

A Parent's Apparent Authority: Why Intergenerational Coresidence Requires a Reassessment of Parental Consent to Search Adult Children's Bedrooms

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A PARENT'S "APPARENT" AUTHORITY: WHY INTERGENERATIONAL CORESIDENCE REQUIRES A REASSESSMENT OF PARENTAL CONSENT TO SEARCH ADULT CHILDREN'S BEDROOMS

*Hillary B. Farber**

For most of the last century, the structure of the American family shifted from a multigenerational model to a nuclear one. However, since the 1980s, the pendulum has shifted back. This shift has been especially acute for the younger generation—aged 25 to 34—who have been hurt by the economic downturn in 2008; one in five of these adults now live in a multigenerational household. Despite this demographic shift, Fourth Amendment apparent authority doctrine has not adapted to take account of these changes.

*Apparent authority doctrine validates, under certain circumstances, an otherwise unlawful search on the basis of a third party's consent. The doctrine reached its current genesis in *Georgia v. Randolph*, where the Court took account of "customary social understanding" in determining whether third party consent validated a police search. Premised on the traditional presumption of parental authority, police rely upon parental consent to search a premises shared by the parent and the child—even if the child is an adult, with her own expectations of privacy. In light of *Randolph's* reliance on social customs, apparent authority doctrine can and should evolve to account for adult children in multigenerational households.*

The proliferation of multigenerational U.S. households provides a new perspective on the social customs and practices concerning coresidence in the United States. Rather than relying outdated presumptions of parental control, this Article argues that police should be compelled to conduct a more thorough inquiry before searching areas occupied exclusively by the adult child. Police should differentiate between "common" and private areas, and inquire into any agreements—formal or infor-

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mal—that the parent and child may have regarding access and control over such areas. By fully recognizing the changing nature of the American household and rejecting a bare reliance on a presumption of parental control, parents and adult children alike will be afforded the Fourth Amendment protection that they deserve.

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INTRODUCTION

After an eight month federal investigation did not turn up sufficient evidence to obtain a search warrant, federal agents knocked on Ray Andrus’s door hoping to conduct a consent search of his home.¹ However, at 8:45 AM that Friday, fifty-one-year-old Ray Andrus was at work, not at home.² Ray Andrus’s father, ninety-one-year-old Dr. Andrus, answered the door in his pajamas and invited the agents into the home.³ During the conversation, the agents learned that Ray lived in the center bedroom, did not pay rent, and lived with his parents to help care for them.⁴ When asked if Dr. Andrus had access to his son’s bedroom, he replied affirmatively and said that he “felt free to enter the room when the door was open, but that he always knocked if the door was closed.”⁵

¹ United States v. Andrus, 483 F.3d 711, 713 (10th Cir. 2007).

² *Id.* at 713–14.

³ *Id.* at 713.

⁴ *Id.*

⁵ *Id.*

Based on this information, the agents asked Dr. Andrus for consent to search the house, including Ray Andrus's bedroom, which Dr. Andrus granted.⁶ The agents immediately went into Ray Andrus's bedroom and began searching his computer for files containing child pornography.⁷ Within five minutes forensic experts had retrieved images of child pornography and Ray Andrus was charged with knowingly possessing images of child pornography.⁸

Established precedent makes it clear that a parent has authority and control over her minor child, which includes responsibility for the discipline, care, and well-being of the child.⁹ Not surprisingly, most courts have concluded that parental consent to a police search of the residence for evidence of a minor child's criminal activity is a reasonable and natural extension of a parent's control over her minor child's moral training.¹⁰ Relying on an agency theory of third-party consent, courts have held that parents possess superior authority over their households, which authorizes them to grant police permission to search the premises—including their child's bedroom.¹¹ As one court stated, parents'

⁶ *Id.* (noting that Dr. Andrus signed a form consenting to the search).

⁷ *Id.*

⁸ *Id.* at 714. Although much of the court's focus was on the legality of the computer search, the fact pattern illustrates the legal presumption that because Ray Andrus was living with his father, Dr. Andrus had authority to consent to a search of Ray's bedroom.

⁹ See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (recognizing a "fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Parham v. J.R.*, 442 U.S. 584, 621 n.1 (1979) (Stewart, J., concurring) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.") (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1971)).

¹⁰ See, e.g., *In re D.C.*, 115 Cal. Rptr. 3d 837, 842 (Cal. Ct. App. 2010) ("Given the legal rights and obligations of parents toward their minor children, common authority over the child's bedroom is inherent in the parental role."); *Vandenberg v. Superior Court*, 87 Cal. Rptr. 876, 880 (Cal. Ct. App. 1970) ("In the exercise of his parental authority a father has full access to the room set aside for his son for purposes of fulfilling his right and duty to control his son's social behavior and to obtain obedience.")

¹¹ See, e.g., *United States v. Ladell*, 127 F.3d 622, 624 (7th Cir. 1997) ("A third-party consent is also easier to sustain if the relationship between the parties—parent to child here, spouse to spouse in others—is especially close."); *United States v. Block*, 590 F.2d 535 (4th Cir. 1978) (finding that the mother had common authority as the "head of the household" and defendant was a mere guest-occupant of the room in his mother's home, and that his mother did not have authority to consent to a search of a locked footlocker in the room because the defendant had a high expectation of privacy in the footlocker); *Vandenberg*, 87 Cal Rptr. at 880 (stating that father's consent to police search of nineteen-year-old son's bedroom was valid because it was a "reasonable and necessary" extension of his authority); *State v. S.B.*, 758 So. 2d 1253, 1255 (Fla. Dist. Ct. App. 2000) (finding by virtue of his ownership and authority to enter home in which his juvenile son lived, a nonresident father could consent to a search of home); *Colbert v. Commonwealth*, 43 S.W.3d 777, 783 (Ky. 2001) (finding that the mother had superior authority over nineteen-year-old son and son's property); *Tate v. State*, 363 A.2d 622, 626 (Md. Ct. Spec. App. 1976) (finding that defendant's mother, as sole owner of the premises, had authority to consent to search of bedroom of her seventeen-year-old son);

rights are “superior to the rights of the children who live in [the] house.”¹²

There is less consensus, however, regarding whether the superior parental authority rationale applies to adult children. Many courts that have considered the issue have extended the superior authority rationale to cases where adult children live with their parents.¹³ These courts have determined that the mere presence of a parent–third party creates a “presumption of control” that permits police to rely on parental consent without further inquiry into the parent’s relationship to the home, the child’s bedroom, and property therein.¹⁴ A minority of courts have been less favorably inclined towards presuming parental dominion and control over the household when the child is not a minor.¹⁵ These courts have required police to ascertain the parent’s relationship to any areas within the home that reasonably could be designated for the exclusive use of one occupant before relying upon the parent’s consent to search.¹⁶

This Article argues that all courts should require police to conduct a diligent inquiry when seeking consent from parents to search an area of

New Jersey v. Douglas, 498 A.2d 364 (N.J. Super. Ct. App. Div. 1985) (finding the mother had authority to consent to the search of her adult son’s bedroom based on her authority as head of the household or owner of the property); Hubert v. State, 312 S.W.3d 554 (Tex. Crim. App. 2010) (upholding grandfather’s consent to search bedroom of grandson living in grandfather’s home under the “common authority” test, where the defendant lives “with a parent or other close relative, and the relative consents to a search of defendant’s bedroom, most courts presume that the relative has sufficient common authority over the bedroom to authorize the consent to search.”).

¹² State v. Kinderman, 136 N.W.2d 577, 580 (Minn. 1965); cf. United States v. DiPrima, 472 F.2d 550, 551 (1st Cir. 1973) (“[E]ven if a minor child, living in the bosom of a family, may think of a room as ‘his,’ the overall dominance will be in his parents.”).

¹³ See, e.g., State v. West, 514 S.E.2d 257 (Ga. Ct. App. 1999) (upholding warrantless search based on authority of mother even though nineteen-year-old son used a lock on his door, without considering defendant’s age); State v. Miller, 799 A.2d 462, 466 (Md. Ct. Spec. App. 2002) (determining that even though the defendant who lived in the basement was present, his father properly had consented because there was a familial relationship between the defendant and his father (father was head of household), and father expressed a desire to have any drugs removed from the premises); Commonwealth v. Basking, 970 A.2d 1181, 1189 (Pa. Super. Ct.), *appeal denied*, 986 A.2d 148 (Pa. 2009) (ignoring the twenty-year-old defendant’s age where consent to search third floor was based on mother’s apparent authority, despite the fact that she admitted to not having been up there in years).

¹⁴ See Jason C. Miller, *When is A Parent’s Authority Apparent? Reconsidering Third Party Consent Searches of an Adult Child’s Private Bedroom and Property*, 24 CRIM. JUST. 34, 34–37 (2010).

¹⁵ See Martin v. United States, 952 A.2d 181 (D.C. 2008); 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 8.1 (4th ed. 2004).

¹⁶ For example, this would include a bedroom, an office, a bathroom, or any other area that could be understood to be for the sole use of a single occupant. See United States v. Whitfield, 939 F.2d 1071, 1075 (D.C. 1991) (“An adult offspring who pays nothing to his parents might nevertheless enjoy exclusive use of a room within the home[.] . . . agents faced with such situations must make further inquiries before engaging in warrantless searches.”).

the home, such as a bedroom, occupied exclusively by an adult child.¹⁷ An officer's conclusion should be based upon reliable information, not assumptions or impressions. A parent who fails to demonstrate common authority or mutual use of the specific area to be searched should not be considered to have provided legally valid consent.¹⁸ This rule is not too onerous and could be easily understood by police, as well as protects the privacy interests of all occupants of the home. Adult children living with their parents should not have a lesser expectation of privacy than if they lived with anyone other than their parent.¹⁹

Third-party parental consent to police searches has become critically important today because intergenerational households are the fastest growing living arrangement in the country.²⁰ There are various financial reasons for the increased coresidence between adult children and parents including the foreclosure crisis, high unemployment rates, and high health care costs. A 2009 Association for the Advancement of Retired Persons (AARP) survey revealed that 33% of respondents between the ages of eighteen and forty-nine lived with their parents or their in-laws; 11% of those respondents were between the ages of thirty-five to forty-four.²¹ Approximately 15% of respondents not currently living with their parents said that it was likely that they would need to move in with family members or friends, or to have family members or friends move in with them.²² Among those who thought it would be likely: 33%

¹⁷ This Article is mainly concerned with officer reliance on parental consent when the adult cotenant is not present. Compare with *Georgia v. Randolph*, where both co-occupants—husband and wife—were present, and husband refused police entry while wife consented to it. 547 U.S. 103, 108 (2006).

¹⁸ See *Commonwealth v. Porter P.*, 923 N.E.2d 36, 52–54 (Mass. 2010) (holding that police must make diligent inquiry concerning the validity of any person's claim of common authority over a residence).

¹⁹ See, e.g., *State v. Vinuya*, 32 P.3d 116, 127–28 (Haw. Ct. App. 2001) (holding that, despite the fact the twenty-three-year-old defendant was living with his parents, his mother could not consent to a warrantless search of his bedroom based on parental or common authority alone and that society recognized his expectation of privacy); *LAFAVE*, *supra* note 15, at § 8.3(g).

²⁰ FRANK HOBBS, U.S. CENSUS BUREAU, CENSUS 2000 SPECIAL REPORTS: EXAMINING AMERICAN HOUSEHOLD COMPOSITION: 1990 AND 2000, CENSR-24, at 27 (2005).

²¹ Press Release, ASSOCIATION FOR THE ADVANCEMENT OF RETIRED PERSONS, *Exclusive AARP Bulletin Poll Reveals New Trends in Multigenerational Housing* (March 3, 2009), http://www.aarp.org/about-aarp/press-center/info-03-2009/Multigen_Housing_Poll.html, [hereinafter AARP Bulletin]. The survey also notes that 34% of people surveyed said they would likely have to move in with family or friends and that it would be due to a loss of income. *Id.* See also Christie D. Batson & Jennifer R. Keene, *Under One Roof: A Review of Research on Intergenerational Co-residence and Multigenerational Households in the United States*, 4 SOC. COMPASS 642, 652 (2000) (“[W]orking adults who experience economic hardship are more likely to seek temporary assistance from family members, most often their parents.”).

