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New York Vs. Burger

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Decided On : Jun-19-1987

Appeal No. : 482 U.S. 691

Appellant : New York

Respondent : Burger

Judgement :

New York v. Burger - 482 U.S. 691 (1987)
U.S. Supreme Court New York v. Burger, 482 U.S. 691 (1987)

New York v. Burger

No. 86-80

Argued February 23, 1987

Decided June 19, 1987

482 U.S. 691

CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

SYLLABUS

Respondent junkyard owner's business consists, in part, of dismantling automobiles and selling their parts. Pursuant to a New York statute authorizing warrantless inspections of automobile junkyards, police officers entered his junkyard and asked to see his license and records as to automobiles and vehicle parts in his possession. He replied that he did not have such documents, which are required by the statute. After announcing their intention to conduct an inspection of the junkyard pursuant to the statute, the officers, without objection by respondent, conducted the inspection and discovered stolen vehicles and parts. Respondent, who was charged with possession of stolen property and unregistered operation as a vehicle dismantler, moved in state court to suppress the evidence obtained as a result of the inspection, primarily on the ground that the administrative inspection statute was unconstitutional. The court denied the motion, and the Appellate Division affirmed. The New York Court of Appeals reversed, concluding that the statute violated the Fourth Amendment's prohibition of unreasonable searches and seizures.

HELD

1. A business owner's expectation of privacy in commercial property is attenuated with respect to commercial property employed in a "closely regulated" industry. Where the owner's privacy interests are weakened and the government interests in regulating particular businesses are concomitantly heightened, a warrantless inspection of commercial premises, if it meets certain criteria, is reasonable within the meaning of the Fourth Amendment. Pp. 482 U. S. 699 -703.

2. Searches made pursuant to the New York statute fall within the exception to the warrant requirement for administrative inspections of "closely regulated" businesses. Pp. 482 U. S. 703 -712.

(a) The nature of the statute establishes that the operation of a junkyard, part of which is devoted to vehicle dismantling, is a "closely regulated" business. Although the duration of a particular regulatory scheme has some relevancy, and New York's scheme regulating vehicle dismantlers can be said to be of fairly recent vintage, nevertheless, because widespread use of the automobile is relatively

new, automobile junkyards and vehicle dismantlers have not been in existence very long, and thus do not have an ancient history of government oversight.

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Moreover, the automobile junkyard business is simply a new branch of an industry -- general junkyards and secondhand shops -- that has existed, and has been closely regulated in New York, for many years. Pp. 482 U. S. 703 -707.

(b) New York's regulatory scheme satisfies the criteria necessary to make reasonable the warrantless inspections conducted pursuant to the inspection statute. First, the State has a substantial interest in regulating the vehicle-dismantling and automobile junkyard industry because motor vehicle theft has increased in the State and because the problem of theft is associated with such industry. Second, regulation of the industry reasonably serves the State's substantial interest in eradicating automobile theft, and warrantless administrative inspections pursuant to the statute are necessary to further the regulatory scheme. Third, the statute provides a constitutionally adequate substitute for a warrant. It informs a business operator that regular inspections will be made, and also sets forth the scope of the inspection, notifying him as to how to comply with the statute and as to who is authorized to conduct an inspection. Moreover, the "time, place, and scope" of the inspection is limited to impose appropriate restraints upon the inspecting officers' discretion. Pp. 482 U. S. 708 -712.

3. The New York inspection statute does not violate the Fourth Amendment on the ground that it was designed simply to give the police an expedient means of enforcing penal sanctions for possession of stolen property. A State can address a major social problem both by way of an administrative scheme -- setting forth rules to guide an operator's conduct of its business and allowing government officials to ensure that such rules are followed -- and through penal sanctions. *Cf. United States v. Biswell,* 406 U. S. 311 . New York's statute was designed to contribute to the regulatory goals of ensuring that vehicle dismantlers are legitimate businesspersons and that stolen vehicles and vehicle parts passing through automobile junkyards can be identified. Nor is the administrative scheme

unconstitutional simply because, in the course of enforcing it, an inspecting officer may discover evidence of crimes, besides violations of the scheme itself. Moreover, there is no constitutional significance in the fact that police officers, rather than "administrative" agents, are permitted to conduct the administrative inspection. So long as a regulatory scheme is properly administrative, it is not rendered illegal by the fact that the inspecting officer has the power to arrest individuals for violations other than those created by the scheme itself. Pp. 482 U. S. 712 -718.

67 N.Y.2d 338, 493 N.E.2d 926, reversed and remanded.

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BLACKMUN, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, POWELL, STEVENS, and SCALIA, JJ., joined. BRENNAN, J., filed a dissenting opinion, in which MARSHALL, J., joined, and in all but Part III of which O'CONNOR, J., joined, *post,* p. 482 U. S. 718 .

JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the question whether the warrantless search of an automobile junkyard, conducted pursuant to a statute authorizing such a search, falls within the exception to the warrant requirement for administrative inspections of pervasively regulated industries. The case also presents the question whether an otherwise proper administrative inspection is unconstitutional because the ultimate purpose of the regulatory statute pursuant to which the search is done -- the deterrence of criminal behavior -- is the same as that of penal laws, with the result that the inspection may disclose violations not only of the regulatory statute but also of the penal statutes.

Respondent Joseph Burger is the owner of a junkyard in Brooklyn, N.Y. His business consists, in part, of the dismantling of automobiles and the selling of their parts. His junkyard is an open lot with no buildings. A high metal fence surrounds it, wherein are located, among other things, vehicles and parts of vehicles. At

approximately noon on November 17, 1982, Officer Joseph Vega and four other plainclothes officers, all members of the Auto Crimes Division of the New York City Police Department, entered respondent's

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junkyard to conduct an inspection pursuant to N.Y.Veh. & Traf.Law 415-a5 (McKinney 1986). [Footnote 1] Tr. 6. On any given day, the Division conducts from 5 to 10 inspections of vehicle dismantlers, automobile junkyards, and related businesses. [Footnote 2] *Id.* at 26.

Upon entering the junkyard, the officers asked to see Burger's license [Footnote 3] and his "police book" -- the record of the automobiles

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and vehicle parts in his possession. Burger replied that he had neither a license nor a police book. [Footnote 4] The officers then announced their intention to conduct a 415-a5 inspection. Burger did not object. Tr. 6, 47. In accordance with their practice, the officers copied down the Vehicle Identification Numbers (VINs) of several vehicles and parts of vehicles that were in the junkyard. *Id.* at 7, 20, 44, 46. After checking these numbers against a police computer, the officers determined that respondent was in possession of stolen vehicles and parts. [Footnote 5] Accordingly, Burger was arrested and charged with five counts of possession of stolen property [Footnote 6]

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and one count of unregistered operation as a vehicle dismantler, in violation of 415-a1.

In the Kings County Supreme Court, Burger moved to suppress the evidence obtained as a result of the inspection, primarily on the ground that 415-a5 was unconstitutional. After a hearing, the court denied the motion. It reasoned that the junkyard business was a "pervasively regulated" industry in which warrantless administrative inspections were appropriate, that the statute was properly limited in

"time, place and scope," and that, once the officers had reasonable cause to believe that certain vehicles and parts were stolen, they could arrest Burger and seize the property without a warrant. App. to Pet. for Cert. 18a-19a. When respondent moved for reconsideration in light of a recent decision of the Appellate Division, *People v. Pace,* 101 App.Div.2d 336, 475 N.Y.S.2d 443 (1984), *aff'd,* 65 N.Y.2d 684, 481 N.E.2d 250 (1985), [Footnote 7] the court granted reargument. Upon reconsideration,

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the court distinguished the situation in *Pace* from that in the instant case. It observed that the Appellate Division in *Pace* did not apply 415-as to the search in question, 125 Misc.2d 709, 711, 479 N.Y.S.2d 936, 938 (1984), and that, in any event, the police officers in that case were not conducting an administrative inspection, but were acting on the basis of recently discovered evidence that criminal activity was taking place at the automobile salvage yard. *Id.* at 712-714, 479 N.Y.S.2d at 939-940. The court therefore reaffirmed its earlier determination in the instant case that 415-a5 was constitutional. [Footnote 8] For the same reasons, the Appellate Division affirmed. 112 App.Div.2d 1046, 493 N.Y.S.2d 34 (1985).

The New York Court of Appeals, however, reversed. 67 N.Y.2d 338, 493 N.E.2d 926 (1986). In its view, 415-a5 violated the Fourth Amendment's prohibition of unreasonable searches and seizures. [Footnote 9] According to the Court of Appeals,

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"[t]he fundamental defect [of 415-a5] . . . is that [it] authorize[s] searches undertaken solely to uncover evidence of criminality, and not to enforce a comprehensive regulatory scheme. The asserted 'administrative schem[e]' here [is], in reality, designed simply to give the police an expedient means of enforcing penal sanctions for possession of stolen property."

Id. at 344, 493 N.E.2d at 929. In contrast to the statutes authorizing warrantless inspections whose constitutionality this Court has upheld, 415-a5, it was said, "do[es] little more than authorize general searches, including those conducted by the police, of certain commercial premises." *Ibid.* To be sure, with its license and recordkeeping requirements, and with its authorization for inspections of records, 415-a appears to be administrative in character.

"It fails to satisfy the constitutional requirements for a valid, comprehensive regulatory scheme, however, inasmuch as it permits searches, such as conducted here, of vehicles and vehicle parts notwithstanding the absence of any records against which the findings of such a search could be compared."

