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# Search and Seizure - Home on the Range - A More Limited Concept of Curtilage Applied to Rural America - United States v. Dunn

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**SEARCH AND SEIZURE—Home on the Range? A More Limited Concept of Curtilage Applied to Rural America. *United States v. Dunn*, 107 S. Ct. 1134 (1987).**

On November 8, 1982, Ronald Dale Dunn was arrested on his ranch near Johnson City, Texas, as law enforcement officers executed a search warrant on a barn in Dunn's ranchyard.[1] The search netted chemicals and a lab for illegal manufacture of amphetamine.[2] Dunn was subsequently convicted on narcotics charges in the U.S. District Court for the West District of Texas.[3]

In his appeal, Dunn challenged the trial court's refusal to suppress the evidence gathered with the search warrant, and the statements he made after his arrest. He argued that the warrant was based on facts discovered during earlier warrantless forays onto the ranch by law enforcement officers.[4] Dunn claimed a reasonable expectation of privacy in his ranch buildings.[5] More particularly, he argued that the barn was within the curtilage[6] of the ranch house, and consequently entitled to fourth amendment protection.[7]

The U.S. Court of Appeals for the Fifth Circuit found the barn to be within the curtilage, and thus "within the protective ambit of the fourth amendment."[8] Because the officers invaded the curtilage during the warrantless search, the Fifth Circuit reversed.[9] The U.S. Supreme Court granted certiorari, vacated and remanded for reconsideration in light of its decision in *Oliver v. United States*.[10] Upon remand the Fifth Circuit again reversed, this time holding that Dunn had a reasonable expectation of privacy in his barn as a commercial building for which he had taken a number of steps to preserve privacy.[11] Six months later, after further

1. United States v. Dunn, 107 S. Ct. 1134, 1138 (1987).
2. *Id.*
3. *Id.* at 1137.
4. *Id.* at 1138.
5. *Id.* at 1140.
6. Most simply, curtilage has been defined as "the area around the home to which the activity of home life extends." Oliver v. United States, 466 U.S. 170, 182 n.12 (1984). The fourth amendment protection of the house has been extended by courts to the curtilage, which has been protected by common law. *Id.* at 180.
7. *Dunn*, 107 S. Ct. at 1138.
8. United States v. Dunn, 674 F.2d 1093, 1100 (5th Cir. 1982).
9. *Id.* at 1095.
10. 466 U.S. 170 (1984); United States v. Dunn, 467 U.S. 1201 (1985). In *Oliver*, the Supreme Court more fully developed the open fields doctrine. The Court interpreted the common law distinction between open fields and curtilage as implying privacy expectations only within the curtilage, and not open fields. *Oliver*, 466 U.S. at 180. " 'Open fields' may include any unoccupied or undeveloped area outside the curtilage. An open field need be neither 'open' nor a 'field' as those terms are used in common speech. . . . a thickly wooded area nonetheless may be an open field as that term is used in construing the Fourth Amendment." *Id.* at 180 n.11.
11. United States v. Dunn, 766 F.2d 880, 886 (5th Cir. 1985). Before reaching the question as to whether the barn was entitled to fourth amendment protection as a commercial building, the Fifth Circuit analyzed the curtilage issue using a three factor test taken from Care v. United States, 231 F.2d 22 (10th Cir. 1956). It concluded, though expressing serious reservations, that the barn was outside the protected area associated with the ranch house. *Dunn*, 766 F.2d at 884.

consideration of *Oliver,* the Fifth Circuit recalled and vacated this opinion, and reinstated its original holding that the barn was within the protected curtilage.[12] After granting the government's petition for certiorari,[13] the Supreme Court reversed the Fifth Circuit, restoring Dunn's conviction.[14]

The Supreme Court did not directly address the Fifth Circuit's curtilage analysis. Instead, it applied a four factor test to the Dunn barn.[15] The result is that this barn is outside the curtilage, although it is within the cluster of ranch buildings that includes the house, located in a clearing in the heart of a 198-acre ranch.[16]

## BACKGROUND

The fourth amendment guarantees that "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated."[17] Fourth amendment guarantees of privacy are based in legitimate expectations of privacy, which encompass societal notions of reasonableness as well as property interests.[18] For courts to recognize an expectation of privacy as legitimate, there must be evidence of a subjective expectation of privacy, and that subjective expectation must be one that society will recognize as reasonable.[19] Property rights remain an element used to determine whether privacy expectations are legitimate, but they are not controlling.[20] Curtilage - the protected locus of home life - is a privacy concept grounded in a property interest, the home. It retains vitality as a privacy expectation which, in contrast to open fields, is clearly recognized as reasonable by society.[21]

