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Fourth Amendment Rights and Non-Consensual Vehicle Identification Number Inspections Occurring during Traffic Stops

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Notes

FOURTH AMENDMENT RIGHTS AND NON-CONSENSUAL VEHICLE IDENTIFICATION NUMBER INSPECTIONS OCCURRING DURING TRAFFIC STOPS

The Supreme Court recently held that a police officer may enter a motor vehicle to ascertain its vehicle identification number during an ordinary traffic stop for no reason other than the observed traffic violation. This Note examines New York v. Class *within the context of a trend toward erosion of fourth amendment rights. The author asserts that* Class *was inconsistent with precedent, and proposes a state statute that would guarantee the protections held inapplicable under the federal Constitution.*

INTRODUCTION

IN THE PAST, the Supreme Court has analyzed the permissible scope of police intrusions involving automobiles in certain contexts,[1] but not specifically within the context of vehicle identification number (VIN) inspections occurring during stops for traffic infractions. As a result of the Court's recent decision in *New York v. Class*,[2] however, the issue has been decided: police officers may now enter the interior of a vehicle during a traffic stop in order to search for a VIN without articulating any reasonable justification for the intrusion other than the observed traffic violation. This holding poses an immediate threat to the fourth amendment rights[3]

1. *E.g.*, Michigan v. Long, 463 U.S. 1032 (1983) (police may search automobile or its occupant for weapons if officer reasonably believes suspect is armed or has immediate access to weapons, thereby posing threat to officer's safety); United States v. Ross, 456 U.S. 798 (1982) (police, with legal stop of vehicle and probable cause to believe it contains contraband, may search entire vehicle and all containers within it capable of housing object of officer's suspicion); New York v. Belton, 453 U.S. 454 (1981) (upon lawful custodial arrest of driver, police may conduct search of passenger compartment of vehicle, including any containers found within); South Dakota v. Opperman, 428 U.S. 364 (1976) (upon lawful impoundment of vehicle, police may conduct routine inventory search, and may search for dangerous instrumentalities); United States v. Brignoni-Ponce, 422 U.S. 873 (1975) (border patrol may stop vehicle only if aware of specific articulable facts warranting suspicion that vehicle contains illegal aliens); *see also infra* notes 63-106 and accompanying text.

2. 106 S. Ct. 960 (1986).

3. U.S. CONST. amend. IV:

> [T]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, 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.

of the "countless"[4] numbers of motorists who are stopped for routine traffic infractions every day.

The VIN is a serial number,[5] unique to each vehicle and required on all cars.[6] A VIN may be located in one of three display configurations, each of which activates a different legal approach. For cars manufactured after 1969, federal law requires that the VIN be displayed so that it is readable through the windshield, from outside the vehicle.[7] Dashboard VINs create few, if any, fourth amendment problems, since the police officer need not enter the vehicle to access the VIN. For cars manufactured prior to 1969, however, the VIN is located on the vehicle's doorjamb. An investigating officer must open the door in order to read the information.[8] Upon opening the vehicle's door, areas and items within the car, not otherwise exposed to observation, come into the plain view[9] of the officer, and are then seizable if they constitute evidence of crime. The third situation involves the case where, for whatever reason, the post-1969 dashboard VIN is obscured by papers or other personal effects. It is the second and third situations which are affected by the Supreme Court's new VIN search rule.

Undoubtedly, governmental regulation of automobile traffic and highway safety[10] is both desirable and necessary. However, where areas of privacy, such as the interior of a car, are protected from

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4. Delaware v. Prouse, 440 U.S. 648, 659 (1979).

5. *See* 49 C.F.R. §§ 565.4, 571.115 (1985).

6. The VIN consists of more than a dozen digits, and can be used to ascertain make, model, engine type and place of manufacture. For further discussion of the function of a VIN, *see infra* notes 35-44 and accompanying text.

7. 49 C.F.R. § 571.115 (S4.6) (1985) requires that the VIN be "readable, without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions . . . ." *See also* New York v. Class, 106 S. Ct. 960, 963 (1986).

GA. CODE ANN. § 40-4-4 (1985) is typical of state statutes which regulate the location of the VIN. It reads, in pertinent part:

> (a) The identification numbers . . . shall be placed upon the passenger car and component parts by the manufacturer thereof.
>
> (b) . . . The numbers may be affixed by any suitable manufacturing process that will result in the numbers becoming a permanent part of the passenger car or component.
>
> (c) The identification numbers shall be of a height and width easily readable by the naked eye. They may consist of letters, digits, or any combination of them.
>
> (d) The identification numbers may be in accordance with recommended practices approved by the Society of Automotive Engineers as to material, lettering, manufacturing, and installation.
>
> (e) Vehicle identification numbers shall be easily accessible for inspection.

Id.

8. *Class*, 106 S. Ct. at 963. For a discussion of the different VIN locations and the search problems they create, see *infra* notes 58-61 and accompanying text.

9. The Plain View Doctrine is discussed *infra* notes 53-62 and accompanying text.

10. For a discussion of the traditional pervasive governmental regulation of the automo-

unreasonable searches and seizures by the fourth amendment,[11] the law developed to date requires that the police articulate a concrete reason for entering the car.[12] It should be noted initially that, in the prototypical VIN search case, the officer has stopped the vehicle after observing an actual violation of traffic law. As such, probable cause for the initial seizure has been supplied.[13] The probable cause does not, however, justify a *search* of the vehicle.

New York v. Class,[14] recently decided by the United States Supreme Court,[15] presents the paradigmatic situation involving a non-consensual vehicle identification number search. In *Class*, the defendant driver was stopped for speeding and driving with a broken windshield.[16] The defendant exited his car and spoke with one officer while the other, Officer McNamee, went directly to the defendant's car and attempted to read the dashboard VIN through the windshield.[17] The VIN was obscured by papers resting on the dashboard, though, and Officer McNamee opened the door to remove them.[18] Upon doing so, McNamee saw a gun protruding from underneath the seat, and the defendant was promptly arrested.[19]

Reversing the conviction below, the New York Court of Appeals held that, absent any kind of justification to believe that the vehicle was stolen, a police officer could not engage in a non-consen-

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bile and police enforcement of those regulations, see *infra* notes 45-52 and accompanying text.

11. *See infra* notes 29-32 and accompanying text for a discussion of the reasonable expectation of privacy in one's automobile.

12. United States v. Powers, 439 F.2d 373 (4th Cir.), *cert. denied*, 402 U.S. 1011 (1971) (VIN inspection is search for fourth amendment purposes, and requires officer to have legitimate grounds for checking number); Cotton v. United States, 371 F.2d 385 (9th Cir. 1967) (even if not a search for fourth amendment purposes, police must have legitimate reason to check VIN); Simpson v. United States, 346 F.2d 291 (10th Cir. 1965) (non-consensual entry into automobile to copy VIN is illegal search, requires probable cause and search warrant). For a discussion of the probable cause/reasonable suspicion requirement, see *infra* notes 68-72 and accompanying text.

13. In Pennsylvania v. Mimms, 434 U.S. 106 (1977), the Court *per curiam* held that, where the police had observed the defendant driving with expired license tags, "there [was] no question about the propriety of the initial restrictions on respondent's freedom of movement." *Id.* at 109.

14. 106 S. Ct. 960 (1986).

15. The case was decided February 25, 1986.

16. *Class*, 106 S. Ct. at 963.

17. *Id.* "It is undisputed that the police officers had no reason to suspect that [defendant's] car was stolen . . . . " *Id.*

18. *Id.* The defendant was not given an opportunity to comply with a demand to remove the papers from the dashboard so that the officers could read the VIN from outside of the car.

