10-1986

Griffin v. Wisconsin

Lewis F. Powell Jr.

C/F/R - Probably a grant
There is a split

Grant

Probation officer searched
Petr's home w/o a warrant

Response
in here. State
makes a reasonable
argument, but
split in substance
11/25

PRELIMINARY MEMORANDUM

October 10, 1986 Conference
List 4, Sheet 1

No. 86-5324-CSY

Griffin (subjected to warrantless search)	Cert to: Supreme Court of Wisconsin (Day for the court; Abrahamson, diss.; Bablitch, diss.)
v.	
Wisconsin	State/Criminal Timely

1. SUMMARY: Petr challenges decision that probation officers may search his residence without a warrant if they have "reasonable grounds to believe" that he is violating a condition of his probation.

~~CFR~~ - Bob. The question whether probation
GRANT officers may search a probationer
(or his residence) without a warrant →

2. FACTS AND PROCEEDINGS BELOW: Petr was convicted in state court of the misdemeanors of resisting arrest, disorderly conduct, and obstructing an officer. Petr was placed on probation for those offenses. During petr's third year of probation, a probation supervisor, Michael Lew, received a call from a police detective that petr "may have had guns in his apartment." Although Lew believed the source of information was a captain at the Detective Bureau, that captain later testified that he did not believe he had called Lew, but the call may have been placed by one of his detectives. Lew waited two or three hours for petr's probation officer. Then he and another probation officer went to search petr's apartment, accompanied by three police officers. Lew explained that the police officers were brought along in order to protect the two probation officers.

Upon arriving at petr's apartment, Lew informed petr who they were and informed petr that they were going to search his residence. One of the police officers apparently pointed toward a table with a broken drawer that exposed the contents of the drawer. Lew found a gun in the drawer, handed the gun over to the police, and directed the officers to arrest petr for a probation violation. The other probation officer found and seized marijuana lying on a table.

Petr was charged with possession of a firearm by a felon and possession of a controlled substance. The trial court denied petr's motion to suppress the evidence seized during the search. The court held that a probation officer did not need a search warrant to engage in a search of a probationer's residence, but

rather must act reasonably in making such a search. The court concluded that the search in this case was reasonable based on the evidence. The trial court further found, as a matter of fact, that the search was not a police search and that the police officers were present solely to protect the probation officers. Petr was convicted and sentenced to a term of two years.

The Wisconsin Court of Appeals affirmed. It concluded that a probation officer may conduct a a warrantless search of a probationer's residence even if the search does not meet one of the usual exceptions to the warrant requirement, as long as the search is reasonable. The court concluded that the tip from the police constituted reasonable grounds to believe that petr's residence contained contraband.

The Wisconsin Supreme Court affirmed. The court noted that neither it, nor the U.S. Supreme Court, had ever recognized that an exception to the warrant requirement could be based on a person's probationary status. Nevertheless, the court concluded that such an exception was warranted. The court noted that there was ample authority among federal courts of appeals and state courts for the viewpoint that probation or parole officers may conduct warrantless searches of a probationer's or parolee's residence, although it noted that there was also some authority for the viewpoint that a warrant was necessary. Pet. App. A5 (citing cases). The court stated that it had already recognized that the nature of probation places limits on the liberty and privacy interests of probationers. See State v. Tarrell, 74 Wis.2d 647, 653-654, 247 N.W.2d 696 (1976) ("Conditions of proba-

tion must at times limit the constitutional freedoms of the probationer. Necessary infringements on these freedoms are permissible as long as they are not overly broad and are reasonably related to the person's rehabilitation.") A probation officer has the dual role of assisting in rehabilitating the probationer and protecting the public, and this creates a special relationship between the officer and the probationer. Because of this special relationship, "'the law relating to probation searches cannot be strictly governed by automatic reference to ordinary search and seizure law.'" Pet. App. A6 (citation omitted). Rather, a court must balance the probationer's right to privacy against the probation system's interest in ensuring that the probationer is complying with probation conditions. Based "on the nature of probation," the court concluded that "a probation agent who reasonably believes that a probationer is violating the terms of probation may conduct a warrantless search of a probationer's residence." Pet. App. A7.

The court then turned to the standard that should govern the agent's belief. It concluded that the standard must be less than "probable cause," and is met when the officer has "reasonable grounds" to believe the probationer is violating a condition of probation. That is the standard established by a Wisconsin Dept. of Health and Human Services rule, which allows probation agents to search a probationer's residence "if there are reasonable grounds to believe that the quarters . . . contain contraband." The court concluded that this formulation met the constitutional standard of reasonableness.

Last, the court concluded that Lew had "reasonable grounds" to search petr's home on the basis of the police tip. In addition, it noted that the record supported the trial court's finding that this was not a police search, and that the police assistance was solely for protection of the probation officers.

Justice Abrahamson dissented. She agreed that probationers have a different expectation of privacy than other citizens and that probation officers must have some latitude if they are to exercise their supervisory responsibilities. Nevertheless, she disagreed that the warrant requirement could be so easily cast aside. A probation officer should be allowed to search a probationer's home if the officer has "reasonable cause" to believe the probationer is violating a condition of probation and believes that evidence of the violation will be found in the home to be searched. Evidentiary support for the reasonable cause standard need not meet the standards of Illinois v. Gates, but rather should be flexible. The issuance of a warrant on this kind of showing would not be an undue burden on the officer and would provide the required protection for the probationer. In addition, this warrant requirement would not impede the dual goals of probation, that ofprotecting the public and rehabilitating the probationer. Justice Abrahamson added that, even if she agreed with the majority that no warrant was needed, she would dissent on the grounds that the facts of this case did not even meet the "reasonable grounds" standard set out by the majority.

Justice Bablitch dissented on the latter ground raised by Justice Abrahamson. He noted that the only basis for the war-

rantless search in this case was the supervisor's testimony that some detective told him that petr "may have had guns in his apartment." There was no evidence as to which detective phoned in this information, the source of the detective's information, or any other fact that indicated the probation supervisor had reason to believe petr had anything to do with guns. Based on these facts, even the majority's minimal test of "reasonable grounds" was not met.

3. CONTENTIONS: Petr first argues that there is significant split in the federal courts of appeals and the highest state courts as to whether a warrant must be obtained before searching a probationer's residence. Numerous courts have ruled that a probation officer must get a warrant before searching a probationer's home, while other courts have decided the issue to the contrary. Pet. 9-10, citing cases (also, see Discussion below). This Court should grant cert to resolve the conflict.

Petr next contends that the decision by the Wisconsin Supreme Court is in conflict with controlling principles of law announced by this Court. In Payton v. New York, 445 U.S. 573, 589-590 (1980), the Court emphasized that the Fourth Amendment "has drawn a firm line at the entrance to the house" and that "absent exigent circumstances that threshold may not reasonably be crossed without a warrant." The Wisc. S.Ct., "out of whole cloth and with no supporting authority from this Court," has improperly created a "probationer" exception to the normal requirement that a warrant must be obtained before a person's residence is searched. In addition, even if a warrant were not re-

quired, the state court erred in concluding that a standard of "reasonable grounds to believe," rather than the stricter standard of probable cause, is sufficient to justify a search by a probation agent.

Finally, petr contends that the facts presented in this case did not even meet the minimal standard of "reasonable grounds to believe" established by the Wisc. S.Ct.

4. DISCUSSION: Petr is correct that there is a split in the federal and state courts on this issue. Although some cases deal with parolees and others with probationers, a number of courts have stated that the two groups should be considered as presenting similar questions for purposes of the Fourth Amendment. See, e.g., United States v. Scott, 678 F.2d 32, 33 n.1 (CA5 1982); State v. Earnest, 293 N.W.2d 365, 368 n. 2 (Minn. 1980). I think this is probably correct, particularly for purposes of evaluating the significance of the lower court split.[1] One of the first cases to deal with this issue at length was Latta v. Fitzharris, 521 F.2d 246 (CA9 1975) (en banc), cert. denied, 423 U.S. 897 (1975). In that case, the court rejected a previously long-standing view that parolees have almost no Fourth Amendment rights (citing Morissey v. Brewster, 408 U.S. 471 (1972) as evincing greater protection for parolees), but concluding

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[1]Nevertheless, for those who may feel that this distinction does present a real difference for purposes of the lower court split, I note after each case the area it deals with. (Both petr and the Wisc. S.Ct. omitted this information in their case citations, as they concluded it was unnecessary.)

ed that the "special relationship" between the parole officer and the parolee meant that parole officers should be allowed to search without a warrant, as long as the search was reasonable. A number of highest state courts adopted the Latta reasoning and result, with some articulating various standards as to what would constitute a "reasonable" basis for a search. See People v. Anderson, 189 Colo. 34, 536 P.2d 302, 305 (1975) (parole); People v. Huntley, 43 N.Y.2d 175, 371 N.E.2d 794, 796 (1977) (parole); State v. Earnest, 293 N.W.2d at 368-369 (Minn. 1980) (probation); State v. Pinson, 657 P.2d 1095, 1099-1101 (Idaho 1983) (probation); State v. Velasque, 672 P.2d 1088, 1094 (Utah 1983) (parole); State v. Fields, 686 P.2d 1379, 1389-1390 (Hawaii 1984) (probation; must have "specific and articulable" grounds). One other federal circuit court of appeals has followed Latta. See United States v. Scott, 678 F.2d at 34-35 (CA5 1982) (parole; need a "reasonable suspicion"). Some of these courts have emphasized that police officers do not have the same right to search without a warrant, but that police may accompany parole or probation officers if necessary for assistance. See, e.g., Anderson, 536 P.2d at 305; Pinson, 657 P.2d at 1101.

Other courts have held that a warrant is required in order to search the home of a probationer or parolee. An early case, State v. Cullison, 173 N.W.2d 533, 537 (Iowa 1970), cert. denied, 398 U.S. 938 (1970), stated flatly that parolees have the same Fourth Amendment rights as other citizens. Later cases, decided after Latta, have usually referred to that CA9 decision and have explicitly rejected the Latta approach. See United States v.

Bradley, 571 F.2d 787, 789 (CA4 1978) (parole; accepts Justice Hufstedler's dissent in Latta); United States v. Rea, 678 F.2d 382, 387-388 (CA2 1982) (probation; requiring an officer to get a warrant does not significantly interfere with the dual rehabilitative and law enforcement functions of probation). See also State v. Fogarty, 610 P.2d 140, 152 (1980) (probation officer must get a warrant to protect the privacy of third parties who may be living with the probationer). Other cases, also cited by petr as upholding the warrant requirement, are a bit more equivocal. See Tamez v. State, 534 S.W.2d 686, 691-692 (Tex. 1976) (condition in probation that allowed for searches without any probable cause and without any basis for suspicion is too broad); State v. Culberson, 563 P.2d 1224, 1227-1229 (Or. App. 1977) (search must be based on either probable cause or a condition of probation in which probationer has consented to certain searches). See also United States v. Bazzano, 712 F.2d 826, 833 (CA3 1983) (en banc) (holds that exclusionary rule does not apply to probation revocation hearing; in dicta, states that special features of probation system do not also mean that a probationer is not protected by the warrant requirement, citing Rea.) In general, courts that have upheld the warrant requirement have acknowledged the special features and needs of probation or parole systems, but have concluded that the warrant requirement does not interfere with those needs so significantly that a court is justified in removing the warrant protection for parolees or probationers.

