FOURTH AMENDMENT STANDING AFTER *KATZ*, IOWA CASES ANALYZED

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I. INTRODUCTION

In 1967, the United States Supreme Court formulated a new analysis for determining whether an individual could raise the claim that his rights under the fourth amendment had been violated.[1] Specifically, protection of the fourth amendment is now determined by reference to a person's "reasonable expectation of privacy."[2] Due to the myriad of situations in which the fourth amendment may be implicated, cases attempting to define "reasonable expectation of privacy" have been numerous, confusing, and sometimes contradictory. This Note analyzes Iowa decisions regarding the issue of fourth amendment standing to determine the extent to which Iowa decisions are consistent with those of the federal courts.

First, it is necessary to explain some of the general principles involved in a fourth amendment standing question. A typical fourth amendment claim involves a situation in which the authorities obtained incriminating evidence through a search and seizure. The defendant claims the search and seizure violated his fourth amendment rights. If the defendant can establish "standing," he may attempt to have the evidence suppressed at a hearing. Thus, situations may arise in which the police have uncovered evidence through an admittedly illegal search, but the defendant against whom the evidence is being offered lacks the necessary "standing" to attempt suppression. Conversely, many defendants are successful in establishing standing, but are unable to have the evidence suppressed due to police compliance with search and seizure law. This Note discusses only the issue of "standing," and does not deal with substantive search and seizure law.

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1. Katz v. United States, 389 U.S. 347 (1967). The fourth amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

2. Katz v. United States, 389 U.S. at 361 (Harlan, J., concurring).

II. THE FOURTH AMENDMENT AND THE "REASONABLE EXPECTATION OF PRIVACY"

The law is well settled that standing in a fourth amendment context is available only to one whose personal rights of privacy have been invaded.[3] The test for determining a person's "reasonable expectation of privacy" has evolved into a two-fold inquiry. The first inquiry asks whether the individual seeking suppression had an actual, subjective expectation of privacy.[4] The second inquiry considers whether that expectation is one that society is prepared to recognize.[5] If society is prepared to recognize a privacy expectation, that expectation is then termed "legitimate" or "reasonable,"[6]—which are interchangeable in this context.[7]

The inquiry used to determine whether an individual has an actual, subjective expectation of privacy is relatively straightforward. The court simply decides whether the defendant actually took steps to hide the evidence from others.[8] Establishing this first prong is not a problem because incriminating evidence is usually placed to avoid detection.

With regard to whether an expectation of privacy is legitimate, the United States Supreme Court notes:

> [A] "legitimate" expectation of privacy by definition means more than a subjective expectation of not being discovered. A burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as "legitimate." His presence, . . . is "wrongful"; his expectation is not "one that society is prepared to recognize as 'reasonable.' "[9]

The Court goes on to state:

> Legitimation of expectations of privacy by law must have a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society. One of the main rights attaching to property is the right to exclude others, and one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of this right to exclude. Expectations of privacy protected

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3. Alderman v. United States, 394 U.S. 165, 171-72 (1969).
4. Smith v. Maryland, 442 U.S. 735, 740 (1979) (citing Katz v. United States, 389 U.S. at 351 (Harlan, J., concurring)).
5. *Id.*
6. Rakas v. Illinois, 439 U.S. 128, 143-44 (1978).
7. *See* Hudson v. Palmer, 468 U.S. 517, 525 (1984) (suggesting the inquiry is the same, regardless of the term used).
8. *See* Katz v. United States, 389 U.S. at 361 (Harlan, J., concurring).
9. Rakas v. Illinois, 439 U.S. at 143-44 n.12 (citations omitted).

> by the Fourth Amendment, of course, need not be based on a common-law interest in real or personal property, or on the invasion of such an interest. . . . But by focusing on legitimate expectations of privacy in Fourth Amendment jurisprudence, the Court has not altogether abandoned use of property concepts in determining the presence or absence of the privacy interests protected by that Amendment.[10]

Whether an expectation of privacy is legitimate is not determined solely by reference to the law of property. However, the "right to exclude," which is an inherent right in ownership, is an important consideration. Finally, "[t]he proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure."[11]

The Iowa case of *State v. Harty*[12] clearly illustrates the process used to determine standing in a fourth amendment context. In *Harty*, a defendant sought to suppress evidence discovered at the homes of two of his co-conspirators.[13] Though not specifically referring to "legitimate expectations of privacy," the court held the defendant's personal rights of privacy were not implicated by a search of a co-defendant's home.[14] Accordingly, the defendant had no "standing" to challenge the search or seizure of the evidence in question.[15]

