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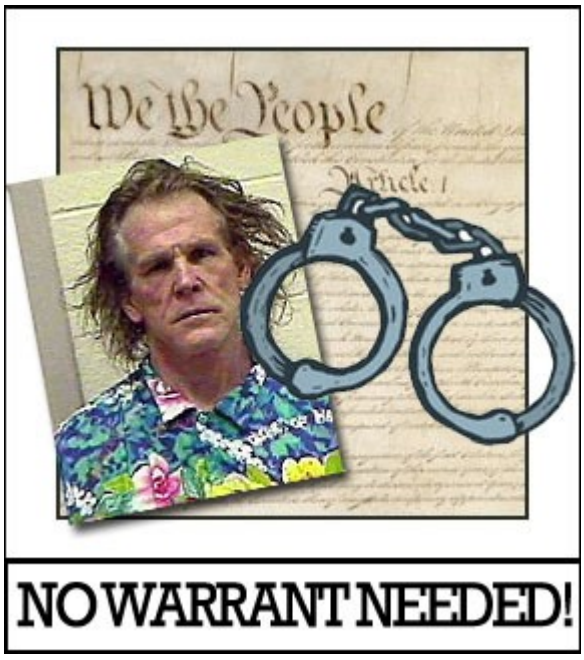
Presents:

No Warrant Needed

Exceptions to the Warrant Requirement under New Jersey Law



Lesson Plan

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Amendment IV – U.S. Constitution

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.

Article I – Para. 7 of N.J. Constitution of 1947

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 warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

State v. Maryland, 167 N.J. 471, 482 (2001) **

The starting point is the Fourth Amendment of the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution. Those similarly worded provisions protect citizens against unreasonable police searches and seizures by requiring warrants issued upon probable cause unless [the search] falls within one of the few well-delineated exceptions to the warrant requirement.

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Abandoned Property

Texas v. Brown, 460 U.S. 730 (1983)

State v. Johnson, 193 N.J. 528, 546 (2008) *

Under federal law, one who abandons property has no legitimate expectation of privacy in that property and therefore no standing to object to a search or seizure of that property. "[I]f an item has been abandoned, [no] Fourth Amendment interest is implicated, and neither probable cause nor a warrant is necessary to justify seizure".

Administrative Inspection Exception

Camara v. Municipal Court, 387 U.S. 523 (1967)
New York, Burger, 482 U.S. 691 ((1987)
State v. Turcotte, 239 N.J. Super. 285 (App. Div. 1990)
State v. Hewitt, 400 N.J. Super. 376, 384 (App. Div. 2008) *

Under the Fourth Amendment to the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution, "[a] warrantless search [or seizure] is presumed invalid unless it falls within one of the recognized exceptions to the warrant requirement. One such exception is for an administrative search of a place of business operations of a highly or pervasively regulated industry.

This exception applies only if three criteria are satisfied:

First, there must be a "substantial" government interest that informs the regulatory scheme pursuant to which the inspection is made....

Second, the warrantless inspections must be "necessary to further [the] regulatory scheme.

Finally, "the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant." In other words, the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers. To perform this first function, the statute must be "sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes." In addition, in defining how a statute limits the discretion of the inspectors, we have observed that it must be "carefully limited in time, place, and scope."

Attenuation Doctrine

Nardone v. U.S., 308 U.S. 338 (1939)

State v. Badessa, 185 N.J. 303, 311-312 (2005) *

[T]he exclusionary rule will not apply when the connection between the unconstitutional police action and the evidence becomes so attenuated as to dissipate the taint from the unlawful conduct. In those circumstances, withholding from the finder of fact relevant evidence far removed from the constitutional breach is a cost not justified by the exclusionary rule. Under both federal and state law, courts must determine whether law enforcement officials "have obtained the evidence by means that are sufficiently independent to dissipate the taint of their illegal conduct. To determine whether there is sufficient attenuation to purge the unconstitutional taint from evidence offered by the State, we look to three factors: "(1) the temporal proximity between the illegal conduct and the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy and purpose of the police misconduct.

Automobile Exception

Carroll v. U.S., 267 U.S. 132 (1925)
Chambers v. Maroney, 399 U.S. 42 (1970)
Pennsylvania v. Labron, 518 U.S. 938 (1996)

State v. Cooke, 163 N.J. 657, 667-668 (2000) **
State v. Pena-Flores, 198 N.J. 6 (2009)

The early federal cases focused on the inherent mobility of automobiles, which created exigent or emergent circumstances making it impracticable to obtain a warrant.. Later, the Supreme Court articulated an additional rationale based on a reduced expectation of privacy in motor vehicles

More recently, the Supreme Court has held that "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more.