Id. at 344-345, 493 N.E.2d at 929-930. Accordingly, the only purpose of such searches is to determine whether a junkyard owner is storing stolen property on business premises. [Footnote 10]

Because of the important state interest in administrative schemes designed to regulate the vehicle-dismantling or automobile junkyard industry, [Footnote 11] we granted certiorari. 479 U.S. 812 (1986).

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II

A

The Court long has recognized that the Fourth Amendment's prohibition on unreasonable searches and seizures is applicable to commercial premises, as well as to private homes. *See v. City of Seattle,* 387 U. S. 541 , 387 U. S. 543 , 387 U. S. 546 (1967). An owner or operator of a business thus has an expectation of privacy in commercial property, which society is prepared to consider to be reasonable, *see Katz v. United States,* 389 U. S. 347 , 389 U. S. 361 (1967) (Harlan, J., concurring). This expectation

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exists not only with respect to traditional police searches conducted for the gathering of criminal evidence but also with respect to administrative inspections designed to enforce regulatory statutes. *See Marshall v. Barlow's, Inc.,* 436 U. S. 307 , 436 U. S. 312 -313 (1978). An expectation of privacy in commercial premises, however, is different from, and indeed less than, a similar expectation in an individual's home. *See Donovan v. Dewey,* 452 U. S. 594 , 453 U. S. 598 -599 (1981). This expectation is particularly attenuated in commercial property employed in "closely regulated" industries. The Court observed in *Marshall v. Barlow's, Inc.:*

"Certain industries have such a history of government oversight that no reasonable expectation of privacy, *see Katz v. United States,* 389 U. S. 347 , 389 U. S. 351 -352 (1967), could exist for a proprietor over the stock of such an enterprise."

436 U.S. at 436 U. S. 313 .

The Court first examined the "unique" problem of inspections of "closely regulated" businesses in two enterprises that had "a long tradition of close government supervision." *Ibid.* In *Colonnade Corp. v. United States,* 397 U. S. 72 (1970), it considered a warrantless search of a catering business pursuant to several federal revenue statutes authorizing the inspection of the premises of liquor dealers. Although the Court disapproved the search because the statute provided that a sanction be imposed when entry was refused, and because it did not authorize entry without a warrant as an alternative in this situation, it recognized that "the liquor industry [was] long subject to close supervision and inspection." *Id.* at 397 U. S. 77 . We returned to this issue in *United States v. Biswell,* 406 U. S. 311 (1972), which involved a warrantless inspection of the premises of a pawnshop operator, who was federally licensed to sell sporting weapons pursuant to the Gun Control Act of 1968, 18 U.S.C. 921 *et seq.* While noting that "[f]ederal regulation of the interstate traffic in firearms is not as deeply rooted in history as is governmental control of the liquor industry," 406 U.S. at 406 U. S. 315 , we nonetheless concluded that the warrantless inspections

authorized by the Gun Control Act would "pose only limited threats to the dealer's justifiable expectations of privacy." *Id.* at 416 U. S. 316 . We observed:

"When a dealer chooses to engage in this pervasively regulated business and to accept a federal license, he does so with the knowledge that his business records, firearms, and ammunition will be subject to effective inspection."

Ibid.

The " *Colonnade-Biswell* " doctrine, stating the reduced expectation of privacy by an owner of commercial premises in a "closely regulated" industry, has received renewed emphasis in more recent decisions. In *Marshall v. Barlow's, Inc.,* we noted its continued vitality, but declined to find that warrantless inspections, made pursuant to the Occupational Safety and Health Act of 1970, 84 Stat. 1598, 29 U.S.C. 657(a), of *all* businesses engaged in interstate commerce fell within the narrow focus of this doctrine. 436 U.S. at 436 U. S. 313 -314. However, we found warrantless inspections made pursuant to the Federal Mine Safety and Health Act of 1977, 91 Stat. 1290, 30 U.S.C. 801 *et seq.,* proper because they were of a "closely regulated" industry. *Donovan v. Dewey, supra.*

Indeed, in *Donovan v. Dewey,* we declined to limit our consideration to the length of time during which the business in question -- stone quarries -- had been subject to federal regulation. 452 U.S. at 452 U. S. 605 -606. We pointed out that the doctrine is essentially defined by "the pervasiveness and regularity of the federal regulation" and the effect of such regulation upon an owner's expectation of privacy. *See id.* at 452 U. S. 600 , 452 U. S. 606 . We observed, however, that "the duration of a particular regulatory scheme" would remain an "important factor" in deciding whether a warrantless inspection pursuant to the scheme is permissible. *Id.* at 452 U. S. 606 . [Footnote 12]

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B

Because the owner or operator of commercial premises in a "closely regulated" industry has a reduced expectation of privacy, the warrant and probable cause requirements, which fulfill the traditional Fourth Amendment standard of reasonableness for a government search, *see O'Connor v. Ortega,* 480 U. S. 709 , 480 U. S. 741 (1987) (dissenting opinion), have lessened application in this context. Rather, we conclude that, as in other situations of "special need," *see New Jersey v. T.L.O.,* 469 U. S. 325 , 469 U. S. 353 (1985) (opinion concurring in judgment), where the privacy interests of the owner are weakened and the government interests in regulating particular businesses are concomitantly heightened, a warrantless inspection of commercial premises may well be reasonable within the meaning of the Fourth Amendment.

This warrantless inspection, however, even in the context of a pervasively regulated business, will be deemed to be reasonable only so long as three criteria are met. First, there must be a "substantial" government interest that informs the regulatory scheme pursuant to which the inspection is made. *See Donovan v. Dewey,* 452 U.S. at 452 U. S. 602 ("substantial federal interest in improving the health and safety conditions in the Nation's underground and surface mines"); *United States v. Biswell,* 406 U.S. at 406 U. S. 315 (regulation of firearms is "of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders"); *Colonnade Corp. v. United States,* 397 U.S. at 397 U. S. 75 (federal interest "in protecting the revenue against various types of fraud").

Second, the warrantless inspections must be "necessary to further [the] regulatory scheme." *Donovan v. Dewey,* 452 U.S. at 452 U. S. 600 . For example, in *Dewey* we recognized that forcing mine inspectors to obtain a warrant before every inspection

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might alert mine owners or operators to the impending inspection, thereby frustrating the purposes of the Mine Safety and Health Act -- to detect and thus to deter safety and health violations. *Id.* at 452 U. S. 603 .

Finally,

"the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant."

Ibid. In other words, the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers. *See Marshall v. Barlow's, Inc.,* 436 U.S. at 436 U. S. 323 ; *see also id.* at 436 U. S. 332 (STEVENS, J., dissenting). To perform this first function, the statute must be

"sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes."

Donovan v. Dewey, 452 U.S. at 452 U. S. 600 . In addition, in defining how a statute limits the discretion of the inspectors, we have observed that it must be "carefully limited in time, place, and scope." *United States v. Biswell,* 406 U.S. at 406 U. S. 315 .

III

Searches made pursuant to 415-a5, in our view, clearly fall within this established exception to the warrant requirement for administrative inspections in "closely regulated" businesses. [Footnote 13] First, the nature of the regulatory statute reveals that the operation of a junkyard, part of which is devoted to

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vehicle dismantling, is a "closely regulated" business in the State of New York. [Footnote 14] The provisions regulating the activity of vehicle dismantling are extensive. An operator cannot engage in this industry without first obtaining a license, which means that he must meet the registration requirements and must pay a fee. [Footnote 15] Under 415-a5(a), the operator must maintain a police book recording the acquisition and disposition of motor vehicles and vehicle parts,

and make such records and inventory available for inspection by the police or any agent of the Department of Motor Vehicles. The operator also must display his registration number prominently at his place of business, on business documentation, and on vehicles and parts that pass through his business. 415-a5(b). Moreover, the person engaged in this activity is subject to criminal penalties, as well as to loss of license or civil fines,

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for failure to comply with these provisions. *See* 415-a1, 5, and 6. [Footnote 16] That other States besides New York have imposed similarly extensive regulations on automobile junkyards further supports the "closely regulated" status of this industry. *See* n 11, *supra.*

In determining whether vehicle dismantlers constitute a "closely regulated" industry, the "duration of [this] particular regulatory scheme," *Donovan v. Dewey,* 452 U.S. at 452 U. S. 606 , has some relevancy. Section 415-a could be said to be of fairly recent vintage, *see* 1973 N.Y.Laws, ch. 225, 1 (McKinney), and the inspection provision of 415-a5 was added only in 1979, *see* 1979 N.Y.Laws, ch. 691, 2 (McKinney). But because the automobile is a relatively new phenomenon in our society, and because its widespread use is even newer, automobile junkyards and vehicle dismantlers have not been in existence very long, and thus do not have an ancient history of government oversight. Indeed, the industry

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did not attract government attention until the 1950's, when all used automobiles were no longer easily reabsorbed into the steel industry and attention then focused on the environmental and aesthetic problems associated with abandoned vehicles. *See* Landscape 1970: National Conference on the Abandoned Automobile 11; *see also* Report to the President from the Panel on Automobile Junkyards, White House Conference on Natural Beauty 1 (1965) (statement of Charles M. Haar, Chairman: "There are junkyards and abandoned cars in the streets and along the countryside that are making America ugly, not beautiful").

