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Standing to Object to Unreasonable Search and Seizure

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STANDING TO OBJECT TO UNREASONABLE SEARCH AND SEIZURE

I. INTRODUCTION

The fourth amendment of the United States Constitution protects the citizen from unreasonable searches and seizures and gives citizens the right to be secure in their homes from such searches.[1] In the course of criminal proceedings, it may become necessary for an accused to challenge the validity of a search and seizure. The question then arises: what persons have the privilege of objecting to an unlawful search and seizure?

As a general principle, a party cannot claim a protective right under the Constitution unless he is a member of the class for whose benefit the constitutional protection was made.[2] The federal courts provided in Rule 41(e) of the Federal Rules of Criminal Procedure for the suppression of illegally seized evidence by a "person aggrieved" under the rule.[3] Prior to 1960, this "aggrieved person" was an individual who could establish a proprietary interest in the property seized or the premises searched.[4] This rule employed common law notions of property interests, and was based on the fact that the rights protected by the fourth amendment were personal and accrued only to those persons whose private proprietary interests had been invaded.

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

The states have also provided in their own constitutions certain limitations of police power and safeguards to secure the people, their persons, houses, papers and effects against all unreasonable searches and seizures. See *e.g.*, MO. CONST. art. I § 15.

2. People *ex rel.* Hatch v. Reardon, 204 U.S. 152 (1907).

3. A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as exidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing. FED. R. CRIM. P. 41(e).

4. Lagow v. United States, 159 F.2d 245 (2d Cir. 1946), *cert. denied*, 321 U.S. 858 (1947).

In 1960, the Supreme Court decided *Jones v. United States*,[5] the first full discussion of standing in a search and seizure case. That case declared that, in order to qualify as a "person aggrieved" by an unlawful search and seizure, one must have been the victim of a search and seizure, and that same person must be the one against whom the search was directed (as distinguished from one who was prejudiced only through the use of the evidence gathered as a result of a search and seizure directed at someone else).[6] Thus, *Jones* changed the requirement as to the necessary proprietary interest in the property seized or the premises searched. The proprietary interest requirement was greatly liberalized by removing the common law property concepts. Following *Jones*, anyone legitimately on the premises where a search occurs may challenge the legality of the search;[7] and, at least in cases where the indictment itself charges possession,[8] the accused may move to suppress the illegally seized evidence without asserting an interest in the property seized.[9]

The question of standing to object to illegally seized evidence has occupied attention of writers for many years.[10] Since the important decision of *Jones v. United States*[11] much of the writers' concern has been directed toward examining the merits of the standing requirement,[12] and toward predicting the consequences of the *Jones* decision. It is the purpose of this comment to determine the effect of the *Jones* decision on the issue of standing.[13]

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5. 362 U.S. 257 (1960).

6. The Supreme Court again declared that a defendant cannot object to an unlawful search and seizure unless he first shows a personal interest in either the property seized or the premises searched in Wong Sun v. United States, 371 U.S. 471, 492 (1963).

7. 362 U.S. at 267.

8. *Id.* at 264.

9. The exclusionary rule was first adopted in 1914 in Weeks v. United States, 232 U.S. 383 (1914), which abandoned the common law rule that evidence was admissible in a criminal prosecution regardless of the method used to obtain it. Apparently, the common law rule was based on the theory that the police officers were answerable for their wrongful acts in separate proceedings. In Mapp v. Ohio, 367 U.S. 643 (1961), the Supreme Court made the exclusionary rule applicable to the states through the fourteenth amendment. Retroactive effect was denied the *Mapp* decision in Linkletter v. Walker, 381 U.S. 618 (1965).

10. *E.g.*, Note, *Standing to Object to an Unlawful Search and Seizure*, 1965 WASH. U.L.Q. 488 (1965); Comment, *Standing to Object to an Unreasonable Search and Seizure*, 34 U. CHI. L. REV. 342 (1967); Edwards, *Standing to Suppress Unreasonably Seized Evidence*, 47 NW. U.L. REV. 471 (1952); Weeks, *Standing to Object in the Field of Search and Seizure*, 6 ARIZ. L. REV. 65 (1964); and Comment, *Judicial Control of Illegal Search and Seizure*, 58 YALE L. J. 144 (1948).

11. 362 U.S. 257 (1960).

