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Dimension-Based Analysis of Hypotheticals from Supreme Court Oral Argument*

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Abstract

In this paper we examine a sequence of hypotheticals taken from a Supreme Court oral argument. We use the idea of a "dimension," developed previously in our case-based reasoning system HYPO, to analyze the hypotheticals and to speculate on how the Justices might have arrived at them. The case we consider is taken from the area of Fourth Amendment law concerning warrantless search and seizure.

1 Introduction

Before a case is decided by an appellate court, the advocates are given the opportunity to present their arguments orally. During these arguments, the court has the opportunity to question counsel and, in particular, to pose hypotheticals. Since all concerned have had ample opportunity to research the issues and write or read briefs, oral argument is not just a forum to present the well worked out argument, but rather an opportunity to probe its weaknesses, oversights, and implications. In that the judges can be quite aggressive in their probing, the proceedings can be similar to a thesis defense, and counsel who has not adequately anticipated testing hypotheticals can encounter grave difficulties, even to the extent of being fooled into a slippery slope situation which ultimately undermines his position. Hypotheticals can be particularly potent in novel situations for which the body of relevant case law is sparse: they can provide legal *gedanken* experiments in which conjectures can be tested much as they are in mathematics and science. However, *hypos* test and stretch the boundaries of legal concepts that, unlike mathematical concepts, are typically

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open-textured, sometimes deliberately vague, and often raise substantial questions of interpretation, especially in non-middle-of-the-road instances.

A central problem concerning hypotheticals is to explain how they are generated. Since the space of all hypothetical cases is huge and the time for oral argument is small (30 minutes per side, including interruptions and questioning from the bench, in the case of the United States Supreme Court), what mechanisms might account for the hypotheticals actually used? This question has two parts: (1) deciding the content or desiderata for the hypotheticals; and (2) actually generating them.

In our work on case-based reasoning ("CBR"), we have examined reasoning with hypotheticals. The CBR program HYPO [Ashley & Rissland, 1988a; Ashley, 1988], reasons with cases and hypotheticals in the area of trade secret law. It used several heuristics to propose new hypotheticals [Rissland & Ashley, 1986]. In this paper, we use some of the constructs and mechanisms developed in HYPO to analyze (by hand) hypotheticals from the oral argument of one case argued before the United States Supreme Court in 1985. This analysis suggests that certain heuristics, like *Make a conflict hybrid hypo* or *Make a stronger hypo*, might be used to propose the content of the *hypos* and that certain computational mechanisms from HYPO, like dimensions and focal slots, might be used to generate them.

1.1 Background on Search and Seizure Law

The Fourth Amendment to the U.S. Constitution requires that searches and seizures be "reasonable".¹ This has been interpreted to mean that in all, but a few exceptional circumstances, the police must have a warrant to search a person or his property. With respect to a person's home, the Court has been reluctant to allow exceptions to the warrant requirement and in the case of homes, has held most warrantless searches to be *per se* unconstitutional; thus, the old saw that

¹"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U. S. Const., Amdt.4.

"a man's home is his castle" is mostly apt. We say only "mostly" since there are limitations (e.g., police in pursuit of a person fleeing the scene of a crime do not need a warrant to enter a home where the suspect has fled). One of the primary reasons for keeping the scope of the exceptions narrow is that people have an *expectation of privacy* in certain places like their homes, hotel rooms, summer cabins, etc.

On the other hand, the Court has not held that a person's car is anywhere near so sacrosanct. On the contrary, it established the well-known "vehicle exception" to the warrant requirement. The exception was first recognized in *Carroll v. United States*, 267 U. S. 132 (1925), a prohibition era case which involved a warrantless search of an automobile stopped by the police on a highway because they suspected it of being used to transport bootleg whiskey. The Court in *Carroll* held that when the police have probable cause to believe that a moving or temporarily stationed vehicle contains the fruits or instrumentalities of crime, evidence of crime, or contraband, it may be searched without a warrant.

In the *Carroll* opinion of Chief Justice Taft, the Court relied in part on the long tradition of (warrantless) searches of ships, especially for smuggled or contraband goods, by the government (e.g., naval and customs officers). The Court also reasoned that a vehicle's mobility creates such an *exigent* situation, in which, for instance, the car might leave the police's jurisdiction or even flee across an international boundary, that another exception to the warrant requirement can be made. It believed that the exigency rationale was compelling and that the home-vehicle distinction was valid:

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

Carroll at p. 153.

