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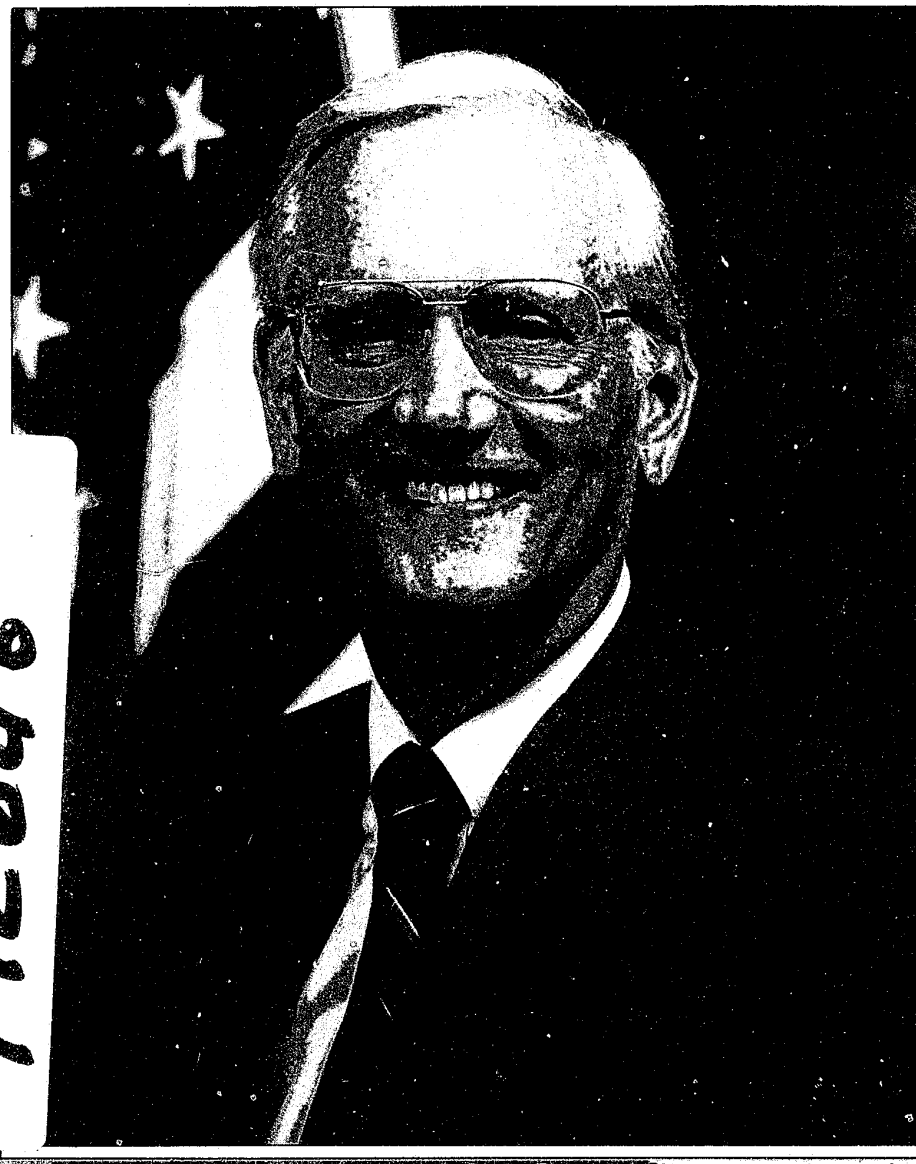

FBI Director William S. Sessions

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Look But Don't Touch: The Plain View Doctrine

"To be in plain view, an item must be plainly visible to a law enforcement officer standing in a position where he has a lawful right to be."

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Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

ARIZONA v. *HICKS*[1]

On April 18, 1984, police officers in Phoenix, AZ, were called to a local apartment complex to investigate an apparent shooting. Early reports indicated that a bullet, which was fired through the floor of an apartment occupied by James Hicks, struck and injured a man living in the apartment below. Once on the scene, the officers quickly entered Hicks' apartment[2] and conducted a cursory search for the shooter, other victims, and weapons. Although no people were found, several weapons and a stocking-cap mask were discovered during the search.

Before leaving the scene, one of the officers noticed two sets of expensive stereo components in Hicks' apartment. Noting that the stereo equipment appeared out of place in the otherwise ill-appointed apartment, the officer began to suspect that the components may have been stolen. To satisfy his curiosity, the officer more closely examined the stereos, moving the individual components in the process, to read and record their serial numbers. A subsequent telephone call to police headquarters revealed that a number of the components had been taken in a recent armed robbery. The stolen components were ultimately seized,[3] and Hicks was indicted on charges of armed robbery.