12. The decision as to standing in *Jones* was actually based upon an interpretation of Rule 41(e) of the Federal Rules of Criminal Procedure, and was therefore not binding upon the states. And, although *Mapp* made the exclusionary rule binding upon the states, the standing to invoke that rule has not been made applicable to the states. *See*, Note, *Standing to Object to an Unlawful Search and Seizure*, 1965 WASH. U.L.Q. 488, 491 (1965). It is therefore of some concern to the states to determine whether the standing requirement is meritorious.

13. "Standing" problems should be distinguished from the problem of "primary taint." A standing problem arises when a defendant complains that prop-

II. Standing Before Jones

Every federal circuit has held that the privilege to object to unreasonable searches and seizures is a personal right[14] and the states deciding the issues have also insisted on the element of personal interest.[15] But the decisions on the subject of standing have been less than clear and uniform. The general requirement that there be a proprietary interest in the property seized or premises searched has not always been explained in the cases decided by the courts. However, examples of several categories into which the cases can be classified will serve to illustrate the "standing" rules before *Jones*.

Employees who objected to the use as evidence of illegally seized property and who alleged possession of the property solely in their capacity as an employee were usually denied standing. In *United States* v. *Ebeling*[16] the employee was assigned a desk for his own use, but the court determined that the employee's interest was not sufficient to confer standing to object to an unlawful search of this desk since the desk was in the employer's building and employer had possession of the desk. But in *United States* v. *Blok*,[17] an employee had standing to object to the search of a desk assigned to her exclusive use. The employee was prosecuted for petty larceny on the basis of evidence seized from her desk. The desk had been searched in the employee's absence, without a warrant, but with the consent of the employee's supervisor. The court of appeals affirmed the lower court's ruling suppressing the evidence.[18]

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erty unconstitutionally taken from *another* is proposed to be used against him. A primary taint issue, on the other hand, arises when a defendant objects to the admission of evidence obtained from *him* on the ground that the unreasonable search and seizure from *another* furnished the probable cause to make his arrest and search. N. Sobel, Current Problems in the Law of Search and Seizure (1964).

14. Nunes v. United States, 23 F.2d 905 (1st Cir. 1928); Klein v. United States, 14 F.2d 35 (1st Cir. 1926); United States v. Pepe, 247 F.2d 838 (2nd Cir. 1957); United States v. Antonelli Fireworks Co., 155 F.2d 631 (2nd Cir. 1946); Whitcombe v. United States, 90 F.2d 290 (3rd Cir.), *cert. denied*, 302 U.S. 759 (1937); Mabee v. United States, 60 F.2d 209 (3rd Cir. 1932); Grainger v. United States, 158 F.2d 236 (4th Cir. 1946); Kitt v. United States, 132 F.2d 920 (4th Cir. 1942); Parr v. United States, 255 F.2d 86 (5th Cir. 1958); Lovette v. United States, 230 F.2d 263 (5th Cir. 1956); Brubaker v. United States, 183 F.2d 894 (6th Cir. 1950); Gowling v. United States, 64 F.2d 796 (6th Cir. 1933); United States v. Eversole, 209 F.2d 766 (7th Cir. 1954); Schnitzer v. United States, 77 F.2d 233 (8th Cir. 1935); Cravens v. United States, 62 F.2d 261 (8th Cir. 1932); Ingram v. United States, 113 F.2d 966 (9th Cir. 1940); Kwong How v. United States, 71 F.2d 71 (9th Cir. 1934); Baskerville v. United States, 227 F.2d 454 (10th Cir. 1955); Wilson v. United States, 218 F.2d 754 (10th Cir. 1955); Accardo v. United States, 247 F.2d 568 (D.C. Cir.), *cert. denied*, 355 U.S. 898 (1957).

15. *See* Annot., 50 A.L.R.2d 531, 571 (1956). California is the one exception. In People v. Martin, 45 Cal. 2d 755, 290 P.2d 855 (1955), California adopted the exclusionary rule on its own initiative, relying on the deterrence theory.

16. 146 F.2d 254 (2d Cir. 1944). Employees were also denied standing in United States v. Conoscente, 63 F.2d 811 (2d. Cir. 1933), *cert. denied*, 290 U.S. 642 (1933); and Connolly v. Medalie, 58 F.2d 629 (2nd Cir. 1932).

17. 188 F.2d 1019 (D.C. Cir. 1951).

18.