²² See AARP Bulletin, *supra* note 21.

said it would be due to a loss of income; 19% said it would be due to a change in job status; and 8% cited home foreclosure as the reason.²³

Contemporary demographics weigh against police assuming parental dominion over the home. The Supreme Court recently elevated the relevance of social norms and expectations in assessing reasonable reliance on third-party consent. In the 2006 case of *Georgia v. Randolph*,²⁴ the Court articulated a new test for assessing reasonableness in third party consent situations: reliance on “commonly held understandings” about the authority co-inhabitants possess with respect to one another’s property and privacy concerns is part of the reasonableness inquiry for third-party consent searches.²⁵ For example, an eight-year-old child who answers the door and invites the caller inside would not be perceived as having the authority to permit anyone to search his parent’s bedroom.²⁶ The Court’s emphasis on the relevance of widely shared social expectations is an important departure from previous cases that were almost exclusively concerned with the assumption of risk borne by parties sharing property with one another.²⁷

This fundamental change in household composition provides a new perspective on the social customs and practices concerning coresidence in the United States. Police reliance upon parental consent without first ascertaining whether the parent actually possessed the authority to enter the room, ignores the reasonable possibility that the parent and child may have an agreement as to the circumstances under which the parent may enter the adult child’s room.²⁸ If police were prohibited from presuming that parents who reside with their adult child have authority to consent to a search of the areas of the home used exclusively by the adult child, then police would have to ask questions and gather information about the

²³ See Donna M. Owens, *Our House*, BALTIMORE SUN, Mar. 22, 2009, (Real Estate), at 1–2.

²⁴ 547 U.S. 103 (2006).

²⁵ *Id.* at 111.

²⁶ *Id.* at 112 (citing LAFAVE, *supra* note 15, at § 8.4(c)).

²⁷ See, e.g., *United States v. Matlock*, 415 U.S. 164 (1974).

²⁸ It is not uncommon for adult children and parents who reside together to agree upon spatial boundaries within the home in order to respect and preserve each other’s privacy. See, e.g., *Hughes v. Coconut Creek Police Dep’t*, 233 Fed. Appx. 919 (11th Cir. 2007) (finding that a warrantless search of twenty-four-year-old son’s bedroom did not violate his Fourth Amendment rights even though the son had his own key, paid rent, and told his father not to allow anyone to enter his room); *People v. Nunn*, 304 N.E.2d 81 (Ill. 1973), *cert. denied*, 416 U.S. 904 (1974) (upholding a warrantless search even though the adult son locked his bedroom door and told his mother not to enter nor let anyone else enter); *State v. Jenkins*, 39 P.3d 868 (Or. Ct. App. 2002) (upholding a warrantless search on grounds of common authority despite adult son having made an oral agreement with parents that garage area was “his” and police failure to inquire into any such agreement); *Becknell v. State*, 720 S.W.2d 526 (Tex. Crim. App. 1986) (holding warrantless search improper where adult son’s room was padlocked, son cooked and ate meals separately, and father and son had agreement whereupon father only could enter son’s bedroom when son was present).

parent's relationship to the premises, including whether the parent and child had an understanding concerning the privacy of those areas.²⁹ Conversely, allowing police to presume parental authority, even where later found lacking, would permit searches on grounds that the police reasonably relied on the appearance of authority.³⁰ Such a result comports neither with *Georgia v. Randolph*, nor with the Fourth Amendment's guarantee that a person should be free from unreasonable searches and seizures in their own home.³¹ Demographic shifts and economic pressures have created a marked change in household composition that requires a reassessment of third-party parental consent to police searches.

Part I introduces the Fourth Amendment's third-party consent doctrine and discusses its evolution following the Supreme Court's 1961 decision, *Chapman v. United States*.³² Part II examines the emphasis of social norms and expectations in determining consent to search as set forth in *Georgia v. Randolph*. Part III describes how the increase in intergenerational coresidence among adult children and their parents invalidates the "presumption of parental control" underlying third-party consent searches, requiring a more nuanced approach for determining consent. Lastly, Part IV sets forth guidelines for police to adhere to before relying on parental consent to search the bedroom of an adult child living with the parent.

²⁹ See, e.g., *Commonwealth v. Basking*, 970 A.2d 1181, 1191 (Pa. Super. Ct.), *appeal denied*, 986 A.2d 148 (Pa. 2009) (holding that though police did an inadequate job questioning defendant's mother, the search was still reasonable for Fourth Amendment purposes).

³⁰ See *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990); see also, *Pearson v. State*, No. 06-07-00043-CR, 2007 WL 4355269, at *3 (Tex. Ct. App. Dec. 14, 2007) ("If officers reasonably believed that the third party had common authority over the place to be searched, then their good-faith mistake will not invalidate the search.").

³¹ U.S. CONST. amend. IV; cf. *Kyllo v. United States*, 533 U.S. 27, 31 (2001) ("The Fourth Amendment provides that '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.'" (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)); *Payton v. United States*, 445 U.S. 573, 584 (1980) ("Almost a century ago, the Court stated in resounding terms that the principles reflected in the [Fourth] Amendment . . . apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life." (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)); *Silverman v. United States*, 365 U.S. 505, 511-12 (1961) ("This Court has never held that a federal officer may without warrant and without consent physically entrench into a man's office or home, there secretly observe or listen, and relate at the man's subsequent criminal trial what was seen or heard.").

³² 365 U.S. 610 (1961).

I. THIRD-PARTY CONSENT: AN OVERVIEW

A. *The Creation and Development of the Third-Party Consent Doctrine*

According to researchers, consent searches constitute the largest portion of warrantless police searches.³³ This is in part because consent searches offer police a number of benefits without costs. For instance, valid consent allows police officers to bypass the administrative hurdles associated with obtaining and executing a warrant.³⁴ Consent searches are also preferred as a means of gathering evidence because it is less likely that evidence recovered will be excluded at a suppression hearing.³⁵ Most jurisdictions do not even require a request for consent to be based on any suspicion of criminal conduct.³⁶ Finally, the scope of a consent search can be broader than otherwise might be available to police with a search warrant.³⁷ As such, consent is the preferred investigative method of police.

Of course, a portion of the total number of consent searches involves consent from third parties.³⁸ The Supreme Court first introduced the third-party consent doctrine in *Chapman v. United States*.³⁹ There, police officers, acting without a warrant, relied on the landlord's consent to enter a home the landlord was renting to Chapman.⁴⁰ Officers climbed through an unlocked window, searched the premises during Chapman's absence, and seized evidence pertaining to violations of federal liquor laws.⁴¹ The Court invalidated the search on the basis that the landlord, despite owning the property, lacked the authority to grant po-

³³ Some scholars assert that consent searches comprise as much as 90% of warrantless searches. See Ric Simmons, *Not "Voluntary" But Still Reasonable: A New Paradigm for Understanding the Consent Searches Doctrine*, 80 IND. L.J. 773, 773 (2005); see also JOSHUA DRESSLER & ALAN C. MICHAELS, UNDERSTANDING CRIMINAL PROCEDURE 261 n.5 (4th ed. 2006) (citing RICHARD VAN DUIZEND ET AL., THE SEARCH WARRANT PROCESS: PRECONCEPTIONS, PERCEPTIONS, AND PRACTICES 21 (1984) (stating that 98% of warrantless searches are consent searches)).

³⁴ See Tracey Maclin, *The Good and Bad News About Consent Searches in the Supreme Court*, 39 McGEORGE L. REV. 27, 31 (2008).

³⁵ LAFAVE, *supra* note 15, at § 8.1.

³⁶ See Maclin, *supra* note 34, at 31.

³⁷ See LaFave, *supra* note 15, at § 8.1. If a person unwittingly consents to a search of their property and does not place any parameters on the scope of the search, such as limiting it to particular compartments in a car or rooms in a house, then police may search anywhere on the property. See *id.*

³⁸ "Third parties" here means any persons other than the target of the investigation who have a reasonable expectation of privacy regarding the place to be searched and who may have actual or apparent authority to issue valid consent.

³⁹ 365 U.S. 610 (1961).

⁴⁰ *Id.* at 612. The officers testified that the landlord told them, "[G]o in the window and see what('s) what in there," while the landlord testified that he said, "If it's what I think it is, what it smells like, yes, you can have my permission to go in." *Id.*

⁴¹ *Id.*

lice the permission to enter the leased premises.⁴² Unmoved by the government's argument that the landlord, as the property owner, had authority to consent,⁴³ the Court expressed concern that strict adherence to property law would undermine a tenant's Fourth Amendment right to expect privacy in his own home—even if that home is leased and not owned.⁴⁴

A few years later, the Court applied the third-party consent doctrine to a case where police officers conducted a warrantless search of the hotel room of a man suspected of robbery based on the hotel clerk's consent.⁴⁵ Lacking both a search and arrest warrants, the police went to a hotel where they believed the suspect, Joey Stoner, was staying and asked the hotel clerk whether he was a registered guest at the hotel.⁴⁶ The night clerk informed the police that Stoner was staying at the hotel, but that he was not in his room at that time.⁴⁷ The police informed the night clerk that they suspected Stoner had committed a robbery and that they were concerned that he might have a weapon in his hotel room.⁴⁸ The police asked the clerk for permission to enter Stoner's room;⁴⁹ the clerk took police to Stoner's room, unlocking the door and telling them to "be my guest."⁵⁰ Police searched the room, finding a firearm and clothing that were later introduced at trial.⁵¹ Stoner objected to the admission of this evidence on the grounds that the hotel clerk did not have authority to permit police to enter and search his hotel room.⁵² Following *Chapman*, the Court found no factual basis for any express delegation of authority sufficient to permit a police search of defendant's room.⁵³ The Court noted that a hotel guest's "explicit or implicit permis-

⁴² *Id.* at 617.

⁴³ *Id.* at 616. "[T]he Government does not contend in this Court that this search and seizure, as such, met the standards of the Fourth Amendment. Instead, it says . . . when the landlord, paying a social call, [finds] good reason to believe that the leased premises [a]re being wasted and used for criminal purposes, he ha[s] authority to enter as a matter of right and to bring officers with him for this purpose." *Id.*

⁴⁴ *Id.* at 617. "Moreover, 'it is unnecessary and ill-advised to import into the law surrounding the constitutional right to be free from unreasonable searches and seizures subtle distinctions, developed and refined by the common law in evolving the body of private property law which, more than almost any other branch of law, has been shaped by distinctions whose validity is largely historical [W]e ought not to bow to them in the fair administration of the criminal law. To do so would not comport with our justly proud claim of the procedural protections accorded to those charged with crime.'" *Id.*

⁴⁵ *Stoner v. California*, 376 U.S. 483, 485–86 (1964).

⁴⁶ *Id.* at 485.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 486.

⁵² *Id.* at 487–88.

⁵³ *Id.* at 485. At trial, the police testified to the following: "We explained [to the clerk] that we were there to make an arrest of a man who had possibly committed a robbery in the

sion” to allow maids, janitors, and servicemen to enter the room to perform their prescribed duties is in no way analogous to the purpose with which the hotel clerk and police entered Stoner’s room.⁵⁴

In *Frazier v. Cupp*,⁵⁵ the Supreme Court articulated the “assumed risk” principle, declaring that a joint owner of a property assumes the risk that a co-owner may permit an outside party to search the property.⁵⁶ Martin Frazier and his cousin Jerry Lee Rawls shared a duffel bag that had been left in Rawls’s home.⁵⁷ When police arrested Rawls on murder charges, they asked for his clothing.⁵⁸ Rawls directed police to a duffel bag that was being jointly used by Rawls and Frazier.⁵⁹ Both Rawls and his mother consented to a search of the duffel bag, which yielded clothing later used at trial against Frazier.⁶⁰ The Court held that Rawls, as a joint user of the bag, clearly had authority to consent to its search, and that Frazier assumed the risk that Rawls might allow someone else to look inside.⁶¹ The Court dismissed Frazier’s argument that Rawls’s actual use of only one compartment in the bag did not give him authority to consent to a search of the entire bag.⁶² Justice Marshall called these facts “metaphysical subtleties” and refused to give them weight in determining consent.⁶³ The Court explained that it was reasonable for a police officer seeing an individual in possession of property to believe that the individual possesses authority to consent to a search of that property.⁶⁴ The officer’s perceptions that Rawls was the sole owner of the bag, without any indication to the contrary, was reasonable and therefore did not require the officer to inquire about any third-party interests.⁶⁵ These facts stand in sharp contrast to *Stoner*, where a police officer can be expected to know that a hotel guest reasonably expects that no one will enter his room without his permission.⁶⁶

City of Monrovia, and that we were concerned about the fact that he had a weapon. He stated: ‘In this case, I will be more than happy to give you permission and I will take you directly to the room.’” *Id.*

⁵⁴ *Id.* at 489–90.