No evidence was presented in *Harty* that the defendant had any personal relationship to the premises searched. This fact is highly significant because a "casual visitor" present in another's home during a search generally will not have standing to protest that search.[16] A person will generally have standing to challenge the search of another's home only if he or she has some relationship to the premises.[17] In *Jones v. United States*,[18] the defendant had standing to challenge the search of another's apartment where he had permission to use the apartment, had a key to the apartment, and had kept possessions in the apartment.[19] In *Rakas v. Illinois*,[20] the Supreme Court rejected the *Jones* rule granting standing to anyone legitimately on the premises;[21] however, the Court noted the particular defendant

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10. *Id.*
11. *Id.* at 130-31 n.1.
12. State v. Harty, 167 N.W.2d 665 (Iowa 1969).
13. *Id.* at 667.
14. *Id.* at 669.
15. *Id.* at 668.
16. *See* Rakas v. Illinois, 439 U.S. 128, 142 (1978). *But see* W. LAFAVE, SEARCH AND SEIZURE, § 11.3(b), at 290 (1987) (suggesting a dinner guest may have standing to challenge search of the dining room).
17. Jones v. United States, 362 U.S. 257, 265 (1960).
18. *Id.* at 257.
19. *Id.* at 259.
20. Rakas v. Illinois, 439 U.S. 128 (1978).
21. *Id.* at 143.

in *Jones* would nevertheless have had a legitimate expectation of privacy in the apartment.[22]

In *Harty*, the court also emphasized that "co-conspirators . . . are accorded no special treatment."[23] Status as a co-conspirator will not, by itself, serve to create a legitimate privacy interest in an area in which none would otherwise exist. However, an agreement between co-conspirators indicating "joint control" of certain premises may give rise to fourth amendment standing.[24]

Under normal circumstances, one will always have a legitimate expectation of privacy in one's own home. "The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home . . . ."[25] In *Alderman v. United States*,[26] the Supreme Court of the United States indicated a defendant's right to privacy in his home is so great he would have standing to object to the admission of a conversation recorded illegally in his home, even if he were not a party to the conversation.[27]

In *State v. Cullison*,[28] the Iowa Supreme Court addressed a parolee's standing to challenge the search of his home by his parole officer.[29] Keeping in mind the deference afforded a person's privacy interest in his own residence, the court held the parolee had standing to challenge the search.[30] It should be noted, however, that the court did not choose to determine whether the defendant had a "legitimate expectation of privacy in his home." Rather, its analysis focused on whether a parolee retained any

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22. *Id.*; *see also* United States v. Torres, 705 F.2d 1287 (11th Cir.), *vacated*, 718 F.2d 998 (1983) (defendant granted standing to challenge the search of his parent's home in which bedroom was for his use and he had unrestricted access to the public hallways); United States v. Robertson, 606 F.2d 853, 858 n.2 (9th Cir. 1979) (defendant who spent one night in home and stored personal belongings in bedroom had legitimate expectation of privacy).

23. State v. Harty, 167 N.W.2d 665, 668 (Iowa 1969) (quoting Alderman v. United States, 394 U.S. 165, 172 (1969)); *see also* United States v. McKennon, 814 F.2d 1539 (11th Cir. 1987) (defendant had no legitimate expectation of privacy in co-conspirator's luggage bag, even though defendant kept personal belongings in the bag); State v. Shank, 191 N.W.2d 703 (Iowa 1971) (defendant who was not present during search of accomplice's car had no standing).

24. United States v. Pollock, 726 F.2d 1456, 1465 (9th Cir. 1984) (defendant participated in establishing metamphetamine laboratory in another's house); *accord* United States v. Johns, 707 F.2d 1093, 1099-1100 (9th Cir. 1983), *cert. granted*, 467 U.S. 1250 (1984), *rev'd on other grounds*, 469 U.S. 478 (1985) (pilots who put packages of marijuana into another's truck had standing to challenge a later search of the packages even though they were not present at time of search); United States v. Perez, 689 F.2d 1336, 1338 (9th Cir. 1982) (defendants following in car had standing to challenge search of truck they were following).

25. Payton v. New York, 445 U.S. 573, 589 (1980).

26. Alderman v. United States, 394 U.S. 165 (1969).

27. *Id.* at 180.