We think appellee's exclusive right to use the desk assigned to her made

Prior to *Jones,* corporate officers and shareholders did not have standing to object to the illegal search of corporate premises and seizure of corporate property; only the corporation had the right to object. In *Lagow* v. *United States*[19] the person objecting was the sole shareholder of the corporation, but was denied standing to object to the seizure of corporate books and records from the corporate premises.[20] Similarly, an officer was denied standing to object although the books were taken from his possession[21] and the president of several corporations was denied the right to object to illegally seized evidence.[22] *State* v. *Rodgers,*[23] an in rem proceeding to declare the cargo of a tractor-trailor contraband, is a Missouri case in which the manager, director and sole stockholder of the trucking company involved sought to object to an illegal search of the truck. Standing was denied.[24] Corporations are, however, legal entities with the fourth amendment right to be protected from unreasonable search and seizure.[25]

In cases where the defendant occupied an automobile that was searched, but denied that he owned the seized property or the automobile, courts have differed in their results. In *Mabee* v. *United States*[26] the defendant truck driver disclaimed both ownership of the truck and the seized contraband. Reiterating the requirement of personal interest,[27] the court denied standing. In *Mabee* the defendant was the driver, but the same result was reached in *Shurman v. United States*[28] as to a passenger who asserted no proprietary or possessory interest in the car or contraband. Defendants who had borrowed a car from a third person had standing, based on a "possessory interest" in the contents of the car, to object to the illegal

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> the search of it unreasonable. . . . Her supervisors could not reasonably search the desk for her purse, her personal letters, or anything else that did not belong to the government and had no connection with the work of the office. Their consent did not make such a search by the police reasonable.

United States v. Blok, 188 F.2d 1019, 1021 (D.C. Cir. 1951).

19. 159 F.2d 245 (2nd Cir. 1946).

20. "When a man chooses to avail himself of the privilege of doing business as a corporation, even though he is its sole shareholder, he may not vicariously take on the privilege of the corporation under the Fourth Amendment. . . ." Lagow v. United States, 159 F.2d 245, 246 (2d Cir. 1946).

21. Bilodeaw v. United States, 14 F.2d 582 (9th Cir. 1926).

22. United States v. H.F.K. Theatre Corporation, 236 F.2d 502 (2nd Cir.), *cert. denied,* 352 U.S. 969 (1956).

23. 364 Mo. 247, 260 S.W.2d 736 (1953).

24. The corporate trucking company was not a party, and the manager-director-sole shareholder claimed no ownership or interest in the cargo or tractor-trailer.

25. Silverthorne Lumber Co. v. United States, 251 U.S. 388 (1920). However, a corporation is not protected by the fifth amendment right against self-incrimination. *See* Oklahoma Press Publishing Company v. Walling, Wage and Hour Administration, 327 U.S. 186 (1946); United States v. Guterma, 174 F. Supp. 581 (D.C.N.Y. 1959). Compare, United States v. White, 322 U.S. 694 (1944), labor union; Hale v. Henkle, 201 U.S. 43 (1906), unincorporated association.

26. 60 F.2d 209 (3rd Cir. 1932).

27. *Id.* at 212.

28. 219 F.2d 282 (5th Cir. 1955). The owner-driver of the car was held to have standing based on his claimed ownership of the car.

seizure of property to which they denied ownership in *United Sattes v. Chippa.*[29]

In *State v. Green,*[30] a Missouri case, an occupant of an automobile who disclaimed any interest in the automobile or the seized property was denied standing. The defendant was a passenger in an an automobile which was being driven by another with the owner's consent, and the driver gave permission for the search. The defendant was denied standing because "only the owner or the perosn in possession of the premises or property has any legal standing to complain of its violation."[31]

Temporary guests were denied standing[32] to challenge the validity of searches and seizures because of insufficient proprietary interest. Heavy reliance was placed on common law property rules. Thus, in *Nuner v. United States,*[33] the defendant who owned the building searched, but had no possessory interest in the portion searched, was denied standing because of insufficient interest in the searched premises. And in *State v. Cantrell,*[34] before search of the apartment, the defendant denied living there. He was denied standing to object to evidence seized in the apartment, even though he later claimed to have had an interest in the apartment: "His disclaimer, once made, cannot be recalled when it suits his purpose to do so."[35] In *United States v. Jeffers*[36] the defendant did not have possession of either the premises searched, or the property seized. Narcotics were seized during a search of a hotel room occupied by the defendant's aunt. The defendant had a key to the room, but did not live there. Neither the defendant nor the aunt was present at the time of the search. The defendant was held to have standing to object, without any interest in the searched premises, because he specifically claimed ownership of the property in his motion to suppress.[37]

There are other types of cases where the question of standing to object to

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29. 241 F.2d 635, 638 (2d Cir. 1957); *see* Cariol v. United States, 267 U.S. 132 (1924); Wilson v. United States, 218 F.2d 754 (10th Cir. 1955), standing denied passenger.

