10-1984

California v. Carney

Lewis F. Powell Jr.

Grant

Q - whether search of a mobile home requires a search warrant in addition to probable cause.

Conflict.

PRELIMINARY MEMORANDUM

February 17, 1983 Conference
List 7, Sheet 2

No. 83-859

CALIFORNIA

v.

CARNEY

Cert to CA SCt
(Mosk,
Richardson-dis)

State/Criminal Timely

1. SUMMARY: Petr challenges ruling that a motor home does not fit within the vehicle exception to the warrant requirement established in Carroll v. United States, 267 U.S. 132, 149 (1925).

GRANT. I am not sure the question is so exceedingly important, but the split in the lower courts is genuine.

Joe

2. FACTS AND PROCEEDINGS BELOW: Petr drove around in his motor home soliciting sex from boys in exchange for marijuana.[1] Based on the testimony of one of the boys and the observations of a narcotics officer, the police went to the motor home, which was parked in a public parking lot, and had the boy knock on the door to get resp to come out. The officers identified themselves, and one of them entered the motor home where he saw on a table two bags of marijuana, some Ziploc baggies, and a scale. Resp was arrested, and the vehicle was seized and driven to the police station where a subsequent inventory search revealed more marijuana.

Resp was charged with possession of marijuana for sale. After an unsuccessful motion to suppress, resp pled nolo contendere and was put on 3 years probation. The CA SCt reversed on the grounds that a motor home is not subject to the automobile exception to the warrant requirement. The court noted that although Carroll rested on the inherent mobility of cars, this justification was no longer a valid one. Rather, the reason for the exception lies in the diminished expectation of privacy which surrounds the automobile. Cady v. Dombrowski, 413 U.S. 433 (1973); Chambers v. Maroney, 399 U.S. 42 (1970). The court also relied on

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[1]The vehicle in question was a "Dodge Mini Motor Home." It contained, at least, a bed, a table and chairs, cupboards and a refrigerator. The record does not disclose whether additional fixtures and appliances, such as bathing and toilet facilities, sink, stove, etc., were also present.

United States v. Chadwick, 433 U.S. 1 (1977), in which this Court held that the inherent mobility of a footlocker did not justify a warrantless search of it. Since a motor home, although it has the mobility of a car, also has the privacy of a home, a warrant is required for a search of it.

The CA SCt remanded the case to allow resp to withdraw his plea. Under CA law, the State had only 60 days in which to retry the df without the suppressed evidence. JUSTICE REHNQUIST stayed the judgment of the CA SCt to permit the State to file a petition for certiorari.

3. CONTENTIONS: Petr argues that under Carroll, 267 U.S., at 149, 153 (which speaks of a vehicle exception, including therein "a ship, motor boat, wagon, or automobile," or any other vehicle which "can be quickly moved out of the locality;" not just an auto exception), the inherent mobility of a vehicle creates sufficient exigency to render a warrant unnecessary provided there is probable cause to search. This has remained the primary reason for the exception up to the present day. See United States v. Ross, 456 U.S. 798, 804-809 (1982); Chambers v. Maroney, 399 U.S. 42, 48-49 (1970). Lack of a reasonable expectation of privacy serves as an "independent justification" for a warrantless search, not a necessary condition when the vehicle is still mobile. This case is important because of the large number of vehicles that could be called "motor homes" and, more important, could be used as mobile criminal operational centers. Yes

Petr further argues that there is a split among the Circuits on this question. The CA9 (630 F.2d 1332) has agreed with the CA SCt that a motor home is not subject to the vehicle exception because of the heightened expectation of privacy associated with the vehicle. Most other Circuits have relied on the mobility justification and come out the other way. See, e.g., CA10 (620 F.2d 753); CA6 (472 F.2d 1204) (vessel); CA5 (559 F.2d 420).

Finally, petr argues that the CA SCt has thrown away the brightline test of this Court in favor of an inherently uncertain standard which will provide no guidance to law enforcement officers. With the expectations of the owner paramount, a subcompact with a sleeping bag may be "home" just as a Winnebago might be used solely for transport. And the range of vehicle configurations in between (even setting aside owner expectations) is enormous.

Resp argues that the decision below rests on an independent and adequate state ground since the opinion clearly invokes Art. 1, §13 of the California Constitution. All the federal cases cited by the CA SCt merely serve to explicate the independent reasons relied upon by the CA court.

Resp further argues that this is an inappropriate case for review because of the inadequacy of the factual record. For example, the physical configuration of the motor home is only vaguely described and it is not clear whether it was used as resp's primary residence. Furthermore, the conflicts cited by petr are "illusory."

Finally, resp claims that the State never even established probable cause for the entry.

4. DISCUSSION: The CA SCt clearly relied for its holding on the precedents of this Court. And the CA SCt never questioned the finding of the lower courts that there was probable cause for the entry. Thus, the "vehicle exception" issue is properly presented here. Furthermore, although there is not a complete description of the contents of the vehicle in the record, enough is known to present the issue concretely. The Court is unlikely to draw a line that would require a police officer to guess in advance whether a particular vehicle does or does not have a stove or a sink.

The issue is both difficult and important. The CA SCt's determination is by no means clearly correct, relying as it does on a revisionist history of the vehicle exception cases in light of Chadwick and Dombrowski. Dombrowski involved an inventory search of an impounded, wrecked car. The traditional "mobility" rationale was nonexistent and, thus, the diminished expectation of privacy in autos (and the good faith efforts of the officers to inventory and secure the contents) provided an alternative justification for the search. Nothing in Dombrowski, or certainly in Chadwick, undermines the independent validity of the mobility rationale relied upon from Carroll through Ross, and explicitly not limited to autos.

The Court has never applied the doctrine to motor homes, and certainly the proper answer in this context is not self-

evident. Some clarification of the doctrine appears essential. The split among the Circuits is genuine, and resp gives no justification for his claim to the contrary.

I recommend a GRANT.

There is a response.

February 9, 1984 Kellogg Opn in Petn

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

February 17, 1984

No. 83-859

CALIFORNIA

vs.

CARNEY

ITAB says conflict is not clear. Then "mobile home" was parked on street.

Relist for C. J. to take a 2nd look

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.					Pass								
Brennan, J.			✓										
White, J.			✓										
Marshall, J.			✓										
Blackmun, J.			✓										
Powell, J.		✓											
Rehnquist, J.		✓											
Stevens, J.			✓										
O'Connor, J.		✓											

March 16, 1984

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 83-859

CALIFORNIA

vs.

CARNEY

Granted

Z. Reed for Kalhler

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.	Z												
Rehnquist, J.													
Stevens, J.													
O'Connor, J.													

LFP/djb 08/15/84

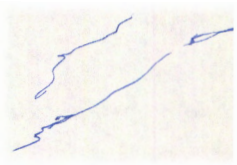
No. 83-859, California v. Carney

Memorandum for the File

This is a summary memorandum on the basis of a preliminary reading of the briefs.

The question presented is:

> "Whether police officers violated the Fourth Amendment when they conducted a warrantless search based on probable cause of a 'motor home' parked in a public parking lot"?



The case is here on cert from the Supreme Court of California. The petition for cert does not include any opinions other than that of the State Supreme Court. The only findings of fact with respect to the motor home at issue are those in the opinion of the California Supreme Court. The vehicle was in a public parking lot. Respondent states in his brief that the vehicle was in an "off-street" parking lot. The California Court described the vehicle as follows:

> "First and foremost, unlike an automobile the primary function of a motor home is not transportation. *Motor homes* are generally designed and used as residences; their essential purpose is to provide the occupant with living quarters, whether on a temporary or a permanent *basis*. *Both Vehicle Code* section 396 and Health and Safety Code section 18008 refer to a mobilehome not as a vehicle but as a transportable "structure." The motor home at issue here was equipped with at least a bed, a refrigerator, a table, chairs, curtains and storage cabinets.[4/] Thus the contents of the

> motor home created a setting that could accommodate most private activities normally conducted in a fixed home. The configuration of the furnishings, together with the use of the motor home for all manner of strictly personal purposes, strongly suggests that the structure at issue is more properly treated as a residence than a mere automobile."

In a footnote, the California Court states that "The record does not disclose what other fixtures, furnishings or appliances were installed in this particular motor home. Amicus implies that it also had bathing and toilet facilities, but the record is silent on this point."

DEA agents, who had had the mobile home under surveillance entered it with clear probable cause but without a warrant. They arrested respondent, owner of the home, and searched the vehicle. A substantial quantity of marijuana was found. The vehicle was taken to police headquarters and a further search revealed additional marijuana.

Neither the brief of the State or the SG deny that the DEA agents had plenty of time to obtain a warrant. If the owner had attempted to drive the mobile home away, presumably it could have been followed. There is no evidence on this point.

We granted cert to decide whether the warrant clause applies to mobile homes. The question is an important and troublesome one.

Independent State Ground

Respondent's brief argues that the case should be dismissed because the Supreme Court of California relied on the state constitution and state cases. Respondent acknowledges that Michigan v. Long, 463 U.S. at __, adopts an assumption or a presumption that no independent state ground will be found to exist when "it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground, and when it fairly appears that the state court rested its decision primarily on federal law.

