**Fourth Amendment’s Protections in the Home**

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**Abstract:**

In this lesson, students will be presented with a brief summary of the scope of the Fourth Amendment as it relates to the home. They will read the facts of the Supreme Court case *California v. Greenwood* and work in small groups to deliberate as the Supreme Court would. After reaching a decision in their groups, they will be provided with the Supreme Court’s reasoning and have an opportunity to compare their explanations with those of the Court. The lesson includes background information and relevant case summaries for the teacher.

**Objectives:**

Through this lesson, the students will:

* learn the basic scope of Fourth Amendment protection in the home;
* stretch these legal concepts to fit a new application: trash outside the home, awaiting pick-up for disposal;
* compare their analysis to that of the Supreme Court;
* unpack the ramification of the *Greenwood* case in everyday life; and
* learn that reasonable, intelligent people can reach very different conclusions applying the same black letter law.

**Grade level:**

11 to 12. This lesson is designed for Advanced Placement students, but could be adapted for regular classes as well by simply presenting less background material.

**Time to complete:**

One 60 minute class period:

* + 10 minutes for powerpoint introduction;
	+ 5 minutes to divide into small groups and read the facts of *Greenwood*;
	+ 5 minutes to deliberate as the Supreme Court;
	+ 5 minutes to vote in small mock-Court groups;
	+ 10 minutes to present and discuss the small group’s decisions as a class;
	+ 10 minutes to read the actual opinion silently;
	+ 10 minutes to compare actual Supreme Court opinion to class decisions in a large group; and
	+ 5 minutes to wrap up the lesson.

**Materials needed:**

* Handouts
	+ Fourth Amendment text handout
	+ Supreme Court procedures handout
	+ *California v. Greenwood* fact summary
	+ *California v. Greenwood* opinion excerpt
		- The case excerpt and case summary of *California v. Greenwood* handouts are based on the American Constitution Society’s Constitution Day Lesson Plan for undergraduate students and was tweaked for high school students. The ACS lesson plan can be found at:
			* http://www.acslaw.org/files/Full%204th%20Amendment%20Lesson%20Plan%20-%20College%20-%208.31.06.pdf
* Powerpoint slideshow
* Projector for powerpoint

**Procedure:**

**Powerpoint:**

1. Introduce yourself to the class.
2. Distribute Fourth Amendment handout.
3. Present the powerpoint on basic Fourth Amendment law. This should take ten minutes. The powerpoint includes questions that should be posed to the class. Allow 1-2 responses per question, but continue moving through the slides rapidly, as the goal is exposure to the structure of the Fourth Amendment, not memorization of the slides.

**Supreme Court Conferences:**

\*\*This teaching strategy is adapted from Professor Jennifer Bloom’s Appellate Argument teaching strategy.

