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Mary Beth G. v. City of Chicago: How Reasonable Can a Strip Search Be, 18 J. Marshall L. Rev. 237 (1984)

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CASENOTES

MARY BETH G. v. CITY OF CHICAGO:* HOW "REASONABLE" CAN A STRIP SEARCH BE?

Considerable disagreement exists among the courts concerning the appropriate fourth amendment protections afforded pretrial detainees against unreasonable searches and seizures.[1] In striking a reasonable balance between the twin considerations of jail security and individual privacy rights, the United States Supreme Court has determined that probable cause[2] is

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

1. *Compare* Bell v. Wolfish, 441 U.S. 520, 560 (1979) (routine strip searches of pretrial detainees can be conducted on less than probable cause); Iskander v. Village of Forest Park, 690 F.2d 126, 129 (7th Cir. 1982) (blanket strip search policy held unconstitutional because of the absence of a belief of concealment); Logan v. Shealy, 660 F.2d 1007, 1013 (4th Cir. 1981) (routine strip searches of traffic offenders requires a determination of belief that offender had concealed contraband), *cert. denied*, 455 U.S. 942 (1982); United States v. Himmelwright, 551 F.2d 991, 995 (5th Cir.) (reasonable suspicion standard affords individual protection against unreasonable searches), *cert. denied*, 434 U.S. 902 (1977); Hunt v. Polk County, 551 F. Supp. 339, 345 (S.D. Iowa 1982) (reasonable suspicion required to conduct strip search of temporary detainee); *with* Tinetti v. Wittke, 620 F.2d 160, 161 (7th Cir. 1980) (officials must demonstrate probable cause to conduct strip searches of pretrial detainees charged with traffic offenses); Smith v. Montgomery County, 547 F. Supp. 592, 594 (D. Md. 1982) (probable cause required to conduct strip search of temporary detainee); *with* Dufrin v. Spreen, 712 F.2d 1084, 1087 (6th Cir. 1983) (no determination of belief of concealment required to conduct strip search and body cavity inspection of detainee); Daugherty v. Harris, 476 F.2d 292, 294 (10th Cir. 1973) (routine strip search policy upheld on presumption that cause is not required unless searches conducted wantonly); Roscom v. City of Chicago, 570 F. Supp. 1259, 1262 (N.D. Ill. 1983) (no belief required based on presumption that all pretrial detainees may be concealing contraband); Giles v. Ackerman, 559 F. Supp. 226, 228 (D. Idaho 1983) (same conclusion); Bell v. Manson, 427 F. Supp. 450, 452 (D. Conn. 1976) (same conclusion).

2. Probable cause, according to the Supreme Court, is a flexible standard based on common sense. Texas v. Brown, 460 U.S. 730, 738 (1983). The essence of probable cause requires that the facts known to the searching officer would warrant a reasonably cautious person in the belief that a search would reveal contraband or evidence of a crime. *Id.*, *citing* Carroll v. United States, 267 U.S. 132, 162 (1925). Probable cause does not suggest a certainty or a conclusion beyond a reasonable doubt. Brinegar v. United States, 338 U.S. 160, 175 (1949). Probable cause and reasonable belief are concepts which are substantially similar and interchangeable. *Id.*

not required to conduct a strip search of a pretrial detainee.[3] In *Mary Beth G. v. City of Chicago*,[4] the United States Court of Appeals for the Seventh Circuit addressed the constitutionality of a Chicago Police Department strip search policy. That policy authorized strip searches of all females detained in City lockups without regard to the nature of the charges against them and absent any belief that they were concealing contraband on or in their bodies.[5] The court held that a searching officer must have a reasonable suspicion to conduct a strip search of a pretrial detainee charged with a traffic or minor misdemeanor offense.[6] Consequently, the court found that, because the City's practice was not based on a reasonable suspicion, it constituted an unreasonable search under the fourth amendment.[7] The court also found that the strip search policy constituted an unequal application of the law, and thus violated the equal protection clause of the fourteenth amendment.[8]

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3. Bell v. Wolfish, 441 U.S. 520, 560 (1979). *Wolfish* was the first case in which the United States Supreme Court delineated the scope of fourth amendment protections retained by pretrial detainees. In *Wolfish*, pretrial detainees at a federally operated short-term custodial institution brought a class action claiming that several conditions of confinement violated their constitutional rights. *Id.* at 523-25. One of the alleged violations was the institution's practice of conducting visual strip searches and concomitant body cavity inspections of detainees after contact visits with persons from outside the facility. *Id.* The pretrial detainees contended that the visual strip searches, absent a determination of probable cause to believe that the detainees were concealing weapons or other contraband, violated their fourth amendment rights against unreasonable searches and seizures. *Id.*

In a five to four decision, the Court found that a pretrial detainee properly retains an expectation of privacy under the fourth amendment. *Id.* at 560. The Court also found, however, that correctional officials must be able to carry on all necessary searches to discover any attempt to smuggle contraband into the facility. The Court held that the visual body cavity inspections could be conducted on less than probable cause and were, therefore, reasonable searches under the fourth amendment. *Id. See generally* Note, *Constitutional Limitations on Body Searches in Prisons*, 82 COLUM. L. REV. 1033 (1982) (comprehensive analysis of *Wolfish* and its impact on subsequent strip search litigation).

4. 723 F.2d 1263 (7th Cir. 1983).

5. *Id.* at 1266.

6. *Id.* at 1273.

7. The fourth amendment provides:

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

U.S. CONST. amend. IV.

