The Fourth Amendment and Maritime Drug Searches: Is There a Legitimate Expectation of Privacy on Vessels at Sea?

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Imagine a new 100-foot cargo vessel with a large deck area, a galley, a crew dining area, two cargo holds, three crew cabins, and a crew of fifteen. The captain has constructed two concealed compartments—one within a wall in the dining area and one under the floor of a crew cabin—to ensure safe storage for crew payroll and important documents. The vessel, based in Los Angeles, transports cargo between the United States and Mexico.

One day as the vessel is returning home, the Coast Guard stops it eleven miles from Los Angeles. The Coast Guard boards the vessel, ostensibly to conduct a document and safety inspection. The vessel's captain later learns that the Coast Guard actually boarded the vessel because it confused the vessel with another one on a list of vessels suspected of drug smuggling. Once on board, Coast Guard officers examine the vessel's documentation and the cargo manifest, check the main beam identification number, and locate required safety equipment. During this time, the Coast Guard guards the captain and crew.

Two hours later, one of the Coast Guard officers notes that some crew members appear "nervous," and the Coast Guard decides to continue the investigation. The officers enter the crew living quarters and the dining area and notice measurement discrepancies around the concealed compartments. The officers question no one about the discrepancies; instead, they continue to guard the captain and crew for an additional six hours while other officers use an axe to gain access to the concealed compartments. The Coast Guard officers do not find drugs, but the search...
delays the vessel for over eight hours, and the Coast Guard inflicts thousands of dollars in damage to the vessel.

This seemingly egregious search could well occur. If the Coast Guard had found drugs on the vessel and prosecuted the captain and crew for drug smuggling, a court likely would have ruled that none of the defendants could have legitimately expected privacy in the living quarters, dining area, or concealed compartments. Thus, the Coast Guard's examination of the vessel would not have constituted a Fourth Amendment "search," and the drugs would have been admitted into evidence at trial, despite the fact that the Coast Guard did not have a search warrant, or arguably even probable cause, to conduct the search. Thus, the Coast Guard officers risked nothing by conducting the search. If they had found drugs, a court probably would have admitted the fruits of the search as evidence at trial; if the officers had not found drugs, only the captain or owner of the vessel would have suffered injury in the form of a delayed voyage and destruction of property, not to mention the humiliation resulting from a loss of personal liberty.

This hypothetical situation illustrates a growing problem in Fourth Amendment jurisprudence. Under current Fourth Amendment law, courts have often allowed Customs and Coast Guard officers to board ships at sea and conduct comprehensive warrantless searches without probable cause and with little or no suspicion of wrongdoing. This narrow interpretation of the Fourth Amendment's protection against unreasonable searches and seizures may subject thousands of professional and pleasure sailors to time-consuming and often highly destructive searches of private vessels, and at the same time inject uncertainty into the law with respect to when sailors can reasonably expect a

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3 See Section I(A).

4 Whether the owner of a vessel in such a situation has a tort action against the United States for destruction of property is beyond the scope of this Comment. Note, however, that the owner probably does not have such an action. See, for example, B & F Trawlers, Inc. v United States, 841 F2d 626, 630-31 (5th Cir 1988) (holding that the discretionary function exception to the Federal Tort Claims Act, 28 USC § 2680(a), as incorporated into the Suits in Admiralty Act, 46 USC §§ 741-752, and the Public Vessels Act, 46 USC §§ 781-790, shields the government from tort liability so long as the government officers' actions do not ignore or abuse applicable regulations). This Comment only addresses a captain's and crew's legitimate expectation of privacy in contraband found in certain areas of a vessel. As such, this Comment exclusively concentrates on a criminal defendant's ability to invoke the exclusionary rule.
court to recognize their privacy interest in certain areas of a vessel.

While some courts have sanctioned these searches under recognized exceptions to the Fourth Amendment's search warrant requirement, other courts have held that a defendant could not have legitimately expected privacy in a searched area, and thus the search could not have violated the Fourth Amendment. By not recognizing a legitimate privacy interest in certain areas of a vessel, these courts have repeatedly avoided the difficult question of whether a particular defendant's privacy interest outweighs the government's interest in searching those areas. Thus, as previously indicated, courts have introduced uncertainty and inconsistency into Fourth Amendment jurisprudence by establishing a general Fourth Amendment standard and then selectively disregarding this standard on a case-by-case basis.

This Comment argues that while Customs and Coast Guard officers can legally board vessels to conduct limited document and safety inspections, courts should recognize a privacy interest in areas of a vessel that are outside those reasonably incident to these inspections. By failing to recognize such an interest, some courts have failed to acknowledge that the balance between personal privacy and governmental interests shifts dramatically

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5 "Expectation of privacy" in a Fourth Amendment context refers to each individual's right to freedom from invasion of personal security and personal liberty. See Mapp v Ohio, 367 US 643, 646-47 (1961), citing Boyd v United States, 116 US 616, 630 (1886) ("It is not the breaking of [a defendant's] doors, and the rummaging of . . . drawers, that constitutes the essence of the offence; but it is the invasion of [a defendant's] indefeasible right of personal security, personal liberty and private property."). If a court finds that a defendant did not have a legitimate expectation of privacy in a searched area, the government's action is not considered a Fourth Amendment "search" and therefore not subject to the warrant requirement. See California v Acevedo, 111 S Ct 1982, 1993 (1991) (Scalia concurring).

6 See Section I(A) for a discussion of the balancing test.

7 Compare Linda R. Monk, Basic Principles: Why We Can't Ignore the Reason Johnny Can't Govern, Chi Trib 31 (Dec 15, 1994) ("Thanks to the so-called 'War on Drugs,' the 4th Amendment now has so many holes that it looks like a paper doily.").

8 For commentary questioning the constitutionality of this authority, see Comment, High on the Seas: Drug Smuggling, the Fourth Amendment, and Warrantless Searches at Sea, 93 Harv L Rev 725, 741-43 (1980) (arguing that these searches could be unconstitutional because they may realistically entail a thorough search of virtually all areas of a vessel, and then offering alternatives to such a regime); Note, The United States Coast Guard's Law Enforcement Authority under 14 U.S.C. § 89: Smugglers' Blues or Boaters' Nightmare?, 34 Wm & Mary L Rev 933 (1993) (advocating a reasonable suspicion standard before allowing the Coast Guard to stop recreational vessels at sea). This Comment does not dispute the constitutionality of document and safety inspections; rather, this Comment explores the legitimate expectation of privacy that attaches to certain areas of a vessel outside those necessary for a limited document and safety inspection.
with regard to such areas. Specifically, courts should recognize that the captain and crew of a vessel have a heightened expectation of privacy with regard to areas outside those necessary for a limited document and safety inspection, and they must balance this heightened privacy interest against any governmental interests favoring the search. In short, a court should not simply disregard time-honored Fourth Amendment standards by denying a legitimate privacy interest to avoid engaging in a difficult balancing test.