⁵⁵ 394 U.S. 731 (1969).

⁵⁶ *Id.* at 740.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* Given the size of the bag and the lack of physical barriers between the compartments, the Court’s assessment here is reasonable. However, rooms in a home can clearly be distinguished from rooms in a home.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See *supra* notes 53–54 and accompanying text. The Court adds that it is customary in hotels for housekeepers and like personnel to enter the room to provide services but this hotel clerk’s entry was not such a situation.

A year later, in *United States v. Matlock*,⁶⁷ the Supreme Court sharpened its focus on the third party's relationship to the property for purposes of determining authority to consent.⁶⁸ The Court stated that its analysis would rest on mutual use of the property by persons having joint access or control, rather than merely deferring to property rights.⁶⁹ *Matlock* considered whether the voluntary consent of a third party to search Matlock's living quarters permitted the admission at trial of incriminating evidence seized during the search.⁷⁰ Matlock was arrested in his front yard; rather than seek his permission to search the premises, the police placed him in their police car, and sought consent from his cotenant, Mrs. Graff.⁷¹ Graff, who had been watching Matlock's arrest from inside the home, allowed the police to enter her house and she voluntarily consented to a search.⁷² The police found a large sum of money inside a diaper bag in the bedroom that Matlock and Graff shared.⁷³ The Court held that a third party who has "common authority over or other sufficient relationship to the premises or effects to be inspected" may voluntarily consent to a search of the premises;⁷⁴ all evidence seized pursuant to that search may be used against the co-occupant.⁷⁵ In a 6-3 decision, the Court was quick to point out that the authority justifying third-party consent "rests upon mutual use of the property by persons having joint access or control for most purposes."⁷⁶ The Court found Graff had actual authority to consent to a search of the home in which she and the respondent resided and that the officers were not obligated to ask for Matlock's consent even though he was nearby.⁷⁷

Matlock had lasting implications for the third-party consent doctrine because it firmly established the two grounds upon which third-party consent was sufficient to permit a warrantless search.⁷⁸ First, a third party with mutual use of the area to be searched could authorize the search "in his own right."⁷⁹ Second, an individual sharing property with another assumes the risk that her co-owner might consent to a search of the shared premises.⁸⁰ Thus, *Matlock's* articulation of the third-party

⁶⁷ 415 U.S. 164 (1974).

⁶⁸ *Id.* at 171-72; Sharon E. Abrams, *Third-Party Consent Searches, the Supreme Court, and the Fourth Amendment*, 75 J. CRIM. L. & CRIMINOLOGY 963, 964 (1984).

⁶⁹ *Matlock*, 415 U.S. at 171-72.

⁷⁰ *Id.* at 170-71.

⁷¹ *Id.* at 166.

⁷² *Id.*

⁷³ *Id.* at 166-67.

⁷⁴ *Id.* at 171

⁷⁵ *Id.*

⁷⁶ *Id.* at 171 n.7.

⁷⁷ *Id.* at 177.

⁷⁸ See Maclin, *supra* note 34, at 31.

⁷⁹ *Matlock*, 415 U.S. at 171 n.7.

⁸⁰ *Id.*

consent doctrine made it easier for police to search a dwelling without a warrant.⁸¹

B. Emergence of the Apparent Authority Doctrine—Illinois v. Rodriguez

Several years after *Matlock*, the Supreme Court expanded the third-party consent doctrine to situations involving individuals who gave police permission to search even when they actually lacked authority to do so.⁸² The apparent authority doctrine is a means by which courts may validate consent that otherwise would be invalid because the third party lacked actual authority to consent to the search.⁸³ For a police officer relying on what she believes is authorized permission to search, the issue is whether such reliance is reasonable.⁸⁴ In *Illinois v. Rodriguez*,⁸⁵ the complainant, Gail Fischer, reported to police officers that she was assaulted by Rodriguez.⁸⁶ At the time of the complaint, Fischer did not reside at the apartment with the defendant but had moved out several weeks prior to the search at issue.⁸⁷ However, she did possess keys to the apartment and left behind furniture and personal effects in the apartment.⁸⁸ Furthermore, although she did spend some nights there after she had moved out, Fischer never went to the apartment by herself, and she never invited friends to the apartment.⁸⁹ After requesting police assistance, Fischer accompanied them to Rodriguez's apartment and used her keys to gain entry.⁹⁰ Although Rodriguez was asleep inside his apartment, police used Fischer's consent to enter.⁹¹ Police then arrested Rodriguez and seized drugs and paraphernalia within the apartment.⁹² The issue of apparent authority arose because the lower courts found that

⁸¹ Although the Court strengthened the third-party consent doctrine in *Matlock*, Justice Douglas's dissent criticized the majority's opinion and harkened back to a more conservative application of warrantless searches. Justice Douglas recalled that the respondent paid Graff's parents for use of a bedroom in the home. He disapproved of the majority's erosion of the Fourth Amendment, noting that the officers had sufficient time to secure a search warrant. Additionally, he argued that there was no exigent circumstance, emergency, or danger justifying a warrantless search. *See id.* at 179–80 (Douglas, J., dissenting).

⁸² *See Illinois v. Rodriguez*, 497 U.S. 177, 185–86 (1990).

⁸³ *See, e.g., United States v. Brazel*, 102 F.3d 1120, 1148 (11th Cir.1997) (“Even if the consenting party does not, in fact, have the requisite relationship to the premises, there is no Fourth Amendment violation if an officer has an objectively reasonable, though mistaken, good-faith belief that he has obtained valid consent to search the area.”).

⁸⁴ *See LAFAVE, supra* note 15, at § 8.3(g).

⁸⁵ 497 U.S. 177 (1990).

⁸⁶ *Id.* at 179.

⁸⁷ *Id.* at 180.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

Fischer lacked sufficient common authority over the premises to grant consent to search the apartment.⁹³ Without a valid basis for Fischer's consent, the search of Rodriguez's apartment violated the Fourth Amendment.⁹⁴

Explaining why Fischer's lack of authority did not invalidate the search, the Court analogized to situations where the Fourth Amendment's requirement of reasonableness validated police searches despite factual mistakes.⁹⁵ The Court recalled instances where a magistrate judge issues a warrant for the search of a house based on seemingly reliable, but factually inaccurate, information.⁹⁶ In those instances the owner of the house suffers an inconvenience, but this does not constitute a Fourth Amendment violation.⁹⁷ The Court opined:

It is apparent that in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government—whether the magistrate issuing a warrant, the police officer executing a warrant, or the police officer conducting a search or seizure under one of the exceptions to the warrant requirement—is not that they always be correct, but that they always be reasonable.⁹⁸

The Court concluded that determining whether the basis for authority to consent exists "is the sort of recurring factual question to which law enforcement officials must be expected to apply their judgment; and all that the Fourth Amendment requires is that they answer it reasonably."⁹⁹

Nonetheless, the Court was cautious in stressing that law enforcement officers did not have a free pass to always accept an individual's invitation to enter the premises.¹⁰⁰ Even if consent to search a premises is accompanied by an assertion that the individual lives there, "the surrounding circumstances could be such that a reasonable person would doubt its truth and not act upon it without further inquiry."¹⁰¹ Thus,

determination of consent to enter must 'be judged against an objective standard: would the facts available to the officer at the moment . . . warrant a man of reason-

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 184–85.

⁹⁶ *Id.* at 185.

⁹⁷ *Id.* at 184.

⁹⁸ *Id.* at 185.

⁹⁹ *Id.* at 186.

¹⁰⁰ *Id.* at 188.

¹⁰¹ *Id.*

able caution in the belief⁷ that the consenting party had authority over the premises? . . . If not, then warrantless entry without further inquiry is unlawful unless authority actually exists.¹⁰²

Furthermore, when an officer encounters ambiguous facts relating to a third party's authority to consent, the officer has a duty to investigate further before relying on the consent.¹⁰³

II. SOCIAL NORMS AND EXPECTATIONS IN DETERMINING CONSENT FOR A POLICE SEARCH

A. *Georgia v. Randolph: A New Focus on Social Norms and Expectations*

In 2006, the Court was presented with a case that challenged the fairness of the "assumption of risk" rationale. In *Georgia v. Randolph*,¹⁰⁴ the Supreme Court considered whether it is reasonable for police to enter the premises when they are confronted with one occupant who consents to a search of the home and another who expressly refuses consent.¹⁰⁵ Scott Randolph, his wife Janet, and their minor son lived together in Americus, Georgia.¹⁰⁶ Approximately two months prior to the incident giving rise to the case, the Randolph's separated, and Janet and their son went to live with her parents in Canada.¹⁰⁷ Janet returned to the residence she had shared with Scott in July 2001.¹⁰⁸ On July 6, 2001, Janet called police to report a domestic argument she and Scott had had, after which Scott had taken their son away.¹⁰⁹ When police arrived at the house, Janet told police about their marital problems and reported that Scott was a cocaine user.¹¹⁰ She also informed police that she had just returned days earlier from her parents' residence after being away for several weeks.¹¹¹ During Janet's discussion with police, Scott returned to the house with their son, explaining that he had taken his son to a neighbor's house to prevent Janet from taking the boy back to Canada.¹¹² In the presence of the police officer, Scott denied using cocaine

¹⁰² *Id.* at 188–89 (quoting *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968)).

¹⁰³ See *United States v. Kimoana*, 383 F.3d 1215, 1222 (10th Cir. 2004); see, e.g., *United States v. Whitfield*, 939 F.2d 1071, 1075 (D.C. Cir. 1991) (holding that, without further inquiry, police could not rely on mother's consent to search of defendant son's bedroom where defendant was twenty-nine years old).

¹⁰⁴ 547 U.S. 103 (2006).

¹⁰⁵ *Id.* at 106.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 107.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

and stated that, in fact, Janet abused drugs and alcohol.¹¹³ Janet claimed that there was evidence of drug activity in the house.¹¹⁴ Officer Murray then turned to Scott and asked him for permission to search the house; Scott "unequivocally refused."¹¹⁵ The officer then asked Janet for consent to search the house, which she "readily gave."¹¹⁶ Janet led the officer upstairs to what she identified as Scott's bedroom, where the officer noticed a drinking straw with a white powdery substance that he suspected was cocaine.¹¹⁷ The officer seized the straw, which was then used to obtain a search warrant; after executing the warrant, police conducted a further search of the home, seizing evidence sufficient to indict Scott Randolph for possession of cocaine.¹¹⁸

The Supreme Court's decision in *Randolph* resolved a split among circuits concerning whether one occupant may grant valid consent to police over the objection of a co-occupant who is present.¹¹⁹ The *Randolph* Court found that the physically present occupant's refusal overrode the other co-occupant's consent, thereby rendering the police's entry and subsequent search unlawful.¹²⁰ Justice Souter, writing for the majority, stated that "customary social understanding" should determine whether an officer reasonably may reasonably rely on the consent of one occupant over the refusal of another.¹²¹ The question to be answered is not whether the consenting tenant is divested of his property right by the objection of the other tenant¹²²; rather, the question is whether it is reasonable for the police to rely on one tenant's affirmative response while simultaneously ignoring the objection of a second tenant who possesses equal rights to the property.¹²³ The Court answered this question in the negative: it is not reasonable for a visitor to think he has permission to enter a domicile when a physically present tenant unequivocally refuses him entry.¹²⁴ According to the majority, the logical conclusion that any reasonable person should deduce from this situation is that he should not go inside.¹²⁵

113 *Id.*

114 *Id.*

115 *Id.*

116 *Id.*

117 *Id.*

118 *Id.*

119 *Id.* at 108 n.1.

120 *Id.* at 122–23.

121 *Id.* at 121.

122 *Id.*

123 *Id.* Thus, Janet Randolph's preferences do not carry any greater or lesser weight than Scott Randolph's preferences regarding who may enter their shared premises.