8. *Mary Beth G.*, 723 F.2d at 1274. All female detainees were subjected to a strip search and accompanying visual inspection. Male detainees arrested and detained for similar offenses, however, were merely subjected to a thorough pat-down search. A detention officer was required to have a reason to believe that a male detainee was concealing contraband in order to conduct a strip search. *Id.* at 1268. The City sought to justify this significant

In March of 1977, Chicago police stopped Mary Beth G. for a minor traffic violation.[9] She was taken to a Chicago precinct

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disparity in treatment on two grounds. First, the City asserted that the thorough pat-down searches were as intrusive on a person's privacy as the strip searches and visual examinations. *Id.* at 1274. Second, the City contended that the practice was not arbitrary because, based on documented evidence, women have the ability to secrete contraband in their vaginal cavity, and that such contraband cannot be discovered through a pat-down search. *Id.* The City contended, therefore, that both sexes were subjected to equal treatment under the law. *Id.*

As to the City's first contention, the *Mary Beth G.* court observed that "visual cavity searches . . . are one of the more humiliating invasions of privacy imaginable, and [the court found] those searches to be substantially more intrusive than the thorough hand searches." *Id.* As to the City's second contention, the court noted several conclusions drawn by the district court. First, the City's evidence lacked specificity. *Id.* Second, weapons or contraband could be hidden in the vaginal cavity of a female. Third, weapons or contraband could similarly be hidden within the body cavities of a male and that such articles could not be discovered through a pat-down search. *Id.* Finally, these findings reasonably lead to the conclusion that the City's policy violated the equal protection clause of the fourteenth amendment. *Id.* The Seventh Circuit found that the City did not demonstrate that the incidence of items found in the vaginal cavity of women was so much greater than that associated with items found in the anal cavity of men to justify the grossly disparate search treatment. *Id.*

The equal protection clause provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. The United States Supreme Court has held that a classification which distinguishes between the sexes must show an "exceedingly persuasive justification for the classification" or it violates the equal protection clause. Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 727 (1982). Moreover, the sex-based classification must show a "close and substantial relationship to important government objectives" in order to withstand scrutiny under the equal protection clause. Personnel Admin. of Mass. v. Feeney, 442 U.S. 256, 273 (1979). The Seventh Circuit concluded that the City could not establish a direct and substantial relationship between the gender-based classifications and the purported goal of maintaining institutional security and order. The court held, therefore, that the difference in gender did not justify the disparate search treatment, and that the strip search policy violated the plaintiff's right to equal protection under the law. *Mary Beth G.*, 723 F.2d at 1274.

The *Mary Beth G.* court was also faced with the issue of determining the proper measure of damages. The City of Chicago contested the size of the damages awarded to the women. Mary Beth G. and Sharon N. each received awards of $25,000, Tikalsky received $30,000, and Hoffman was awarded $60,000, for the intangible harm caused to their psychic health by the unreasonable strip searches. *Id.* at 1275. The appellate court affirmed the judgments for each of the awards. *Id.* at 1276. It should be noted that the most recent judgment regarding the City's strip search policy, Joan W. v. City of Chicago, awarded $112,000 to a minor offender who was subjected to the City's egregious practice. That award was the largest of the eleven judgments against the City of Chicago. With twenty five cases remaining to be tried in the Seventh Circuit, and considering the fact that the size of the damages have increased with each case, the effect of the strip search policy will cost the City millions of dollars. Chicago Daily Law Bulletin, Mar. 5, 1984, at 1, col. 1.

9. *Mary Beth G.*, 723 F.2d at 1267 n. 2. Actually, *Mary Beth G.* was a consolidated appeal consisting of four appellees. Because the facts of the cases are substantially similar they do not affect the focus of this note.

lockup when the officer discovered that she had failed to pay some parking tickets.[10] Mary Beth G. was not able to post bond and, consequently, was confined in a jail cell segregated from the general criminal population. While awaiting the arrival of bail money, Mary Beth G. was subjected to a strip search and concomitant visual inspection of her person and body cavities.[11]

Mary Beth G. and two of the other women were part of a class action suit against the City in *Jane Does v. City of Chicago*.[12] The plaintiffs filed a motion for partial summary judg-

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Thus, it is unnecessary to delineate the circumstances of each arrest in the text. Chicago police arrested the plaintiffs-appellees Mary Beth G., Sharon N., Hinda Hoffman, and Mary Ann Tikalsky, independently for either traffic violations or minor misdemeanors. Mary Beth G. and Sharon N. were arrested for traffic violations. *Id.* Hinda Hoffman was arrested for her failure to produce a driver's license after being stopped for making an improper left turn. Mary Ann Tikalsky was arrested for disorderly conduct. The charge was subsequently dismissed. *Id.*

10. *Id.*

11. *Id.* at 1267. Each female detainee was searched by a matron and was required to:

1) lift her blouse or sweater and to unhook and lift her brassiere to allow a visual inspection of the breast area, to replace these articles of clothing and then
2) to pull up her skirt or dress or to lower her pants and pull down any undergarments, to squat two or three times facing the detention aide and to bend over at the waist to permit visual inspection of the vaginal and anal area.

Id. This official action induced feelings of terror and humiliation in the women because of the severity of the intrusion on their personal dignity. *Id.* The practice of strip searching all females detained in the City lockups existed between 1952 and February of 1979. This strip search policy was instituted in the Chicago Police Department because thorough pat-down searches brought complaints from female arrestees. In addition, the City alleged that some women were secreting contraband in their vaginal cavity and that the contraband could not be discovered through pat-down searches. Defendants' Memorandum for Partial Summary Judgment at 2, Jane Does v. City of Chicago, No. 79 C 789 (N.D. Ill. Jan. 12, 1982).

12. No. 79 C 789, slip op. (N.D. Ill. Jan. 12, 1982). The class consisted of:

> all female persons who were detained by the CPD [Chicago Police Department] for an offense no greater than a traffic violation or a misdemeanor, including all females who were never charged with any offense and who were subjected to a strip search in situations where there was no reason to believe that weapons or contraband had been concealed on or in their bodies.

Mary Beth G., 723 F.2d at 1267 n. 2. In a separate proceeding, the remaining woman, Tikalsky, was also found to have had her constitutional rights violated. A jury determined that the City's strip search of Tikalsky constituted an unreasonable search under the fourth amendment. *Id.* at 1267. The district court, however, ordered a new trial because the court found that the jury instructions were improperly delivered. *Id.* Tikalsky appealed the order granting a new trial. *Id.* On appeal, the Seventh Circuit held that the jury was not improperly instructed. Tikalsky v. City of Chicago, 687 F.2d 175, 182 (7th Cir. 1982). The court remanded the case to the district court with directions that the verdict and the award against the City be reinstated. *Id.*

ment claiming that the strip search policy violated the fourth amendment and the equal protection clauses of both the federal and state constitutions.[13] The United States District Court for the Northern District of Illinois held that the City's strip search policy violated those constitutional guarantees as a matter of law, and therefore granted the plaintiffs' motion for partial summary judgment.[14]