Part I of this Comment summarizes current Fourth Amendment jurisprudence, including relevant exceptions to the search warrant requirement. Part II applies these general principles in a maritime context and notes distinctions that courts have drawn between the application of Fourth Amendment principles on land and at sea. By examining these distinctions, and by exploring analogous situations indicating that these distinctions are more illusory than real, Part III of this Comment demonstrates that the captain of a vessel has a legitimate privacy interest in his entire vessel, with the exception of those areas that government officers must visit to ensure compliance with United States document and safety laws. Part III similarly asserts that crew members have a legitimate expectation of privacy in living quarters and concealed compartments accessed through living quarters.

I. OVERVIEW OF THE FOURTH AMENDMENT

The Fourth Amendment protects citizens from unreasonable searches and seizures and compels government investigators to respect the reasonable privacy interests of individuals. This argument applies to the captain and crew members of both pleasure vessels and commercial craft.

Although this Comment summarizes the current state of Fourth Amendment jurisprudence as necessary background for a more thorough discussion of the Fourth Amendment in a maritime context, this Comment does not undertake a comprehensive discussion of Fourth Amendment law. For a more complete discussion of the Fourth Amendment, see, for example, Gerald G. Ashdown, The Fourth Amendment and the 'Legitimate Expectation of Privacy', 34 Vand L Rev 1289 (1981).

The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

US Const, Amend IV.

See Katz v United States, 389 US 347, 351 (1967) ("What a person knowingly ex-
the Fourth Amendment, a search that intrudes upon an individual's reasonable privacy interest must generally be accompanied by a valid search warrant based on probable cause or fall within a recognized exception to the warrant requirement. The Fourth Amendment does not, however, explicitly require that government officers obtain a search warrant prior to a search; it merely prohibits "unreasonable" searches and seizures. Since the early 1900s, courts have "lurched back and forth between imposing a categorical warrant requirement and looking to reasonableness alone."

A. General Principles

To ensure that government officers respect Fourth Amendment limitations on searches and seizures, the "exclusionary rule" requires courts to exclude at trial evidence seized during searches that violated the Fourth Amendment. The rule primarily serves "to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures." To apply the exclusionary rule, a court must first determine whether a contested search violated the Fourth Amendment
rights of the defendant contesting the search. To make this determination, a court must examine "whether the disputed search and seizure ... infringed an interest of the defendant which the Fourth Amendment was designed to protect." Because the Fourth Amendment was designed to protect the reasonable privacy interests of individuals, a court's primary inquiry is whether the defendant challenging the admissibility of the evidence had a "legitimate expectation of privacy" in the evidence or in the area searched. To answer this question, a court must determine: (1) whether the defendant manifested a subjective expectation of privacy in the object or place of the challenged search; and (2) whether society will recognize this subjective expectation of privacy as objectively reasonable. Factors that a court weighs in determining whether a defendant had a legitimate expectation of privacy include: ownership, possession, or control of the premises searched; the ability to control or to exclude others' use of the premises; a legitimate presence on the premises at the time of the search; and the totality of the surrounding circumstances.

If a court finds that a defendant did not have a legitimate expectation of privacy in the searched area, then the government's action is not considered a "search" for Fourth Amendment purposes and the defendant cannot exclude the evidence. If, by contrast, a court finds that a defendant had a legitimate expectation of privacy, then the court must determine whether the search was "reasonable" by balancing the intrusiveness of the government's action on the individual's Fourth Amendment rights against any legitimate governmental interests at stake in the search. In this phase of the process, a court

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19 Id.
20 See note 12 and accompanying text.
23 See United States v Melucci, 888 F2d 200, 202 (1st Cir 1989), construing United States v Aguirre, 839 F2d 854, 856-57 (1st Cir 1988). See also United States v Arango, 912 F2d 441, 445 (10th Cir 1990), quoting Rakas, 439 US at 143 (noting that a court will also consider concepts of real or personal property law, "bearing in mind that 'arcane distinctions developed in property and tort law between guests, licensees, invitees, and the like, ought not to control.'").
25 See United States v Villamonte-Marquez, 462 US 579, 588 (1983), citing Delaware v
must also determine whether federal officers observed probable cause and warrant requirements.\textsuperscript{26} If a court finds that the governmental interests at stake outweigh the defendant’s privacy interest, then the search is “reasonable” and the evidence should be admitted at trial. By contrast, if a court deems the search unreasonable, then the evidence should be excluded.

B. Relevant Exceptions to the Warrant Requirement

Although current Fourth Amendment jurisprudence generally requires officials to obtain a warrant before conducting a search, the courts have recognized over twenty exceptions to this requirement.\textsuperscript{27} Four of these are relevant in a maritime context.

1. The maritime inspections exception.

The exception allowing warrantless maritime inspections originates with two statutes, Title 19, Section 1581(a) of the United States Code (“Section 1581(a)”),\textsuperscript{28} and Title 14, Section 89(a) of the United States Code (“Section 89(a)”),\textsuperscript{29} which autho-

\textsuperscript{26} Prouse, 440 US 648, 654 (1979).

\textsuperscript{27} In a case decided two years after Rakas v Illinois, 439 US 128 (1978), Justice Blackmun stated:

[Rakas] recognized two analytically distinct but ‘invariably intertwined’ issues of substantive Fourth Amendment jurisprudence. The first is ‘whether [a] disputed search or seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect;[.]’ the second is whether ‘the challenged search or seizure violated [that] Fourth Amendment right[.]’ The first of these questions is answered by determining whether the defendant has a ‘legitimate expectation of privacy’ that has been invaded by a governmental search or seizure. The second is answered by determining whether applicable cause and warrant requirements have been properly observed.

\textsuperscript{28} See Acevedo, 111 S Ct at 1992 (Scalia concurring), citing Craig M. Bradley, Two Models of the Fourth Amendment, 83 Mich L Rev 1468, 1473-74 (1985).

\textsuperscript{29} This statute authorizes Customs officers to board vessels in the United States, customs waters, or within a customs enforcement area to conduct administrative inspections:

Any officer of the customs may . . . go on board of any vessel . . . and examine the manifest and other documents . . . and examine, inspect, and search the vessel and every part thereof and any person, trunk, package, or cargo on board, and . . . hail and stop such vessel . . . and use all necessary force to compel compliance.


\textsuperscript{29} This statute authorizes the Coast Guard to board vessels on the high seas and in United States jurisdictional waters to conduct administrative inspections:

The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests . . . for the prevention, detection, and suppression of violations of laws of the United States. For such purposes . . . officers may . . . go on board of any vessel subject to the jurisdiction, or to the operation of any law, of
rize the Customs Service and Coast Guard to board vessels to ensure compliance with United States law. Although the language of these statutes appears to be quite broad, courts have generally required federal officers to limit searches under either statute to those areas reasonably necessary to ensure compliance with United States document and safety laws. Yet courts have also held that the subjective intent of the government officers is irrelevant; even if the officers' intent in conducting a document and safety inspection was to discover illegal drugs, the statutory boarding remains lawful.

