Touro Law Review

Volume 9 | Number 3 Article 53

1993

Search & Seizure

fences and "no trespassing" signs around his marijuana field.[1606] The Court declared that neither the fence nor the signs "demonstrate . . . that the expectation of privacy was legitimate in the sense required by the Fourth amendment."[1607] Refusing to follow the *Oliver* open-fields doctrine in this case, the New York Court of Appeals held that where landowners fence or post "no trespassing" signs on their private property, the expectation of privacy and freedom from intrusions is reasonable.[1608] The court of appeals decided that, under New York law, "a greater degree of protection must be given" to the individual than is given under the federal law.[1609]

People v. Keta[1610]
(decided April 2, 1992)

Defendant Keta, owner of a vehicle dismantling operation, claimed that evidence seized by the police during a warrantless administrative search of his business, pursuant to the New York Vehicle and Traffic Law (VTL) section 415-a(5)(a),[1611] violated

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1606. *Id.* at 182.

1607. *Id.*

1608. *Scott*, 79 N.Y.2d at 491, 593 N.E.2d at 1338, 583 N.Y.S.2d at 930.

1609. *Id.*

1610. 79 N.Y.2d 474, 593 N.E.2d 1328, 583 N.Y.S.2d 920 (1992).

1611. N.Y. VEH. & TRAF. LAW § 415-a(5)(a) (McKinney 1986 & Supp. 1993). Section 415-a(5)(a) provides in pertinent part:

> Every person required to be registered pursuant to this section shall maintain a record of all motor vehicles, trailers, and major component parts thereof, coming into his possession together with a record of the disposition of any such motor vehicle, trailer or part thereof and shall maintain proof of ownership for any motor vehicle, trailer or major component part thereof while in his possession. Such records shall be maintained in a manner and form prescribed by the commissioner. . . . Upon request of an agent of the commissioner or of any police officer and during his regular and usual business hours, a vehicle dismantler shall produce such records and permit said agent or police officer to examine them and any vehicles or parts of vehicles which are subject to the record keeping requirements of this section and which are on the premises.

the New York Constitution's[1612] prohibition against illegal searches and seizures.[1613] Because the United States Supreme Court recently rejected a similar challenge to the VTL section 415-a(5)(a) on federal constitutional grounds[1614] in *New York v. Burger*,[1615] Keta based his claim on state constitutional grounds.[1616]

In *Keta*, the New York Court of Appeals refused to follow the standards set by the Supreme Court in *Burger*[1617] because such standards, it decided, would be inadequate in protecting "the basic privacy values embodied in our Constitution."[1618] In departing from the Supreme Court's position on warrantless administrative searches, the court of appeals elected to follow its own view in *People v. Burger*,[1619] which was reversed by the

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Id. See also the analogous provisions of N.Y. CITY CHARTER § 436 (1986). Section 436 states in relevant part:

> The commissioner shall possess powers of general supervision and inspection over all licensed or unlicensed pawnbrokers, vendors, junkshop keepers, junk boatmen, cartmen, dealers in second-hand merchandise and auctioneers within the city; . . . he shall have power to examine such persons, . . . and their books, business premises, and any articles of merchandise in their possession.

Id.

1612. N.Y. CONST. art. I, § 12.

1613. *Keta*, 79 N.Y.2d at 492-93, 593 N.E.2d at 1339, 583 N.Y.S.2d at 931.

1614. U.S. CONST. amend. IV.

1615. 482 U.S. 691 (1987).

1616. *Keta*, 79 N.Y.2d at 492-93, 593 N.E.2d at 1339, 583 N.Y.S.2d at 931.

1617. The *Burger* Court held that "as in other situations of 'special need,' where the privacy interests of the owner are weakened and the government interests in regulating particular businesses are concomitantly heightened, a warrantless inspection of commercial premises may well be reasonable within the meaning of the Fourth Amendment." 482 U.S. at 702 (citation omitted).

