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OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 83-859

TITLE CALIFORNIA, Petitioner v. CHARLES R. CARNEY

PLACE Washington, D. C.

DATE October 30, 1984

PAGES 1 thru 52

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IN THE SUPREME COURT OF THE UNITED STATES

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CALIFORNIA, :
Petitioner, :
v. : No. 83-859
CHARLES R. CARNEY :
- - - - - x

Washington, D.C.

Tuesday, October 30, 1984

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:05 o'clock a.m.

APPEARANCES:

LOUIS R. HANOIAN, ESQ., Deputy Attorney General of California, San Diego, California; on behalf of petitioner.

THOMAS F. HCMANN, ESQ., San Diego, California; on behalf of respondent.

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1 of 4th and G Streets in downtown San Diego.

2 Mr. Carney and the boy entered the vehicle and
3 stayed in the vehicle for approximately an hour and a
4 quarter. Agent Robert Williams of the Drug Enforcement
5 Administration witnessed Mr. Carney's contact with the
6 young man, and watched Mr. Carney and the boy go into
7 the vehicle.

8 He noticed the license plate on the vehicle,
9 and recalled that he had specific information regarding
10 the vehicle. Specifically, that there had been
11 individuals who were providing young boys with marijuana
12 or drugs in exchange for sex in the van; and that
13 typically a situation would involve an individual and a
14 young boy entering the van for a period of 10 minutes to
15 2 hours, and then they would exit after that time.

16 QUESTION: How long was this vehicle on the
17 parking lot?

18 MR. HANOIAN: The record does not show how
19 long it was there, Your Honor. There was -- Mr. Agent
20 Williams witnessed the vehicle in the parking lot for a
21 period of an hour and a quarter, and it had been there
22 prior at various times. It had been observed in the
23 parking lot at that place, but there was no indication
24 that it was at any time permanently attached to that
25 parking lot.

1 QUESTION: Does the record tell us the
2 character of the parking lot? Was it public, where you
3 had to pay so much an hour? Or was it an empty lot?

4 MR. HANOIAN: The record doesn't specifically
5 say that. It is, however, Your Honor, a public parking
6 lot right at the corner of 4th and G Streets in downtown
7 San Diego. It's privately owned, as I believe the
8 record indicates.

9 QUESTION: It wasn't a trailer parking lot?

10 MR. HANOIAN: No, it was not, Your Honor. It
11 was a parking lot which is typically populated with
12 cars. When people go to work in downtown, they will
13 pull their car into the parking lot and then go off to
14 work, come back after work, take their car, and drive
15 home.

16 QUESTION: And this mobile home was not a
17 tractor-drawn, was it?

18 MR. HANOIAN: Pardon me, Your Honor?

19 QUESTION: This mobile home was not a
20 tractor-drawn motor home?

21 MR. HANOIAN: No, it was not. It was an
22 integral vehicle with an engine and wheels and a back
23 portion.

24 QUESTION: And not tied up to any water or
25 electric facilities, or anything like that?

1 MR. HANOIAN: That's correct, in this
2 particular instance.

3 After an hour and a quarter, Agent Williams
4 noticed the young boy come out of the motor home, and he
5 and another agent followed the boy and, about a block
6 later, stopped the boy and asked him what had been going
7 on in the motor home. The young boy told the agents
8 that he had received a small bag of marijuana in
9 exchange for allowing the man to perform a sexual act
10 with him.

11 At that point in time, they asked the boy to
12 come back to the motor home with them. The boy did
13 that. He knocked on the door of the motor home. Mr.
14 Carney stepped out. Agent Clem looked into the motor
15 home, saw two bags of a green leafy substance which was
16 later identified to be marijuana on a table inside the
17 motor home, saw a scale on the table, and then some
18 zip-lock bags.

19 Agent Clem reported what he saw to Agent
20 Williams, who placed Mr. Carney under arrest. He was
21 then under arrest. The agents took some photographs of
22 the interior of the van. Agent Williams then drove the
23 van to the narcotics task force headquarters in National
24 City, and then searched the van. And in the course of
25 the search, they found a total of about two pounds of

1 marijuana in the refrigerator and in some cupboards in
2 addition to the two bags that were found on the table.

3 At the lower court level, the Superior Court
4 held a statutory motion to suppress under California
5 law. The Superior Court denied the motion to suppress.
6 Following the denial of that motion, Mr. Carney entered
7 a plea of nolo contendere, reserving the search issue
8 for appeal.

9 In the Court of Appeal in California, the
10 judgment was affirmed. The order of probation was
11 affirmed, and then Mr. Carney petitioned for the
12 California Supreme Court to hear the case.

13 QUESTION: What ever happened to the charge of
14 the sexual charge?

15 MR. HANOIAN: That was dropped, Your Honor.
16 My understanding is that the young boy was a Mexican
17 National and he was not to be found at the time of the
18 preliminary hearing. So there was no evidence to
19 proceed with on that particular charge.

20 The California Supreme Court heard the case
21 and reversed the order of probation, and subsequently
22 the People petitioned this Court to hear the case.

23 The People asked this Court to hear the case
24 because there is a need for bright line guidance that is
25 essential to ensure the proper implementation of the

1 Fourth Amendment. This proposition doesn't need to be
2 restated. It's been emphasized again, and again, and
3 again by this Court and by the commentators, that to
4 ensure the proper implementation of the Fourth
5 Amendment, we have to provide law enforcement officers
6 with the guidance by which they know the limits of their
7 power, and so that the people know the limits of their
8 protection.

9 If you will, the police officers are the
10 workmen in the scheme of the law enforcement. They are
11 the carpenters, and they are the plumbers, and they are
12 the electricians. And the courts are the architects.
13 What we need to do is to ensure that the workers have
14 the correct plans in order to implement the building of
15 the law. And if they aren't provided with the plans,
16 then the building that they implement -- the building
17 that they build, will not provide adequate protection
18 from the elements outside.

19 So it is essential that they be provided with
20 bright line guidance, and guidance which is workable.
21 For, if it is not workable, there is no way to ensure
22 the implementation.

23 QUESTION: Would you buy the guideline of
24 wheels?

25 MR. HANOIAN: As the sole limitation?

1 QUESTION: That if the vehicle has wheels on
2 it, it's not a home.

3 MR. HANOIAN: If the vehicle has wheels on it,
4 I think that that makes it mobile and it would be
5 subject to the exception.