19. *Id.*

sual entry to inspect the VIN during a traffic stop.[20] Nevertheless, the United States Supreme Court, in a 5-4 decision,[21] reversed the New York Court of Appeals and held it constitutionally permissable for a police officer to enter a vehicle during a traffic stop to search for a VIN not visible from the outside without having to articulate any suspicion that the vehicle was stolen.[22]

It is the position of this Note that a stop for a traffic infraction does not in itself justify access to a non-visible identification number and the private areas within a vehicle. The Note begins by discussing fourth amendment principles of law, as applied to automobiles generally and to VINs specifically, and the role of governmental regulation in defining these constitutional protections.[23] It also explores the Plain View Doctrine and its implications in the VIN inspection problem.[24] The next section traces the traditional methods of governmental access to private automobiles under various law enforcement theories, and attempts to illustrate how the *Class* rule is manifestly inconsistent with these precedents.[25] Finally, the Note proposes a model statute for use by the states in order to afford their citizens the protections which have been rendered non-existent by the Court's recent search and seizure decision.[26] This statute is consistent with precedent and heeds the danger of promulgating bright line rules[27] in this area.

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20. People v. Class, 63 N.Y.2d 491, 495, 472 N.E.2d 1009, 1012, 483 N.Y.S.2d 181, 184 (1984). The Court of Appeals found it unnecessary to determine whether probable cause or some lesser justification would be appropriate, since "here there was no semblance of either." *Id.*

21. Justice O'Connor wrote the majority opinion in which Chief Justice Burger and Justices Blackmun, Powell, and Rehnquist joined. Justice Powell wrote a concurring opinion, in which Chief Justice Burger joined. Justice Brennan dissented, in which Justices Marshall and Stevens joined. Justice White filed a separate dissenting opinion, in which Justice Stevens joined.

22. *Class*, 106 S. Ct. at 968-69.

23. *See infra* notes 28-52 and accompanying text.

24. *See infra* notes 53-62 and accompanying text.

25. *See infra* notes 63-106 and accompanying text.

26. *See infra* notes 107-37 and accompanying text.

27. "Bright line" rules are rules which are amenable to mechanical application in all cases. However, in terms of fourth amendment principles, the "[s]pecific content and incidents of this right [to be free from unreasonable searches] must be shaped by the context in which it is asserted." Terry v. Ohio, 392 U.S. 1, 9 (1968) (quoted in United States v. Powers, 439 F.2d 373, 375 (4th Cir.), *cert. denied*, 402 U.S. 1011 (1971)). Bright line rules are dangerous, because their results are arbitrary. *See* New York v. Belton, 453 U.S. 454, 464 (1980) (Brennan, J., dissenting) ("[C]ourts should carefully consider the facts and circumstances of each search and seizure, focusing on the reasons supporting the [search incident to arrest] exception rather than on any bright-line rule of general application.").

I. VINs AND THE FOURTH AMENDMENT

A. *Subjects of Fourth Amendment Protection Generally*

For fourth amendment purposes, whether a search[28] has occurred depends on the nature of the privacy interest allegedly violated by a government official. The Supreme Court has held that the fourth amendment is intended to protect an individual's "legitimate expectation" of privacy, even while that person is in a public area.[29] As a second aspect of the protection, this expectation of privacy must be one which society is prepared to recognize as reasonable.[30]

The Court has recognized a lesser expectation of privacy in an automobile. In *Delaware v. Prouse*,[31] the Supreme Court found that, although an automobile is subject to pervasive governmental regulation, an individual does possess a constitutionally cognizable legitimate expectation of privacy from unreasonable governmental intrusion into his automobile.[32] In determining the nature of the privacy interest in the vehicle (perhaps activating fourth amendment protections), the Court has in the past inquired into whether the officer exposes "areas or information to which he otherwise would not have access."[33] Under this standard, items within view of an officer standing outside of the vehicle are legally admissible, because nothing has been exposed that was not already visible to the public.[34] This situation corresponds to the first VIN display scenario, where the VIN is located on the dashboard and plainly visible to anyone standing outside the car.

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28. For purposes of this Note, a "search" is defined as a procedure, which "expose[s] areas in which [the defendant's] privacy interests remain." Brief for Respondent at 19, New York v. Class, 106 S. Ct. 960 (1986) (No. 84-1181) [hereinafter Brief for Respondent].

29. Katz v. United States, 389 U.S. 347, 351-52 (1967).

30. *Id.* at 361 (Harlan, J., concurring); *see also* Oliver v. United States, 466 U.S. 170 (1984) (privacy interest only exists in areas where intimate activities which society has interest in protecting take place).

31. 440 U.S. 648 (1979) (police stops solely designed to check driver's license and registration held unreasonable and violative of fourth amendment).

32. *Id.* at 662; *see also* Allen & Schaefer, *Great Expectations: Privacy Rights in Automobiles*, 34 U. MIAMI L. REV. 99 (1979); Katz, *Automobile Searches and Diminished Expectations in the Warrant Clause*, 19 AM. CRIM. L. REV. 557, 571 n.79 (1982) (discussion of importance of role played by the automobile in American life). The Court in *Class* admits as much in its opinion. *Class*, 106 S. Ct. at 965 ("A citizen does not surrender all the protections of the Fourth Amendment by entering an automobile.").

33. Brief for Respondent, *supra* note 28, at 17.

34. For a discussion of the Plain View Doctrine, see *infra* notes 53-62 and accompanying text. Under this test, the Court held in United States v. Knotts, 460 U.S. 276, 282 (1983) that a beeper placed on a car for surveillance purposes did nothing more than monitor the car's open public conduct.

B. *The Role of the VIN in Fourth Amendment Analysis*

Although commonly used for insurance reports,[35] towing,[36] and vehicle registration information,[37] the VIN functions primarily as a theft detection device.[38] As a law enforcement tool, the VIN itself possesses quasi-public attributes,[39] arguably justifying a reduced expectation of privacy.[40] However, the fact that the VIN is a theft detection device embossed on every vehicle on the road does not determine the issue of access to a non-visible VIN during traffic stops.[41] The location of such data will be a major factor in the legal analysis.[42] However, as Justice Brennan noted in his dissent from

35. United States v. Polk, 433 F.2d 644, 647 (5th Cir. 1970) (insurance policies identify vehicles by VINs). "In combination with state insurance laws, the VIN reduces the number of those injured in accidents, who go uncompensated for lack of insurance." *Class*, 106 S. Ct. at 964-65.

36. United States v. Duckett, 583 F.2d 1309, 1312 (5th Cir. 1978) (officer needed VIN to tow arrestee's van).

37. *See, e.g.*, FLA. STAT. ANN. § 320.02 (West Supp. 1986) (VIN is basic component of automobile registration); KAN. STAT. ANN. § 8-116a (Supp. 1985) (upon application for a VIN for a rebuilt car or a vehicle with questionable identification, owner must request highway patrol to conduct an inspection of the vehicle; if vehicle is not stolen or made up of any stolen parts, highway patrol must issue a new VIN). *See also Class*, 106 S. Ct. at 965 ("In conjunction with the State's registration requirements and safety inspections, the VIN helps to ensure that automobile operators are driving safe vehicles.").

38. *See* Amendment of Federal Motor Vehicle Safety Standards, 33 Fed. Reg. 10,207 (Fed. Highway Admin. 1968) (determination). "Alteration of [automobile] identification numbers is one means to conceal evidence of theft. Prohibition of possession of automobiles and automobile parts having altered identification numbers is rationally related to the prevention of theft and the apprehension of thieves." People v. Sequin, 199 Colo. 381, 385, 609 P.2d 622, 625 (1980).

