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Laurie Knight

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BALANCING THE FOURTH AMENDMENT AGAINST PROTECTING THE ENVIRONMENT

*Riverdale Mills Corp. v. Pimpare*¹

I. INTRODUCTION

In *Riverdale Mills Corp. v. Pimpare*, the First Circuit Court of Appeals was forced to strike a balance between Riverdale's Fourth Amendment rights and protecting the environment from industrial wastewater. The court held that Riverdale did not have a right to privacy in its wastewater. In so holding, the court analogized the wastewater to garbage left out on the curb. This case raises questions as to what extent society should give up liberty interests in order to protect the environment. *Riverdale* is a prime example that the EPA can protect the environment while remaining in the confines of the Fourth Amendment.

II. FACTS AND HOLDING

Two EPA inspectors, Justin Pimpare and Daniel Granz, allegedly violated James M. Knott, Sr. and Riverdale Mills Corporation's (Riverdale) Fourth Amendment right of freedom from unreasonable searches.² Pimpare and Granz invoked qualified immunity in their defense and filed an interlocutory appeal.³

Riverdale manufactures a plastic-coated steel wire product that requires a water-based cleaning process during its manufacturing.⁴ The cleaning process produces both acidic and alkaline wastewater.⁵ Pursuant to a state permit, Riverdale is allowed to put this wastewater into the public sewer system as long as it properly treats the wastewater before it reaches the public sewer.⁶ Riverdale has a pretreatment system within the plant, which treats and neutralizes the acidic or basic qualities of the wastewater before it reaches the public sewer system, in order to meet the state and federal clean-water requirements.⁷ Once the water goes through the pretreatment system, it then moves through a meter loop, which measures water quantity to determine the sewer charges that Riverdale will pay to the town of Northbridge.⁸

From the meter loop the wastewater flows through a "test pit" outside Riverdale's plant towards the public sewer.⁹ This "test pit" is referred to as "Manhole 1."¹⁰ Manhole 1 is located on a street named Riverdale Street.¹¹ Riverdale Street runs from a public road across Riverdale's property along the north side of the plant.¹² Pimpare's affidavit noted that the street appeared to be a public street, but Riverdale alleged that it privately owns this street.¹³ Moreover, Riverdale claimed ownership of Manhole 1.¹⁴

From Manhole 1, the wastewater flows further underneath Riverdale Street through 300 feet of pipe allegedly owned by Riverdale to Manhole 2.¹⁵ There is no dispute that Manhole 2 is publicly owned and is part

¹ 392 F.3d 55 (1st Cir. 2004).

² *Id.* at 56

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 56-57.

⁷ *Id.* at 57.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

of the public sewer system.¹⁶ The Riverdale pipe with wastewater from Manhole 1 enters into Manhole 2 as a separate flow.¹⁷ This separate flow then merges with other flows within Manhole 2.¹⁸ From Manhole 2 the water flows to the town of Northbridge's treatment plant before it is released into the Blackstone River.¹⁹

On July 28, 1997, the EPA received an anonymous tip alleging that the plant was not properly managing the pretreatment system, resulting in the possible discharge of wastewater with improper pH levels.²⁰ Because of this letter, the EPA sent Pimpare and Granz to Riverdale to perform an inspection on October 21, 1997.²¹ The inspectors did not obtain a search warrant prior to the inspection, and did not claim any exigent circumstances for not obtaining one.²²

Upon arriving at the mill, Pimpare met with Knott, who is the president, treasurer, chief executive officer, chairman of the board, and controlling shareholder of Riverdale,²³ as well as two other upper level employees.²⁴ Pimpare did not assert any statutory authority to search Riverdale but asked for Knott's consent to an inspection of the wastewater treatment facility, which would include tests of the wastewater.²⁵ Knott consented with the explicit condition that Knott, or a designated employee, accompany the inspectors at all times.²⁶ At some point during the day, Knott told the inspectors that Riverdale owned the sewer lines under Manhole 1 and that Manhole 2 was the start of the public sewer system.²⁷