On the merits of this issue, I am sure reasonable people may disagree. The Court has recognized only a few exceptions to the warrant requirement, and it is arguable whether the nature of probationary or parole status should constitute an additional exception. Regardless of the merits, however, the case meets some of the usual criteria for a grant. The issue is a generic one of law, not connected to any factbound analysis, and it will probably arise with some frequency given the extensive systems of parole and probation in this country. In addition, the lower courts are split on the issue. Although the Wisc. S.Ct. concluded that the weight of authority conformed with its conclusion that no warrant is required (thus perhaps allowing this Court to deny cert so as to let all other courts arrive at this same conclusion on their own), I am not confident that the split will be resolved that easily. The two federal circuits that have spoken most recently on the issue, CA5 in Scott and CA2 in Rea (both in 1982), have arrived at opposite conclusions. The other circuits, other than CA9 (and CA3 in dicta), have not yet ruled on the question. Thus, this may be an issue on which the Court's guidance will be needed.

I do not think that this particular case presents any significant problems, in terms of being a vehicle for review of the issue. As one can see from a review of the lower court opinions, most have dealt with parolees rather than probationers. Although I do not think the constitutional analysis should differ significantly for the two groups, the Court may wish to wait for a parolee case. There is also a related question that arises in some

of these cases and is not presented here. That regards whether a probation or parole agreement may contain a condition in which the individual consents to certain warrantless searches, under a specified standard of reasonableness. (Such a condition may be valid even if warrants would otherwise be required.) Thus, the Court may have to decide the threshold issue of a probationer's Fourth Amendment rights in a case such as this one, and address the validity of conditions in a second case. Alternatively, the Court could wait for a case that presented the use of a condition in a probation or parole agreement.

Because this case is a possible candidate for a grant, I recommend calling for a response.

5. RECOMMENDATION: I recommend CFR.

There is no response.

October 1, 1986 Feldblum Opn in petn

Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor
Justice Scalia

From: **Justice White**

Circulated: DEC 2 1986

Recirculated: _____

Dear Byron -
Please add my name to your dissent from denial of cert.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

JOSEPH G. GRIFFIN *v.* WISCONSIN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

No. 86-5324. Decided December ——, 1986

JUSTICE WHITE, dissenting.

This case presents the question whether the home of a probationer may be searched without complying with the Fourth Amendment's warrant requirement. The Wisconsin Supreme Court held that such a search is permissible if the probation officer has reasonable grounds to believe that a condition of probation is being violated. —— Wis. 2d ——, 388 N. W. 2d 535 (1986). There is considerable authority for such a rule in cases dealing with probationers or parolees. See, *e. g.*, *United States* v. *Scott*, 678 F. 2d 32 (CA5 1982); *Latta* v. *Fitzharris*, 521 F. 2d 246 (CA9) (en banc), cert. denied, 423 U. S. 897 (1975); *State* v. *Earnest*, 293 N. W. 2d 365 (Minn. 1980). However, there is also conflicting authority. See, *e. g.*, *United States* v. *Rhea*, 678 F. 2d 372 (CA2 1982); *United States* v. *Bradley*, 571 F. 2d 787 (CA4 1978); *Tamez* v. *State*, 534 S. W. 2d 686 (Tex. 1976); *State* v. *Fogarty*, 610 P. 2d 140 (Montana 1980). I would grant certiorari to resolve this recurring conflict on an issue of obvious practical significance.

Probable cause not necessary

9 a necessary

I recommend that you join this dissent, unless you conclude that the "split" is not serious.

I think the question is important, but Wisconsin has adopted the "majority view." - Bob

Court..... Voted on....., 19.....

Argued....., 19..... Assigned....., 19..... No. 86-5324

Submitted....., 19..... Announced....., 19.....

GRIFFIN

vs.

WISCONSIN

Bot
9 may
join BRW

Denied
Related
for
BRW
to vote

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Rehnquist, Ch. J.			✓										
Brennan, J.			✓										
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.			✓										
Powell, J.		✓											
Stevens, J.			✓										
O'Connor, J.			✓										
Scalia, J.		✓											
.....													

19019-9-86

December 4, 1986

86-5324 Griffin v. Wisonsin

Dear Byron:

Please add my name to your dissent from denial of cert.

Sincerely,

Justice White

lfp/ss

cc: The Conference

December 5, 1986

Court..... *Voted on*....., *19*.....

Argued....., *19*..... *Assigned*....., *19*..... No. 86-5324

Submitted....., *19*..... *Announced*....., *19*.....

GRIFFIN

vs.

WISCONSIN

Grant

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Rehnquist, Ch. J.			✓										
Brennan, J.		✓											
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.		✓											
Powell, J.		✓											
Stevens, J.			✓										
O'Connor, J.			✓										
Scalia, J.		✓											
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19019-9-86

File
L.F.P.

Prelim. Note 3/24 See also my note of 3/24

86-5324 Griffin v Wisc (Wisc S/Ct)

Not at Rest

1. Wisc. Probation Statute. Places numerous restrictions on probationer's rights including: right of Probation officers to

> "Search [the probationer's] living quarters [home] at any time ... if there are reasonable grounds to believe the [home] contains contraband ..."

Here on basis of a tip by a local policeman that Petr. "may have had guns" in his residence, ~~Petr, who was on felony conviction, was forbidden to have firearms,~~ two Probation Officers - with police to protect them - went to Petr's home. They identified themself, & a search revealed a pistol & small bag of marijuana.

I don't recall whether Petr. objected to search at the time.

There is a "split" among fed CA's

2. Wisc S/Ct held search was lawful. A probationer could have been imprisoned, his liberty was conditioned on compliance with various requirements, and he has a lessened expectation of privacy.

3. Petr argues for probable cause & a warrant. State says "reasonable grounds" ~~(same as reasonable suspicion")~~ are sufficient.

Probable "reasonable suspicion" is sufficient on Wisc's statute. I doubt Petr's statute requires that the suspicion here was reasonable based on Wisc's?

I am not at Rest. In view of record of probationer violating rules of probation & committing crimes [see SG's Brief], clearly restrictions & oversight are required. I doubt a warrant is necessary. This would require probable cause, just as if Petr. were not on probation.

Prelim Notes 3/24 — File

86-5324 Griffin v. Wisc (S/C Wisc)

1. The Case. Resp., with a substantial record of felonies, was put on probation (not clear to me for how long) upon a further conviction of resisting arrest, disorderly conduct & obstructing an officer.

One of the conditions of probation under Wisc. law [Wisc. Adm Code § 328.04(3)(k)] is that the probationer must make his residence "available for searches". This condition is explained to the probationer.

But see no 4th Am right

In this case on basis of "reasonable suspicion" – but w/o probable cause or a warrant – 2 probation "agents" (as they are called in Wisc), with 3 police to protect them, searched Petr's residence.

The suspicion was based on a "tip" (apparently ~~anonymous~~ anonymous) that Petr. had firearms. A loaded revolver & ammunition were found in plain view.

3. Cts below. ~~The~~ The T. C, Wisc Ct App & Wisc S/C all upheld validity of search, holding "reasonable suspicion" existed & this sufficient. There is a Fed CA split on this Q.

4. S.G. Amicus: urges affirmance. Argues that a person in prison has no 4th Amend Rts, & that probation is granted in lieu of imprisonment. The probation may be subject to conditions, such a right to search.

5. Petr. denies all of foregoing. Also says there was not even reasonable suspicion

adl 03/27/86

Reviewed 3/29

Andy - like I am - is in doubt. He is inclined to Reverse as a warrant should be required. But if I understand Andy's view, he thinks a warrant - could be issued on less than probable cause - analogous to administrative searches (e.g. Barlow)

I'll Discuss with Andy & take further look esp. at SG's Brief.

BENCH MEMORANDUM

To: Mr. Justice Powell March 27, 1986

From: Andy

Re: No. 86-5324, Griffin v. State of Wisconsin

Oral Argument: Monday April 20, 1987 (3d case)

Cert to the Wisconsin S. Ct. (Day, with 2 dissents)

QUESTION PRESENTED

The issue is whether a probation officer's warrantless search of a probationer's home violates the 4th Amendment when the officer has reasonable grounds to suspect that a probation violation has occurred.

I. BACKGROUND

In 1980 petitioner Joseph Griffin was convicted in state court of disorderly conduct, resisting arrest, and obstructing an officer. He was placed on probation for an unspecified number of years. The Wisconsin probation statute places numerous restrictions on a probationer's rights; it provides, for example, that:

> "A search of a client, a client's living quarters, or property may be made at any time, ... if there are 'reasonable grounds' to believe that the quarters or property contain contraband." HHS 328.21; see Resp Brief 3 (text of statute).

In 1983, a supervisor for the State Bureau of Probation, one Michael Lew, was informed by a local policeman that petr "may have had guns" at his residence, in violation of the terms of his probation. Lew and a second probation officer went to Griffin's apartment to investigate, accompanied by three policemen who were to provide protection should petr resist. Upon arrival, the probation officers knocked, identified themselves, and informed petr that they were there to search the apartment. The search uncovered a small bag of marijuana and a pistol. Griffin was arrested and charged with possession of a handgun by a felon (petr previously had been convicted of a serious drug offense).

convicted of possession of handgun by a convicted felon

Before trial Griffin moved to suppress the gun, arguing that the probation officers were required to obtain a warrant before searching a private home. The tc denied the motion, and petr eventually was convicted and sentenced to two years in prison. The Wisc. Ct. App. affirmed, agreeing

that the warrant requirement does not apply when the home belongs to a person on probation. J.A. 77.

The Wisconsin Supreme Court also affirmed, holding that "by its nature, probation places limitations on the liberty and privacy rights of probationers, and these limitations justify an exception to the warrant requirement." Id., 100. The court found that if probation officers were required to obtain a warrant before searching, it would significantly impair their ability to supervise the probationer's conduct. The court also found that the unique characteristics of probation justified the State's decision to lower the degree of suspicion required, from "probable cause" to "reasonable grounds" to believe that probationer possessed contraband. Id., at 113. Finally, the court concluded that on these facts, the tip by the police provided reasonable grounds for the search.

There were two dissenting opinions. Justice Abrahamson agreed that the State could allow searches based on mere reasonable suspicion, but argued that a warrant still should be required. She claimed that the warrant requirement would not interfere with the probation officers' supervisory duties but would provide some protection for the probationer. Justice Bablitch also dissented, claiming that here the officers did not have reasonable grounds to search.

This Court granted cert. (WB, BRW, HAB, LFP) to resolve a conflict among state and federal courts. The Wisconsin court had recognized that its decision was consistent with

the majority view on this issue, although it acknowledged that several cases had reached a contrary conclusion. See id., 106-107 (listing cases).

