



# DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 127  
February 20, 1989

## PLAIN VIEW OBSERVATION OF GREENHOUSE FROM HELICOPTER

Reference: Florida United States Supreme Court  
v. 57 USLW 4126 (No. 87-764)  
Michael A. Riley January 23, 1989

### FACTS:

Police received an anonymous tip that marijuana was being grown on Riley's property. The investigating officer discovered he could not observe contents of a greenhouse on the property from ground level--the greenhouse was enclosed on two sides and obscured from view on the open sides by Riley's home, trees and shrubbery. A wire fence also surrounded the home and greenhouse and the property was posted "Do Not Enter".

The investigating officer circled twice over the property in a helicopter at the height of 400 feet; he was able to see through the opening of the greenhouse roof and able to identify what he thought was marijuana. A warrant was obtained based on these observations. The ensuing search resulted in seizure of marijuana from the greenhouse and Riley's arrest.

### ISSUE:

Does the Fourth Amendment require police, who are traveling in public airways at an altitude of 400 feet, to obtain a warrant in order to observe what is visible to the naked eye?

HELD: No.

### REASONING:

1. Riley could not reasonably have expected that the contents of his greenhouse were protected from public or official inspection from the air, since he left the greenhouse sides and roof partially open.
2. The fact that the inspection was made from a helicopter is irrelevant since, as in the case of fixed-wing planes, private and commercial flight by helicopter is routine. (emphasis added)
3. The helicopter was not violating the law, flying at 400 feet, and any member of the public or police could have legally observed the greenhouse from that altitude. (emphasis added)
4. There is no evidence that the helicopter interfered with the respondent's normal use of his greenhouse or other parts of the

curtilage; intimate details connected with the use of the home or curtilage were observed; or there was undue noise, wind, dust or threat of injury.

NOTES:

CAUTION!! This case was decided on the Fourth Amendment to the U. S. Constitution; Alaska courts could rule differently, as they have done in the past, by interpreting Alaska's Constitution regarding "right to privacy" (Article I-22) and "search and seizure" (Article I, Section 14) as affording more individual rights to Alaska citizens.

You should review Section K of your manual concerning "Plain View" and particularly Oliver v. U.S., Legal Bulletin No. 82, regarding the "Do Not Enter" sign.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section K, page 9, of your Contents and to Section K, page 5, of the Text. File Legal Bulletin No. 127 numerically under Section R of the manual.