



# How to Teach Search & Seizure


1.5 Hour Webinar  
Course Outline

Blue to Gold Law Enforcement Training  
1818 W. Francis Ave #101, Spokane Washington 99205  
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## Module One: Course Introduction – 10 minutes

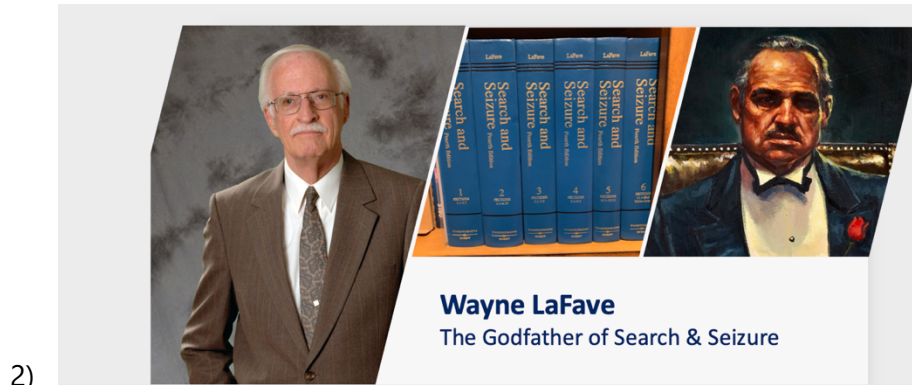
- 1) Instructor introduction.
- 2) Explain the course objective.
- 3) Encourage attendees to ask questions and share feedback with other attendees.
- 4) Explain that certificates will be emailed after the class.
- 5) Go over the three disclaimers:
  - a) Laws and agency standard operating procedures may be more restrictive. Blue to Gold is teaching the federal standard unless otherwise stated. Therefore, students must know their state and local requirements in addition to the federal standard.
  - b) If students have any doubts about their actions, ask a supervisor or legal advisor.
  - c) The course is not legal advice, but legal education. Therefore, nothing we teach should be interpreted as legal advice. Check with your agency's legal advisor for legal advice.

 Agenda	One	Aspire to be Confident, Not Cocky
	Two	Three Golden Rules
	Three	Fourth Amendment Analysis
	Four	Analogies and Analogies
	Five	Take-aways

## Module Two: Aspire to be Confident Not Cocky 15 minutes

- 1) 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 persons or things to be seized. **The Fourth Amendment**



Blue to Gold Law Enforcement Training  
Wayne LaFare

“LaFare has become the Fourth Amendment’s ‘patron saint.’”

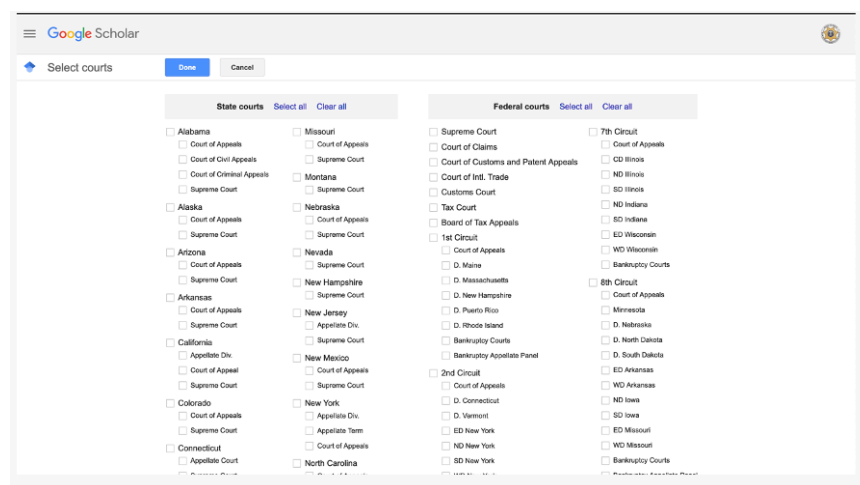
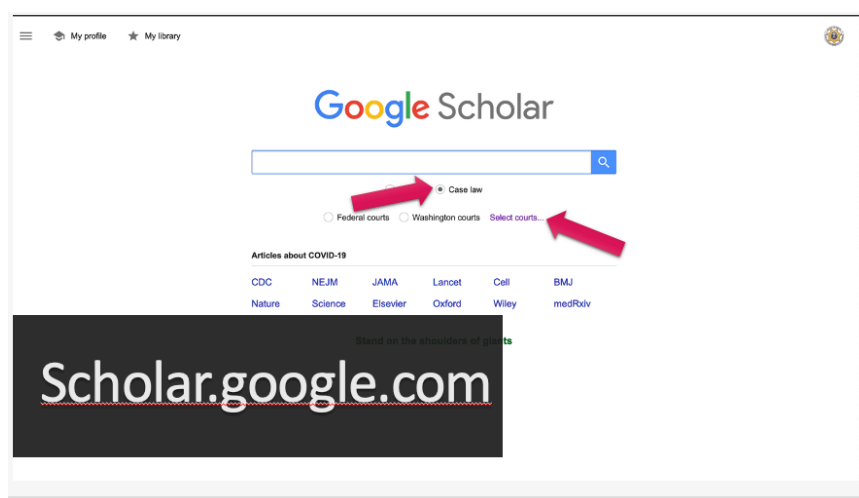


