California Western Law Review

Volume 41 | Number 2 Article 5

2005

People v. Sanders: Towards a Unified Policy Protecting the Rights of Juveniles

Kurt A. Weiser

NOTE

PEOPLE V. SANDERS: TOWARDS A UNIFIED POLICY PROTECTING THE RIGHTS OF JUVENILES

I. INTRODUCTION

In 2003, an experienced police officer cruised slowly through an urban neighborhood. As he made his way down the street, he saw Reginold, a man familiar to him from a recent narcotics arrest. The timing of that earlier arrest suggested Reginold was probably still on probation. The officer also suspected the man was high on drugs, but nevertheless, passed him by.

A block later the same officer spotted Earnest, a juvenile whom he recognized from an earlier arrest. The officer wondered if Earnest was still on probation. He did not know for sure, but it did not matter. The officer pulled over adjacent to the curb and ordered Earnest to come to him. In a swift movement the officer pushed Earnest over the hood of the patrol car, splayed his feet wide, and frisked him. The officer removed an item from the juvenile's pocket, which was later identified as a bag of marijuana.

Unlike his encounter with Reginold, the officer needed neither probable cause nor reasonable suspicion to stop and frisk Earnest, as long as Earnest was on probation at the time of the stop and thereby subject to a search waiver.[1] In the case of juveniles, a police officer performing a search does not need to know at the time of the search whether the juvenile is subject to such a search waiver.[2] Thus, if the officer later discovers that Earnest is on probation, the search is valid, and any evidence found as a result of the search can be used against him.[3] Using this procedure, California is the only state in the nation

1. *See In re* Tyrell J., 876 P.2d 519, 529 (Cal. 1994).
2. *Id.* at 530.
3. *See id.*

that allows an illegal search of a juvenile, which if conducted on an adult, would result in the suppression of the evidence.[4]

In opposition to California's current law, this note proposes that the rule articulated in *People v. Sanders,*[5] where the reasonableness of a search is determined by the circumstances known to the police officer at the time the search is conducted,[6] should be extended to all probationers, juveniles and adults alike. In *Sanders,* the California Supreme Court held that an otherwise unlawful search of an adult may not be later justified by the existence of a search condition of which the law enforcement officers were unaware when the search was conducted.[7]

Sanders is not remarkable for this holding; in fact, the rule that the police cannot legitimize illegal searches by relying on search conditions of which they were then unaware has been universally accepted for decades.[8] The reasons for this rule arise from the Fourth Amendment itself. "[T]he reasonableness of a search is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which [such intrusion] is needed for the promotion of legitimate governmental interests."[9]

In the case of an illegal search, however, governmental interests evaporate unless the police officer conducting the search is then aware of a search condition that legitimizes his actions on behalf of the state.[10] In fact, *Sanders* is extraordinary to the extent to which it diverged from *In re Tyrell J.*,[11] an infamous decision rendered by the same court nine years earlier. In *Tyrell J.* the court made an abrupt shift away from accepted Fourth Amendment jurisprudence.[12] In that case, police conducted a search of a juvenile at a high school football

---

4. People v. Sanders, 73 P.3d 496, 503 (Cal. 2003). "As the dissent in *Tyrell J.* aptly noted, that strange conclusion, without precedent in *any* jurisdiction, gives police an incentive to make searches even without probable cause because, should it turn out that the suspect is a probationer, the evidence will be admissible nonetheless." *Id.*

5. *Id.* at 496.

6. *Id.* at 507, 514 (Baxter, J., dissenting).

7. *Id.* at 507.

8. *See In re* Martinez, 463 P.2d 734, 738 (Cal. 1970).

9. United States v. Knights, 534 U.S. 112, 118-19 (2001).

10. "But if an officer is unaware that a suspect is on probation and subject to a search condition, the search is not justified by the state's interest in supervising probationers or by the concern that probationers are more likely to commit criminal acts." *Sanders,* 73 P.3d at 507.

11. 876 P.2d 519 (Cal. 1994).

12. *Id.* at 531-32.

game.[13] The search revealed contraband, which was used against the young man to declare him a ward of the court.[14] At the time of the search, the police officer had neither reasonable suspicion to support the search, nor was he aware of the juvenile's probationary search condition.[15] The California Supreme Court upheld the juvenile's conviction, holding that a juvenile subject to a search condition has no reasonable expectation of privacy under the Fourth Amendment, even from intrusions by police officers unaware of the search condition.[16]

The court's controversial decision in *Tyrell J.* received overwhelming negative reactions from legal critics and juvenile advocates.[17] *Sanders* extended the criticism, with one justice calling the *Tyrell J.* outcome "constitutionally suspect,"[18] but then, hidden in a footnote, the majority failed to completely overturn *Tyrell J.*[19]

This note discusses the inequities resulting from this unfair treatment of juveniles under California law. In Part II, the note explores the existing law as it relates to adults, then to juveniles. Part III analyzes the Fourth Amendment argument for extending *Sanders* to cover juveniles. In Part IV, the note synthesizes *Sanders* and *United States v. Knights,*[20] and concludes that *Knights* mandates the extension of *Sanders* to cover juveniles. Part V argues that the failure to extend *Sanders* to juveniles triggers a violation of the Equal Protection Clause of the Fourteenth Amendment, under both strict scrutiny and, alternatively, under a rational basis analysis. Finally, Part VI will conclude that the unequal treatment of adult and juvenile probationers is insupportable, and the California Supreme Court or legislature should extend *Sanders* to juveniles as soon as the opportunity arises.