28. State v. Cullison, 173 N.W.2d 533 (Iowa), *cert. denied*, 398 U.S. 938 (1970).

29. *Id.* at 535.

30. *Id.* at 540.

rights under the fourth amendment, and if so, to what extent.[31] The court stated that "the fact that a criminal accused is also a parolee should not, as to a new and separate crime, destroy or diminish constitutional safeguards afforded all people."[32]

The importance of the determination in *Cullison* is obvious. If a parolee has no fourth amendment rights, those rights can never be violated. It follows that one cannot raise fourth amendment claims unless one's personal rights of privacy have been violated. Four justices dissented in *Cullison*, asserting the search of the parolee's home was reasonable.[33] Although any conclusion drawn from this dissent with respect to standing would be speculative, it would seem that by arguing the parolee's rights were not violated, the dissenting justices presupposed the parolee had rights that could be violated. Regardless of the dissenting justices' true intent, it may fairly be said that in Iowa, a parolee does have a legitimate expectation of privacy in his home.

Many fourth amendment standing questions arise in the context of a search of a residence, but many others arise from automobile searches. For example, in *State v. Dixon*,[34] the police pulled over the defendant and other robbery suspects.[35] The police conducted "pat-downs," and they seized two billfolds from one of the passengers.[36] One of the billfolds was identified as belonging to a robbery victim.[37] The officers arrested the defendant and other individuals, and subsequently reached into the defendant's car and seized a purse from the back seat.[38] The court held the defendant had no standing to attack the search of the passengers.[39] The mere fact evidence is used against a defendant does not provide standing.[40]

The holding in *Dixon* is similar to a later United States Supreme Court decision in *Rawlings v. Kentucky*.[41] In *Rawlings*, a police search discovered drugs the defendant had placed in a friend's purse.[42] The Court held the defendant had no legitimate expectation of privacy in another's

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31. *Id.* at 535.

32. *Id.* at 538. *But see* United States *ex rel.* Randazzo v. Follette, 282 F. Supp. 10, 14-15 (S.D.N.Y. 1968), *aff'd*, 418 F.2d 1319 (2d Cir. 1969), *cert. denied*, 402 U.S. 984 (1971) (parolee's rights diluted to the point that search by parole officer will in actuality never violate fourth amendment).

33. State v. Cullison, 173 N.W.2d 533, 541-44 (Iowa 1970), *cert. denied*, 398 U.S. 938 (1970). Chief Justice Moore and Justices Larson, Stuart, and Snell dissented.

34. State v. Dixon, 241 N.W.2d 21 (Iowa 1976).

35. *Id.* at 22.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 24; *accord* State v. Shane, 255 N.W.2d 324, 326 (Iowa 1977) (defendant has no standing to challenge search incident to arrest of another).

40. State v. Dixon, 241 N.W.2d 21, 23 (Iowa 1976).

41. Rawlings v. Kentucky, 448 U.S. 98 (1980).

42. *Id.* at 101 n.1.

purse.[43] The issue in *Rawlings*, however, was whether the defendant had standing to challenge the search of the *purse*.[44] If the challenge had regarded the seizure of the *drugs*, the defendant's property interest in the drugs arguably would have been sufficient to afford him standing. As stated in *United States v. Jeffers*,[45] a possessory or proprietary interest in the property seized is sufficient to establish standing to challenge seizure under the fourth amendment.[46] Accordingly, while the issue was not raised in *Dixon*, if the defendant had testified at the suppression hearing that the billfolds were *his*, perhaps he could have challenged probable cause for the seizure.[47] Although it has been suggested any asserted privacy interest in contraband is "illegitimate,"[48] the Court suggested in *Jeffers* that the illegitimacy of the interest was not applicable for purposes of the exclusionary rule.[49]

In the same year as *Rakas*, the United States Supreme Court held that testimony made at a suppression hearing in hopes of gaining standing could not be used as direct evidence against the defendant at his trial.[50] However, despite *Rakas*, if a defendant admits a possessory interest in contraband at a suppression hearing, it remains uncertain whether the state could use that testimony for purposes of impeachment.

