

## FOREWORD

### WILLIAM REHNQUIST'S FOURTH AMENDMENT

#### 2012 FOURTH AMENDMENT SYMPOSIUM

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The Fourth Amendment<sup>1</sup> protects citizens against unreasonable governmental searches and seizures. Due to the wide applicability of governmental intrusions—ranging from countless daily intrusions at airports; traffic stops; drug testing; traditional criminal law enforcement practices; regulatory intrusions to enforce health, safety, environmental, and other regulatory schemes; and many other searches and seizures—the Amendment is the most commonly implicated and litigated part of our Constitution. It is the foundation upon which other freedoms rest.<sup>2</sup> Its fundamental promise is that individuals will be secure

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<sup>1</sup> 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. amend. IV.

<sup>2</sup> One author has stated:

[T]he Fourth Amendment may plausibly be viewed as the centerpiece of a free, democratic society. All other freedoms presuppose that lawless police action have been restrained. What good is freedom of speech or freedom of religion or any other freedom if law enforcement officers have unfettered power to violate a person's privacy and liberty when he sits in his home or drives his car or walks the streets?

against unreasonable searches and seizures. Yet, government officials are permitted to make reasonable intrusions to effectuate legitimate governmental and societal needs. The operative word is “reasonable,” which is the fundamental but undefined command of the Amendment.<sup>3</sup> A central challenge for courts is to give meaning to that term so law enforcement and individuals may know what the government may permissibly do. The Court has used many tools to interpret the Fourth Amendment, and, as any student of the Amendment knows, it has never been accused of being consistent over time. But perhaps its choices come down to this: Is the Amendment designed primarily to protect individuals from overreaching governmental invasions, or is it designed to regulate law enforcement practices? The first view would promote individual liberty, and the second would offer a rule book for the police to effectuate their intrusions.

William Rehnquist served as Chief Justice of the Supreme Court from September 26, 1986, to September 3, 2005. During that period, he wrote an astonishing number of majority opinions on the Fourth Amendment, totaling twenty-five in all. The list includes many of the most important cases of that time.<sup>4</sup> In

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Yale Kamisar, *The Fourth Amendment and Its Exclusionary Rule*, THE CHAMPION, Sept.-Oct. 1991, at 20-21 (emphasis omitted).

<sup>3</sup> One commentator, often quoted, has described the Amendment as having “the virtue of brevity and the vice of ambiguity.” JACOB W. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT 42 (1966).

<sup>4</sup> The complete list of his opinions follows as an Appendix to this Introduction. I have taken some liberties in counting. I include cases discussing the exclusionary rule in the Fourth Amendment context, even though that rule is not grounded in the Amendment. Also, I include cases, such as *United States v. Peltier*, 422 U.S. 531 (1975), which deal with retroactivity of new Fourth Amendment rules. On the other hand, Rehnquist’s dissent in *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), is not included because he did not reach the Fourth Amendment claim and did not discuss it, *see id.* at 545 & n.1 (Rehnquist, J., dissenting). Also excluded from the list are his opinions addressing stays of mandates. *See Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319 (1994) (denial of stay regarding overbroad subpoena); *Clements v. Logan*, 454 U.S. 1304 (1981) (staying mandate enjoining policy of strip-searching pretrial inmates); *California v. Riegler*, 449 U.S. 1319 (1981) (granting stay regarding suppression of evidence of search following controlled delivery of package containing contraband when the package had been legally searched prior to the delivery); *California v. Minjares*, 443 U.S. 916 (1979) (dissenting from denial of stay and arguing that the exclusionary rule should be reconsidered); *Miroyan v. United States*, 439 U.S. 1338 (1978) (denying stay of mandate in case involving a tracking device attached to an airplane).

