SEARCH AND SEIZURE—WARRANTS—POLICE OFFICERS ACTING PURSUANT TO AN ARREST WARRANT MAY PURSUE A FLEEING SUSPECT INTO A PRIVATE RESIDENCE AND FORCIBLY ENTER THE DWELLING WITHOUT KNOWING THE UNDERLYING OFFENSE OF THE WARRANT AND WITHOUT FIRST KNOCKING AND ANNOUNCING THEIR PRESENCE—*State v. Jones*, 143 N.J. 4, 667 A.2d 1043 (1995).

Article I, paragraph 7[1] of the New Jersey Constitution, analogous to the Fourth Amendment[2] of the United States Constitution, protects[3] persons[4] against unreasonable[5] searches[6] and seizures[7] by

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[1] Article I, paragraph 7 of the New Jersey Constitution reads:

> 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.

N.J. CONST. art. I, ¶ 7. For a general discussion of search and seizure and article I, paragraph 7 of the New Jersey Constitution, *see generally* JULIAN P. BOYD, FUNDAMENTAL LAWS AND CONSTITUTIONS OF NEW JERSEY (1964); KEVIN G. BYRNES, NEW JERSEY ARREST, SEARCH & SEIZURE (1994); MARY ALICE QUIGLEY & MARY R. MURRIN, NEW JERSEY AND THE BILL OF RIGHTS (1989).

[2] The Fourth Amendment of the United States Constitution similarly provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. The United States Supreme Court has held that the Fourth Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643, 655-56 (holding that evidence obtained through searches and seizures that are violative of the United States Constitution are, by the same authority, inadmissible in state court), *reh'g denied*, 368 U.S. 871 (1961).

For various observations and studies on search and seizure law, *see generally* 1 JOSEPH G. COOK, CONSTITUTIONAL RIGHTS OF THE ACCUSED (2d ed. 1985 & Supp. 1995); JOHN C. KLOTTER & JACQUELINE R. KANOVITZ, CONSTITUTIONAL LAW (5th ed. 1985); WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE (2d ed. 1992 & Supp. 1993) [hereinafter LAFAVE, CRIMINAL PROCEDURE]; POLYVIOS G. POLYVIOU, SEARCH AND SEIZURE (1982); THE SUPREME COURT & THE RIGHTS OF THE ACCUSED (John Galloway ed. 1973) [hereinafter RIGHTS OF THE ACCUSED]; 1 CHARLES E. TORCIA, WHARTON'S CRIMINAL PROCEDURE (13th ed. 1989); JOSEPH A. VARON, SEARCHES, SEIZURES AND IMMUNITIES (2d ed. 1974); MELVYN ZARR, THE BILL OF RIGHTS AND THE POLICE (2d ed. 1980); Wayne R. LaFave, *Supreme Court Report: Nine Key Decisions Expand Authority to Search and Seize*, 69 A.B.A. J. 1740 (1983) [hereinafter LaFave, *Nine Key Decisions*]; Richard A. Williamson, *The Dimensions of Seizure: The Concepts of "Stop" and "Arrest,"* 43 OHIO ST. L.J. 771 (1982); Harry M. Caldwell, Comment, *Seizures of the Fourth Kind: Changing the Rules*, 33 CLEV. ST. L. REV. 323 (1985).

[3] The protection furnished by the Fourth Amendment and article I, paragraph 7 is afforded through the "exclusionary rule." *See* STEVEN R. SCHLESINGER, EXCLUSIONARY INJUSTICE 1 (1977); Dallin H. Oaks, *Studying the Exclusionary Rule in Search and*

Seizure, 37 U. CHI. L. REV. 665, 665 (1970). In order to make guarantees against unreasonable searches and seizures more than an empty promise, the exclusionary rule authorizes the suppression of unlawfully acquired evidence. *Id.*, at 665-66. Although the New Jersey Supreme Court recognizes the exclusionary rule as part of the state's search and seizure law, the exclusionary rule is absent from the state's constitution. *See* State v. Novembrino, 105 N.J. 95, 147, 148, 519 A.2d 820, 850-51 (1987).

Notwithstanding the fact that the New Jersey Legislature proposed an exclusionary rule amendment to article I, paragraph 7 in 1947, that amendment was defeated by a vote of 46 to 25. *Id.* at 147, 519 A.2d at 850-51 (quoting Eleuteri v. Richman, 26 N.J. 506, 511, 141 A.2d 46, 49, *cert. denied*, 358 U.S. 843 (1958)). The proposed amendment read, "[n]othing obtained in violation thereof shall be received into evidence." *Id.*, 519 A.2d at 851. It was not until State v. Valentin, 36 N.J. 41, 44, 174 A.2d 737, 738 (1961), that the New Jersey Supreme Court officially recognized the exclusionary rule. *Novembrino*, 105 N.J. at 147, 519 A.2d at 851. The *Valentin* court followed the United States Supreme Court's exclusionary rule decision, *Mapp*, 367 U.S. 643. *Novembrino*, 105 N.J. at 148, 519 A.2d at 851. Since *Valentin*, "the exclusionary rule has become embedded in [New Jersey] jurisprudence." *Id.* The New Jersey Supreme Court has excluded evidence in a variety of instances. *Id.* (citing State v. Valencia, 93 N.J. 126, 141, 459 A.2d 1149, 1156 (1983) (suppressing telephonic search where the state failed to show minimal procedural requisites to assure reliability); State v. Fariello, 71 N.J. 552, 555, 366 A.2d 1313, 1314-15 (1976) (suppressing evidence of narcotics suppression where affidavit inadequate to show probable cause); State v. Macri, 39 N.J. 250, 261-63, 265, 188 A.2d 389, 395-96, 397 (1963) (suppressing illegally seized evidence of bookmaking activities); State v. Moriarity, 39 N.J. 502, 503, 189 A.2d 210, 211 (1963) (excluding bookmaking evidence where affidavit insufficient to show probable cause)).

In a concurring opinion in *Novembrino*, Justice Handler opined that New Jersey has never adopted the exclusionary rule, but instead has incorporated "the rule that 'competent proof shall be available for the prosecution of the offense notwithstanding illegality in the seizure.'" *Id.* at 164, 519 A.2d at 860 (Handler, J., concurring) (quoting *Eleuteri*, 26 N.J. at 509-10, 141 A.2d at 48). Justice Garibaldi concurred in part and dissented in part in *Novembrino*, stating that "New Jersey has no historical attachment to the exclusionary rule." *Id.* at 186, 519 A.2d at 872-73 (Garibaldi, J., concurring in part and dissenting in part). Justice Garibaldi added that "[c]onsistent state and federal rulings are crucial to the rational development of criminal law . . . . Only a strong state purpose would justify divergence in this very sensitive area." *Id.* at 175, 519 A.2d at 866 (Garibaldi, J., concurring in part and dissenting in part).

The United States Supreme Court first applied the exclusionary rule in Weeks v. United States, 232 U.S. 383, 398 (1914). Keith A. Fabi, Comment, *The Exclusionary Rule: Not the "Expressed Juice of the Woolly-Headed Thistle,"* 35 BUFF. L. REV. 937, 941-42 (1986). The *Weeks* Court held that unlawfully seized evidence could not be used at trial when a timely motion was made for the evidence to be returned. *Weeks*, 232 U.S. at 398. Following the *Weeks* decision, the Court held that the exclusionary rule applied to the states. *Mapp*, 367 U.S. at 655. For a more thorough discussion of the exclusionary rule, *see generally* James T. Ranney, *The Exclusionary Rule—The Illusion vs. The Reality*, 46 MONT. L. REV. 289 (1985); Potter Stewart, *The Road to* Mapp v. Ohio *and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases*, 83 COLUM. L. REV. 1365 (1983).

[4] "[T]he Fourth Amendment protects people, not places." Katz v. United States, 389 U.S. 347, 351, 351-52 (1967) (holding that the Fourth Amendment protects individual privacy against certain types of state intrusion and what an individual seeks to reserve as private, even in a public area, may be constitutionally protected); *see also* State *ex rel.* T.L.O. v. Engerud, 94 N.J. 331, 348, 463 A.2d 934, 943 (1983) (finding a personal expectation of privacy in a locker), *rev'd*, 469 U.S. 235 (1985). The Fourth

the state.[8] The two constitutional provisions contain essentially the

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Amendment protects all individuals, whether law-abiding or criminal, *Weeks*, 232 U.S. at 392 ("This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws."), and this protection extends to an individual's property. U.S. CONST. amend. IV.

[5] "'[W]hat the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures.'" State v. Williams, 251 N.J. Super. 617, 621, 598 A.2d 1258, 1260 (Law Div. 1991) (quoting Elkins v. United States, 364 U.S. 206, 222 (1960)).

[6] A "search" is defined as:

> An examination of a person's house or other buildings or premises, or of his person, or of his vehicle, aircraft, etc., with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he is charged.

BLACK'S LAW DICTIONARY 1349 (6th ed. 1990). The constitutionality of searches are dictated by "expectation[s] of privacy." State v. Hempele, 120 N.J. 182, 200, 576 A.2d 793, 802 (1990).

The United States Supreme Court developed a two-prong test to determine the reasonableness of a search. *Katz*, 389 U.S. at 361. The Court explained "first that a person [must] have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" *Id.*

The New Jersey Supreme Court, however, rejected the *Katz* test, holding that a two-prong test measuring both objectiveness and subjectiveness is unnecessary and that a single reasonableness test should be used to determine an expectation of privacy. *Hempele*, 120 N.J. at 199-200, 576 A.2d at 802. The *Hempele* court added that the single reasonableness test better reflects search and seizure law, because the New Jersey provision "does not 'ask[ ] what we expect of government. [It] tell[s] us what we should demand of government.'" *Id.* at 200, 576 A.2d at 802 (quoting Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 384 (1974)).

For discussions of the "reasonable expectation of privacy" doctrine, *see generally* Brian J. Serr, *Great Expectations of Privacy: A New Model for Fourth Amendment Protection*, 73 MINN. L. REV. 583 (1989); Richard G. Wilkins, *Defining the "Reasonable Expectation of Privacy": An Emerging Tripartite Analysis*, 40 VAND. L. REV. 1077 (1987); Gregory E. Sopkin, Comment, *The Police Have Become Our Nosy Neighbors:* Florida v. Riley *and Other Supreme Court Deviations from* Katz, 62 U. COLO. L. REV. 407 (1991).

[7] "A 'seizure' of *property* (under the Fourth Amendment) occurs when there is some meaningful interference with an individual's possessory interest in that property." BLACK'S LAW DICTIONARY 1359 (6th ed. 1990) (emphasis added). A seizure of a *person*:

> connotes the taking of one physically or constructively into custody and detaining him, thus causing a deprivation of his freedom in a significant way, with real interruption of his liberty of movement. Such occurs not only when an officer arrests an individual, but whenever he restrains the individual's freedom to walk away.

Id.; *see also* United States v. Mendenhall, 446 U.S. 544, 554 (1980) ("[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.").

[8] N.J. CONST. art. I, ¶ 7. The Fourth Amendment does not prohibit all searches and seizures, but only those that are considered unreasonable. State v. Campbell, 53 N.J. 230, 233, 250 A.2d 1, 3 (1969); *see also* United States v. Jacobsen, 466 U.S. 109, 113

same language,[9] although the New Jersey provision has occasionally been deemed to afford greater protection than its federal counterpart.[10] Both the United States Supreme Court and the New Jersey Supreme Court have traditionally recognized that the

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(1984) (holding that the Fourth Amendment is only applicable to the government and governmental agents, not private citizens); United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976) (ruling that the Fourth Amendment protects against oppressive and arbitrary state intrusion into a person's privacy); Carroll v. United States, 267 U.S. 132, 146 (1925) (holding that the Fourth Amendment protects against unreasonable searches, not warrantless ones).

9 *Cf. supra* note 1 (quoting article I, paragraph 7 of the New Jersey Constitution) *with supra* note 2 (quoting the United States Constitution's Fourth Amendment).

10 State v. Hunt, 91 N.J. 338, 345-46, 450 A.2d 952, 955 (1982) ("'The present function of state constitutions is as a second line of defense for those rights protected by the Federal Constitution and as an independent source of supplemental rights unrecognized by federal law.'") (quotation omitted). In reference to the Fourth Amendment and article I, paragraph 7 of the New Jersey Constitution, Justice Handler noted that "identical language does not necessarily imply identical meaning." *Id.* at 369, 450 A.2d at 968 (Handler, J., concurring).

Recognizing the Federal Constitution as a constitutional floor, some state courts follow the interstitial approach to constitutional adjudication. *See* Shirley S. Abrahamson, *Criminal Law and State Constitutions: The Emergence of State Constitutional Law*, 63 TEX. L. REV. 1141, 1171 (1985) [hereinafter Abrahamson, *State Constitutions*]; Stewart G. Pollock, *Adequate and Independent State Grounds as a Means of Balancing the Relationship Between State and Federal Courts*, 63 TEX. L. REV. 977, 984 (1985) [hereinafter Pollock, *Adequate State Grounds*]; Robert F. Utter, *Swimming in the Jaws of the Crocodile: State Court Comment on Federal Constitutional Issues when Disposing of Cases on State Constitutional Grounds*, 63 TEX. L. REV. 1025, 1028 (1985). Under the interstitial method, a state court will first view an impingement of a fundamental right under the Federal Constitution. Stewart G. Pollock, *State Constitutions as Separate Sources of Fundamental Rights*, 35 RUTGERS L. REV. 707, 718 (1983) [hereinafter Pollock, *State Constitutions*]. The state constitution is then used as a means of amplifying or supplementing federal rights which are viewed as inadequate with state rights. Utter, *supra*, at 1028. The interstitial approach enables a state court to develop its own body of jurisprudence in recognizing its state constitution as an independent source of liberties. Pollock, *State Constitutions*, *supra*, at 718-19. Additionally, the interstitial approach allows a court to decide cases solely under federal law, while declining to refer to its own state constitution. *Id.* In the 1980s, most criminal cases were decided primarily on Federal Constitutional grounds and made little, if any, reference to state constitutions. Abrahamson, *State Constitutions*, *supra*, at 1158. If a state court opinion cited state case law, the cited state cases likely interpreted and applied federal law. *Id.* at 1158 n.55.

