

Workplace Searches by Public Employers and the Fourth Amendment

Paul R. Koster*

I. Introduction

YOU ARE A COUNTY MANAGER AND today's the first day of work for your newest employee. You show your employee his office, which houses a computer, file cabinet, desk, and chair. Your new employee sits down with a smile on his face, reflecting his comfort in "his" new workspace. Fast forward two months later. You have received information your new employee is using the computer in his office to access inappropriate websites. Without any warning to the employee, you enter his office and search the computer.

Like their private counterparts, public employers have a variety of reasons for conducting searches of the workplace, including the need to locate a missing file, to determine whether an employee is misusing their property, or because they have information an employee has committed a crime. Unlike private employers, however, public employers are "state actors," and thus subject to the restraints of the Fourth Amendment when they conduct searches and seizures within the workplace.¹

This article analyzes the framework for assessing whether a public employer's search of the workplace comports with the Fourth Amendment. It will then provide a checklist to help public employers ensure their workplace searches fall within the requirements of the Fourth Amendment.

II. *O'Connor v. Ortega*

In *O'Connor v. Ortega*,² a plurality of the United States Supreme Court carved out an exception to the Fourth Amendment's warrant and

*Paul R. Koster is Managing Partner of the Atlanta law firm of Daley, Koster & LaVallee, LLC, where he focuses his practice on the areas of governmental liability, governmental relations, employment law, and appellate litigation.

1. See *O'Connor v. Ortega*, 480 U.S. 709, 715 (1987) ("Searches and seizures by government employers or supervisors of the private property of their employees . . . are subject to the restraints of the Fourth Amendment.").

2. *Id.*

probable cause requirements³ for workplace searches conducted by public employers, noting such requirements would likely frustrate the governmental purpose behind the search.⁴

Instead, the Supreme Court established a “reasonableness” standard for assessing whether a public employer’s search of the workplace is constitutionally permissible under the Fourth Amendment: “public employer intrusions on the constitutionally protected privacy interests of government employees for noninvestigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances.”⁵

As the preceding sentence suggests, the *O’Connor* exception to the Fourth Amendment’s warrant and probable cause requirements applies only if the search in question is *work-related*.⁶ “This element limits the *O’Connor* exception to circumstances in which the government actors who conduct the search act in their capacity as employers, rather than law enforcers.”⁷ Searches will be deemed work-related when they are conducted for non-investigatory purposes, such as to locate a missing file⁸ or to investigate workplace misconduct.⁹

3. Pursuant to the Fourth Amendment, “[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, and no Warrants shall issue, but upon probable cause. . . .” U.S. CONST. amend. IV.

4. 480 U.S. at 722 (“[R]equiring an employer to obtain a warrant whenever the employer wished to enter an employee’s office, desk, or file cabinets for a work-related purpose would seriously disrupt the routine conduct of business and would be unduly burdensome”); *id.* at 724 (stating “a probable cause requirement for searches of the type at issue here would impose intolerable burdens on public employers”).

5. *Id.* at 725–26.

6. See Bryan R. Lemons, *Public Privacy: Warrantless Workplace Searches of Public Employees*, 7 U. PA. J. LAB. & EMP. L. 1, 23–24 (2004).

7. *Id.* at 23 (quoting ORIN S. KERR & U.S. DEP’T OF JUSTICE CRIMINAL DIVISION, COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION, SEARCHING AND SEIZING COMPUTERS AND OBTAINING ELECTRONIC EVIDENCE IN CRIMINAL INVESTIGATIONS 34 (2002), available at <http://www.cybercrime.gov/s&manual2002.ntm> [hereinafter SEARCHING AND SEIZING]).

8. *O’Connor*, 480 U.S. at 723 (“The governmental interest justifying work-related intrusions by public employers is the efficient and proper operation of the workplace. . . . [T]he work of [government] agencies would suffer if employers were required to have probable cause before they entered an employee’s desk for the purpose of finding a file or piece of office correspondence.”).

9. *Id.* at 724.

Public employers have an interest in ensuring that their agencies operate in an effective and efficient manner, and the work of these agencies inevitably suffers from the inefficiency, incompetence, mismanagement, or other work-related misfeasance of its employees. . . . In our view, therefore, a probable cause requirement for the searches of the type at issue here would impose intolerable burdens on public employers. The delay in correcting the employee misconduct caused by the need for probable cause rather than reasonable suspicion will be translated into tangible and often irreparable damage to the agency’s work, and ultimately to the public interest.