In *Hester v. United States,*[22] the Supreme Court first distinguished privacy expectations from property rights in holding that the fourth amendment does not apply to open fields.[23] The Court further developed the distinction between privacy expectations and property rights in *Katz v. United States,*[24] in which it was stated that the key to fourth amendment protection is an expectation of privacy which society will recognize

12. United States v. Dunn, 782 F.2d 1226, 1227 (5th Cir. 1986).
13. United States v. Dunn, 106 S. Ct. 3270 (1986).
14. *Dunn,* 107 S. Ct. at 1137.
15. *Id.* at 1139.
16. *Id.* at 1142 (Brennan, J., dissenting).
17. U.S. CONST. amend. IV.
18. Rakas v. Illinois, 439 U.S. 128, 144 n.12 (1978).
19. Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). The subjective expectation of privacy must be exhibited, except in the home which is presumptively private. "[W]e do not insist that a person who has the right to exclude others exercises that right. A claim to privacy is therefore strengthened by the fact that the claimant somehow manifested to other people his desire that they keep their distance." *Oliver,* 466 U.S. at 193 (Marshall, J., dissenting).
20. *Oliver,* 466 U.S. at 183.
21. *Id.* at 180.
22. Hester v. United States, 265 U.S. 57 (1924).
23. *Id.* at 59.
24. Katz v. United States, 389 U.S. 347.

as reasonable.[25] Subsequent to *Katz*, the Supreme Court again addressed the open fields doctrine in *Oliver*, establishing the principle that there is no legitimate expectation of privacy in open fields.[26] The Court considered this general rule essential to prevent arbitrary enforcement of constitutional rights by enforcement officers.[27] Without a clear standard, officers are required to determine the extent of their authority to search each time they are called upon to exercise it.[28] The Supreme Court based its opinion on findings that open fields are accessible in ways that houses and commercial buildings are not, and that fences do not prevent the public from viewing open fields.[29] Consequently, it determined that society does not recognize a privacy right in them, irrespective of property interests.[30]

Although privacy expectations and property interests are not equivalent, as Justice Harlan observed in his concurrence in *Katz*, the protection of privacy interests of people usually requires reference to a place.[31] Open fields are defined in relation to curtilage - the dwelling and the area of domestic activity immediate to it - to which the privacy expectations of the house have traditionally extended.[32] Outbuildings such as garages, barns, smokehouses and chicken houses have generally been found to be within the curtilage.[33] To reach these results, courts have focused on the actual extent of home-centered activities, rather than mere physical features, using phrasing such as "use and enjoyment as an adjunct to the domestic economy of the family,"[34] "an integral part of the group of structures making up the farm home,"[35] "the area around the home to which the activity of home life extends,"[36] and as "includ[ing] buildings used for domestic purposes in the conduct of family affairs."[37] This curtilage concept should be, as the Supreme Court stated in *Oliver*, "easily understood from our daily experience,"[38] and consequently viewed as an area with reasonable privacy expectations by society. Such appeared to be the case until *Dunn*, as courts had applied the concept with reasonable consistency.[39]

25. *Id.* at 361 (Harlan, J., concurring).
26. *Oliver*, 466 U.S. at 181.
27. *Id.* at 181-82.
28. *Id.* at 181.
29. *Id.* at 179. Commercial buildings, or business premises, may be sheltered by the fourth amendment from warrantless searches. "The occupant of a commercial building must take the additional step of effectively barring the public from the area because a business operator has a reasonable expectation of privacy only in those areas from which the public has been excluded." *Dunn*, 107 S. Ct. at 1147 (Brennan, J., dissenting).

