

Expansive Automobile Access in Arkansas: The Untold Story

Alex C. Carroll*

“Now, maybe this is all illegal. I don’t know, but I’m asking the question.”¹

The history behind the automobile exception to the Fourth Amendment is as convoluted as it is long, but the United States Supreme Court has made at least one thing clear: The automobile exception is—drumroll, please—”an exception for automobiles.”²

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The first Article of this three-piece series, published separately, began the untold story of Rule 14.1. Part I of the first Article provided the Fourth Amendment principles relevant to this series and the history of the federal automobile exception. Part II then provided the modern application of the automobile exception. In doing so, the first Article laid the critical groundwork for understanding with precision why Arkansas’s expansive approach to the automobile exception is unequivocally unconstitutional.

The third and final Article of this three-piece series, published separately, concludes the untold story of Rule 14.1. The third Article argues that Rule 14.1 is unconstitutional for two independent reasons. Part I will argue that Rule 14.1 is an unconstitutional expansion of the automobile exception, which deviates from United States Supreme Court precedent. Part II will then argue that Rule 14.1 is unconstitutional because it permits a warrantless search of a person without a firm constitutional basis. After making these arguments, the third Article will conclude that the answer to the forty-three-year old (and counting) question about Rule 14.1’s constitutionality is as simple as Rule 14.1 is analogous.

1. Am. Law Inst., *47th Annual Meeting*, 47 A.L.I. PROC. 161 (1970) [hereinafter *47th Annual Meeting*] (statement of American Law Institute council member William Marbury).

2. *Collins v. Virginia*, 138 S. Ct. 1663, 1673 (2018).

The Federal Fourth Amendment guarantees the right to be free from unreasonable searches and seizures.³ A warrantless search is unreasonable unless an exception applies.⁴ The automobile exception, first recognized by the Supreme Court in 1925,⁵ permits a police officer to warrantlessly search a *vehicle* and its *containers* where the officer has probable cause to believe contraband is located.⁶ In the decades since, the Supreme Court has held that the automobile exception *does not* justify a warrantless search of a *person*.⁷ The Court has *never* retreated from that principle.⁸ Easy enough, right?

Apparently not. Despite fifty years of consistent Supreme Court jurisprudence, the American Law Institute (“ALI”) paved its own road for warrantless vehicle searches when it adopted Section 260.3 (“Section 260.3”) of the Model Code of Pre-Arrest Procedure (“MCPA”).⁹ Section 260.3 permitted a police officer to warrantlessly search a vehicle occupant’s person—in addition to the vehicle itself.¹⁰ Despite its own drafters and many members of the ALI doubting its constitutionality, the ALI proposed Section 260.3 as a model rule of criminal procedure in 1975.¹¹ Fortunately, as of 2019,

3. U.S. CONST. amend. IV. In essentially the same language, the Arkansas Constitution also protects the right to be free from unreasonable searches and seizures. Ark. CONST. art. 2, § 15; *Clubb v. State*, 230 Ark. 688, 693, 326 S.W.2d 816, 819 (1959).

4. *E.g.*, *Kentucky v. King*, 563 U.S. 452, 455 (2011) (exigent circumstances); *California v. Acevedo*, 500 U.S. 565, 580 (1991) (automobile exception); *Horton v. California*, 496 U.S. 128, 133 (1990) (plain view exception); *Colorado v. Bertine*, 479 U.S. 367, 371 (1987) (custodial inventory searches); *Schneekloth v. Bustamonte*, 412 U.S. 218, 219 (1973) (consent); *United States v. Robinson*, 414 U.S. 218, 235 (1973) (search incident to a lawful arrest); *Terry v. Ohio*, 392 U.S. 1, 30 (1968) (stop and frisk).

5. *Carroll v. United States*, 267 U.S. 132, 158–59 (1925).

6. *Acevedo*, 500 U.S. at 580.

7. *United States v. Di Re*, 332 U.S. 581, 587 (1948).

8. In 2018, the Supreme Court reiterated, “the scope of the automobile exception extends no further than the automobile itself.” *Collins v. Virginia*, 138 S. Ct. 1663, 1671 (2018).

9. MODEL CODE OF PRE-ARREST PROCEDURE § 260.3 (AM. LAW INST., Proposed Official Draft No. 1, 1972). For purposes of this Article, “Section 260.3” specifically refers to “Section 260.3(2).” *See infra* note 45. Additionally, any reference throughout the balance of this Article to “Section 260.3(2) has been replaced with “Section 260.3.”

10. *See* MODEL CODE OF PRE-ARREST PROCEDURE § 260.3 cmt. at 209 (AM. LAW INST., Proposed Official Draft No. 1, 1972).

11. *See* MODEL CODE OF PRE-ARREST PROCEDURE § 260.3 (AM. LAW INST. 1975).

the consequences of Section 260.3 are only felt by one state in the country. Unfortunately, that state is Arkansas.

Rule 14.1 (“Rule 14.1”) of the Arkansas Rules of Criminal Procedure (“ARCP”) was modeled entirely after Section 260.3.¹² Accordingly, Rule 14.1 permitted a police officer to warrantlessly search an occupant of a vehicle.¹³ Like those of Section 260.3, the drafters of Rule 14.1 questioned its constitutionality at the time of its adoption.¹⁴ Despite those constitutional concerns, Arkansas adopted Rule 14.1 in 1976.¹⁵ In the forty-three years since, the question about Rule 14.1’s constitutionality has persisted across a variety of mediums, including Arkansas courts, commentators, and police agencies, yet remains unanswered.¹⁶ Against that history, Rule 14.1 has gone unamended. As of 2019, Rule 14.1 is the only criminal procedure rule or statute in the country that is modeled after Section 260.3.¹⁷ Rule 14.1 is, in a word, an anomaly.

This Article tells the second piece—the middle—of the untold story of Rule 14.1. Part I of this Article offers the historical context for Section 260.3, including its historical backdrop, development and adoption. Part II then offers the same for Rule 14.1. Taken together, Parts I and II provide the full historical context necessary to conclude that Arkansas’s expansive approach to the automobile exception is unequivocally unconstitutional.