30. 292 S.W.2d 283 (Mo. 1956); *see also* State v. Egan, 272 S.W.2d 719 (Mo. 1954).

31. State v. Green, 292 S.W.2d 283, 286 (Mo. 1956).

32. United States v. Pepe, 247 F.2d 838 (2d Cir. 1957); Gaskins v. United States, 218 F.2d 47 (D.C. Cir. 1955); Gibson v. United States, 149 F.2d 381 (D.C. Cir. 1945); *In re* Nassetta, 125 F.2d 924 (2d Cir. 1942).

33. 23 F.2d 905 (1st Cir. 1928).

34. 310 S.W.2d 866 (Mo. 1958).

35. *Id.* at 870.

36. 342 U.S. 48 (1951). On the question of whether there is a protectable interest when the searched premises are leased, see Parr v. United States, 255 F.2d 86 (5th Cir. 1958); United States v. De Bousi, 32 F.2d 902 (D.C. Mass. 1929); and when the defendant exercises control or dominion over the searched premises, see Steeber v. United States, 198 F.2d 615 (10th Cir. 1952).

37. Basing the right to object to illegally seized evidence on a proprietary interest in the property seized places the accused in a very delicate position when the evidence challenged tends to establish the charge of possession of contraband. If the accused denies that he was in possesison of the contraband, he would subsequently be denied standing to complain of an illegal search and seizure. On the other hand, if the accused admits the proprietary interest in the property, he has admitted to possession of the contraband. This "dilemma" is the basis of the very well-known statement of Judge Learned Hand:

illegally seized evidence may arise,[38] but the examples given illustrate the narrow scope of standing in the cases prior to 1960. It is also apparent that, under the standing requirements, the victim of an illegal search, often the leader, might go free while his accomplices would be convicted on the basis of evidence illegally seized from the victim-leader.

III. JONES AND FOLLOWING

In the *Jones* case, District of Columbia police officers seized narcotics from a bird's nest on an outside awning of an apartment allegedly occupied by Jones and Richardson. Jones was present during the search, and he was charged with possession of narcotics. Jones had a key to the apartment, but claimed that it belonged to a friend and that he had stayed there "maybe a night." The district court overruled the motion to suppress on the ground the defendant had no standing. The court of appeals affirmed.[39] The Supreme Court reversed and remanded, holding that the defendant Jones did have standing to object:

> In cases where the indictment itself charges possession, the defendant in a very real sense is revealed as a "person aggrieved by an unlawful search and seizure" upon a motion to suppress evidence prior to trial.[40]

Thus, the defendant need not allege a proprietary interest in the contraband, but only that the seized evidence will be used against him.

In *Contseras v. United States*[41] defendants who were charged with possession

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> Men may wince at admitting they were the owners, or in possession, of contraband property; may wish at once to secure the remedies of a possessor, and avoid the perils of the part; but equivocation will not serve. If they come as victims, they must take on that role, with enough detail to cast them without question. The petitioners at bar shrank from that predicament, but they were obliged to choose one horn of the dilemma.

Connolly v. Medalie, 58 F.2d 629, 630 (2d Cir. 1932).

38. In theory, standing is not conferred on a co-defendant by virtue of his position as co-defendant, but in McDonald v. United States, 335 U.S. 451 (1948), the Supreme Court allowed a co-defendant to take advantage of a motion to suppress, holding that the improper denial of defendant's motion to suppress was prejudicial error as to his co-defendants; compare, Hair v. United States, 289 F.2d 894 (D.C. Cir. 1961). *Contra,* United States v. Romano, 203 F. Supp. 27 (D.C. Conn. 1962); Drake v. State, 92 Okl. Cr. 253, 222 P.2d 770 (1950).