Prior to trial, the State court granted Hicks' motion to suppress the stereo equipment seized from his apartment. On review, the Arizona Court of Appeals,[4] although recognizing the validity of the initial warrantless entry into the apartment due to the exigent circumstances created by the shooting,[5] affirmed the lower court's order to suppress on the grounds that the obtaining of the serial numbers was an additional search that was unrelated to and, therefore, not justified by the exigency.[6] In so holding, the court of appeals implicitly rejected the State's steadfast contention that the officer's actions regarding the stereo components were totally justified under the "plain view" doctrine. After the Arizona Supreme Court denied further review in the matter, the

Special Agent Kingston

U.S. Supreme Court granted certiorari[7] to more closely examine the State's contention in light of previous decisions involving the "plain view" doctrine.

ORIGIN OF THE PLAIN VIEW DOCTRINE

The U.S. Supreme Court officially recognized the concept of "plain view" in the 1968 case of *Harris* v. *United States.*[8] In *Harris,* a police officer, while in the process of securing an impounded automobile, discovered evidence of a robbery. The evidence, a vehicle registration card that was found lying face down on the door jamb, was later introduced against Harris, the owner of the impounded automobile, and he was convicted on robbery charges. The conviction was first reversed, then affirmed by the court of appeals.[9] Finally, when the U.S. Supreme Court had an opportunity to address the issue of whether the registration card had been obtained by means of an unlawful search,[10] the Court, in a very short *per curiam* decision, simply announced that "objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence."[11] Because the Court found that the officer had a right to be in a position to view the vehicle registration card, the card was deemed to have been lawfully seized and admitted into evidence. Consequently, the conviction was affirmed, and the plain view doctrine was formally adopted.

A few years later, in the case of *Coolidge* v. *New Hampshire,* the Supreme Court had another opportunity to clarify the concept of plain view. In *Coolidge,* police officers investigating the murder of a 14-year-old girl obtained warrants to arrest Coolidge and search his car. Acting on those warrants, officers arrested Coolidge in his home and seized the automobile parked in his driveway. The automobile was thoroughly searched and vacuumed 2 days later. Evidence obtained during the search was later admitted against Coolidge, who was found guilty and sentenced to life in prison. Both the judgment and sentence were affirmed by the Supreme Court of New Hampshire.[12] The U.S. Supreme Court then granted certiorari to "consider the constitutional questions raised by the admission of [certain] evidence against Coolidge at his trial."[13]

The first question considered by the Court in *Coolidge* was the validity of the warrant that authorized the search of Coolidge's car. The warrant in question was signed by the State attorney general acting as a justice of the peace.[14] The attorney general, however, was also actively in charge of the murder investigation and later assumed the role of chief prosecutor at trial. Because the Court found that the attorney general was so closely aligned with law enforcement in this case that he could not be considered a neutral and detached magistrate as required by the Constitution,[15] the warrant was declared invalid. With the warrant nullified, the search of Coolidge's automobile stood "on no firmer ground than if there had been no warrant at all."[16] If, therefore, the search was to be justified, it had to be justified on one of the exceptions to the warrant requirement.[17]

In an effort to preserve the evidence seized from the automobile, the State advanced a number of theories which would bring the search of the automobile within one of the exceptions to the warrant requirement.[18] One of the theories proposed by the State suggested that the vehicle could have been seized under the plain view doctrine and searched later as part of a custodial inventory. Ignoring the inventory portion of the State's argument, a

"... if probable cause to believe that an item is evidence of a crime cannot be established without making some further intrusion, no matter how slight, then the search and seizure of that item cannot be justified under the plain view doctrine."

plurality[19] of the Court in *Coolidge* focused on the plain view exception to the warrant requirement and concluded that it was inapplicable to that case. In reaching this conclusion, the Court made the following statement regarding the plain view doctrine:

> "What the 'plain view' cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification—whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed at the accused—and permits the warrantless seizure. Of course the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the 'plain view' doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges."[20]

This synopsis of the plain view doctrine recognizes three limitations inherent in the concept: (1) The law enforcement officer must be in a lawful position when he (2) inadvertently comes across an item, (3) the evidentiary value of which is immediately apparent. Applying these limitations to the facts in *Coolidge,* the plurality found that the plain view doctrine did not apply because the discovery of the automobile in Coolidge's driveway was expected, not inadvertent. The seizure of the automobile was, therefore, unconstitutional, as was the subsequent search.

Although the decision in *Coolidge* was merely a plurality opinion which established no binding precedent, the lower courts have generally adhered to the plurality's interpretation of the plain view doctrine and applied the inherent limitations to subsequent cases.[21] The remainder of this article will examine the concept of plain view, analyze its limitations, and discuss what effect these limitations had on the outcome of *Arizona* v. *Hicks.*

LIMITATIONS TO THE PLAIN VIEW DOCTRINE

Officers in a Lawful Position

To See

Before the seizure of an item of evidence can be fully scrutinized in terms of the limitations of the plain view doctrine to determine whether it is admissible against a criminal defendant, the item must first be found to have been in plain view at the time it was seized. In other words, before the plain view doctrine can apply, a court must find that the particular object in question was plainly visible at the time it was seized by a law enforcement officer and that no unauthorized intrusion was necessary to bring the object into view.