12. ARK. R. CRIM. P. 14.1(b) (ARK. CRIMINAL CODE REVISION COMM’N., Proposed Official Draft 1974). For purposes of this Article, “Rule 14.1” specifically refers to Rule 14.1(b). See *infra* note 67. Additionally, any reference throughout the balance of this Article to “Rule 14.1(b)” has been replaced with “Rule 14.1.”

13. ARK. R. CRIM. P. 14.1 (ARK. CRIMINAL CODE REVISION COMM’N., Proposed Official Draft 1974).

14. See ARK. R. CRIM. P. ART. IV, Refs & Annos at 30 (ARK. CRIMINAL CODE REVISION COMM’N., Proposed Official Draft 1974).

15. See *In re* Ark. Criminal Code Revision Comm’n, 259 Ark. 863, 864, 530 S.W.2d 672, 673 (1975).

16. See ARK. R. CRIM. P. 14.1 1987 Unofficial Supplementary Cmt. at 907; *Brunson v. State*, 327 Ark. 567, 573–74, 940 S.W.2d 440, 443 (1997); LESLIE RUTLEDGE, OFFICE OF ARK. ATTORNEY GEN., LAW ENFORCEMENT POCKET MANUAL 31–32 (7th ed. 2015) [hereinafter RUTLEDGE, POCKET MANUAL].

17. Alex C. Carroll, *Unpacking the Convoluted History of the Automobile Exception*, 2019 Ark. L. Notes 32, 33 & app. (2019).

I. SECTION 260.3: THE ROAD LESS TRAVELED

In 1964, the “ALI secured funding to develop a model statute governing law enforcement and pre-arraignment procedures.”¹⁸ A committee was then formed to draft the model statute (the “Reporters”),¹⁹ and work began on what would become known as the MCPP.²⁰ Part I of this article provides the historical backdrop, development, and adoption of Section 260.3.

On the morning of May 20, 1970, members of the ALI met at the Mayflower Hotel in Washington D.C. to discuss a tentative draft of the MCPP.²¹ The tentative draft included many search and seizure model statutes, but Section 6.03 proved to be the most troublesome for the ALI members.²² Although the Supreme Court had, as the Reporters recognized, “held pretty squarely to the contrary in *United States v. Di Re*,”²³ Section 6.03 read:

An officer who has reasonable cause to believe that a moving or readily movable vehicle on a public way or other land open to the public contains things subject to seizure . . . may, without a search warrant, stop, detain, and search the vehicle *and the person of any individual occupying or in control of the operation of the vehicle*, and may seize any things subject to seizure discovered in the course of the search.²⁴

To spark a discussion on the matter, the Reporters published the following question alongside Section 6.03:

18. Biography/History, in the Model Code of Pre-Arraignment Procedure Records, American Law Institute Archives, ALI.04.009, Biddle Law Library, University of Pennsylvania Law School, Philadelphia, PA. [hereinafter History of the Model Code of Pre-Arraignment Procedure].

19. See *id.*

20. *Id.*

21. 47th Annual Meeting, *supra* note 1, at 150.

22. See *id.* at 151–66.

23. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 cmt. at 209 (AM. LAW INST., Proposed Official Draft No. 1, 1972).

24. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 6.03 (AM. LAW INST., Tentative Draft No. 3, 1970) (emphasis added). In Tentative Draft No. 3, the above italicized language of Section 6.03 was in brackets. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 6.03 (AM. LAW INST., Tentative Draft No. 3, 1970). For clarity, those brackets have been omitted. Additionally, any reference throughout the balance of this Article to “the bracketed material” or “the bracketed language” has been replaced by “[Section 6.03].”

“Should authority to search a vehicle include authority to search its occupants?”²⁵ Professor Telford Taylor, the lead Reporter for the search and seizure provisions,²⁶ began the meeting:

Now, as the commentary indicates, the case authority in the *Di Re* case raises substantial question[s] about the constitutional validity of the bracketed material. The Reporters feel that, given the *Carroll* rule, logic and policy should call for the inclusion of [Section 6.03]²⁷

Professor Taylor concluded that he and the other Reporters, “would like the benefit of a bit of floor discussion” as guidance.²⁸ As requested, Professor Dibble, an ALI member, addressed Professor Taylor to share his concerns about Section 6.03:

PROFESSOR DIBBLE: . . . What would you do in the case of an individual who is moving by himself? Would you consider that the fact that he is a movable person would justify a search, if you had reasonable cause to believe that the individual was carrying narcotics, and he was running down the street? Would you have reasonable cause to search him without making an arrest?

PROFESSOR TAYLOR: Well, you have reasonable cause to arrest.

PROFESSOR DIBBLE: That’s a different question. If you have reasonable cause to arrest a man in the car, then you can search him based on the arrest, but that isn’t what you are doing here.

PROFESSOR TAYLOR: That’s right. In these circumstances we’re suggesting that there is no reasonable cause to arrest anyone in the car.

PROFESSOR DIBBLE: Right. So what about the man who is running down the street, and you don’t have reasonable cause to arrest him?

25. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE at xiii (AM. LAW INST., Tentative Draft No. 3, 1970).

26. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 Forward at viii (AM. LAW INST., Proposed Official Draft No. 1, 1972) (“I wish to express the appreciation of the Institute to . . . Professor Telford Taylor of Columbia Law School who was Reporter for the Articles on Search and Seizure.”).

27. *47th Annual Meeting, supra* note 1 at 151 (statement of Professor Telford Taylor).

28. *Id.*

PROFESSOR TAYLOR: If you don't have reasonable cause to arrest him, you couldn't search him.

PROFESSOR DIBBLE: That's right. So why change the rule in the case of the car, unless the fact that you found something in the car gave you reasonable cause to arrest the man in the car? I don't see any distinction between the man in the vehicle and the man on the street.

PROFESSOR TAYLOR: Well, all right. That is a good argument against [Section 6.03].

PROFESSOR DIBBLE: Right.²⁹

Professor Taylor then commented that Professor Dibble's argument was not "good enough," and the two men continued on.³⁰ The continued debate between Professors Taylor and Dibble was interrupted by ALI member and Judge, Charles Merrill, who spoke to express his own concerns:

HONORABLE CHARLES M. MERRILL: I share Professor Dibble's problems with this. If we are going to make it a different standard for search, reasonable cause to believe, but less than probable cause to arrest, I just, simply don't see how you can include [Section 6.03]. I don't think that the fact that they may be invited to secrete whatever is in the car on the person is a sufficient answer, because you are making an entirely different rule for the search of a person in a case in which he is sitting in an automobile than in the case in which he is not³¹

Judge Merrill went on to conclude, "I would very much favor eliminating [Section 6.03]."³² Several other ALI members agreed with Professors Dibble and Judge Merrill and moved to omit Section 6.03.³³ Alternatively, several other members

29. *Id.* at 154–55 (statements of Professor Telford Taylor and Professor J. Rex Dibble).