However….

This Court has repeatedly looked to exigent circumstances to justify warrantless automobile searches. Without a requirement of exigent circumstances, virtually every search of an automobile would be valid provided the police had probable cause to act. For example, under the rationale advanced by the State, a car parked in the home driveway of vacationing owners would be a fair target of a warrantless search if the police had probable cause to believe the vehicle contained drugs. Such a broad ruling has no basis in our case law.

Blood Extraction – Drunk Driving

Schmerber v. California, 384 U.S. 757, 771 (1966) **

State v. Woomer, 196 N.J. Super. 583 (App. Div. 1984)
State v. Ravotto, 169 N.J. 227 (2001)

[W]e are satisfied that the test chosen to measure petitioner's blood-alcohol level was a reasonable one. Extraction of blood samples for testing is a highly effective means of determining the degree to which a person is under the influence of alcohol. Such tests are a commonplace in these days of periodic physical examination and experience with them teaches that the quantity of blood extracted is minimal, and that for most people the procedure involves virtually no risk, trauma, or pain. Petitioner is not one of the few who on grounds of fear, concern for health, or religious scruple might prefer some other means of testing, such as the 'Breathalyzer' test petitioner refused. We need not decide whether such wishes would have to be respected.

Border Searches

U.S. v. Ramsey, 431 U.S. 606 (1977)

State v. Green, 346 N.J. Super. 87 (App. Div. 2001) (Newark Airport)

From the multitude of factual scenarios addressed by the courts, we distill the following parameters of a routine border search. The initial stop and detention of an individual for questioning is permissible. Searches of a traveler's luggage, and personal effects, including the contents of a purse, wallet or pockets, are deemed routine. Similarly, a request to remove outer garments, such as a coat or jacket for the purpose of a search is likewise considered routine.

It has also been held that a pat-down, commonly referred to as a frisk, is within the permissible limits of a routine border search. The assumption underlying these cases is that a frisk is not unduly intrusive and involves relatively little indignity or embarrassment. It is neither painful nor dangerous. Whatever the stigma attached to a pat-down in other contexts during a border inspection it is no worse than having a stranger rummage through one's baggage, a practice which is clearly acceptable.

However....

If a search is deemed to be non-routine reasonable suspicion is required. (e.g. strip search)

Collateral Source Rule

(Clear and Convincing Evidence Standard)

Silverthorne Lumber v. U.S., 251 U.S. 385 (1920)
Murray v. United States, 487 U.S. 533 (1988)

State v. Holland, 176 N.J. 344, 360-361 (2003) **

First, the State must demonstrate that probable cause existed to conduct the challenged search without the unlawfully obtained information. It must make that showing by relying on factors wholly independent from the knowledge, evidence, or other information acquired as a result of the prior illegal search. Second, the State must demonstrate in accordance with an elevated standard of proof, namely, by clear and convincing evidence, that the police would have sought a warrant without the tainted knowledge or evidence that they previously had acquired or viewed. Third, regardless of the strength of their proofs under the first and second prongs, prosecutors must demonstrate by the same enhanced standard that the initial impermissible search was not the product of flagrant police misconduct.

Community Caretaking Exception

Cady v. Dombrowski, 413 U.S. 433, 441 (1973) **

State v. Goetaski, 209 N.J. Super. 362 (App. Div. 1986)
State v. Diloreto, 180 N.J. 264 (2004)

Local police often have occasion to deal with vehicles in the performance of functions 'totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. This has been described as the "community caretaking function.

Consent

(Clear and Convincing Evidence Standard)

Schneckloth v. Bustamonte, 412 U.S. 218 (1973)

State v. Johnson, 68 N.J. 349, 353-354 (1975) **

We conclude that under Art. I, par. 7 of our State Constitution the validity of a consent to a search, even in a non-custodial situation, must be measured in terms of waiver; I.e., where the State seeks to justify a search on the basis of consent it has the burden of showing that the consent was voluntary, an essential element of which is knowledge of the right to refuse consent.

Many persons, perhaps most, would view the request of a police officer to make a search as having the force of law. Unless it is shown by the State that the person involved knew that he had the right to refuse to accede to such a request, his assenting to the search is not meaningful. One cannot be held to have waived a right if he was unaware of its existence.