Respondent's argument is not frivolous. The long California opinion commences by citing the state constitution. In addition, a number of state cases are cited, including those that have said that the California constitution is applied more strictly than the Fourth Amendment. But the basic principles relied upon by the California court were those established by Supreme Court decisions. Virtually every important warrant clause case was cited. It will be interesting to see what the Attorney General of California says in his reply brief.

The Merits

The California Court, reversing lower courts, held that the automobile exception to the warrant clause is inapplicable to a mobile home. It recognized that our cases have based the exception on two grounds: (i) mobility of automobiles, and (ii) a lessoned expectation of privacy in an automobile. Conceding that mobile homes - by definition - are mobile though they vary in mobility, the California court relied primarily on its view that there is no diminution of one's expectation of privacy. The California court comes close to laying down a "bright line" that would treat all mobile homes alike.

Respondent's brief identifies three significant factors in arguing that the autombile exception does not apply "to the facts of this case": (i) the area searched was the living quarters; (ii) the vehicle was not in transit or stopped on a roadway, but was "parked off the public street and was being used as a residence"; and (iii) a warrant easily could have been obtained.

The SG and the Attorney General of California disagree. Specifically, the SG emphasizes that the automobile exception is based on (a) a reduced expectation of privacy; (b) "difficulties engendered by its mobility justify relaxation of the warrant

requirement"; (c) one's expectation of privacy in a vehicle - "even one being used for residential purposes - "cannot be equated with that of a permanent residence".

The SG agrees that "there is some point at which a motor home ... should be afforded the protection of a dwelling even though it remains potentially mobile." It is emphasized that mobile homes vary widely from overnight campers to those (in Florida for example) that, in effect, become the residences of the occupants.

My Tentative Views

Subject to further consideration, I am inclined to affirm. At least on the facts of this case, incomplete as they are, it appears that this vehicle was being used as a residence or at least was capable of being so used. There is nothing in the record to the contrary. I do not regard the fact that this particular home, found in a parking lot, probably was being driven from place to place. Tens of thousands of people, often seeking employment, move above the country in vehicles used as residences.

The difficulty is whether to adopt the California "bright line" view, or decide the case primarily on its facts. As police officers are unlikely to know the contents of a mobile home, or

indeed the extent to which it may be used as a residence, there is much to be said for a rather broad bright line. I suppose there are some limits such as, for example, the overnight camper that lacks any of the characteristics of a residence except perhaps camp-type beds or bunks.

L.F.P.

Renewed 10/27 (Mobile Home case)
Not sure I agree entirely
with Lee's view.

alb 10/27/84

BENCH MEMORANDUM

To: Mr. Justice Powell October 27, 1984

From: Lee

No. 83-859, California v. Carney

BACKGROUND

Factual Background

Drug Enforcement Agent Robert Williams observed respondent, Carney, approach a Mexican youth in downtown San Diego. Williams watched respondent and the boy enter a Dodge Mini Motor Home which was parked in a lot in the downtown area. Once inside, they closed the curtains of the vehicle.

Because he recalled that he had received tips on many occasions that the same motor home was used for drug sales by another individual, agent Williams noted the license number of the mobile home.

Williams watched the van for about an hour and a quarter, until the youth emerged. Williams approached and began to interrogate him. In response to Williams' questions, the boy stated that he had allowed respondent to perform oral sex on him. In exchange, respondent gave the youth a small bag of marijuana.

Williams returned with the youth to the mobile home, and had the boy knock on the door. Respondent opened the door and stepped out. Agent Williams and two fellow DEA agents identified themselves as law enforcement officials; one of the agents looked inside the mobile home and saw on a table a large bag of marijuana, a small bag of marijuana, some empty plastic bags, and a scale. Respondent was placed under arrest. A subsequent search of the van revealed more marijuana.

Respondent was charged with a single count of possession of marijuana for sale. He pleaded not guilty, and moved to suppress the marijuana seized from the motor home. This motion was denied, as the trial court found that the "automobile exception" justified a warrantless search. Respondent then entered a plea of nolo contendere. He was sentenced to probation for three years. The California Court of Appeals affirmed.

II. The Decision Below

The California Supreme Court found that the vehicle exception to the warrant requirement does not apply to mobile homes and reversed. That court accepted the trial court's finding that there was probable cause to search the motor home, but found that a motor home is so different from a car that a warrant is required to search it.

Held in add. to prob. cause, must have a warrant.

In reaching its decision, the California Supreme Court recognized that the "underlying rationale" of the seminal case of Carroll v. United States, 267 U.S. 132 (1925), was "the inherent mobility of automobiles." The California court found, however, that mobility alone was insufficient to support the automobile exception. The court supported this reasoning with references to cases: (1) where a warrant was found to be required even though the container searched was mobile; and (2) where warrantless searches of automobiles were permitted although there was little chance of the automobile's going anywhere. Quoting this Court's opinion in United States v. Chadwick, 433 U.S. 1 (1977), the court concluded that the primary justification for the automobile exception is "the diminished expectatiopn of privacy which surrounds the automobile."

The court proceeded from this premise to find the automobile exception inapplicable to a motor home because the factors that diminish the privacy interest in an automobile are absent in a motor home. The primary function of respondent's vehicle was not to provide transportation, but

to serve as living quarters. Its functioning as a house was not altered by its not being affixed to real property. Nor did it matter that respondent might have had a transient lifestyle, since expectations of privacy exist in transient-occupied "hotel rooms." The court relied on the fact that the interior and contents of an ordinary mobile home are not exposed to the public, and concluded that the automobile exception to the warrant requirement did not apply, that no other exceptions to the warrant requirement applied, and that the search was therefore illegal. The evidence acquired in the search therefore should have been suppressed, and the case was ordered remanded.[1]

DISCUSSION

I. Applicability to the Automobile Exception

In Carroll v. United States, 267 U.S. 132 (1925), this Court considered the warrantless search of an Oldsmobile roadster by federal prohibition agents. The agents stopped the car on a route well-known for its heavy bootleg traffic, and proceeded to inspect it. Behind the upholstering of the

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[1]In support of its position, the California Supreme Court cites several of its own cases and the state constitution. The state court's discussion, however, focuses only on this Court's fourth amendment decisions. Therefore, the judgment below rests on independent and adequate state grounds. See Michigan v. Long, 103 S.Ct. 3469 (1983)("state court indicates clearly and expressly that its [judgment] is alternatively based ...").

seats they found 68 bottles of illicit liquor. Without making an arrest of the car's two occupants, the agents impounded the car and the liquor. The Court held that the warrantless search was "reasonable" for fourth amendment purposes because: (1) there was probable cause to believe the vehicle contained evidence of a crime; and (2) it was likely that due to exigent circumstances the vehicle would have been unavailable by the time a warrant was obtained.

The Carroll Court emphasized that there was a difference between fixed and movable premises:

> [T]he 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 a 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.

Although Carroll was concerned only with "mobility," more recent cases indicate that there is another justification for the "automobile exception." In United States v. Chadwick, 433 U.S. 1 (1977), federal agents had probable cause to believe that respondents' footlocker contained marijuana. The agents searched the footlocker without respondents' consent or a warrant. This Court held that the search violated the respondents' fourth amendment rights. It rejected the government's argument that, because of the mobility of the footlocker, the "automobile exception"

could be used by analogy to justify the warrantless search. The Court noted that warrantless searches of automobiles are permitted because of the "diminished expectation of privacy surrounding the automobile." A footlocker, unlike a car, is a common repository of personal effects, and is "inevitably associated with the expectation of privacy." Therefore, the agents should have secured a warrant prior to searching the footlocker. See also Arkansas v. Sanders, 442 U.S. 753, 761 (1979)("the configuration, use, and regulation of automobiles often may dilute the reasonable expectation of privacy that exists with respect to differently situated property"); Cardwell v. Lewis, 417 U.S. 583,590 (1974)(plurality opinion)("it travels public thoroughfares where both its occupants and its contents are in plain view").

The reasons for the "automobile exception" do not justify its use to validate the warrantless search of a mobile home. A mobile home "resident" clearly expects more privacy than does a car owner. Unlike a car, a mobile home is often the repository of personal effects, and its interior is usually shielded from view. Therefore, an exception to the warrant requirement cannot be justified by the mobile home owner's diminished expectation of privacy.

II. Exigent Circumstances

Although the "automobile exception" should be held inapplicable, "exigent circumstances" will justify the warrantless search of a motor home. It is important, however, that the Court not consider as an "exigent circumstance" the "inherent mobility" of the motor home. It is true that if the police do not guard a mobile home thought to contain evidence, the vehicle may be driven away. Nevertheless, a stationary house that contains contraband or evidence of a crime presents the police with an equally serious problem. If the police do not guard the house, someone may enter the home and leave with the evidence. There is thus no basis for a claim that a mobile home not in motion or about to be driven away presents the police with an "exigent circumstance" justifying a warrantless search.

When a motor home is in motion, on the other hand, the police should be allowed to perform warrantless searches. It will sometimes be impossible for a policeman to follow a vehicle even for the short time required to obtain a telephonic warrant. Therefore, without an immediate search, the vehicle and the evidence that it contains may well disappear. In such a case, "exigent circumstances" support a warrantless search of the vehicle.