On appeal, the United States Court of Appeals for the Seventh Circuit affirmed the district court's decision.[15] The appellate court found that the City's practice constituted an unreasonable search under the fourth amendment based on two considerations. First, balanced against the City's institutional security concerns,[16] the practice amounted to a severe invasion of the plaintiff's personal privacy rights. Second, the searches were unreasonable because the searching officers had made no determination of belief that the plaintiff had hidden contraband on or in her body.[17]

The *Mary Beth G.* court began its analysis by noting that governmental searches of individuals are generally unreasonable absent a search warrant issued on probable cause.[18] The court recognized certain exceptions to the warrant requirement, however, which permit warrantless searches of persons incident

13. The plaintiffs alleged that the City's practice violated the equal protection clause, regarding gender, of the Illinois Constitution. ILL. CONST. art. I, § 18. That clause provides: "The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts." *Id.* The Seventh Circuit determined that the gender provision of the Illinois equal protection clause was coextensive with the equal protection clause of the fourteenth amendment. *Mary Beth G.*, 723 F.2d at 1268. The court, consequently, did not rule on the state constitutional issues but focused solely on the federal constitutional issues. *Id.*

14. Jane Does v. City of Chicago, No. 79 C 789, slip op. at 8 (N.D. Ill. Jan. 12, 1982).

15. Mary Beth G. v. City of Chicago, 723 F.2d 1263, 1273 (7th Cir. 1983).

16. For a discussion of weapons and other contraband discovered on or in the bodies of some female detainees, see *infra* note 60.

17. *Mary Beth G.*, 723 F.2d at 1273. The Seventh Circuit "agree[d] with the district court in *Jane Does* that ensuring the security needs of the City by strip searching plaintiffs-appellees was unreasonable without a reasonable suspicion by the authorities that either of the twin dangers of concealing weapons or contraband existed." *Id.*

18. *See* New York v. Belton, 453 U.S. 454, 457 (1981) (search of an individual requires a search warrant unless certain exceptions are shown); Mincey v. Arizona, 437 U.S. 385, 390 (1978) (search of a person without a search warrant is *per se* unreasonable); Katz v. United States, 389 U.S. 347, 357 (1967) (search of an individual without a search warrant is presumptively unlawful); United States v. McEachin, 670 F.2d 1139, 1144 (D.C. Cir. 1981) (searches undertaken without a search warrant are *per se* unreasonable subject to recognized exceptions).

to lawful arrest[19] and incident to lawful detention.[20] Given the power to conduct warrantless searches, the court observed that the scope and intensity of the search must still be reasonable under the fourth amendment.[21]

The City contended that the strip search was reasonable because of a Supreme Court decision which held that probable cause was not required to make a thorough search of an arres-

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19. *See* New York v. Belton, 453 U.S. 454, 455-56 (1981) (defendant lawfully stopped subjected to subsequent search upon plain view of contraband); United States v. Robinson, 414 U.S. 218, 224 (1973) (warrantless search incident to lawful arrest); Chimel v. California, 395 U.S. 752, 762-63 (1969) (warrantless search upheld when officer acts reasonably to protect his safety).

Because the process of arrest is defined in a broad manner, the authority to conduct a warrantless search incident to arrest extends to searches at the police station. In United States v. Edwards, the arrestee broke into a post office through a window. 415 U.S. 800, 804 (1974). The next morning, jail officials removed and searched his clothes for evidence. *Id.* The search revealed paint chips which matched the paint on the window of the post office. *Id.* The Supreme Court concluded that the search and seizure was substantially contemporaneous with the arrest and that a reasonable delay in searching an individual incident to arrest was not unconstitutional. *Id.* at 805. The Court noted, in Illinois v. Lafayette, that "[p]olice conduct that would be impractical or unreasonable—or embarrassingly intrusive—on the street can more readily—and privately be performed at the station." 103 S. Ct. 2605, 2609 (1983).

Some of the justifications for conducting a warrantless search have been promulgated in statutes. For instance, an Illinois statute provides:

> Search without Warrant. When a lawful arrest is effected a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:
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> (a) Protecting the officer from attack; or
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> (b) Preventing the person from escaping; or
>
> (c) Discovering the fruits of the crime; or
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> (d) Discovering any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, an offense.

ILL. REV. STAT. ch. 38 § 108-1 (1983).

20. Bell v. Wolfish, 441 U.S. 520, 556-57 (1979) (government has the authority to search all lawfully detained individuals without the requirement of a search warrant); United States v. Edwards, 415 U.S. 800, 809 (1974) (warrantless search is reasonable for purposes of police protection, discovery of weapons and evidence, and prevention of escape). *See generally* W. LAFAVE, SEARCH AND SEIZURE § 5.3(a) (1978 and 1984 supplement) (search of person upon arrival at detention facility).

21. 723 F.2d at 1269. *Accord* Bell v. Wolfish, 441 U.S. 520, 560 (1979) (all searches must be conducted in a reasonable manner); Terry v. Ohio, 392 U.S. 1, 9 (1968) (individual's right to privacy is not an unqualified right because the Constitution only protects individuals who are subjected to "unreasonable" searches and seizures); Smith v. Fairman, 678 F.2d 52, 54 (7th Cir. 1982) (jail officials can utilize reasonable measures to detect the smuggling of contraband), *cert. denied*, 103 S. Ct. 1879 (1983); Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 761 (3rd Cir. 1979) (jail officials cannot go beyond what is reasonable in conducting searches of detainees).

tee.[22] In *United States v. Robinson*,[23] the Supreme Court ruled that after a police officer had made an arrest based on probable cause, the officer could undertake a "full search" of the arrestee to discover weapons, evidence, and instruments of escape. The Court reasoned that such a search was presumed to be reasonable notwithstanding an absence of probable cause to believe that the arrestee was concealing contraband on his person.[24] The Court justified its holding on the premise that, regardless of the severity of the offense, all custodial arrests are inherently dangerous to police safety. The Court did not assume that persons charged with minor offenses were less likely to possess dangerous weapons than persons arrested for more serious offenses.[25] The *Mary Beth G.* court found, however, that the holding in *Robinson* could not be extended because the plaintiff was not inherently dangerous to police safety and because the strip search was unreasonably intrusive. The City, therefore, exaggerated its response to institutional security because the plaintiff could hardly have been considered a risk to the detention facility.[26]

In rejecting *Robinson*, the *Mary Beth G.* court indicated that the intensity of a strip search must be guided by a test of reasonableness. Accordingly, the court focused on the Supreme

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22. *Mary Beth G.*, 723 F.2d at 1269, *citing* United States v. Robinson, 414 U.S. 218, 235 (1973).

