. Conversely, the opposite result obtains when the reasonableness of the search is emphasized. Here, the hypothetical situation posed in Ross becomes very convincing: if it was reasonable to tear open the upholstery in Carroll, it would have been just as reasonable to open a burlap bag hidden inside. Hence, Ross is able to state with some accuracy that the contrary rule would be illogical and absurd. The constant shifting in emphasis produces irreconcilable and contradictory decisions.214 Coolidge and Cardwell wound up in the same plight when the issue was how to set the outer boundaries of the exigent circumstances of the Carroll-Chambers doctrine.215 Both schools of thought have their practical problems.216 Regardless of the ideological debate over whether the word unreasonable applies only to the first clause or both, the only concept that emerges with clarity is that each time the Court shifts its emphasis the lower courts will not know how to apply the principles to a recurring factual situation, nor will the police know the scope of their authority.217 Another contributing factor to the search and seizure morass is that the circumstances of a warrantless search can vary almost infinitely, and a small difference in the facts of a case may often be the controlling factor in determining fourth amendment rights.218

The continuous confusion as to the outer limits of the exceptions to the warrant clause has sparked a Supreme Court trend to decide its search and seizure cases on a fairly broad basis.219 The thrust of the trend is to standardize these decisions by developing a category of cases with a clear-cut rule that will apply to the category regardless of variations in the factual pattern.220 The standardization approach is premised on the argument that one of the purposes of the fourth amendment, and the exclusionary

214. See supra notes 71-74 and accompanying text.
215. See supra notes 74 & 192 and accompanying text.
216. See, e.g., T. Taylor, Two Studies in Constitutional Interpretation 23-24 (1969) (arguing that emphasizing the warrant requirement over the reasonableness of the search "has stood the Fourth Amendment on its head."); E. Griswold, supra note 213, at 39-41 (analogizing the inherent difficulties in determining the reasonableness of the search to what would occur if the "reasonable man" standard of tort law were elevated to a constitutional principle.) "The result is an inherent amount of uncertainty, and this uncertainty extends to the lower courts, which have to try to apply the decisions of the Supreme Court." Id. at 40. Dean Griswold suggests that in another context the fourth amendment could be considered "void for vagueness." Id. at 39.
217. See Belton, 453 U.S. at 459-60.
218. See Sanders, 442 U.S. at 757; E. Griswold, supra note 213, at 40.
219. See supra note 212.
220. See E. Griswold, supra note 213, at 47.
rule, is to regulate the police in their everyday activities.\textsuperscript{221} Accordingly, search and seizure law must necessarily be expressed in terms that are readily understood and easily applied by police officers on their beat.\textsuperscript{222} As one commentator has noted:

A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.'\textsuperscript{223}

Standardization allows the Court to remove itself from the problems it creates each time it shifts the placement of the word unreasonable in the fourth amendment. Robbins, Ross, and Belton illustrate the practical differences between the standardization approach and the ideological debate approach. Robbins and Ross each state unambiguous rules. However, each case is tangled up in the continual and unresolvable debate about where to place the word unreasonable. Consequently, each case, despite its superficial clarity, leaves more uncertainty in its wake. Robbins gave rise to the localized suspicion container issue which was unconvincingly addressed in Ross.\textsuperscript{224} Ross leaves open the issue of whether the automobile exception can logically rest on probable cause alone.\textsuperscript{225} This issue will no doubt be raised in the lower courts. Hence, the ideological debate forces the Court into a case-by-case review of fourth amendment issues. In contrast, Belton removed itself from the ideological struggle by basing its holding on a generalized standard: search of an automobile incident to arrest includes all articles within the passenger compartment.\textsuperscript{226}

\textsuperscript{221} LaFave, "Case-By-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma, 1974 SUP. CT. REV. 127, 141.