New Jersey follows the interstitial approach. *See id.* at 1172; Pollock, *Adequate State Grounds*, *supra*, at 984; Pollock, *State Constitutions*, *supra*, at 719; Utter, *supra*, at 1028. The New Jersey Supreme Court has, in relying on its own state constitution, rejected several United States Supreme Court search and seizure decisions. *Hempele*, 120 N.J. at 195, 576 A.2d at 799. The *Hempele* decision sheds considerable light upon the New Jersey court's constitutional methodology:

> In interpreting the New Jersey Constitution, [the court] look[s] for direction to the United States Supreme Court, whose opinions can provide "valuable sources of wisdom for us." But although that Court may be a polestar that guides us as we navigate the New Jersey Constitution, we bear ultimate responsibility for the safe passage of our ship. Our eyes must not be so fixed on that star that we risk the welfare of our

two constitutional provisions are first and foremost a protection against unauthorized entry into a person's home.[11] The principal

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passengers on the shoals of constitutional doctrine. In interpreting the New Jersey Constitution, we must look in front of us as well as above us.

Id. at 196, 576 A.2d at 800 (quotation omitted); *see also* State v. Tucker, 136 N.J. 158, 164, 165, 642 A.2d 401, 404, 405 (1994) (holding that seizure of a person is dependent upon an objective examination of the totality of circumstances, discarding the federal interpretation); State v. Pierce, 136 N.J. 184, 208, 642 A.2d 947, 959 (1994) (rejecting *Belton* and holding that police were unjustified in searching vehicles after a routine traffic stop); State v. Novembrino, 105 N.J. 95, 159, 519 A.2d 820, 857 (1987) (rejecting good faith exception to the exclusionary rule); *Hunt*, 91 N.J. at 345-46, 450 A.2d at 955 (requiring court authorization to obtain evidence of telephone billing records); State v. Alston, 88 N.J. 211, 226, 440 A.2d 1311, 1318-19 (1981) (holding that despite federal standard, an individual's possessory interest in property is sufficient to confer standing); State v. Johnson, 68 N.J. 349, 353, 346 A.2d 66, 67-68 (1975) (adopting higher standard than Federal Constitution for determining voluntary consent searches).

Conversely, the court has also, under the interstitial approach, decided cases solely under federal law, while declining to refer to its own state constitution. *See, e.g., Novembrino*, 105 N.J. at 147-48, 519 A.2d at 850-51 (recognizing the exclusionary rule although absent from state constitution); State v. Bruzzese, 94 N.J. 210, 216-17, 463 A.2d 320, 323-24 (1983) (upholding a search on federal grounds), *cert. denied*, 465 U.S. 1030 (1984); State *ex rel* T.L.O. v. Engerud, 94 N.J. 331, 340-41, 463 A.2d 934, 938-39 (1983) (holding inadmissible, under Federal Constitution, evidence obtained by a warrantless search by school official of student's purse), *rev'd*, 469 U.S. 235 (1985).

Many commentators offer thorough discussions on the historical development of the emergence of state constitutional law. *See generally* DEVELOPMENTS IN STATE CONSTITUTIONAL LAW (Bradley D. McGraw ed. 1985); Shirley S. Abrahamson, *Reincarnation of State Courts*, 36 Sw. L.J. 951 (1982) [hereinafter Abrahamson, *Reincarnation of State Courts*]; William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. REV. 535 (1986) [hereinafter Brennan, *The Bill of Rights*]; William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977) [hereinafter Brennan, *State Constitutions*]; Christian G. Fritz, *The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth-Century West*, 25 RUTGERS L.J. 945 (1994); Alan B. Handler, *Expounding the State Constitution*, 35 RUTGERS L. REV. 202 (1983); G. Alan Tarr, *Constitutional Theory and State Constitutional Interpretation*, 22 RUTGERS L.J. 841 (1991).

[11] United States v. United States Dist. Court, 407 U.S. 297, 313 (1972) (stating that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed"). The New Jersey Supreme Court has concurred with this proposition. *See* State v. Jones, 143 N.J. 4, 12, 667 A.2d 1043, 1047 (1995); State v. Henry, 133 N.J. 104, 110, 627 A.2d 125, 128, *cert. denied*, 114 S. Ct. 486 (1993); State v. Hutchins, 116 N.J. 457, 462-63, 561 A.2d 1142, 1145 (1989); State v. Bolte, 115 N.J. 579, 583, 560 A.2d 644, 646, *cert. denied*, 493 U.S. 936 (1989); *Bruzzese*, 94 N.J. at 217, 463 A.2d at 324.

In 1925, the United States Supreme Court first held that the Fourth Amendment requires a warrant for the search of a home. Agnello v. United States, 269 U.S. 20, 32 (1925). In *Agnello*, the Court emphasized the importance of the warrant requirement: "The search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws." *Id.*; *see also United States Dist. Court*, 407 U.S. at 313. The Supreme Court reiterated that the warrant requirement is the primary safeguard against unreasonable governmental intrusions into the home. Welsh v. Wisconsin,

inquiry concerning a specific search or seizure is reasonableness.[12] Both courts have typically followed a constricted view of search and seizure jurisprudence by holding that warrantless searches conducted within the home are per se unreasonable.[13]

The warrant requirement[14] dictates that an unbiased[15] judicial

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466 U.S. 740, 748 (1984); *but cf.* California v. Carney, 471 U.S. 386, 389 (1985) (holding that police are not required to obtain a warrant to search a mobile home, because mobile homes are regulated vehicles which may be moved).

12 *See* Cady v. Dombrowski, 413 U.S. 433, 439 (1973) (stating that "[t]he ultimate standard set forth in the Fourth Amendment is reasonableness"); Camara v. Municipal Court, 387 U.S. 523, 539 (1967) (noting that "reasonableness is still the ultimate standard" of the Fourth Amendment); *Bruzzese*, 94 N.J. at 217, 463 A.2d at 324 (stating that "the touchstone of the Fourth Amendment is reasonableness"). This constitutional inquiry is satisfied when police obtain, upon a demonstration of probable cause, a search warrant from a detached and neutral magistrate, or where an accepted exception is met. LAFAVE, CRIMINAL PROCEDURE, *supra* note 2, § 3.6(e) at 186-89 (discussing constitutional warrantless entry and search for evidence); *see also* State v. Patino, 83 N.J. 1, 7, 414 A.2d 1327, 1330 (1980) (noting that New Jersey has adopted "the specific exceptions [to the warrant requirement] created by the United States Supreme Court"); *infra* notes 22-26 and accompanying text commenting on exceptions to the warrant requirement.

13 Coolidge v. New Hampshire, 403 U.S. 443, 477-78 (1971). The language of the Fourth Amendment and article I, paragraph 7 creates questions of interpretation. *See* Cathy Cox et al., Comment, *An Emerging New Standard for Warrantless Searches and Seizures Based on* Terry v. Ohio, 35 MERCER L. REV. 647, 649 (1984). The provisions consist of dual conjunctive clauses, the "reasonableness" clause and the "warrant" clause. *Id.* Problems of construction occur because the clauses may be read as dependent or as independent. *Id.* at 649-50. Two broad opinions have arisen concerning the reasonableness of searches and seizures. POLYVIOU, *supra* note 2, at 131. The first view posits that the Fourth Amendment forbids only unreasonable searches, not warrantless ones. *Id.* Because there is no specific definition of the word "reasonableness," it must be resolved by the unique facts of each case. *Id.* The second view, preferred by the United States Supreme Court, holds that "reasonableness" under the Fourth Amendment hinges on the existence of a validly issued warrant. *Id.*; *see also Bolte*, 115 N.J. at 583, 560 A.2d at 646 (stating that "warrantless searches or arrests in the home must be subjected to particularly careful scrutiny"). Therefore, a search and seizure is reasonable only if executed pursuant to a warrant or performed subject to an accepted exception. Katz v. United States, 389 U.S. 347, 357 (1967) (stating that searches conducted without a warrant are "*per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions"); *see also Bolte*, 115 N.J. at 585, 560 A.2d at 647 (noting that "[w]arrantless searches, particularly in a home, are presumptively unreasonable and invalid unless justified by a recognized exception to the warrant requirement"); State v. Valencia, 93 N.J. 126, 133, 459 A.2d 1149, 1152 (1983) (noting the presumption of validity of a search pursuant to a warrant); *see infra* note 22 and accompanying text (commenting on the warrant requirement exceptions).

14 The United States Supreme Court concisely construed the warrant requirement as an essential safeguard to the privacy interests of individuals in the home:

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged

officer[16] consider[17] whether police have probable cause to conduct a search or make an arrest.[18] Although both arrest warrants[19] and

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> in the often competitive enterprise of ferreting out crime. . . . The right of officers to thrust themselves into a home is . . . a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent.

Johnson v. United States, 333 U.S. 10, 13-14 (1948); *see also* Steagald v. United States, 451 U.S. 204, 212 (1981) ("The purpose of a warrant is to allow a neutral judicial officer to assess whether the police have probable cause to make an arrest or conduct a search."). *See infra* notes 103-109 and accompanying text (discussing *Steagald*). New Jersey recognizes the warrant requirement. *Bolte*, 115 N.J. at 585, 560 A.2d at 647; *Bruzzese*, 94 N.J. at 218, 463 A.2d at 324; *Valencia*, 93 N.J. at 133, 459 A.2d at 1152; State v. Young, 87 N.J. 132, 141, 432 A.2d 874, 879 (1981).

15 Courts typically use phrases such as "neutral and detached" to describe the magistrate's proper status. Project, *Sixteenth Annual Review of Criminal Procedure: United States Supreme Court and Courts of Appeals 1985-1986*, 75 GEO. L.J. 713, 727 n.93 (1987); *see also* Shadwick v. City of Tampa, 407 U.S. 345, 350 (1972) ("Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement."); State v. Ruotolo, 52 N.J. 508, 512, 247 A.2d 1, 3 (1968) (stating that the probable cause determination of issuance of a warrant is to be made by the detached and neutral court official who is free from "'the often competitive enterprise of ferreting out crime'") (quoting *Johnson*, 333 U.S. at 14).

16 *See* N.J. STAT. ANN. § 2A:8-27 (West 1987) (providing that "any magistrate of a municipal court, any clerk or deputy clerk thereof, . . . may, within the municipality wherein an offender may be apprehended, administer or take any oath, acknowledgement, complaint or affidavit to be used in the proceedings, issue warrants and summonses"); *see also* PRESSLER, CURRENT N.J. COURT RULES, R. 3:2-3 & 3:5-3 (providing that various court clerks and administrators may issue arrest warrants); *Ruotolo*, 52 N.J. at 515, 247 A.2d at 5 (holding that as permitted by court rules and statute, an arrest warrant for misdemeanor may be issued by a municipal court deputy clerk, because clerks and deputy clerks maintain the qualifications and neutral status necessary to conform with the requirements of the Fourth Amendment); *cf. Shadwick*, 407 U.S. at 352 (upholding a municipal clerk's authority to issue arrest warrants for violations of municipal ordinances and rejecting the idea that only a judge or lawyer can issue warrants).

17 A magistrate must consider the evidence in a realistic, nontechnical, and common sense manner. Project, *supra* note 15, at 728. Additionally, the judicial officer must make an independent judgment concerning the existence of probable cause. *Id.* at 728-29. The judicial officer's judgment is typically granted extreme deference by reviewing courts and is overruled only if missing "'substantial basis.'" *Id.* at 729 (quotation omitted).

18 State v. Henry, 133 N.J. 104, 110, 627 A.2d 125, 128 (noting that the court-appointed warrant "safeguards citizens by placing the determination of probable cause in the hands of a neutral magistrate before an arrest or search is authorized"), *cert. denied*, 114 S. Ct. 486 (1993). The United States Supreme Court follows the same rationale. *See, e.g., Steagald*, 451 U.S. at 212 (stating that a warrant is a "checkpoint between the government and the citizen" that is necessary because police "may lack sufficient objectivity to weigh correctly the strength of evidence . . . against the individual's interests in protecting his own liberty"); McDonald v. United States, 335 U.S. 451, 456 (1948) (stating that "history shows that the police acting on their own cannot

search warrants[20] function to submit the probable cause decisions of law enforcement to judicial scrutiny, each warrant protects a separate interest and demands a separate factual demonstration.[21]

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be trusted" with respect to Fourth Amendment privacy rights); *Johnson*, 333 U.S. at 13-14 (stating that a warrant protects citizens from overzealous police officers).

19 The New Jersey court rules detail arrest warrant requirements:

> An arrest warrant shall be made on a Complaint-Warrant (CDR-2) form. The warrant shall contain the defendant's name or if that is unknown, any name or description which identifies the defendant with reasonable certainty, and shall be directed to any officer authorized to execute it, ordering that the defendant be arrested and brought before the court that issued the warrant. The warrant shall be signed by the judge, clerk or deputy clerk, municipal court administrator, or deputy court administrator.

PRESSLER, *supra* note 16, at R. 3:2-3; *see also id.* at R. 3:3-1 (explaining issuance of an arrest warrant or summons).

20 New Jersey court rules describe search warrants and their issuance as:

> A search warrant may be issued to search for and seize any property, including documents, books, papers and any other tangible objects, obtained in violation of the penal laws of this State or any other state; or possessed, controlled, designed or intended for use or which has been used in connection with any such violation; or constituting evidence of or tending to show any such violation.

PRESSLER, *supra* note 16, at R. 3:5-2; *see also id.* at R. 3:5-1 (explaining authority to issue search warrants); *id.* at R. 3:5-3 (defining issuance and contents of search warrants).

21 State v. Bruzzese, 94 N.J. 210, 250, 463 A.2d 320, 341-42 (1983) (Pollock, J., dissenting), *cert. denied*, 465 U.S. 1030 (1984). Justice Pollock differentiated arrest warrants from search warrants, asserting that an arrest warrant, specifically one for a minor offense, may never substitute a search warrant. *Id.*, 463 A.2d at 341 (Pollock, J., dissenting). The justice noted the different roles of the two warrants, stating that:

> An arrest warrant is issued by a magistrate upon a showing that probable cause exists to believe that the subject of the warrant has committed an offense and thus the warrant primarily serves to protect an individual from an unreasonable seizure. A search warrant, in contrast, is issued upon a showing of probable cause to believe that the legitimate object of a search is located in a particular place, and therefore safeguards an individual's interest in the privacy of his home and possessions against the unjustified intrusion of the police.

Id., 463 A.2d at 341-42 (Pollock, J., dissenting) (quoting *Steagald*, 451 U.S. at 213). Therefore, an arrest warrant, which essentially serves to safeguard a person from an unreasonable seizure, is issued upon probable cause to believe that the individual is committing or has committed an offense. *See* PRESSLER, *supra* note 16, at R. 3:3-1(a) (providing that an arrest warrant is issued if a complaint, affidavit, or deposition shows probable cause to believe the offense was committed and the defendant committed it). In contrast, a search warrant is designed to protect the privacy interest in a person's home and possessions against unreasonable intrusions by the government. *Bruzzese*, 94 N.J. at 250, 463 A.2d at 341-42 (Pollock, J., dissenting).