In addition to the claim of error on the issue of curtilage, Dunn also presented a claim of error based on a reasonable expectation of privacy in his barn as a commercial building. The discussion of this claim, and the historic roots of this privacy expectation are found in *Dunn*. *Dunn*, 107 S. Ct. at 1146-49 (Brennan, J., dissenting).
30. *Oliver*, 466 U.S. at 179.
31. *Katz*, 389 U.S. at 360 (Harlan, J., concurring).
32. *Oliver*, 466 U.S. at 180.
33. *Care*, 231 F.2d at 25.
34. *Id.*
35. Walker v. United States, 225 F.2d 447, 449 (5th Cir. 1955).
36. *Oliver*, 466 U.S. at 182 n.12.
37. State v. Vicars, 207 Neb. 325, 299 N.W.2d 421, 425 (1980) (quoting State v. Kender, 60 Haw. 301, 304, 588 P.2d 447, 449 (1978)).
38. *Oliver*, 466 U.S. at 182 n.12.
39. *Dunn*, 107 S. Ct. at 1143 (Brennan, J., dissenting).

While no universal formula had been adopted prior to *Dunn*, the Fifth Circuit had established a near bright-line rule for curtilage in rural fact situations. In *United States v. Williams*,[40] it held that where outbuildings are neither within the same enclosure as the house, nor inside an exclusionary fence, the curtilage extends to the outer walls of the furthest outbuildings.[41] In doing so, the Fifth Circuit recognized that in rural settings it is reasonable to expect that activities traditionally considered as within the curtilage generally occur throughout the ranch enclave. Other courts subsequently applied this standard.[42] Against these decisions stands the *Dunn* opinion.[43]

## PRINCIPAL CASE

### *Physical Setting and Circumstances of Entry*

In *Dunn*, the barn in which law enforcement officers discovered the illegal lab was in the group of ranch buildings, including the house, at the end of a half-mile private drive leading from the nearest public road.[44] At the time of the investigative entries, the entrance to the drive was secured by a locked gate, and the entire 198-acre ranch was surrounded by a barbed wire perimeter fence.[45] The enclave of buildings, including house, garage and two barns, was set in a clearing surrounded by woods.[46] The house and a small yard were enclosed by a wire fence, from which it was approximately fifty yards to the barn in question.[47] The house and barn were connected by both a well-worn footpath and a well used driveway.[48]

Law enforcement officers focused on Dunn's property when they tracked chemicals and lab equipment purchased by Dunn's confederate to the ranch.[49] Two officers then made a warrantless investigative foray onto the ranch, and were standing between the house and barn in question when they detected the odor of phenylacetone.[50] After finding that a smaller barn contained only empty boxes, the officers crossed a fence enclosing the front (house side) of the barn, and walked under its overhanging roof in an effort to see through a netting material that hung from the roof to a locked waist-high gate.[51] From this vantage point, using

40. United States v. Williams, 581 F.2d 451 (5th Cir. 1978).
41. *Id.* at 454.
42. United States v. Berrong, 712 F.2d 1370, 1374 (11th Cir. 1983); State v. Fierge, 673 S.W.2d 855, 856 (Mo. Ct. App. 1984).
43. *Dunn*, 107 S. Ct. at 1143 (Brennan, J., dissenting).
44. *Id.* at 1142 (Brennan, J., dissenting).
45. *Id.*
46. *Id.*
47. *Id.* at 1137 (majority opinion).
48. Brief for Appellee at 5, United States v. Dunn, 107 S. Ct. 1134 (1987) (No. 85-998) [hereinafter Brief for Appellee].
49. *Dunn*, 107 S. Ct. at 1137. Dunn's confederate, Carpenter, had been under Drug Enforcement Administration surveillance for several orders of chemicals and equipment used in the manufacture of amphetamine, some of which were made with an alias. A Texas state judge granted warrants authorizing installation of electronic beepers on a hot plate stirrer and subsequently a 55-gallon drum of chemicals ordered by Carpenter. *Dunn*, 674 F.2d at 1095-96.
50. *Dunn*, 107 S. Ct. at 1142 (Brennan, J., dissenting).
51. *Dunn*, 766 F.2d at 883.

flashlights to illuminate the barn's interior, they discovered the drug lab.[52] This observation was the basis for the search warrant that led to Dunn's arrest and conviction.[53]

*The Test*

In *Dunn*, the Supreme Court applied a four factor test to determine whether or not the curtilage extended to the barn.[54] The factors are not a "finely tuned formula," but are described as tools to help establish whether the area in question is intimately tied to the home.[55] They are:

1) proximity to the house,
2) whether the area is within an enclosure surrounding the house,
3) the use of the area, and
4) the effort made to protect the area from observation by any passerby.[56]

The Court decided that the barn was not within the curtilage, as the distance between the buildings was substantial; the house and barn were each enclosed by separate fences; the warrantless search established that the barn was being used solely for illegal activities and not for domestic affairs; and finally, Dunn had not done enough to protect the contents of the barn from discovery by passersby.[57]

## ANALYSIS

The Supreme Court's test is not as practical in rural settings as the standards developed in prior state and federal court decisions. More significantly, it contradicts objectives for fourth amendment protections and enforcement articulated by the Court in earlier cases. This analysis addresses the practical problems and contradictions in a factor by factor review of the *Dunn* rationale.