124 *Id.* at 113. "To begin with, it is fair to say that a caller standing at the door of shared premises would have no confidence that one occupant's invitation was a sufficiently good reason to enter when a fellow tenant stood there saying, 'stay out.'" *Id.*

125 *Id.*

The focus on social expectation signals a departure from earlier third-party consent cases.¹²⁶ *Georgia v. Randolph* articulates a new standard for assessing when an officer may reasonably rely on the consent of another occupant.¹²⁷ This new test has direct bearing on parent-child coresidence and the validity of the “presumption of parental control.” The third-party consent doctrine has always required that, when facts and circumstances should reasonably cause one to doubt the scope of a consenting occupant’s authority, police must ask questions to determine the third party’s precise relationship to the area to be searched.¹²⁸ Adult children living with their parents, and vice versa, should not be an exception to the rule.¹²⁹ First, none of the rationales justifying superior authority for a parent in a consent-search are legally applicable once the child reaches the age of majority. The rationale for the “presumption of parental control” is tied to the understanding that parents are responsible for the care, custody, and well-being of their minor children, which includes superseding the privacy interest of a minor’s physical space.¹³⁰ But when a parent is residing with her adult child—for example a thirty-something recently unemployed lawyer—the rationale for applying the

¹²⁶ Cf. *supra* Part II; *United States v. Matlock*, 415 U.S. 164, 171 (1974) (holding that the consent of one who possesses common authority over the premises is valid against the absent co-occupant); *Illinois v. Rodriguez*, 497 U.S. 177, 182–83 (1990) (holding that if officer reasonably relies on consent given by third party without common authority, consent may be valid against absent co-occupant).

In his dissent in *Randolph*, Chief Justice Roberts criticizes the ambivalence of the rule advanced by the majority and the way it departs from prior precedent regarding assumption of risk. See *Randolph*, 547 U.S. at 128 (Roberts, C.J., dissenting). Chief Justice Roberts finds discord with the majority’s conception of “widely shared social expectations” because, as he puts it, when two parties are left to decide the use of their common quarters, it is often difficult for them to come to a clear-cut agreement. *Id.* at 129. As Chief Justice Roberts succinctly puts it, we are left with a “common stalemate of two gentlemen insisting that the other enter the room first.” *Id.* Thus, according to the Chief Justice, it is difficult for the analysis to be decided on which party has more authority to consent, because a rule based primarily on social expectations will differ with varying social situations. *Id.* For example, a guest who has traveled a long distance to meet one of the cotenants would not be as inclined to turn away at the objection of the other tenant. The variety of social situations and “shifting expectations are not a promising foundation on which to ground a constitutional rule.” *Id.* at 129–30.

¹²⁷ See Monique N. Bhargava, *Protecting Privacy in a Shared Castle: The Implications of Georgia v. Randolph for the Third-Party Consent Doctrine*, 2008 U. ILL. L. REV. 1009 (2008); Tom B. Bricker, *Bad Application of a Bad Standard: The Bungling of Georgia v. Randolph’s Third-Party Consent Law*, 44 VA. U. L. REV. 423 (2010); Russell Gold, *Is This Your Bedroom? Reconsidering Third Party Consent Searches Under Modern Living Arrangements*, 76 GEORGE WASH L. REV. 375 (2008); Daniel E. Pulliam, *Post-Georgia v. Randolph: An Opportunity to Rethink the Reasonableness of Third-Party Consent Searches Under the Fourth Amendment*, 43 IND. L. REV. 237 (2009).

¹²⁸ See *infra* Part IV.

¹²⁹ See *Martin v. United States*, 952 A.2d 181, 187–88 (D.C. Cir. 2008) (finding that a parent-adult child household does not reflect a recognizable hierarchy that should infringe upon the adult child’s expectation of privacy).

¹³⁰ See *supra* notes 9–10.

presumption is misplaced.¹³¹ Here, it is reasonable to expect that the adult child and parent may have an existing agreement regarding the rooms in the home that are jointly occupied and those that are for the exclusive use of one occupant.¹³² These arrangements should be honored by police and upheld by the courts. Second, presuming that parents have superior authority to consent exempts the police from inquiring about the parents' right of access to the space the police want to search. Given the proliferation of multigenerational households, permitting police to refrain from asking questions to ascertain the privacy arrangement between parent and adult child will lead to constitutionally unjust results.

B. Shifting Social Norms and the Proliferation of Multigenerational Households

Experts predict that multigenerational coresidence rates will continue to rise as long as unemployment and medical costs remain high, and those affected by the foreclosure crisis are unable to afford homes.¹³³ As a result of these social and economic conditions, police will encounter multigenerational living arrangements with greater frequency. As borne out by case law, police will often encounter rooms in homes that are occupied and controlled exclusively by an adult child.¹³⁴ Sometimes these rooms will be locked and only the adult child will possess the key,¹³⁵ and other times there may be a tacit agreement between parent and child as to the conditions under which the parent may enter.¹³⁶ Facts and circumstances that indicate whether there was a reasonable expectation that a parent would not enter the room without the child's permission often are dispositive regarding the actual authority to consent.¹³⁷

¹³¹ The news is replete with stories of adults who have lost their jobs within the past three years due to the recession and gone through all their savings trying to stay afloat while looking for alternative employment. In the end, many of these people have returned to live with their parents. See e.g., Tim Chapman, *Issues Arise When Adult Children Move Back Home*, RICHMOND TIMES-DISPATCH, July 18, 2010; Freddie deBoer, *Tough Job Market Forces Families Into Multigenerational Living*, AARP BULL. (Apr. 3, 2009), available at <http://www.aarp.org/home-garden/housing/info-04->; Laura Koss-Finder, *Bunking In With Mom and Dad*, TIME, Mar. 2, 2009, at 45.

¹³² See discussion *infra* Part IV.

¹³³ See Sharon Sassler et al., *Are They Really Mama's Boys/Daddy's Girls? The Negotiation of Adulthood upon Returning to the Parental Home*, 23 SOC. FORUM 670, 673 (2008); Owens, *supra* note 23.

¹³⁴ See, e.g., *State v. Vinuya*, 32 P.3d 116 (Haw. Ct. App. 2001).

¹³⁵ See, e.g., *State v. West*, 514 S.E.2d 257 (Ga. Ct. App. 1999).

¹³⁶ See, e.g., *State v. Carsey*, 664 P.2d 1085 (Or. 1983) (unspoken agreement that defendant's room was under his exclusive control.); *State v. Jenkins*, 39 P.3d 868 (Or. Ct. App. 2002) (adult son having made oral agreement with parents that garage area was his); *Commonwealth v. Basking*, 970 A.2d 1181 (Pa. Super. Ct.), *appeal denied*, 986 A.2d 148 (Pa. 2009).

¹³⁷ See *United States v. Howard*, 984 F. Supp. 31, 34 (D.D.C. 1997) (holding that the defendant had a genuine privacy interest in his bedroom as a result of the fact that he paid rent

For example, in *State v. Cambre*,¹³⁸ the court held that parents had the authority to consent to a search of their son's bedroom because their son did not pay rent and only made a limited financial contribution to the household.¹³⁹ Furthermore, the son's bedroom door was not locked and the parents had full access to the room.¹⁴⁰

Similarly in *United States v. Austin*,¹⁴¹ the stepfather of the twenty-five-year-old defendant gave consent for police to search the third floor of his house where the defendant lived.¹⁴² The record details the parents' relationship to the premises, especially the area occupied by the defendant.¹⁴³ The defendant paid rent, although it is uncertain how much and how consistently.¹⁴⁴ The defendant's mother and stepfather owned the furniture in the room.¹⁴⁵ The storage room across the hall from the bedroom was used by the family.¹⁴⁶ There were no locks or other obstacles preventing access to the third floor, and the stepfather was not prohibited from going to the third floor.¹⁴⁷ The defendant's mother visited the defendant in his room and testified that she and the stepfather often searched the room for drugs.¹⁴⁸ Thus, the court found that the stepfather's consent to search the room was valid.¹⁴⁹

Whether the police have asked sufficient questions to establish the basis for a third party's consent to search an area used by the suspected-criminal often hinges on the third party demonstrating sufficient access and use of the bedroom. In *State v. Vinuya*,¹⁵⁰ the Hawaii Intermediate Court of Appeals considered the validity of a mother's consent to the search of her son's locked bedroom.¹⁵¹ Although items seized in the common rooms could be admitted into evidence, items from the defendant's—an emancipated adult—bedroom could not,¹⁵² as his parents had

and reasonable expected that no other member of the family was allowed to enter without reason); *Pearson v. State of Texas*, No. 06-07-00043-CR, 2007 WL 4355269, at *4 (Tex. App. Dec. 14, 2007) (holding that it was not objectively reasonable for the police to conclude that the mother had authority to consent to a search of the building mother owned but defendant-son stayed in and when they did not have a key or access to the building).

¹³⁸ 902 So. 2d 473 (La. Ct. App. 2005).

¹³⁹ *Id.* at 484.

¹⁴⁰ *Id.*

¹⁴¹ Nos. 94-4220, 94-4238, 94-4278, 1996 WL 109500 (6th Cir. Mar. 11, 1996).

¹⁴² *Id.* at *3.

¹⁴³ *Id.* at *3-4.

¹⁴⁴ *Id.* at *3.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at *4.

¹⁵⁰ 32 P.3d 116 (Haw. Ct. App. 2001).

¹⁵¹ *Id.* at 122-24.

¹⁵² *Id.* at 129-30.

completely ceded their use of the bedroom to him.¹⁵³ The court suppressed the evidence seized from the defendant's bedroom.¹⁵⁴

Similarly, the Oregon Supreme Court invalidated a police search of an adult grandchild's bedroom in his grandparents' house predicated upon the consent of the grandmother without any inquiry into her access to the bedroom.¹⁵⁵ In this case, the defendant occupied a bedroom in his grandparents' home for which he paid nominal rent; did his own cleaning and washing, and neither grandparent ever went into defendant's room, except to alert him that a meal was ready.¹⁵⁶ The court invalidated the search on grounds that the police failed to adequately inform themselves as to the grandmother's use, access, and control of the defendant's room.¹⁵⁷ In another case, the defendant's mother told the police that she had free access to the defendant's bedroom and consented to a search of the bedroom, but refused to sign a consent form.¹⁵⁸ Since the defendant did not pay rent, the trial court upheld the validity of the police's search.¹⁵⁹ The D.C. Circuit Court of Appeals reversed his conviction because the police's "superficial and cursory questioning" of the mother did not establish mutual use as required by *Matlock*;¹⁶⁰ the court also noted that a parent-child relationship was insufficient to show mutual use when the child is an adult.¹⁶¹ The cases discussed above provide examples of the type of inquiry police should conduct before relying upon the consent of the parent or other third party. If police officers were aware of the actual living arrangements between an adult child and her parents, the reasonableness inquiry becomes more transparent. After

¹⁵³ *Id.* at 131–32. "At the time of the search, Vinuya was twenty-three years old—hardly a minor by any stretch of the imagination. Also, Vinuya was employed as a maintenance landscaper, further indication of his emancipation from his parents. In addition, Vinuya had exclusive use of his bedroom, by tacit agreement with his parents and by his practice of locking the door at virtually all times. His parents had, in essence, relinquished their 'common authority' over Vinuya's bedroom, thereby rendering nugatory Mrs. Sardinha's consent to search the room." *Id.*

¹⁵⁴ *Id.* at 132.

¹⁵⁵ *State v. Carsey*, 664 P.2d 1085 (Or. 1983).

¹⁵⁶ *Id.* at 1089.

¹⁵⁷ *Id.* at 1094. "Had the police asked the defendant's grandmother and learned that she and the defendant had no 'joint access or control for most purposes,' the subjective good faith belief that they could make the search if she consented should not avail them, for the factual *Matlock* foundation is lacking. We see no reason for a different result if the police do not ask and proceed upon good faith born of and borne by innocent or deliberate ignorance. Indeed, upholding searches such as this, based upon the subjective good faith of the searching officers, might encourage police to obtain as little pre-search information as possible concerning the consenting party's relationship to the defendant and to their common use, access, or control of the premises to be searched." *Id.*

¹⁵⁸ *United States v. Whitfield*, 939 F.2d 1071, 1073 (D.C. Cir. 1991).

¹⁵⁹ *Id.* at 1072.

¹⁶⁰ *Id.* at 1075.

¹⁶¹ *Id.*

Randolph, police and judicial reliance on the presumption of parental control is not justified, making these inquiries legally necessary.