23. 414 U.S. 218 (1973).

24. *Id.* at 235. Robinson was arrested for driving without a permit. He was subjected to a pat-down search which produced a suspicious cigarette package. The officer opened the package and discovered fourteen heroin capsules. *Id.* at 220. The Supreme Court concluded that the search was reasonable under the fourth amendment since Robinson was under lawful arrest. *Id.* at 235. In an often cited opinion, the Supreme Court held:

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

Id.

25. *Id.* at 226. The Court ruled that the danger of concealed weapons alone, regardless of the offense, provides an "adequate basis for treating all custodial arrests alike for purposes of search justification." *Id.* at 235. The Court noted a study which concluded that approximately 30% of all shootings of police officers occurred when an officer stopped a person in an automobile. *Id.* at 234 n. 5.

26. *Mary Beth G.*, 723 F.2d at 1269. *Contra* Giles v. Ackerman, 559 F. Supp. 226, 228 (D. Idaho 1983) (on facts similar to *Mary Beth G.*, court upheld strip search policy on ground that traffic offenders could include people with communicable diseases, people who use drugs, and people who are inherently dangerous).

Court's balancing of interests test developed in *Bell v. Wolfish*.[27] The court applied this balancing test by weighing security precautions in jail facilities against individual privacy interests.[28] The City's primary concerns consisted of preventing harm to lockup personnel and other detainees, preventing the destruction of evidence, and preventing the smuggling of drugs, weapons, and other contraband into a custodial facility.[29] The plaintiff's primary concern consisted of a fundamental expectation of personal privacy from unwarranted official intrusions. The court concluded that the search was unreasonable because the City's need to maintain the internal security of its lockups did not outweigh the harsh assault upon the plaintiff's privacy and dignity.[30]

The court additionally reasoned that, because the police made no individual determination as to any belief of concealment, the policy violated the prohibitions of the fourth amendment.[31] The Supreme Court, in *Wolfish*, held that an officer could conduct a visual strip search and attendant body cavity inspection of a pretrial detainee on a standard of belief of less than probable cause.[32] The *Mary Beth G.* court held that an officer was required to have a reasonable suspicion of concealment and found that *Wolfish* was not controlling because of the differing circumstances surrounding the searches.[33]

The court distinguished *Mary Beth G.* from *Wolfish* on three grounds. First, the pretrial detainees in *Wolfish* were charged with serious federal offenses, while the pretrial detainees in *Mary Beth G.* were charged with minor offenses.[34] Second, the *Wolfish* detainees were being confined for longer periods of

27. 441 U.S. 520 (1979). For a discussion of *Wolfish*, see *supra* note 3.

28. *Mary Beth G.*, 723 F.2d at 1272. The *Wolfish* balancing of interests test has been applied by a great number of courts across the nation in determining the "reasonableness" of strip searches. In *Wolfish*, the Supreme Court observed:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

441 U.S. at 558-59.

29. *Mary Beth G.*, 723 F.2d at 1272.

30. *Id.* at 1273. *Contra* Giles v. Ackerman, 559 F. Supp. 226, 228 (D. Idaho 1983) (court found strip search policy reasonable in order to maintain internal security).

31. *Mary Beth G.*, 723 F.2d at 1273.

32. 441 U.S. at 560.

33. 723 F.2d at 1272.

34. *Id.*

time.[35] Third, the *Wolfish* detainees were strip searched after contact visits[36] to prevent the opportunity to smuggle contraband into the facility.[37] Consequently, the court distinguished *Mary Beth G.* from *Wolfish* on its facts, but nevertheless held, like *Wolfish*, that an officer could conduct a strip search of a pretrial detainee on less than probable cause.

The *Mary Beth G.* court provided for minimal protection of an individual's expectations of personal privacy against unreasonably intrusive governmental searches. The court noted two mechanical principles of search and seizure analysis in applying the balancing of interests test enunciated in *Wolfish*. First, the court observed that a reasonableness test must be measured against an objective standard in order to weigh the facts upon which the intrusion was based.[38] Second, in determining whether a fourth amendment violation existed, the court recognized a sliding scale of reasonableness and weighed the intrusiveness of the strip search against the degree of antecedent cause to believe that the plaintiff was concealing contraband.[39] Although the Seventh Circuit had shown a willingness to apply a probable cause standard to determine the reasonableness of

35. *Id.*

36. A contact visit refers to an institutional visitation policy wherein the inmate and his visitor have the ability to touch each other without a barrier separating the inmate and visitor. Such an arrangement can induce the frequency of smuggling into the institution. *See* Block v. Rutherford, 104 S. Ct. 3227, 3233 (1984) (holding that pretrial detainees do not have constitutional rights to contact visits or to observe searches of their cells).

37. *Mary Beth G.*, 723 F.2d at 1272.

38. *Id.* at 1273, *citing* Delaware v. Prouse, 440 U.S. 648, 654 (1979). In *Prouse*, the Supreme Court held that discretionary stop checks of vehicles, where there were no traffic violations and no suspicious activity, constituted an unreasonable search under the fourth amendment. 440 U.S. 648, 654 (1979). A police officer stopped the respondent's vehicle to check the respondent's license and registration. The officer smelled marihuana and seized the controlled substance which was in plain view. *Id.* at 651. The Court ruled that, balancing the promotion of legitimate governmental interests against the respondent's personal privacy interests, the discretionary stop checks violated the fourth amendment because alternate, less intrusive means existed to identify drivers who carried invalid licenses and registrations. *Id.* at 654. In United States v. Afanador, 567 F.2d 1325, 1331 (5th Cir. 1978), the Fifth Circuit also recognized the well established rule that cause must be directed to the individual being searched. The Court found that this necessarily cannot be accomplished through routine law enforcement procedures. *Id.*

39. *Mary Beth G.*, 723 F.2d at 1273. *Accord* Terry v. Ohio, 392 U.S. 1, 18 n. 15 (1968) (the scope of the particular intrusion, in light of all the exigencies of the case, is a central element in the analysis of reasonableness); United States v. Afanador, 567 F.2d 1325, 1328 (5th Cir. 1978) (the greater the intrusion, the greater the reason for conducting the search).

strip searches of persons charged with minor offenses,[40] the *Mary Beth G.* court held that the strip search was unreasonable because it was undertaken without a reasonable suspicion of some type of unlawful concealment.[41]

Courts faced with the issue of the reasonableness of a strip search have generally been inconsistent in testing the standard of belief necessary to conduct that search.[42] It is apparent, however, that the more extensive the invasion of privacy, the greater the burden should be on the government to justify that invasion.[43] In light of prior strip search cases brought before the Seventh Circuit, the holding in *Mary Beth G.* was inadequate because the invasion of the detainee's privacy was severe and because the court failed to require probable cause to conduct strip searches of individuals detained for minor offenses.[44] Although the court's decision was correct, the court's reasoning may cast doubt in the Seventh Circuit as to the type of official conduct that constitutes an unreasonable search under the fourth amendment.

