Parolee's Reduced Expectation of Privacy May Justify Suspicionless Search: *Samson v. California*

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**CONSTITUTIONAL LAW — FOURTH AMENDMENT — SEARCH AND SEIZURE — PAROLEE RIGHTS** — The United States Supreme Court found that a condition of release can diminish or eliminate a released prisoner’s reasonable expectation of privacy such that a suspicionless search by law enforcement officers would not offend the Fourth Amendment.


Petitioner, Donald Samson, was on parole from prison in California when he was arrested for and charged with possession of methamphetamine.\(^1\) Prior to his arrest, Samson had been walking down a residential street where he was observed by Alex Rohleder, an officer of the San Bruno Police Department.\(^2\) Officer Rohleder was aware that Samson was a parolee and believed that a warrant had been issued for his arrest.\(^3\) Samson was stopped by Office Rohleder and asked whether he had an outstanding parole warrant.\(^4\) Samson answered that he did not.\(^5\) Officer Rohleder confirmed, by radio dispatch, that Samson was on parole and did not have an outstanding warrant.\(^6\) However, pursuant to section 3067(a) of the California Penal Code,\(^7\) Officer Rohleder decided to search Samson.\(^8\) During the search, Officer Rohleder found a cigarette box, inside of which was a plastic baggie containing methamphetamine.\(^9\) Samson was immediately arrested.\(^10\)

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3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Samson*, 126 S. Ct. at 2196. Section 3067(a) of the California Penal Code provides: Any inmate who is eligible for release on parole pursuant to this chapter shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause. CAL. PENAL CODE § 3067(a) (West 2003).
9. *Id.*
10. *Id.*
The State of California charged Samson with possession of methamphetamine. Samson moved to suppress the methamphetamine evidence, asserting that section 3067(a) unconstitutionally allowed the arresting officer to search his person without suspicion of criminal activity based solely on his status as a parolee. The trial court denied Samson's motion, finding that section 3067(a) authorized the search and that the search was not "arbitrary or capricious." Samson was tried and convicted of the charge of possession. He was sentenced to seven years imprisonment.

Samson petitioned the California Court of Appeal and again argued that section 3067(a) violated his right to be free of unreasonable searches under the Fourth Amendment. Applying the principle announced in People v. Reyes, the court of appeal held that suspicionless searches of parolees were lawful under California law. Specifically, the court of appeal held that suspicionless searches of parolees were deemed reasonable within the meaning of the Fourth Amendment provided they were not arbitrary, capricious or harassing. The court of appeal concluded that the search in this case was not arbitrary, capricious, or harassing. Accordingly, Samson's appeal was denied. The Supreme Court of the United States granted certiorari to address whether a condition of release can diminish or eliminate a released prisoner's reasonable expectation of privacy such that a suspicionless search by law enforcement would not offend the Fourth Amendment.

11. Id.
12. Id.
14. Id.
15. Id.
17. 968 P.2d 445 (Cal. 1998).
19. Id.
20. Id. at *3.
21. Id.
Justice Thomas delivered the majority opinion for the Supreme Court. He stated that, in order to "determine whether a search [was] reasonable within the meaning of the Fourth Amendment," the Court must "examine the totality of the circumstances." In this context, reasonableness would be determined by weighing two interests: (1) "the degree to which [a search] intrudes upon an individual's privacy" and (2) "the degree to which [a search] is needed for the promotion of legitimate governmental interests."

Justice Thomas relied on a previous case, United States v. Knights, wherein the Supreme Court followed this approach when it examined the validity of a California law requiring Knights, as a probationer, to "submit his . . . person, property, place of residence, vehicle, personal effects, to search anytime, with or without a search warrant, warrant of arrest or reasonable cause by any probation officer or law enforcement officer." In evaluating the first prong of the reasonableness test, the Supreme Court found Knights's probationary status "salient." Specifically, the Supreme Court held that "probation is one point . . . on a continuum of possible punishments" and that "by virtue of their status alone, probationers do not enjoy the absolute liberty to which every citizen is entitled." Rather, "prisoners have no reasonable expectation of privacy."

