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People v. Keta: The Search for Stolen Auto Parts--Warrantless Searches of Chop Shops in New York

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PEOPLE v. KETA: THE SEARCH FOR STOLEN AUTO PARTS — WARRANTLESS SEARCHES OF CHOP SHOPS IN NEW YORK

The fourth amendment[1] to the United States Constitution protects the right of individuals to be free from unreasonable[2]

[1] U.S. CONST. amend. IV. 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.

Id. See Camara v. Municipal Court, 387 U.S. 523, 528 (1967) (quoting Wolf v. Colorado, 338 U.S. 25, 27 (1949)). "The security of one's privacy against arbitrary intrusion by the police — which is at the core of the Fourth Amendment — is basic to a free society." *Id.*; Schmerber v. California, 384 U.S. 757, 767 (1966). "The overriding function of the fourth amendment is to protect personal privacy and dignity against unwarranted intrusion by the State." *Id. See generally* E. GRISWOLD, SEARCH AND SEIZURE: A DILEMMA OF THE SUPREME COURT 1-10 (1975) (evolution and history of fourth amendment); Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349 (1974) (fourth amendment protects privacy and freedom and is consistent with aims of free and open society) .

The fourth amendment's prohibition against unreasonable searches and seizures is made applicable to the states through the due process clause of the fourteenth amendment. Mapp v. Ohio, 367 U.S. 643, 655 (1961). *See* Burger v. New York, 388 U.S. 41, 53 (1967) (same); Ker v. California, 374 U.S. 23, 30 (1963) (same).

Scholars universally contend that the area of fourth amendment jurisprudence is confusing and does not make sense. *See, e.g.*, Amsterdam, *supra*, at 349 ("For clarity and consistency, the law of the fourth amendment is not the Supreme Court's most successful product."); Ashdown, *The Fourth Amendment and the "Legitimate Expectation of Privacy,"* 34 VAND. L. REV. 1289, 1310 (1981) ("The [Court's] approach is at best confusing."); Burkoff, *When is a Search not a "Search"? Fourth Amendment Doublethink*, 15 U. TOL. L. REV. 515, 523-25 (1984). ("[T]here is, in 1984, unceasing, often vitriolic, controversy among and between the justices of the Supreme Court over . . . the interpretation and application of fourth amendment principles . . . [J]udicial doublethink is becoming commonplace in the Supreme Court in this setting."); Dworkin, *Fact Style Adjudication and the Fourth Amendment: The Limits of Lawyering*, 48 IND. L. J. 329, 329 (1973) ("The fourth amendment cases are a mess!").

[2] *See* Bell v. Wolfish, 441 U.S. 520, 559 (1979):

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

Id.; *Ker*, 374 U.S. at 33. "[T]he reasonableness of a search is . . . [to be determined] by the trial court from the facts and circumstances of the case and in light of the 'fundamental

search[3] and seizure.[4] To effectuate this protection, due process

criteria' laid down by the fourth amendment and in opinions of this Court applying that Amendment." *Id. See also* Graham v. Connor, 490 U.S. 386, 397 (1989) (reasonableness test is an objective one, made without inquiry into underlying motivations); Skinner v. Railway Labor Executives Ass'n, 489 U.S. 602, 619-21 (1989) (despite absence of suspicion, search may be reasonable where important governmental interest justifies the intrusion); Brown v. Texas, 443 U.S. 47, 50 (1979) ("The reasonableness depends on balance between public interest and individual's right to personal security free from interference by police officers."); Terry v. Ohio, 392 U.S. 1, 21 (1968) ("no ready test to determine reasonableness other than balancing need to search or seize and invasion which search or seizure entails"). *See, e.g.*, United States v. Asbury, 586 F.2d 973, 975 (2d Cir. 1978) (routine border search not unreasonable); United States v. Crain, 485 F.2d 297, 299 (9th Cir. 1973) (airport search of luggage pursuant to anti-hijacking program not unreasonable); United States v. Marshall, 488 F.2d 1169, 1186 (9th Cir. 1973) (warrantless search of home per se unreasonable); Nakamota v. Fasi, 64 Haw. 17, 26, 635 P.2d 946, 954 (1981) (mandatory search of concert patron to detect concealed bottles of alcohol was unreasonable). *See generally* GRISWOLD, *supra* note 1, at 40-41. "What is 'unreasonable' or 'reasonable' is a question of informed judgment which will inevitably be affected as the facts shift, and will likewise vary according to the outlook of the particular judge or Justice who has to consider the question." *Id.*

[3] *See* United States v. Jacobsen, 466 U.S. 109, 113 (1984). "A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *Id.*; Illinois v. Andreas, 463 U.S. 765, 771 (1983). "[I]f the inspection by police does not intrude upon a legitimate expectation of privacy, there is no search . . . ." *Id.*; Katz v. United States, 389 U.S. 347, 351-52 (1967). "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection . . . . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Id.*

Various procedures have been held to constitute a search. *See, e.g.*, Arizona v. Hicks, 480 U.S. 321, 324-25 (1987) (picking up stereo turntable and looking at serial number on bottom was "search"); Schmerber v. California, 384 U.S. 757, 767 (1966) (blood test constitutes "search" within meaning of fourth amendment); United States v. Henry, 615 F.2d 1223, 1227 (9th Cir. 1980) (airport x-ray scan of defendant's briefcase was "search" within meaning of fourth amendment).

However, numerous other procedures have not been held to constitute a "search" under the fourth amendment. *See, e.g.*, United States v. Dunn, 480 U.S. 294, 300-03 (1987) (peering into barn with flash light to see illicit drug lab not "search"); Dow Chemical Co., v. United States, 476 U.S. 227, 239 (1986) (taking high resolution aerial photos of open air chemical plant not "search"); United States v. Place, 462 U.S. 696, 707 (1983) (trained narcotics detection dog sniffing traveler's luggage in public place not "search"); United States v. Euge, 444 U.S. 707, 718 (1980) (compulsory handwriting sample requested by IRS not "search"). *See generally* J. WESLEY HALL, JR., SEARCH AND SEIZURE §1.6 (2d ed. Supp. 1988) (examples of conduct constituting "search" within meaning of fourth amendment); Burkoff, *supra* note 1 (discussing ambiguous and arbitrary interpretation of "search" in context of fourth amendment); Cunningham, *A Linguistic Analysis of the Meanings of "Search" in the Fourth Amendment: A Search for Common Sense*, 73 IOWA L. REV. 541 (1988) (advocating use of common sense interpretation of "search" to make fourth amendment jurisprudence comprehensible).

[4] *See* Maryland v. Macon, 472 U.S. 463, 469 (1985) (quoting United States v. Jacobsen, 466 U.S. 109, 113 (1984)). "A seizure occurs 'when there is some meaningful interference with an individual's possessory interests in the property seized." *Id.*; United States v. Mendenhall, 446 U.S. 544, 554 (1980). A seizure occurs when "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not

generally requires police officers to obtain a warrant before a valid search may be conducted.[5] With respect to commercial premises,[6] there exists an exception to the warrant requirement[7]

free to leave." *Id.*; United States v. Berry, 670 F.2d 583, 597 (5th Cir. 1982) (implicit constraints on individual's freedom constitute "seizure"). *See, e.g.*, Brower v. County of Inyo, 489 U.S. 593, 599 (1989) (police use of stationary roadblock to stop fleeing suspect remanded for determination if seizure was unreasonable); Tennessee v. Garner, 471 U.S. 1, 7 (1985) (use of deadly force by policeman to stop fleeing criminal not "seizure"); State v. Little, 468 A.2d 615, 617-18 (Me. 1983) (field sobriety test is "seizure"); *In re* Multi-Vehicle Accident, 135 N.J. Super. 190, 195, 342 A.2d 903, 908 (N.J. Super. Ct. Law Div. 1975) (taking paint scrapings from truck exterior constitutes "seizure"); People v. Phillips, 119 App. Div. 2d 773, 774, 501 N.Y.S.2d 181, 182 (2d Dept. 1986) (blocking path of suspect's car with police car is "seizure"); Gordon v. State, 640 S.W.2d 743, 753 (Tex. Ct. App. 4th Dist. 1982) (photographing exposed area is not "seizure"); State v. Ng, 104 Wash. 2d 763, 770, 713 P.2d 63, 67 (1985) (impounding room by stationing officer outside door is "seizure"). *See generally* J. WESLEY HALL, JR., *supra* note 3, §1.7 (examples of conduct constituting "seizure"); Burkoff, *Bad Faith Searches*, 57 N.Y.U. L. REV. 70, 116-19 (1982) (discussing question of what is bad faith "seizure").

[5] Terry v. Ohio, 392 U.S. 1, 20 (1968). "[T]he police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure . . . ." *Id.* *See* United States v. Leon, 468 U.S. 897, 913-14 (1984) (strong preference for warrant as safeguard against improper searches); Katz v. United States, 389 U.S. 347, 357 (1967) ("searches conducted outside the judicial process, without prior approval of judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions"); United States v. Ventresca, 380 U.S. 102, 106-07 (1965) (with limited exceptions, searches and seizures can be undertaken only after obtaining warrant); Johnson v. United States, 333 U.S. 10, 13-14 (1948) (to allow police searches without warrant would nullify safeguards of fourth amendment). *But see* Robbins v. California, 453 U.S. 420, 438 (1981) (Rehnquist, J., dissenting). Justice Rehnquist has characterized the Court's preference for warrants as "judicially created" and has argued that "nothing in the Fourth Amendment itself requires that searches be conducted pursuant to warrants." *Id. See generally* 2 W. LAFAVE, SEARCH & SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 4.1 (2d ed. 1987) (discussing fourth amendment warrant requirement); Bloom, *The Supreme Court and its Purported Preference for Search Warrants*, 50 TENN. L. REV. 231 (1983) (discussing Supreme Court's approach to warrant requirement).