39. Jones v. United States, 262 F.2d 234 (D.C. Cir. 1958).

40. Jones v. United States, 362 U.S. 257, 264 (1960). The *Jones* Court addressed itself directly to the contradictory positions of the prosecution which charged possession of the narcotics by the defendant, and yet, on the motion to suppress, contended that the defendant should be denied relief because he did not possess it:

> The prosecution here thus subjected the defendant to the *penalties* meted out to one in lawless possession while refusing him the *remedies* designed for one in that situation. It is not consonant with the amenities, to put it mildly, of the administration of criminal justice to sanction such squarely contradictory assertions of power by the government.

Id. at 263-4.

41. 291 F.2d 63 (9th Cir. 1961). *See* Bourg v. United States, 286 F.2d 124 (5th Cir. 1960).

of narcotics had standing to object—based on the *Jones* case. The court of appeals reversed the trial court's finding of lack of standing, recognizing that a charge based upon possession of narcotics, by that fact alone, confers standing on the defendant. Where possession of the seized property is not charged, but is highly incriminating, courts have reached different results. In *State v. Konigsberg*[42] the exception which grants standing for crimes of possession was held to apply only when possession *per se* constitutes a crime. But in a case where the defendant was charged with a wagering violation and the government based its case on two envelopes allegedly taken from defendant's possession, the defendant was held to have standing to object, notwithstanding the fact that he denied possession.[43]

In addition to providing an exception for crimes of possession, *Jones* greatly extended the scope of "person aggrieved" in regard to the necessary proprietary interest in the premises searched to convey standing:

> No just interest of the Government in the effective and vigorous enforcement of the criminal law will be hampered by recognizing that anyone legitimately on premises where a search occurs may challenge its legality by way of a motion to suppress, when its fruits are proposed to be used against him. This would of course not avail those who, by virtue of their wrongful presence, cannot invoke the privacy of the premises searched.[44]

The "legitimately on the premises" rule is a most significant aspect of *Jones* since private property law is thereby eliminated as a test to determine standing. The Court rejected all "subtle distinctions" of proprietary interest.[45]

Actually, it seems that the only persons present when the search is made who would have no standing would be the persons who entered the premises unlawfully. One who entered the premises to commit a crime, without the consent of the owner, such as a burglar or car thief, would presumably be denied standing. In *State v. Keeling*[46] guests who were engaged with the hostess in numbers operations were held not to have standing to object because their presence on the premises was not for a legitimate purpose. Clearly a showing of personal interest is still an essential element in invoking the privacy of the premises, but the greatly expanded scope of personal interest in searched premises should result in greater protection from unlawful searches and seizures.

Since employees are "legitimately on premises" where a search occurs, they likely have standing to object to evidence proposed to be used against them that was illegally seized from the employer's premises. In addition, the elimination of common law property rules and "subtle distinctions" should result in different decisions in those cases which held that employees lacked standing be-

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42. 336 F.2d 844 (3rd Cir. 1964).
43. United States v. Festa, 192 F. Supp. 160 (D.C. Mass. 1960); *compare* People v. DeFillippis, 34 Ill. 2d 129, 214 N.E.2d 897 (1966); *see* Comment, *Standing to Object to Unlawful Search and Seizure,* 1965 WASH. U.L.Q. 488, 492-506.
44. Jones v. United States, 362 U.S. 257, 267 (1960).
45. *Id.* at 266.
46. 186 N.E.2d 60 (Ohio Ct. C.P. 1962).

cause possession was actually in the employer. In *Mancusi v. De Forte*[47] union papers were seized from De Forte's office, one large room shared by De Forte with others. At the time of the seizure, De Forte had custody of the papers, but they belonged to the union. The Supreme Court held that De Forte had fourth amendment standing to object; the fact of a "group" office did not matter. The Court stated that the capacity to claim the protection of the amendment, while not depending upon a property right in the premises, does depend upon whether the area was one in which there was reasonable expectation of freedom from governmental intrusion.[48]

The corporate officers' and shareholders' right to object to unlawful seizure of corporate property seems also to have been expanded. In *Mancusi* the defendant was a vice-president of the union whose papers were seized. Most narrowly, *Mancusi* confers standing on an officer of an organization (or business) who was legitimately on the searched premises at the time of the search and from whose custody the corporate property was taken. Whether the case will be read more broadly[49] is a question that will have to be answered in future cases in view of the undefined language of the "test."[50]

Cases involving searches of automobiles have been affected by *Jones* to the extent that standing no longer depends upon a claim of ownership or possession of the car or seized property.[51] The pre-*Jones* cases denying standing to in-

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47. 392 U.S. 364 (1968).