*Proximity*

The Supreme Court quickly dismissed the 50-60 yard separation between the house and barn as a "substantial distance [which] supports no inference that the barn should be treated as an adjunct of the house."[58] In response, the dissent points out that several cases have included barns more than fifty yards from the house in the curtilage,[59] which suggests that at least there should be no inference that the barn should *not* be considered adjunct. Consequently, this distance should not be conclusive.

52. *Id.*
53. Law enforcement officers actually made four separate intrusions onto Dunn's ranch to locate and observe the drug lab. Brief for Appellee, *supra* note 48, at 1-3.
54. *Dunn*, 107 S. Ct. at 1139.
55. *Id.*
56. *Id.*
57. *Id.* at 1140.
58. *Id.*
59. *Id. See, e.g., Williams*, 581 F.2d at 453 (50 yards); *Walker*, 225 F.2d at 448 (70-80 yards); McGlothlin v. State, 705 S.W.2d 851, 857 (Tex. Crim. App. 1986) (100 yards).

A naked distance in feet or yards is not useful for determining the extent of home life, which varies in different settings. This is aptly illustrated by the fifty yards between the *Dunn* house and barn. In an urban neighborhood with 75-foot lots, fifty yards is a substantial distance; in fact, it is two lots down the block. Obviously, this is beyond the privacy expectations, much less the property interests, of one family. However, fifty yards is a more intimate distance when it lies between a house and barn found in a cluster of buildings on less than an acre of a 198-acre ranch, and at the end of a half-mile (880 yards) driveway leading from the nearest public road. Viewed in their rural setting, these buildings are in proximity, and their close relationship evident.

*Fence or Enclosure*

Prior to *Dunn*, yard fences were no longer considered conclusive or even significant in determining the curtilage in a rural setting.[60] Fences placed to keep livestock out of a yard do not confine the domestic activities of the ranch or farm residents. There may still be eggs to gather, family pets to care for, home projects and other wholly domestic activities which take place beyond that yard fence but within the enclave around the house. Those activities that are likely confined by a yard fence in the city are frequently spread between and among several buildings - and across fences as well - in the country.

The protective umbrella of curtilage has evolved in decisions involving rural facts as farms and ranches have changed. Although early definitions are tied to physical features, such as a general wall or enclosure,[61] recognition of the underlying significance of those features by courts has led to incorporation of a larger area around the dwelling that continues to involve domestic activities and family affairs.[62]

Just as some activities have moved inside the dwelling (e.g., the privy),[63] others have been moved beyond the yard. In either case, the key continues to be recognition of the living area.[64] The expectation of privacy is the same, only the location of the activity has changed.[65] Curtilage has generally been extended by courts to the cluster of buildings, or enclave, that is today the typical farm home.[66]

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60. *See, e.g., Williams*, 581 F.2d at 454.

61. *See, e.g.*, 4 W. BLACKSTONE, COMMENTARIES *225 ("[I]f the barn, stable, or warehouse, be parcel of the mansion-house, and within the same common fence, though not under the same roof or contiguous, a burglary may be committed therein; for the capitol house protects and privileges all its branches and appurtenants, if within the curtilage or homestall.").

62. This larger area is most clearly enunciated in *Williams*, 581 F.2d at 451.

63. Moylan, *The Fourth Amendment Inapplicable vs. The Fourth Amendment Satisfied: The Neglected Threshold of "So What?"*, S. ILL. U. L.J. 75, 87 (1977).

64. *Id.*

65. *Id.*

66. *See, e.g., Walker*, 225 F.2d at 449; *Williams*, 581 F.2d at 454; *Fierge*, 673 S.W.2d at 856; Luman v. Oklahoma, 629 P.2d 1275, 1276 (Okla. Crim. App. 1981); State v. Lee, 120 Or. 643, 648, 253 P. 533, 534 (1927).