For a search and seizure to be reasonable, the *Carroll* Court required that there be "probable cause." Thus, the *Carroll* court announced two prerequisites for a warrantless vehicle search: (1) probable cause; and (2) exigency. And in the circumstances of the *Carroll* car operating near an international border and believed to be engaged in bootlegging, it found both conditions satisfied.² In light of the issues to be raised by the

²The police were also satisfied: they found 68 bottles of bootleg whiskey.

case of *California v. Carney*, 105 S. Ct. 2066 (1985), it is interesting to note that the *Carroll* Court also stated, "In cases where the securing of a warrant is reasonably practicable, it must be used." (p. 156)

In the intervening sixty years from *Carroll* to *Carney*, the vehicle exception was further delineated and tied in with other Fourth Amendment law concerning warrantless search.³ In several cases, the *Carroll* rationale, based on the necessity of mobility or exigency, was sometimes called into question and a competing rationale based on a "lesser expectation of privacy" was sometimes preferred, as in *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974), where a car was seized from a public parking lot, impounded, and paint samples were taken from it:

One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. *Cardwell* at p. 590

Nonetheless up to *Carney*, it seemed that for purposes of search and seizure doctrine, the splitting of "places" into two categories, "homes" and "vehicles," seemed to work fairly well. For the most part, aside from the major well-known exceptions, people could expect to be secure in their homes and police could go about their motor vehicle investigations unhindered; the boundaries between the two classes seemed clear. However, in recent years the line has become blurred, for now there are recreational vehicles, homes on wheels. In fact, the California Vehicle Code has a separate category for "house cars".⁴ This presents a conundrum: should an RV, like a Winnebago or pickup truck with camper compartment, be considered a home or a vehicle? If it is the former, then the police need a warrant to search it; if it is the latter, then they don't. What was once an *is-a* hierarchy has now become a graph and the case law must be reconsidered in light of this novel (in the sense of new but not unusual) situation. In fact, other conundrums were possible all along, for instance, houseboats.⁵ *California v. Carney* presented the hybrid situation and the Court was asked to decide whether a motor home is more like a "vehicle" or a "home" for Fourth Amendment purposes.⁶

³For instance, in *Chambers v. Maroney*, 399 U.S. 42 (1970), the occupant of a car was arrested and the car taken to the police station and searched without a warrant; the exigency rationale was re-affirmed. In *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), a man was arrested at his home and his car removed from the driveway of his home and towed to the police station where it was searched without a warrant; the Court held that the vehicle exception did not apply and the search was unconstitutional.

⁴A "house car" is "a motor vehicle originally designed, or permanently altered, and equipped for human habitation, or to which a camper has been permanently attached." Cal. Vehicle Code §362.

⁵The Court has not yet resolved this one either, although it has considered situations like ocean-going ships.

⁶Note, for other purposes, the answer might be quite

While we examine the *Carney* case from the perspective of hypothetical reasoning, it could also be examined from the viewpoint of concept formation in machine learning [Mitchell, 1983; Lenat, 1977], legal history [Levi, 1949; Radin, 1933], both of those [Rissland & Collins, 1986], or philosophy of science [Kuhn, 1970; Lakatos, 1976]. Legal examples, such as *Carney*, provide interesting data for these other lines of inquiry since not only are they rich in detail, but also they present certain aspects not found in more standard AI domains, whose ingredient concepts are typically more clear cut.

1.2 Background on Dimensions

HYPO is a case-based reasoning program that operates in the area of trade secret law [Ashley, 1988; Ashley & Rissland, 1987, 1988a; Rissland & Ashley, 1987]. A successor to HYPO was TAX-HYPO which operated in an area of tax law [Rissland & Skalak, 1989]. Both systems start with a statement of the facts of a case ("the current fact situation" or "cfs"), proceed through a dimension-based legal analysis and a sorting of cases according to their relevancy to the cfs, and conclude with presentation of an argument outline complete with case citations and possibly with the posing of interesting or testing hypotheticals.

One of the primary mechanisms used by HYPO and TAX-HYPO is a type of index into the knowledge base of cases called a "dimension" [Rissland et al., 1984]. It summarizes ways of arguing or approaching an issue and relates clusters of legally relevant facts to particular conclusions. A dimension indicates what variations of the facts, especially those "focal" aspects which are at the crux of the issue, make the case weaker or stronger for one side or the other. The idea of a dimension is quite general; it is what some have called a "soft" index - that is, it doesn't just indicate *yes* or *no* but how strong a certain aspect is in a case.

As an illustration of a HYPO dimension, consider a typical trade secrets case, in which plaintiff and defendant produce competing products and the plaintiff alleges that the defendant misappropriated secret production information. Additional facts might be that the plaintiff disclosed "secret" information to the defendant, perhaps in connection with an attempt to enter into a sales or other agreement with the defendant, or that a former employee of the plaintiff with knowledge of the trade secret enters the employ of the defendant and brings with him trade secret information that he learned or developed while working for plaintiff. There are several standard ways of approaching such a case; for instance, one can emphasize either the

different. For instance, with regard to taxes, an RV can be considered a home, and therefore qualify its owner or manufacturer for certain tax considerations, as long as it meets certain IRS criteria like that it be "designed primarily for living quarters." See *20th Century Manufacturing Company v. The United States*, 444 F.2d 1109, 1113 (Ct. Cl. 1971) in which the design details, including ceiling height, were considered.

employee who switched or the disclosures made. There are lines of cases for each approach. These standard approaches are captured in HYPO's dimensions. If one emphasizes the disclosures made by the plaintiff - that is, the dimension in HYPO called "knowledge-voluntarily-disclosed" - the more people to whom such disclosures were made, the worse off is the plaintiff - in one extreme, there may be so many disclosures, that there is essentially no one left to have a secret from - in the other extreme, there are no disclosures at all.