1618. *Keta*, 79 N.Y.2d at 498, 593 N.E.2d at 1343, 583 N.Y.S.2d at 935.

1619. 67 N.Y.2d 338, 493 N.E.2d 926, 502 N.Y.S.2d 702 (1986), *rev'd* 482 U.S. 691 (1987). The court of appeals, in *Burger*, stated that "[i]n order to validate a warrantless administrative search, . . . the commercial premises must be part of a pervasively regulated industry and the search itself must be part of a regulatory scheme designed to further an urgent State interest." *Id.* at 343, 493 N.E.2d at 928, 502 N.Y.S.2d at 704.

Supreme Court in *New York v. Burger*. The *Keta* court therefore held that the "administrative search" exception[1620] to the Fourth Amendment's probable cause and warrant requirement did not apply in a case where the exclusive reason for the search is "to uncover evidence of criminality," and the sole purpose behind the statute was "to give the police an expedient means of enforcing penal sanctions."[1621] In so holding, the court of appeals reversed the second department, and reinstated the suppression order originally granted by the supreme court.[1622]

In 1988, a police team from the Auto Crime Division arrived at defendant's vehicle dismantling yard to make a random warrantless inspection pursuant to the VTL section 415-a(5)(a).[1623] After checking the defendant's vehicle dismantler's license, the police randomly searched through the various auto parts located in the yard. Selected vehicle identification numbers were entered by the police into their mobile computer and some of the parts were

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1620. The Supreme Court formulated an exception (now known as the *Colonnade-Biswell* exception) to the warrant requirement in Colonnade Catering Corp. v. United States, 397 U.S. 72 (1969) and United States v. Biswell, 406 U.S. 311 (1972). In *Colonnade*, the Court reversed the defendant caterer's conviction for refusing a federal inspector to inspect stored liquor without a search warrant. The Court held that Congress had broad power "to fashion standards of reasonableness for searches and seizure" with respect to an industry, such as the liquor industry, which is "subject to close supervision and inspection." 397 U.S. at 77. Therefore, "the Fourth Amendment and its various restrictive rules [do not] apply" to administrative search and inspections of a heavily regulated industry. *Id.* Three years later, in *Biswell*, the Court, while conceding that the firearms industry was "not as deeply rooted in history as is governmental control of the liquor industry," declared that the federal government's attempts to prevent crime was of central importance in helping the States to regulate the traffic of firearms. 406 U.S. at 315. The Court stated that in order for the law "to be properly enforced and inspection made effective, inspections without warrant must be deemed reasonable official conduct under the Fourth Amendment." *Id.* at 316.

1621. *Keta*, 79 N.Y.2d at 498, 593 N.E.2d at 1343, 583 N.Y.S.2d at 935 (quoting *Burger*, 67 N.Y.2d at 344, 493 N.E.2d at 929, 502 N.Y.S.2d at 705).

1622. *Id.* at 502, 593 N.E.2d at 1345-46, 583 N.Y.S.2d at 937-38.

1623. *Id.* at 492, 593 N.E.2d at 1339, 583 N.Y.S.2d at 931; N.Y. VEH. & TRAF. LAW § 415-a(5)(a) (McKinney 1986 & Supp. 1993).

discovered from vehicles to have been reported stolen.[1624] The police then requested to see the defendant's "police book," which was supposed to contain records of all auto parts purchases.[1625] After examining the book, the police discovered that the defendant had not recorded the purchases of these suspect parts, and subsequently placed him under arrest.[1626] Afterwards, the police conducted a thorough search of the premises, pursuant to a search warrant, and uncovered thirty-five additional stolen auto parts.[1627]

The defendant was charged with grand larceny, falsifying business records, and "multiple counts of criminal possession of stolen property in the third degree."[1628] Keta moved to suppress the evidence the police had seized during their search arguing that it violated the search and seizure provision of article I, section 12 of the New York Constitution.[1629] The trial court granted the defendant's motion to suppress the evidence seized.[1630] The second department reversed,[1631] because the United States Supreme Court, in *New York v. Burger*, "upheld the statutory provision for warrantless 'administrative' searches of vehicles dismantling businesses" when challenged on Fourth Amendment grounds.[1632]

1624. *Keta*, 79 N.Y.2d 492, 593 N.E.2d at 1339, 583 N.Y.S.2d at 931.