48. *Id.* at 367. Katz v. United States, 389 U.S. 347, 352 (1967).

49. Although the Court in *Mancusi* found that DeForte would clearly have had standing in a private office, an earlier decision was not so clear. In Henzel v. United States, 296 F.2d 650 (5th Cir. 1950), defendant was the sole shareholder and president of the corporation. Corporate books and records were seized from the personal office of the defendant in his absence. The court concluded that *Jones* set forth no formula to determine the question of standing and that each case must be decided on its facts by comparing the defendant's interest with the interest of the defendant in *Jones*:

> Since the Supreme Court has not provided us with a precise and unequivocal definition of an "aggrieved person" under Rule 41(e), we can best measure appellant's standing to suppress the illegally obtained evidence by comparing his interest with the interest of the defendant in *Jones*.
>
> This is not to say that every employee of a corporation can attack the illegal seizure of corporate property if the fruits of the search are proposed to be used against him. Each case must be decided on its own facts. Hanzel v. United States *supra*, at 653.

Thus, the right of corporate officers and shareholders to object has broadened greatly, but each case will have to be decided on its own facts to determine whether or not there was a reasonable expectation of freedom from intrusion.

50. "[W]hether the area was one in which there was a reasonable expectation of freedom from governmental intrusion." Mancusi v. DeForte, U.S. 364, 368 (1968).

51. A passenger in an automobile, "legitimately on the premises," would have standing to object to evidence seized from the car. In United States v. Festa, 192 F. Supp. 160 (D.C. Mass. 1960), the defendant was the driver of a car which was stopped and searched. The defendant had standing to object to evidence seized from the car even though he was not the owner of the car or its contents. He had been given possession of the car by its owner and he was therefore legitimately on the premises. The defendant will not be denied standing to object

vitees, licensees and guests have been specifically rejected by *Jones*: "Distinctions such as those between 'lessee,' 'licensee,' 'invitee,' and 'guest,' often only of gossamer strength, ought not to be determinative in fashioning procedures ultimately referable to constitutional safeguards."[52] The single test is whether one is "legitimately on the premises," and, although liberal, even that test may not encompass a lessor who has divested himself of possession and use of the premises.[53]

Missouri cases since *Jones* differ little in terminology from their pre-*Jones* counterparts. In *State v. Anderson*[54] the defendant was convicted of murder in the first degree. Evidence was seized from an apartment in which his mother lived. There was a conflict in evidence as to whether the defendant also resided there. The court found the evidence warranted a finding that he did not reside in the apartment and standing was denied.[55] The court specifically distinguished the *Jones* case on the basis that the instant case did not involve a possessory crime. However, *State v. Stuart*[56] did involve a possessory crime. The defendant was convicted of possession of instruments for the unauthorized use of narcotic drugs. Evidence was seized from an apartment in which defendant was lawfully present, having the permission of one of the two owners. The second owner authorized the search. Although defendant relied on *Jones* to establishh standing, the court found that the question of the extent to which an owner's consent can override an objection of one lawfully on the premises was not discussed in *Jones*. Standing was thus denied a defendant accused of a possessory crime who was "legitimately on the premises."[57]

Recent cases involving the search of an automobile in Missouri do not rely on the *Jones* principle of "legitimately on the premises." Rather, the cases repeat the phraseology of the pre-*Jones* cases which require either ownership or possession of the vehicle or the property seizd. Thus, in *State v. Pruett*[58] the court relied on the statement in *State v. Cantrell*[59] that since the defendant disclaimed any interest in the premises searched, he cannot be heard to question the legality of the seizure and standing was denied. A similar result was reached

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to illegally seized evidence because the searched car was temporarily out of his possession at the time of the search and he owned the car. United States v. Eldridge, 302 F.2d 463 (4th Cir. 1962).

52. Jones v. United States, 362 U.S. 257, 266 (1960).

53. Weeks, *Standing to Object in the Field of Search and Seizure,* 6 ARIZ. L. REV. 65 (1964).

54. 384 S.W.2d 591 (Mo. En Banc 1964).

55. "[I]t has long been the rule in this state that '[t]he constitutional guaranty against unreasonable search and seizure is a personal one and affords no protection from search to a person who is not the owner of nor in possession of the premises.'" *Id.* at 601.

56. 415 S.W.2d 766 (Mo. 1967).