---

13. *Id.* at 521.

14. Declaring a juvenile a ward of the court is the equivalent of an adult conviction. *Id.* at 522.

15. *Id.*

16. *Id.* at 529.

17. "[T]he holding opens the door to condoning, and possibly encouraging, police misconduct." Kristin Anne Joyce, Comment, *Fourth Amendment Protections for the Juvenile Probationer After* In re Tyrell J., 36 SANTA CLARA L. REV. 865, 883 (1996). "In a seemingly result-oriented opinion, the court evinced both a disregard for precedent and the Fourth Amendment." Lidia Stiglich, Comment, *Fourth Amendment Protection for Juvenile Probationers in California, Slim or None?:* In re Tyrell J., 22 HASTINGS CONST. L.Q. 893, 905 (1995).

18. People v. Sanders, 73 P.3d 496, 511 (Cal. 2003) (Brown, J., concurring).

19. *Id.* at 508 n.5.

20. 534 U.S. 112 (2001).

II. BACKGROUND LAW

A. Existing Federal Law as It Pertains to Adults

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures" by police officers and other government officials.[21] The reasonableness of a search is determined by comparing the degree to which the search intrudes upon an individual's privacy with the degree to which it is needed to promote legitimate government interests.[22] If this determination results in favor of a criminal defendant, the Fourth Amendment is enforced by an exclusionary rule, which generally prohibits admission at trial of evidence obtained during an illegal search.[23] This exclusionary rule was adopted to effectuate the Fourth Amendment right of "*all* citizens to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures."[24]

Thus, the Fourth Amendment prohibits all unreasonable searches and seizures, and warrantless searches are always unreasonable subject only to a small number of "specifically established and well-delineated exceptions."[25] Furthermore, in a criminal prosecution, the state bears the burden of justifying a warrantless search under such an exception.[26]

The United States Supreme Court recognizes such exceptions when so called "special needs" exist.[27] If circumstances render the warrant and probable cause requirements impracticable, the government is allowed to circumvent them if the government's needs are seen to outweigh the rights of the individual.[28]

The "special needs" exception was examined with an eye toward the constitutionality of search conditions, twice by the U.S. Supreme Court: first in *Griffin v. Wisconsin*[29] and again in *United States v.*

---

21. U.S. CONST. amend. IV.
22. United States v. Knights, 534 U.S. 112, 118-19 (2001).
23. Mapp v. Ohio, 367 U.S. 643, 654-55 (1961); United States v. Leon, 468 U.S. 897, 913 (1984).
24. United States v. Calandra, 414 U.S. 338, 347 (1974) (citing Weeks v. United States, 232 U.S. 383 (1914)) (emphasis added).
25. *See* Mincey v. Arizona, 437 U.S. 385, 390 (1978).
26. *See* Welsh v. Wisconsin, 466 U.S. 740, 749-50 (1984).
27. *Id.* at 750.
28. *Id.* at 747-48.
29. 483 U.S. 868 (1987).

Knights.[30] In the former, the warrantless search of a probationer in his home was upheld.[31] Petitioner was on probation and subject to a search condition that permitted any probation officer to search a probationer's home so long as the officer's supervisor approved, and there were reasonable grounds to believe the probationer was in possession of contraband prohibited by his probationary status.[32] The probation officer knew of Griffin's probationary status at the time the search was conducted, and was investigating pursuant to a tip from a police detective, which specifically identified Griffin as likely to be in possession of contraband.[33] The Supreme Court upheld the search, ruling that warrantless searches were reasonable whenever the state had a "special need[], beyond the normal need for law enforcement, [to] make the warrant and probable-cause requirement impracticable."[34] The state's operation of a probation system presents a special need, necessitating a reduction of Fourth Amendment protections in order to better supervise probationers.[35] In dicta, the court added that the permissible degree of those reductions was not unlimited.[36]

Under *Knights,* whether the officer had knowledge of the search condition at the time of the search was essential to weighing the reasonableness of a warrantless search.[37] In that case, the court held that a law enforcement officer investigating criminal conduct could search the residence of a probationer without a warrant pursuant to a probation search condition.[38] The officer in *Knights* knew of the search condition.[39] The court upheld the search because when examining the "totality of the circumstances," the probation search condition operated as a salient circumstance.[40] While defendant Knight's search condition significantly diminished his reasonable exception of privacy, it was clear that the officer's knowledge of that search condition served to legitimize the search under the state's "special needs" exception developed in *Griffin.*

---

30. 534 U.S. 112 (2001).
31. *Id.* at 880.
32. *Id.* at 870-71.
33. *Id.* at 870.
34. *Id.* at 873 (citing New Jersey v. T.L.O. 496 U.S. 325 (1985) (Blackmun, J., concurring)).
35. *Id.* at 873-74.
36. *Id.* at 875.
37. United States v. Knights, 534 U.S. 112, 121-22 (2001).
38. *Id.* at 122.
39. *Id.* at 115.
40. *Id.* at 118.