It is a fundamental principle of constitutional law that an individual has a right to privacy.[45] It is equally established,

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40. For an analysis of prior Seventh Circuit decisions concerning the "reasonableness" of strip searches of persons charged with minor offenses, see *infra* note 55.

41. *Mary Beth G.*, 723 F.2d at 1273.

42. For an outline of cases applying inconsistent standards of belief, see *supra* note 1.

43. *See* Terry v. Ohio, 392 U.S. 1, 19 (1968) (scope and intensity of a search must be strictly tied to and justified by circumstances which rendered the intrusion permissible). Law enforcement officials, however, usually attempt to justify their unreasonably intrusive searches by extracting broad pro-search dictum from landmark cases. In United States v. Robinson, 414 U.S. 218, 235 (1973), for instance, the Supreme Court decided that an arresting officer may conduct a "full search" of the arrestee and that the officer did not need any cause in justification of the search. The Court ruled that such a search was presumed to be reasonable because the individual was arrested on probable cause. The Court described a "full search" incident to arrest as one involving "a relatively extensive exploration of the person." *Id.* at 227, *citing* Terry v. Ohio, 392 U.S. 1, 25 (1968).

The City of Chicago cited *Robinson* as authority for conducting strip searches of minor offenders incident to arrest. *Mary Beth G.*, 723 F.2d at 1269. *Robinson*, however, merely focused on the reasonableness of a pat-down search, not a strip search, and concluded that an arresting officer may conduct a reasonable search for weapons. 414 U.S. at 235. The Seventh Circuit, in *Mary Beth G.*, distinguished the cases on the ground that "the *Robinson* Court simply did not contemplate the significantly greater intrusions that occurred here." 723 F.2d at 1271.

44. For an analysis of other cases in which the Seventh Circuit has required a high level of antecedent cause to conduct strip searches of persons charged with minor offenses, see *infra* note 55.

45. *See* Schmerber v. California, 384 U.S. 757, 767 (1966) (the individual's privacy interests are protected by the fourth amendment); Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) (right to

however, that an individual's personal privacy expectations are diminished while the individual is in lawful custody.[46] This limitation of fourth amendment protections, moreover, has been applied not only to convicted prisoners, but also to pretrial detainees.[47] Although the City's strip search policy may be apposite in light of certain extreme realities of confinement, the

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privacy acknowledged as "the right most valued by civilized men"); Union Pac. Ry. Co. v. Botsford, 141 U.S. 250, 251 (1891) (no right is more sacred and carefully guarded than the right to be free from unreasonable interference); Smith v. Fairman, 678 F.2d 52, 53 (7th Cir. 1982) (protection of person's personal privacy interests is inherent in the fourth amendment), *cert. denied*, 103 S. Ct. 1879 (1983); United States v. Afanador, 567 F.2d 1325, 1331 (5th Cir. 1981) (a person's body is draped with constitutional protections); York v. Story, 324 F.2d 450, 455 (9th Cir. 1963) (the naked body is guarded by the constitutional protections respecting rights to privacy).

46. Jail and prison officials frequently "shake down" their detention facilities in order to uncover contraband. The unlawful articles may be used as evidence in disciplinary proceedings and in criminal prosecutions. The officials, therefore, are given great latitude in searching the bodies of persons in lawful custody. *See* Block v. Rutherford, 104 S. Ct. 3227, 3232 (1984) (courts should play a limited role in analyzing the administration of detention facilities and give detention officials wide-ranging deference); Houchins v. KQED, Inc., 438 U.S. 1, 5 n. 2 (1978) (Chief Justice Burger suggested that, although an inmate's constitutional protections are limited while in custody, the inmate still retains "certain fundamental rights of privacy"); Lanza v. New York, 370 U.S. 139, 143 (1962) (personal privacy interests of one lawfully incarcerated are limited); Price v. Johnston, 334 U.S. 266, 285 (1948) (withdrawal or limitation of many constitutional privileges and rights upon incarceration); Stroud v. United States, 251 U.S. 15, 21 (1919) (prisoners are not granted full protection of the fourth amendment); Madyun v. Franzen, 704 F.2d 954, 958 (7th Cir.) (prisoners retain constitutional protections but these protections are diminished by reason of conviction and confinement), *cert. denied*, 103 S. Ct. 493 (1983); Smith v. Fairman, 678 F.2d 52, 54 (7th Cir. 1982) (inmate's constitutional guarantees are necessarily limited), *cert. denied*, 103 S. Ct. 1879 (1983).

47. "Pretrial detainee" refers to a person who has been charged with an offense but who has not been tried for that offense. A pretrial detainee is confined for the purpose of assuring his appearance in court. "Prisoner" refers to a person who has been convicted and confined for the offense charged. A prisoner is confined for the purpose of accomplishing the objectives of criminal law, that is, punishment, deterrence, restraint, and rehabilitation.