1. Divide students into groups of 9 to represent the number of justices on the Supreme Court. (If the class is not easily divisible by 9, groups of 7 or 8 will work.) Tell students that each group represents the Supreme Court, and designate a Chief Justice in each group.
2. Distribute the *Greenwood* Case Facts handout and the Supreme Court Conferences Procedures handout to the students.
3. Remind students that actual Supreme Court Conferences, during which the Court discusses the case, decides the outcome, and selects the author of the majority opinion, are confidential.
4. Tell students they should follow the procedures used by the U.S. Supreme Court in conference to discuss and *Greenwood.* Briefly summarize these procedures, and tell the students to consult their handouts for reference as they work through the steps:
	* As the justices enter the conference room, they traditionally shake hands all around.
	* The chief justice announces a case for discussion. A free discussion of the case is held (10 minutes will be allowed for purposes of this lesson). Justices will want to try to persuade others and try to form coalitions in order to reach a majority opinion.
	* After 10 minutes, stop the discussion and tell the chief justices to initiate a formal vote.
	* The chief justice then formally states his or her position on the case, followed by each of the other justices, each person giving his/her vote. Note that in reality, this is done in order of seniority (years on the Court).
	* Each justice should keep a tally of the other justices' votes and take notes of the key reasons given for their opinions.
	* If the chief justice votes with the majority, he/she may elect to write the majority opinion or may assign one of the associate justices to write the majority opinion, or. If the chief justice is a dissenter, the most senior justice voting with the majority will make the assignment. The other justices in this group should help the main drafter, because all must sign the opinion. Dissenting justices may write one opinion together, or may each write his/her own. Concurring justices traditionally each write a separate opinion.
	* The justice assigned the majority opinion will report the decision to the class as a large group and explain briefly why their mock-Court decided the case they way they did.
5. After 10 minutes of conferencing, tell the students they have 5 minutes to vote.
6. Resume class-wide discussion and have each group present their decision and defend it. Ask probing questions to help students explain their reasoning. (10 minutes).
7. Hand out the actual Supreme Court opinion (excerpted) in *Greenwood* and allow 10 minutes of reading time. For a rowdy class, consider “popcorn” reading. (Students read a sentence or two, and then select a classmate to take over. Repeat until the entire selection has been read.)
8. Summarize/brief the opinion as a large group, asking the class general case summary questions:
	* What language of the Constitution and the amendments, other law, or previous cases was relied upon in the Court’s decision?
	* What were the key principles involved?
	* What was the significance of the court’s decision?
	* Did the decision change the meaning of the Constitution?
	* Can you predict problems arising out of the court’s decision?
	* If you agreed with the Court’s decision, did you use the same reasoning?
	* If you disagreed with the Court’s decision, did you agree with the dissent’s reasoning?
	* What, if anything, should happen next?
9. And, if these points do not come up naturally in the discussion, incorporate the following questions:
	* What are ways you could keep your trash private? (Is there any way to dispose of your trash and still maintain an expectation of privacy in it?)
	* Should the fact that citizens are required to dispose of trash in certain manners change your analysis? How can you ever claim an expectation of privacy in the things you throw out, when you know that by law the government will require that you dispose of it in certain locations?
	* Does your analysis of the case turn on where the trash was kept? What if the trash was kept in the house until pick up? Would that matter?
	* Does it matter how the trash was stored? What if it the bag had been a clear plastic bag?
	* Does your analysis change based on who regularly has access to your trash? For example, we know that occasionally people “dumpster-dive” out of either necessity or fun. Since we know that people will go through our trash, how can we ever claim any expectation of privacy?
	* Does it matter that it was the police who were the ones going through the trash? What if it was a neighbor walking his dog?

**TEACHER INFORMATION**

**Fourth Amendment Background**

The Fourth Amendment requires that Americans’ homes be protected from unreasonable searches and seizures. A search is not unreasonable if the police obtain a search warrant before entering the home. (Warrantless searches of the home are reasonable in only extremely rare circumstances: “[w]ith few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.” *Kyllo v. United States*,533 U.S. 27, 31 (2001)).Police apply for a warrant when they believe that the facts they have uncovered meet the standard of “probable cause,” a legal concept based on the totality of the circumstances. Probable cause is considered an element of reasonableness for Fourth Amendment purposes, and is met when “the facts and circumstances within an officer's knowledge and of which he had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *Safford Unified School Dist. No. 1 v. Redding*, 129 S. Ct. 2633, 2639 (2009). To apply for a warrant, police officers prepare affidavits stating the facts they have gathered and submit them to a magistrate. The magistrate, who must be “neutral and detached,” determines whether the probable cause standard is met before issuing a warrant. This proceeding is *ex parte*—the suspect who is to be searched is not given notice.

The Fourth Amendment has been interpreted to require that a warrant be "reasonably particular" both as to place and to the specific item being searched for. Thus, if probable cause exists for only the suspect’s garage, a warrant should not issue for the entire house. Similarly, the police are only permitted to search locations where the particular items listed on the warrant could be found.

These limits on police searches work to decrease police access to homes unless expressly authorized by a warrant. However, under the plain view doctrine, incriminating evidence in plain view may be seized by law enforcement officers during an otherwise lawful search for other evidence. The evidence being searched for and the materials found in plain view need not be similar or even related in any way. *Horton v. California*, 496 U.S. 128 (1990). To invoke the plain view doctrine, there are three requirements:

* 1. The police officer must not have violated the Fourth Amendment by his or her presence in the home. Put another way, the officer must be in the suspect’s home lawfully.
	2. The criminal nature or incriminating character of the plain view evidence must be immediately apparent. The police officer must have probable cause to believe the evidence is seizable without picking it up and examining it further.
	3. The officer must have a lawful right of access to the evidence.

Significantly, inadvertence is not a requirement of the plain view doctrine. Thus, an officer may consciously *try* to find evidence for which a warrant has not been issued, so long as the requirements of the doctrine are met.