[6] *See, e.g.*, United States v. Blanchard, 495 F.2d 1329, 1333 (1st Cir. 1974) (regulatory inspections of tavern); United States *ex rel.* Terraciano v. Montanye, 493 F.2d 682, 685 (2d Cir. 1974) (pharmacy); United States v. Ciaccio, 356 F. Supp. 1373, 1378 (D. Md. 1972) (night club); People v. White, 259 Cal. App. 2d Supp. 936, 940, 65 Cal. Rptr. 923, 927 (1968) (convalescent hospital); Lanchester v. Pennsylvania State Horse Racing Comm'n, 325 A.2d 648, 653 (Pa. 1974) (vehicle on racetrack).

[7] New York v. Burger, 482 U.S. 692, 702-03 (1987). In *Burger*, the Supreme Court summarized the closely regulated industry exception holding that automobile junkyards were a closely regulated industry and the statute authorizing warrantless administrative searches was reasonable under the fourth amendment. *Id.*

The evolution of the closely regulated industry exception was developed and refined by the Court in a series of cases beginning with See v. City of Seattle, 387 U.S. 541 (1967), in which the Court concluded that fourth amendment protections applied to commercial, as well as residential, premises. *Id.* at 543, 546. This conclusion was based on the rationale that the businessman had a right to conduct his business free from unreasonable entries upon his private commercial property. *Id.* at 543. However, the Court expressly declined to espouse the boundaries of fourth amendment protection and left untouched the area

for certain administrative inspections of closely regulated industries.[8] These warrantless, administrative inspections must, how-

regarding "such accepted regulatory techniques as licensing programs which require inspection prior to operating a business or marketing a product." *Id.* at 546. Thus, it appeared that while *See* would not be applied to all business inspections, the scope of its application remained undefined. *Id.* at 546; *see generally* 3 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT §10.2(a), 631 (2d ed. 1987) (development of administrative search exception to warrant requirement).

Three years after the decision in *See*, the Court decided Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970), which held warrantless search of a liquor store unconstitutional. *Id.* at 77. However, the *Colonnade* Court recognized the constitutionality of warrantless searches in industries such as the liquor industry that had been "long subject to close supervision and inspection." *Id.* The Court implied that a warrantless search made pursuant to a congressional statute setting forth specific rules to guide the agent as to the permissible scope of the search may be constitutional. *Id. See generally* Comment, *Warrantless Searches of Commercial Premises: An Unwarranted Intrusion*, 32 ST. LOUIS U.L.J. 501, 505 (1987) (ramifications of *Colonnade*).

Colonnade was applied to firearms trafficking two years later in United States v. Biswell, 406 U.S. 311 (1972), when the Court deemed unconstitutional a warrantless search of a pawnshop pursuant to the Gun Control Act of 1968. *Biswell*, 406 U.S. at 317. The *Biswell* Court reasoned that warrantless inspections constituted a crucial part of the regulatory scheme involved, and held that the legality of a search depended on the authority of a valid statute which would pose only limited threats to the dealer's justifiable expectations of privacy. *Id.* at 315-16. To ensure proper enforcement of the law and effective inspection, warrantless inspections must be deemed reasonable official conduct under the fourth amendment. *Id* at 316. While recognizing the fact that firearms trafficking lacked the long history of governmental regulation associated with the liquor industry, the Court held that "close scrutiny of this traffic [was] undeniably of central importance to federal efforts to prevent violent crime and assist the states in regulating the firearms traffic within their borders" and therefore was a justified intrusion. *Id.* at 315.

The Supreme Court in Donovan v. Dewey, 452 U.S. 594 (1981), put to rest any speculation that the closely regulated industry exception would be limited to the firearms and liquor industries. *See* Comment, *supra*, at 508. In *Dewey*, the Court held that the warrantless inspections required by the Mine Safety and Health Act did not violate the fourth amendment. *Dewey*, 452 U.S. at 602. The *Dewey* Court interpreted *Biswell* and *Colonnade* to mean that no warrant may be constitutionally required when Congress reasonably determines that warrantless searches are necessary to further a regulatory scheme and that scheme is sufficiently comprehensive and defined to give the owner of commercial property notice that his property will be subject to periodic inspections for a specific purpose. *Id.* at 600; Comment, *supra*, at 509. The Court, largely due to the decision in *Burger*, 482 U.S. at 691, has been criticized for making administrative searches the rule, rather than the exception. *See Burger*, 482 U.S. at 721 (Brennan, J., dissenting) ("warrant requirement is the exception not the rule"); J. WESLEY HALL, *supra* note 3, §11:5.1 (government can now impose warrant exception on almost any industry simply by regulating it).

[8] *See Burger*, 482 U.S. at 708-12 (administrative search of automobile junkyards does not require warrant); *Dewey*, 452 U.S. at 606 (administrative inspection of underground and surface mines requires no warrant); *Biswell*, 406 U.S. at 317 (administrative search of firearms dealer's storeroom does not require warrant); *Colonnade*, 397 U.S. at 77 (administrative searches in liquor industry require no warrant).

There are numerous cases in which fire, health, and safety inspections have required a valid search warrant. *See* Michigan v. Clifford, 464 U.S. 287, 291 (1984) (administrative search of residences to investigate cause of fire requires warrant); Michigan v. Tyler, 436

ever, be "reasonable" under the fourth amendment.[9] Administrative inspections have been justified on the theory that there is a reduced expectation of privacy[10] within commercial premises coupled with the government's heightened interest in regulating the particular business.[11]

In *New York v. Burger*,[12] the United States Supreme Court held that a warrantless search made pursuant to section 415-a(5)(a) of New York's Vehicle and Traffic Law ("VTL"),[13] which authorizes administrative inspections of automobile junkyards,[14] commonly referred to as "chop shops," was not violative of the fourth amendment.[15] Recently, in *People v. Keta*,[16] the Appellate Division

U.S. 499, 508-11 (1978) (administrative search of commercial premises to investigate cause of fire requires warrant); Marshall v. Barlow's, Inc., 436 U.S. 307, 320-24 (1978) (administrative search of commercial premises for safety inspection requires warrant).

[9] *Burger*, 482 U.S. at 702-03. A warrantless inspection of a closely regulated business will only be deemed "reasonable" under the fourth amendment when three criteria are met:

> 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.'

Id. at 702-03 (citations omitted).

[10] *Id.* at 702. "Because the owner or operator of commercial premises in a 'closely regulated' industry has a reduced expectation of privacy, the warrant and probable cause requirements, which fulfill the traditional Fourth Amendment standards of reasonableness for a government search . . . have lessened application in this context." *Id. See Dewey*, 452 U.S. at 598-99 (owner of commercial property has lesser expectation of privacy than that accorded individual's home); *Biswell*, 406 U.S. at 316 (warrantless inspections under Gun Control Act only limited threat to dealer's justifiable expectation of privacy). *See generally* LAFAVE, *supra* note 7, §10.2 (warrant exception for administrative inspections).

[11] *Burger*, 482 U.S. at 702. *See, e.g., Dewey*, 452 U.S. at 602 (substantial federal interest in improving health and safety conditions of underground surface mines); *Biswell*, 406 U.S at 315 (close scrutiny of firearms trafficking crucial to federal effort to prevent violent crimes and regulate firearms traffic); Lovgren v. Byrne, 787 F.2d 857, 866 (3d Cir. 1986) (Congress clearly articulated strong federal interest in protecting natural resources within Fishery Conservation Zone); Rush v. O'Bledo, 756 F.2d 713, 723 (9th Cir. 1985) ("state has a vital governmental interest in the protection of children which is furthered by warrantless inspections" of family day care homes).

[12] 482 U.S. 691 (1987).

[13] *See* N.Y. VEH. & TRAF. LAW § 415-a(5)(a) (McKinney 1986).

[14] *Id.* This statute provides in pertinent part:

> Upon request of an agent of the commissioner or of any police officer and during his regular and usual business hours, a vehicle dismantler shall produce such records and permit said agent or police officer to examine them and any vehicle or parts of vehicles which are subject to the record keeping requirements of this section and which are on the premises.

Id.

[15] *Burger*, 482 U.S. at 708-12. The defendant in *Burger* was the owner of an automobile

of the Supreme Court for the State of New York, Second Department, was asked to determine whether section 415-a(5)(a), satisfied the search and seizure requirements of the New York State Constitution.[17] In upholding the constitutionality of section 415-a(5)(a), the second department concluded that the New York Constitution does not require greater rights than those guaranteed to

junkyard. *Id.* at 693. On November 17, 1982, five members of the Auto Crimes Division of the New York City Police Department entered the defendant's junkyard to conduct an inspection pursuant to section 415-a(5) of the Vehicle and Traffic Law. *Id.* at 693-94. The officers requested to see Burger's license and "police book," both of which he was required to maintain. *Id.* at 694-95. Burger replied that he had neither the license nor a police book. *Id.* at 695. The officers then conducted an inspection pursuant to VTL § 415-a(5) whereby the Vehicle Identification Numbers (VINs) of several vehicles and various auto parts were checked against a police computer. *Id.* After checking the VINs and determining that Burger was in possession of stolen parts, he "was arrested and charged with five counts of possession of stolen property and one count of unregistered operation as a vehicle dismantler, in violation of VTL § 415-a(1)." *Id.* at 695-96. Burger moved to suppress the evidence obtained as a result of the inspection on the ground that VTL § 415-a(5) was unconstitutional. *Id.* at 696. The hearing court determined that VTL § 415-a(5) was constitutional and denied the motion. *Id.* at 696-97. The appellate division affirmed. *Id.* at 697. The New York Court of Appeals reversed, holding that "§415-a(5) violated the fourth amendment prohibition on unreasonable searches and seizures." *Id. See* People v. Burger, 67 N.Y.2d 338, 340, 493 N.E.2d 926, 502 N.Y.S.2d 702 (1986), *rev'd*, 482 U.S. 691 (1987). The court of appeals believed that "the fundamental defect [of section 415-a(5)] . . . is that [it] authorizes searches undertaken soley to uncover evidence of criminality and not to enforce a comprehensive regulatory scheme." *Id.* at 344, 493 N.E.2d at 929, 502 N.Y.S.2d at 705.