30. *Id.* at 155.

31. *Id.* at 156 (statement of Hon. Charles M. Merrill).

32. 47th Annual Meeting, *supra* note 1, at 156.

33. *Id.* at 157 (statement of Professor Schwartz) ("Well, I would like to join myself with Judge Merrill and Professor Dibble in favor of [f] removing [Section 6.03.]"); *id.* at 158 (statement of Mr. Eldredge) ("Mr. President, I wish to join with Judge Merrill and Professor Schwartz in my concern about [Section 6.03]"); *id.* at 160–61 (statement of Mr. Sigmund Timberg) ("I'd prefer to see [Section 6.03] stricken, because of the problems that it raises, and I suggest that we take a good, long look at the actualities of what's transpiring, because otherwise we are really distinguishing between people, as I say, who have a small parcel that they can carry within their hip pocket and people who are carrying larger luggage that would have to be in the vehicle.").

moved to amend Section 6.03 so that it was unrelated to vehicle searches.³⁴ Other members seemed completely lost.³⁵ Responding to the concerns of one ALI member, Professor Taylor stated, “[t]he constitutional doubts of including [Section 6.03] are impressive.”³⁶

Professor Kamisar, another ALI member, supported including Section 6.03 in the MCPP.³⁷ Still, however, he had his doubts: “I’m troubled because all the good guys are on one side, and for one of the few occasions in the years I have been here I can’t go along with them.”³⁸ Professor Kamisar reasoned that, as a matter of probabilities, the automobile exception should permit a warrantless search of a vehicle occupant.³⁹ After arguing in favor of Section 6.03, Professor Kamisar addressed the constitutional concerns raised by his fellow ALI members:

[I]t is a matter of common sense to be able to search all the people in the car. And so I do think that the *Di Re* case, as the Reporters candidly admit, is a problem, but it’s an old case as this business goes. A lot has happened since 1948, and I think that [Justice] Jackson’s arguments are just not persuasive.⁴⁰

34. *E.g., id.* at 157 (statement of Judge Charles D. Breitel) (“I think simply to have [Section 6.03] the way we now have it is too dangerous, because it suggests that it would be applicable only in a situation where you have no reason whatsoever to believe that the person involved has the material on him, because otherwise he would be subject to arrest.”); *id.* at 159 (statement of Mr. Williams) (“I don’t think that [Section 6.03] belongs as a kind of an incident to the *Carroll* case, but I do think that Judge Breitel and others have raised an important point; namely, that there are occasions where the man should be searched at least in connection with a vehicle.”); *id.* at 160 (statement of Mr. Hubert I. Teitelbaum) (“I think we should omit this kind of language, and if we want to provide for a change in the law as to search of an individual, we ought to do it down the line, without relationship to a motor vehicle.”).

35. *See, e.g., id.* at 161 (statement of Mr. William L. Marbury) (“Now, maybe this is all illegal. I don’t know, but I’m asking the question.”).

36. *Id.* (statement of Professor Telford Taylor).

37. *47th Annual Meeting, supra* note 1, at 166 (statement of Professor Yale Kamisar).

38. *Id.* at 165.

39. *Id.* at 165–66.

40. *Id.* at 166. For clarity, Justice Jackson was the Supreme Court justice who wrote the 1948 majority opinion in *United States v. Di Re*. *United States v. Di Re*, 332 U.S. 581, 582 (1948). The core rationale supporting Justice Jackson’s majority opinion is as follows:

Assuming, however, without deciding, that there was reasonable cause for searching the car, did it confer an incidental right to search *Di Re*? It is admitted by the Government that there is no authority to that effect,

After further debate, a majority of ALI members voted to have the Reporters amend and resubmit Section 6.03 for additional consideration.⁴¹

On May 21, 1971, almost exactly one year later, a majority of ALI members voted to include an amended Section 6.03 in the MCPP.⁴² The amended 6.03 was thereafter retitled to Section 260.3, included within the Proposed Official Draft of the MCPP, and submitted to the ALI on April 10, 1972.⁴³ Although it had a new title and additional verbiage, Section 260.3 remained the same in the sense that it permitted a police officer

either in the statute or in precedent decision of this Court, but we are asked to extend the assumed right of car search to include the person of occupants because 'common sense demands that such right exist in a case such as this where the contraband sought is a small article which could easily be concealed on the person.' . . .

The Government says it would not contend that, armed with a search warrant for a residence only, it could search all persons found in it. But an occupant of a house could be used to conceal this contraband on his person quite as readily as can an occupant of a car. Necessity, an argument advanced in support of this search, would seem as strong a reason for searching guests of a house for which a search warrant had issued as for search of guests in a car for which none had been issued. By a parity of reasoning with that on which the Government disclaims the right to search occupants of a house, we suppose the Government would not contend that if it had a valid search warrant for the car only it could search the occupants as an incident to its execution. How then could we say that the right to search a car without a warrant confers greater latitude to search occupants than a search by warrant would permit?

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

Id. at 586–87.

41. 47th Annual Meeting, *supra* note 1, at 167.

42. Am. Law Inst., *48th Annual Meeting*, 48 A.L.I. Proc. 440 (1971). The Reporters submitted the amended version of Section 6.03 to the members at the ALI's 48th Annual meeting. *Id.* at 371 ("Section 6.03 on vehicle searches, is back because at the meeting last year there was extensive discussion of one problem in connection with it, and that was the extent to which individuals who were in the vehicle could be personally searched. And after long discussion, a motion by Judge Breitel was made and carried directing that certain changes be made in that section. We have made them, submitted them to the Council, and Section 6.03 is back here with the changes which we believe were made in accordance with that meeting's directive.")

43. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 (AM. LAW INST., Proposed Official Draft No. 1, 1972).

to warrantlessly search a vehicle occupant's person.⁴⁴ In the proposed official draft of the MCPP, Section 260.3 read in relevant part:

(1) Reasonable Cause. An officer who has reasonable cause to believe that a moving or readily movable vehicle, on a public way or waters or other area open to the public or in a private area unlawfully entered by the vehicle, is or contains things subject to seizure under the provisions of Section SS 210.3, may, without a search warrant, stop, detain, and search the vehicle and may seize things subject to seizure discovered in the course of the search.

(2) Search of the Occupants. If the officer does not find the things subject to seizure by his search of the vehicle, and if

(a) the things subject to seizure are of such a size and nature that they could be concealed on the person, and

(b) the officer has reason to suspect that one or more of the occupants of the vehicle may have the things subject to seizure so concealed,

the officer may search the suspected occupants: *Provided*, That this Subsection shall not apply to individuals traveling as passengers in a vehicle operating as a common carrier.⁴⁵

In addition to the text of the model statute, the Reporters included commentary notes to Section 260.3 of the Proposed Official Draft of the MCPP.⁴⁶ In support of Section 260.3, the Reporters commented, "if the [automobile exception] is to be accepted at all, it seems both illogical and impracticable to exempt from search the occupants themselves."⁴⁷ The Reporters

44. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 (AM. LAW INST., Proposed Official Draft No. 1, 1972).

45. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 (AM. LAW INST., Proposed Official Draft No. 1, 1972). Subsection (3) of Section 260.3 is omitted from the above definition because it is not relevant for purposes of this Article. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3(3) (AM. LAW INST., Proposed Official Draft No. 1, 1972) ("This Section shall not be construed to limit the authority of an officer under Section 110.2 of Part I of this Code.").

46. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 cmt. at 208–09 (AM. LAW INST., Proposed Official Draft No. 1, 1972).

47. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 cmt. at 209 (AM. LAW INST., Proposed Official Draft No. 1, 1972). The full comment relating to Section 260.3(2) reads:

A more difficult question is whether or not the right of vehicular search extends to the persons of individuals occupying the vehicle, as provided in Subsection (2). The Supreme Court has squarely held that officers may not

did concede, however, “the Court has held pretty squarely to the contrary in *United States v. Di Re*.”⁴⁸ Against that recognized precedent, the Reporters argued, “it seems absurd to say that the occupants [of a vehicle] can take the narcotics out of the glove compartment and stuff them in their pockets, and drive happily away after the vehicle has been fruitlessly searched.”⁴⁹ The Reporters did not cite a single authority in support of those

enter premises without a warrant, even with probable cause to believe that seizable things are within, except to make an arrest based on probable cause with respect to a particular individual. The *Carroll* case lays down a different rule for vehicles. If the *Carroll* rule is to be accepted at all, it seems both illogical and impracticable to exempt from search the occupants themselves. If they were not in the vehicle, and there was probable cause to believe that they were in unlawful possession of things, they would be liable to arrest on probable cause. Why should there be a different result if they are in a vehicle, assuming probable cause to believe that *within* the vehicle—whether in the trunk or in their pockets—seizable things are to be found?

MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 cmt. at 209 (AM. LAW INST., Proposed Official Draft No. 1, 1972). However, the Court has held pretty squarely to the contrary in *United States v. Di Re*, 332 U.S. 581 (1948), at 589:

‘The government says it would not contend that, armed with a search warrant for a residence only, it could search all persons found in it. But an occupant of a house could be used to conceal this contraband on his person quite as readily as can an occupant of a car. Necessity, an argument advanced in support of this search, would seem as strong a reason for searching guests of a house for which a search warrant had issued as for search of a guest in a car for which none had been issued. . . . How then could we say that the right to search a car without a warrant confers greater latitude to search occupants than a search warrant would permit. . . . By mere presence in a suspected automobile, a person does not lose immunities from search of his person to which he otherwise would be entitled.’

There is considerable basis for criticism of this reasoning, which takes analogy from a search of fixed premises under a search warrant to an emergency search without a warrant, justified as “reasonable” by the mobile character of the thing to be searched. Under the rejuvenescent *Trupiano* rule and the thrust of the *Chimel* case, one might reasonably say that if the officers want to search people as well as premises, they should get a warrant that says so. But this will not do for emergency searches of vehicles, and it seems absurd to say that the occupants can take the narcotics out of the glove compartment and stuff them in their pockets, and drive happily away after the vehicle has been fruitlessly searched.

MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 cmt. at 208–09 (AM. LAW INST., Proposed Official Draft No. 1, 1972).

48. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 cmt. at 209 (AM. LAW INST., Proposed Official Draft No. 1, 1972).

49. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 cmt. at 209 (AM. LAW INST., Proposed Official Draft No. 1, 1972).

arguments.⁵⁰ Although the Reporters and many ALI members questioned its constitutionality, the ALI adopted Section 260.3 and proposed it as a model statute of criminal procedure in May of 1975.⁵¹

II. RULE 14.1: THE (ONLY) FOLLOWER

The Arkansas Supreme Court adopted the automobile exception on December 10, 1962.⁵² From 1962 to 1975, Arkansas courts,⁵³ and law enforcement officials,⁵⁴ interpreted the automobile exception by following the road paved by the

50. See MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 cmt. at 209 (AM. LAW INST., Proposed Official Draft No. 1, 1972).

51. History of the Model Code of Pre-Arrest Procedure, *supra* note 18, at 4.

52. *Burke v. State*, 235 Ark. 882, 886, 362 S.W.2d 695, 697 (1962) (adopting the automobile exception in Arkansas).