Dimensions encode the legal knowledge of (1) what clusters of facts, (2) according to a particular point of view summarizing lines of cases, (3) have legal relevance for a particular claim, (4) are prerequisite for dealing with a claim, and (5) contribute to weaknesses and strengths. Dimensions are used by HYPO in several ways. They are used as indices into an existing Case-Knowledge-Base and they are used by various submodules in HYPO's case-based reasoning. The library of dimensions and the Case-Knowledge-Base are two primary repositories of HYPO's legal knowledge. The third is a body of metrics, by which to assess relevancy of cases to one another, such as, HYPO's definition of "most on-point case",⁷ and standards, by which to assess the importance or persuasive effect of cases, such as, rankings of cases according to court (e.g., Federal cases preferred over district court cases).

A key aspect of dimensions is that they organize the prerequisite facts in such a way so that the most important ones - the "focal slots" - can be analyzed and manipulated in a legally meaningful way in order, for instance, to strengthen or weaken a case. The HYPO trade secrets dimension "knowledge-voluntarily-disclosed" captures the knowledge that the more people who have been told about the secret, the worse off the teller is; its focal slot is the "number-of-disclosees".

The dimensions, the dimension-based case-analysis and the (partially) ordered set of relevant cases (the "claim lattice"), enable HYPO's HYPO-GENERATOR module to spawn legally interesting hypotheticals: for instance, a "conflict hybrid" case, which brings together two competing lines of cases which conflict, or a hypothetical which fills in a sparse area of the CKB. HYPO uses a set of heuristics in its generation of such hypotheticals, for instance:

- (1) Make a case weaker/stronger;
- (2) Make a case extreme;
- (3) Enable a near-miss analysis;
- (4) Dis-able a near-win analysis;
- (5) Add a closely-coupled aspect;
- (6) Add potentially conflicting aspects;
- (7) Elevate an (unfavorable) on-point case to be most-on-point;
- (8) Demote a (favorable) most-on-point case;
- (9) Add facts so as to tease apart a cluster of

⁷The definition of a most-on-point case takes into account various lines of cases from HYPO's "claim lattice" and the overlap of their applicable dimensions or their applicable plus near miss dimensions.

similar cases;

(10) Fill in a gap in the case base.

HYPO's heuristics are implemented using dimensions and the claim lattice. For instance, manipulation of the focal aspects of a dimension enables HYPO to make a case weaker or stronger with respect to that dimension. Filling in a missing prerequisite condition for a dimension is a way of enabling a near-miss analysis. Such heuristics enable HYPO to perform a heuristic search of the space of possible cases [Rissland & Ashley, 1986].

2 The case of *Calif. v. Carney*

2.1 The Facts

California v. Carney, 105 S. Ct. 2066 (1985) involved the warrantless search for marijuana of a motor home located in a parking lot in downtown San Diego. Police had been given a tip that the owner of the motor home was engaged in exchanging marijuana for performance of sex acts. On the day of the incident, a Drug Enforcement Administration agent observed Mr. Carney and a young Mexican boy enter Carney's motor home. During this time, curtains were drawn across the motor home's windows, including the windshield.

The DEA agent and others then kept the vehicle under surveillance for approximately an hour and a quarter, at which time they stopped the youth after he emerged from the motor home. He said he had received marijuana for sex and at the agents' request, he returned to Carney's motor home and knocked on the door. Carney opened the door and stepped outside. Without a warrant or Carney's consent, one agent entered the motor home and observed marijuana. Carney was then taken into custody and the motor home taken to the police station, where an additional search revealed marijuana in the cupboards and in the refrigerator.

The off-the-street parking lot where all this happened was "only a few blocks from the courthouse in downtown San Diego where dozens of magistrates were available to entertain a warrant application. In addition, a telephone warrant was only 20 cents and the nearest phone booth away." (*Carney* at p. 2076, Fn. 16.)

2.2 The Issues

The legal issue raised in *Carney* is whether the police should have granted Carney's motor home the legal respect accorded homes and obtained a warrant or whether they were correct in treating it as a motor vehicle and operating within the realm of the vehicle exception. *Carney* exemplifies a typical conflict between a citizen's *expectations of privacy* and the desires of the police to act aggressively and to go unfettered in drug investigations, especially where they consider there to be a degree of *exigency*.