If the purpose behind the exclusionary rule of the fourth amendment is to deter illegal conduct by the police,[51] then allowing the state to benefit from a defendant's attempt to establish fourth amendment standing seems inconsistent with the rule's purpose. On the other hand, if impeachment were not allowed, application of the exclusionary rule would allow a defendant to testify under oath inconsistently without fear of impeachment. In other words, a defendant who was unsuccessful on a suppression motion would be able to have his cake and eat it too. Further, the effect of not allowing impeachment would probably be slight. The Iowa Court of Appeals declined to rule on this issue in *State v. Sanders*,[52] a case dealing with the

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43. *Id.* at 104.
44. *Id.* at 105.
45. United States v. Jeffers, 342 U.S. 48 (1951).
46. *Id.* at 52-54.
47. *See infra* notes 55-59 and accompanying text (discussion regarding probable cause required for seizure).
48. United States v. Jacobsen, 466 U.S. 109, 123 (1984).
49. United States v. Jeffers, 342 U.S. at 53-54; *see also* Rawlings v. Kentucky, 448 U.S. 98, 105 (1980) (defendant's ownership of the drugs is a fact to be considered in determining whether he has privacy interest in the purse as a whole).
50. Simmons v. United States, 390 U.S. 377, 394 (1968), *cited in* United States v. Salvucci, 448 U.S. 83, 89-90 (1980).
51. United States v. Calandra, 414 U.S. 338, 347 (1974).
52. State v. Sanders, 282 N.W.2d 770, 773 n.4 (Iowa Ct. App. 1979).

automatic standing doctrine.[53] This doctrine was ultimately abandoned in *United States v. Salvucci*.[54]

Obviously, the defendant in *Dixon* did have standing to challenge the warrantless search and seizure of the purse from the back seat of his automobile.[55] The court stated the automobile exception justified this warrantless intrusion.[56] For a discussion of a factually similar situation upholding seizure, the case of *Texas v. Brown*[57] is instructive. In *Brown*, the Supreme Court of the United States stated that to reach into a car and make a warrantless seizure, there must be " 'probable cause to associate the property with criminal activity.' "[58] Probable cause "requires that the facts available to the officer would 'warrant a man of reasonable caution in the belief' that certain items may be contraband or stolen property or useful as evidence of a crime."[59]

In *United States v. Lochan*,[60] the defendant was driving a car owned by the passenger.[61] The First Circuit Court of Appeals noted the defendant had the vehicle's registration in his pocket and was travelling on a long trip—a fact that may provide a slightly greater privacy expectation.[62] The court, however, held the defendant had no legitimate expectation of privacy in another's car even though the defendant was more than an ordinary passenger.[63]

In *State v. Hungerford*,[64] the Iowa Court of Appeals dealt with a situation in which the defendant was merely a passenger in a van that was stopped and searched.[65] The defendant contended he was arrested without probable cause,[66] for which he would certainly have standing. The court, however, held the evidence he was seeking to suppress was the product of the search of the van, not his arrest.[67] Accordingly, the evidence discovered as a result of the van search was not evidence deriving from an invasion of

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53. *Id.* at 773 n.4, 772. "[The automatic standing] [d]octrine applies to situations where possession of the items seized is an essential element of the offense charged." [citations omitted]. *Id.* at 772 (citing State v. Osborne, 200 N.W.2d 798, 805 (Iowa 1972)).

54. United States v. Salvucci, 448 U.S. 83, 95 (1980).

55. State v. Dixon, 241 N.W.2d 21, 24 (Iowa 1976) (court discusses justifiability of police intrusion, which would be unnecessary if defendant had no standing).

56. *Id.*

57. Texas v. Brown, 460 U.S. 730 (1983).

58. *Id.* at 741-42 (quoting Payton v. New York, 445 U.S. 573, 587 (1980)).

59. *Id.* at 742 (quoting Carrel v. United States, 267 U.S. 132, 162 (1925)).

60. United States v. Lochan, 674 F.2d 960 (1st Cir. 1982); *accord* United States v. Paulino, 850 F.2d 93 (2d Cir. 1988), *cert. denied*, 109 S. Ct. 1967 (1989).

61. United States v. Lochan, 674 F.2d at 962.

62. *Id.* at 965.

63. *Id.* at 963.

64. State v. Hungerford, 311 N.W.2d 699 (Iowa Ct. App. 1981).

65. *Id.* at 700.

