

Do Not Write On!

Student Handout 1

Illinois v. Wardlow — Focus Scenarios for Discussion

Imagine that you are a police officer. The law gives you the right to stop a person who is acting suspiciously in order to conduct a brief investigation to determine whether a crime is taking place or is about to take place. However, you must be able to cite specific facts to support your position. You cannot stop someone on a hunch. Read through the following scenarios and determine, in your opinion, whether or not you would stop those involved to conduct an investigation.

Write **Y** if you would stop the person and **N** if you would not stop the person. Be ready to explain your reasoning.

____ 1. A woman standing on a corner gives a clear bag with a white substance to a man who gives her money in exchange.

Explain:

____ 2. A young man is walking down the street dressed in gang colors.

Explain:

____ 3. One man walks up a street, peers into a store and continues walking. He then comes back and looks into the same store. He meets up with a companion who also peers into the window of the store. The two of them continue walking back and forth checking out the store several more times before following a third man up the street.

Explain:

____ 4. As you are driving down the street, you notice a woman running away from you.

Explain:

Case Study #1: *Carroll v. United States* (1925)



Facts:

Carroll and another man were charged with illegally transporting alcohol. The police knew that Carroll had been smuggling alcohol and when they saw him driving, they chased him, pulled him over, searched the car and found the liquor; all without a warrant. Carroll claimed that the warrantless search of his car violated his Fourth Amendment rights.

Decision:

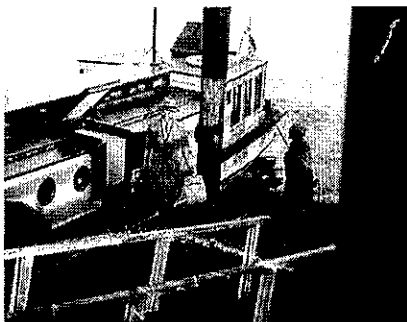
The Court disagreed with Carroll. The Court asserted this search was permissible because, although there is some privacy expectation in cars, the fact that a car can be moved lowers the expectation and creates a need to allow the police to search without a warrant. In the time it would take the police to get a warrant, the car could be driven off and any evidence lost.

Focus Questions

Think about these questions after reading the case study:

1. How does the 4th Amendment regulate police or government activities in this scenario?
2. Did this ruling surprise you? Why or why not?

Case Study #2: *Olmstead v. United States* (1928)



Property of Museum of History & Industry, Seattle

Facts:

Olmstead was running a major bootlegging operation off the coast of Seattle during Prohibition. Olmstead would often use new technology—phones—to communicate information about incoming shipments and distribution. Police used wiretaps to listen in to Olmstead’s conversations, and taped hours of chatter. Olmstead knew he was being taped, but did not fear prosecution. When he was indicted in 1925 for violating the Volstead Act, Olmstead argued that the wiretapping of his phone violated his Fourth Amendment right to be protected against illegal searches and seizures because police did not have a warrant.

Decision:

The Court disagreed with Olmstead. Former President and Chief Justice William Howard Taft issued the opinion: “The language of the Amendment can not be extended and expanded to include telephone wires reaching to the whole world from the defendant’s house or office. The intervening wires are not part of his house or office any more than are the highways along which they are stretched.” Taft added that Congress was free to protect telephone communication through legislation, but the courts could not do so without distorting the meaning of the Fourth Amendment. In the lengthiest and most noted dissent, Justice Brandeis asserted a general “right to be let alone” from government intrusion and argued that the purpose of the Fourth Amendment was to secure that right. In contrast to Taft and the Court’s majority, Brandeis found that “there is, in essence, no difference between the sealed letter and the private telephone message.” The protections of the Fourth Amendment, he said, did not apply solely to the medium familiar to the framers of the Constitution.

Focus Questions

Think about these questions after reading the case study:

1. How does the 4th Amendment regulate police or government activities in this scenario?
2. Did this ruling surprise you? Why or why not?

Case Study #3: *Katz v. United States* (1967)



Facts:

Katz used a public phone in LA to call other parts of the country to place illegal bets. Katz frequently used the same phone booth and the police set up an electronic listening/recording device in the booth without a warrant. The recordings of Katz's portion of the phone calls were used against him in his trial for illegal gambling. Katz claimed that the police use of the listening device violated his Fourth Amendment right. California claimed that Katz had no reasonable right to expect that his phone calls in a public phone booth would be private.

Decision:

The Court held that the Fourth Amendment did in fact apply in a public phone booth. According to the Court, the Fourth Amendment applies to *people* not *places*. In other words, if a person acts in a way that indicates that he or she expects privacy, and such an expectation is reasonable, then the Fourth Amendment will apply.

Focus Questions

Think about these questions after reading the case study:

1. How does the 4th Amendment regulate police or government activities in this scenario?
2. What do you think the legal "rule" is, as a result of this case?
3. Did this ruling surprise you? Why or why not?

