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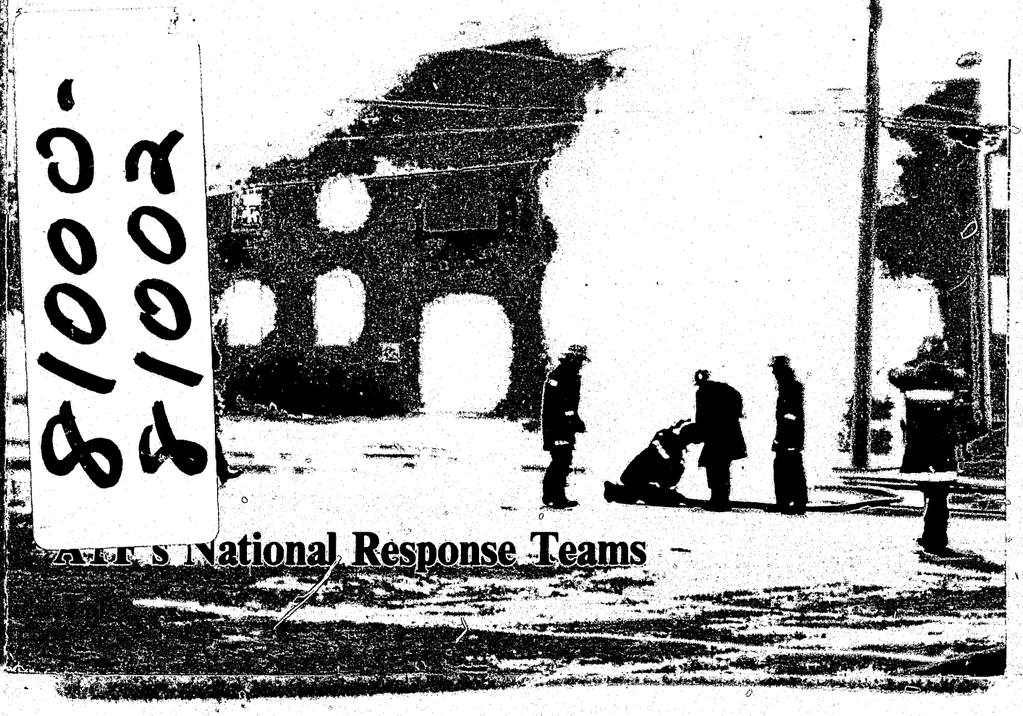

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The Legal Digest

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THE MOTOR VEHICLE EXCEPTION TO THE SEARCH WARRANT REQUIREMENT (CONCLUSION)

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Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissable under Federal constitutional law are of questionable legality under State law or are not permitted at all.

In 1925, in its landmark decision of *Carroll* v. *United States,*[59] the U.S. Supreme Court held that a warrantless search is reasonable under the fourth amendment to the U.S. Constitution when there exists probable cause that an automobile or other vehicle contains that which is subject to seizure by law[60] and where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.[61] Thus, the vehicle exception to the search warrant requirement of the fourth amendment was conceived.

Part I of this article described the remarkable manner in which that exception, after more than 4 decades of relative obscurity, has emerged in recent years as one of the most significant search and seizure tools available to American law enforcement officers. Part I further discussed the probable cause requirement as it has been applied by the courts to vehicle searches.

As noted above, however, probable cause, standing alone, will not justify a warrantless search.[62] The Supreme Court has emphasized:

> "Only in *exigent circumstances* will the judgment of the police as to probable cause serve as a sufficient authorization for a search." [63] (emphasis added)

Part II of the article examines the manner in which the courts have interpreted and applied the second requirement of the vehicle exception, i.e., exigent circumstances.

The Exigent Circumstance Requirement

The Supreme Court has long recognized that warrantless searches by police are justified under the fourth amendment if a delay would endanger their lives or the lives of others[64] or result in evidence being destroyed or removed.[65] The burden in such cases rests with the police to show that emergency (exigent) circumstances exist[66] to support an exemption from the warrant requirement.