B. Existing California Law as It Pertains to Adults; Knowledge First Is King

California has previously examined the constitutionality of a warrantless search of a residence where police discovered that the suspect was on parole after the fact. In *In re Martinez*,[41] Ralph Martinez, an adult, was arrested while inside his car near his home.[42] Police then conducted a full search of his home without a warrant.[43] At the time of the search, the officers were unaware of Martinez's parole status.[44] The court held, "[u]nder these circumstances the officers cannot undertake a search without probable cause and then later seek to justify their actions by relying on the defendant's parole status, a status of which they were unaware at the time of their search."[45] Reduction of a parolee's Fourth Amendment protections can be "justified only to the extent actually necessitated by the legitimate demands of the operation of the parole process," and such demands cannot be justified when the police officer is unaware that the defendant is on parole.[46] Seventeen years later, this concept was reinforced by the same court in *People v. Bravo*[47]:

> We do not suggest that searches of probationers may be conducted for reasons *unrelated* to the rehabilitative and reformative purposes of probation or other legitimate law enforcement purposes. A waiver of Fourth Amendment rights as a condition of probation does not permit searches undertaken for harassment or searches for arbitrary or capricious reasons.[48]

Finally, in *Sanders,* the police illegally searched a couple's apartment pursuant to a domestic disturbance report.[49] During the search police discovered contraband stuffed in a boot inside the bedroom closet.[50] This evidence was later used to convict both defendants of criminal charges.[51] However, it was not discovered until after the search that one of the defendants was on parole and thereby subject to

41. 463 P.2d 734 (Cal. 1970).
42. *Id.* at 736 n.1.
43. *Id.*
44. *Id. at* 737-38.
45. *Id.*
46. *Id.*
47. 738 P.2d 336 (Cal. 1987).
48. *Id.* at 342 (emphasis added).
49. People v. Sanders, 73 P.3d 496, 499 (Cal. 2003).
50. *Id.*
51. *Id.*

a search condition allowing warrantless residential searches.[52] The defendants pled guilty after the trial court denied their motions to suppress.[53] However, the defendants appealed, arguing the search was illegal.[54] The Supreme Court granted review to decide the narrow question of whether the search was lawful despite the fact the officers had no idea the defendant was on parole when the search was conducted.[55] Affirming the Court of Appeals' decision reversing the conviction, the Supreme Court held that an otherwise unlawful search of an adult may not be later justified by the existence of a search condition of which the police were unaware at the time of the search.[56]

Therefore, the status of parolees and probationers subject to search conditions was clear.[57] A search condition reduced one's reasonable expectation of privacy, but not so much that one could anticipate an arbitrary search by a police officer unaware of the search condition.

C. In re Tyrell J.: A Startling Departure; Existing Law as It Pertains to Juveniles

The California Supreme Court made a startling departure from the universally accepted *Martinez* view and overturned twenty five years of precedent when it decided *Tyrell J.*[58] In that case the warrantless search of a juvenile was upheld, even though the officer had no knowledge of the minor's probationary status.[59] By upholding the juvenile's conviction, the California Supreme Court held that a juvenile subject to a search condition had no reasonable expectation of privacy under the Fourth Amendment, even from intrusions by police officers unaware of the condition.[60] The court based its holding on the "special needs" of the juvenile justice system, which under the *parens patriae* model "embraces a goal of rehabilitating youngsters who have transgressed the law, a goal that is arguably stronger than in the adult

52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.* at 499-500.
56. *Id.* at 507-08.
57. For the purposes of this discussion, the law treats individuals on probation and individuals on parole uniformly. This is because search waivers attached to either condition operate in the same manner. *See* People v. Bravo, 738 P.2d 336 (1987) (involving a defendant on probation); People v Burgener, 714 P.2d 1251 (1986) (involving a defendant on parole).
58. *See In re* Tyrell J., 876 P.2d 519, 531-32 (Cal. 1994).
59. *See id.* at 531-32.
60. *Id.* at 532.

context."[61] The dichotomy of the holdings in *Tyrell J.* and *Martinez* can only be explained by examining the different treatment juveniles receive in the eyes of the law.

D. Existing Federal Law as It Pertains to Juveniles: Constitutional Rights Evolve

Historically, the constitutional rights of juveniles have been construed differently than those of adults.[62] Under the doctrine of *parens patriae,* the state acts in a capacity as provider of protection to juveniles unable to care for themselves.[63] Generally, juvenile courts were kept "separate from adult criminal courtrooms"[64] and such "proceedings were [deemed] *civil* in nature, not criminal."[65] The purpose of these measures was to "create a nonadversarial setting in which judges could act in the best interests of the juveniles who appeared in their courtrooms."[66] However, while the ultimate objective of such policies was the protection of children's welfare, judges and courts believed such results could not be achieved if the standard rules of criminal due process were applied to juvenile proceedings.[67]

As well-intentioned as this *parens patriae* model was, it led to grand violations of juveniles' constitutional rights. "Law enforcement administration in juvenile . . . situations was unremarkable largely because in the first half of the century it was simply assumed that police had *carte blanche* authority to do as they pleased with youth."[68] By the 1960s, the discomfort with the *parens patriae* model and its lack of oversight of the juvenile court system reached the Supreme Court in *Kent v. United States.*[69] In *Kent*, the Court found that the governmental exercise of *parens patriae* authority led to procedural arbitrariness on a constitutional scale.[70] "There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both

---

61. *Id.* at 530.

62. *See* SAMUEL M. DAVIS, RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM 3-2 (2001).