Moreover, the cases finding parental consent inadequate are the exception, not the rule. More often courts validate parental consent on far less information than was present in the cases discussed above. For example, courts have upheld parental consent to a search of a defendant's bedroom in cases where the police witnessed some act by the parent or grandparent that established the reasonableness of assuming joint access and use of the bedroom.¹⁶² In one case, the defendant's mother consented to a police search of her nineteen-year-old's bedroom by procuring a key to open the door.¹⁶³ Although the police did not inquire about the mother's access to the bedroom of her son (who lived there rent free), the Georgia Court of Appeals held that the mother's consent was valid because she had a sufficient relationship to the premises, based on the living arrangement.¹⁶⁴ Similarly, in another case the police were not required to question a defendant's grandmother before searching the defendant's bedroom when they simply followed her into the bedroom as she organized it—her actions demonstrated that she had apparent authority to consent to the search.¹⁶⁵ The outcome of these cases did not hinge on the depth of inquiry by the police officers because the mother's and grandmother's conduct communicated to the police that they had sufficient access to the respective defendants' bedrooms.

The increase in coresidence between parents and their adult children, along with the variety of privacy agreements into which they enter, ought to put police on notice that the parent may not have joint access or mutual use of the adult child's room. The Fourth Amendment apparent authority doctrine does not require the police to always be correct, but it requires that they act reasonably in their assessment of whether they have authorized consent.¹⁶⁶ It runs afoul of constitutional protections and contrary to contemporary social norms for police to presume that parents have the authority to consent to a search of the bedroom of an adult child with whom they reside. None of the rationales, which permit a parent's consent to trump a child's expectation of privacy, are legally applicable once the child becomes an adult. In order to comply with the *Randolph*-social-expectation standard, police must make a reasonable effort to learn

¹⁶² *E.g.*, *State v. West*, 514 S.E.2d 257, 257 (Ga. Ct. App. 1999); *People v. Manuel*, No. 215677, 2000 WL 33424357 at *2 (Mich. Ct. App. Apr. 21, 2000).

¹⁶³ *West*, 514 S.E.2d at 257.

¹⁶⁴ *Id.* at 258. The dissent vehemently argued that the majority had misapplied *Matlock* and that Supreme Court did not intend "the law of property to govern the other category it created, i.e., 'sufficient relationship' else the latter would swallow up 'common authority' as defined and make it superfluous." *Id.* at 261 (Beasley, J., dissenting).

¹⁶⁵ *Manuel*, 2000 WL 33424357 at *2.

¹⁶⁶ *See Illinois v. Rodriguez*, 497 U.S. 177, 183–84 (1990).

what the privacy arrangement is between parent and adult child in respect to the adult child's bedroom.¹⁶⁷ Presuming parental access or control falls short of what *Randolph* requires.

Nevertheless, numerous courts have upheld parental consent merely on the virtue of parental status, regardless of the age of the child. In *State v. Miller*,¹⁶⁸ the defendant was twenty-six years old and living in the basement of his father's home.¹⁶⁹ The defendant did not pay rent, there was a lock on the bedroom door (which was generally unlocked), there was a backdoor entrance to the house that the defendant occasionally used, and other family members could enter the defendant's bedroom.¹⁷⁰ The defendant was not present when the police requested consent and the father gave his consent to search the home—including the son's bedroom.¹⁷¹ The court stated that the police were not required to seek the defendant's consent instead of the father's.¹⁷² According to the court, the parent, as homeowner, has both control over her home and an interest in prohibiting contraband from being used or stored in the home.¹⁷³ Even though the defendant was an emancipated child, there was no understanding or agreement between him and his father with respect to the defendant's expectation of privacy, thus the defendant assumed the risk that his father would consent to a search of his bedroom.¹⁷⁴

It is widely recognized that a person living with others assumes the risk that her cotenants may admit visitors onto the premises during her absence.¹⁷⁵ Equally recognized, however, is that the third party's consent is limited to common areas and areas under her exclusive control.¹⁷⁶ This Article is concerned with the courts' assessment of when it is reasonable for an officer to believe the third party has joint access or mutual use of the adult child's bedroom or any area not typically identified as a "common area"—like, living rooms, kitchens, and hallways. To be sure, it is not reasonable to expect police officers to inquire about the possible existence of an unconventional arrangement between tenants before val-

¹⁶⁷ See *Georgia v. Randolph*, 547 U.S. 103, 111 (2006).

¹⁶⁸ 799 A.2d 462 (Md. Ct. Spec. App. 2002).

¹⁶⁹ *Id.* at 463–64.

¹⁷⁰ *Id.* at 464.

¹⁷¹ *Id.*

¹⁷² *Id.* at 468.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *United States v. Matlock*, 425 U.S. 164, 171 (1974). Turning to *Matlock* as an example, the Court observed that a common understanding of a woman answering the door of a residence holding a baby is that she likely lives there, perhaps with her child and possibly with others not physically present. It is reasonable to assume that she has authority to admit visitors, and that she may permit a search of any common areas within the residence. *Id.* at 172 n.7.

¹⁷⁶ *Id.*

idly relying upon the consent of the present occupant.¹⁷⁷ Justice Souter uses as an example of an atypical arrangement between co-occupants with an agreement under which one occupant may not admit a guest onto the premises without the consent of all occupants.¹⁷⁸ Not only is such an arrangement highly unusual, but it is also relatively undetectable to an unsuspecting caller.¹⁷⁹ Moreover, a tacit agreement, like this one, stands in stark contrast to the presence of multiple bedrooms or separate work quarters, which signals that multiple people may occupy the residence and that these rooms are likely to be under the exclusive possession of one or more of the other occupants.¹⁸⁰ Consequently, a well-articulated rule that instructs police to inquire into the parent's relationship to the areas to be searched when an officer encounters a parent and adult child living together leaves no room for speculation about the existence of such unconventional arrangements between occupants. The apparent authority doctrine seeks to strike a balance between an onerous requirement on police and reasonable reliance. A bright-line rule with respect to adult child and parent coresidence strikes the right balance.

III. ADULT CHILDREN AND PARENTS LIVING TOGETHER IS NOT AN ATYPICAL LIVING ARRANGEMENT

The Fourth Amendment third-party consent doctrine must respond to the changing composition of family households in the twenty-first century. Just as any other body of law needs to be flexible in its application to circumstances that postdate its enactment, so too should the third-party consent doctrine accommodate current demographics. Police encounter a multiplicity of living arrangements when searching homes, serving warrants, and conducting other forms of police business. Two issues illuminate the issue of apparent authority today: first, there are more households occupied by adult children and their parents, and second, after *Randolph*, police may not reasonably presume that a parent has dominion over all rooms and property in the residence merely because she resides there.

¹⁷⁷ See *Georgia v. Randolph*, 547 U.S. 103, 112 (2006).

¹⁷⁸ *Id.* at 111.

¹⁷⁹ *Id.*

¹⁸⁰ See, e.g., *United States v. Whitfield*, 939 F.2d 1071 (D.C. Cir. 1991). There, the mother consented to a search when the defendant's twenty-nine-year-old son was not present. The court found that the police agents could not reasonably have believed the mom had authority to consent to the search because they did not have enough information to make that judgment. The defendant's bedroom was not a common area. The court places the burden of inquiring about mutual use by the person giving consent on the government. If the police do not ask enough questions, or if they cannot determine from the information that the person consenting has apparent authority, then warrantless entry is unlawful. Just because there was a parent-child relationship is not dispositive of whether the mom had authority to consent. See *id.* at 1074.

A. *Historical Background*

The structure of American families has changed dramatically over the past 150 years. One of the most significant changes is the shift from a multigenerational household to that of a smaller, "nuclear family."¹⁸¹ Social scientists have posited various theories for this change including the decline of the agrarian economy and the emergence of an industrialized society.¹⁸² Ownership of land became less determinative of wealth as more American workers came to depend on wages for their livelihood.¹⁸³ Accumulation of wages and earned income supplanted family farming as the primary economic force shaping family structures.¹⁸⁴ Men and women were no longer tied to an agricultural way of life, leading many to leave their families in search of industrial jobs in city centers.¹⁸⁵

This watershed in the economics of family life brought about a number of other changes, which, in turn, precipitated further shifts in family structure. For example, the emergence of new job opportunities meant higher wages and a chance for independence by moving away from home to an urban center.¹⁸⁶ The expansion of the American educational system also effected changes in family structure.¹⁸⁷ The correlation between one's education and more highly skilled jobs became more pronounced.¹⁸⁸ Children began to spend less time on the farm and were more likely to pursue higher paying jobs in more urban areas.¹⁸⁹ American society also saw a fundamental change in gender roles as opportunities grew for women in the workplace.¹⁹⁰ Wage labor provided a way for women to live independently, away from farms controlled by their fathers, husbands, or sons.¹⁹¹ The paradigms of family life also began to shift as the process of leaving home became associated with transitioning to adulthood.¹⁹² Marriage was no longer the driving force behind leav-

¹⁸¹ Approximately 70% of persons aged sixty-five or older lived with their children or children-in-law during the mid-nineteenth century as compared with about 58% in 1920 and 10–20% in 1990. Steven Ruggles, *Multigenerational Families in Nineteenth-Century America*, 18 CONTINUITY & CHANGE 139, 142 fig.1 (2003).

¹⁸² *See id.* at 148–49.

¹⁸³ *Id.* at 161–62.

¹⁸⁴ *Id.* at 148–49.

¹⁸⁵ *Id.* at 161–62.

¹⁸⁶ *Id.*

¹⁸⁷ Steven Ruggles, *The Decline of Intergenerational Coresidence in the United States, 1850 to 2000*, 72 AM. SOC. REV. 964, 968 (2007).

¹⁸⁸ *Id.* at 969.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 985.

¹⁹¹ *Id.*

¹⁹² Nicholas Buck & Jacqueline Scott, *She's Leaving Home: But Why? An Analysis of Young People Leaving the Parental Home*, 55 J. OF MARRIAGE & THE FAMILY 863, 863 (1993).

ing the family home.¹⁹³ Instead, youth began to establish lives away from their immediate family members as an expression of independence.¹⁹⁴

By the time the Supreme Court first considered the third-party consent doctrine in the 1960s, the pathway to independent living was established for young adults.¹⁹⁵ Among white, middle class American families, residential independence was viewed positively as an indicator of the physical and emotional maturity normally associated with “adulthood.”¹⁹⁶ The trend away from multigenerational households minimized the need for police or the courts to be concerned with the privacy expectation of adult children living with their parents. Third-party consent cases that came before the courts predominantly involved domestic partners, hotel clerks, and overnight guests.¹⁹⁷

On the other hand, among particular racial and ethnic groups, multigenerational coresidence is far more common.¹⁹⁸ According to the Pew Research Center’s analysis of data from the 2008 American Community survey, Asians, Blacks, and Hispanics, respectively, are all significantly more likely than whites to live in multigenerational family household.¹⁹⁹

¹⁹³ Frances K. Goldscheider & Julie DaVanzo, *Pathways to Independent Living in Early Adulthood: Marriage, Semi-Autonomy, and Premarital Residential Independence*, 26 DEMOGRAPHY 597, 597–98 (1989). Although marriage is no longer one of the major driving forces it still remains a factor in leaving the parental home. *Id.* at 998. Once children reach the age of majority, they marry, produce offspring, and become the heads of their own households. See Naomi Gerstel & Natalia Sarkisian, *Till Marriage Do Us Part: Adult Children’s Relationship With Their Parents*, 70 J. OF MARRIAGE & THE FAMILY 360, 360 (2008) (“[M]arriage serves as a key lynchpin for social ties.”).

¹⁹⁴ Goldscheider & DaVanzo, *supra* note 193, at 598.

¹⁹⁵ Richard A. Settersten, Jr. & Barbara Ray, *What’s Going on With Young People Today? The Long and Twisting Path to Adulthood*, 20 FUTURE OF CHILDREN 19, 21 (2010).