The United States Supreme Court reversed the New York Court of Appeals and upheld the constitutionality of VTL § 415-a(5). *Burger*, 482 U.S. at 708-12. Initially, the Court determined that the junkyard business, part of which includes vehicle dismantling, is a closely regulated industry in New York. *Id.* at 703-04. "Accordingly, in light of the regulatory framework governing [the junkyard] business . . . [the] operator of a junkyard engaging in vehicle dismantling has a reduced expectation of privacy . . . ." *Id.* at 707. The Court found that "a State can address a major social problem *both* by way of an administrative scheme *and* through penal sanctions." *Id.* at 712 (emphasis in original). "Administrative statutes and penal laws may have the same *ultimate* purpose of remedying the social problem, but they have different subsidiary purposes and prescribe different methods of addressing the problem." *Id.* (emphasis in original). The Court concluded that "[a] search conducted pursuant to [VTL] § 415-a(5) ... . clearly falls within the well-established exception to the warrant requirement for administrative inspections of 'closely regulated' business." *Id.* at 712.

[16] People v. Keta, 165 App. Div. 2d. 172, 567 N.Y.S.2d 738 (2d Dept. 1991).

[17] *See* N.Y. CONST. art. I, §12. Section 12 provides:

> The right of 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.

Id. New York's search and seizure provision is identical to the fourth amendment of the United States Constitution. *See supra* note 1 (text of fourth amendment).

the citizens of New York under the fourth amendment.[18] Additionally, the court found that the statutory scheme of section 415-a(5)(a) is sufficiently definite in scope and reasonably limits the discretion of inspecting officers.[19]

In *Keta*, the defendant, George Keta, was the owner and operator of a vehicle dismantling yard located in Queens County.[20] During business hours, members of the Automobile Crime Division of the New York City Police Department entered Keta's office, identified themselves as police officers and announced that they intended to perform an administrative inspection pursuant to section 415-a(5)(a).[21] The officers requested, and Keta produced, the vehicle dismantler's license[22] along with various statutorily required New York City permits.[23] Thereafter, the officers walked through Keta's junkyard, randomly writing down vehicle identification numbers ("VINs") from car parts stored in the yard.[24] After checking the VINs on the computer located in their patrol car, the officers discovered that some of the parts had come from stolen automobiles.[25] Following the computer check, the police examined Keta's "police book"[26] and found that Keta's auto parts

[18] *Keta*, 165 A.D.2d at 180-81, 567 N.Y.S.2d at 742.

[19] *Id.* at 182, 567 N.Y.S.2d at 744-45 (citing New York v. Burger, 482 U.S. 691, 711-12 (1987)).

[20] *Id.* at 174, 567 N.Y.S.2d at 739. Keta's vehicle dismantling yard operated under the name Jimmy-Son. *Id.*

[21] *Id. See supra* note 13 (setting forth text of VTL § 415-a(5)(a)). The majority found that the police randomly selected Keta's yard for an administrative inspection. *Id.* at 174-75, 567 N.Y.S.2d at 739. However, the dissent argued that the origin of the inspection was planned and the goal was to uncover Penal Code violations by Keta. *Id.* at 185, 567 N.Y.S.2d at 745-46 (Harwood, J., dissenting).

[22] *Keta*, at 174, 567 N.Y.S.2d at 739. *See* N.Y. VEH. & TRAF. LAW § 415-a(1) (McKinney 1986). Anyone operating a vehicle dismantling business in New York is required to be registered:

> Definition and registration of vehicle dismantlers. A vehicle dismantler is any person who is engaged in the business of acquiring motor vehicles or trailers for the purpose of dismantling the same for parts or reselling such vehicles as scrap. No person shall engage in the business of or operate as a vehicle dismantler unless there shall have been issued to him a registration in accordance with the provisions of this section. A violation of this subdivision shall be a class E felony.

Id.

[23] *Keta*, 165 A.D.2d at 174, 567 N.Y.S.2d at 739.

[24] *Id.* at 174-75, 567 N.Y.S.2d at 739.

[25] *Id.* at 175, 567 N.Y.S.2d at 739. A computer indication that a part was stolen is commonly termed a "hit." *Id.*

[26] N.Y. VEH. & TRAF. LAW § 415-a(5)(a) (McKinney 1986). The statute requires owners and operators of chop shops to record the purchase of vehicle parts in a so-called "police

were not inventoried in accordance with the regulatory scheme.[27] Keta was then arrested.[28]

The Supreme Court, Queens County, subsequently granted Keta's motion to suppress all evidence obtained as a result of the search.[29] The court determined that section 415-a(5)(a) violated article I, section 12 of the New York Constitution.[30] The court

book:"

> [E]very person required to be registered pursuant to this section shall maintain a record of all motor vehicles, trailers, and major component parts thereof . . . and shall maintain proof of ownership for any motor vehicle, trailer or major component part thereof while in his possession. Such records shall be maintained in a manner and form prescribed by the commissioner . . . .

Id.

[27] *Keta*, 165 A.D.2d at 175, 567 N.Y.S.2d at 739.

[28] *Id.* The police then obtained a search warrant, searched Keta's yard and discovered more stolen car parts. *Id.* The dissent raised the contention that it was irrelevant that Keta was not arrested until after the police officers had examined his police book and ascertained that the stolen auto parts in his possession had not been inventoried in compliance with the statute. *Id.* at 185, 567 N.Y.S.2d at 746 (Harwood, J., dissenting). Justice Harwood argued that this fact did not change the end result that the inspection served only to uncover evidence of criminal activity. *Id.* at 185, 567 N.Y.S.2d at 746.

The majority argued the conduct of the police officers in first requesting Keta's "police book," then randomly checking the VINs of selected auto parts, and finally re-examining Keta's "police book" to ascertain whether the proper entries had been made "amply establishe[d] the administrative character of the [inspection] and undermine[d] the suggestion that [Keta] was subjected to an inspection motivated solely by a desire to uncover evidence of Penal Law violations." *Keta*, 165 A.D.2d at 182-83, 567 N.Y.S.2d at 745.

The majority noted that the police officers' conduct in properly obtaining a search warrant before conducting a more thorough search of Keta's yard further illustrated the administrative nature of the initial inspection. *Id.* Keta was also indicted for possession of burglar's tools. *Id.* at 185, 567 N.Y.S.2d at 746 (Harwood, J., dissenting). Justice Harwood found it interesting that this crime concerned items that were not within the purview of the statutory inspection scheme. *Id.* at 185, 567 N.Y.S.2d at 745-46. *See also* New York v. Burger, 482 U.S. 691, 723 (1987) (Brennan, J., dissenting) (police removed identification numbers from walker and wheelchair, although neither fell within permissible administrative search).

[29] People v. Keta, 142 Misc. 2d 986, 994, 538 N.Y.S.2d 417, 423 (Sup. Ct. Queens County 1989). "[T]he search conducted by the police pursuant to a search warrant [was the] by-product of the illegal search and seizure and must be suppressed as fruits of the poisonous tree." *Id.*

[30] *Id.* at 994, 538 N.Y.S.2d at 423. The Supreme Court for the County of Queens relied heavily on the New York Court of Appeals' conclusion in *People v. Burger* that the fundamental defect with section 415-a(5)(a) was that it authorized searches undertaken solely to uncover evidence of criminal activity and not to enforce any comprehensive regulatory scheme. *Keta*, 142 Misc. 2d 986, 991-92, 538 N.Y.S.2d 417, 420 (Sup. Ct. Queens County 1989). *Contra* People v. Tinneny, 145 Misc. 2d 737, 547 N.Y.S.2d 799 (N.Y. Crim. Ct. Kings County 1989). The *Tinneny* court disagreed with the findings of the *Keta* court and held that VTL § 415-a(5)(a) was constitutional. *Id.* at 741, 547 N.Y.S.2d at 801. The *Tinneny* court applied a balancing test for warrantless inspections in "closely regulated" industries. *Id.* In balancing a person's privacy expectations within commercial premises with

reasoned that past New York Court of Appeals' decisions interpreting article I, section 12 demonstrated New York's inclination to expand the rights of its citizens rather than to rely on more narrowly interpreted fourth amendment grounds.[31]

The appellate division, second department, reversed the Queens County Supreme Court.[32] Writing for the majority, Judge Kooper admonished the trial court for encroaching upon the policy and rule-making functions of the court of appeals.[33] The majority analyzed the considerations that have traditionally affected the court of appeals' decisions to depart from constitutional standards enunciated by the United States Supreme Court under the fourth amendment,[34] and concluded that an expansive construction of New York's Constitution was not warranted under the circumstances.[35] Additionally, the majority reasoned that the United

New York's desire to control the automobile dismantling industry, the *Tinneny* court concluded that VTL § 415-a(5)(a) was constitutional. *Id.* The court believed that it was obvious that the "type of search at issue [was] the most effective way to discover abuses in the [chop-shop] industry." *Id.*

[31] *Keta*, 142 Misc. 2d at 992-94, 538 N.Y.S.2d at 421-23. The Supreme Court for the County of Queens relied on only two New York Court of Appeals decisions to conclude that New York courts are inclined to augment their citizens' privacy rights based on article I, § 12. *Id.* One case, *People v. Burger*, was dismissed without comment, while the second case, *People v. Class*, was reversed by the United States Supreme Court, in New York v. Class, 475 U.S. 106 (1986). *Id.*

[32] *Keta*, 165 A.D.2d at 174, 567 N.Y.S.2d at 739.

[33] *Id.* at 178, 567 N.Y.S.2d at 741. Justice Kooper argued that deference must be given to the court of appeals as New York's policy-making tribunal when a court seeks to determine if a greater right exists under the New York State Constitution. *Id.* "[T]he Court of Appeals is best suited to effectively weigh the policy concerns which must be considered in order to determine whether the recognition of a separate right under the state constitution is, in fact, required." *Id.*

Justice Harwood disagreed with the majority's suggestion that it should reverse the trial court "primarily as a matter of 'deference to the Court of Appeals' ". *Id.* at 184, 567 N.Y.S.2d at 745 (Harwood, J., dissenting) (quoting Justice Kooper). In Justice Harwood's view, where "an issue of state constitutional law is raised and presented in a proper procedural posture, a court called upon to address the merits is bound to do so." *Id.*

[34] *Id.* at 179, 567 N.Y.S.2d 742. There are three circumstances under which the court of appeals has chosen to depart from Supreme Court decisions when interpreting the New York Constitution: (1) where the court has decided to maintain existing New York law or "because the Supreme Court has retreated from previously announced rules"; (2) "to establish a more protective state right by constitutionalizing a prior fully developed common law right" or; (3) because the court has found "a separate State rule justified by concerns peculiar to New York State residents". *Id.* (quoting People v. Vilardi, 76 N.Y.2d 67, 83, 555 N.E.2d 915, 924, 556 N.Y.S.2d 518, 527 (1990) (Simons, J., concurring).

