Search Incident to Arrest: Exposing the Unconstitutionality of Chicago's Strip Search Policy - Mary Beth G. v. City of Chicago

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RECENT CASES

SEARCH INCIDENT TO ARREST: EXPOSING THE UNCONSTITUTIONALITY OF CHICAGO'S STRIP SEARCH POLICY—MARY BETH G. V. CITY OF CHICAGO

The fourth amendment to the United States Constitution protects persons against unreasonable searches and seizures.¹ The United States Supreme Court has held that a search without a warrant is an unreasonable search in violation of the fourth amendment.² Certain judicially created exceptions to the warrant requirement, however, have evolved over the years.³ One exception, search incident to arrest, allows a police officer to conduct a warrantless search of an arrestee's person incident to an arrest.⁴ The permissible scope of a search incident to an arrest is a question that has troubled the United States Supreme Court for many years. Although the Supreme Court has considered the permissible scope of a search incident to an arrest in several opinions,⁵ it has failed to establish clear parameters to guide police

¹. The fourth amendment provides:
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
U.S. CONST. amend. IV.
The Supreme Court applied the fourth amendment to the states through the fourteenth amendment in Wolf v. Colorado, 338 U.S. 25 (1949). The Wolf court, however, did not require the states to employ the exclusionary rule for violations of the fourth amendment. Twelve years later, in Mapp v. Ohio, 338 U.S. 643 (1961), the Supreme Court reversed itself and extended the exclusionary rule to the states. For a complete analysis of the fourth amendment as it relates to search and seizure, see Amsterdam, Perspectives on the Fourth Amendment, 58 MINN. L. REV. 349 (1974).

². See, e.g., Arkansas v. Sanders, 442 U.S. 753 (1979) (a search of private property normally must be pursuant to a search warrant); Katz v. United States, 389 U.S. 347 (1967) (searches conducted without a warrant are unreasonable).


⁴. See infra notes 19-25 and accompanying text.

conduct. As a result, arrested persons often have been subjected to highly intrusive body searches by police officers.\(^6\)

In recent years, it has become a common police department practice to subject arrestees to such highly intrusive body searches.\(^7\) These searches are called strip searches\(^4\) and have been described as "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission."\(^8\) The policies of many police departments require that all arrestees be strip searched, even those arrested for misdemeanor and non-misdemeanor traffic offenses.\(^9\) Despite the highly offensive and extremely questionable nature of such practices, the United States Supreme Court has not considered the constitutionality of such a blanket strip search policy.\(^10\) In Mary Beth G. v. City of Chicago,\(^11\) the Seventh Circuit considered the constitutionality of the City of Chicago's strip search policy. Chicago's policy provided that all females detained in a City lockup be strip searched prior to detention regardless of the charges against them. Further, strip searches were performed regardless of whether the arresting officer or detention aide believed that the arrestee was concealing contraband.\(^12\) The Seventh Circuit held that the City's policy violated the fourth amendment's proscription against unreasonable searches.\(^13\)

The Mary Beth G. decision signifies the Seventh Circuit's retreat from


6. Searching the arrestee is an evidentiary and protective practice. A search of the arrestee may result in the discovery of weapons or evidence of crime. See Simons, Strip-Search, 6 BARRISTER 8 (Summer 1979).

7. Id.

8. The terms "strip search" and "body cavity search" have been subject to varying interpretations. According to one commentator, a strip search requires an individual to disrobe. A visual body cavity inspection requires the additional step of bending over, lifting the genitals, and spreading the buttocks so that a visual inspection of these areas may be made. A body cavity search involves the manual probing of an individual's rectum or vagina. See Note, Constitutional Limitations on Body Searches in Prisons, 82 COLUM. L. REV. 1033, 1033 n.2 (1982) [hereinafter cited as Note, Body Searches in Prisons].


For purposes of this Recent Case, a strip search will be defined as having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts, or undergarments of such person. This is the statutory definition in Illinois. ILL. REV. STAT. 38, § 103-1(d) (1983).


10. Strip search practices have surfaced in Chicago, St. Louis, Houston, Racine, and New York. See Simons, supra note 6, at 8.


12. 723 F.2d 1263 (7th Cir. 1983).

13. Id. at 1266.

14. Id. at 1273.
prior United States Supreme Court cases which addressed the search incident to arrest exception. The Supreme Court has stated that once there is a lawful custodial arrest, a search incident to that arrest requires no additional justification. The Court has also stated that once the arrest has established the authority to search, a "full search" of the person is a reasonable search under the fourth amendment. An analysis of the impact of Mary Beth G. on these Supreme Court decisions must be prefaced by a discussion of the Supreme Court cases which have addressed the search incident to arrest exception to the warrant requirement of the fourth amendment. Accordingly, this Recent Case will review the development of the search incident to arrest case law. The Mary Beth G. decision will then be analyzed in light of that background.

SEARCH INCIDENT TO ARREST

The United States Supreme Court has determined that a search without a warrant is an unreasonable search in violation of the fourth amendment. The courts, however, have developed several exceptions to the warrant requirement. Two exceptions, exigent circumstances and search incident to arrest, were developed in response to a need to protect police officers and to prevent the destruction of evidence. The exigent circumstances exception allows a warrantless search when the particular circumstances surrounding that search indicate that an immediate search is necessary. Such a search is permissible to protect the officer, to protect the public, and to prevent

15. See infra notes 36-49 and accompanying text.
17. A full search incident to an arrest may involve a relatively extensive exploration of one's person. Terry v. Ohio, 392 U.S. 1, 25 (1968).
19. See, e.g., Arkansas v. Sanders, 442 U.S. 753 (1979) (a search of private property normally must be pursuant to a search warrant); Katz v. United States, 389 U.S. 347 (1967) (searches conducted without a warrant are usually unreasonable). To obtain a warrant, police officials must first convince a neutral magistrate that probable cause exists. See, e.g., New York v. Belton, 453 U.S. 454, 457 (1980) ("It is a first principle of Fourth Amendment jurisprudence that the police may not conduct a search unless they first convince a neutral magistrate that there is probable cause to do so."); United States v. Chadwick, 433 U.S. 1, 9 (1977) (the warrant plays a significant role in fourth amendment protection). For a general discussion of the warrant requirement, see J.W. Hall, Jr., supra note 3, at §§ 6:1-18; W. LaFave, SEARCH AND SEIZURE §§ 4.1-13 (1978).
20. See supra note 3.
the destruction of evidence.24

Likewise, the search incident to arrest exception is justified by the need to protect the officer who is carrying out official duties and to prevent the destruction of evidence.25 The exigent circumstances exception and the search incident to arrest exception are similar in that each permits police to dispense with the warrant requirement due to an overriding necessity. Although our fourth amendment rights are jealously guarded,26 the exceptions to the warrant requirement are justified in situations where the public’s interest in having the search immediately conducted outweighs the intrusion into the privacy of the arrested person.27