III. Search or Seizure

In the preceding section, it was suggested that a warrantless search is justified in those cases where the mobile home is actually in motion or about to be driven away. It might be preferable, however, for this Court to hold that the police are permitted only to seize the motor home. Following the seizure, the police would be required to obtain a warrant in order to search the vehicle. This line of reasoning might seem foreclosed by Chambers v. Maroney, 399 U.S. 42 (1970), in which the Court held that there is no qualitative difference, in constitutional terms, between a search and a seizure. The Chambers Court noted that whether a search or a seizure was a greater intrusion was "a debatable question and the answer may depend on a variety of circumstances."

I am not convinced that Chambers is dispositive in this case. Arguably, when one is talking about mobile homes instead of cars, it is clear that a search is a greater intrusion than a seizure. Most people would prefer temporary immobilization of their motor home to a policeman's search through their personal effects. Any individual who prefered an immediate searach could consent to one. Cf. Chambers v. Maroney, 399 U.S. 42, 63 (1970)("the device of consent is readily available"). Therefore, it might make sense to say that even when "exigent circumstances" justify a warrantless seizure, a magistrate must approve of any subsequent search.

SUMMARY

Because of the owner's high expectation of privacy, the "automobile exception" cannot justify the warrantless search of a motor home. When the motor home is being moved, however, a warrantless search should be permitted; "exigent circumstances" make resort to a magistrate impossible. Policemen should have little difficulty determining whether a vehicle is a "mobile home," not covered by the "automobile exception." If a reasonable person would assume that someone resided in the vehicle, a warrantless search would not be allowed. On the other hand, if it appeared that the vehicle served solely as a means of transportation, then the police could search the vehicle on the basis of probable cause alone.

83-[redacted]9 Calif v. [redacted] Carney
(mobile home case)

"Hybrid" - by definition this is both a "mobile vehicle" and a "home".

Calif Bright line: Calif S/Ct is holding based on "expectation of privacy"; in that "auto exception" to warrant clause does not apply.

Dual basis of auto exception: Carroll relied only on "inherent mobility" that in effect creates "exigent circumstances". But recent cases also rely on "expectation of privacy".

Bright line not appropriate. Facts & "circumstances" must be considered - e.g. moving or parked on the road or temporarily, compared with located in a mobile home park + connected to utilities.

83-859 CALIFORNIA v. CARNEY

[mobile home case]

Argued 10/30/84

Hanoian (Dep. AG of Calif)

Record doesn't show how long this vehicle had been in parking lot.

Not a "trailer" parking area or park

This was "integral vehicle" — an automobile ~~with~~ - van-type rear large enough for sleeping quarters (like a camper).

Vehicle not the typical trailer home that is towed by a tractor or auto. ~~E~~

Altho the record doesn't show type of lot, it was a typical city parking lot.

This vehicle had a ~~state~~ vehicle registration, ~~and~~ and required a special type of registration & license

~~E~~ J. 50'C noted that SG has different rationale from Calif.

[SG would rely on both mobility & privacy. Calif. believes that these are separate grounds & that mobility alone is sufficient]

Hanoverair (cont.)

Under Calif's view, test is that vehicle must be capable of movement - either "wheels" itself or attached to a tractor.

Answering JP 5, the AG said if the trailer is attached to a tractor & is located in a trailer park (even "hooked-up"), the Carroll mobility rule applies.

Ship is capable of serving as a home (e.g. "marina ~~ness~~ ~~ss~~ on the Potomac Channel)

Carroll's rationale is ~~no exigent~~ based on absence of time to obtain warrant.

CJ Taft stated the mobility standard.

Was this in Carroll

Homman (Resp)

Court House near by - time to obtain warrant.

[In Ross, Carroll was cited several times with apparent approval - see 456 US at 823, 825]

Ross did involve an automobile.

The vehicle is "self-contained" - only a single unit.

Critical Q is whether the Carroll exception should be applied w/o regard to expectation of privacy.

This vehicle was unlike an auto because it was dual purpose: a home & a vehicle.

Configuration of motor home is designed to assure privacy.

Agree if the van was in movement the auto exception applies. When a mobile home is being moved, the mobility factor out-weighs the privacy factor.

Agrees with 5 Cs fall back position stated on p 19, n 8.

11/1

83-859 Calif v. Carney (mobile home case)

Inclined to Reverse - but Dissent.

Do not agree with Calif S/Ct. view that only relevant inquiry is whether there was reasonable expectation of privacy.

SG suggests two standards of analysis:

[Both "mobility" & "expectation of privacy" are relevant.]

1: Primary use at time
as a "residence" or for "transportation"

2. Type of vehicle
was it built primarily for use as a "residence" or for "transportation". ~~(Cg~~ :
(Cf. homes that can be connected with utilities & vans & campers)

Relevant considerations
(a) subject to state registration & traffic laws; driver's license.
(b) may be ~~stopped~~ stopped by police. (reduced expectation privacy) accidents
(c) where located at time

No. 83-859, California v. Carney Conf. 11/2/84

The Chief Justice Rev.

This vehicle was not the type used as a home.

Should have a bright line. Could hold that any thing that can move on highway is a vehicle. But need not go this fast.

Type mid-air home would not have been on this lot. No reason to think this vehicle was a home.

Justice Brennan Rev.

Both mobility & exp. of privacy are relevant

Agree with SG - test is whether there are objective indications of vehicle & ~~use as a fact~~

~~test~~ Calif rule is wrong, Adopt SG's test. Objective indicia.

Justice White Rev.

Agree with SG - but there could be exceptions.

Justice Marshall Rev.

Agree with SG

Justice Blackmun Rev.

No independent ~~St. ground~~ state ground.

Agree with SG's primary test

Justice Powell Rev.

See my notes.

SG primary test OK.

Object ~~to~~ the facts must be considered.

Justice Rehnquist

Rev

Test should turn on objective facts.

could go with SG's first test.

Justice Stevens

Affirm

Both of SG's proposals may be OK.

But no test will resolve all questions - e.g. a true "home"? moving on highway.

Prefer SG's second home test. (?)

Carroll rule applies only if vehicle is moving.

Here vehicle appeared to be a home.

Justice O'Connor

Rev.

Adopt SG primary test

Decide on basis of what officer sees - not what may be inside.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 28, 1985

Re: 83-859 - California v. Carney

Dear Chief,

Although I may come to a different conclusion when I write it out, I plan to try my hand at a dissenting opinion.

Respectfully,

JPS

Chief Justice Burger

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 1, 1985

No. 83-859

California v. Carney

Dear Chief:

At Conference, I said that I could go along with a test based on objective external indicia to indicate whether a vehicle was being used as a home or merely as a car. Your opinion appears to draw the line based solely on mobility. I will therefore probably write an opinion concurring in the judgment. In the meantime, I'll be interested to read John's writing.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 1, 1985

Re: No. 83-859 - California v. Carney

Dear Harry:

Thank you for your note. It was my understanding at Conference that the majority of the Court preferred an objective, bright-line test that police on the beat would have a reasonable chance of following. I understood the Court's holding to be a rejection of the "principal function" test applied by the California Supreme Court, and consequently the rejection of a similar "primary function" test in this case.

I believe that the Conference's rejection of the Calif lower court's "principal function" test was based on sound reasoning. Any inquiry into the "primary function" of a vehicle mandates an inspection of the interior which the officer has never seen; that is inherently subjective and speculative. The record in this case, for example, does not indicate with any certainty whether the vehicle at issue had as its "primary" function use as a vehicle or use as a dwelling; it shows that it was capable of being used as either.

With regard to the Solicitor General, I believe that my draft is fully consistent with the Solicitor General's position as it applies to the facts of this case. On page 19 of the Solicitor General's brief, for example, he states, "[A] motor home that is treated by the state as a vehicle for regulatory purposes and that is come upon by the police when it is being used as a vehicle should be retained within the automobile exception." Again, on page 19 note 8, he states, "Our approach would thus draw the line between 'vehicles' and 'residences' not on the basis of the attributes of the vehicle, but on the basis of whether it is at least temporarily affixed to the site or is fully mobile." (emphasis added) My draft conforms to that approach; I would welcome suggestions how to make it more so.

As to your suggestion that the location of the vehicle is important, we recognize that this case involves a vehicle parked in a public lot. Our decision thus does not--and, properly, should not--decide what standard would apply to a vehicle parked in a different sort of setting. I could readily include language leaving for another day determination of what standards would apply if a vehicle such as this one is not parked on or near a

public thoroughfare, but for vehicles out on the street I am persuaded that the simplest, soundest "test" is ready mobility, which would likely exclude a "vehicle" with plumbing and power attachments to public facilities.

Regards,

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 1, 1985

Re: No. 83-859, California v. Carney

Dear Chief:

I have some difficulty with your opinion in this case. I thought that a majority of the Conference wished to pursue the Solicitor General's primary position, that is, that searches of motor homes concern conflicting interests in privacy and in effective use of the police power, that primary use of the motor home is the important and governing factor, and that, therefore, when a motor home is being used primarily as a home, privacy rights prevail, whereas when it is used primarily for transportation, it should be treated as a mobile vehicle for purposes of the automobile exception. A bright-line rule reflecting this balance would focus on the location of the vehicle. For me, when these standards are applied, this case is not a difficult one, for dwelling indicia are minimal when a motor home is parked off a city street.