- 3) Legal Rule: It may take up to **10,000** hours of “**deliberate practice**” to become an **expert**.
- 4) **Pro Tip:** A search and seizure expert has three characteristics:
  - A. Constantly **reads case law**
  - B. Knows **facts matter**

C. Develops an intuition for “reasonableness”



5)



Google Scholar search results for "fernandez v california".

**Case law**

**Fernandez v. California**  
 134 S. Ct. 1126, 571 US 202, 188 L. Ed. 2d 25 - Supreme Court, 2014 - Google Scholar  
 The events involved in this case occurred in Los Angeles in October 2009. After observing Abel Lopez cash a check, petitioner Walter Fernandez approached Lopez and asked about the neighborhood in which he lived. When Lopez responded that he was from Mexico, Fernandez laughed and told Lopez that he was in territory ruled by the "DPS," i.e. the "Differents" gang. A.S. Petitioner then pulled out a knife and pointed it at Lopez' chest. Lopez raised his hand in self-defense, and petitioner cut him on the wrist ... Lopez ran from the scene and called 911 for help, but petitioner ...  
 ☆ Cited by 415 How cited Related articles All 2 versions

**Fernandez v. California**  
 133 S.Ct. 2887 (2013). Walker FERNANDEZ, petitioner, v. CALIFORNIA. No. 12-7822. Supreme Court of United States, June 27, 2013. Motion of petitioner for appointment of counsel granted. Gerald P. Peters, Esquire, of Thousand Oaks, California, is appointed to serve as counsel for the petitioner in this case.  
 ☆ Cited by 1 How cited Related articles All 2 versions

**Fernandez v. California**  
 133 S.Ct. 2388 (2013). Walker FERNANDEZ, petitioner, v. CALIFORNIA. No. 12-7822. Supreme Court of United States, May 20, 2013. Motion of petitioner for leave to proceed in forma pauperis granted. Petition for writ of certiorari to the Court of Appeal of California, Second Appellate District, granted.  
 ☆ All 2 versions

**Fernandez v. California**  
 134 S. Ct. 900 - Supreme Court, 2013 - Google Scholar  
 134 S.Ct. 500 (2013). Walter FERNANDEZ, petitioner, v. CALIFORNIA. No. 12-7822. Supreme Court of United States, October 21, 2013. Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument granted.  
 ☆ All 2 versions

Showing the best results for this search. See all results

**"search term"**

Force an exact-match search. Use this to refine results for ambiguous searches, or to exclude synonyms when searching for single words.

**Example: "steve jobs"**

**OR**

Search for X or Y. This will return results related to X or Y, or both. **Note:** The pipe (|) operator can also be used in place of "OR."

**Examples: jobs OR gates / jobs | gates**

**AND**

Search for X and Y. This will return only results related to both X and Y. **Note:** It doesn't really make much difference for regular searches, as Google defaults to "AND" anyway. But it's very useful when paired with other operators.

**Example: jobs AND gates**

**-**

Exclude a term or phrase. In our example, any pages returned will be related to jobs but *not* Apple (the company).

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**Fernandez v. California**  
 Supreme Court of the United States - February 25, 2014 - 571 U.S. 292 - 134 S.Ct. 1126 - 188 L.Ed.2d 25 - See All Citations (Approx. 30 pages)

Document Filings (10) Negative Treatment (7) History (10) Citing References (774) Table of Authorities Powered by KeyCite

Synopsis

West Headnotes

Syllabus

Attorneys and Law Firms

2 Searches and Seizures

A warrant is generally required for a search of a home, but the ultimate touchstone of the Fourth Amendment is reasonableness. U.S.C.A. Const.Amend. 4.