Typical fourth amendment analysis requires the balancing of two competing interests.28 On the one hand, the government’s interest in effective law enforcement requires that government authorities have the power to conduct searches of the person.29 On the other hand, the individual has a right of privacy and of bodily integrity.30 To accommodate both of these interests, the fourth amendment requires that searches be “reasonable.”31 In Bell v. Wolfish,32 the United States Supreme Court stated that the term

24. Carroll v. United States, 267 U.S. 132 (1925) (warrantless search of vehicle is permissible to prevent evidence from being transported out of jurisdiction).
25. Chimel v. California, 395 U.S. 752 (1969) (search of the arrestee and the area within the arrestee’s immediate control is permissible to protect the arresting officer and to prevent the destruction of evidence). See W. LAFAVE, supra note 19, at § 5.2; infra notes 36-43 and accompanying text.
27. For example, when a police officer believes that an individual is concealing a weapon and there are several bystanders in the area, the officer should have the right to search the individual in order to protect other members of the public. See J.W. HALL, JR., supra note 3, at § 7:1.
28. The permissibility of a particular law enforcement practice is judged by balancing the intrusion on the individual’s privacy interests against the furtherance of legitimate governmental interests. The purpose of the fourth amendment is to protect individuals’ privacy interests by imposing a standard of conduct on government officials carrying out their official duties. The fourth amendment accomplishes this by requiring that searches be reasonable. See, e.g., Delaware v. Prouse, 440 U.S. 648 (1979) (reasonableness of a search is judged by balancing the legitimate governmental concern against its intrusion on an individual’s privacy); Camara v. Municipal Court, 387 U.S. 523 (1967) (test of reasonableness requires a balancing of the need to search against the invasion which the search entails); see also J.W. HALL, JR., supra note 3, at § 1:10 (test of reasonableness is subject to abuse and courts should not sacrifice individual liberties for the sake of effective law enforcement).
29. See, e.g., Terry v. Ohio, 392 U.S. 1 (1968) (in order to carry out their duties, police officers must have the right to protect themselves); Preston v. United States, 376 U.S. 364 (1964) (it is necessary for an arresting officer to protect himself while making an arrest).
30. See, e.g., Mapp v. Ohio, 367 U.S. 643, 656 (1961) (fourth amendment creates a “right to privacy, no less important that any other right carefully and particularly reserved to the people”).
31. See supra note 28.
32. 441 U.S. 520 (1979). In Bell, the challenged strip searches occurred at a federal detention center in New York. The inmates, who were awaiting trial on serious federal charges,
"reasonable," in the context of the fourth amendment, is "not capable of precise definition or mechanical application." Instead, the Court articulated the factors to be balanced when determining reasonableness:

In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.14

The exigent circumstances and search incident to arrest exceptions to the warrant requirement are deemed reasonable by the courts because, in most situations falling under these exceptions, the government's interest in conducting the search outweighs the individual's right to privacy and bodily integrity.15

The United States Supreme Court explained the justifications for the search incident to arrest exception to the warrant requirement in Chimel v. California.16 The Court stated that subsequent to an arrest, it is entirely reasonable for the arresting officer to search the person of the arrestee for any weapons that may be used to resist arrest or to effect an escape.17 Furthermore, according to the Chimel Court, it is reasonable for the officer to search for any evidence of crime on the arrestee's person in order to prevent its concealment or destruction.18

were strip searched after contact visits with persons from outside the facility. In an opinion written by Justice Rehnquist, the Court held that the searches were reasonable intrusions and did not violate the fourth amendment. The Court stated that a detention facility was a unique place fraught with serious security dangers. The Court also stated that prison officials should be given wide-ranging deference in carrying out their duties. Id. at 559. For a general discussion of searches in prisons, see Note, Body Searches in Prisons, supra note 8.

33. 441 U.S. at 559.
34. Id. Similar language appeared in Pennsylvania v. Mimms, 434 U.S. 106 (1977), where the Court stated that the reasonableness of a search is determined by balancing the government's need to search against the individual's right to privacy, taking into account all the surrounding circumstances.

35. In most cases under these exceptions, the search conducted does not intrude on a person's dignity as severely as a strip search would. When a search is not highly intrusive, the government's right to provide effective law enforcement will outweigh the individual's privacy rights. If officers are not allowed to conduct a reasonable search incident to an arrest, the public might suffer through inadequate law enforcement. To justify a strip search, however, the government's need to search must be substantial in order to outweigh an individual's privacy rights. See Note, Body Searches in Prisons, supra note 8, at 1046 (searches should be balanced on a sliding scale; the more intrusive the search, the greater the government's need to search must be).

36. 395 U.S. 752 (1969). The defendant in Chimel was suspected of burglarizing a coin shop. Three police officers arrested him at his house and conducted a warrantless search of his entire house at the time of arrest. Evidence obtained during that search was subsequently introduced at his trial on burglary charges. The Court held that the search exceeded the permissible bounds of a search incident to an arrest and violated the defendant's fourth amendment rights.

37. Id. at 763. This ruling is justified by the need to protect the police officer while carrying out official duties. See supra notes 22 & 25.
38. 395 U.S. at 763.
A warrantless search incident to an arrest, however, may be unreasonable if the police officer exceeds the permissible scope of the search. The United States Supreme Court has addressed the permissible scope of a search incident to an arrest on several occasions. In Chimel, the Court identified the permissible scope as a search of the arrestee's person and the area within his immediate control. The Court defined the area of immediate control as the area from within which the arrestee might gain possession of a weapon or destructible evidence. In so holding, the Court quoted from Terry v. Ohio that "the scope of the search must be 'strictly tied to and justified by' the circumstances which rendered it permissible." The Terry Court had also stated that a search which is reasonable at its inception may violate the fourth amendment by virtue of its intolerable intensity and scope. Thus, in both Terry and Chimel, the Court held that searches should be only as intense as justified by the facts giving rise to it, and that any search more intense than necessary would be unreasonable. This requires that the reasonableness of a search be determined in each case by an examination

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39. Id. Chimel limited the scope of the search incident to an arrest to the area within the arrestee's immediate control. In construing that phrase, the Illinois Supreme Court upheld the warrantless seizure of a gun, which was found in a paper bag approximately seven to ten feet from the arrestee. The court stated that the factors to be considered when determining the reasonableness of searching the area within the arrestee's immediate control are: the officer's knowledge of whether or not the suspect is armed; the presence of another person who might assist the arrestee in resisting arrest; and the officer's physical control over the situation. People v. Williams, 57 Ill. 2d 239, 246, 311 N.E.2d 681, 685, cert. denied, 419 U.S. 1026 (1974). See generally Aaronson & Wallace, A Reconsideration of the Fourth Amendment's Doctrine of Search Incident to Arrest, 64 Geo. L.J. 53 (1975) (the standard enunciated in Chimel is an inadequate guide to lower courts).