Consideration of these two competing doctrines of exigency and expectation of privacy gives one an idea

of the rich (and troublesome) nature of this and related Fourth Amendment cases. This case is not the sort of situation where there is a high degree of *exigency* since in this case, the suspected criminal was not actively fleeing and there was ample opportunity to obtain the warrant before seizing the fruits, instrumentalities, evidence, etc. of crime. Further, if one considers an RV to be not very home-like, then *Carney* is quite weak on both the doctrinal lines of exigency and expectation of privacy. This makes *Carney* an insidious case. For instance, accepting the constitutionality of warrantless search in *Carney* could prove to be the beginning of a slippery slope along the expectation-of-privacy/use-as-home dimension or a precedent justifying search of other cases weak on the exigency dimension. On the other hand, *Carney* is also troubling if the RV is considered very home-like since that would call into question the "sanctity" of the home from warrantless searches. Thus, in *Carney* the conflict between the general doctrinal principles of exigency and expectation of privacy is joined. The conflict actually occurs along the more specific dimensions concerning mobility and use as a home.

In their briefs and arguments, counsel for the State of California focused on the issues surrounding the determination of what constitutes a standard which is workable enough so that the police can use it to distinguish between homes and vehicles. Counsel asked the Court to elaborate an objective "bright line" standard, which would be easy for the police to apply. In a sense, what would be ideal would be articulation of HYPO-like "dimensions" (for exigency and expectation-of-privacy) and enunciation of critical points on them.

The home/vehicle dichotomy, one should note, is somewhat artificial. Its attractiveness lies in part in its seeming objectiveness and the common sense rationale about exigent mobility used to support it. Its difficulty lies in the need for subjective assessment of what constitutes "home-ness" or "vehicle-ness" in borderline cases and the existence of a competing expectation of privacy rationale. The distinction, as this case shows, has become something less than clear since the Court first "signed up" for it in *Carroll*. Perhaps an artful house-car hypothetical at the argument of *Carroll* would have dissuaded the Court from approaching the problem this way. Certainly, law professors and law students have played with such hypotheticals since.

To assess the various approaches to the case, the Justices explore the issues from varying points of view derived from already existing lines of cases. According to HYPO's framework, what they do is push and pull the case along various dimensions, place it on conflicting dimensions, and otherwise move it through the "space" of relevant cases.

The two major dimensions, which can be seen in our segments from the oral argument, are *inherent-mobility* and *use-as-home*. The former is closely tied to the more general *exigency* approach and the latter, to *expectation-of-privacy*. They also ad-

dress the purpose of the vehicle or structure. Other dimensions, or perhaps sub-dimensions or facets of these,⁸ which we see, include:

- exigency/inherent-mobility
 - similarity-to-car
 - potential-speed-of-departure
 - means-of-locomotion
 - at-rest-or-moving
- expectation-of-privacy/use-as-home
 - residential-appearance
 - size-and-capacity-for-domicile
 - on-land-or-on-water
 - attachment-to-location

Since we do not need such a fine legal analysis to consider the hypotheticals presented in the excerpts we examine, we don't elaborate on these finer dimensional distinctions. We use *inherent-mobility* and *use-as-home* as the dimensions, and the "sub-dimensions" listed under them as facets, sometimes almost as focal slots. Almost all the action occurs because inherent-mobility and use-as-home, which both apply to the *Carney* fact situation, are in conflict. Discovering the situations in which one dimension might prevail over the other or even how to assess the tradeoffs is one goal of the Court's inquiry during oral argument.

Assessing the interaction between such dimensions is intimately tied in with the problem of "credit assignment," in which one seeks to credit or blame various factors, typically conflicting and interdependent, which contributed to the overall outcome (success or failure). One approach is to assign weights to the factors. In HYPO, we do not do this since it is fraught with difficulties [Rissland & Ashley, 1988]; rather, we pursue a symbolic approach, which includes the sort of hypothetical exploration seen in oral argument [Ashley & Rissland, 1988b].

2.3 The Oral Argument

In the oral argument, the Justices test the counsels' proposals for standards and ways of looking at the issue of warrantless searches. They explore the issues of mobility and whether an RV is more like a home or vehicle (or neither or both). In HYPO's terms, they are creating hypotheticals by pushing the case along various dimensions in order to uncover potential flaws, which, if not remedied, could come back to haunt them in future cases. Much like mathematicians, computer programmers and strategic planners, they are engaged in troubleshooting and debugging using a dialectic between theory and examples [Rissland, 1984]. They are also trying to determine whether an existing way of looking at such an issue can be "mapped over" ana-

⁸Since, for the purposes of this paper, we wish to skirt the jurisprudential and knowledge engineering issues necessary to create a full library of dimensions for this area of case law, the ones we give are by no means to be considered a completely designed set.

logically to resolve the instant case and thereby save unnecessary creation of new doctrine.⁹

Excerpts from the oral argument are given in *Figures 1* and *2*. They are taken from the transcript of the argument [Alderson, 1985]. Questions posed by a Justice are indicated by a "J"; responses of an attorney, by an "A". The hypotheticals we discuss are all posed by the Justices and are indicated with a **J**. (*N.B.*, different *J*'s do not necessarily indicate different Justices.)