Federal courts have upheld the constitutionality of these statutes, reasoning that the government's strong interest in ensuring compliance with United States document and safety laws outweighs any privacy interest in the limited areas that government officers must visit during document and safety inspections. In United States v Villamonte-Marquez, the Supreme Court upheld a Customs boarding of a vessel off the coast of Louisiana. Customs officers boarded the vessel under the au-

The United States, address inquiries to those on board, examine the ship's documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance. When ... it appears that a breach of the laws of the United States ... is being, or has been committed, by any person, such person shall be arrested or, if escaping to shore, shall be immediately pursued and arrested on shore ... or, if it shall appear that a breach of the laws of the United States has been committed so as to render such [vessel or merchandise] ... liable to forfeiture ... such vessel or such merchandise, or both, shall be seized.

14 USC § 89(a) (1988). This statute differs from Section 1581(a) in two primary ways: (1) Section 1581(a) provides inspection authority for Customs officers, while Section 89(a) provides inspection authority for the Coast Guard; and (2) Section 89(a) allows boardings to take place on the "high seas" as well as within United States waters, while Section 1581(a) limits Customs boardings to "customs waters." See United States v Ceballos, 706 F2d 1198, 1199-1200 (11th Cir 1983). See also note 54 (defining these boundaries).

30 See, for example, United States v Freeman, 660 F2d 1030 (5th Cir 1981) (Section 89(a)); United States v Caraway, 474 F2d 25 (5th Cir 1973), vacated on other grounds, 483 F2d 215 (5th Cir 1973) (Section 1581(a)).

31 See United States v Manbeck, 744 F2d 360, 382 (4th Cir 1984), quoting United States v Villamonte-Marquez, 462 US 579, 585 (1983) ("The language of [19 USC § 1581(a)] imparts an obviously broad grant of authority to Customs officials, and evidently draws no distinction between the boarding of a vessel for a documents inspection and the boarding of a vessel for an investigatory stop."). The Manbeck court did not decide the minimum basis upon which an investigatory stop under Section 1581(a) may be upheld. Rather, the court held that, under the facts of the case, Customs officers had reasonable suspicion of wrong-doing and were thus justified in making the stop. Manbeck, 744 F2d at 383.

32 See, for example, Villamonte-Marquez, 462 US at 592 (Section 1581(a)); United States v Jonas, 639 F2d 200, 202-03 (5th Cir 1981) (Section 89(a)).


34 Id at 583.
In upholding the boarding, the Court reaffirmed that the constitutionality of a government action is judged by "balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests."

Under this balancing test, the Court concluded that federal officers do not unduly intrude upon Fourth Amendment guarantees of privacy during routine document and safety inspections and that, even though the Villamonte-Marquez inspection was more than minimally intrusive, the individual intrusion was outweighed by significant governmental interests favoring the inspection. Specifically, the Court found that the outward markings of a vessel are substantially different from those of an automobile, thus necessitating a boarding to ensure compliance with registration laws; that the government has a compelling interest in ensuring compliance with registration laws in the wake of increased smuggling activity; and that the nature of sea travel vitiates any expectation that a "fixed checkpoint" stop would accomplish this purpose.

Similarly, in United States v Cilley, the Ninth Circuit upheld a boarding by the United States Coast Guard on the high seas conducted in accordance with Section 89(a). Although the court stated that Villamonte-Marquez did not control this case because that holding was limited to a Customs boarding in domestic waters, the court nevertheless evaluated the case under the Villamonte-Marquez standard. The court concluded that the initial boarding in Cilley was limited to the publicly exposed

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35 Id at 580-81.
37 The Customs officers boarded the vessel in domestic waters and without suspicion of wrongdoing. Villamonte-Marquez, 462 US at 583. Once on board, a Customs officer smelled burning marijuana and through an open hatch observed burlap-wrapped bales of the drug. Id.
38 Id at 592-93.
39 Id. The Court also traced the history of Section 1581(a) to a statute passed in 1790 that authorized these inspections to prevent travelers from avoiding duties on foreign goods. Villamonte-Marquez, 462 US at 584. The Court concluded that the enactment of this precursor statute by the same Congress that promulgated the Bill of Rights was strong evidence that the statute did not violate the Fourth Amendment. Id at 585.
40 785 F2d 651 (9th Cir 1985).
41 Id at 655-56.
42 Id at 653. Presumably the Cilley court was not bound by Villamonte-Marquez because Villamonte-Marquez addressed a Customs boarding under the authority of Section 1581(a), which limits Customs boardings for document and safety inspections to domestic waters. Cilley, by contrast, concerned a Coast Guard boarding of a United States registered vessel on the high seas pursuant to the jurisdiction granted by Section 89(a).
deck area and therefore only "minimally" intruded upon the crew's privacy interests. The court also emphasized the strong governmental interest in enforcing compliance with United States safety laws. The court further noted that because no other country can exercise jurisdiction over United States vessels on the high seas, the right to board and search is the only practical way for the United States to exert sufficient control over American vessels.

Although the Ninth Circuit did not define the boundaries of "minimal" intrusion, it placed a boarding of the publicly exposed deck area of a vessel into this category. Moreover, although the court declined to decide whether a routine document and safety inspection may extend below deck without a warrant and probable cause, it held that the continuation of the Cilley search below deck did not violate the Fourth Amendment because, after boarding, the government officers smelled marijuana, and a member of the vessel's crew told them the vessel was loaded with the drug. Thus, the officers had probable cause to extend the search to the entire ship, and the vessel's inherent mobility created exigent circumstances that excused the need to obtain a warrant.

Under current law, therefore, document and safety inspections of vessels conducted pursuant to Section 1581(a) and Section 89(a) are per se reasonable under the Fourth Amendment. The courts have recognized that, although these inspections intrude on the privacy expectations of the captain and crew of a vessel, the government's interest in ensuring compliance with United States law outweighs the minimal intrusion involved. The courts have limited these inspections, however, by holding that Section 1581(a) and Section 89(a) do not authorize searches of vessels beyond those areas "reasonably incident" to a document and safety inspection.
2. The border search exception.

The border search exception to the warrant requirement allows United States officials to conduct searches of individuals entering the United States. Border searches are authorized by Title 19, Section 482 of the United States Code ("Section 482"), which grants Customs officers plenary power to inspect individuals and their belongings at the border.

Courts have uniformly upheld the constitutionality of warrantless border searches by holding that the government's interest in controlling entry of goods into the United States outweighs any privacy interest a traveler has in luggage. Because of the governmental interest in controlling the entry of dutiable or illegal goods into the United States, most courts have deemed border searches reasonable under the Fourth Amendment even if the searches are conducted without a warrant, probable cause, or articulable suspicion.

Some courts have cited the border search exception to justify warrantless searches of vessels at sea. These courts have adopted the "extended border search" doctrine, which recognizes the practical difficulty of searching a vehicle or vessel at the precise moment it crosses land or sea borders. In applying this doctrine,

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This statute provides:

Any of the officers . . . may stop, search, and examine . . . any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law . . . and to search any trunk or envelope . . . in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer . . . shall find any merchandise . . . which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States . . . he shall seize and secure the same for trial.