In Samson, the Court explained that "parolees are on the [same] continuum of state-imposed punishments." Unlike probationers, however, "parolees have fewer expectations of privacy . . . because parole is more akin to imprisonment than probation is to imprisonment." This, the Court held, was especially true under California's system of parole. The Supreme Court noticed that California inmates may serve parole in either physical custody, or may elect to complete their sentence out of physical custody and subject to certain conditions. Regardless of physical custody, the State

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23. Samson, 126 S. Ct. at 2195 (Roberts, C.J., Scalia, Kennedy, Ginsburg and Alito, JJ., joined; Stevens, J., filed a dissenting opinion, in which Souter and Breyer, JJ., joined).
24. Id. at 2197 (quoting United States v. Knights, 534 U.S. 112, 118-19 (2001)).
25. Id. (quoting Knights, 534 U.S. at 119).
27. Samson, 126 S. Ct. at 2197 (quoting Knights, 534 U.S. at 114).
28. Id. (quoting Knights, 534 U.S. at 118).
29. Id. (quoting Knights, 534 U.S. at 119).
30. Id. (quoting Knights, 534 U.S. at 119-20).
31. Id. at 2198.
32. Samson, 126 S. Ct. at 2198.
33. Id. at 2199.
34. Id. Section 3060.5 of the California Penal Code provides:
of California remains in legal custody of the inmate for the duration of his sentence. Accordingly, the inmate is required to comply with all the terms and conditions of parole which may include, but are not limited to, mandatory drug testing, mandatory meetings with parole officers, and restrictions on association with felons or gang members. The Court concluded that these conditions demonstrate that parolees have "severely diminished expectations of privacy by virtue of their status alone."

The Court reinforced its conclusion by noting that parolees must sign an order submitting to suspicionless searches as a condition of parole. Recalling Knights, the Court explained, "we found that acceptance of a clear and unambiguous search condition significantly diminished Knights'[s] reasonable expectation of privacy." By analogy, the condition at issue in the present case was "clearly expressed" to Samson who, the Court implied, was "unambiguously aware of it."

Having determined that Samson "did not have an expectation of privacy that society would recognize as legitimate," the Court turned to the second prong of the reasonableness test, considering the degree to which a search is needed for the promotion of legitimate governmental interests. In Knights, the Supreme Court held that "probation searches . . . are necessary to the promotion of legitimate governmental interests." Such interests were twofold: (1) integration of probationers back into the community and

Notwithstanding any other provision of law, the parole authority shall revoke the parole of any prisoner who refuses to sign a parole agreement setting forth the general and any special conditions applicable to the parole, refuses to sign any form required by the Department of Justice stating that the duty of the prisoner to register under Section 290 has been explained to the prisoner, unless the duty to register has not been explained to the prisoner, or refuses to provide samples of blood or saliva as required by the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and shall order the prisoner returned to prison. Confinement pursuant to any single revocation of parole under this section shall not, absent a new conviction and commitment to prison under other provisions of law, exceed six months, except as provided in subdivision (c) of Section 3057.

CAL. PENAL CODE § 3060.5 (West 2003).
35. Samson, 126 S. Ct. at 2199.
36. Id.
37. Id.
38. Id.
39. Id. (quoting Knights, 534 U.S. at 120).
40. Samson, 126 S. Ct. at 2199.
41. Id. at 2199-200.
42. Id. at 2198 (quoting Knights 534 U.S. at 120-21).
(2) combating recidivism. Following *Knights*, the Court held that the State of California had an "overwhelming interest" in supervising parolees. That interest warranted privacy intrusions that would not otherwise be tolerated under the Fourth Amendment.

Furthermore, the Court held that the suspicionless search of parolees "aids, rather than hinders, the reintegration of parolees into productive society." Specifically, the Court explained that "most parolees are ill prepared to handle the pressures of reintegration... thus, most parolees require intense supervision." Supervision combats the "incentive-to-conceal" among parolees who, as a class of persons, are susceptible to recidivism. Accordingly, "searches... based on individualized suspicion would undermine the State's ability to effectively supervise parolees[, and]... imposing a reasonable suspicion requirement, as urged by petitioner, would give parolees greater opportunity to anticipate searches and conceal criminality."

