Coast Guard Nighttime Boardings and the Fourth Amendment: United States v. Piner

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The Coast Guard is responsible for enforcing federal law on the high seas and waters subject to United States jurisdiction. Coast Guard duties include administering laws and promulgating and enforcing regulations to promote safety at sea. Pursuant to these law enforcement and safety responsibilities, congressional authorization has existed for almost two hundred years for the Coast Guard to board vessels and examine documents without reasonable suspicion, probable cause, or a warrant. This authority, presently codified at 14 U.S.C. section 89(a), has consistently been upheld by the circuit courts of appeals that have considered its constitutionality. The Fifth Cir.


2. See Act of Aug. 4, 1790, ch. 35, § 62, 1 Stat. 175, where the First Congress created the Revenue Cutter Service. Section 31 of the Act empowered officers of the Revenue Cutter Service “to go on board of ships or vessels in any part of the United States . . . for the purpose of demanding the manifests . . . and of examining and searching the said ships or vessels.” Id. at § 31. In 1915, Congress created the Coast Guard by merging the Revenue Cutter Service and the Lifesaving Service. Act of Jan. 28, 1915, ch. 20, 38 Stat. 800.

3. 14 U.S.C. § 89(a) (1976) provides: The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States. For such purposes, commissioned, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship’s documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance.

Id. (emphasis added).


cuit, for example, sitting en banc, has held that Coast Guard boarding authority under section 89(a) is "plenary," and "need not be founded on any particularized suspicion."\(^5\) However, in *United States v. Piner,*\(^6\) the Ninth Circuit Court of Appeals limited Coast Guard boarding authority by holding that a boarding of a pleasure craft after dark must (1) "be for cause, requiring at least a reasonable and articulable suspicion of noncompliance" with federal safety law or other federal laws, or (2) "be conducted under administrative standards so drafted that the decision to search is not left to the sole discretion of the Coast Guard officer."\(^7\)

I. INSTANT CASE

On January 12, 1978, a Coast Guard vessel was conducting a routine law enforcement patrol on the waters of San Francisco Bay. At approximately 6:30 p.m. the Coast Guard crew spotted the running lights of defendants' forty-three foot sailboat, the "Delphene," and decided to conduct a routine boarding. The Coast Guard vessel identified itself, instructed the "Delphene" to prepare to be boarded, and placed a Coast Guard officer on the defendants' sailboat. The boarding Coastguardsman displayed his credentials and advised the defendants that he was conducting a routine safety inspection.\(^8\) Shortly thereafter, the Coast Guard boarding officer observed bags of marijuana in plain view. Both defendants were immediately placed under arrest, and their boat was seized. A subsequent search of their ves-

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5. *United States v. Warren,* 578 F.2d 1058, 1064-65 (5th Cir. 1978). In this case the Coast Guard boarded an American shrimping vessel on the high seas without cause pursuant to 14 U.S.C. § 89(a). Circumstances developed which led the Coast Guard boarding team and treasury agents to have probable cause to search further and seize evidence of drug and currency violations. *See also* United States v. Williams, 617 F.2d 1063, 1066 (5th Cir. 1980).

6. 608 F.2d 358 (9th Cir. 1979).

7. *Id.* at 361.

8. *Id.* at 359. Under applicable regulations, the safety inspection of a pleasure craft consists of the following:
   (1) Stopping and boarding of the boat.
   (2) Checking boat registration papers and personal identification of the boat owner.
   (3) Inspecting the boat for number, condition and storage of life jackets and fire extinguishers.
   (4) Inspecting the engine for backfire flame arrestor, closed compartments for proper ventilation ducts, and bilges for spilled oil or fuel to prevent explosion and fire.

*Id.*
sel resulted in the recovery of over four thousand pounds of marijuana. The parties stipulated that the nighttime stop and boarding of the “Delphene” was for a routine safety inspection, that it was a random stop and boarding, and that there were no suspicious circumstances. Defendants were indicted for importing marijuana, possession with intent to distribute marijuana, and conspiracy to import and distribute marijuana—all in violation of federal law.9

Defendants moved to suppress the seized marijuana on the ground that the evidence was the fruit of a search prohibited by the fourth amendment.10 The district court held that the Coast Guard boarding was an unreasonable random administrative inspection.11 The judge found that there was no suspicion for the boarding and that there was no administrative warrant, or its equivalent, restraining the discretion of the inspecting officer. Thus, the district court granted defendants’ motion and suppressed the seized marijuana.12

The Ninth Circuit Court of Appeals affirmed this decision two to one.13 The majority relied on the United States Supreme Court decision of Delaware v. Prouse,14 which held that the random stop of an automobile by state police for a driver’s license and registration check was an unreasonable intrusion on the automobile travelers and therefore violated the fourth amendment.15 The Piner majority noted that Prouse requires that “[t]he permissibility of a particular law-enforcement practice [be] judged by balancing its intrusion on the individual’s Fourth Amendment interests against its promotion of legitimate governmental interests.”16

The government sought to distinguish Piner from Prouse by

9. Id.
10. United States v. Piner, 452 F. Supp. 1335, 1337 (N.D. Cal. 1978). The fourth amendment provides:
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 person or things to be seized.