II. DISCUSSION

Griffin challenges three aspects of the ruling below. First, he claims that the probation officers should have been required to obtain a warrant before searching the apartment. Second, even if there is no warrant requirement, it was error to allow the search based on a standard lower than probable cause. Finally, the information available to the probation officers in this case did not satisfy either the probable cause or the reasonable suspicion standard.

A. Prerequisites for a Search

The most important question is whether the probation officers were required to obtain a warrant and/or have probable cause before conducting the search. Griffin's best argument is that both should be required because the search took place in a private home. This type of search not only interferes with the probationer's privacy interests, but also with those of his family and friends who share the home. This Court has made it clear that "physical entry of the home is the chief evil against which the wording of the 4th amendment is directed," United States v. United States District Court, 407 U.S. 297, 313 (1972), and that "[a]bsent exigent circumstances, th[e] threshold [of a home] may not reasonably be crossed without a warrant." Payton v. New

York, 445 U.S. 573, 590 (1980). Here the State has not even alleged that there were exigent circumstances. Instead, petr argues, the Wisconsin court created an exception out of whole cloth, based solely on the view that petr's probationary status justified the lower level of protection.

Griffin argues that there is no support in this Court's cases for this novel exception. Unlike other exigent circumstances, the fact that petr is on probation does not create the need for immediate, warrantless action to prevent an escape or the destruction of evidence. See Welsh v. United States, 466 U.S. 740, 749-750 (1984) ("the police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests" (emphasis added)). The lack of urgency in this case is evident from the fact that Mr. Lew waited several hours after receiving the tip before carrying out the search.

Griffin concedes that this Court also has recognized exceptions to the warrant requirement that are not based on exigent circumstances. But he claims that the search of a probationer's home fails to meet the criteria for creating such an exception. In Camera v. United States, 387 U.S. 523, (1967), the Court stated:

> "In assessing whether the public interest demands creation of a general exception to the ... warrant requirement, the question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search." Id., at 533.

See also New Jersey v. T.L.O., 469 U.S. 325, 340 (1985) (citing Camera test with approval). In this type of case, Griffin argues, it would not place any burden on the probation officers to obtain a warrant before searching. Even though the officers might have good reasons for believing that petr possessed contraband, it would not have unduly delayed the search or created a risk that the contraband would be destroyed. The only added burden would be that the probation officers would have to explain the basis for their suspicion to a magistrate, thus deterring searches that are designed to harass, or used as a pretext for routine criminal investigations.

Griffin also claims that even if a warrant is not necessary, the 4th amendment still requires that the search be based on probable cause. In other cases where this Court has permitted warrantless searches, it normally continues to demand that the police meet the probable cause standard. See, e.g., Chambers v. Maroney, 399 U.S. 42 (1970) (police need probable cause for warrantless search of an automobile). On the other hand, in those cases where the Court has allowed searches based on less than probable cause, the searches tend to be both necessary to meet a crucial state need, and also quite limited in scope. See, e.g., Terry v. Ohio, 392 U.S. 1 (1969); United States v. Brignoni-Ponce, 442 U.S. 873, 880-881 (1975) (LFP opinion, permitting brief stops of cars near Mexican border if officers have reasonable suspicion that they contain illegal aliens). These

decisions clearly are distinguishable, given that here the probation officers conducted a generalized search of petr's entire apartment.

I am partially persuaded by these arguments. I agree that warrantless searches of a home should be presumptively unconstitutional, and that the warrant requirement normally will not impose such a heavy burden on probation officers that it would frustrate the purpose of the search. And while there is no direct support in this Court's precedent for the decision below, the State and the SG (as amicus) nevertheless claim that the Wisconsin court was justified in creating an exception for a probationers. They argue that the legal status of a person on probation is sufficiently different from those of other citizens to justify different 4th amendment treatment.

First, the State correctly points out that a probationer has a lower expectation of privacy than others. By definition, petr has been convicted of a crime, and although he is not in prison, he is considered "in custody" under Wisconsin law. Wis. Stat. Ann. §973.10. In exchange for not being imprisoned, a probationer may be subject to all sorts of limitations that would be unconstitutional if applied to non-probationers. He may be ordered to live in certain places, avoid associating with certain people, refrain from certain types of occupations, undergo periodic physical or psychological testing, and seek permission to leave the jurisdiction. See SG Brief 15. Significantly, the probation-

er also may be subject to periodic, unannounced home visits by his probation officer, who must carefully scrutinize the probationer's conduct to make sure that he complies with the terms imposed by the trial court. Cf., Petr Brief 19 (acknowledging that warrantless home visits are permissible).

Simply because a probationer has a lower expectation of privacy, of course, does not mean a fortiori that the State is excused from the warrant requirement. The State admits that a probationer is entitled to those 4th amendment rights that are not fundamentally inconsistent with his special legal status. Therefore, the State's second argument is that warrantless searches based on reasonable suspicion serve an important state function, because they are an indispensable part of the probation officer's authority to supervise the probationer. The SG claims that state and federal probation laws serve two purposes: assist the rehabilitation of the offender, and protect society from further crime. He makes a persuasive argument that both of these goals are furthered by allowing warrantless searches. If the probationer knows that his supervising officer may make an unannounced search at any time, he will be less tempted to violate the terms of his parole by having contraband at his residence. See Owens v. Kelley, 681 F.2d 1362, 1367 (CA11 1982). If the State were prohibited from searching until it had probable cause, it would be easier for the probationer to avoid detection, and thus easier to drift back into a pattern of crime by bringing drugs or weapons into

his home. The fear of discovery, it is argued, helps channel the offender's energy into more rehabilitative activities.

The need to spot criminal tendencies before they develope clearly is a significant one. The SG notes that a recent Rand Corp. study revealed that over half the probationers in California were charged with crimes within 40 months of being sentenced, and over two-thirds were rearrested. The State claims that this high recidivist rate provides ample justification for a state statute that conditions a defendant's release on his willingness to accept a diminution of 4th amendment rights. If the States are not allowed to impose these conditions, it is argued, trial judges will face the difficult choice of sending an offender to prison who otherwise might have received parole, see United States v. Consuelo-Gonzales, 521 F.2d 259, 266 (CA5 1975), or granting parole, knowing that it will be difficult for the probation department to supervise the terms of the release.

Record in Calif

I therefore think the State is correct in asserting that "reasonable grounds" is a more appropriate standard in this type of case than probable cause. But I am less convinced that the need to supervise also justifies an exception to the warrant requirement, because the State presents little evidence that it would be an undue burden to obtain a warrant before searching. The fact that a search may be carried out on less than probable cause certainly does not

Andy's views

But can't obtain warrant w/o probable cause

prevent this Court from insisting that the warrant requirement be honored. See Marshall v. Barlow's Inc., 436 U.S. 307 (1978) (prohibiting warrantless searches of commercial premises under OSHA). Since time often is not of the essence in searches of a probationer's residence, and since the "reasonable grounds" standard will not be a significant barrier to obtaining warrants when they are needed, I think the best result is to retain the warrant requirement for this type of search.

I recognize, however, that there are legitimate arguments for disposing of the warrant requirement entirely. I suspect that there is less reason to fear that probation officers will abuse the right to search than if the police were given this power. Probation officers normally will have little reason to harass or intimidate a probationer, given that most officers probably do not have enough time to handle their regular case work. Moreover, the officers are not given unbridled discretion in deciding when to search; the Wisconsin statute provides relatively detailed guidelines to instruct probation officers on when "reasonable grounds" are present. See HHS 328.21(7); see also §.21(5) ("Field staff shall strive to preserve the dignity of clients in all searches conducted under this section"). The statute also requires that the officers give probationers advanced notice of the searches "whenever feasible," (although it is hard to imagine that it will ever be feasible to give notice for contraband searches). Finally, although

the state does not advance the argument, it is likely that the warrant requirement could frustrate the state interest in conducting frequent searches. If a probation officer hopes to deter criminal conduct by conducting several searches in a single day or week, inevitably he will end up spending most of his time preparing warrant affidavits and appearing before a magistrates. (This problem is worse for federal probation officers, who cannot obtain warrants at all, Fed R. Crim. P. 41(a), (h), and therefore would have to depend on the assistance of law enforcement personnel.) Thus, while I think the warrant requirement is preferable, it may be that the minuscule benefits of requiring a warrant are outweighed by the interference it creates.

B. Were There Reasonable Grounds Here?

Griffin's final claim is that even if the probation officer only needed "reasonable suspicion" to search, the standard was not met in this case. The tip concerning Griffin's possession of the gun was given by an unidentified source to the police officer, who then relayed it to the probation department. There was no attempt to check the reliability of the information, nor was it determined that the tipster had given truthful information in the past. Moreover, the tip itself was ambiguous; it simply stated that petr "may have had" guns in his apartment.

I agree that this information, standing alone, provides a questionable basis for the search. Nevertheless, the courts below found that the tip met the "reasonable grounds"

Were courts found the single "tip" was reasonably came from obser.

standard, and there is no reason to disturb that finding here. The police officer who took the tip had enough confidence in the information to pass it on, and it was reasonable for the probation officer to rely on the policeman's word. Moreover, it seems likely that most of the information gathered by probation officers concerning the people they supervise will be in the form of anonymous tips and second-hand data. It would interfere with the officers' ability to perform their jobs if this Court requires the same type of source verification from probation officers that it requires of the police.

III. SUMMARY AND RECOMMENDATION

Wisconsin has created a detailed statutory system that allows warrantless searches of probationers' homes based on a probation officers' "reasonable suspicion" that a person possesses contraband. I agree that "probable cause" should not be required for these searches, given the unique status of the probationers and the specific need to supervise closely those who have committed crimes. I would prefer that the probation officers be required to obtain a warrant before searching, given that a home is entitled to the highest level of 4th amendment protections. Accordingly, I suggest that the decision below be reversed to the extent it allows warrantless searches.

Statute says "reasonable grounds" — in this case de "reasonable suspicion"

But w/respect to a Home,

I recommend that the decision of the Wisconsin Supreme Court be affirmed in part and reversed in part.

April 16, 1987

Andy would require probable cause

To: Justice Powell

From: Andy

Re: 86-5324, Griffin v. Wisconsin; supplement to the bench memo (to be argued Monday, April 20, 1987).

In looking over you comments on my bench memo in this case, I noticed that I was not clear in explaining my recommendation. I concluded that probation officials did not need probable cause to search a probationer's home, but that it nevertheless might be preferable to retain the warrant requirement. You wondered whether it was rational to require a warrant, since in virtually all of our cases warrants can only issue on a showing of probable cause.

My recommendation was based largely on an analogy to OSHA Marshall v. Barlow's, 436 U.S. 407 (1978). In that case the Court refused to permit warrantless searches of business premises by OSHA inspectors. We retained the warrant requirement even though the standard needed to justify the search was only "reasonable suspicion," not probable cause. I though that the same requirements could be applied to Griffin: protect the government's interest by permitting it to search based on reasonable suspicion, but protect the probationer from abusive searches by demanding that the officials get an administrative-type warrant.

See next pg.