[35] *Keta*, at 179, 567 N.Y.S.2d at 742. *See, e.g.*, People v. Harris, 77 N.Y.2d 434, 438, 568 N.Y.S.2d 702, 704, 570 N.E.2d 1051, 1053 (1991) (right to counsel protected more zealously in New York than in other states or under federal constitution); Patchogue-Medford

States Supreme Court's decision in *New York v. Burger*[36] did not represent a doctrinal departure from previous cases involving the closely regulated industry exception to the warrant requirement.[37]

Writing for the dissent, Judge Harwood maintained that the right at issue warranted greater protection under the New York Constitution.[38] The dissent further argued that "New York's long tradition of interpreting its constitution to protect individuals," particularly in the area of citizen-police encounters, warranted a higher level of protection than that afforded by the fourth amendment.[39] It concluded that the inspections authorized by section 415-a(5)(a) did nothing more than enable police to "ferret out crime."[40]

This Comment will examine whether the appellate division's decision in *Keta* comports with the Supreme Court's fourth amendment test for warrantless searches pursuant to administrative statutes. First, the Comment will explore the necessary initial determination of whether chop shops are a closely regulated industry in New York. It will further examine whether the statute meets the three criteria necessary for its validity, namely, whether the statute advances a substantial governmental interest, whether the warrantless search furthers that governmental interest, and

Congress of Teachers v. Board of Educ. of Patchogue-Medford Union Free School Dist., 70 N.Y.2d 57, 66-71, 510 N.E.2d 325, 328-31, 517 N.Y.S.2d 456, 459-63 (1987) (mandatory urine testing of public school teachers violates New York and federal prohibition against unreasonable searches and seizures). The majority argued that the provisions of VTL § 415-a(5)(a) did not implicate a "peculiar State or local concern" nor were the rights of "chop shop" owners historically accorded greater protection under the state constitution. *Keta*, 165 A.D.2d at 180, 567 N.Y.S.2d at 743. In addition, the majority refused to acknowledge the existence of a unique New York attitude that might warrant the extension of additional constitutional protection to those engaged in the "chop shop" business. *Id.*

[36] 482 U.S. 691 (1987).

[37] *See supra* note 7 and accompanying text (development of "closely regulated" industry exception).

[38] *Keta*, 165 A.D.2d at 184, 567 N.Y.S.2d at 745 (Harwood, J., dissenting). According to Justice Harwood, a finding that VTL § 415-a(5)(a) was unconstitutional would have amounted to "a refusal to carve out an additional exception to long recognized constitutional principles governing police conduct . . . ." *Id.* at 188, 567 N.Y.S.2d at 748. Justice Harwood did not view the issue as whether additional constitutional protection should be extended to chop shop owners. *Id.* Instead, his main argument was that the *Burger* Court overturned established Supreme Court precedent that "warrantless administrative searches are unlawful when used to uncover evidence of criminality." *Id.*

[39] *Id.* at 188-89, 567 N.Y.S.2d at 748-49.

[40] *Id.* at 185, 567 N.Y.S.2d at 746.

whether the statute provides an adequate and valid substitute for a warrant. Finally, this Comment will address whether the New York Constitution grants expanded privacy protection to chop shop owners under independent and adequate state grounds.

I. Fourth Amendment Reasonableness Criteria

A. *Chop Shops — A "Closely Regulated" Industry*

Before analyzing section 415-a(5)(a) to determine whether it falls within the exception to the warrant requirement for administrative inspections,[41] a determination must be made as to whether chop shops are a closely regulated industry in New York.[42] The chop shop industry has long been subject to governmental supervision and inspection.[43] The New York Legislature has found that "the crimes of possession of stolen property in general and stolen automobile parts, in particular," are pervasive in the chop shop industry.[44] Former Governor Carey recognized that the increasing rate of motor vehicle theft in New York State had become a seri-

[41] *See supra* note 7 (case law leading up to administrative search exception to warrant requirement).

[42] *See* New York v. Burger, 482 U.S. 691, 703-07 (1987) (before discussing reasonableness test, determination of closely regulated business is made).

[43] See *id.* at 706 (automobile-junkyard business is new branch of second hand shop industry which has been closely regulated for many years); *Keta*, 165 A.D.2d at 180, 567 N.Y.S.2d at 743 (courts virtually unanimous concluding vehicle dismantling industry has been subject to pervasive regulation); People v. Tinneny, 145 Misc. 2d 737, 741, 547 N.Y.S.2d 799, 801 (N.Y. Crim. Ct. Kings County 1989) (same). People v. Pace, 101 App. Div. 2d 336, 342-43, 475 N.Y.S.2d 443, 448 (2d Dept. 1984) (Mangano, J., dissenting) (same), *aff'd*, 65 N.Y.2d 684, 481 N.E.2d 250, 491 N.Y.S.2d 618 (1985). *See also* Project, *Nineteenth Annual Review of Criminal Procedures: United States Supreme Court and Courts of Appeals 1988-1989*, 78 Geo. L.J. 699, 781 (1990) (same). *Contra* Comment, *The Junking of the Fourth Amendment:* Illinois v. Krull *and* New York v. Burger, 63 Tul. L. Rev. 335, 365 (1988) (criticizing *Burger* analogy between chop shops and second-hand shops stating chop shop industry was only recently regulated).

[44] *Pace*, 101 A.D.2d at 343, 475 N.Y.S.2d at 448. *See Keta*, 165 A.D.2d at 187, 567 N.Y.S.2d at 748 (Harwood, J., dissenting). The New York State legislature found that the chop shop industry was involved in the lucrative trade of stolen automobiles and parts. *Id.*; People v. Brogante, 131 Misc. 2d 708, 711, 501 N.Y.S.2d 583, 586 (Sup. Ct. Kings County 1986) ("many junkyards, body shops and dismantlers are little more than fronts or essential elements of stolen car rings and insurance fraud schemes"); People v. Ost, 127 Misc. 2d 183, 187, 485 N.Y.S.2d 483, 486 (Sup. Ct. Queens County 1985) (common knowledge that there are many stolen car operations and that many stolen cars go to chop shops to be used for parts), *aff'd*, 121 A.D.2d 571, 503 N.Y.S.2d 620 (2d Dept. 1986); People v. Tinneny, 99 Misc. 2d 962, 966, 417 N.Y.S.2d 840, 843 (Sup. Ct. Kings County 1979) (chop shops industry "prone to criminal improprieties").

ous social and economic problem for the citizens of the state.[45] In response, the legislature amended section 415-a(5) to diminish traffic in stolen vehicles and parts, thereby reducing costs to insurance companies and the public.[46] The provisions enacted by the legislature precluded an individual from engaging in the chop shop business in New York until the individual complies with the statutory registration requirements and obtains a vehicle dismantler's license.[47]

It has been argued that chop shops are not a closely regulated industry in New York because the state lacks a long history of chop shop regulation and because the regulatory scheme is not

[45] *See Burger*, 482 U.S. at 708. Former Governor Carey noted that in 1976 over 130,000 cars were stolen resulting in losses of over $225 million. *Id.* As a result, premiums for comprehensive car insurance in New York were significantly higher than the national average. *Id.* Furthermore, automobile theft has become a major social problem, putting tremendous economic and personal hardship on the citizens of different states. *Id. See also Ost*, 127 Misc. 2d at 187, 485 N.Y.S.2d at 486 ("auto thefts have reached epidemic proportions"); *National F.O.P. Launches Auto Theft Prevention Program,* PR Newswire, Feb. 15, 1991 (LEXIS, Nexis library) (one auto theft occurs every twenty seconds amounting to 4,000 thefts nationally per day); *Auto Theft Costs U.S. Insurers Eight Billion Dollars*, Reuters, Feb. 12, 1991 (LEXIS, Nexis library). In 1989, over 1.5 million automobiles were stolen in the United States, costing auto insurers more than $8 billion. *Id.* The rate of automobile thefts in the United States increased 41.8 percent from 1985-1989. *Id.* According to the National Automobile Theft Bureau (NATB), the cost of this problem is increasing about 10 percent each year. *Id.*; *Vehicle Theft in 1988 Soars to 11.2 Percent*, The National Underwriter Company; Property & Casualty/Employee Benefits Edition, Nov. 6, 1989 (LEXIS, Nexis library). During 1988, vehicle thefts skyrocketed to a record 1,432,916 nationally, an increase of 11.2 percent from 1988. *Id.* This resulted in an estimated cost to the public of $7 billion, including such items as law enforcement expenses for investigation and prosecution. *Id.* In 1988, there were also 2.7 million auto-related crimes involving thefts of automobile contents or parts. Autoweek, Oct. 16, 1989, at 9 (LEXIS, Nexis library).

In 1984, car thefts cost insurance companies about $4.5 billion nationally. United Press International, Jul. 31, 1984 (LEXIS, Nexis library). As a consequence, insurance companies pass the cost on to consumers in the form of increased premiums. *Id.* Furthermore, the insurance companies and the public bear an additional burden because only about 11 of every 1,000 cars stolen are ever recovered. *Id.*

[46] *Burger*, 482 U.S. at 709 n.20.