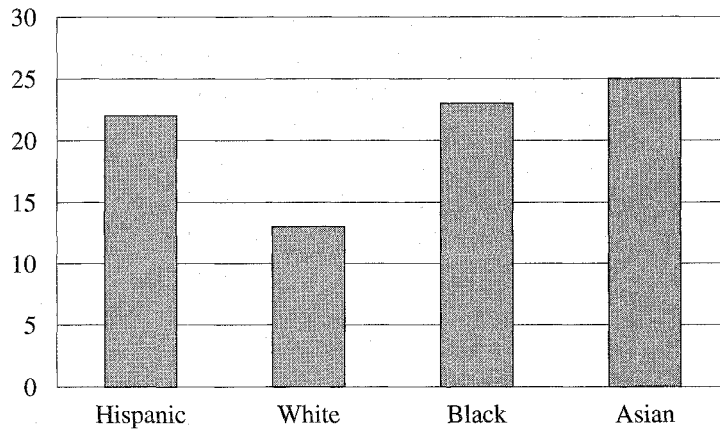
¹⁹⁶ Sassler et al., *supra* note 132, at 670–76; see also Settersten, *supra* note 195, at 22 (“Today, more than 95 percent of Americans consider the most important markers of adulthood to be completing school, establishing an independent household, and being employed full-time . . .”).

¹⁹⁷ See, e.g., *Minnesota v. Olson*, 495 U.S. 91 (1990); *United States v. Matlock* 415 U.S. 164 (1974); *Stoner v. California*, 376 U.S. 483 (1964).

¹⁹⁸ Philip N. Cohen & Lynne M. Casper, *In Whose Home? Multigenerational Families in the United States, 1998–2000*, 45 SOC. PERSPS. 1, 16 (2002).

¹⁹⁹ PEW RESEARCH CENTER, *THE RETURN OF THE MULTI-GENERATIONAL FAMILY HOUSEHOLD* (2010), available at <http://pewsocialtrends.org/2010/03/18/the-return-of-the-multi-generational-family-household>.

SHARE OF POPULATION IN MULTI-GENERATIONAL FAMILY HOUSEHOLD
BY RACE/ETHNICITY 2008 (%)²⁰⁰

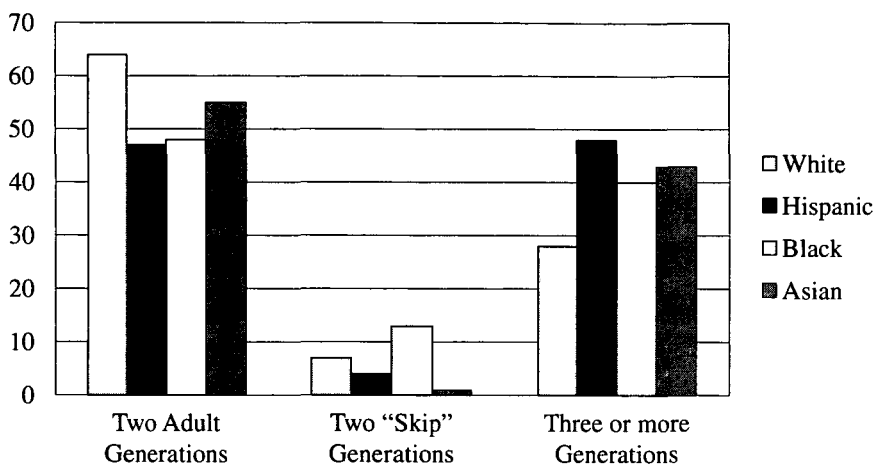


Among Latinos living in multigenerational family households, 48% reside in a three-generation household; 47% reside in a two-generation household; and 4% live in a “skipped generation” household.²⁰¹ By comparison, among the 13% of whites living in multigenerational family households, 64% live in a two-generation household; 28% are in a three-generation household; and 7% are in a skipped generation household.²⁰²

²⁰⁰ Pew Research Center Analysis of 2008 American Community Survey. For the purposes of this chart, Hispanics are of any race; white, black and Asian include only non-Hispanics.

²⁰¹ *See id.* According to the Pew Research Center, multi-generational family households are defined as follows: “Two generational household: parents (or in-laws) and adult children ages 25 and older (or children-in-law); either generation can “head” the household; three generational household: parents (or in-laws), adult children (and spouse or children-in-law), grandchildren; skipped” generational household: grandparents and grandchildren, without parents (including step-generation).”

²⁰² *See id.*

LIVING ARRANGEMENTS AMONG THOSE IN MULTIGENERATIONAL FAMILY HOUSEHOLDS (%)²⁰³

Although whites make up 63% of the U.S. population, a comparison between the 2000 and 2010 censuses shows a substantial increase in the aggregate population among nonwhites.²⁰⁴ Between 2000 and 2010, the Hispanic population in the U.S. grew 43%.²⁰⁵ Today, Hispanics are the largest minority group in the United States. Over half of America's cities are nonwhite,²⁰⁶ making multigenerational households even more relevant to the nation's urban police forces. In 2010, fifty-eight of the one-hundred largest metro areas were mostly nonwhite, compared to forty-three cities in 2000, and twenty-five cities in 1990.²⁰⁷ Seventy-three of the one-hundred largest metro areas lost white residents to exurban areas outside of suburbia between 2000 and 2010.²⁰⁸ Across all cities in 2010, 41% of residents were white, 26% were Hispanic, and 22% were black.²⁰⁹

Cultural preferences for coresidence explain, in part, high rates of multigenerational coresidence among non-white ethnic and racial groups. For instance, traditional gender and family roles are reinforced in Hispanic groups; thus, there is more reliance on extended family net-

²⁰³ Pew Research Center Analysis of 2008 American Community Survey.

²⁰⁴ WILLIAM H. FREY, *MELTING POT CITIES AND SUBURBS: RACIAL AND ETHNIC CHANGE IN METRO AMERICA IN THE 2000s* 1-5 (Brookings Institution 2011).

²⁰⁵ JEFFREY S. PASSEL & D'VERA COHN, *CENSUS 2010: 50 MILLION LATINOS HISPANICS ACCOUNT FOR MORE THAN HALF OF NATION'S GROWTH IN PAST DECADE* 1 (Hispanic Pew Research Center 2011), available at <http://pewhispanic.org/files/reports/140.pdf> (last visited Sept. 8, 2011).

²⁰⁶ WILLIAM H. FREY, *supra* note 204, at 1-5.

²⁰⁷ *Id.* at 5.

²⁰⁸ *Id.* at 6.

²⁰⁹ *Id.* at 1-5.

works.²¹⁰ Some scholars suggest that immigrant families are less likely to value independence and privacy than residents born in the United States.²¹¹ Likewise, a sense of obligation to support elderly parents, who are recent immigrants, may play a larger role in groups with more recent immigration histories, such as Hispanics or Asians.²¹² Newly arrived immigrants may also lack extra-familial social networks and thus may depend more on relatives for support.²¹³ According to one prominent social scientist, "Nearly 14% of all Asians and 12% of Central/South Americans appear to be financially dependent on a coresident adult child."²¹⁴ Often a combination of factors, including economic hardship, low levels of education, higher unemployment, and lack of citizen status, necessitate these groups' intergenerational coresidence upon their arrival to the United States.²¹⁵

Other scholars have suggested a structural explanation for differences in multigenerational coresidence among minorities. According to Christie D. Batson, "The primary structural causes of such differences include variations in socioeconomic status, immigration, marriage patterns, and health status."²¹⁶ Families with higher socioeconomic statuses are more likely to exchange financial support, whereas those with fewer financial resources tend to exchange practical help—such as residency.²¹⁷ Additionally, higher rates of single-parent mothers among African-American women and lower income among African-American men cause higher rates of coresidence in the African-American community.²¹⁸ African-American individuals are also more likely to live in households with their grandparents.²¹⁹

Regardless of the underlying explanation of the theory on the prevalence of multigenerational households among minority groups, the presumption of parental control allowing police search has had a

²¹⁰ Yoshinori Kamo, *Racial and Ethnic Differences in Extended Family Households*, 43 *SOC. PERSP.* 211, 226 (2009).

²¹¹ Jennifer E. Glick & Jennifer Van Hook, *Parents' Coresidence with Adult Children: Can Immigration Explain Racial and Ethnic Variation?* 64 *J. OF MARRIAGE & THE FAMILY* 241, 242 (2004).

²¹² *Id.*

²¹³ Jimmy M. Sanders & Victor Nee, *Immigrant Self-Employment: The Family as Social Capital and the Value of Human Capital*, 61 *AM. SOC. REV.* 231 (1996).

²¹⁴ Glick & Van Hook, *supra* note 211, at 247.

²¹⁵ Harriet Orcutt Duleep & Mark C. Regets, *Measuring Immigrant Wage Growth Using Matched CPS Files*, 34 *DEMOGRAPHY*, Issue 2, 239–49 (May 1997); see Kamo, *supra* note 211, at 212.

²¹⁶ Batson & Keene, *supra* note 21, at 648.

²¹⁷ *Id.*

²¹⁸ Kamo, *supra* note 210, at 224; Teresa T. Swartz, *Intergenerational Family Relations in Adulthood: Patterns, Variations, and Implications in the Contemporary United States* 35 *ANN. REV. OF SOC.* 191, 204 (2009).

²¹⁹ Esme Fuller-Thomson et al., *A Profile of Grandparents Raising Grandchildren in the United States*, 37 *GERONTOLOGIST* 406, 408 (1997).

comparatively greater intrusion on the expectation of privacy of individuals living in non-white households. The apparent authority doctrine developed assuming the presence of a nuclear household, which, conveniently and neatly aligned both the individual's Fourth Amendment expectation of privacy and a minor's expectation of privacy and autonomy *vis-à-vis* her parents; the apparent authority doctrine did not consider situations where these two interests might not align and thus might under-protect individuals living in non-nuclear, multigenerational households. Since many minorities live in these kinds of households,²²⁰ the apparent authority doctrine is not responsive to their circumstances and needs. In addition to responding to the demographic shift away from the nuclear family, the proposal for diligent policy inquiry when seeking parental consent to search an adult child's room will also remedy the established doctrine's disparate impact on minorities.

B. *Recent Trends in Parent-Adult Child Living Arrangements*

Shifts in family household structure are more cyclical than unidirectional, and they depend on a number of factors, including employment opportunities, financial independence, and costs of alternative living arrangements.²²¹ The steady decline in adult children leaving the family home began in the 1980s, as adult children lived at home longer and were more likely to return after leaving.²²² According to the 2000 United States Census Bureau survey, households consisting of adult children and their parents were the fastest growing household combination, outpacing households of at least three generations by one percent.²²³ Between 1990 and 2000, households consisting of an adult child and her parent grew 33%.²²⁴ In 2000, for example, 42 million Americans were living in family household that contained at least two *adult* generations.²²⁵ Within the past decade, growth of multigenerational family households has accelerated with the downturn in the economy at the end of 2007.²²⁶ Between 2007 and 2008, the number of Americans living in a multigenerational household grew by 2.6 million.²²⁷ By 2008, a record 49 million Americans—16% of the population—were living in a two-

²²⁰ See *supra* notes 198–209 and accompanying text.

²²¹ See, e.g., Ruggles, *supra* note 187, at 968; Sessler et al., *supra* note 132, at 678.

²²² William S. Aquilino, *The Likelihood of Parent-Adult Child Co-residence: Effects of Family Structure and Parental Characteristics*, 52 J. OF MARRIAGE & THE FAMILY 405, 411 tbl.1 (1990).

²²³ HOBBS, *supra* note 20.

²²⁴ *Id.*

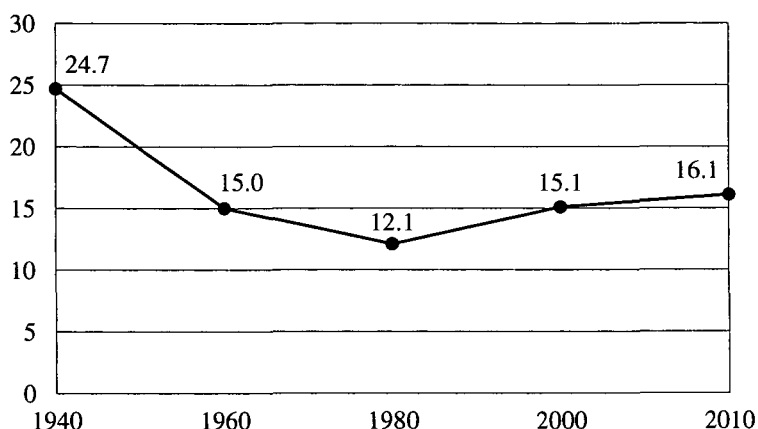
²²⁵ PEW RESEARCH CENTER, THE RETURN OF THE MULTI-GENERATIONAL FAMILY HOUSEHOLD (2010) available at <http://pewsocialtrends.org/2010/03/18/the-return-of-the-multi-generational-family-household>.