I have done more research since writing the bench memo. Although in some ways I still think it would be useful to keep a "reasonable suspicion" warrant requirement, I realize that Barlow has not been widely cited as a new approach to analyzing these cases. I think it would probably create confusion to separate the warrant requirement from probable cause, and would require non-police officers to develop expertise in an area that already is quite complex. So rather than affirm in part and reverse in part as recommended before, I now recommend that the decision of the Wisconsin S. Ct. be affirmed in full.

86-5324 GRIFFIN v. WISCONSIN

Argued 4/20/87

Abernethy (Petr)

No warrant & no consent.

The acceptance of terms of probation is not consent — one can't be coerced into giving up privacy of his home.

SO'C suggested that probation is a "jail w/o walls".

Administrative Code authorizes search on reasonable grounds

"Consent" has never been argued or been an issue

[Nino suggested that acceptance of parole includes its conditions]

Levenson (ant AG)

The Adm Code Rules applies to all probations. See State's Br. 2-4

Never argued or courts below that Petr. was not told about Rules

→ There is a presumption of regularity.

Levenson (cont'd).

S O'C asked whether the statement of one unidentified police officer ~~as to a belief~~ that Peh "may have guns in home" ~~was~~ constitute "reasonable grounds".

This was considered in light of Peh's record.

Answering Nino, Levenson said whether the "reasonable" standard was matter of State law.

The right to search was limited to probationer offices - not law enforcement ~~personnel~~ personnel generally.

The ~~Federal~~ federal Const. Q is whether the reasonableness standard is valid.

S O'C noted that a 2nd Q is whether an adm. warrant also is required.

Reliance on P h.D

The Wire Comprehensive ~~Control~~ provisions make clear no need for warrant.

29,000 people in Wire are on parole or probation

aff'm 5-4

No. 86-5324 Griffin v. Wisconsin Conf. 4/22/87

The Chief Justice Aff'm

The ~~quantum of ev.~~ in

Tolbert N.J. v P.L.O.

Probationers, like school children, have limited expectation of privacy

Reasonable suspicion is a matter of ~~law~~ "hunches"

There was reasonable suspicion.

Justice Brennan Rev.

There must be probable cause & no reason to dispense with warrants

Dissented in P.L.O.

Justice White Aff'm

A probationer ~~or~~ can be returned to custody.

?

We should respect a state law that says reasonable suspicion is ~~not~~ satisfactory

Justice Marshall

Reverse

Justice Blackmun

Reverse

applying balancing test but

here there was a home

Justice Powell

Aff'm

See my note

JUSTICE STEVENS Reverse

Close case, & a State should be able to impose restrictions on probationers.

Should not lay down a broad general rule.

Here Wisc has put some reasonably limitations: only the probation officer may search, & there must be reasonable suspicion. But in this case, there was no basis for finding reasonable suspicion

JUSTICE O'CONNOR [redacted] on Standard; not at rest as to reasonable grounds in this case.

When a Δ has been convicted of a felony, a State can place Δ on probation subject to reasonable restrictions. Restrictions here OK

To reverse here would deter judges from putting Δs on probation.

Apply P.L.O. standard.

But in doubt as to reasonable doubt.

JUSTICE SCALIA Affirm

Agree with CJ + 50' C.

See final ¶ p 10
I agree with much but
not all of this.

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

L.F.P.

From: **Justice Scalia**

Circulated: JUN 1 1987

Recirculated: _____

1st DRAFT

Renewed 6/1/87

SUPREME COURT OF THE UNITED STATES

No. 86-5324

JOSEPH G. GRIFFIN, PETITIONER *v.* WISCONSIN

I'll await 50's writing

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[June ——, 1987]

JUSTICE SCALIA delivered the opinion of the Court.

Petitioner Joseph Griffin, who was on probation, had his home searched by probation officers acting without a warrant. The officers found a gun that later served as the basis of Griffin's conviction of a state-law weapons offense. We granted certiorari, —— U. S. —— (1986), to consider whether this search violated the Fourth Amendment.

I

On September 4, 1980, Griffin, who had previously been convicted of a felony, was convicted in Wisconsin state court of resisting arrest, disorderly conduct, and obstructing an officer. He was placed on probation.

Wisconsin law puts probationers in the legal custody of the State Department of Health and Social Services. Sec. 973.10(1), Wis. Stats. (1985). That law also provides that "imposition of probation . . . shall subject the defendant to . . . conditions set by the court and rules and regulations established by the department." *Ibid.* One of the Department's regulations permits any probation officer to search a probationer's home without a warrant as long as his supervisor approves and as long as there are "reasonable grounds" to believe there is contraband—including any item that the probationer cannot possess under the probation conditions—in

Regulation

the home. §§328.21(4), 328.16(1), Wis. Adm. Code.[1] The rule directs an officer to consider a variety of factors in determining whether "reasonable grounds" exist, among which are information provided by an informant, the reliability and specificity of that information, the reliability of the informant (including whether the informant has any incentive to supply inaccurate information), the officer's own experience with the probationer, and the "need to verify compliance with rules of supervision and state and federal law." §328.21(7). Another regulation makes it a violation of the terms of probation to refuse to consent to a home search. §328.04(3)(k). And still another forbids a probationer to possess a firearm without advance approval from a probation officer. §328.04(3)(j).

On April 5, 1983, while Griffin was still on probation, Michael Lew, the supervisor of Griffin's probation officer, received information from a "detective" on the Beloit Police Department that there were or might be guns in Griffin's apartment. Unable to secure the assistance of Griffin's own probation officer, Lew, accompanied by another probation officer and three plainclothes policemen, went to the apartment. When Griffin answered the door, Lew told him who they were and informed him that they were going to search his home. During the subsequent search—carried out entirely by the probation officers under the authority of Wisconsin's probation regulations—they found a handgun.

Griffin was charged with possession of a firearm by a convicted felon, which is itself a felony. Sec. 941.29(2), Wis. Stats. (1986). He moved to suppress the evidence seized during the search. The trial court denied the motion, con-

Did Griffin object?

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[1] Section HSS 328 was promulgated in December 1981 and became effective on January 1, 1982. Effective May 1, 1986, Section HSS 328.21 was repealed and repromulgated with somewhat different numbering and without relevant substantive changes. See *Griffin* v. *State*, 388 N. W. 2d 535, 542 n. 7 (Wis. 1986). This opinion will cite the old version of §328.21, which was in effect at the time of the search.

cluding that no warrant was necessary and that the search was reasonable. A jury convicted Griffin of the firearms violation, and he was sentenced to two years' imprisonment. The conviction was affirmed by the Wisconsin Court of Appeals, *State* v. *Griffin*, 376 N. W. 2d 62 (Wis. Ct. App. 1985).

On further appeal, the Wisconsin Supreme Court again affirmed. It found denial of the suppression motion proper because probation diminishes a probationer's reasonable expectation of privacy—so that a probation officer may, consistent with the Fourth Amendment, search a probationer's home without a warrant, and with only "reasonable grounds" (not probable cause) to believe that contraband is present. It held that the "reasonable grounds" standard of Wisconsin's search regulation satisfied this "reasonable grounds" standard of the federal Constitution, and that the detective's tip established "reasonable grounds" within the meaning of the regulation, since it came from someone who had no reason to supply inaccurate information, specifically identified Griffin, and suggested a need to verify Griffin's compliance with state law. *State* v. *Griffin*, 388 N. W. 2d 535, 539–544 (1986).

II

We think the Wisconsin Supreme Court correctly concluded that this warrantless search did not violate the Fourth Amendment. To reach that result, however, we find it unnecessary to embrace the new principle of law that court adopted. Griffin had been convicted of a crime, and the search was carried out pursuant to a regulation promulgated by the corrections officials to whose custody he had been committed. It is enough to find that regulation valid under the analysis our cases have applied to other regulations allegedly infringing the constitutional rights of those lawfully remanded to the custody of corrections officials.

A

With regard to those convicted of crimes and sentenced to prison, the Court has long recognized that, although not all

constitutional protections are forfeit, *Bell* v. *Wolfish*, 441 U. S. 520, 545 (1979), some constitutional rights are significantly limited, not only as an inevitable consequence of incarceration but also to enable corrections authorities reasonably to pursue such valid objectives as rehabilitation and security. *Price* v. *Johnston*, 334 U. S. 266, 285 (1948); *Pell* v. *Procunier*, 417 U. S. 817, 822–823 (1974); *Procunier* v. *Martinez*, 416 U. S. 392, 412–413 (1974). "There must be," we have said, "mutual accommodation between institutional needs and objectives" and constitutional rights, *Wolff* v. *McDaniel*, 418 U. S. 539, 556 (1974), including, perhaps most obviously, rights under the Fourth Amendment. See *Bell* v. *Wolfish*, *supra*, at 555–560 (upholding jail policy requiring unannounced "shakedown" inspections and strip searches). And we have held, therefore, that a prison regulation is not to be judged under the "heightened scrutiny" usually applied to alleged infringements of fundamental constitutional rights, but instead under a standard of "reasonableness," *Turner* v. *Safley*, —— U. S. ——, —— (1987), validating the regulation "if it is reasonably related to legitimate penological interests." *O'Lone* v. *Estate of Shabazz*, —— U. S. ——, —— (1987) (quoting *Turner*, at ——).

We think this mode of analysis (though not, of course, the precise results it produces) equally applicable to regulations that allegedly impinge on the constitutional rights of probationers. Probation, like prison, is "a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty." G. Killinger et al., Probation and Parole in the Criminal Justice System 14 (1976). Probation is simply one point (or, more accurately, one set of points) on a continuum of possible punishments ranging from solitary confinement in a maximum security facility to a few hours of mandatory community service. A number of different options lie between those extremes, including confinement in a medium or minimum security facility, work-release programs, "halfway houses," and probation—which can itself be

more or less confining depending upon the number and severity of restrictions imposed. To a greater or lesser degree, however, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy "the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions." *Morrissey* v. *Brewer*, 408 U. S. 471, 480 (1972).

As already noted, Griffin was committed to the legal custody of the Wisconsin State Department of Health and Social Services, and was made "subject . . . to . . . rules and regulations established by the department." Sec. 973.10(1), Wis. Stats. (1985). The corrections officials of that department pursue many of the same objectives as the corrections officials of a prison system, including rehabilitation and protection of the community. See *State ex rel. Niederer* v. *Cady*, 240 N. W. 2d 626, 633 (Wis. 1976) (discussing objectives of parole). We see no reason why the same considerations that induced us to adopt a "reasonableness" standard for assessing the constitutionality of regulations promulgated by prison officials would not call for a similar standard here—considerations ranging from separation of powers and federalism concerns to an appropriate respect for the expert judgment of corrections officials with regard to the needs of the penal system. See, *e. g.*, *Turner*, at ——; *O'Lone*, at ——; *Procunier* v. *Martinez*, *supra*, at 405; *Jones* v. *North Carolina Prisoners' Union*, 433 U. S. 119, 137 (1977) (Burger, C. J., concurring).