This initial requirement for application of the plain view doctrine was illustrated in the case of *United States* v. *Irizarry.*[22] In *Irizarry,* Federal agents and local law enforcement officers, armed with a valid arrest warrant, knocked and announced their presence prior to making a demand to enter the defendant's hotel room in Isla Verde, Puerto Rico. Before entering, one of the agents peered through the hotel room window and observed the defendant removing a gun from a handbag resting on a dresser. The agents and officers quickly took cover and made repeated demands for defendant and others in the room to come out. Approximately 5 minutes later, defendant and two others exited the room and were arrested. One agent then entered the hotel room to insure that no one else remained inside. Once in the room, the agent noticed marijuana residue in the bathtub and marijuana cigarette butts in the ashtrays. While this evidence was being collected, a second agent entered the hotel room to assist in securing the premises. In the bathroom, the second agent noted that a soundproofing panel in the ceiling was ajar. Climbing onto the toilet and looking into the space above the drop-ceiling, the agent found and seized three guns, two packages of marijuana, and one package of cocaine.[23] Defendant was subsequently charged with possession of the firearms and possession of the controlled substance with intent to deliver.

Prior to trial, defendant moved to suppress all the evidence seized from the hotel room. This motion, along with a second identical motion made during trial, was denied and defendant was convicted. On appeal, the government offered a two-step justification for the hotel room seizures. First, they argued that the initial entry and brief search of the room were made necessary by the exigent circumstances surrounding the arrest. Second, the government asserted that all items of evidence confiscated, including those items discovered above the ceiling, were in plain view and could lawfully be seized by agents legitimately on the premises.

Conceding the government's first argument, the court of appeals in *Irizarry* readily recognized that the emergency situation created by the lawful arrest of the hotel room occupants justified the subsequent entry of that room to search for others who might be present. Likewise, the court accepted a portion of the government's second argument—that the marijuana residue in the bathtub and the cigarette butts in

"... [p]lain view alone is never enough—the doctrine requires a catalyst to place an officer in a lawful position to seize the evidence."

the ashtrays were items of evidence found in plain view by agents lawfully in the hotel room. However, the court was not willing to extend its acceptance to the items found above the ceiling soundproofing panel. Although noting that a law enforcement officer may "crane his neck, or bend over, or squat"[24] to observe items of interest without rendering the plain view doctrine inapplicable, the court held that the doctrine was not intended to "permit an officer to indulge in a frolic of his own."[25] More simply, the plain view doctrine, by itself, cannot authorize any further intrusion into premises.[26]

To be in plain view, an item must be plainly visible to a law enforcement officer standing in a position where he had a lawful right to be. Clearly, the agents who arrested Irizarry had a right to be in his hotel room, and they could lawfully seize items of evidence plainly visible to them. Unfortunately, the items of evidence found above the ceiling panel were not plainly visible to the agents standing in the room. Discovery of those items required the additional intrusion of climbing on the toilet, lifting the panel, and peering into the space above the ceiling. Because an additional intrusion, for which the agents had no legal basis, was required, seizure of these items could not be justified under the plain view doctrine. Consequently, the court of appeals in *Irizarry* suppressed these items of evidence and reversed defendant's conviction.

To Seize

Once a reviewing court has determined that a particular item of evidence was plainly visible to a law enforcement officer prior to its seizure, that court must next ascertain whether the law enforcement officer had a right to be in the position he occupied when he seized the evidence. Simply because an officer is in a lawful position to see an item does not necessarily mean he is in a lawful position to seize that item. If, for example, an officer standing on a public sidewalk, where he undoubtedly has a right to be, can look through the window of a private residence and see something he has reason to believe is evidence of a crime, the plain view doctrine would not justify the warrantless entry on to those premises to seize that item.[27] Although the officer was in a lawful position to see the evidence, he was not in a lawful position to seize it.