Despite any distinctions, an arrest warrant impliedly offers the authority to enter the home of a subject of a warrant if police have reason to believe the individual is present. *See Steagald*, 451 U.S. at 221; Payton v. New York, 445 U.S. 573, 603 (1980); State v. Jones, 143 N.J. 4, 15, 667 A.2d 1043, 1049 (1995). For discussions about the implications of this rule, *see generally* Roger D. Groot, *Arrests in Private Dwellings*, 67 VA. L. REV. 275 (1981); Sarah L. Klevit, Comment, *Entry to Arrest a Suspect in a Third Party's*

Despite the obvious mandate of the warrant requirement, courts have afforded exceptions to the rule which have allowed law enforcement officials to effectuate searches and seizures without prior judicial authorization.[22] One of these exceptions is the exigent circumstances doctrine,[23] which includes "hot pursuit"[24] of a

Home: Ninth Circuit Opens the Door—United States v. Underwood, 59 WASH. L. REV. 965 (1984). A valid arrest warrant does not, however, give police officers authority to enter a third party's home to search for the subject of an arrest warrant. *Steagald*, 451 U.S. at 213-14; *but cf.* United States v. Ramirez, 770 F.2d 1458, 1460 (9th Cir. 1985) (holding that arrest warrants for two suspects supported entry into the residence shared by the suspects and a third party). Rather, police must acquire a separate search warrant in order to enter a third party's home to arrest the subject of an arrest warrant. *Steagald*, 451 U.S. at 213-14. Additionally, the type of offense expressed in the arrest warrant has frequently governed the breadth of warrants. *See, e.g.*, Welsh v. Wisconsin, 466 U.S. 740, 754 (1984) (holding that the Fourth Amendment prohibited warrantless entry of suspect's home for nonjailable offense); State v. Bolte, 115 N.J. 579, 581, 560 A.2d 644, 645 (holding that the officer could not make a warrantless entry into a suspect's home for the violation of minor traffic offenses), *cert. denied*, 493 U.S. 936 (1989).

22 *See, e.g.*, Coolidge v. New Hampshire, 403 U.S. 443, 477-78 (1971). The United States Supreme Court recognized that, at times, there arises "exceptional circumstances in which, on balancing the need for effective law enforcement against the right of privacy, it may be contended that a magistrate's warrant for search may be dispensed with." Johnson v. United States, 333 U.S. 10, 14-15 (1948) (noting, however, that "[t]he right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance"). There are few exceptions to the warrant requirement, and law enforcement officers bear a heavy burden to justify their application. *Welsh*, 466 U.S. at 749-50. The New Jersey Supreme Court has expressed willingness to adopt the specific warrant requirement exceptions developed by the United States Supreme Court. *See* State v. Patino, 83 N.J. 1, 7, 414 A.2d 1327, 1330 (1980) ("The warrant requirement . . . may be dispensed with in only a few narrowly circumscribed exceptions. The *prima facie* invalidity of any warrantless search is overcome only if that search falls within one of the specific exceptions created by the United States Supreme Court.") (citation omitted); State v. Ercolano, 79 N.J. 25, 41-42, 397 A.2d 1062, 1070 (1979) ("[T]he basic precept of the Fourth Amendment [is] that any warrantless search is *prima facie* invalid and gains validity only if it comes within one of the specific exceptions created by the United States Supreme Court."); *but cf.* State v. Novembrino, 105 N.J. 95, 159, 519 A.2d 820, 857 (1987) (rejecting the application of the United States Supreme Court's acceptance of the "good faith" exception to the exclusionary rule when warrants are issued on less than probable cause).

23 "Exigent circumstances" are defined as:

> those situations in which law enforcement agents will be unable or unlikely to effectuate an arrest, search or seizure for which probable cause exists unless they act swiftly and without seeking prior judicial authorization. Exception to rule requiring search warrant is presence of exigent or emergency-like circumstances as for example presence of weapons in a motor vehicle stopped on highway and such exigent circumstances permit warrantless search and seizure. Where there are exigent circumstances in which police action literally must be "now or never" to preserve the evidence of the crime, it is reasonable to permit action without prior evaluation.

fleeing felon.[25] The hot pursuit exception, however, is rarely sanctioned where there is probable cause to believe that merely a minor offense has been committed.[26]

BLACK'S LAW DICTIONARY 574 (6th ed. 1990).

The United States Supreme Court and the New Jersey Supreme Court have both held that exigent circumstances combined with probable cause may excuse police officers from compliance with the warrant requirement. *See* Katz v. United States, 389 U.S. 347, 357 (1967) (quoting Agnello v. United States, 269 U.S. 20, 33 (1925)); *Bolte*, 115 N.J. at 585-86, 560 A.2d at 648. Despite extensive acceptance of the exigent circumstances exception to the warrant requirement in both state and federal courts, the exception has infrequently been considered by either the New Jersey or the United States Supreme Courts. *Bolte*, 115 N.J. at 586, 560 A.2d at 648 (citing Barbara C. Salken, *Balancing Exigency and Privacy in Warrantless Searches to Prevent Destruction of Evidence: The Need for a Rule*, 39 HASTINGS L.J. 283, 283 (1988) ("The Supreme Court has infrequently considered the question and has never provided a clear standard for determining when warrantless action is justified.")). The United States Supreme Court has "'[left] to the lower courts the initial application of the exigent-circumstances exception.'" *Id.* at 586 n.4, 560 A.2d at 648 n.4 (quoting *Welsh*, 466 U.S. at 749).

[24] The phrase "hot pursuit" first appeared in a United States Supreme Court decision in *Johnson*, where the *Johnson* Court recognized that "some element of a chase will usually be involved in a 'hot pursuit.'" United States v. Santana, 427 U.S. 38, 43 n.3 (1976) (citing *Johnson*, 333 U.S. at 16 n.7). *See infra* notes 91-96 and accompanying text (discussing *Santana*). The *Johnson* Court added:

> we find no element of "hot pursuit" in the arrest of one who was not in flight, was completely surrounded by agents before she knew of their presence, who claims without denial that she was in bed at the time, and who made no attempt to escape.

Johnson, 333 U.S. at 16 n.7. The United States Supreme Court has acknowledged that under certain circumstances hot pursuit of a fleeing suspect may justify proceeding without a warrant where a warrant might have otherwise been required. *Santana*, 427 U.S. at 42-43; *see also Steagald*, 451 U.S. at 218 ("We have long recognized that . . . 'hot pursuit' cases fall within the exigent-circumstances exception to the warrant requirement . . . .") (citation omitted); Vale v. Louisiana, 399 U.S. 30, 35 (1970) (noting that law enforcement officers "were not in hot pursuit of fleeing felon"). A law enforcement officer may effectuate a warrantless entry of a private home when in hot pursuit of a fleeing suspect whom the officer has probable cause to search or arrest. Warden v. Hayden, 387 U.S. 294, 310 (1967) (Fortas, J., concurring). In *Hayden*, the majority did not use the expression "hot pursuit," although the phrase was used by the concurring Justice. *Santana*, 427 U.S. at 43 n.3.

[25] H. Patrick Furman, *The Exigent Circumstances Exception to the Warrant Requirement*, COLO. LAW., Jun. 1991, at 1167, 1167. The United States Supreme Court has recognized only three emergency circumstances excusing the warrant requirement: destruction of evidence; on going fire; and hot pursuit. United States v. Sangineto-Miranda, 859 F.2d 1501, 1511 (6th Cir. 1988) (explaining the Supreme Court's justifications for excusing the warrant requirement). The destruction of evidence exception arises recurrently in drug cases, because of the propensity of drugs to be easily destroyed. Furman, *supra*, at 1168. The exception also arises where the evidence itself is temporary, such as the alcohol level in a driver's blood. *Id.* Some states, such as Colorado, recognize an "emergency exception." *Id.*

[26] *See Welsh*, 466 U.S. at 753, 754 (holding that the Fourth Amendment prohibited a warrantless entry into a suspect's home for a nonjailable offense); *Bolte*, 115 N.J. at 598, 560 A.2d at 654 (finding that the police officer could not effect a warrantless

Once the warrant requirement or one of its exceptions has been satisfied, courts also consider the "knock and announce" rule.[27] The knock and announce rule requires law enforcement officials to announce their presence and purpose prior to entering a home by forcible means.[28] Some courts, including those in New

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entry into a suspect's home for violation of minor traffic offenses). Most cases involving warrantless hot pursuit entries have been upheld only when pursuing suspected felons. *See* William A. Schroeder, *Factoring the Seriousness of the Offense Into Fourth Amendment Equations—Warrantless Entries Into Premises: The Legacy of* Welsh v. Wisconsin, 38 KAN. L. REV. 439, 468 & n.101 (1990). At common law, hot pursuit was limited to felons. *Id.*, at 468. States have acknowledged that the doctrine only applies to fleeing felons or where a suspect presents some danger. *See Bolte*, 115 N.J. at 589, 560 A.2d at 650 (noting that the hot pursuit doctrine has "been interpreted to apply only to the pursuit of fleeing felons"); *see also* Schroeder, *supra*, at 468 n.103. Additionally, it is not essential that the fleeing suspect be kept constantly in the officers' sight. Schroeder, *supra*, at 467. A notable delay in pursuit, however, may render hot pursuit inapplicable. *Id.* at 467 n.99. Nonetheless, most hot pursuit cases involve some type of chase. *Id.* at 467-68.

27 Charles Patrick Garcia, Note, *The Knock and Announce Rule: A New Approach to the Destruction-Of-Evidence Exception*, 93 COLUM. L. REV. 685, 686 (1993); Jennifer M. Goddard, Note, *The Destruction of Evidence Exception to the Knock and Announce Rule: A Call for Protection of Fourth Amendment Rights*, 75 B.U. L. REV. 449, 450 (1995); *see generally* TORCIA, *supra* note 2, § 165 (discussing announcement of identity and purpose). The "knock and announce rule" dictates:

> that police knock and announce their authority and purpose before entering into [a] home. A peace officer, whether he arrests by virtue of warrant or by virtue of his authority to arrest without warrant on probable cause, can break door of house to effect arrest only after first stating his authority and purpose for demanding admission. The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

BLACK'S LAW DICTIONARY 872 (6th ed. 1990).

The knock and announce rule can be traced to the seminal decision, Semayne's Case, 77 Eng. Rep. 194 (K.B. 1603). *See* Miller v. United States, 357 U.S. 301, 308 (1958); *see also* Garcia, *supra*, at 688-89; Goddard, *supra*, at 453. In *Semayne's Case*, a civil decision, the English court posited that, "[i]n all cases where the King is party, the sheriff (if the doors be not open) may break the party's house, either to arrest or to do other execution of the K[ing]'s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open the doors . . . ." *Semayne's*, 77 Eng. Rep. at 195. This common law requisite rested partly on the idea "[t]hat the house of every one is to him as his castle and fortress . . . ." *Id.*; *see* Garcia, *supra*, at 689. For further discussion of the English common law development, *see* G. Robert Blakey, *The Rule of Announcement and Unlawful Entry:* Miller v. United States *and* Ker v. California, 112 U. PA. L. REV. 499, 500-04 (1964).

28 Garcia, *supra* note 27, at 685. The United States Supreme Court first confronted the knock and announce rule in *Miller*. *Id.* at 692; Goddard, *supra* note 27, at 459. Writing for the *Miller* majority, Justice Brennan recognized that the knock and announce rule "is deeply rooted in our heritage and should not be given grudging application." *Miller*, 357 U.S. at 313. In a recent decision, the Court held that the

Jersey, have incorporated the knock and announce rule into their jurisprudence.[29] The rule's purposes are to protect people from unreasonable intrusions of privacy, to decrease the risk of violence to innocent persons and police, to prevent unnecessary destruction of personal property, and to afford an opportunity for innocent individuals to correct police officials who are at an incorrect address.[30] Similar to the warrant requirement, the knock and announce rule has specific exceptions where immediate action is needed to preserve evidence, the arrest would be frustrated, or the police officer's safety would be endangered if knocking preceded

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knock and announce rule is a factor to be considered in determining the reasonableness of a particular search. Wilson v. Arkansas, 115 S. Ct. 1914, 1919 (1995). *See infra* notes 119-27 and accompanying text discussing fully *Wilson*. Also, the *Wilson* Court left to lower courts the determination of reasonable unannounced entry. *Wilson*, 115 S. Ct. at 1919. Congress has codified the common law knock and announce rule for federal officers executing search warrants. Garcia, *supra* note 27, at 690; Goddard, *supra* note 27, at 457. Additionally, a majority of states have statutes concerning forced entry to execute arrest or search warrants. *See* Goddard, *supra* note 27, at 458 & n.56.

29 Goddard, *supra* note 27, at 458-59 & 459 n.57; *see* State v. Love, 233 N.J. Super. 38, 44, 558 A.2d 15, 17 (App. Div.), *certif. denied*, 118 N.J. 188, 570 A.2d 954 (1989). New Jersey has incorporated the knock and announce rule at the appellate level. *See id.* *Love* sheds considerable light upon the knock and announce rule's emergence in New Jersey. *See id.* The knock and announce rule is considered to be embodied in the Fourth Amendment. *Id.* (citing *Miller*, 357 U.S. at 313). The United States Supreme Court, however, has regarded the *Miller* decision as an illustration of a "supervisory power" decision, and thus, not binding on states through the Fourteenth Amendment. *Id.* (citing Ker v. California, 374 U.S. 23, 33 (1963)). Similarly, in *State v. Fair*, the New Jersey Supreme Court decided a "no knock" matter on the presumption that *Ker* did not impose that facet of the Fourth Amendment on states. *Id.* (citing State v. Fair, 45 N.J. 77, 86, 211 A.2d 359, 363-64 (1965)). Because the state of New Jersey has no statute compelling police to knock before entering a home to execute a warrant, the *Fair* court stated that the common law of arrest applied. *Id.* (citing *Fair*, 45 N.J. at 86, 211 A.2d at 364). The general common law rule applied by the *Fair* court was that police must request admittance and explain a purpose before entering. *Id.* (citing *Fair*, 45 N.J. at 86, 211 A.2d at 364); *see supra* notes 27-29 (discussing common law history of knock and announce rule). Also, most states, including New Jersey, that ratified the Fourth Amendment enacted constitutional provisions incorporating English common law. *Wilson*, 115 S. Ct. at 1917 (citing N.J. CONST. of 1776, § 22, in 5 THE FEDERAL AND STATE CONSTITUTIONS 2598 (Francis N. Thorpe ed. 1909)).