Notwithstanding this significant distinction, several courts have held that the constitutional deprivations imposed upon convicted prisoners similarly apply to pretrial detainees. *See, e.g.*, Bell v. Wolfish, 441 U.S. 520, 558 (1979) (no difference between pretrial detainees and prisoners because pretrial detainees do not pose any lesser threat to security than convicted prisoners); Dufrin v. Spreen, 712 F.2d 1084, 1087-88 (6th Cir. 1983) (correctional facility officers need not distinguish between pretrial detainees and convicted inmates when reviewing institutional security practices); United States v. Hinckley, 672 F.2d 115, 128 (D.C. Cir. 1982) (unavailability of workable precedent to the extent of fourth amendment protections accorded pretrial detainees). *See generally* Gianelli, *Prison Searches and Seizures: "Locking" the Fourth Amendment Out of Correctional Facilities*, 62 VA. L. REV. 1045 (1976) (comparing rights accorded pretrial detainees with rights accorded inmates).

scope and intensity of those searches distinguish *Mary Beth G.* from *Wolfish* and *Robinson.*

Courts have generally been inconsistent in applying appropriate levels of antecedent cause for conducting strip searches. These inconsistencies are in part due to the varying circumstances surrounding the searches.[48] The standards for conducting strip searches of persons detained in jails and prisons have ranged from probable cause,[49] to a minimal belief of concealment,[50] to the proposition that no determination of any belief is required to conduct body searches.[51]

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48. In border searches, for instance, courts have determined that the government must have a real or reasonable suspicion of concealment in order to conduct a strip or pat-down search of an individual. *See* United States v. Dorsey, 641 F.2d 1213, 1217 (7th Cir. 1981) (pat-down search of person revealing 58.5 grams of cocaine upheld because officer had reasonable suspicion); United States v. Afanador, 567 F.2d 1325, 1330 (5th Cir. 1978) (strip search of stewardess which revealed bags of cocaine taped in the genital and waist areas upheld because officer had reasonable suspicion to conduct body search).

In order to conduct body cavity searches, however, courts have found that the government must have a clear indication of belief. *See* Henderson v. United States, 390 F.2d 805, 808 (9th Cir. 1967) (official must have a real suspicion to conduct strip search and a clear indication to conduct body cavity search). *See generally* Alexander, *Unwarranted Power at the Border: The Intrusive Body Search*, 32 Sw. L. J. 1005 (1978) (analysis of the reasonableness of strip searches at the border); Note, *Criminal Law: It's Touch and Go at the Border*, 11 STETSON L. REV. 551 (1982) (discussion of recent federal decision focusing on border search).

49. *See* Tinetti v. Wittke, 620 F.2d 160, 160-61 (7th Cir. 1980) (per curiam) (jail personnel must have probable cause in order to conduct strip searches of pretrial detainees charged with traffic violations); Smith v. Montgomery County, 547 F. Supp. 592, 599 (D. Md. 1982) (detention officer must have probable cause to conduct strip search of temporary detainee).

50. *See* Bell v. Wolfish, 441 U.S. 520, 560 (1979) (Court held that these searches could be conducted on a standard of belief of less than probable cause, thus implicitly holding that some degree of belief was required); Iskander v. Village of Forest Park, 690 F.2d 126, 129 (7th Cir. 1982) (jail personnel must show cause); Logan v. Shealy, 660 F.2d 1007, 1013 (4th Cir. 1981) (routine strip search policy held unconstitutional because there was no determination of belief), *cert. denied*, 455 U.S. 942 (1982); United States v. Himmelwright, 551 F.2d 991, 995 (5th Cir. 1977) (reasonable suspicion is required), *cert. denied*, 434 U.S. 902 (1977); Hunt v. Polk County, 551 F. Supp. 339, 344 (S.D. Iowa 1982) (reasonable suspicion required to conduct strip search of temporary detainee); Black v. Amico, 387 F. Supp. 88, 92 (W.D.N.Y. 1974) (real suspicion required to conduct strip search of prisoner).

51. *See* Dufrin v. Spreen, 712 F.2d 1084, 1087 (6th Cir. 1983) (reasonableness of strip search based on balancing test, thus, no need to show that officer lacked cause); Daughtery v. Harris, 476 F.2d 292, 294 (10th Cir.) (all searches are reasonable unless wanton conduct is shown, hence, absence of belief is irrelevant), *cert. denied*, 414 U.S. 872 (1973); Roscom v. City of Chicago, 570 F. Supp. 1259, 1262 (N.D. Ill. 1983) (blanket policy upheld on ground that all pretrial detainees could be concealing contraband); Giles v. Ackerman, 559 F. Supp. 226, 228 (D. Idaho 1983) (searching officer is not required to form any basis of belief); Bell v. Manson, 427 F. Supp. 450, 452 (D. Conn. 1976) (no individual determination of belief required); Giampetruzzi

The issues involved in determining the proper degree of antecedent cause are frequently complex. It does not take a constitutional scholar, however, to recognize that the highest level of cause must be applied before the government can subject traffic offenders to strip searches. Clearly, considerations of personal privacy exceed jail security concerns based upon a balancing of interests analysis because traffic offenders do not pose a security threat. Because of the notoriety of the City's strip search policy, the Illinois legislature amended the rights on arrest statute to prohibit strip searches of persons arrested for traffic, regulatory, or misdemeanor offenses absent a reasonable belief of unlawful concealment.[52] The Supreme Court of Illinois has responded firmly by also requiring that the searching officer have a reasonable belief of concealment.[53] Moreover, commentators exploring the "reasonableness" of strip searches of persons charged with minor offenses have also agreed that a showing of probable cause should be a prerequisite to conducting those searches.[54]

Prior to *Mary Beth G.*, the Seventh Circuit made it clear that, in order to conduct a strip search of a minor offender, the government must have probable cause to believe that the individual is concealing contraband on or in the body.[55] The court in *Mary Beth G.*, however, held that the strip searches, pursuant to the City's policy, were unreasonable because the City did not

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v. Malcolm, 406 F. Supp. 836, 844 (S.D.N.Y. 1975) (no cause required to justify blanket policy).

52. ILL. REV. STAT. ch. 38, § 103-1 (1983). The Illinois legislature amended the statute because of the pressure exerted by the American Civil Liberties Union and by the notoriety of *Jane Does v. City of Chicago.* The amended statute, effective as of September 2, 1979, provides: "No person arrested for a traffic, regulatory or misdemeanor offense, except in cases involving weapons or a controlled substance, shall be strip searched unless there is reasonable belief that the individual is concealing a weapon or controlled substance." *Id.*

53. People v. Seymour, 84 Ill. 2d 24, 36, 416 N.E.2d 1070, 1075 (1981).

54. *See, e.g.*, Dix, *Means of Executing Searches and Seizures as Fourth Amendment Issues*, 67 MINN. L. REV. 89 (1982) (analyzing the reasonableness of searches and the justifications for initiating those searches); Shuldiner, *Visual Rape: A Look at the Dubious Legality of Strip Searches*, 13 J. MAR. L. REV. 273 (1980) (discussing the constitutionality of strip searches and the necessity of stringent fourth amendment safeguards).