Because your draft appears not to recognize sufficiently any expectation of privacy in a home that happens to be mobile, and seems to rely exclusively on mobility in determining the applicability of the automobile exception (except for the situation described in footnote 3), it does not reflect the balance between privacy interests and police interests that I prefer and that I thought the conference majority had struck. Indeed, the draft suggests that if the home is "readily mobile," it is subject to the automobile exception regardless of other considerations. See draft at page 5. If this remains your view, I cannot join the opinion and I shall have to write separately in concurrence.

Sincerely,

HAB

The Chief Justice

cc: The Conference

Sally or Gerry:
I've dictated a draft of a letter to C.J. Give draft to Lee - with my memo to him.

alb 03/05/85

TO: Justice Powell
FROM: Lee
RE: No. 83-859, California v. Carney, the Chief's first draft of the Court opinion

Your notes indicate that everyone at Conference (with the exception of the Chief) agreed with the SG's position. Unfortunately, the Chief's opinion is inconsistent with this conference vote.

SG

The SG recognizes that there are two rationales for the "automobile exception": (i) mobility; and (ii) a reduced expectation of privacy. The SG goes on to state that it is "undeniable that greater privacy interests may be implicated by a search of a camper or motor home than of a conventional automobile." SG brief, p. 12." Because of this greater expectation of privacy, warrantless searches of motor homes should be allowed only when the vehicle is "subject to state motor vehicle registration laws and [and] ... on a public street or parked in a location inapropriate for residence." SG brief, p. 6.

The Chief's opinion states that mobility is the "principal foundation" for the automobile exception to the warrant requirement. It goes on to concede that the automobile exception is based in part on the lessened expectation of privacy that an individual has in his car. The opinion, however,

effectively eliminates the individual's "expectation of privacy" as an independent factor in the analysis. It states that there is a lessened expectation of privacy in all movable vehicles because "'individuals always [have] been on notice that movable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband, without the protection afforded by a magistrate's prior evaluation of those facts.'" Draft Op. 6 (quoting United States v. Ross, 456 U.S. 798 (1982). This is the most circular reasoning that I have ever seen in a Court opinion. It also follows from this reasoning that any vehicle that is mobile can be searched without a warrant.

The Chief's opinion must be altered if it is to conform to the Conference vote. The Chief should first recognize that an individual may have a greater expectation of privacy in a mobile home than he does in an automobile. He should then state that despite this difference, a mobile home can be searched without a warrant if it is: (1) registered as a motor vehicle; and (2) on a public thoroughfare or parked in a public lot. Both of these conditions clearly are satisfied in this case. The Chief comes close to making this point when he quotes your concurring opinion in Rakas.

The Chief is correct in stating that it is unnecessary to decide what standard would apply if the mobile home had not been "parked on or near a public street." See Chief's memo of March 1, 1985. His draft opinion, however, already has decided

this issue by indicating that mobility alone justifies the warrantless search of a mobile home.

At this point, I do not know what course you will want to pursue. The Chief's clerk has told me that he is working on a second draft of the Court opinion. I also would like to see Justice Stevens' dissent. He will argue that because of the greater expectation of privacy in mobile homes, warrantless searches of these vehicles should be allowed only when they are stopped while in motion. This would limit the exception to cases where exigent circumstances justify a departure from the warrant requirement. Maybe it would be best to "sit tight" for now and wait for further writing.

lfp/ss 03/07/85

MEMORANDUM

TO: Lee DATE: March 7, 1985

FROM: Lewis F. Powell, Jr.

83-859 California v. Carney

Take a close look at the rough draft of a proposed letter to the Chief. I am asking Sally to give you the draft as she transcribes it without my having an opportunity to look at it. Make such changes as you think appropriate, and send me a copy to review.

L.F.P., Jr.

ss

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

L.F.P.

From: **The Chief Justice**

Circulated: Sent to me privately by C.J. - Would comply with my suggestions in my letter of 3/8/85.

Recirculated:

I can join this

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-859

CALIFORNIA, PETITIONER *v.* CHARLES R. CARNEY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

[April ——, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether law enforcement agents violated the Fourth Amendment when they conducted a warrantless search, based on probable cause, of a fully mobile "motor home" located in a public place.

I

On May 31, 1979, Drug Enforcement Agency Agent Robert Williams watched respondent, Charles Carney, approach a youth in downtown San Diego. The youth accompanied Carney to a Dodge Mini Motor Home parked in a nearby lot. Carney and the youth closed the window shades in the motor home, including one across the front window. Agent Williams had previously received uncorroborated information that the same motor home was used by another person who was exchanging marihuana for sex. Williams, with assistance from other agents, kept the motor home under surveillance for the entire one and one-quarter hours that Carney and the youth remained inside. When the youth left the motor home, the agents followed and stopped him. The youth told the agents that he had received marihuana in return for allowing Carney sexual contacts.

At the officers' request, the youth returned to the motor home and knocked on its door; Carney stepped out. The

agents identified themselves as law enforcement officers. Without a warrant or consent, one agent entered the motor home and observed marihuana, plastic bags, and a scale of the kind used in weighing drugs on a table. Agent Williams took Carney into custody and took possession of the motor home. A subsequent search of the motor home at the police station revealed additional marihuana in the cupboards and refrigerator.

Respondent was charged with possession of marihuana for sale. At a preliminary hearing, he moved to suppress the evidence discovered in the motor home. The magistrate denied the motion, upholding the initial search as a justifiable search for other persons, and the subsequent search as a routine inventory search.

Respondent renewed his suppression motion in the Superior Court. The Superior Court also rejected the claim, holding that there was probable cause to arrest respondent, that the search of the motor home was authorized under the automobile exception to the Fourth Amendment's warrant requirement, and that the motor home itself could be seized without a warrant as an instrumentality of the crime. Respondent then pleaded *nolo contendere* to the charges against him, and was placed on probation for three years.

Respondent appealed from the order placing him on probation. The California Court of Appeal affirmed, reasoning that the vehicle exception applied to respondent's motor home. *People* v. *Carney*, 117 Cal. App. 3d 36 (1981).

The California Supreme Court reversed the conviction. *People* v. *Carney*, 34 Cal. 3d 597, 668 P. 2d 807 (1983). The Supreme Court did not disagree with the conclusion of the trial court that the agents had probable cause to arrest respondent and to believe that the vehicle contained evidence of a crime; however, the court held that the search was unreasonable because no warrant was obtained, rejecting the State's argument that the vehicle exception to the warrant

requirement should apply.[1] That court reached its decision by concluding that the mobility of a vehicle "is no longer the prime justification for the automobile exception; rather, it said, 'the answer lies in the diminished expectation of privacy which surrounds the automobile.'" 34 Cal. 3d, at 605, 668 P. 2d, at 811. The California Supreme Court held that the expectations of privacy in a motor home are more like those in a dwelling than in an automobile because the primary function of motor homes is not to provide transportation but to "provide the occupant with living quarters." 34 Cal. 3d, at 606, 668 P. 2d, at 812.

We granted certiorari, 465 U. S. —— (1984). We reverse.

II

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." This fundamental right is preserved by a requirement that searches be conducted pursuant to a warrant issued by an independent judicial officer. There are, of course, exceptions to the general rule that a warrant must be secured before a search is undertaken; one is the so-called "automobile exception" at issue in this case. This exception to the warrant requirement was first set forth by the Court sixty years ago in *Carroll* v. *United States*, 267 U. S. 132 (1925). There, the Court recognized that the privacy interests in an automobile are

[1] Respondent contends that the state court decision rests on an adequate and independent state ground, because the opinion refers to the state as well as the federal constitutions. Respondent's argument is clearly foreclosed by our opinion in *Michigan* v. *Long*, 463 U. S. —— —— (1983), in which we held, "when . . . a state court decision appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." We read the opinion as resting on federal law.

constitutionally protected; however, it held that the ready mobility of the automobile justifies a lesser degree of protection of those interests. The Court rested this exception on a long-recognized distinction between stationary structures and vehicles:

> "[T]he guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in 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." *Id.*, at 153 (Emphasis added).

The capacity to be "quickly moved" was clearly the basis of the holding in *Carroll*, and our cases have consistently recognized ready mobility as one of the principal bases of the automobile exception. See, *e. g.*, *Cooper* v. *California*, 386 U. S. 58, 59 (1967); *Chambers* v. *Maroney*, 399 U. S. 42, 52 (1970); *Cady* v. *Dombrowski*, 413 U. S. 433, 442 (1973); *Cardwell* v. *Lewis*, 417 U. S. 583, 588 (1974); *South Dakota* v. *Opperman*, 428 U. S. 364, 367 (1976). In *Chambers*, for example, commenting on the rationale for the vehicle exception, we noted that "the opportunity to search is fleeting since a car is readily movable." 399 U. S., at 51. More recently, in *United States* v. *Ross*, 456 U. S. 798, 806 (1982), we once again emphasized that "an immediate intrusion is necessary" because of "the nature of an automobile in transit . . . ." The mobility of automobiles, we have observed, "creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible." *South Dakota* v. *Opperman*, *supra*, at 367.