The inspectors started their sampling of the wastewater that morning.²⁸ Knott and the two employees accompanied the inspectors to Manhole 1, where the inspectors took samples for approximately two hours.²⁹ After the initial round of sampling, Knott and the two employees took the inspectors on a tour of the mill.³⁰ At the conclusion of this tour, Pimpare told Knott and the two employees that he needed to conduct more testing at Manhole 1.³¹ Knott disputed this statement, but Pimpare claimed that Knott did not object to the further testing.³² More samples were taken from Manhole 1 between 12:40 pm and 1:15 pm and between 3:00 pm and 3:04 pm.³³ Knott stated that the inspectors took those afternoon samples without him or any of Riverdale's representatives present, and that those samples exceeded the scope of his consent.³⁴

The First Circuit Court of Appeals held that Pimpare and Granz did not violate Riverdale's Fourth Amendment rights by sampling the water.³⁵ The court also held that Pimpare and Granz were entitled to

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at 56.

²⁴ *Id.* at 57.

²⁵ *Id.* at 58.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* The inspectors originally planned to take a 24-hour composite sample from Manhole 1. The parties dispute the reason the inspectors chose not to take the composite sample. *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* However, the inspectors took samples on the street in full view of Riverdale employees. *Id.*

³⁵ *Id.* at 65.

qualified immunity based on the first prong of the qualified immunity test,³⁶ which requires a showing that the officers' conduct violated a constitutional right.³⁷

III. LEGAL BACKGROUND

A. *The Fourth Amendment*

As a general rule the Fourth Amendment protects people and not places.³⁸ Further, the Fourth Amendment does not protect things that a person knowingly exposes to the public.³⁹ The Supreme Court in *Katz v. United States* addressed the issue of a person's reasonable expectation of privacy in an item to be searched.⁴⁰ The Supreme Court held that the Fourth Amendment protections apply when a person has a subjective expectation of privacy in the disputed item and when that expectation is one that society is prepared to recognize as reasonable.⁴¹

Katz is central in many courts' analyses of garbage searches.⁴² Courts are reluctant to apply the protection of the Fourth Amendment to garbage searches when the garbage is in a location accessible to animals and members of the public at large.⁴³ The majority of courts have found that there is no reasonable expectation of privacy in garbage, even though one may have a subjective expectation of privacy in their trash.⁴⁴

*California v. Greenwood*⁴⁵ is the principle case dealing with the Fourth Amendment and garbage. In *Greenwood*, a Laguna Beach, California police officer asked the trash collector to pick up the garbage that Greenwood, the defendant, left on his curb and then to turn the bags over to her without mixing it with other people's garbage.⁴⁶ The officer then searched the garbage bags and found items indicating drug use, which led to a search of Greenwood's home and his arrest.⁴⁷ The issue in the case was whether the Fourth Amendment prohibited a warrantless search and seizure of garbage left for collection outside the curtilage of a home.⁴⁸ The Court said that a warrantless search and seizure of the garbage left at the curb outside Greenwood's home would violate the Fourth Amendment only if Greenwood manifested a subjective expectation of privacy in his garbage that society accepts as objectively reasonable.⁴⁹ The Court concluded that Greenwood could not have had a reasonable expectation of privacy in his garbage because he had exposed his garbage to the public.⁵⁰ Specifically, the Court said, "[i]t is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public."⁵¹

³⁶ *Id.*

³⁷ *Id.* at 61.

³⁸ Kimberly J. Winbush, Annotation, *Searches and Seizures: Reasonable Expectation of Privacy in Contents of Garbage or Trash Receptacle*, 62 A.L.R. 5th 1, 2a (2005).

³⁹ *Id.*

⁴⁰ 389 U.S. 347 (1967).

⁴¹ *Id.* at 361 (Harlan, J. concurring).

⁴² Winbush, *supra* note 38, at 2a.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 486 U.S. 35 (1988).

⁴⁶ *Id.* at 37.

⁴⁷ *Id.* at 37-38.

⁴⁸ *Id.* at 37.

⁴⁹ *Id.* at 39.

⁵⁰ *Id.* at 36-37. See *California v. Ciraolo*, 476 U.S. 207, 215 (1986) (finding police observation of marijuana plants from public airway at altitude of 1,000 feet does not violate the Fourth Amendment); *Oliver v. United States*, 466 U.S. 170, 178 (1984) (holding that "an individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home").