[47] *See supra* note 22 and accompanying text (statutory registration requirement). The application for registration as a vehicle dismantler must contain "a listing of all felony convictions and all other convictions relating to the illegal sale or possession of a motor vehicle or motor vehicle parts, and a listing of all arrests for any such violations by the applicant and any other person required to be named in such application." N.Y. VEH. & TRAF. LAW § 415-a(2) (McKinney 1986). The fee for registration is $50. *Id.*, § 415-a(3). A registration will not "be issued or renewed unless the applicant has a permanent place of business at which the activity requiring registration is performed which conforms to section one hundred thirty-six of the general municipal law . . ." and "the applicant and any persons having a financial interest in the business have been determined by the commissioner to be fit persons to engage in such business." *Id.*, § 415-a(4)(a) (McKinney 1986).

sufficiently pervasive.[48] The duration of the regulatory scheme in question has been held to be an important factor in determining whether the industry has been closely regulated.[49] However, the Supreme Court has clearly indicated that the duration of regulation of an industry is not dispositive.[50] In *Dewey*, the Court posited a situation where a new or emerging industry, such as nuclear power, posing tremendous health and safety concerns, could never be subject to warrantless inspections simply because regulation of that industry is of "recent vintage."[51] The Court did not endorse such a view, stating that absurd results would occur if the length of regulation were the only criterion for evaluating the closely regulated industry exception to the warrant requirement.[52]

It is submitted that, as the area sought to be regulated becomes a greater social and economic problem to the citizens of the state, the length of time the subject area has been regulated becomes less significant in determining whether warrantless searches are permissible. It is further suggested that when the legislature determines that an industry is permeated with criminal activity and in dire need of regulation, the fact that the implementing regulations are only recent amendments should not preclude a finding that the industry in question is closely regulated. Although chops

[48] *Burger*, 482 U.S. at 719-21 (Brennan, J., dissenting). *See* Comment, *Id.*, *supra* note 43, at 365 (chop shops do not have history of close regulation). *But see Burger*, 482 U.S. at 703-04 (junkyards or chop shops are closely regulated businesses in New York State); People v. Garcia, 111 Misc. 2d 550, 554, 444 N.Y.S.2d 548, 551 (Sup. Ct. Suffolk County 1981) (same) (citing People v. Tinneny, 99 Misc. 2d 962, 971, 417 N.Y.S.2d 840, 845 (Sup. Ct. Kings County 1979)); Comment, *Discord Among Federal Courts of Appeals: The Constitutionality of Warrantless Searches of Employers' OSHA Records*, 45 U. MIAMI L. REV. 201, 217 (1990) (same) (citing *Burger*, 482 U.S. at 703).

[49] *Burger*, 482 U.S. at 701 (citing Donovan v. Dewey, 452 U.S. 594, 606 (1981)). Several commentators have discussed the Supreme Court's proposition that the regulatory schemes' duration is an important factor in this area. *See* Brannigan & Ensor, *Speech and the First Amendment: Did Bose Speak Too Softly?: Product Critiques and the First Amendment*, 14 HOFSTRA L. REV. 571, 583 (1986); Project, *Nineteenth Annual Review of Criminal Procedure: United States Supreme Court and Courts of Appeals 1988-1989*, 78 GEO. L.J. 699, 781 (1990); Project, *Eighteenth Annual Review of Criminal Procedure: United States Supreme Court and Courts of Appeals 1987-1988*, 77 GEO. L.J. 489, 589 (1989); Note, *The National Collegiate Athletic Association, Random Drug-Testing, and the Applicability of the Administrative Search Exception*, 17 HOFSTRA L. REV. 641, 661 n.124 (1989) ("duration of the regulatory scheme is still a relevant factor").

[50] *See Dewey*, 452 U.S. at 606 (if duration of regulation were only criterion absurd results would occur).

[51] *Id.*

[52] *Id.*

shops have been a relatively recent area of regulation in New York, they are a closely regulated industry.

B. New York's Substantial Interest

Having concluded that chop shops are a closely regulated industry, it is necessary to apply the three criteria set forth by the United States Supreme Court in *Burger* to determine whether a warrantless search of a closely regulated industry is reasonable.[53] First, the regulatory scheme in question must serve a "substantial" governmental interest.[54] The conclusion that a sovereign entity has a substantial interest in curbing auto theft is inescapable.[55] The New York Legislature recognized that auto theft has become a multimillion dollar industry which creates an "intolerable economic burden" on the public and insurance companies.[56] There is

[53] *See supra* note 9 (fourth amendment reasonableness test for warrantless inspection in closely regulated industries).

[54] *Id.* (same).

[55] *See Burger*, 482 U.S. at 708-09. The legislature amended VTL § 415-a(5) in response to the economic burdens inflicted upon citizens of New York by auto theft. *Id. See also* 1979 N.Y. Laws 1826, 1826-27. "stolen automobiles are often used in the commission of other crimes and there is a high incidence of accidents resulting in property damage and bodily injury involving stolen automobiles." *Id.*; People v. Robles, 124 Misc. 2d 419, 422, 477 N.Y.S.2d 567, 571 (Sup. Ct. Kings County 1984) (state contended VTL § 415-a aimed at decreasing auto theft and costs to insurance companies and public); People v. Camme, 112 Misc. 2d 792, 795, 447 N.Y.S.2d 621, 624 (Sup. Ct. Queens County 1982) (thefts and costs to insurance companies and public will be decreased by making it more difficult to traffic stolen vehicles and parts); People v. Garcia, 111 Misc. 2d 550, 556, 444 N.Y.S.2d 548, 552 (Sup. Ct. Suffolk County 1981) (same). Several commentators have discussed *Burger's* holding that states have a substantial interest in reducing auto theft. *See* Comment, *Warrantless Searches of Commercial Premises: An Unwarranted Intrusion*, 32 ST. LOUIS U.L.J. 501, 520-21 (1987) [hereinafter Comment, *Warrantless Searches*] (when industry poses no danger to public health or safety, commercial property owner's right to be free from unreasonable searches outweighs any justification state can offer for warrantless search); Comment, *Search and Seizure:* New York v. Burger: *Can an Administrative Search Be Used to Uncover Evidence of a Crime?*, 56 U. MO. K.C. L. REV. 617, 624, 631 (1988) [hereinafter Comment, *Search and Seizure*] (*Burger* Court understood state's concern in decreasing auto theft). *But see* Note, *The 'Administrative' Search from* Dewey to Burger: *Dismantling the Fourth Amendment*, 16 HASTINGS CONST. L.Q. 261, 283-84 (1989). The *Burger* Court's "substantial interest" analysis is criticized because while regulation of the junkyard industry may curb auto theft, it will not decrease the number of automobile accidents nor will it deter thieves from using stolen cars to commit other crimes. *Id.*

[56] *See supra* note 45 and accompanying text (discussing economic impact of auto theft on insurance companies and citizens of New York). *See also 2 Indicted as Heads of Chop Shops*, Chicago Tribune, Sep. 3, 1987 (LEXIS, Nexis library). According to the National Auto Theft Bureau, car thefts have been increasing at an annual rate of 6 percent. *Id.* In 1986, 1 million automobiles were stolen in the United States, costing the public about $5 billion in

no question that auto theft in New York State has been rapidly increasing.[57] In the three years prior to the amendment of section 415-a(5), one hundred thirty thousand cars were stolen in New York State, resulting in losses in excess of 225 million dollars.[58] The legislature's amendment of section 415-a(5) was a direct response to this alarming statistic.[59] Governor Carey's statements in support of the amendment reflect the legislature's intention that section 415-a(5)(a) would curb auto theft by making it more difficult to fence stolen vehicles and parts.[60]

C. Section 415-a(5)(a) Substantially Serves New York's Interest

The regulation of the chop shop industry reasonably serves New York's substantial interest in curbing auto theft.[61] It is well established that discouraging the middleman or receiver of stolen property is an effective method of combating theft in general.[62]

increased insurance premiums and law enforcement expenditures. *Id.*; *Car Thieves Find Haven Near Malls*, Chicago Tribune, Nov. 28, 1986 (LEXIS, Nexis library). Although the number of car thefts occurring in suburbs exceeds most other serious crimes, citizens appear to be more concerned with these other crimes. *Id.* This reduced public concern for car theft exists despite the fact that each auto theft costs the car owner or insurer an average of $4,000. *Id.*; *Car Thefts Soar—But Few Are Punished*, United Press International, Mar. 19, 1982 (LEXIS, Nexis library). According to State Farm, the nation's largest automobile coverage writer, the average cost to insure a car for theft has more than doubled in the last ten years. *Id.*

[57] *See Burger*, 482 U.S. at 708 (recognizing increased incidence of auto theft in New York). *See also Keta*, 165 A.D.2d at 180-81 n.3, 567 N.Y.S.2d at 743 n.3. The Chairman of the Senate Committee which issued a comprehensive report on auto theft stated that automobile theft in New York State had risen to alarming proportions. *Id.* Furthermore, New York's auto theft rate continued to increase with the number of car thefts in New York comprising 10 percent of the national total. *Id.* The Committee noted a 14 percent rise in reported thefts between 1975 and 1976 and concluded that the New York Metropolitan area had been targeted by professional automobile theft rings. *Id.*; People v. Tinneny, 145 Misc. 2d 737, 739, 547 N.Y.S.2d 799, 800 (N.Y. Crim. Ct. Kings County 1989) (noting increased auto theft in New York); *At Last Free of Cars and Insurers Delays*, N.Y. Times, Jul. 2, 1980 (LEXIS, Nexis Library) (In 1979, 110,881 motor vehicles reported stolen in New York State).

[58] 1979 N.Y. Laws 1826, 1826-27.

[59] *See Burger*, 482 U.S. at 708-09 (noting increase in auto theft prompted amendment of VTL § 415-a(5)).

[60] *Burger*, 482 U.S. at 708 n. 20. *See Tinneny*, 145 Misc. 2d at 739, 547 N.Y.S.2d at 800 (§ 415-a aimed at eliminating car theft); People v. Camme, 112 Misc. 2d 792, 795, 447 N.Y.S.2d 621, 624 (Sup. Ct. Queens County 1982) (§ 415-a amended in order to reduce auto thefts and costs to insurance companies).

[61] *Burger*, 482 U.S. at 709. *See infra* notes 62-64 (chop shops are market for stolen auto parts).