The Court acknowledged that empirical evidence demonstrated the significance of these interests in California, where the recidivism rate was the highest in the nation. Accordingly, the Court rejected Samson's argument that California's system was "constitutionally defective" in comparison to other systems that "have been able to further similar interests... despite having systems that permit parolee searches based upon some level of suspicion." The Court concluded that this comparison is "of little relevance to our determination whether California's supervisory system is drawn to meet its needs and is reasonable." Moreover, California's prohibition on arbitrary, capricious or harassing searches militated against concerns that a suspicionless search system would undermine state interests. The Supreme Court, therefore, affirmed the judgment of the California Court of Appeal.

43. *Id.* at 2200.
44. *Id.*
46. *Id.*
47. *Id.*
48. *Id.* at 2201.
49. *Id.* at 2200-01.
51. *Id.* at 2201.
52. *Id.*
53. *Id.* at 2202.
54. *Id.*
Justice Stevens, joined by Justices Souter and Breyer, dissented. The dissent insisted that parolees have a legitimate expectation of privacy beyond that of prisoners and that the Fourth Amendment does not permit the conclusion that a search supported by neither individualized suspicion nor "special needs" is nonetheless "reasonable."

The dissent argued that the Supreme Court has consistently held that the Fourth Amendment provides limited protection for parolees. Recognizing that such protection was "not as robust as that afforded to ordinary citizens," the dissent explained that *Knights* cannot be read to have supported a regime of suspicionless searches. To the contrary, suspicionless searches are "the very evil the Fourth Amendment was intended to stamp out."

Justice Stevens went on to argue that, if individualized suspicion is no longer required, it must be replaced with measures to protect against unfettered state action. However, the majority took issue with the implication that California's parole search law permits unlimited discretion. The majority noted that California's prohibition on arbitrary, capricious or harassing searches remains in place despite the Court's interpretation of section 3607(a). The dissent disagreed, arguing that California's prohibition was insufficient and that suspicionless searches should only be justified on "special needs" grounds.

Finally, Justice Stevens pressed that parolees have a legitimate expectation of privacy distinguishable from that of prisoners. He argued that the majority's reasoning to the contrary was "entirely

55. *Samson*, 126 S. Ct. at 2202 (Stevens, J., dissenting).
56. *Id.* at 2203.
57. *Id.* at 2202.
58. *Id.*
59. *Id.* at 2203.
60. *Samson*, 126 S. Ct. at 2204 (Stevens, J., dissenting).
61. *Id.* at 2202.
62. *Id.*
63. *Id.* at 2203. In *Griffin v. Wisconsin*, 483 U.S. 868 (1987), the Supreme Court held that "Although we usually require that a search be undertaken only pursuant to a warrant (and thus supported by probable cause, as the Constitution says warrants must be), we have permitted exceptions when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." *Griffin*, 483 U.S. at 873. Pursuant to the law as pronounced in *Griffin*, Justice Stevens argued that a departure from "special needs" analysis was unprecedented and beyond the scope of the Supreme Court's Fourth Amendment jurisprudence. *Samson*, 126 S. Ct. at 2202 (Stevens, J., dissenting).
64. *Samson*, 126 S. Ct. at 2205 (Stevens, J., dissenting).
circular."

Specifically, Justice Stevens argued that it was not "enough, in deciding whether someone's expectation of privacy is 'legitimate,' to rely on the existence of the offending condition or the individual's notice thereof." Speaking directly to the fact that Samson had notice of the suspicionless search condition, Justice Stevens argued that the "mere fact that a particular State refuses to acknowledge a parolee's privacy interest cannot mean that a parolee in that State has no expectation of privacy that society is willing to recognize as legitimate." Accordingly, Justice Stevens concluded that only a system based on individualized suspicion would guard against arbitrary action, caprice and harassment.

