

# What Does It Mean To Be “An Independent Judicial Official?”

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“The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers. Crime, even in the privacy of one's own quarters, is, of course, of grave concern to society, and the law allows such crime to be reached on proper showing. The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent.”

Johnson v. United States, [333 U.S. 10, 13](#) -14 (1948)

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Manchester, New Hampshire, 1964. A teenage girl named Pamela Mason left her home during a snowstorm in response to a telephone call asking her to babysit. Her body was found several months later; she had been brutally murdered. Suspicion settled on one man, and police officers working on the case eventually held a meeting with the State Attorney General, who had personally taken charge of all police activities relating to the murder, and was later to serve as chief prosecutor at the trial. At this meeting, it was decided that there was enough evidence to justify the arrest of Coolidge on the murder charge and a search of his house and two cars. At the conclusion of the meeting, the Manchester police chief made formal application, under oath, for the arrest and search warrants. The warrants were then signed and issued by the Attorney General himself, acting as a justice of the peace. The United States Supreme Court said:

“In this case, the determination of probable cause was made by the chief "government enforcement agent" of the State - the Attorney General - who was actively in charge of the investigation and later was to be chief prosecutor at the trial. . . . [T]he State argues that the Attorney General, who was unquestionably authorized as a justice of the peace to issue warrants

under then-existing state law, did in fact act as a "neutral and detached magistrate." Further, the State claims that any magistrate, confronted with the showing of probable cause made by the Manchester chief of police, would have issued the warrant in question. To the first proposition it is enough to answer that there could hardly be a more appropriate setting than this for a per se rule of disqualification rather than a case-by-case evaluation of all the circumstances. Without disrespect to the state law enforcement agent here involved, the whole point of the basic rule . . . is that prosecutors and policemen simply cannot be asked to maintain the requisite neutrality with regard to their own investigations - the "competitive enterprise" that must rightly engage their single-minded attention. “

Coolidge v. New Hampshire, [403 U.S. 443, 449](#) -51 (1971)

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And in *Lo-Ji Sales v. New York*, [442 U.S. 319](#) (1979), the Justice of the Peace led the search party:

“The Town Justice did not manifest that neutrality and detachment demanded of a judicial officer when presented with a warrant application for a search and seizure. *Coolidge v. New Hampshire*, supra, at 449. We need not question the [\[442 U.S. 319, 327\]](#) subjective belief of the Town Justice in the propriety of his actions, but the objective facts of record manifest an erosion of whatever neutral and detached posture existed at the outset. He allowed himself to become a member, if not the leader, of the search party which was essentially a police operation. Once in the store, he conducted a generalized search under authority of an invalid warrant; he was not acting as a judicial officer but as an adjunct law enforcement officer. When he ordered an item seized because he believed it was obscene, he instructed the police officers to seize all "similar" items as well, leaving determination of what was "similar" to the officer's discretion. Indeed, he yielded to the State Police even the completion of the general provision of the warrant.”

### Questions for Exploring Further:

1. When is a judge acting “*as a Judge*”?
2. What decisions are “judicial decisions?”
3. An independent judicial official is independent . . . from what?

## ***Selections from the North Carolina Code of Judicial Conduct***

### **Preamble**

An *independent* and honorable judiciary is indispensable to justice in our society, and to this end and in furtherance thereof, this Code of Judicial Conduct is hereby established. A violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings pursuant to Article 30 of Chapter 7A of the General Statutes of North Carolina. . . .

### **Canon 1**

**A judge should uphold the integrity and *independence* of the judiciary.**

A judge should participate in establishing, maintaining, and enforcing, and should himself observe, appropriate standards of conduct to ensure that the integrity and *independence* of the judiciary shall be preserved.

### **Canon 2**

**A judge should avoid impropriety in all his activities.**

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and *impartiality* of the judiciary.

### **Canon 3**

**A judge should perform the duties of his office *impartially* and diligently.**

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law.

#### **C. Disqualification.**

(1) On motion of any party, a judge should disqualify himself in a proceeding in which his *impartiality* may reasonably be questioned, including but not limited to instances where:  
(a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;

### **Canon 4**

**A judge may participate in cultural or historical activities or engage in activities concerning the legal, economic, educational, or governmental system, or the administration of justice.**

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast substantial doubt on his capacity to decide *impartially* any issue that may come before him:

- A. He may speak, write, lecture, teach, participate in cultural or historical activities, or otherwise engage in activities concerning the economic, educational, legal, or governmental system, or the administration of justice.

### **Canon 5**

**A judge should regulate his extra-judicial activities to ensure that they do not prevent him from carrying out his judicial duties.**

- B. **Civic and charitable activities.** A judge may participate in civic and charitable activities that do not reflect adversely upon *his impartiality* or interfere with the performance of his judicial duties.

**C. Financial activities.**

(1) A judge should refrain from financial and business dealings that reflect adversely on his *impartiality*, interfere with the proper performance of his judicial duties, exploit his judicial position or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

### **Canon 7**

**A judge may engage in political activity consistent with his status as a public official.**

The provisions of Canon 7 are designed to strike a balance between two important but competing considerations: (1) the need for *an impartial and independent* judiciary and (2) in light of the continued requirement that judicial candidates run in public elections as mandated by the Constitution and laws of North Carolina, the right of judicial candidates to engage in constitutionally protected political activity.