In *Figure 1*, the oral argument starts out with a discussion of the mobility issue. The attorney arguing at this point is Louis Hanoian, counsel for the State of California. After a brief statement of the facts and the need for bright line guidance, he takes the bait of "guideline of wheels" as the primary index (or in our dimensional terms, a focal slot) for determining mobility.

The first hypothetical, **J-1**, posed by Justice O'Connor, presents the conflict between the two dimensions *inherent-mobility* and *use-as-home*. Her hypothetical is derived by adding facts to the *Carney* fact situation: (1) "in one of those mobile home parks" and (2) "hooked up to water and electricity" to make the vehicle more home-like, that is, to strengthen the case along the use-as-home dimension, and less mobile, that is, weaken it along the inherent-mobility dimension. She hammers home the contradiction by repeating the RV still has its wheels.

The attorney stubbornly hangs on to the focal aspect of wheels and the rationale of mobility. He emphasizes this dimension by making sure the facts of **J-1** include the presence of the engine. He is met head on with a strengthened variant of **J-1** along the use-of-home dimension: **J-1a** where (1) people are living in it *as a home* (our emphasis) and (2) are paying rent. In **J-1a** the conflict is intensified, since **J-1a** is more homelike and less mobile than **J-1** and therefore, has a greater expectation-of-privacy and less of an exigency factor. This drives home the fact that analysis based on mobility alone is deficient.

At **J-2**, the Justices continue to work on the mobility aspect by posing a hypothetical that has wheels but no means of propulsion. In response, since "wheels" are no longer a reliable index of mobility, counsel generalizes his criterion to "self-propelled". This is to no avail since in **J-2a** the Justices come back with another conflict hypo about "a self-propelled vehicle plugged into plumbing and electricity"¹⁰ which is strong along both the inherent-mobility and use-as-home dimensions. **J-2b** adds some time considerations, which strengthen use-as-home and weaken

⁹The Court did something like this in *Carroll* when it brought in analogies to existing law on searches of ships.

¹⁰**J-2a** could also be thought of as derived from **J-1** which also mentions hook ups to electricity. Thus, a map of the "constructional derivation" of the hypotes would probably include back pointers to more than one antecedent hypo.

inherent-mobility. Perhaps more importantly, **J-2b** shows that even such "objective" indicia have complicating aspects that might make the police's use of them neither easy nor desirable. The interchange around this second sequence of hypos shows that wheels do not constitute reliable indicia of mobility. That is, "wheels" is certainly not a sufficient condition, and neither is "self-propelled". There is some hint that self-propelled might be necessary.

J-3¹¹, the next hypo, shows (again) that self-propelled, itself, is not a good enough criterion. **J-3** is a classic hybrid hypothetical juxtaposing two contradictory ways of treating similar situations. With respect to the dimensions of inherent-mobility and use-as-home, the tent and the motor home are not dissimilar, yet Hanoian's proposal is to treat them differently. Despite such anomalous possibilities, Mr. Hanoian sticks to his analysis.

In **J-4**¹¹, the Justices pose the hypo of a houseboat. In **J-4a** they strengthen its use-as-home aspects and again present the conundrum, as in **J-3**¹¹, of two very house-like structures being treated completely differently (under Hanoian's analysis). Hanoian responds with an analogy of a car parked next to a house that makes the discrepancy seem not so severe.¹¹ Despite some playful exchanges, the Justices continue on the houseboat-beside-a-house conundrum by making the houseboat less mobile and more home-like ("tied there for 36 years") in **J-4b**¹¹. This simultaneous strengthening along one dimension and weakening along the other is similar to Justice O'Connor's earlier moves with **J-1**¹¹.

Thus, in these excerpts from the oral argument one can see the Court posing a variety of hypos, many of which present conflicts between the two dimensions. The result of these interchanges is creation of a heuristic constellation of hypotheticals constructed "around" the current fact situation (cfs) of *Carney*. See *Figure 3*; the links shown are derivational (i.e., they represent making strengthened, weakened, hybrid conflict, etc. hypos). They correspond to applying HYPO's hypo-generation heuristics.

The rest of the oral argument is very similar. For instance, see *Figure 2* for excerpts containing hypos posed to the opposing counsel, Mr. Homann, representing Mr. Carney, and *Figure 4* for the resulting constellation of hypos. For instance, see the sequence **J-5**¹¹, posed by Justice Marshall, about "a great big stretch Cadillac," driven into a parking lot and having curtains pulled all around or the sequence **J-7**¹¹ concerning vans.