57. "It has been repeatedly held that one who has equal authority over premises may authorize a search of them . . . and certainly such person may authorize an entry onto the premises contrary to the wishes of another who has far less authority." *Id.* at 768.

58. 425 S.W.2d 116 (Mo. 1968).

59. 310 S.W.2d 866, 870 (Mo. 1958).

in *State v. Taylor*.[60] Defendant was a passenger in Seymour's car. Defendant was denied standing because "the constitutional limitations upon search and seizure apply only to the owner or to one in possession of the premises or property. Appellant has no standing to complain of the search of the automobile. It was not owned by appellant and was being driven by Seymour."[61]

The Missouri courts continue to insist upon the requirement of a personal interest in the property seized or a proprietary interest in the premises searched, regardless of whether the crime is possessory, or the defendant is legitimately on the premises.[62]

IV. STANDING

There are proponents of the standing requirement and there are those who oppose imposing such limitations on the exclusionary rule of evidence.[63] Those who favor the standing requirement state, first, that police officers are concerned with the proper and lawful enforcement of the law; that police officers would not invade the rights of third persons in searches and seizures. In addition, it is harmful to society to encourage a policy that would result in guilty men being free from conviction because of some minor technicality in the search warrant, or some miscalculation in the nebulous area of probable cause. Further, the proponents argue, standing is required in challenging all violations of constitutional provisions. And, finally, there is no need to eliminate the requirement of standing because the trend is to accommodate goals of public policy by defining the limits of standing to meet those needs.

Opponents of the standing requirements answer that it is wrong to allow the government to use illegally seized evidence to convict a man. If it is wrong for the government to use such evidence, they should be deterred from even seizing the evidence illegally. In many situations, the police will make little effort to make a lawful search and seizure if the fruits can be used against third persons. The result would be increased invasion of the rights of third persons and little or no deterrent effect on the police officers. The fourth amendment can only be enforced fully by protecting potential victims from infringement through deterring unlawful searches and seizures. It is likely, say the opponents,

60. 429 S.W.2d 254 (Mo. 1968).

61. *Id.* at 255.

62. *See, e.g.*, State v. Ross, 438 S.W.2d 8 (Mo. 1969); State v. Reask, 409 S.W. 2d 76 (Mo. 1966); Diener v. Mid-American Coaches, Inc., 378 S.W.2d 509 (Mo. 1964); State v. Watson, 386 S.W.2d 24 (Mo. 1964); State v. Martin, 347 S.W.2d 680 (Mo. 1960).

63. Weeks, *Standing to Object in the Field of Search and Seizure,* 6 ARIZ. L. REV. 65, 77 (1964); Comment, 1965 WASH. U.L.Q. 488, 514-515. The *Jones* opinion expressly states that it is an interpretation of Rule 41(e), and therefore the court's discussion of standing rules is only applicable to the lower federal courts. But standing determines who has the privilege to enforce the fourth amendment, and the fourth amendment is enforced by excluding evidence that is obtained as a result of unreasonable searches and seizures. This exclusionary rule was made applicable to the states in Mapp v. Ohio, 367 U.S. 643 (1961). Thus, states, too, may have to formulate some principle to determine who may enforce the fourth amendment by excluding illegally seized evidence.

that guilty men go free. But the society's benefit outweighs the harm; the rights of innocent persons must be protected.[64]

One of the strongest arguments against the standing requirements has recently been eliminated. Even under the liberalized standing requirements of *Jones,* there are many situations in which a defendant's testimony is necessary to establish standing to object to illegally seized evidence in asserting his fourth amendment claim for exclusion. Under the rules of lower courts,[65] the defendant assumed the risk that the testimony would later be used against him at trial. This dilemma was eliminated for possessory crimes in *Jones,* but in other cases the defendant could either admit the connection with the incriminating evidence at the hearing for exclusion and risk later admission at trial, or he could refuse to admit the connection and have the evidence admitted at trial. The effect of such a choice is clearly to deter assertion of fourth amendment rights. In *Simmons v. United States*[66] the Supreme Court held that when a defendant testifies in support of a motion to suppress evidence on fourth amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection.[67] Thus, those who would do away with the standing requirement altogether have one less argument against it, and those who would retain the standing requirement wonder perhaps if it exists at all.[68]

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64. Mr. Justice Jackson's dissent in Brinegar v. United States, 338 U.S. 160, 181 (1941), states:

> Only occasional and more flagrant abuses come to the attention of the courts, and then only where the search and seizure yields incriminating evidence and the defendant is at least sufficiently compromised to be indicted. If the officers raid a home, an office, or stop and search an automobile but find nothing incriminating, this invasion of the personal liberty of the innocent too often finds no practical redress. . . . Courts can protect the innocent against such invasions only indirectly and through the medium of excluding evidence obtained against those who frequently are guilty.