Prior to Chimel, the United States Supreme Court had upheld searches of an arrestee's premises incident to an arrest. See, e.g., United States v. Rabinowitz, 339 U.S. 56 (1950) (allowing the search of an office and papers located within the office as incident to an arrest); Harris v. United States, 331 U.S. 867 (1947) (allowing the search of an arrestee's entire apartment incident to an arrest). Yet, the Chimel Court held that the search incident to arrest doctrine did not encompass wholesale searches of the arrestee's premises. 395 U.S. at 762-63. Thus, Rabinowitz and Harris were overruled. Id. at 768.

40. 392 U.S. 1 (1968). Terry involved a stop and frisk or investigatory stop. In Terry, a police officer stopped the defendant on the street because the officer believed that the defendant was "casing" a store prior to robbing it. When the defendant mumbled a response to the officer's question, the officer turned the defendant around and patted down the outside of his clothes. The officer found a gun in the defendant's overcoat. The gun was introduced into evidence despite the defendant's objection that it was the fruit of an illegal search.

The Court affirmed Terry's conviction, stating that the scope of a search must be limited to that which is necessary for the discovery of the object for which the officer is searching. Id. at 26.

41. 395 U.S. at 762 (quoting Terry, 392 U.S. at 19); see also Warden v. Hayden, 387 U.S. 294, 310 (1967) (Fortas, J., concurring) (searches executed without a warrant must be tied strictly to the circumstances which excuse the warrant).

42. 392 U.S. at 17-18. This is particularly applicable in the strip search cases. For example, assume a person is arrested for a misdemeanor offense. The officer clearly has authority to search that person. If a strip search is conducted, however, the officer's right to search is not clear. If the officer has no reason to believe that either of the Chimel justifications for a search
of the circumstances giving rise to the search.\textsuperscript{43}

Four years later, however, the Supreme Court expanded the permissible scope of the search incident to an arrest in \textit{United States v. Robinson}.\textsuperscript{44} The Court determined that a standardized rule governing the scope of a search incident to an arrest would be more operable than "case-by-case adjudication."\textsuperscript{45} The Court stated:

A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.\textsuperscript{46}

Thus, pursuant to \textit{Robinson}, an arrestee is always subject to a full search, which may include "a relatively extensive exploration of the person."\textsuperscript{47}

\begin{footnotesize}
\textsuperscript{43} See infra notes 90-94 and accompanying text.
\textsuperscript{44} 414 U.S. 218 (1973). In \textit{Robinson}, the defendant was arrested for operating a vehicle without a license. While conducting a pat-down search of the defendant, the arresting officer felt an object in the defendant's pocket. Further examination revealed a crumpled up cigarette package containing heroin. The defendant's conviction for possession of narcotics was affirmed by the United States Supreme Court. \textit{Id.} at 218.
\textsuperscript{45} \textit{Id.} at 235. The Supreme Court reversed the court of appeals and stated that:

[the] more fundamental disagreement with the Court of Appeals arises from its suggestion that there must be litigated in each case the issue of whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest. We do not think the long line of authorities of this Court . . . requires such a case-by-case adjudication. A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick \textit{ad hoc} judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search. The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. 

\textit{Id.} Thus, the Court abandoned case-by-case adjudication of reasonableness under the fourth amendment and adopted a standardized rule to guide police behavior.

In his forceful dissent, Justice Marshall stated that the majority's approach represented a "clear and marked departure from our long tradition of case-by-case adjudication of the reasonableness of searches and seizures under the Fourth Amendment." Marshall also stated that fourth amendment analysis required a "painstaking" case-by-case determination of reasonableness in order to maintain the integrity of our individual rights. \textit{Id.} at 238-39 (Marshall, J., dissenting).

\textsuperscript{46} \textit{Id.} at 235.

\textsuperscript{47} Terry v. Ohio, 392 U.S. 1, 25 (1968) (differentiating between the stop and frisk exception and the search incident to arrest exception).
\end{footnotesize}
Three months after adopting a standardized rule governing search incident to arrest in *Robinson*, the Court decided *United States v. Edwards*. In *Edwards*, the Court upheld the warrantless search and seizure of an arrestee’s clothing approximately ten hours after his arrest. Prior to *Edwards*, the Court had stated that a search incident to an arrest must be conducted substantially contemporaneous with the arrest. By sustaining the constitutionality of the search in *Edwards*, the Court expanded the time frame in which a search incident to arrest is permissible. The *Edwards* decision indicated the Court’s willingness to expand the search incident to arrest doctrine. *Robinson* and *Edwards* together indicated the movement of the Court toward a more permissive view of the search incident to arrest exception to the warrant requirement. The per se reasonableness of a strip search incident to an arrest, however, has remained subject to differing analyses by the lower federal courts. Some courts have interpreted *Bell v. Wolfish* as allowing a return to case-by-case adjudication of the reasonableness of strip searches incident to arrest, notwithstanding *Robinson*. For example, in *Tinetti v. Wittke*, the court held that the strip search of a woman arrested for a traffic violation was unconstitutional.

In *Tinetti*, the plaintiff was arrested for speeding and, because she was an out-of-state resident, was required to post a cash bond. Unable to post the required bond, the plaintiff was taken to the police station, strip searched, and detained until the bond could be posted. The strip search of the plain-

49. *Id.* at 808-09. At approximately 11:00 p.m., the defendant, Edwards, was arrested for attempting to break into the Lebanon, Ohio Post Office. A police investigation revealed that the attempted entry had been made by using a pry bar to force open a wooden window. The use of the pry bar left paint chips on the window sill and around the window area. The next morning, substitute clothes were purchased for the defendant and his clothes were seized as evidence of the crime. Examination of this clothing revealed paint chips which matched those that had been taken from the post office window. The clothing and the results of the examination were introduced at trial over the defendant’s objection that they were illegally seized. *Id.* at 801-02.
50. *Stoner v. California*, 376 U.S. 483 (1964) (a search is incident to an arrest only if it is conducted substantially contemporaneous with the arrest); *Preston v. United States*, 376 U.S. 364 (1964) (a search too remote in time from the arrest cannot meet the fourth amendment’s test of reasonableness).
51. 441 U.S. 520 (1979). In *Bell*, the Supreme Court determined that strip searches of detainees in a federal custodial center after the detainees had visited with outsiders were reasonable. The Court, in reaching this holding, stated that the test of reasonableness under the fourth amendment is not capable of precise definition and requires consideration of the circumstances surrounding each case. *Id.* at 559. It is worth noting that *Bell* is not a search incident to arrest case.
52. 479 F. Supp. 486 (E.D. Wis. 1979), aff’d, 620 F.2d 160 (7th Cir. 1980).
53. *Id.* at 491.
54. The arrestee is referred to as plaintiff because subsequent to her arrest and strip search she instituted this civil action against the sheriff’s department alleging a violation of her constitutional rights.
55. 479 F. Supp. at 488.
tiff was conducted pursuant to a written policy of the Racine County, Wisconsin Sheriff's Department, which provided that "all persons detained in the County Jail, regardless of the offense, be subject to a strip search." The Tinetti court found that neither of the justifications for a search incident to arrest announced in Chimel were present. First, the plaintiff was not searched by the arresting officer at the time of arrest because there was no reason to believe that she was carrying a dangerous weapon. Second, the court stated that since traffic violations do not generally involve any evidence which is likely to be destroyed, there was no reason to believe that the plaintiff was concealing evidence. Therefore, since no justifiable basis for the strip search existed, the Tinetti court concluded that the plaintiff's fourth amendment rights had been violated.