Id.

But what if a public employer conducts a search of an employee's workspace solely for the purpose of obtaining evidence of a crime? In *O'Connor*, the Supreme Court did not directly address the applicable standard for searches conducted when a public employee is being investigated for criminal misconduct that does not violate workplace policy.¹⁰ Nevertheless, courts that have addressed the standard required for workplace searches conducted solely for the purpose of obtaining criminal evidence have found that "the rationale for the lesser burden *O'Connor* places on public employers is not applicable for . . . a criminal investigation."¹¹ Thus, a government entity "cannot cloak itself in its public employer robes in order to avoid the probable cause requirement when it is acquiring evidence for a criminal prosecution."¹² Where the sole motivation behind a workplace search is to uncover evidence of criminal wrongdoing, the probable cause standard has been applied.¹³

That said, "the line between a legitimate work-related search and an illegitimate search for criminal evidence is clear in theory, but often blurry in fact."¹⁴ This is particularly the case where the public employer conducting the search is a law enforcement agency.¹⁵ Notably, though, the mere fact the public employer conducting the search is a law enforcement agency does not automatically convert a work-related search into a criminal investigation.¹⁶ Rather, "in such situations, the 'crucial question is not whether the investigation involves actions arising out of a [public employee's] duties, but whether the investigation's objective is to discipline the [employee] within the department or to seek criminal prosecution.'"¹⁷ In other words, "in looking to ascertain whether the investigation is criminal in nature, the proper focus is not on the

10. See *id.* at 723 (expressing that "[b]ecause the parties in this case have alleged that the search was either a noninvestigatory work-related intrusion or an investigatory search for evidence of suspected work-related employee misfeasance, we undertake to determine the appropriate Fourth Amendment standard of reasonableness only for these two types of employer intrusions and leave for another day inquiry into other circumstances"); Lemons, *supra* note 6, at 28–31.

11. *United States v. Taketa*, 923 F.2d 665, 675 (9th Cir. 1991).

12. *Id.*

13. See, e.g., *United States v. Jones*, 286 F.3d 1146, 1151 (9th Cir. 2002) ("The *O'Connor* standard is not applicable to federal agents engaged in a criminal investigation.").

14. Lemons, *supra* note 6, at 29 (quoting *SEARCHING AND SEIZING*, *supra* note 7, at 35).

15. *Id.*

16. Lemons, *supra* note 6, at 29 (citing *United States v. Slanina*, 283 F.3d 670, 679 (5th Cir. 2002) (noting several federal circuit courts of appeal have reviewed "searches by law enforcement personnel into work-related misconduct . . . under the *O'Connor* standard"), *vacated on other grounds by*, 537 U.S. 8020 (2002)).

17. Lemons, *supra* note 6, at 29 (citing *Cerrone v. Brown*, 246 F.3d 194, 200 (2d Cir. 2001)).

positions or capabilities of the persons conducting the search, but rather the reason for the search itself.”¹⁸ “[F]actors considered by courts in making this determination include whether a criminal investigation has been opened, whether a workforce policy was violated, and the position of the individual who conducted the search.”¹⁹

Finally, a public employer may conduct a “mixed-motive” search of an employee’s workspace, seeking to discover evidence of employee misconduct, as well as evidence the employee has committed a crime.²⁰ For example, a search of a computer of an employee who has been downloading child pornography implicates both criminal and employee misconduct concerns.²¹ Courts assessing whether to apply the *O’Connor* reasonableness standard or the more traditional Fourth Amendment probable cause and warrant requirements to these mixed-motive searches have applied *O’Connor*’s reasonableness standard.²² Indeed, as explained by the United States Court of Appeals for the Fifth Circuit, “*O’Connor*’s goal of ensuring an efficient workplace should not be frustrated simply because the same misconduct that violates a government employer’s policy also happens to be illegal.”²³

III. Two-Part Inquiry for Assessing Whether a Public Employer’s Work-Related Search Satisfies the Requirements of the Fourth Amendment

Pursuant to *O’Connor*, a two-part inquiry is utilized to assess whether a public employer’s work-related search of the workplace is reasonable,

18. Lemons *supra* note 6, at 29 (citing *Wiley v. Dep’t of Justice*, 328 F.3d 1346, 1352 (Fed. Cir. 2003)).

19. Lemons, *supra* note 6, at 29–30.

20. *Id.* at 31–32.