1625. *Id.*; N.Y. VEH. & TRAF. LAW § 415-a(5)(a) (McKinney 1986 & Supp. 1993).

1626. *Keta*, 79 N.Y.2d at 492, 593 N.E.2d at 1339, 583 N.Y.S.2d at 931.

1627. *Id.*

1628. *Id.*

1629. *Id.*

1630. People v. Keta, 142 Misc. 2d 986, 538 N.Y.S.2d 417 (Sup. Ct. Queens County 1989).

1631. People v. Keta, 165 A.D.2d 172, 567 N.Y.S.2d 738 (2d Dep't 1991), *rev'd*, People v. Scott; People v. Keta, 79 N.Y.2d 474, 593 N.E.2d 1328, 583 N.Y.S.2d 920 (1992).

1632. *Id.* The appellate division held that VTL section 415-a did not violate the New York Constitution because warrantless, administrative searches of automobile dismantling businesses were held by the *Burger* Court not to violate the Fourth Amendment. *Id.* at 177, 567 N.Y.S.2d at 741; New York v. Burger, 482 U.S. 691, 700 (1986). For a thorough discussion of the appellate division's decision see *New York State Constitutional Decisions: 1991 Compilation*, 8 TOURO L. REV. 1030, 1030-36 (1992).

The court of appeals reversed the second department,[1633] and declined to follow the Supreme Court's holding in *New York v. Burger*. Instead, the court of appeals determined that its "firm commitment to protecting the privacy rights embodied within article I, section 12 of [the State Constitution led it] to the conclusion that Vehicle and Traffic Law section 415-a(5)(a)'s provisions for warrantless, suspicionless searches of business premises cannot withstand challenges under our State Constitution."[1634] The court acknowledged that the identical wording of the search and seizure provisions in the state and federal constitutions would generally support a "policy of uniformity."[1635] However, the court determined that an independent construction of the state's constitution is "particularly appropriate" when the Supreme Court departs from precedent and in so doing significantly narrows fundamental constitutional rights.[1636] The court noted that

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1633. *Keta*, 79 N.Y.2d at 493, 593 N.E.2d at 1339, 583 N.Y.S.2d at 931.

1634. *Id.* at 497, 593 N.E.2d at 1342, 583 N.Y.S.2d at 934.

1635. *Id.* at 496, 593 N.E.2d at 1342, 583 N.Y.S.2d at 934.

1636. *Id.* at 497, 593 N.E.2d at 1342, 583 N.Y.S.2d at 934. In People v. Scott, 79 N.Y.2d 474, 593 N.E.2d at 1328, 583 N.Y.S.2d at 920, the court of appeals rejected the rule in Oliver v. United States, 466 U.S. 170, 181 (1984) (Fourth Amendment does not protect individuals from warrantless intrusions by government of open fields), because it applied to "secluded lands . . . notwithstanding efforts of the owner to exclude the public by erecting fences or posting 'No Trespassing' signs," and thus did not "adequately protect fundamental constitutional rights." 79 N.Y.2d at 478, 593 N.E.2d at 1330, 583 N.Y.S.2d at 922. In People v. P.J. Video, Inc., 68 N.Y.2d 296, 501 N.E.2d 556, 508 N.Y.S.2d 907 (1986), the court of appeals also chose to interpret the New York Constitution as providing greater protection to its citizens against warrantless searches and seizures than did the Supreme Court. In New York v. P.J. Video, Inc., 475 U.S. 868 (1985), the Supreme Court had reversed the court of appeals' affirmance of the lower court's supression of video cassettes seized as evidence that the defendant was promoting obscenity. *Id.* at 873-78. On remand, the court of appeals held that the state constitution "impose[d] a more exacting standard for the issuance of search warrants authorizing the seizure of allegedly obscene material than does the Federal Constitution," and affirmed its prior order. 68 N.Y.2d at 299, 501 N.E.2d at 558, 508 N.Y.S.2d at 909. In support of its contention that it has not hesitated to interpret Art. I, § 12 independently of its federal counterpart the court also cited to People v. Dunn, 77 N.Y.2d 19, 564 N.E.2d 1054, 563 N.Y.S.2d 388 (1991); People v. Torres, 74 N.Y.2d 224, 543 N.E.2d 61, 544

