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Abortion Protests

While it would be inappropriate for The Rutherford Institute to provide you with legal advice at this time or under these circumstances, we are pleased to provide you with the following information.

I. Overview

The right of an individual to protest legalized abortion arises from the free speech and assembly clauses of the First Amendment to the United States Constitution, which states: "Congress shall make no law . . .abridging the freedom of speech . . .or the right of the people peaceably to assemble..."[i] However, the Supreme Court has stated that the right of free speech is not absolute at all times and under all circumstances.[ii]

Recently, pro-life advocates have confronted new challenges as a result of the Supreme Court's adoption of new standards for evaluating abortion-related protests. They also face the threat of legal action under the Freedom of Access to Clinic Entrances ("FACE") Act and the Racketeer Influenced and Corrupt Organizations ("RICO") Act.

II. Protests Which Commonly Qualify As Protected Free Speech

When deciding whether governmental interests outweigh constitutionally protected rights to protest abortion, the Supreme Court examines the "forum" (i.e., location of the speech) in which the speech is restricted. It then applies varying degrees of protection to the speech depending upon the forum. This is known as a "forum analysis." The Court has identified at least three types of forums: traditional, designated, and non-traditional.

a. Traditional Forum

Areas such as public streets and parks fall into the category of a traditional public forum. In such a forum, the state may not ban all communicative activity. If the state does restrict a form of communication based on content, the state must show that its regulation is necessary to serve a compelling state interest (the highest and most difficult standard for the government to meet in court) and that the regulation is narrowly tailored to achieve that interest. In a traditional public forum, the state may also enforce regulations pertaining to time, place, and manner of expression. However, such regulations must be content-neutral and narrowly tailored to serve a significant state interest. Further, the regulation must leave open ample alternative channels of communication.[iii]

b. Designated Public Forum

Areas of public property, such as a school auditorium, which the state has opened to the public for use as a place for expressive activity, fall into the category of a designated public forum. The state is not required to create the forum or keep it open indefinitely. However, once the forum is open, the state may not exclude certain groups or discriminate against certain individuals from the forum based upon the content of their expression unless its restriction is narrowly tailored to serve a compelling state interest. So long as it keeps the forum open, the state may only impose reasonable time, place and manner restrictions.[iv]

c. Non-Traditional Forum

Areas of public property not considered "designated" or "traditional" forums for public communication qualify under the category of non-traditional public forum. The state, in addition to time, place and manner regulations, may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.[v]

d. Abortion Protest Analysis

Under a forum analysis, peaceful abortion protests occurring outside abortion clinics in a traditional or designated public forum, such as on a sidewalk, are subject mainly to content-neutral regulations which are narrowly aimed to achieve a significant state interest. For instance, courts have upheld statutes concerning the following: Prohibiting the use of hand-held amplifiers within 150 feet of a medical facility; prohibiting the obstruction of passage; and disallowing production of noise that substantially interferes with an abortion clinic's operation. These laws have been allowed on the grounds that they are sufficiently content-neutral.[vi]

On the other hand, a municipal ordinance which made it a criminal offense for three or more persons to assemble on a sidewalk and conduct themselves in a manner "annoying to persons passing by" violated the constitution. This was because the law authorized punishment of constitutionally protected assembly and free speech. The ordinance also was found to be unconstitutionally vague because it subjected the exercise of fundamental rights to unascertainable standards.[vii]

Additionally, ordinances and statutes must be narrowly tailored and leave open ample alternative channels of communication. For instance, California and New York courts invalidated a complete ban of all picketing on Saturdays, which was the only day that the medical clinic performed abortions.[viii]

III. New Standards for Evaluating Speech in Abortion Protest Cases

a. Madsen v. Women's Health Care Center

In 1994, the Supreme Court in *Madsen v. Women's Health Care Center*,[ix] adopted a new and separate standard for abortion-related injunction cases. The Court held that a combination of government