 A criminal defendant has the right to challenge the facts that caused a warrant to issue after a search of their abode is complete. In *Franks v. Delaware*, 438 U.S. 154 (1978), the Supreme Court held that to challenge the truthfulness of factual statements made in a search warrant application affidavit, the defendant must make a substantial preliminary showing of the following:

1. that the affiant knowingly and intentionally lied, or acted with reckless disregard for the truth;  *and*
2. that the allegedly false statement is necessary for probable cause to be found. (That is, a warrant would not have issued without the false statement).

If these stringent requirements are met, the Fourth Amendment requires the court to hold a veracity hearing. Because a showing of police negligence is insufficient to obtain a veracity hearing and it is very difficult to prove that a police officer intentionally lied, few defendants are able to take advantage of this procedure.

Yet, if a defendant does manage to prevail at a veracity hearing—the statement is found to be untrue—the remedy is significant. The text of the Constitution does not specify what happens if the government violates an individual’s Fourth Amendment rights. The Supreme Court has ruled, however, that when police behave improperly, any evidence found during the illegal search or seizure cannot be used at trial by a prosecutor. *Mapp v. Ohio*, 367 U.S. 643 (1961). This remedy is termed the exclusionary rule, and is used when a defendant is successful in a warrant veracity hearing, as well as for many other Fourth Amendment violations.The exclusionary rule does even more than suppress the physical evidence found—it also suppresses any police testimony regarding the search. Police testimony can encompass anything the police saw or learned as a result of the unconstitutional search, including voice recordings of the search, etc.

The exclusionary rule is obviously designed to deter police from misbehavior, but other policy considerations also apply. The exclusionary rule safeguards judicial integrity and preserves the legitimacy of our government in the public eye. However, because the remedy is a drastic one, the Supreme Court has carved out an objective, good-faith exception to the exclusionary rule. *United States v. Leon*, 468 U.S. 897 (1984). For example, where the police obtain a warrant, but later discovers there was insufficient probable cause for the warrant to issue, the exclusionary rule does not apply. The Court, in creating this exception, has determined that the exclusionary rule is only appropriate where its remedial objectives are thought most efficaciously served: that is, where the rules’ deterrence benefits outweigh its substantial social costs, which include allowing some guilty defendants to go free. This exception indicates the value of warrants, creating an exception that encourages police to rely on the warrants they receive. The Court values warrants for a few key reasons:

1. Warrants limit when and where police can search in space and time.
2. Warrants perform a signaling function and inform residents not to resist police efforts to search their homes, maintaining peace and ensuring the safety of both officers and the individuals.
3. Warrants perform a record-keeping function, detailing what facts the police knew before the search.

Though *Leon* creates an exception that diminishes the impact of the exclusionary rule, the decision provides four examples of instances where the exclusionary rule will still apply.

The first is termed a *Franks v. Delaware* exception: in situations where the affiant police officer knew the information was false (or recklessly disregarded the truth), the exclusionary rule shall apply even if a warrant is issued. The second “exception to the exception” imagines a magistrate who has wholly absolved his judicial role so that no reasonable officer could rely on the warrant—that is, the magistrate is acting as a “rubber stamp” for the police. The third instance occurs where a police officer’s belief that he or she had probable cause was entirely unreasonable. Finally, a warrant might be so facially deficient that the officers cannot reasonably presume it to be valid. If any of these circumstances exist, *Leon* will not allow police to rely on a warrant and instead permit the exclusionary rule to remedy the Fourth Amendment violation by excluding the evidence from entering the defendant’s trial.

The Fourth Amendment also requires that the police knock at the door and announce their presence before entering a home, even if they have a warrant. *Hudson v. Michigan,* 547 U.S. 586 (2006). There are many exceptions to the knock and announce rule, which some legal scholars argue effectively eviscerate the rule. The police are not required to knock before entering a home if they have reasonable suspicion that:

1) there is a threat of physical violence;

2) there is reason to believe evidence would be destroyed if advance notice is given; or

3) the announcement would be futile.

Unlike other Fourth Amendment violations, the exclusionary rule does not operate to enforce this requirement. The Supreme Court has declined to apply the rule to the knock and announce requirement, reasoning that the Fourth Amendment requires them to balance the protection of individual rights with the encumbrances that these protections have on law enforcement and the prosecution of criminals.

A significant issue that arises regarding the police search of homes is the problem of consent searches. Generally, the police may search an individual’s home if the individual consents to the search. To be lawful, the consent must be voluntary, as defined by the “absence of police coercion.” The voluntariness of the consent is determined by an examination of the totality of the circumstances. This voluntariness inquiry is undertaken using a reasonable person standard, though a few subjective factors relating to the individual can be examined, including: education, language barriers, circumstantial pressure, and vulnerability.