30 Garcia, *supra* note 27, at 690-91 (listing the purposes of the knock and announce rule); *see also Miller*, 357 U.S. at 313 n.12 (noting one purpose of the knock and announce rule is to protect the officers' safety). For discussion of specific case law articulating the purposes of the knock and announce rule, *see* James O. Pearson, Jr., Annotation, *What Constitutes Compliance With Knock-and-Announce Rule in Search of Private Premises—State Cases*, 70 A.L.R.3d 217, § 3 (1976 & Supp. 1995); Marvin O. Meier, Annotation, *What Constitutes Violation of 18 USCS § 3109 Requiring Federal Officer to Give Notice of His Authority and Purpose Prior to Breaking Open Door or Window or Other Part of House to Execute Search Warrant*, 21 A.L.R. FED. 820, § 2 (1974 & Supp. 1995).

entry.[31]

In opposition to the practical effects of the warrant requirement and the knock and announce rule, society has long had an interest in the vigorous enforcement of its criminal jurisprudence.[32] The war on drugs[33] has prompted our nation to embrace extremely burdensome anti-drug tactics.[34] Many constitutionally

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31 *Love*, 233 N.J. Super. at 44, 558 A.2d at 17 (citing State v. Smith, 37 N.J. 481, 497-500, 181 A.2d 761, 769-71 (1962), *cert. denied*, 374 U.S. 835 (1963)). *See also* People v. Maddox, 294 P.2d 6, 9 (Cal.) (noting that "[s]uspects have no constitutional right to destroy or dispose of evidence" and "compliance is not required if the officer's peril would have been increased or the arrest frustrated had he demanded entrance and stated his purpose"), *cert. denied*, 352 U.S. 858 (1956)). *See also* State v. Doyle, 42 N.J. 334, 345, 200 A.2d 606, 612 (1964) (permitting unannounced search for performance of abortion because of the likelihood of destruction of evidence).

The restatements sustain this view. *See* RESTATEMENT (SECOND) OF TORTS § 206 (1965) (condoning the entrance without an announcement if the law enforcement officer reasonably believes such announcement would be impractical or useless to observe the knock and announce rule); *see also* RESTATEMENT (SECOND) OF TORTS § 206 cmt. d (1965) (recognizing the risks involved in sudden entry, yet condoning if the officer reasonably believes necessary to avoid frustration).

32 WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW § 1.2(e), at 10 (2d ed. 1986) (noting the basic goal of criminal law is to prevent societal harm).

33 "Our Nation, we are told, is engaged in a 'war on drugs.'" Florida v. Bostick, 501 U.S. 429, 440 (1991) (Marshall, J., dissenting). The American effort to abolish drug abuse has consistently shaped drug agendas "in the image of an all-out campaign." Thomas D. Grant, *Toward a Swiss Solution for an American Problem: An Alternative Approach for Banks in the War on Drugs*, 14 ANN. REV. BANKING L. 225, 226 n.2 (1995). During the Reagan Presidency (1981-89), the administration announced its drug policy in unyielding terms, as President Reagan foretold the birth of the "Drug War":

> "[t]he mood toward drugs is changing in this country and the momentum is with us. We're making no excuses for drugs—hard, soft, or otherwise. Drugs are bad and we're going after them . . . . [W]e've taken down the surrender flag and run up the battle flag. And we're going to win the war on drugs."

Id. (quotation omitted). The New Jersey Legislature has engaged in the war on drugs, enacting the Comprehensive Drug Reform Act. *See* N.J. STAT. ANN. §§ 2C:35-1 to -23 (West 1995). For an in-depth discussion of the Comprehensive Drug Reform Act, see generally W. Cary Edwards, *An Overview of the Comprehensive Drug Reform Act of 1987*, 13 SETON HALL LEGIS. J. 5 (1989).

Many commentators offer intriguing and thoughtful discussion on our nation's fight against drugs and its Fourth Amendment ramifications. *See generally* STEVEN B. DUKE & ALBERT C. GROSS, AMERICA'S LONGEST WAR (1993); Doug Bandow, *Drug Prohibition: Destroying America to Save It*, 27 CONN. L. REV. 613 (1995); Steven B. Duke, *Drug Prohibition: An Unnatural Disaster*, 27 CONN. L. REV. 571 (1995); Philippa M. Guthrie, *Drug Testing and Welfare: Taking the Drug War to Unconstitutional Limits?*, 66 IND. L.J. 579 (1991); Stephen A. Saltzburg, *Another Victim of Illegal Narcotics: The Fourth Amendment (As Illustrated by the Open Fields Doctrine)*, 48 U. PITT. L. REV. 1 (1986); Mindy G. Wilson, Note, *The Prewarrant Use of Thermal Imagery: Has This Technological Advance in the War Against Drugs Come at the Expense of Fourth Amendment Protections Against Unreasonable Searches?*, 83 KY. L.J. 891 (1995); Steven Wisotsky, *Crackdown: The Emerging "Drug Exception" to the Bill of Rights*, 38 HASTINGS L.J. 889 (1987).

34 *See* Albernaz v. United States, 450 U.S. 333, 343 (1981) (stating that "the history

marginal police measures are deemed necessary in light of the seriousness of the national drug problem.[35] Our courts remain divided on this issue, often leaving a hodgepodge of decisions which offer little and sometimes confusing guidance in the practical realities of law enforcement.[36]

In a recent case, *State v. Jones*,[37] the New Jersey Supreme Court held that police in possession of an arrest warrant chasing a suspect to a home may knock down the door as part of the pursuit even if the suspect is wanted only on minor charges.[38] The court reasoned that requiring officers to know the warrant's underlying offense would unjustifiably hamper law enforcement.[39] Finding that the

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of the narcotics legislation in this country 'reveals the determination of Congress to turn the screw ofthe criminal machinery—detection, prosecution and punishment—tighter and tighter'") (quoting Gore v. United States, 357 U.S. 386, 390 (1957), *reh'g denied*, 358 U.S. 858 (1958)).

35 *See* Phillip Pina, *Drug War, Crime on Many Minds*, USA TODAY, December 12, 1995. In a recent Gallop Poll, 88% of the respondents said that the country is facing a serious drug problem. *Id.* Seventy-three percent of the respondents indicated that they would support sending the U.S. military into our cities to combat drugs. *Id.* Eighty-five percent of the respondents soundly rejected drug legalization as a means to alleviate the war on drugs. *Id.* Fifty-four percent of the respondents favored mandatory drug testing of high school students, and 71% favored an increase in mandatory drug testing at work. *Id.*

36 *See, e.g.*, State v. Afanador, 134 N.J. 162, 179, 631 A.2d 946, 955 (1993) (O'Hern, J., dissenting) ("If society is to win the war on drugs, it must wage that war effectively."); State v. Johnson, 127 N.J. 458, 480, 606 A.2d 315, 326 (1992) ("Special efforts may be required to cope with the difficulties of investigating drug offenses . . . ."). Some other members of the judiciary, however, have warned against the evolving drug exception. *See* Hartness v. Bush, 919 F.2d 170, 174 (D.C. Cir. 1990) (Edwards, J., dissenting), *cert. denied*, 501 U.S. 1251 (1991). Judge Edwards stated succinctly:

> Faced regularly with the grim results of the illegal drug trade, the judiciary may well be tempted to offer aid to the Government in its War on Drugs. But no matter how pressing the perceived need, the judiciary is simply without authority to trim back the Fourth Amendment. There is, and can be, no "drug exception" to the Fourth Amendment.

Id. (footnote omitted); *see also* Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 641 (1989) (Marshall, J., dissenting) ("There is no drug exception to the Constitution, any more than there is a communism exception or an exception for other real or imagined sources of domestic unrest."); United States v. Karo, 468 U.S. 705, 717 (noting that individuals "suspected of drug offenses are no less entitled to [Fourth Amendment] protection than those suspected of nondrug offenses"), *reh'g denied*, 468 U.S. 1250 (1984); Capua v. City of Plainfield, 643 F. Supp. 1507, 1511 (D.N.J. 1986) ("In order to win the war against drugs, we must not sacrifice the life of the Constitution in the battle."); State v. Hempele, 120 N.J. 182, 221, 576 A.2d 793, 812-13 (1990) (stating that "the usefulness of house searches in the 'war on drugs' is not reason to discard the core of article I, paragraph 7: the warrant requirement for house searches").

37 143 N.J. 4, 667 A.2d 1043 (1995).

38 *Id.* at 19, 20, 667 A.2d at 1050, 1051.

39 *Id.* at 17, 667 A.2d at 1050.

officers' unannounced entrance was permissible, the court concluded that incriminating evidence discovered by the officers within the home was justifiably seized.[40]

On October 16, 1989, a car theft was reported to the Hackensack Police Department.[41] The car had been broken into and the owner's wallet and other items were stolen.[42] Two days later, Sergeants Robert Wright and Michael Mordaga of the Hackensack Police Department's Narcotics Street Crime Unit were handling a surveillance near 370 Park Street, an apartment building in Hackensack.[43] The surveillance was unrelated to the defendant, Leo Jones.[44] During the surveillance, the two officers noticed a vehicle containing Jones and a companion, Lonzie Collier, drive into the apartment complex's parking lot.[45] Officer Mordaga recognized Collier and remembered seeing an outstanding warrant for Collier's arrest earlier that evening.[46] At that time, however, the officer did not know the charges underlying the issuance of the arrest warrant.[47]

Upon seeing Collier, Officers Wright and Mordaga exited their vehicle and approached Jones and Collier.[48] Jones and Collier fled[49] and the officers pursued them into the apartment build-

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40 *Id.* at 14, 667 A.2d at 1048.

41 *Id.* at 8, 667 A.2d at 1045. On the evening of October 15, 1989, Peter Katsihtis parked his car, a Mazda MX6, in the Stony Hill Inn parking lot, which was located across the street from his home. *Id.* at 7, 667 A.2d at 1045.

42 *Id.* at 7-8, 667 A.2d at 1045. The next morning, Katsihtis found the passenger's side window of his car broken and items from his car missing. *Id.*; State v. Jones, 277 N.J. Super. 113, 116-17, 649 A.2d 89, 90 (App. Div. 1994). Among the missing items were Katsihtis' wallet, driver's license, Social Security card, registration, car mats, and cassette tapes. *Jones*, 143 N.J. at 7-8, 667 A.2d at 1045.

43 *Id.* at 8, 667 A.2d 1045.

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.* Officer Mordaga would later learn that Collier's warrant was issued for failure to pay fines for two prior narcotics convictions. *Id.*

48 *Id.*

49 Although both Jones and Collier knew that Wright and Mordaga were police officers, the trial record and court briefs remain unclear as to whether the officers informed Collier that they possessed a warrant for Collier's arrest before Collier and Jones ran away. *Id.* at 8, 9, 667 A.2d at 1045. At the suppression hearing, it seemed as if Collier and Jones ran before the officers had a chance to inform Collier about the warrant. *Id.* at 8, 667 A.2d at 1045. Additionally, Collier and Jones may have been too far from the officers to have heard them. *Id.* At trial, Officer Mordaga testified that: "'[I] attempted to get [Collier's] attention by calling him. I said, "Toot" which is his nickname, "Toot," we have a warrant for your arrest. He turned. At the same time he saw us approaching and he ran.'" *Id.* (quoting trial cross-examination of Officer Mordaga). In Jones's appellate brief, the officer's testimony was confirmed. *Id.* In Jones's brief to the New Jersey Supreme Court, however, the defendant stated that he

ing.[50] Jones and Collier then darted up the stairs and entered Collier's apartment.[51] The officers tried the door, found it locked, and broke it down.[52] It is unclear whether Officers Wright and Mordaga knocked and announced their presence before kicking the door down.[53] Immediately inside the door, the officers found a kitchen table covered with various narcotics paraphernalia, materials relating to the car theft reported on October 16, 1989, and a crowbar wrapped in newspaper.[54] The officers seized the materials found on the table, arrested Jones and Collier, read the *Miranda* rights to them, and transported them to the police station.[55]

Once at police headquarters, Jones expressed some willingness to cooperate with the police.[56] Jones implicated himself and Collier for several crimes in which Jones had been the getaway driver.[57] Officer Mordaga re-advised Jones of his *Miranda* rights, but Mordaga did not interrogate Jones because the crimes were not associated with narcotics.[58] The following morning, Detective Krakowski of General Investigations began a follow-up interroga-

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and Collier ran before Officer Mordaga informed them of Collier's warrant. *Id.* Nonetheless, it remained undisputed that both Jones and Collier fled either on being informed that the officers had Collier's arrest warrant or on seeing the officers. *Id.* at 9, 667 A.2d at 1045.

50 *Id.*

51 *Id.*

52 *Id.*

53 *Id.* At the pretrial suppression hearing, the two officers were not questioned as to whether they knocked and announced their presence. *Id.* At the trial, however, Officer Mordaga testified that he knocked and asked for entrance before kicking the door down. *Id.* *See supra* notes 27-32 and accompanying text (discussing knock and announce rule).

54 *Jones*, 143 N.J. at 9, 667 A.2d at 1045-46. Mordaga testified at trial: "'[I]mmediately upon entering the apartment to the right of the door was a kitchen table. There were several items on that table. There was assorted narcotic paraphernalia.'" *Jones*, 277 N.J. Super. at 117, 649 A.2d at 91.

55 *Jones*, 143 N.J. at 9, 667 A.2d at 1045-46. The *Miranda* rule requires that:

> Prior to any custodial interrogation (that is, questioning initiated by law enforcement officers after a person is taken into custody or otherwise deprived of his freedom in any significant way) the person must be warned: 1. That he has a right to remain silent; 2. That any statement he does make may be used as evidence against him; 3. That he has a right to the presence of an attorney; 4. That if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires.
>
> Unless and until these warnings or a waiver of these rights are demonstrated at the trial, no evidence obtained in the interrogation may be used against the accused.

BLACK'S LAW DICTIONARY 998 (6th ed. 1990).

56 *Jones*, 143 N.J. at 9, 667 A.2d at 1046.

57 *Id.*

58 *Id.*

tion on Jones.[59] Krakowski again informed Jones of his *Miranda* rights, which Jones waived in a signed release, and Krakowski took a statement from Jones connected to the auto robbery reported on October 16.[60] Jones stated that he had been in a car with Lonzie Collier and that Collier instructed him to pull into the Stony Hill Inn's parking lot on October 15.[61] Jones added that Collier exited the vehicle and used a crowbar to break into the parked auto; when Collier returned, Collier said there was nothing of value in the parked vehicle.[62]

Jones was indicted for first degree robbery,[63] burglary,[64] pos-

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59 *Id.*

60 *Id.*

61 *Id.* at 9-10, 667 A.2d at 1046.

62 *Id.* at 10, 667 A.2d at 1046.