6 QUESTION: Would you be satisfied with that
7 guideline?

8 MR. HANOIAN: I think I would, Your Honor,
9 yes. That would provide a bright line. But I am
10 looking a little bit more beyond just wheels. We are
11 looking for self-locomotion, self-propelling.

12 QUESTION: You want to cloud it up now.

13 MR. HANOIAN: Not at all. I think that is
14 easily attainable. You examine a vehicle, and if it
15 objectively appears to be mobile, if that thing is
16 capable of movement, then you're entitled to search it
17 with probable cause.

18 QUESTION: Did this vehicle have a motor
19 vehicle license on it issued by the State of
20 California?

21 MR. HANOIAN: Yes, it did, Your Honor, and
22 that was one of the ways that Agent Williams identified
23 this particular vehicle as the one that was referred to
24 in the WETIP information sheet that was provided. It
25 had a vehicle registration, and in fact in California

1 this type of a vehicle requires a special registration.
2 They have to pay more money in order to get it on the
3 road.

4 It also requires that the individual who
5 drives this vehicle have a Class III driver's license.
6 That's a special kind of license with a large vehicle,
7 and it requires, again, a larger fee.

8 QUESTION: You mean something like a truck
9 driver's license.

10 MR. HANOIAN: That's correct.

11 QUESTION: But not quite that high?

12 MR. HANOIAN: I didn't read the entire section
13 on the licensing of Class III to determine if truck
14 drivers were involved. I would suggest that that is a
15 close analogy, if it's not right on.

16 QUESTION: Mr. Hanoian, the Solicitor General
17 has filed an amicus brief in the case and suggests
18 apparently a somewhat different approach than you are
19 urging, and an approach that would suggest that under
20 some circumstances a mobile home could result in an
21 expectation of privacy that could be respected.

22 Do you reject that approach?

23 MR. HANOIAN: Not in total, Your Honor. The
24 Solicitor General's approach, like our approach,
25 suggests that there is some point in time where what is

1 objectively identifiable as a vehicle ceases to be a
2 vehicle. And in our position, we would --

3 QUESTION: Well, what if the vehicle is in one
4 of these mobile home parks and hooked up to water and
5 electricity but still has its wheels on?

6 MR. HANOIAN: If it still has its wheels and
7 it still has its engine, it is capable of movement and
8 it is capable of movement very quickly.

9 QUESTION: Even though the people are living
10 in it as a home and are paying rent for the trailer
11 space, and so forth?

12 MR. HANOIAN: Well, I'm not certain that we're
13 talking about the same thing, then, Justice O'Connor,
14 because the mobile home parks that I envision are
15 prevalent all across the country. What is generally
16 placed in a mobile home park is a trailer that has
17 wheels, but it is placed up on blocks --

18 QUESTION: Well, there are places where people
19 can plug into water, and electricity, and do. There are
20 many places, for example, in the state I came from where
21 people go and spend the winter in a mobile home. And
22 you think there would be no expectation of privacy in
23 such circumstances?

24 MR. HANOIAN: Well, I am not suggesting that
25 there is no expectation of privacy in those

1 circumstances, Your Honor. What I am suggesting is that
2 society -- this Court has determined that society is not
3 willing to recognize that expectation of privacy as
4 justifying a different rule from another motor vehicle;
5 and that, because of its mobility, the capacity for it
6 to move --

7 QUESTION: Well, it just seemed to me that
8 your approach and that offered by the Solicitor General
9 were rather different in that area.

10 MR. HANOIAN: Yes. That is the precise area
11 where our approaches are different.

12 QUESTION: You prefer a single rationale for
13 the exception to the warrant requirement. Namely, you
14 think "mobility" is practically the sole criteria; and
15 the Solicitor General at least thinks that there are
16 two.

17 MR. HANOIAN: Well, I think there is more than
18 one, and I think they're independent of one another,
19 Your Honor.

20 QUESTION: Well, anyway, you certainly would
21 differ with the Solicitor General as to the application
22 of the exception in a park, in a mobile home park?

23 MR. HANOIAN: Under the circumstances that's
24 been presented, yes, I would.

25 QUESTION: Of course that isn't the issue

1 here, is it? This is in a public parking lot.

2 MR. HANOIAN: That's correct, Your Honor.
3 That is not presented in this case. And if I might
4 address the Solicitor General's position and explain why
5 ours is a little bit difference: The reason for our
6 difference with the Solicitor General is because the
7 analysis that's required in the Solicitor General's
8 approach suffers from the same failures as the
9 California Supreme Court's.

10 That is, that a law enforcement officer in the
11 field has to determine whether or not this vehicle is
12 now placed in a constitutionally protected parking
13 spot.

14 QUESTION: Well, the inquiry there might be,
15 did it come in in the afternoon and hook up with the
16 electricity and so forth, but leave the following
17 morning if there was drug activity, drug sales activity
18 suspected. Then the attachment to the electric power
19 would be less significant than if they were there all
20 winter, as Justice O'Connor suggested.

21 MR. HANOIAN: That's correct, Your Honor. And
22 typically in these situations -- and what happened in
23 this particular case -- is that an individual is going
24 to come upon this vehicle and he's not going to know
25 whether it's been parked in this particular motor home

1 lot for a period of three months, or two weeks, or how
2 long. He'll have probable cause. He'll be asked to
3 react immediately. And under those circumstances, he
4 won't know what the expectations of the individuals who
5 own that vehicle are.

6 They are subjective thoughts the officer is
7 not privy to. He cannot make his decision on whether or
8 not to search that vehicle based upon the subjective
9 thoughts of the individual inside. That's another
10 reason why we would differ, if you will, with the
11 Solicitor General's approach, which we feel is far
12 superior to that of the California Supreme Court or to
13 that that has been proposed by the Respondent in this
14 case. But the problem with the approach is twofold:

15 One, it requires that you make some
16 differentiation between a vehicle based upon
17 configuration. Under the Solicitor General's approach,
18 there are some vehicles which have the capability of an
19 expectation of privacy and some that do not. That
20 requires a determination by an officer.

21 Then secondly, there is the more fundamental
22 problem of which one of these parking spaces is or is
23 not entitled to the added protection.