⁵¹ *Id.*

Thus, society does not believe that it is objectively reasonable to believe that garbage left on the curb is private.⁵²

Courts have also upheld searches of garbage placed within the curtilage of homes or businesses.⁵³ “At common law, the curtilage is the area to which extends the intimate activity associated with the ‘sanctity of a man’s home and the privacies of life’ . . .”⁵⁴ In *United States v. Dunn*, the Supreme Court formulated a four factor test to determine whether an area should qualify as curtilage.⁵⁵ The four factors are: (1) the proximity of the area claimed to be curtilage to the home; (2) whether the area is included within an enclosure surrounding the home; (3) the nature of the uses to which the area is put; and (4) the steps taken by the resident to protect the area from observation by people passing by.⁵⁶ The Court said that these factors are only “useful analytical tools” to determine if the area in question is intimately tied to the home itself as to be placed within the Fourth Amendment protection of the home.⁵⁷

B. Qualified Immunity

Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, a landmark Fourth Amendment case, held that someone injured by federal agents’ Fourth Amendment violation had a private right of action against the agents.⁵⁸ In this case, agents of the Federal Bureau of Narcotics, who claimed they had federal authority, entered Bivens’s apartment and arrested him for suspected narcotics violations.⁵⁹ The agents placed restraints upon him in front of his family and threatened to arrest the entire family.⁶⁰ The agents then thoroughly searched the apartment.⁶¹ After searching his home, the agents took Bivens to the federal courthouse where the agents interrogated and booked him.⁶² The agents also conducted a visual strip search of Bivens.⁶³ In response, Bivens brought suit in Federal District Court alleging that the search and arrest were without a warrant and that the agents used unreasonable force during the arrest.⁶⁴ Bivens sought monetary damages because he suffered great humiliation, embarrassment, and mental suffering as a result of the agents’ unlawful search and arrest.⁶⁵

The federal agents did not argue that Bivens was without any available remedy for the constitutional violations he had suffered.⁶⁶ They argued that Bivens could obtain monetary damages only by an action in tort through state law in state court.⁶⁷ The Supreme Court rejected this argument because it was “an unduly restrictive view of the Fourth Amendment’s protection against unreasonable searches and seizures by federal agents . . .”⁶⁸ The Court said that the “Fourth Amendment does not in so many words provide for its

⁵² *Id.* at 43-44.

⁵³ Winbush, *supra* note 38, at 4a.

⁵⁴ *Oliver*, 466 U.S. at 180 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)).

⁵⁵ *United States v. Dunn*, 480 U.S. 294, 301 (1987).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ 403 U.S. 388, 397 (1971).

⁵⁹ *Id.* at 389.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 389-90.

⁶⁶ *Id.* at 390.

⁶⁷ *Id.*

⁶⁸ *Id.* at 391.

enforcement by an award of money damages for the consequences of its violations.”⁶⁹ However, “it is . . . well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.”⁷⁰ Further, Congress did not explicitly declare that persons injured by federal agents’ violation of the Fourth Amendment may not recover monetary damages from the agents.⁷¹ Thus, the Supreme Court said, “[h]aving concluded that petitioner’s complaint states a cause of action under the Fourth Amendment, we hold that petitioner is entitled to recover money damages for any injuries he has suffered as a result of the agents’ violation of the Amendment.”⁷²

The progeny of *Bivens* have refined such claims. In *Carlson v. Green*, the Supreme Court stated that a *Bivens* claim to recover damages against a federal officer for a federal constitutional violation may be defeated in two situations.⁷³ First, a *Bivens* claim may be defeated where the defendant demonstrates “special factors counseling hesitation in the absence of affirmative action by Congress.”⁷⁴ Second, defeat may be appropriate when a defendant shows that “Congress has provided an alternative remedy which it explicitly declared to be a *substitute* for recovery directly under the Constitution and viewed as equally effective.”⁷⁵ In *Chappell v. Wallace*,⁷⁶ the Supreme Court stated that before a *Bivens* remedy is available the “court must take into account any ‘special factors counseling hesitation.’”⁷⁷ In other words, the court cannot allow a *Bivens* remedy when “special factors counseling hesitation” are present.⁷⁸ Finally, in *FDIC v. Meyer*,⁷⁹ Meyer asked the Supreme Court to extend the category of defendants against whom *Bivens* claims may be brought to include federal agencies, not just federal agents.⁸⁰ The Supreme Court refused to extend *Bivens* claims to include agencies as defendants, because the logic of *Bivens* does not support such a proposition.⁸¹