The "reasonableness" standard, of course, automatically takes account of relevant differences that exist between probation and prison confinement. Even in the prison context alone, we have recognized that this standard produces varying results depending upon "the nature of the regime to which [prisoners] have been lawfully committed." *Wolff* v. *McDaniel*, *supra*, at 556. See *O'Lone*, at —— (restriction upon religious liberty reasonable in light of outdoor-work

regimen dictated by crowded conditions in particular prison); *Turner*, at —— (inmate mail restrictions justified by existence of convict gangs in particular prison system). Thus, some prison regulations we have approved will not be constitutionally applicable to probationers. It is difficult to envision, for example, circumstances that would validate, in the probation context, the restrictions on inmate mail we upheld in *Turner*. Cf. *Morrissey* v. *Brewer*, 408 U. S. 471, 483 (1972) (holding that due process requires limited hearing before parole may be revoked since, although parolee is formally "in custody," summary decisionmaking is not as important in that setting as in prison).

B

Having determined that the reasonableness analysis set forth in *Turner* and *O'Lone* provides the proper framework, we turn to its application to the facts of the present case. The manner of that analysis has been as follows: As a threshold matter, we have required that the regulation at issue have "a logical connection to legitimate governmental interests invoked to justify it." *O'Lone*, at —— (citing *Turner*, at ——). If it does, we have proceeded to a consideration of the proportionality between, on the one hand, the nature and degree of restriction upon the prisoner's liberty and, on the other, the importance of that restriction to the public interest. With regard to the latter, we have accorded considerable deference to the "considered judgment" of corrections officials, *O'Lone*, at —— (quoting *Bell* v. *Wolfish*, *supra*, at 562); see also *Turner*, at ——, though we have not been prepared to ignore the existence of "obvious, easy alternatives" to their restrictive policies, *O'Lone*, at —— (quoting *Turner*, at ——).

In applying this mode of analysis here, we must of course take the regulation as it has been interpreted by state corrections officials and state courts. As already noted, the Wisconsin Supreme Court—the ultimate authority on issues of

Wisconsin law—has held that a tip from a police detective that Griffin "had" or "may have had" an illegal weapon at his home constituted "reasonable grounds" under the regulation. See 388 N. W. 2d, at 544. Whether or not we would choose to interpret a similarly worded federal regulation in that fashion, we are bound by the state court's interpretation, which is relevant to our constitutional analysis only insofar as it fixes the meaning of the regulation.[2]

Whatever may be the outer limits established by our "reasonableness" test for assessing the validity of corrections officials' regulations, Wisconsin's search regulation is well within them. Permitting searches on "reasonable grounds" (even as Wisconsin has defined them) obviously has a logical connection to the quite legitimate objective of assuring that the probationer is complying with the terms of his probation, including the requirement that he not violate other Wisconsin laws, thereby assuring that the probation serves as a period of genuine rehabilitation, and that the community is not harmed by the probationer's being at large. Pursuit of this objective justifies the State in exercising a degree of surveillance and supervision over probationers beyond what it can properly apply to others who are not incarcerated. We must, therefore, determine whether there is a reasonable

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[2] If the regulation in question established a standard of conduct to which the probationer had to conform on pain of penalty—*e. g.*, a restriction on his movements—the state court could not constitutionally adopt so unnatural an interpretation of the language that the regulation would fail to provide adequate notice. Cf. *Kolender* v. *Lawson*, 461 U. S. 352, 357–358 (1983); *Lambert* v. *California*, 355 U. S. 225, 228 (1957). That is not an issue here since, even though the petitioner would be in violation of his probation conditions (and subject to the penalties that entails) if he failed to consent to any search that the regulation authorized, see HSS 328.04(3)(k), nothing in the regulation or elsewhere required him to be advised, at the time of the request for search, what the probation officer's "reasonable grounds" were, any more than the ordinary citizen has to be notified of the grounds for "probable cause" or "exigent circumstances" searches before they may be undertaken.

proportionality between the burden of the restriction Wisconsin's search regulation imposes upon normal civil liberties and (giving due weight to the considered judgment of Wisconsin's corrections officials) its utility in furthering the goal of Wisconsin's probation system.

Wisconsin's search regulations bring the probationer's rights below those which ordinary citizens enjoy in two respects. First, they dispense with the warrant requirement that is ordinarily a condition of Fourth Amendment reasonableness. See, *e. g.*, *Payton* v. *New York*, 445 U. S. 573, 586 (1980). That requirement would obviously interfere to an appreciable degree with the probation system, setting up a magistrate rather than the probation officer as the judge of how close a supervision the probationer requires. By way of analogy, one might contemplate how parental custodial authority would be impaired by requiring judicial approval for search of a minor child's room. And on the other side of the equation—the effect of dispensing with a warrant upon the probationer: Although a probation officer is not an impartial magistrate, neither is he the police officer who normally conducts searches against the ordinary citizen. He is an employee of the State Department of Health and Social Services who, while assuredly charged with protecting the public interest, is also supposed to have in mind the welfare of the probationer (who in the regulations is called a "client," HSS § 328.03(5)). The applicable regulations require him, for example, to "[p]rovid[e] individualized counseling designed to foster growth and development of the client as necessary," HSS § 328.04(2)(i), and "[m]onitor[] the client's progress where services are provided by another agency and evaluat[e] the need for continuation of the services," HSS § 328.04(2)(o). In such a setting, we think it reasonable to dispense with the warrant requirement.

The second respect in which the Wisconsin regulation dispenses with ordinary Fourth Amendment requirements is that it demands only a standard of "reasonable grounds" to

justify a search. That lies somewhere between the standard of "probable cause" that citizens who are not under sentence for crime enjoy, and the standard of no cause that we have implicitly approved in the prison context, see *Bell* v. *Wolfish*, *supra*, at 555–557 (approving random "shakedown" searches); *Hudson* v. *Palmer*, 468 U. S. 517, 530 (1984) (prisoners have no legitimate expectation of privacy in their prison cells). It is most unlikely that the unauthenticated tip of a police officer—bearing, as far as the record shows, no indication whether its basis was first-hand knowledge or, if not, whether the first-hand source was reliable, and merely stating that Griffin "had or might have" guns in his residence, not that he certainly had them—would support the issuance of a warrant in an ordinary case. Once again, however, this is not an ordinary case, by reason of the continuing relationship that exists between the probation agency and the probationer. The principal difference is well reflected in the regulation specifying what is to be considered "[i]n deciding whether there are reasonable grounds to believe . . . a client's living quarters or property contain contraband," HSS § 328.21(7). The factors include not only the usual elements that a police officer or magistrate would consider, such as the detail and consistency of the information suggesting the presence of contraband and the reliability and motivation to dissemble of the informant, HSS § 328.21(7)(c), (d); but also "[i]nformation provided by the client which is relevant to whether the client possesses contraband," and "[t]he experience of a staff member with that client or in a similar circumstance." HSS § 328.21(7)(f), (g). We deal with a situation, in other words, in which there is an ongoing relationship—and one that is not, or at least not entirely, adversarial—between the object of the search and the decisionmaker.

In such circumstances it is both unrealistic, and destructive of the whole object of the continuing probation relationship, to insist upon the same degree of demonstrable reliability of particular items of supporting data, and upon the same de-

gree of certainty of violation, as is required in other contexts. The probation agency must be able to proceed on the basis of its entire experience with the probationer, and to assess probabilities in the light of its knowledge of his life, character and circumstances. This kind of personal evaluation is reviewable only with great difficulty, if at all, by courts of law. To allow adequate play for such factors, we think it reasonable to permit information provided by a police officer, whether or not on the basis of first-hand knowledge, to support a probationer search. The same conclusion is suggested by the fact that the police may be unwilling to disclose their confidential sources to probation personnel. For the same reason, and also because it is the very assumption of the institution of probation that the probationer is in need of rehabilitation and is more likely than the ordinary citizen to violate the law, we think it enough if the information provided indicates, as it did here, only the likelihood ("had or might have guns") of facts justifying the search.

Finally, we see no readily available alternative to warrantless searches based on reasonable grounds (as that term has been interpreted by Wisconsin corrections officials and the Wisconsin Supreme Court in the circumstances of this case) that would as effectively accomplish the purposes of the probation system. Accordingly, we conclude that the regulation as applied satisfies the constitutional standard of reasonableness.

* * *

The search of Griffin's residence was "reasonable" within the meaning of the Fourth Amendment because it was conducted pursuant to a valid regulation governing probationers. This conclusion makes it unnecessary to consider whether, as the court below held and the State urges, *any* search of a probationer's home by a probation officer is lawful when there are "reasonable grounds" to believe contraband is present. For the foregoing reasons, the judgment of the Wisconsin Supreme Court is

Affirmed.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1987

RE: No. 86-5324-Griffin v. Wisconsin

Dear Nino:

I await the dissent.

Sincerely,

T.M.

Justice Scalia

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 2, 1987

Re: 86-5324 - Griffin v. Wisconsin

Dear Nino:

Because I detect some tension between your analysis of the custodial character of parole and the Court's approach in Oregon v. Mathiason, 429 U.S. 492, and because I do not agree with your implicit holding that a search based on nothing more than a police officer's "hunch" is reasonable, I shall wait to see what Harry writes in dissent.

Respectfully,

JPS

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 2, 1987

Re: No. 86-5324, Griffin v. Wisconsin

Dear Nino:

In due course, I shall try my hand at a dissent in this case.

Sincerely,

Harry

Justice Scalia

cc: The Conference

June 2, 1987

To: Justice Powell

From: Andy

Re: 86-5324, Griffin v. United States

Justice Scalia has circulated his draft opinion for the Court in this April case. The result is consistent with your vote at Conference. The reasoning is quite broad in places: he says, for example, that the "reasonableness" standard applies to any type of regulation imposed on anyone who has been committed to the custody of the state AG, regardless of whether the defendant is in jail, on probation, parole, or work-release. Ultimately, however, his holding is narrow. He simply decides that this particular search was permissible because it was conducted pursuant to a valid state regulation. He does not hold that any warrantless search of a probationer's home will be considered reasonable in the absence of a regulation.

I have other, minor quibbles about the way the opinion is written (see, e.g., the analogy at the middle of page 8), but they are not worth fighting about. Unless you are concerned about the scope of the opinion, I recommend that you join.

Join

June 11, 1987

To: Justice Powell

From: Andy

Re: 86-5324, Griffin v. Wisconsin

You might recall that we discussed this case briefly after Justice Scalia circulated his draft opinion. At the time you were uneasy about the analysis, although satisfied with the result. The outcome is consistent with your Conference vote -- it is permissible for a state statute to allow the warrantless search of a probationers home. But as you noted, parts of the analysis are quite broad.

Justice Scalia's states that any person who is serving a sentence for a crime may be required to relinquish his constitutional rights if there is a "reasonable" connection between a state penological interest and the restriction. He arrives at this conclusion by looking to our "prisoners' rights" cases such as Turner v. Safley (Justice O'Connor's opinion from this term that you joined). Justice Scalia reasons that since we give great deference to the warden on how to run the prison, we logically should give similar deference to parole officials, probation officers, or any other official responsible for punishment and rehabilitation. Of course, the type of restriction that is considered reasonable will vary according the degree of "confinement" to which you are subject -- the mail restriction upheld in Safley would be unreasonable if applied to

a person on parole -- but Justice Scalia concludes that the standard for evaluation constitutional deprivations should be the same regardless of whether the person is sentenced to perform community service or is confined in Attica.

