University of Baltimore Law Forum

Volume 16
Number 1 *Fall, 1985*

Article 14

1985

Recent Developments: California v. Carney: A Man's Mobile Home Is Not His Castle

Edward B. Lattner

in a dishonest manner. The nonresident lawyer's professional duty and interest in his reputation should provide the same incentive to maintain high ethical standards as they do for resident lawyers." *Piper*, 105 S.Ct. at 1279. Furthermore, the Supreme Court of New Hampshire "has the authority to discipline all members of the bar, regardless of where they reside." *Piper*, 105 S.Ct. at 1279. Third, the argument that a nonresident attorney will not be available for court proceedings is unsound because

> in those cases where the nonresident counsel will be unavailable on short notice, the State can protect its interests through less restrictive means. The trial court, by rule or as an exercise of discretion, may require any lawyer who resides at a great distance to retain a local attorney who will be available for unscheduled meetings and hearings.

Piper, 105 S.Ct. at 1280.

Fourth, the contention that nonresident lawyers will not "do their share of *pro bono* and volunteer work" is not necessarily true. *Piper*, 105 S.Ct. at 1280. A nonresident lawyer could be "required to represent indigents and perhaps to participate in formal legal-aid work." *Piper*, 105 S.Ct. at 1280.

Justice Rehnquist dissented in *Piper*, arguing that there are substantial reasons why a state would discriminate against nonresident lawyers. First,

> the State has a substantial interest in creating its own set of laws responsive to its own local interests, and it is reasonable for a State to decide that those people who have been trained to analyze law and policy are better equipped to write those state laws and adjudicate cases arising under them. The State therefore may decide that it has an interest in maximizing the number of resident lawyers, so as to increase the quality of the pool from which its lawmakers can be drawn.

Piper, 105 S.Ct. at 1283.

Second, since lawyers play an important role in the formation of state policy, "they should be intimately conversant with the local concerns that should inform such policies." *Piper*, 105 S.Ct. at 1283. Third, the state may have an interest in having resident attorneys "bring their useful expertise to other important functions that benefit from such expertise and are of interest to state governments – such as trusteeships, or directorships of corporations or charitable organizations, or school board positions, or merely the role of the interested citizen at a town meeting." *Piper*, 105 S.Ct. at 1283. Fourth, a state does have a substantial interest in assuring that there not be a delay in litigation due to nonresident lawyers. *Piper*, 105 S.Ct. at 1285.

The Court in *Piper* has promulgated a rule which will cause the amendment of, if not the abolition of, residency requirements for lawyers in at least twenty-seven states. The fears of Justice Rehnquist, however, do not seem to be sound. Nonresident lawyers have represented clients, with the permission of the courts, on a *pro hac vice* basis for years. By allowing attorneys to practice on a regional or national level, this ruling will permit the public to have a freer hand in selecting competent legal counsel.

– Sam Piazza

California v. Carney: A MAN'S MOBILE HOME IS NOT HIS CASTLE

In *California v. Carney*, 105 S.Ct. 2066 (1985), the Supreme Court of the United States held that federal narcotics agents did not violate the fourth amendment when they conducted a warrantless search based on probable cause of a mobile home parked in a public parking lot. In so doing, the Court, for the first time applied the "automobile exception" to a fully mobile motor home.

Federal narcotics agents had reason to believe that Carney was exchanging marijuana for sex in a motor home parked in a lot in downtown San Diego. The defendant was observed downtown as he approached a youth and accompanied him back to the motor home. When the youth emerged he was stopped by the agents who then learned that he had received marijuana in return for allowing Carney sexual contacts. The officers persuaded the youth to return to the motor home and knock on the door. When Carney stepped out the agents identified themselves and without a warrant or consent, one agent entered and observed marijuana and drug paraphernalia. A subsequent search of the motor home at the police station revealed additional marijuana.

After unsuccessful attempts to have the evidence discovered in the motor home suppressed, the defendant pleaded *nolo contendre* to possession of marijuana for sale. The California Court of Appeal affirmed (*People v. Carney*, 117 Cal. App. 3d 36, 172 Cal. Rptr. 430 (1981)), but the California Supreme Court reversed *People v. Carney*, 34 Cal. 3d 597, 194 Cal. Rptr. 500, 668 P.2d 807 (1983), holding the "automobile exception" inapplicable to a motor home.