Since *Bivens* allows injured parties to sue federal agents for Fourth Amendment violations, federal agents who are sued will invoke the qualified immunity doctrine. Qualified immunity is “an entitlement not to stand trial or face the other burdens of litigation . . .”⁸² Further, it is “an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.”⁸³ The initial inquiry is whether the alleged facts, taken in the light most favorable to the party asserting injury, show the agent’s conduct violated a constitutional right.⁸⁴ If no constitutional right was violated then no further inquiries are necessary concerning qualified immunity.⁸⁵ However, if a constitutional violation did occur then the next inquiry is whether the Constitution clearly established the right.⁸⁶ “The contours of the right

⁶⁹ *Id.* at 396.

⁷⁰ *Id.* (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)).

⁷¹ *Id.* at 397.

⁷² *Id.*

⁷³ 446 U.S. 14, 18 (1980).

⁷⁴ *Id.* (quoting *Bivens*, 403 U.S. at 396).

⁷⁵ *Id.* at 18-19.

⁷⁶ 462 U.S. 296 (1983).

⁷⁷ *Id.* at 298. The Court coined the phrase “special factors counseling hesitation” in *Bivens*. See 403 U.S. at 396.

⁷⁸ See *Chappell*, 462 U.S. at 298.

⁷⁹ 510 U.S. 471 (1994).

⁸⁰ *Id.* at 484.

⁸¹ *Id.* at 486. The Court recognized the “enormous financial burden” that the extension of liability would create for the Federal Government and determined Congress was in a better position to “weigh the implications of such a significant expansion of Government liability.” *Id.*

⁸² *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (emphasis in original).

⁸³ *Id.*

⁸⁴ *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

⁸⁵ *Id.*

⁸⁶ *Id.*

must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.”⁸⁷ If the federal agent’s mistake regarding the requirements of the law is reasonable, then the agent is entitled to the qualified immunity defense.⁸⁸

The First Circuit Court of Appeals has explained the qualified immunity defense as a three-stage test by subdividing *Saucier*’s second prong into two distinct questions.⁸⁹ The three part test asks: (1) “[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer’s conduct violated a constitutional right;”⁹⁰ (2) “whether the right was clearly established at the time of the alleged violation” such that a reasonable officer would “be on notice that [his] conduct [was] unlawful;”⁹¹ and (3) “whether a ‘reasonable officer, similarly situated, would understand that the challenged conduct violated’ the clearly established right at issue.”⁹²

IV. INSTANT DECISION

The First Circuit Court of Appeals has jurisdiction over an interlocutory appeal from a denial of qualified immunity when the denial rests purely on legal questions and not on disputed issues of fact, such as is the situation in the instant decision.⁹³ The First Circuit has a three-prong test for qualified immunity.⁹⁴ The first prong asks, “taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer’s conduct violated a constitutional right?”⁹⁵ The second prong asks “whether the right was clearly established at the time of the alleged violation” such that a reasonable officer would “be on notice that [his] conduct [was] unlawful.”⁹⁶ The third prong asks “whether a ‘reasonable officer, similarly situated, would understand that the challenged conduct violated’ the clearly established right at issue.”⁹⁷ The Supreme Court of the United States has stated that courts should begin with the first prong, whether the facts as seen in the light most favorable to the injured party show that the officers’ conduct violated a constitutional right.⁹⁸

The First Circuit took as undisputed that the inspectors, Pimpare and Granz, lacked a warrant and exceeded the scope of Knott’s consent.⁹⁹ The court then looked to whether a search occurred for Fourth Amendment purposes.¹⁰⁰ The inspectors’ actions constituted a search only if Riverdale had a reasonable expectation of privacy in the wastewater underneath Manhole 1.¹⁰¹ The court assumed that Riverdale had a subjective expectation of privacy and then asked whether Riverdale’s subjective expectation of privacy was one which society was willing to accept as objectively reasonable.¹⁰² The court concluded that the controlling fact was that the wastewater at Manhole 1 was irretrievably flowing into the public sewer located 300 feet away.¹⁰³ The situation is similar to the situation of trash left on the curb, which enjoys no reasonable expectation of

⁸⁷ *Id.* at 202 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

⁸⁸ *Id.* at 205.