21. *Id.* at 31.

22. *See, e.g., Slanina*, 283 F.3d at 679 (reasoning that although [the supervisor] “undoubtedly appreciated the possibility that the investigation into [the employee’s] misuse of city computer equipment might result in evidence of criminal violations[,] . . . any evidence of criminal acts was also proof of work-related misconduct. . . . The record evidence demonstrates that as of the time of [the supervisor’s] search, the probe remained at least partly an investigation into employee misconduct. . . . To hold that a warrant is necessary any time a law enforcement official recognizes the possibility that an investigation into work-related misconduct will yield evidence of criminal acts would frustrate the government employer’s ‘interest in the efficient and proper operation of the workplace.’ . . . We decline to impose such a burden on government employers.”) (internal quotations and citation omitted); *United States v. Simon*, 206 F.3d 392, 400 (4th Cir. 2000) (assuming purpose of search was “to acquire evidence of criminal activity,” but concluding the *O’Connor* exception to the warrant requirement applied as the government employer had “reasonable grounds for suspecting that the hard drive [the area searched] would yield evidence of misconduct” and the government employer “did not lose its special need for the efficient and proper operation of the workplace . . . merely because the evidence obtained was evidence of a crime.”) (internal quotations and citation omitted).

23. *Slanina*, 283 F.3d at 678.

and thus satisfies the requirements of the Fourth Amendment: (1) does the employee have a reasonable expectation of privacy in the area searched;²⁴ and (2) if so, was the search conducted by the public employer reasonable under all circumstances?²⁵

A. *Does the Public Employee Have a Reasonable Expectation of Privacy in the Area Searched?*

Absent a public employee's reasonable expectation of privacy in the area searched, "a workplace search by a public employer will not violate the Fourth Amendment, regardless of the search's nature and scope."²⁶

A reasonable expectation of privacy exists when (1) an individual exhibits an actual expectation of privacy and (2) that expectation is one that society is prepared to recognize as being "reasonable."²⁷ A public employee's expectation of privacy is limited by the "operational realities of the workplace" and "whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis."²⁸ "Although [a public employer's] ownership of the items seized is not determinative, it is an important consideration in determining the existence and extent of . . ." an employee's expectation of privacy.²⁹

Courts have considered a variety of factors in assessing whether a public employee has a reasonable expectation of privacy in the area searched, including:

1. OFFICE PRACTICES, PROCEDURES,
AND LEGITIMATE REGULATIONS

"Public employees' expectations of privacy . . . may be reduced by virtue of actual office practices and procedures, or by legitimate regulation."³⁰ Thus, "'government employees who are notified that their employer has retained rights to access or inspect information stored on the employer's computers can have no reasonable expectation of privacy in the information stored there.'"³¹

24. *O'Connor*, 480 U.S. at 715–19.

25. *Id.* at 725–26.

26. *Leventhal v. Knapek*, 266 F.3d 64, 73 (2d Cir. 2001).

27. *See Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

28. *O'Connor*, 480 U.S. at 717–18.

29. *United States v. Angevine*, 281 F.3d 1130, 1134 (10th Cir. 2002) (internal quotations and citation omitted); *see Gillard v. Schmidt*, 579 F.2d 825, 829 (3d Cir. 1978) ("Applicability of the [F]ourth [A]mendment does not turn on the nature of the property interest in the searched premises, but on the reasonableness of the person's privacy expectation.") (citing *Mancusi v. DeForte*, 392 U.S. 364, 368 (1968); *United States v. Speights*, 557 F.2d 362, 364 (3d Cir. 1977)).

30. *O'Connor*, 480 U.S. at 717.

31. *Lemons*, *supra* note 6, at 5–6 (quoting *SEARCHING AND SEIZING*, *supra* note 7, at 32).