55. In Salinas v. Breier, 695 F.2d 1073, 1075 (7th Cir. 1982), *cert. denied*, 104 S. Ct. 119 (1983), federal agents and local officials had probable cause to believe that Robert Salinas was transporting heroin into Milwaukee. While driving through Milwaukee with his wife Carolyn and their four children, Salinas' car was stopped by law enforcement personnel and he was placed under arrest. The Salinas family was taken to the police station. Although Carolyn and the children were not arrested, they were held in custody. *Id.* Thereafter, Carolyn and her four young children were subjected to strip searches and body cavity inspections. *Id.* at 1075-76. The Seventh Circuit reasoned that, because the police had probable cause to carry on the war-

have a reasonable suspicion of concealment.[56] Because reasonable suspicion is considered a lesser standard of belief than probable cause,[57] the court, in determining an appropriate level of antecedent cause, distinguished *Wolfish* in a curious fashion.

The *Mary Beth G.* court applied the *Wolfish* balancing test primarily to decide whether the City exaggerated its response to legitimate security considerations. The City argued that the plaintiff did pose a threat to institutional order requiring such a severe invasion of her personhood.[58] The City sought to analogize the Supreme Court's reasoning in *Wolfish* to the facts of *Mary Beth G.* In *Wolfish*, the Court found that the detainee's right of privacy was subordinate to the correctional goal of internal security where there had been only one reported occasion of

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rantless strip searches, the searches were reasonable as defined under the fourth amendment. *Id.* at 1085.

In Doe v. Renfrow, 631 F.2d 91 (7th Cir. 1980) (per curiam), *cert. denied*, 451 U.S. 1022 (1982), district school officials in Highland, Indiana, searched junior high school students for suspected possession of narcotics. The school officials, consequently, compelled a junior high school girl to remove her clothing so that they could search her nude body. Because the officials did not have reasonable cause to conduct that strip search, the Seventh Circuit concluded that the girl's fourth amendment rights were violated. *Id.* at 92. The court observed that it did "not require a constitutional scholar to conclude that a nude search of a thirteen-year-old child is an invasion of constitutional rights of some magnitude." *Id.* at 92-93.

In Tinetti v. Wittke, 479 F. Supp. 486, 488 (E.D. Wis. 1979), *aff'd*, 620 F.2d 160 (7th Cir. 1980) (per curiam), the plaintiff and her four children drove from their home in Colorado to visit relatives in Wisconsin. The plaintiff was arrested for speeding by a Wisconsin State Police officer. 479 F. Supp. at 488. Since the plaintiff was not a resident of Wisconsin, she was required to post a forty dollar cash bond; she was unable to post bond and was taken to jail. *Id.* The plaintiff was then subjected to a strip search pursuant to a Racine County policy. That policy required a strip search of all persons detained in the facility regardless of the offense. *Id.* at 489. The Seventh Circuit, adopting the district court's opinion, found that the strip search policy violated the plaintiff's fourth amendment protections. 620 F.2d at 160-61. The court held that detention officials must have probable cause to believe that a pretrial detainee, charged with a traffic offense, is concealing contraband in order to conduct a strip search. *Id.*

56. *Mary Beth G.*, 723 F.2d at 1273.

57. *See* Terry v. Ohio, 392 U.S. 1, 27 (1968) (officer need not have probable cause to arrest in order to subject individual to a warrantless pat-down search, because a reasonable suspicion or belief may warrant that intrusion); United States v. Afanador, 567 F.2d 1325, 1328 (5th Cir. 1978) (standard of reasonable suspicion is recognized as a lesser standard of belief than probable cause); United States v. Himmelwright, 551 F.2d 991, 994-95 (5th Cir. 1977) (because reasonable suspicion standard affords individual full measure of protection, full-blown probable cause is not required for strip search); Perel v. Vanderford, 547 F.2d 278, 280 (5th Cir. 1977) (probable cause was not necessary because proper standard for governing strip search at border was real or reasonable suspicion); Hunt v. Polk County 551 F. Supp. 339, 345 (S.D. Iowa 1982) (jail officials need not show probable cause because the lesser standard of reasonable suspicion properly governed "reasonableness" of strip searches of minor offenders).

58. *Mary Beth G.*, 723 F.2d at 1272.

concealment in that facility.[59] In *Mary Beth G.*, the City of Chicago provided evidence to indicate that several female detainees had attempted to conceal contraband on or in their bodies while in custody.[60] The City argued, therefore, that the *Wolfish* holding should control because the justifications for conducting the strip searches in *Mary Beth G.* were even greater than those proposed in *Wolfish.*

The *Mary Beth G.* court rejected this argument on three grounds. First, the strip search policy in *Wolfish* was implemented to deter the detainees from attempting to smuggle contraband into the institution after contact visits. Second, the court found that the policy was an effective deterrent because there had been only one reported instance of concealment. Third, unlike the detainees in *Wolfish*, the detainees in *Mary Beth G.* had no knowledge that they would be strip searched and, therefore, they had no motive to conceal contraband on or in their bodies.[61]

As a result of these distinctions, the court accurately ruled that the *Wolfish* holding was not controlling. The City's evidence simply did not justify its policy. Of the large number of strip searches, the City could produce evidence of only a small number of women who had actually secreted weapons or other contraband on or in their bodies.[62] Furthermore, in the majority of those instances, the detainees who did conceal contraband were arrested for serious offenses, such as prostitution, assault, or narcotics violations.[63]

Prior to *Mary Beth G.*, the Seventh Circuit addressed the issue of the reasonableness of strip searches and demonstrated

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59. 441 U.S. 520, 559 (1979).

60. The Chicago Police Department undertook an evaluation of its strip search policy of female detainees between June and July of 1965. During a 35 day period, 1,824 female detainees were stripped and visually searched. 7.1% of these women had concealed weapons or contraband on their bodies or among their belongings. The Department stated that 3.4% of those detainees had articles hidden on or in their bodies and that, consequently, such contraband could only be detected through a practice of partial disrobement and visual inspection. Common examples of contraband found in the "body orifice" of the women included narcotics, razor blades, small knives, money and cigarettes. Appendix to Brief for Defendant-Appellant at 29, 32-34, Mary Beth G. v. City of Chicago, 723 F.2d 1263 (7th Cir. 1983).

61. *Mary Beth G.*, 723 F.2d at 1272.