63 *Id.* Count one of defendant's indictment charged Jones with first degree robbery, contrary to N.J. STAT. ANN. § 2C:15-1. New Jersey law provides:

> a. Robbery defined. A person is guilty of robbery if, in the course of committing a theft, he:
>
> (1) Inflicts bodily injury or uses force upon another; or
>
> (2) Threatens another with or purposely puts him in fear of immediate bodily injury; or
>
> (3) Commits or threatens immediately to commit any crime of the first or second degree.
>
> An act shall be deemed to be included in the phrase "in the course of committing a theft" if it occurs in an attempt to commit theft or in immediate flight after the attempt or commission.
>
> b. Grading. Robbery is a crime of the second degree, except that it is a crime of the first degree if in the course of committing the theft the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury, or is armed with, or uses or threatens the immediate use of a deadly weapon.

N.J. STAT. ANN. § 2C:15-1 (West 1995).

64 *Jones*, 143 N.J. at 10, 667 A.2d at 1046. The second count of the indictment charged the defendant with burglary, contrary to N.J. STAT. ANN. § 2C:18-2. New Jersey law provides:

> a. Burglary defined. A person is guilty of burglary if, with purpose to commit an offense therein he:
>
> (1) Enters a research facility, structure, or a separately secured or occupied portion thereof unless the structure was at the time open to the public or the actor is licensed or privileged to enter; or
>
> (2) Surreptitiously remains in a research facility, structure, or a separately secured or occupied portion thereof knowing that he is not licensed or privileged to do so.
>
> b. Grading. Burglary is a crime of the second degree if in the course of committing the offense, the actor:
>
> (1) Purposely, knowingly or recklessly inflicts, attempts to inflict or threatens to inflict bodily injury on anyone; or
>
> (2) Is armed with or displays what appear to be explosives or a deadly weapon.
>
> Otherwise burglary is a crime of the third degree. An act shall be

session of heroin,[65] and receiving stolen property.[66] Before trial, Jones moved to suppress the physical evidence which was seized from the apartment and the oral statements which were later given to the police.[67] At the suppression hearing, Jones's principal argument was that the warrant by which Collier was arrested did not exist and that the warrant was fabricated after the forced entry of Collier's apartment and the arrests.[68] The trial court denied the motion to suppress and admitted the items seized from Collier's

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deemed "in the course of committing" an offense if it occurs in an attempt to commit an offense or in immediate flight after the attempt or commission.

N.J. STAT. ANN. § 2C:18-2 (West 1995).

[65] *Jones*, 143 N.J. at 10, 667 A.2d at 1046. Count three of defendant's indictment charged Jones with possession of heroin, contrary to N.J. STAT. ANN. § 2C:35-10a(1). New Jersey law provides:

> a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L.1970, c. 226 (C. 24:21-1 et seq.). Any person who violates this section with respect to:
>
> (1) A controlled dangerous substance, or its analog, classified in Schedule I, II, III or IV other than those specifically covered in this section, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.A. 2C:43-3, a fine of up to $25,000.00 may be imposed.

N.J. STAT. ANN. § 2C:35-10a(1) (West 1995).

[66] *Jones*, 143 N.J. at 10, 667 A.2d at 1046. Count six of the indictment charged Jones with receiving stolen property, contrary to N.J. STAT. ANN. § 2C:20-7. New Jersey law states:

> a. Receiving. A person is guilty of theft if he knowingly receives or brings into this State movable property of another knowing that it has been stolen, or believing that it is probably stolen. It is an affirmative defense that the property was received with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.
>
> b. Presumption of knowledge. The requisite knowledge or belief is presumed in the case of a person who:
>
> (1) Is found in possession or control of two or more items of property stolen on two or more separate occasions; or
>
> (2) Has received stolen property in another transaction within the year preceding the transaction charged; or
>
> (3) Being a person in the business of buying or selling property of the sort received, acquires the property without having ascertained by reasonable inquiry that the person from whom he obtained it had a legal right to possess and dispose of it.

N.J. STAT. ANN. § 2C:20-7 (West 1995). The other counts of the defendant's indictment related to Collier and another co-defendant. *Jones*, 143 N.J. at 10, 667 A.2d at 1046.

[67] *Id.* Jones also moved to have the indictment counts severed for trial. *Id.*

[68] *Id.* The hearing lasted five days. *Id.* Defendant's counsel brought out several

apartment and Jones's statements to the police.[69] After standing trial on only the car theft charge, the jury found Jones guilty.[70]

On appeal, the appellate division reversed and remanded Jones's conviction.[71] The appellate court noted the importance of the Fourth Amendment and its basic principle that a search and seizure within a home without a warrant is presumptively unreasonable.[72] The court maintained that the objective of the warrant requirement is to protect citizens by placing the probable cause determination in the hands of an impartial magistrate.[73] The appellate division then rejected the State's contention that the outstanding arrest warrant against Collier, along with Collier and Jones's flight into a known narcotics location, met an exigent circumstances exception.[74] The court found that the officers were unjustified in pursuing Jones and Collier into the apartment, because an invasion into a private home could not be validated upon a warrant issued for minor offenses.[75] The court reasoned that in circumstances where the police do not know the basis for the warrant, such as in the present case, the presumption must be that the

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mistakes and inconsistencies in police and court procedures concerning the issuance of the arrest warrant. *Id.*

69 *Id.* at 10-11, 667 A.2d at 1046. Although impressed with the defense counsel's attempt to refute the validity of the warrant, the trial court asserted, "'I also recognize and take into consideration all the reasons why these things might have been suspect, but I can't disbelieve the clerk's testimony that she signed [the warrant] on the 18th absent any proof to the contrary.'" *Id.* at 10, 667 A.2d at 1046 (quoting the trial court). The trial court ultimately concluded that "'the entry into the premises was lawful and they could seize, pursuant to that warrant, any contraband that they observed on the kitchen table and they did that.'" *Id.* (quoting the trial court). The trial court, however, granted the defense motion to sever numerous counts of the indictment. *Id.* at 11, 667 A.2d at 1046.

70 *Id.* Jones stood trial solely on the second count, the Katsihtis burglary charge. *Id.* Jones did not call any witnesses, nor did he testify on his own behalf. *Id.*

71 *Id.*; *Jones*, 277 N.J. Super. at 122, 649 A.2d at 93.

72 *Jones*, 277 N.J. Super. at 118, 649 A.2d at 91. The appellate court primarily relied upon *State v. Bolte*. *Jones*, 143 N.J. at 11, 667 A.2d at 1046; *Jones*, 277 N.J. Super at 119-20, 649 A.2d at 92. *See infra* notes 115-18 and accompanying text (discussing thoroughly *Bolte*).

73 *Jones*, 277 N.J. Super. at 118-19, 649 A.2d at 91. In making its determination, the court posited that the proper inquiry is whether the officers' conduct was objectively reasonable, without regard to their underlying motives or intent. *Id.* at 119, 649 A.2d at 91. Moreover, the court added that the inquiry is strict and that a warrantless search and seizure is *per se* illegal except for a few well-delineated and specifically established exceptions. *Id.*, 649 A.2d at 92.

74 *Id.* *See supra* notes 23-25 and accompanying text (discussing exigent circumstances).

75 *Jones*, 277 N.J. Super at 121, 649 A.2d at 93 ("If arrest for numerous motor vehicle and disorderly persons violations committed in the officer's presence does not justify invading the sanctity of a private home, it follows that execution of an arrest warrant issued for similar minor offenses would not validate such an invasion.")

warrant is based on a minor offense.[76]

The New Jersey Supreme Court granted the state's petition for certification[77] to determine if the appellate court properly evaluated the officers' conduct in pursuing Jones and Collier.[78] The *Jones* court asserted that law enforcement officers acting pursuant to a validly issued arrest warrant have the authority to pursue a fleeing suspect into a private dwelling.[79] The court posited that to require officers to know a warrant's underlying offense and to determine the seriousness of that offense would unjustifiably impede law enforcement and undermine the role of a judicial officer.[80] The *Jones* court reasoned that under the circumstances of the case at bar, it would be futile to require the officers to announce their presence before forcibly entering the apartment.[81] Applying these principles, the New Jersey Supreme Court reversed the appellate court's decision and reinstated Jones's conviction.[82]

The extent of the constitutional protection of an individual's right of privacy in a private residence has fluctuated in numerous court decisions.[83] The United States Supreme Court, in *Warden v. Hayden*,[84] confronted the reasonableness of a search and seizure where police, looking for a robbery suspect, warrantlessly entered a home in which the suspect was seen to have entered.[85] The *Hayden*

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76 *Id.* To allow another practice, the court posited, would permit the police to bypass the constitutional sanctity of private homes by merely choosing not to determine the disposition of an outstanding warrant. *Id.*; *cf. Jones*, 143 N.J. at 17, 667 A.2d at 1050 (stating that to require police officers to distinguish between arrest warrants issued for minor and serious offenses would be unreasonable). The appellate court concluded that the evidence obtained at the apartment and the subsequent inculpatory statements should have been suppressed. *Jones*, 277 N.J. Super. at 122, 649 A.2d at 93 (citing Wong Sun v. United States, 371 U.S. 471, 485 (1963) (poisonous tree doctrine)).

77 140 N.J. 276, 658 A.2d 300 (1995).

78 *See Jones*, 143 N.J. at 7, 667 A.2d at 1045.

79 *Id.* at 13, 667 A.2d at 1047.

80 *Id.* at 17, 667 A.2d at 1050.

81 *Id.* at 18-19, 667 A.2d at 1050.

82 *Id.* at 20, 667 A.2d 1051.

83 *See* Jeffrey O. Himstreet, Note, *The Executive's War on Crime Takes a Bite Out of Privacy in* California v. Acevedo, 28 WILLIAMETTE L. REV. 195, 195 (1991) ("The United States Supreme Court's numerous, seemingly contradictory rulings over the years have made search and seizure one of the most complex areas of criminal procedure."); Wayne R. LaFave, *Search and Seizure: "The Course of True Law . . . Has Not . . . Run Smooth,"* 1966 U. ILL. L. F. 255, 255 ("No area of law has more bedeviled the judiciary [than search and seizure] . . . .") (footnote omitted).

84 387 U.S. 294 (1967).

85 *Id.* at 297. *Hayden* established the authority of police, who are lawfully on premises to effectuate an arrest, to search the premises in order to find the person to be arrested. *See* LAFAVE, CRIMINAL PROCEDURE, *supra* note 2, § 3.6(c), at 184.

opinion, written by Justice Brennan, upheld the warrantless entrance and search of the private residence, noting that the urgencies of the situation compelled the ensuing events.[86] The Court reasoned that the Fourth Amendment does not require police to delay in pursuing an investigation involving a serious offense, where time is essential and where a delay would seriously endanger public safety.[87]

Ten years later, in *United States v. Santana*,[88] the Court addressed the constitutionality of a private home entry where a warrantless arrest originated in a public place, but due to the suspect's attempted escape, concluded in a private home.[89] The majority

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86 *Hayden*, 387 U.S. at 298 (quoting McDonald v. United States, 335 U.S. 451, 456 (1948) (stating that "the exigencies of the situation made that course imperative")). Although such a search is commonly limited to searching only places where a fugitive could hide, the *Hayden* decision found that police occasionally may do more. LAFAVE, CRIMINAL PROCEDURE, *supra* note 2, § 3.6(c), at 184. For instance, the *Hayden* Court upheld the searches into a washing machine and a bathroom flush tank, noting that the searches were necessary so that the police could ensure safety. *Hayden*, 387 U.S. at 299-300; LAFAVE, CRIMINAL PROCEDURE, *supra* note 2, § 3.6(c), at 184.

87 *Hayden*, 387 U.S. at 298-99. The *Hayden* Court noted that the police officers were informed that an armed robbery had occurred, that the suspect had entered the residence just minutes before they reached it, and that speed was necessary. *Id.* at 298, 299. *Hayden* was established upon the "exigencies of the situation," and failed to use the term "hot pursuit." United States v. Santana, 427 U.S. 38, 43 n.3 (1976); *see also supra* note 24 and accompanying text (discussing "hot pursuit") and *infra* notes 88-93 and accompanying text (discussing fully *Santana*). Although the *Hayden* Court did not refer to "hot pursuit," the *Santana* holding, a subsequent "hot pursuit" decision, would use much of the *Hayden* reasoning. *See Santana*, 427 U.S. at 42-43.

88 427 U.S. 38 (1976).

89 *Id.* at 42. On August 16, 1974, an undercover Philadelphia Narcotics Squad officer, Michael Gilletti, arranged to buy heroin from Patricia McCafferty. *Id.* at 39. Gilletti purchased narcotics from McCafferty before. *Id.* McCafferty told Gilletti the heroin would cost $115 and that they must go to "Mom Santana's" to pick up the heroin. *Id.* Gilletti recorded the serial numbers of the purchase money and went with McCafferty to the prearranged location. *Id.* The officers waited as McCafferty entered Dominga Santana's home to obtain heroin. *Id.* at 39-40. McCafferty returned to Gilletti's car, and Gilletti asked McCafferty for the heroin. *Id.* at 40. McCafferty removed several glassine envelopes holding a brownish-white powder later determined to be heroin. *Id.* at 40, 41. Gilletti arrested McCafferty and asked McCafferty where the money was, to which McCafferty answered, "'Mom has the money.'" *Id.* at 40. Gilletti informed other officers that Santana had the purchase money and took McCafferty to the police station. *Id.* The officers approached Santana as she stood in her doorway, driving within 15 feet of Santana's house. *Id.* The officers saw Santana standing in the doorway of her home with a paper bag in her hand. *Id.* One of the officers recognized Santana, whom the officer had seen before. *Id.* at 40 n.1. The officer noted that Santana was standing in the doorway in a way so that one step forward would place her outside and one step backward would place her in her home. *Id.* The officers exited the vehicle, displayed their badges, and shouted "'police.'" *Id.* at 40. Santana retreated inside her home. *Id.* The officers followed Santana through the open doorway and caught her in the vestibule. *Id.* Once inside her apartment, Santana struggled with the officers and two packets of heroin fell to the ground. *Id.*

opinion, written by Justice Rehnquist, upheld the entry into the private residence, because the arrest had been attempted in a public area and had been followed by genuine hot pursuit.[90] The Court posited that because the suspect was initially in a public place, she was not in a location where she could presume an expectation of privacy.[91] The Court reasoned that the suspect's attempted escape could not thwart a proper arrest which had been set in motion in a public place.[92] The *Santana* Court concluded that once the suspect saw the officers, there was a probable expectation that a delay in her arrest would result in the destruction of evidence.[93]

Santana then produced the marked bills which were used in the heroin sale with McCafferty. *Id.* at 41. An indictment was filed in the United States District Court for the Eastern District of Pennsylvania, charging Santana with possession of heroin with an intent to distribute, and McCafferty with distribution of heroin. *Id.* Although McCafferty pleaded guilty, Santana moved to suppress the money and heroin found during and after her arrest. *Id.* The district court granted Santana's motion, noting that the entry into Santana's home was unjustified, because the court interpreted hot pursuit to mean a chase in or about public streets. *Id.* The United States Court of Appeals for the Third Circuit affirmed the decision without opinion. *Id.* at 42.