U.S. Const. amend. IV.
12. Id. at 1339-41.
13. 608 F.2d at 358, 361.
15. 440 U.S. at 663.
arguing that Prouse-approved roadblocks \(^{17}\) are not practicable and that Coast Guard boardings are more productive and reasonable than automobile spot checks.\(^{18}\) Additionally, the government pointed out that Coast Guard boardings promote important governmental safety interests, have been historically accepted, and are now covered by regulations.\(^{19}\) The court recognized the forcefulness of the government's contentions and assumed, arguendo, that governmental interests in securing compliance with safety regulations outweighed the intrusion of privacy encountered in the ordinary daytime boarding. At nighttime, however, the court believed that because of an enhanced "subjective intrusion," the individual privacy interests outweighed the governmental interests.\(^{20}\) Subjective intrusion was defined by the Supreme Court in Prouse as "the generating of concern or even fright on the part of lawful travelers."\(^{21}\) The Piner majority applied this concept as follows:

If the stop of an automobile upon a public highway by an identifiable police car is felt to create such subjective intrusion as to require the use of potentially less intrusive alternatives, surely the stop of an isolated boat after dark, followed by a physical intrusion upon the boat itself, would have an unsettling effect immeasurably greater, placing a far greater demand upon the government to come forward with balancing factors. If the purpose of the random stop is to ascertain and discourage noncompliance with safety regulations, we see no reason why this purpose cannot sufficiently be accomplished during the daylight hours. Thus, reliance on this less intrusive means eliminates the need for stops and boardings after dark where no cause to suspect noncompliance exists.\(^{22}\)

Thus, the Ninth Circuit upheld the district court order suppressing the seized marijuana.\(^{23}\)

Judge Kennedy dissented, offering four reasons to reverse

\(^{17}\) Prouse expressly approved the use of roadblocks as a less-intrusive alternative to random stops. 440 U.S. at 663.

\(^{18}\) See 608 F.2d at 361. "It appears from the record that in 1977, 330, 534 pleasure craft were registered in the San Francisco Bay area and 3,245 were boarded by the Coast Guard, of which 40 per cent were found not to be in compliance with safety regulations." Id. at 361 n.2.

\(^{19}\) Id. at 361.

\(^{20}\) Id.

\(^{21}\) 440 U.S. at 656 (quoting from United States v. Martinez-Fuerte, 428 U.S. 543, 558 (1976)).

\(^{22}\) 608 F.2d at 361 (emphasis added).

\(^{23}\) Id.
the district court decision. First, *Prouse* was not dispositive of the constitutionality of Coast Guard boardings because "[random safety checks of vessels by the Coast Guard present considerations very different from random automobile stops] and require a different rule." Second, the majority's "less-intrusive" daytime-only-boarding alternative was impractical. Third, because of the historical acceptance of Coast Guard boarding authority under 14 U.S.C. section 89(a), "vessels are not entitled to the same fourth amendment protections as their landlocked counterparts." Fourth, Coast Guard boardings fall within an exception to the fourth amendment for reasonable administrative searches and invade no legitimate expectation of privacy.

II. Analysis

The *Piner* majority inadequately analyzed the competing interests involved in nighttime Coast Guard boardings, thereby creating a distorted daytime-nighttime distinction. Two criticisms of the court's approach are offered: First, there is no more subjective intrusion inherent in a nighttime boarding than in a daytime boarding; second, the governmental interest in safety is greater at night when navigation is more dangerous.

There is no more subjective intrusion inherent in a nighttime boarding than in a daytime boarding. *Piner* reasoned that if an automobile stop creates such subjective intrusion as to require less intrusive alternatives, then "surely" a nighttime stop of an isolated vessel and subsequent physical intrusion creates even more subjective intrusion. However, the court failed to offer any reasons to support this assertion. Although it is difficult to know whether boat operators are in fact more frightened by a random boarding at night than in the day, there is little reason to suppose that they would be. Day and night boardings share

24. *Id.* at 362 (Kennedy, J., dissenting).
25. *Id.*
26. *Id.* at 363-64. This view was asserted in a concurrence by Justices Brandeis and Holmes:

There is no limitation upon the right of the sovereign to seize without a warrant vessels registered under its laws, similar to that imposed by the common law and the Constitution upon the arrest of persons and upon seizure of "papers and effects."