63. BLACK'S LAW DICTIONARY 1144 (8th ed. 2004).

64. JOHN C. WATKINS, JR. THE JUVENILE JUSTICE CENTURY: A SOCIOLEGAL COMMENTARY ON AMERICAN JUVENILE COURTS 47 (1998).

65. *Id.*

66. CHRISTOPHER P. MANFREDI, THE SUPREME COURT AND JUVENILE JUSTICE 82 (1998).

67. *Id.* at 85.

68. WATKINS, *supra* note 64, at 103.

69. 383 U.S. 541; MARTIN R. GARDNER, UNDERSTANDING JUVENILE LAW 177 (2d. ed. 2003).

70. 383 U.S. at 555; GARDNER, *supra* note 69, at 178.

worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[71] Thus, there is historical ambivalence regarding the constitutional rights of juveniles being limited compared to those of adults.[72]

This restriction of the constitutional rights of juveniles pivotally changed course when the United States Supreme Court decided *In re Gault*.[73] The *Gault* decision "led to a reexamination of the entire juvenile justice system in America," and required a guarantee of constitutional due process rights for all juveniles.[74] In *Gault*, the Court reviewed the constitutionality of the commitment of Gerald Gault, then fifteen years old, to a juvenile detention facility for up to six years for allegedly making an obscene phone call.[75] Gault's commitment was conducted without any procedural formality.[76] He was taken from his home by the Sheriff while his parents were at work.[77] The Sheriff did not notify Gault's parents that Gault was being taken into custody.[78] Gault's participation in the phone call was never factually determined.[79] In overturning the commitment order, the Court concluded that the juvenile court system had failed to effectively attain its rehabilitative goals.[80] Thus, the *Gault* Court found the essentials of due process and fair treatment under the Fourteenth Amendment entitled juveniles to increased procedural protections.[81] Later decisions interpreted *Gault* to apply not only to due process violations, but to violations of juveniles' Fourth Amendment rights as well.[82]

---

71. *Kent*, 383 U.S. at 556.

72. *See* MANFREDI, supra note 66, at 82; DAVIS, *supra* note 62, at 1-4.

73. 387 U.S. 1 (1967).

74. Stanford J. Fox, *Juvenile Justice Reform: A Historical Perspective,* 22 STAN. L. REV. 1187, 1187 (1970).

75. *In re* Gault, 387 U.S. at 8. The same violation, if committed by an adult, would have caused the adult to incur a maximum of two months in jail *or* a fine of five to fifty dollars. *Id.* at 8-9.

76. *Id.* at 4.

77. *Id.* at 5.

78. *Id.*

79. *Id.* at 6.

80.

> The constitutional and theoretical basis for this peculiar system is—to say the least—debatable. And in practice, as we remarked in the *Kent* case, *supra*, the results have not been entirely satisfactory. Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.

Id. at 17-18.

81. *Id.* at 30-31.

82. "All courts that have specifically considered the question of the applicability of the [F]ourth [A]mendment to the juvenile process have held in favor of its applicability, or more

Thus, by 1980, when the Joint Commission on Juvenile Justice Standards of the Institute of Judicial Administration and the American Bar Association published its model for states to implement in order to revise their juvenile court systems, its authors concluded that all aspects of the Fourth Amendment should apply to juveniles and adults alike.[83] Standard 3.2 of the model recommends:

> Police investigation into criminal matters should be similar whether the suspect is an adult or a juvenile. Juveniles, therefore, should receive *at least the same* safeguards available to adults in the criminal justice system. This should apply to: A. preliminary investigations (e.g., stop and frisk); B. the arrest process; C. search and seizure; . . . [and] F. prehearing detention and release.[84]

The official note to Standard 3.2 effectively renders dead any notion that the *parens patrie* model should continue to be utilized if it results in stripping juveniles of their constitutional rights:

> Is it not more outrageous for the police to treat children more harshly than adult offenders, especially when such is violative of due process and fair treatment? Can a court countenance a system where, as here, an adult may suppress evidence with the usual effect of having the charges dropped for lack of proof, and on the other hand, a juvenile can be institutionalized—lose the most sacred possession a human being has, his freedom—for 'rehabilitative' purposes because the Fourth Amendment right is unavailable to him?[85]

Thus nationwide, courts agree Fourth Amendment protections apply equally whether the subject is a juvenile or an adult, regardless of the civil nature of juvenile proceedings.[86]

III. THE FOURTH AMENDMENT AND ITS RELATIONSHIP TO THE EXCLUSIONARY RULE

While the *Sanders* majority relied on the exclusionary rule's deterrent value in deciding to suppress the evidence, there are other compelling reasons why the Fourth Amendment would deem the search illegal. Those reasons highlight the need to extend the *Sanders* rule to cover juveniles.

---

correctly, no court considering the question has held the [F]ourth [A]mendment to be inapplicable to juvenile proceedings." DAVIS, *supra* note 62, at 3-17.

83. WATKINS, *supra* note 64, at 104.

84. JUVENILE JUSTICE STANDARDS 3.2 (Inst. Judicial Admin. 1980) (emphasis added).

85. *Id.* cmt. introduction.