65. The rationale for admitting the testimony after the motion to suppress has failed is that it is relevant and freely given. Following a successful motion, the testimony was excluded as "fruit" of an unlawful search. Safarik v. United States, 62 F.2d 892 (8th Cir. 1933).

66. 390 U.S. 377 (1968).

67. *Id.* at 394. The Court stated, "Thus, in this case Garrett was obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or, in legal effect, to waive his Fifth Amendment privilege against self-incrimination.

68. Mr. Justice Black, in his opinion in *Simmons,* concurring in part and dissenting in part, may well speak for those who are alarmed at the further liberalization:

> There is certainly no language in the Fourth Amendment which gives support to any such device to hobble law enforcement in this country. While our Constitution does provide procedural safeguards to protect defendants from arbitrary convictions, that governmental charter holds out no promises to stultify justice by erecting barriers to the admissibility of relevant evidence voluntarily given in a court of justice. Under the first principles of ethics and morality a defendant who secures a court order by telling the truth should not be allowed to seek a court advantage later based on a premise directly opposite to his solemn judicial oath. This Court should not lend its high name to such a justice-defeating stratagem. *Id.* at 398-399.

The Court in *Simmons* distinguished between a defendant's right to exclude evidence under the fourth amendment and his right against self-incrimination under the fifth amendment.[69] For many years there seemed to be some doubt as to the exact nature of the constitutional protection against unreasonable searches and seizures.[70] But always the Court stressed the element of personal invasion and incrimination. And a theory of an interrelationship between the fourth and fifth amendments developed. The idea that the privilege against self-incrimination and the right to be secure from invasion into personal privacy were intimately related was asserted by *Boyd v. United States*[71] but was not made free from ambiguity as a basis for asserting search and seizure rights until the recent cases of *Frank v. Maryland*[72] and *Jones v. United States.*[73] In both cases, the Court expressly discussed the interplay between the two amendments. And in *Mapp v. Ohio*[74] the Court spoke of the intimate relation between the two:

> The philosophy of each Amendment and of each freedom is complementary to, although not dependent upon, that of the other in its sphere of influence—the very least that together they assure is that no man is to be convicted on unconstitutional evidence.[75]

If this rationale had been retained in the search and seizure cases, there would be little upon which to base an argument to eliminate the requirement of standing. The personal element is vital in a claim based on invasions of privacy that amount to coerced confessions.

But the personal element was rejected and a new rationale was adopted as the basis of the exclusionary rule. In *Linkletter v. Walker*[76] the Court held that the exclusionary rule was not to be given retroactive effect; the basis upon which the rule rests is deterrence of unreasonable conduct by the police. The potential victims of illegal searches are to be protected and "reparation comes too late"[77] for those whose privacy has already been invaded. The fourth-fifth amendment interplay was not expressly discussed or denied, but it would seem that, after *Linkletter,* the "single and distinct" purpose of the exclusionary rule of evidence is deterrence. If the police know that illegally obtained evidence will not be admissible against *anyone,* they will be most careful to make only legal searches and seizures. Whether the deterrence rationale is justified in terms of practicalities, it does seem to remove the necessity for personal interest, or standing.

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69. *Id.* at 394.
70. *See* Comment, *Standing to Object to an Unreasonable Search and Seizure,* 34 U. CHI. L. REV. 342, 344-352 (1967).
71. 116 U.S. 616 (1886).
72. 359 U.S. 360 (1959).
73. 362 U.S. 257 (1960).
74. 367 U.S. 643 (1961).
75. *Id.* at 657.
76. 381 U.S. 618 (1965).
77. Linkletter v. Walker, 381 U.S. 618, 637 (1965).

V. Conclusion

The existing standing requirements are, at the very least, inconsistent with the theory of deterrence. In fact, to limit the exclusionary rule by requiring a personal interest detracts from deterrence by giving an incentive to officers to make unreasonable searches and seizures. If deterrence is the foundation for the exclusionary rule, questions as to the "victim" status of the defendant—standing—are irrelevant.

Jill Bredeman Steps