*Id.* (quoting *Maul v. United States*, 274 U.S. 501, 524 (1927) (Brandeis, J., concurring)).
27. *Id.* at 364.
28. 608 F.2d at 361.
the same scope of limited physical intrusion: a boarding officer's reasonable discretion to conduct safety checks generally extends only to the boat owner or operator, and there is generally no need for other passengers to be disturbed. 29 Boardings at night do not "raise the specter of uniformed officers rousing people from their sleep . . . [because] where the boat is underway, it is clear that someone is, or ought to be, awake." 30 Hence, there is as much assurance at night as there is in the daytime that a Coast Guard boarding will be a reasonable, limited, foreseeable, routine inspection. 31 Moreover, vessels, unlike automobiles, have historically traveled the sea in totally isolated conditions—often traveling for many days and nights. A boat's isolation after dark does not, as the court contended, make subjective intrusion greater since boats are usually just as isolated during the daytime.

Additionally, Piner failed to recognize that the governmental interest in safety may be greater at night, when navigation is more dangerous. Coast Guard safety regulations apply whenever a vessel is in use—day or night. 33 The Piner majority felt enforcement of these safety regulations could "sufficiently be accomplished during daylight hours." 34 However, the danger to the boating public of loss of life and property would likely be increased by a law enforcement scheme that severely limited authority to detect violations at night. 35 Willful violators could easily avoid Coast Guard safety enforcement by departing patrolled waters before light and returning after dark, or simply by conducting all boating at night. Daytime-only boardings are impractical and preclude effective nighttime safety enforcement when visibility is lowest and navigation potentially more dangerous. 36 If, as the Piner court assumed, governmental interests in ordinary daytime boardings outweigh the intrusion on an individual's fourth amendment interests, then equal or stronger governmental interests outweigh the intrusion in a nighttime boarding

29. See id. at 362 (Kennedy, J., dissenting). See also U.S. COAST GUARD, U.S. DEP'T OF TRANSPORTATION, BOARDING MANUAL 3-3, 3-5 (1977) (Coast Guard boating safety inspection boardings are directed at the owner or operator of a vessel) [hereinafter cited as BOARDING MANUAL].
30. 608 F.2d at 362 (Kennedy, J., dissenting).
31. See United States v. Williams, 617 F.2d 1063, 1083, 1086 (5th Cir. 1980).
33. 608 F.2d at 361.
34. See id. at 362 (Kennedy, J., dissenting).
35. See id.
as well. Since the Piner daytime-nighttime boarding distinction
is untenable, the court’s decision to limit Coast Guard boarding
authority is sound only if fourth amendment privacy interests
outweigh government interests in all Coast Guard boardings.

Moreover, Prouse held "only that persons in automobiles on
public roadways may not for that reason alone have their travel
and privacy interfered with at the unbridled discretion of police
officers." This holding protects the fourth amendment rights of
persons in automobiles but does not establish a rule against all
random stops. There are at least three important differences
between vessels and their landlocked counterparts which indi-
cate that random vessel stops are reasonable even though ran-
dom automobile stops are not.

First, random boardings are the only practicable means of
enforcing the governmental interest in boating safety. While the
police may constitutionally enforce automobile safety laws by
roadblocks and annual safety inspections, these alternatives to
random stops are not available to the Coast Guard. "Road-
blocks" at sea are impractical because vessels traveling on the
oceans must constantly contend with changing sea, wind, cur-
rent, and oceanographic conditions. Additionally, since vessel
safety equipment (life preservers, fire extinguishers, etc.) is re-
movable and safety regulations for boats apply only when a ves-
sel is in use, periodic dockside boat inspections are ineffective.