66. *Id.*

67. *Id.* at 700-01.

his personal rights of privacy.[68] The court held the defendant lacked standing to challenge the search of the van.[69]

It should be noted the defendant in *Hungerford* would have had standing to challenge the initial stop of the van because a person has a recognized privacy interest in proceeding down the highway.[70] The Iowa Supreme Court recognized the right of passengers to challenge vehicle stops in *State v. Eis*.[71] Citing to *Delaware v. Prouse*,[72] the court stated a passenger in a vehicle has standing to challenge the stop of the car.[73] An interesting note, however, is that "[t]his holding presupposes the occupant's rightful presence in the vehicle. Otherwise the privacy expectation is not legitimate."[74]

III. STANDING AND PERSONS NOT LEGITIMATELY ON THE PREMISES

An interesting issue is whether a person who is not "legitimately on the premises" has standing to challenge a search of the premises. The Iowa case of *State v. Baker*,[75] presents a very unique situation. The defendant in *Baker* had discussed renting a farm house with the owner.[76] The defendant thought he had leased the house, but the owner had not acquiesced in the lease.[77] Even though the court concluded the defendant's belief that he had rented the farmhouse was reasonable, a valid leasehold was never established.[78] In a later search of the farmhouse, the police found large amounts of marijuana.[79] The court of appeals held the defendant had standing to challenge the search.[80]

It seems beyond dispute that mere trespassers have no legitimate expectation of privacy in the premises on which they are trespassing.[81] As

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68. *Id.* at 700 n.2.
69. *Id.* at 700.
70. Delaware v. Prouse, 440 U.S. 648, 662-63 (1979).
71. State v. Eis, 348 N.W.2d 224, 226 (Iowa 1984); *accord* State v. Losee, 353 N.W.2d 876 (Iowa Ct. App. 1984). *But see* United States v. Cardona, 524 F. Supp. 45 (W.D. Tex. 1981) (although case was decided after *Delaware v. Prouse*, the court inexplicably holds that a passenger does not have standing to challenge investigatory stop and search).
72. Delaware v. Prouse, 440 U.S. 648 (1979).
73. State v. Eis, 348 N.W.2d at 226.
74. *Id.*
75. State v. Baker, 441 N.W.2d 388 (Iowa Ct. App. 1989).
76. *Id.* at 390.
77. *Id.*
78. *Id.* at 390-91.
79. *Id.* at 390.
80. *Id.* at 391.
81. *See* Rakas v. Illinois, 439 U.S. 128, 143 (1978) (regarding presence being wrongful); *accord* United States v. Roy, 734 F.2d 108, 111-12 (2d Cir. 1984), *cert. denied*, 475 U.S. 1110 (1986) (prison escapee is wrongfully present in car and thus has no legitimate expectation of privacy--he is a trespasser); United States v. Parks, 684 F.2d 1078, 1084 (5th Cir. 1982) (defendant had no standing since he failed to show he was legitimately on the premises of the airplane); United States v. Sanchez, 635 F.2d 47, 64 (2d Cir. 1980) (defendant who cannot demonstrate that his

professor LaFave points out, standing is not available to those whose presence is "wrongful."[82] In *Rakas*, the Supreme Court of the United States gave two examples of one whose presence is "wrongful": (1) "a burglar plying his trade in a summer cabin during the off season," and (2), "a person present in a stolen automobile."[83]

The distinguishing factor in the *Baker* case, however, is the court found it was reasonable for the defendant to believe he lawfully possessed the farmhouse.[84] The court concluded that "he [defendant] had a reasonable expectation of privacy."[85] The court reasoned, "His presence on the property, although for a wrongful purpose, is one that society is prepared to recognize as reasonable."[86]

The question raised by the *Baker* decision is whether the "reasonableness" of a defendant's subjective expectation of privacy is relevant to a determination of whether that expectation is "legitimate"—that is, whether it is one that society is prepared to recognize.[87] According to *Baker*, the answer is yes.[88] Furthermore, this conclusion seems to be appropriate, at least in view of certain federal cases.[89]

Gallegos v. Haggerty[90] involved a suit against the government for, among other things, violations of the fourth amendment.[91] The plaintiffs were living in a house under what they thought was a valid agreement; however, the actions of a third party were such that the contract became void.[92] In determining the plaintiffs had a legitimate expectation of privacy, the court noted they were not "wrongfully" present in the sense a burglar or a person in a stolen car is wrongfully present.[93] Specifically, "[p]laintiffs had a subjective expectation of privacy in the premises and their expectation was not unreasonable."[94] The defendants in *Baker* and the plaintiffs in *Gallegos* can be distinguished from burglars and car thieves because they lacked the intent to be wrongfully on the premises. In both situations, however, a person would not have that indicia of a

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presence in car is not wrongful has no legitimate expectation of privacy); United States v. Ortiz, 311 F. Supp. 880, 882 n.1 (D. Colo. 1970), *aff'd*, 445 F.2d 1100 (10th Cir.), *cert. denied*, 404 U.S. 993 (1971) (trespassers have no standing).