Despite the general application of the emergency search exception to houses, as well as to other kinds of property, it would be erroneous to conclude that the vehicle exception is nothing more than another application of the traditional emergency search doctrine. The Supreme Court instructed in *Carroll:* ". . . There is a necessary difference between a search of a store, dwelling house or other structure . . . and a search of a ship, motor boat or automobile. . . ." [67] Because of that difference, warrantless searches of vehicles have been upheld in circumstances in which a search of a home or office would not be approved.[68]

Mobility

The characteristic of vehicles most frequently cited by the courts as creating an exigency, and therefore, justifying a warrantless search is *mobility.* In *Carroll* v. *United States*, it was the capacity of the automobile to be "quickly moved out of the locality or jurisdiction" which prompted the Supreme Court to hold that based on probable cause, an immediate warrantless search was reasonable. The automobile was stopped on a public highway by Federal agents who had probable cause to believe that Carroll was transporting contraband whiskey. Furthermore, the occupants were not arrested until after a search of the car uncovered the contraband. Under the circumstances, the Court had no difficulty concluding that the automobile was mobile, and therefore, it was impracticable for the agents to secure a search warrant.[69]

Since *Carroll*, several factors have been considered by the courts with respect to their effect upon a vehicle's mobility, including: (a) The arrest of a vehicle's occupants, (b) a delayed search at a different location, and (c) whether the vehicle is parked and unoccupied.

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Arrest of Occupants

In *Carroll*, the occupants of the automobile were not under arrest at the time the warrantless vehicle search occurred, and the Court found the vehicle was mobile. However, in 1970, in *Chambers* v. *Maroney,*[70] the Supreme Court was confronted with significantly different circumstances. Late one night, less than an hour after the armed robbery of a service station, police stopped a blue station wagon with four male occupants, which matched the description of a car witnesses observed speeding from the crime scene. When the police stopped the car, they observed that the clothing of two of its occupants matched the description given by witnesses of clothing worn by the robbers. All four men were placed under arrest and the car was driven to the police station. A thorough search of the car at the police station located evidence relating to the robbery earlier that evening, as well as a robbery which had occurred the previous week.

The Supreme Court quickly acknowledged that the vehicle search was not valid as a search incident to an arrest, inasmuch as "the reasons which have been thought sufficient to justify warrantless searches carried out in connection with an arrest no longer obtain when the accused is safely in custody at the station house." [71] The Court held, however, that there were alternative grounds to justify the warrantless search. The Court found:

> ". . . there was probable cause to arrest the occupants of the station wagon that the officers stopped; just as obviously was there probable cause to search the car for guns and stolen money." [72]

In addition to the probable cause, the Court found that the opportunity to search was fleeting since a car is readily movable:

> "On the facts before us, the blue station wagon could have been searched on the spot when it was stopped since there was probable cause to search and it was a fleeting target for a search." [73]

The fact that the occupants had been placed under arrest did not alter the Court's view that the vehicle was still mobile. Similar results have been reached by the lower Federal courts. For example, in *United States* v. *Harris,*[74] the defendant was arrested for selling narcotics and his van immediately searched without a warrant. The Court of Appeals for the District of Columbia upheld the search, stating:

> "We believe that the search of the van falls squarely within the 'automobile exception' to the warrant requirement. . . . The police had probable cause to believe that [defendant] was selling drugs out of the van, and that a search of the van would yield incriminating evidence. . . . Because of their mobility automobiles on the public highway carry with them *inherent exigent circumstances* when it is believed that they contain contraband." [75] (emphasis added)

Just as an arrest of a vehicle's occupants is not necessary to justify a search under the vehicle exception, so also the arrest of the vehicle's occupants does not render the vehicle exception inapplicable.

Delayed Search

Because the vehicle search in *Chambers* did not occur until after the occupants were arrested and the vehicle was removed to the police station, the Court had an opportunity to consid-

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er the impact of that delay on the application of the vehicle exception. The Court advised with regard to mobile vehicles:

> ". . . if an effective search is to be made at any time, either the search must be made immediately without a warrant or the car itself must be seized and held without a warrant for whatever period is necessary to obtain a warrant for the search. . . ." [76]

Considering the alternatives available to the police in such circumstances, the Court concluded:

> "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." [77]

Facts similar to those in *Chambers* occurred in *Texas* v. *White,*[78] wherein the occupant of an automobile was arrested by police while attempting to pass fraudulent checks at a drive-in window of a bank. The officers also had information that a man of the same description, driving a car of exactly the same description, had attempted to negotiate some checks on a nonexistent account at a different bank just shortly before. The officers directed White to park his car at the curb. As he was doing so, he was observed attempting to stuff something between the seats. White and his automobile were taken to the station house.