However, although ready mobility alone was perhaps the original justification for the vehicle exception, our later cases

have made clear that ready mobility is not the only basis for the exception. The reasons for the vehicle exception, we have said, are twofold. *Id.*, at 367. "Besides the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office." *Ibid.*

Even in cases where an automobile was not immediately mobile, the lesser expectation of privacy resulting from its use as a readily mobile vehicle justified application of the vehicular exception. See, *e. g.*, *Cady* v. *Dombrowski*, *supra*. In some cases, the configuration of the vehicle contributed to the lower expectations of privacy; for example, we held in *Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974), that, because the passenger compartment of a standard automobile is relatively open to plain view, there are lesser expectations of privacy. But even when enclosed "repository" areas have been involved, we have concluded that the lesser expectations of privacy warrant application of the exception. We have applied the exception in the context of a locked car trunk, *Cady* v. *Dombrowski*, *supra*, a sealed package in a car trunk, *Ross*, *supra*, a closed compartment under the dashboard, *Chambers* v. *Maroney*, *supra*, the interior of a vehicle's upholstery, *Carroll*, *supra*, or sealed packages inside a covered pickup truck, *United States* v. *Johns*, —— U. S. —— (1985).

These reduced expectations of privacy derive not from the fact that the area to be searched is in plain view, but from the pervasive regulation of vehicles capable of traveling on the public highways. *Cady* v. *Dombrowski*, *supra*, at 440–441. As we explained in *South Dakota* v. *Opperman*, an inventory search case,

> "Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine

vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order." *Id.*, at 368.

The public is fully aware that it is accorded less privacy in its automobiles because of this compelling governmental need for regulation. Historically, "individuals always [have] been on notice that movable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband, without the protection afforded by a magistrate's prior evaluation of those facts." *Ross*, *supra*, at 806, n. 8. In short, the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate so long as the overriding standard of probable cause is met.

When a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes—temporary or otherwise—the two justifications for the vehicle exception come into play.[2] First, the vehicle is obviously readily mobile by the turn of a switch key, if not actually moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling. At least in these circumstances, the overriding societal interests in effective law enforcement justify an immediate search before the vehicle and its occupants become unavailable.

While it is true that respondent's vehicle possessed some, if not many of the attributes of a home, it is equally clear that

[2] With few exceptions, the courts have not hesitated to apply the vehicle exception to vehicles other than automobiles. See *e. g.*, *United States* v. *Rollins*, 699 F. 2d 530 (CA11), cert. denied, —— U. S. —— (1983) (airplane); *State* v. *Mower*, 407 A. 2d 729 (Maine 1979) (converted school bus used as a home).

the vehicle falls clearly within the scope of the exception laid down in *Carroll* and applied in succeeding cases. Like the automobile in *Carroll*, respondent's motor home was readily *mobile*. Absent the prompt search and seizure, it could readily have been moved beyond the reach of the police. Furthermore, the vehicle was licensed to "operate on public streets; [was] serviced in public places; . . . and [was] subject to extensive regulation and inspection." *Rakas* v. *Illinois*, 439 U. S. 128, 154, n. 2. (1978) (POWELL, J., concurring). And the vehicle was so situated that an objective observer would conclude that it was being used not as a residence, but as a vehicle.

Respondent urges us to distinguish his vehicle from other vehicles within the exception because it was *capable of functioning as a home*. In our increasingly mobile society, many vehicles used for transportation can be and are being used not only for transportation but for shelter, *i. e.*, as a "home" or "residence." To distinguish between respondent's motor home and an ordinary sedan for purposes of the vehicle exception would require that we apply the exception depending upon the size of the vehicle and the quality of its appointments. Moreover, to fail to apply the exception to vehicles such as a motor home ignores the fact that a motor home lends itself easily to use as an instrument of illicit drug traffic and other illegal activity. In *United States* v. *Ross*, *supra*, at 822, we declined to distinguish between "worthy" and "unworthy" containers, noting that "the central purpose of the Fourth Amendment forecloses such a distinction." We decline today to distinguish between "worthy" and "unworthy" vehicles which are either on the public roads and highways, or situated such that it is reasonable to conclude that the vehicle is not being used as a residence.

Our application of the vehicle exception has never turned on the other uses to which a vehicle might be put. The exception has historically turned on the ready mobility of the vehicle, and on the presence of the vehicle in a setting that

objectively indicates that the vehicle is being used for transportation.[3] These two requirements for application of the exception ensure that law enforcement officials are not unnecessarily hamstrung in their efforts to detect and prosecute criminal activity, and that the legitimate privacy interests of the public are protected. Applying the vehicle exception in these circumstances allows the essential purposes served by the exception to be fulfilled, while assuring that the exception will acknowledge legitimate privacy interests.

III

The question remains whether, apart from the lack of a warrant, this search was unreasonable. Under the vehicle exception to the warrant requirement, "[o]nly the prior approval of the magistrate is waived; the search otherwise [must be such] as the magistrate could authorize." *Ross*, *supra*, at 823.

This search was not unreasonable; it was plainly one that the magistrate could authorize if presented with these facts. The police had fresh, direct, uncontradicted evidence that the respondent was distributing a controlled substance from the vehicle, apart from evidence of other possible offenses. The police thus had abundant probable cause to enter and search the vehicle for evidence of a crime notwithstanding its possible use as a dwelling place.

The judgment of the California Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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[3] 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 whether a warrant would be required in such a circumstance 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.

March 8, 1985

PERSONAL

83-859 California v. Carney

Dear Chief:

Although I agree with much of your first draft (that I read today for the first time), I am sending this private letter because I would have difficulty joining your opinion in its present form. It is clear from the Conference votes that we agreed with the SG's primary reasoning. I enclose a copy of my Conference notes.

The SG recognizes that there are two rationales for the "automobile exception": (i) mobility; and (ii) a reduced expectation of privacy. The SG goes on to state that it is "undeniable that greater privacy interests may be implicated by a search of a camper or motor home than of a conventional automobile." SG brief, p. 12. Because of this greater expectation of privacy, warrantless searches of motor homes should be allowed only when the vehicle is "subject to state motor vehicle registration laws [and] ... on a public street or parked in a location inappropriate for residence." SG brief, p. 6.

Your opinion states that mobility is the "principal foundation" for the automobile exception to the warrant requirement. This was certainly true initially. We repeatedly have held in subsequent cases, however, that the exception also is justified by the lessened expectation of privacy that an individual has in his automobile. See Arkansas v. Sanders, 442 U.S. 753, 761 (1979) ("configuration, use, and regulation of automobiles often may dilute the reasonable expectation of privacy"); South Dakota v. Opperman, 428 U.S. 364, 367 (1976) ("less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office"). In deciding whether a motor home can be searched without a warrant, we cannot ignore this second rationale for the automobile exception.

I do not believe that a "bright line" can be drawn based solely on whether or not the vehicle is mobile because there may be a greater expectation of privacy in many types

of mobile homes than in an automobile. There are, for example, thousands of mobile homes in Florida - and indeed in many other states - that are occupied as principal residences. They are connected to public utility services provided in mobile home parks. For the most part, objective facts distinguish a vehicle used as a residence from one used solely for transporation.

Although these motor homes often are used as residences, they also may be moved on the highway (e.g., to Florida for the winter). While moving on a public highway, parked on a public street, or - as in this case - parked in a location inappropriate for a residence, these factors outweigh the "expectation of privacy" interests. The fact of mobility becomes the paramount factor.

In sum, I believe that both of the rationales for the automobile exception must be considered - as the SG argues. In this case, mobility justified the warrantless entry. My Conference notes that make reasonably clear that all of us except John agreed with the SG.

Sincerely,

The Chief Justice

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 8, 1985

Re: No. 83-859 California v. Carney

Dear Chief,

Please join me.

Sincerely,

WW

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 11, 1985

83-859 - California v. Carney

Dear Chief,

Please join me.

Sincerely yours,

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 13, 1985

Re: No. 82-859 - California v. Charles R. Carney

MEMORANDUM TO THE CONFERENCE

A few "extracurricular" matters, e.g., Judicial Conference, Williamsburg Conference, sessions on the 3.5 COLA, and security problems have held up my work on this case.

However, I expect to have a new draft taking into account circulated memos and the need to clarify what we are not deciding.

Regards,

WEB

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: APR 18 1985

Recirculated: _____

CJ has written for Court, & I suggested some changes.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

I'll not join this.

No. 83–859

CALIFORNIA, PETITIONER *v.* CHARLES R. CARNEY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

[April ——, 1985]

JUSTICE STEVENS, dissenting.

The character of "the place to be searched"[1] plays an important role in Fourth Amendment analysis. In this case, police officers searched a Dodge/Midas Mini Motor Home. The California Supreme Court correctly characterized this vehicle as a "hybrid" which combines "the mobility attribute of an automobile . . . with most of the privacy characteristics of a house."[2]

The hybrid character of the motor home places it at the crossroads between the privacy interests that generally forbid warrantless invasions of the home, *Payton* v. *New York*, 445 U. S. 573, 585–590 (1980), and the law enforcement interests that support the exception for warrantless searches of automobiles based on probable cause, *United States* v. *Ross*, 456 U. S. 798, 806, 820 (1982). By choosing to follow the latter route, the Court errs in three respects: it has entered new territory prematurely, it has accorded priority to an exception rather than to the general rule, and it has abandoned the limits on the exception imposed by prior cases.