⁸⁹ *Riverdale Mills Corp. v. Pimpare*, 392 F.3d 55, 60 (2004).

⁹⁰ *Id.* at 61 (quoting *Saucier v. Katz*, 533 U.S. 194, 201 (2001)).

⁹¹ *Id.* (quoting *Suboh v. Dist. Attorney’s Office*, 298 F.3d 81, 90 (1st Cir. 2002)).

⁹² *Id.* (quoting *Suboh*, 298 F.3d at 90).

⁹³ *Id.* at 60.

⁹⁴ *Id.*

⁹⁵ *Id.* at 61.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 62.

¹⁰⁰ *Id.* at 63.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 64.

privacy, because the wastewater from Manhole 1 will inevitably reach Manhole 2 after only a short period of time, and once it reaches Manhole 2 anyone can take a sample.¹⁰⁴ Therefore, the First Circuit Court of Appeals held that Riverdale's Fourth Amendment rights were not violated and the inspectors were entitled to qualified immunity on the first prong.¹⁰⁵ Since the first prong was met, the court did not need to address the other two prongs of the qualified immunity analysis.¹⁰⁶

V. COMMENT

The Clean Water Act has been in existence for over thirty years and at the time of drafting was an innovative attempt to fight water pollution in the United States.¹⁰⁷ Data reveals that water quality has improved tremendously even hundreds of miles downstream from point sources.¹⁰⁸ This data suggests that the Clean Water Act has worked well since its inception.¹⁰⁹ In order to maintain high water quality standards, the EPA must insure that industries comply with the Act. Therefore, the EPA must be able to conduct tests of industrial water waste yet still comply with the Fourth Amendment's protection against unreasonable searches and seizures.

In deciding *Riverdale*, the First Circuit had to balance the need to protect the environment against Riverdale's Fourth Amendment rights. The court compared the sewer in this case with garbage left out on the curb for the trash-man to collect.¹¹⁰ The court did not adopt a *per se* rule that wastewater is not entitled to constitutional protection.¹¹¹ The court found that the controlling fact in the case was that the wastewater at Manhole 1 was irretrievably flowing into the public sewer located at Manhole 2, which was only 300 feet away.¹¹² Because Riverdale could not stop the flow of the wastewater from Manhole 1 to the public sewer, Riverdale did not have a reasonable expectation of privacy in the wastewater located at Manhole 1.¹¹³ This is how the court decided to strike the balance between the Fourth Amendment's protection against unreasonable searches and seizures and protecting the environment from industrial waste.

The First Circuit is not the only court that has had to balance the environment against the Fourth Amendment. The Supreme Court of the United States had to make a similar decision in *Dow Chemical Co. v. United States*.¹¹⁴ In *Dow*, Dow Chemical Co. operated a chemical manufacturing facility consisting of many buildings and piping conduits located between the buildings.¹¹⁵ To protect its privacy, Dow maintained an elaborate security system around the perimeter of the complex but did not conceal all the equipment within the complex from aerial view due to prohibitive costs.¹¹⁶

¹⁰⁴ *Id.* at 65.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* The court addressed the second prong of the analysis as an alternative ground. The court found that even if Riverdale had a reasonable expectation of privacy in their wastewater, there was no prior law that would have alerted the officers that Riverdale had a reasonable expectation of privacy in their industrial wastewater. Therefore, the officers were entitled to qualified immunity on the second prong of the qualified immunity analysis as well. *Id.*

¹⁰⁷ William L. Andreen, *Water Quality Today—Has the Clean Water Act Been a Success?* 55 ALA. L. REV. 537, 537-38 (2004).

¹⁰⁸ *Id.* at 546.

¹⁰⁹ *See id.*

¹¹⁰ *Riverdale*, 392 F. 3d at 64.