Analysis for the hypos excerpted in *Figure 2* is similar to what we have done for those of *Figure 1*. The Justices explore the same basic conflict between inherent-mobility (exigency) and use-as-home (expectation-of-privacy) and the tactics they employ with Mr. Homann are also similar. They strengthen

¹¹Compare this with the situation of *Coolidge* involving a car in a driveway beside a house. Interestingly, *Coolidge* is a *contra* case for Hanoian.

and weaken hypos along the dimensions, carry them to (absurd) extremes, create hybrid juxtapositions, etc.

Thus, the kinds of heuristics used by HYPO to generate hypotheticals, like *Make the case weaker/stronger*, *Make a conflict hybrid*, etc., can be seen to capture some of the hypothetical reasoning exhibited by the Justices. While it is hard to know the exact reasons motivating their hypotheticals, it does seem plausible that they might be using the same sort of heuristics, which, after all, are exactly the sort of example proposing and generation techniques used in many dialectical situations, whether mathematics, science or law.

With regard to the selection of the "seed" case to which to apply the hypo generation heuristics, often it is the facts of the original case or the current hypo (e.g., see the **J-1** or **J-2** series). Sometimes, it is the facts of another case of which the Justices have been reminded, for instance, by a citation. For instance, the *Carroll* case might have reminded the Justices of the situation involving ships and *Coolidge*, of cars in driveways next to homes; later on in the oral argument the Justices pose a hypo concerning covered wagons, which was mentioned in one of the briefs.

2.4 The Decision and The Opinion

The Court held that (1) warrantless search of a *mobile* (our emphasis) motor home did not violate the Fourth Amendment, and (2) the search was not unreasonable. In its opinion, the Court, speaking through Chief Justice Burger, concentrated on the approaching issues in terms of mobility and "on the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation." (Opinion at p. 2071.) The Court stated that these two requirements - mobility and setting - ensure that law enforcement officers are not unnecessarily hamstrung in their efforts, and also assure that legitimate privacy interests are not harmed. They specifically declined to rule on many details that give rise to conflicting lines of analysis.¹² In their opinion, as opposed to the oral argument, they do not consider hypothetical variations on the facts.

In the dissent, Justice Stevens, who was joined by Justices Brennan and Marshall, states that such key aspects like "character of place to be searched" should be considered. They, of course, feel that a motor home is closer to a home than the majority does. They write that mobility alone is not a sufficient condition to resolve such questions¹³ and that, "If the motor home

¹²"We need not pass on the application of the vehicle exception to a motor home that is situated in a way or place that objectively indicates that it is being used as a residence. Among the factors that might be relevant in determining ... is its location, whether the vehicle is readily mobile or instead, for instance, elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road." Fn. 3, p. 2071

¹³"If 'inherent mobility' does not justify warrantless

were parked in the exact middle of the intersection between the general rule and the exception for automobiles, priority should be given to the rule rather than the exception." (Dissent at p. 2075). That is, a warrant should be used. In other words, in cases where there is conflict between the two rationales, the expectation of privacy should prevail over exigency.

3 Comments & Conclusions

In this paper, we¹⁴ have examined the oral argument of one case in some detail from the perspective of "dimensions" with the goal of analyzing the use and generation of hypotheticals. A fuller analysis would require further reading of supporting documents such as briefs, opinions of relevant cases, sections of relevant statutes, and scholarly analyses. Other modes of analysis, such as those advanced by Toulmin [Toulmin, 1958], and carried out by Marshall (see her article in these *Proceedings*), for analyzing argument would also be useful. Consideration of certain high level argument goals would also help explain the selection of specific hypotheticals [Rissland, 1984].

We feel that oral arguments, such as presented in *Carney*, provide a rich source of data for those interested in argument and the use of hypotheticals, and that the framework of dimensional analysis used in our HYPO Project provides a good framework for analyzing it. Our approach enables us to grapple with such a deliberately adversarial problem area, where there is no side with the right answer but rather where everything is a matter of degrees and typically conflicting viewpoints.

*Figure 1. Excerpts from Oral Argument of California v. Carney
Hypotheticals posed to the attorney for California.*

A: (Mr. Hanoian) So it is essential that they [the police] be provided with bright line guidance, and guidance which is workable....

J: Would you buy the guideline of wheels?...That if the vehicle has wheels on it, it's not a home.

A: If the vehicle has wheels on it, I think that that makes it mobile and it would be subject to the exception....But I am looking a little bit more beyond just wheels. We are looking for self-locomotion, self-propelling.

J: You want to cloud it up now.

A: Not at all....

searches of containers, it cannot rationally provide sufficient justification for the search of a person's dwelling place." p. 2077.

¹⁴The author gratefully acknowledges the able assistance she has received in this research from her former colleague Kevin Ashley, and students Eileen Pahl and Mark Raffman, at Harvard Law School, and Eric Deller, at Stanford Law School.

J-1: ... Well, what if the vehicle is in one of these mobile home parks and hooked up to water and electricity but still has its wheels on?

A: If it still has its wheels and it still has its engine, it is capable of movement ... very quickly.

J-1a: Even though the people are living in it as a home are paying rent for the trailer space, and so forth?