[1] The Fourth Amendment provides:

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

[2] 34 Cal. 3d 597, 606, 668 P. 2d 807, 812 (1983).

I

In recent Terms, the Court has displayed little confidence in state and lower federal court decisions that purport to enforce the Fourth Amendment. Unless an order suppressing evidence is clearly correct, a petition for certiorari is likely to garner the four votes required for a grant of plenary review—as the one in this case did. Much of the Court's "burdensome" workload is a product of its own aggressiveness in this area. By promoting the Supreme Court of the United States as the High Magistrate for every warrantless search and seizure, this practice has burdened the argument docket with cases presenting fact bound errors of minimal significance.[3] It has also encouraged state legal officers to file petitions for certiorari in even the most frivolous search and seizure cases.[4]

The Court's lack of trust in lower judicial authority has resulted in another improvident exercise of discretionary jurisdiction.[5] In what is at most only a modest extension of our

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[3] *E. g., United States* v. *Johns*, —— U. S. —— (1985); *United States* v. *Sharpe*, —— U. S. —— (1985); *Oklahoma* v. *Castleberry*, —— U. S. —— (1985). Cf. *Florida* v. *Rodriguez*, —— U. S. ——, —— (1984) (STEVENS, J., dissenting, joined by BRENNAN, J.).

[4] See, *e. g. State* v. *Caponi*, 12 Ohio St. 3d 302, 466 N. E. 2d 551 (1984), cert. denied, 469 U. S. —— (1985). The Court's inventiveness in the search and seizure area has also emboldened state legal officers to file petitions for certiorari from state court suppression orders that are explicitly based on independent state grounds. See, *e. g.*, *Jamison* v. *State*, 455 So. 2d 1112 (Fla. Dist. Ct. App. 1984), cert. denied, 469 U. S. —— (1985); *Gannaway* v. *State*, 448 So. 2d 413 (Ala. 1984), cert. denied, 469 U. S. —— (1985); *State* v. *Burkholder*, 12 Ohio St. 3d 205, 466 N. E. 2d 176, cert. denied, 469 U. S. —— (1984); *People* v. *Corr*, —— Colo. ——, 682 P. 2d 20, cert. denied, 469 U. S. —— (1984); *State* v. *Von Bulow*, —— R. I. ——, 475 A. 2d 995, cert. denied, —— U. S. —— (1984).

[5] *Michigan* v. *Long*, —— U. S. ——, —— (1983) (STEVENS, J., dissenting); *California* v. *Ramos*, —— U. S. —— U. S. ——, —— (1983) (STEVENS, J., dissenting); *Watt* v. *Western Nuclear, Inc.*, 462 U. S. 36, 72–73 (1983) (STEVENS, J., dissenting); *Watt* v. *Alaska*, 451 U. S. 259, 273 (1981)

Fourth Amendment precedents, the California Supreme Court held that police officers may not conduct a non-exigent search of a motor home without a warrant supported by probable cause. The State of California filed a petition for certiorari contending that the decision below conflicted with the authority of other jurisdictions.[6] Even a cursory examination of the cases alleged to be in conflict revealed that they did not consider the question presented here.[7]

(STEVENS, J., concurring). See also Stevens, Some Thoughts on Judicial Restraint, 66 Judicature 177, 182 (1982).

[6] Pet. for Cert. 15–17, 21, 24–25. The petition acknowledged that the decision below was consistent with dictum in two recent Ninth Circuit Court of Appeals decisions. See *United States* v. *Wiga*, 662 F. 2d 1325, 1329 (CA9 1981), cert. denied, 456 U. S. 918 (1982); *United States* v. *Williams*, 630 F. 2d 1322, 1326 (CA9), cert. denied, 449 U. S. 865 (1980).

[7] Only one case contained any reference to heightened expectations of privacy in mobile living quarters. *United States* v. *Cadena*, 588 F. 2d 100, 101–102 (CA5 1979) (*per curiam*). Analogizing to automobile cases, the court upheld the warrantless search of an ocean-going ship while in transit. The court observed that the mobility "exception" required probable cause *and* exigency, and "that the increased measure of privacy that may be expected by those aboard a vessel mandates careful scrutiny both of probable cause for the search and the exigency of the circumstances excusing the failure to secure a warrant." *Id.*, at 102.

In all of the other cases, defendants challenged warrantless searches for vehicles claiming either no probable cause or the absence of exigency under *Coolidge* v. *New Hampshire*, 403 U. S. 443 (1971). *United States* v. *Montgomery*, 620 F. 2d 753, 760 (CA10), cert. denied, 449 U. S. 882 (1980) ("camper"); *United States* v. *Clark*, 559 F. 2d 420, 423–425 (CA5), cert. denied, 434 U. S. 969 (1977) ("camper pick-up truck"); *United States* v. *Lovenguth*, 514 F. 2d 96, 97 (CA9 1975) ("pick up with . . . camper top"); *United States* v. *Cusanelli*, 472 F. 2d 1204, 1206 (CA6 1973) *(per curiam)*, cert. denied, 412 U. S. 953 (1973) (two camper trucks); *United States* v. *Miller*, 460 F. 2d 582, 585–586 (CA10 1972) ("motor home"); *United States* v. *Rodgers*, 442 F. 2d 902, 904 (CA 5 1971) ("camper truck"); *State* v. *Million*, 120 Ariz. 10, 15–16, 583 P. 2d 897, 902–903 (1978) ("motor home"); *State* v. *Sardo*, 112 Ariz. 509, 513–514, 543 P. 2d 1138, 1142 (1975) ("motor home"). Only *Sardo* involved a vehicle that was not in transit, but the motor home in that case was about to depart the premises.

Two state supreme courts have upheld the warrantless search of mobile

This is not a case "in which an American citizen has been deprived of a right secured by the United States Constitution or a federal statute. Rather, . . . a state court has upheld a citizen's assertion of a right, finding the citizen to be protected under both federal and state law." *Michigan* v. *Long*, —— U. S. ——, —— (1983) (STEVENS, J., dissenting). As an unusually perceptive study of this Court's docket stated with reference to *California* v. *Ramos*, —— U. S. —— (1983), "this . . . situation . . . rarely presents a compelling reason for Court review in the absence of a fully percolated conflict."[8] The Court's decision to forge ahead has established a rule for searching motor homes that is to be

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homes in transit, notwithstanding a claim of heightened privacy interests. See *State* v. *Mower*, 407 A. 2d 729, 732 (Me. 1979); *State* v. *Lepley*, 243 N. W. 2d 41,42–43 (Minn. 1984). Those cases—which were not cited in the petition for certiorari—are factually distinguishable from the search of the parked motor home here. In any case, some conflict among state courts on novel questions of the kind involved here is desirable as a means of exploring and refining alternative approaches to the problem. See *infra*, at ——.

[8] Estreicher & Sexton, New York University Supreme Court Project, Appendix to the Executive Summary A-4. The study elaborated:

"[C]ases in which a state court has invalidated state action on a federal ground should not be heard by the Court in the absence of a conflict or a decision to treat the case as a vehicle for a major pronouncement of federal law. Without further percolation, there is ordinarily little reason to believe that such an issue is one of recurring national significance; and correction of error, even regarding a matter of constitutional law, is not a sufficient basis for Supreme Court intervention. Here, unlike a federal court's invalidation of state action, structural justification for intervention is generally missing, given the absence of vertical federalism difficulties and the built-in assurance that state courts functioning under significant political constraints are not likely lightly to invalidate state action even on federal grounds. . . . [The Court] should not grant . . . merely to correct perceived error." Id., at 22–23.

Chief Justice Samuel Roberts, Retired, of the Pennsylvania Supreme Court has expressed similar concerns. Roberts, The Adequate and Independent State Ground: Some Practical Considerations, 17 Inst. Jud. Admin. Rep., No. 2, p. 1–2 (1985).

followed by the entire nation. If the Court had merely allowed the decision below to stand, it would have only governed searches of those vehicles in a single State. The breadth of this Court's mandate counsels greater patience before we offer our binding judgment on the meaning of the Constitution.[9]

Premature resolution of the novel question presented has stunted the natural growth and refinement of alternative principles. Despite the age of the automobile exception and the countless cases in which it has been applied, we have no prior cases defining the contours of a reasonable search in the context of hybrids such as motor homes, house trailers, houseboats or yachts. In this case, the Court can barely glimpse the vast subculture associated with recreational vehicles and mobile living quarters.[10] The line or lines separating mobile homes from permanent structures might have been drawn in various ways, with consideration given to whether the home is moving or at rest, whether it rests on land or water, the form of the vehicle's attachment to its location, its potential speed of departure, its size and capacity to serve as a domicile, and its method of locomotion. Rational decision making strongly counsels against divining the uses and abuses of these vehicles in the vacuum of the first case raising the question before us.