interests sufficiently justified an injunction which prohibited abortion protesters from gathering within thirty-six feet of abortion clinic entrances and driveways, and also restricted excessive noisemaking.[x] The protesters had argued that the injunction was content-based, and therefore, should have been subject to a compelling state interest test and heightened scrutiny. Although the Court asserted that injunctions "carry greater risks of censorship and discriminatory application than do general ordinances," it held that a standard slightly higher than intermediate scrutiny should apply to injunctions in abortion cases.[xi] In so doing, the Court applied a lesser standard to evaluate the appropriateness of the injunction than the compelling interest/strict scrutiny test, which demands the highest level of justification by the government and is typically applied to speech in non-abortion protests. The Court decided that content-neutral injunctions regulating abortion protests are constitutional if the "restrictions burden no more speech than necessary to serve a significant government interest."[xii] In addition, the Court held that the injunction was permissible because it targeted the demonstrators' conduct, rather than the content of their speech.[xiii]

b. Schenck v. Pro-Choice Network of Western New York

In 1997, the Supreme Court further elaborated on its *Madsen* decision in *Schenck v. Pro-Choice Network of Western New York*.[xiv] There, the Court reviewed an injunction which banned demonstrating within fifteen feet from clinic doorways, parking lot entrances, driveways and driveway entrances ("fixed buffer zones"). The injunction also prevented demonstrations within fifteen feet of any person or vehicle seeking access to and from such facilities ("floating buffer zones").[xv] Under the injunction, the protesters were allowed to have two people approach and "counsel" individuals seeking access to the clinics. However, if the person seeking access indicates that she did not wish to be counseled, the protesters/counselors would be required to: (1) "cease and desist," (2) retreat fifteen feet from the individual, and (3) remain outside the boundaries of the buffer zone.

The Court applied the *Madsen* test for content neutral regulation of speech, which states: "Whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest."[xvi] The Court found similar significant government interests in *Schenck* as in *Madsen*. These interests included: protecting a women's freedom to seek pregnancy-related services, ensuring public safety and order, promoting the flow of traffic on streets and sidewalks, and protecting property rights.[xvii]

On the one hand, the Court upheld the fixed buffer zone provisions of the injunction, stating that keeping the protesters away from clinic entrances was the only way to ensure access to the clinics.[xviii] On the other hand, the Court struck down the floating buffer zones around persons and vehicles because they burdened free speech more than necessary. It said that by forcing protesters to stay fifteen feet away from persons or vehicles, the injunction makes it practically impossible for protesters to exercise their free speech rights in a safe and orderly fashion.[xix]

While recognizing that "[l]eaftletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at its most protected on public sidewalks," the Court also limited that protection.[xx] It asserted that "a record of abusive conduct makes a prohibition on classic speech in limited parts of a public sidewalk permissible."[xxi] The Court defined "abusive conduct" as physically abusive conduct, harassment of the police which hampers law

enforcement, and the tendency of peaceful conversations to escalate into aggressive and sometimes violent conduct.[xxii]

c. Hill v. Colorado

The Supreme Court most recently addressed the issue of abortion protests in 2000 in *Hill v. Colorado*.[xxiii] The Court upheld a Colorado statute that regulated speech-related conduct within 100 feet of the entrance to any heath care facility.[xxiv] The challenged section of the statute made it unlawful for any person to "knowingly approach within eight feet of another person, without that person's consent, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such person…"[xxv]

While the statute prohibited speakers from approaching unwilling listeners, it did not require a standing speaker to move away from anyone passing by. It also did not place any restriction on the content of any message that anyone wished to communicate to anyone else, either inside or outside the regulated areas.[xxvi]

The Plaintiffs asserted that they it often engaged in "sidewalk counseling" near health care centers, which consisted of efforts to educate, counsel, persuade, or inform passersby about abortion and abortion alternatives by means of verbal speech, display of signs, and distribution of literature. They argued that such activities frequently required being within eight feet of other persons, and that their fear of prosecution under the new statute caused them to be chilled in the exercise of their fundamental constitutional rights.[xxvii]

The *Hill* case is distinguishable from *Scheck,* which is likely why the statute in *Hill* was upheld. First, *Schneck* involved a judicial decree, which posed a greater risk of censorship and discriminatory application than a general statute like the one found in *Hill*. Second, *Schenck* required a protester either to stop talking or to get off the sidewalk whenever a patient was within fifteen feet. Conversely, the statute in *Hill* had a "knowingly approaches" requirement, which allowed a protester to stand still while a person moving toward or away from a health care facility walked past him or her.[xxviii]

In its analysis, the Court noted that the Colorado statute was content neutral. It stated the following:

> Instead of drawing distinctions based on the subject that the approaching speaker may wish to address, the statute applies equally to used car salesmen, animal rights activists, fundraisers, environmentalists, and missionaries. Each can attempt to educate unwilling listeners on any subject, but without consent may not approach within eight feet to do so.[xxix]

It said that the statute applied to all demonstrators and counselors whether or not the demonstrations concerned abortions, and regardless of whether they opposed or supported an individual's abortion decision. The Court held that this statute met the level of neutrality demanded by the Constitution.[xxx]

Additionally, the Court found that the statute served legitimate governmental interests and that it was narrowly tailored to serve those interests. It ruled that the eight-foot restriction on an unwanted physical approach left ample room to communicate a message through speech. It said that signs, pictures, and voice itself can cross an eight foot gap with ease, and that "demonstrators with leaflets might easily stand on the sidewalk at entrances (without blocking entrances) and, without physically approaching those who are entering the clinic, peacefully hand them leaflets as they pass by."[xxxi] The Court also noted that the eight-foot restriction occurred only within 100 feet of a health care facility, which was the place where the restriction was most needed.[xxxii]

d. Pre-*Hill* Decisions

Prior to these Supreme Court decisions, the courts consistently ruled that the state could prohibit unlawful protest activities, such as blocking the entrance to the clinics or physically threatening or intimidating persons entering them. Basic street and sidewalk control had been deemed a legitimate governmental interest in limiting picketing by abortion protesters. For example, in one case an injunction prohibiting trespass in a clinic or obstruction of its entrance was found to promoted a significant state interest in public safety on streets and sidewalks.[xxxiii] In another case where a police barricade kept protesters eight feet from the entrance to an abortion clinic and prevented obstruction of the entrance, the court held that the barricade was reasonable to keep the sidewalk uncongested and to avoid potential for violence.[xxxiv]

The Supreme Court upheld a ban on residential picketing that targeted an individual residence.[xxxv] However, the Court has never held that picketing can be restricted because it targets an individual. For example, nothing prohibits putting an abortionist's name or other identifying information on signs.

IV. Freedom of Assembly

The power of the state to abridge freedom of assembly is the exception rather than the rule.[xxxvi] Freedom of assembly can be restricted only to prevent grave or immediate danger to interests which the state may lawfully protect.[xxxvii] In cases involving restriction of freedom of assembly, some courts have applied the following test whereby there must be a "clear and present danger" of some substantive evil that the legislature has a right to prevent.[xxxviii] Demonstrations lose their protected quality as expression under the first amendment where they turn violent.[xxxix] The "clear and present danger" test has most frequently been applied in cases involving picketing, breach of the peace, and disorderly conduct, among others. A court upheld an injunction ordering a cessation of chanting, shouting, and picketing to incite a riot near an abortion clinic.[xl] When picketing, parades or demonstrations are free from coercion, intimidation, and violence, they are constitutionally guaranteed as a right of free speech.

V. FACE

In 1994, the United States Congress passed the Freedom of Access to Clinic Entrances ("FACE") Act. This Act made it unlawful for any person by force, threat of force, or by physical obstruction to intentionally injure, intimidate, or interfere with persons seeking to obtain or provide reproductive health services.[xli] The Act defines "interfere with" as "to restrict a person's freedom of movement." It defined

"intimidate" as "to place a person in reasonable apprehension of bodily harm to him or herself or to another."[xlii] The term "physical obstruction" means "rendering impassable ingress to or egress from a facility that provides reproductive health services . . . or rendering passage to or from such a facility . . . unreasonably difficult or hazardous."[xliii] Congress enacted the FACE Act to "protect and promote the public safety . . . by establishing remedies for certain violent, threatening, obstructive and destructive conduct."[xliv] Violators are subject to both civil and criminal penalties which include fines, imprisonment, or both.[xlv] The Act does not preempt state or local laws which already provide similar remedies for similar conduct.[xlvi] Additionally, the FACE Act states that it should not be construed "to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected by the First Amendment to the Constitution."[xlvii]