24 QUESTION: May I inquire, just so I understand
25 your position? Is it that the vehicle have wheels?

1 Could a trailer without a tractor in front of it
2 qualify?

3 MR. HANOIAN: No. I don't think it would,
4 Your Honor, because it would be more or less like the
5 suitcase.

6 QUESTION: I'm sorry? What is your position.
7 You tell me your position.

8 MR. HANOIAN: Our position is that if the
9 officer looks at this conveyance and determines that it
10 has the objective indicia of mobility --

11 QUESTION: Now does that mean
12 self-propelled?

13 MR. HANOIAN: Self-propelled.

14 QUESTION: It has to be self-propelled?

15 MR. HANOIAN: Yes. I would agree with that.

16 QUESTION: So you wouldn't apply your thought
17 to a trailer park?

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

20 QUESTION: But then what about a
21 self-propelled vehicle that's plugged into the plumbing
22 and the electricity?

23 MR. HANOIAN: I think that that would be
24 covered under the exception that we proposed.

25 QUESTION: Be covered? You mean they could

1 search it without a warrant? Or they would need a
2 warrant?

3 MR. HANOIAN: They could search it without a
4 warrant --

5 QUESTION: I see.

6 MR. HANOIAN: -- because the same reasons are
7 available in that instance.

8 QUESTION: Okay.

9 MR. HANOIAN: That particular vehicle is
10 capable of movement, and it is capable of movement very
11 quickly.

12 QUESTION: And you would apply it, even if it
13 had been parked there three months or so, because your
14 officer wouldn't really know how long it had been
15 parked?

16 MR. HANOIAN: That's correct.

17 QUESTION: Thank you.

18 QUESTION: What about a camper's tent, if the
19 camper takes his things out of the motor home and
20 pitches a tent next to it?

21 MR. HANOIAN: The motor home would be subject
22 to search, but then the tent --

23 QUESTION: But not the tent.

24 MR. HANOIAN: Not the tent, not under this
25 particular exception. There may be some other exception

1 that would allow the search of the tent.

2 One of the things that we want to avoid is the
3 inherent problems in determining what configurations of
4 vehicles are subject to the exception, and which ones
5 are not.

6 QUESTION: May I just ask why -- Justice
7 O'Connor's question intrigues me. Why wouldn't the tent
8 be just as mobile as the self-propelled vehicle? I
9 gather you can pull it down pretty fast --

10 QUESTION: It doesn't have wheels, right?

11 QUESTION: -- and throw it on the back.

12 (Laughter.)

13 QUESTION: Pardon me?

14 MR. HANOIAN: That's right.

15 QUESTION: I didn't hear that.

16 MR. HANOIAN: It doesn't have wheels.

17 (Laughter.)

18 QUESTION: But you can surely move it just the
19 same.

20 QUESTION: But it is moveable.

21 MR. HANOIAN: It is moveable.

22 QUESTION: And I should think your reasoning
23 would apply. I'm not saying you are right or wrong.

24 MR. HANOIAN: Well, I think the reasoning does
25 apply. But again, this Court has been very careful in

1 drawing the lines to vehicles. For example, the
2 suitcase in the Chadwick case. That's capable of
3 movement, but the Court was reluctant to apply the
4 analysis of allowing a warrantless search of the
5 suitcase. However, when the suitcase is placed into the
6 trunk of a car, or placed into the cab of a car, and the
7 probable cause arises afterwards, the suitcase is
8 subject to search.

9 QUESTION: But your analysis -- and maybe
10 you're right -- but you entirely omit any consideration
11 of the magnitude of the privacy interest, the fact that
12 somebody lives in it, like a tent, wouldn't make any
13 difference.

14 MR. HANOIAN: We asked that the officers not
15 be required to make that evaluation, because we don't
16 think that they're equipped to do it, for one.
17 Secondly, I think that this Court has already done the
18 analysis for them. It seems to me that --

19 QUESTION: Well, the thing I'm puzzled about
20 is, I understand the value of a bright line test
21 certainly, but I'm not sure that -- the California court
22 may be wrong, but its test is also a bright line test,
23 too, isn't it?

24 MR. HANOIAN: That's true, Your Honor.

25 QUESTION: So that arguing for a bright line

1 test really doesn't help us decide which test is the
2 best one.

3 MR. HANOIAN: That's correct. And although
4 California has a bright line test by saying motor homes
5 cannot be searched, they don't define what a motor home
6 is. So their bright line is very fuzzy, I would
7 suggest, since they have not defined their term.

8 We think that mobility provides the bright
9 line. If I might get back to the point I was about to
10 make in terms of the privacy interests, that in the
11 Carroll case in 1925, Chief Justice Taft analyzed the
12 particular vehicles that were applied.

13 In particular, of course, Carroll involved an
14 automobile. But he found it significant not to
15 differentiate between an automobile, and a wagon, and a
16 ship, and a motorboat, yet the ship, the wagon, and the
17 motorboat are clearly capable of serving a residential
18 function. Yet they were not to be treated any
19 differently than an automobile, because both of those
20 things, all of those conveyances, had the ability to
21 move. And it was that ability to move which caused the
22 privacy expectations to yield to the exigency created
23 therein.

24 As I believe it is footnote 8 in the Ross
25 opinion suggests, that if you give probable cause to

1 believe that you're transporting contraband in a
2 vehicle, then you're not entitled to the added
3 protection that a warrant provides if there is probable
4 cause.

5 And of course the probable cause determination
6 is going to be evaluated by a magistrate at some point
7 in time anyway. The question is, are we going to
8 provide the added protection of the magistrate
9 evaluation before the search or after the search. And
10 of course if the probable cause analysis by the officer
11 was faulty, that evidence is going to be lost to the
12 exclusionary rule, and there will not be any --
13 certainly there will be an inconvenience to the party
14 because of the unlawful search, but he will not suffer a
15 criminal ramification as a result of that.

16 The protections are provided under that
17 situation, and we think that that's a good place to draw
18 the line because it is capable of being properly
19 enforced, and it is capable of a bright line
20 approach.

21 QUESTION: But you can't really argue that it
22 doesn't matter whether the probable cause determination
23 comes before or after the search. We're mainly
24 interested in the innocent person, not the guilty one.

25 MR. HANOIAN: Certainly we are.

1 QUESTION: And if you have it before,
2 presumably the search won't take place.

3 MR. HANOIAN: And it is certainly preferable,
4 Your Honor. I am not going to argue whether it is
5 preferable or not to have the probable cause
6 determination first, because of course it is. But the
7 exigency created by mobility -- and indeed all of the
8 exceptions to the warrant requirement -- are based upon
9 the probability that you can't get the warrant
10 beforehand and ensure that the other policies of the
11 Fourth Amendment, ensuring the public safety and the
12 safety of the officers, will be implemented.