Chief Justice Burger, author of the Court's opinion, began by reviewing the "automobile exception" to the general rule that a warrant must be secured before a search is undertaken. *Carney*, 105 S.Ct. at 2068. This exception to the warrant requirement had its genesis in *Carroll v. United States*, 267 U.S. 132 (1925). The Court justified the lesser degree of protection of privacy interests in an automobile by relying principally on the ready mobility of the automobile.

"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." *Carney*, 105 S.Ct. at 2069. Because one has a lesser expectation of privacy in one's automobile than one's home, the warrant requirement is relaxed notwithstanding the mobility of the vehicle. *Cady v. Dombrowski*, 413 U.S.

433 (1973). "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." *Carney*, 105 S.Ct. at 2069.

The Court was now forced to characterize the motor home as either an automobile or a home. "While it is true that the [defendant's] vehicle possessed some, if not many of the attributes of a home, it is equally clear that the vehicle falls clearly within the exception laid down in *Carroll* . . ." *Carney*, 105 S.Ct. at 2070. The Chief Justice noted that the motor home was readily mobile and subject to extensive regulation – the two justifications underlying the "automobile exception." However, the Chief Justice made a third observation; "the vehicle was so situated that an objective observer would conclude that it was being used not as a residence, but as a vehicle." *Id.* at 2070. This may

represent an additional requirement imposed on the warrantless search of "hybrid" vehicles – those combining "the mobility attribute of an automobile . . . with most of the privacy characteristics of a house." *Id.* at 2071 (Stevens, J., dissenting). Further evidence of this additional requirement may be found in a footnote to the Court's opinion. "We need not pass on the application of the vehicle exception to a motor home that is situated in such a way or place that objectively indicated it is being used as a residence." *Id.* at 2071 n.3.

Having concluded that the "automobile exception" applied, the Court was left to decide whether the search was reasonable. "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.'" *Id.* at 2071 (quoting *United States v. Ross*, 456 U.S. 798, 823 (1982)). The Court concluded that the search was one that the magistrate could authorize and was thus reasonable.

Before *Carney*, the lower court decisions represented a potpourri of theories on the applicability of the "automobile exception" to motor homes. As a preliminary matter, the courts have found difficulty distinguishing among motor homes, vans, campers, pick-ups with tops, and other similar vehicles. *State v. Francoeur*, 387 So.2d 1063 (Fla. App. 1980). Substantively, while the Ninth Circuit held that the "automobile exception" is inapplicable to a motor home, *United States v. Williams*, 630 F.2d 1322 (9th Cir. 1980), *cert. denied*, 449 U.S. 865, (1980); *United States v. Wiga*, 662 F.2d 1325 (9th Cir. 1981), *cert. denied*, 456 U.S. 918, (1982), other circuits applied the "automobile exception" to motor homes, camper vans, and other such vehicles. *See United States v. Combs*, 672 F.2d 574 (6th Cir. 1982), *cert. denied*, 458 U.S. 1111 (1982).

Furthermore, even among those courts applying the "automobile exception" there was disagreement as to when the exception applied. Compare *United States v. Holland*, 740 F.2d 878 (11th Cir. 1984) (exception applied to motor homes which are used for transportation purposes and not as dwellings) with *State v. Francoeur*, 387 So.2d 1063 (Fla. App. 1980) (exception applied to camper van, even if "the defendants were using the vehicle as a living accommodation").

Justice Stevens was joined by Justices Brennan and Marshall in dissent in *Carney*. The dissent chastised the majority, claiming that "[m]uch of the Court's 'burdensome' workload is a product of its own aggressiveness [in the fourth amendment area, burdening] the argument docket with cases presenting fact bound errors of minimal significance." *Id.* at 2072 (Stevens, J., dissenting). On the merits, the dissent characterized the Court's opinion as erroneous 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." *Carney*, 105 S.Ct. at 2071 (Stevens, J., dissenting).