Case Study #4: *United States v. Knotts* (1983)



Facts:

Minnesota law enforcement agents suspected that Armstrong was purchasing chloroform for the manufacture of illegal drugs. Police arranged with the chloroform manufacturer to have a radio transmitter, described as a “beeper,” placed within a drum of chloroform the next time Armstrong made a purchase. Police then followed Armstrong’s vehicle after the purchase, maintaining visual contact for

most of the journey. They followed Armstrong to a cabin, owned by Knotts. Police ultimately found Knotts’s cabin through use of the beeper. Following visual surveillance of Knotts’s cabin, the authorities acquired a warrant to search the premises, and used the evidence found therein—an apparent methamphetamine laboratory—to convict both Armstrong and Knotts. Knotts appealed the conviction, claiming the use of the beeper violated his Fourth Amendment rights.

Decision:

The Court unanimously ruled that use of the beeper did not violate Knotts’s Fourth Amendment rights. Monitoring the beeper signals did not invade any legitimate expectation of privacy on Knotts’s part, and thus there was neither a “search” nor a “seizure” within the Fourth Amendment. The beeper surveillance amounted to following an automobile on public streets and highways. A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements. The fact that the officers relied not only on visual surveillance, but also on the use of the beeper, does not alter the situation. Nothing in the Fourth Amendment prohibited the police from augmenting their sensory faculties with such enhancement as science and technology afforded them in this case. There is no indication that the beeper was used in any way to reveal information as to the movement of the chloroform container within the cabin, or in any way that would not have been visible to the naked eye from outside the cabin.

Focus Questions

Think about these questions after reading the case study:

1. How does the 4th Amendment regulate police or government activities in this scenario?
2. Did this ruling surprise you? Why or why not?

Case Study #5: *California v. Greenwood* (1988)



Facts:

The police received a tip that Greenwood was selling drugs out of his home. A police officer asked the trash collector who worked on Greenwood's street to set the trash bags from in front of Greenwood's home aside when collecting trash. The officer then went through the bags from in front of Greenwood's house and found evidence of

drug use. This evidence was then used to get a warrant to search Greenwood's home, where the police found drugs. Greenwood was charged with drug possession and drug trafficking. Greenwood argued that the warrantless search of his trash violated his Fourth Amendment rights.

Decision:

The Court upheld the search and subsequent warrant and arrest. According to the Supreme Court, there is no expectation of privacy in our trash. The Court focused on the fact that the trash was left on the side of the curb, where anyone can look at it and animals or scavengers could get into it. Because trash is knowingly exposed to the public, the Court said there was no role for the Fourth Amendment to play here.

Focus Questions

Think about these questions after reading the case study:

1. How does the 4th Amendment regulate police or government activities in this scenario?
2. Did this ruling surprise you? Why or why not?

Case Study #6: *Florida v. Riley* (1989)



Facts:

A Florida county sheriff received a tip that Riley was growing marijuana on his five acres of rural property. Unable to see inside a greenhouse, which was behind the defendant's mobile home, the sheriff circled over the property at 400 feet, using a helicopter. The absence of two roof panels allowed the sheriff to see, with his naked eye, what appeared to be marijuana growing inside. A warrant was obtained and marijuana was found in the greenhouse. Riley argued

before the trial court that the aerial search violated his reasonable expectation of privacy under the Fourth Amendment.

Decision:

The Court concluded that Riley's expectation of privacy under these circumstances was *not* reasonable because the use of helicopters, flying at 400 feet or higher, is quite common in the United States. In particular, the airspace above Riley's greenhouse was indeed public, and anyone else flying overhead also could have seen inside. In other words, "Any member of the public could legally have been flying over Riley's property in a helicopter at the altitude of 400 feet and could have observed Riley's greenhouse. The police officer did no more."

The Court also took into consideration that the helicopter did not interfere with the normal use of the property: "As far as this record reveals, no intimate details connected with the use of the home or curtilage were observed, and there was no undue noise, no wind, no dust, or threat of injury. In these circumstances, there was no violation of the Fourth Amendment."

Focus Questions

Think about these questions after reading the case study:

1. How does the 4th Amendment regulate police or government activities in this scenario?
2. Did this ruling surprise you? Why or why not?

Case Study #7: *Kyllo v. United States* (2001)



Facts:

Government officials were suspicious that Kyllo was growing marijuana. They used thermal imaging equipment to scan Kyllo's home; the images showed the heat emanating from Kyllo's home was consistent with high-intensity lamps frequently used for in-door marijuana growing. This information was then used to obtain a warrant to search Kyllo's home where the police found growing marijuana. Kyllo was subsequently charged with violating federal drug laws. Kyllo asked

the trial court to throw out the evidence obtained as a result of the search on the basis that the use of the thermal-imaging equipment was a search under the Fourth Amendment and therefore required a warrant.