**Significant Supreme Court Cases, chronologically:**

**Chimel v. California**

**395 U.S. 752 (1969)**

* FACTS: The police arrived at Chimel’s house with an arrest warrant, and asked the suspect if they could search his house. The suspect said no, but the police told him that they could/would enter regardless of his answer. The officers did not have a search warrant. The police walked through the entire house and made the suspect's wife open drawers and move items around. Stolen coins were discovered, and the suspect was convicted for robbing a coin store.
* HELD: The warrantless search of a suspect’s entire house cannot be constitutionally justified as incident to that arrest.
* REASONING:
	+ When an arrest is made, the arresting officer may search:
		- the arrestee's person and
		- the area "within his immediate control."
			* This means anything the arrestee could reach or grab, to prevent arrestees from grabbing weapons or destroying evidence.
	+ To allow a greater scope of search incident to arrest would provide police with an incentive to arrest people in their home rather than in the street so as to search their houses without a warrant. This is dangerous for the officers, and infringes on the privacy of innocent third parties who may live with an arrestee.

**Vale v. Louisiana**

**399 U.S. 30 (1970)**

* FACTS: The police witnessed a drug sale outside of a home. The police arrested the dealer outside the house, then went inside and searched the premises.
* HELD: A search incident to arrest may be made only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. An arrest outside the house cannot provide its own exigent circumstance so as to justify a warrantless search of the arrestee's home.
* REASONING:
	+ The Court requires a high burden of proof for exigent circumstances, an exception to the warrant requirement: destruction of evidence must be imminent, not just hypothetical.
	+ The police could easily have "frozen" the situation while they went to get a warrant by only allowing residents to go in the house with a chaperone. The police are permitted to check if there is anyone in the home quickly, and then post a guard while a search warrant is obtained.

**Schneckloth v. Bustamonte**

**412 U.S. 218 (1973)**

* FACTS: Defendant was pulled over on a routine traffic stop, then gave the police officer permission to search his car. The defendant opened the trunk for the officer, where three stolen checks were found. Defendant was convicted of check fraud.
* HELD: For a consent search to be lawful, the government must prove that the consent was given voluntarily (without police coercion), but need not prove that the defendant had knowledge of his right to refuse the police.
* REASONING:
	+ Voluntariness only requires that the suspect’s will not be overborne.
	+ It would be impractical to require the police to administer a detailed warning and explanation of the suspect’s right to refuse a search.

**Payton v. NY**

**445 U.S. 573 (1980)**

* FACTS: Multiple combined cases: all fact patterns have in common that the defendant was arrested in his home, without a warrant, and the police entered the home without the consent of any occupant.
* HELD: An arrest warrant is usually required for an in-premises arrest. The police also need to have reasonable suspicion that the suspect is at home before entering the premises to search for the arrestee.
* REASONING:
	+ Though warrantless arrests in public places are valid, searches and seizures inside a home without a warrant are presumptively unreasonable, including arrests. This is because the Fourth Amendment more greatly protects the home—the home is where an individual has the greatest zone of privacy/reasonable expectation of privacy.
	+ This situation is different from warrantless public arrests (which are permitted) partially because there is no clear common law rule that applies here.

**Steagald v. United States**

**451 U.S. 204 (1981)**

* FACTS: The police had an arrest warrant for a third party. The police entered the defendant’s home in order to look for the third party. The intended arrestee was not there, but the police spot drugs in plain view. Defendant is convicted.
* HELD: To enter an individual’s home to arrest a guest, the police need a search warrant for the premises, in addition to any arrest warrant they may have for the guest.
* REASONING:
	+ The Court employs a balancing test: the additional burden imposed on police is minimal. The interest presumptively innocent people have in being secure in their homes is much more “weighty.”

**Illinois v. Gates**

**462 U.S. 213 (1983)**

* FACTS: An anonymous tip letter was sent to police, stating that a couple would be smuggling drugs from Florida to Chicago. The letter mapped out their plan, and much of it was corroborated by police investigation. A warrant was issued, and the police found drugs in both the couple’s car and their house.
* HELD: For an informant’s tip to meet the probable cause requirement necessary for a search warrant to issue, the totality of the circumstances must be examined. The basis of the informant’s knowledge and the veracity of the informant are both relevant to this inquiry.
* REASONING:
	+ Although the informant’s veracity could not be verified in this case (because the informant was anonymous) the corroborated detail of the letter was sufficient for a warrant to issue.
	+ It is enough that there is a fair probability of accuracy.