Despite the dissent's suggestion that "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", *id.* at 2073 n.7 (Stevens, J., dissenting), the majority has opted for a uniform rule. When the United States Supreme Court interprets the Federal Constitution the state courts are bound by that interpretation. Of course, state courts may choose to rely on their own constitutions, giving more protection under the state counterpart. *See State v. Opperman*, 247 N.W.2d 673 (S.D. 1976).

Although the defendant in *Carney* contended that the California Supreme Court decision rested on adequate and independent state grounds, the Court rejected that contention. *Carney*, 105 S.Ct. at 2068 n.1. Whether, on remand, the California Supreme Court will continue to hold the "automobile exception" inapplicable to motor homes, this time on state grounds, remains to be seen.

–Edward B. Lattner

WHY YOU ARE IMPORTANT TO US

Chances are you could play a vital role in the improvement of this magazine. You see, unlike most legal journals, *Law Forum* is open to input and contributions from all ambits of the legal community. Because we serve practitioners, professors, students and judges, we in turn require their help and effort.

The issue you are presently reading has been distributed free of charge to over seven thousand attorneys, judges, and legislative representatives throughout the State of Maryland. Additionally, *Law Forum* is made available to the University of Baltimore Law students and faculty alike, as well as to Law Libraries across the nation. But again, in order to make each issue a success, WE NEED YOU.

We encourage every student at the University of Baltimore School of Law to get involved. Besides the *Law Forum*, several organizations provide ideal supplements to a tedious school schedule. Like most things in life, however, the ball is in your hands. You must make the initial effort. *Law Forum* alone provides its staff with all types of opportunities including creative writing and research, photography, art, sales, management, and an occasional softball game or social outing.

For PRACTICING ATTORNEYS, JUDGES, AND PROFESSORS, *Law Forum* can be an effective way to express your ideas and to share your knowledge. We invite your thoughts on any legal topic affecting our community. Help to make *Law Forum* as informative and diverse as it can be.

Finally, no request for your help would be complete without mentioning that as a non-profit, state subsidized student organization, *Law Forum* is always seeking financial support. Such support can take the form of advertising in our next issue (our prices are very reasonable), or via donations of essential office equipment and publications, or in any other form which is appropriate. Take the time and effort to help a creative legal magazine improve itself and its readers.

For more information regarding *Law Forum* or to share your input, contact:

Law Forum
University of Baltimore
School of Law
Charles at Mount Royal
Baltimore, Maryland 21203
(301) 576-2303

Thank you for your continued support and input.

Thomas K. Swisher
Business Editor

JOIN THE SPECIAL OLYMPICS TEAM!

Special Olympics

SPONSOR AN ATHLETE!

Your tax-deductable contribution will make it possible for Baltimore County Special Olympics (B.C.S.O.) to provide a sports program for mentally retarded children and adults in Baltimore County. Sponsorship of a Winter Games athlete allows B.C.S.O. to send an athlete to the State Winter Games at Wisp Ski Resort in McHenry Maryland from February 9-12, 1986. Sponsorship of a Spring Games athlete will permit B.C.S.O. to provide track and field competition for an athlete at the Baltimore County Spring Games at Catonsville Community College on May 10, 1986. (Note: Any moneys raised in excess of expenditures will be used to provide services to athletes during the following athletic year.)

For more information, call Sharon, B.C.S.O. Fundraising Chairman, at (301) 521-5166.

Please make checks payable to Maryland Special Olympics–Baltimore County.

Send all correspondence to:

Baltimore County Special Olympics
c/o Michael Czarnowsky, Area Director
Department of Psychology
University of Maryland Baltimore County
Catonsville, Maryland 21228

Sponsorship Chart

Athletic Competition	*Full Sponsorship*	*Half Sponsorship*	*Quarter Sponsorship*
Winter Games	$90.00	$45.00	$23.00
Spring Games	$20.00	$10.00	$ 5.00