13 That is what the reasonable approach entails.
14 And I think Chief Justice Taft talked about the rule.
15 What he said is, it's a wise one because it leaves the
16 rule one which is easily applied and understood and is
17 uniform. And that is what we are proposing: a uniform
18 rule.

19 And it's really not the rule that the
20 California courts, or the California Attorney General's
21 office is proposing. It's the rule that this Court has
22 articulated and rearticulated in Carroll, and Chambers,
23 and Ross. And we are asking that it be applied to all
24 vehicles, regardless of their configuration, or
25 regardless of what the people who are driving those

1 vehicles think.

2 I mean, what they expect personally is really
3 not terribly important, because there is no way to
4 confirm those facts objectively.

5 QUESTION: What would you do with a
6 houseboat?

7 MR. HANOIAN: A houseboat? I think that would
8 be covered, and I think that the --

9 QUESTION: It has wheels?

10 MR. HANOIAN: No, it's a vessel, and it is
11 covered by the same rule. In fact, the circuit courts
12 have dealt with ship cases in the past, and they have
13 applied the Carroll reasoning to a vessel because of its
14 inherent mobility, as well.

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

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

25 QUESTION: But the automobile has a motor in

1 it--

2 MR. HANOIAN: That's correct.

3 QUESTION: -- and the houseboat does not.

4 MR. HANOIAN: No. There may be oars. There
5 may be some way to move that from one place to
6 another.

7 QUESTION: There "may be." May be. I've seen
8 houses moved, too.

9 (Laughter.)

10 MR. HANOIAN: As have I. I've passed a few of
11 them on the beltway.

12 QUESTION: You've got to get more than that.

13 MR. HANOIAN: Certainly. Again, the objective
14 indicia of mobility would be what the officers are
15 looking to. Perhaps in Your Honor's example, they would
16 be looking to see if there's oars there. There's no
17 motor. There's no way to move that thing.

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

20 (Laughter.)

21 MR. HANOIAN: If the officer doesn't know
22 that, I don't see why he should be called to that
23 particular knowledge. One thing he does know about when
24 he is dealing with a house --

25 QUESTION: The moral is, don't live in a

1 houseboat.

2 MR. HANOIAN: People choose to live where they
3 want to live. There are some risks associated with
4 where one will live. People who live in glass houses
5 don't have the expectation of privacy someone else does
6 unless they do something to black out the glass, to
7 prevent people from looking in; but they choose to live
8 there. And individuals may choose to live in a
9 recreational vehicle, or a houseboat, or something else,
10 but when they make that choice it is a conscious choice,
11 because they've been on notice that ever since the
12 adoption of the Fourth Amendment, if a vehicle or vessel
13 has been used to transport contraband or evidence, it's
14 been subject to seizure and subsequent search
15 without -- with probable cause, without a magistrate's
16 prior approval.

17 QUESTION: Well, Mr. Hanoian, I guess we
18 didn't authorize -- the Court didn't authorize that in
19 *Coolidge v. New Hampshire* where Justice Stewart, writing
20 for the Court, said we attach no constitutional
21 significance to the mobility of the vehicle.

22 Now is there any life left to *Coolidge*?

23 MR. HANOIAN: Well, I would suggest that
24 perhaps there's not. *Coolidge* is not a good case for a
25 number of reasons, I think. You know, *Coolidge* was more

1 of a warrant case than it really was an automobile
2 case. And once the warrant failed because it wasn't
3 issued by neutral and detached magistrate, they went
4 through all the possible reasons to justify the search
5 of that vehicle, and they didn't find any in that
6 particular case.

7 I note that the Coolidge Court was unable to
8 garner a majority of this court. I think that the Ross
9 case --

10 QUESTION: Yes. It was a plurality opinion.

11 MR. HANOIAN: Yes, Your Honor. I think the
12 Ross case stands in stark contrast to Coolidge, and that
13 there is --

14 QUESTION: Well, in Ross the car wasn't parked
15 in the driveway.

16 MR. HANOIAN: That's true, it was not.

17 QUESTION: So the facts are different.

18 MR. HANOIAN: But the analysis of Ross stands
19 in stark contrast to Coolidge. Also, I might add that
20 in Coolidge the officers knew about that particular car
21 for a long period of time. In fact, they knew about it
22 for long enough to get the warrant from the attorney
23 general, which was not issued by a neutral magistrate
24 and therefore invalid. They had prior knowledge about
25 that.

1 It wasn't the situation where they came upon
2 it suddenly and were faced with a situation where they
3 had to decide what to do right now. In that particular
4 case, this Court found that it was an improper search
5 under any number of reasons, including that it was
6 improper under the vehicle exception.

7 I see the light is on, so if I might, I would
8 like to reserve the rest of my time for rebuttal.

9 CHIEF JUSTICE BURGER: You may.

10 Mr. Homann.

11 ORAL ARGUMENT OF THOMAS F. HOMANN, ESQ.,

12 ON BEHALF OF RESPONDENT

13 MR. HOMANN: Mr. Chief Justice, and may it
14 please the Court:

15 This case concerns the physical entry of the
16 living compartment, the residential area of the motor
17 home which was parked for an unknown but extended period
18 of time in a parking lot. Unfortunately, and not
19 withstanding Mr. Hancian's representation to which I
20 know to be accurate, the character of that particular
21 parking lot does not appear in the record in this
22 case.

23 QUESTION: The location does, doesn't it?

24 MR. HOMANN: The location does.

25 QUESTION: Do you think we could take judicial

1 notice of the fact that they don't let people stay
2 indefinitely on a parking lot in downtown San Diego?

3 MR. HOMANN: I'm not sure that's absolutely
4 correct, Your Honor, that they don't.

5 QUESTION: You think we can't take judicial
6 notice?

7 MR. HOMANN: I would think not.

8 The motor home was parked; the drapes were
9 closed. It contained upholstered furniture. It
10 contained a table, kitchen features, a refrigerator. It
11 contained all of the indicia of a home.

12 The time of the entry was on a Thursday
13 afternoon, a working day. The motor home was parked
14 within a few hundred yards of the courthouse. It's the
15 main courthouse in San Diego. Over 60 magistrates were
16 available there ready, willing, and able to issue the
17 warrant if a proper showing had been made.

18 Rather than seeking the authorization of the
19 warrant before entering into the residential compartment
20 of the vehicle, the officers entered themselves. This
21 is not a case like United States against Ross involving
22 search of a passenger car, or indeed of any vehicle
23 which was stopped while speeding down the highway, with
24 probable cause to believe that it was transporting
25 contraband.