39. United States v. Polk, 433 F.2d at 647 (since VIN is used for manufacturer identification, state registration, and insurance policies, no reasonable expectation of privacy exists in VIN itself); United States v. Powers, 439 F.2d 373, 375 (4th Cir. 1971) ("Since identification numbers are, at the least, quasi-public information, a search of that part of the car displaying the number is but a minimal invasion of a person's privacy."). *See, e.g.*, Uniform Motor Vehicle Certificate of Title and Anti-Theft Act § 9(a)(5), 11 U.L.A. 438 (1955) (VIN is integral part of automobile title).

40. The majority in *Class* relied upon this ground: "because of the important role played by the VIN in the pervasive governmental regulation of the automobile . . . we hold that there [is] no reasonable expectation of privacy in the VIN." New York v. Class, 106 S. Ct. 960, 966 (1986). *See infra* notes 45-51 and accompanying text for a general discussion of governmental regulation of automobiles.

41. *But see* People v. Class, 63 N.Y.2d 491, 497-98, 472 N.E.2d 1009, 1013, 483 N.Y.S.2d 181, 185 (1984) (Jones, J., dissenting). Justice Jones wrote, "The letters and digits constituting the VIN . . . have no independent existence and are not susceptible of being possessed by the owner . . . . The purpose of the VIN is to proclaim the identity of the vehicle, a purpose quite inconsistent with any legitimate privacy interest of the owner." *Id.* This view was echoed by the Supreme Court majority, which held that "there was no reasonable expectation of privacy in the VIN." *Class*, 106 S. Ct. at 966.

42. United States v. Powers, 439 F.2d 373, 375 (4th Cir.), *cert. denied*, 402 U.S. 1011 (1971) ("The two most significant factors affecting the legality of a search for identification

New York v. Class, "[E]ven assuming that respondent had no reasonable expectation of privacy in the VIN, why is this relevant to the question we decide? By focusing on the object of the search . . . the Court misses the issue . . . whether an interior search of the car to discover that object was constitutional."[43]

In cases where the VIN is readily visible from outside the vehicle, there is no need for the officer to intrude to ascertain the number.[44]

C. *Governmental Regulation of Automobiles*

The historical role of the police as public protectors requires them to engage in inspection and patrol duties.[45] The problem inevitably becomes one of drawing the line between public service and private intrusion.

Pervasive governmental regulation of automobiles has been used by the Supreme Court to justify a "lesser" expectation of privacy in vehicles than that found in less regulated areas such as the home.[46]

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numbers are . . . the mobility of a motor vehicle . . . and . . . the 'expectation of privacy' that a person may reasonably claim for those parts of his vehicle where identification numbers are posted." (citations omitted)). *See also* Hayes v. Florida, 105 S. Ct. 1643 (1985) (while police have law enforcement interest in fingerprints—they are quasi-public [as are VINs]—this is not a legitimate basis for forcibly removing defendant from his home and detaining at police station without probable cause or warrant). In United States v. Johnson, 431 F.2d 441, 447 (5th Cir. 1970), Judge Godbold dissented, stating that even though the VIN has a quasi-public function, it does not exempt the car itself from fourth amendment protection.

The other factor is, of course, the police officer's justification for entering the car. For a discussion of automobile searches under present law, see *infra* notes 63-106 and accompanying text.

43. *Class*, 106 S. Ct. at 971 (Brennan, J., dissenting).

44. This point was emphasized by the *Class* majority; *see Class*, 106 S. Ct. at 969. *See also* United States v. Polk, 433 F.2d 644, 647 (5th Cir. 1970) (looking underneath car in order to read VIN on car's axle did not constitute search under fourth amendment).

45. Cady v. Dombrowski, 413 U.S. 433, 441 (1973). In *Cady*, the Court observed how an officer's "community caretaking function [is] totally divorced from the detection, investigation, or acquisition of evidence" function which police also perform. *Id. See also* Cotton v. United States, 371 F.2d 385, 392 (9th Cir. 1967) ("a local police officer is 'in a very real sense a guardian of the public peace and he has a duty in the course of his work to be alert for suspicious circumstances, and, *provided that he acts within constitutional limits*, to investigate whenever such circumstances indicate to him that he should do so.' " (emphasis added) (quoting Frye v. United States, 315 F.2d 491, 494 (9th Cir. 1963))).

46. *See* Cady v. Dombrowski, 413 U.S. 433 (1973). Since vehicles have traditionally been subject to a complex web of governmental regulations, the Court reasoned that automobiles cannot reasonably be expected to be exempt from governmental intrusion the way one's home might be. *Id.* at 441. *See also* Cardwell v. Lewis, 417 U.S. 583, 590 (1974) (seminal automobile exception case where Court traced fourth amendment difference between vehicle and home to fourth amendment's roots in colonial America); Arkansas v. Sanders, 442 U.S. 753, 761 (1979) ("The configuration, use, and regulation of automobiles often may dilute the reasonable expectation of privacy that exists with respect to differently situated

The Court has, however, firmly curtailed police discretion by holding that officers may not randomly stop cars for license checks (under authority of a general regulatory/police power) without an articulation of individualized suspicion.[47] The Court refused to allow police a completely free reign in performing their duty of preventing highway crime.[48] The Court balanced an individual's right to freedom from unreasonable governmental interference against the government's admittedly vital interest in preventing crime[49] on the highways and found that, absent proof of a legitimate governmental need to detain, the individual's rights dominated.[50] In other words, the burden was placed on the government to justify such regulatory deprivations of liberty.[51]

In light of the Court's attitude that random highway vehicle stops may not be conducted without an articulation of individualized suspicion, there is reason for concern when faced with a decision such as *Class*, which appears to be a significant step in the

property."). *But see* Katz, *The Automobile Exception Transformed: The Rise of a Public Place Exemption to the Warrant Requirement*, 36 CASE W. RES. L. REV. 375, 413 n.200 (1986) (home is regulated, "yet no one would suggest that these regulations result in a lower expectation of privacy").

The Supreme Court recently dismissed the plain view justification, and based an automobile's lesser expectation of privacy entirely on pervasive governmental regulation. California v. Carney, 105 S. Ct. 2066, 2069-70 (1985). The Court reasoned that " '[a]utomobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licencing requirements. As an everyday occurrence, police stop and examine vehicles when licence plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted . . . .' " *Id.* (quoting South Dakota v. Opperman, 428 U.S. 364, 368 (1976)).

47. Delaware v. Prouse, 440 U.S. 648, 662 (1979). "An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to governmental regulation." *Id.* at 655.

48. *Id.* at 654. One year later the Court reaffirmed the importance of limiting officer discretion in Brown v. Texas, 443 U.S. 47 (1979). In *Brown* the Court recognized a need "to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *Id.* at 51. *See generally* Westendorf & Westendorf, *The* Prouse *Dicta: From Random Stops to Sobriety Checkpoints*, 20 IDAHO L. REV. 127 (1984) (constitutionality of drunk driver roadblocks); Note, *Licence Check Stops and the Fourth Amendment*, 68 CAL. L. REV. 1167 (1980) (impact of *Delaware v. Prouse* on fourth amendment jurisprudence).

49. *Prouse*, 440 U.S. at 654.

50. *Id.* at 663. Justice Brennan echoed this view in his dissent in *Class*: "Absent some reason to search for the VIN, the government's admittedly strong interest in promoting highway safety cannot validate the intrusion resulting from the *search* of respondent's vehicle." *Class*, 106 S. Ct. at 973 (Brennan, J., dissenting) (emphasis in original).