Conversely, office practices, procedures, and regulations may be used by public employees to establish an expectation of privacy in an area where one would otherwise not exist.³² For example, in *United States v. Speights*,³³ a police officer retained a locker at his police headquarters and used both a personal lock and a lock that had been issued by the police department to secure the locker.³⁴ The police department had no regulations addressing whether personal locks on the police lockers were permitted or whether the lockers could be searched.³⁵ Upon receiving information that the police officer had a sawed-off shotgun in his locker, the locker was opened with a master key (for the police-issued lock) and bolt cutters (for the police officer's personal lock).³⁶ A sawed-off shotgun was recovered in the search, and the police officer was convicted of illegally possessing the weapon.³⁷

On appeal, the police officer claimed his Fourth Amendment rights had been violated by the search of his locker.³⁸ The United States Court of Appeals for the Third Circuit agreed, finding that "no regulation and no police practice" existed to justify the search of Speights' locker.³⁹ According to the court, "[o]nly if the police department had a practice of opening lockers with private locks without the consent of the user would [the police officer's] privacy expectation be unreasonable."⁴⁰

2. THE PUBLIC EMPLOYEE'S DOMINION AND CONTROL OVER THE WORKSPACE

The greater the dominion and control a public employee has over an item or area, the more likely it is that he or she has a reasonable expectation of privacy in that item or area.⁴¹ Thus, "[w]here a public employee has [his or] her own office or desk which co-workers and superiors normally do not enter, and where no agency policy or regulation warns the employee that an expectation of privacy is unreasonable, an expectation of privacy may be reasonable."⁴²

32. Lemons, *supra* note 6, at 11–12.

33. 557 F.2d 362 (3d Cir. 1977).

34. *Id.* at 362.

35. *Id.* at 363.

36. *Id.* at 362–63.

37. *Id.* at 362.

38. *Speights*, 557 F.2d at 363.

39. *Id.* at 365.

40. *Id.* at 364.

41. See Lemons, *supra* note 6, at 13–17; *Taketa*, 923 F.2d at 671 (“[A] reasonable expectation of privacy [exists] in an area given over to [an employee’s] exclusive use.”) (internal quotations and citation omitted); *Voyles v. State*, 133 S.W.3d 303, 305–06 (Tex. App. 2004) (holding that employee had no reasonable expectation of privacy over work computer where, among other things, he did not have “complete dominion or control” over the computer and it was “available for use by [other] substitute teachers”).

42. *McGregor v. Greer*, 748 F. Supp. 881, 888 (D.C. Cir. 1990).

Likewise, the “[u]se of passwords and locking office doors to restrict an employer’s access to computer files is evidence of the employee’s subjective expectation of privacy in those files.”⁴³ Moreover, where an employee is the only individual to have a key to the area in question, that factor weighs in favor of the employee having an expectation of privacy.⁴⁴

Conversely, the more open and accessible an item or area is to others, the less likely a public employee has a reasonable expectation of privacy in that item or area.⁴⁵ Nevertheless, that others may be permitted access to a public employee’s office, desk, computer, or filing cabinet may not, by itself, destroy an employee’s reasonable expectation of privacy.⁴⁶ Moreover, neither the existence of a master key nor an employee’s failure to consistently shut and lock an office door will automatically defeat a public employee’s expectation of privacy in his or her office.⁴⁷

3. THE NATURE OF THE PUBLIC EMPLOYEE’S POSITION

The nature of the position held by a public employee may be considered in assessing whether a reasonable expectation of privacy exists.⁴⁸ For example, “[w]hen an individual enters into an employment situation

43. *United States v. Bailey*, 272 F. Supp. 2d 822, 835 (D. Neb. 2003).

44. *See United States v. Chaves*, 169 F.3d 687, 691 (11th Cir. 1999) (finding that employee with only key to warehouse had a “measure of control and ability to exclude others” supporting expectation of privacy, but noting that “possession of a key, without more, might not be sufficient to establish a reasonable expectation of privacy”).