53. See, e.g., *Wickliffe v. State*, 258 Ark. 544, 546, 527 S.W.2d 640, 641 (1975) (“In *Cox* and *Easley* we held that where the initial intrusion of a vehicle was justified a subsequent warrantless search of a vehicle, after being removed into town, comported with constitutional standards. In doing so, we reviewed pertinent federal decisions.”); *Jenkins v. State*, 253 Ark. 249, 252, 485 S.W.2d 541, 543 (1972) (“In the case at bar we cannot, consistently with our own recent decisions and those of the [United States] Supreme Court, sustain the third search of Jenkins’s truck, which was the only search that is said to have revealed incriminating evidence.”); *Tygart v. State*, 248 Ark. 125, 126, 451 S.W.2d 225, 226. (1970) (“The fundamental requirements of the [automobile exception] are (1) that the officers have reasonable cause to believe the vehicle contains that which by law is subject to seizure, and (2) that it is not reasonably practicable to obtain a search warrant.”); *Mann v. City of Heber Springs*, 239 Ark. 969, 971–72, 395 S.W.2d 557, 559 (1965) (recognizing at the outset that “an automobile may be searched without a warrant where there is reasonable or probable cause for the belief of the officers that contents of the automobile offend against the law,” but later holding that a warrantless search of a vehicle lacked probable cause and was unconstitutional when police officers, prior to searching the vehicle, fruitlessly searched the vehicle owner’s apartment); *Burke*, 235 Ark. at 886, 362 S.W.2d at 697 (holding that a police officer could warrantlessly search “a vehicle moving on a public highway” if the officer had probable cause to believe a vehicle contained contraband).

54. See JAMES W. GALLMAN ET AL., CRIMINAL PROCEDURE INST., UNIV. OF ARK. SCH. OF LAW, CRIMINAL PROCEDURE MANUAL 79 (1st prt. 1970) (“An officer may stop and search an automobile without a warrant when he has reasonable cause to believe that the vehicle contains that which by law is subject to seizure and it is not reasonably practical to obtain a warrant.”). In its introduction to Chapter VIII, titled “Search of Vehicles,” the 1970 printing of the Arkansas Criminal Procedure manual noted, “[a]n officer’s authority to search vehicles is broader than his authority to search persons and places.” *Id.* Specifically, the manual gave Arkansas law enforcement officials the following guidance: The right to search a vehicle on reasonable grounds does not include the right to search a person inside the vehicle. If someone inside the vehicle is to be searched, he should be lawfully arrested before the search or be the subject of a search warrant, unless he voluntarily consents to the search. *Id.* at 80.

United States Supreme Court. In 1976, however, Arkansas chose to follow the deviant road paved by the ALI.⁵⁵

Adopted on January 1, 1976, Rule 14.1 was and remains similar to Section 260.3 in three notable ways.⁵⁶ First, Rule 14.1 was modeled entirely after Section 260.3.⁵⁷ Accordingly, Rule 14.1 permits a police officer to warrantlessly search an occupant of a vehicle—in addition to the vehicle itself.⁵⁸ Second, the drafters of Rule 14.1 questioned its constitutionality at the time of its inception.⁵⁹ Third, Arkansas adopted Rule 14.1 in spite of those concerns.⁶⁰ In the forty-three years since, Arkansas courts, commentators, and police officials have periodically raised further questions about the constitutionality of Rule 14.1.⁶¹ Against that history, the ultimate question of Rule 14.1’s constitutionality remains unanswered. Part II of this Article begins in 1971, and chronologically provides the historical context underlying that ultimate question.

In 1971, the Arkansas General Assembly authorized an eighteen-member committee, known as the Arkansas Criminal Code Revision Commission (the “Arkansas Committee”), to draft “rules of pleading, practice, and procedure in criminal case”⁶² Arkansas subsequently adopted the ARCP on January 1, 1976.⁶³ At the time of its adoption, the ARCP included thirty-one rules governing search and seizure—twenty-four of which derived exclusively from the MCPP.⁶⁴ Rule 14.1,

55. See *In re* Ark. Criminal Code Revision Comm’n, 259 Ark. 863, 864, 530 S.W.2d 672, 673 (1975).

56. *Id.* at 864, 530 S.W.2d at 673; compare ARK. R. CRIM. P. 14.1, with MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 (AM. LAW INST., Proposed Official Draft No. 1, 1972).

57. ARK. R. CRIM. P. 14.1 Derivation Tbl. at xvii (ARK. CRIMINAL CODE REVISION COMM’N, Proposed Official Draft 1974).

58. ARK. R. CRIM. P. 14.1.

59. See ARK. R. CRIM. P. ART. IV, Refs & Annos at 30 (ARK. CRIM. CODE REVISION COMM’N, Proposed Official Draft 1974) (“[Rule 14.1], which permits search of the persons in a vehicle when the officer does not find the things subject to seizure in his search of the vehicle, may raise constitutional questions.”).

60. *In re* Ark. Criminal Code Revision Comm’n, 259 Ark. at 864, 530 S.W.2d at 673.

61. See *supra* note 16.

62. John N. Fogleman & N. Chase Teeple, *The Forgotten Rule: Rule 16.2(e) of the Arkansas Rules of Criminal Procedure*, 66 ARK. L. REV. 661, 663–64 (2013) (discussing the creation of the ARK. R. CRIM. P.).

63. *Id.* at 663.

64. See ARK. R. CRIM. P. 14.1 Derivation Tbl. at xvii (ARK. CRIMINAL CODE REVISION COMM’N., Proposed Official Draft 1974).

titled “[v]ehicular searches,” was one of those twenty-four rules.⁶⁵ Rule 14.1 read and still reads as follows:

(a) An officer who has reasonable cause to believe that a moving or readily movable vehicle is or contains things subject to seizure may, without a search warrant, stop, detain, and search the vehicle and may seize things subject to seizure discovered in the course of the search where the vehicle is:

(i) on a public way or waters or other area open to the public;

(ii) in a private area unlawfully entered by the vehicle;
or

(iii) in a private area lawfully entered by the vehicle, provided that exigent circumstances require immediate detention, search, and seizure to prevent destruction or removal of the things subject to seizure.

(b) If the officer does not find the things subject to seizure by his search of the vehicle, and if:

(i) the things subject to seizure are of such a size and nature that they could be concealed on the person; and

(ii) the officer has reason to suspect that one (1) or more of the occupants of the vehicle may have the things subject to seizure so concealed;

the officer may search the suspected occupants; provided that this subsection shall not apply to individuals traveling as passengers in a vehicle operating as a common carrier.⁶⁶

As the above language illustrates, Rule 14.1 was derived, nearly word-for-word, from Section 260.3.⁶⁷ In addition to the rule itself, the Arkansas Committee published supplementary commentary notes alongside Rule 14.1.⁶⁸ Like the Reporters, the Arkansas Committee questioned the constitutionality of

65. ARK. R. CRIM. P. 14.1 (ARK. CRIMINAL CODE REVISION COMM’N., Proposed Official Draft 1974).

66. ARK. R. CRIM. P. 14.1(a–b) (ARK. CRIMINAL CODE REVISION COMM’N., Proposed Official Draft 1974). Section (c) of Rule 14.1 is omitted from the above definition because it is not relevant for purposes of this Article. *See id.* at (c) (“This rule shall not be construed to limit the authority of an officer under Rules 2 and 3 hereof.”).