1 In this case there is nothing in the record to
2 indicate that this particular motor home was ever used
3 to transport contraband. There is indications that it
4 was used as a distribution point, but not that it was
5 used for transporting contraband, and I think that is
6 somewhat key.

7 Perhaps I read United States against Ross too
8 narrowly, but the Court over and over again in the
9 opinion mentions and reiterates the fact that the car
10 was stopped while transporting contraband on an open
11 highway. The entire genesis and development of the
12 automobile exception from Carroll on forward I think has
13 frequently, if not always, turned on the fact of
14 mobility in the context of a car stopped on a highway.

15 Carroll itself, of course, involved the
16 Oldsmobile Roadster speeding down the highway --

17 QUESTION: I thought all those cases said that
18 the possibility of them moving was the issue. Isn't
19 that right?

20 MR. HOMANN: The possibility of movement
21 was--

22 QUESTION: Good enough.

23 MR. HOMANN: -- was good enough.

24 QUESTION: Well, you had the possibility of
25 movement here, didn't you?

1 MR. HOMANN: There was no possibility of
2 movement after the driver, the only occupant of the
3 motor home, left it. As a matter of fact --

4 QUESTION: Why not?

5 MR. HOMANN: The motor home was inoperable.
6 There had been curtains closed across the front -- the
7 front of the -- the front of the vehicle itself.

8 QUESTION: Well, couldn't somebody have pulled
9 the curtains back and driven off?

10 MR. HOMANN: But there was no one there.

11 QUESTION: How do you know?

12 MR. HOMANN: At least the California Supreme
13 Court found that the police had no reason to believe
14 that there was anyone there. As long as there was no
15 one there, the fact of the -- the mobility factor itself
16 was substantially diminished when it's parked, when it's
17 inoperable at least by virtue of the curtains across the
18 front windshield, when there's no one there to drive it
19 down the street.

20 QUESTION: I thought the boy went back and he
21 knocked on the door and the owner came up?

22 MR. HOMANN: That's correct. He had been in
23 it. He was not under arrest at that time and the motor
24 home had not been searched at that point. He came out
25 and, at that time, Officer --

1 QUESTION: I don't understand your earlier
2 statement that nobody was there. He was there.

3 MR. HOMANN: Once he came out, there was no
4 one else in there, though.

5 QUESTION: Oh, in other words you're saying
6 that -- well, what was the officer supposed to do,
7 then? Just hold him there while they went and got a
8 warrant?

9 MR. HOMANN: We have suggested that they go
10 get a warrant at that point. The whole issue of
11 probable cause, which as I -- I agree not raised here,
12 we have consistently contested all the way up through
13 the courts --

14 QUESTION: But your point is he should have
15 gotten the warrant after he knocked down the door, not
16 before? That the boy's testimony, or the boy's comments
17 weren't enough?

18 MR. HOMANN: Well, the officers themselves
19 never attempted to arrest Mr. Carney until after the
20 entry was made and after they saw the marijuana on the
21 table. The issue of whether they needed a warrant to
22 get Mr. Carney out of the motor home has not been
23 raised. My only contention is, before they actually
24 made the physical entry into the living compartment,
25 that a warrant would have been required.

1 The attorney general's argument, and the rule
2 that they propose I think is insufficiently sensitive to
3 the reasonable expectations of privacy. The central
4 purpose of a Fourth Amendment, I think the Court has
5 recognized on numerous occasions, is to protect
6 reasonable expectations of privacy.

7 An automobile is one item, but a home has
8 always been treated differently. Society has
9 traditionally recognized the greatest of privacy
10 interests and privacy rights in the sanctity of a
11 person's home, even if it's only a temporary home.

12 The tent, I agree with Mr. Hanoian, is
13 entitled to be free from warrantless seizure,
14 warrantless search, unless there has been a warrant
15 issued, or unless there is some genuine need to enter
16 it.

17 Likewise, I think the motel room, which the
18 Court has recognized as a place entitled to the dignity
19 equivalent to that of a home, cannot be entered without
20 a warrant. Here also we have --

21 QUESTION: Those exceptions you mentioned do
22 not have the factor which has distinguished the
23 mobility. Hasn't it been constantly in all the cases
24 the mobility of the vehicle that is the basis for the
25 exception?

1 MR. HOMANN: Not in all the cases, Your
2 Honcr. The example that comes to my mind is Cady v.
3 Dombrowski, I believe, where the automobile had been in
4 a crash and was inoperable at the time that it was
5 subjected to the warrantless search.

6 So certainly mobility has not been the
7 beginning and the end of the automobile exception.

8 QUESTION: But I think mobility may have been
9 the end, not the beginning, though. Because a case like
10 Cady says that there are some unusual circumstances
11 where, even though not mobile, the automobile exception
12 applied. But I am hardpressed to think of a case where
13 we have said that, even though mobile, the automobile
14 exception does not apply.

15 MR. HOMANN: Mobility itself, though, apart
16 from an automobile, has never been a justification for
17 all warrantless searches. The example that we always
18 rely on is the trunk in the Chadwick case, for
19 instance.

20 QUESTION: Well, but you would say this mobile
21 home was closer to an automobile than to a trunk?

22 MR. HOMANN: In many respects it was not
23 closer to an automobile. I think if we look --

24 QUESTION: Than to a trunk?

25 MR. HOMANN: Pardon me?

1 QUESTION: Than to a trunk. It seems to me it
2 is sensible to start with the automobile and say, you
3 know, this may differ, it has similarities, it has
4 differences, rather than start with something else that
5 it really doesn't resemble at all.

6 MR. HOMANN: Well, insofar as the motor home
7 contains dresser drawers, cabinets, all sorts of
8 intimate personal items that one ordinarily carries
9 around in a trunk or a suitcase, they certainly also
10 carry them around in the storage compartments of --

11 QUESTION: Do you carry around a lot of
12 intimate items in your trunk?

13 MR. HOMANN: I don't mean a trunk of a car. I
14 mean the trunk, as in United States against Chadwick.
15 And in Chadwick, even though the trunk was mobile, the
16 expectations of privacy were considered to outweigh the
17 necessity for an immediate entry, warrantless entry of
18 the trunk.

19 QUESTION: Do you think the Chadwick case is
20 still good law?

21 MR. HOMANN: It's my understanding that
22 Chadwick is still good law, yes.

23 QUESTION: In any event, Chadwick involved a
24 trunk that it took two men to lift. That isn't terribly
25 mobile, is it?