37 Cases that cite this headnote

349 Searches and Seizures In General

349I Fourth Amendment and reasonableness in general

349 Searches and Seizures In General

349I25 Persons, Places and Things Protected

349K25.1 In general

3 Searches and Seizures

349 Searches and

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**Fernandez v. California**  
 Supreme Court of the United States · February 25, 2014 · 571 U.S. 292 · 134 S.Ct. 1126 · 188 L.Ed.2d 25 · See All Citations (Approx. 30 pages)

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5 **Searches and Seizures**  
 The consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared. U.S.C.A. Const.Amend. 4.  
 24 Cases that cite this headnote

6 **Searches and Seizures**  
 Police could conduct warrantless search of defendant's apartment following defendant's arrest based on consent to the search by a woman who also occupied the apartment, although defendant had objected to the search prior to his arrest and was absent at the time of the woman's consent because of his arrest, where police had reasonable grounds for removing defendant from the apartment so that they could speak with the woman, an apparent victim of domestic violence, outside of defendant's potentially intimidating presence, and had probable cause to place defendant under arrest for robbery; abrogating *United States v. Murphy*, 516 F.3d 1117, U.S.C.A. Const.Amend. 4.

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**Fernandez v. California**  
 Supreme Court of the United States · February 25, 2014 · 571 U.S. 292 · 134 S.Ct. 1126 · 188 L.Ed.2d 25 · See All Citations (Approx. 22 pages)

Document Filings (10) Negative Treatment (7) History (10) **Citing References (774)** Table of Authorities

KeyCite Citing References (774) 1-50 > Sort By: Depth: Highest First

Content types	Count
Cases	269
Trial Court Orders	1
Secondary Sources	204
Appellate Court Documents	230
Trial Court Documents	70
<b>All Results</b>	<b>774</b>

Treatment	Title	Date	Type	Depth	Headnote(s)
Distinguished by	1. U.S. v. Peyton ¶ 745 F.3d 546, 556n, 409 U.S.App.D.C. 26, 36*, D.C.Cir., (NO. 10-3099)	Mar. 21, 2014	Case	8	12 S.C.L.
Examined by	2. United States v. Howard ¶ — Fed Appx. —, 2020 WL 1244121, *5n, 6th Cir.(Tenn.), (NO. 19-5522)	Mar. 16, 2020	Case	7	8



- 6)
- 7) **Pro Tip:** The goal is to understand the **facts** and the **reason** why the court made its decision – **don't get stuck in the weeds.**

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Justia > US Law > US Case Law > US Supreme Court > Volume 571 > Fernandez v. California

## Fernandez v. California, 571 U.S. 292 (2014)

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Syllabus Opinion Concurrence (Thomas) Concurrence Dissent

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8)

**JUSTIA** US Supreme Court

Fernandez v. California, 571 U.S. 292 (2014)

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Syllabus Opinion Concurrence (Thomas) Concurrence Dissent

on writ of certiorari to the court of appeal of california for the second appellate district

[February 25, 2014]

Justice Alito delivered the opinion of the Court.

Our cases firmly establish that police officers may search jointly occupied premises if one of the occupants<sup>[1]</sup> consents. See *United States v. Matlock*, 415 U.S. 164 (1974); in *Georgia v. Randolph*, 547 U.S. 103 (2006), we recognized a narrow exception to this rule, holding that the consent of one occupant is insufficient when another occupant is present and objects to the search. In this case, we consider whether *Randolph* applies if the objecting occupant is absent when another occupant consents. Our opinion in *Randolph* took great pains to emphasize that its holding was limited to situations in which the objecting occupant is physically present. We therefore refuse to extend *Randolph* to the very different situation in this case, where consent was provided by an abused woman well after her male partner had been removed from the apartment they shared.