Several courts have upheld the constitutionality of FACE. For instance, in *Terry v. Reno*, the U.S. Court of Appeals for the District of Columbia ("D.C. Circuit") ruled that the FACE Act does not violate the First Amendment, reasoning that it "does not target protected speech," but prohibits force, threats of force, and obstruction.[xlviii] The D.C. Circuit found several substantial government interests that the Act advanced, including "ensuring access to lawful health services and protecting the constitutional right of women seeking abortions and other pregnancy-related treatment."[xlix] The D.C. Circuit also found that the government's interest in protecting women who seek medical treatment is unrelated to the suppression of anti-abortion activists' protests.[l] Finally, the D.C. Circuit held that the Act was a constitutional means of prohibiting certain conduct and was not a law designed to burden protesting.[li]

VI. RICO

Abortion clinics also turn to the Racketeer Influenced and Corrupt Organizations ("RICO") Act as a tool for limiting abortion protests. RICO was passed with broad language and was designed to combat organized crime. The most important part of RICO makes it unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or the collection of an unlawful debt."[lii] A "pattern" of RICO activity occurs if two acts are committed within a ten-year span.

In *National Organization of Women v. Scheidler*,[liii] the Supreme Court unanimously rejected several pro-life protesters' argument that RICO could not apply to them because they lacked an economic motivation to constitute an "enterprise" under RICO. The Court as a whole did not address RICO's potential chilling effects upon free speech or associational rights. However, Justice Souter recognized in a concurring opinion that RICO had the potential to infringe upon legitimate free speech rights.[liv]

As one commentator noted in the aftermath of *Scheidler*, it would appear that "any politically unpopular protest movement with resulting property damage or technical trespass can be elevated to a federal crime."[lv] Due to uncertain limits of RICO and constitutional liberties involved, many abortion protesters may be hesitant to protest abortion, out of fear of being tried in a RICO suit. RICO can be particularly intimidating because of the potential assessment of triple damages, the stigma facing racketeering charges, and the possible legal costs that could be involved..[lvi] Since *Scheidler*, several courts have ruled

on the merits of RICO claims against pro-life protesters, with varying results depending on the particular facts of the case.[lvii]

VII. Protests on Private Property

Protesters have no federal constitutional right to demonstrate on private property, such as a shopping center or mall, without the consent of the owner.[lviii] Assemblages of unwelcome persons on private property are commonly charged under an unlawful entry statute and require a request to leave before it can be enforced.[lix] However, a number of state courts, interpreting their own state constitutions, have ruled that certain private property open to the public, such as shopping centers and universities, must be open to those wishing to exercise their right to freedom of speech and petition.[lx]

Protesters should be aware of the potential liability for engaging in abortion protests which are considered unlawful assemblies under state or local laws. Generally speaking, for an assembly to be unlawful, there must be (1) a gathering of persons (usually three or more), (2) with a common intent to do an unlawful act or attempt to do a lawful act in a violent or unlawful manner to the disturbance of the public in general.[lxi] However, unlawful assembly statutes may be unconstitutional if they are drafted too broadly, if they delegate enforcement authority without laying down any rules or standards properly within the police power, and where they grant city police absolute discretion in preventing the assemblage of persons.[lxii] Generally, a majority of unlawful-assembly statutes are challenged as unconstitutional because of vagueness or overbreadth.[lxiii] However, one such statute in Minnesota was held to be neither unconstitutionally vague nor overbroad. It prohibited three or more assembled persons from conducting themselves in such a disorderly manner as to threaten or disturb the public peace by unreasonably denying or interfering with the rights of others to peacefully use their property or public facilities without obstruction, interference, or disturbance.[lxiv]

Confrontations with police supply another source of unlawful assembly charges. For instance, where persons have assembled to commit an unlawful act, failure to withdraw from the assembly after being lawfully commanded to disperse by a police officer is an unlawful assembly. A group can be ordered to withdraw even before any member of the assembly inflicts injury to the person or property of another.[lxv] The same is the case where an assembly of persons obstructs a street or sidewalk and refuses to disperse upon police order.[lxvi] However, a command to disperse must be given in a manner reasonably calculated to be communicated to the assemblage by a law enforcement or peace officer or public official responsible for keeping the peace.[lxvii]

To establish guilt on a charge of refusal to disperse, a court must find that the person was at the scene of an unlawful assembly and knew of the command to disperse, and refused to obey.[lxviii] On the other hand, when peaceful, orderly public comment is involved, police have a duty to take reasonable affirmative steps to protect the protesters' rights to freedom of speech and expression. Further, a protester cannot be punished for failing to obey a command of a police officer if that command itself violates the Constitution because the statute being forced is vague or overbroad.[lxix]

If you have any further questions, or are in need of legal assistance, please call The Rutherford Institute at (434) 978-3888. Please send any correspondence to P.O. Box 7482, Charlottesville, Virginia 22906-7482, or e-mail us at tristaff@rutherford.org

NOTES.