However, in a non-custodial situation, such as is here presented, the police would not necessarily be required to advise the person of his right to refuse to consent to the search. Our decision is only that in such a situation if the State seeks to rely on consent as the basis for a search, it has the burden of demonstrating knowledge on the part of the person involved that he had a choice in the matter.

Private Motor Vehicles

State v. Carty, 170 N.J. 632 (2002) – Reasonable suspicion for Private Motor Vehicles

Domiciles

State v. Domicz, 188 N.J. 285 (2006) – No Suspicion Required
Georgia v. Randolph, 126 S. Ct. 1515 (2006) – Two occupants.

Consent Once Removed

Payton v. New York, 445 U.S. 573 (1980)

State v. Henry, 133. N.J. 104 (1993)

State v. Penalber, 386 N.J. Super. 1 (App. Div. 2006)

Emergency Aid Exception

In General

Mincey v. Arizona, 437 U.S. 385 (1978)
Brigham City v. Stuart, 126 S. Ct. 1943 (2006)

State v. Frankel, 179 N.J. 586 (2004) **

1. The public safety official must have an objectively reasonable basis to believe that an emergency requires that he provide immediate assistance to protect or preserve life, or prevent serious injury;
2. His primary motivation for entry into the home must be to render assistance, not to find and seize evidence; and
3. There must be a reasonable nexus between the emergency and the area or places to be searched.

Domestic Violence

State v. Cassidy, 179 N.J. 150 (2004)

Emergencies Created by Fire

Michigan v. Tyler, 436 U.S. 499 (1978)
Michigan v. Clifford, 464 U.S. 287 (1984)

State v. Amodio, 390 N.J. Super. 313 (App. Div. 2007)

Field Inquiry

Florida v. Royer, 460 U.S. 491, 497-498 (1983) **

[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions. Nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into a seizure requiring some level of objective justification. The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. If there is no detention-no seizure within the meaning of the Fourth Amendment then no constitutional rights have been infringed.

State v. Maryland, 167 N.J. 471 (2001)
State v. Nishina, 175 N.J. 502, 510 (2003) **

A field inquiry "is a limited form of police investigation that, except for impermissible reasons such as race, may be conducted 'without grounds for suspicion." As a general rule, "a police officer properly initiates a field inquiry by approaching an individual on the street, or in another public place, and by asking him if he is willing to answer some questions[.]"A permissible inquiry occurs when an officer questions a citizen in a conversational manner that is not harassing, overbearing, or accusatory in nature.

Frisk

Terry v. Ohio, 392 U.S. 1 (1968)
State v. Thomas, 110 N.J. 673, 685 (1988) **

The standard for a protective search adopted in *Terry* is whether "a reasonably prudent [officer] in the circumstances would be warranted in the belief that his safety or that of others was in danger.

Motor Vehicle

Michigan v. Long, 463 U.S. 1032 (1983)
State v. Lund, 119 N.J. 35 (1990)

Hot Pursuit

Warden v. Hayden, 387 U.S. 294 (1967)
U.S. v. Santana, 427 U.S. 38, 42 (1976) **

State v. Jones, 143 N.J. 4 (1995)
Welsh v. Wisconsin, 466 U.S. 740 (1984)
State v. Bolte, 115 N.J. 579 (1989)

The only remaining question is whether her act of retreating into her house could thwart an otherwise proper arrest. We hold that it could not. In Warden v. Hayden we recognized the right of police, who had probable cause to believe that an armed robber had entered a house a few minutes before, to make a warrantless entry to arrest the robber and to search for weapons. This case, involving a true "hot pursuit," is clearly governed by *Warden* the need to act quickly here is even greater than in that case while the intrusion is much less.