J: Well, there are place where people can plug into water, and electricity, and do...where people go and spend the winter in a mobile home. And do you think there would be no expectation of privacy in such circumstances?

A: Well, I am not suggesting that there is no expectation of privacy in those circumstances, Your Honor....

J-2: May I inquire, just so I understand your position? Is it that the vehicle have wheels? Could a trailer without a tractor in front of it qualify?

A: No. I don't think it would....Our position is that if the officer looks at this conveyance and determines that it has the objective indicia of mobility - ...

J: It has to be self-propelled?

A: Yes, I would agree with that.

J: So you wouldn't apply your thought to a trailer park?

Q: Not when it's parked, no. When it's attached, yes, in the same way that one would -

J-2a: But then what about a self-propelled vehicle that's plugged into the plumbing and the electricity?...

J-2b: And you would apply it, even if it had been parked there three months or so, because your officer wouldn't really know how long it had been parked?

A: That's correct.

J: Thank you.

J-3: What about a camper's tent, if the camper takes his things out of the motor home and pitches a tent next to it?

A: The motor home would be subject to search...Not the tent....

J: ... Why wouldn't the tent be just as mobile as the self-propelled vehicle? I gather you can pull it down pretty fast -

J: It doesn't have wheels, right?...

A: It doesn't have wheels.
(Laughter.)

J: ... But it is moveable [*sic*].

A: It is moveable.

J-4 : What would you do with a houseboat?

A: A houseboat? I think that would be covered, and I think that the -

J: It has wheels?

A: No, it's a vessel, and covered by the same rule....

J-4a : Well, I want to be more specific. There is a houseboat. It's tied up to a dock that's got no motor on it at all. It's just sitting there. And it's hooked up to the sewage, electricity, et cetera, and it's right beside a house. The house is covered, and the boat is not?

A: That's correct. It's sort of like an automobile that is parked right next to the house in the driveway. The automobile might not be covered, and the house is.

J: But the automobile has a motor in it -

A: That's correct.

J: - and the houseboat does not.

A: No. There may be oars. There may be some way to move that from one place to another.

J: There "may be." May be. I've seen houses moved, too.

A: ...Perhaps in Your Honor's example, they would be looking to see if there's oars there. There's no motor. There's no way to move that thing.

J: Well, let me add one more thing. It's been tied up there for the last 36 years.

*Figure 2. Excerpts from Oral Argument of
California v. Carney
Hypotheticals posed to the attorney for Carney*

J-5 (Marshall): We're getting closer to your case. Suppose somebody drives a great big stretch Cadillac down and puts it in a parking lot, and pulls all the curtains around it, including the one over the windshield and around all the rest of them. Would that be a home?

A: (Mr. Homann) It comes closer to a home, but I don't think that that necessarily satisfies the California Supreme Court.

J-5a : ...Well it has everything in the back of it that your [house] has.

A: Does it have a bed?

J: Yes, yes.

A: If it is reasonably objectively observable that it has the attributes of a home in it, then I think... we have to give it the same protections that we ordinarily give dwelling compartments.

J-6 : What about the old covered wagons?

A: ...But insofar as the covered wagon served or functioned as a person's temporary residence while they were making the trek [sic] across the country, then I think we would have to give it at least some of the dignity that we give a home.

J-7 : Mr. Homann, what about a van? You see thousands of them on the road.

A: I think that's true. A van ordinarily would not be subject to the motor home exception.

J-7a : Well, I've seen some with all the chairs, all upholstered chairs in them.

A: And I think that once it becomes obvious to the searching police officers that the item is being used as a home for its residential purposes, then I think the search has to be - the search has to be limited...

J-7b : In order to help you out, the van is running down the road at 55 mph.

A: That helps me tremendously.... If the van is being moved, then I think that a real danger of loss or destruction of evidence would have been presented...

J: So your bright line is that it has to move?

J: Well, where do you draw the line between the situation that you say obtains here where it was parked and there was no indication it was about to be moved, and the fact that it is actually in movement?

A: I think that once the key is in the ignition....

J-8 : So you would say that if there is a car, if there had been a car parked alongside the motor home in this case in the same parking lot and the police had probably cause to search them both, they could enter the car but not the motor home?

A: Exactly....

J: But ... as soon as the mobility becomes mobility, it overrides it [your exception]?

A: As soon as mobility becomes something more than theoretical or hypothetical mobility....

J-9 : (**J-2** again) Assume now that Justice [White's] automobile vehicle is the tractor that would pull the otherwise immobile motor home, or whatever you want to call it. Now you could search the tractor, but not the -

A: I think that's true. And the reason is -

J-9a : The tractor can take off down the street and go 70 miles an hour on the highway?