[i] U.S. CONST. amend. I.

[ii] *Texas v. Johnson*, 491 U.S. 397, 430 (1989) (Rehnquist, W., dissenting), citing *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942).

[iii] *See Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.,* 460 U.S. 37, 45 (1983).

[iv] *Id.*

[v] *Id.* at 46.

[vi] *See Medlin v. Palmer*, 874 F.2d 1085 (5th Cir. 1989); *see also*, *Portland Feminist Women's Health Ctr. v. Advocates for Life, Inc.*, 859 F.2d 681 (9th Cir. 1989).

[vii] *See Coates v. Cincinnati*, 402 U.S. 611 (1971).

[viii] *See Chico Feminist Women's Health Ctr. v. Scully*, 208 Cal. App. 3d 230, 256 Cal. Rptr. 194 (3rd Dist.); *see also*, *Parkmed Co. v Pro-Life Counseling, Inc.,* 91 A.D.2d 551, 457 N.Y.S.2d 27 (1st Dep't. 1982).

[ix] 114 S.Ct. 2516 (1994).

[x] *Id*. at 2516.

[xi] *Id*. at 2524-2525.

[xii] *Id.* at 2525.

[xiii] *Id*. at 2524.

[xiv] 117 S.Ct. 855 (1997).

[xv] *Id.* at 861.

[xvi] *Id.* at 864.

[xvii] *Id*. at 866.

[xviii] *Id*. at 869.

[xix] *Id*. at 867-68.

[xx] *Id*. at 867.

[xxi] *Id*.

[xxii] *Id*.

[xxiii] 530 U.S. 703 (2000).

[xxiv] *Id*. at 708

[xxv] *Id.*

[xxvi] *Id.*

[xxvii] *Id*. at 709.

[xxviii] *Id*. at 13.

[xxix] *Id*. at 724.

[xxx] *Id*. at *725.*

[xxxi] *Id.* at 729.

[xxxii] *Id.*

[xxxiii] *See New York State Nat'l Org. for Women v. Terry*, 886 F.2d 1339 (1989), *cert. denied,* 495 U.S. 947 (1990).

[xxxiv] *See Thompson v. Police Dep't. of New York*, 145 Misc 2d 417, 546 NYS2d 945 (1989).

[xxxv] *See Frisby v. Schultz*, 487 U.S. 474 (1989).

[xxxvi] *See Herndon v. Lowry*, 301 U.S. 242 (1937).

[xxxvii] *See Thomas v. Collins*, 323 U.S. 516 (1945); *see also*, *West Virginia State Bd. of Educ. v. Barnette,* 319 U.S. 624 (1943).

[xxxviii] *See Danskin v. San Diego Unified Sch. Dist*., 28 Cal. 2d 536, 171 P.2d 885 (1946) (explaining that the same test for the existence of a clear and present danger of a serious substantive evil in cases involving freedom of assembly also applies to cases involving freedom of expression).

[xxxix] *See Boos v. Barry*, 485 U.S. 312 (1988).

[xl] *See O. B. G. Y. N. Associations. v. Birthright of Brooklyn & Queens, Inc*., 64 N.Y.A.D. 2d 894, 407 N.Y.S.2d 903 (2d Dep't. 1978).

[xli] 18 U.S.C.A. § 248.

[xlii] 18 U.S.C.A. § 248 (e)(2), (3).

[xliii] 18 U.S.C.A. § 248 (e)(4).

[xliv] 108 Stat. 694 § 2.

[xlv] 18 U.S.C.A. § 248 (b), (c).

[xlvi] 18 U.S.C.A. § 248 (d)(3).

[xlvii] 18 U.S.C.A. § 248 (d)(1).

[xlviii] 101 F.3d 1412 (1996).

[xlix] *Id*.

[l] *Id*. at 1420.