The automobile junkyard business, however, is simply a new branch of an industry that has existed, and has been closely regulated, for many years. The automobile junkyard is closely akin to the secondhand shop or the general junkyard. Both share the purpose of recycling salvageable articles and components of items no longer usable in their original form. As such, vehicle dismantlers represent a modern, specialized version of a traditional activity. [Footnote 17] In New York, general junkyards and secondhand shops long have been subject to regulation. One New York court has explained:

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"Vehicle dismantlers are part of the junk industry, as well as part of the auto industry. . . . Prior to the enactment of section 415-a of the Vehicle and Traffic Law, auto dismantlers were subject to regulatory provisions governing the licensing and operation of junkyards. These regulations included provisions mandating the keeping of detailed records of purchases and sales, and the making of such records available at reasonable times to designated officials including police officers, by junk dealers . . . and by dealers in secondhand articles. . . . "

"These regulatory, recordkeeping and warrantless inspection provisions for junk shops have been a part of the law of the City of New York and of Brooklyn for at least 140 years."

People v. Tinneny, 99 Misc.2d 962, 969, 417 N.Y.S.2d 840, 845 (Sup.1979). *See also* N.Y. C. Charter and Admin. Code B32-113.01 (1977) (" *Junk dealer'. Any person engaged in the business of purchasing or selling junk"); B32-126.0a ("`dealer in second-hand articles' shall mean any person who, in any way or as a principal broker or agent: 1. [d]eals in the purchase or sale of second-hand articles of whatever nature"). [Footnote 18] The history of government regulation of junk-related activities argues strongly in favor of the "closely regulated" status of the automobile junkyard.*

Accordingly, in light of the regulatory framework governing his business and the history of regulation of related industries, an operator of a junkyard engaging in

vehicle dismantling has a reduced expectation of privacy in this "closely regulated" business.

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B

The New York regulatory scheme satisfies the three criteria necessary to make reasonable warrantless inspections pursuant to 415-a5. First, the State has a substantial interest in regulating the vehicle-dismantling and automobile junkyard industry, because motor vehicle theft has increased in the State and because the problem of theft is associated with this industry. In this day, automobile theft has become a significant social problem, placing enormous economic and personal burdens upon the citizens of different States. For example, when approving the 1979 amendment to 415-a5, which added the provision for inspections of records and inventory of junkyards, the Governor of the State explained:

"Motor vehicle theft in New York State has been rapidly increasing. It has become a multimillion dollar industry which has resulted in an intolerable economic burden on the citizens of New York. In 1976, over 130,000 automobiles were reported stolen in New York, resulting in losses in excess of $225 million. Because of the high rate of motor vehicle theft, the premiums for comprehensive motor vehicle insurance in New York are significantly above the national average. In addition, stolen automobiles are often used in the commission of other crimes, and there is a high incidence of accidents resulting in property damage and bodily injury involving stolen automobiles."

Governor's Message approving L.1979, chs. 691 and 692, 1979 N.Y. Laws 1826, 1826-1827 (McKinney). *See also* 25 Legislative Newsletter, New York State Automobile Assn., p. 1 (May 10, 1978), reprinted in Governor's Bill Jacket, L.1979, ch. 691 (1979 Bill Jacket) ("Auto theft in New York State has become a low-risk, high-profit, multimillion

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dollar growth industry that is imposing intolerable economic burdens on motorists"). [Footnote 19] Because contemporary automobiles are made from standardized parts, the nationwide extent of vehicle theft and concern about it are understandable.

Second, regulation of the vehicle-dismantling industry reasonably serves the State's substantial interest in eradicating automobile theft. It is well established that the theft problem can be addressed effectively by controlling the receiver of, or market in, stolen property. 2 W. LaFave & A. Scott, Substantive Criminal Law 8.10(a), p. 422 (1986) ("Without [professional receivers of stolen property], theft ceases to be profitable"); 2 Encyclopedia of Crime and Justice 789 (Kadish ed.1983) ("[The criminal receiver] . . . inspires 95 per cent or more of the theft in America"). Automobile junkyards and vehicle dismantlers provide the major market for stolen vehicles and vehicle parts. *See* Memorandum from Paul Goldman, Counsel, State Consumer Protection Board, to Richard A. Brown, Counsel to the Governor (June 29, 1979), 1979 Bill Jacket ("It is believed that a major source of stolen vehicles, parts and registration documentation may involve vehicles which pass through the hands of [junk vehicle] dealers"). Thus, the State rationally may believe that it will reduce car theft by regulations that prevent automobile junkyards from becoming markets for stolen vehicles, and that help trace the origin and destination of vehicle parts. [Footnote 20]

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Moreover, the warrantless administrative inspections pursuant to 415-a5 "are necessary to further [the] regulatory scheme." *Donovan v. Dewey,* 452 U.S. at 452 U. S. 600 . In this respect, we see no difference between these inspections and those approved by the Court in *United States v. Biswell* and *Donovan v. Dewey.* We explained in *Biswell:*

"[I]f inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential. In this context, the prerequisite of a warrant could easily frustrate inspection; and if the necessary flexibility as to time,

scope, and frequency is to be preserved, the protections afforded by a warrant would be negligible."

406 U.S. at 406 U. S. 316 . *See also Donovan v. Dewey,* 452 U.S. at 452 U. S. 603 . Similarly, in the present case, a warrant requirement would interfere with the statute's purpose of deterring automobile theft accomplished by identifying vehicles and parts as stolen and shutting down the market in such items. Because stolen cars and parts often pass quickly through an automobile junkyard, "frequent" and "unannounced" inspections are necessary in order to detect them. In sum, surprise is crucial if the regulatory scheme aimed at remedying this major social problem is to function at all.

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Third, 415-a5 provides a "constitutionally adequate substitute for a warrant." *Donovan v. Dewey,* 452 U.S. at 452 U. S. 603 . The statute informs the operator of a vehicle dismantling business that inspections will be made on a regular basis. *Id.* at 452 U. S. 605 . Thus, the vehicle dismantler knows that the inspections to which he is subject do not constitute discretionary acts by a government official, but are conducted pursuant to statute. *See Marshall v. Barlow's, Inc.,* 436 U.S. at 436 U. S. 332 (dissenting opinion). Section 415-a5 also sets forth the scope of the inspection and, accordingly, places the operator on notice as to how to comply with the statute. In addition, it notifies the operator as to who is authorized to conduct an inspection.

Finally, the "time, place, and scope" of the inspection is limited, *United States v. Biswell,* 406 U.S. at 406 U. S. 315 , to place appropriate restraints upon the discretion of the inspecting officers. *See Donovan v. Dewey,* 452 U.S. at 452 U. S. 605 . The officers are allowed to conduct an inspection only "during [the] regular and usual business hours." 415-a5. [Footnote 21] The inspections can be made only of vehicle-dismantling and related industries. And the permissible scope of these searches is narrowly defined: the inspectors may examine the records, as well as "any vehicles or parts of vehicles which are subject to

the recordkeeping requirements of this section and which are on the premises." *Ibid.* [Footnote 22]

IV

A search conducted pursuant to 415-a5, therefore, clearly falls within the well-established exception to the warrant requirement for administrative inspections of "closely regulated" businesses. The Court of Appeals, nevertheless, struck down the statute as violative of the Fourth Amendment because, in its view, the statute had no truly administrative purpose, but was "designed simply to give the police an expedient means of enforcing penal sanctions for possession of stolen property." 67 N.Y.2d at 344, 493 N.E.2d at 929. The court rested its conclusion that the administrative goal of the statute was pretextual, and that 415-a5 really "authorize[d] searches undertaken solely to uncover evidence of criminality," particularly on the fact that, even if an operator failed to produce his police book, the inspecting officers could continue their inspection for stolen vehicles and parts. *Id.* at 344, 345, 493 N.E.2d at 929, 930. The court also suggested that the identity of the inspectors -- police officers -- was significant in revealing the true nature of the statutory scheme. *Id.* at 344, 493 N.E.2d at 929.

In arriving at this conclusion, the Court of Appeals failed to recognize that a State can address a major social problem both by way of an administrative scheme and through penal sanctions. Administrative statutes and penal laws may have the same *ultimate* purpose of remedying the social problem, but they have different subsidiary purposes, and prescribe different methods of addressing the problem. An administrative statute establishes how a particular business in a

"closely regulated" industry should be operated, setting forth rules to guide an operator's conduct of the business and allowing government officials to ensure that those rules are followed. Such a regulatory approach contrasts with that of the penal laws, a major emphasis of which is the punishment of individuals for specific

acts of behavior.

In *United States v. Biswell,* we recognized this fact that both administrative and penal schemes can serve the same purposes by observing that the ultimate purposes of the Gun Control Act were "to prevent violent crime and to assist the States in regulating the firearms traffic within their borders." 406 U.S. at 406 U. S. 315 . It is beyond dispute that certain state penal laws had these same purposes. Yet the regulatory goals of the Gun Control Act were narrower: the Act ensured that

"weapons [were] distributed through regular channels and in a traceable manner and [made] possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms."

Id. at 406 U. S. 315 -316. The provisions of the Act, including those authorizing the warrantless inspections, served these immediate goals and also contributed to achieving the same ultimate purposes that the penal laws were intended to achieve.