45. *See Gillespie v. Dallas Hous. Auth.*, 2003 U.S. Dist. LEXIS 29, at **22–23 (D. Tex. Jan. 2, 2003) (where video camera was mounted in a common hallway, the court noted that the employee “would certainly have no objectively reasonable expectation of privacy in the common hallway” because “[b]eing an undifferentiated area, all employees used the common hallway”); *Shaul v. Cherry Valley-Springfield Cent. Sch. Dist.*, 218 F. Supp. 2d 266, 270 (D.N.Y. 2002) (stating that teacher had no reasonable expectation of privacy in classroom where classroom was “open to students, colleagues, custodians, administrators, parents, and substitute teachers,” it was not a private office, and teacher “did not have exclusive use of any furniture in the room”); *Thompson v. Johnson County Cmty. Coll.*, 930 F. Supp. 501, 507 (D. Kan. 1996) (holding that “[s]ecurity personnel and other college employees, including maintenance and service personnel, had unfettered access to this storage room. Consequently, defendants argue that the open, public nature of the security personnel locker area defeats any reasonable expectation of privacy in this area. The court agrees.”).

46. *See Caldarola v. County of Westchester*, 343 F.3d 570, 575 (2d Cir. 2003) (reasoning that “a private space (such as a desk) within an otherwise public space (such as a government building) will justify an expectation of privacy”); *Slanina*, 283 F.3d at 676 (citing *O’Connor*, 480 U.S. at 718) (holding that where employee had a private office, “the ability of a select few of his coworkers to access the office does not mean that the office was ‘so open to fellow employees or the public that no expectation of privacy is reasonable’”); *Taketa*, 923 F.2d at 673 (stating “[p]rivacy does not require solitude”).

47. *See Taketa*, 923 F.2d at 673 (“Furthermore, the appellants correctly point out that allowing the existence of a master key to overcome the expectation of privacy would defeat the legitimate privacy interest of any hotel, office, or apartment occupant.”); *id.* (“Nor was the expectation of privacy defeated by [the public employee’s] failure to shut and lock his door at all times.”).

48. *Lemons*, *supra* note 6, at 17–19.

with high security requirements, it becomes less reasonable for her to assume that her conduct on the job will be treated as private.”⁴⁹

Similarly, where a public employee is part of an industry subjected to strict regulations to ensure the safety and fitness of its employees, any expectation of privacy the employee may have may be reduced.⁵⁰

B. If a Reasonable Expectation of Privacy Exists, Was the Search Reasonable Under All Circumstances?

If a public employee has a reasonable expectation of privacy in his or her workplace, “then an intrusion into that area qualifies as a ‘search’ governed by the Fourth Amendment.”⁵¹

As noted, the reasonableness standard set forth in *O’Connor* applies only to work-related searches conducted by public employers.⁵² If, however, a public employer conducts a search for the purpose of obtaining evidence of a crime, then the more traditional Fourth Amendment probable cause and warrant requirements have been applied.⁵³

Searches will be deemed work-related when they are conducted (1) for noninvestigatory purposes, such as to locate a missing file,⁵⁴ or (2) to investigate workplace misconduct.⁵⁵

49. *Cowles v. State*, 23 P.3d 1168, 1173 (Alaska 2001).

50. *See Nat’l Treasury Employees Union v. Von Raab*, 489 U.S. 656, 671 (1989) (asserting “it is plain that certain forms of public employment may diminish privacy expectations even with respect to . . . personal searches. Employees of the United States Mint, for example, should expect to be subject to certain routine personal searches when they leave the workplace every day.”); *see, e.g., Petersen v. City of Mesa*, 83 P.3d 35, 41 (Ariz. 2004) (stating that “individuals who elect to become firefighters should anticipate a diminished expectation of privacy and should reasonably expect some intrusion into matters involving their health and fitness”); *Morris v. Port Auth. of N.Y.*, 290 A.D.2d 22, 28 (N.Y. App. Div. 2002) (declaring police officer’s “special status must be factored into the reasonableness analysis, for it is within the State’s power to regulate the conduct of its police officers even when the conduct involves the exercise of a constitutionally protected right”) (internal quotations and citation omitted).

51. *Lemons*, *supra* note 6, at 21–23.

52. *See id.* and accompanying text.

53. *See supra* notes 10–13 and accompanying text.

54. *O’Connor*, 480 U.S. at 723 (“The governmental interest justifying work-related intrusions by public employers is the efficient and proper operation of the workplace.” The work of government agencies “would suffer if employers were required to have probable cause before they entered an employee’s desk for the purpose of finding a file or piece of office correspondence.”).