[li] *Id*. at 1422. *Accord, United States v. Soderna*, 82 F.3d 1370 (7th Cir. 1996), *cert. denied, Hatch v. United States,* 117 S.Ct. 507 (1996); *see also United States v. Unterberger*, 97 F.3d 1413 (11th Cir. 1996); *United States v. Weslin*, 964 F.Supp. 83 (W.D.N.Y. 1997); *United States v. Scott*, 958 F.Supp. 761 (1997); *United States v. Roan*, 947 F.Supp. 872 (E.D. Pa. 1996); *Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life Advocates*, 945 F.Supp. 1355 (D. Ore. 1996).

[lii] 18 U.S.C.A. § 1962(c).

[liii] 114 S.Ct. 798 (1994).

[liv] *Id*. at 806 n.6 (Souter, J., concurring).

[lv] Angela Hubbell, `*FACE'ing the First Amendment: Application of RICO and the Clinic Entrances Act to Abortion Protesters*, 21 OHIO N.U. L. REV. 1061, 1067 (1995).

[lvi] 18 U.S.C.A. § 1964(c).

[lvii] *See e.g., Palmetto State Me. Ctr. v. Operation Lifeline*, 117 F.3d 142 (4th Cir. 1997) (no evidence existed to show that Operation Lifeline or any of the individual defendants engaged in any illegal activities on the ~~particular~~ dates alleged by the plaintiff-hospital); *Planned Parenthood v. American Coalition of Life Activists*, 945 F.Supp. 1355 (D.Or. 1996) (plaintiffs adequately stated RICO claims against all defendants but one); *National Org. of Women v. Scheidler*, 1997 WL 610782 (N.D.Ill. 1997) (permitting certain RICO claims to proceed against defendants, while granting judgment for plaintiffs on other RICO claims).

[lviii] *See Lloyd Corp. v. Tanner,* 407 U.S. 551 (1972).

[lix] *See Morgan v. District of Columbia*, 476 A.2d 1128 (D. C. 1984).

[lx] *See e.g., Robins v. Pruneyard Shopping Ctr.,* 23 Cal.3rd 899 (1979), *aff'd*, 447 U.S. 74 (1980); *see also, Planned Parenthood v. Holy Angels Catholic Church*, 765 F. Supp. 617 (N.D. Cal. 1991).

[lxi] *See e.g., Gilmore v. Fuller*, 198 Ill. 130, 65 N.E. 84 (Ill. 1902); *State v. Mast*, 713 S.W.2d 601 (Mo.App. 1986); *State v. Butterworth*, 104 N.J.L. 579, 142 A. 57 (E.&.A.. 1928); *Cleveland v. Anderson*, 13 Ohio App. 2d 83, 42 Op. 2d 202, 234 N.E.2d 304 (Ohio Ct .App. 1968); *Lair v. State*, 316 P.2d 225 (Okla. Crim. App. 1957); *State v. Stephanus*, 53 Or. 135, 99 P. 428 (1909); *State v. Wooldridge*, 129 W. Va. 448, 40 S.E.2d 899 (1947); *Shields v. State,* 187 Wis. 448, 204 N.W. 486 (Wis. 1925).

[lxii] *See Toledo v. Sims*, 14 Ohio Op. 2d 66, 84 Ohio Law Abs. 476, 169 N.E.2d 516 (Ohio 1960).

[lxiii] *See, e.g., Coates v. Cincinnati*, 402 U.S. 611 (1971); *Chapman v. State*, 257 Ark. 415, 516 S.W.2d 598 (1974); *State v. Hipp,* 298 Minn 81, 213 NW2d 610 (1973).

[lxiv] *See State v. Hipp*, 298 Minn. 81, 213 N.W.2d 610 (1973).

[lxv] *See e.g., Kerr v. State*, 193 Ga. App. 165, 387 S.E. 2d 355 (Ga. App. 1989); *Iowa v. Elliston*, 159 N.W.2d 503 (Iowa 1968); *Bloor v. State*, 129 Neb. 407, 261 N.W. 840

(1935).

[lxvi] *See Koss v. State,* 217 Wis. 325, 258 N.W. 860 (1935).

[lxvii] *See Louisiana v. West,* 419 So. 2d 868, 871 (La. Ct. App.1982).

[lxviii] *See Missouri v. Mast*, 713 S.W.2d 601, 604 (Mont. App. 1986).

[lxix] *See New Hampshire v. Nickerson*, 424 A.2d 190, 193 (N.H. 1980).