Incident to a Lawful Arrest

Chimel v. California, 395 U.S. 752 (1969)
State v. Dangerfield, 171 N.J. 446 (2002)
State v. Daniels, 393 N.J. Super. 476 (App. Div. 2006)

In a Motor Vehicle

New York v. Belton, 453 U.S. 454 (1981)
Arizona v. Gant, 129 S. Ct. 1710 (2009)
State v. Eckel, 185 N.J. 523 (2006)

Inevitable Discovery

(Clear and Convincing Evidence Standard)

Brewer v. Williams, 430 U.S. 387 (1977)
Nix v. Williams, 467 U.S. 431 (1984)

State v. Sugar, 100 N.J. 214, 238 (1985)

In a case in which the State seeks to rely on the inevitable discovery exception, it is because the police have already violated the law. Evidence has been obtained unlawfully; a defendant's constitutional rights have been denied. The State itself is directly responsible for the loss of the opportunity lawfully to obtain evidence; the State has created a situation in which it is impossible to be certain as to what would have happened if no illegal conduct had occurred. Moreover, the State itself is in possession of all relevant evidence bearing upon its ability to have otherwise lawfully discovered the evidence. Finally, the defendant is at a gross disadvantage; defendant's constitutional rights were in fact abridged, and, he is in possession of no independent evidence concerning whether the evidence that had been seized unlawfully would have otherwise been discovered through lawful means. Consequently, the State should be required to make a strong showing that, by the admission of the evidence, it is in no better position than it would have enjoyed had no illegality occurred. We conclude therefore that a "clear and convincing" burden must be imposed on the State. This, we believe, would restore a fair balance between the adversarial positions of the parties and constitute a proper accommodation of the conflicting interests of the State and the defendant.

Thus, ... [t]he State must show by clear and convincing evidence that had the illegality not occurred, it would have pursued established investigatory procedures that would have inevitably resulted in the discovery of the controverted evidence, wholly apart from its unlawful acquisition.

Inventory Searches

Cooper v. California, 386 U.S. 58 (1967)
South Dakota v. Opperman, 428 U.S. 364 (1976)

State v. Mangold, 82 N.J. 575 (1980)
State v. One Ford Thunderbird, 349 N.J. Super. 352 (App. Div. 2002)

We also conclude that even if the Fourth Amendment permitted a warrantless investigative search of a seized vehicle, the citizens of New Jersey have a right to greater protection under our state constitutional protection against unlawful searches and seizures. *N.J. Const.* art. 1, ¶ 7.

Two levels of inquiry are relevant to determine the propriety of inventory searches." The first determination is whether "the impoundment itself is justified."

The second level of inquiry concerns the legality of the inventory. Mere lawful custody of an impounded vehicle does not *ipso facto* dispense with the constitutional requirement of reasonableness mandated in all warrantless search and seizure cases. The reasonableness of an inventory search, , is to be evaluated against the reasonableness standards such as the scope of the search, the [official police] procedure used, and the availability of less intrusive alternatives.

Investigative Detention

Terry v. Ohio, 392 U.S. 1 (1968)
U.S. v. Place, 462 U.S. 696 (1983)

State v. Dickey, 152 N.J. 468 (1998) (Time – 2+ hours)

State v. Davis, 104 N.J. 490, 504 (1986) **
State v. Arthur, 149 N.J. 1 (1997)
State v. Stovall, 170 N.J. 346 (2002)

An investigatory stop is valid only if the officer has a "particularized suspicion" based upon an objective observation that the person stopped has been or is about to engage in criminal wrongdoing. The "articulable reasons" or "particularized suspicion" of criminal activity must be based upon the law enforcement officer's assessment of the totality of circumstances with which he is faced. Such observations are those that, in view of officer's experience and knowledge, taken together with rational inferences drawn from those facts, reasonable warrant the limited intrusion upon the individual's freedom.

Moreover, even if the initial stop is deemed constitutional, a further inquiry must be made to determine whether the subsequent scope of the seizure was justified by the particular facts and circumstances of the case. An important factor to consider is whether the officer used the least intrusive investigative techniques reasonably available to verify or dispel his suspicion in the shortest period of time reasonably possible.

No Expectation of Privacy

Katz v. United States, 389 U.S. 347 (1967)

"[W]hat a person knowingly exposes to the public … is not a subject of Fourth Amendment protection,"

State v. Hempele, 120 N.J. 182 (1990) – Garbage

Voluntarily turned over to a third party (The N.J. View)

U.S. v. Miller, 425 U.S. 436 (1976) (Bank Records)
State v. Hunt, 91 N.J. 338 (1982) (Telephone toll records)
State v. McAllister, 184 N.J. 17 (2005) (Bank Records)
State v. Domicz, 188 N.J. 285 (2006) (Utility Records)
State v. Reid, 194 N.J. 386 (2008) (ISP Account Info)

But See…

State v. M.A., 402 N.J. Super. 353 (App. Div. 2008) (Workplace computer)
State v. Sloane, 193 N.J. 423 (2008) (Law Enforcement databases)