²²⁶ See *id.*

²²⁷ See *id.*

adult-generation-family household²²⁸; among those 49 million, 47% were living in a household where the youngest adult generation was at least twenty-five years old.²²⁹ Nearly one in five adults ages twenty-five to thirty-four currently live in a multigenerational household, as do a similar percent of adults ages sixty-five and older.²³⁰

SHARE OF U.S. POPULATION LIVING IN MULTI-GENERATIONAL FAMILY HOUSEHOLDS 1940-2008 (%)²³¹



In 2000, approximately one-third of adult children in their twenties lived with their parents.²³² The number of men aged twenty-five to thirty-four living with their parents has steadily risen since 1997, while the number of similarly-aged females reached historically high levels in 2008.²³³ *Monster.com's* 2010 Annual Entry-Level Job Outlook reports that about 52% of recent college graduates reported that they lived at home, 12% higher than in 2009.²³⁴

²²⁸ See *id.*

²²⁹ See *id.*

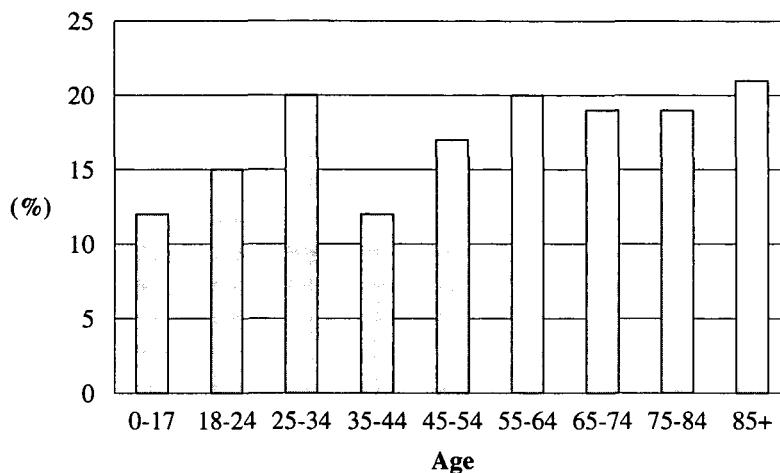
²³⁰ See *id.*

²³¹ Pew Research Center analysis of the United States decennial census data from 1940–2000, and American Community Surveys from 2006–2008.

²³² See Sassler et al., *supra* note 133, at 673 (citing Daniel T. Lichter & Zhenchao Qian, *Marriage and Family in a Multiracial Society*, in *THE AMERICAN PEOPLE: CENSUS 2000* 169, 187 (Reynolds Farley & John Haaga eds., 2004)).

²³³ U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY, 2009 ANNUAL SOCIAL AND ECONOMIC (ASEC) SUPPLEMENT (2009).

²³⁴ See *MONSTER.COM, MONSTER 2010 ANNUAL ENTRY-LEVEL JOB OUTLOOK SURVEY 9* (2010), http://media.monster.com/a/i/intelligence/pdf/2010StateoftheCollegeWorkplace_Spring2010.pdf.

SHARE OF POPULATION LIVING IN MULTI-GENERATIONAL FAMILY HOUSEHOLD BY AGE (%)²³⁵

“Boomerang children” has emerged as the term to describe adult children who return to their parents’ homes after finishing college.²³⁶ In recent years, this has become the most widely studied and acknowledged coresidence model, in part because of the frequent references to the phenomenon in popular culture.²³⁷ Between 1995 and 2003, adult children residing at home with their parents increased 7%.²³⁸ According to a 2009 survey, 13% of parents with grown children report that one of their adult children has moved back home in the past year.²³⁹ These numbers correspond with the notion that, although today’s young adults are more likely than those in the past to leave home to attend college or establish independence, they are also more likely to return home to live with their parents for some period of time.²⁴⁰ Notably, there has been an accelera-

²³⁵ Pew Research Center Analysis of 2008 American Community Survey.

²³⁶ The adult children returning home temporarily to live with their parents following graduation from college, loss of employment, and difficulties finding employment are referred to in the vernacular as “boomerang children.” See Sassler et al., *supra* note 133, at 675 (discussing psychologist Jeffrey Jensen Arnett concept of the “emerging adulthood” as a new life stage for individuals aged between eighteen and the late twenties, where the emerging adult seeks to explore identities and experiment and experiences the accompanying instability). See generally Koss-Finder, *supra* note 131, at 45.

²³⁷ See *id.* at 672. “News stories, movies, and advice books refer to those who remain in or return to the parental home as . . . kids who have ‘failed to launch,’ and generally portray them as contributing little or nothing to the household while benefiting from the provision of domestic tasks such as cooking and laundry.” *Id.*

²³⁸ ROSE M. KREIDER, U.S. CENSUS BUREAU, *YOUNG ADULTS LIVING AT HOME* (2009).

²³⁹ WENDY WANG & RICH MORIN, PEW RESEARCH CENTER, *RECESSION BRINGS MANY YOUNG PEOPLE BACK TO THE NEST: HOME FOR THE HOLIDAYS . . . AND EVERY OTHER DAY* (2009), available at <http://pewsocialtrends.org/files/2010/10/home-for-the-holidays.pdf>.

²⁴⁰ See NEW YORK LIFE INSURANCE COMPANY, *Adult Children Moving Back Home: Don't Let “Boomerang Kids” Derail Your Goals* (Dec. 2, 2010), available at <http://www.new>

tion in the return of boomerang children to their parents' homes as the current recession deepened.²⁴¹ The economic climate poses a considerable challenge for recent college graduates in finding a permanent job that provides sufficient income for them to live independently.²⁴² Frequently, boomerang children pay nominal rent or no rent, and contribute to chores in these households.²⁴³

Boomerang children, however, are not the only adult children who have been forced to live with parents due to the current economic climate. The sheer number of foreclosures over the past five years are staggering. For example, the number of foreclosures soared from 780,000 in 2005 to about 3 million in 2009.²⁴⁴ Recent data shows a slight reduction in foreclosure rates at the end of 2010, with the total number of loans in foreclosure around 2 million.²⁴⁵ The most vulnerable homeowners are often those in their thirties and forties, where foreclosure has forced them to move back in with their parents long after they thought it was likely or possible.²⁴⁶

Similarly, layoffs have affected all age groups, and many workers face an involuntary reduction in hours. According to the Bureau of Labor Statistics, the unemployment level at the end of 2010 hovered around 9.4%.²⁴⁷ Even without widespread foreclosures looming, the ensuing financial pressure that families face often forces them to pool resources

yorklife.com/nyl/v/index.jsp?contentId=13762&vgnextoid=d0bd47bb939d2210a2b3019d221024301cacRCRD.

²⁴¹ See deBoer, *supra* note 131.

²⁴² *Id.* (referring to a study that states that as many as 66% of college graduates plan to move back home, at least briefly upon graduation). Even if the adult children find post-graduate jobs, the cost of living often exceeds their entry level salaries. *Id.*

²⁴³ See Sassler et al., *supra* note 133, at 680–81. The authors discuss their findings regarding the contributions to the household by young adults who have returned to their parents' homes after interviewing thirty such young adults. *Id.* at 680. The respondents almost always returned home for financial reasons and were frequently dependent on their parents, despite having a median annual income of \$17,500. *Id.* Further, the respondents noted that departing their parents' homes would depend on financial security, more secure job prospects, or marriage. *Id.* at 691.

²⁴⁴ Cynthia Angell & Robert M. Miller, FEDERAL DEPOSIT INSURANCE CORPORATION, *Measuring Progress in U.S. Housing and Mortgage Markets*, 4 FDIC Q. 29, 29 (2010), available at http://www.fdic.gov/bank/analytical/quarterly/2010_vol4_1/latest.html.

²⁴⁵ Associated Press, *Foreclosures Weigh on Metro Home Prices*, USA TODAY, Nov. 30, 2010, http://www.usatoday.com/money/economy/housing/2010-11-30-home-prices_N.htm.

²⁴⁶ See Koss-Finder, *supra* note 131, at 45. The article discusses how older adult children are forced to move in with their parents after losing jobs, exhausting funds, and losing their homes. Similarly, in an Op-Ed in the New York Times, an adult child describes his ensuing frustrations after he, along with his fiancée, had to move back into his parents' home when the bank foreclosed on his house. See also Colt Phipps, *Awaiting A Rebound, Back With The Folks*, N.Y. TIMES, Jun. 14, 2009, at BU9.

²⁴⁷ News Release, UNITED STATES BUREAU OF LABOR STATISTICS, *Employment Situation Summary* 8 tbl.A (Feb. 4, 2011), http://www.bls.gov/news.release/archives/empisit_02042011.pdf.

under one roof.²⁴⁸ As a result of the recession, older adult children, often with children in tow, are moving back in with their parents.²⁴⁹

The upward trend in coresidence is not solely due to adult children moving back into their parents' homes. There has been a recent upswing in elderly parents moving in with their adult children and grandchildren after decades of declining rates of three-generational households.²⁵⁰ Since the 1980s, there has been a decrease in institutionalization of the elderly.²⁵¹ As the trend against institutionalization increases, adult children frequently provide care to their elderly parents, including welcoming them into their homes when they develop health problems.²⁵² The economic hardships of independent living also force elderly parents to live with their adult children.²⁵³ As adult children are increasingly involved in the care of their parents, these elderly parents are playing a greater role in the care of their grandchildren than they did one or two generations ago.²⁵⁴ As families are pressed for resources, grandparents

²⁴⁸ In 2010, Greg Kaplan constructed a monthly panel of parent-youth co-residence outcomes and used it to document an empirical relationship between co-residency and individual labor market outcomes. Factors taken into account in this study included labor supply, savings decisions and co-residence frequency. Through econometric methods, Kaplan found that labor market shocks are an important determinant of the dynamics of movements in and out of the parental home. This suggests that a recession as large as the recent foreclosure crisis has the potential to significantly impact American family structure. Greg Kaplan, *Moving Back Home: Insurance Against Labor Market Risk* 1, 2–3 (Fed. Res. Bank of Minneapolis Res. Dep't, Working Paper No. 667, 2010), available at <http://www.minneapolisfed.org/research/wp/wp677.pdf>.

²⁴⁹ See Chapman, *supra* note 131; Phipps, *supra* note 242, at BU9. An Association for the Advancement of Retired Persons (AARP) survey revealed that 11% of people aged 35–44 report living with parents or in-laws. AARP Bulletin, *supra* note 21. The survey also notes that 34% of people surveyed said they likely would have to move in with family or friends due to a loss of income. *Id.* See also Batson & Keene, *supra* note 21, at 652 (“[W]orking adults who experience economic hardship are more likely to seek temporary assistance from family members, most often their parents.”).

²⁵⁰ See Suzanne M. Bianchi et al., *Intergenerational Ties: Alternative Theories, Empirical Findings and Trends, and Remaining Challenges*, in INTERGENERATIONAL CAREGIVING 22–23 (Alan Booth et al., eds. 2008). Moreover, Social Security reform in the future may result in reduced benefits for recipients, which will impact multigenerational households as recipients move in with family members due to increased financial pressures. See Gary V. Engelhardt et al., *Social Security and Elderly Living Arrangements*, 2 J. OF HUM. RESOURCES 354, 368 (2005).

²⁵¹ The percentage of people over seventy-five years old in nursing homes dropped from 9.6% in 1985 to 6.4% in 2004. Sandra Block, *Elder Care Shifting Away From Nursing Homes*, USA TODAY, Feb. 1, 2008, http://www.usatoday.com/money/perfi/eldercare/2007-06-24-elder-care-costs_N.htm.

²⁵² See Bianchi et al., *supra* note 250, at 24–26; see also Aquilino, *supra* note 222, at 406 (“[C]o-residence of elderly parents and their older adult children is attributed to parents’ dependence on children.”).

²⁵³ Batson & Keene, *supra* note 21, at 649.

²⁵⁴ Pat Curry, *Make Room for Mom*, BUILDER, April 6, 2009, <http://www.builderonline.com/demographics/make-room-for-mom.aspx> (noting that 25% of baby boomers expect their parents to move in with them).

often are valuable for their assistance with childcare and household chores.²⁵⁵

When adult children and their parents co-reside, issues of privacy and personal space are paramount. To be sure, some children, regardless of their age, harbor no expectation of privacy while living under their parents' roof, in the rooms they inhabit and the property they keep there. As part of the terms of their tenancy, some are subject to the rules of the house, including parental access to their bedroom and inspection of their belongings. Other adult children may have an arrangement with their parents that resembles a landlord-tenant relationship: the child pays rent to his parents and expects that his bedroom and property will be under his control, free from uninvited parental entry and examination.²⁵⁶ Regardless, the likelihood is that both cohorts of adult children would have their personal space is violated if police, as opposed to their parents, search their room.