About 30 to 45 minutes after arriving at the police station with White and his car, the police requested consent to search the vehicle. When consent was refused, the officers searched anyway and discovered fraudulent checks in the car which were admitted in evidence against White at his trial. The Texas Court of Criminal Appeals reversed White's conviction on the ground that the warrantless search was a violation of the fourth amendment. The Texas court reasoned that since White was in custody and the police had the keys to his car which was parked at the station, the exigencies required for a warrantless search of the car were not present. The court found no evidence that although the car was movable, there was any prospect of it being taken from the station by anyone.[79]

The Supreme Court reversed. Concluding that there was probable cause to search the car at the place where it was stopped, the Court stated:

> "In *Chambers* v. *Maroney,* we held that police officers with probable cause to search an automobile on the scene where it was stopped could constitutionally do so later at the station house without first obtaining a warrant. There as here, 'the probable-cause factor' that developed on the scene 'still obtained at the station house.' " [80]

In *Chambers* and *White,* neither the arrest of the vehicle's occupants nor a delayed search at the station house defeated the application of the vehicle exception. It should be noted that in both cases there was probable cause to search the vehicles *at the scene* of the stop, and in both cases, the Court upheld a later search at the police station.

In *United States* v. *Forrest,*[81] FBI Agents stopped a tractor-trailer based on information that the vehicle and its contents had been stolen from interstate shipment. An immediate search at the scene confirmed the contents as stolen property. The vehicle was then moved immediately to the Federal building where a further search occurred the following morning.

The Federal appellate court upheld the initial stop and search on the scene under the vehicle exception. With respect to the continuation of the search the following day, the court explained:

> ". . . the mere passage of time between the seizure and the search does not change this exception to the warrant requirement . . . exigence is to be determined as of the time of the seizure of an automobile, not as of the time of its search; the fact that in these cases sufficient time to obtain a warrant had passed between each seizure and the corresponding search did not invalidate either." [82]

Thus, while *Carroll* held that officers having probable cause to believe that a mobile vehicle contains evidence or contraband may stop the vehicle and search it without a warrant, *Chambers* holds that the vehicle may also be seized and searched later at the police station.[83]

Parked and Unoccupied Vehicle

The year following the Supreme Court's decision in *Chambers*, the Court was called upon to consider a warrantless seizure and search of an unoccupied vehicle parked on private premises. In *Coolidge* v. *New Hampshire,*[84] police arrested the defendant at his residence in connection with the murder of a 14-year-old girl. At the time of the arrest, the vehicle was parked in the driveway of the home. About 2½ hours later, the vehicle was towed to the police station. The car was searched and vacuumed 2 days later, again after a year, and a third time about 14 months following the initial seizure. One theory subsequently proffered by the prosecution to justify the warrantless seizure and searches was the vehicle exception. However, the Supreme Court ruled the rationale of the vehicle exception inapplicable and observed:

> ". . . even granting that the police had probable cause to search the car, the application of the *Carroll* case to these facts would extend it far beyond its original rationale." [85]

The Court emphasized that the previous cases in which the vehicle exception had been applied involved occupied automobiles stopped on the open highway where there was probable cause. In *Coolidge,* the Court pointed out that the police had known for some time of the probable role of the car in the crime, the defendant was in custody, at the time of the seizure the car was parked in the driveway rather than moving on an open highway, and there were no confederates waiting to move the evidence because the only other adult residing there (defendant's wife) had been taken by police to another town to stay with a relative. "In short," the Court said, "by no possible stretch of the legal imagination can this be made into a case where 'it is not practicable to secure a warrant' (cite omitted), and the 'automobile exception' despite its label is simply irrelevant." [86]

The *Coolidge* case raised a question as to whether the vehicle exception could be applied to unoccupied, parked vehicles, particularly those parked on private premises. A footnote to the Court's decision stated in part:

> ". . . it seems abundantly clear that there is a significant constitutional difference between stopping, seizing, and searching a car on the open highway, and entering private property to seize and search an unoccupied, parked vehicle not then being used for any illegal purpose." [87]

Nevertheless, since the *Coolidge* decision, Federal appellate courts have frequently upheld warrantless searches of unoccupied, parked vehicles, including those parked on private premises.