1 MR. HOMANN: It's not terrifically mobile, but
2 it is --

3 QUESTION: It has no wheels.

4 MR. HOMANN: It has no wheels, but it's still
5 designed to be transported from one place to another.
6 The purpose of the trunk is to move things. So in that
7 respect, it is similar to the motor home.

8 QUESTION: We're getting closer to your case.
9 Suppose somebody drives a great big stretch Cadillac
10 down and puts it in a parking lot, and pulls all the
11 curtains around it, including the one over the
12 windshield and around all the rest of them. Would that
13 be a home?

14 MR. HOMANN: It comes closer to a home, but I
15 don't think that that necessarily satisfies the
16 California Supreme Court.

17 QUESTION: What else?

18 MR. HOMANN: I think what they want is some
19 kind of -- in the first instance, some kind of outward
20 indicia that it is capable of being used, or is designed
21 to be used as --

22 QUESTION: Well, it has everything in the back
23 of it that your car has.

24 MR. HOMANN: Does it have a bed?

25 QUESTION: Yes, yes.

1 MR. HOMANN: If it is reasonably objectively
2 observable that it has the attributes of a home in it,
3 then I think we have to give it those -- I think we have
4 to give it the same protections that we ordinarily give
5 dwelling compartments.

6 QUESTION: That would be a home.

7 MR. HOMANN: I'm satisfied that it would be,
8 yes.

9 QUESTION: It would be a home?

10 MR. HOMANN: Yes.

11 QUESTION: You just can't say it would be a
12 home, can you?

13 (Laughter.)

14 MR. HOMANN: I have a harder time saying it
15 would be a home. What you have to look at, I think,
16 first of all -- and under the California Supreme Court's
17 analysis -- what you look at first is what it looks
18 like. If it looks like it's a motor home, and I can
19 tell the difference between a Ford LTD and a motor home,
20 then I think you have to give it the respect that a home
21 is due.

22 On the other hand, if it doesn't look like
23 one, but if it's being used as a home, if it's being
24 used as residential purposes, you're sleeping in it,
25 whatever, then I think the person has exhibited the kind

1 of expectations of privacy in it that are going to make
2 a police officer's warrantless entry a little more
3 suspect, a little more suspect at least --

4 QUESTION: Well, Mr. Homann, in answering
5 Justice Marshall's question just now, you said if this
6 thing looks like a motor home. Now can you say in a
7 couple sentences what you think a motor home looks
8 like?

9 MR. HOMANN: The motor home in this case I can
10 moderately describe. It has trailers. It's large
11 enough to stand up in. It looks like a trailer-trailer
12 type walls.

13 QUESTION: You say it has trailers?

14 MR. HOMANN: It looks like a trailer, rather.
15 That's what I mean.

16 QUESTION: It is a self-contained single
17 unit?

18 MR. HOMANN: It is a self-contained single
19 unit.

20 QUESTION: With the cab in front from which
21 you drive?

22 MR. HOMANN: A cab in front, and a door into
23 the living compartment and the rear, which was where the
24 entry was made in this case; and curtains, upholstered
25 furniture, kitchen facilities. Frequently motor homes

1 have bathrooms.

2 QUESTION: Of course you can't always tell
3 that from the outside. I thought your description would
4 enable us to tell from the outside whether or not it was
5 subject -- or should get this --

6 MR. HOMANN: I think ordinarily it is
7 obvious. It becomes a closer question, of course, when
8 we see a van, for instance, which could have the
9 accoutrements of a home, but which are not obvious from
10 the outside that it contains those kinds of features.

11 QUESTION: How would your test decide the van
12 question where all you see is a closed van?

13 MR. HOMANN: Under my test, I think that once
14 it becomes obvious to the police that it is being used
15 for residential purposes as opposed to being used for
16 transportation, then I think you have to look to
17 determine whether there is exigency which justifies the
18 entry or not. And if there was no exigency, then a
19 warrant would be required. That is of course the bottom
20 line on my test.

21 QUESTION: Would it be enough under your test
22 if the defendant claiming the right testified that he
23 simply has a sleeping bag, sleeps in the back of his
24 van, but drives from place to place. But that's the
25 only living place he has according to his testimony.

1 MR. HOMANN: All of the indicia of a home are
2 not present when it's a sleeping bag in the back of a
3 van. Among other things, I think that the compartments
4 for storing personal items are somewhat key to a
5 determination that it is being used residentially.

6 The kitchen features are significant. The
7 fact that it's got a bed is also significant. The fact
8 that it can be closed off from view with curtains I
9 think is important, thereby exhibiting a reasonable
10 expectation that the world is being shut out when one
11 goes inside.

12 QUESTION: What about the old covered
13 wagons?

14 MR. HOMANN: The covered wagon problem --
15 perhaps I'm not as familiar with my history as I ought
16 to be. I was under the impression that the covered
17 wagons were used for to transport the items, and that
18 you slept outside around the campfire rather than in the
19 covered wagon.

20 But insofar as the covered wagon served or
21 functioned as a person's temporary residence while they
22 were making the trek across the country, then I think
23 we have to give it at least some of the dignity that we
24 give a home. Certainly the covered wagon, even when it
25 is traveling along the trail, is a repository for all of

1 the personal effects. And unless there's a need, I
2 doubt that we would want the police to be able to
3 rummage through all of those items, as in this case they
4 did when they rummaged through all of the cabinets and
5 the cupboards without first obtaining the authorization
6 of the warrant.

7 I think that the critical question here is
8 whether an invariable and automatic application of the
9 vehicle exception to all vehicles, without regard to the
10 circumstances of how they're being used, without regard
11 to any expectations of privacy in the vehicles; because
12 ultimately I think that the State Attorney General's
13 position here is the privacy interests in this vehicle
14 should be totally disregarded, that it has no part in
15 the analysis of whether the item should be searched,
16 whether the Court should ignore all of those interests
17 and sacrifice what I think are important Fourth
18 Amendment privacy protections merely for the sake of
19 police expediency and police convenience, for the sake
20 of the bright line rule.

21 Let me talk about the privacy interests just
22 briefly. The Court I think in a number of decisions has
23 pointed out various factors in a passenger vehicle which
24 diminish the expectation of privacy, and which at least
25 help justify an automobile exception. Among other

1 things, a passenger car's function is principally
2 transportation.

3 That is also true of a motor home, the type of
4 vehicle which was involved here. However,
5 transportation is not its sole function, whereas a
6 passenger automobile, it's principal function, if not
7 its exclusive function, is transportation. Here, the
8 vehicle is stopped. The vehicle is used for sleeping,
9 for all sorts of intimate activities.