This case, too, reveals that an administrative scheme may have the same ultimate purpose as penal laws, even if its regulatory goals are narrower. As we have explained above, New York, like many States, faces a serious social problem in automobile theft, and has a substantial interest in regulating the vehicle-dismantling industry because of this problem. The New York penal laws address automobile theft by punishing it or the possession of stolen property, including possession by individuals in the business of buying and selling property. *See* n 6, *supra.* [Footnote 23] In accordance with its interest

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in regulating the automobile junkyard industry, the State also has devised a regulatory manner of dealing with this problem. Section 415-a, as a whole, serves the regulatory goals of seeking to ensure that vehicle dismantlers are legitimate businesspersons, and that stolen vehicles and vehicle parts passing through automobile junkyards can be identified. [Footnote 24] In particular, 415-a5 was

designed to contribute to these goals, as explained at the time of its passage:

"This bill attempts to provide enforcement not only through means of law enforcement, but by making it unprofitable for persons to operate in the stolen car field. "

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"The various businesses which are engaged in this operation have been studied, and the control and requirements on the businesses have been written in a manner which would permit the persons engaged in the business to legally operate in a manner conducive to good business practices, while making it extremely difficult for a person to profitably transfer a stolen vehicle or stolen part. The general scheme is to identify every person who may legitimately be involved in the operation, and to provide a recordkeeping system which will enable junk vehicles and parts to be traced back to the last legitimately registered or titled owner. Legitimate businessmen engaged in this field have complained with good cause that the lack of comprehensive coverage of the field has put them at a disadvantage with persons who currently are able to operate outside of statute and regulations. They have also legitimately complained that delays inherent in the present statutory regulation and onerous recordkeeping requirements have made profitable operation difficult."

"The provisions of this bill have been drafted after consultation with respected members of the various industries and provides [*sic*] a more feasible system of controlling traffic in stolen vehicles and parts."

Letter of Stanley M. Gruss, Deputy Commissioner and Counsel, to Richard A. Brown, Counsel to the Governor (June 20, 1979), 1979 Bill Jacket. Accordingly, to state that 415-a5 is "really" designed to gather evidence to enable convictions under the penal laws is to ignore the plain administrative purposes of 415-a in general, and 415-a5 in particular.

If the administrative goals of 415-a5 are recognized, the difficulty the Court of Appeals perceives in allowing inspecting officers to examine vehicles and vehicle

parts even in the absence of records evaporates. The regulatory purposes of 415-a5 certainly are served by having the inspecting officers

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compare the records of a particular vehicle dismantler with vehicles and vehicle parts in the junkyard. The purposes of maintaining junkyards in the hands of legitimate businesspersons and of tracing vehicles that pass through these businesses, however, *also* are served by having the officers examine the operator's inventory even when the operator, for whatever reason, fails to produce the police book. [Footnote 25] Forbidding inspecting officers to examine the inventory in this situation would permit an illegitimate vehicle dismantler to thwart the purposes of the administrative scheme, and would have the absurd result of subjecting his counterpart who maintained records to a more extensive search. [Footnote 26]

Nor do we think that this administrative scheme is unconstitutional simply because, in the course of enforcing it, an inspecting officer may discover evidence of crimes, besides violations of the scheme itself. In *United States v. Biswell,* the pawnshop operator was charged not only with a violation of the recordkeeping provision, pursuant to which the inspection was made, but also with other violations detected during the inspection, *see* 406 U.S. at 406 U. S. 313 , n. 2, and convicted of a failure to pay an occupational tax for dealing in specific firearms, *id.* at 406 U. S. 312 -313. The discovery of evidence of crimes in the course of an otherwise proper administrative inspection does not render that search illegal, or the administrative scheme suspect. *Cf. United States v. Villamonte-Marguez,* 462 U. S. 579 , 462 U. S. 583 -584, and n. 3 (1983). [Footnote 27]

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Finally, we fail to see any constitutional significance in the fact that police officers, rather than "administrative" agents, are permitted to conduct the 415-a5 inspection. The significance respondent alleges lies in the role of police officers as

enforcers of the penal laws, and in the officers' power to arrest for offenses other than violations of the administrative scheme. It is, however, important to note that state police officers, like those in New York, have numerous duties in addition to those associated with traditional police work. *See People v. De Bour,* 40 N.Y.2d 210, 218, 352 N.E.2d 562, 568 (1976) ("To consider the actions of the police solely in terms of arrest and criminal process is an unnecessary distortion"); *see also* ABA Standards for Criminal Justice 1-1.1(b) and commentary (2d ed.1980, Supp.1982). As a practical matter, many States do not have the resources to assign the enforcement of a particular administrative scheme to a specialized agency. So long as a regulatory scheme is properly administrative, it is not rendered illegal by the fact that the inspecting officer has the power to arrest individuals for violations other than those created by the scheme itself. [Footnote 28] In

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sum, we decline to impose upon the States the burden of requiring the enforcement of their regulatory statutes to be carried out by specialized agents.

V

Accordingly, the judgment of the New York Court of Appeals is reversed, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

It is so ordered.

[Footnote 1]

This Statute reads in pertinent part:

"Records and identification. (a) Any records required by this section shall apply only to vehicles or parts of vehicles for which a certifiate of title has been issued by the commissioner [of the Department of Motor Vehicles] or which would be eligible to have such a certificate of title issued. Every person required to be registered pursuant to this section shall maintain a record of all motor vehicles, trailers, and

major component parts thereof, coming into his possession together with a record of the disposition of any such motor vehicle, trailer or part thereof and shall maintain proof of ownership for any motor vehicle, trailer or major component part thereof while in his possession. Such records shall be maintained in a manner and form prescribed by the commissioner. The commissioner may, by regulation, exempt vehicles or major component parts of vehicles from all or a portion of the recordkeeping requirements based upon the age of the vehicle if he deems that such recordkeeping requirements would serve no substantial value. Upon request of an agent of the commissioner or of any police officer and during his regular and usual business hours, a vehicle dismantler shall produce such records and permit said agent or police officer to examine them and any vehicles or parts of vehicles which are subject to the recordkeeping requirements of this section and which are on the premises. . . . The failure to produce such records or to permit such inspection on the part of any person required to be registered pursuant to this section as required by this paragraph shall be a class A misdemeanor."

[Footnote 2]

It was unclear from the record why, on that particular day, Burger's junkyard was selected for inspection. Tr. 23-24. The junkyards designated for inspection apparently were selected from a list of such businesses compiled by New York City police detectives. *Id.* at 22.

[Footnote 3]

An individual operating a vehicle-dismantling business in New York is required to have a license:

"Definition and registration of vehicle dismantlers. A vehicle dismantler is any person who is engaged in the business of acquiring motor vehicles or trailers for the purpose of dismantling the same for parts or reselling such vehicles as scrap. No person shall engage in the business of or operate as a vehicle dismantler unless there shall have been issued to him a registration in accordance with the provisions of this section. A violation of this subdivision shall be a class E felony."

N.Y.Veh. & Traf.Law 415-a1 (McKinney 1986).

[Footnote 4]

There appears to have been some initial confusion among the inspecting officers as to whether Burger had not compiled a police book or whether, at the moment of the inspection, it simply was not in his possession. *See* Tr. 6, 30, 46-47, 59-60.

[Footnote 5]

The officers also determined that Burger possessed a wheelchair and a handicapped person's walker that had been located in a stolen vehicle. *See id.* at 8-11, 13, 34-36.

[Footnote 6]

Respondent was charged with two counts of criminal possession of stolen property in the second degree in violation of a New York statute that, at that time, read:

"A person is guilty of criminal possession of stolen property in the second degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when:"

"1. The value of the property exceeds two hundred fifty dollars; or"

" * * * *"

"3. He is a pawnbroker or is in the business of buying, selling or otherwise dealing in property. . . . "

" * * * *"

"Criminal possession of stolen property in the second degree is a class E felony."

N.Y.Penal Law 165.45 (McKinney 1976). Burger also was charged with three counts of criminal possession of stolen property in the third degree pursuant to the

following provision of a New York statute:

"A person is guilty of criminal possession of stolen property in the third degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof."

"Criminal possession of stolen property in the third degree is a class A misdemeanor."

N.Y.Penal Law 165.40 (McKinney 1976).

[Footnote 7]

In *People v. Pace,* the Appellate Division was faced with a situation in which officers had conducted a warrantless search of an automobile salvage yard immediately after having their suspicions aroused about criminal activity there. The court did not find the exception for warrantless administrative inspections applicable in that situation, 101 App.Div.2d at 340, 476 N.Y.S.2d at 446, but made the following footnote remark:

"Subdivision 5 of section 415-a of the Vehicle and Traffic Law, the statute under which the police officers said they were acting, has no application. While this section requires dismantlers to keep a police book, the book was missing when the officers entered, and it would thus have been impossible for the officers to exercise the alleged implied authority to compare the book entries to the contents of the yard."

Id. at 339, n. 1, 475 N.Y.S.2d at 446, n. 1. Respondent construed this footnote to mean that police officers had to obtain a search warrant if a vehicle dismantler did not produce a police book, and thus they could not conduct a warrantless inspection in the absence of this book. *See* 126 Misc.2d 709, 711, 479 N.Y.S.2d 936, 938 (Sup.1984).

[Footnote 8]

In addition, the court determined that the search was proper under New York City Charter and Admin.Code 436 (Supp.1986). 126 Misc.2d at 712-716, 479 N.Y.S.2d at 939-940. That section reads:

"The commissioner [of the Police Department] shall possess powers of general supervision and inspection over all licensed and unlicensed pawnbrokers, vendors, junkshop keepers, junk boatmen, cartmen, dealers in second-hand merchandise and auctioneers within the city; and in connection with the performance of any police duties he shall have power to examine such persons, their clerks and employees and their books, business premises, and any articles of merchandise in their possession. A refusal or neglect to comply in any respect with the provisions of this section on the part of any pawnbroker, vendor, junkshop keeper, junk boatman, cartman, dealer in second-hand merchandise or auctioneer, or any clerk or employee of any thereof shall be triable by a judge of the criminal court and punishable by not more than thirty days' imprisonment, or by a fine of not more than fifty dollars, or both."