86. DAVIS, *supra* note 62, at 3-21.

Sanders holds that police cannot justify otherwise illegal searches through the use of a later discovered search condition.[87] The majority's main reason supporting the holding was that it was "consistent with the primary purpose of the exclusionary rule—to deter police misconduct."[88] This holding follows the reasoning set forth in *United States v. Leon*,[89] which established the "good faith exception" to the Fourth Amendment's warrant requirement.[90] In *Leon,* the court held the exclusionary rule would not apply to cases where police officers relied in good faith on a warrant that was lacking probable cause.[91] The court reasoned that the deterrence purpose of the exclusionary rule was only intended for police, and not others involved in criminal administration.[92] The problem with *Leon* is that it was wrongly decided. The framers of the Constitution and the Fourth Amendment in particular were not only concerned with unreasonable searches and seizures by police, but by the government in general.[93]

That courts tend to state the "primary" purpose of the exclusionary rule is to deter police misconduct is not surprising. Frequent interactions between police and the public present reasons to determine individuals' rights under the Fourth Amendment. There is danger, however, in letting the *primary* purpose for a rule become misunderstood as the *sole* purpose for that rule.[94] In fact, the exclusionary rule serves numerous purposes beyond deterring police misconduct.[95]

First among these is that the primary purpose of the exclusionary rule is *not* to deter police misconduct, but rather to ensure individual's rights under the Fourth Amendment are respected.[96] Viewed from this

---

87. People v. Sanders, 73 P.3d 496, 507 (Cal. 2003).

88.

> The requirement that the reasonableness of a search must be determined from the circumstances known to the officer when the search was conducted is consistent with the primary purpose of the exclusionary rule—to deter police misconduct. The rule serves "to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it.

Id. (quoting Mapp v. Ohio, 367 U.S. 643, 656 (1961)).

89. 468 U.S. 897 (1984).

90. *Id.* at 923-24.

91. *Id.* at 926.

92. *Id.* at 916.

93. *Id.* at 929-30.

94. *See* Arizona v. Evans, 514 U.S. 1, 18-19 (1995) (Stevens, J., dissenting).

95. *See Leon*, 468 U.S. at 933-34 (Brennan, J., dissenting); Potter Stewart, *The Road to Mapp v. Ohio and Beyond: The Origins, Development and Future of The Exclusionary Rule in Search-and-Seizure Cases,* 83 COLUM. L. REV. 1365 (1983).

96.

> [T]he purpose of the Fourth Amendment is to safeguard the right to be free from unreasonable searches and seizures. Throughout the opinion, the majority in this

perspective, the exclusionary rule only operates as a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved."[97] Therefore, examining the presence or absence of *deterrence* is improper when conducting a totality of the circumstances analysis to determine whether one's rights were abused under the Fourth Amendment, because deterrence pertains only to application of the exclusionary rule.[98] Whether police violated an individual's rights during an illegal search is a separate question, the affirmative answer to which will only then trigger exclusion of evidence. Thus, there are dangers lurking when courts supplant an analysis of whether to apply the exclusionary rule for whether a person's Fourth Amendment rights were violated during a search. Only through this logical error was *Tyrell J.* able to reach its constitutionally untenable result, one which should be overturned.[99]

Also among the exclusionary rule's more nuanced purposes is that of ensuring judicial integrity.[100] The exclusionary rule's value to the courts is found in the following passage from Justice Brennan's dissent in *United States v. Leon*:

> case refers to the exclusionary rule's goal of deterring unlawful police conduct as supporting its holding that the search here cannot be justified by a parole search condition of which the searching officers were ignorant. But that goal is not relevant in determining whether a *particular* search or seizure violates the Fourth Amendment, which is the issue here.

People v. Sanders, 73 P.3d 496, 509-10 (Cal. 2003) (Kennard, J., concurring) (emphasis added) (citations omitted).

97. United States v. Calandra, 414 U.S. 338, 348 (1974).

98. "The deterrent purpose of the exclusionary rule is not a consideration in assessing the totality of the circumstances affecting the reasonableness of a search." *Sanders*, 73 P.3d at 511 (Brown, J., concurring).

99.

> [T]he fact that deterrence is the primary purpose of the exclusionary rule does not assist in analyzing the predicate question. Until *In re Tyrell J.* . . . this court's search and seizure jurisprudence was generally consistent with the United States Supreme Court's view that the purpose of the exclusionary rule was relevant to the scope of the remedy, not the contours of the constitutional right itself. Both of these decisions concerned the legality of the officers' conduct, not the appropriateness of excluding the evidence. In *Tyrell J.*, however, the court's analysis for the first time—perhaps to shore up a constitutionally suspect result--included reference to the "primary purpose of the Fourth Amendment" as part of its rationale.

Id. (Brown, J., concurring) (citations omitted).

100. "Courts which sit under our Constitution cannot and will not be made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions." *Id.* at 507. "[C]onviction by means of unlawful seizures and enforced confessions . . . should find no sanction in the judgments of the courts." Mapp v. Ohio, 367 U.S. 643, 648 (1961) (quoting Weeks v. United States, 232 U.S. 383, 392 (1914)).