Historically, the applicability of the Fourth Amendment turns on whether the person invoking its protection can claim a justifiable, reasonable, or legitimate expectation of privacy that has been invaded by government action. In United States v. Katz, Justice Harlan suggested that an expectation of privacy is "justifiable: if the person concerned has 'exhibited an actual (subjective) expectation of privacy' and the expectation is one that 'society is prepared to recognize as reasonable.'"

Accordingly, the Supreme Court has held that the touchstone of the Fourth Amendment is reasonableness, and the reasonableness of a search is determined by assessing, on the one hand, the degree to which [the search] intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests. The right of the people "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" is not absolute but may be limited under certain circumstances.

While imprisoned persons enjoy some constitutional protections, courts have made clear that imprisonment carries with it the loss

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65. Id.
66. Id. at 2206.
67. Id.
68. Id. at 2207.
70. 389 U.S. 347 (1967).
73. U.S. CONST. amend. IV.
74. See generally Hudson, 468 U.S. at 526 ("The proscription against unreasonable searches under U.S. CONST. amend. IV does not apply within the confines of the prison cell.").
of many significant rights. For example, in *Hudson v. Palmer,* Russell Palmer was an inmate at the Bland Correctional Center in Bland, Virginia. On September 16, 1981, Hudson, a correctional officer, conducted a "shakedown" search of Palmer's prison locker and cell for contraband. During the "shakedown," a ripped pillowcase was discovered in a trash can near Palmer's cell bunk. Thereafter, Palmer was charged pursuant to prison disciplinary procedures for destroying state property. After a hearing, Palmer was found guilty. He was ordered to reimburse the State for the cost of the material destroyed, and a reprimand was entered on his prison record.

In sentencing Palmer, the district court held, among other things, that Hudson's search did not "rise to the level of a constitutional deprivation." However, that holding was reversed on appeal. Relying on the United States Supreme Court's holding in *Bell v. Wolfish,* the court of appeals recognized that an individual prisoner has a "limited privacy right" in his cell entitling him to protection against searches conducted solely to harass or to humiliate. Moreover, the court noted that the shakedown of a single prisoner's property is permissible only if done pursuant to an established program of conducting random searches of single cells or groups of cells reasonably designed to deter or to discover the possession of contraband, or upon reasonable belief that the particular prisoner possessed contraband.

The Supreme Court granted certiorari to determine whether Palmer had a right of privacy in his prison cell entitling him to protection against unreasonable searches under the Fourth Amendment. The Court held that, notwithstanding its caution in approaching claims that the Fourth Amendment is inapplicable in a given context, society "is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might

77. *Palmer,* 468 U.S. at 519.
78. *Id.* at 519.
79. *Id.*
80. *Id.* at 520.
81. *Id.*
82. *Palmer,* 468 U.S. at 520.
83. *Id.*
84. *Id.* at 521.
85. 441 U.S. 520 (1979).
86. *Palmer,* 468 U.S. at 521.
87. *Id.* at 521-22.
88. *Id.* at 522.
have in his prison cell;” accordingly, “the Fourth Amendment pro-
scription against unreasonable searches does not apply within the
confines of the prison cell.” Thus, the recognition of privacy
rights for prisoners in their individual cells did not outweigh the
value of incarceration and the needs and objectives of penal insti-
tutions.

The Court went on to conclude that prisons are places of invol-
untary confinement and that inmates have “shown a lapse in abil-
ity to control and conform their behavior to the legitimate stan-
dards of society.” In this environment, administrators are re-
quired to ensure the safety of staff and visitors. They must also
protect and ensure the safety of inmates. Indeed, the admini-
stration of a prison is an extraordinarily difficult undertaking —
one that would be difficult to accomplish if inmates retained a
right of privacy in their cells.