51. "Because the Fourth Amendment constrains the State's authority to *search* automobiles under the guise of 'regulation,' the fact that the government uses the VIN as part of its scheme for regulating automobiles is insufficient to justify a *search* of the passenger compartment to retrieve such information." *Id.* at 972 (Brennan, J., dissenting) (emphasis in original).

opposite direction.[52]

II. THE PLAIN VIEW IMPLICATIONS OF VIN SEARCHES

Perhaps the most significant fourth amendment concern present when an automobile is stopped on the highway is what the officer may view as he or she stands next to the stopped car.[53] Under *Coolidge v. New Hampshire*,[54] an officer may seize any contraband or evidence of a crime which falls within his plain view during citizen-officer contact, including items viewed during a VIN inspection.[55] The Court set forth three conditions which must be met for a seizure to fall within the plain view doctrine: (1) there must be a valid prior intrusion into the area where the evidence is viewed (justified either by a search warrant or one of the recognized exceptions);[56] (2) discovery of the evidence must be inadvertent, and (3) it must be immediately apparent to the officer that the items being viewed are evidence of crime or criminal activity.[57]

This is the crux of the VIN inspection problem, in terms of possible infringement of fourth amendment rights. Opening the door to access the non-visible VIN exposes most, if not all, of the car's

52. Although the *Class* majority claims that it reached its holding by balancing "the governmental interests in highway safety" against the "nature and quality of the [initial] intrusion," *Class*, 106 S. Ct. at 968 (quoting United States v. Place, 462 U.S. 696, 703 (1983)), the dissent accuses it of " 'balancing" into oblivion the protections the Fourth Amendment affords.' " *Id.* at 971 (Brennan, J., dissenting) (quoting Michigan v. Long, 463 U.S. 1032, 1065 (1983)). In light of the Court's other fourth amendment decisions involving automobiles, it can be argued that *Class* is merely the continuation of a trend toward limiting constitutional protections. *See, e.g.*, California v. Carney, 105 S. Ct. 2066 (1985) (Court justified warrantless search of motor *home* under automobile exception); United States v. Johns, 105 S. Ct. 881 (1985) (Court justified search of items removed from vehicle, secured three days earlier and kept in DEA warehouse, under automobile exception); *see also* Wasserstrom, *The Incredible Shrinking Fourth Amendment*, 21 AM. CRIM. L. REV. 257 (1984).

53. In United States v. Polk, 433 F.2d 644, 647 (5th Cir. 1970), the court wrote: "Its [the car's] exterior and much of its interior are within the 'plain view' of the casual or purposeful onlooker, and thus are not protected by the Fourth Amendment from searching eyes."

54. 403 U.S. 443 (1971). In *Coolidge*, the Court correctly noted that the seized evidence will always be within the "plain view" of the officer, at least at the moment of seizure. *Id.* at 465. The narrower doctrine of plain view delineates the legal scope of a search which supplements a prior valid intrustion. *See infra* notes 56-57 and accompanying text.

55. United States v. Duckett, 583 F.2d 1309 (5th Cir. 1978) (stolen Treasury checks sitting on dashboard of car within plain view of officer conducting VIN inspection); United States v. Polk, 433 F.2d 644, 647 (5th Cir. 1970) ("Thus the VIN on the rear axle or on the car frame are outside any reasonable expectations of privacy. Those that may be seen only by opening the car door or hood are no more private: doors and hoods are continually opened to the eyes of observers.").

56. *See infra* notes 63-106 and accompanying text.

57. *Coolidge*, 403 U.S. at 466-70.

interior to the plain view of the investigating officer.[58] Although much of the interior of a car can be seen without opening the door,[59] *Class* illustrates that some areas are not visible until the door is opened.[60] In light of the frequency of officer-motorist contact during traffic stops each day, *Class* has created a potent law enforcement tool.[61]

The requirement of a prior valid intrusion is critical to the VIN inspection situation. It is also an area in which the Court has most notably departed from its own precedents. Under what circumstances may an officer legally demand access to a vehicle's non-visible VIN, thereby enabling himself to view the interior of the vehicle and any evidence which it may contain?[62]

III. DEVELOPMENT OF A STANDARD FOR ACCESS TO VINS DURING TRAFFIC STOPS

A. *Permissible Automobile Intrusions under Present Law*

Although warrantless[63] governmental searches or intrusions are

58. *Class* held that police may search the interior of a vehicle to move papers obscuring the dashboard VIN or to read the doorjamb VIN. New York v. Class, 106 S. Ct. 960, 968 (1986). The Court's reasoning, however, is flawed. The Court wrote, "The VIN, which was the clear initial objective of the officer, is by law present in one of two locations—either inside the door jamb, or atop the dashboard and thus *ordinarily in plain view of someone outside the automobile*." *Id.* (emphasis added). Does the Court mean to suggest that the doorjamb can be viewed when the door is closed, or that people never leave maps or papers on their dashboards? It is ludicrous to imagine that no other objects will be viewed, even when the door is opened, because the VIN is the officer's "clear initial objective."

59. In Texas v. Brown, 460 U.S. 730, 739-40 (1983), the Supreme Court held that a search was not conducted when a police officer used his flashlight to look through the window of a stopped car. The officer only saw the area normally visible to "inquisitive passersby," and therefore did not infringe upon any reasonable expectation of privacy.

60. *Class*, 106 S. Ct. at 963. The gun was protruding from underneath the passenger seat, an area which would not have been within the plain view of the arresting officer, had the door remained closed.

61. According to one report, there are over one million moving violations per year in New York City. Mendelson, *Arrest for Minor Traffic Offenses*, 19 CRIM. L. BULL. 501, 503-04 (1983) (citing Report of New York City Police Department, Mayor's Management Report (prelim. 1982)).

62. Justice Powell, concurring in *Class*, recognized this problem: "The question raised on the facts of this case, therefore, is whether the Fourth Amendment was offended by the incremental intrusion resulting from the officer's efforts to observe this VIN once respondent's vehicle lawfully was stopped." *Class*, 106 S. Ct. at 969-70 (Powell, J., concurring).

63. "The primary reason for the warrant requirement is to interpose a 'neutral and detached magistrate' between the citizen and 'the officer engaged in the often competitive enterprise of ferreting out crime.' " United States v. Karo, 104 S. Ct. 3296, 3305 (1984) (quoting Johnson v. United States, 333 U.S. 10, 14 (1948)) (federal agents not completely free to determine, by means of electronic device, contents of home's interior absent warrant and probable cause or reasonable suspicion). The warrant requirement provides an objective evaluation of

presumptively unreasonable under the fourth amendment,[64] the Court has recognized that automobiles present special problems due to their inherent mobility[65] and exposure to pervasive governmental regulation.[66] As a result, the warrant requirement has been removed in certain situations involving automobiles.[67] Despite this exception, the Court has continued to require the articulation of individualized suspicion or probable cause[68] to enter the car. The government must show some concrete basis for its intrusion into an area of privacy.[69] Recognizing the inherent difficulty in reducing such a vague concept to a workable standard, the Court has historically required, at a minimum, a showing of reasonableness in the circumstances to justify suspicion that criminal activity is afoot.[70]

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the situation and limits the scope of the intrusion. Katz v. United States, 389 U.S. 347, 356 (1967) (warrantless tapping of public phone booth by federal agents held per se unreasonable search under fourth amendment).

64. *Katz*, 389 U.S. at 357; *see also* Mincey v. Arizona, 437 U.S. 385, 390 (1978) (warrantless four day search of apartment after murder of undercover officer not within recognized exception to fourth amendment warrant requirement; therefore per se unreasonable).

65. Carroll v. United States, 267 U.S. 132 (1925) (exigency of car's mobility justifies waiver of warrant requirement when reasonable or probable cause exists); Chambers v. Maroney, 399 U.S. 42 (1970) (extending *Carroll* mobility exception to search of immobile car, based on inherent mobility of cars in general).