I

A

The events involved in this case occurred in Los Angeles in October 2009. After observing Abel Lopez cash a check, petitioner Walter Fernandez approached Lopez and asked about the neighborhood in which he lived. When Lopez responded that he was from Mexico, Fernandez laughed and told Lopez that he was in territory ruled by the “D.F.S.,” i.e., the “Drifters” gang. App. 4–5. Petitioner then pulled out a knife and

Contributors

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Mountain View, CA

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**JUSTIA** US Supreme Court

Fernandez v. California, 571 U.S. 292 (2014)

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Syllabus Opinion Concurrence (Thomas) Concurrence Dissent

B

Petitioner was charged with robbery, Cal. Penal Code Ann. §211 (West 2008), infliction of corporal injury on a spouse, cohabitant, or child’s parent, §273.5(a), possession of a firearm by a felon, §12021(a)(1)(West 2009), possession of a short-barreled shotgun, §12020(a)(1), and felony possession of ammunition, §12316(b)(1).

Before trial, petitioner moved to suppress the evidence found in the apartment, but after a hearing, the court denied the motion. Petitioner then pleaded nolo contendere to the firearms and ammunition charges. On the remaining counts—for robbery and infliction of corporal injury—he went to trial and was found guilty by a jury. The court sentenced him to 14 years of imprisonment.

The California Court of Appeal affirmed. 208 Cal. App. 4th 100, 145 Cal. Rptr. 3d 51 (2012). Because *Randolph* did not overturn our prior decisions recognizing that an occupant may give effective consent to a shared residence, the court agreed with the majority of the federal circuits that an objecting occupant’s physical presence is “indispensable to the decision in *Randolph*.” *Id.*, at 122, 145 Cal. Rptr. 3d, at 66.[3] And because petitioner was not present when Rojas consented, the court held that petitioner’s suppression motion had been properly denied. *Id.*, at 121, 145 Cal. Rptr. 3d, at 65.

The California Supreme Court denied the petition for review, and we granted certiorari. 569 U.S. \_\_\_ (2013).

II

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**Fernandez v. California, 571 U.S. 292 (2014)**

Syllabus **Opinion** Concurrency (Thomas) Concurrency Dissent

the objecting occupant in every situation other than the one mentioned in the dictum discussed above.

**B**

This brings us to petitioner's second argument, viz., that his objection, made at the threshold of the premises that the police wanted to search, remained effective until he changed his mind and withdrew his objection. This argument is inconsistent with Randolph's reasoning in at least two important ways. First, the argument cannot be squared with the "widely shared social expectations" or "customary social usage" upon which the Randolph holding was based. See 547 U. S., at 111, 121. Explaining why consent by one occupant could not override an objection by a physically present occupant, the Randolph Court stated:

[I]t is fair to say that a caller standing at the door of shared premises would have no confidence that one occupant's invitation was a sufficiently good reason to enter when a fellow tenant stood there saying "stay out." Without some very good reason, no sensible person would go inside under those conditions." Id., at 113.

It seems obvious that the calculus of this hypothetical caller would likely be quite different if the objecting tenant was not standing at the door. When the objecting occupant is standing at the threshold saying "stay out," a friend or visitor invited to enter by another occupant can expect at best an uncomfortable scene and at worst violence if he or she tries to brush past the objector. But when the objector is not on the scene (and especially when it is known that the objector will not return during the course of the visit), the friend or visitor is much more likely to accept the invitation to enter.[5] Thus, petitioner's argument is inconsistent with Randolph's reasoning.

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**Fernandez v. California, 571 U.S. 292 (2014)**

Syllabus **Opinion** Concurrency (Thomas) Concurrency Dissent

should have the right to invite the police to enter the dwelling and conduct a search. Any other rule would trample on the rights of the occupant who is willing to consent. Such an occupant may want the police to search in order to dispel "suspicion raised by sharing quarters with a criminal." 547 U. S., at 116; see also Schneckloth, 412 U. S., at 243 (evidence obtained pursuant to a consent search "may insure that a wholly innocent person is not wrongly charged with a criminal offense"). And an occupant may want the police to conduct a thorough search so that any dangerous contraband can be found and removed. In this case, for example, the search resulted in the discovery and removal of a sawed-off shotgun to which Rojas' 4-year-old son had access.

Denying someone in Rojas' position the right to allow the police to enter her home would also show disrespect for her independence. Having beaten Rojas, petitioner would bar her from controlling access to her own home until such time as he chose to relent. The Fourth Amendment does not give him that power.

\* \* \*

The judgment of the California Court of Appeal is affirmed.

It is so ordered.

**Notes**

1 We use the terms "occupant," "resident," and "tenant" interchangeably to refer to persons having "common authority" over premises within the meaning of . See v. .