There are two problems with this approach. First, it does not logically follow that we should lower the standard of scrutiny for probationers simply because we do so for prisoners. One reason we are willing to give such great deference to wardens is that prisons are a unique, self-contained society, and judges are ill-suited for making the day-to-day decisions necessary to run them. People on probation, however, are by definition part of the mainstream; judges are more capable of deciding whether a warrantless search is necessary for probationers than for prisoners, and thus there is less reason for deferring to corrections officials. In fact, because the "reasonableness" standard is an exception to the usual rule of strict scrutiny, a strong argument could be made that Justice Scalia has swept too broadly in establishing a standard for all convicts that originally was intended to apply only in prisons.

The scope of the analysis is the second problem. We have not considered a great number of similar cases involving constitutional deprivations of non-prisoners convicted of crimes (perhaps they just don't arise), but taken to extremes, Justice Scalia's opinion would apply to all deprivations of any constitutional rights for anyone in the custody of the AG. Ultimately, this may prove to be the logical rule, but it is not necessary to go that far immediately. This case only involves

the 4th amendment rights of a probationer; the narrowest opinion would find that the 4th amendment has less application to probationers because of the special need to monitor their behavior. This narrow approach is less satisfying, in that it does not clarify a whole area of law, but it may be more prudent.

Recommendation: Having said this, I realize that my concerns are quite theoretical, and may be better resolved in law reviews rather than the U.S. Reports. Because you agree with the result, I think you safely can join Justice Scalia's opinion. But for the moment, the better course may be to wait. Justice O'Connor's clerks are concerned about this case, and she may be planning to write separately to address the issues mentioned above. If she does write (I hope to find out from her clerks as soon as they know), I would recommend that you wait to see what she has to say. If she decides not to write, we then can decide whether to add a few words of our own or simply join.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 3, 1987

Re: 86-5324 - Griffin v. Wisconsin

Dear Nino:

Please join me.

Sincerely,

WEB

Justice Scalia

cc: The Conference

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice Scalia

L.F.P.

From: **Justice O'Connor**

Circulated: JUN 18 1987

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 86-5324

JOSEPH G. GRIFFIN, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[June —, 1987]

JUSTICE O'CONNOR, concurring in the judgment.

I agree with the plurality that the probation condition at issue in this case satisfies the requirements of the Fourth Amendment, and accordingly concur in the judgment. I disagree, however, that the standard adopted in *Turner* v. *Safley*, 482 U. S. —— (1987) is apposite here. It is true, of course, that this case, like *Turner*, involves constitutional claims by those who have been convicted of crimes and remanded to custody of the executive branch. Unlike *Turner*, however, this case does not involve the kind of institutional concerns raised by the "operational . . . realities of running a penal institution." *Jones* v. *North Carolina Prisoners' Labor Union*, 433 U. S. 119, 126 (1977). These considerations were an important reason for the standard adopted in *Turner*, *supra*, at ——, and in my view their absence makes that decision inapt to the question at hand.

Better authority, in my view, for the conclusion reached by the Court today is the balancing test announced in *Camara* v. *Municipal Court*, 387 U. S. 523 (1967), and recently applied by this Court in *O'Connor* v. *Ortega*, 480 U. S. —— (1987) and *New Jersey* v. *T. L. O.*, 469 U. S. 325 (1985). In concluding that *Camara*'s balancing analysis offers the most appropriate framework for considering the Fourth Amendment claims of those on probation, I would follow the position apparently taken by the Supreme Court of Wisconsin in this case, see 388 N. W. 2d 535 (1986), and widely supported by

I agree probably & will join unless Nino makes changes.

LFP

I don't think Turner standard not applicable. It involves inmate of a prison.

Prefer SOC's balancing test: rights of probationer (limited tho he is) vs societal interests that are extremely imp.

other courts and commentators. See, *e. g.*, 4 W. LaFave, Search and Seizure § 10.10(c), pp. 136–142 (2d ed. 1987); White, The Fourth Amendment Rights of Parolees and Probationers, 31 U. Pitt. L. Rev. 167 (1969); Note, Extending Search-and-Seizure Protection to Parolees in California, 22 Stan. L. Rev. 129, 137–140 (1969); *Latta* v. *Fitzharris*, 521 F. 2d 246 (CA9 1975) (en banc); *United States* v. *Consuelo-Gonzalez*, 521 F. 2d 259 (CA9 1975) (en banc); *State* v. *Earnest*, 293 N. W. 2d 365, 368 (Minn. 1980). The view of these authorities is that a reweighing of the balance of individual and societal interests is appropriate in light of the ongoing supervision and regulation of probationers and parolees in society. Under this test, although probable cause is generally required for any search or seizure, a different standard may be appropriate "'[w]here a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause.'" *O'Connor* v. *Ortega*, *supra*, at —— (quoting *New Jersey* v. *T. L. O.*, *supra*, at 341).

Considering first the government's legitimate needs, few would disagree that there is a great public interest in close supervision of those on probation. According to a recent RAND study of probation in California, for example, over half of the persons on probation for felony convictions were charged with new crimes within 40 months of being sentenced, and almost two-thirds were rearrested within the same period. Petersilia, Probation and Felony Offenders, 49 Fed. Probation 4, 5 (June 1985). Moreover, over half of those on probation were reconvicted, with 18% convicted of homicide, rape, weapons offenses, assault, or robbery. *Id.*, at 6. Probation—which was "originally intended for offenders who pose little threat to society and were believed to be capable of rehabilitation through a productive, supervised life in the community," *id.*, at 4—is increasingly used even for those convicted of serious felonies. Over one-third of the

Nation's adult probation population consists of those convicted of *felonies*, and the probation population is growing more rapidly than the prison population. *Ibid.* Accordingly, there is a special public interest in maintaining a system of close supervision of those on probation.

Probation supervision would be substantially more difficult, if possible at all, under a rule requiring probation officers to have both probable cause and a warrant before conducting a search to ensure compliance with probation conditions. Some potential violations of probation conditions—such as possession of drugs or firearms in violation of the conditions of probation—can only be detected by searches of the probationer's person or home. In some cases, moreover, a reduced standard of Fourth Amendment reasonableness is necessary to permit early intervention before a probationer does damage to himself or society. Indeed, recent research suggests that more intensive supervision of those on probation can significantly reduce recidivism. *Id.*, at 9. In *Camara*, this Court refused to require probable cause in the traditional sense because "the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures." 387 U. S., at 535–536. Some probation conditions likewise can be effectively enforced only if probation officers are permitted to act on evidence that may not satisfy the probable-cause standard. The warrant requirement is also ill-suited to probation searches. Such a requirement would interfere with the ability of probation officials to react quickly to evidence of misconduct, see *T. L. O.* v. *New Jersey*, 469 U. S., at 340 (warrant requirement "would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools"), and the delay occasioned by a warrant requirement could frustrate the need for an effective, credible deterrent. *New York* v. *Burger*, —— U. S. ——, —— (1987); *United States* v. *Biswell*, 406 U. S. 311, 316 (1972). Thus, "special needs, beyond the

normal need for law enforcement make the warrant and probable cause requirement impracticable." 469 U. S., at 351 (BLACKMUN, J., concurring in judgment).

Balanced against this public need, of course, are the probationers' privacy interests. The instant case involves the search of home, where individuals' privacy interests are at their greatest. Nonetheless, because of the supervisory nature of probation, a probationer has a lesser privacy interest than other members of the public. A term of probation is imposed instead of a term of imprisonment, *see* 18 U. S. C. §3651 (1982 ed. and Supp. III); Wis. Stat. Ann. §973.09 (West 1985 and Supp. 1986), and in return, a probationer must comply with often quite stringent conditions that belie any claim to the degree of privacy shared by those not on probation. The federal probation statute, for example, authorizes an array of conditions, including: the obligation not to commit another crime during the period of probation, the obligation to pursue employment, the duty to avoid certain occupations, an obligation to avoid certain places or people, a requirement that the probationer spend weekends or nights in prison, a requirement that the probationer refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance. 18 U. S. C. §3563 (1982 ed., Supp. III) (effective Nov. 1, 1987). In light of restrictions such as these, probationers cannot legitimately expect the same degree of privacy as law-abiding citizens.

On balance, I conclude that the standard of Fourth Amendment reasonableness applied by the Supreme Court of Wisconsin is appropriate in the probation context. I further agree with the plurality and the Supreme Court of Wisconsin that the search in this case was reasonable. The search was initiated by a supervisor in the State Bureau of Probation and Parole after he received a telephone call from the local detective bureau. The supervisor testified that the detective who called him "indicated that they had received information that Mr. Griffin had in his possession at his residence contraband

material." App. 51. Although this information would not be adequate to support a finding of probable cause under *Illinois* v. *Gates*, 462 U. S. 213 (1983), in my view, it was reasonable for probation officials to rely on information provided by law enforcement officials. As stated by the plurality, it is essential that probation officials be able to proceed on the basis of their entire experience with a probationer, and "it [is] reasonable to permit information provided by a police officer, whether or not on the basis of first-hand knowledge, to support a probationer search." *Ante*, at 10. I therefore concur in the judgment affirming the judgment of the Supreme Court of Wisconsin.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 22, 1987

Re: 86-5324 - Griffin v. Wisconsin

Dear Harry:

Please join me in Parts I and IIC of your dissent.

Respectfully,

JPS

Justice Blackmun

Copies to the Conference

June 22, 1987

86-5324 Griffin v. Wisconsin

Dear Sandra and Nino:

I am not yet at rest in this case, and therefore hope it will be possible for the two of you to agree.

Sincerely,

Justice O'Connor
Justice Scalia

LFP/vde

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 22, 1987

Re: No. 86-5324-Griffin v. Wisconsin

Dear Harry:

Please join me in your dissent.

Sincerely,

T.M.

Justice Blackmun

cc: The Conference

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

L.F.P.

From: **Justice Scalia**

Circulated: JUN 23 1987

Recirculated: _____

ALTERNATE DRAFT

SUPREME COURT OF THE UNITED STATES

No. 86-5324

JOSEPH G. GRIFFIN, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[June 26, 1987]

JUSTICE SCALIA delivered the opinion of the Court.

Petitioner Joseph Griffin, who was on probation, had his home searched by probation officers acting without a warrant. The officers found a gun that later served as the basis of Griffin's conviction of a state-law weapons offense. We granted certiorari, 479 U. S. —— (1986), to consider whether this search violated the Fourth Amendment.

I

On September 4, 1980, Griffin, who had previously been convicted of a felony, was convicted in Wisconsin state court of resisting arrest, disorderly conduct, and obstructing an officer. He was placed on probation.