The difference between being in a lawful position to see and seize evidence is often explained by distinguishing "plain view" from "open view." Judge Charles Moylan of the Maryland Special Court of Appeals aptly distinguished these two concepts as follows:

> "Seeing something in open view does not, of course, dispose, ipso facto, of the problem of crossing constitutionally protected thresholds. Those who thoughtlessly overapply the plain view doctrine to every situation where there is a visual open view have not yet learned the simple lesson long since mastered by old hands at the burlesque houses, 'You can't touch everything you see.'
>
> "Light waves cross thresholds with a constitutional impunity not permitted arms and legs. Wherever the eye may go, the body of a policeman may not necessarily follow."[28]

The Court in *Coolidge* recognized that a variety of reasons could justify an officer being in a lawful position to seize evidence in plain view. For instance, the Court pointed out that an officer executing a search warrant for specific objects may, during the course of that search, come across some other items of an incriminating nature, and thus, be in a lawful position to seize those items.[29] Similarly, the initial intrusion which brings the law enforcement officer into contact with plain view evidence may be lawful, not because a warrant exists, but because one of the exceptions to the warrant requirement applies, such as consent,[30] hot pursuit,[31] or a search incident to arrest.[32] Regardless of the reason legitimizing an officer's presence in an area, one thing is clear: Plain view alone is never enough—the doctrine requires a catalyst to place an officer in a lawful position to seize the evidence.

Inadvertent Discovery

After concluding that a law enforcement officer was in a lawful position to both see and seize an item of evidence, a court must next decide whether the discovery of that particular item of evidence was inadvertent.[33] The inadvertency requirement, although discussed at length in *Coolidge,* has never been defined by the Supreme Court, and consequently, has caused considerable confusion in the lower courts. Some courts interpret the inadvertent limitation as requiring the discovery of plain view evidence to be totally unexpected.[34] An ever-increasing majority of courts,[35] however, considers the inadvertency requirement satisfied if, prior to conducting a search, law enforcement officers had less than probable cause to believe that the plain view evidence would be found.[36] Both interpretations of the inadvertency requirement are involved in the case of *United States* v. *Hare.*[37]

In *Hare,* defendant was arrested by local police officers and was found to be

in possession of an illegal firearm. The weapon and information regarding Hare was turned over to agents of the Federal Bureau of Alcohol, Tobacco and Firearms (ATF) who began an intensive investigation which led them to believe that Hare was a key figure in an illegal firearms operation. During the course of their investigation, ATF agents also discovered that Hare was suspected by agents of the Drug Enforcement Administration (DEA) of being involved in the illegal distribution of cocaine. Consequently, when ATF agents obtained a warrant to search Hare's premises, DEA agents were requested to participate in the search to identify any controlled substances that may be found at the scene. The subsequent search resulted in the seizure of numerous weapons and large quantities of cocaine.

During the preliminary stages of his narcotics prosecution, Hare moved to suppress the cocaine on the grounds that it had been illegally seized. The government, recognizing that a warrant to search for illegally possessed weapons could not support the seizure of controlled substances, argued that the cocaine was discovered in plain view while the agents were lawfully on Hare's premises pursuant to the search warrant. Resolving the dispute, the district court analyzed the seizure of the cocaine in light of the limitations announced in *Coolidge* and found it to be illegal. The discovery of the cocaine, claimed the district court, was expected, and therefore, not inadvertent. Proof of the agents' expectations was found in the presence of DEA agents during the search. In granting defendant's motion to suppress, the district court stated:

> "The Agents in this case expected to find drugs at the residence, and this expectation supplied at least some impetus for the search. Furthermore, the Court finds that the warrant was executed with the intention of seizing any drugs found in plain view and thus was used, at least in part, as a pretext or subterfuge to search for evidence of drug violation."[38]

The court of appeals reviewing the decision in *Hare,* however, subscribed to a different interpretation of the *Coolidge* inadvertency requirement. According to the court of appeals, the requirement that the discovery of evidence be inadvertent was intended only to condemn reliance on the plain view doctrine for seizures that *could have been authorized by warrant.*[39] Because the mere expectation that evidence will be found during a search could not support the issuance of a warrant, the purpose of the inadvertency requirement would not be contravened by allowing the plain view seizure of such evidence. If, on the other hand, prior to the search probable cause exists to believe that certain evidence will be found, a warrant could be issued, and the purpose of the inadvertency requirement would be satisfied by prohibiting the plain view seizure of that evidence.[40] Applying this interpretation of the inadvertency requirement to the facts in *Hare,* the court of appeals concluded that prior to commencing the search, the agents did not have probable cause to search for drugs, no warrant could have been issued to authorize such a search, and consequently, the discovery of the cocaine was inadvertent. The decision of the district court was, therefore, reversed, and the evidence was declared admissible.

Both interpretations of the inadvertency requirement have won acceptance in various courts over the years.[41] Although the interpretation advanced by the court of appeals in *Hare* appears to be more logical, no definitive statement can be made regarding the validity of either interpretation without a pronouncement from the Supreme Court. Until then, law enforcement officers can avoid the potential risks of suppression by obtaining search warrants whenever possible and by describing in the warrants all items for which probable cause can be established.