addition, the Rehnquist Court issued numerous per curiam decisions,<sup>5</sup> and it is fair to say that Rehnquist had something to do with them, given that he dissented in none of those cases. Indeed, Justice “Per Curiam” wrote more majority opinions when Rehnquist was Chief Justice than have any of the current Justices of the Court (excepting only Justice Scalia). During his tenure as Chief Justice, Rehnquist also wrote four dissenting opinions but no concurring opinions. Rehnquist served as an Associate Justice of the Supreme Court from January 7, 1972, to the date of his elevation as Chief Justice. During that earlier period, he wrote twenty-three majority opinions, five concurring opinions, and eleven dissenting opinions. In total, he wrote sixty-eight opinions in his thirty-three years on the bench. In only a handful of those opinions did he side with the individual.<sup>6</sup> Regardless of whether

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<sup>5</sup> See, e.g., *Brosseau v. Haugen*, 543 U.S. 194 (2004) (finding qualified immunity in excessive force case and not discussing the constitutional issue); *Kaupp v. Texas*, 538 U.S. 626 (2003) (finding arrest when suspect was involuntarily taken from home to police station); *Kirk v. Louisiana*, 536 U.S. 635 (2002) (reaffirming requirement for warrant for routine arrest in home); *Arkansas v. Sullivan*, 532 U.S. 769 (2001) (reaffirming use of objective analysis to justify seizures and rejecting viability of pretextual claims); *Flippo v. West Virginia*, 528 U.S. 11 (1999) (reaffirming precedent rejecting murder-scene exception to warrant requirement); *Maryland v. Dyson*, 527 U.S. 465 (1999) (applying automobile exception to warrant requirement to uphold search); *Pennsylvania v. LaBron*, 518 U.S. 938 (1996) (same); *United States v. Padilla*, 508 U.S. 77 (1993) (rejecting co-conspirator standing); *Smith v. Ohio*, 494 U.S. 541 (1990) (holding that a warrantless search of a grocery bag that provided probable cause to arrest could not be used to justify arrest).

<sup>6</sup> See *Bond v. United States*, 529 U.S. 334 (2000) (finding that a search occurred when police officer squeezed, in exploratory manner, Bond’s soft-sided luggage on bus, because Bond had a reasonable expectation of privacy in the bag); *Knowles v. Iowa*, 525 U.S. 113 (1998) (rejecting application of the traditional authority to search incident to arrest when applied to traffic citations); *Florida v. Wells*, 495 U.S. 1 (1990) (holding that opening closed containers in impounded vehicle, in the absence of policy regulating inventory searches, violated the Fourth Amendment). Cf. *Wilson v. Layne*, 526 U.S. 603 (1999) (prohibiting media from accompanying execution of warrant in house but finding that the officers were entitled to qualified immunity); *Ornelas v. United States*, 517 U.S. 690 (1996) (establishing de novo review for question whether stop was based on articulable suspicion, which was arguably a defense-friendly standard, but remanding to lower court to apply the standard); *Mincey v. Arizona*, 437 U.S. 385, 405-07 (1978) (Rehnquist, J., concurring in part and dissenting in part) (joining the Court’s opinion rejecting a homicide-scene exception to the warrant requirement, but noting that some of the evidence seized, including blood on the floor, may have been permissibly seized under an exigent-circumstances analysis; dissenting in part on other grounds).

one agrees with his views, Chief Justice Rehnquist's impact on Fourth Amendment analysis—and his legacy—is substantial.

Rehnquist's thirty-three-year tenure on the Court coincided with a dramatic increase in the amount of Fourth Amendment litigation, with the Court addressing many issues for the first time. Much of the cause of that increase was due to the Warren Court's sweeping re-interpretation of the Fourth Amendment in the 1960s.<sup>7</sup> It was within that framework that Rehnquist made his own mark.

First, the Warren Court expanded the types of actors who were covered by the Amendment. In *Mapp v. Ohio*,<sup>8</sup> the Court extended the application of the exclusionary rule to state and local governments, effectively bringing those actors within the coverage of the Amendment.<sup>9</sup> This brought before the Court a host of issues, ranging from administrative inspections to drug testing of high school students.