In *United States* v. *Menke,*[88] U.S. Customs officers traced a shipment of marihuana from its origin in Korea to the defendant's home, where a controlled delivery was made. An officer observed the defendant drive to his mailbox, remove the parcel, and place it in the trunk of the vehicle. He then drove the car into the driveway of his home, some 200 yards away, removed what appeared to be the same parcel from the vehicle and entered the residence.

A warrant to search the house was obtained and executed. Although other evidence of narcotics was found, the parcel was not located. The defendant was placed under arrest and the search extended to the vehicle parked in the driveway. The parcel was located in the trunk. A Federal appeals court found that there was probable cause to believe the contraband was in the vehicle and upheld the search. The court found this case distinguishable from *Coolidge* for several reasons: There was contraband involved which could be readily removed; three other persons resided in the home besides the defendant; and it was not known if there were other confederates. These factors created exigent circumstances justifying the vehicle search.

Other cases have sustained warrantless searches and seizures of vehicles parked in parking lots or on public streets. In *Cardwell* v. *Lewis,*[89] the Supreme Court considered the warrantless seizure of an automobile from a public commercial parking lot and the warrantless examination of the car's exterior at the police impoundment lot for tire impressions and paint scrapings. At the time the car was seized, the owner, who had voluntarily appeared at a nearby police station for questioning in connection with a homicide, had been placed under arrest pursuant to a warrant.

The existence of probable cause to search the car was conceded by the defense, but the warrantless seizure and search were held by the lower Federal courts to be invalid, inasmuch as there was no consent, the search was not incident to arrest, and the seizure could not be justified as a plain view seizure of an instrumentality of the crime.

The Supreme Court reversed. With respect to the *search,* the Court found that the external examination of the car did not implicate traditional considerations of the owner's privacy interests. The Court concluded:

> "Under circumstances such as these, where probable cause exists, a warrantless examination of the exterior of a car is not unreasonable under the Fourth and Fourteenth Amendments." [90]

"Because of their inherent mobility and the diminished expectation of privacy surrounding them, vehicles can be searched without warrants under circumstances which would not permit warrantless searches of other property."

With respect to the warrantless *seizure* of the parked vehicle, the Court noted that "the automobile was seized from a public place where access was not meaningfully restricted."[91] Citing the rationale of *Chambers* v. *Maroney, supra,* the Court stated:

> "The fact that the car in *Chambers* was seized after being stopped on a highway, whereas Lewis' car was seized from a public parking lot, has little, if any, legal significance.[92]

One final issue raised in *Cardwell* was the defendant's contention that probable cause to search the car existed for some time prior to arrest and therefore there were no exigent circumstances justifying the warrantless search. The Court's response is significant:

> "Assuming that probable cause existed, we know of no case or principle that suggests that the right to search on probable cause and the reasonableness of seizing a car under exigent circumstances are foreclosed if a warrant was not obtained at the first practicable moment. Exigent circumstances with regard to vehicles are not limited to situations where probable cause is unforeseeable and arises only at the time of arrest. The exigency may 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."[93]

A vehicle parked alongside a public road would obviously present problems similar to those of a vehicle parked in a parking lot. In *United States* v. *Newbourn,*[94] two men were arrested following their attempt to sell weapons to a police informant. The vehicle in which they had been riding immediately prior to their arrests was parked by the road. An immediate warrantless search of the trunk of the car uncovered the weapons. The trial court suppressed the evidence, holding that it would have been practicable under the circumstances for the officers to obtain a search warrant for the car. A Federal appeals court agreed that the officers could have procured a search warrant after they came upon the scene and arrested the defendants, but held that factor alone did not remove the case from the vehicle exception to the warrant requirement:

> "Here the [vehicle] exception applies both because the officers reasonably believed that the vehicle contained a cache of weapons potentially dangerous to the public if in the wrong hands, and because of the potential mobility of the vehicle parked on the shoulder of a public road."[95]

The fact that a vehicle is parked at the time it is searched or seized does not by itself render the vehicle exception inapplicable, as the foregoing cases clearly indicate.[96] It is interesting to note, however, that whenever the vehicle is parked, the courts tend to look to factors other than mobility to establish justification for a warrantless search. For example, in *Menke* and *Cardwell, supra,* where the vehicle owners were in police custody, the courts were concerned that confederates or relatives, who were alerted to police interest in the vehicles, could gain *access* to them. In *Newborn, supra,* the court was concerned that the vehicle parked alongside a public road contained weapons potentially dangerous to the public which could fall into the wrong hands.[97]

Conversely, when the vehicle is stopped on the open highway, the *inherent mobility* alone is generally sufficient to satisfy the exigency requirement. In *United States* v. *Whitfield,*[98] the U.S. Court of Appeals for the District of Columbia upheld the warrantless search of a van on a public street after the arrest of its occupants for selling narcotics. In sustaining the search the court reasoned:

> "We believe that the mobility of a motor vehicle, without more, creates an exigency permitting a warrantless search based on probable cause and that the police need not carry out this search immediately upon the crystallization of probable cause. . . . We believe that the requirement of exigency is satisfied by the very nature of an operable motor vehicle; no further exigent factors are necessary."[99]

As the foregoing cases illustrate, *mobility* has historically been the major factor recognized by the courts as distinguishing vehicles from houses or other property, and when coupled with probable cause, justifies a warrantless search. It is also clear from the cases that courts tend to base their judgments as to exigent circumstances on *inherent mobility* rather than practical or actual mobility.

There is, however, a second distinction between vehicles and other property, recognized by the courts in recent years. It sheds further light on the application of the vehicle exception. In *Cady* v. *Dombrowski,* the Supreme Court explained:

> "Although the original justification advanced for treating automobiles differently from houses . . . was the vagrant and mobile nature of the former (citations omitted) . . . warrantless searches of vehicles have been sustained in cases in which the possibilities of the vehicles being removed or evidence in it destroyed was remote, if not nonexistent."[100]

The reason given by the Court was that one has a *lesser expectation of privacy* in a motor vehicle.[101]

Lesser Expectation of Privacy

Whether the protections of the fourth amendment to the Constitution are applicable in any case is dependent upon whether there is a governmental intrusion which infringes upon one's reasonable expectation of privacy.[102] The *degree* of fourth amendment protection is commensurate with the level of reasonable privacy expectation.

The Supreme Court has given several reasons to support its conclusion that there is a lesser expectation of privacy in motor vehicles than in other property:[103]

1) The function of a vehicle is transportation;
2) A vehicle seldom serves as one's residence or as the repository of personal effects;
3) A vehicle has little capacity for escaping public scrutiny;
4) A vehicle travels public thoroughfares where both its occupants and its contents are in plain view;
5) Vehicles are subjected to pervasive and continuing governmental regulation and control, including periodic inspection and licensing requirements; and
6) As an everyday occurrence, police stop and examine vehicles with regard to proper registration and licensing, as well as enforcement of safety standards.

The lesser expectation of privacy rationale offers some explanation for the Court's decisions allowing warrantless searches of vehicles even when mobility is for all practical purposes nonexistent. It further explains the Court's unwillingness to extend the warrantless search authority to other movable property, such as personal luggage or other containers, which, despite their movability, do not share some of the other attributes of vehicles listed above.

In *United States* v. *Chadwick,*[104] Federal narcotics agents seized a 200-pound, double-locked footlocker from the open trunk of a parked automobile based upon information which led them to believe the footlocker contained marihuana. The footlocker was removed to the Federal building and opened without a warrant about 1½ hours later. One theory offered by the prosecution to support the warrantless search was that a container such as the footlocker is analogous to motor vehicles for fourth amendment purposes. The Supreme Court responded:

> "Our treatment of automobiles has been based in part on their inherent mobility, which often makes obtaining a judicial warrant impracticable. Nevertheless, we have also sustained 'warrantless searches of vehicles . . . in cases in which the possibilities of the vehicle's being removed or evidence in it destroyed were remote'. . . ."[105]