Similarly, in Logan v. Shealy, the Fourth Circuit held that the strip search of a woman arrested for a misdemeanor offense was unconstitutional. In Logan, a woman was arrested for driving while intoxicated, taken to the police station, and strip searched. The Logan court stated that the nature of the plaintiff's offense—driving while intoxicated—was not normally associated with the possession of weapons or contraband. Furthermore, the arrestee was present at the stationhouse for over one and one-half hours and had not been searched at all before the strip search was conducted. The court also stated that the strip search was unrelated to the security needs of the facility and, when balanced against the intrusive nature of the strip search, it could not be justified. Thus, the court found that the strip search violated the arrestee's fourth amendment rights.

In both Tinetti and Logan, the police conducted a strip search of a person incident to an arrest. Although the Supreme Court in Robinson held that a full search of the person requires no justification after an arrest, these lower courts analyzed the respective cases pursuant to the Chimel decision. In view of the intrusive nature of the searches for relatively minor offenses, it is not difficult to understand why these courts have by-passed the Robinson decision. Moreover, these lower courts may be aware of the publicity which

56. Id.
57. Id. at 490.
58. Id.
59. Id.
60. Id. at 491. Further, the court issued a permanent injunction barring similar strip searches in the future. Id. at 490.
62. Id. at 1013.
63. Id. The city's policy required that all persons detained, regardless of their offense, be strip searched. Id. at 1010.
64. Id. at 1013.
65. Id.
66. Id.
67. Id. The court stated: "An indiscriminate strip search policy routinely applied to all detainees . . . cannot be constitutionally justified simply on the basis of administrative ease in attending to security considerations." Id.
the recent strip search cases have received. Consequently, the Seventh Circuit’s decision in *Mary Beth G.*, which found the strip search policy of the Chicago Police Department unconstitutional, must be viewed not only in light of prior case law, but also in light of public sentiment.

*Mary Beth G.*

In the early part of 1979, a Chicago television station aired an investigative report exposing the City of Chicago’s policy of strip searching all female detainees. Following this broadcast, the Illinois branch of the American Civil Liberties Union filed *Jane Does v. City of Chicago,* a class action suit against the City which alleged that its blanket strip search policy was unconstitutional. The City’s policy required that all female arrestees be strip searched prior to detention in city lockups. The City’s blanket strip search policy did not require that the search be justified under the rationale of *Chimel.*

In *Jane Does*, the three named plaintiffs had been arrested for traffic violations, taken to the police station, and strip searched. Granting plaintiffs’ motion for summary judgment, the district court found that the City’s policy was unconstitutional under the fourth amendment. The district court then determined that the issue of damages should be decided in individual jury

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68. In Chicago, a television station aired a three-part investigative report exposing the City’s strip search policy. See Simons, *supra* note 6, at 8.

69. In response to the public outrage over strip searches, the Illinois General Assembly passed a statute governing strip searches. The statute provides that no person arrested for a misdemeanor or traffic offense, except in cases dealing with weapons or a controlled substance, shall be strip searched unless there is a reasonable belief that the individual is concealing a weapon or contraband. The statute also provides that the officer conducting the search must have written permission of the police commander. Ill. Rev. Stat. ch. 38, § 103-1 (1981); see Singer, *Strip and Body Cavity Searches in Illinois*, 69 Ill. B.J. 86 (1980).

70. 580 F. Supp. 146 (N.D. Ill. 1983). The definition of the proposed class was:
all female persons who were detained by the CPD [Chicago Police Department] for an offense no greater than a traffic violation or a misdemeanor, including all females who were never charged with any offense and who were subjected to a strip search in situations where there was no reason to believe that weapons or contraband had been concealed on or in their bodies.

*Mary Beth G.*, 723 F.2d at 1267 n.2.

71. The suit alleged that the challenged searches violated the fourth amendment to the United States Constitution, the equal protection clause of the fourteenth amendment, and the state equal protection clause. The Seventh Circuit held that the search policy violated each of these constitutional protections. 723 F.2d at 1273-74. Only the fourth amendment issue will be addressed in this Recent Case.

72. *Id.* at 1267 n.2. Mary Beth G. and Sharon N., were arrested after being stopped for traffic violations because there were outstanding parking tickets registered to their cars. Hinda Hoffman was arrested after being stopped for a traffic violation because she failed to produce her driver’s license. *Id.*

73. *Id.* at 1266. Prior to the district court’s ruling, the parties entered into an agreement which enjoined the City from continuing its strip search policy. The agreement provided that, in settlement of plaintiffs’ claims for injunctive relief, the City would be permanently enjoined from conducting strip searches of any person arrested for misdemeanor or traffic offenses unless the police believed that the arrestee was concealing contraband or weapons. The City, however, did not admit to liability for the challenged searches. *Id.*
trials rather than in a class action. Each plaintiff was awarded monetary damages in a separate proceeding at the district court level. The City appealed from these awards of monetary damages, as well as from the district court's holding that the strip search policy was unconstitutional.

These cases were consolidated on appeal with another strip search case under the name of Mary Beth G. v. City of Chicago. All of the strip search cases litigated had been conducted in accordance with the City's established procedures. On appeal, the City argued that its strip search policy did not violate the fourth amendment, and that, even if it had, the damage awards were excessive. The Seventh Circuit held that the City's policy of strip searching all female detainees was an unreasonable search under the fourth amendment absent a "reasonable suspicion" on the part of police personnel that the detainee was concealing a weapon or contraband. In reaching this conclusion, the court first examined the search incident to arrest exception to the warrant requirement of the fourth amendment. The court approvingly noted the Chimel justifications for the search incident to arrest, and then distinguished Robinson on the ground that it had not involved a strip search.