Second, the Warren Court expanded the concepts of “search” and “seizure.” Seizures in Supreme Court cases prior to 1968 invariably involved extended detentions, including a trip to the police station and booking, and were the initial step in prosecution. With limited exceptions, there had been no occasion to discuss what constituted an arrest, and the police practice of stopping and frisking suspicious persons had been largely ignored or avoided.<sup>10</sup> In *Terry v. Ohio*,<sup>11</sup> however, the Court expanded the scope of the Fourth Amendment's protections by including within the concept of a seizure a second category—stops. This additional category expanded coverage of the Amendment to many everyday interactions between police and citizens, including the millions of traffic stops that occur each year and countless interactions on the street. *Terry* also expanded the concept of a search to include “frisks,” that is, the police practice of checking persons they

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<sup>7</sup> See generally Morgan Cloud, *A Liberal House Divided: How the Warren Court Dismantled the Fourth Amendment*, 3 OHIO ST. J. CRIM. L. 33 (2005).

<sup>8</sup> 367 U.S. 643 (1961).

<sup>9</sup> See *id.* at 655. Technically, this was initially accomplished in *Wolf v. Colorado*, 338 U.S. 25 (1949); however, because *Wolf* rejected application of the exclusionary rule as a sanction for state actors, it had no real impact.

<sup>10</sup> See THOMAS K. CLANCY, *THE FOURTH AMENDMENT: ITS HISTORY AND INTERPRETATION* 219 (2008).

<sup>11</sup> 392 U.S. 1 (1968).

accosted for weapons.<sup>12</sup> In *Katz v. United States*,<sup>13</sup> the Court offered a broad concept of a search. In announcing that the Fourth Amendment protected against the unwanted interception of conversations, the *Katz* Court rejected prior precedent requiring a physical trespass and, in discussing the factual situation before it, asserted: “The Government’s activities in electronically listening to and recording the petitioner’s words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a ‘search and seizure’ within the meaning of the Fourth Amendment.”<sup>14</sup> *Katz* was so amorphous that subsequent cases could have taken many different roads.<sup>15</sup>

Third, the Warren Court redefined the person’s right to be “secure” to be primarily a privacy right, creating an expectations of privacy framework. Prior to the Warren Court era, the Supreme Court grounded Fourth Amendment protections in common law property concepts. That property-based structure was repudiated by the Court in *Warden v. Hayden*<sup>16</sup> and in *Katz*. Justice Stewart’s opinion for the Court in *Katz* showed how prior case law had structured the question to ask whether there had been a physical penetration of a constitutionally protected area and rejected that test. Justice Stewart also sought to explain what the Fourth Amendment did protect and the relation of that protection to the

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<sup>12</sup> *See id.*

<sup>13</sup> 389 U.S. 347 (1967).

<sup>14</sup> *Id.* at 353.

<sup>15</sup> Arguing for a broad-based view of what constituted a search and writing seven years after *Katz* was decided, Anthony Amsterdam argued that *Katz* rejected a two-stage inquiry regarding when a search occurs:

The entire thrust of the opinion is that it is needless to ask successively whether an individual has the kind of interest that the [F]ourth [A]mendment protects and whether that interest is invaded by a kind of governmental activity characterizable by its attributes as a “search.” Rather, a “search” is anything that invades interests protected by the amendment.

Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 383 (1974). Amsterdam added that “[s]earches’ are not particular methods by which [the] government invades constitutionally protected interests: they are a description of the conclusion that such interests have been invaded.” *Id.* at 385. Subsequent caselaw did not develop in that direction. Indeed, the Court has rarely construed the concept of a search as broadly as it did in *Katz*, or at least as broadly as Amsterdam construed that decision. *See, e.g.*, Thomas K. Clancy, *United States v. Jones: Fourth Amendment Applicability in the 21st Century*, 10 OHIO ST. J. CRIM. L. 303 (2012).