62. The City's evidence, which consisted of affidavits of lockup personnel and an analytical survey, revealed that the number of items recovered from body cavity searches was strikingly small. This was especially so when the evidence focused on the instances of contraband concealed by traffic offenders and minor misdemeanants. The Seventh Circuit was prompted to find that the evidence the City offered to justify the legitimacy of its strip search policy belied its purported concerns. *Id.*

63. *Id.* at 1273.

a trend towards greater protection of an individual's bodily integrity against unreasonably intrusive governmental invasions.[64] In *Tinetti v. Wittke*,[65] for instance, the United States Court of Appeals for the Seventh Circuit held that strip searches of traffic offenders, absent probable cause, violated the fourth, fifth, and fourteenth amendments of the Constitution as a matter of law.[66] The policy of the Racine County Police, in *Tinetti*, authorized strip searches of all persons detained in the county lockup regardless of their offense and absent any belief of concealment. The court indicated that some degree of antecedent cause must be directed to the individual being searched,[67] and that this necessarily could not be accomplished through a routine practice of strip searching all detainees.[68]

While *Tinetti* supports the argument that a probable cause standard should have been extended to *Mary Beth G.*,[69] one factor may be advanced to distinguish the two cases. The arrestee in *Tinetti* was detained for a single traffic violation and an inability to post bond.[70] The plaintiff in *Mary Beth G.* was detained for a single traffic violation, coupled with outstanding parking tickets, and an inability to post bond.[71] Therefore, the sole distinguishing factor between *Tinetti* and *Mary Beth G.* was the presence of outstanding parking tickets.

This distinction is inconsequential in several respects. First, the existence of outstanding parking tickets cannot be interpreted to suggest that the plaintiff had contraband hidden on or in her body.[72] Second, the additional parking violations did

64. For a discussion concerning the Seventh Circuit's previous decisions regarding strip searches of pretrial detainees, see *supra* note 55.

65. 479 F. Supp. 486 (E.D. Wis. 1979), *aff'd*, 620 F.2d 160 (7th Cir. 1980) (per curiam).

66. 620 F.2d at 160.

67. 479 F. Supp. 486-89. *Accord* Ybarra v. Illinois, 444 U.S. 85 (1979) (suspicion justifying a search must relate specifically to the person being searched and not to some broad category of persons).

68. *Tinetti*, 479 F. Supp. at 490-91, *aff'd*, 620 F.2d at 160.

69. Because of the following three key similarities between the cases, the *Mary Beth G.* court should have proceeded on a probable cause standard. First, both women were arrested and held in custody for minor traffic violations. Second, while awaiting bail money, both women were subjected to a strip search and attendant visual inspection of their persons. Third, both strip searches were authorized pursuant to routine law enforcement policies. For an independent discussion of both *Mary Beth G.* and *Tinetti*, see *supra* notes 9 and 55 respectively.

70. 479 F. Supp. at 490-91.

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

72. In fact, the severity of the plaintiff's offense was not even taken into consideration. *Id.* at 1266. The designated consequence of any offense, whether it be a robbery or a traffic violation, was that the woman would be subjected to humiliation and frustration due to an unwarranted strip

not make the police fearful for their own safety or for the safety of other detainees.[73] Third, there was no legitimate reason to consider the plaintiff anything other than an ordinary traffic offender.[74] Finally, given the additional traffic violations in *Mary Beth G.*, the City's strip search policy was still a routine and indiscriminate policy that applied to all women regardless of their offense.[75] The court, therefore, should have extended the standard of probable cause to *Mary Beth G.*

Following the applicable precedent of *Tinetti*, the district court, in *Jane Does v. City of Chicago*,[76] held that the strip searches violated the fourth amendment because the searching officers did not have a reasonable belief that the plaintiffs were concealing contraband.[77] It is apparent that the district court was guided by the holding in *Tinetti* because the court based its decision on a high level of antecedent cause. The *Mary Beth G.* court, however, sustained the plaintiff's fourth amendment challenge on a lesser level of cause, thus limiting the personal privacy expectations of pretrial detainees. Based on the narrow facts of this case, the approach taken by the district court is preferable because it was consistent with an established precedent in that jurisdiction.

The *Mary Beth G.* court, nevertheless, correctly observed that, balanced against the need for internal security, "the visual cavity searches conducted by the City [were] one of the more

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search. This across-the-board approach really brings to light the egregious nature of the Chicago Police Department's strip search policy.

73. It is difficult, based on the facts of *Mary Beth G.*, to attach approval to the Supreme Court's holding that police officers can treat murderers, thieves, and traffic violators alike for search and seizure purposes. The Court has found, however, that in order to prevent harm to police officers, a person who has failed to obey a traffic signal will be searched no differently than a person who has committed a violent act. For a discussion of United States v. Robinson, see *supra* notes 23-25 and accompanying text. In showing a legitimate desire to enhance police safety, the Court has blinded itself to the fact that, without proper sanctions, law enforcement officials will persist in stepping over the boundaries of individual protections.

74. Even a traffic offender must retain some fundamental expectations of privacy because the fourth amendment applies to any area wherein the individual maintains a "reasonable expectation of privacy." Katz v. United States, 389 U.S. 347, 360 (1967) (Harlan, J., concurring). The "reasonable expectation of privacy" test is composed of both an objective and a subjective standard. *Id.* at 361. Certainly the plaintiff exhibited an actual (subjective) expectation of privacy in her person as an ordinary traffic offender. Society, moreover, would recognize the plaintiff's expectation of personal privacy as reasonable (objective). Based on these considerations, the City's practice was manifestly violative of the plaintiff's fourth amendment rights.

75. *Mary Beth G.*, 723 F.2d at 1266.

76. No. 79 C 789, slip op. at 8 (N.D. Ill. Jan. 12, 1982).

77. *Id.*

humiliating invasions of privacy imaginable."[78] In balancing the respective interests of the parties, however, the court's logic deviated from precedent. The court's limited reliance on *Tinetti* and its peculiar interpretation of *Wolfish* may produce uncertainty in the jurisdiction because its rationale conflicts with a settled framework for search and seizure analysis. Courts must fully acknowledge a pretrial detainee's constitutionally protected privacy rights against unreasonable and highly offensive intrusions like the City's defunct strip search policy. It is evident that courts should take more effective actions to prevent official overreaching in favor of preserving the individual's dignity and expectations of personal privacy.

Frank C. Lipuma

78. *Mary Beth G.*, 723 F.2d at 1274.