Thus, the Court held that determining whether an expectation
of privacy is “legitimate” or “reasonable” necessarily entails a bal-
ancing of interests. In Palmer, the Court weighed two interests:
(1) the interest of society in the security of its penal institutions;
and (2) the interest of the prisoner in privacy within his cell.
The Court concluded that a prisoner’s expectation of privacy is
necessarily limited and that a right of privacy in traditional
Fourth Amendment terms is fundamentally incompatible with the
close and continual surveillance of inmates and their cells, which
is required to ensure institutional security and internal order.
The Court was satisfied that society would insist that the pris-
oner’s expectation of privacy always “yield to what must be con-
sidered the paramount interest in institutional security.” The
Court believed that it was accepted by society that the loss of free-

89. Id. at 526.
90. Id.
91. Palmer, 468 U.S. at 526.
92. Id.
93. Id.
retain rights under the Due Process Clause in no way implies that these rights are not
subject to restrictions imposed by the nature of the regime to which they have been lawfully
committed. Prison disciplinary proceedings are not part of a criminal prosecution, and the
full panoply of rights due a defendant in such proceedings does not apply. In sum, there
must be mutual accommodation between institutional needs and objectives and the provi-
sions of the Constitution that are of general application.”).
95. Palmer, 468 U.S. at 527.
96. Id. at 521.
97. Id.
98. Id. at 528.
dom of choice and privacy are incidents of confinement. In other words, the curtailment of certain rights is necessary, as a practical matter, to accommodate the myriad "institutional needs and objectives" of prison facilities, chief among which is internal security.

Not unlike incarceration, the Supreme Court views probation as one point on a continuum of possible punishments, a point at which, like prisoners, the probationer does not enjoy certain incidents of liberty more fully enjoyed by ordinary citizens. In United States v. Knights, the Court held that, "just as other punishments for criminal convictions curtail an offender's freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens."

In Knights, the defendant had been sentenced to summary probation. Among other things, the probation order required Mark Knights to "submit his . . . person, property, place of residence, vehicle, personal effects, to search at anytime, with or without a search warrant, warrant of arrest or reasonable cause by any probation officer or law enforcement officer." Knights had notice of the provision, as he had signed the same.

While on probation, Pacific Gas and Electric (hereinafter "PG&E") had filed a theft-of-services complaint against Knights and discontinued his electrical service. Knights and a friend were then placed under suspicion for numerous acts of vandalism against a PG&E meter. Local detectives noticed that acts of vandalism coincided with Knights's court appearance dates, and a sheriff's deputy had stopped Knights near a PG&E gas line while in possession of pipes and gasoline. Detectives conducted surveillance of Knights's apartment and eventually decided to conduct a search. They were aware of the search condition in Knights's probation order and thus believed that a warrant was

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99. Id.
103. Knights, 534 U.S. at 119.
104. Id. at 114.
105. Id.
106. Id.
107. Id. at 115.
109. Id.
110. Id.
not necessary. The search revealed a number of incriminating items. Knights was arrested and indicted for conspiracy to commit arson, for possession of an unregistered destructive device, and for being a felon in possession of ammunition.

Knights moved to suppress the evidence obtained during the search of his apartment. The district court held that the search was supported by “reasonable suspicion.” The district court nonetheless granted suppression, holding that the search was for “investigatory” rather than “probationary” purposes. The Court of Appeals for the Ninth Circuit affirmed, holding that the search condition in Knights’s probation order is limited as to probation searches. The United States Supreme Court granted certiorari to decide whether a search pursuant to Knights’s probation condition and supported by reasonable suspicion satisfied the Fourth Amendment and thus could be used for more than probationary purposes.

The Court was unanimous in its view, beginning with the proposition that “probation diminishes a probationer’s reasonable expectation of privacy — so that a probation officer may, consistent with the Fourth Amendment, search a probationer’s home without a warrant, and with only reasonable grounds (not probable cause) to believe that contraband is present.” Reasonable grounds imply the “likelihood that criminal conduct is occurring” such that “an intrusion on the probationer’s significantly diminished privacy interests is reasonable.”