> [T]he [Fourth] Amendment, like other provisions of the Bill of Rights, restrains the power of the government as a whole; it does not specify only a particular agency and exempt all others. The judiciary is responsible, no less than the executive, for ensuring that constitutional rights are respected.
>
> When that fact is kept in mind, the role of the courts and their possible involvement in the concerns of the Fourth Amendment comes into sharper focus. Because seizures are executed principally to secure evidence, and because such evidence generally has utility in our legal system only in the context of a trial supervised by a judge, it is apparent that the admission of illegally obtained evidence implicates the same constitutional concerns as the initial seizure of that evidence. Indeed, by admitting unlawfully seized evidence, the judiciary becomes a part of what is in fact a single governmental action prohibited by the terms of the Amendment.[101]

The courts are the key arbiter of adults' Fourth Amendment rights, and for this reason the exclusionary rule binds the efforts of the courts as well as the police. Because the same is true of the juvenile court system, it should be no less bound by the dictates of the exclusionary rule and its purpose of preserving the integrity of the system under the Fourth Amendment. Under *Tyrell J.*, however, police are allowed to conduct illegal searches of juveniles, and to have whatever evidence they find during those searches admitted at trial. This policy undermines an important purpose of the exclusionary rule, which is to preserve the integrity of the justice system. The courts face a difficult choice: exclude evidence obtained in violation of the Fourth Amendment or, by admitting evidence from illegal searches, partake in the evil by which the evidence was obtained.[102] By allowing the latter, the public, and especially the juveniles subject to such a policy, lose their trust in the entire justice system. For this reason, *Sanders*' distinction between the use of the exclusionary rule with respect to juveniles and adults should be abolished.

Finally, the exclusionary rule shapes the behavior of government institutions, not just police departments, in such a way as to ensure their policies and practices protect the rights of individuals to be free from unreasonable searches and seizures. "[T]hat our society attaches

---

101. United States v. Leon, 468 U.S. 897, 933-934 (1984) (Brennan, J., dissenting).

102. Chief Justice Holmes reached the heart of the matter when he wrote:

> [Therefore] we must consider the two objects of desire, both of which we cannot have, and make up our minds which to choose. It is desirable that criminals should be detected, and to that end that all available evidence should be used. It also is desirable that the Government should not itself foster and pay for other crimes, when they are the means by which the evidence is to be obtained.

Stewart, *supra* note 95 at 1382 (quoting Olmstead v. United States, 277 U.S. 438 (1928) (Holmes, J., dissenting).

serious consequences to violation of constitutional rights is thought to encourage those who formulate law enforcement policies, and the officers who implement them, to incorporate Fourth Amendment ideals into their value system."[103] Rather than serving as a punishment for individual officers that conduct illegal searches, the exclusionary rule serves as an incentive for law enforcement officials to respect the Fourth Amendment, because only by doing so will the evidence they worked so hard to gather be admitted at trial.[104] California, the only state that allows searches of juveniles that would be illegal if conducted in the same manner on an adult,[105] sends a message that its juvenile justice institution is free to promulgate polices that violate juveniles' Fourth Amendment rights.

From the foregoing it is clear that the exclusionary rule serves a number of important purposes beyond that of deterring police misconduct. The exclusionary rule ensures that individuals' rights under the Fourth Amendment are respected, promotes the integrity of the justice system as a whole, and encourages the creation of institutional policies and behaviors that operate within Fourth Amendment mandates. None of these essential purposes of the exclusionary rule can be achieved in a state which arbitrarily allows searches of juveniles which would be illegal if conducted on an adult. Therefore, *Sanders'* holding, which draws a distinction between adults and juveniles, should be corrected to treat both in an equal manner.

However, courts may continue to misstate the sole purpose of the exclusionary rule as that of deterring police misconduct, as they did in *Sanders*. As evidenced by the discussion below, even under such a "deterrence" analysis the result is the same: *Sanders* should be extended to cover juveniles as well as adults.

---

103. *Sanders*, 73 P.3d at 507 (quoting Stone v. Powell, 428 U.S. 465, 492 (1976)).

104. Stewart, *supra* note 95, at 1400.

105. *Sanders*, 73 P.3d at 503.

> Our holding in *Tyrell J.* that police could justify a search based upon the existence of a search condition of which they were unaware, received a chilly reception. Referring to our earlier decision in *Martinez*, one commentator stated: "Regrettably, that eminently sound position was later abandoned in *In re Tyrell J.* on the bizarre reasoning that a probationer who knows that he is subject to 'a valid search condition' to his release consequently 'does not have a reasonable expectation of privacy over his person or property' vis-à-vis any search by anyone, including a search by a police officer unaware of the probationer status! As the dissent in *Tyrell J.* aptly noted, that strange conclusion, without precedent in any jurisdiction, gives police an incentive to make searches even without probable cause because, should it turn out that the suspect is a probationer, the evidence will be admissible nonetheless."

Id. (emphasis omitted) (internal citations omitted).

IV. SANDERS AND KNIGHTS—SAY GOODNIGHT TO *IN RE TYRELL J.*

Any case involving illegal searches, where police later discover search conditions they were unaware of at the time, is now bound by the synthesis of holdings from *Knights* and *Sanders*. Under such an analysis, officers' ignorance of the search condition at the time of the search is a "salient circumstance" in determining whether a search is unreasonable and, therefore, violates the Fourth Amendment.[106]

Under *Knights,* in order to determine whether a search is reasonable, the court looks to the "totality of the circumstances."[107] The existence of a search condition that is previously known to the officer is a salient circumstance in such an analysis.[108] In *Knights,* the police officer knew the probationer was subject to a search condition,[109] whereas in *Sanders,* the officer did not.[110] *Sanders* was the first case to apply *Knights'* totality of the circumstances test to a search where the officers were *not* aware of the search condition. *Sanders* specifically recognized the officer's lack of knowledge of the condition as a second salient circumstance,[111] a circumstance that tips the scales in the defendant's favor in deciding whether the search violated the Fourth Amendment.[112] In the case of unknown search conditions, the search cannot be deemed reasonable, because "if an officer is unaware that a suspect is on probation and subject to a search condition, the search is not justified by the state's interest in supervising probationers or by the concern that probationers are more likely to commit criminal acts."[113] Later California cases apply the same analysis, focusing on the officer's lack of knowledge of a search condition as a second "salient circumstance" in deciding to exclude evidence.[114]