74. Id. The district court ordered the parties to select typical cases for trial on the issue of damages.
75. Id. Mary Beth G. and Sharon N. were each awarded $25,000. Hinda Hoffman was awarded $60,000.
76. In the case with which Mary Beth G. was consolidated, the plaintiff, Mary Ann Tikalsky, was arrested for a misdemeanor offense (disorderly conduct), transported to the police station, and strip searched. In a jury trial, the district court found that the City's policy violated Tikalsky's fourth amendment rights and awarded her damages in the amount of $30,000. Id. at 1267.
77. Since the district court instructed the parties to select out typical cases for individual trials on damages, the case took on the name of one of the plaintiffs to the class action.
78. The City's policy required each female placed in a detention facility to:

1) lift her blouse or sweater and to unhook and lift her brassiere to allow a visual inspection of her breast area, to replace these articles of clothing and then

2) to pull up her skirt or dress or to lower her pants and pull down any undergarments, to squat two or three times facing the detention aide and to bend over at the waist to permit visual inspection of the vaginal and anal area.

The policy also required that the searches be conducted by a female officer in a closed room away from the view of all other persons. Id.

This policy did not apply to males, who were strip searched only if the arresting officers had reason to believe that the detainee was concealing a weapon or other contraband. Otherwise, males were subject to a thorough hand search which the Mary Beth G. court described as follows:

The male detainee would place his hands against the wall and stand normally while the searching officer, with his fingers, would go through the hair, into the ears, down the back, under the armpits, down both arms, down the legs, into the groin area, and up the front. The officer would also search the waistband and require the detainee to remove his shoes and sometimes his socks.

Id. at 1268.
79. 723 F.2d at 1273.
80. Id. at 1269-72; see supra notes 37-39 and accompanying text.
81. 723 F.2d at 1269. The court stated that Robinson dealt with whether the officer could search in order to disarm the suspect or to preserve evidence, and not the permissible intensity of the search.
Next, the court stated that it would employ the balancing test announced in *Bell v. Wolfish* to evaluate the reasonableness of the searches conducted in these cases, and described this balancing test as the "touchstone for fourth amendment analysis." The court reasoned that although the Supreme Court had upheld strip searches in *Bell*, that decision was not controlling because of "sufficiently significant" factual differences. The court also stated that *Bell* had not established a per se rule validating strip searches in the detention setting. Thus, the court concluded that it was compelled to conduct its own inquiry into the "reasonableness" of the strip searches.

Quoting from several sources, the *Mary Beth G.* court considered the magnitude of the intrusion of strip searches on personal rights. The court concluded that the searches constituted a severe intrusion on a citizen's privacy, and stated, "we can think of few exercises of authority by the state that intrude on the citizen’s privacy and dignity as severely as the visual anal and genital searches practiced here." This intrusion on a person's privacy was balanced against the City's need to maintain the security and integrity of its detention facilities. After balancing these competing interests, the court announced that "[w]hile the need to assure jail security is a legitimate and substantial concern, we believe that, on the facts here, the strip searches bore an insubstantial relationship to security needs so that, when balanced against [the arrestees'] privacy interests, the searches cannot be considered 'reasonable.'" Thus, the court held that the City's strip search policy was unreasonable absent a "reasonable suspicion by the authorities" that either of the *Chimel* justifications for a search incident to arrest was present.

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82. *Id.* at 1272; see supra notes 28-35 and accompanying text.
83. 723 F.2d at 1272. In *Bell*, the Supreme Court held that strip searches of pre-trial detainees in a federal custodial center after visits with outsiders were reasonable. 441 U.S. at 560. The Seventh Circuit found that *Bell* was not controlling because the detainees in that case were awaiting trial on serious federal charges, while the detainees in *Mary Beth G.* were only minor offenders. 723 F.2d at 1272.
84. 723 F.2d at 1272.
85. *Id.* But see *Clements v. Logan*, 454 U.S. 1304 (Rehnquist, Circuit Justice 1981) (in-chambers opinion) (temporary stay pending hearing on certiorari petition), *cert. denied*, 455 U.S. 942 (1982). In the *Clements* in-chambers opinion, Justice Rehnquist, the author of the *Bell* decision, stated that the Fourth Circuit's decision in *Logan* was completely at odds with the Court's decision in *Bell*. He stated that the Fourth Circuit had incorrectly applied the *Bell* test by not deferring to prison officials' judgment in security matters. *Id.* at 1309-10. The full Court later denied certiorari.
86. 723 F.2d at 1272. The court quoted from the majority decision in *Bell* that visual inspections "instinctively give us the most pause." 441 U.S. at 558. The court also quoted from Marshall's dissenting opinion in *Bell* that "the body cavity searches ... represent one of the most grievous offenses against personal dignity and common decency." *Id.* at 576-77 (Marshall, J., dissenting).
87. 723 F.2d at 1272.
88. *Id.* at 1273.
89. *Id.* The court did not define the circumstances that would give rise to a "reasonable suspicion" that the arrestee was carrying a weapon or contraband.
To determine the reasonableness of the strip searches that occurred in *Mary Beth G.*, the court employed the balancing test announced in *Bell v. Wolfish*. The *Bell* Court's test of reasonableness correctly identified the competing interests present in fourth amendment analysis: the government's need for the search and the individual's right to privacy and bodily integrity. The test also considered the circumstances surrounding each search—including the possible justification for the search as well as the scope of the particular intrusion. This view, however, cannot be reconciled with the Supreme Court's holding in *Robinson*. The *Robinson* Court held that once a lawful arrest is established, a search incident to that arrest requires no additional justification.

If, as *Mary Beth G.*, *Tinetti*, and *Logan* indicate, the test of reasonableness under the fourth amendment now requires courts to look at the circumstances surrounding each search, then these lower courts have returned to case-by-case adjudication.

In *Mary Beth G.*, the Seventh Circuit correctly applied the *Bell* balancing test. First, the court determined the magnitude of the invasion on personal rights that the strip searches entailed. The court then balanced the magnitude of the invasion against the City's justification for the searches: the need to maintain the security and integrity of its lockup. The court found that the searches bore an insubstantial relationship to the City's security needs.

90. 441 U.S. at 559. The *Bell* balancing test requires that the need for the particular search be balanced against the intrusion on personal rights that the search entails. *See supra* notes 28-35 and accompanying text.

91. 441 U.S. at 559. In Delaware v. Prouse, 440 U.S. 648 (1979), the Supreme Court stated that the purpose of the fourth amendment is to protect the individual from unwarranted government intrusion. The Court further stated that in order to accomplish this, the fourth amendment required that searches be reasonable. The reasonableness of a search is determined by balancing the need for the search against the intrusion on personal rights that the search entails. *Id.* at 654.

92. 441 U.S. at 559; *see supra* text accompanying note 34.

93. 414 U.S. 218 (1973); *see supra* notes 44-47 and accompanying text.

94. 414 U.S. at 235. In so doing, the *Robinson* Court adopted a standardized rule governing the search incident to arrest doctrine. *Robinson's* standardized rule is a clear departure from the Court's decision in *Chimel*. In *Chimel*, the Court stated that a search incident to an arrest must be justified by the need to protect the officer and to prevent the destruction of evidence. The *Robinson* decision removed the requirement that the officer justify his search under *Chimel* and paved the way for abuse by police officers. *See LaFave, supra* note 16, at 162.