\textsuperscript{222} Id. Professor LaFave notes that the fourth amendment's guarantee of freedom from unreasonable searches and seizures is best viewed as a "regulatory canon" that limits arbitrary governmental intrusion rather than as "a collection of atomistic spheres of interest of individual citizens." Id. at 142 (quoting Amsterdam, Perspectives On The Fourth Amendment, 58 MINN. L. REV. 349, 375 (1974)). Accordingly, the commands of the fourth amendment are best met by developing a set of rules which make it possible for the police to determine in advance whether a warrantless search is justified, and thereby reduce the risk of error. Id. "In short, we must resist 'the understandable temptation to be responsive to every relevant shading of every relevant variation of every relevant complexity' lest we wind up with 'a fourth amendment with all of the character and consistency of a Rorschach blot.'" Id. (quoting Amsterdam, at 375). See also E. GRISWOLD, supra note 213, at 52.

\textsuperscript{223} LaFave, supra note 221, at 141 (quoting United States v. Robinson, 471 F.2d 1082, 1122 (Wilkey, J., dissenting)).

\textsuperscript{224} See Ross, 102 S. Ct. at 2167-68.

\textsuperscript{225} Id. at 2174 (Marshall, J., dissenting).

\textsuperscript{226} Belton, 453 U.S. at 460.
Robbins and Ross are both attempts at standardization that fell short. Both cases state clear rules which the police can easily understand and apply. Robbins prohibits the warrantless search of all closed containers found during an automobile exception search. Conversely, Ross permits a warrantless search of the same containers. These clear-cut, all inclusive rules indicate that the Court was using standardization to clarify the complexities and confusion surrounding the automobile exception. Unfortunately, the Court in Ross may have frustrated its own efforts. Robbins provided the police and courts with specific guidance to be used in recurring factual situations, as standardization requires. Less than a year later, Ross gave totally contradictory guidance and needlessly created a new rule to replace the Robbins standard. Such back-to-back decisions create their own confusion, make the Court appear inconsistent, and do little to bring certainty and stability to this area of the law.

Attractive as standardization may be, it is not a sufficient justification for the rule in Ross. A constitutional standard cannot rest on clarity alone; it must be supported by logic and a valid interpretation of precedent. Ross lacks these virtues. Robbins, whatever its shortcomings, came closer to a solid standard founded upon logic and consistency. Robbins recognized that the precedents established in Chadwick and Sanders precluded using the automobile exception to justify the warrantless search of closed containers. Justice Powell argued for standardization in Robbins, stating that "expanding the scope of the automobile exception is attractive not so much for its logical virtue, but because it . . . would give more specific guidance to police and courts in this recurring situation." Ross attempted standardization but its logic is unsound. Perhaps a later Court will accomplish both.

VI. CONCLUSION

Ross uses the automobile exception to permit a warrantless search of closed containers found during a legitimate automobile exception search. However, the rationale behind the automobile exception is not appropriate for determining the right of privacy in closed containers. Because the Court indiscriminately mixed cars and containers for purposes of fourth amendment analysis, the analytical foundation is inappropriate to the case, and the major premise of Ross, therefore, fails to support its conclusion. In addition, Ross' attempt to distinguish earlier closed container cases is unconvincing. The distinction between "precise location" and "generalized suspicion" containers reinstates a worthy-unworthy container con-

cept that turns on the quality of the policeman's knowledge about the location of the container and its contents. The distinction directly contradicts Ross' explicit rejection of such a notion and creates the very confusion for the police that Ross sought to avoid. Finally, Ross invites further litigation by leaving unanswered the question of whether the automobile exception can logically rest on probable cause alone.

Ross, however, is not without virtue. It was intended to state a clear, easily applicable automobile exception rule, and to this extent it succeeded despite all its logical flaws. In this regard Ross is an attempt to join a growing series of decisions that standardize the law as concerns the exceptions to the warrant clause. Standardization creates a category or class of cases and then develops a clear rule that applies regardless of variations in the facts. The standardization approach gives lower courts clear guidance, allows the police to know the limits of their authority, and permits individuals some certainty as to the extent of their right of privacy. If nothing else, Ross does set a clear-cut, easily applicable rule; its failing is that it misused logic and precedent to achieve its goal.

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