See, for example, United States v Alfonso, 759 F2d 728, 733 (9th Cir 1985), citing United States v Thirty-Seven (37) Photographs, 402 US 363, 376 (1971). The primary purpose of a border search is to seize contraband that individuals seek to bring into the United States without paying duty or that is illegal to import. See Alfonso, 759 F2d at 733. Thus, the courts have held that the Commerce Clause confers broad authority on Congress to authorize these searches. See US Const, Art I, § 8, cl 3.

See, for example, Alfonso, 759 F2d at 734. But see United States v Caicedo-Guarnizo, 723 F2d 1420, 1422 (9th Cir 1984) (stating that "ordinary border searches need not be justified by probable cause; mere suspicion is sufficient") (emphasis added) (citations omitted).

See, for example, Alfonso, 759 F2d at 734. The functional equivalent of the United States border at sea is generally recognized as the "contiguous zone"—the nine-mile area between United States "territorial waters," which extend three miles from the coastline,
however, the courts have recognized that when federal officers conduct searches after vessels have entered the United States, they intrude more significantly on an individual’s normal expectation of privacy than when federal officers conduct these searches at a defined border. Therefore, the courts have generally required that border searches within the United States be justified by "reasonable suspicion" that the subject of the search was involved in criminal activity, rather than simply mere suspicion or no suspicion. The courts have also generally required some probability that the vessel has crossed a United States border before upholding an extended border search.

In a maritime context, the border search exception tends to merge with that for maritime inspections. The Fourth Circuit, in *Blair v United States*, opined that a Coast Guard stop of a vessel on the high seas pursuant to Section 89(a) equates to a border stop and is therefore reasonable even absent any suspicion of criminal activity on board. The court further noted that the seizure of a vessel by Customs officers or the Coast Guard in customs waters may also be reasonable as a border stop, thus requiring no probable cause, if the vessel entered the United States from international waters.

and the limits of United States “customs waters,” which extend twelve miles from the coastline. See *United States v Hidalgo-Gato*, 703 F2d 1267, 1269-73 (11th Cir 1983). Areas beyond the three-mile line are referred to as “high seas,” and areas beyond the twelve-mile line are “international waters.”

The rationale for the stricter standard appears to be that individuals expect a search at a border when entering the United States, thus according a lesser expectation of privacy to the areas searched at the border. An extended border search, by contrast, occurs after the vessel has crossed an imaginary United States border at sea. Therefore, “[t]he delay in conducting such a search until the person has removed herself from the border area or port of entry makes the eventual unexpected search more intrusive,” and it “compels a requirement that those conducting the search have reasonable suspicion of criminal activity.” *United States v Garcia*, 672 F2d 1349, 1366 (11th Cir 1982).

*Alfonso*, 759 F2d at 734, citing *Caicedo-Guarnizo*, 723 F2d at 1422-23; *Garcia*, 672 F2d at 1366.

See, for example, *United States v Garcia*, 598 F Supp 533, 535 (S D Fla 1984), citing *United States v Whitmire*, 595 F2d 1303, 1307 (5th Cir 1979).

*Id* at 505, citing *United States v Harper*, 617 F2d 35 (4th Cir 1980). “High seas” refers to the area beyond a three-mile line from the United States coastline. See note 54. *Blair*, 665 F2d at 505, citing *United States v Laughman*, 618 F2d 1067, 1072 n 2 (4th Cir 1980); *United States v Tilton*, 534 F2d 1363 (9th Cir 1976). “Customs waters” encompasses an area from the United States coastline to a line twelve miles from the coastline. See note 54. “International waters” is that area beyond a line twelve miles from the United States coastline. *Id.*
3. The exigent circumstances doctrine.

The courts have also upheld warrantless searches where government officers had probable cause to conduct the search and "exigent circumstances" made it impossible or impractical to obtain a warrant. In *Chambers v Maroney*, the Supreme Court stated that exigent circumstances justify the warrantless search of an automobile stopped on the highway where probable cause is present. An automobile is mobile, and if the occupants are alerted to police suspicion, the car's contents may be moved from the jurisdiction while the government official is seeking a warrant. Because "the opportunity to search" is "fleeting," officials are justified in conducting a warrantless search.

Courts have frequently invoked the exigent circumstances doctrine in a maritime context. In general, when government officers have lawfully boarded a vessel under the authority of Section 1581(a) or Section 89(a) and have discovered evidence raising their level of suspicion to that of probable cause, some courts have recognized that the opportunity to search the vessel is "fleeting" and have allowed warrantless searches under the exigent circumstances doctrine.

4. The plain view doctrine.

The courts have also recognized an exception to the warrant requirement for evidence that is in "plain view" when government officers lawfully enter an area. The courts have generally imposed three conditions before applying the plain view doctrine. First, the government official must not have violated the Fourth Amendment to place himself in a position to view the evidence. Second, the incriminating nature of the evidence, and thus its

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62 Id at 51.
63 Id.
64 Id.
65 See *United States v Cilley*, 785 F2d 651, 655 n 2 (9th Cir 1985); *Blair v United States*, 665 F2d 500, 506 (4th Cir 1981).
66 If evidence is in plain view, "neither its observation nor its seizure would involve any invasion of privacy." *Horton v California*, 496 US 128, 134 (1990). Thus, when government officers have discovered evidence in plain view, courts have admitted the evidence because its discovery does not invade a defendant's privacy interest, and thus no Fourth Amendment "search" has occurred. Id. Although courts have often cited the plain view doctrine as an exception to the Fourth Amendment's search warrant requirement, the doctrine is actually an exception to Fourth Amendment concerns regarding unreasonable seizures rather than searches. See id. A discussion of unreasonable seizures is beyond the scope of this Comment.
probative value, must have been immediately apparent. Third, the officers must have possessed a lawful right of access to the evidence.

The plain view doctrine, like the exigent circumstances doctrine, frequently arises in maritime cases when government officers have boarded a vessel under statutory authority and, during the ensuing limited inspection, have viewed illegal drugs on board the vessel. If the officers have viewed the incriminating evidence from a vantage point they lawfully occupied, and if the other criteria are present, then a court would probably apply the plain view doctrine and admit the evidence. If not, a court would probably refuse to admit the evidence under the doctrine.

II. THE FOURTH AMENDMENT IN A MARITIME CONTEXT

Although the Fourth Amendment clearly applies at sea, the extent to which it applies is less clear. Most courts agree that the Fourth Amendment applies less rigidly at sea because "at sea, a person's expectation of privacy may be severely restricted compared with expectations of privacy on land."

One reason for the lower expectation of privacy is that the government pervasively regulates maritime vessels. Because Section 1581(a) and Section 89(a) allow Coast Guard and Customs officials to board United States vessels "even without suspicion of criminal activity," vessels are on notice of a potential boarding just as automobile drivers are on notice of a potential stop to check vehicle license and registration.