Second, random automobile spot checks are not "sufficiently
productive to qualify as a reasonable law-enforcement prac-
tice," but random boating "safety checks are a highly effective

36. 440 U.S. at 663.
37. Prouse noted, "Nor does our holding today cast doubt on the permissibility of
roadside truck weigh stations and inspection checkpoints, at which some vehicles may be
subject to further detention for safety and regulatory inspection than are others." 440
U.S. at 663 n.26. See also id. at 663-64 (Blackmun, J., concurring) (Prouse does not fore-
close roadblock stops, every-tenth-car stops, and random inspections by game wardens).
38. "[T]he substantial differences between a vessel and a landlocked vehicle . . .
preclude any assumption that the cases defining what is reasonable on the land automatic-
ally control the question of what is reasonable on the . . . sea." United States v. Wil-
liams, 617 F.2d 1063, 1084 (5th Cir. 1980).
39. See 608 F.2d at 362 (Kennedy, J., dissenting).
40. Id.
41. Id. Vessel operators could meet requirements for an annual inspection and still
violate safety regulations by operating their vessel without required equipment or with
defective equipment. But see Note, High on the Seas: Drug Smuggling, the Fourth
Amendment, and Warrantless Searches at Sea, 93 HARM. L. REV. 725, 743-51 (1980)
(recommending a regular mandatory dockside vessel inspection program).
42. 608 F.2d at 362 (Kennedy, J., dissenting) (referring to Delaware v. Prouse, 440
means of discovering safety violations." Judge Kennedy noted in his dissent that of the 3,245 pleasure vessels boarded in the San Francisco Bay area in 1977, the Coast Guard found forty percent to be in violation of safety regulations. Thus, the productiveness of Coast Guard boardings qualifies them as a reasonable practice.

Third, the court failed to recognize that Prouse was decided in the context of law enforcement officers pursuing governmental interests without "any standards, guidelines, or procedures." The contrary was true in Piner. Coast Guard regulations, instructions, and training specifically caution boarding officers to exercise restraint and respect for the rights of persons on boarded vessels. The regulations require boarding officers "to interfere as little as possible with the movement of the vessels boarded." Coast Guard instructions emphasize the education of the recreational boater as well as enforcement of the law. Indeed, the concept of educating the boating public permeates the Coast Guard boarding program. Hence, Coast Guard boarding officers serve a dual role: education and law enforcement. Additionally, Coast Guard policy allows only a few qualified officers to exercise boarding authority. Furthermore, Coast Guard instructions state the circumstances for conducting boardings:

The purpose of boarding is the enforcement of boating safety laws. Sound discretion should be used to insure that vessels in legitimate trade, and those engaged in recreational pursuits are not unnecessarily hampered in their movements or subject to unnecessary annoyance and interference by unreasonable exercise of authority.

It is not possible to set forth hard and fast rules as to when and where to examine vessels. It is important that Coast Guard enforcement operations should be conducted in such a fashion that just cause for complaint is not given.

The routine examination of documents, papers, and equip-

U.S. at 659-61).
43. Id.
44. Id.
45. 440 U.S. at 650.
46. See 608 F.2d at 361.
47. See BOARDING MANUAL, supra note 29 at 1-1, 1-2, 3-1.
48. Id. at 1-2.
49. Id. at Letter of Promulgation.
50. Id. at 1-2, 3-2.
ment in the enforcement of boating safety laws and regulations is best done when the vessel is boarded, is at anchor, or at a wharf. Vessels underway may be stopped, boarded, and examined.51

Admittedly, Coast Guard regulations vest some discretion in boarding officers, but only because of the difficulty of creating "hard and fast rules" in the unique maritime setting.52 The Coast Guard's written instructions, training, and boarding officer qualification process are all part of a plan aimed squarely at promoting recreational boating safety through a joint enforcement and education policy. Because of these clear policies and objectives, the boarding in Piner was simply more reasonable than the stop in Prouse.53

III. Conclusion

The Piner daytime-nighttime boarding distinction is untenable. Nighttime boardings do not involve greater subjective intrusion than daytime boardings. Moreover, increased dangers of nighttime navigation strengthen the government's interest in seeing that safety regulations are obeyed at least as consistently at night as they are during the day. Since the court implicitly concluded that daytime boardings are reasonable, the same result should apply to nighttime boardings. Because of the untenable daytime-nighttime distinction and the significant differences between Piner and Prouse, the court should have held the Coast Guard's random nighttime boarding to be reasonable under the fourth amendment.

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51. Id. at 2-4. See also id. at 3-2 (vessels observed in unsafe operation or obvious violation of the law may be stopped and boarded).

52. See Carmichael, At Sea With the Fourth Amendment, 32 U. MIAMI L. REV. 51, 104 (1977).

53. Additionally, a Coast Guard boarding officer who intentionally violates or fails to obey lawful orders and regulations or who is derelict in performing his duties may be punished by court-martial. 10 U.S.C. § 892 (1976). Arguably, official sanctions could have been imposed on the Prouse policemen for violating verbal orders. Unlike the police in Prouse, however, the Coast Guard had written regulations, which are not readily susceptible to change, and an established plan for promoting safety through enforcement and education.