Living arrangements among adult children and their parents, which delineate areas to be considered common and areas under the exclusive control of one party, are neither unique, nor just now coming into vogue.²⁵⁷ Designating particular areas of the residence for the exclusive use of either the parent or the child is a common way to maintain both dominion and control over one's property, and privacy in the activities one engages in within that exclusive space.²⁵⁸ No matter their spatial

²⁵⁵ See, e.g., Ying Wang & Dave E. Marcotte, *Golden Years? The Labor Market Effects of Caring for Grandchildren* (Inst. for the Study of Labor Discussion Paper No. 2629, Feb. 2007) (noting the general upswing in grandparents caring for grandchildren, both in their own households and their adult children's households).

²⁵⁶ See, e.g., *Hughes, v. Coconut Creek Police Dep't.*, 233 Fed.Appx. 919, 922 (11th Cir. 2007) (finding a rental where the twenty-four-year-old defendant paid rent, and told father not to allow anyone to enter his room); *United States v. Austin*, Nos. 94-4220, 94-4238 & 94-4278, 1996 WL 109500, at *3-4 (6th Cir. Mar. 11, 1996); *United States v. Howard*, 984 F. Supp. 31, 34 (D.D.C. 1997) (finding a rental where defendant paid rent and no other member of the family was allowed to enter without some explicit reason); *State v. Carsey*, 664 P.2d 1085, 1093 (Or. 1983) (finding that the nineteen-year-old defendant had an unspoken agreement with his grandparents that his room was under his exclusive control); *People v. Mortimer*, 46 A.D.2d 275, 276-77 (N.Y. App. Div. 1974) (characterizing twenty-one-year-old defendant's room as a rental).

²⁵⁷ See, e.g. *People v. Nunn*, 304 N.E.2d 81, 86 (Ill. 1973), *cert. denied*, 416 U.S. 904 (1974) (finding that a mother's consent to search the nineteen-year-old defendant-son's room was invalid as son had a reasonable expectation of privacy in his room); *Becknell v. State*, 720 S.W.2d 526, 528 (Tex. Crim. App. 1986) (holding that the father did not have the authority to consent to the search of his son's bedroom because he did not exercise equal control over and equal use of the premises being searched).

²⁵⁸ *LaFAVE*, *supra* note 15, at § 8.3(a) ("Some portions of premises are shared more than others and in different ways; some are shared wholly and some are not at all. Although the uncle may be careful to ask his niece whether he and his cronies can play gin rummy in the living room, he is not so likely to ask whom he may invite into his own room. He may not expect to be consulted about his niece's invitations generally; but he would be startled if she held a meeting of the garden club in his room. It is not always a matter of rooms. His desk

proximity, a child and her parent are entitled to an expectation of privacy within their coresidence.

IV. SUGGESTED GUIDELINES FOR POLICE INQUIRY DURING CONSENT SEARCHES OF ADULT CHILDREN'S BEDROOMS

As adult children and their parents are residing together in increasing numbers, police need a clear rule to follow when seeking consent from parents to search areas of the home that may be occupied exclusively by an adult child. Presuming parental control or dominion over the residence, simply by virtue of the fact that the third party is the parent, is impermissible. Any time police seek parental consent to search the premises where an adult child lives, police should conduct a thorough inquiry into the parents' relationship to the premises. Children residing at the premises, without benefit of any formal possessory interest therein, have a reasonable expectation of privacy in "essentially the same dimensions" as the owner or lessee of the premises.²⁵⁹ While acknowledging that it is not the burden of police to investigate every conceivable living arrangement that may exist between co-occupants, reasonableness does require that when police request permission from a parent to search a residence occupied by the parent and her adult child, police should be required to determine the scope of authority the parent has over the area to be searched. Strict adherence to a core principle of the Fourth Amendment—that the home is the most sacred of private spaces—should be given full consideration. Common areas must be differentiated from bedrooms and other areas of the home often used exclusively by one occupant.

While it would be untenable to provide a script to police,²⁶⁰ certain areas of inquiry can be identified as having strong bearing on consent determinations. For instance, police should inquire into the existence of any explicit or implicit agreement between the parent and child, concerning access to the child's bedroom or any other area construed to belong

may be in the living room. Nor are the labels on the 'premises' always unequivocal. The niece may regularly enter her uncle's room to clean it and open the drawers in his dresser to put the clothes away, without having discretion to allow others to rummage through his clothes" (quoting Lloyd L. Weinreb, *Generalities of the Fourth Amendment*, 42 U. CHI. L. REV. 47, 60-62 (1974)).

²⁵⁹ See 5 WAYNE LAFAYE, *SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT* § 11.3(a) (3d ed. 1996); see also *Bumper v. North Carolina*, 391 U.S. 543, 548 n.11 (1968) (explaining that the defendant had standing to challenge the lawfulness of the search of the house his grandmother owned in light of the fact that he resided in the house searched); *State v. Reddick*, 541 A.2d 1209, 1213 (Conn. 1988) (holding that an adult child living permanently or staying temporarily within the parental home has a reasonable expectation of privacy in that home).

²⁶⁰ Cf. *Duckworth v. Egan*, 492 U.S. 195, 203 (1989) (holding that there is not specific script for *Miranda* warnings).

to the resident child. As this Article has illustrated, it is fairly typical for adult children and their parents to make formal or informal agreements about whether the parent may enter the bedroom when the child is not home.²⁶¹ Likewise, parents and their adult children may have a contractual arrangement, much like that between a lessor and lessee, setting forth the terms and conditions of the tenancy-contemplating monetary payment and possibly parental access to the child's room.²⁶² Police should acknowledge visible signs denoting privacy, such as locks, and inquire who placed them there and for what purpose. Because reasonable but erroneous beliefs concerning consent may still validate the search, police must diligently inquire into the nature of the parent and child's arrangement concerning access and entry to the area to be searched. In addition, police should base their conclusion of actual authority on the readily discernable facts, not assumptions or impressions.²⁶³

Uncertainty about where common areas end and private spaces begin may arise when police search multiple floors of a house. For example, in *United States v. Austin*,²⁶⁴ police searched the third floor of a residence without giving proper consideration to the privacy of the adult child living there.²⁶⁵ A search of a basement bedroom or the top floor of a residence should trigger a more detailed line of questioning designed to assess whether the space is occupied by *only* one person—the adult child. Areas of a residence separated by barriers, such as stairs or a separate entrance, denote exclusivity and should alert police that they need to inquire about the nature and extent of the right to possession and control of the area to be searched by the person giving consent to search.

Such a requirement is not without precedent. If police wanted to search the bedroom of an adult suspect who lived with three other people (each of whom had their own bedrooms), police could not rely on the consent of another co-occupant to search the suspect's bedroom unless it was reasonable to believe that the third party had mutual use of the bed-

²⁶¹ See *supra* Part IV.

²⁶² See, e.g., *Hughes, v. Coconut Creek Police Dep't.*, 233 Fed.Appx. 919, 922 (11th Cir. 2007) (finding relevant that the twenty-four-year-old son had his own key, paid rent, and told father not to allow anyone to enter his room to the rental inquiry); *People v. Mortimer*, 46 A.D.2d 275, 274 (N.Y. App. Div. 1974) (discussing twenty-one-year-old defendant's rental of a room in his parents' home).

²⁶³ See *United States v. Goins*, 437 F. 3d 644, 649 (7th Cir. 2006); *United States v. Waller*, 426 F.3d 838, 846 (6th Cir. 2005), *United States v. Rosario*, 962 F.2d 733, 738 (7th Cir. 1992); *Commonwealth v. Porter P.*, 923 N.E.2d 36, 53 (Mass. 2010).

²⁶⁴ Nos. 94-4220, 94-4238 & 94-4278, 1996 WL 109500 (6th Cir. Mar. 11, 1996). See also *supra* Part III for a discussion of *Austin*.

²⁶⁵ *Id.* at *3-4.

room.²⁶⁶ A diligent police inquiry includes a duty to explore, rather than ignore facts contrary to the third party's claim of authority to consent, along with clarification of ambiguous circumstances.²⁶⁷ Similarly, a hotel guest does not cede his expectation of privacy to the manager to allow anyone other than hotel employees into her room for routine services.²⁶⁸

Notwithstanding the fact that consent is an exception to the Fourth Amendment's warrant requirement, the proper result is to afford adult children living with their parents the same expectation of privacy that they would be entitled to if they lived with an unrelated third party. After all, nothing in this proposal limits the parent from acting on her own initiative and searching the child's bedroom upon suspicion of illegal activity. A parent has the prerogative to deliver whatever evidence she finds in her child's bedroom to the police. The Fourth Amendment is concerned with the actions of government actors, not private citizens acting in their individual capacity.²⁶⁹ The focus of this proposal is on parental consent to allow police to search the adult child's bedroom and, to that end, the concern is over the ease with which police can intrude upon the privacy of adults in their own home by presuming that their parents have authority to consent to a search of the adult child's room."²⁷⁰

²⁶⁶ See, e.g., *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990) (finding no joint access or control where person erroneously giving consent did not have her name on the lease, did not pay rent could not invite others over, and could not access the apartment when the defendant was away); *Minnesota v. Olson*, 495 U.S. 91, 96–97 (1990) (explaining that a person's status as a guest creates a reasonable expectation of privacy, thus consent was required to enter); *United States v. Matlock*, 415 U.S. 164, 180 (1974) (stating that search of a bedroom was permissible where co-occupant of bedroom gave her consent); see also, *In re D.C.*, 115 Cal. Rptr. 3d 837, 983 (Cal. Ct. App. 2010) ("It has been held, outside the parent-child context, that adults sharing a residence but maintaining separate bedrooms do not have the apparent authority to consent to the search of one another's bedrooms, at least when officers have no other information about their living arrangements.").

²⁶⁷ See e.g., *Commonwealth v. Porter P.*, 923 N.E.2d at 53 (Mass. 2010) (requiring "diligent inquiry" by police officer to satisfy apparent authority doctrine); *United States v. Cos*, 498 F.3d 1115, 1129–30 (10th Cir. 2007) (holding that mere presence on premises not sufficient for government to establish claim of apparent authority). For fuller discussion of state constitutional law in the area of third party consent see Lawrence Friedman & David Siegel, *Criminal Law—Emphasizing Privacy of the Home and Limiting Third Party Consent Under the State Constitution* 93 MASS. L. REV. 357 (2011).

²⁶⁸ *Stoner v. California*, 376 U.S. 483, 489 (1964).

²⁶⁹ See, e.g., LAFAYE, *supra* note 15, at § 1.8; see also *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921) (holding that protection against unlawful searches and seizures applies only to governmental action).

²⁷⁰ See *Georgia v. Randolph*, 547 U.S. 103, 116–17 (2006) ("The reliance on a co-tenant's information instead of disputed consent accords with the law's general partiality toward police action taken under a warrant [as against] searches and seizures without one." (quoting *United States v. Ventresca*, 380 U.S. 102, 107 (1965))).

CONCLUSION

America faces great economic uncertainty. With countless numbers of people unemployed and foreclosure rates reaching their highest levels ever, many families are reconsidering multigenerational living as a way to weather the storm. Increasing numbers of adult children are moving back in with their parents. Many of them would expect some degree of privacy and autonomy over their room and belongings. Similarly, parents moving back in with their adult children would expect that they have an equal degree of independence and control over their possessions. The Fourth Amendment, and its counterpart, the Exclusionary Rule, aim to regulate police behavior. A set of guidelines for police to follow when searching the room of an adult child living with her parents will deter police from being willfully ignorant of areas that are under the exclusive control of one occupant, while concomitantly preventing subordination of individual privacy rights. Adult children living with their parents should not have any lesser expectation of privacy than adults who share living quarters with a non-parental occupant. In order to fully accord with what Justice Souter termed "customary social understanding,"²⁷¹ the police inquiry must recognize the changing nature of household composition in the United States. By doing so, parents and adult children alike would be afforded that which they are deserve and are entitled to—the protections of the Fourth Amendment.

²⁷¹ *Id.* at 121.