66. *See supra* notes 45-52 and accompanying text.

67. *See supra* note 1.

68. The fourth amendment states that warrants (or, in the case of an automobile, the right to conduct a search without a warrant) shall issue only upon probable cause. U.S. CONST. amend. IV. "Probable cause exists where 'the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." Draper v. United States, 358 U.S. 307, 313 (1959) (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)) (probable cause justified warrantless arrest and subsequent search incident to arrest).

69. California v. Carney, 105 S. Ct. 2066, 2071 (1985) (DEA agents had "abundant" probable cause to conduct warrantless search of motor home). "Under the vehicle exception to the warrant requirement, '[o]nly the prior approval of the magistrate is waived; the search otherwise [must be such] as the magistrate could authorize.'" *Id.* (quoting United States v. Ross, 456 U.S. 798, 823 (1982)). "In short, the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate so long as the overriding standard of probable cause is met." *Id.* at 2070.

70. "[B]ecause many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes . . . . But the mistakes must be those of *reasonable men*, acting on facts leading sensibly to their conclusions of probability." Brinegar v. United States, 338 U.S. 160, 176 (1949) (emphasis added) (defendant's prior arrest by officer and reputation for hauling liquor across state lines was enough to show probable cause for officer to stop car and, upon admission of defendant that he had liquor in car, to search it). "These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime." *Id.*

In *Class*, however, the majority required neither an articulized suspicion nor reasonable suspicion to justify the warrantless search of the defendant's car. The investigating officers even admitted that they had no reason to suspect that the defendant's car was stolen.[71] As noted by the Court in *Coolidge v. New Hampshire*, "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away."[72]

There are several exceptions justifying a warrantless search of a car under present law. The following sections delineate these exceptions and point out why the new VIN search, by not requiring that it be justified by an articulation of individualized suspicion, is inconsistent with all of the Court's precedents in this area.

1. *The Automobile Exception*

Under the automobile exception, an officer having probable cause to believe a vehicle is involved in a crime or contains evidence of a crime may stop a car and conduct a search of all areas capable of containing such evidence.[73]

Despite the judicial transformation of the exception from one based on the exigency of ready mobility and impracticability of securing a warrant[74] to a general exception for use in almost any case in which an automobile is involved in crime,[75] the Court has continued to require the articulation of independent probable cause to believe that the vehicle was involved in a crime. In *United States v. Ross*,[76] the Court held that when a police officer could identify objective facts giving rise to a probable cause belief that the vehicle contained contraband, a warrantless search of the car and containers therein capable of containing the contraband was justifiable

71. *Class*, 106 S. Ct. at 963.

72. 403 U.S. 443, 461 (1971).

73. United States v. Ross, 456 U.S. 798 (1982).

74. Carroll v. United States, 267 U.S. 132 (1925). In this landmark automobile exception case, the law then in existence precluded the officers from taking the suspects into custody for a misdemeanor, so the police had either to conduct a search on the spot, or to allow the suspects to proceed—possibly out of the jurisdiction.

75. California v. Carney, 105 S. Ct. 2066 (1985) (search of mobile home allowed under automobile exception despite ready availability of warrant); United States v. Johns, 105 S. Ct. 881 (1985) (vehicle searched under automobile exception after being impounded for three days at DEA warehouse); Chambers v. Maroney, 399 U.S. 42 (1970) (search of car under automobile exception allowed where driver in police custody, and car could not be driven away by him).

76. 456 U.S. 798 (1982) (police, acting on information from informant that car trunk contained narcotics, had probable cause to conduct warrantless search of entire vehicle).

under the automobile exception.[77] In such a case, police could search the entire vehicle either on the highway where the vehicle was stopped or later at the police station. In addition, the scope of the search would be as broad as if a judge had issued the warrant.

A traffic violation alone, while supplying probable cause to stop the vehicle initially, does not supply probable cause to *search* for a VIN. Therefore, the VIN search rule is not justified by the automobile exception.[78]

2. *Inventory Searches*

In *South Dakota v. Opperman*,[79] the Supreme Court held that upon impounding a vehicle, police may conduct an inventory search of the vehicle in order to protect the police from potential danger and claims of lost or stolen property, and also to protect the owner's property.[80] At a minimum, the vehicle must be lawfully impounded.[81] The inventory search cannot be a mere pretext for an investigatory search.[82]

When a driver receives a traffic ticket, however, there is no need to impound the car unless the driver is taken into custody.[83] Accordingly, in the typical non-custodial arrest situation, the inventory search exception is inapplicable to the VIN search rule.

3. *Officer Safety*

Under *Michigan v. Long*,[84] the police, upon stopping a motorist for a traffic offense, may conduct a search of those areas of the passenger compartment capable of containing weapons which pose a threat to the officer.[85] The officer must possess a reasonable belief,

77. *Id.* at 809. The objective facts must be sufficient to "justify the issuance of a warrant by a magistrate, and not merely [be based] on the subjective good faith of the police officers." *Id.* at 808.

78. This was pointed out by Justice Brennan, dissenting in *Class*: "The Court supplies not an iota of reasoning to support the holding that respondent's traffic infractions gave the police probable cause to search for the VIN." *Class*, 106 S. Ct. at 972 (Brennan, J., dissenting).

79. 428 U.S. 364 (1976) (police towed and impounded defendent's car after ticketing it for parking in restricted zone; inventory search disclosed marijuana in glove box).

80. *Id.* at 369.

81. *Opperman* cites vehicle accidents, traffic control, violation of parking ordinances, and public safety as legitimate reasons to impound a vehicle. *Id.* at 368-69.

82. *Id.* at 376; *see also* Cady v. Dombrowski, 413 U.S. 433, 443 (1973) (inventory search was standard police procedure).

83. *See infra* notes 88-93 and accompanying text, discussing custodial arrests and VIN searches incident to an arrest.

84. 463 U.S. 1032 (1983).

85. *Id.* at 1049.

based upon "specific and articulable facts . . . taken together with the rational inferences from those facts" that the driver is dangerous and has access to those weapons during the stop.[86] There must be a specific articulation of the reasons leading the officer to fear for his safety before a search for weapons is justifiable under the officer safety exception. Without such articulated reasons, a VIN search cannot be justified under this exception.[87]

4. *Search Incident to Arrest*

Under authority of the bright line rule developed in *New York v. Belton*,[88] an officer may conduct a search of both the passenger compartment of a vehicle and any containers within it following the full "custodial" arrest of its occupants.[89]

Although the search incident to arrest doctrine[90] as applied to automobiles may appear to apply to a VIN search occurring after an observed traffic violation and subsequent arrest, the rationale supporting the doctrine is arguably unrelated to the average traffic stop situation. As noted in *United States v. Robinson*,[91] the dual rationales behind the doctrine are to remove any weapons from the vehicle which pose a threat to the officer and to seize any evidence which the arrestee may try to destroy or conceal.[92] The purpose of a VIN inspection, however, is to ascertain whether the car is stolen; there is no crime involved other than the traffic infraction and therefore no need to search for weapons or evidence. It is also unlikely that a full arrest would typically be effected for a traffic

86. *Id.* (quoting Terry v. Ohio, 392 U.S. 1, 21 (1968)).

87. Indeed, the *Class* majority had to stretch this rationale to apply it to the officer's VIN search. Not only did the driver voluntarily leave his vehicle (and was therefore unable to gain access to weapons in the car), but, more significantly, the officers expressed no actual fear for their own safety. *Class*, 106 S. Ct. at 973 (Brennan, J., dissenting).

88. 453 U.S. 454 (1981).