10 The public nature of automobile travel and the
11 visibility of the occupants in an automobile are said to
12 diminish expectations of privacy in a passenger
13 automobile. That's not true in the passenger
14 compartment of a motor home.

15 The private passenger automobile is not
16 ordinarily used as a repository of personal effects. I
17 have already addressed that. As far as a motor home is
18 involved, it does involve a repository for personal
19 effects.

20 The configuration of a passenger automobile is
21 a factor that the Court has suggested diminishes
22 expectations of privacy. The configuration of a motor
23 home is designed to ensure privacy in many respects.
24 And finally, and I guess most significantly, the Court
25 has noted that a car seldom serves as one's home, and I

1 think that's true, even though it is possible to live in
2 a stretch limousine.

3 QUESTION: Mr. Homann, what about a van? You
4 see thousands of them on the road.

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

8 QUESTION: Well, I've seen some with the
9 chairs, all upholstered chairs in them.

10 MR. HOMANN: And I think that once it becomes
11 obvious to searching police officers that the item is
12 being used as a home for its residential purposes, then
13 I think the search has to be -- the search has to be
14 limited. Ordinarily, the situation in which I would
15 anticipate that would arise, the police officers --

16 QUESTION: In order to help you out, the van
17 is running down the road at 55 miles per hour.

18 MR. HOMANN: That helps me tremendously. That
19 helps me tremendously, because the rule that I've
20 proposed at least is not going to preclude the police
21 from entering the van or the motor home, for that
22 matter, when it is speeding down the highway in most
23 circumstances.

24 QUESTION: Well, could they have waited? In
25 your case, could they have waived until he moved the

1 van?

2 MR. HOMANN: I think that if the van --

3 QUESTION: Would that have been all right?

4 MR. HOMANN: If the van was being moved, then
5 I think that a real danger of loss or destruction of
6 evidence would have been presented, assuming they had
7 probable cause to get in, and they probably could have
8 searched it without a warrant if it was moving, if there
9 was a danger that it was going to be lost.

10 That's all -- under current law --

11 QUESTION: So your bright line is that it has
12 to move?

13 MR. HOMANN: Ordinarily, the mobility factor
14 when it actually comes into play, when the vehicle
15 believed to contain contraband is being moved, there is
16 a need for an immediate search at that point because
17 there is a genuine danger that the evidence is going to
18 be lost. Here that is not what was happening. There
19 was no danger that the vehicle was going to be moved.
20 It was parked. The windshield was covered, and there
21 was no real danger that the evidence would be lost.

22 QUESTION: Well, where do you draw the line
23 between the situation that you say obtains here where it
24 was parked and there was no indication it was about to
25 be moved, and the fact that it is actually in

1 movement?

2 MR. HOMANN: I think that once the key is in
3 the ignition, once the vehicle starts or advances into
4 its use as a vehicle, as opposed to its use as a use in
5 its residential qualities, then I think there is
6 sufficient exigency, there is a real necessity to
7 dispense with the warrant requirement at that time.

8 If the police officers have reason to believe
9 that evidence inside the house is being destroyed, they
10 can obviously enter the house without a warrant. And I
11 think the same thing applies when the vehicle starts to
12 move.

13 QUESTION: Mr. Homann, maybe I am incorrect,
14 but I think I understand your position to be
15 substantially the same as the Solicitor General's second
16 position -- not the one he favors, but the one he
17 advocates in his long footnote toward the end of his
18 brief. Am I correct?

19 MR. HOMANN: Yes. I like the Solicitor
20 General's brief, and I agree that there is more than one
21 position in there. That is essentially what I am --

22 QUESTION: But your position is basically his
23 fallback position?

24 MR. HOMANN: That's correct.

25 QUESTION: So you would say that if there's a

1 car, if there had been a car parked alongside the motor
2 home in this case in the same parking lot and the police
3 had probable cause to search them both, they could enter
4 the car but not the motor home?

5 MR. HOMANN: Exactly. The expectations of
6 privacy I think the Court has recognized in the
7 automobile are substantially less than what we
8 would --

9 QUESTION: The possible mobility or the
10 potential mobility doesn't override the privacy
11 interests?

12 MR. HOMANN: The privacy interest
13 overcomes --

14 QUESTION: But it does -- as soon as the
15 mobility becomes mobility, it overrides it?

16 MR. HOMANN: As soon as the mobility becomes
17 something more than theoretical or hypothetical
18 mobility --

19 QUESTION: Well, it isn't theoretical. It's
20 something more than potential.

21 MR. HOMANN: All right.

22 QUESTION: Because you know that very soon
23 it's going to move. It's not going to stay there very
24 long.

25 MR. HOMANN: Right.

1 QUESTION: Assume now that Justice Wright's
2 automobile vehicle is the tractor that would pull the
3 otherwise immobile motor home, or whatever you want to
4 call it. Now you could search the tractor, but not
5 the --

6 MR. HOMANN: I think that's true. And the
7 reason is --

8 QUESTION: The tractor can take off down the
9 street and go 70 miles an hour on the highway?

10 MR. HOMANN: The reason is, the tractor has a
11 privacy interest which society is less prepared to
12 recognize. It's a diminished privacy expectation, as
13 opposed to the motor home or the trailer itself.

14 QUESTION: Well, they're equally -- when
15 they're attached, they're equally moveable, aren't
16 they?

17 MR. HOMANN: Exactly. But one is used for
18 private living residential purposes, and the other is
19 used for transportation. As a matter of fact --

20 QUESTION: The other one isn't used for
21 transportation in the abstract, but only in connection
22 with what it pulls. Isn't that so?

23 MR. HOMANN: Yes, that's correct.

24 QUESTION: People don't go out on the highway
25 on the tractor alone, do they?

1 MR. HOMANN: Ordinarily not. The tractor
2 partakes more of the automobile, because it doesn't
3 have -- it is not the kind of repository for personal
4 effects. It's not surrounded by glass. The glass house
5 illustration is good here. People who live in glass
6 houses shouldn't have reasonable expectations of
7 privacy, and the cab is surrounded by glass. But the
8 motor home is not. It is surrounded by curtains, which
9 were designed specifically to ensure expectations of
10 privacy.

11 I want to speak to the bright line rules very
12 briefly, because I've mentioned in the brief that I
13 think the California police officers, at least, and I
14 suspect others as well, are currently required to
15 distinguish between "motor homes" and "passenger
16 automobiles" between the living quarters of what the
17 California Vehicle Code defines as a "house car."