Immediately Apparent

The final limitation placed on the plain view doctrine by the Supreme Court in *Coolidge* is the requirement that the incriminating nature of seized items be "immediately apparent" to law enforcement officers. Like the inadvertent requirement, the concept of "immediately apparent" was never defined in *Coolidge* and caused considerable consternation in the lower courts.[42] In fact, the Supreme Court itself later observed that "the use of the phrase 'immediately apparent' was very likely an unhappy choice of words, since it can be taken to imply that an unduly high degree of certainty as to the incriminatory value of evidence is necessary for an application of the 'plain view' doctrine."[43] Fortunately, the confusion caused by the phrase "immediately apparent" was, for the most part,[44] resolved by the Court in the 1983 case of *Texas* v. *Brown.*[45]

In *Brown,* defendant's automobile was stopped by a local police officer manning a routine driver's license checkpoint. When asked to produce his driver's license, Brown withdrew his hand from his pocket and dropped an opaque, green party balloon, knotted about one-half inch from the top, onto the seat beside him. While looking for

"... law enforcement officers can avoid the potential risks of suppression by obtaining search warrants whenever possible and by describing in the warrants all items for which probable cause can be established."

his license, Brown rummaged through the contents of the glove compartment, which included an open bag of party balloons and several plastic vials of a white powder. All of Brown's actions were observed by the police officer standing next to the automobile.[46] Unable to produce his license, Brown was asked to step out of the car. When Brown complied, the attending police officer reached inside the vehicle and seized the green balloon which appeared to contain a powdery substance. Believing the substance to be a narcotic, the officer placed Brown under arrest and conducted a search of the entire vehicle. Later, it was determined that the balloon contained heroin.

Brown moved to suppress the contents of the balloon on the grounds that the initial seizure was unlawful. Specifically, Brown argued that contrary to the government's assertions, the balloon could not have been seized pursuant to the plain view doctrine because the evidentiary value of the balloon was not "immediately apparent" at the time of the seizure. Not swayed by Brown's argument, the trial court denied the motion to suppress, and Brown was subsequently convicted on charges of possessing the heroin. The State court of appeals, however, was more receptive to Brown's contentions and ultimately reversed the conviction on the grounds that the "immediately apparent" limitation of the plain view doctrine required the police officer to "*know* that incriminatory evidence was before him when he seized the balloon."[47] The U.S. Supreme Court granted certiorari[48] to resolve the conflict over the meaning of the phrase "immediately apparent."

A majority of the Supreme Court in *Brown* had no trouble deciding that the "immediately apparent" requirement would be satisfied if a law enforcement officer had probable cause to believe what he saw was either evidence or contraband. Citing the language in previous decisions, the Court stated that "the seizure of property in plain view involves no invasion of privacy and is *presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity.*"[49] Requiring probable cause for the seizure, reasoned the Court, was consistent with fourth amendment principles and constituted a workable standard for law enforcement officers.

Applying the now clearer concept of "immediately apparent" to the facts in *Brown,* the Court found that it was obvious, based on the arresting officer's observations and expertise, that probable cause existed to believe that the party balloon contained a controlled substance. Accordingly, seizure of the balloon was deemed lawful under the plain view doctrine, and the decision of the court of appeals was reversed.

APPLICATION OF THE PLAIN VIEW DOCTRINE IN *ARIZONA* v. *HICKS*

In *Hicks*, the Supreme Court was tasked with determining whether the stolen stereo components were properly seized from Hicks' apartment. As previously noted, the stereo equipment was seized pursuant to a search warrant. However, if the serial numbers that formed the basis of the probable cause used to support the issuance of the warrant were obtained unlawfully, then the warrant would be rendered invalid. To resolve this issue, the Supreme Court focused its attention on the initial search which had revealed those serial numbers. The Court's analysis was divided into two phases.

In the first phase of its analysis, the Supreme Court considered whether those serial numbers were obtained in accordance with the plain view doctrine. On this particular point, despite vehement dissents by three members of the Court,[50] the majority concluded that the plain view doctrine could not justify the recording of the serial numbers. While accepting that the officers were lawfully present in Hicks' apartment based upon the emergency created by the shooting, the Court found that the concealed serial numbers on the stereo components were not plainly visible to those officers because they had to move the components to gain access to those numbers.[51] Inasmuch as an additional intrusion was required to reveal the serial numbers, the search for the serial numbers could not be justified under the plain view doctrine.

In the second phase of its analysis, the Court contemplated whether the plain view doctrine would have sustained the seizure of the stereo equipment itself. For, according to the Court, "it would be absurd to say that an object could lawfully be seized and taken from the premises, but could not be moved for closer examination."[52] Clearly, the stereo equipment was plainly visible to the officers lawfully on Hicks' premises. Additionally, there was no question that those same officers were in a lawful position to seize the equipment which they inadvertently discovered. The final issue was, therefore, whether the evidentiary value of the stereo components was "immediately apparent" to those officers. In other words, prior to the search which revealed the serial numbers, did the officers have probable cause to believe the equipment was stolen. Unfortunately, in response to this question, the State had previously conceded that the officers merely had a reasonable suspicion that the items were stolen.[53] Consequently, the Supreme Court had no alternative but to find that the "immediately apparent" requirement of the plain view doctrine

was not satisfied. Because neither the serial numbers nor the stereo equipment itself could be seized pursuant to the plain view doctrine, the search was declared unlawful and the evidence was suppressed.