Open Fields and Curtilage

Oliver v. United States, 466 U.S. 170 (1984)
U.S. v. Dunn, 480 U.S. 294 (1987)

State v. Marolda, 394 N.J. Super. 430, 442-443 (App. Div. 2007) **
State v. Nikola, 359 N.J. Super. 573 (App. Div. 2003)

Open fields are not protected by the text of the Fourth Amendment or any constitutionally recognized interest in the privacy of land beyond the curtilage of a home. "Curtilage is land adjacent to a home and may include walkways, driveways, and porches." The "centrally relevant consideration [is] whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." Thus, even within the curtilage of a home, the "area to which the public is welcome, such as a walkway leading to an entrance to a home, is not afforded Fourth Amendment protection because the resident has given implicit consent to visitors to approach the home that way. For purposes of the Fourth Amendment, curtilage does not include land used for activities such as cultivation of crops, whether or not that land is fenced or posted against trespass. Fences and no trespass signs are not generally effective in barring the public from viewing open fields in rural areas and declining to adopt a case-by-case approach depending upon whether the property is fenced or posted against trespass.

Plain View

Coolidge v. New Hampshire, 403 U.S. 443 (1971)
Texas v. Brown, 460 U.S. 730 (1971)
Arizona v. Hicks, 480 U.S. 321 (1987)
Horton v. California, 496 U.S. 128 (1990).

State v. Bruzzese, 94 N.J. 210 (1983)
State v. Johnson, 171 N.J. 192 (2002)

1. Lawfully in Viewing Area
2. Inadvertent discovery
3. Probable Cause to associate the item with crime

Protective Sweep

Maryland v. Buie, 494 U.S. 325, 327 (1990)

State v. Lane, 393 N.J. Super. 132, 153-154 (App. Div. 2007)

A protective sweep is "a quick and limited search of premises, *incident to an arrest* and conducted to protect the safety of police officers and others."

Whether the police [have] the right to conduct a protective sweep-although not limited to being incident to an arrest-remains governed by a number of factors, including: whether the sweep occurs within the home or elsewhere; the lawfulness of the presence of the police in the area where the sweep occurs; and whether the police had a reasonable articulable suspicion that the area to be sweptharbors an individual posing a danger to those on the scene.

[U]nlike an encounter on the street or along a highway, an in-home arrest puts the officer at the disadvantage of being on his adversary's "turf." An ambush in a confined setting of unknown configuration is more to be feared than it is in open, more familiar surroundings.

Notwithstanding the absence of any prior decisions that permit a protective sweep beyond the four walls of a dwelling place, we decline to adopt a hard-and-fast rule that would preclude a protective sweep of the curtilage of a home. In certain circumstances, an officer who has legitimately entered a fenced-in area would be entitled to conduct a protective sweep for persons who may pose a danger. Although in many such instances, the degree of danger may be less than that posed by being within a dwelling place, we conclude that the admissibility of evidence found during such a sweep is not automatically precluded by the fact that it was found outside the home itself. The fact that a location may have provided a lesser degree of concern about the officer being "ambushed" by one of defendant's alleged confederates is simply a factor to be applied in considering the legitimacy of the search.

Probable Cause & Exigent Circumstances

Payton v. New York, 445 U.S. 573 (1980)
Welsh v. Wisconsin, 466 U.S. 740 (1984)
State v. Bolte, 115 N.J. 579 (1989)

State v. LaBoo, 396 N.J. Super. 97, 103-104 (App. Div.2007)***
State v. Holland, 328 N.J. Super.1 (App. Div. 2000)

Arrest Warrant Used to Enter Residence

Steagald v. U.S. 451 U.S. 204 (1981)
State v. Miller, 342 N.J. Super. 474 (App. Div. 2001)

The predominant exception" to the warrant requirement is "exigent circumstances." Probable cause, when combined with exigent circumstances, "will excuse a police officer's failure to have secured a written warrant prior to a search for criminal wrongdoing."

The existence of probable cause and exigent circumstances trumps the right of privacy and the requirement of a search warrant. However, exigent circumstances deliberately created by the police that are not objectively reasonable do not provide a basis for a constitutionally valid warrantless search. The following factors should be considered when determining whether to validate a warrantless search under exigent circumstances:

[T]he degree of urgency and the amount of time necessary to obtain a warrant; the reasonable belief that the evidence was about to be lost, destroyed, or removed from the scene; the severity or seriousness of the offense involved; the possibility that a suspect was armed or dangerous; and the strength or weakness of the underlying probable cause determination.