"consistent with well-settled principles of federalism, [state courts] are not bound by decisions of the Supreme Court construing similar provisions of the Federal Constitution."[1637] The court cited to Justice Stevens' concurring opinion in *Massachusetts v. Upton*,[1638] where he reminded state courts that they were "the primary guardian[s] of the liberty of the people,"[1639] and have the power to interpret the state constitution as providing greater protections than their federal constitution.[1640] The court of appeals further noted that despite the fact that the state constitutional provision is identical to its federal counterpart, its "presence alone signifies its special meaning to the People of New York; thus, the failure to perform an independent analysis under the State Constitution would improperly relegate many of its provisions to redundancy."[1641]

To support its position in deviating from the Supreme Court's ruling in *New York v. Burger*, the court addressed the "somewhat perplexing legal backdrop"[1642] created by the Supreme Court decisions on the subject of warrantless administrative searches.[1643] The court noted that initially, the Supreme Court, in *Frank v. Maryland*,[1644] decided that the warrant requirement of the Fourth Amendment applied only to searches conducted in order to obtain evidence of criminal activity, and did not apply to

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N.Y.S.2d 796 (1989); People v. Class, 67 N.Y.2d 431, 494 N.E.2d 444, 503 N.Y.S.2d 313 (1980); People v. Bigelow, 66 N.Y.2d 417, 488 N.E.2d 451, 497 N.Y.S.2d 630 (1985); People v. Gokey, 60 N.Y.2d 309, 457 N.E.2d 723, 469 N.Y.S.2d 618 (1983). For a discussion of these cases see Lina Shahin, *Constitutional Posture of Canine Sniffs*, 9 TOURO L. REV. 645, 647 n.8 (1993).

1637. *Keta*, 79 N.Y.2d at 495-96, 593 N.E.2d at 1341, 583 N.Y.S.2d at 933.

1638. 466 U.S. 727 (1984).

1639. *Id.* at 739 (Stevens, J., dissenting).

1640. *Keta*, 79 N.Y.2d at 496, 593 N.E.2d at 1342, 583 N.Y.S.2d at 934

1641. *Id.* (quoting People v. Alvarez, 70 N.Y.2d 375, 379, 515 N.E.2d 898, 899, 521 N.Y.S.2d 212, 213 (1987)).

1642. *Id.* at 494, 593 N.E.2d at 1340, 583 N.Y.S.2d at 932.

1643. *Id.* at 493, 593 N.E.2d at 1339, 583 N.Y.S.2d at 931.

1644. 359 U.S. 360 (1959), *overruled on other grounds by* Dandridge v. Williams, 397 U.S. 471 (1970).

administrative inspections.[1645] The Supreme Court subsequently rejected this decision in *Camara v. Municipal Court*,[1646] and held that the Fourth Amendment did apply to administrative searches as well.[1647]