Another reason the courts have recognized a more lenient privacy standard at sea is the mobility of maritime vessels. In

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66 Id at 136-37.
67 Id at 137.
68 See United States v Hayes, 653 F2d 8, 12 (1st Cir 1981); United States v Hilton, 619 F2d 127, 133 (1st Cir 1980). See also United States v Amuny, 767 F2d 1113, 1126 (5th Cir 1985) (in a case involving an aircraft search, the court stated: "[T]o determine whether [the officer] was in a place where he had a lawful right to be we must focus upon whether [his] conduct invaded the appellants' legitimate expectations of privacy.").
69 See, for example, United States v Peterson, 812 F2d 486, 489 (9th Cir 1987).
70 United States v Thompson, 928 F2d 1060, 1064 (11th Cir 1991), citing United States v Lopez, 761 F2d 632, 635 (11th Cir 1985).
71 Thompson, 928 F2d at 1064-65 (citations omitted).
72 United States v Lopez, 761 F2d 632, 635 (11th Cir 1985).
73 Thompson, 928 F2d at 1064-65 (citations omitted).
74 See California v Carney, 471 US 386, 392 (1985) (finding a reduced privacy interest in automobiles that derives from the pervasive regulation of automobiles permitted to travel on public roads, which in turn places people on notice that vehicles may be stopped and searched).
California v Carney, the Supreme Court explained that the Fourth Amendment distinguishes between the search of a store, home, or other dwelling, which requires a proper warrant, and the search of a ship, automobile, or other movable vehicle. The Carney Court justified this distinction by explaining that ships and other mobile vehicles can quickly be moved from the jurisdiction in which the warrant must be sought, thereby increasing the danger of lost evidence.

The courts have therefore generally accorded a lower expectation of privacy to the captain and crew of maritime vessels than to the occupants of land-based structures. In analyzing this limited privacy interest as one side of the balancing equation to determine the reasonableness of a search, the courts have often considered the type and size of the vessel, the place searched, the significance of the intrusion, and the location where the vessel was detained.

A. Distinctions Based Upon Size and Usage of a Vessel

In determining the privacy interests that the captain and individual crew members possess in areas of a vessel, some courts have distinguished between small pleasure vessels and larger commercial vessels. In United States v Whitmire, the Fifth Circuit indicated that courts may accord relatively high levels of privacy to those on a houseboat or to the crew's living quarters on a tanker that travels for months at sea. The court, however, found it difficult to justify a legitimate privacy interest in an open deck or in the cargo hold of a commercial vessel.

Similarly, the court in United States v Gollwitzer suggested that individuals are accorded a greater expectation of privacy in a small pleasure boat or houseboat because, due to the limited range of these craft, the government is not ordinarily concerned

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76 Id at 390, citing Carroll v United States, 267 US 132, 153 (1925).
77 Carney, 471 US at 390. See notes 63-64 and accompanying text.
78 United States v Whitmire, 595 F2d 1303, 1312-13 (5th Cir 1979). To weigh governmental interests, courts have often considered: (1) congressional plenary power to regulate commerce; (2) the interest in ensuring dutiable goods are not brought into the United States absent payment of any applicable duty; and (3) the national interests in regulating United States vessels. Id at 1313-14. The governmental interests side of the balancing equation is beyond the scope of this Comment.
79 595 F2d 1303 (5th Cir 1979).
80 Id at 1312.
81 Id.
82 697 F2d 1357 (11th Cir 1983).
that these vessels will be used to violate customs laws. Therefore, the individuals on board such vessels are not normally on notice of potential Customs boardings.

These cases suggest that the captain and crew members of a small pleasure vessel may expect more privacy than the captain and crew of a larger vessel. This greater privacy interest arises from the fact that small pleasure vessels are analogous to "homes," and thus the individuals on board are not normally on notice of potential Customs boardings.

B. Captain and Owner of a Vessel

The courts have generally accorded a greater privacy interest to the captain and owner of a vessel than to its crew. At least one court has held that the captain of a vessel retains a legitimate expectation of privacy in all areas of his vessel. In United States v Cardona-Sandoval, the First Circuit evaluated the motions of the captain of a vessel and several crew members to exclude evidence found after a long and detailed search. In evaluating these motions, the court separated the defendants into two categories: the captain and the crew members. The court held that the captain had a cognizable expectation of privacy in all areas of the vessel. In so holding, the court reasoned that the captain derives a legitimate privacy interest from his overall responsibility for the vessel, from his power to exclude others from entry to particular places on board, and from doctrines of admiralty,

83 Id at 1360.
84 Id.
85 6 F3d 15 (1st Cir 1993).
86 Id at 21.
87 Id. Presumably underlying the First Circuit's holding in Cardona-Sandoval was the egregious nature of the search and detention of the captain and crew members. During the initial two-hour document and safety inspection, some Coast Guard officers guarded the defendants, while others searched the vessel for compliance with safety regulations and performed a "space accountability" search to detect secret compartments that might be used for smuggling. Cardona-Sandoval, 6 F3d at 18. While no contraband was found during the initial search, the officers did notice suspicious areas where the walls appeared thicker than normal. Id. The next day, after learning the vessel was on a list of vessels suspected of drug trafficking, the Coast Guard reboarded the vessel. Id at 18-19. The second boarding lasted five hours and entailed use of a crowbar and axe to investigate suspicious areas. Id at 19. No contraband was found. Cardona-Sandoval, 6 F3d at 19. The officers then determined that the seas were too rough to continue the search and towed the vessel to Puerto Rico for further investigation. Id. There the search continued for two days. Id. The officers finally found cocaine hidden on the vessel, but not before they had practically destroyed the vessel. Id at 19-20.
"which grant the captain (as well as the owner) a legal identity of interest with the vessel."\textsuperscript{88}

By contrast, the Fifth Circuit in \textit{United States v De Weese}\textsuperscript{89} did not reach such a broad conclusion. In that case, the captain of a vessel moved to suppress as evidence marijuana found in an ice hold during a Coast Guard inspection.\textsuperscript{90} The court concluded that although a vessel’s captain or a member of its crew may have a legitimate expectation of privacy in a footlocker, duffel bag, or private living quarters, the captain has no privacy interest in an ice hold, which is subject to the “common access of those legitimately aboard the vessel.”\textsuperscript{91} Thus, it is unclear in which areas of a vessel the captain may claim a legitimate privacy interest.\textsuperscript{92}

C. Crew Members

The degree of privacy the courts have accorded crew members on a vessel is generally more limited than that accorded the captain. Unlike the captain, crew members lack the authority to exclude others from certain areas of the vessel.\textsuperscript{93} Thus, the courts have generally decided issues related to a specific crew member’s legitimate privacy interest in specific areas of a vessel on an \textit{ad hoc} basis.

1. \textit{The crew’s personal effects.}

Most courts have recognized that each individual member of a vessel’s crew possesses a legitimate privacy interest in his or her footlockers, duffel bags, and similar personal effects. One court stated:

\begin{quote}
\textsuperscript{88} \textit{Cardona-Sandoval}, 6 F3d at 21. Presumably, the court’s reference to “identity of interests” refers to the close connection between the captain and the vessel such that an intrusion on the vessel itself is an intrusion on the captain’s privacy rights in the vessel. Compare \textit{Black’s Law Dictionary} 745, 1199 (West, 6th ed 1990).

\textsuperscript{89} 632 F2d 1267 (5th Cir 1980).