<sup>16</sup> 387 U.S. 294, 315 (1967).

concept of privacy. However, the Court's embrace of privacy was not without reservation, and Stewart did little to explain what he meant by the term. The lessons of the majority opinion can be briefly stated: "[T]he Fourth Amendment protects people, not places";<sup>17</sup> its protections are not limited to tangible property; and property interests do not control the determination of whether a search or seizure has occurred.<sup>18</sup> Beyond those blackletter, legal concepts, the majority's opinion had little lasting impact on future decisions. It was Justice Harlan's concurring opinion in *Katz* that endured. Harlan's opinion is the origin of the "reasonable expectation of privacy" test, which came to be used by the Court as the predominant measure for the scope of the Fourth Amendment's protections. The Harlan test requires that a person exhibit an actual, subjective expectation of privacy and that the expectation be one that society recognizes as reasonable.<sup>19</sup> If either prong is missing, no protected interest is established. To support that inquiry, the post-Warren Court era created a hierarchy of privacy interests: Reasonable expectations of privacy that society is prepared to recognize as legitimate have, at least in theory, the greatest protection; diminished expectations of privacy are more easily invaded; and subjective expectations of privacy that society is not prepared to recognize as legitimate have no protection.<sup>20</sup>

Fourth, as it was broadly expanding the applicability of the Amendment to a wide array of governmental activity, the Warren Court was also re-interpreting the concept of reasonableness. The first clause of the Fourth Amendment requires that a search or seizure not be "unreasonable." This is the "fundamental command"<sup>21</sup> of the Amendment, and this "imprecise and flexible term" reflects the Framers' recognition "that searches and seizures were too valuable to law enforcement to prohibit them entirely" but that "they should be slowed down."<sup>22</sup> Reasonableness is the measure of both the permissibility of the initial decision to

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<sup>17</sup> *Katz*, 389 U.S. at 351.

<sup>18</sup> *Id.* at 353.

<sup>19</sup> *Id.* at 361 (Harlan, J., concurring). See *Smith v. Maryland*, 442 U.S. 735, 740 (1979) (stating that the Harlan test "embraces two discrete questions").

<sup>20</sup> See CLANCY, *supra* note 10, at 61-62 (collecting cases).

<sup>21</sup> *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985).

<sup>22</sup> *Berger v. New York*, 388 U.S. 41, 75 (1967) (Black, J., dissenting).

search and seize and the permissible scope of those intrusions.<sup>23</sup> Prior to the Warren Court, the Court maintained substantive restrictions on the government's ability to search and seize, that is, there were categories of papers that could not be the target of a search or seizure. Those substantive restrictions were rejected in *Hayden*, and reasonableness became to be viewed solely as a procedural mechanism that regulates the circumstances when the government can intrude and the scope of that intrusion.<sup>24</sup> In *Camara*<sup>25</sup> and *Terry*,<sup>26</sup> the Warren Court adopted a balancing test to measure reasonableness within the meaning of the Fourth Amendment.<sup>27</sup> In *Camara*, the Court used balancing to undermine the traditional Warrant Clause model; in *Terry*, balancing undermined the individualized suspicion model. In *Camara*, the Supreme Court validated the issuance of search warrants to inspect residences for health, fire, and housing code violations on an area-wide basis, rejecting any requirement of individualized suspicion for believing that violations existed at a particular building.<sup>28</sup> The Court asserted: "Unfortunately, there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails."<sup>29</sup> In *Terry*, the Court lowered the level of individualized suspicion from "probable cause" to "articulable suspicion" for frisks and stops.<sup>30</sup> Largely as a result of the rise of balancing and the identification of expectations of privacy as the primary object protected by the Amendment, a significant list of permissible warrantless and suspicionless invasions, and the level of intrusiveness of those governmental actions, grew in the post-Warren Court era.

Finally, in *Mapp v. Ohio*,<sup>31</sup> a very splintered Court extended the exclusionary rule to the states, grounding that extension on

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<sup>23</sup> *E.g.*, *T.L.O.*, 469 U.S. at 341; *Terry v. Ohio*, 392 U.S. 1, 20 (1968).

<sup>24</sup> *See, e.g.*, *Zurcher v. Stanford Daily*, 436 U.S. 547, 554 (1978).

<sup>25</sup> *Camara v. Mun. Court*, 387 U.S. 523 (1967).

<sup>26</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>27</sup> *See generally* Scott E. Sundby, *A Return to Fourth Amendment Basics: Undoing the Mischief of Camara and Terry*, 72 MINN. L. REV. 383, 391-414 (1988) (discussing the impact of *Camara* and *Terry* on Fourth Amendment analysis).