Wisconsin law puts probationers in the legal custody of the State Department of Health and Social Services and renders them "subject to . . . conditions set by the court and rules and regulations established by the department." Wis. Stat. § 973.10(1) (1985). One of the Department's regulations permits any probation officer to search a probationer's home without a warrant as long as his supervisor approves and as long as there are "reasonable grounds" to believe the presence of contraband—including any item that the probationer cannot possess under the probation conditions. Wis. Admin.

Renewed Join

S.O'C. helped Nino rewrite her opinion to include portions of her concurring opinion that I would have joined.

SO'C has joined

Code HHS §§ 328.21(4), 328.16(1) (1981).[1] The rule provides that an officer should consider a variety of factors in determining whether "reasonable grounds" exist, among which are information provided by an informant, the reliability and specificity of that information, the reliability of the informant (including whether the informant has any incentive to supply inaccurate information), the officer's own experience with the probationer, and the "need to verify compliance with rules of supervision and state and federal law." HHS § 328.21(7). Another regulation makes it a violation of the terms of probation to refuse to consent to a home search. HHS § 328.04(3)(k). And still another forbids a probationer to possess a firearm without advance approval from a probation officer. HHS § 328.04(3)(j).

On April 5, 1983, while Griffin was still on probation, Michael Lew, the supervisor of Griffin's probation officer, received information from a detective on the Beloit Police Department that there were or might be guns in Griffin's apartment. Unable to secure the assistance of Griffin's own probation officer, Lew, accompanied by another probation officer and three plainclothes policemen, went to the apartment. When Griffin answered the door, Lew told him who they were and informed him that they were going to search his home. During the subsequent search—carried out entirely by the probation officers under the authority of Wisconsin's probation regulation—they found a handgun.

Griffin was charged with possession of a firearm by a convicted felon, which is itself a felony. Wis. Stat. § 941.29(2) (Supp. 1986–1987). He moved to suppress the evidence seized during the search. The trial court denied the motion,

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[1] HSS § 328 was promulgated in December 1981 and became effective on January 1, 1982. Effective May 1, 1986, HSS § 328.21 was repealed and repromulgated with somewhat different numbering and without relevant substantive changes. See *Griffin* v. *State*, 131 Wis. 2d 41, 60, n. 7, 388 N. W. 2d 535, 542, n, 7 (1986). This opinion will cite the old version of § 328.21, which was in effect at the time of the search.

concluding that no warrant was necessary and that the search was reasonable. A jury convicted Griffin of the firearms violation, and he was sentenced to two years' imprisonment. The conviction was affirmed by the Wisconsin Court of Appeals, *State* v. *Griffin*, 126 Wis. 2d 183, 376 N. W. 2d 62 (1985).

On further appeal, the Wisconsin Supreme Court also affirmed. It found denial of the suppression motion proper because probation diminishes a probationer's reasonable expectation of privacy—so that a probation officer may, consistent with the Fourth Amendment, search a probationer's home without a warrant, and with only "reasonable grounds" (not probable cause) to believe that contraband is present. It held that the "reasonable grounds" standard of Wisconsin's search regulation satisfied this "reasonable grounds" standard of the Federal Constitution, and that the detective's tip established "reasonable grounds" within the meaning of the regulation, since it came from someone who had no reason to supply inaccurate information, specifically identified Griffin, and suggested a need to verify Griffin's compliance with state law. *State* v. *Griffin*, 131 Wis. 2d 41, 52–64, 388 N. W. 2d 535, 539–544 (1986).

II

We think the Wisconsin Supreme Court correctly concluded that this warrantless search did not violate the Fourth Amendment. To reach that result, however, we find it unnecessary to embrace a new principle of law, as the Wisconsin court evidently did, that any search of a probationer's home by a probation officer satisfies the Fourth Amendment as long as the information possessed by the officer satisfies a federal "reasonable grounds" standard. As his sentence for the commission of a crime, Griffin was committed to the legal custody of the Wisconsin State Department of Health and Social Services, and thereby made subject to that department's rules and regulations. The search of Griffin's home satisfied the demands of the Fourth Amendment because it was

carried out pursuant to a regulation that itself satisfies the Fourth Amendment's reasonableness requirement under well established principles.

A

A probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be "reasonable." Although we usually require that a search be undertaken only pursuant to a warrant (and thus supported by probable cause, as the Constitution says warrants must be), see, *e. g.*, *Payton* v. *New York*, 445 U. S. 573, 586 (1980), we have permitted exceptions when "special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable." *New Jersey* v. *T. L. O.*, 469 U. S. 325, 351 (BLACKMUN, J., concurring in the judgment). Thus, we have held that government employers and supervisors may conduct warrantless, work-related searches of employees' desks and offices without probable cause, *O'Connor* v. *Ortega*, —— U. S. —— (1987), and that school officials may conduct warrantless searches of some student property, also without probable cause. *New Jersey* v. *T. L. O.*, *supra*. We have also held, for similar reasons, that in certain circumstances government investigators conducting searches pursuant to a regulatory scheme need not adhere to the usual warrant or probable cause requirements as long as their searches meet "reasonable legislative or administrative standards." *Camara* v. *Municipal Court*, 387 U. S. 523, 538 (1967). See *New York* v. *Burger*, —— U. S. ——, —— (1987); *Donovan* v. *Dewey*, 452 U. S. 594, 602 (1981); *United States* v. *Biswell*, 406 U. S. 311, 316 (1972).

A State's operation of a probation system, like its operation of a school, government office or prison, or its supervision of a regulated industry, likewise presents "special needs" beyond normal law enforcement that may justify departures from the usual warrant and probable cause requirements. Probation, like incarceration, is "a form of criminal

sanction imposed by a court upon an offender after verdict, finding, or plea of guilty." G. Killinger, H. Kerper, & P. Cromwell, Probation and Parole in the Criminal Justice System 14 (1976); see also 18 U. S. C. § 3651 (9182 ed. and Supp. III) (probation imposed instead of imprisonment); Wis. Stat. Ann. § 973.09 (West 1985 and Supp. 1986) (same).[2] Probation is simply one point (or, more accurately, one set of points) on a continuum of possible punishments ranging from solitary confinement in a maximum security facility to a few hours of mandatory community service. A number of different options lie between those extremes, including confinement in a medium or minimum security facility, work-release programs, "halfway houses," and probation—which can itself be more or less confining depending upon the number and severity of restrictions imposed. See, *e. g.*, 18 U. S. C. § 3563 (1982 ed., Supp. III) (effective Nov. 1, 1987) (probation conditions authorized in federal system include requiring probationers to avoid commission of other crimes; to pursue employment; to avoid certain occupations, places, and people; to spend evenings or weekends in prison; and to avoid narcotics or excessive use of alcohol). To a greater or lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy "the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions." *Morrissey* v. *Brewer*, 408 U. S. 471, 480 (1972).

These restrictions are meant to assure that the probation serves as a period of genuine rehabilitation and that the com-

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[2] We have recently held that prison regulations allegedly infringing Constitutional rights are themselves constitutional as long as they are "'reasonably related to legitimate penological interests.'" *O'Lone* v. *Estate of Shabazz*, —— U. S. ——, —— (1987) (quoting *Turner* v. *Safley*, 482 U. S. ——, —— (1987)). We have no occasion in this case to decide whether, as a general matter, that test applies to probation regulations as well.

munity is not harmed by the probationer's being at large. See *State* v. *Tarrell*, 74 Wis. 2d 746, 653–654, 247 N. W. 2d 696, 700 (1976). These same goals require and justify the exercise of supervision to assure that the restrictions are in fact observed. Recent research suggests that more intensive supervision can reduce recidivism, see Petersilia, Probation and Felony Offenders, 49 Fed. Probation 9 (June 1985), and the importance of supervision has grown as probation has become an increasingly common sentence for those convicted of serious crimes, see *id.*, at 4. Supervision, then, is a "special need" of the State permitting a degree of impingement upon privacy that would not be constitutional if applied to the public at large. That permissible degree is not unlimited, however, so we next turn to whether it has been exceeded here.

B

In determining whether the "special needs" of its probation system justify Wisconsin's search regulation, we must take that regulation as it has been interpreted by state corrections officials and state courts. As already noted, the Wisconsin Supreme Court—the ultimate authority on issues of Wisconsin law—has held that a tip from a police detective that Griffin "had" or "may have had" an illegal weapon at his home constituted the requisite "reasonable grounds." See 131 Wis. 2d, at 64, 388 N. W. 2d, at 544. Whether or not we would choose to interpret a similarly worded federal regulation in that fashion, we are bound by the state court's interpretation, which is relevant to our constitutional analysis only insofar as it fixes the meaning of the regulation.[3] We

[3] If the regulation in question established a standard of conduct to which the probationer had to conform on pain of penalty—*e. g.*, a restriction on his movements—the state court could not constitutionally adopt so unnatural an interpretation of the language that the regulation would fail to provide adequate notice. Cf. *Kolender* v. *Lawson*, 461 U. S. 352, 357–358 (1983); *Lambert* v. *California*, 355 U. S. 225, 228 (1957). That is not an issue here since, even though the petitioner would be in violation of his probation conditions (and subject to the penalties that entails) if he failed to

think it clear that the special needs of Wisconsin's probation system make the warrant requirement impracticable and justify replacement of the standard of probable cause by "reasonable grounds," as defined by the Wisconsin Supreme Court.

A warrant requirement would interfere to an appreciable degree with the probation system, setting up a magistrate rather than the probation officer as the judge of how close a supervision the probationer requires. Moreover, the delay inherent in obtaining a warrant would make it more difficult for probation officials to respond quickly to evidence of misconduct, see *New Jersey* v. *T. L. O.*, 469 U. S., at 340, and would reduce the deterrent effect that the possibility of expeditious searches would otherwise create, see *New York* v. *Burger*, —— U. S. ——, —— (1987); *United States* v. *Biswell*, 406 U. S., at 316. By way of analogy, one might contemplate how parental custodial authority would be impaired by requiring judicial approval for search of a minor child's room. And on the other side of the equation—the effect of dispensing with a warrant upon the probationer: Although a probation officer is not an impartial magistrate, neither is he the police officer who normally conducts searches against the ordinary citizen. He is an employee of the State Department of Health and Social Services who, while assuredly charged with protecting the public interest, is also supposed to have in mind the welfare of the probationer (who in the regulations is called a "client," HSS § 328.03(5)). The applicable regulations require him, for example, to "[p]rovid[e] individualized counseling designed to foster growth and development of the client as necessary," HSS

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consent to any search that the regulation authorized, see HSS 328.04(3)(k), nothing in the regulation or elsewhere required him to be advised, at the time of the request for search, what the probation officer's "reasonable grounds" were, any more than the ordinary citizen has to be notified of the grounds for "probable cause" or "exigent circumstances" searches before they may be undertaken.

§ 328.04(2)(i), and "[m]onitor[] the client's progress where services are provided by another agency and evaluat[e] the need for continuation of the services," HSS § 328.04(2)(o). In such a setting, we think it reasonable to dispense with the warrant requirement.