\textsuperscript{90} Id at 1268.

\textsuperscript{91} Id at 1270-71. See also \textit{United States v Freeman}, 660 F2d 1030, 1034 (5th Cir 1981).

\textsuperscript{92} One can, however, conceivably distinguish \textit{De Weese} from \textit{Cardona-Sandoval} because the vessel in \textit{De Weese} was a commercial vessel, whereas the vessel in \textit{Cardona-Sandoval} was a small pleasure craft. See Section II(A).

\textsuperscript{93} See \textit{Cardona-Sandoval}, 6 F3d at 21-22 (noting differences in control between captain and crew members, but deciding that, because the vessel involved was a small pleasure craft, no practical means existed to exclude members of the crew from specific areas of the vessel).
Our cases ... have repeatedly emphasized that the Coast Guard may not rummage through the private areas utilized by the boat's crew, such as footlockers, knapsacks or duffel bags, while conducting a safety and documents inspection.94

Thus, it is generally settled that crew members retain a legitimate expectation of privacy in these containers, presumably due to the highly personal nature of what is stored in them.95

2. The crew's living quarters.

Some courts have stated, at least in dicta, that crew members also retain a greater privacy interest in living quarters than in other areas of a vessel.96 Other courts, however, have distinguished between living quarters occupied by a single member of a vessel's crew and those occupied by numerous crew members.

In United States v Morales,97 the Coast Guard boarded a vessel to conduct a document and safety inspection.98 The officers entered one of the vessel's two sleeping cabins, detected the odor of marijuana while inside, and became suspicious of the size of the vessel's water tank.99 After lifting the floorboards of the sleeping cabin, the officers discovered garbage bags containing cocaine.100

At trial, the defendant moved to suppress as evidence the seized cocaine on the grounds that the Coast Guard, by searching the living quarters without a warrant, conducted an unreasonable search.101 The Eleventh Circuit held that the Coast Guard legitimately entered the sleeping cabin as part of a routine document and safety inspection.102 The court concluded that because the sleeping cabin served as access to a second sleeping cabin,
and because there were more crew members on board the vessel than sleeping cabins, the cabin could not serve as a private area. Therefore, the defendant had no legitimate privacy interest in the cabin. Once legitimately present in the cabin, the officers were confronted with a marijuana odor which offered reasonable suspicion to search below the floor.

3. Concealed compartments on a vessel.

Although some courts have disagreed over when defendants retain a legitimate expectation of privacy in concealed compartments on a vessel, most courts have held that crew members do not have such an expectation. In United States v Sarda-Villa, the Eleventh Circuit justified this holding by explaining that a secret compartment constructed within the hull of a ship differs from a duffel bag or footlocker with respect to usage and expectation of exclusive control. Presumably the court was referring to the fact that a duffel bag or footlocker generally contains items belonging to only one person on the vessel, while a concealed compartment may conceivably be accessed and utilized by anyone on board the vessel. In any event, the court concluded that society is unwilling to recognize as reasonable an expectation of privacy in a sealed compartment, located in the hull of a ship and disguised in appearance, for the legitimate storage of personal items.

In United States v Garcia, by contrast, the court held that only the vessel's captain (but not individual crew members) could assert a legitimate expectation of privacy in a concealed compartment. In that case, the concealed compartment was

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103 Id at 1060-61.
104 Id.
105 Morales, 889 F2d at 1061.
106 760 F2d 1232 (11th Cir 1985).
107 Id at 1237.
108 Id. Conceivably the Sarda-Villa court reached this decision because of a background assumption that such compartments would only be constructed for unlawful uses. As discussed later, this assumption is rather tenuous because such a compartment is analogous to a home safe. By contrast, at least one good reason exists to deny a privacy interest in certain concealed compartments. In United States v Thompson, 928 F2d 1060, 1065-66 (11th Cir 1991), the court denied a privacy interest in a storage compartment under a mattress in living quarters because safety gear was frequently stored in such compartments. The concealed compartment in Thompson, however, was located under a berth in a compartment often utilized to store life jackets and other safety gear. The character of the concealed compartment in Sarda-Villa, by contrast, would not qualify it as a compartment traditionally used to store safety gear.
109 598 F Supp 533 (S D Fla 1984).
110 Id at 536.
behind a refrigerator that was screwed into the wall. The court held that such a compartment was not in plain view during a document and safety inspection and therefore could not be summarily removed from the "ambit of Fourth Amendment protection."

4. Common areas on a vessel.

Courts have generally agreed that crew members do not have a legitimate privacy interest in a vessel's common areas. Common areas generally include those areas of a vessel in plain view to passing vessels and areas, such as cargo holds and the engine room, that are not under the control of anyone on board the vessel except the captain. Presumably crew members cannot contest evidence seized from these areas because of the plain view doctrine and because crew members lack the authority to exclude others from these areas.

III. COURTS MUST RECOGNIZE THE PRIVACY INTERESTS OF THE CAPTAIN AND CREW MEMBERS IN CERTAIN AREAS OF MARITIME VESSELS

As previously discussed, the courts have uniformly found warrantless document and safety inspections of maritime vessels reasonable under the Fourth Amendment, even if government officers have conducted these inspections without probable cause or reasonable suspicion of wrongdoing. To ensure government officers remain within the edicts of the Fourth Amendment when they conduct these inspections, however, the courts have limited the scope of these inspections to those areas "reasonably incident" to ensuring compliance with document and safety laws. Despite this limitation, some courts have allowed searches of areas beyond those reasonably incident to a document and safety inspection. These courts have held on a case-by-case basis that the captain or crew members of a vessel did not have a legitimate expectation of privacy in an area that was the subject of a particular search. Such holdings may accomplish the very result that

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111 Id at 535.
112 Id at 536. García, however, was apparently never appealed. It is thus uncertain whether the ruling would have survived appellate review.
113 See United States v Wright-Barker, 784 F2d 161, 176 (3d Cir 1986) (cargo hold); United States v Herrera, 711 F2d 1546, 1556 (11th Cir 1983), corrected, 727 F2d 1016 (11th Cir 1984) (exposed deck area); United States v Stuart-Caballero, 686 F2d 890, 891-92 (11th Cir 1982) (engine room and two forward cargo holds); United States v Williams, 589 F2d 210, 214 (5th Cir 1979) (ship's hold).
the limitation on document and safety inspections was designed to prevent: a full-scale search of a maritime vessel without a warrant, probable cause, or reasonable suspicion of wrongdoing.

Moreover, some courts have exacerbated the problem by distinguishing between commercial vessels and recreational vessels. As a result, the captain and crew of a maritime vessel may wrongly believe *ex ante* that they have a legitimate privacy interest in certain areas of a vessel, only to discover *ex post* that they do not have such an interest. If courts are to maintain consistency and predictability in Fourth Amendment jurisprudence, they should recognize that the captain and crew members of a vessel have a legitimate privacy interest in areas of a vessel that are outside those reasonably incident to a document and safety inspection.