[62] *See Burger*, 482 U.S. at 709. It is well known that the auto theft problem can be ap-

Chop shops have been, and presently are, a primary conduit for the trafficking of stolen vehicles and parts.[63] The New York Legislature amended section 415-a(5) with the intent to frustrate the ability of the middleman to market stolen goods.[64] It believed that the state could reduce auto theft by implementing regulations which trace the origin and destination of vehicle parts.[65]

proached effectively by controlling the receiver of, or market in, stolen property. *Id.* Theft would not be profitable without professional receivers of stolen property. *Id.* (citing W. LAFAVE & A. SCOTT, CRIMINAL LAW § 8.10, p.765 (2d ed. 1986)). Furthermore, the middleman or professional receiver inspires 95 percent or more of the auto theft in the United States. *Id.* (citing 2 ENCYCLOPEDIA OF CRIME AND JUSTICE 789 (Kadish ed. 1983)). Chop shops provide the major market for stolen automobiles and parts. *Id.* (citing Letter from Paul Goldman, Counsel, State Consumer Protection Board, to Richard A. Brown, Counsel to the Governor (June 29, 1979)). Therefore, it is rational for the state to believe that it will curb auto theft through regulations that prevent chop shops from becoming markets for stolen cars and that help trace the origin and destination of automobile parts. *Id.*

Several commentators have also noted that controlling the middleman or receiver can effectively reduce theft. *See* Comment, *Warrantless Searches of Commercial Premises: An Unwarranted Intrusion*, 32 ST. LOUIS U. L.J. 501, 514 n.106 (1987) (problem of auto theft effectively contained by controlling receiver of stolen property). *See also* Langbenn, *Shaping the Eighteenth Century Criminal Trial: A view from the Ryder Sources*, 50 U. CHI. L. REV. 1, 65 (1983) ("[i]f there were no receivers There would be no thieves") (quoting H. FIELDING, AN ENQUIRY INTO THE CAUSES OF THE LATE INCREASE OF ROBBERS 106 (London 1751)).

[63] *See Burger*, 482 U.S. at 709 ("Automobile junkyards and vehicle dismantlers provide the major market for stolen vehicles and vehicle parts."). *See also* United States v. Dominguez-Prieto, 923 F.2d 464, 468 (6th Cir. 1991) (warrantless searches of chop shops deter receiving and marketing of stolen goods); *Keta*, 165 A.D.2d at 180, 567 N.Y.S.2d at 743 (legislature found chop shops to be influenced by lucrative trade in stolen automobiles and parts); People v. Brigante, 131 Misc. 2d 708, 711, 501 N.Y.S.2d 583, 586 (Sup. Ct. Kings County 1986) ("many junkyards, body shops and dismantlers are little more than fronts or essential elements of stolen car rings . . . ."); *Tinneny*, 145 Misc. 2d at 739, 547 N.Y.S.2d at 800 (problem of theft is associated with vehicle dismantling industry); People v. Pace, 101 App. Div. 2d 336, 342-43, 475 N.Y.S.2d 443, 447 (2d Dept. 1984) (Mangano, J., dissenting) (criminal possession of stolen property is associated with chop shop industry), *aff'd*, 65 N.Y.2d 684, 481 N.E.2d 250, 491 N.Y.S.2d 618 (1985); People v. Garcia, 111 Misc. 2d at 556, 444 N.Y.S.2d at 552 (chop shop industry must be closely regulated to prevent trafficking in stolen autos and parts).

[64] *Burger*, 482 U.S. at 708 n.20. *See* 1979 N.Y. Laws 1826, 1827 (by making it tougher to traffic in stolen cars and parts, auto theft will be decreased); *See also* People v. Robles, 124 Misc. 2d 419, 422, 477 N.Y.S.2d 567, 571 (Sup. Ct. Kings County 1984) (prosecution argued that amendment to § 415-a allowed police to conduct warrantless searches of chop shops which would decrease auto theft); People v. Camme, 112 Misc. 2d 792, 795, 447 N.Y.S.2d 621, 624 (Sup. Ct. Queens County 1982) (amendment to § 415-a was aimed at closely regulating chop shops to reduce theft); People v. Martinelli, 117 Misc. 2d 310, 317, 458 N.Y.S.2d 785, 790 (Sup. Ct. Kings County 1982) (amendment to § 415-a allows police to inspect chop shops' records and premises which will have effect of trimming market for stolen autos and parts); *Garcia*, 111 Misc. 2d at 554, 444 N.Y.S.2d at 551-52 (§ 415-a and amendments require junkyards to maintain record keeping systems so that stolen autos can be traced to them).

[65] *See* 1979 N.Y. Laws 1826, 1827.

It is submitted that warrantless inspections pursuant to section 415-a(5)(a) are necessary to further the regulatory goal of curtailing auto theft. Mandating a warrant would frustrate the purpose of the statute,[66] since stolen vehicles and parts pass quickly from the thief through the chop shops.[67] Consequently, frequent and unannounced inspections are crucial if this regulatory scheme is to succeed in deterring auto theft.[68]

[66] *See Burger*, 482 U.S. at 710 (warrant requirement could easily frustrate inspection of chop shops by putting owners on notice); New Jersey v. T.L.O., 469 U.S. 325, 356 (1985) (time constraints make getting warrant either impossible or extremely impracticable); Donovan v. Dewey, 452 U.S. 594, 603 (1980) (citing United States v. Biswell, 406 U.S. 311, 316 (1972)) (for effective inspection, frequent unannounced inspections are essential — warrant could easily frustrate inspection under Mine Safety and Health Act of 1977); United States v. Dominguez-Prieto, 923 F.2d 464, 468 (6th Cir. 1991) (warrantless inspections of junkyards needed to deter receiving and marketing of stolen goods), *cert. denied*, 111 S.Ct. 2063 (1991); United States v. Goff, 677 F. Supp. 1526, 1535 (D. Utah 1987) (warrant requirement could easily frustrate inspection of chop shop premises); Dunlop v. Hertzler Enter., Inc., 418 F. Supp. 627, 632 (D.N.M. 1976) (same); People v. Rizzo, 40 N.Y.2d 425, 431, 353 N.E.2d 841, 845-46, 386 N.Y.S.2d 878, 882 (1976) (Jasen, J., dissenting) (same); People v. Hedges, 112 Misc. 2d 632, 635, 447 N.Y.S.2d 1007, 1010 (Dist. Ct. Suffolk County 1982) (same). *But see Burger*, 482 U.S. at 722 n.8 (Brennan, J., dissenting) (warrantless searches not needed and warrant should be obtained ex parte to keep element of surprise); Note, supra note 54, at 289 (if surprise element is needed then ex parte warrants should be considered).

[67] New York v. Burger, 482 U.S. 691, 710 (1987) ("[s]tolen cars and parts often pass quickly through an automobile junkyard"). *See* Note, *supra* note 55, at 279-80 (same); Comment, *Search and Seizure, supra* note 55, at 624 (same); Comment, *Warrantless Searches, supra* note 54, at 514 (same). The ability of car theft rings to transfer or sell stolen cars and parts to chop shops and junkyards is essential to this criminal enterprise. *See* Bionic Auto Parts and Sales, Inc. v. Fahner, 721 F.2d 1072, 1076 (7th Cir. 1983).

[68] *Burger*, 482 U.S. at 710 (quoting United States v. Biswell, 406 U.S. 311, 316 (1972)). *See T.L.O.*, 469 U.S. at 356 (same); Balelo v. Baldrige 724 F.2d 753, 764 (9th Cir. 1984) (same), *cert. denied*, 467 U.S. 1252 (1984); *Goff*, 677 F. Supp. at 1535 (same); Euster v. Pennsylvania State Horse Racing Comm'n, 431 F. Supp. 828, 832 (E.D. Pa. 1977) (appellant was aware that by entering closely regulated industry he would be subjected to frequent and unannounced inspections); *Rizzo*, 40 N.Y.2d at 431, 353 N.E.2d at 846, 386 N.Y.S.2d at 882 (Jasen, J., dissenting) (frequent unannounced visits crucial in making inspections serve as credible detriment to auto thefts); People v. McIver, 125 A.D.2d 263, 264, 508 N.Y.S.2d 436, 438 (1st Dept. 1986) (under §415-a authorities may make unannounced visits to examine owner's books and records). Several commentators have addressed the need for frequent unannounced visits to junkyards. *See* George, *United States Supreme Court 1986-1987 Term: Criminal Law and Procedural Decisions*, 33 N.Y.L. SCH. L. REV. 193, 210 (1988) (random, frequent and unannounced inspections are needed to further regulating scheme); Note, *Putting the 'Super' into Superfund's Entry and Inspection Provisions:* Outboard Marine Corp. v. Thomas, 36 DEPAUL L. REV. 437, 442 (1987) (government could only enforce statute through frequent unannounced inspections). *Contra*, Comment, *supra* note 43, at 346 n.65 (*Burger's* requirement of frequent and unannounced inspections undermines fourth amendment by sacrificing warrant's protections for administrative convenience).

D. Constitutionally Adequate Substitute for a Warrant

Since section 415-a(5)(a) authorizes a warrantless search pursuant to an administrative inspection, the statute must establish an adequate procedural substitute for a warrant to prevent unconstitutional governmental intrusions.[69] According to the Supreme Court, the statute must fully inform the owner of the commercial business that he is subject to possible searches and it must "limit the discretion of the inspecting officer."[70] To satisfy these two requirements, the statute must be so clearly defined that an owner is fully aware that his property is subject to periodic inspection and "carefully limited in time, place and scope."[71]

Section 415-a(5)(a), authorizing the administrative, warrantless search provides:

> Upon request of an agent of the commissioner or of any police officer and during his regular and usual business hours, a vehicle dismantler shall produce such records and permit said agent or police officer to examine them and any vehicles or parts of vehicles which are subject to the record keeping requirements of this section and which are on the premises.[72]

The Supreme Court has held that this statute complies with constitutional requirements.[73] The statute fully informs the owner that his premises are subject to periodic inspections,[74] and specifi-

[69] *Donovan*, 452 U.S. at 603. *See* New York v. Burger, 482 U.S. 691, 711 (1987) (§ 415-a provides constitutionally adequate substitute for warrant); People v. Sessions, 170 A.D.2d 704, 567 N.Y.S.2d 116, 117 (2d Dept. 1991) (same); People v. Tinneny, 145 Misc. 2d 737, 739, 547 N.Y.S. 2d 799, 800 (N.Y.C. Crim. Ct. Kings County 1989) (same); Comment, *Search and Seizure*, supra note 54, at 624 (same). *But see Burger*, 482 U.S. at 718 (Brennan, J., dissenting) (warrant needed under § 415-a); Comment, *The 'Junking' of the Fourth Amendment: the Closely Regulated Industry Exception to the Warrant Requirement*, 25 AM. CRIM. L. REV. 791, 810-11 (1988).