Decision:

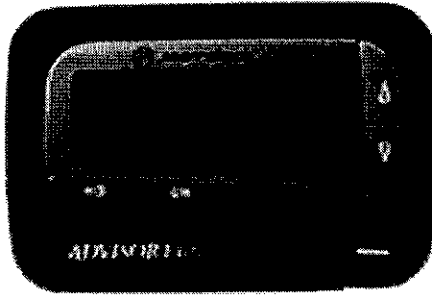
According to the Court, the use of the thermal-imaging equipment required a warrant. In coming to this decision, the Court consider that such equipment was not in general use by the public at large and permitted for surveillance that would have been impossible without a physical intrusion into the property. Because the government officials did not obtain a warrant before using the equipment on Kyllo's house, the search was inherently unreasonable and therefore inadmissible at trial.

Focus Questions

Think about these questions after reading the case study:

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2. Did this ruling surprise you? Why or why not?

Case Study #8: *City of Ontario v. Quon* (2010)



Facts:

Quon, an officer in the Ontario Police Department and member of its SWAT team, was assigned a pager that could send text messages. All Ontario officers with a pager were required to sign a statement that they understood they had no expectation of privacy in using city-issued equipment; officers were told that “light personal use” was permitted. After Quon exceeded the monthly limit for text messages, his lieutenant asked the provider for the transcripts to determine if more messages were needed for department business. The lieutenant learned that Quon had been texting his wife, mistress and friends and that some of the messages were very sexually explicit. Quon, his wife and his mistress filed a suit claiming the lieutenant’s actions violated their Fourth Amendment right to privacy.

Decision:

A unanimous Court ruled in favor of the City of Ontario. According to the Court, the government’s searching of Quon’s text messages was reasonable and did not violate the Fourth Amendment. In the Court’s opinion, the search of Quon’s pager was reasonable given its work-related purpose and was not excessive in scope.

Focus Questions

Think about these questions after reading the case study:

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2. Did this ruling surprise you? Why or why not?

Case Study #9: *U.S. v. Jones* (2012)



Facts:

Police began investigating Jones for cocaine trafficking. Agents conducted visual surveillance and installed a fixed camera near a nightclub owned by Jones. They also obtained pen register data showing phone numbers for outgoing phone calls from Jones’s cell phone. Agents also obtained a warrant to covertly install and monitor a

global positioning system (GPS) device on a Jeep used primarily by Jones, for up to 90 days. Agents installed the device one day after the warrant had expired, and while the Jeep was parked in a location not covered under the original warrant. Agents installed the GPS device without Jones’s knowledge or consent. It provided information about the vehicle’s location, not the driver or occupants. Agents collected more than 2,000 pages of GPS data over 28 days.

Agents used the device to track Jones’s Jeep in the vicinity of a suspected stash house. A grand jury charged Jones with conspiring to distribute cocaine and using a communications facility to facilitate a drug-trafficking offense. Prior to trial, Jones moved to suppress the data obtained from the GPS tracking device. The court suppressed data obtained while the Jeep was parked at Jones’s residence, but allowed GPS data obtained from the Jeep’s movement in public areas. A jury convicted Jones, sentencing him to life in prison and ordering him to pay back \$1,000,000 in proceeds from drug trafficking.

Decision:

The Supreme Court held that by placing the GPS device on the defendant’s car, the “Government physically occupied private property for the purpose of obtaining information,” which constituted a “search.” In concurring opinions, justices noted that GPS, in particular, allows for searches without physical intrusions, and provides opportunities for “unrestrained power to assemble data that reveal private aspects of identity,” which must be considered. Justice Sotomayor suggested that a *Katz* standard must be applied and asked whether a “reasonable person expects their movements to be recorded and aggregated” by authorities.

Focus Questions

Think about these questions after reading the case study:

1. How does the 4th Amendment regulate police or government activities in this scenario?
2. Did this ruling surprise you? Why or why not?

Case Study #10: *Florida v. Jardines* (2013)



Facts:

After receiving an anonymous tip that Jardines’s home was being used to grow marijuana, officers conducted a warrantless surveillance of Jardines’s home. During the surveillance, a drug detection dog named Franky sniffed the exterior of the home and alerted to a smell of marijuana at the front door. Based on this positive alert, among other indications of marijuana production, the officers were granted a search warrant. The search confirmed that the house was being used as a marijuana grow house and Jardines was charged with drug trafficking and grand theft for stealing electricity. Jardines moved to suppress evidence of the dog sniff outside his home by arguing that the sniff constituted an unreasonable search under the Fourth Amendment.

Decision:

The Supreme Court ruled that “the government’s use of trained police dogs to investigate the home and its immediate surroundings is a ‘search’ within the meaning of the Fourth Amendment.” The Court acknowledged the existence of an implicit license permitting visitors to “approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.” “Complying with the terms of that traditional invitation,” explained the Court, “does not require fine-grained legal knowledge; it is generally managed without incident by the Nation’s Girl Scouts and trick-or-treaters.” However, there is no implicit license to introduce “a trained police dog to explore the area around the home in hopes of discovering incriminating evidence.” Since the officers were able to learn that marijuana was being grown in the home only by “physically intruding on Jardines’ property to gather evidence,” the search was unconstitutional in the absence of a warrant.

Focus Questions

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2. Did this ruling surprise you? Why or why not?