[Footnote 9]

The Court of Appeals found that the question of the constitutionality of the statute and charter was squarely presented by this case, as it had not been in *People v. Pace,* because there was no dispute that the inspection was made pursuant to those provisions. 67 N.Y.2d at 342-343, 493 N.E.2d at 928.

[Footnote 10]

For similar reasons, the Court of Appeals concluded that Charter 436 also violated the Fourth Amendment's prohibition on unreasonable searches and seizures. 67 N.Y.2d at 344-346, 493 N.E.2d at 929-930.

[Footnote 11]

Numerous States have provisions for the warrantless inspections of vehicle dismantlers and automobile junkyards. *See, e.g.,* Ala.Code 40-12-419 (1986); Ariz.Rev.Stat.Ann. 28-1307C (Supp.1986); Ark.Stat.Ann. 75-1803 (1979);

Cal.Veh.Code Ann. 2805(a) and (c) (West Supp.1987); Conn.Gen.Stat. 14-67m(a) (Supp.1987); Del.Code Ann., Tit. 21, 6717(a) (1986); Fla.Stat. 812.055 (Supp.1987); Ga.Code Ann. 43-48-16 (1984); Ill.Rev.Stat., ch. 95 1/2, 5-403 (Supp.1986); Ind.Code 9-1-3.6-10(a) and (d) and 9-1-3.6-12 (1979 and Supp.1986); Iowa Code 321.90(3)(b) and 321.96 (1986); Kan.Stat.Ann. 8-2408(c) (1982); Ky.Rev.Stat. 177.935(7) (1985); La.Rev.Stat.Ann. 32:757 (West Supp.1987); Me.Rev.Stat.Ann., Tit. 29, 2459 (Supp.1986); Md.Transp.Code Ann. 15-105 (Supp.1986); Mich.Comp.Laws 257.251 (Supp.1987); Miss.Code Ann. 27-19-313 (1972); Mo.Rev.Stat. 301.225 (Supp.1986); Mont.Code Ann. 75-10-603 and 75-10-613 (1986); Nev.Rev.Stat. 482.3263 (1986); N.H.Rev.Stat.Ann. 261:132 (1982); N.J.Stat.Ann. 39.10B-2c (West Supp.1987); N.M.Stat.Ann. 66-2-12(A)(4) (1984); Okla.Stat., Tit. 47, 591.6 (Supp.1987); Ore.Rev.Stat. 810.480 (1986); R.I.Gen.Laws 42-14.2-15 (Supp.1986); S.C.Code 56-5-5670(b) (1976); S.D.Codified Laws 32-6B-38 to 32-6B-40 (Supp.1987); Tenn.Code Ann. 55-14-106 (1980); Tex.Rev.Civ.Stat.Ann., Art. 6687-2(e) (Vernon Supp.1987); Utah Code Ann. 41-3-23(2) and (4) (Supp.1987); Vt.Stat.Ann., Tit. 23, 466 (1978); Va.Code 46.1-550.12 (Supp.1986); Wash.Rev.Code 46.80.080(5) and 46.80.150 (1970); W.Va.Code 17A6-25 (1986); Wis.Stat. 218.22(4)(c) (1982); Wyo.Stat. 31-13-112(e)(iii) (1987).

Courts have upheld such statutes against federal constitutional attack. *See, e.g., Bionic Auto Parts & Sales, Inc. v. Fahner,* 721 F.2d 1072, 1081 (CA7 1983); *People v. Easley,* 90 Cal.App.3d 440, 445, 153 Cal.Rptr. 396, 399, *cert. denied,* 444 U.S. 899 (1979); *Moore v. State,* 442 So.2d 215, 216 (Fla.1983); *People v. Barnes,* 146 Mich.App. 37, 42, 379 N.W.2d 464, 466 (1985); *State v. Zinmeister,* 27 Ohio App.3d 313, 318, 501 N.E.2d 59, 65 (1985); *see also State v. Tindell,* 272 Ind. 479, 483, 399 N.E.2d 746, 748 (1980); *Shirley v. Commonwealth,* 218 Va. 49, 57-58, 235 S.E.2d 432, 436-437 (1977). *But see People v. Krull,* 107 Ill.2d 107, 116-117, 481 N.E.2d 703, 707-708 (1986), *rev'd,* 480 U. S. 340 (1987); *State v. Galio,* 92 N.M. 266, 268-269, 587 P.2d 44, 46-47 (1978).

[Footnote 12]

We explained in *Donovan v. Dewey:*

"If the length of regulation were the only criterion, absurd results would occur. Under appellees' view, new or emerging industries, including ones such as the nuclear power industry that pose enormous potential safety and health problems, could never be subject to warrantless searches even under the most carefully structured inspection program simply because of the recent vintage of regulation."

452 U.S. at 452 U. S. 606 .

[Footnote 13]

Because we find the inspection at issue here constitutional under 415-a5, we have no reason to reach the question of the constitutionality of 436 of the New York City Charter. Moreover, because the Court of Appeals addressed only the general question concerning the constitutionality of the administrative inspection, not the specific question whether the search and seizure of the wheelchair and walker were within the scope of the inspection, we do not reach here this latter issue.

[Footnote 14]

The New York Court of Appeals did not imply that automobile junkyards were *not* a "closely regulated" business in that State. Rather, it found fault with one aspect of the administrative statutes regulating these junkyards. 67 N.Y.2d at 344-345, 493 N.E.2d at 929-930. In his brief in opposition to the petition for certiorari, respondent appears to concede that this industry in New York is "closely regulated" by his statement that the New York Legislature could enact a "*comprehensive regulatory scheme'" directed at the industry. Brief in Opposition 3.*

[Footnote 15]

Under 415-a1,

"[n]o person shall engage in the business of or operate as a vehicle dismantler unless there shall have been issued to him a registration in accordance with the provisions of this section."

In making an application for a registration, the operator must provide

"a listing of all felony convictions and all other convictions relating to the illegal sale or possession of a motor vehicle or motor vehicle parts, and a listing of all arrests for any such violations by the applicant and any other person required to be named in such application."

415-a2. Section 415-a3 requires that the operator pay a registration fee, and 415-a4 stipulates that

"no registration shall be issued or renewed unless the applicant has a permanent place of business at which the activity requiring registration is performed which conforms to section one hundred thirty-six of the general municipal law as such section applies and to all local laws or ordinances and the applicant and all persons having a financial interest in the business have been determined by the commissioner to be fit persons to engage in such business."

[Footnote 16]

The broad extent of the regulation of the vehicle-dismantling industry further is shown by the fact that 415-a regulates the activities not only of vehicle dismantlers, but also of those in similar businesses, such as salvage pool operators, 415-a1-a, mobile car crushers, 415-a1-b, itinerant vehicle collectors, 415-a1-c, vehicle rebuilders, 415-a5, scrap processors, 415-a5, and scrap collectors and repair shops, 415-a10. Moreover, the Commissioner of the Department of Motor Vehicles has promulgated regulations dealing specifically with this industry: *e.g.,* N.Y.Comp.Codes, Rules & Regs., Tit. 15, 81.2 (1986) (registration); 81.8 (procedures upon acquisition of junk and salvage vehicles); 81.10 (vehicle identification numbers); 81.12 (records).

Amici argue that 415-a does not create a truly administrative scheme, because its provisions are not sufficiently voluminous. *See* Brief for American Civil Liberties Union *et al.* as *Amici Curiae* 34-36. Although the number of regulations certainly is a factor in the determination whether a particular business is "closely regulated," the sheer quantity of pages of statutory material is not dispositive of this question. Rather, the proper focus is on whether the

"regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes."

Donovan v. Dewey, 452 U.S. at 452 U. S. 600 . Section 415-a plainly satisfies this criterion.

[Footnote 17]

A member of the automobile junkyard industry described it this way:

"Webster says junk is old metal, rags, and rubbish. The word 'junk' can also be used as a verb, and as such would mean to discard. I represent an industry that buys vehicles which are no longer suitable for transportation. These vehicles have been wrecked, damaged, or have otherwise become inoperative. They are taken apart by members of our industry. The components that are still usable are made available to garages, body shops, and the general public as used parts for repair of other vehicles. The portion of the vehicle that is not suitable for parts is passed on to a scrap processor who then transforms the hulk, or the remnants, into a product suitable for resmelting purposes."

Junkyards & Solid Waste Disposal in the Highway Environment, Proceedings of National Seminar, June 10-11, 1975, p.19 (1976) (statement of Donald J. Rouse, National Association of Auto and Truck Recyclers, now known as Automotive Dismantlers and Recyclers of America).

[Footnote 18]

In fact, by assuming that Charter 436 with its use of the terms "junkshop keepers" and "dealers in second-hand merchandise," *see* n 8, *supra,* could be applied to respondent, the New York Court of Appeals understood that a vehicle dismantler fell within the scope of those terms. *See also People v. Cusumano,* 108 App.Div.2d 752, 754, 484 N.Y.S.2d 909, 912 (1985).