67. ARK. R. CRIM. P. 14.1 Derivation Tbl. at xvii (ARK. CRIMINAL CODE REVISION COMM’N., Proposed Official Draft 1974).

68. *See* ARK. R. CRIM. P. Art. IV, Refs & Annos at 30 (ARK. CRIM. CODE REVISION COMM’N., Proposed Official Draft 1974).

expanding the scope of the automobile exception to permit warrantless searches of people:

[Rule 14.1], which permits search of the persons in a vehicle when the officer does not find the things subject to seizure in his search of the vehicle, may raise constitutional questions. The Supreme Court disapproved such searches in *United States v. Di Re*, 332 U.S. 581, 68 S. Ct. 222, 92 L. Ed. 210 (1948)⁶⁹

Nevertheless, the Arkansas Committee argued that “the continued validity of *Di Re* is questionable” because “[i]t would be unduly burdensome to require that the officer secure a warrant before he searches the occupants of a vehicle.”⁷⁰ To support those criticisms of *Di Re*, the Arkansas Committee cited only *one* authority, the ALI: “[A]s stated in the A.L.I. commentary, ‘it seems absurd to say that the occupants can take *seizable things* out of the glove compartment and stuff them in their pockets, and drive happily away after the vehicle has been fruitlessly searched.’”⁷¹

69. ARK. R. CRIM. P. ART. IV, Refs & Annos at 30 (ARK. CRIM. CODE REVISION COMM’N, Proposed Official Draft 1974). The full comment relating to Rule 14.1(b) reads:

[Rule 14.1], which permits search of the persons in a vehicle when the officer does not find the things subject to seizure in his search of the vehicle, may raise constitutional questions. The Supreme Court disapproved such searches in *United States v. Di Re*, basing its holding on the analogous rule that a warrant to search premises does not justify a search of persons on such premises. However, this analogy may be inappropriate, and the continued validity of *Di Re* is questionable. Following *Chimel*, an officer must in most instances secure a warrant prior to a premises search. If the officer desires to search persons on the premises, he can always ensure that the warrant so states. On the other hand, a vehicular search under Rule 14.1 is, by definition, without a warrant. It would be unduly burdensome to require that the officer secure a warrant before he searches the occupants of the vehicle. Furthermore, as stated in the A.L.I. commentary, “it seems absurd to say that the occupants can take seizable things out of the glove compartment and stuff them in their pockets, and drive happily away after the vehicle has been fruitlessly searched.” [quoting MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 cmt. at 209 (AM. LAW INST., Proposed Official Draft No. 1, 1972)].

ARK. R. CRIM. P. ART. IV, Refs & Annos at 30 (ARK. CRIM. CODE REVISION COMM’N, Proposed Official Draft 1974) (citations omitted).

70. ARK. R. CRIM. P. ART. IV, Refs & Annos at 30 (ARK. CRIM. CODE REVISION COMM’N, Proposed Official Draft 1974).

71. ARK. R. CRIM. P. ART. IV, Refs & Annos at 30 (ARK. CRIM. CODE REVISION COMM’N, Proposed Official Draft 1974) (emphasis added). It is worth noting that the Arkansas Committee, in quoting the ALI’s commentary to Section 260.3, changed the word “narcotics” to “seizable things” in the commentary to Rule 14.1; the italicized

The drafters of Rule 14.1 questioned its constitutionality at the time of its adoption in 1976.⁷² In the forty-three years since, a number of Arkansas courts, commentators, and police officials have periodically raised further questions about Rule 14.1's constitutionality.⁷³

Just a year after the adoption of Rule 14.1, the Arkansas Criminal Procedure Institute questioned its constitutionality in the 1977 printing of *Law Enforcement Criminal Procedure Manual*.⁷⁴ In the manual's chapter devoted to vehicle searches, the Arkansas Criminal Procedure Institute defined the scope of the automobile exception as follows:

If an officer fails to find the things subject to seizure after searching the vehicle, and if the things are such a size and nature that they could be concealed on a person, and the officer has reason to suspect that one or more of the occupants of the vehicle may have the things so concealed, then the officer may search the suspected occupants.⁷⁵

Citing Rule 14.1 in support of that definition, the Arkansas Criminal Procedure Institute cautioned, “[t]he authority granted under this rule may be questionable as a result of the decision in *United States v. Di Re*.”⁷⁶

In 1978, the constitutionality of Rule 14.1 arguably became more questionable with the Arkansas Supreme Court's decision in *Rowland v. State*.⁷⁷ In *Rowland*, Madison County sheriffs received a tip that Roger Rowland was using his car to traffic “amphetamine pills” from Washington County to Madison County.⁷⁸ The sheriffs later observed Rowland driving his vehicle and conducted a traffic stop.⁷⁹ After removing Rowland

language above reflects that alteration. Compare ARK. R. CRIM. P. ART. IV, Refs & Annos at 30 (ARK. CRIM. CODE REVISION COMM'N, Proposed Official Draft 1974), with MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 cmt. at 209 (AM. LAW INST., Proposed Official Draft No. 1, 1972).

72. ARK. R. CRIM. P. ART. IV, Refs & Annos at 30 (ARK. CRIM. CODE REVISION COMM'N, Proposed Official Draft 1974) (“[Rule 14.1] . . . may raise constitutional questions.”).

73. See *supra* note 16.

74. Charles N. Williams et al., *Criminal Procedure Inst.*, Sch. Of Law, Univ. of Ark., *Law Enforcement Officers Criminal Procedure Manual* 86 n.13 (2d prtng. 1977).

75. *Id.* at 86.

76. *Id.* at 86 n.13.

77. *Rowland v. State*, 262 Ark. 783, 561 S.W.2d 304 (1978).

78. *Id.* at 786, 561 S.W.2d at 306.