CONCLUSION

The importance of the decision in *Hicks* is found, not so much in what the Court did, as in what it did not do. Specifically, the Supreme Court refused to make a distinction between cursory inspections involving minor intrusions and "full blown" searches.[54] Instead, the Court ruled that both actions require probable cause to make them reasonable under the fourth amendment. Although numerous lower courts have made this distinction and allowed cursory inspections of items in plain view for which law enforcement officers had only a reasonable suspicion that the items were evidence or contraband,[55] a majority of the Supreme Court[56] held that such a distinction contravenes the probable cause requirement of the fourth amendment. With respect to the facts in *Hicks*, the Court stated that "it matters not that the search uncovered nothing of any great value to [Hicks]—serial numbers rather than (what might, conceivably have been hidden behind or under the equipment) letters or photographs. A search is a search, even if it happens to disclose nothing but the bottom of a turntable."[57]

The Supreme Court's refusal to permit cursory inspections of items in plain view absent probable cause to believe that those item have evidentiary value may have a wide-ranging effect on law enforcement investigations. For instance, the *Hicks* decision makes it clear that under the plain view doctrine, weapons found during a search could not be moved to reveal serial numbers unless there is probable cause to believe those weapons are evidence of a crime.[58] Similarly, notebooks could not be opened or video tapes played[59] to reveal their contents without the requisite probable cause. In short, if probable cause to believe that an item is evidence of a crime cannot be established without making some further intrusion, no matter how slight, then the search and seizure of that item cannot be justified under the plain view doctrine.

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Footnotes

[1]107 S.Ct. 1149 (1987) [hereinafter cited as *Hicks*].

[2]The officers were admitted to Hicks' apartment by the manager of the apartment complex.

[3]One turntable was seized immediately. The remaining components were seized pursuant to a search warrant issued on the basis of an affidavit containing the serial number information.

[4]*State* v. *Hicks*, 707 P.2d 331 (Ariz. App. 1985).

[5]This point was conceded by both parties to the action.

[6]The Arizona Court of Appeals relied on a statement in *Mincey* v. *Arizona*, 437 U.S. 385 (1978), that a "warrantless search must be 'strictly circumscribed by the exigencies which justify its initiation.'" *Id.* at 393 (citation omitted). *See, supra* note 4, at 332.

[7]106 S.Ct. 1512 (1986).

[8]390 U.S. 234 (1968) [hereinafter cited as *Harris*].

[9]The U.S. Court of Appeals for the District of Columbia Circuit reversed the conviction of Harris on the grounds that the registration card had been seized as a result of an unlawful search. However, the government's petition for an *en banc* review was granted, and the conviction was affirmed. *See Harris* v. *United States*, 370 F.2d 477 (D.C. Cir. 1966).

[10]The Supreme Court granted certiorari at 386 U.S. 1003 (1967).

[11]*Harris, supra* note 8, at 236.

[12]403 U.S. 443 (1971) [hereinafter cited as *Coolidge*].

[13]*See State* v. *Coolidge*, 260 A.2d 547 (N.H. 1969).

[14]*Coolidge, supra* note 12, at 448.

[15]The Supreme Court found that the policy underlying the fourth amendment to the Constitution requires that all warrants be issued by neutral and detached magistrates. *Coolidge, supra* note 12, at 449.

[16]*Id.* at 453.

[17]Any search conducted without a warrant is per se invalid unless it can be fit into one of the narrowly defined exceptions to the warrant requirement. *Katz* v. *United States*, 389 U.S. 347 (1967).

[18]In addition to "plain view," the State also argued unsuccessfully that the search was justified either as a search incident to arrest or under the motor vehicle exception to the warrant requirement.

[19]Only four justices agreed on the portion of the decision that pertained to plain view.

[20]*Coolidge, supra* note 12, at 466.

[21]In *Texas* v. *Brown*, 460 U.S. 730 (1983), the Supreme Court noted that although the *Coolidge* decision was not binding precedent, it should obviously be the point of reference for further discussion on the issue. *Id.* at 737.

[22]673 F.2d 554 (1st Cir. 1982) [hereinafter cited as *Irizarry*].