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[9] Indeed, the improvident consideration of the question presented in this case is aggravated by the possibility that today's opinion may be purely advisory if, on remand, the California Supreme Court simply reinstates its judgment under the California Constitution. The Court's opinion in *California* v. *Ramos* has had just that fate. See *People* v. *Ramos*, 37 Cal. 3d 136, 150–159, 689 P. 2d 430, 437–444 (1984), cert. pending, No. 84–1227. Cf. *South Dakota* v. *Neville*, 459 U. S. 553 (1983), on remand, *State* v. *Neville*, 346 N. W. 2d 425 (SD 1984); *Washington* v. *Chrisman*, 455 U. S. 1 (1982), on remand, *State* v. *Chrisman*, 100 Wash. 814, 676 P. 2d 419 (1984) (en banc).

[10] See generally, 45 Trailer Life, No. 1 (1985); *id.*, No. 2; 22 Motor Home, No. 1 (1985); *id.*, No. 2.

Of course, we may not abdicate our responsibility to clarify the law in this field. Some caution, however, is justified when every decision requires us to resolve a vexing "conflict . . . between the individual's constitutionally protected interest in privacy and the public interest in effective law enforcement." *United States* v. *Ross*, 456 U. S., at 804. "The certainty that is supposed to come from speedy resolution may prove illusory if a premature decision raises more questions than it answers."[11] The only true rules governing search and seizure have been formulated and refined in the painstaking scrutiny of case-by-case ajudication. Consideration of this matter by the lower courts in a series of litigated cases would surely have facilitated a reasoned accommodation of the conflicting interests. To identify rules that will endure, we must rely on the state and lower federal courts to debate and evaluate the different approaches to difficult and unresolved questions of constitutional law.[12] Deliberation on the

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[11] Hellman, The Proposed Intercircuit Tribunal: Do We Need It? Will It Work?, 11 Hastings Const. L.Q. 375, 405 (1984).

[12] "The Court . . . should intervene only when a binding, authoritative decision is truly demanded. Absent relatively rare justifications for immediate intervention, the Court as manager should accord a presumption of regularity or validity to the decisions of lower courts and should defer articulation of binding national law until all of the issues have been sufficiently ventilated after a period of percolation in the state and lower federal courts.

"Our view of the Court as manager is committed in substantial measure to the policy of 'percolation'—that it is ordinarily best for the Court as manager to stay its hand until there has been a period of exploratory consideration and regional experimentation by the lower federal and state courts. Thus, we embrace lower-court percolation as an affirmative value rather than simply a rule of administrative convenience. The views of the lower courts on a particular legal issue provide the Supreme Court with a means of identifying significant rulings as well as an experiential base and set of doctrinal materials enabling the Court to fashion sound binding law. Moreover, the percolation process encourages the lower courts to act as responsible agents in the process of development of national law." Estreicher & Sexton, New York University Supreme Court Project 15 (1985) (executive summary).

question over time winnows out the unnecessary and discordant elements of doctrine and preserves "whatever is pure and sound and fine."[13]

II

The Fourth Amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U. S. Const., Amdt. 4. We have interpreted this language to provide law enforcement officers with a bright-line standard: "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." *Katz* v. *United States*, 389 U. S. 347, 357 (1967) (footnotes omitted); *Arkansas* v. *Sanders*, 442 U. S. 753, 758 (1979).

In *United States* v. *Ross*, the Court reaffirmed the primary importance of the general rule condemning warrantless searches, and emphasized that the exception permitting the search of automobiles without a warrant is a narrow one. 456 U. S., at 824–825. We expressly endorsed "the general rule," stated in *Carroll* v. *United States*, 267 U. S. 132, 156 (1925), that "'[i]n cases where the securing of a warrant is reasonably practicable, it must be used.' " 456 U. S., at 807. Given this warning and the presumption of regularity that attaches to a warrant,[14] it is hardly unrealistic to expect experienced law enforcement officers to obtain a search warrant when one can easily be secured.

The ascendancy of the Warrant Requirement in our system of justice must not be bullied aside by extravagant claims of necessity:

> "'The warrant requirement . . . is not an inconvenience to be somehow "weighed" against the claims of

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[13] B. Cardozo, The Nature of the Judicial Process 179 (1921).

[14] *Leon* v. *United States*, —— U. S. ——, —— (1984); *Illinois* v. *Gates*, 462 U. S. 213, 236–237 (1983).

> police efficiency. It is, or should be, an important working part of our machinery of government, operating as a matter of course to check the "well-intentioned but mistakenly overzealous executive officers" who are a part of any system of law enforcement.' [*Coolidge* v. *New Hampshire*, 403 U. S. 443, 481 (1971).]
>
> "By requiring that conclusions concerning probable cause and the scope of a search 'be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime' *Johnson* v. *United States*, 333 U. S. 10, 14 (1948), we minimize the risk of unreasonable assertions of executive authority." *Arkansas* v. *Sanders*, 442 U. S. at 758–759.

If the motor home 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.

III

The motor home, however, was not parked in the middle of that intersection. Our prior cases teach us that inherent mobility is not a sufficient justification for the fashioning of an exception to the warrant requirement, especially in the face of heightened expectations of privacy in the location searched. Motor homes, by their common use and construction, afford their owners a substantial and legitimate expectation of privacy when they dwell within. When a motor home is parked in a location that is removed from the public highway, I believe that society is prepared to recognize that the expectations of privacy within it are not unlike the expectations one has in a fixed dwelling. As a general rule, such places may only be searched with a warrant based upon probable cause. Warrantless searches of motor homes are only reasonable when the motor home is traveling on the public streets or highways, or when exigent circumstances other-

wise require an immediate search without the expenditure of time necessary to obtain a warrant.

As we explained in *Ross*, the automobile exception is the product of a long history:

> "since its earliest days Congress had recognized the impracticability of securing a warrant in cases involving the transportation of contraband goods. It is this impracticability, viewed in historical perspective, that provided the basis for the *Carroll* decision. Given the nature of an automobile in transit, the Court recognized that an immediate intrusion is necessary if police officers are to secure the illicit substance. In this class of cases, the Court held that a warrantless search of an automobile is not unreasonable." 456 U. S., at 806–807 (footnotes omitted).[15]

The automobile exception has been developed to ameliorate the practical problems associated with the search of vehicles that have been stopped on the streets or public highways because there was probable cause to believe they were transporting contraband. Until today, however, the Court has never decided whether the practical justifications that apply to a vehicle that is stopped in transit on a public way apply with the same force to a vehicle parked in a lot near a court house where it could easily be detained while a warrant is issued.[16]

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[15] "As we have stated, the decision in *Carroll* was based on the Court's appraisal of practical considerations viewed in the perspective of history." 456 U. S., at 820.

[16] In *Coolidge* v. *New Hampshire*, 403 U. S. 443 (1971), a plurality refused to apply the automobile exception to an automobile that was seized while parked in the driveway of the suspect's house, towed to a secure police compound, and later searched:

"The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears. And surely there is nothing in this case to invoke the meaning and purpose of the rule of *Carroll* v. *United States*—no alerted criminal bent on flight, no fleeting opportunity on an open highway after a hazardous chase, no contraband or stolen goods

In this case, the motor home was parked in an off-the-street lot only a few blocks from the courthouse in downtown San Diego where dozens of magistrates were available to entertain a warrant application.[17] The officers clearly had the element of surprise with them, and with curtains covering the windshield, the motor home offered no indication of any imminent departure. The officers plainly had probable cause to arrest the petitioner and search the motor home, and on this record, it is inexplicable why they eschewed the safe harbor of a warrant.[18]

In the absence of any evidence of exigency in the circumstances of this case, the Court relies on the inherent mobility of the motor home to create a conclusive presumption of exigency. This Court, however, has squarely held that mobility of the place to be searched is not a sufficient justification

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or weapons, no confederates waiting to move the evidence, not even the inconvenience of a special police detail to guard the immobilized automobile. In short, by no possible stretch of the legal imagination can this be made into a case where 'it is not practicable to secure a warrant.' [267 U. S., at 153,] and the 'automobile exception' despite its label, is simply irrelevant." 403 U. S., at 462 (opinion of Stewart, J., joined by Douglas, BRENNAN and MARSHALL, JJ.).

In *Cardwell* v. *Lewis*, 417 U. S. 583 (1974), a different plurality approved the seizure of an automobile from a public parking lot, and a later examination of its exterior. *Id.*, at 592–594 (opinion of BLACKMUN, J.). Here, of course, we are concerned with the reasonableness of the search, not the seizure. Even if the diminished expectations of privacy associated with an automobile justify the warrantless search of a parked automobile notwithstanding the diminished exigency, the heightened expectations of privacy in the interior of motor home require a different result.

[17] See Suppression Hearing Tr. 7; Tr. Oral Arg. 27. In addition, a telephonic warrant was only 20 cents and the nearest phone booth away. See Cal. Penal Code § 1526(b), § 1528(b); *People* v. *Morrongiello*, 145 Cal. App. 3d 1, 9, 193 Cal. Rptr. 105, 109 (1983).