[Footnote 19]

A similar concern with stemming the social plague of automobile theft has motivated other States to pass legislation aimed at the vehicle-dismantling industry. *See, e.g.,* Ill.Rev.Stat., ch. 95 1/2, 5-100-1 (Supp.1985) (legislative finding that "crimes involving the theft of motor vehicles and their parts have risen steadily over the past years, with a resulting loss of millions of dollars to the residents of this State").

[Footnote 20]

See Governor's Message approving L.1979, chs. 691 and 692, 1979 N.Y. Laws 1826, 1827 (McKinney) ("By making it difficult to traffic in stolen vehicles and parts, it can be anticipated that automobile theft problems will be decreased and the cost to insurance companies and the public may be reduced"). As the Illinois Legislature found in passing regulations aimed at this industry,

"(2) essential to the criminal enterprise of motor vehicle theft operations is the ability of thieves to transfer or sell stolen vehicles or their parts through legitimate commercial channels, making them available for sale to the automotive industry; and (3) motor vehicle dealers, used parts dealers, scrap processors, automotive parts recyclers, and rebuilders are engaged in a type of business which often exposes them and their operations to pressures and influences from motor vehicle thieves; and (4) elements of organized crime are constantly attempting to take control of businesses engaged in the sale and repair of motor vehicles so as to further their own criminal interests."

Ill.Rev.Stat., ch. 95 1/2, 5-100-1 (1985). *See also* Kan.Stat.Ann. 8-2402 (1982); Nev.Rev.Stat. 482.318 (1985).

[Footnote 21]

Respondent contends that 415-a5 is unconstitutional because it fails to limit the number of searches that may be conducted of a particular business during any given period. Brief for Respondent 12. While such limitations, or the absence thereof, are a factor in an analysis of the adequacy of a particular statute, they are not determinative of the result so long as the statute, as a whole, places adequate

limits upon the discretion of the inspecting officers. Indeed, we have approved statutes authorizing warrantless inspections even when such statutes did not establish a fixed number of inspections for a particular time period. *See United States v. Biswell,* 406 U. S. 311 , 406 U. S. 312 , n. 1 (1972). And we have suggested that, in some situations, inspections must be conducted frequently to achieve the purposes of the statutory scheme. *Id.* at 406 U. S. 316 ("Here, if inspection is to be effective and serve as a credible deterrent, unannounced, even *frequent,* inspections are essential") (emphasis added).

[Footnote 22]

With respect to the adequacy of the statutory procedures, this case is indistinguishable from *United States v. Biswell.* There, the regulatory provisions of the Gun Control Act permitted warrantless inspections of *both* records and inventory "at all reasonable times." *Id.* at 406 U. S. 312 , n. 1. The Court held that the statute gave a firearms dealer adequate notice of "the purposes of the inspector [and] the limits of his task." *Id.* at 406 U. S. 316 .

[Footnote 23]

The penal laws often are changed in response to the growth of a particular type of crime. For example, in 1986, New York amended its definition of grand larceny to include the following provision:

"A person is guilty of grand larceny in the fourth degree when he steals property and when:"

" * * * *"

"8. The value of the property exceeds one hundred dollars and the property consists of a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, other than a motorcycle, as defined in section one hundred twenty-three of such law."

1986 N.Y. Laws, ch. 515, 1 (McKinney), codified at N.Y. Penal Law 155.30 (McKinney Supp.1987).

[Footnote 24]

See, e.g., Memorandum of State Department of Motor Vehicles in support of 1973 N.Y. Laws, ch. 225, 1973 N.Y. Laws 2166, 2167 (McKinney) (purpose of 415-a "is to provide a system of recordkeeping so that vehicles can be traced through junk yards, and to assure that such junk yards are run by legitimate businessmen, rather than by auto theft rings"); Letter of John D. Caemmerer, Chairman of Senate Committee on Transportation, to Michael Whiteman, Counsel to the Governor (Apr. 12, 1973), reprinted in Governor's Bill Jacket, L.1973, ch. 225, p. 15 (1973 Bill Jacket) ("This bill establishes much-needed safeguards for an industry which can be readily infiltrated by those wishing to dispose of stolen automobiles or automobile parts"); Letter of Peter M. Pryor, Chairman of New York State Consumer Protection Board, to Michael Whiteman, Counsel to the Governor (Apr. 18, 1973), 1973 Bill Jacket, p. 6 ("Organized crime has used the junk and salvage industry as a convenient staging ground for illicit activities concerning motor vehicles, as well as for operations into other areas. The proposed legislation opens the junk and salvage business to the scrutiny of the police and the Department of Motor Vehicles, thereby reducing the possibility of utilizing such dealerships as covers for covert businesses").

[Footnote 25]

Failure to produce a record is a misdemeanor, 415-a5, which can be a ground for suspension of the operator's license, 415-a6. This suspension serves to remove illegitimate operators from the industry.

[Footnote 26]

Indeed, in *United States v. Biswell,* we found no constitutional problem with a statute that authorized inspection both of records and inventory, 406 U.S. at 406 U. S. 312 , n. 1, and with an actual inspection of a dealer's premises despite the fact that the dealer's records were not properly maintained, *id.* at 406 U. S. 313 , n. 2.

[Footnote 27]

The legislative history of 415-a, in general, and 416-a5 in particular, reveals that the New York Legislature had proper regulatory purposes for enacting the administrative scheme and was not using it as a "pretext" to enable law enforcement authorities to gather evidence of penal law violations. *See supra* at 482 U. S. 714 -715 and n. 24; *see also Illinois v. Krull,* 480 U. S. 340 , 480 U. S. 351 (1987) ("[W]e are given no basis for believing that legislators are inclined to subvert their oaths and the Fourth Amendment"). There is, furthermore, no reason to believe that the instant inspection was actually a "pretext" for obtaining evidence of respondent's violation of the penal laws. It is undisputed that the inspection was made solely pursuant to the administrative scheme. In fact, because the search here was truly a 415-a5 inspection, the Court of Appeals was able to reach in this case, as it could not in *People v. Pace,* 65 N.Y.2d 684, 481 N.E.2d 250 (1985), the question of the constitutionality of the statute. *See* 67 N.Y.2d at 342-343, 493 N.E.2d at 928; *see also* n 7, *supra.*

[Footnote 28]

In *United States v. Biswell,* the search in question was conducted by a city police officer and by a United States Treasury agent, 406 U.S. at 406 U. S. 312 , the latter being authorized to make arrests for federal crimes. *See* 27 CFR 70.28 (1986). The Internal Revenue agents involved in the search in *Colonnade Corp. v. United States,* 397 U. S. 72 , 397 U. S. 73 (1970), had similar powers. *See* 26 U.S.C. 7608(a).

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, and with whom JUSTICE O'CONNOR joins as to all but Part III, dissenting.

Warrantless inspections of pervasively regulated businesses are valid if necessary to further an urgent state interest, and if authorized by a statute that carefully limits their time, place, and scope. I have no objection to this general rule. Today, however, the Court finds pervasive regulation in the barest of administrative schemes. Burger's vehicle-dismantling business is not closely regulated (unless most New York City businesses are), and an administrative warrant therefore was required to search it. The Court also perceives careful guidance and control of

police discretion in a statute that is patently insufficient to eliminate the need for a warrant. Finally, the Court characterizes as administrative a search for evidence of only criminal wrongdoing. As a result, the Court renders virtually meaningless the general rule that a warrant is required for administrative searches of commercial property. [Footnote 2/1]

I

In *See v. City of Seattle,* 387 U. S. 541 , 387 U. S. 543 (1967), we held that an administrative search of commercial property generally

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must be supported by a warrant. We make an exception to this rule, and dispense with the warrant requirement, in cases involving "closely regulated" industries, where we believe that the commercial operator's privacy interest is adequately protected by detailed regulatory schemes authorizing warrantless inspections. *See Donovan v. Dewey,* 452 U. S. 594 , 452 U. S. 599 (1981). [Footnote 2/2] The Court has previously made clear that "the closely regulated industry . . . is the exception." *Marshall v. Barlow's, Inc.,* 436 U. S. 307 , 436 U. S. 313 (1978). Unfortunately, today's holding makes it the rule.

Initially, the Court excepted from the administrative warrant requirement only industries which possessed a " *long tradition of government regulation,*'" *Donovan v. Dewey, supra,* at 452 U. S. 605 , quoting *Marshall v. Dewey,* 493 F.Supp. 963, 964 (1980), or which involved an "inherent and immediate danger to health or life." Note, 48 Ind. L.J. 117, 120-121 (1972). [Footnote 2/3] The Court today places substantial reliance on the historical justification, and maintains that vehicle dismantling is part of the general junk and secondhand industry, which has a long history of regulation. In *Dewey,* however, we clarified that, although historical supervision may help to demonstrate that close regulation exists, it is

"the pervasiveness and regularity of . . . regulation that ultimately determines whether a warrant is necessary to render

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an inspection program reasonable under the Fourth Amendment."