The *Mary Beth G.* court, however, correctly noted that the *Robinson* majority would have been willing to find a search incident to arrest unconstitutional if the search was "extreme or patently abusive." 723 F.2d at 1270 (quoting *Robinson*, 414 U.S. at 236). Thus, the standardized rule of *Robinson* does not legitimate all searches incident to arrest.

95. The court stated that the strip searches conducted here constituted a severe intrusion on the arrestee's privacy and dignity. 723 F.2d at 1272.

96. *Id.* Certainly, the City has an interest in maintaining the security of its detention facilities. In *Bell*, the Court stated that a detention facility is a unique place fraught with serious security dangers and that prison officials should be given wide-ranging deference in carrying out their official duties. 441 U.S. at 559.

In *Logan*, the strip search policy was adopted by the county after a deputy sheriff allegedly
so that, when balanced against the arrestee's privacy interests, the searches could not be considered reasonable. Thus, the Seventh Circuit correctly identified the competing interests and balanced them in accordance with the *Bell* analysis.

The *Mary Beth G.* court examined the relationship between the challenged search and the City's need to search and found it insubstantial. In so doing, the court suggested that the scope of a search should be tied strictly to the facts that justify its initiation.100 In other words, the court is returning to a *Chimel*-type analysis which would invalidate a search if it becomes more intense than the facts giving rise to it justify.101

Furthermore, according to the court, the City of Chicago's policy of strip searching women arrested for misdemeanor and traffic offenses cannot be justified by either the need to protect the officer or the need to prevent

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was shot by a misdemeanant who had not been thoroughly searched. 660 F.2d at 1010.

97. 723 F.2d at 1273.

98. As stated above, the competing interests in fourth amendment analysis are the government's need to search in order to provide effective law enforcement and the citizen's right to privacy and bodily integrity. The *Bell* test requires that these competing interests be balanced against each other, taking into consideration the circumstances surrounding the search. See *supra* notes 28-35 and accompanying text. This is precisely how the *Mary Beth G.* court determined the reasonableness of the challenged searches. See *supra* notes 86-89 and accompanying text. Thus, the court correctly followed the mandates of the *Bell* test.

99. 723 F.2d at 1272. The City introduced into evidence a study of searches made over a 35 day period. The study showed that over 1800 females were processed and, of these arrestees, seven percent were found to have concealed contraband and over three percent had items hidden on their bodies. Appellant's Opening Brief at 26-27, *Mary Beth G. v. City of Chicago*, 723 F.2d 1263 (7th Cir. 1983). Typical items found included gas guns, narcotics, knives, matches, cigarettes, hypodermic needles, and heroin kits. *Id.* These items were found in the undergarments, vagina, or, in one case, the wig of an arrestee. *Id.*

The City argued that its security measures were necessary to "maintain jail security, to prevent injury to guards and other inmates." *Id.* at 24. The City stated that excellent security was necessary because "if an arrestee wields a weapon that had been well hidden, the police would be deservedly criticized if someone is injured or if the arrestee escapes." *Id.* In some respects, the City is in a "Catch-22" position. If the City conducts strip searches of all arrestees, the result is, as *Mary Beth G.* indicated, condemnation of the City not only by the public, but also by the courts. If the City does not conduct adequate searches of detainees, and someone is injured as a result, the City will also be condemned by the public. In either case, the City would receive bad marks for its security procedures. See, e.g., *People v. Seymour*, 84 Ill. 2d 24, 38, 416 N.E.2d 1070, 1076 (1981) (police would be subject to deserved criticism if an arrestee produced a weapon and either injured someone or escaped).

100. The court stated that the facts upon which an intrusion is based must be capable of measurement against an objective standard. The court also stated that the more intrusive the search, the closer government authorities must come to showing that the search will uncover the objects for which the search is being conducted. 723 F.2d at 1273. In other words, the more intense the search, the greater the government's justification for the search must be in order for the court to find it reasonable. See, e.g., *Delaware v. Prouse*, 440 U.S. 648, 654 (1979) (facts upon which an intrusion is based must be capable of measurement); *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (in a stop and frisk situation, officer must be able to point to specific and articulable facts which justify the warrantless intrusion).

the destruction of evidence—the traditional justifications for the search incident to arrest announced by the Supreme Court in *Chimel*. This is demonstrated by the fact that, first, none of the arrestees in *Mary Beth G.* were searched by the arresting officer at the time of arrest. Evidently, the officers did not feel that these women posed any danger to their safety. Second, in a routine traffic arrest situation, there is no destructible evidence. The only evidence of the offense is either the readout on the officer’s speed detection device or the officer’s eyewitness account of the alleged violation. Because neither of the justifications for the search incident to arrest announced in *Chimel* were present in *Mary Beth G.*, the court correctly found the searches to be unconstitutional.

The *Mary Beth G.* decision represents a clear departure from *Robinson*. In *Robinson*, the Supreme Court held that a police officer does not have to assess in each case the likelihood that the individual arrestee is possessing a weapon or concealing evidence. According to the Court in *Robinson*, once a lawful arrest is established, a search incident to that arrest requires no additional justification. If the *Mary Beth G.* court had followed *Robinson*, it would not have examined the City’s justification for the searches and would have upheld the City’s strip search policy. The court did, however, analyze the possible justifications for the strip searches. In so doing, the Seventh Circuit ignored *Robinson* and returned to a *Chimel*-type analysis, which requires that the reasonableness of a search be determined in each case.

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102. In *Chimel*, the Court stated that the justification for the search incident to arrest was the need to protect the officer and to prevent the destruction of evidence. 395 U.S. at 763; see supra notes 36-43 and accompanying text.

103. 723 F.2d at 1271.

104. In *Tinetti*, the court stated that the discovery of evidence was not a sufficient justification for the search because the individual had been arrested for speeding. The only evidence was the readout on the arrestee’s speedometer, as remembered by the arrestee, and the readout on the officer’s speed detection device. Thus, the arrestee “had no reason to conceal, and the officer had no reason to suspect, the existence of any evidence” which could be discovered by a strip search. 479 F. Supp. at 490.

In *Logan*, the court stated that the offense—driving while intoxicated—was not normally associated with the possession of weapons or contraband. 660 F.2d at 1013; see Note, *Constitutional Law: Search and Seizure: An Analysis of Federal and Oklahoma Law in Light of Recent Chicago Strip Search Cases*, 34 OKLA. L. REV. 312 (1981) (author suggests that routine traffic violations do not normally involve the use of a weapon, and traffic violations do not produce evidence which may be concealed on the arrestee’s person).

105. 414 U.S. at 235; see supra notes 44-47 and accompanying text.

106. In *Chimel*, the Court stated that the recurring question of reasonableness in search and seizure cases can only be determined by an examination of the facts and circumstances, or the “total atmosphere” of the case. 395 U.S. at 765.