89. *Id.* at 460. *Belton* is significant in that the Court no longer requires exigent circumstances (e.g., that suspect could gain access to weapon or evidence) to justify a search. A custodial arrest is defined as "confinement or detention by police or government authorities during which a person is entitled to certain warnings [of the *Miranda* variety] as to his rights when questioned." BLACK'S LAW DICTIONARY 346 (5th ed. 1979). In Miranda v. Arizona, 384 U.S. 436, 477 (1966), the Court distinguished between general investigatory on-the-scene questioning and full custody interrogation while at the police station. Due to the "compelling atmosphere" of the police station, full custodial interrogations require the now-famous *Miranda* warnings. *Id.* at 478.

90. The doctrine originated in Chimel v. California, 395 U.S. 752 (1969) (upon arrest of suspect, police may search area in home within immediate control of arrestee to prevent access to weapons or destruction of evidence).

91. 414 U.S. 218 (1973).

92. *Id.* at 251.

violation.[93]

B. *The* Terry *Standard and Problems of Scope*

In *Terry v. Ohio*,[94] the Court sanctioned limited intrusions into a person's privacy based upon less than probable cause.[95] However, even under *Terry*'s "reasonable suspicion" standard,[96] "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."[97]

In *Terry*, the police were required to articulate grounds for the initial stop.[98] In the VIN search situation, however, the motorist has typically committed some sort of traffic infraction in the presence of an officer, so the standard for seizure is easily met.[99] Therefore, the problem becomes one of *scope* for the search. In determining the permissible scope of a VIN search once a valid seizure has been made, the *Terry* standard requires that a court look at the grounds for the initial seizure: the officer's search must be "reasonably related in scope to the circumstances which justified the interference in the first place."[100] Assuming that the VIN is primarily used as a theft detection device,[101] it is doubtful that, in all routine traffic stop cases, an officer will be able to point to facts leading to a reasonable suspicion that the vehicle is stolen.[102] A

93. Issuing a citation or conducting a full arrest is discretionary in some jurisdictions. This may allow or even encourage pretextual searches of a vehicle's interior. *Robinson*, 414 U.S. at 248; *see generally* 2 W. LAFAVE, SEARCH & SEIZURE § 5.1(h) (1978) [hereinafter W. LAFAVE] (in most jurisdictions, officer has complete discretion in issuing citation or conducting full arrest). *See, e.g.*, DEL. CODE ANN. tit. 21, § 701 (1985) (allowing officer to make custodial arrest for any traffic violation). In Traylor v. State, 458 A.2d 1170, 1174 (Del. 1983), the Delaware Supreme Court held that an officer's use of discretion under this statute does not, in itself, invalidate a search incident to that arrest. *See also* WIS. STAT. ANN. § 345.23 (West Supp. 1986) (officer arresting driver for violation of traffic regulations shall issue citation, and "may" release driver, or release him upon posting of appearance bond). *But see* United States v. Lefkowitz, 285 U.S. 452, 467 (1932) ("An arrest may not be used as a pretext to search for evidence.").

94. 392 U.S. 1 (1968) (reasonably suspecting defendant about to commit crime, officer justified in stopping defendant and conducting limited patdown search for weapons).

95. *Id.* at 28.

96. *Terry* was applied to automobiles in Delaware v. Prouse, 440 U.S. 648, 662-63 (1979) (stop of vehicle solely to check driver's license and registration ruled unreasonable seizure under fourth amendment).

97. *Terry*, 392 U.S. at 21 (emphasis added).

98. *Id.*

99. *See supra* note 13.

100. *Terry*, 392 U.S. at 20.

101. *See supra* note 38.

102. As Justice Brennan wrote in *Class*, "[t]he Court suggests that respondent's traffic

cracked windshield or a speeding car does not, in itself, indicate that the vehicle has been stolen or involved in other crimes.

By not requiring that the grounds for a VIN search be closely tied to an articulable suspicion stemming from either the circumstances surrounding the traffic stop or independent grounds arising after the stop,[103] the Court is sanctioning "intrusions upon constitutionally guaranteed rights based on nothing more substantial than articulate hunches . . . ."[104] By allowing such a practice, any traffic stop could be turned into a VIN search at the will of the investigating officer.[105] Because of the potential for abuse of discretion[106] by officers in the field, the need to establish guidelines for VIN searches is manifest.

IV. A PROPOSED STATUTORY SOLUTION

A. *Neutral Criteria*

Class holds that during a lawful traffic stop the police may enter the vehicle without the driver's consent in order to search for and read the VIN if it is not otherwise visible from the outside.[107] Although, as shown earlier, virtually all of the Court's automobile search and seizure cases have required the articulation of individualized suspicion or probable cause in order to justify a governmental intrusion into private spaces, the *Class* rule was founded upon a "balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the

infractions provided the requisite probable cause . . . . This analysis makes a mockery of the Fourth Amendment. . . . Fourth Amendment protections evaporate if this supplies the requisite probable cause to *search* for a VIN not visible from the exterior of the car." *Class*, 106 S. Ct. at 972 (Brennan, J., dissenting) (emphasis in original).

103. For example, if a driver is unable to produce a license, vehicle registration, or any other identification (United States v. Duckett, 583 F.2d 1309 (5th Cir. 1978) (car stopped for failure to have visible license plate light), a non-consensual VIN search might be justified.

104. Terry v. Ohio, 392 U.S. 1, 21-22 (1968). *See also* Delaware v. Prouse, 440 U.S. 648, 662-63 (1979) ("Were the individual subject to unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed."); Brief for Respondent, *supra* note 28, at 24.

105. In United States v. Place, 462 U.S. 696, 721 (1983) (Blackmun, J., concurring), Justice Blackmun recognized the "emerging tendancy on the part of the Court to convert the *Terry* decision into a general statement that the Fourth Amendment requires only that any seizure be reasonable." (footnote omitted).

106. The requirement of probable cause to conduct a search serves as a necessary safeguard to the citizen by neutralizing any preconceived notions—conscious or unconscious—with which an officer may approach a particular situation. People v. Super. Ct. of Yolo County, 3 Cal. 3d 807, 818, 478 P.2d 449, 455, 91 Cal. Rptr. 729, 735 (1970).

107. *Class*, 106 S. Ct. at 968-69.

governmental interests alleged to justify the intrusion.' "[108] The application of a rule that does not require objectively verifiable grounds for the search, however, will invariably result in a finding that the particular VIN search is justified, regardless of the circumstances of the incident.

In *Delaware v. Prouse*,[109] the Supreme Court stated that if random highway stops for license checks were to be sanctioned as a valid regulatory device in the absence of articulable, individualized suspicion, there must be neutral criteria (by which to adjudge the appropriateness of the intrusion) capable of application in each case.[110] This is consistent with the fact that search warrants, where appropriate,[111] are to be issued by a detached and neutral magistrate.[112] In light of the potential for abuse of discretion[113] by officers conducting VIN inspections, the establishment of neutral criteria would serve as an aid to both law enforcement officers and citizens by alerting both parties to the legal scope of their respective rights. The police officer would be spared the burden of uncertainty and possible inadvertent violation of a motorist's rights (which could thwart an otherwise legal operation). The driver would be relieved of the feelings of injustice and intimidation which accompany the exercise of questionable authority.[114] In short, predictability would be promoted. As the law presently stands, a driver may have to abandon any expectation of privacy in the car's interior upon the occurrence of even the most minor traffic infraction.[115] This is clearly undesirable.[116] Furthermore, although there is an unquestioned need for flexibility and case-by-case adjudication of

108. *Id.* at 968 (quoting United States v. Place, 462 U.S. 696, 703 (1983)).

109. 440 U.S. 648 (1979).

110. *Id.* at 662 (citing Marshall v. Barlow's, Inc., 436 U.S. 307, 323 (1978)).