In re Tyrell J. was decided seven years before *Knights* and nine years before *Sanders*; therefore, neither was binding upon that case. However, the synthesis of *Sanders* with *Knights* compels one to conclude that under the Fourth Amendment, an otherwise unlawful search may not be justified by a search condition of which police were un-

106. *Id.* at 506.
107. United States v. Knights, 534 U.S. 112, 118 (2001).
108. *Id.*
109. *Id.* at 115.
110. *Sanders*, 73 P.3d at 498.
111. "In order to determine whether the search was unlawful as to McDaniel, we must examine 'the totality of the circumstances,' with two salient circumstances being McDaniel's parole search condition and the officer's lack of knowledge of that condition." *Id.* at 506.
112. *See id.* at 507.
113. *Id.*
114. *See* People v. Hill, 13 Cal. Rptr. 3d 719, 723 (Cal. Ct. App. 2004).

aware when the search was conducted, whether the subject of the search was an adult *or* a juvenile.

V. THE EQUAL PROTECTION ARGUMENT FOR EXTENDING *SANDERS* TO COVER JUVENILES

Allowing juvenile probationers to be searched by officers absent knowledge of a search condition violates juveniles' fundamental right to be free from unreasonable searches and seizures. In practice, *Sanders* creates two classes of persons for Fourth Amendment purposes: (1) adults, whose search condition the police must have knowledge of before a search is conducted, and (2) juveniles, who may be searched without such knowledge. The latter class is denied the assistance of the exclusionary rule. This classification is invalid and violates the Fourteenth Amendment.

The Equal Protection Clause of the Fourteenth Amendment provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."[115] The Fourteenth Amendment prohibits the unequal treatment of different "classes of individuals who are similarly situated."[116] In analyzing a challenge under the Equal Protection Clause, the U.S. Supreme Court has adopted different levels of scrutiny depending upon the nature of the classification at issue.[117] Denials of fundamental rights to a group of persons are subject to a strict scrutiny level of analysis.[118] Other classifications are subject to a rational basis standard of review.[119]

A. Strict Scrutiny Test

The right to be free of unreasonable searches and seizures is a fundamental liberty interest,[120] and as such is subject to a strict scrutiny analysis. Thus, the government cannot infringe upon the fundamental right to be free from unreasonable searches and seizures, nor can it apply law unequally between adults and juveniles. Yet the dichotomy created by the rulings in *Tyrell J.* and *Sanders* creates such a

115. U.S. CONST. amend. XIV, § 1.

116. 28 AM. JUR. 3D *Proof of Facts* § 12 (1994).

117. RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW § 18.3 (3d ed. 1999).

118. People v. Olivas, 551 P.2d 375, 379 (Cal. 1976).

119. Pennell v. City of San Jose, 485 U.S. 1, 13 (1988).

120. Wolf v. Colorado, 338 U.S. 25, 27 (1949), *overruled on other grounds by* Mapp v. Ohio, 367 U.S. 643 (1961).

result. Under *Sanders,* the illegal search of a juvenile, which if conducted in the same manner on an adult would trigger the suppression of evidence found in that search, may result in that juvenile's incarceration. Because juveniles and adults are treated differently with respect to the fundamental right to be free from unreasonable searches and seizures, California's failure to extend *Sanders* to cover juveniles is subject to a strict scrutiny analysis. Under strict scrutiny, a law will be upheld only if the state can prove that it is necessary to achieve a compelling purpose.[121]

Therefore, the proper inquiry is whether California has a compelling reason to disregard the fundamental Fourth Amendment rights of juvenile probationers. The California Court of Appeals has already passed on this issue in *People v. Hester.*[122] In *Hester,* police stopped a vehicle carrying three adults and one juvenile.[123] Lacking reasonable suspicion for the stop,[124] the government relied on the later discovery that the juvenile and two of the adults were on probation.[125] The court rejected this reasoning and held that the probation conditions could not be used to justify the illegal search, because the reasonableness of the search is based on the facts known to the officer at the time he acts.[126] While the court in *Hester* based its decision on Fourth Amendment principles, the court also sent an invitation to those making an equal protection argument: "In the absence of *compelling reasons* to treat individuals subject to the juvenile law differently than adults, we feel compelled by *Sanders* to limit *Tyrell J.* to its facts."[127] If the California Court of Appeals believes there are "no compelling reasons" to allow the after-acquired knowledge of a juvenile search condition to justify an illegal search, it is unlikely that continued reliance on *Tyrell J.* will withstand a strict scrutiny analysis.

B. Rational Basis Test

All laws challenged under equal protection must, at a minimum, survive rational basis scrutiny.[128] When analyzing an equal protection

---

121. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 645 (2d ed. 2002).
122. 14 Cal. Rptr. 3d 377 (Cal. Ct. App. 2004).
123. *Id.* at 381.
124. *Id.* at 387.
125. *Id.*
126. *Id.* at 393 (citing People v. Sanders, 73 P.3d 496, 507 (Cal. 2003)).
127. *Id.* at 398 (emphasis added).
128. 28 AM. JUR. 3D *Proof of Facts* § 13 (1994).

issue under the rational basis test, "the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly situated shall be treated alike."[129] In short, under a rational basis review a law must be related to a legitimate government purpose.