When courts upheld the constitutionality of document and safety inspections, they balanced the privacy interests in the areas of a vessel that government officers must inspect against the government's interest in ensuring compliance with those laws. Because these areas generally include the most public ones on a vessel, the courts have held that the significant governmental interests involved in the searches outweighed the minimal intrusion on privacy in these public areas.

As previously discussed, if a court holds that a defendant did not have a legitimate expectation of privacy in a searched area, then the government's inspection is not considered a Fourth Amendment "search," and the court is not required to perform the balancing test. Thus, the courts that have upheld the constitutionality of document and safety inspections would not have engaged in the balancing test if they had not recognized at least some privacy interest in even the most public areas of a vessel. If a privacy interest exists in the most public areas of a vessel, clearly a privacy interest also exists in the more private areas—those areas that government officers need not visit to ensure compliance with document and safety laws.

Moreover, the fact that most courts have, at least in dicta, limited the scope of document and safety inspections to "reason-

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114 See Section II(A).
115 See Section I(B)(1).
117 See Section I(B)(1).
118 See Section I(A).
ably incident areas" of a vessel suggests that to perform a limited search of other areas, the government must have reasonable suspicion of wrongdoing, or, for a more comprehensive search, either procure a search warrant based on probable cause or justify the broader search under the exigent circumstances doctrine. At a minimum, a court presented with a contested search should not deny recognition of a defendant's legitimate privacy interest simply to avoid addressing the difficult question of whether this privacy interest outweighs the governmental interests involved.

Under this rationale, the courts should recognize that a captain of both recreational and commercial vessels retains a legitimate expectation of privacy in all areas of her vessel, with the exception of publicly exposed deck areas and those areas reasonably incident to a limited document and safety inspection. The captain's expectation of privacy is based on her right of control over the vessel and her right to exclude others from those areas of the vessel.

Furthermore, the courts should recognize that crew members retain a legitimate expectation of privacy in both living quarters on board recreational or commercial vessels, whether they share these quarters with other crew members or occupy them alone, and in concealed compartments accessed through living quarters. An individual crew member's privacy expectation in these areas is justified by the crew member's right of control over these areas. Although an individual member of a vessel's crew may not be able to exclude the captain or other crew members from these areas, the crew member should still have a legitimate privacy interest in these areas based on her right to exclude all others, including government officers.

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119 See United States v Crews, 605 F Supp 730, 738 (S D Fla 1985), aff'd without opinion, United States v McGill, 800 F2d 265 (11th Cir 1986). See also United States v Hilton, 619 F2d 127, 131 (1st Cir 1980) ("[Section 89(a)] has been consistently construed as limiting [stops and boardings]—in the absence of probable cause—to the necessary task of conducting safety and document inspections. A more extensive search is permissible only if there is consent or probable cause to believe a crime has been or is being committed.") (citations omitted).

120 This Comment assumes that the courts currently recognize crew members' legitimate expectation of privacy in duffel bags, footlockers, and similar personal effects, and that this expectation of privacy is settled law. See Section II(C)(1).
A. Areas “Reasonably Incident” to a Maritime Inspection

Courts have uniformly held that the government’s interest in ensuring compliance with document and safety laws outweighs the captain’s and crew’s expectation of privacy in areas of a vessel that are “reasonably incident” to a document and safety inspection. Because this Comment takes issue with courts that have refused to recognize the captain’s and crew’s legitimate privacy interest in areas outside those “reasonably incident” to a document and safety inspection, however, an attempt must be made to define which areas of a vessel are “reasonably incident” to a document and safety inspection. Unfortunately, defining these areas is not an easy task. Certainly the deck area, required for boarding, is necessary. Moreover, some courts have held that it is necessary for officers to proceed to the engine room or ship’s hold to check the main beam number of the vessel to ensure the vessel’s registration number matches that on the documentation. Other courts have held that any area where safety equipment is normally stored is a legitimate area for government officers to search. At least one court endeavored to set guidelines with respect to areas in plain view:

[Officials] may visit public areas . . . . They may enter the hold to check the main-beam identification number . . . . Further, if a cabin is used for multiple purposes, the fact that one of its uses is private . . . does not shield it from the legitimate scope of a safety inspection.

While these holdings might appear reasonable in isolation, the ambiguous guidelines set by this court, along with the fact that other courts appear to define reasonably incident areas on an ad hoc basis, can result in subjecting virtually an entire vessel to a document and safety inspection. The resulting inconsistency and unpredictability effectively vitiate any expectation of privacy in the vessel and violate the spirit of the case law describing document and safety inspections as “limited.”

If, as this Comment proposes, a court should recognize the heightened privacy interest that a captain and crew possess in

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121 See Hilton, 619 F2d at 133.
122 See United States v Thompson, 928 F2d 1060, 1065 (11th Cir 1991).
123 Crews, 605 F Supp at 737 (citations omitted).
124 See Comment, 93 Harv L Rev at 741-43 (cited in note 8).
125 See note 49 and accompanying text.
areas of a vessel that are not "reasonably incident" to a document and safety inspection, then the judiciary must establish clear boundaries for such inspections. Judges must narrowly define these areas in order to send a clear message to government officers that they can only inspect areas that a reasonable person would consider necessary to ensure compliance with document and safety laws.\textsuperscript{126}

B. Captain and Owner of Vessel

The captain's legitimate expectation of privacy in all areas of a ship, with the exception of publicly exposed deck areas and those areas incident to a limited document and safety inspection, derives from the captain's property rights in and control over the vessel. Although the Supreme Court has rejected the use of a common law interest in real or personal property as the sole criterion for determining a legitimate expectation of privacy,\textsuperscript{127} the courts have continued to apply property concepts as one factor to determine the constitutionality of a warrantless search.

In \textit{United States v Amuny},\textsuperscript{128} the Fifth Circuit applied property concepts in evaluating a claim of privacy regarding an aircraft. The court opined that to determine the legitimacy of a privacy interest, a court must look to "a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society."\textsuperscript{129} The court concluded that "one of the main rights attaching to property is the right to exclude others," and "one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of this right to exclude."\textsuperscript{130}

The First Circuit has similarly held that the captain of a small pleasure vessel has a legitimate expectation of privacy in his entire vessel. In \textit{United States v Cardona-Sandoval},\textsuperscript{131} the

\textsuperscript{126} Such areas might include, for example, the deck (necessary for boarding), the main cargo hold (necessary for checking the main beam number to ensure the vessel's documentation is in order), and very limited areas where safety equipment is normally stored. A narrow definition of areas "reasonably incident" to a document and safety inspection would not, for example, include living quarters, dining areas, food preparation areas, or concealed compartments. Vessel inhabitants can just as easily store safety equipment immediately outside the doors to these rooms as inside the rooms themselves.


\textsuperscript{128} 767 F2d 1113 (5th Cir 1985).

\textsuperscript{129} Id at 1126, quoting \textit{Rakas v Illinois}, 439 US 128, 143-44 n 12 (1978).

\textsuperscript{130} \textit{Amuny}, 767 F2d at 1126.