111. A close reading of the fourth amendment discloses that the amendment itself does not require a warrant for every search. Warrants will issue only upon probable cause, to justify an otherwise unreasonable search. U.S. CONST. amend. IV.

112. *See supra* note 69 and accompanying text.

113. Delaware v. Prouse, 440 U.S. 648, 661-62 (1979); *see also* United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976) (border searches of vehicles) ("The Fourth Amendment imposes limits on search-and-seizure powers in order to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.").

114. *Martinez-Fuerte*, 428 U.S. at 559. In *Martinez-Fuerte*, the Court distinguished between checkpoint inspections and random, roving stops, noting that checkpoint stops are less likely to frighten or annoy a motorist because the driver can see visible signs of the officer's authority and that other vehicles are being treated similarly. *Id.* (citing United States v. Brignoni-Ponce, 422 U.S. 873, 882-83 (1975)).

115. The officer can open the door to check the VIN if it is not visible from the outside of the car. *See supra* note 107 and accompanying text.

116. "[T]he exercise of a desire to be mobile does not, of course, waive one's right to be free of unreasonable government intrusion." Cardwell v. Lewis, 417 U.S. 583, 591 (1974).

fourth amendment problems,[117] there is a danger of tipping the scales too far, resulting in a "make the rules as you go" attitude. In such a situation, the motorist is left without any fourth amendment protections: "Crime is contagious. If the Government becomes a law breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means . . . would bring terrible retribution."[118]

B. *Less Restrictive Alternatives*

Despite the fact that *Class* found the VIN search to involve such a minimal intrusion as to make it reasonable when "balanced" against the government's interest,[119] the discovery of the gun illustrates that even a "minimal" intrusion into a private automobile could lead to the discovery of evidence.[120] It is submitted that, unless the officer can articulate individualized suspicion that the vehicle is stolen, a less intrusive means should be employed in determining whether a stopped vehicle is stolen.[121]

In *Prouse* the Court relied in part upon the availability of less restrictive alternatives in finding random spot checks unjustifiable under the fourth amendment.[122] In the case of the VIN inspection, likewise, there are options available which would not require or allow wholesale entry into the vehicle in order to identify it when no articulable suspicion of theft exists.[123] One avenue to access is through the use of the radio check.[124] If a check is run on the li-

117. *See supra* note 27. "[T]he intensive, at times painstaking, case-by-case analysis characteristic of our Fourth Amendment decisions bespeaks our 'jealous regard for maintaining the integrity of individual rights.'" United States v. Robinson, 414 U.S. 218, 238 (1973) (Marshall, J., dissenting) (quoting Mapp v. Ohio, 367 U.S. 643, 647 (1961)).

118. Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).

119. *Class, 106 S. Ct. at 968.*

120. The officer can seize the evidence under the Plain View Doctrine; *see supra* notes 53-62 and accompanying text.

121. *See supra* note 52.

122. *Prouse*, 440 U.S. at 659. "[I]n Delaware, as elsewhere, vehicles must carry and display current license plates, which themselves evidence that the vehicle is properly registered . . . . It does not appear, therefore, that a stop . . . is necessary in order to ascertain compliance with the State's registration requirements . . . ." *Id.* at 660 (footnotes omitted).

123. Under such an option, *Class* would be moot. *See supra* notes 17, 71 and accompanying text.

124. *See* United States v. Matlock, 558 F.2d 1328 (8th Cir.) (radio check on license plate of strange van confirmed it stolen), *cert. denied*, 434 U.S. 872 (1977); United States v. Jamerson, 549 F.2d 1263 (9th Cir. 1977) (defendant seen sleeping in van parked along highway, radio check on license plate confirmed van stolen); United States v. Harris, 479 F.2d 508 (5th Cir. 1973) (car observed making illegal turn, radio check after stop of car confirmed license

cense plate of a moving or legitimately stopped vehicle and an irregularity surfaces, further inquiry and inspection is warranted.

Another way to obtain access to the interior VIN is by use of preexisting identification statutes. Some state laws require the presentation of a driver's license or vehicle registration to the officer during each traffic stop.[125] If, while reviewing such documents, the officer finds a discrepancy between the information appearing on the documents and the appearance of the vehicle or its driver, grounds for a VIN inspection exist.[126] One argument marshalled by the *Class* majority is that access to VIN information under a general identification presentation statute is integral to a complete identification process,[127] and a VIN search is therefore justified whenever a vehicle is stopped for a traffic infraction.[128] The Plain View Doctrine, however, makes the presentation of an undisclosed VIN fundamentally different from the mere presentation of a document through a car window.

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plate stolen); United States v. Williams, 440 F.2d 1235 (6th Cir.) (computer check on license plate of car parked at motel confirmed vehicle stolen), *cert denied*, 404 U.S. 837 (1971).

125. *See, e.g.*, N.Y. VEH. & TRAF. LAW § 401(4) (McKinney 1986): "4. Carrying certificate of registration. Any . . . police officer *may request* that the operator of any motor vehicle produce for inspection the certificate of registration . . . and . . . any information necessary for the identification of such vehicle and its owner, and all information required concerning his license to operate . . . ." (emphasis added). Section 401(4) requires the vehicle to have an affixed validating sticker which indicates the plate number, VIN and registration expiration date. *Id.* For statutes requiring display of registration upon demand see, *e.g.;* IND. CODE ANN. §§ 9-1-4-5, 34-4-32-2 (West Supp. 1986); *Md.* TRANSP. CODE ANN. §§ 13-409, 16-112 (Supp. 1986); MICH. COMP. LAWS ANN. §§ 257, 233, 257, 311 (West Supp. 1986). *But see* ARIZ. REV. STAT. ANN. § 28-305 (Supp. 1985) (In State v. Taras, 19 Ariz. App. 7, 504 P.2d 548 (1972), the court held that, under the authority of an earlier but essentially identical version of this statute, the failure to produce registration upon demand justified a limited search for evidence of automobile ownership.).

126. Similar grounds for a VIN inspection did not exist in *Class*, but the search was allowed. *Class*, 106 S. Ct. at 963. "Plainly the search of the interior for the VIN was unnecessary since respondent had supplied his car registration certificate, and there [was] no suggestion that it was inadequate." *Id.* at 972 (Brennan, J., dissenting). In fact, the officers did not even record the registration information which they obtained. *Id.* at 972 n.2.

127. Virtually all states require the presentation of some form of identification (driver's licence, registration, or insurance card) to the officer. However, even if there is no expectation of privacy in the VIN itself, the challenged intrusion will be exempt from the usual fourth amendment protections only if it does not infringe upon another privacy interest. *See* United States v. Jacobsen, 466 U.S. 109, 124-25 (1984); *see also* United States v. Place, 462 U.S. 696, 707 (1983).

128. The *Class* majority equates the VIN to the driver's license and registration as part of the web of "pervasive governmental regulation," therefore acting to reduce one's expectation of privacy in his automobile. *Class*, 106 S. Ct. at 965 (citing South Dakota v. Opperman, 428 U.S. 364, 368 (1976)). "A motorist must surely expect that such regulation will on occasion require the State to determine the VIN of his or her vehicle, and the individual's reasonable expectation of privacy in the VIN is thereby diminished." *Class*, 106 S. Ct. at 966.

Finally, by requiring the expression of a reasonable belief, based on specific, articulable facts that the car is stolen (and not simply involved in *any* traffic law violation), the officer may engage in an interior VIN inspection that is consistent with the Court's previous cases.[129] By requiring the officer to articulate the factors leading him or her to believe that the car is stolen, a vital buffer of objectivity is placed between the unbridled discretion of an individual officer and a motorist's fourth amendment rights.[130]

Although the Supreme Court has now defined the federal fourth amendment standard for VIN searches, the states may enact statutes under their constitutional provisions which provide greater fourth amendment protections for their citizens.[131] Indeed, this is the only protection available.