82. W. LAFAVE, *supra* note 16, §11.3(b), at 298 nn.79-80.
83. Rakas v. Illinois, 439 U.S. at 143-44 n.12.
84. State v. Baker, 441 N.W.2d at 391.
85. *Id.*
86. *Id.* at 391.
87. *Id.* at 390.
88. *Id.* at 390-91.
89. *See infra* text accompanying notes 90-95.
90. Gallegos v. Haggerty, 689 F. Supp. 93 (N.D.N.Y. 1988).
91. *Id.*
92. *Id.* at 98.
93. *Id.*
94. *Id.*

"legitimate expectation of privacy"—the legal right to exclude—which the Supreme Court felt was important in *Rakas*.[95]

While *Gallegos* directly supports the *Baker* decision, other cases at least give the impression courts are considering the reasonableness of the subjective expectation as being relevant to a determination of legitimacy by the way in which the courts frame the issue. The Second Circuit Court of Appeals in *United States v. Paulino*[96] seemed to apply this rationale. The court determined a passenger, who had hidden counterfeit money under the floor mat of a car, lacked standing to challenge the search of the car.[97] After noting the defendant had a subjective expectation of privacy, the court stated that, "[t]o state it another way, Paulino's [subjective] expectation, viewed objectively, is not justifiable under the circumstances."[98] At first glance, the United States Supreme Court seemed to use this type of analysis in *Smith v. Maryland*.[99] The Court stated the inquiry is whether the subjective expectation is one that society is prepared to recognize, but followed with a restatement of the proposition—whether "the individual's expectation, viewed objectively, is 'justifiable' under the circumstances."[100] In support of this statement, the Court cited *Rakas*.[101] It should be remembered, however, that a footnote in *Rakas* explains:

> A burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate.'[102]

Accordingly, when the Supreme Court speaks of an expectation being reasonable from an objective viewpoint, it may be using the term "objective viewpoint" to connote a constitutional perspective. In *Baker*, the Iowa Court of Appeals seemed to base its determination of "reasonable" on the fact the subjective expectation was "understandable."[103] This analysis would make the expectation "reasonable" in the usual sense, but it might not be correct to say the expectation is therefore "reasonable" or "legitimate" in a fourth amendment standing context.

The Iowa court's apparent determination that the reasonableness of a subjective expectation is relevant to its legitimacy seems consistent with existing federal case law. The specific issue, however, was not squarely framed and dealt with in *Baker*. As a practical matter, the final result in

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95. Rakas v. Illinois, 439 U.S. 128, 143-44 n.12 (1978).
96. United States v. Paulino, 850 F.2d 93 (2d Cir. 1988).
97. *Id.* at 97.
98. *Id.*
99. Smith v. Maryland, 442 U.S. 735 (1979).
100. *Id.* at 740.
101. *Id.* at 740-41.
102. Rakas v. Illinois, 439 U.S. 128, 143-44 n.12 (1978).
103. State v. Baker, 441 N.W.2d 388, 390-91 (Iowa Ct. App. 1989).

Baker illustrates a confusing point. The police in conducting the warrantless search were acting at the request of the property owner.[104] The court found that although no lease existed, police entries pursuant to the owner's request (i.e. consent) would be "reasonable" only if the owner himself could have entered in compliance with the Iowa landlord-tenant law.[105] This result is confusing at best. Cases like *Baker* and *Gallegos* may well become a proverbial "fly in the soup" of fourth amendment standing doctrine.

IV. CONCLUSION

Since *Katz*, the law of fourth amendment standing has been developing rapidly and one can expect it will continue to do so. Thus far, one is practically assured of standing to challenge searches of one's own home or police pullovers of cars in which one is traveling. To have standing to challenge the searches of the homes of others, one will generally need to qualify as being something more than a casual visitor or co-conspirator. It also will be difficult for a passenger to challenge the search of another person's car. In situations in which one is not legitimately on the searched premises, *Baker* will provide standing for those who can establish both that they failed to realize they were trespassing and that the failure was reasonable. Until a clear standard is established, courts will continue to struggle with the issue of what constitutes a reasonable expectation of privacy.

Ward Rouse

104. *Id.* at 389.
105. *Id.* at 392.