55. *Id.* at 724:

Public employers have an interest in ensuring that their agencies operate in an effective and efficient manner, and the work of these agencies inevitably suffers from the inefficiency, incompetence, mismanagement, or other work-related misfeasance of its employees In our view, therefore, a probable cause requirement for searches of the type at issue here would impose intolerable burdens on public employers. The delay in correcting the employee misconduct caused by the need for probable cause rather than reasonable suspicion will be translated into tangible and often irreparable damage to the agency’s work, and ultimately to the public interest.

In either of these scenarios, the search must be “reasonable” under “all the circumstances” to satisfy the requirements of the Fourth Amendment.⁵⁶ Under this reasonableness standard, the search must be both justified at its inception and permissible in scope.⁵⁷ This reasonableness standard has been equated to the “reasonable suspicion” standard outlined by the United States Supreme Court in *Terry v. Ohio*.⁵⁸

1. JUSTIFIED AT INCEPTION

A public employer’s search of an employee’s workplace “will be ‘justified at its inception’ when there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a noninvestigatory work-related purpose such as to retrieve a needed file.”⁵⁹ In other words, a public employer must be able to articulate a reason “for believing that evidence of work-related misconduct or work-related materials are located in the place to be searched.”⁶⁰

2. PERMISSIBLE IN SCOPE

For a search to be reasonable under the standard announced in *O’Connor*, the search also must be permissible in scope.⁶¹ A search is “permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of . . . the nature of the [misconduct].”⁶² “This means that the search may be made of only those areas where the item sought is reasonably expected to be located.”⁶³

IV. Workplace Search Checklist

The following checklist, presented by Jay Becker at the 21st Annual Defense Research Institute Employment Law Seminar, can help public employers ensure their workplace searches do not invade their employees’

56. *Id.* at 725–26.

57. *Id.* at 726.

58. 392 U.S. 1 (1968); *see also Wiley*, 328 F.3d at 1351 (citing *O’Connor*, 480 U.S. at 715) (noting that the Supreme Court has found “workplace searches undertaken either for noninvestigatory work-related purposes or to investigate work-related misconduct may be predicated on reasonable suspicion rather than probable cause”).

59. *O’Connor*, 480 U.S. at 726.

60. Lemons, *supra* note 6, at 24–27.

61. 480 U.S. at 726; Lemons, *supra* note 6, at 27–28.

62. *O’Connor*, 480 U.S. at 726 (internal quotations and citation omitted).

63. Lemons, *supra* note 6, at 27.

reasonable expectation of privacy, are justified at their inception, and are properly limited in scope:⁶⁴

- Establish, distribute, and implement a written policy that employer property, such as lockers, desks, cabinets, or computers, may be subject to searches to ensure compliance with the public employer's work-related rules;
- Establish, distribute, and implement a written policy that employee property, such as personal computers or purses, may be subject to searches in the workplace to ensure compliance with the public employer's work-related rules;
- Establish, distribute, and implement a written policy requiring that any lock used on employer property be owned and provided by the public employer and that the public employer will retain a copy of the key or combination for each company lock, desk, or door;
- Have each employee sign a written acknowledgment stating he or she has received and read all of the public employer's various policies;
- Limit the scope of the search to only those areas where there is a reasonable suspicion that the item sought is reasonably expected to be located;
- Record and document all investigatory steps conducted prior to the search and the reasons why a search was necessary; and
- Have more than one person present on behalf of the public employer during any search so that the public employer's conduct can be corroborated.

V. Conclusion

Public employers may conduct work-related searches, such as to locate a missing file or to investigate workplace misconduct, in accordance with the Fourth Amendment without probable cause or a warrant. Work-related searches are constitutionally permissible so long as they are reasonable under all circumstances. A public employer's work-related search will not conflict with the Fourth Amendment if it does not invade an employee's reasonable expectation of privacy. Moreover, even if the search does infringe on an employee's reasonable expectation of privacy, the search will be deemed reasonable in accordance with the Fourth Amendment if it is justified at its inception and permissible in scope.

64. Jay S. Becker, *Privacy and Technology in the Workplace Part A: Workplace Searches and Drug Testing Programs: The Latest Word on Searching and Securing the Private Workplace*, at the 21st Annual DRI Employment Law Seminar, Boston, Mass., (Sept. 18-19, 1997), available at LEXIS, Secondary Legal Library, DRI File, Seminars, 21st Annual DRI Employment Law Seminar.