After noting that there are several distinctions between an automobile and a footlocker, the Court concluded that "a person's expectations of privacy in personal luggage are substantially greater than in an automobile."[106]

Similarly, in *Arkansas* v. *Sanders,*[107] the Supreme Court ruled that personal luggage found in a lawfully stopped and searched automobile could not be searched under the same rationale that justified the vehicle search, despite the probable cause which the officers had to believe the suitcase contained marihuana. The reason is the distinction between the privacy expectation one has in luggage as opposed to that in an automobile. In other words, a closed piece of luggage found in a lawfully searched car is constitutionally protected to the same extent as are closed pieces of luggage found elsewhere, and authority to search the vehicle does not extend to luggage located therein.

Most recently, in *Robbins* v. *California,*[108] the Court ruled that a closed, opaque plastic package located in a lawfully searched car could not be searched pursuant to the vehicle exception. Again the officer had probable cause to believe the package contained marihuana. But the Court held that "unless the container is such that its contents may be said to be in plain view, those contents are fully protected by the Fourth Amendment."[109]

In both *Sanders* and *Robbins* the vehicle searches were sustained; the searches of the separate containers found inside the vehicles were not. The Court has based these holdings on the "diminished expectation of privacy which surrounds the automobile."[110]

"...Whenever it is reasonably practicable to do so, securing a search warrant not only affords the greatest protection to the privacy of the citizen but also provides the greatest protection to the law enforcement officer."

Conclusion

Because of their inherent mobility and the diminished expectation of privacy surrounding them, vehicles can be searched without warrants under circumstances which would not permit warrantless searches of other property.

That is not to suggest that vehicles are in some way excluded from the protections of the fourth amendment. Quite the contrary is true. As the Supreme Court has observed: "The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."[111]

Probable cause is an absolute requisite to invocation of the warrantless search, and an officer's judgment as to the existence of that probable cause will only suffice to support the warrantless search when there are *exigent circumstances.*

Although the cases discussed in this article clearly indicate that the level of exigency necessary to justify a warrantless vehicle search is considerably less than that which would be necessary to justify a warrantless search of other property, there is nothing to suggest that the *probable cause* standard is any less strictly applied. The Supreme Court has emphasized: "When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent."[112]

The vehicle exception is without doubt one of the most valuable tools available to American law enforcement officers. Due to the complex problems with which vehicles confront law enforcement officers, the courts have allowed considerable latitude in police response. However, a word of caution is in order. Warrantless searches, even more so than those conducted with a warrant, are subjected to close scrutiny by the courts. The officer who conducts a warrantless search of a vehicle assumes the risk that a reviewing court will determine that the facts available at the time were not sufficient to establish probable cause or that there were no exigencies present to justify the search without a warrant. The result could be the loss of critical evidence in an important case. If the officer's actions were taken in bad faith, civil and/or criminal liability could be incurred.

The message is clear: Whenever it is reasonably practicable to do so, securing a search warrant not only affords the greatest protection to the privacy of the citizen but also provides the greatest protection to the law enforcement officer. **FBI**