**Welsh v. Wisconsin**

**466 U.S. 740 (1984)**

* FACTS: The police went into the defendant’s home without a warrant in order to test the defendant’s blood alcohol content. The state argued that this was an exigent circumstance, as the suspect’s blood alcohol level was diminishing moment by moment.
* HELD: The police may not enter the home of a suspect of driving under the influence without a warrant in order to get a blood sample.
* REASONING:
	+ The entrance into the home is a more intrusive privacy violation than a custodial arrest. (Houses are given more protection than one’s physical person).
	+ At the time of this decision, a DUI was a non-jailable civil violation. The Court reasons that the intrusion into the home is not proportional to the offense.
	+ Hierarchy of Fourth Amendment Protection against unreasonable searches:
		- Home (most protection)
		- Personal effects
		- Vehicles

**Florida v. Riley**

**488 U.S. 445 (1989)**

* FACTS: The police hovered in a helicopter 400 feet above land, so that they could see marijuana plants growing in Riley’s backyard.
* HELD: This is NOT a violation of the Fourth amendment because a private citizen could legally fly a helicopter at the same height and see what the police saw.
* REASONING:
	+ If private citizens have frequent access to information, the police do not need a warrant to obtain this same information.
	+ This would be different if there was property injury, spying on intimate details of the home, etc.

**Horton v. California**

**496 U.S. 128 (1990)**

* FACTS: A police officer applied for a warrant to search for guns used in a robbery and for jewelry stolen in the same robbery. The officer receives a warrant only for the jewelry stolen. While searching for the jewelry, which he did not find, he saw the guns in plain view as well as some other incriminating items. The officer was specifically looking to see if any of the other evidence he needed was in plain view—spotting the guns was not inadvertent.
* HELD: The warrantless seizure of evidence of crime in plain view is NOT prohibited by the Fourth Amendment even if the discovery of the evidence was not inadvertent.
* REASONING:
	+ Even though inadvertence is a characteristic of most legitimate "plain view" seizures, it is not a necessary condition.
	+ Subjective officer intent is too difficult to determine, and we do not want to encourage police to lie.
	+ The requirement that the contraband be in plain view is limiting enough.
	+ The intrusion of privacy has already been supported by the warrant. Thus, the plain view doctrine does not alter the level of search, just what may be seized.

**Richards v. Wisconsin**

**520 U.S. 385 (1997)**

* FACTS: The state of Wisconsin argued that the knock and announce rule was never required for felony drug searches, because the exigent circumstances exception would always be available. The state sought a categorical rule.
* HELD: In the absence of exigent circumstances, the amount of time required by the knock and announce rule is determined by the question of whether it reasonably appeared to the police that an occupant has had time to get to the door. The amount of time can vary based on the size of the establishment, and is based on the facts known to the police at the time. The Court rejected Wisconsin’s argument, requiring that police complete a case-by-case inquiry before deciding to enter a home unannounced.
* REASONING:
	+ If categorical exceptions were allowed, the knock and announce rule would be eviscerated.
	+ Police must have reasonable suspicion that knocking and announcing their presence under the particular circumstances would be either:
		- * Dangerous or futile OR
			* That it would inhibit the effective investigation of the crime (usually destruction of evidence).
	+ Note the risks of requiring police to knock and announce:
* Lost evidence;
* Lost suspects; and/or
* Injury by dangerous suspects.

**Kyllo v. United States**

**533 U.S. 27 (2001)**

* FACTS: Kyllo was growing marijuana in his home. The police used a thermal imaging scan from the public road outside his townhouse, and saw that he had many high intensity lights. They then procured a warrant and searched the house.
* HELD: Thermal imaging IS a search*.*
* REASONING:
	+ The police are obtaining by sense-enhancing technology information that they normally would not be able to get without physical intrusion.
	+ The Court states that this case may come out differently if the thermal imaging devices were in general public use, because then a person would not have a reasonable expectation of privacy in the heat coming from his home.

**Georgia v. Randoph**

**547 U.S. 103 (2006)**

* FACTS: Mrs. Randolph gave the police consent to come in and search the premises, but Mr. Randolph, her husband, was also at the door and refused to give consent. The police went in anyway, spotted drugs, and the husband was convicted.
* HELD: Consent is determined by ordinary social conventions: would a reasonable houseguest think they are allowed in? Here, consent did not occur.
* REASONING:
	+ When property is jointly owned, a houseguest would not think she was invited in if one spouse refused her entry.