However, the court of appeals noted that the Supreme Court, in *Colonnade Catering Corp. v. United States*,[1648] carved out an exception to the Fourth Amendment's warrant requirement. *Collonnde* held that warrants were not required for searches conducted on the premises of industries where the government has close supervision and where procedural guidelines regulating the search are in place.[1649] Likewise, in *United States v. Biswell*,[1650] the Supreme Court declared that the government has important interests at stake in regulating firearms trafficking.[1651] By regular inspection, the government can help prevent the sale of firearms to undesirables, detect the firearms' origin, and therefore, help prevent violent crime.[1652] Furthermore, according to the *Biswell* Court, effective inspection of a "pervasively regulated business," which requires frequent and suprise inspection, cannot

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1645. *Frank*, 359 U.S. at 367; *Keta*, 79 N.Y.2d at 493, 593 N.E.2d at 1339, 583 N.Y.S.2d at 931.

1646. 387 U.S. 523 (1967).

1647. *Id.* at 528; *Keta*, 79 N.Y.2d at 493, 593 N.E.2d at 1339-40, 583 N.Y.S.2d at 931-32; *see also* See v. City of Seattle, 387 U.S. 541, 545 (1967) (Court held that "administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure.").

1648. 397 U.S. 72 (1970).

1649. *Id.* at 77; *Keta*, 79 N.Y.2d at 493, 593 N.E.2d at 1340, 583 N.Y.S.2d at 931.

1650. 406 U.S. 311 (1972).

1651. *Id.* at 315-16. The *Colonnade-Biswell* exception was later explained by the Supreme Court in Marshall v. Barlow, Inc., 436 U.S. 307, 313 (1978), where the Court stated that "[c]ertain industries have such a history of government oversight that no reasonable expectation of privacy, could exist for a proprietor over the stock of such an enterprise." *Id.* at 313 (citation omitted). According to the Court, when a businessman undertakes a business such as, a liquor or a firearms business, "he has voluntarily chosen to subject himself to a full arsenal of governmental regulation." *Id.*

1652. *Biswell*, 406 U.S. at 316.

be accomplished if a warrant must first be obtained.[1653] The Supreme Court broadened this exception in *Donovan v. Dewey*,[1654] and declared that pervasiveness of the regulation, rather than a long tradition of government regulation, is required in determining whether a warrant is needed for a search.[1655]

Based on this line of decisions, the court of appeals first addressed the constitutionality of VTL section 415-a(5)(a) in *People v. Burger*. There, the court held that the statute violated the Fourth Amendment because it "authorize[d] searches [to be] undertaken solely to uncover evidence of criminality and not to enforce a comprehensive scheme."[1656] However, in *New York v. Burger*, the Supreme Court reversed the court of appeals and held that the VTL section 415-a(5)(a) did not violate the Fourth Amendment.[1657] Instead, the Court determined that the state had a "substantial interest in . . . deterring trafficking in stolen vehicles, and that warrantless inspections [of vehicle dismantling operations] were reasonably necessary to serve that interest."[1658] Finally, the Court decided that the functions that would otherwise be served by a warrant requirement were adequately served by this statute, which placed "limitation on the time, place and scope of the inspection."[1659]

Based on this "perplexing" precedence, the court in *Keta* refused to follow the Supreme Court's decision in *Burger*.[1660] The court maintained that uniformity must be sacrificed for a "predictable, structured analysis" in order to protect against

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1653. *Id.*

1654. 452 U.S. 594 (1981).

1655. *Id.* at 605-06; *Keta*, 79 N.Y.2d at 493, 593 N.E.2d at 1340, 583 N.Y.S.2d at 931.

1656. People v. Burger, 67 N.Y.2d 338, 344, 493 N.E.2d 926, 929, 502 N.Y.S.2d 702, 705 (1986). In fact, the court stated that the sole purpose of the statute was to provide the police with an "expedient means of enforcing penal sanctions for possession of stolen property." *Id.*

1657. New York v. Burger, 482 U.S. 691, 712 (1987).

1658. *Id.* at 708-10; *Keta*, 79 N.Y.2d at 495, 593 N.E.2d at 1328, 583 N.Y.S.2d at 933.