[70] *Burger*, 482 U.S. at 703.

[71] *Id. See also Donovan*, 452 U.S. at 600 (statute must provide comprehensive and predictable inspection scheme); *Biswell*, 406 U.S. at 315 (same).

[72] N.Y. VEH. & TRAF. LAW §415-a(5)(a) (McKinney 1986).

[73] *Burger*, 482 U.S. at 718 (statute held constitutional).

[74] *See* N.Y. VEH. & TRAF. LAW §415-a(5)(a) (McKinney 1986) (police officer or agent may examine owner's records during "regular and usual business hours") *see also Burger*, 482 U.S. at 711 (statute informs chop shop owner that inspections will be made on regular basis).

cally defines the record keeping requirements.[75] It limits the personnel permitted to conduct an inspection to police officers or authorized agents of the Commissioner of Motor Vehicles[76] and restricts the scope of the inspection to the owner's records and inventory which are subject to the record keeping requirements.[77]

It has been argued that the statute is not sufficiently limited in "time, place, and scope" because it neither requires nor limits the number of searches that might be conducted of a given chop shop.[78] However, if the statute were to establish a set pattern and frequency of inspections, a sophisticated chop shop owner would be able to predict their occurrence and defeat the regulatory goal of the statute.[79] It is submitted that frequency and unpredictability of chop shop inspections are necessary elements to aid the government in curtailing auto theft. Since the statute sufficiently limits the inspection to "regular and usual business hours,"[80] a chop shop owner can expect the inspection to occur during the normal course of business, leaving unknown only the specific day that it will take place.[81] Thus, section 415-a(5)(a) is clearly defined in the state constitution and sufficiently limited in time, place, and

[75] N.Y. VEH. & TRAF. LAW §415-a(5)(a) (McKinney 1986); *see also Burger*, 482 U.S. at 711 (§ 415-a(5)(a) clearly explains how chop shop owner must comply with statute).

[76] N.Y. VEH. & TRAF. LAW §415-a(5)(a) (McKinney 1986).

[77] *Id.*; *see also Burger*, 482 U.S. at 711-12.

[78] *Burger*, 482 U.S. at 722 (Brennan, J., dissenting) ("[t]here is neither an upper nor a lower limit on the number of searches that may be conducted at any given operator's establishment in any given time period"). *But see id.* at 711. The "time, place and scope" of the inspections is restricted to place appropriate restraints upon the inspecting officer's discretion. *Id.* Officers can only perform inspections during regular and usual business hours. *Id.* Furthermore, only vehicle-dismantling and related industries can be inspected. *Id.* Finally, the scope of these searches is restricted because the inspectors may scrutinize the records and any autos or parts which are subject to the record keeping requirements of § 415-a and which are on the owner's property. *Id.* at 711-12; People v. Tinneny, 145 Misc. 2d 737, 739, 547 N.Y.S. 2d 799, 800 (N.Y. Crim. Ct. Kings County 1989) (§ 415-a(5) is sufficient in time, place and scope); People v. Burger, 67 N.Y.2d 338, 341, 493 N.E.2d 926, 927, 502 N.Y.S.2d 702, 703 (1986) (same), *rev'd*, 482 U.S. 691 (1987); People v. Burger, 125 Misc. 2d 709, 710, 479 N.Y.S. 2d 936, 938 (Sup. Ct, Kings County 1984) (same), *aff'd*, 112 A.D.2d 1046, 493 N.Y.S. 2d 34 (2d Dep't 1985), *rev'd*, 67 N.Y.2d 338, 493 N.E.2d 926, 502 N.Y.S.2d 702 (1986), *rev'd*, 482 U.S. 691 (1987), *appeal dismissed*, 70 N.Y. 2d 828, 518 N.E.2d 1, 523 N.Y.S.2d 489 (1987).

[79] *See supra* notes 64-66 (explaining element of surprise).

[80] *See* N.Y. VEH. & TRAF. LAW §415-(a)(5)(a) (McKinney 1986).

[81] *See* People v. Keta, 165 A.D.2d 172, 182, 567 N.Y.S.2d 738, 744 (2d Dept. 1991); *supra* note 69 (VTL § 415-(a)(5)(a) requirements).

scope.[82]

II. Independent and Adequate State Grounds

The United States Constitution establishes the minimum threshold of individual liberties which both the federal and the state governments must protect.[83] Each state, through enactment of its own constitution and statutes, has the sovereign authority to grant greater protection to an individual's privacy rights than required under the United States Constitution.[84] A state court is obligated

[82] *See supra* note 76 (same).

[83] *See* Gilliard v. Mississippi, 464 U.S. 867, 867 (1983) (Marshall, J., dissenting). State courts have traditionally looked to the federal courts for leadership in the area on individual rights. *Id.* at 870. When the United States Supreme Court has expanded individual liberties in an area, state courts have followed and even occasionally interpreted state constitutional rights to be greater than the minimum level of rights guaranteed by the United States Constitution. *Id.*; *See also* Smith v. Lindstrom, 699 F. Supp. 549, 570 n.28 (W.D. Va. 1988), *aff'd*, 895 F.2d 953 (4th Cir. 1990), *cert. denied*, 111 S. Ct. 74 (1990). "The protections afforded by the United States Constitution must be considered a floor, so that no state constitution may be read to afford protections less potent than those contained in the federal constitution. However, the guarantees of the federal constitution are not a ceiling." *Id.*; *accord* Arcara v. Cloud Books, 68 N.Y.2d 553, 557, 503 N.E.2d 492, 494, 510 N.Y.S.2d 844, 846 (1986):

> The Supreme Court's role in construing the Federal Bill of Rights is to establish minimal standards for individual rights applicable throughout the Nation. The function of the comparable provisions of the State Constitution, if they are not to be considered purely redundant, is to supplement those rights to meet the needs and expectations of the particular State.

Id.

Several authors have addressed the minimum level of protection of individual liberties that the federal constitution affords. *See* Levit, *The Caseload Conundrum, Constitutional Restraint and the Manipulation of Jurisdiction*, 64 Notre Dame L. Rev. 321, 344 n.171 (1989) (state decisions which offer less protection than afforded under federal constitution are open to Supreme Court review); Pine, *Speculation and Reality: The Role of Facts in Judicial Protection of Fundamental Rights*, 136 U. Pa. L. Rev. 655, 725 n. 320 (1988) (state constitution may grant more protection to individual rights than federal constitution, but not less protection) (citing Pruneyard Shopping Center v. Robins, 447 U.S. 74, 81 (1980)); Turkington, *Constitutional Limitations on Tort Reform: Have the State Courts Placed Insurmountable Obstacles in the Path of Legislative Response to the Perceived Liability Insurance Crisis?*, 32 Vill. L. Rev. 1299, 1321 (1987) (supremacy clause of federal constitution places floor, but not ceiling, on state court's interpretation of individual rights); Note, Miranda *and the State Constitution: State Courts Take a Stand*, 39 Vand. L. Rev. 1693 (1986) (federal constitution guarantees minimum level of rights below which no state may venture in interpreting its own laws); Comment, *Arrest and Search Powers of Special Police in Pennsylvania: Do Your Constitutional Rights Change Depending on the Officer's Uniform?*, 59 Temp. L. Q. 497, 509 n. 65 (1986) (states can not provide criminal defendants with less protection than is guaranteed by federal constitution).

[84] Pruneyard Shopping Center v. Robins, 447 U.S. 74, 81 (1980). It is well established that a state has the right "to adopt in its own Constitution individual liberties more expan-

to follow Supreme Court precedent when its determination of issues is based solely upon federal statutes or the federal constitution.[85] However, a state court may decide an issue under its own state constitution by applying an independent, non-federal analysis, and create an umbrella of protection more encompassing than that provided by the Supreme Court.[86] When the language of a federal statute or the Constitution differs from a similar state provision, a state may elect to interpret the state version independent of the federal analysis of the federal version, provided that it's interpretation is not violative of federal law.[87] Where the language of a federal provision is identical, the New York courts have employed a non-interpretative analysis to determine if the language would have a separate application peculiar to New York citizens.[88]

sive than those conferred by the Federal Constitution." *Id.*; Cooper v. California, 386 U.S. 58, 62 (1967). "Our holding, of course, does not affect the State's power to impose higher standards on searches and seizures than required by the Federal Constitution if it chooses to do so." *Id.*; People v. Barber, 289 N.Y. 378, 384, 46 N.E.2d 329, 331 (1943). *See also* Smith v. Lindstrom, 699 F. Supp. 549, 570 (W.D. Va. 1988) (same), *aff'd*, 895 F. 2d. 953 (4th Cir. 1990), *cert. denied*, 111 S. Ct. 74 (1990); NAACP v. Thompson, 648 F. Supp. 195, 206 (D. Md. 1986) (same); United States v. Geller, 560 F. Supp. 1309, 1314 (E.D. Pa. 1983) ("undoubtedly, states may impose higher 'standards on searches and seizures' than required by the United States Constitution), *aff'd without opinion*, 745 F.2d 49 (3d Cir. 1984), *cert. denied*, 469 U.S. 1109 (1985); Brennan, *State Constitutions and the Protections of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977) (state constitutions often afford greater protection to individual rights than federal constitution); Levit, *The Caseload Conundrum, Constitutional Restraint and the Manipulation of Jurisdiction*, 64 NOTRE DAME L. REV. 321, 344 (1989) (presumption in favor of Supreme Court review only becomes important when state court gives individual rights more protection than would be available under the United States Constitution).

[85] People v. P.J. Video, 68 N.Y.2d 296, 301-02, 501 N.E.2d 556, 559, 508 N.Y.S.2d 907, 911 (1986), *cert.denied*, New York v. P.J. Video Inc., 479 U.S. 1091 (1987). "State courts are bound by the decisions of the Supreme Court when reviewing federal statutes or applying the Federal Constitution." *Id.* at 301-02, 501 N.E.2d at 559, 508 N.Y.S. 2d at 911.