79. *Id.* at 787, 561 S.W.2d at 307.

from the vehicle, the sheriffs immediately searched his person and found “two bags of amphetamine pills and one bag of marijuana in Rowland’s boot.”⁸⁰ In holding that the warrantless search was unconstitutional, the Arkansas Supreme Court wrote:

It should be noted that all the incriminating evidence was discovered in a search of [Rowland’s] person and none, in a search of the vehicle itself. The searching officers testified that two bags of pills and one bag of marijuana were found in [Rowland’s] left boot and that nothing else was found in the vehicle.⁸¹

Although the Arkansas Supreme Court did not explicitly discuss the constitutionality of Rule 14.1, the court reasoned, “[i]t is well established that vehicle searches are often justified when searches of the person are not, because of the difference in the right to expectation of privacy.”⁸²

Further questions surrounding Rule 14.1’s constitutionality arose nine years later when it was republished within the newly adopted *Arkansas Code of 1987 Annotated*.⁸³ Although Rule 14.1 remained unamended, it was distributed with new supplementary commentary notes.⁸⁴ Like the Arkansas Committee, the 1987 commentators questioned the constitutionality of Rule 14.1:

Questions raised in the original commentary about the continuing validity of *United States v. Di Re* [] remain unanswered, though recent decisions of the circuit courts of appeal have reiterated the *Di Re* Court’s assumption that “a person, by mere presence in a suspected car, does not lose immunities of a search of his person to which he would otherwise be entitled.”⁸⁵

The 1987 commentators further discussed a then-recent Tenth Circuit opinion upholding *Di Re*,⁸⁶ but left the ultimate question of Rule 14.1’s constitutionality unanswered.⁸⁷

80. *Id.* at 787, 561 S.W.2d at 307.

81. *Id.* at 790, 561 S.W.2d at 308–09.

82. *Rowland*, 262 Ark. at 790, 561 S.W.2d at 309 (citing *United States v. Chadwick*, 433 U.S. 1 (1977)).

83. See Vincent C. Henderson, *The Creation of the Arkansas Code of 1987 Annotated*, 11 U. ARK. LITTLE ROCK L. J. 21, 21 (1988).

84. See ARK. R. CRIM. P. 14.1 1987 Unofficial Supplementary Cmt. at 906–08.

85. ARK. R. CRIM. P. 14.1 1987 Unofficial Supplementary Cmt. at 907 (citations omitted).

86. ARK. R. CRIM. P. 14.1 1987 Unofficial Supplementary Cmt. at 907–08.

In 1997, the Arkansas Supreme Court raised further questions about the constitutionality of Rule 14.1 in *Brunson v. State*.⁸⁸ In *Brunson*, a North Little Rock police officer stopped a vehicle because its occupants were “playing music so loudly it violated a city ordinance.”⁸⁹ As the officer approached the driver’s side of the car, he smelled marijuana and ordered the four occupants, one of which was Alton Brunson, to step outside.⁹⁰ When Brunson complied, the officer immediately searched Brunson’s person and found a small amount of marijuana and two crack rocks in his pockets.⁹¹ The Arkansas Court of Appeals held that the search of Brunson’s person violated the Fourth Amendment, and the State appealed to the Arkansas Supreme Court.⁹²

Reversing the lower court’s decision, the Arkansas Supreme Court held that the warrantless search of Brunson’s person was “reasonable” as one incident to a lawful arrest.⁹³ Notably, however, the court also considered whether Rule 14.1 permitted the warrantless search of Brunson’s person:

[W]e have not analyzed the search of [Brunson’s] person as being incident to a vehicular search. Even assuming *arguendo* that we did so analyze the search, we would be hesitant to interpret Rule 14.1 as narrowly as did the court of appeals . . . Rather, upon presentation of appropriate facts, we might consider an interpretation of Rule 14.1[] . . . [a]s analogous to our law on searches contemporaneous with arrests.⁹⁴

87. ARK. R. CRIM. P. 14.1 1987 Unofficial Supplementary Cmt. at 907–08.

88. *Brunson v. State*, 327 Ark. 567, 574, 940 S.W.2d 440, 443 (1997).

89. *Id.* at 571, 940 S.W.2d at 441.

90. *Id.* at 570, 940 S.W.2d at 441.

91. *Id.* at 570, 940 S.W.2d at 441.

92. *Brunson v. State*, 54 Ark. App. 248, 257, 925 S.W.2d 434, 438 (1996), *rev’d*, 327 Ark. 567, 940 S.W.2d 440 (1997). Specifically, the Arkansas Court of Appeals held that Rule 14.1 did not justify the warrantless search of Brunson’s person because the police officer “made no effort to search the vehicle” before searching Brunson. *Id.* at 253, 925 S.W.2d at 436. The Court of appeals further held that the warrantless search of Brunson’s person was not justified as one incident to a lawful arrest because the police officer “lacked a reasonable basis” for arresting Brunson until after the search had occurred. *Id.* at 255, 925 S.W.2d at 437. Accordingly, the Arkansas Court of Appeals concluded that the search of Brunson’s person “was prohibited by the Fourth Amendment” and reversed the trial court’s denial of Brunson’s motion to suppress. *Id.* at 257–58, 925 S.W.2d at 438–39.

93. *Brunson*, 327 Ark. at 572, 940 S.W.2d at 442.

94. *Id.* at 574, 940 S.W.2d at 443.

The *Brunson* court, however, left unanswered whether Rule 14.1 unconstitutionally expands the scope of the automobile exception.⁹⁵

Most recently, in 2015, Arkansas Attorney General Leslie Rutledge left the question about Rule 14.1's constitutionality unanswered in her seventh edition of the *Arkansas Law Enforcement Officer's Pocket Manual*.⁹⁶ In the manual's section devoted to warrantless vehicle searches, Attorney General Rutledge defined the scope of the automobile exception as follows:

2. Scope of Search: An officer with probable cause to search a vehicle may inspect:

a. every part of the vehicle that is capable of concealing the object of the search, including the glove compartment and trunk; or

b. contents of the vehicle that are capable of concealing the object of the search, including closed containers and containers belonging to passengers.