<sup>28</sup> *Camara*, 387 U.S. at 537-38.

<sup>29</sup> *Id.* 536-37.

<sup>30</sup> *See* CLANCY, *supra* note 10, at 478-81.

<sup>31</sup> 367 U.S. 643 (1961).

the view that the rule was constitutionally mandated. That view did not survive very long. In 1971, that view was repudiated in *United States v. Calandra*,<sup>32</sup> and the sole basis for exclusion has evolved to be the deterrence of future police misconduct. The post-Warren Court years were characterized by an increasingly long list of exceptions to that rule.<sup>33</sup>

In 1969, the Warren Court became the Burger Court, with the succession of Warren Burger as Chief Justice. The stage was set. In 1972, when Rehnquist was appointed, the remnants of the Warren Court era were in retreat. Rehnquist, in his first term, began writing the first of his many opinions that often tracked and embraced the Warren Court's framework, yet rarely favored the defendant.

The National Center for Justice and the Rule of Law,<sup>34</sup> which is a program of the University of Mississippi School of Law, focuses on issues relating to the criminal justice system, with its purpose to promote the two concepts comprising the title of the Center. In furtherance of its mission, the Center has developed its *Fourth Amendment Initiative*. The purpose of the Center's initiative is to promote awareness of Fourth Amendment principles through conferences, publications, and training of state judges and other professionals in the criminal justice system. The Center has never taken a point of view as to the direction that Fourth Amendment analysis should take; rather, it has sought to facilitate awareness of the issues and encourage discussion of search and seizure principles. A central pillar of the *Fourth Amendment Initiative* has been its annual symposium on important search and seizure topics. As Director of the Center, I am honored to offer this preface to the important scholarship by

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<sup>32</sup> 414 U.S. 338 (1974).

<sup>33</sup> See CLANCY, *supra* note 10, at 619-21.

<sup>34</sup> The National Center for Justice and the Rule of Law is supported in part by grants from the Bureau of Justice Assistance, Office of Justice Programs, of the U.S. Department of Justice. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime. Points of view or opinions in the Articles stemming from this Symposium are those of the author and do not represent the official position of the United States Department of Justice. For more information about the Center, please visit [www.ncjrl.org](http://www.ncjrl.org).



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## APPENDIX

*1. The Majority Opinions of William Rehnquist as Chief Justice*

*Muehler v. Mena*, 544 U.S. 93 (2005) (clarifying bright-line authority of police to detain all occupants of a house for the two- to three-hour duration of the execution of a search warrant; permitting questioning of detainee unrelated to purpose of detention without any showing of independent justification for the questioning).

*Thornton v. United States*, 541 U.S. 615 (2004) (reaffirming bright-line rule permitting searches of passenger compartments of vehicles incident to arrest and extending it to the situation where the arrest occurred after suspect exited the vehicle).

*United States v. Flores-Montano*, 541 U.S. 149 (2004) (broad opinion discussing the nature of the border-search doctrine and finding suspicionless dismantling of gas tank reasonable).

*Maryland v. Pringle*, 540 U.S. 366 (2003) (discussing the nature of probable cause and finding that the police had probable cause to arrest three occupants of vehicle for drug possession).

*United States v. Arvizu*, 534 U.S. 266 (2002) (finding articulable suspicion to justify stop of minivan based on the totality of the circumstances).

*United States v. Knights*, 534 U.S. 112 (2001) (finding warrantless search of probationer's apartment reasonable).

*Florida v. Thomas*, 532 U.S. 774 (2001) (dismissing certiorari but reaffirming bright-line rule permitting searches of passenger compartments of vehicles incident to arrest).

*Bond v. United States*, 529 U.S. 334 (2000) (finding that a search occurred when police officer squeezed, in exploratory manner, Bond's soft-sided luggage on bus, because Bond had a reasonable expectation of privacy in the bag).

*Illinois v. Wardlow*, 528 U.S. 119 (2000) (finding that "[h]eadlong" flight in high crime area suffices to justify stop).