Reasonable Continuation Doctrine

United States v. Keszthelyi, 208 F. 3d 557, 568-569 (6th Cir. 2002)

State v. Finesmith, 406 N.J. Super. 510, 519 (App. Div. 2009) **

Our courts have not previously had occasion to consider whether a single search warrant may provide authorization for the executing officers to make more than one entry into the premises identified in the warrant if they are unable to locate an item of evidence specified in the warrant during their initial entry. However, the federal courts have adopted what is commonly referred to as the "reasonable continuation doctrine" under which police may in some circumstances temporarily suspend a search authorized by a warrant and re-enter the premises at a later time to continue the search

In order for a re-entry into premises to be considered a reasonable continuation of the search authorized by the warrant, two conditions must be satisfied: first, "the subsequent entry must ... be a continuation of the original search, rather than a new and separate search," and second, "the decision to conduct a second entry to continue the search must be reasonable under the totality of the circumstances.

Road Blocks

Michigan v. Sitz, 496 U.S. 444 (1990)
Illinois v. Lidster, 540 U.S. 419 (2004)
City of Indianapolis v. Edmond, 531 U.S. 32 (2000)

Established under N.J. Constitution

State v. Kirk, 202 N.J. Super. 28 (App. Div. 1985)

Special Needs Exception

Skinner v. Railway Labor Executives, 489 U.S. 602, 619-620 (1989) **
New Jersey v. T.L.O., 469 U.S. 325 (1985)

Joye v. Hunterdon Central Regional High School, 176 N.J. 568 (2003)

State v. Best ___ N.J. ___ (2010) (Student Cars)

But see Safford Unified v. Redding, 129 S. Ct. 2633 (2009) (Strip Search)

State v. O'Hagen, 189 N.J. 140 (2007) (DNA)
State v. Moore, 254 N.J. Super. 295 (App. Div. 1992) (Schools)

Probationers and Parolees

Samson v. California, 547 U.S. 843 (2006)
Griffin v. Wisconsin, 483 U.S. 868 (1987)
U.S. v. Knights, 534 U.S. 112 (2001)

State v. Maples, 346 N.J. Super. 408 (App. Div. 2002)
NJAC 10A:26-6.3(a)

In most criminal cases, we strike this balance in favor of the procedures described by the Warrant Clause of the Fourth Amendment. Except in certain well-defined circumstances, a search or seizure in such a case is not reasonable unless it is accomplished pursuant to a judicial warrant issued upon probable cause. We have recognized exceptions to this rule, however, when 'special needs', beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable. When faced with such special needs, we have not hesitated to balance the governmental and privacy interests to assess the practicality of the warrant and probable-cause requirements in the particular context.

Strip Searches

Bell v. Wolfish, 441 U.S. 520, 560 (1979) **

We **do not underestimate the degree to which these searches may invade the personal privacy of inmates. Nor do we doubt, as the District Court noted, that on occasion a security guard may conduct the search in an abusive fashion. Such an abuse cannot be condoned. The searches must be conducted in a reasonable manner. But we deal here with the question whether visual body-cavity inspections as contemplated by the MCC rules can *ever* be conducted on less than probable cause. Balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates, we conclude that they can.**

State v. Sheppard, 196 N.J. Super. 448 (Law Div. 1984)

State v. Hayes, 327 N.J. Super. 373 (App. Div. 2000)

State v. Harris, 384 N.J. Super. 29 (App. Div. 2006)

N.J.S.A. 2A:161A-1 *et seq*.

A person who has been detained or arrested for commission of an offense other than a crime shall not be subjected to a strip search unless:

a. The search is authorized by a warrant or consent;

b. The search is based on probable cause that a weapon, controlled dangerous substance, as defined by the "Comprehensive Drug Reform Act of 1987," N.J.S. 2C:35-1 et al., or evidence of a crime will be found and a recognized exception to the warrant requirement exists; or

c. The person is lawfully confined in a municipal detention facility or an adult county correctional facility and the search is based on a reasonable suspicion that a weapon, controlled dangerous substance, as defined by the "Comprehensive Drug Reform Act of 1987," N.J.S. 2C:35-1 et al., or contraband, as defined by the Department of Corrections, will be found, and the search is authorized pursuant to regulations promulgated by the Commissioner of the Department of Corrections.