However, probable cause to believe that a particular container conceals contraband is not probable cause to search the entire vehicle and its contents.⁹⁷

Curiously, perhaps, Attorney General Rutledge did not include vehicle occupants in the scope of a lawful warrantless vehicle search⁹⁸—despite Rule 14.1 permitting just that.⁹⁹ Moreover, Attorney General Rutledge did not cite or mention

95. *Id.* at 574, 940 S.W.2d at 443. As of 2019, *Brunson* remains the only Arkansas Supreme Court opinion to ever interpret or analyze Rule 14.1 as it pertains to the warrantless search of a vehicle's occupants. *Id.* at 574, 940 S.W.2d at 443. The Arkansas Supreme Court has, however, analyzed various aspects of Rule 14.1(a). *E.g.*, *Colbert v. State*, 340 Ark. 657, 661, 13 S.W.3d 162, 164 (2000) (“Reasonable cause, as required by [Rule 14.1(a)], exists when officers have trustworthy information which rises to more than mere suspicion that the vehicle contains evidence subject to seizure and a person of reasonable caution would be justified in believing an offense has been committed or is being committed.”); *Reyes v. State*, 329 Ark. 539, 548, 954 S.W.2d 199, 203 (1997) (holding that a car parked in a motel parking lot was located in an area open to the public as required by Rule 14.1(a)); *Bohanan v. State*, 324 Ark. 158, 164, 919 S.W.2d 198, 202 (1996) (holding that a vehicle with a flat tire is readily mobile and, as such, meets the requirements of Rule 14.1(a)).

96. *See* RUTLEDGE, POCKET MANUAL, *supra* note 16, at 32–33.

97. *Id.*

98. *Id.*

99. Ark. R. Crim. P. 14.1.

Rule 14.1 once in the manual's section devoted to warrantless vehicle searches.¹⁰⁰

As of 2019, the question about Rule 14.1's constitutionality remains unanswered, while Rule 14.1 remains unamended.¹⁰¹ Although the ALI proposed Section 260.3 nearly fifty years ago, "Arkansas is the *only* state in the country that maintains it as a statute or rule of criminal procedure."¹⁰²

III. CONCLUSION

The anomaly that is Rule 14.1 is best understood in light of its historical context. Recall that Rule 14.1 derived entirely from Section 260.3.¹⁰³ The American Law Institute proposed Section 260.3 as a model statute of criminal procedure in 1975, despite the Reporters and many ALI members questioning its constitutionality.¹⁰⁴ The Arkansas Committee likewise questioned Rule 14.1's constitutionality at the time of its adoption in 1976.¹⁰⁵ Questions remain related to the constitutionality of Rule 14.1's passage because neither Arkansas courts,¹⁰⁶ commentators,¹⁰⁷ nor police officials,¹⁰⁸

100. RUTLEDGE, POCKET MANUAL, *supra* note 16, at 32–33. To be clear, the *Arkansas Law Enforcement Officer's Pocket Manual* did not specifically cite Rule 14.1(b) in its section devoted to warrantless vehicle searches. *Id.* The manual did, however, cite Rule 14.1(a)(i)–(iii) in that section when defining the probable cause required to warrantlessly search an automobile. *Id.* at 31.

101. Compare ARK. R. CRIM. P. 14.1 (ARK. CRIMINAL CODE REVISION COMM'N, Proposed Official Draft 1974), with Ark. R. Crim. P. 14.1.

102. Carroll, *supra* note 17, at 33 & app. (emphasis in original).

103. See Rules of Crim. P. 14.1 Derivation Tbl. at xvii (ARK. CRIMINAL CODE REVISION COMM'N, Proposed Official Draft 1974).

104. See, e.g., MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 260.3 note at 76 (AM. LAW INST., Proposed Official Draft No. 1, 1972) ("Case authority for [Section 260.3] is lacking and clouded by the apparently contrary determination in *United States v. Di Re* . . .") (citation omitted); *47th Annual Meeting*, *supra* note 1, at 161 (statement of Professor Telford Taylor) ("The constitutional doubts of including [it] are impressive.").

105. RULES OF CRIM. P. ART. IV, Refs & Annos at 30 (ARK. CRIMINAL CODE REVISION COMM'N, Proposed Official Draft 1974) ("[Rule 14.1] . . . may raise constitutional questions.").

106. See, e.g., *Brunson v. State*, 327 Ark. 567, 574, 940 S.W.2d 440, 443 (1997) (explaining that if presented with the appropriate facts, it would interpret Rule 14.1. as "analogous" to a search incident to a lawful arrest); *Rowland v. State*, 262 Ark. 783, 790, 561 S.W.2d 304, 309 (1978) ("It is well established that vehicle searches are often justified when searches of the person are not, because of the difference in the right to expectation of privacy.").

107. See ARK. R. CRIM. P. 14.1 1987 Unofficial Supplementary Cmt. at 907 ("[R]ecent decisions of the circuit courts of appeal have reiterated the *Di Re* Court's

have explicitly addressed the issue. Meanwhile, and perhaps as a result, Rule 14.1 has gone unamended.¹⁰⁹ As of 2019, Rule 14.1 is the only criminal procedure rule or statute in the country modeled after Section 260.3.¹¹⁰

Perhaps Counsel Member William Marbury summed up the purpose of this Article best at the American Law Institute's 1970 meeting: "Now, maybe this is all illegal. I don't know, but I'm asking the question."¹¹¹ The purpose of this Article is not to answer Mr. Marbury's question, but rather to raise it: Is Rule 14.1—any of it—constitutional? As this Article concludes, the forty-three-year-old (and counting) question about Rule 14.1's constitutionality remains unanswered. But it will not remain unanswered for much longer. Until next time.

assumption that 'a person, by mere presence in a suspected car, does not lose immunities of search of his person to which he would otherwise be entitled.'" (citation omitted).

108. See, e.g., WILLIAMS ET AL., *supra* note 74, at 86 n.13 ("[T]he authority granted under this rule may be questionable as a result of the decision in *United States v. Di Re . . .*") (citation omitted); RUTLEDGE, POCKET MANUAL, *supra* note 16, at 31–32 (failing to include a vehicle occupant's person within the scope of a lawful warrantless vehicular search).

109. Compare ARK. R. CRIM. P. 14.1 (ARK. CRIMINAL CODE REVISION COMM'N, Proposed Official Draft 1974), with Ark. R. Crim. P. 14.1.

110. See Carroll, *supra* note 17, at 33 & app.

111. 47th Annual Meeting, *supra* note 1, at 161.