*Wilson v. Layne*, 526 U.S. 603 (1999) (prohibiting media from accompanying police executing warrant in a house but finding that the officers were entitled to qualified immunity).

Knowles v. Iowa, 525 U.S. 113 (1998) (rejecting application of the traditional authority to search incident to arrest to traffic citations).

Minnesota v. Carter, 525 U.S. 83 (1998) (rejecting view that temporary visitors to apartment had a reasonable expectation of privacy in that location when, *inter alia*, they were in the apartment for two and a half hours to bag cocaine).

United States v. Ramirez, 523 U.S. 65 (1998) (upholding no-knock entry into house that resulted in destruction of property and observing that the manner in which a warrant was executed is a question of reasonableness).

Maryland v. Wilson, 519 U.S. 408 (1997) (establishing bright-line authority of police to order all passengers out of vehicle during traffic stop).

Ohio v. Robinette, 519 U.S. 33 (1996) (rejecting bright-line rule that an officer had to tell the stopped motorist that he was free to go at the conclusion of a traffic stop before requesting consent to search).

Ornelas v. United States, 517 U.S. 690 (1996) (establishing *de novo* review for questioning whether stop was based on articulable suspicion, remanding for that determination, and discussing the nature of the probable cause and articulable suspicion standards).

Arizona v. Evans, 514 U.S. 1 (1995) (extension of good-faith exception to the exclusionary rule for errors made by court personnel that indicated the suspect had outstanding arrest warrant).

Albright v. Oliver, 510 U.S. 266 (1994) (plurality opinion announcing judgment of Court) (Fourth Amendment applies to pretrial deprivation of liberty).

Florida v. Jimeno, 500 U.S. 248 (1991) (scope of consent search of motor vehicle included opening closed paper bag on floor of vehicle).

Mich. Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (utilizing balancing test to uphold initial stop of motorists at sobriety checkpoints).

Florida v. Wells, 495 U.S. 1 (1990) (in absence of policy regulating inventory searches, opening closed containers in impounded vehicle violated the Fourth Amendment).

United States v. Verdugo-Urquidez, 494 U.S. 259 (1990) (Fourth Amendment inapplicable to seizures of property in foreign country of nonresident alien).

Graham v. Connor, 490 U.S. 386 (1989) (Fourth Amendment is proper vehicle to examine excessive-force claims stemming from seizure of person).

United States v. Sokolow, 490 U.S. 1 (1989) (opining about the nature of articulable suspicion and finding that stop of suspected drug courier was justified).

Colorado v. Bertine, 479 U.S. 367 (1987) (pursuant to standardized policy, inventory search of impounded vehicle permissibly included closed backpack).

*2. The Concurring Opinions of William Rehnquist as Chief Justice*

None.

*3. The Dissenting Opinions of William Rehnquist as Chief Justice<sup>35</sup>*

City of Indianapolis v. Edmond, 531 U.S. 32, 48-56 (2002) (arguing that drug checkpoints were valid, utilizing a balancing test).

Chandler v. Miller, 520 U.S. 305, 323-28 (1997) (maintaining a Georgia law that required political candidates to submit to drug testing was valid).

United States v. James Daniel Good Real Prop., 510 U.S. 43, 65-73 (1993) (dissenting in part) (arguing that Fourth Amendment warrant requirement provided sufficient due-process protection to property owners who have been convicted of a crime that rendered their property susceptible to civil forfeiture).

Minnesota v. Dickerson, 508 U.S. 366, 383 (1993) (dissenting in part) (arguing for remand for factual findings on whether police had probable cause to believe lump felt during frisk was contraband).

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<sup>35</sup> In *Minnesota v. Olson*, 495 U.S. 91 (1990), he dissented without an opinion.

4. *The Majority Opinions of William Rehnquist as Associate Justice*

New York v. P.J. Video, Inc., 475 U.S. 868 (1986) (rejecting higher standard for probable cause for search warrant for allegedly obscene materials).

United States v. Montoya de Hernandez, 473 U.S. 531 (1985) (detention at international border was justified based on reasonable suspicion traveler was smuggling contraband in her alimentary canal).