[23]The agent used a flashlight when searching the space above the ceiling. However the use of the flashlight had no bearing on the outcome of the case. For plain view cases involving the use of flashlights, *see United States* v. *Wright*, 449 F.2d 1355 (D.C. Cir. 1971); *United States* v. *Lara*, 517 F.2d 209 (5th Cir. 1975); *United States* v. *Lewis*, 504 F.2d 92 (6th Cir. 1974); *United States* v. *Johnson*, 506 F.2d 674 (8th Cir. 1974); and *United States* v. *Hood*, 493 F.2d 677 (9th Cir. 1974).

[24]*Irizarry, supra* note 22, at 560.

[25]*Id.*

[26]In *Irizarry*, the court noted that if the plain view doctrine could be cited as justification for further entry into premises, a "police officer who entered a student's room to break up a brawl would be allowed to clamber up the bookcase to see what sort of illicit matter might be hiding behind Madame Bovary." *Id.*

[27]For an excellent discussion on this issue, *see Ensor* v. *State*, 403 So.2d 349 (Fla. 1981).

[28]Moylan, "The Plain View Doctrine: Unexpected Child of the Great 'Search Incident' Geography Battle," 26 Mercer L. Rev. 1047, 1096 (1975).

[29]*Coolidge, supra* note 12, at 582.

[30]*See, e.g., United States* v. *Baldwin*, 621 F.2d 251 (6th Cir. 1980) and *Lance* v. *State*, 425 N.E. 2d 77 (Ind. 1981).

[31]*See, e.g., Warden* v. *Hayden*, 387 U.S. 58 (1967).

[32]*See, e.g., Chimel* v. *California*, 395 U.S. 752 (1969).

[33]The inadvertency requirement has never been adopted by a majority of the U.S. Supreme Court. Justice White is particularly opposed to this requirement and has made his position quite clear. *See, e.g., Hicks, supra* note 1 (White, J., concurring); *Texas* v. *Brown*, 460 U.S. 730 (1983) (White, J., concurring); *Coolidge, supra* note 12 (White, J., dissenting).

[34]*See, e.g., State* v. *Caponi*, 466 N.E.2d 551 (Ohio 1984); *Gonzales* v. *State*, 507 P.2d 1277 (Okla. Crim. 1973); *State* v. *Catlette*, 221 N.W.2d 25 (S.D. 1974).

[35]*See, e.g., United States* v. *Hare*, 589 F.2d 1291 (6th Cir. 1979); *United States* v. *Bolts*, 558 F.2d 316 (5th Cir. 1977); *United States* v. *Montiell*, 526 F.2d 1008 (2d Cir. 1975).

[36]Justifying its position on this issue, the court of appeals in *United States* v. *Hare*, 589 F.2d 1291 (6th Cir. 1979) made the following statement:

> "We conclude, then, that 'inadvertence' in this context means that the police must be without probable cause to believe evidence would be discovered until they actually observe it in the course of an otherwise-justified search. There are many times when a police officer may 'expect' to find evidence in a particular place, and that expectation may range from a weak hunch to a strong suspicion. However, the Fourth Amendment prohibits either a warrant to issue or a search based on such expectation. Yet, if . . . that hunch or suspicion is confirmed by actual observation, the police are in precisely the same position as if they were taken wholly by surprise by the discovery. The same exigent circumstances exist, and no warrant could have been obtained before the discovery." *Id.* at 1294.

[37]589 F.2d 1291 (6th Cir. 1979) [hereinafter cited as *Hare*].

[38]*Id.* at 1293.

[39]*Id.* at 1294.

[40]*Id.*

[41]*See supra* notes 34 and 35.

[42]*See* Ronnie Altman Cintron, "The Plain View Exception to the Fourth Amendment," Search and Seizure Law Report, vol. 10, No. 10, November 1983, p. 178. *See also, United States* v. *Thomas*, 676 F.2d 239 (7th Cir. 1980); *United States* v. *Schire*, 586 F.2d 15 (7th Cir. 1978).

[43]*Texas* v. *Brown*, 460 U.S. 730, 741 (1983).

[44]In *Brown*, the Court did not answer whether "in

some circumstances, a degree of suspicion lower than probable cause would be sufficient basis for a seizure in certain cases." *Id.* at 742, n. 7. This question was not completely resolved in the negative until the Court's decision in *Hicks, supra* note 1.

[45]460 U.S. 730 (1983) [hereinafter cited as *Brown*].

[46]The police officer in *Brown* used a flashlight to see into the automobile. However, the use of the flashlight had no impact on the outcome of the case. *See supra* note 23.

[47]*Brown* v. *State*, 617 S.W.2d 196, 200 (Tex. Crim. App. 1982).

[48]457 U.S. 1116 (1982).

[49]*Brown, supra* note 45, at 741, 742 (emphasis in original) [quoting *Payton* v. *New York*, 445 U.S. 573 (1980)].