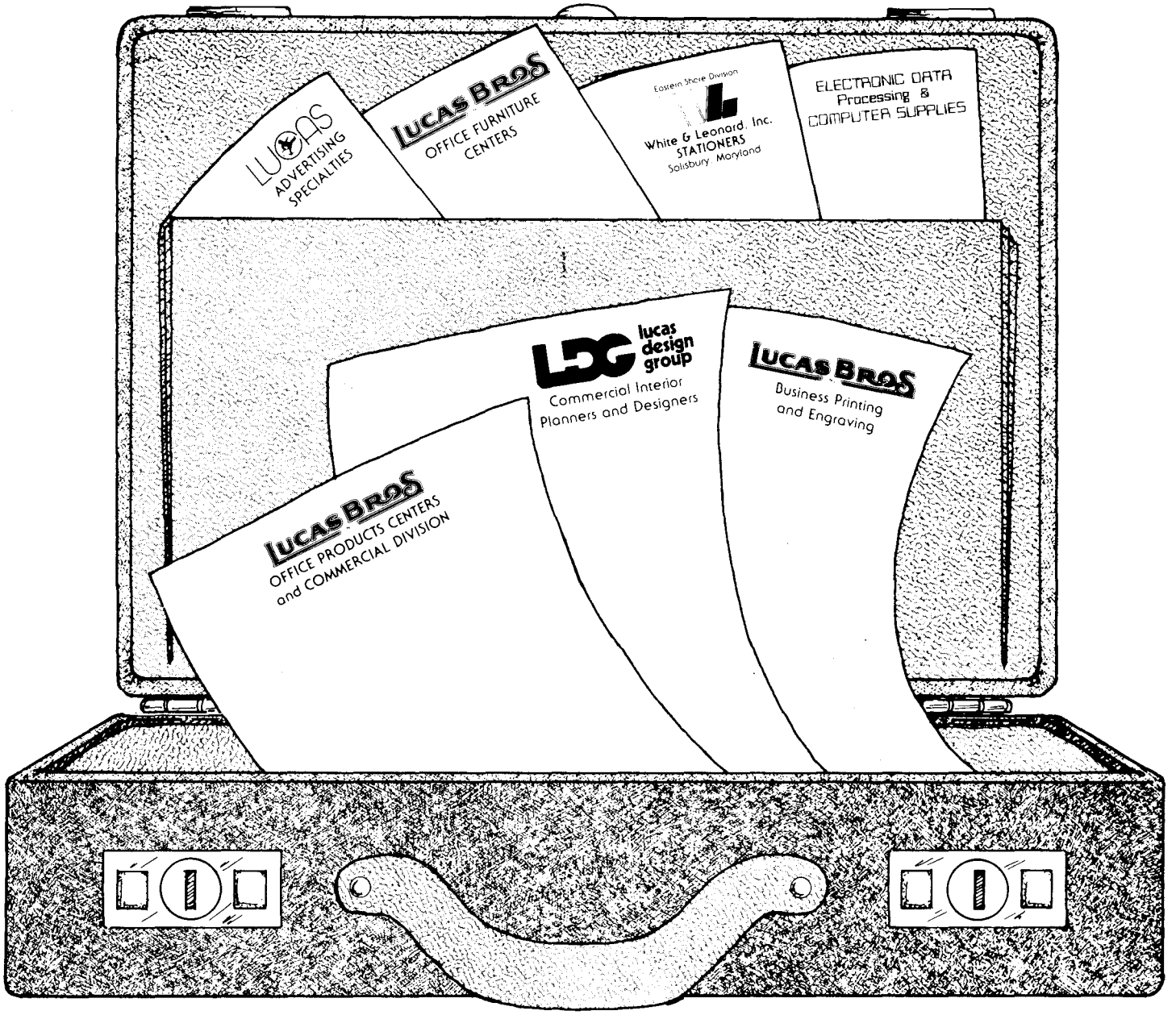
SPECIAL OLYMPICS

Created by The Joseph P. Kennedy, Jr. Foundation.

Authorized and Accredited by Special Olympics, Inc. for the Benefit of Mentally Retarded Citizens.

We've Got An Open & Shut Case!

Lucas Bros. Complete Line of Business Products & Services!



LUCAS BROS INC

America's Oldest Office Products Centers

OFFICE PRODUCTS CENTERS
Annapolis, Baltimore, Towson, Pikesville, Salisbury

OFFICE FURNITURE CENTERS
Baltimore, Dorsey, Cockeysville

In Baltimore Call: (301) 799-7700

In Washington, D.C. Call: (202) 621-1002

NOTES

41126 8/85