90 *Id.* at 42-43. *See supra* notes 24-25 and accompanying text (commenting on hot pursuit). The *Santana* Court rejected the district court's interpretation of hot pursuit, noting that hot pursuit may entail some type of chase, but it does not require "an extended hue and cry 'in and about [the] public streets.'" *Santana*, 427 U.S. at 43 (quotation omitted). The Court justified the officers' pursuit of Santana in light of this reasoning, since the pursuit of Santana was very quick and "ended almost as soon as it began." *Id.* The *Santana* Court also recognized *Warden v. Hayden* as governing hot pursuit, although the *Hayden* Court did not refer distinctively to hot pursuit. State v. Bolte, 115 N.J. 579, 588 n.5, 560 A.2d 644, 649 n.5, *cert. denied*, 493 U.S. 936 (1989). The *Santana* Court recognized, however, that *Hayden* was founded on the exigencies of the situation and did not specifically mention hot pursuit. *See Santana*, 427 U.S. at 43 n.3.

91 *Id.* at 42. The Court posited that Santana, standing in her doorway, was initially not in an area where she had an expectation of privacy. *Id.* The Court added that although the common law of property may hold the threshold of a dwelling, such as a yard surrounding a house, as private, Santana was standing in a public place. *Id.* Justifying this reasoning, the *Santana* Court asserted that whatever a person knowingly displays to the public, even in a private home, is not protected by Fourth Amendment. *Id.* (quoting Katz v. United States, 389 U.S. 347, 351 (1967)). Thus, the Court noted that Santana exposed herself to public view while standing in her doorway just as if she had been completely outside of her house. *Id.* Additionally, the Supreme Court opined that the officers were justified in arresting Santana, because the warrantless arrest of a person in a public place with probable cause does not violate the Fourth Amendment. *Id.*

92 *Id.* One commentator notes that the exact meaning of "set in motion" is unclear, because of some post-*Santana* opinions. *See* Schroeder, *supra* note 26, at 469 n.109.

93 *Santana*, 427 U.S. at 43. Additionally, the Court noted that the fact that the pursuit in *Santana* ended almost immediately did not characterize it any less of a "hot pursuit" suitable to justify the warrantless entry into the home. *Id.* Although *Santana* was the first United States Supreme Court decision to articulate "hot pursuit," it has

In *Payton v. New York*,[94] the United States Supreme Court acknowledged that the Fourth Amendment prohibits warrantless and non-consensual entries into the home of a suspect in order to effectuate a routine felony arrest.[95] The *Payton* Court, however, con-

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since been solely interpreted to apply to the pursuit of fleeing felons. *See* United States v. Aquino, 836 F.2d 1268, 1271 (10th Cir. 1988) ("The only case in which the Supreme Court has held the exigent circumstance exception sufficient to justify warrantless entry into a suspect's home involved the hot pursuit of a fleeing felon whom the police could have lawfully arrested without a warrant."); City of Seattle v. Altschuler, 766 P.2d 518, 520 (Wash. Ct. App. 1989) ("*Santana*'s facts limit its application to the 'hot pursuit' of a fleeing felon."); *see also* Welsh v. Wisconsin, 466 U.S. 740, 754 (1984); *Bolte*, 115 N.J. at 581, 560 A.2d at 645.

94 445 U.S. 573 (1980).

95 *Id.* at 576. *Payton* confronted the constitutionality of a New York statute that authorized law enforcement officers to forcibly enter private dwellings without a warrant to effectuate a routine felony arrest. *Id.* at 574. The decision did not consider any exigent circumstances exceptions to the warrant requirement. *Id.* at 583. In the primary *Payton* case, New York police officers, acting under probable cause to believe that Theodore Payton had murdered the manager of a gas station, warrantlessly broke into Payton's home. *Id.* at 576, 583. When the officers entered Payton's apartment, they found no one home; however, in plain view the officers discovered a .30-caliber shell casing. *Id.* at 576. The officers seized the casing, which later was introduced into evidence against Payton at his murder trial. *Id.* at 576-77. Both the trial court and New York Court of Appeals upheld the seizure of the casing under New York statute. *Id.* at 577, 579. In the companion *Payton* case, New York police officers arrested Obie Riddick at his home without a warrant. *Id.* at 578. The officers did, however, have probable cause to believe that Riddick had committed two armed robberies. *Id.* During Riddick's arrest, the officers found narcotics and related paraphernalia which the state admitted into evidence against Riddick at his trial. *Id.* Again, the state courts approved the arrest and seizure under New York statute. *Id.* at 578-79.

Reversing the New York Court of Appeals, the United States Supreme Court declared that the officers' warrantless entry into each home, without consent, violated the Fourth Amendment. *Id.* at 603. In reaching this conclusion, the *Payton* Court reaffirmed the proposition that the primary purpose for requiring unbiased judicial intervention is to protect individuals from needless police intrusions. *Id.* at 586. The Court also recognized that physical entry into a home is the chief evil against which the Fourth Amendment is directed. *Id.* at 585 (quoting United States v. United States Dist. Court, 407 U.S. 297, 313 (1972)).

Professor LaFave has noted that the *Payton* Court discussed with apparent approval the holding in Dorman v. United States, 435 F.2d 385 (D.C. Cir. 1970). *See* Wayne R. LaFave, *"Seizures" Typology: Classifying Detentions of the Person to Resolve Warrant, Grounds, and Search Issues*, 17 U. MICH. J.L. REF. 417, 454 (1984); *see also Payton*, 445 U.S. at 587-89. The *Dorman* decision required a warrant for arrest entries in the absence of exigent circumstances and enumerated how to determine whether circumstances were sufficiently exigent. LaFave, *supra*, at 454; *see Dorman*, 435 F.2d at 392. The appellate court listed these factors as:

> (1) whether "a grave offense is involved, particularly one that is a crime of violence"; (2) whether "the suspect is reasonably believed to be armed"; (3) whether "there exists not merely the minimum of probable cause, that is requisite even when a warrant has been issued, but beyond that a clear showing of probable cause, including 'reasonably trustworthy information,' to believe that the suspect committed the crime in-

cluded that an arrest warrant, combined with a reason to believe that a suspect is on the premises, sufficiently authorizes police to enter a suspect's home to effectuate the suspect's arrest.[96] Writing for the majority, Justice Stevens noted that an entry into a suspect's home conducted by an arrest warrant is lawful even in the absence of a search warrant, because of the implicit similarities between an arrest and a search.[97] Therefore, the Court concluded that if a sus-

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> volved"; (4) whether there is "strong reason to believe that the suspect is in the premises being entered"; (5) whether there exists "a likelihood that the suspect will escape if not swiftly apprehended"; (6) whether "the entry, though not consented, is made peaceably"; and (7) "though it works in more than one direction, . . . whether [entry] is made at night."

LaFave, *supra*, at 454 (quoting *Dorman*, 435 F.2d at 392-93). Professor LaFave noted that except in "hot pursuit" circumstances, the *Dorman* formula endures as the general rule on the limits of the warrant requirement. *Id.* at 455. Professor LaFave added, however, that the *Dorman* formula is impractical, because it is intended to direct police decisions, which are at times required to be made in haste. *Id.*

96 *Payton*, 445 U.S. at 603. Professor LaFave discusses in detail when police are sufficiently authorized to enter a suspect's home to arrest the suspect. *See* LEFAVE, CRIMINAL PROCEDURE, *supra* note 2, § 6.1, at 562-608. The *Payton* Court held that the authority of police to enter a suspect's home pursuant to an arrest warrant is limited to instances where they have "*reason to believe* the suspect is within." *Payton*, 445 U.S. at 603 (emphasis added). Professor LaFave suggests that the *Payton* Court used such language to not encourage lower courts to employ a strict "probable cause to believe the suspect is at home" standard. LEFAVE, CRIMINAL PROCEDURE, *supra* note 2, § 6.1, at 565. Thus, officers executing an arrest warrant and entering the home of the subject of the warrant, need only have "reason to believe" that the subject is present within the dwelling, not "probable cause to believe." *See Payton*, 445 U.S. at 603; LAFAVE, SEARCH AND SEIZURE, *supra* note 2, § 6.1 at 565; *but cf.*, *Payton*, 445 U.S. at 616 (White, J., dissenting) ("[T]he officer entering to arrest must have reasonable grounds to believe, not only that the arrestee has committed a crime, but also that the person suspected is present in the house at the time of entry."). Officers executing an arrest warrant at a suspect's home, however, apparently require an additional increment of probable cause: reason to believe that the subject is within the dwelling. *Payton*, 445 U.S. at 616 n.13 (White, J., dissenting).

One commentary would have preferred a refining of *Payton*, noting that the Court should have "require[d] police to have (1) probable cause to believe the suspect is at home or uses his home regularly, and (2) some valid reason to make a home arrest if a public arrest were feasible." *The Supreme Court, 1979 Term*, 94 HARV. L. REV. 75, 186 (1980) (footnote omitted); *cf.* Joseph D. Harbaugh & Nancy L. Faust, *"Knock on Any Door"—Home Arrests After* Payton *and* Steagald, 86 DICK. L. REV. 191, 219 (1982) (contending that in arrest warrant situations, a judicial officer "should be required to determine whether the police have probable cause to believe the suspect still uses his home"; then, a police officer could only enter the dwelling by showing "an independent source of information to support the belief that the suspect is presently in his home").

97 *Payton*, 445 U.S. at 589. The *Payton* Court added that an arrest and a search both effect a infringement of the entrance to a home, and that the distinctions in the intrusiveness of an arrest or search are merely of proportion rather than of kind. *Id.* The Court, however, never considered the liberty interests of suspected felons. *See* Edward G. Mascolo, 66 CONN. B.J. 333, 334 (1992). Comparing an arrest to a typical

pect's guilt was sufficient under the standards of probable cause for an arrest warrant, it would likewise be constitutionally reasonable for the police with an arrest warrant to enter a suspect's home when they have reason to believe that the suspect is home.[98]

One year later, in *Steagald v. United States*,[99] the Supreme Court restricted the *Payton* rationale, prohibiting police from entering third-party dwellings in search of a suspect.[100] In *Steagald*, Federal Drug Enforcement Agents searched for the subject of an arrest warrant in a third party's home without first obtaining a search warrant for the home.[101] The majority opinion, written by Justice Marshall, noted that law enforcement officers may lack the degree

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seizure, the *Payton* Court deemed a suspect as simply another object to be seized. *Id.* Because both a search and an arrest implicate similar privacy interests, the Court maintained that both require the authority of a warrant. *Payton*, 445 U.S. at 589, 590. Absent exigent circumstances, the Court added, the threshold of the home may not be traversed without a warrant. *Id.* at 590.

98 *Payton*, 445 U.S. at 602-03. In other words, if the evidence for guilt was adequate to satisfy the probable cause standard for the issuance of an arrest warrant, the Court explained that it would likewise be "constitutionally reasonable" to compel the subject of an arrest warrant "to open his doors" to police. *Id.* Although the Court recognized that a search warrant may furnish more protection than an arrest warrant, the Court asserted that an arrest warrant would sufficiently interpose a magistrate's determination between a zealous officer and citizens. *Id.* at 602.

One commentator notes that privacy interests involving the arrest of a person should be more sensitive than privacy interests involving the search for items, because "the Fourth Amendment protects people not places." Mascolo, *supra* note 97, at 335 (quoting Katz v. United States, 389 U.S. 347, 351 (1967)). Furthermore, the *Payton* Court failed to explain why sufficient probable cause for an arrest warrant justifies entry into the home. *Id.* An arrest warrant bestows no authority for a search of a suspect, but rather, an arrest warrant is more concerned with identity and guilt of the individual to be seized. *Id.* In declining to require a search warrant to enter the dwelling of a subject of an arrest warrant, the Court referred to no authority for the ruling, but simply asserted that entry with merely an arrest warrant is "'constitutionally reasonable.'" *Id.* (quoting *Payton*, 445 U.S. at 602-03). The Court's incomplete analysis would create much confusion among lower courts applying the *Payton* doctrine. *Id.* at 336.

99 451 U.S. 204 (1981).

100 *See id.* at 216.

101 *Id.* at 206. On January 14, 1978, an agent of the Federal Drug Enforcement Agency (DEA) was anonymously informed that Ricky Lyons, wanted on drug charges, could be heard in the background of phone calls with a certain phone number. *Id.* The phone number turned out to be petitioner Steagald's residence. *Id.* On January 18, 1978, DEA agents, possessing an arrest warrant for Lyons, went to Steagald's home. *Id.* When told that Lyons was not home, one of the federal agents performed a sweep search of the residence. *Id.* The agent discovered, in plain view in a bedroom, several bags containing white powder. *Id.* The agents then obtained a search warrant and made further searches. *Id.* at 207. All together, the agents discovered 43 pounds of cocaine on the premises. *Id.* Steagald was indicted on drug charges. *Id.* The federal district court denied Steagald's motion to suppress the evidence found during these searches, and Steagald was convicted. *Id.* The divided Fifth Circuit affirmed the conviction. *Id.*

of objectivity required of a judicial officer to properly weigh the strength of evidence against an individual's liberty interests.[102] The Justice reasoned that arrest warrants and search warrants protect distinct interests.[103] The majority observed that while an arrest warrant may protect the subject of the warrant from an unjustified seizure, an arrest warrant effects no protection for a third party's privacy interests.[104] The *Steagald* Court concluded that to allow police, absent exigent circumstances, to determine whether there is adequate justification to search the home of a third party for the subject of an arrest warrant produces a serious potential for abuse.[105] Therefore, the Court held that the search of the third-party home, conducted without a search warrant, violated the Fourth Amendment.[106]

The New Jersey Supreme Court has also confronted a number of search and seizure issues.[107] In *State v. Bruzzese*,[108] the New Jersey court addressed the constitutionality of evidence seized from an individual's home, without a search warrant, while executing an outstanding arrest warrant on unrelated charges.[109] Writing for

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[102] *Id.* at 212. The Court added that the officer's lack of objectivity is worsened when coupled with the inclinations of law enforcement officers who are often engaged in the competitive endeavor of ferreting out crime. *Id.*

[103] *Id.* at 212-13. *See also supra* note 21 (discussing separate warrant interests). For instance, Justice Marshall explained that an *arrest warrant* serves to protect an individual from an unreasonable seizure, by requiring a showing of probable cause to believe that the individual sought committed a crime. *Steagald*, 451 U.S. at 213. In contrast, the Court stated that a *search warrant* functions to protect a privacy interest of a person in his possessions and home from an unjustified police intrusion, by requiring a demonstration of probable cause to conclude that the legitimate object to be sought is found in a particular place. *Id.*

[104] *Id.* The Court added that a third party's only protection from an unlawful search and seizure would be a law enforcement officer's own determination of probable cause. *Id.* Noting the plain meaning of the Fourth Amendment, the Court posited that judicially untested determinations are inherently unconstitutional. *Id.* at 213, 214 & n.7. The Court stated, therefore, that such a determination must be made by a detached magistrate, not a police officer. *Id.* at 214 n.7.