18 A house car is a vehicle which has either been
19 designed or permanently altered for human habitation.
20 The importance of the definition that they have adopted
21 in the California Vehicle Code is this: that it is a
22 criminal offense to possess an open container of
23 alcoholic beverage, to consume an alcoholic beverage in
24 a vehicle, except in the living quarters of what the
25 legislature defines as a house car.

1 This is a criminal law that the California
2 State Police officers are currently required to enforce
3 on an everyday basis. They can, and I think that it's
4 reasonable to expect them to distinguish between what is
5 a motor home, what is being used as residential
6 quarters, and what is not.

7 The rule that I suggest is that before
8 warrantless entry of a motor home can be accomplished,
9 there must be some showing of a genuine need, more than
10 a theoretical need. I agree that ordinarily, and in
11 most circumstances, that need is going to be easily
12 demonstrated by police.

13 The two Ninth Circuit cases involving motor
14 homes which were stopped on a highway where the Ninth
15 Circuit refused to apply the automobile exception to
16 justify the searches, in both of those cases, Williams
17 and Wiga, the police ultimately were justified in making
18 their warrantless entry on another basis other than the
19 automobile exception.

20 The point is this: There is no need for an
21 automobile exception if none of the justifications and
22 none of the reasons for its necessity are present.

23 If the motor home is traveling down the
24 highway, if it's likely that evidence is going to be
25 lost, if it's going to explode, if the officers need to

1 enter it for their own safety, existing law permits them
2 to do that even if we apply ordinary Holmes rules to the
3 case.

4 The interests at stake, the interests in the
5 privacy of a home-like place even if it's on wheels, I
6 think require a higher showing than the relaxed standard
7 which has justified warrantless searches of automobiles
8 in most circumstances.

9 Thank you.

10 CHIEF JUSTICE BURGER: Do you have anything
11 further, Mr. Hanoian?

12 MR. HANOIAN: Yes, I do, Your Honor.

13 ORAL ARGUMENT OF LOUIS R. HANOIAN, ESQ.,

14 ON BEHALF OF PETITIONER -- REBUTTAL

15 MR. HANOIAN: Thank you, Your Honor.

16 In rebuttal, the State of California would
17 like to advance four positions.

18 First of all, with regard to the specifics in
19 this particular case, counsel has referred to the living
20 compartment in this case as supporting the residential
21 purpose. But the record does not at all support this
22 particular assertion. And in particular, if one
23 examines the photographs that are a part of the record
24 in this case that were submitted to this Court, looking
25 at the picture of the refrigerator will show that there

1 is marijuana in the refrigerator, but there is no food.

2 And when they examined the cupboards in this
3 case, there's no underwear, there's no sheets, there's
4 marijuana. There's nothing in the record to suggest
5 Mr. Carney was using this as his home, and in fact that
6 is the problem. There is no way to determine, in these
7 particular class of vehicles, when they are and are not
8 being utilized as a home, objectively.

9 Secondly, Justice Marshall's concern with the
10 Cadillac stretch car points out the flaw in the
11 reasoning of the Respondent, because it is our
12 impression that more people in this country live in cars
13 and live in pickup trucks. The poor people that can't
14 afford motor homes live in those vehicles. More of them
15 live there than live in motor homes, which are typically
16 more expensive. Yet they are to be accorded a different
17 expectation of privacy merely because they can't afford
18 the trappings that a motor home would provide them
19 with. I think that that's an unfair application of the
20 rule.

21 Thirdly, the definition that Mr. Homann gives
22 with regard to house cars. The California Supreme Court
23 did not use that term in the Carney opinion. They
24 talked about "motor homes." They didn't talk about
25 "house cars." That definition was not promulgated to

1 apply to search and seizure law. That definition was
2 promulgated in order to register these vehicles and to
3 show that those vehicles would be accorded a certain
4 registration fee, and that in certain circumstances,
5 particularly when there is open alcohol containers, that
6 an individual that has that container in the back is not
7 going to be cited for that particular violation.

8 QUESTION: But the California court did rely
9 on the statutory definition. They didn't use the term
10 that your opponent used, but they did on page A-18 they
11 talk about Section 3.96 of the Health and Safety Code,
12 and Section 18.008 of the mobile home -- referring
13 to--

14 MR. HANOIAN: Yes, Your Honor.

15 QUESTION: So they did have, it seems to me, a
16 legislative determination of the kind of vehicle they
17 had in mind.

18 MR. HANOIAN: Well, the vehicle --

19 QUESTION: And it's licensed. It has a
20 special license.

21 MR. HANOIAN: Right. It does have a special
22 license. But I might add that the Vehicle Code section
23 that the California Supreme Court refers to is not the
24 code section defining "house car." It's a different
25 code section that defines "mobile home." And the house

1 car section is Section 3.84, I believe, of the vehicle
2 code, and 3.62 of the vehicle code is the house car
3 definition.

4 I might also add that the legislature has also
5 determined that, for purposes of burglary, that the
6 burglary of a residence is burglary in the first degree
7 in California. Yet the burglary of a house car or an
8 automobile, it lumps it into the category of second
9 degree burglary. They don't provide that with the
10 trappings of a residence in the penal code, even if
11 there may be some provision in the vehicle code
12 determining -- with licensing involved.

13 And finally, if police officers are going to
14 be allowed to ensure that a vehicle does not move, if
15 they are going to be able to get the evidence in there,
16 they have to be allowed to seize it. It has to be
17 stopped. And once that seizure is made, this Court has
18 determined in the past that there is no difference
19 constitutionally between seizing and holding that
20 vehicle while one awaits for a warrant, and subjecting
21 it to an immediate search at the officer's option.

22 There is a reason for that difference.
23 Different policy provisions come into play once you
24 seize and hold. Because at that point in time, if one
25 is to require the officers to hold the vehicle while

1 awaiting a warrant, they are going to be subjected to
2 danger; they are going to be subjected to the
3 possibility that --

4 CHIEF JUSTICE BURGER: Your time has expired,
5 counsel.

6 MR. HANOIAN: Thank you, Your Honor.

7 CHIEF JUSTICE BURGER: The case is submitted.
8 Thank you, gentlemen.

9 (Whereupon, at 12:02 o'clock p.m., the case in
10 the above-entitled matter was submitted.)

11 * * *

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#83-859 - CALIFORNIA, Petitioner v. CHARLES R. CARNEY

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BY Paul A. Richardson

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