452 U.S. at 452 U. S. 606 . [Footnote 2/4]

The provisions governing vehicle dismantling in New York simply are not extensive. A vehicle dismantler must register and pay a fee, display the registration in various circumstances, maintain a police book, and allow inspections. *See* N.Y.Veh. & Traf.Law 415-a1-6 (McKinney 1986). Of course, the inspections themselves cannot be cited as proof of pervasive regulation justifying elimination of the warrant requirement; that would be obvious bootstrapping. Nor can registration and recordkeeping requirements be characterized as close regulation. New York City, like many States and municipalities, imposes similar, and often more stringent licensing, recordkeeping, and other regulatory requirements on a myriad of trades and businesses. [Footnote 2/5]

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Few substantive qualifications are required of an aspiring vehicle dismantler; no regulation governs the condition of the premises, the method of operation, the hours of operation, the equipment utilized, etc. This scheme stands in marked contrast to, *e.g.,* the mine safety regulations relevant in *Donovan v. Dewey, supra.* [Footnote 2/6]

In sum, if New York City's administrative scheme renders the vehicle-dismantling business closely regulated, few businesses will escape such a finding. Under these circumstances, the warrant requirement is the exception not the rule, and *See* has been constructively overruled. [Footnote 2/7]

II

Even if vehicle dismantling were a closely regulated industry, I would nonetheless conclude that this search violated the Fourth Amendment. The warrant requirement protects

the owner of a business from the "unbridled discretion [of] executive and administrative officers," *Marshall, supra,* at 436 U. S. 323 , by ensuring that "reasonable legislative or administrative standards for conducting an . . . inspection are satisfied with respect to a particular [business]," *Camara v. Municipal Court,* 387 U. S. 523 , 387 U. S. 538 (1967). In order to serve as the equivalent of a warrant, an administrative statute must create "a predictable and guided [governmental] presence," *Dewey,* 452 U.S. at 452 U. S. 604 . Section 415-a5 does not approach the level of "certainty and regularity of . . . application" necessary to provide "a constitutionally adequate substitute for a warrant." *Id.* at 452 U. S. 603 . [Footnote 2/8]

The statute does not inform the operator of a vehicle-dismantling business that inspections will be made on a regular basis; in fact, there is no assurance that any inspections at all will occur. [Footnote 2/9] There is neither an upper nor a lower limit on the number of searches that may be conducted at any given operator's establishment in any given time period. [Footnote 2/10]

Neither the statute, nor any regulations, nor any regulatory body, provides limits or guidance on the selection of vehicle dismantlers for inspection. In fact, the State could not explain why Burger's operation was selected for inspection. 67 N.Y.2d 338, 341, 493 N.E.2d 926, 927 (1986). This is precisely what was objectionable about the inspection scheme invalidated in *Marshall:* it failed to

"provide any standards to guide inspectors either in their selection of establishments to be searched or in the exercise of their authority to search."

Dewey, supra, at 452 U. S. 601 .

The Court also maintains that this statute effectively limits the scope of the search. We have previously found significant that "the standards with which a [business] operator is required to comply are all specifically set forth," 452 U.S. at 452 U. S.

604 , reasoning that a clear and complete definition of potential administrative violations constitutes an implied limitation on the scope of any inspection. Plainly, a statute authorizing a search which can uncover no administrative violations is not sufficiently limited in scope to avoid the warrant requirement. This statute fails to tailor the scope of administrative inspection to the particular concerns posed by the regulated business. I conclude that "the frequency and purpose of the inspections [are left] to the unchecked discretion of Government officers." *Ibid.* The conduct of the police in this case underscores this point. The police removed identification numbers from a walker and a wheelchair, neither of which fell within the statutory scope of a permissible administrative search.

The Court also finds significant that an operator is on notice as to who is authorized to search the premises; I do not find the statutory limitation -- to "any police officer" or "agent of the commissioner" -- significant. The sole limitation I see on a police search of the premises of a vehicle dismantler is that it must occur during business hours; otherwise it is open season. The unguided discretion afforded police in this scheme precludes its substitution for a warrant.

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III

The fundamental defect in 415-a5 is that it authorizes searches intended solely to uncover evidence of criminal acts. The New York Court of Appeals correctly found that 415-a5 authorized a search of Burger's business "solely to discover whether defendant was storing stolen property on his premises." 67 N.Y.2d at 345, 493 N.E.2d at 930. In the law of administrative searches, one principle emerges with unusual clarity and unanimous acceptance: the government may not use an administrative inspection scheme to search for criminal violations. *See Michigan v. Clifford,* 464 U. S. 287 , 464 U. S. 292 (1984) (opinion of POWELL, J.) (in fire investigation, the constitutionality of a post-fire inspection depends upon "whether the object of the search is to determine the cause of the fire or to gather evidence of criminal activity"); *Michigan v. Tyler,* 436 U. S. 499 , 436 U. S. 508 (1978) ("

if the authorities are seeking evidence to be used in a criminal prosecution, the usual standard of probable cause will apply'") (citations omitted); Donovan v. Dewey, supra, at 452 U. S. 598 , n. 6 ("[Warrant and probable cause requirements] pertain when commercial property is searched for contraband or evidence of crime"); *Almeida-Sanchez v. United States,* 413 U. S. 266 , 413 U. S. 278 (1973) (POWELL, J., concurring) (traditional probable cause not required in border automobile searches because they are "undertaken primarily for administrative, rather than prosecutorial, purposes"); *Camara v. Municipal Court, supra,* at 387 U. S. 539 (authorization of administrative searches on less than probable cause will not "endange[r] time-honored doctrines applicable to criminal investigations"); *See v. City of Seattle,* 387 U.S. at 387 U. S. 549 (Clark, J., dissenting) ("[N]othing . . . suggests that the inspection was . . . designed as a basis for a criminal prosecution"); *Abel v. United States,* 362 U. S. 217 , 362 U. S. 226 (1960) ("The deliberate use by the Government of an administrative warrant for the purpose of gathering evidence in

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a criminal case must meet stern resistance by the courts"); *id.* at 362 U. S. 248 (Douglas, J., dissenting) (Government cannot evade the Fourth Amendment "by the simple device of wearing the masks of [administrative] officials while, in fact, they are preparing a case for criminal prosecution"); *Frank v. Maryland,* 359 U. S. 360 , 359 U. S. 365 (1959) ("[E]vidence of criminal action may not . . . be seized without a judicially issued search warrant"). [Footnote 2/11]

Here the State has used an administrative scheme as a pretext to search without probable cause for evidence of criminal violations. It thus circumvented the requirements of the Fourth Amendment by altering the label placed on the search. This crucial point is most clearly illustrated by the fact that the police copied the serial numbers from a wheelchair and a handicapped person's walker that were found on the premises, and determined that these items had been stolen. Obviously, these objects are not vehicles or parts of vehicles, and were in no way relevant to the State's enforcement of its administrative scheme. The scope of the search alone reveals that it was undertaken solely to uncover evidence of criminal

wrongdoing. [Footnote 2/12]

Moreover, it is factually impossible that the search was intended to discover wrongdoing subject to administrative

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sanction. Burger stated that he was not registered to dismantle vehicles, as required by 415-a1, and that he did not have a police book, as required by 415-a5(a). [Footnote 2/13] At that point, he had violated every requirement of the administrative scheme. There is no administrative provision forbidding possession of stolen automobiles or automobile parts. [Footnote 2/14] The inspection became a search for evidence of criminal acts when all possible administrative violations had been uncovered. [Footnote 2/15]

The State contends that acceptance of this argument would allow a vehicle dismantler to thwart its administrative scheme simply by failing to register and keep records. This is false.

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A failure to register or keep required records violates the scheme and results in both administrative sanctions and criminal penalties. *See* n. 13, *supra.* Neither is the State's further criminal investigation thwarted; the police need only obtain a warrant and then proceed to search the premises. If respondent's failure to register and maintain records amounted to probable cause, then the inspecting police officers, who worked in the Auto Crimes Division of the New York City Police Department, possessed probable cause to obtain a criminal warrant authorizing a search of Burger's premises. [Footnote 2/16] Several of the officers might have stayed on the premises to ensure that this unlicensed dismantler did no further business, while the others obtained a warrant. Any inconvenience to the police would be minimal, and in any event, "inconvenience alone has never been thought to be an adequate reason for abrogating the warrant requirement." *Almeida-Sanchez,* 413 U.S. at 423 U. S. 283 (POWELL, J., concurring).

The Court properly recognizes that "a State can address a major social problem both by way of an administrative scheme and through penal sanctions." *Ante* at 482 U. S. 712 . Administrative

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violations may also be crimes, and valid administrative inspections sometimes uncover evidence of crime; neither of these facts necessarily creates constitutional problems with an inspection scheme. In this case, the problem is entirely different. In no other administrative search case has this Court allowed the State to conduct an "administrative search" which violated no administrative provision and had no possible administrative consequences. [Footnote 2/17]

The Court thus implicitly holds that, if an administrative scheme has certain goals and if the search serves those goals, it may be upheld even if no concrete administrative consequences could follow from a particular search. This is a dangerous suggestion, for the goals of administrative schemes often overlap with the goals of the criminal law. Thus, on the Court's reasoning, administrative inspections would evade the requirements of the Fourth Amendment so long as they served an abstract administrative goal, such as the prevention of automobile theft. A legislature cannot abrogate constitutional protections simply by saying that the purpose of an administrative search scheme is to prevent a certain type of crime. If the Fourth Amendment is to retain meaning in the commercial context, it must be applied to searches for evidence of criminal acts, even if those searches would also serve an administrative purpose, unless that administrative purpose takes the concrete form of seeking an administrative violation. [Footnote 2/18]

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IV

The implications of the Court's opinion, if realized, will virtually eliminate Fourth Amendment protection of commercial entities in the context of administrative searches. No State may require, as a condition of doing business, a blanket

submission to warrantless searches for any purpose. I respectfully dissent.

[Footnote 2/1]

The Court does not reach the question whether the search was lawful under New York City Charter and Admin.Code 436 (Supp.1985). I agree with the analysis of the New York Court of Appeals, holding that this provision is plainly unconstitutional.