The dissent would retain a judicial warrant requirement, though agreeing with our subsequent conclusion that reasonableness of the search does not require probable cause. This, however, is a combination that neither the text of the Constitution nor any of our prior decisions permits. While it is possible to say that Fourth Amendment reasonableness demands probable cause without a judicial warrant, the reverse runs up against the constitutional provision that "no Warrants shall issue but upon probable Cause." Amendment IV. The Constitution prescribes, in other words, that where the matter is of such a nature as to require a judicial warrant, it is also of such a nature as to require probable cause. Although we have arguably come to permit an exception to that prescription for administrative warrants,[4] we have never done so for judicial warrants. There it remains true that "[i]f a search warrant be constitutionally required, the requirement cannot be flexibly interpreted to dispense with the rigorous constitutional restrictions for its issue." *Frank* v. *Maryland*, 359 U. S. 360, 373 (1959). The dissent neither gives a justification for departure from that principle nor con-

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[4] In the administrative search context, we formally require that administrative warrants be supported by "probable cause," because in that context we use that term as referring not to a quantum of evidence, but merely to a requirement of reasonableness. See, *e. g.*, *Marshall* v. *Barlow's, Inc.*, 436 U. S. 307, 320 (1978); *Camara* v. *Municipal Court*, 387 U. S. 523, 528 (1967). In other contexts, however, we use "probable cause" to refer to a quantum of evidence for the belief justifying the search, to be distinguished from a lesser quantum such as "reasonable suspicion." See *O'Connor* v. *Ortega*, —— U. S. ——, —— (1987) (plurality); *New Jersey* v. *T. L. O.*, 469 U. S. 325, 341–342 (1985). It is plainly in this sense that the dissent uses the term. See, *e. g.*, *post*, at 5 (less than probable cause means "a reduced level of suspicion").

siders its implications for the body of Fourth Amendment law.[5]

We think that the probation regime would also be unduly disrupted by a requirement of probable cause. To take the facts of the present case, it is most unlikely that the unauthenticated tip of a police officer—bearing, as far as the record shows, no indication whether its basis was first-hand knowledge or, if not, whether the first-hand source was reliable, and merely stating that Griffin "had or might have" guns in his residence, not that he certainly had them—would meet the ordinary requirement of probable cause. But this is different from the ordinary case in two related respects: First, even more than the requirement of a warrant, a probable cause requirement would reduce the deterrent effect of the supervisory arrangement. The probationer would be assured that so long as his illegal (and perhaps socially dangerous) activities were sufficiently concealed as to give rise to no more than reasonable suspicion, they would go undetected and uncorrected. The second difference is well reflected in the regulation specifying what is to be considered "[i]n deciding whether there are reasonable grounds to believe . . . a client's living quarters or property contain contraband," HSS § 328.21(7). The factors include not only the usual elements

[5] Moreover, the dissent cannot, at the same time, proclaim as an absolute (absent a warrant or exigent circumstances) "the right of a man to retreat into his own home," *post*, at 6 (quoting from *Silverman* v. *United States*, 365 U. S. 505, 511 (1961)), and yet deprecate the need for warrantless searches here on the ground that "a probation officer has the special advantage of the authority to conduct home visits," and "[o]bservations during such visits could provide reasonable suspicion and support a warrant or, under exigent circumstances, an immediate search." *Post*, at 8. For one must also justify the authority to compel the probationer to host warrantless "home visits" (a friendlier phrase, certainly, but hardly a different reality than "warrantless entries") and to permit the "observations" they entail. The difference between us seems to be much more narrow than the dissent believes, going, apparently, only to the scope of the warrantless search, with the dissent objecting only to one that is "full-blown," *post*, at 9.

that a police officer or magistrate would consider, such as the detail and consistency of the information suggesting the presence of contraband and the reliability and motivation to dissemble of the informant, HSS §§ 328.21(7)(c), (d); but also "[i]nformation provided by the client which is relevant to whether the client possesses contraband," and "[t]he experience of a staff member with that client or in a similar circumstance." HSS §§ 328.21(7)(f), (g). As was true, then, in *O'Connor* v. *Ortega*, *supra*, and *New Jersey* v. *T. L. O.*, *supra*, we deal with a situation in which there is an ongoing supervisory relationship—and one that is not, or at least not entirely, adversarial—between the object of the search and the decisionmaker.[8]

In such circumstances it is both unrealistic and destructive of the whole object of the continuing probation relationship to insist upon the same degree of demonstrable reliability of particular items of supporting data, and upon the same degree of certainty of violation, as is required in other contexts. In some cases—especially those involving drugs or illegal weapons—the probation agency must be able to act based upon a lesser degree of certainty than the Fourth Amendment would otherwise require in order to intervene before a probationer does damage to himself or society. The agency, moreover, must be able to proceed on the basis of its entire

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[8] It is irrelevant whether the probation authorities relied upon any peculiar knowledge which they possessed of the petitioner in deciding to conduct the present search. Our discussion pertains to the reasons generally supporting the proposition that the search decision should be left to the expertise of probation authorities rather than a magistrate, and should be supportable by a lesser quantum of concrete evidence justifying suspicion than would be required to establish probable cause. That those reasons may not obtain in a particular case is of no consequence. We may note, nonetheless, that the dissent is in error to assert as a fact that the probation authorities made no use of special knowledge in the present case, *post*, at 12. All we know for certain is that the petitioner's probation officer could not be reached; whether any material contained in petitioner's probation file was used does not appear.

experience with the probationer, and to assess probabilities in the light of its knowledge of his life, character and circumstances.

To allow adequate play for such factors, we think it reasonable to permit information provided by a police officer,[7] whether or not on the basis of first-hand knowledge, to support a probationer search. The same conclusion is suggested by the fact that the police may be unwilling to disclose their confidential sources to probation personnel. For the same reason, and also because it is the very assumption of the institution of probation that the probationer is in need of rehabilitation and is more likely than the ordinary citizen to violate the law, we think it enough if the information provided indicates, as it did here, only the likelihood ("had or might have guns") of facts justifying the search.[8]

* * *

The search of Griffin's residence was "reasonable" within the meaning of the Fourth Amendment because it was conducted pursuant to a valid regulation governing probationers. This conclusion makes it unnecessary to consider

[7] The dissent speculates that the information might not have come from the police at all, "but from someone impersonating an officer." *Post*, at 10. The trial court, however, found as a matter of fact that Lew received the tip on which he relied from a police officer. See 388 N. W. 2d, at 543. The Wisconsin Supreme Court affirmed that finding, *ibid.*, and neither the petitioner nor the dissent asserts that it is clearly erroneous.

[8] The dissent asserts that the search did not comport with all the governing Wisconsin regulations. There are reasonable grounds on which the Wisconsin court could find that it did. But we need not belabor those here, since the only regulation upon which we rely for our constitutional decision is that which permits a warrantless search on "reasonable grounds." The Wisconsin Supreme Court found the requirement of "reasonable grounds" to have been met on the facts of this case and, as discussed earlier, we hold that such a requirement, so interpreted, meets constitutional minimum standards as well. That the procedures followed, although establishing "reasonable grounds" under Wisconsin law, and adequate under federal constitutional standards, may have violated Wisconsin state regulations, is irrelevant to the case before us.

whether, as the court below held and the State urges, *any* search of a probationer's home by a probation officer is lawful when there are "reasonable grounds" to believe contraband is present. For the foregoing reasons, the judgment of the Wisconsin Supreme Court is

Affirmed.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 24, 1987

Re: 86-5324 - Griffin v. Wisconsin

Dear Harry:

Please join me in Part I(C) of the "Alternative Dissent Draft" circulated today.

Respectfully,

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 24, 1987

Re: 86-5324 Griffin v. Wisconsin

Dear Nino,

Please join me in your alternate draft in this case. I will withdraw my separate opinion if your alternate draft becomes the opinion of the Court.

Sincerely,

Sandra

Justice Scalia

Copies to the Conference

June 24, 1987

86-5324 Griffin v. Wisconsin

Dear Nino:

Please join me in your alternate draft in this case.

Sincerely,

Justice Scalia

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 24, 1987

Griffith v. Wisconsin, No. 86-5324

Dear Harry,

I was prepared to join in large part your fine dissent in the above. Ought I now await your re-circulation in light of Nino's entirely new draft?

Sincerely,

Bill

Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 24, 1987

Re: 86-5324 Griffin v. Wisconsin

Dear Nino,

Please join me in your alternate draft in this case. I will withdraw my separate opinion if your alternate draft becomes the opinion of the Court.

Sincerely,

Sandra

Justice Scalia

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 24, 1987

86-5324 - Griffin v. Wisconsin

Dear Nino,

Please join me.

Sincerely yours,

Byron

Justice Scalia

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 24, 1987

Griffin v. Wisconsin, No. 86-5324

Dear Harry,

Please join me in Parts IIB and IIC of your alternate draft dissent in this case.

Sincerely,

Bill

Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 24, 1987

Re: 86-5324 - Griffin v. Wisconsin

Dear Nino:

Please join me in your alternate draft of June 23rd.

Sincerely,

Justice Scalia

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 24, 1987

Re: 86-5324 - Griffin v. Wisconsin

Dear Nino:

Please join me in your alternate draft of June 23rd.

Sincerely,

Justice Scalia

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE ANTONIN SCALIA

June 24, 1987

Re: 86-5324 - Griffin v. Wisconsin

MEMORANDUM TO THE CONFERENCE:

In response to Harry's revised dissent, I will add the indicated new language and additional footnote call to the sentence beginning on line 17 of page 8 of my June 26 draft:

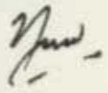
> Although we have arguably come to permit an exception to that prescription for administrative search warrants, 4/ which may, but do not necessarily have to be, issued by courts, 5/, we have never done so for constitutionally mandated judicial warrants.

The new footnote 5/ will read as follows:

> See Marshall v. Barlow's, Inc., supra, 436 U.S., at 307 ("We hold that ... the Act is unconstitutional insofar as it purports to authorize inspections without warrant or its equivalent"). The "neutral magistrate," Camara, supra, 387 U.S., at 532, or "neutral officer," Marshall v. Barlow's, Inc., supra, 436 U.S., at 323, envisioned by our administrative search cases is not necessarily the "neutral judge," post, at 7, envisioned by the dissent.

I will make no other substantive changes.

Sincerely,



86-5324 Griffin v. Wisconsin (Andy)

AS for the Court 5/4/87
1st draft 6/1/87
2nd draft 6/12/87
Alternate draft 6/23/87
3rd draft 6/25/87
Joined by CJ 6/3/87
SOC joins alternate draft 6/24/87
BRW 6/24/87
LFP 6/24/87

SOC concurring in the judgment
1st draft 6/16/87
2nd draft 6/18/87

BRW concurring in the judgment
1st draft 6/16/87

HAB dissenting
1st draft 6/20/87
1st alternative draft 6/24/87
2nd alternative draft 6/25/87
JPS joins Part I and IIC 6/22/87
TM 6/24/87
JPS joins Part I(C) 6/24/87
WJB joins Part IIB and IIC 6/24/87

JPS dissenting
1st draft 6/23/87
Joined by TM 6/24/87

HAB will dissent 6/2/87
TM awaiting dissent 6/2/87
JPS awaiting dissent 6/2/87