Had the Seventh Circuit followed *Robinson*, it would not have inquired into the reasonableness of the particular searches because *Robinson* held that a search incident to a lawful arrest requires no justification other than the arrest. 414 U.S. at 235. In *Mary Beth G.*, the arrestees were lawfully arrested and, according to *Robinson*, no additional justification for a search was necessary. The Seventh Circuit, however, does require that authorities have a reasonable suspicion—a justification other than the arrest itself—that weapons or contraband are present prior to strip searching an arrestee. This is similar to the holding in *Terry*. In *Terry*, the Court
In reaching its decision in *Mary Beth G.*, the Seventh Circuit relied on the *Tinetti* and *Logan* decisions. In *Tinetti*, the court held that the strip search of a woman arrested for a traffic violation was unconstitutional under the fourth amendment.107 Similarly, in *Logan*, the Fourth Circuit held unconstitutional the strip search of a woman arrested for a misdemeanor offense.108 The *Mary Beth G.*, *Tinetti*, and *Logan* decisions all held that the scope and intensity of a search must be tied strictly to, and justified by, the circumstances giving rise to it. This is precisely what the *Chimel* analysis calls for. Thus, these cases represent a trend away from *Robinson* and back to case-by-case adjudication of the reasonableness of a search incident to arrest. After these cases, the scope of a search is limited by the circumstances which rendered its initiation permissible.

While the decision in *Mary Beth G.* is commendable from a public policy standpoint, it can be criticized for not extending the protection of arrestees far enough. The *Mary Beth G.* decision protects only misdemeanor and other non-felony arrestees from strip searches absent a reasonable suspicion that the arrestee is concealing weapons or contraband. It does not protect felony arrestees in any manner. If the reasonableness of a search is determined by these traditional justifications of discovering weapons or contraband,109 then the fact that an individual is arrested for a felony is irrelevant. Under the *Chimel* analysis, there would be no justification to strip search a felony arrestee when the authorities have no reason to believe that the individual is concealing a weapon or contraband.

The need to protect felony arrestees from unreasonable strip searches was demonstrated in *Dufrin v. Spreen*.110 In *Dufrin*, the plaintiff111 was arrested at her home pursuant to a warrant for a felonious assault allegedly committed two months earlier.112 She was taken to the county detention center and strip searched in accordance with the county's policy.113 The search was held

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107. 479 F. Supp. at 491; see supra notes 52-60 and accompanying text.
108. 660 F.2d at 1013; see supra notes 61-67 and accompanying text.
109. The justifications for the search incident to arrest were announced by the Supreme Court in *Chimel*. The warrantless search incident to arrest is justified by the need to protect the officer and to prevent the destruction of evidence. 395 U.S. at 763.
110. 712 F.2d 1084 (6th Cir. 1983); accord United States v. Klein, 552 F.2d 296 (1st Cir. 1975) (strip search of individual arrested on felony drug charges is constitutional).
111. The arrestee is referred to as plaintiff because, subsequent to her arrest and strip search, she instituted a civil action against the sheriff's department alleging a violation of her constitutional rights.
112. 712 F.2d at 1085. The plaintiff was arrested for assaulting her 16 year old stepdaughter with a broom handle.
113. The county's policy provided that "all female prisoners to be incarcerated in the Oakland County Jail . . . regardless of the nature of the charges against them and regardless of the probability that they might be carrying contraband" shall be strip searched. *Id.*
to be constitutional. The Dufrin court distinguished Tinetti and Logan on the ground that Dufrin involved a felony arrest rather than a misdemeanor arrest, and further, found that the United States Supreme Court's decision in Bell v. Wolfish was controlling. According to the Dufrin court, the case fell squarely within the area recognized by the Bell Court as requiring wide-ranging deference to prison officials to allow them to carry out their duties.

Neither of the Chimel justifications for a search incident to arrest were present in Dufrin. First, there was no evidence that police personnel believed that the arrestee was concealing a weapon. In any event a pat-down search would have been sufficient to discover any weapon that she might have been carrying. Second, the crime for which the plaintiff was arrested had allegedly taken place two months earlier. Hence, it is doubtful that the plaintiff was concealing any evidence of that crime at the time of arrest. Although Mary Beth G. did not involve a search incident to a felony arrest, Dufrin illustrates that the requirements of Chimel will not be met in all felony arrests. Notwithstanding the fact that the Dufrin court found the strip search

The search was conducted in the following manner:
1) the arrestee was led into a small room and directed to remove her clothing;
2) the clothing was placed in a bag;
3) the arrestee was viewed from both the front and the rear, and then required to bend over;
4) the arrestee was then given a prison uniform;
5) the search was conducted by a female officer.

Id.
114. Id. at 1088-89.
115. Id. at 1089. The court stated: "It is not necessary for us to determine whether Tinetti and Logan were correctly decided or should represent the law in this Circuit . . . it is enough to observe that their facts are clearly distinguishable from the undisputed facts before us." Id. The crucial difference, according to the court, was that the plaintiff had been arrested for a felony involving the use of violence, while in Tinetti and Logan, the offenses were a traffic violation and a misdemeanor respectively. Id.
116. Id. at 1088-89.
117. Id.; see supra note 32.
118. A pat-down search has been described as follows: "The officer must feel with sensitive fingers every portion of the prisoner's body. A thorough search must be made of the prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet." Terry v. Ohio, 392 U.S. 1, 17 n.13 (1968) (quoting Priar & Martin, Searching and Disarming Criminals, 45 J. CRIM. L. CRIMINOLOGY & POL. SCI. 481 (1954)).
119. 712 F.2d at 1085.
120. The arrest situations in Mary Beth G. involved persons arrested for traffic and misdemeanor offenses. 723 F.2d at 1267 n.2.

In a footnote, the Seventh Circuit distinguished United States v. Klein, 522 F.2d 296 (1st Cir. 1975), a case cited by the City involving the strip search of a felony arrestee. The court stated that it had previously upheld such searches, Salinas v. Breier, 695 F.2d 1073 (7th Cir. 1982) (strip search of felony arrestee suspected of concealing narcotics), but the searches conducted in Mary Beth G. involved different circumstances. In Mary Beth G., the arrestees were only misdemeanor and traffic offenders, and there was no reason to believe that any of them were concealing contraband. Thus, the felony arrest cases where there was a reasonable belief that the suspect was concealing contraband were not controlling. 723 F.2d at 1271 n.7.
before it reasonable, the Seventh Circuit, when presented with a case involving a search incident to a felony arrest, should continue the trend limiting the permissible scope of the search incident to arrest established by *Tinetti, Logan,* and *Mary Beth G.*

The Seventh Circuit’s decision in *Mary Beth G.* also fell short in its protection of arrestees by its use of a “reasonable suspicion” standard. The court held that the City’s policy of strip searching all female arrestees was unreasonable absent a “reasonable suspicion” by the authorities that the individual was concealing contraband. The reasonable suspicion standard that the court used is incapable of precise definition and is subject to varying interpretations. Furthermore, the use of such a standard gives courts and police officers little guidance in determining what factual circumstances constitute a reasonable suspicion.