[105] *Id.* at 215. The Court added that to allow police such freedom could result in a search of all homes of the suspect's friends and acquaintances. *Id.* Furthermore, the Court warned of the danger where police, with only suspicions and no probable cause, might use arrest warrants as a pretext for entering homes. *Id.* Asserting that the exclusionary rule would inadequately redress such police infringements, the Court recognized that the Fourth Amendment is fashioned to prevent and not simply redress unlawful police conduct. *Id.*

[106] *Id.* at 216.

[107] *See supra* note 10 and accompanying text (discussing the court's ability to afford and occasional practice of affording greater search and seizure liberties from by the New Jersey Constitution than the Federal Constitution).

[108] 94 N.J. 210, 463 A.2d 320 (1983), *cert. denied*, 465 U.S. 1030 (1984).

[109] *Id.* at 213, 463 A.2d at 322. While investigating a burglary at Madan Plastics, Inc., the police discovered a distinctive boot imprint at the rear door of the building.

the majority, Justice Garibaldi recognized the court's ability and history of affording New Jersey citizens greater protection against unreasonable searches and seizures than its federal counterpart.[110] The *Bruzzese* court, however, adhered to federal precedent, adopting it as an accurate interpretation of New Jersey constitutional law.[111] The *Bruzzese* court held that the proper inquiry for deciding the constitutionality of a search and seizure is whether the law enforcement officer's conduct was objectively reasonable, without regard to the officer's underlying motives or intent.[112] The court reasoned that an officer's judgment is to be made in light of the facts known at the time of the search.[113] After determining that

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Id. After learning that the defendant had been fired by the company and had been wearing boots on the day of the burglary, the police went to the defendant's home to arrest him for failure to appear in court for a traffic violation. *Id.* at 245, 463 A.2d at 339 (Pollock, J., dissenting). The officers did not have a search warrant. *Id.* at 245-46, 463 A.2d at 339 (Pollock, J., dissenting). After the officers announced their intention to arrest him, Bruzzese went upstairs to his bedroom to put on a pair of shoes. *Id.* at 246, 463 A.2d at 339 (Pollock, J., dissenting). Two officers followed Bruzzese upstairs, despite Bruzzese's request that the officers remain downstairs. *Id.* The trial court later learned that the officers were not concerned that Bruzzese would escape or that there was a concern for safety. *Id.* at 245, 463 A.2d at 339 (Pollock, J., dissenting). While in the defendant's bedroom, one officer looked around the bedroom, searching behind a television and under a bed. *Id.* at 246, 463 A.2d at 339-40 (Pollock, J., dissenting). The officers found a pair of black boots under a dresser and seized them. *Id.* Bruzzese was subsequently indicted for burglary, theft, and criminal mischief. *Id.* at 215, 463 A.2d at 323. The trial court suppressed the boots as evidence, finding the seizure of the boots violative of the defendant's constitutional rights, and the appellate division affirmed. *Id.* at 215-16, 463 A.2d at 323.

110 *Id.* at 216, 463 A.2d at 323; *see also supra* note 10 and accompanying text (discussing the New Jersey court's history of affording greater search and seizure liberties through the New Jersey Constitution than through the Federal Constitution).

111 Abrahamson, *State Constitutions*, *supra* note 10, at 1176 (noting that the *Bruzzese* court examined a series of federal cases, determined them to be sound, and adopted them as an accurate interpretation of New Jersey constitutional law); *see also Bruzzese*, 94 N.J. at 216-17, 463 A.2d at 323-24 ("[O]ur holding with respect to the validity of instant search and seizure under the Fourth Amendment of the United States Constitution is equally applicable under Article I, paragraph 7 of the New Jersey Constitution.").

112 *Bruzzese*, 94 N.J. at 219, 463 A.2d at 325. The court added that "the Fourth Amendment proscribes unreasonable actions, not improper thoughts." *Id.*

113 *Id.* at 221, 463 A.2d at 326. In determining the constitutionality of an officer's actions, the court stated that the officer's own subjective appraisal of the conduct is immaterial. *Id.* at 222, 463 A.2d at 326-27. Rather, the court maintained that an objective evaluation handled by a detached judicial authority determines the appropriateness of law enforcement conduct. *Id.* at 221, 463 A.2d at 326. This position is succinctly posited in *Terry v. Ohio*:

> The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that

the execution of the arrest warrant at the defendant's home was proper, and despite the absence of a search warrant, the court concluded that the evidence seized was admissible.[114]

Offering a more protective interpretation of search and seizure liberties than the *Bruzzese* opinion, the New Jersey Supreme Court decided *State v. Bolte*.[115] In *Bolte*, the court determined that a law enforcement officer, in hot pursuit of an individual suspected of driving while intoxicated, may not make a warrantless entry into the individual's home to effectuate an arrest.[116] Although the

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> assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate?

Terry v. Ohio, 392 U.S. 1, 21-22 (1968) (footnote omitted). The *Bruzzese* court criticized the subjective test as being costly and impractical. *Bruzzese*, 94 N.J. at 222, 463 A.2d at 327.

114 *Id.* at 239, 463 A.2d at 336. The court noted that the accompaniment of defendant to his bedroom was necessary and that the inspection and seizure of the defendant's boots were reasonable. *Id.* at 230, 235, 239, 463 A.2d at 331, 334, 336.

115 115 N.J. 579, 560 A.2d 644, *cert. denied*, 493 U.S. 936 (1989).

116 *Id.* at 580-81, 560 A.2d at 645. In *Bolte*, a Moorestown police officer observed and followed Richard Bolte, as Bolte drove home in an erratic fashion at 1:40 a.m. on April 6, 1987. *Id.* at 581, 560 A.2d at 645. The officer observed Bolte's automobile swerve on and off the road. *Id.* When the officer activated his lights and siren, Bolte continued on, apparently ignoring the officer and making four loops of the neighborhood. *Id.* at 581-82, 560 A.2d at 645. Bolte's speed ranged from 20 to 48 miles per hour. *Id.* at 582, 560 A.2d at 645-46. Bolte finally parked his car in the driveway of a private residence, exited the vehicle, and entered the garage. *Id.*, 560 A.2d at 646. The officer followed Bolte into the garage, into the home, and upstairs to a bedroom where Bolte's wife was asleep. *Id.* at 581, 582, 560 A.2d at 645, 646. The officer then informed Bolte that he was under arrest. *Id.* At the station house, Bolte refused a breathalyzer test, the evidence which Bolte subsequently moved to suppress. *Id.* Bolte was charged with driving while intoxicated (DWI), reckless driving, refusal to submit to a breathalyzer test, speeding, failure to maintain a single lane, driving on an expired license, eluding, disorderly conduct, and resisting arrest. *Id.* at 582, 560 A.2d 646.

At the trial, Bolte moved to suppress the evidence of refusing to submit to a breathalyzer on the basis that the arrest was unlawful. *Id.* The court denied the motion, coinciding with the government that the "exigent circumstances" and "hot pursuit" exceptions to the warrant requirement justified the police officer's intrusion into the Bolte's home, because Bolte was avoiding apprehension by the officer and because of the likely dissipation of alcohol in Bolte's blood. *Id.* The trial court asserted that "'the practical problem'" with the defendant's argument is that it "'encourages people to disobey a police officer when they tell them to stop.'" *Id.* at 582-83, 560 A.2d 646 (quoting the trial court).

In reversing and remanding for admission of the suppression order, the appellate division held that neither the "exigent circumstances" nor "hot pursuit" exception, jointly or separately, strengthened the denial of Bolte's suppression motion. *Id.* at 583, 560 A.2d at 646. The appellate court noted that the United States Supreme Court decisions in *Hayden* and *Santana* were different from *Bolte*. *Id.* (noting that the *Hayden* and *Santana* Courts identified "hot pursuit" as a limited exception to the war-

court recognized that exigent circumstances combined with probable cause may excuse police officers from compliance with the warrant requirement,[117] the court held that hot pursuit alone is an inadequate justification for a warrantless arrest.[118]

In a recent decision, *Wilson v. Arkansas*,[119] the United States Supreme Court held that the Fourth Amendment, in some circumstances, requires law enforcement officers to knock and announce

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rant requirement). The appellate division declared that the hot pursuit exception is applicable only in serious offenses. *Id.* The appellate court commented that *Hayden* and *Santana* "'both involved fleeing felons and were based not only on the concept of hot pursuit but also on separate emergent considerations which, when coupled with the pursuit, justified the warrantless intrusion.'" *Id.* (quotation omitted). Thus, the appellate court held that the government failed to justify the warrantless intrusion into Bolte's home. *Id.*

117 *Id.* at 585-86, 560 A.2d at 648. *Bolte* relied on *Welsh*, a factually similar United States Supreme Court case based on the exigent circumstances exception to the warrant requirement. *See id.* at 597-98, 560 A.2d at 654-55; Welsh v. Wisconsin, 466 U.S. 740, 742-43 (1984) (describing facts similar to *Bolte*). The *Welsh* Court found that the Fourth Amendment prohibited police officers from making warrantless entry into a home to arrest a defendant for "nonjailable" traffic offense. *Welsh*, 466 U.S. at 754. The Court further noted that it "ha[d] recognized only a few such emergency conditions," and had actually applied only the "hot pursuit" doctrine to justify in-home arrests. *Id.* at 750. The *Welsh* Court regarded it significant that the "underlying offense for which there is probable cause to arrest is relatively minor[,]" reasoning that:

> Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries. When the government's interest is only to arrest for a minor offense, that presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate.

Id. The Court added that "lower courts have looked to the nature of the underlying offense as an important factor to be considered in the exigent-circumstances calculus[,]" *id.* at 751, and concluded that "it is difficult to conceive of a warrantless home arrest that would not be unreasonable under the Fourth Amendment when the underlying offense is extremely minor." *Id.* at 753.

118 *Bolte*, 115 N.J. at 592-93, 560 A.2d at 652. The *Bolte* court rejected *Hayden* and *Santana* as controlling. *Id.* at 593, 594, 560 A.2d at 652. More specifically, the *Bolte* court differentiated *Hayden* by noting that the *Hayden* Court was primarily concerned with the possible danger to the public and police. *Id.* at 593, 560 A.2d at 652. The *Bolte* court also distinguished *Santana* by asserting that *Santana* involved a felony offense. *Id.* at 594, 560 A.2d at 652. Instead, the *Bolte* court appreciated the reasoning of *Welsh*, quoting specifically from the *Welsh* opinion: "application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense, such as the kind at issue in this case, has been committed." *Id.* at 597, 560 A.2d at 654 (quoting *Welsh*, 466 U.S. at 753). Additionally, the *Bolte* court held that Bolte's arrest could not be justified on the basis of the possibility of evidence destruction, because the officer did not have probable cause to believe that the defendant had been driving while intoxicated. *Id.* at 593, 560 A.2d at 652.

119 115 S. Ct. 1914 (1995).

their presence before entering a residence to conduct a search.[120] In *Wilson*, police officers entered a suspect's home by opening an unlocked screen door, and while entering, identified themselves as police officers and stated they had a warrant.[121] Once inside, the officers seized illegal drugs and narcotics paraphernalia.[122] The defendant moved to suppress the seized evidence because the police had failed to knock and announce their presence before entering the home.[123]

Justice Thomas, writing for the unanimous Court, opined that the framers of the Fourth Amendment believed that the manner in which an officer enters a dwelling should be contemplated when evaluating the reasonableness of a search, because the common law knock and announce principle was a component of early American law.[124] Although the Justice found that the knock and announce rule forms a part of the reasonableness inquiry under the Fourth Amendment, Justice Thomas also posited that not all entries are required to be preceded by an announcement.[125] The Justice stated that the Court would not specify which situations require an announcement but would leave the task to lower courts.[126] The *Wilson* Court announced, however, that the possibility of destruction of evidence or threats of physical violence would justify law enforcement officers' failure to knock and announce.[127]

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120 *Id.* at 1918. *See supra* notes 27-31 and accompanying text (discussing thoroughly the knock and announce rule).

121 *Wilson*, 115 S. Ct. at 1915. The accused in *Wilson*, Sharlene Wilson, made a string of narcotics sales to an undercover police informant. *Id.* During the last sale, Wilson brandished a pistol in the informant's face and threatened to kill her if she was working for the police. *Id.* The next day, police officers obtained warrants to arrest Wilson and search her home. *Id.*

122 *Id.* at 1915-16. Once inside her home, the officers seized marijuana, methamphetamine, valium, narcotics paraphernalia, a gun, and ammunition. *Id.* at 1915-16. The officers also found Wilson in a bathroom, flushing marijuana down a toilet. *Id.* at 1916.

123 *Id.* The trial court denied the motion and Wilson was convicted of all charges. *Id.* The Arkansas Supreme Court affirmed her conviction, holding that the Fourth Amendment did not require the knock and announce principle. *Id.*

124 *Id.* at 1918. The *Wilson* Court ruled that the common law knock and announce rule constructs a portion of the reasonableness inquiry under the Fourth Amendment. *Id.* ("Given the longstanding common-law endorsement of the practice of announcement, we have little doubt that the Framers of the Fourth Amendment thought that the method of an officer's entry into a dwelling was among the factors to be considered in assessing the reasonableness of a search or seizure.")

125 *Id.* ("The Fourth Amendment's flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests.")

126 *Id.* at 1919.

127 *Id.* Justice Thomas noted that Wilson's previous threats and the risk of destruc-

Against this backdrop of judicial precedent arose the New Jersey Supreme Court's disposition of *State v. Jones*.[128] The *Jones* court addressed the issue of whether it was reasonable, under article I, paragraph 7 of the New Jersey Constitution and the Fourth Amendment of the United States Constitution, for police officers to forcefully enter a private home while pursuing the fleeing subject of an arrest warrant for which the officers did not know the underlying offense.[129] The court found that to require police officers to know a warrant's underlying offense would unjustifiably hamper law enforcement.[130] Determining that the officers' uninformed entrance was not only justified but required, the court concluded that incriminating evidence discovered by the officers within the home was appropriately seized.[131]

Writing for the unanimous court, Justice Garibaldi commenced the court's analysis by reviewing the extent of the protections afforded by the Fourth Amendment of the United States Constitution and article I, paragraph 7 of the New Jersey Constitution.[132] Next, the justice recognized the judicial history of distinguishing between searches pursuant to a warrant and warrantless searches.[133] The court reasoned that warrants protect citizens by placing the decision of probable cause with a detached and neutral magistrate before a search or arrest is authorized.[134] Moreover, Justice Garibaldi explained that arrest warrants implicitly carry a limited authority to enter the subject's home when a reason to believe exists that the subject is there.[135]

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tion of evidence might have given the police adequate justification for failing to announce their entry. *Id.* The Court remanded the case to the Arkansas Supreme Court so that it could determine whether an announcement was required before the police could enter Wilson's home. *Id.*

128 143 N.J. 4, 667 A.2d 1043 (1995).