Furthermore, the Court reasoned that a determination of this kind rests upon the balancing of government and privacy interests. Specifically, the degree of individualized suspicion required for a search is determined by the high probability that criminal conduct is occurring; in such cases, the intrusion on the individual’s privacy interest is reasonable. However, while the Fourth Amendment ordinarily requires the degree of probability

111. Id.
112. Id.
114. Id.
115. Id.
116. Id.
117. Id.
119. Id. at 118.
120. Id. at 122.
121. Id. at 119.
122. Id. at 122.
embodied in the term "probable cause," the Court concluded that a lesser degree satisfies the United States Constitution when the balance of interests makes such a diminished standard reasonable.123

With respect to the individual's privacy interest, the Court concluded that probation, like incarceration, is a form of criminal sanction imposed by a court upon an offender after a verdict, a finding, or a guilty plea.124 Moreover, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens; a search condition significantly diminishes a probationer's reasonable expectation of privacy.125 Finally, regarding the governmental interest, the Court held that a probationer is assumed to be more likely than the ordinary citizen to violate the law.126 Probationers have more incentive to conceal their criminal activities and quickly dispose of incriminating evidence than the ordinary criminal because probationers may be subject to supervision, revocation of probation, and possible incarceration.127 Such proceedings are dangerous to probationers because the trial rights of a jury and proof beyond a reasonable doubt, among other things, do not apply.128 Accordingly, the Supreme Court struck its balance of interests against Knights.129

The logical nexus between this conclusion and the holding in Samson raises various issues and competing concerns. First, the Supreme Court now endorses the viewpoint that parolees are positioned (albeit differently) on the same continuum of state-imposed punishment as prisoners and probationers.130 Parole is held out as an established variation on imprisonment of convicted criminals;131 the essence of parole is release from prison before the completion of the sentence on the condition that the prisoner will abide by certain rules during the remainder of the sentence.132 On the Court's continuum of possible punishments, parolees enjoy

124. *Id.* at 119 (quoting *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987)).
125. *Id.* at 121.
126. *Id.* at 120-21.
127. *Id.*
129. *Id.*
even less of the average citizen’s privacy rights than do probationers.\footnote{133}{United States v. Cardona, 903 F.2d at 60, 63 (1st Cir. 1990).}

In theory, parolees may be closer to prisoners than are probationers. However, the Court goes one step further, justifying the regime of suspicionless searches by equating parolees with prisoners. But, as a practical matter, it is difficult to conclude that reasonable persons would view parolees and prisoners as having the same expectations of privacy. The equation is suspect, and the Supreme Court’s reasoning appears susceptible to the charge that it has elevated judicial predilection over law.

Secondly, the Supreme Court has never held that a probationer or parolee may be subject to a full and suspicionless search at the behest of a law enforcement officer. In fact, such wide latitude has never been required to achieve important state interests. Rather, courts have long permitted exceptions to the warrant requirement when special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirements impracticable.\footnote{134}{Samson, 126 S. Ct. at 2203 (Stevens, J., dissenting).} As it stands, the Court’s decision may be troubling to some, since its holding moves beyond the scope of previous decisions.

To many, the Court’s decision may be troubling for another, more important reason. In his dissent, Justice Stevens suggests that suspicionless searches are “the very evil the Fourth Amendment was intended to stamp out.”\footnote{135}{Id.} Thus, not only does the Court depart from the method in which it previously justified warrantless searches, it now appears to have sanctioned a type of search which strikes at the heart of the Fourth Amendment. Even if one was to concede that the suspicionless search of a parolee serves the public good, it is a double-edged sword: it comes at the expense of important and fundamental constitutional guarantees.

This point illustrates the broader debate taking place in Samson. The issue is in essence, philosophical. It is not a question of whether suspicionless searches of a parolee are reasonable or justifiable; rather, the issue is whether and to what extent the government may serve a public interest at the expense of constitutional rights.

In light of this Court’s conservative disposition, it is not surprising that parolee rights were narrowly interpreted. Given the paucity of historical support for the Court’s position, it is more palatable to uphold the conviction of a person who was in possession of
methamphetamine than to set him free. At least, that is what the Court is really trying to say when it focuses on the "reasonableness" of the search.

Whether or not one is persuaded by the Court's rationale, we will be forced to address the following unanswered question: Is the public interest better served by a regime of suspicionless searches, or by a Supreme Court that, in the protection of our fundamental rights, refuses to allow them?

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