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Criminal Procedure--Warrantless Search Permissible Even Though Arresting Officer had Time to Procure Warrant

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ABSTRACTS

CRIMINAL PROCEDURE—WARRANTLESS SEARCH PERMISSIBLE EVEN THOUGH ARRESTING OFFICER HAD TIME TO PROCURE WARRANT

A postal inspector, acting on information provided by an informant of known reliability, arrested the defendant Watson without an arrest warrant, although he had sufficient opportunity to obtain one. After informing the defendant of his *Miranda* rights, the inspector asked if he could look inside defendant's car. Watson replied, "Go ahead," and repeated the answer when warned that "[i]f I find anything, it is going to go against you." The search revealed evidence upon which the defendant was convicted of possession of stolen mail in the United States District Court for the Central District of California.

The Court of Appeals for the Ninth Circuit ruled that the informant was reliable and probable cause existed, yet held the arrest unconstitutional because the inspector failed to obtain a warrant although he had time to do so. The court also held the search involuntary and thus constitutionally defective based on the totality of the circumstances, which included the unlawful arrest, and reversed. *United States v. Watson*, 504 F.2d 849 (9th Cir. 1974).

The United States Supreme Court, after reviewing the old common law rules relating to warrantless arrest, as well as the prevailing view among the states, held that "the Fourth Amendment permits a . . . law enforcement officer to make a warrantless arrest in a public place even though he had adequate opportunity to procure a warrant after developing probable cause for arrest." The Court stated that although it may be wiser for officers to obtain warrants when possible, it would:

decline to transform this judicial preference into a constitutional rule when the judgment of the Nation and Congress has for so long been to authorize warrantless public arrests on probable cause rather than to encumber criminal prosecutions with endless litigation with respect to the existence of exigent circumstances, whether it was practicable to get a warrant, whether the suspect was about to flee, and the like.

Mr. Justice Marshall, joined by Mr. Justice Brennan, dissented on the ground that arrests should be subject to the same requirements with regard to warrants as searches.

The Court also reversed the ninth circuit's ruling that the search was involuntary under the totality of the circumstances rule set forth in *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). The Court in deciding *Schneckloth* distinguished the facts in that case from a situation in which the consent to search was given while the defendant was in custody, and declined to make a determination of the proper standard to be applied in such a case. The Court here clearly ruled that the *Schneckloth* "totality of the circumstances" test would be applied even when the defendant was in custody at the time of the consent. *United States v. Watson*, 96 S. Ct. 820 (1976).

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TAXATION—FOURTH CIRCUIT DISALLOWS LEASEBACK DEDUCTIONS

In a significant tax case, *Perry v. U.S.*, 520 F.2d 235 (4th Cir. 1975), the fourth circuit has ruled that rental payments made by two physician-taxpayers for the use of a medical building, which they had previously transferred to trusts for the benefit of their children, were not deductible under section 162(a)(3) of the Internal Revenue Code of 1954.

The physicians, partners in a medical partnership, created a "Clifford Trust" under sections 671-678 of the Internal Revenue Code of 1954. Later each conveyed to the trust under essentially the same terms his half interest in some property upon which they had constructed an office building for their practice. The same bank was named as corporate trustee with broad administrative powers, and each physician-taxpayer was the settlor to whom the remainder interests were reserved upon expiration of the trust or the death of the beneficiaries, whichever should occur first.

A leaseback of the office building was arranged prior to establishing the trust whereby each taxpayer leased a one-half interest in the building with monthly rent of \$200 to be paid for the duration of each respective trust. The intended effect of this leaseback arrangement, of course, was to divert a part of each taxpayer's