1659. *Burger*, 482 U.S. at 711-12.

1660. *Keta*, 79 N.Y.2d 497, 593 N.E.2d at 1343, 583 N.Y.S.2d at 934.

dilution of constitutional guarantees,[1661] and to protect "the basic privacy values embodied in our Constitution."[1662] The court likened the administrative searches permitted by the VTL section 415-a(5)(a) to general warrants, which the court noted "were an important component of colonial resentment against the Crown . . . ."[1663] Therefore, the court declared that the constitutional rules governing administrative searches "must be narrowly and precisely tailored to prevent the subversion of the basic privacy values embodied in our Constitution."[1664] Otherwise, the court stated that the exception would "swallow up the rule and permit circumvention of the traditional probable cause and warrant requirements."[1665]

Furthermore, the court of appeals found that the administrative search provisions of the Vehicle and Traffic statute "cannot pass constitutional muster because the essential element of pervasive governmental supervision is lacking."[1666] It disagreed with the Supreme Court's finding that the element of pervasive government supervision could be satisfied by analogy to other highly regulated and "'related industries such as junkyards."[1667] The court of appeals refused to adopt such reasoning because, in its

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1661. *Id.* (quoting People v. Johnson, 66 N.Y.2d 398, 407, 488 N.E.2d 439, 445 497 N.Y.S.2d 618, 624 (1985)). In *Johnson*, the court declared that "the practical considerations upon which uniformity rests must yield, . . . to a predictable, structured analysis of the quality of evidence necessary to support intrusive searches and seizures." 66 N.Y.2d at 407, 488 N.E.2d at 445, 497 N.Y.S.2d at 624. *See also* People v. P.J. Video, Inc., 68 N.Y.2d 296, 304, 501 N.E.2d 556, 561, 508 N.Y.S.2d 907, 912-13 (1986), *cert. denied*, 479 U.S. 1091 (1987) ("[N]otwithstanding an interest in conforming our State Constitution's restrictions on searches and seizures to those of the Federal Constitution . . ., this court has adopted independent standards under the State Constitution when doing so best promotes 'predictability and precision in judicial review of search and seizure cases and 'the protection of the individual rights of our citizens.'") (quoting *Johnson*, 66 N.Y.2d at 407, 488 N.E.2d at 445, 497 N.Y.S.2d at 624).

1662. *Keta*, 79 N.Y.2d at 498, 593 N.E.2d at 1343, 583 N.Y.S.2d at 935.

1663. *Id.* at 497-98, 593 N.E.2d at 1343, 583 N.Y.S.2d at 935.

1664. *Id.* at 498, 593 N.E.2d at 1343, 583 N.Y.S.2d at 935.

1665. *Id.* at 498-99, 593 N.E.2d at 1343, 583 N.Y.S.2d at 935.

1666. *Id.* at 499, 593 N.E.2d at 1343, 583 N.Y.S.2d at 935.

1667. *Id.*; *see* New York v. Burger, 482 U.S. 691, 706 (1987).

view, more is required to create an exception to the warrant requirement of article I, section 12.[1668] The court of appeals declared that in order for a business to fall into this narrow exception there must be a pervasive, detailed, regulatory scheme.[1669] According to the court's reasoning, the present statutory requirements such as the obligation to register with the government, to pay a fee, and to maintain certain books and records are insufficient.[1670] The court declared that if it were to consider such minimal requirements sufficiently pervasive, then most businesses would be considered "'closely regulated,'" and warrantless searches would "become the rule rather than the exception."[1671]

Additionally, the court criticized the statute for not providing a minimum and maximum number of times that a business can be searched within a specific time span, therefore providing no "guideline for determining which businesses may be targeted."[1672] And, since the only real requirement specified by the statute is the keeping of record books, "there are no real *administrative* violations that could be uncovered in a search."[1673]