Footnotes

[59] 267 U.S. 132 (1925).
[60] *Id.* at 149.
[61] *Id.* at 153.
[62] In *Chambers* v. *Maroney,* 399 U.S. 42, 50 (1970), the Supreme Court stated: "Neither *Carroll* . . . nor 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 the extra protection for privacy that a warrant affords."
[63] *Id.* at 51.
[64] *Warden* v. *Hayden,* 387 U.S. 294 (1967).
[65] E.g., *Vale* v. *Louisiana,* 399 U.S. 30 (1970).
[66] See, e.g., *Katz* v. *United States,* 389 U.S. 347 (1967); *Mincey* v. *Arizona,* 437 U.S. 385 (1978).
[67] *Supra* note 55, at 153.
[68] See *Cardwell* v. *Lewis,* 417 U.S. 583 (1974).
[69] See also, *Arkansas* v. *Sanders,* 442 U.S. 753 (1979); *Brinegar* v. *United States,* 338 U.S. 160 (1949); *Husty* v. *United States,* 282 U.S. 694 (1931).
[70] *Supra* note 62.
[71] *Id.* at 47.
[72] *Id.* at 47 and 48.
[73] *Id.* at 52.
[74] 627 F.2d 474 (D.C. Cir. 1980).
[75] *Id.* at 476–477. See also, *United States* v. *Brannon,* 616 F.2d 413 (9th Cir. 1980), *cert. denied,* 447 U.S. 908 (1980); *United States* v. *Newbourn,* 600 F.2d 452 (4th Cir. 1979); *United States* v. *Gooch,* 603 F.2d 122 (10th Cir. 1979); *United States* v. *Williams,* 526 F.2d 1000 (5th Cir. 1975); *United States* v. *Harflinger,* 436 F.2d 928 (8th Cir. 1970).
[76] *Supra* note 62, at 50–51.
[77] *Id.* at 52.
[78] 423 U.S. 67 (1975).
[79] *White* v. *State,* 521 S.W.2d 255, 257 (Tex Cr. App. 1975).
[80] *Supra* note 77, at 68.
[81] 620 F.2d 446 (5th Cir. 1980).
[82] *Id.* at 454. See also, *United States* v. *Williams,* 626 F.2d 697 (9th Cir. 1980), *cert. denied,* 101 Sup. Ct. 586 (1981); *United States* v. *Kimack,* 624 F.2d 903 (9th Cir. 1980); *United States* v. *Dien,* 609 F.2d 1038 (2d Cir. 1979); *United States* v. *Chulengarian,* 538 F.2d 553 (4th Cir. 1976).
[83] See, e.g., *Coolidge* v. *New Hampshire,* 403 U.S. 443, 458 (1971).
[84] *Id.*
[85] *Id.* at 458.
[86] *Id.* at 461–462.
[87] *Supra* note 78, at 463.
[88] 468 F.2d 20 (3d Cir. 1972).
[89] *Supra* note 68.
[90] *Id.* at 592.
[91] *Id.* at 593.
[92] *Id.* at 594.
[93] *Id.* at 595–596. See also, *United States* v. *Forrest,* 620 F.2d 446 (5th Cir. 1980); *United States* v. *Beckwitt,* 619 F.2d 649 (7th Cir. 1980); *United States* v. *McGrath,* 613 F. 2d 365 (2d Cir. 1979).
[94] 600 F.2d 452 (4th Cir. 1979).
[95] *Id.* at 454.
[96] See, e.g., *United States* v. *Fultz,* 622 F.2d 204 (6th Cir. 1980), *cert. denied,* 101 Sup. Ct. 105 (1980), *United States* v. *Matthews,* 615 F.2d 1279 (10th Cir. 1980); *United States* v. *Pappas,* 600 F.2d 300 (1st Cir. 1979); *United States* v. *Milhollan,* 599 F.2d 518 (3d Cir. 1979); *United States* v. *Alden,* 576 F.2d 772 (8th Cir. 1978); *United States* v. *Robinson,* 533 F.2d 578 (D.C. Cir. 1976).
[97] Cf., *Cady* v. *Dombrowski,* 413 U.S. 433 (1973).
[98] 629 F.2d 136 (D.C. Cir. 1980), *cert. denied,* 101 Sup. Ct. 875 (1981).
[99] *Id.* at 140 and 141. See also, *United States* v. *Harris,* 627 F.2d 474 (D.C. Cir. 1980), *cert. denied,* 101 Sup. Ct. 375 (1981).
[100] *Supra* note 97, at 441–442.
[101] *Supra* note 68. See also, *South Dakota* v. *Opperman,* 428 U.S. 364 (1976); *United States* v. *Chadwick,* 433 U.S. 1 (1977).
[102] See *Katz, supra* note 66.
[103] See *Cardwell, supra* note 68; *Opperman, supra* note 101.
[104] *Supra* note 101.
[105] *Id.* at 12.
[106] *Id.*
[107] 442 U.S. 753 (1979).
[108] 29 CrL 3115 (1981).
[109] *Id.*
[110] *Chadwick, supra* note 101, at 12.
[111] *Coolidge, supra* note 83, at 461.
[112] *Johnson* v. *United States,* 333 U.S. 10, 13–14 (1948).

END