[50]Chief Justice Rehnquist along with Justices Powell and O'Connor dissented on the grounds that recording of the serial numbers could be justified on less than probable cause. The dissenters expressed the belief that the cursory inspection of an item found in plain view is reasonable if there is reasonable suspicion that the item is evidence of a crime. *Hicks, supra* note 1, at 1157 (O'Connor, J., dissenting).

[51]The Court in *Hicks* made the following observation:

> Merely inspecting those parts of the turntable that came into view during the latter search would not have constituted an independent search, because it would have produced no additional invasion of respondent's privacy interest. But taking action, unrelated to the objectives of the authorized intrusion, which exposed to view concealed portions of the apartment or its contents, did produce a new invasion of respondent's privacy unjustified by the exigent circumstances that validated the entry." *Hicks, supra* note 1, at 1152 (citations omitted).

[52]*Hicks, supra* note 1, at 1153.

[53]Justice Powell termed the State's actions in conceding this point as "unwise." *Id.* at 1156 (Powell, J., dissenting).

[54]The court held that the "distinction between 'looking' at a suspicious object in plain view and 'moving' it even a few inches is much more than trivial for purposes of the Fourth Amendment." *Id.* at 1152.

[55]*See, e.g., United States* v. *Marbury*, 732 F.2d 390 (5th Cir. 1984); *United States* v. *Hillyard*, 677 F.2d 1336 (9th Cir. 1982); *United States* v. *Wright*, 667 F.2d 793 (9th Cir. 1982); *United States* v. *Crouch*, 648 F.2d 932 (4th Cir. 1981); *United States* v. *Roberts*, 619 F.2d 379 (5th Cir. 1980); *United States* v. *Damitz*, 495 F.2d 50 (9th Cir. 1974).

[56]Chief Justice Rehnquist along with Justices Powell and O'Connor dissented on this issue. The dissenting Justices would support making a distinction between the cursory inspection of an item and a "full blown" search of that item. *See supra* note 50.

[57]*Hicks, supra* note 1, at 1152, 53.

[58]*See, e.g., United States* v. *Gray*, 484 F. 2d 352 (6th Cir. 1973).

[59]*See, e.g., Stanley* v. *Georgia*, 394 U.S. 557 (1969).

Book Review

Personal Identification From Human Remains,
by Spencer L. Rogers,
Charles C. Thomas—Publisher
1987. $23.50, 70 pages.

On a scale of 1 to 10, *Personal Identification From Human Remains* has to score top marks. The book is a good companion analysis of forensic medicine and is short enough, full enough, and nontechnical enough to be understood by those officers with no previous forensic background. This does not mean the work is superficial; on the contrary, it is precise and accurate and covers all spectrums of forensic investigation. Professor Rogers has somehow managed to condense a great deal of knowledge on the subject into some 70 pages of easy-to-read text and still retain excellence and thoroughness in six chapters embracing (1) The Transformations of Death and Visual Recognition, (2) Fingerprinting the Dead, (3) Identification Through Dentition, (4) Reconstruction From the Skeleton, (5) Reconstructing the Face and (6) Pathology, Trauma and Surgery.

The dental section is extremely well done—very detailed, nicely diagrammatic, and with many useful tables. The early part of the book could possibly use a bit more in the way of tables, not necessarily diagrams, but tables which relate to timing. The osteological section (relating to bones) is good without being too technical or involved and hence is easily understood.

One gets the impression that the entire book is probably as up-to-date as possible, but there is an inkling that the general field requires much more research as far as the timing of death is concerned. Perhaps more details about the various psychological processes of death require more forensic research? Such knowledge would certainly manifest greater accuracy in timing where death happens to occur in less than 2 weeks, even down to time periods measured in hours. We are not referring here to a newly found body, but one that is, for instance, a week or so old. The lack of this particular element is not so much a failure of the book, but a failure of current forensic fact in terms of needed research.

The chapter dealing with the transformation of death and visual recognition is exceptionally good and well written. For instance, an example of the author's style in this chapter reads: "In summary, the decomposition of the body depends on four primary factors: warmth, air, moisture and bacteria. The presence or absence of any or a combination of these has a profound effect on the preservation of a body."

The text on fingerprinting the dead is both definitive and easy to follow. Dental identification, reconstruction from the skeletal remains, reconstructing the face, and the subjects of pathology, trauma, and surgery are normally deemed to be quite complicated fields of study. Nevertheless, this book will meet most of the requirements of officers in county sheriff and police departments who have to deal with identification from human remains.

Law enforcement officers wishing to specialize in the forensic aspects of investigatory procedures will find a wealth of further reading listed in the book's comprehensive bibliography, and unlike far too many texts of this nature, there is also a full glossary of terms used.

The average young officer (and older officers too) would glean enough useful information from this book to make its acquisition more than worth while.

Dr. Alastair Segerdal
Dr. Eugene Miller
Dr. Norman Singer