Finally, the court also rejected the Supreme Court's assertion that the statute is supported by substantial governmental interest. Rather it found that such a justification was an insufficient ground for straying from the dictates of the New York Constitution's mandate against "warrantless, suspicionless searches."[1674]

The court also rejected the dissent's analogous reasoning that the high increase in crime is a persuasive ground for relaxing the mandate of the state constitution.[1675] The court replied that serious crime will always exist in society, and the court's

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1668. *Keta*, 79 N.Y.2d at 499, 593 N.E.2d at 1343, 583 N.Y.S.2d at 935.
1669. *Id.* at 499, 593, N.E.2d at 1343-44, 583 N.Y.S.2d at 935-36.
1670. *Id.* at 499, 593 N.E.2d at 1344, 583 N.Y.S.2d at 936.
1671. *Id.*
1672. *Id.*
1673. *Id.* at 499-500, 593 N.E.2d at 1344, 583 N.Y.S.2d at 936.
1674. *Id.* at 500, 593 N.E.2d at 1344, 583 N.Y.S.2d at 936.
1675. *Id.*

function is not to "respond to these temporary crises . . . or to advance the goals of law enforcement, but rather to stand as a fixed citadel for constitutional rights . . . ."[1676] Therefore, the court of appeals declared that the constitutional guarantee to privacy requires that only narrow exceptions may be applied to the warrant requirement.[1677] The court noted that additional factors such as "hot pursuit" or the status of a "closely regulated" business must exist in order to justify a warrantless search and seizure.[1678]

On a parting note, the court maintained that for a legislative act to be consistent with the New York Constitution article I, section 12 mandates, the statute must be part of a "comprehensive administrative program that is unrelated to the enforcement of the criminal laws."[1679] Furthermore, the inspections must be carried out "pursuant to an administrative warrant issued by a neutral Magistrate, not necessarily based on probable cause," or in the alternative, "the law must provide for such certainty . . . of application" as to become a sufficient substitute for a warrant.[1680]

Judge Bellacosa's dissent strongly criticized the court's view, interpreting it to require added New York privacy protections for such commercial operations as the defendant's vehicle dismantling business.[1681] The dissent declared that there is no historical foundation for New York to accord vehicle dismantling operations greater privacy protections than the protections such operations enjoy in the rest of the country.[1682] According to Judge Bellacosa, the court's opinion that an inconsistency exists in the Supreme Court decisions is groundless, since "the only prior New York cases addressing the [subject] at issue were con-

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1676. *Id.* at 501, 593 N.E.2d at 1345, 583 N.Y.S.2d at 937.

1677. *Id.*

1678. *Id.*

1679. *Id.* at 501-02, 593 N.E.2d at 1345, 583 N.Y.S.2d at 937.

1680. *Id.* at 502, 593 N.E.2d at 1345, 583 N.Y.S.2d at 937.

1681. *Id.* at 517, 593 N.E.2d at 1355, 583 N.Y.S.2d at 947 (Bellacosa, J., dissenting).

1682. *Id.* (Bellacosa, J., dissenting).

sistent with the . . . *Burger*" Supreme Court decision.[1683] Because of this consistency, the Supreme Court decision in *Burger* should have been followed and not discounted by the New York Court of Appeals, the dissent argued.[1684]

Judge Bellacosa pointed to the Legislature's reasons for enacting the VTL section 415-a among which were the urgent need to ensure that the junk yards would be run by legitimate businessmen, and not crime rings, and to reduce the auto theft catastrophe in New York State.[1685] Furthermore, he found that many reasons existed for classifying this type of business as "closely regulated" such as "the pervasiveness of the auto theft crisis, the legislative history, the carefully prescribed nature . . . of the administrative regime adopted, and the . . . close governmental oversight of this . . . crime-plagued industr[y]."[1686] Consequently, the dissent explained, the defendant, as owner of a vehicle dismantling