Despite the denouncement of the model thirty years earlier by the U.S. Supreme Court in *Gault,*[130] the California District Attorneys Association submitted an amicus curiae brief to the *Sanders* court citing continuing support for *parens patriae* as a primary reason not to extend the *Sanders* rule to juveniles.[131] The *Sanders* court cited that brief along with its decision to sidestep the issue of whether to extend the rule to juveniles.[132] Thus, the proper inquiry should be whether California's reliance on *parens patriae* as a justification to deny juveniles equal protection under the Fourth and Fourteenth Amendments is legitimate.[133]

The legitimacy of the policy of "rehabilitating youngsters" is impossible to examine without including the context of current events. A juvenile incarcerated under California law is detained in the California Youth Authority (CYA),[134] "a system that has been widely maligned for its violence, substandard healthcare and failure to steer wayward youths toward a law-abiding future."[135] In November 2004, Governor Arnold Schwarzenegger intervened in a lawsuit lodged against the CYA by Margaret Farrell, whose nephew, a mentally ill CYA inmate, was locked in his cell for 23 hours a day and fed "blender meals"[136] through a straw from outside his cell.[137] CYA's many controversies include holding inmates in cages during schooling, guards kicking and striking inmates while they lay prostrate on the floor, and instances of inmates committing suicide as part of a

129. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

130. *See In re* Gault, 387 U.S. 1, 17-18 (1967).

131. People v. Sanders, 73 P.3d 496, 508 n.5. (Cal. 2003).

132. *Id.*

133. The Supreme Court has ruled that under certain circumstances the liberty interests of juveniles may "be subordinated to the State's 'parens patriae interest.'" *See* Schall v. Martin, 467 U.S. 253, 265 (1984). However, in no case has the U.S. Supreme Court ruled a juvenile probationer has no reasonable expectation of privacy under the Fourth Amendment.

134. *See In re* Tyrell J., 876 P.2d 519, 527 (Cal. 1994).

135. Jennifer Warren, *State Youth Prisons on Road to Rehab,* L.A. TIMES, Nov. 17, 2004, at A1.

136. *Id.* Blender meals consist of "a whipped mix of food groups." *Id.*

137. *Id.*

pact.[138] In his notes related to the Farrell lawsuit, Schwarzenegger stated that the agreement to settle the lawsuit will "put the [CYA's] focus back on rehabilitation."[139] Such a comment begs the question: If CYA's focus needs to be put back on rehabilitation, where was it before?

If California's system for housing juvenile detainees was not focused on rehabilitation, how can *parens patriae*, a doctrine whose focus "embraces a goal of rehabilitating youngsters"[140] be relied upon to strip juveniles of their fundamental rights? It cannot. *Parens patriae*, in the form practiced in California and particularly by the CYA, has lost the legitimacy necessary to support disparate treatment under the Equal Protection Clause. Thus, even under the rational basis test, allowing juveniles to be searched in a manner that would be illegal if practiced on an adult is a violation of the Fourteenth Amendment's Equal Protection Clause.

VI. CONCLUSION

The rule announced in *People v. Sanders,* where the reasonableness of a warrantless search of an adult probationer on a search condition depends on the officer's knowledge at the time of the search, should be extended to juveniles as well, thus overturning *Tyrell J.* The reasoning in that case is wholly obsolete, given its reliance on the *parens patriae* model. Furthermore, failure to extend *Sanders* to juveniles is inconsistent with the U.S. Supreme Court's decision in *Knights*. Extending *Sanders* to its logical conclusion would eliminate constitutionally unsupportable conflicts in legal reasoning put forth by the same court in *Tyrell J.* and *Sanders*. It would discourage, rather than encourage, police misconduct by eliminating the incentive to conduct illegal searches in hopes that the search could be later legitimized by the discovery of a search condition. The Equal Protection Clause of the Fourteenth Amendment compels the use of legitimate processes before conducting searches because disparate treatment of juveniles' Fourth Amendment rights is untenable under either a strict scrutiny analysis or the much more relaxed rational basis review. Finally, overturning *Tyrell J.* will send a message that the rights of juveniles are respected, valued members of society, and will reduce the

138. *Id.* At the Ione prison near Sacramento, wards Deon Whitfield and Durrell Feaster "hanged themselves with bedsheets in the isolation cell they shared." *Id.*

139. *Id.*

140. *See* People v. Sanders, 73 P.3d 496, 502 (Cal. 2003).

cynicism shared by urban youth toward the police. Consider our friend Earnest: "A child arrested without valid reason by a seemingly all-powerful and challengeless exercise of police power would instantly intuit the injustice and react accordingly. Even a juvenile who has violated the law but is unfairly arrested will feel deceived and thus resist any rehabilitative efforts."[141] At its next possible opportunity, either the California legislature or the California Supreme Court should take action and find the reasonableness of a search, whether conducted on an adult or a juvenile, shall be determined by the circumstances known to the police officer at the time of the search.

Kurt A. Weiser[*]

141. Lanes v. Texas, 767 S.W.2d 789, 795 (Tex. Crim. App. 1989).

[*] J.D. Candidate, California Western School of Law, 2006; B.A., University of California, Santa Cruz, 1995. I would like to thank Professors Roake and Benner for their excellent ideas, assistance, and encouragement. And of course, I could not have done this without Lizzie's support.