¹¹¹ *Id.* at 63.

¹¹² *Id.* at 64.

¹¹³ *Id.*

¹¹⁴ 476 U.S. 227 (1986).

¹¹⁵ *Id.* at 229.

¹¹⁶ *Id.*

The EPA made an on-site inspection of the complex with Dow's consent in early 1978.¹¹⁷ However, Dow denied consent for a second inspection, and the EPA did not seek an administrative search warrant.¹¹⁸ Instead, the EPA used aerial surveillance to investigate the complex without informing Dow.¹¹⁹ Dow argued that the aerial search constituted a search without a warrant and was a violation of Dow's Fourth Amendment rights.¹²⁰ Dow further argued that the industrial plant did not fall within the open fields doctrine but was "industrial curtilage," which would have the same constitutional protection as the curtilage of a private home.¹²¹

The Supreme Court has drawn a line where reasonable expectations lie in regards to open areas beyond the curtilage of a dwelling.¹²² "[O]pen fields do not provide the setting for those intimate activities that the [Fourth] Amendment is intended to shelter from governmental interference or surveillance."¹²³ The area at issue in *Dow* was somewhere between open fields and curtilage but lacked some of the critical characteristics of both.¹²⁴ Further, this was an inspection without physical entry onto the premises.¹²⁵ The Supreme Court concluded that the open areas of the complex were not analogous to the curtilage of a dwelling for purposes of an aerial surveillance and could be observed by the general public.¹²⁶ Therefore, the Supreme Court held that taking aerial photographs on the industrial complex was not a violation of Dow's Fourth Amendment right against unreasonable searches.¹²⁷

Even though *Dow* involved aerial surveillance instead of an on-site inspection like *Riverdale*, the two cases are similar. Both companies argued that the EPA trampled their Fourth Amendment rights due to warrantless searches.¹²⁸ In *Riverdale*, the First Circuit equated the inevitable flow of the wastewater from Manhole 1 to the public sewer to garbage left on the curb.¹²⁹ Due to this analogy, *Riverdale* did not have a reasonable expectation of privacy in the wastewater, which allowed the EPA to inspect for environmental infractions. Dow did not have a reasonable expectation of privacy when the EPA conducted aerial surveillance of their property because the general public could view the area while flying over the property.¹³⁰ In both of these cases, the courts balanced environmental protection and the privacy of businesses. Both courts decided to balance in favor of protecting the environment.

Both of these cases raise the issue of where to draw the line between protecting the environment and protecting the Fourth Amendment rights of businesses regulated by the EPA. As stated above, the Clean Water Act, which was at issue in *Riverdale*, has made vast improvements in the quality of the nation's water since its enactment. To ensure future high water quality, the EPA must conduct thorough investigations of industries that emit wastewater. However, the Fourth Amendment limits this investigatory power. Due to the Fourth Amendment, the EPA cannot conduct warrantless searches.

As a society we must decide where to draw the line between protecting the environment and protecting industries' Fourth Amendment rights. The earth is a finite commodity that our society has depleted at a great rate. On the other hand, our society is based upon industry and the market. We cannot choose between industry and the environment. Rather, a delicate balance must be struck between these two forces. As seen in

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 230.

¹²¹ *Id.* at 232-33.

¹²² *Id.* at 235.

¹²³ *Id.*

¹²⁴ *Id.* at 236.

¹²⁵ *Id.* at 237.

¹²⁶ *Id.* at 239.

¹²⁷ *Id.*

¹²⁸ See *supra* Parts IV and V.

¹²⁹ See *supra* Part IV.

¹³⁰ See *supra* Part V.

Riverdale, the First Circuit Court of Appeals decided in favor of the environment while remaining within the confines of the Fourth Amendment. Therefore, *Riverdale* is a prime example of protecting the environment without trampling on industries' Fourth Amendment rights.

VI. CONCLUSION

This case raised questions about the extent to which we should protect the environment at the expense of industries' Fourth Amendment interests. The First Circuit Court of Appeals decided to strike the balance in favor of the environment by holding that *Riverdale* did not have a reasonable expectation of privacy in their wastewater. The EPA can protect the environment while still remaining in the confines of the Fourth Amendment.

Laurie Knight