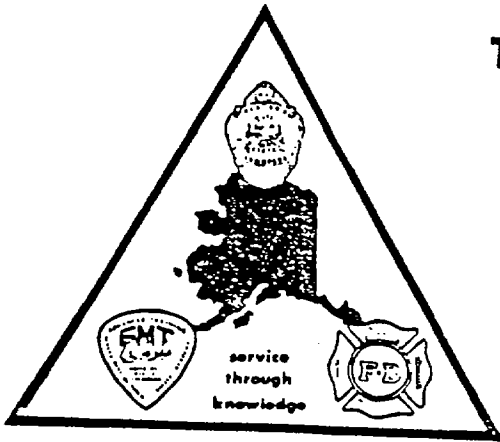


# DEPARTMENT OF PUBLIC SAFETY

## TRAINING ACADEMY



LEGAL BULLETIN NO. 82  
May 10, 1984

### WARRANTLESS SEARCH CONDUCTED ON "OPEN FIELD" WITH "NO TRESPASSING" SIGNS POSTED

Reference: Ray E. OLIVER  
v.  
United States

United States Supreme Court  
(Decided April 17, 1984)

~~34 CRL 3011~~ 466 US 170

#### FACTS:

Kentucky State Police received reports that marijuana was being grown on OLIVER's farm. Officers drove past OLIVER's farmhouse to a locked gate with a "No Trespassing" sign. A footpath led around one side of the gate. The officers went around the gate and walked along the road for several hundred yards, passing a barn and a parked camper. A person standing in front of the camper shouted, "No hunting is allowed; come back here." The officers shouted back that they were Kentucky State Police officers, but found no-one when they returned to the camper. The officers resumed their investigation of the farm and found a field of marijuana over a mile from OLIVER's house. OLIVER was arrested and charged with "manufacturing a controlled substance."

#### ISSUE:

Did OLIVER have a reasonable expectation that the fields would remain private, since he had done all that could be expected of him to assert his privacy in the area of the farm which was searched?

HELD: No.

#### REASONING:

1. An individual may not legitimately demand privacy for activities conducted out-of-doors in "open fields", except in the area immediately surrounding the home. (emphasis added)
2. There is no societal interest in protecting the privacy of those activities, such as the cultivation of crops, which occur in open fields.
3. It is not generally true that fences or "No Trespassing" signs effectively bar the public from viewing open fields in rural areas.

#### NOTES:

In this case, the United States Supreme Court reaffirmed a 1924 decision, Hester v. U.S., upholding the "open fields" doctrine, which holds that

the Fourth Amendment requires neither a warrant nor probable cause for law-enforcement officers to enter and conduct searches of unoccupied or undeveloped areas outside the curtilage of a dwelling.

This case was decided on the Fourth Amendment to the United States Constitution--the court concluded that the term "effects" is less inclusive than "property" and cannot be said to encompass open fields.

CAUTION...The Alaska Constitution contains two sections which our Appellate Courts might conclude require different results in similar issues; these are: (1) Article I, Section 14 (Alaska's equivalent to the Fourth Amendment), which states, "...houses, ...and other property", and (2) Article I, Section 22, which guarantees the Alaska citizen the right to privacy.

It is open to speculation as to how our court would view a similar case. They may adopt this case or they may place greater restrictions upon us.

Remember--the public and police lawfully may survey lands from the air. In other words, you can use aerial surveillance to gather information necessary to obtain a warrant (35 CrL 3013, Footnote 9).