INS v. Delgado, 466 U.S. 210 (1984) (rejecting claim that factory surveys of workers by immigration authorities constituted seizures).

Donovan v. Lone Steer, Inc., 464 U.S. 408 (1984) (no warrant needed to enter areas of motel and restaurant that are open to the public to serve administrative subpoena).

United States v. Villamonte-Marquez, 462 U.S. 579 (1983) (upholding statute that permitted customs officials to board, without suspicion, ships located in waters with ready access to open sea to examine manifest and other documents).

Illinois v. Gates, 462 U.S. 213 (1983) (adopting totality-of-circumstances standard to review sufficiency of information of informant tip in affidavit to support search warrant).

Texas v. Brown, 460 U.S. 730 (1983) (announcing the judgment of the Court and writing plurality opinion) (upholding use of flashlight to illuminate interior of vehicle during vehicle stop at checkpoint for license; observation of balloon containing contraband valid under plain-view doctrine, giving officer probable cause to seize the balloon).

United States v. Knotts, 460 U.S. 276 (1983) (beeper placed in container of chloroform prior to its sale; tracking of that beeper as container was transported in vehicle was not a search because no reasonable expectation of privacy in movements).

Rawlings v. Kentucky, 448 U.S. 98 (1980) (rejecting standing to challenge search of another's purse, absent showing that the challenger had a legitimate expectation of privacy in the purse; applying attenuation analysis to admit a statement; and holding that a search incident to arrest may precede the formal arrest).

United States v. Salvucci, 448 U.S. 83 (1980) (overruling "automatic" standing rule of *Jones v. United States*, 362 U.S. 257

(1960), and establishing that a defendant charged with a possessory offense must establish that his own Fourth Amendment rights had been violated in the area searched).

*Baker v. McCollan*, 443 U.S. 137 (1979) (in civil rights suit for wrongful detention based on mistaken identification, no cause of action stated when three-day detention over New Year's weekend was pursuant to a valid warrant).

*Bell v. Wolfish*, 441 U.S. 520 (1979) (examining Fourth Amendment rights of pretrial detainees and upholding restrictions on types of materials the detainees could receive, searches of living areas, and body cavity searches after contact visits).

*Rakas v. Illinois*, 439 U.S. 128 (1978) (rejecting ability of mere passenger of a vehicle to contest a search of that vehicle and discussing that "standing" terminology was not helpful, that is, the proper question was whether the person's own Fourth Amendment rights have been infringed by the search or seizure).

*Scott v. United States*, 436 U.S. 128 (1978) (in wiretapping case involving a mix of statutory and Fourth Amendment analysis, establishing objective standard to measure propriety of police actions, rather than examination of subjective intent, and opining on the "ad hoc nature of any determination of reasonableness").

*United States v. Ceccolini*, 435 U.S. 268 (1978) (establishing limits on application of the exclusionary rule to witness testimony as a fruit of an illegal search).

*United States v. Ramsey*, 431 U.S. 606 (1977) (upholding searches of international mail based on border search doctrine).

*United States v. Santana*, 427 U.S. 38 (1976) (upholding warrantless arrest that started at doorway of house but ended inside based on "hot pursuit").

*United States v. Peltier*, 422 U.S. 531 (1975) (strictly not a Fourth Amendment case but addressing non-retroactive application of the exclusionary rule to roving border patrols, which had been found to violate the Amendment in *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973)).

*Cal. Bankers Ass'n v. Shultz*, 416 U.S. 21 (1974) (upholding reporting requirements for banks in foreign and interstate commerce and finding no standing of depositors to challenge obtaining the records from the banks).

Gustafson v. Florida, 414 U.S. 260 (1973) (companion case of *Robinson* upholding search incident to arrest as categorically reasonable for all arrests).

United States v. Robinson, 414 U.S. 218 (1973) (search incident to valid arrest is exception to warrant requirement and categorically reasonable for all arrests).

Cady v. Dombrowski, 413 U.S. 433 (1973) (based on community caretaking, warrantless search of vehicle to locate revolver permissible when the vehicle had been in an accident, the driver in a coma, and the vehicle towed to private lot based on police order).