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1683. *Id.* at 511, 593 N.E.2d at 1351-52, 583 N.Y.S.2d at 943-44 (Bellacosa, J., dissenting); New York v. Burger, 482 U.S. 691 (1987). The Court in *Burger* found VTL section 415-a to be constitutional under the Fourth Amendment. *Id.* at 705; *cf,* Matter of Glenwood TV, Inc., v. Ratner, 65 N.Y.2d 642, 481 N.E.2d 252, 491 N.Y.S.2d 620 (1985), *aff'g* 103 A.D.2d 322, 480 N.Y.S.2d 98 (1984). The *Glenwood* court affirmed the appellate division's decision that warrantless, administrative inspections of television repair businesses, pursuant to statute, where the inspections are limited in scope to records and the businesses' public areas inspection, was constitutional, and therefore, did not violate the owners' legitimate privacy interests. 103 A.D.2d at 330, 480 N.Y.S.2d at 103.

1684. *Keta,* 79 N.Y.2d at 513, 593 N.E.2d at 1352, 583 N.Y.S.2d at 944 (Bellacosa, J., dissenting).

1685. *Id.* at 516, 593 N.E.2d at 1355, 583 N.Y.S.2d at 947 (Bellacosa, J., dissenting).

1686. *Id.* at 517, 593 N.E.2d at 1355, 583 N.Y.S.2d at 947 (Bellacosa, J., dissenting); *see also* United States v. Biswell, 406 U.S. 311 (1972). The *Biswell* Court found that close federal regulation of the firearms industry is essential to federal efforts to minimize gun-related crimes, and "inspections without warrant must be deemed reasonable official conduct under the Fourth Amendment." *Id.* at 315-16; *see also* Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970). The *Colonnade* Court held that Congress had "broad authority to fashion standards of reasonableness for searches and seizures" relating to such industries as the liquor industry, since it had been "long subject to close supervision and inspection." *Id.* at 77.

operation, should possess a "greatly reduced expectation of privacy."[1687]

Under the Federal Constitution, the Supreme Court has determined that a warrantless administrative search of a vehicle dismantler's shop is constitutional since such searches "clearly fall within this established exception to the warrant requirement for administrative inspections in 'closely regulated' businesses."[1688] However, the New York Court of Appeals has refused to follow the Supreme Court, and has determined that the New York Constitution does not permit a "general wholesale exception to the warrant and probable cause requirements that may be invoked to enhance the effectiveness of the State's law enforcement efforts."[1689] Instead, there must exist some exigency before justifying dispensing with the warrant or probable cause requirements.[1690]

1687. *Keta*, 79 N.Y.2d at 517, 593 N.E.2d at 1355, 583 N.Y.S.2d at 947 (Bellacosa, J., dissenting); *see also* Marshall v. Barlow's, Inc., 436 U.S. 307 (1978). The *Marshall* Court held that, by voluntarily involving himself in an industry with a history of close, governmental regulation, the "entrepreneur . . . voluntarily chose to subject himself to a full arsenal of governmental regulation." *Id.* at 313; *see also* Donovan, Secretary of Labor v. Dewey, 452 U.S. 594 (1981). According to the *Donovan* Court, "the expectation of privacy that the owner of commercial property enjoys in such property differs significantly from [that] accorded an individual's home . . . ." *Id.* at 598-99.

1688. *See* New York v. Burger, 482 U.S. 691, 704-05 (1987).

1689. *Keta*, 79 N.Y.2d at 501, 593 N.E.2d at 1345, 583 N.Y.S.2d at 937. The court of appeals, however, did not completely rule out administrative inspections of vehicle dismantling business provided such inspections are "part of a comprehensive administrative program unrelated to the enforcement of criminal laws[, and] . . . the inspections [are] . . . pursuant to an administrative warrant issued by a neutral Magistrate, although they need not be based on probable cause in the traditional sense." *Id.* at 501-02, 593 N.E.2d at 1345, 583 N.Y.S.2d at 937.

1690. *Id.*