Though the open fields doctrine establishes that property lines are not necessarily to be considered as privacy barriers,[67] it seems clear that the perimeter fence around a ranch or farm commonly serves the same purpose as a yard fence in urban settings - the general fence that defines the property limit. The fact that this fence in the city also serves neatly to describe the curtilage should *not* be used to penalize rural residents, whose many fences serve a variety of functions, though not that of setting the limits of family life. The enclave is "readily recognizable" when viewed in scale, and any enclosure around the house has little meaning given the way ranch homes are managed today.

*Nature of Use*

In applying this factor, the Court contradicts the reasoning behind the principle of generality it established in *Oliver* to ensure proper enforcement actions in open field settings.[68] In *Oliver,* the Court was concerned that an "ad hoc approach not only makes it difficult for the policeman to discern the scope of his authority (citation omitted), it also creates a danger that constitutional rights will be arbitrarily and inequitably enforced."[69] Because of the inherent dangers in a case-by-case approach, the Court concluded that it was unworkable for courts, field enforcement officers and citizens.[70] Consequently, it stated as a general principle that "open fields do not provide the setting for those intimate activities that the Amendment is intended to shelter from government interference or surveillance."[71]

Just as open fields are unlikely to be the setting for constitutionally sheltered activities, farm outbuildings clustered around the house, and the intervening grounds *are* likely to be used in daily domestic affairs.[72] This is implicit in the Court's statement in *Oliver* that "an individual may not legitimately demand privacy for activities conducted *out of doors* in fields, *except* in the area immediately surrounding the home."[73] (emphases added).

Yet with the *Dunn* test, the enforcement officer is expected to determine on a case-by-case basis whether the use of each outbuilding is domestic before establishing whether or not it is entitled to fourth amendment protection. The concerns about inequitable enforcement are even more glaring here, yet the door is left open for gross violations of constitutional privacy guarantees.

Essentially what the Court permits with *Dunn* is a search-to-establish-a-privacy-right approach. In this case, the search revealed that the use of the barn was not domestic, and the Court's test placed it outside the

67. *Oliver,* 466 U.S. at 174 (quoting Oliver v. United States, 686 F.2d 356, 360 (6th Cir. 1982)).
68. *Dunn,* 107 S. Ct. at 1144 (Brennan, J., dissenting).
69. *Oliver,* 466 U.S. at 181-82.
70. *Id.* at 181.
71. *Id.* at 179.
72. *Dunn,* 107 S. Ct. at 1144 (Brennan, J., dissenting).
73. *Oliver,* 466 U.S. at 178.

curtilage.[74] However, the next time the test is applied in the field by enforcement officers, the intrusion may just as likely establish that the building in question *is* used for domestic purposes,[75] and it may be found within the curtilage in that case. The unfortunate result is a violation of the fourth amendment to establish a right of that amendment's protection. As the curtilage is considered part of the house for fourth amendment purposes,[76] what the Court endorses is fundamentally no different than permitting warrantless entry into a house to seek grounds for a warrant to search that house.[77] By inquiring into the nature of use, and approving the sort of action taken by the officers in *Dunn*, the Court establishes an unworkable and constitutionally unsound approach.

The appropriate course to ensure protection of legitimate privacy expectations is to assume that the outbuildings around the house are used for family purposes, as people with daily experience in rural areas understand, *unless* contrary evidence is developed without invading the presumed curtilage. There is a danger of violation of constitutional rights of farmers and ranchers in any case-by-case approach to establish use. A general rule is essential to prevent the problems inherent in requiring law enforcement officers to determine nature of use, as the Court had earlier recognized in *Oliver*.[78]

*Effort to Preserve Privacy*

This factor is new to the curtilage analysis with *Dunn*, and appears to be an incorporation of the subjective expectation element used to evaluate the reasonableness of privacy expectations in commercial property.[79] It is difficult to see why the Court added this factor to the curtilage analysis. Although actions demonstrating subjective expectations may have bearing on establishing a protected privacy right, the key is clearly societal recognition of an expectation as reasonable.[80] In extending fourth amendment protection to curtilage, courts have validated this expectation of privacy as a reasonable extension of the house, which has inherent protection, regardless of protective efforts.

Efforts to preserve privacy should have no bearing on maintaining the status of an area as within the curtilage. The measure of curtilage is the area's association with the house and domestic affairs,[81] and not whether it has been screened or fenced. The yard around a city home is readily recognizable as a part of the house's curtilage, whether or not a physical barrier exists at its boundary. Illegal objects or activities within

74. *Dunn*, 107 S. Ct. at 1139-40.