[86] *See Pruneyard*, 447 U.S. at 81 (states can find broader individual rights on independent state grounds); *see also* Michigan v. Long, 463 U.S. 1032, 1037-38 (1983) (same).

[87] People v. Vilardi, 76 N.Y.2d 67, 80, 555 N.E.2d 915, 922, 556 N.Y.S.2d 518, 525 (1990) (Simons, J, concurring) "Briefly, if the language of the Federal provision and its State counterpart differ, then the State court after examining the State provision and its textual and historical differences, may conclude that it should be construed otherwise than the Federal provision." *Id.*

[88] *Id.* "Even if the language of the two provisions is the same, however, the court may conclude that a different construction is in order because of noninterpretative considerations". *Id. See* People v. Harris, 77 N.Y.2d 434, 570 N.E.2d 1051, 568 N.Y.S.2d 702 (1991); Bonventre, *Beyond the Reemergence — "Inverse Incorporation" and Other Prospects for State Constitutional Law*, 53 ALB. L. REV. 403, 407-12 (1989).

The language of the fourth amendment is identical to article I, section 12 of the New York Constitution.[89] The court of appeals has held that the identity of language between the fourth amendment and article I, section 12 "supports a policy of uniformity between the State and federal courts."[90] Thus, the court of appeals does not "disregard the Supreme Court's decisions merely because it disagrees with them or dislikes the result reached."[91] However, federal-state uniformity is only one factor "to be balanced against other considerations that may argue for a different state rule."[92] Specifically, the court of appeals has distinguished article I, section 12 from its federal equivalent, when the "analysis adopted by the Supreme Court in a given area has threatened to undercut the right of our citizens to be free from unreasonable government intrusions."[93] Utilizing the non-interpretative analysis, the New York courts look for: any pre-existing state statutory or common law defining the scope of the individual right in question; the history and traditions of the State in its protections of the individual right; any identification of the right in the New York State Constitution as being one of peculiar state or local concern; and any distinctive attitudes of the state citizenry toward the definition, scope or protection of the individual right.[94] After analyzing these criteria, the court would decide whether to grant a

[89] *P.J. Video*, 68 N.Y.2d at 304, 501 N.E.2d at 560, 508 N.Y.S.2d at 912 (1986) ("[T]he history of §12 supports the presumption that the provision 'against unlawful searches and seizures . . . conforms with that found in the 4th Amendment, and this identity of language supports a policy of uniformity between State and Federal courts.' " (quoting People v. Johnson, 66 N.Y.2d 398, 406, 488 N.E.2d 439, 445, 497 N.Y.S.2d 618, 624 (1985))), *cert. denied*, New York v. P.J. Video, Inc., 479 U.S. 1091 (1987).

[90] People v. Johnson, 66 N.Y.2d 398, 406, 488 N.E.2d 439, 445, 497 N.Y.S.2d 618, 624 (1985). The court has sought to fashion search and seizure rules that promote consistency in the interpretation given to identical clauses. *See, e.g.*, People v. Gonzalez, 62 N.Y.2d 386, 389-90, 465 N.E.2d 823, 477 N.Y.S.2d 103, 105 (1984) (inventory search of closed containers); People v. Ponder, 54 N.Y.2d 160, 165, 429 N.E.2d 735, 737, 445 N.Y.S.2d 57, 59 (1981) (automatic standing rule); People v. Roman, 53 N.Y.2d 39, 422 N.E.2d 554, 439 N.Y.S.2d 894 (1981) (inventory search of cigarette case).

[91] People v. Vilardi, 76 N.Y.2d 67, 80, 555 N.E.2d 915, 922, 556 N.Y.S.2d 518, 525 (1990) (Simons, J., concurring).

[92] *P.J. Video*, 68 N.Y.2d at 304, 501 N.E.2d at 561, 508 N.Y.S.2d at 912 *cert. denied*, New York v. P.J. Video, Inc., 479 U.S. 1091 (1987).

[93] People v. Dunn, 77 N.Y.2d 19, 24, 564 N.E.2d 1054, 1057, 563 N.Y.S.2d 388, 391 (1990), *cert. denied*, Dunn v. New York, 111 S.Ct. 2830 (1991).

[94] People v. P.J. Video, 68 N.Y.2d 296, 303, 501 N.E.2d 556, 560, 508 N.Y.S.2d 907, 911 (1986).

broader construction of the identical language based on state grounds.[95]

In *People v. Keta*, the appellate division, second department, applied the non-interpretative analysis and determined that article I, section 12 does not grant greater protection than the fourth amendment to persons engaged in the chop shop industry.[96] The court held that New York's "peculiar State or local concern" is regulation of the chop shop industry.[97] According to the court, section 415-a(5)(a) affects a relatively small number of businesses which are notoriously involved in the multimillion dollar auto theft and stolen parts industry.[98] Consequently, a chop shop owner does not have a heightened privacy interest which has traditionally been afforded greater protection in New York.[99] The court held that New York has a greater interest in stopping the trafficking of stolen cars and parts than in expanding the fourth amendment's protection of a chop shop owner.[100]

The court of appeals has found a broader scope of protection within the New York Constitution and statutes in several areas, such as due process limits on police conduct,[101] right to counsel,[102] mental patient rights,[103] urine testing,[104] freedom of the press,[105]

[95] *Id.*
[96] *Keta*, 165 A.D.2d 172, 567 N.Y.S.2d 738 (2d Dept. 1991).
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *See* People v. Dunn, 77 N.Y.2d 19, 564 N.E.2d 1054, 563 N.Y.S.2d 388 (1990), *cert. denied*, Dunn v. New York, 111 S.Ct. 2830 (1991). The court of appeals has held that a "canine sniff", conducted without a warrant or probable cause, by a specially trained narcotics detection dog, was an unreasonable intrusion by the government under the New York Constitution. *Id.* The court stated that "to hold otherwise, we believe would raise the specter of the police roaming indiscriminately through the corridors of public housing projects with trained dogs in search of drugs." *Id.*; *see also* People v. Isaacson, 44 N.Y.2d 511, 520, 378 N.E.2d 78, 85, 406 N.Y.S.2d 714, 721 (1978) (boundaries of permissible police conduct decided under state constitution).
[102] *See* People v. Hobson, 39 N.Y.2d 479, 483, 348 N.E.2d 894, 900, 384 N.Y.S.2d 419, 424 (1976) (right to assistance of counsel is grounded in state's constitution).
[103] *See* Rivers v. Katz, 67 N.Y.2d 485, 498, 495 N.E.2d 337, 344, 504 N.Y.S.2d 74, 81 (1986) (due process clause of New York State Constitution permits committed mental patients to refuse antipsychotic medication).
[104] *See* Matter of Patchogue-Medford Congress of Teachers v. Board of Educ., 70 N.Y.2d 57, 70, 510 N.E.2d 325, 331, 517 N.Y.S.2d 456, 462 (1987). Compulsory urine testing of school teachers was found to violate an individual's fundamental expectation of privacy and to be an unreasonable search under both the New York and federal constitu-

freedom of expression,[106] and those cases involving "fundamental rights which have been historically accorded a higher status in New York and which affect a broad spectrum of the State's citizenry".[107]

In each of these cases, the State had a greater interest in expanding constitutional protection than in regulating the individual right in question. In this case, there is no long tradition or history in New York to protect proprietors of chop shops. Section 415-a(5)(a) creates a diminished expectation of privacy for such a proprietor, and the safeguards of the fourth amendment are in place to prevent unreasonable governmental intrusions. It is therefore suggested that the appellate division's analysis of the warrantless inspection in *Keta*, correctly concluded that a chop shop is not entitled to greater protection than that accorded by the fourth amendment.

Finally, it submitted that federal-state uniformity and the absence of an independent state ground outweigh any need for New York to create a different rule for the closely regulated chop shop industry than that already adopted by the Supreme Court.

tions. *Id.* The court stated "[b]y restricting the government to reasonable searches, the State and Federal Constitutions recognize that there comes a point at which searches intended to serve the public interest, however effective, may themselves undermine the public's interest in maintaining privacy, dignity and security of its members." *Id.* The court concluded that ". . . random searches conducted by the state without reasonable suspicion are closely scrutinized, and generally only permitted when the privacy interests implicated are minimal, the government's interest is substantial, and safeguards are provided to insure the individual's reasonable expectation of privacy is not subjected to unregulated discretion." *Id.*

[105] *See* O'Neill v. Oakgrove Construction, 71 N.Y.2d 521, 529, 523 N.E.2d 277, 282, 528 N.Y.S.2d 1, 6 (1988). In *O'Neill*, the New York Court of Appeals held that the New York Constitution protected a journalist from compelled disclosure of non-confidential photographs taken in the course of news gathering. *Id.* The court cited New York's long history of freedom of the press and the state's "consistent tradition . . . of providing the broadest possible protection to the 'sensitive' role of gathering and disseminating news of public events . . . ." *Id.*

[106] *See* Arcara v. Cloud Books, 68 N.Y.2d 553, 557, 503 N.E.2d 492, 495, 510 N.Y.S.2d 844, 848 (1986). The court of appeals has held that the closing down of an adult bookstore to end illegal sexual acts by its customers on the premises infringes upon the bookstore's New York constitutional right of freedom of expression. *Id.* The court stated "New York has a long history and tradition of fostering freedom of expression, often tolerating and supporting works which in other States would be found offensive to the community." *Id.*

[107] *Keta*, 165 A.D.2d 172, 567 N.Y.S.2d 738 (2d Dept. 1991). *See* Beach v. Shanley, 62 N.Y.2d 241, 255, 465 N.E.2d 304, 311, 476 N.Y.S.2d 765, 773 (1984) (Wacthtler, J., concurring).

Conclusion

Section 415-a(5)(a) of New York's Vehicle and Traffic Law falls squarely within the closely regulated industry exception to the warrant requirement of the fourth amendment. The State has a compelling interest in curbing automobile theft and section 415-a(5)(a) is a necessary administrative regulation designed to achieve that end. Although in certain areas New York has traditionally expanded protection of individual rights beyond the United States Constitution, a chop shop owner's expectation of privacy is not, and should not be, one of those areas.

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