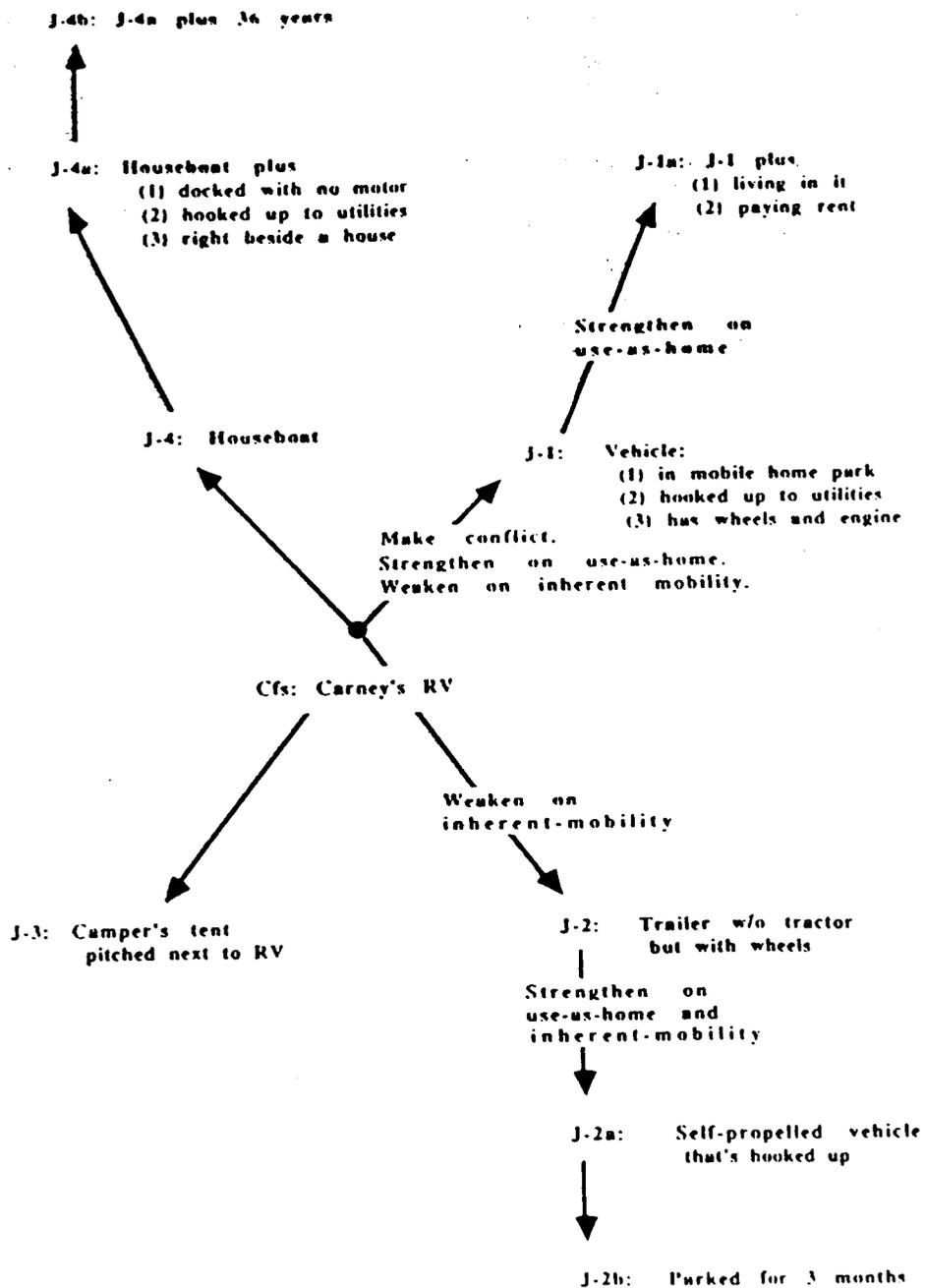


Figure 3. The Heuristic Constellation for Fig. 1.

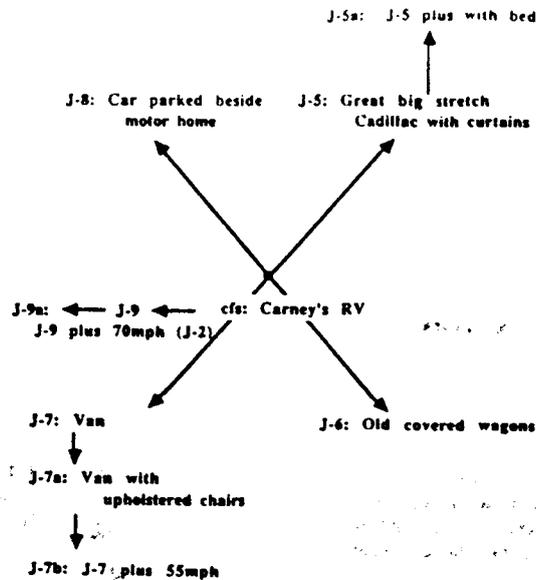


Figure 4. The Heuristic Constellation for Fig. 2.

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