**IMPACT**

The Seventh Circuit’s decision in *Mary Beth G.* is part of a recent trend limiting the scope of the search incident to arrest. The *Mary Beth G.* decision does not limit the authority to search, but instead limits the intensity of a permissible search. This decision should prompt police departments around the country to reassess and revise their search incident to arrest policies. Efforts should be made to make police officers more aware of

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121. 723 F.2d at 1273.
122. In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court stated “in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Id.* at 21. This language has been quoted as the test of reasonable suspicion. *United States v. Burgos*, 720 F.2d 1520, 1524 (11th Cir. 1983); *United States v. Collom*, 614 F.2d 624, 628 (9th Cir. 1979).

In *Williams v. Alioto*, 549 F.2d 136 (9th Cir. 1977), the court stated that the term “reasonable suspicion” is not capable of definition. *Id.* at 139 n.2 (quoting police guidelines). Further, “it is more than a hunch or mere speculation . . . but less than the probable cause necessary for an arrest.” *Id.* In *United States v. Collom*, 614 F.2d 624 (9th Cir. 1979), the court stated that California law permits investigatory stops on a showing of “rational suspicion.” This means “some activity out of the ordinary is or has taken place” and that the person under scrutiny is somehow connected with the activity. *Id.* at 628. In a footnote the court stated that “there is no substantial difference” between the “reasonable” and “rational” suspicion standards. *Id.* at 628 n.3.

123. The Seventh Circuit did not outline any factual circumstances that would constitute a reasonable suspicion. The reasonable suspicion tests that have been articulated by the courts are not a reliable guide for police officers. If the courts have been unable to set a precise standard for reasonable suspicion, it is evident that a police officer in the field would also have a difficult time determining what facts establish a reasonable suspicion.

124. The holding in *Mary Beth G.* does not prevent police officers from searching a traffic or misdemeanor arrestee incident to an arrest. Rather, *Mary Beth G.* requires that police personnel have a reasonable suspicion that a traffic or misdemeanor arrestee is concealing contraband before a strip search can be conducted. 723 F.2d at 1273. Thus, *Mary Beth G.* limits the permissible scope and intensity of an otherwise reasonable search incident to an arrest. See Shuldiner, *supra* note 8, at 280-82.

125. If the police departments do not act themselves, the state legislature may do so. In
the reasoning supporting the search incident to arrest doctrine. Furthermore, revised policies should include a strict prohibition against strip searching arrestees when police personnel do not suspect the arrestee of concealing contraband. Permissible strip searches should be an exception to a general rule which prohibits such highly offensive intrusions. Revisions of police department practices would be a major step in protecting individuals' jealously guarded fourth amendment rights.126

The result in Mary Beth G. is also likely to prompt other women who have been strip searched to file civil actions against the offending agency.127 Prior to Mary Beth G., many women who were strip searched remained silent in order to avoid the publicity that would accompany filing a civil suit.128 Now, however, attitudes toward women's rights in general have changed, and more women are willing to speak out against strip search practices.129 In addition, the prospect of a monetary damage award may also induce other women to file suit.

Whether Mary Beth G. will have an effect on decisions outside the strip search area is difficult to determine. Much depends on the precise makeup of the Supreme Court. When determining the proper balance between the competing interests,130 some Justices favor the government's interest in effective law enforcement while others favor the privacy rights of individuals. Mary Beth G., however, does provide a framework by which courts may limit all types of searches incident to arrest.131 By limiting the scope of the search incident to arrest to situations where a search is justified under Chimel, the Seventh Circuit has at least reminded other courts of the principles underlying the search incident to arrest exception to the warrant requirement.

Illinois, for example, the legislature passed a statute governing the permissibility of strip searches. ILL. REV. STAT. ch. 38, § 103-1 (1983); see supra note 67.

This statute was passed shortly after the Jane Does class action was filed. See Simons, supra note 6, at 56-57.

126. Arkansas v. Sanders, 442 U.S. 753, 759 (1979) (exceptions to the warrant requirement are jealously and carefully drawn); Jones v. United States, 357 U.S. 493, 499 (1958) ("exceptions to the rule that a search must rest upon a search warrant have been jealously and carefully drawn").

127. One commentator suggests that a "barrage" of civil suits will be filed now that strip search practices have come to light. See Simons, supra note 6, at 8. Furthermore, the extensive publicity surrounding the strip search cases is likely to apprise other strip search victims of their right to bring suit.

128. A co-administrator of the ACLU in Houston states that many women complained of being strip searched several years ago. None of these women, however, would file a civil suit because of the publicity such a suit would receive. Id. at 56.

129. The City of Chicago's strip search policy has been in place since 1952. 723 F.2d at 1268. Yet, only recently have cases been filed against the City. The most plausible explanation for this is that women are now fighting for their legal rights in all areas. Further, the public is more open to women's problems and more responsive to the complaints of females. Simons, supra note 6, at 56.

130. See supra notes 28-35 and accompanying text.

131. In Mary Beth G., the Seventh Circuit held that the strip search of a misdemeanor arrestee could only be conducted when the authorities have a reasonable suspicion that a weapon or
CONCLUSION

The search incident to arrest exception to the warrant requirement of the fourth amendment allows a police officer to make a warrantless search of the arrestee incident to a lawful arrest. In *Chimel v. California*, the Supreme Court articulated the justification for and the scope of a permissible search incident to arrest. The *Chimel* Court stated that the scope of the search incident to an arrest should be tied strictly to the circumstances which justify it, and that any search beyond that would be invalid. Since the *Chimel* decision, the permissible scope of the search incident to arrest has been expanded, allowing police to routinely strip search female arrestees without any justification. *Mary Beth G.* is one of several recent decisions which has condemned such practices by finding them unconstitutional.

From the public's standpoint, the *Mary Beth G.* decision is both commendable and overdue. Unfortunately, the Seventh Circuit was unable to extend the fourth amendment protection it afforded misdemeanor arrestees to felony arrestees. Hopefully, when a search incident to a felony arrest is presented to the Seventh Circuit, the court will continue the trend it has helped create and protect felony arrestees from strip searches. By so doing, the court would limit the scope of the search incident to arrest sufficiently to adequately protect all arrestees under the fourth amendment.

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other contraband is being concealed. 723 F.2d at 1273. This rationale could be used to limit the scope and intensity of all types of searches incident to arrest. The most apparent example is a search of an automobile incident to an arrest. Courts could limit the scope of such searches by applying a *Chimel* analysis. If neither the need to prevent the destruction of evidence nor the need to protect the officer is present, a search incident to an arrest should not include a search of the arrestee's vehicle.