[Footnote 2/2]

In only three industries have we invoked this exception. *See Colonnade Catering Corp. v. United States,* 397 U. S. 72 (1970) (liquor industry); *United States v. Biswell,* 406 U. S. 311 (1972) (firearm and ammunitions sales); *Donovan v. Dewey,* 452 U. S. 594 (1981) (coal mining).

[Footnote 2/3]

Compare Biswell, supra, at 406 U. S. 315 (permitting warrantless searches because, although regulation of firearms not as deeply rooted in history as control of the liquor industry, "close scrutiny of this traffic is undeniably of central importance to federal efforts to prevent violent crime"); *Dewey, supra,* at 452 U. S. 602 (permitting warrantless searches in mining industry, which ranks "among the most hazardous in the country"), *with Marshall v. Barlow's, Inc.,* 436 U. S. 307 (1978) (requiring warrant when statute authorizes agency to perform health and safety inspections of all businesses engaged in interstate commerce).

[Footnote 2/4]

Moreover, it is "a long tradition of *close* government supervision" that is relevant to a finding that a business is closely regulated. *Id.* 406 U. S. Historically, government regulation of the general junk and secondhand industry was roughly equivalent to the modern regulation discussed *infra.* Neither the general junk industry nor the vehicle-dismantling industry is or ever has been pervasively regulated.

[Footnote 2/5]

See licensing and regulatory requirements described in New York City Charter and Admin.Code B32-1.0 (1977 and Supp.1985) (exhibitors of public amusement or sport), B32-22.0 (motion picture exhibitions), B32-45.0 (billiard and pocket billiard tables), B32-46.0 (bowling alleys), B32-54.0 (sidewalk cafes), B32-58.0 (sidewalk stands), B32-76.0 (sightseeing guides), B32-93.0 (public carts and cartmen), B32-98.0 (debt collection agencies), B32-135.0 (pawnbrokers), B32-138.0 (auctioneers), B32-167.0 (laundries), B32-183.0 (locksmiths and keymakers), B32-206.0 (sales), B32-251.0 (garages and parking lots), B32-267.0 (commercial refuse removal), B32-297.0 (public dance halls, cabarets, and catering establishments), B32-311.0 (coffeehouses), B32324.0 (sightseeing buses and drivers), B32-362.0 (home improvement business), B32-467.0 (television, radio, and audio equipment phonograph service and repairs), B32-491.0 (general vendors), B32-632.0 (storage warehouses).

New York State has equally comprehensive licensing and permit requirements. *See* N.Y.Exec.Law 876 (McKinney Supp.1987):

"More than thirty-five state agencies issue rules and permits affecting businesses, organizations and individuals. Permits number in the hundreds in statute, with still more in rules and regulations. Those who are regulated move in a maze of rules, permits, licenses, and approvals."

[Footnote 2/6]

This is not an assertion that some minimal number of pages is a prerequisite to a finding of close regulation, *see ante* at 482 U. S. 706 , n. 16; instead, it is an assertion about the minimal substantive scope of the regulations. The Mine Safety and Health Act at issue in *Dewey, supra,* mandated inspection of all mines, defined the frequency of inspection (at least twice annually for surface mines, four times annually for underground mines, and irregular 6-, 10-, or 16-day intervals for mines that generate explosive gases), mandated followup inspections where violations had been found, mandated immediate inspection upon notification by a

miner or miner's representative that a dangerous condition exists, required compliance with elaborate standards set forth in the Act and in Title 30 of the Code of Federal Regulations, and required individual notification to mine operators of all standards proposed pursuant to the Act. *See Dewey, supra,* at 452 U. S. 604 .

[Footnote 2/7]

The Court further weakens limitations on the closely regulated industries category when it allows the government to proceed without a warrant upon a showing of a substantial state interest. *See ante* at 482 U. S. 702 , 482 U. S. 708 . The Court should require a warrant for inspections in closely regulated industries unless the inspection scheme furthers an urgent governmental interest. *See Dewey, supra,* at 452 U. S. 699 -600, *Biswell, supra,* at 406 U. S. 317 .

[Footnote 2/8]

I also dispute the contention that warrantless searches are necessary to further the regulatory scheme, because of the need for unexpected and/or frequent searches. If surprise is essential (as it usually is in a criminal case), a warrant may be obtained *ex parte. See* W. LaFave, Search and Seizure 10.2(e), p. 653 (1987). If the State seeks to conduct frequent inspections, then the statute (or some regulatory authority) should somewhere inform the industry of that fact.

[Footnote 2/9]

See 415-a5(a) ("Upon request of an agent of the commissioner or of any police officer and during his regular and usual business hours, a vehicle dismantler shall produce such records and permit said agent or police officer to examine them and any vehicles or parts of vehicles which are subject to the recordkeeping requirements of this section and which are on the premises").

[Footnote 2/10]

In *Dewey, supra,* of course, there was no upper limit on the number of mine inspections that could occur each year, but because the statute provided for the inspection of each mine every year, the chance that any particular mine would be

singled out for repeated or intensive inspection was diminished. *See* 452 U.S. at 452 U. S. 599 (inspections may not be so "random, infrequent, or unpredictable that the owner, for all practical purposes, has no real expectation that his property will from time to time be inspected by government officials").

[Footnote 2/11]

In *Camara v. Municipal Court,* 387 U. S. 523 (1967), using the presently relevant example of a search for stolen goods, the Court stated that

"public interest would hardly justify a sweeping search of an entire city conducted in the hope that these goods might be found. Consequently, a search for these goods . . . is 'reasonable' only when there is 'probable cause' to believe that they will be uncovered in a particular dwelling."

Id. at 387 U. S. 536 .

[Footnote 2/12]

Thus, I respectfully disagree with the Court's conclusion that there is

"no reason to believe that the instant inspection was actually a 'pretext' for obtaining evidence of respondent's violation of the penal laws."

Ante at 482 U. S. 717 , n. 27. Inspection of the serial numbers on the wheelchair and walker demonstrates that the search went beyond any conceivable administrative purpose. At least the second and third counts of Burger's indictment for possession of stolen property, which involve the wheelchair and the walker, must be dismissed.

[Footnote 2/13]

These omissions also subjected him to potential criminal liability, it is a class E felony to fail to register, 415-a1, and a class A misdemeanor to fail to produce a police book, 415-a5(a).

[Footnote 2/14]

Had Burger been registered as a vehicle dismantler, his registration could have been revoked for illegal possession of stolen vehicles or vehicle parts, and the examination of the vehicles and vehicle parts on his lot would have had an administrative purpose. But he was not registered.

[Footnote 2/15]

In *Michigan v. Clifford,* 464 U. S. 287 (1984), a case involving an administrative inspection seeking the cause and origin of a fire, the Court was

"unanimous in [the] opinion that after investigators have determined the cause of the fire and located the place it originated, a search of other portions of the premises may be conducted only pursuant to a warrant, issued upon probable cause that a crime has been committed."

Id. at 464 U. S. 300 (STEVENS, J., concurring); *see also id.* at 464 U. S. 294 ("Circumstances that justify a warrantless search for the cause of a fire may not justify a search to gather evidence of criminal activity once that cause has been determined"); *id.* at 464 U. S. 306 (REHNQUIST, J., dissenting) ("[A]lthough the remaining parts of the house could not have been searched without the issuance of a warrant issued upon probable cause," the basement was properly searched for the cause and origin of the fire). Thus,

"fire officials [could] not . . . rely on [evidence of criminal activity discovered during the course of a valid administrative search] to expand the scope of their administrative search without first making a showing of probable cause to an independent judicial officer."

Id. at 464 U. S. 294 . Likewise here, the administrative inspection ceased when all administrative purposes had been fulfilled. Further investigation was necessarily a search for evidence of criminal violations, and a warrant based on probable cause was required.

[Footnote 2/16]

Although the fact that the police conducted the search is not dispositive as to its administrative or criminal nature, it should caution the Court to proceed with care, because

"[s]earches by the police are inherently more intrusive than purely administrative inspections. Moreover, unlike administrative agents, the police have general criminal investigative duties which exceed the legitimate scope and purposes of purely administrative inspections."

Commonwealth v. Lipomi, 386 Mass. 370, 378, 432 N.E.2d 86, 91 (1982). *See also* W. LaFave, Criminal Search and Seizure 10.2(f), p. 661 (1987) ("[E]xisting scope limitations would be entitled to somewhat greater weight where, by law, the inspections may be conducted only by specialized inspectors who could be expected to understand and adhere to the stated scope limitations, rather than by any law enforcement officer"); *United States ex rel. Terraciano v. Montanye,* 493 F.2d 682, 686 (CA2 1974) (Friendly, J.) (emphasizing the amendment of the New York statute on inspection of drug records "to restrict the right of inspection to representatives of the Health Department, . . . rather than *all peace officers within the state'").*

[Footnote 2/17]

This case thus does not present the more difficult question whether a State could take any criminal conduct, make it an administrative violation, and then search without probable cause for violations of the newly created administrative rule. The increasing overlap of administrative and criminal violations creates an obvious temptation for the State to do so, and plainly toleration of this type of pretextual search would allow an end run around the protections of the Fourth Amendment.

[Footnote 2/18]

Today's holding, of course, does not preclude consideration of the lawfulness of the search under the State Constitution. *See People v. P. J. Video, Inc.,* 68 N.Y.2d 296, 501 N.E.2d 556 (1986); *People v. Class,* 67 N.Y.2d 431, 494 N.E.2d 444 (1986).

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