129 *Id.* at 7, 667 A.2d at 1045.

130 *Id.* at 17, 667 A.2d at 1050.

131 *Id.* at 14, 667 A.2d at 1048.

132 *Id.* at 12, 667 A.2d at 1047. Recognizing that the entry of a person's home is the primary evil which the Fourth Amendment addresses, the court appreciated the basic precept that warrantless searches and seizures within a home are per se unreasonable. *Id.*

133 *Id.* at 13, 667 A.2d at 1047. *See supra* notes 19-21 discussing distinctions between arrest and search warrants.

134 *Jones*, 143 N.J. at 13, 667 A.2d at 1047 (quoting State v. Henry, 133 N.J. 104, 110, 627 A.2d 125, 128 (noting that the warrant requirement "safeguards citizens by placing the determination of probable cause in the hands of a neutral magistrate before an arrest or search is authorized"), *cert. denied*, 114 S. Ct. 486 (1993)).

135 *Id.* (quoting Payton v. New York, 445 U.S. 573, 603 (1980) (stating that "for Fourth Amendment purposes, an arrest warrant founded upon probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within")). *See supra* note 96 and

The *Jones* court noted that issuance of a warrant not only places a duty of execution upon law enforcement officers, but also suggests that the subject of the warrant may be desired for a serious offense or that the subject has ignored less-intrusive procedures.[136] The justice stated that in the present case, the officers were acting under a valid arrest warrant and had the authority to effectuate the arrest by entering the apartment.[137] Justice Garibaldi noted that it was irrelevant whether the defendants' flight made it impossible for them to hear the officers state that they had a warrant for Collier's arrest.[138] Accordingly, the justice concluded that the subject of a warrant who makes it difficult for an officer to announce that there is an outstanding warrant should not profit from the officer's inability to announce the warrant.[139]

Addressing the appellate division court's decision, the supreme court stated that the lower court had failed to distinguish entry pursuant to a warrant, as in the present case, and warrantless entries.[140] The court reasoned that in the present case, the police officers made an in-home arrest pursuant to a validly issued warrant based upon probable cause by a detached magistrate.[141] Although the arrest warrant was issued for a minor offense, the court asserted that an arrest warrant provides a limited authority to enter a residence in which a suspect lives when there are reasonable grounds to believe that the suspect is present.[142] Because the officers were aware of the outstanding arrest warrant, the court reasoned that the officers had both a right and duty to follow the suspects into the apartment.[143]

Confronting the appellate court's holding that law enforcement officers may not follow fleeing suspects into private dwellings unless provided with a warrant for non-minor offenses, the supreme court opined that such a standard is unworkable and un-

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accompanying text (discussing applications and implications of "reason to believe" standard).

136 *Jones*, 143 N.J. at 13, 14, 667 A.2d at 1048 (citing Smith v. Gonzales, 670 F.2d 522, 527 (5th Cir.) ("Once a warrant is issued, or probable cause comes into existence, it becomes an officer's duty to arrest the suspect . . . ."), *cert. denied*, 459 U.S. 1005 (1982); Stone v. Florida, 620 So. 2d 200, 201 (Fla. Dist. Ct. App. 1993) ("Officers have no discretion in making arrests where there is an outstanding warrant.")).

137 *Jones*, 143 N.J. at 14, 667 A.2d at 1048.

138 *Id.*

139 *Id.*

140 *Id.* at 14-15, 667 A.2d at 1048 (addressing appellate division's reasoning).

141 *Id.* at 15, 667 A.2d at 1048-49.

142 *Id.*, 667 A.2d at 1049.

143 *Id.*

reasonable.[144] The court explained that because of the magnitude of outstanding warrants, it is unreasonable to believe that police usually know the underlying offense to which a particular arrest warrant is issued.[145] The court then noted that compelling officers to delay the apprehension of suspects while ascertaining the underlying offenses of warrants would be impracticable.[146] Recognizing that all arrests, regardless of the offense, present an element of danger, the court posited that it would be unreasonable for police officers to distinguish arrest warrants for minor offenses from arrest warrants for serious offenses.[147] The court asserted that once a judicial officer issues a warrant, any evidence seized incident to an arrest is justified where the officers acted reasonably in the warrant's execution.[148]

Justice Garibaldi then relied on the United States Supreme Court's reasoning in *Wilson v. Arkansas* to determine whether the officers' actions were reasonable in failing to knock and announce their presence before entering the apartment.[149] The justice explained that requiring the officers in this case to knock and announce their presence would be futile, because the suspects knew that the officers were pursuing them and fled into the apartment to avoid arrest.[150] The justice further explained that the officers knew that the fleeing suspects had previously been convicted of drug offenses and that drug evidence is easily destroyed.[151]

The court predicted that there would be no increase in the number of incidents where police forcibly enter private homes to execute arrest warrants.[152] Justice Garibaldi emphasized that the

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144 *Id.* at 16, 667 A.2d at 1049 (citing Welsh v. Wisconsin, 466 U.S. 740, 761 (1984) (White, J., dissenting)); *but cf. supra* note 26 (discussing the rationale that the hot pursuit exception is rarely sanctioned for minor offenses).

145 *Jones*, 143 N.J. at 16, 667 A.2d at 1049 (noting that "over 1,000 warrants for contempt of court alone are issued by the Municipal Court of Hackensack each year").

146 *Id.*; *cf.* Tennessee v. Garner, 471 U.S. 1, 19 (1985) ("We would hesitate to declare a police practice of long standing 'unreasonable' if doing so would severely hamper effective law enforcement.").

147 *Jones*, 143 N.J. at 17, 667 A.2d at 1049-50 (quoting State v. Bruzzese, 94 N.J. 210, 233, 463 A.2d 320, 333 (1983) (stating that "every arrest, regardless of the nature of the offense must be presumed to present a risk of danger to an officer"), *cert. denied*, 465 U.S. 1030 (1984)).

148 *Id.*, 667 A.2d at 1050.

149 *Id.* at 18 & 19 n.1, 667 A.2d at 1050 & 1051 n.1 (citing Wilson v. Arkansas, 115 S. Ct. 1914, 1919 (1995)). *See supra* notes 119-27 and accompanying text (discussing fully the Court's rationale in *Wilson*).

150 *Jones*, 143 N.J. at 18, 667 A.2d at 1050.

151 *Id.* at 19, 667 A.2d at 1049; *see also supra* note 33 (discussing war on drugs).

152 *Jones*, 143 N.J. at 19, 667 A.2d at 1050-51.

reasonableness of an entry is a purely factual based determination.[153] The court stated that the chief test of an entry's reasonableness is whether the officer has performed his duties in an objectively reasonable manner.[154] Viewing the case at bar under the totality of the circumstances, the court found that the officers acted in an objectively reasonable manner pursuant to the Fourth Amendment of the United States Constitution and article I, paragraph 7 of the New Jersey Constitution.[155]

The New Jersey Supreme Court's decision in *Jones* illustrates the tension which exists between our aversion towards bending our liberty interests and our aspirations to have criminals brought to justice.[156] This tension often leads to an inevitable amount of uncertainty, fluctuation, and criticism.[157] *State v. Jones* is no exception, both in first impression and future prediction. Nonetheless, the decision appreciates the practical realities of law enforcement, while adequately reconciling these realities with the need to protect future privacy interests.[158]

The *Jones* holding signifies a departure from the court's occasional offering of increased search and seizure liberties, although such a departure is not inconsistent with the New Jersey court's approach to constitutional interpretation.[159] New Jersey adheres

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153 *Id.* at 19-20, 667 A.2d at 1051.

154 *Id.* at 19-20, 667 A.2d at 1051.

155 *Id.* at 20, 667 A.2d at 1051.

156 *See* POLYVIOU, *supra* note 2, at 31 (noting that courts regularly balance the effect of state action on a person's security interest against the action's efficiency as a law enforcement method); ZARR, *supra* note 2, at 24 (noting "a real tension between the professed needs of law enforcement and the liberty of the individual" in search and seizure law); Cox, *supra* note 13, at 650 (stating that following World War II, the United States Supreme Court began confronting the struggle between advancing effective law enforcement and protecting privacy rights).

157 *See* Chapman v. United States, 365 U.S. 610, 618 (1961) (Frankfurter, J., concurring) ("The course of true law pertaining to searches and seizures . . . has not—to put it mildly—run smooth."); Himstreet, *supra* note 83, at 195 ("The United States Supreme Court's numerous, seemingly contradictory rulings over the years have made search and seizure one of the most complex areas of criminal procedure."); LaFave, *supra* note 83, at 255 ("No area of law has more bedeviled the judiciary, from the Justices of Supreme Court down to the magistrate; 'reasonable men simply cannot agree on what is a reasonable search.'") (quotation omitted).

158 *See Jones*, 143 N.J. at 19, 667 A.2d at 1051 (stating that "[i]n other circumstances a forcible entry to execute an arrest warrant may not be reasonable").

159 *See* Abrahamson, *State Constitutions*, *supra* note 10, at 1160, 1176. Justice Abrahamson concluded that the New Jersey Supreme Court opinion in *Engerud* "failed to consider the state constitutional claim as a separate and independent issue. . . . and . . . [some] viewed the . . . opinion as based on the federal constitution." *Id.* at 1160. The justice noted that the court failed to address this omission. *Id.* at 1160. Additionally, Justice Abrahamson opined that the *Bruzzese* court "examined a series of federal cases, found them sound, and adopted them as a valid interpretation of the state

to the "interstitial approach" to decide constitutional issues, which recognizes the Constitution as a constitutional floor.[160] Under the interstitial approach, a court first views an impingement of a fundamental right under the Federal Constitution, and then uses its state constitution as a means to amplify or supplement the federal rights which are viewed as inadequate with state rights.[161] The *Jones* court, in adhering to federal precedent, apparently found the federal constitutional interpretation adequate and, thus, refrained from implicating heightened state constitutional interpretation. Such interpretation as manifested in *Jones*, on the one hand, may ensure that various areas of the nation have similar legal standards, but on the other hand, may compromise the protection of certain locally expected liberties.[162] In addition, such a decision, although perhaps in the right direction, amounts to nothing more than fragmented decision making and makes future adjudication unclear.[163]

The *Jones* court failed to specifically address confusions which the Federal Court mended in the *Payton* and *Steagald* evolution of cases. For instance, future New Jersey cases will surely spark the issue whether a warrant for a suspect's arrest adequately safeguards

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constitution." *Id.* at 1176. *See supra* notes 4 & 10 (discussing *State* ex rel. *T.L.O. v. Engerud*) and notes 108-114 and accompanying text (discussing *State v. Bruzzese*).

160 *See supra* note 10 and accompanying text (discussing fully the interstitial method to constitutional adjudication); *see also* Abrahamson, *State Constitutions, supra* note 10, at 1172; Pollock, *Adequate State Grounds, supra* note 10, at 984; Pollock, *State Constitutions, supra* note 10, at 718-19; Utter, *supra* note 10, at 1028-29.

161 *See* Pollock, *State Constitutions, supra* note 10, at 718-19; *see also* State v. Hunt, 91 N.J. 338, 346, 450 A.2d 952, 955 (1982) ("'The present function of state constitutions is as a second line of defense for those rights protected by the Federal Constitution and as an independent source of supplemental rights unrecognized by federal law.'") (quotation omitted). The interstitial method enables a state court to develop its own body of jurisprudence in recognizing its state constitution as an independent source of liberties. Pollock, *State Constitutions, supra* note 10, at 718-19. Additionally, the interstitial approach allows a court to decide cases solely under federal law, while declining to refer to its own state constitution. *Id.* at 718.

162 *See* Right to Choose v. Byrne, 91 N.J. 287, 331, 450 A.2d 925, 948 (1982) (Pashman, J., concurring in part and dissenting in part). Justice Pashman eloquently asserted:

> The benefit of uniform federal constitutional rights is not that all citizens in the country are protected to precisely the same degree: it is that there is a certain minimum of liberty and security that may not be infringed by any state government whether or not it possesses its own constitutional protections. Beyond that minimum, states are free to adopt constitutional charters that protect the citizens of that state even further from oppression by state government.

Id.

163 *See* Abrahamson, *State Constitutions, supra* note 10, at 1176 ("If a state court adopts federal constitutional case law as part of state constitutional law in one decision, it is unclear how the court will treat a subsequent change in the federal cases.").

third parties' privacy interests who share the suspect's residence.[164] The New Jersey court will likely apply a search warrant preference in cases in which there is no hot pursuit.[165]

Justice Garibaldi realizes the practical realities of law enforcement. The holding stands as a departure from applying the hot pursuit doctrine solely to fleeing felons.[166] The decision also recognizes practical considerations to the knock and announce rule.[167] These considerations are specifically justified on federal precedent, although many societal problems seem to have effected the court's ruling.[168] Flourishing societal dilemmas have severely compromised effective law enforcement, and law enforcement officials and judicial dockets are overwhelmed. Law enforcement agencies and our communities require relief, and *Jones* is a needed step in the right direction.

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164 Groot, *supra* note 21, at 284.

165 *See* Steagald v. United States, 451 U.S. 204, 216 (1981) (holding that a search of a third-party home, without a search warrant, is violative of the Fourth Amendment); *supra* notes 99-106 and accompanying text (discussing thoroughly *Steagald*). *But cf.* United States v. Ramirez, 770 F.2d 1458, 1460 (9th Cir. 1985) (holding that arrest warrants for two suspects supported entry into the residence shared by the suspects and a third party).

166 *See Jones*, 143 N.J. at 16, 17, 667 A.2d at 1049, 1050; *see also supra* note 26 (discussing rationale that the hot pursuit exception is rarely sanctioned for minor offenses).

167 *See Jones*, 143 N.J. at 18, 667 A.2d at 1050.

168 *See id.* at 16, 667 A.2d at 1050 (noting exorbitant amount of warrants issued per year); *see also id.* at 19, 667 A.2d at 1049 (noting the defendants' prior drug involvement as contributing to the decision).