Adams v. Williams, 407 U.S. 143 (1972) (stop and frisk based on informant tip resulting in probable cause to arrest for gun found in defendant's waistband).

##### *5. The Concurring Opinions of William Rehnquist as Associate Justice*

New York v. Belton, 453 U.S. 454, 463 (1981) (brief concurring statement joining the majority opinion upholding search of passenger compartment of vehicle incident to arrest).

Donovan v. Dewey, 452 U.S. 594, 608-09 (1981) (rejecting the reasoning of the majority that upheld a statute authorizing a warrantless search but agreeing that warrantless searches of mine valid because the stone quarry searched was an open field and not protected by the Amendment).

Mincey v. Arizona, 437 U.S. 385, 405-07 (1978) (joining the Court's opinion rejecting a homicide scene exception to the warrant requirement, but noting that some of the evidence seized, including blood on the floor, may have been permissibly seized under an exigent circumstances analysis; dissenting in part on other grounds).

United States v. Ortiz, 422 U.S. 891, 898-99 (1975) (joining majority opinion in border patrol case that established that, to search vehicles at fixed checkpoints away from the border, probable cause was needed, but opining that "fixed-checkpoint stops for the purpose of inquiring about citizenship" were reasonable under the Amendment).

United States v. Brignoni-Ponce, 422 U.S. 873, 887-88 (1975) (joining majority opinion upholding stop by roving border patrol

and adding that a “strong case” could be made to justify stops of any motorists using “highways in order to determine whether they have met the qualifications prescribed by applicable law for such use”).

*6. The Dissenting Opinions of William Rehnquist as Associate Justice*

*Michigan v. Clifford*, 464 U.S. 287, 305-11 (1984) (arguing that re-entry of building and search of basement by fire investigators was continuation of earlier investigation, justified by exigent circumstances, although warrant was needed to search the remainder of the house).

*Florida v. Royer*, 460 U.S. 491, 519-32 (1983) (broad attack on majority’s view and asserting that investigation and detention of suspected drug smuggler at airport reasonable).

*Robbins v. California*, 453 U.S. 420, 437-44 (1981) (arguing that *Mapp v. Ohio*, 367 U.S. 643 (1961), should be overruled, criticizing the warrant-preference rule, and advocating broad application of the automobile exception).

*Steagald v. United States*, 451 U.S. 204, 223-31 (1981) (rejecting requirement for search warrant to arrest someone believed to be in another’s home).

*Reid v. Georgia*, 448 U.S. 438, 442 (1980) (rejecting view that suspect approached by federal agents at airport had been seized).

*Payton v. New York*, 445 U.S. 573, 620-21 (1980) (agreeing with dissent of Justice White that a warrant should not be required for a routine felony arrest in a person’s home and referring to “significant historical evidence” that the Court had “misread the history of the Fourth Amendment” by “elevating the warrant requirement over the necessity for probable cause in a way which the Framers of that Amendment did not intend”).

*Ybarra v. Illinois*, 444 U.S. 85, 98-110 (1979) (rejecting view that Ybarra was illegally searched when police executed warrant to search tavern where Ybarra was a customer; offering extended discussion of his views on the relationship of the two clauses of the Amendment and the concept of reasonableness).

*Dunaway v. New York*, 442 U.S. 200, 221-27 (1979) (rejecting view that Dunaway was seized when he accompanied police to station and rejecting reliance on officer’s subjective view that

Dunaway would have been prevented from leaving the station if he had tried to do so; alternatively, assuming that there had been a seizure, opining that Dunaway's statement was sufficiently attenuated from any illegal detention).

Delaware v. Prouse, 440 U.S. 648, 664-67 (1979) (arguing that random vehicle stops to check driver's license are permissible).

Franks v. Delaware, 438 U.S. 154, 180-88 (1978) (rejecting the majority's framework to assess misrepresentations in an affidavit supporting the issuance of a warrant).

Michigan v. Tyler, 436 U.S. 499, 516-18 (1978) (rejecting requirement for warrant for fire investigation of furniture store because warrant not needed for "routine, regulatory inspections of commercial premises") (internal quotation marks omitted).