75. Certainly, even if the building is used for both domestic and illegal purposes, the privacy protections of curtilage still apply. "Dual use does not strip a home or any building within the curtilage of Fourth Amendment protection." *Dunn*, 107 S. Ct. at 1145 (Brennan, J., dissenting).

76. *Oliver*, 466 U.S. at 180.

77. *Dunn*, 107 S. Ct. at 1144 (Brennan, J., dissenting).

78. *Oliver*, 466 U.S. at 181.

79. *See Dunn*, 107 S. Ct. at 1146-49 (Brennan, J., dissenting).

80. *Oliver*, 466 U.S. at 177.

81. *Dunn*, 107 S. Ct. at 1139.

the curtilage plainly visible from unprotected areas are subject to enforcement action, but the curtilage remains curtilage, and cannot otherwise be searched without a warrant.[82] Use in the daily affairs of family life, and not physical barriers, limits warrantless intrusions.

Even if this were an appropriate factor for identifying the curtilage, clearly Dunn made efforts to ensure his privacy in the barn from observation by those passing by. The entire perimeter of the ranch was fenced, the gate at the end of the drive locked, and the buildings not even visible from the road.[83] The interior of the barn was not visible from three sides. On the fourth side, which faced the house and was connected to it by foot and vehicle paths, another fence enclosed the barn and limited access to any point where the contents of the interior could be observed.[84] Even if a "passerby" was to climb this fence and approach the barn, at this point in full view of the house, it was still necessary to stand against the waist-high locked gate, under the overhanging roof, and use a flashlight to penetrate the netting hanging from roof to gate to discover its contents.[85] From just a few feet away, the fence and netting obscured the interior of the barn.[86] If these efforts were inadequate to demonstrate an effort to ensure privacy, then few houses would meet the Court's standard.

Consideration of efforts to preserve privacy is not appropriate in a curtilage analysis since curtilage is based in the privacy expectation inherent in the house. Anything within the curtilage is entitled to the highest privacy expectations regardless of how well it is protected. Analysis must begin and end with the barn's functional relationship to the house. If it is within the curtilage, it is entitled to the highest privacy expectations, and efforts to protect it are irrelevant.

## CONCLUSION

Though denying any intent to establish a "bright-line rule,"[87] *Dunn* comes perilously close to doing so, with unfortunate consequences for rural citizens. Fifty yards becomes a "substantial distance,"[88] a negative inference as applied by the Court. Yard fences are "significant,"[89] and while perimeter fences are not important, the Court gives fencing configurations that separate the ranch buildings great weight.[90] Grounds and outbuildings beyond any yard around the dwelling are presumptively in the open fields,[91] and therefore open to warrantless entry to establish use. Ap-

82. This point was most recently discussed in Ciraolo v. United States, 476 U.S. 207 (1986), which involved the aerial observation of marijuana in a yard surrounded by an exclusionary fence. The Supreme Court held that the fourth amendment was not violated by naked-eye aerial observation of the curtilage.

83. *Dunn*, 766 F.2d at 882.

84. *Id.* at 883.

85. *Dunn*, 107 S. Ct. at 1137.

86. *Dunn*, 766 F.2d at 883.

87. *Dunn*, 107 S. Ct. at 1139 n.4.

88. *Id.* at 1140.

89. *Id.*

90. *Id.*

91. *Id.*

parently the Court endorses an "enter first, then establish use" approach. The test is complicated by requiring efforts to preserve privacy in an area that has from common law been afforded the highest protections without such a prerequisite. The Court then handicaps rural residents when applying this factor, by refusing to consider wire fences as having any exclusionary function. As a result, farm and ranch outbuildings are now generally outside the curtilage unless enclosed by more substantial fences or until their use can be established, apparently by warrantless searches.

The objective of eliminating illegal drug trafficking is keenly important to all citizens, but this decision ultimately does little to achieve it, while dramatically cutting back privacy protections for farm and ranch families. Criminals need only move inside the fenced yard, or move the yard fence. Meanwhile, ranchers going about the activities of home life may now find law enforcement officers lawfully among, and even *in* their outbuildings without a warrant.

Prior cases had established a concept of curtilage that was both more workable and more consistent with the fourth amendment. It is unfortunate that the Supreme Court chose to strike off in a new direction by trying to shrink-fit the ranch home into an urban mold. The consequence is an erosion of the rights of rural citizens.

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