[18] This willingness to search first and later seek justification has properly been characterized as "a decision roughly comparable in prudence to determining whether an electrical wire is charged by grasping it." *United States* v. *Mitchell*, 538 F. 2d 1230, 1233 (CA5 1976) (en banc), cert. denied, 430 U. S. 945 (1977).

for abandoning the warrant requirement. In *United States* v. *Chadwick*, 433 U. S. 1 (1977), the Court held that a warrantless search of a footlocker violated the Fourth Amendment even though there was ample probable cause to believe it contained contraband. The Government had argued that the rationale of the automobile exception applied to movable containers in general, and that the warrant requirement should be limited to searches of homes and other "core" areas of privacy. See *id.*, at 7. We categorically rejected the Government's argument observing that there are greater privacy interests associated with containers than with automobiles,[19] and that there are less practical problems associated with the temporary detention of a container than with the detention of an automobile. See 433 U. S., at 13, and n. 7.

We again endorsed that analysis in *Ross*:

> "The Court in *Chadwick* specifically rejected the argument that the warrantless search was 'reasonable' because a footlocker has some of the mobile characteristics that support warrantless searches of automobiles. The Court recognized that 'a person's expectations of privacy in personal luggage are substantially greater than in an automobile,' [433 U. S., at 13], and noted that the practical problems associated with the temporary detention of a piece of luggage during the period of time necessary to obtain a warrant are significantly less than those associated with the detention of an automobile. *Id.*, at 13, n. 7." 456 U. S., at 811.

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[19] "The factors which diminish the privacy aspects of an automobile do not apply to respondent's footlocker. Luggage contents are not open to public view, except as a condition to a border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile." *United States* v. *Chadwick*, 433 U. S. 1, 13 (1977).

It is perfectly obvious that the citizen has a much greater expectation of privacy concerning the interior of a mobile home than of a piece of luggage such as a footlocker. If "inherent mobility" does not justify warrantless searches of containers, it cannot rationally provide a sufficient justifiction for the search of a person's dwelling place.

Unlike a brick bungalow or a frame Victorian, a motor home seldom serves as a permanent lifetime abode. The motor home in this case, however, was designed to accommodate a breadth of ordinary everyday living. Photographs in the record indicate that its height, length and beam provided substantial living space inside: stuffed chairs surround a table; cupboards provide room for storage of personal effects; bunk-beds provide sleeping space; and a refrigerator provides ample space for food and beverages.[20] Moreover, curtains and large opaque walls inhibit viewing the activities inside from the exterior of the vehicle. The interior configuration of the motor home establishes that the vehicle's size, shape, and mode of construction should have indicated to the officers that it was a vehicle containing mobile living quarters.

The State contends that officers in the field will have an impossible task determining whether or not other vehicles contain mobile living quarters. It is not necessary for the Court to resolve every unanswered question in this area in a single case, but common English usage suggests that we already distinguish between a "motor home" which is "equipped as a self-contained traveling home," a "camper" which is only equipped for "casual travel and camping," and an automobile which is "designed for passenger transportation."[21] Surely the exteriors of these vehicles contain clues about their different functions which could alert officers in the field to the necessity of a warrant.[22]

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[20] Tr. Ex. Nos. 102, 103.

[21] Webster's New Collegiate Dictionary 77, 160, 752 (1975).

[22] In applying the California Supreme Court's decision in *Carney*, the California Court of Appeals has had no difficulty in distinguishing the mo-

The California Vehicle Code also refutes the State's argument that the exclusion of "motor homes" from the automobile exception would be impossible to apply in practice. In its definitional section, the Code distinguishes campers and house cars from station wagons, and suggests that they are special categories of the more general terms—motor vehicles and passenger vehicles.[23] A "house car" is "a motor vehicle originally designed, or permanently altered, and equipped for human habitation, or to which a camper has been permanently attached."[24] Alcoholic beverages may not be opened or consumed in motor vehicles traveling on the highways, except in the "living quarters of a housecar or camper."[25] The same definitions might not necessarily apply in the context of the Fourth Amendment, but they do indicate that descriptive distinctions are humanly possible. They also reflect the California Legislature's judgment that "house cars" entertain different kinds of activities than the ordinary passenger vehicle.

In my opinion, searches of places that regularly accommodate a wide range of private human activity are fundamentally different from searches of automobiles which primarily serve a public transportation function.[26] Although it

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tor home involved there from a Ford van, *People* v. *Chestnut*, 151 Cal. App. 3d 721, 726–727, 198 Cal. Rptr. 8, 11 (1983), and a cab-high camper shell on the back of a pick-up truck, *People* v. *Gordon*, 156 Cal. App. 3d 74, 82, 202 Cal. Rptr. 566, 570 (1984). There is no reason to believe that trained officers could not make similar distinctions between different vehicles, especially when California law already requires them to do so in enforcing the state vehicle code.

[23] Cal. Vehicle Code §§ 243, § 362, 415, 465, 585.

[24] *Id.* § 362.

[25] *Id.*, § 23221, § 23223, § 23225, § 23226, § 23229.

[26] Cf. *Cardwell* v. *Lewis*, 417 u.S. 583, 590 (1974) (opinion of BLACKMUN, J.):

"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. A car has little capacity for escaping public scrutiny. It travels through public thoroughfares where both its occupants and its contents are in plain view."

may not be a castle, a motor home is usually the functional equivalent of a hotel room, a vacation and retirement home, or a hunting and fishing cabin. These places may be as spartan as a humble cottage when compared to the most majestic mansion, 456 U. S. at 822; *ante*, at 7, but the highest and most legitimate expectations of privacy associated with these temporary abodes should command the respect of this Court. *Stoner* v. *California*, 376 U. S. 483, 490 (1964); *Payton* v. *New York*, 445 U. S., at 585; *United States* v. *Karo*, —— U. S. ——, —— (1984).[27] In my opinion, a warrantless search of living quarters in a motor home is "presumptively unreasonable absent exigent circumstances." *Ibid.*

I respectfully dissent.

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[27] "At the risk of belaboring the obvious, private residences are places in which the individual normally expects privacy free of governmental intrusion not authorized by a warrant, and that expectation is plainly one that society is prepared to recognize as justifiable. Our cases have not deviated from this basic Fourth Amendment principle. Searches and seizures inside a home without a warrant are presumptively unreasonable absent exigent circumstances." *United States* v. *Karo*, —— U. S. ——, —— (1984).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1985

Re: 83-859 - California v. Carney

MEMORANDUM TO THE CONFERENCE:

I have deferred circulating a revised draft until the dissent was available.

A new draft will be around tomorrow.

Regards,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 22, 1985

No. 83-859

California v. Carney

Dear John,

Please join me.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

File

Dear Lewis

Will this do

I.?

Regards

WEB

alb 04/23/85

TO: Justice Powell
FROM: Lee
RE: No. 83-859, California v. Carney, the Chief's second draft

After you left yesterday, the Chief sent you a second draft of Carney. The draft was not circulated to any other chambers. Although you might have approached the problem differently, I believe that you can now join the CJ's opinion. The Chief has complied substantially with your requests of March 8, 1985.

The first draft, of course, suggested that mobility was the primary justification for the "automobile exception." The new draft recognizes that "ready mobility is not the only basis for the automobile exception." Page 5. Moreover, it makes clear that the Court's holding is limited to those situations when the vehicle is on a public highway or "in a place not regularly used for residential purposes--temporary or otherwise." Page 6. The Court expressly leaves open the question of whether a warrantless search is permissible when the motor home is "situated in a way or place that objectively indicates that it is being used as a residence." Page 8 n.3.

I recommend that you give the Chief an "O.K." on his second draft.

April 23, 1985

PERSONAL

83-859 California v. Carney

Dear Chief:

I have reviewed the second draft of your opinion, sent to me yesterday afternoon, and will be happy to join you when it is circulated.

I now think it is a fine opinion.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

April 23, 1985

83-859 California v. Carney

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 24, 1985

Re: No. 83-859-California v. Carney

Dear John:

Please join me in your dissent.

Sincerely,

T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 25, 1985

Re: No. 83-859, California v. Carney

Dear Chief:

Please join me in your recirculation of April 23.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 25, 1985

Re: 83-859 California v. Charles R. Carney

Dear Chief,

Please join me.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 26, 1985

Re: No. 83-859, California v. Carney

Dear Chief:

I, for one, hope that you will not delete the second sentence of footnote 3 on page 8 of your recirculation of April 23. With that sentence retained, I think we have a fairly bright line test which should be of help to law enforcement officers. It is helpful dicta, and I hope it will remain in the opinion.

My joinder, however, is unaffected.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 29, 1985

Re: No. 83-859 - California v. Carney

MEMORANDUM TO THE CONFERENCE:

We had this case on as a "tentative" for Monday's announcement.

I will have some small additions in short order.

Regards,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 9, 1985

Re: No. 83-859 - California v. Charles R. Carney

MEMORANDUM TO THE CONFERENCE:

I have concluded not to enlarge the opinion in this case.

Accordingly, the case can come down Monday unless someone objects.

Regards,

WEB

83-859 California v. Carney (Lee)

CJ for the Court 11/9/84
1st draft 2/28/85
2nd draft 4/23/85
Joined by WHR 3/8/85
BRW 3/11/85
LFP 4/23/85
SOC 4/25/85
HAB 4/25/85

JPS dissent
1st draft 4/18/85
Joined by WJB 4/22/85

JPS will dissent 2/28/85
WJB may write, will await JPS's writing 3/1/85