C. *Proposed Statute for Law Enforcement Access to the Vehicle Identification Number during Stops for Traffic Law Violations*

In the interest of a uniform approach to VIN inspections among the various states, and in light of the constitutional interests involved, the following statute is proposed. If adopted, it would alleviate the problems described in this Note in a manner consistent with fourth amendment law:[132]

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129. *See generally supra* notes 63-106 and accompanying text.

130. *Class*, 106 S. Ct. at 972 (Brennan, J., dissenting) (citing Pennsylvania v. Mimms, 434 U.S. 106, 122 (1977) (Stevens, J., dissenting)). *See* Illinois v. Andreas, 463 U.S. 765, 773 (1983) (fourth amendment standard should be objective and not dependent upon belief of individual police officers); *see also* Brief for Respondent, *supra* note 28, at 33.

131. The Court has recognized that a state may, under its state constitution, impose a "higher standard" than that contained in the federal Constitution. *See* Michigan v. Long, 463 U.S. 1032, 1044 n.10 (1983). In *Long*, insufficient proof of reliance on the state standard led the court to apply the less stringent federal fourth amendment standard. *See also* Cooper v. California. 386 U.S. 58, 62 (1967) ("Our holding, of course, does not affect the state's power to impose higher standards on searches and seizures than required by the Federal Constitution if it chooses to do so."); State v. Opperman, 247 N.W.2d 673 (S.D. 1976) (on remand state court based its holding on state constitutional grounds, rejecting expansive search powers formulated by United States Supreme Court in South Dakota v. Opperman, 428 U.S. 364 (1976)); People v. Belton, 55 N.Y.2d 49, 51, 432 N.E.2d 745, 745, 447 N.Y.S.2d 873, 873 (1982) ("The identical wording of the two provisions [Federal and State versions of the Fourth Amendment] does not proscribe our more strictly construing the State Constitution than the Supreme Court has construed the Federal Constutition.").

132. In Illinois v. Andreas, 463 U.S. 765 (1983) (DEA-controlled delivery of crate containing illegal drugs), the Supreme Court wrote:

> In fashioning a standard [for searches], we must be mindful of three Fourth Amendment principles. First, the standard should be workable for application by rank-and-file, trained police officers. Second, it should be reasonable . . . . Third, the standard should be objective, not dependent on the belief of individual police officers.

§ 1 A law enforcement official may, upon stopping a motorist for any traffic infraction, engage in a non-consensual inspection of a non-visible VIN only if he has a reasonable belief,[133] based on specific articulable facts, that the car is stolen. Such belief may be based upon observations[134] occurring during the legal traffic stop itself.[135]

§ 2 In the absence of a reasonable belief that the vehicle is stolen, law enforcement officials may utilize the following procedures to obtain VIN information during traffic stops:

a) exterior inspection of visible VIN;
b) radio check on physical description of vehicle and tags;
c) inspection of auto registration and/or driver's license;[136] or
d) voluntary disclosure of interior VIN by driver.

Unless the display of interior VINs is specifically required under the routine traffic stop identification provision of the state, non-consensual interior VIN inspections shall not be construed to fall under such general regulatory provisions.[137]

V. CONCLUSION

Non-consensual VIN inspections made during routine traffic stops create a direct conflict between the need for effective law enforcement and a motorist's fourth amendment protections. Recognizing that constitutional rights must be compromised to some degree if we are to encourage the governmental regulation of highway traffic in the interest of safety,[138] the challenge becomes the

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Id. at 772-73 (citations omitted).

133. The reasonableness requirement is consistent with the need for a case-by-case analysis of fourth amendment problems since, as the Court wrote in Go-Bart Importing Co. v. United States, 282 U.S. 344, 357 (1931), "[t]here is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances." The facts and circumstances must be scrutinized to see if they provide an articulate basis for this belief.

134. *Cf.* United States v. Green, 465 F.2d 620 (D.C. Cir. 1972) (after stop of vehicle for traffic infraction, police observed suspect making furtive movements within vehicle; held, police justified in searching under driver's seat after ordering suspect from car, based upon officer safety and automobile exceptions).

135. A "legal traffic stop" is a police stop after an observed violation of a traffic law; *see* Pennsylvania v. Mimms, 434 U.S. 106, 109 (1977) (police observed defendant driving with expired tags in violation of Pennsylvania Motor Vehicle Code).

136. Since the registration (which is a required item of presentation under most state motorist identification statutes) contains the VIN, an officer may inspect it initially and compare it to the visible VIN. Absent an inconsistency between the registration and the visible VIN, there is no need for the officer to access the interior VIN. If a discrepancy between the registration and the visible VIN appears, an officer is then warranted in inspecting other, perhaps non-visible VINs. In pre-1969 cars, the officer should only be able to compare the registration with the license tag and the vehicle itself.

137. For an example of a general motor vehicle identification statute, *see supra* note 125.

138. In Marshall v. Barlow's, Inc., 436 U.S. 307, 312-13 (1978) (warrantless inspections

balancing of those interests. Claiming that the VIN inspection is not a probe for evidence but merely a regulatory procedure does not exempt it, in light of the legitimate privacy interests at stake, from traditional fourth amendment precedents.[139] The present lack of standards for guidance of both law enforcement officials and motorists has created a "labyrinth of judicial uncertainty"[140] regarding the VIN inspection issue. The Supreme Court has declined to formulate a workable standard, choosing instead to grant a blanket license to law enforcement. The proposed statute provides state guidelines to protect motorists from the unbridled discretion of field officers "engaged in the often competitive enterprise of ferreting out crime."[141] It also provides a workable framework for investigation of suspected auto theft.

New York v. Class has determined the federal standard for a VIN search. Had the Court followed its own precedents in the area of fourth amendment jurisprudence by insisting on a showing of probable cause or reasonable suspicion for governmental intrusions, it would have significantly clarified a confusing area of the law. Instead, the Court chose to condone non-consensual VIN inspections during traffic stops in the absence of any concrete articulation of grounds for suspicion. The Court has given the government a clear avenue towards violating the fourth amendment rights of all motorists unfortunate enough to have committed even the most minor traffic infraction.

What the Court said seventy-two years ago still holds true today:

> The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the

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of commercial buildings under Occupational Safety and Health Act of 1970 held unconstitutional), the Supreme Court recognized that "if the government intrudes . . . the privacy interest suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards."

139. *See supra* notes 28-34 and accompanying text.

140. W. LAFAVE, *supra* note 93, at § 7.2. A difference of opinion existed among the circuits prior to *Class*. *See, e.g.,* United States v. Polk, 433 F.2d 644 (5th Cir. 1970) (non-consensual VIN inspection is "limited inspection," opening vehicle hood or door to do so violates no expectation of privacy); United States v. Johnson, 431 F.2d 441 (5th Cir. 1970)) (Godbold, J., dissenting) (fact that VIN has quasi-public function does not exempt vehicle from fourth amendment privacy interest); Cotton v. United States, 371 F.2d 385 (9th Cir. 1967) (warrantless VIN search reasonable when officer suspects car stolen); Simpson v. United States, 346 F.2d 291 (10th Cir. 1965) (probable cause required to justify non-consensual entry into automobile to copy VIN).

141. Johnson v. United States, 333 U.S. 10, 14 (1948) (search of apartment based on smell of opium emanating into hallway held unconstitutional without warrant issued by neutral and detached magistrate).

sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land.[142]

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142. Weeks v. United States, 232 U.S. 383, 393 (1914).