\textsuperscript{131} 6 F3d 15 (1st Cir 1993). See discussion in Section II(B).
court stated that the captain's legitimate expectation of privacy derives from "his custodial responsibility for the ship, his associated legal power to exclude interlopers from unauthorized entry to particular places on board, and the doctrines of admiralty, which grant the captain (as well as the owner) a legal identity of interest with the vessel."\(^{132}\)

Both Amuny and Cardona-Sandoval suggest that the captain and owner of both small pleasure craft and large commercial vessels retain a legitimate privacy interest in the entire vessel. The captain of a vessel has a property right in and control over the vessel, either through ownership of the vessel or through delegated authority from the vessel's owner. Moreover, the captain generally maintains the authority to exclude anyone, even crew members, from any area of the vessel.

This legitimate expectation of privacy must yield, of course, to the significant governmental interests present during a document and safety inspection. Areas of a vessel that are not incident to a limited document and safety inspection, however, should constitute private areas with respect to the captain. Therefore, courts should recognize a captain's legitimate expectation of privacy in any area of a vessel that is not necessary for government officers to visit during a limited document and safety inspection.

C. Crew Members

Courts should also recognize that individual crew members each retain a legitimate expectation of privacy in living quarters. The position of some courts that an individual member of a vessel's crew only possesses a legitimate expectation of privacy in private living quarters, as opposed to shared living quarters, is unconvincing.\(^{133}\) Such a position virtually forecloses any legitimate privacy interest that crew members might have in living quarters; because of the small size of most maritime vessels, crew members rarely have private quarters.

Moreover, the mere fact that an individual member of a vessel's crew may lack the authority to exclude the captain and other crew members from the living quarters does not necessarily mean that she cannot exclude and maintain a legitimate privacy

\(^{132}\) Cardona-Sandoval, 6 F3d at 21.

\(^{133}\) See, for example, United States v Morales, 889 F2d 1058, 1061 (11th Cir 1989).
interest against all outsiders, including government officers. As the court opined in Cardona-Sandoval:

[L]ike hosts and their overnight guests in a small apartment, the captain and crew members, each individually, possessed a reasonable expectation of privacy in all areas of the vessel with respect to all individuals not living within the unit and sharing the space.\(^{134}\)

This language clearly suggests that the First Circuit recognizes that crew members who share living quarters have a legitimate expectation of privacy against all individuals except the other occupants of the quarters.

An analogy to roommates in a house or apartment also supports this proposition. In United States v Kelley,\(^{135}\) the Ninth Circuit held that a roommate has the authority to consent to a search of a defendant's bedroom.\(^{136}\) The court stated that the one giving consent to the search had joint access to the apartment, including the defendant's bedroom, and therefore possessed the authority to consent to a search.\(^{137}\) Because the police officers in Kelley were allowed to search the defendant's bedroom only after the defendant's roommate offered consent, the logical implication of Kelly is that the defendant possessed a legitimate expectation of privacy in the bedroom against all but the person sharing the apartment. Thus, if courts are to allow a roommate to consent to a search, they must also recognize that each roommate retains a legitimate expectation of privacy in the room against everyone but the other occupants.\(^{138}\)

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\(^{134}\) Cardona-Sandoval, 6 F3d at 22. Although the holding in Cardona-Sandoval only applies to small pleasure vessels, the same reasoning applies to living quarters on board larger vessels: "The fact that several individuals may share the limited space no more makes the space public than would the fact that a family may share a house or a hotel room." Id.

\(^{135}\) 953 F2d 562 (9th Cir 1992).

\(^{136}\) Id at 566.

\(^{137}\) Id. A consensual search is reasonable for Fourth Amendment purposes when the person giving consent has authority, either actual or apparent, over the area searched. United States v Dearing, 9 F3d 1428, 1429 (9th Cir 1993). One has "actual authority" to consent "when he has `mutual use of the property'," and "joint access or control[.]" Id, quoting United States v Matlock, 415 US 164, 171 n 7 (1974).

\(^{138}\) See also United States v Rosado, 2 MJ 763, 765-66 (Army Ct Mil Rev 1976) (explaining that although a defendant does not have a legitimate expectation of privacy with respect to the other occupants of his room, he does have such an expectation with respect to the unit commander, a party who does not live in the room). While this analogy is sound, the converse proposition is also true. If one crew member on a vessel consents to a search of shared living quarters, then the other occupants of the quarters cannot contest the admissibility of any evidence discovered during such a search.
D. Concealed Compartments

Courts should recognize that the captain of a vessel retains a legitimate expectation of privacy in all concealed compartments on a vessel. Moreover, courts should recognize that crew members have a legitimate expectation of privacy in concealed compartments accessed through crew living quarters.

As previously discussed, the Eleventh Circuit in United States v Sarda-Villa\(^{139}\) held that neither the captain nor crew has a legitimate expectation of privacy in concealed compartments.\(^{140}\) The court justified this holding by pointing to the differences in usage and control between a concealed compartment and other containers traditionally used to store personal items.\(^{141}\) The touchstone of the court's opinion in Sarda-Villa was that society is not willing to recognize as reasonable a privacy interest in a concealed compartment.\(^{142}\) Clearly this is correct if one takes as a background assumption that a concealed compartment on a vessel has only one use—drug smuggling. If, however, one takes as a background assumption that the owner of a vessel might construct a compartment to safeguard ownership papers, family memorabilia, payroll, or any other item one might find in a home safe, then the Sarda-Villa court's analysis becomes less certain.

Courts should also recognize that crew members have a legitimate expectation of privacy in concealed compartments accessed through living quarters. First, crew members may utilize such compartments for the legitimate storage of personal items, just as an individual might use a home safe constructed in the wall of a bedroom. Furthermore, if crew members have a legitimate expectation of privacy in living quarters, then government officers cannot, without reasonable suspicion or probable cause, lawfully enter the living quarters to discover the compartment.

CONCLUSION

Whether driven by changing social mores or a compelling desire to fight the drug war, the courts have become increasingly willing to allow comprehensive warrantless searches of maritime

\(^{139}\) 760 F2d 1232 (11th Cir 1985).
\(^{140}\) See notes 107-08 and accompanying text.
\(^{141}\) Sarda-Villa, 760 F2d at 1237.
\(^{142}\) Id at 1236-37.
vessels without regard to Fourth Amendment limitations. This Comment advocates recognizing that the captain and crew of a maritime vessel have a legitimate privacy interest in certain areas of a vessel. Such a recognition simply requires the courts to realize that in their laudable quest to stem the flow of drugs into the United States, they have weakened time-honored Fourth Amendment principles to such a degree that amateur and professional sailors can no longer rely on the Fourth Amendment protections envisioned by our Founders. Thus, amateur and professional sailors are at the mercy of overzealous government officers who can now conduct time-consuming and highly destructive searches of private vessels with little or no suspicion of wrongdoing.

Only by reviving strict Fourth Amendment protections will the courts fulfill their role in the checks and balances process and prevent themselves from becoming “loyal foot soldier[s] in the Executive’s fight against crime.” By recognizing that the captain and crew of a vessel retain a legitimate privacy interest in certain areas of a vessel, the judiciary can take that critical first step toward reinstating a right guaranteed by the Constitution.