2 Both petitioner and the dissent suggest that Rojas' consent was coerced. , at 9, n. 5 (opinion of J. But the trial court found otherwise. Ann. 162 and the correctness of that finding is not before us. In connection that

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**Fernandez v. California**

**MEDIA**

- ORAL ARGUMENT - NOVEMBER 13, 2013
- OPINION ANNOUNCEMENT - FEBRUARY 25, 2014

**PETITIONER**  
Walter Fernandez

**RESPONDENT**  
California

**LOCATION**  
Superior Court of Los Angeles County

**DOCKET NO.**  
12-7822

**DECIDED BY**  
Roberts Court

**ADVOCATES**

Jeffrey L. Fisher  
for the petitioner

Louis W. Karlin  
for the respondent

Joseph R. Palmore  
Assistant to the Solicitor General, Department of Justice, for the United States as amicus curiae supporting the respondent.

**Oyez.org**

DISSENTING OPINION



Oyez LII Supreme Court Resources Justia Supreme Court Center

# Oyez

CASES JUSTICES ARGUMENT 2.0 NEWS

## Fernandez v. California

**MEDIA**

- ORAL ARGUMENT - NOVEMBER 13, 2013
- OPINION ANNOUNCEMENT - FEBRUARY 25, 2014

**OPINIONS**

- SYLLABUS
- OPINION OF THE COURT
- CONCURRING OPINION
- DISSENTING OPINION

<b>PETITIONER</b> Walter Fernandez	<b>RESPONDENT</b> California
<b>LOCATION</b> Superior Court of Los Angeles County	
<b>DOCKET NO.</b> 12-7822	<b>DECIDED BY</b> Roberts Court
<b>CITATION</b> 571 US 392 (2014)	<b>ADVOCATES</b> Jeffrey L. Fisher for the petitioner
<b>GRANTED</b> May 20, 2013	Louis W. Karlin for the respondent
<b>ARGUED</b> Nov 13, 2013	Joseph R. Palmore Assistant to the Solicitor General, Department of Justice, for the United States as amicus curiae supporting the respondent

## California

Walter Fernandez California

**MEDIA**

- ORAL ARGUMENT - NOVEMBER 13, 2013
- OPINION ANNOUNCEMENT - FEBRUARY 25, 2014

**OPINIONS**

- SYLLABUS
- OPINION OF THE COURT
- CONCURRING OPINION
- DISSENTING OPINION

The doctrine of third-party consent is best understood as establishing a rebuttable presumption.

When the police arrive at a house at which multiple people live, they can assume, according to social custom, that if one person grants consent to enter, that person is speaking for everybody who lives in the dwelling.

But when somebody is present and tells the police officer that he refuses consent, that presumption is reversed.

Then when the police full well know that one person doesn't have a delegated authority to speak for the others, they must respect the objection.

And a failure to do so violates the Fourth Amendment.

In other words, Matlock already gives the police all of the benefit of the doubt.

Even when people are nearby and have a -- might have an interest in objecting, the police can assume, as this put -- as this Court put it in Randolph, that asking that other person wouldn't make a difference very often, and therefore, they can presume that they would also consent to the search.

So all we're --

Stephen G. Breyer

### Facts of the case

On October 12, 2009, Abel Lopez was attacked and robbed by a man he later identified as Walter Fernandez. Lopez managed to call 911, and a few minutes after the attack, police and paramedics arrived on the scene. Detectives investigated a nearby alley that was a known gang location where two witnesses told them that the suspect was in an apartment in a house just off the alley. The detectives knocked on the door of the indicated apartment, and Roxanne Rojas answered. The detectives requested to enter and conduct a search, at which point Walter Fernandez stepped forward and refused the detectives entry. They arrested Fernandez and took him into custody. Police officers secured the apartment, informed Rojas that Fernandez had been arrested in connection with a robbery, and requested to search the apartment. Rojas consented to the search verbally and in writing. During the search, officers found gang paraphernalia, a knife, and a gun.










At trial, the defendant moved to suppress the evidence seized in the warrantless search, and the trial court denied the motion. The jury found Fernandez guilty on the robbery charge, and he did not contest the charges for possession of firearms and ammunition. On appeal, the defendant argued that the trial court improperly denied his motion to suppress. The California Court of Appeal for the Second District affirmed and held that the warrantless search was lawful because a co-tenant consented.

**Question**  
Does the Fourth Amendment prohibit warrantless searches when the defendant has previously objected but is no longer present and the co-tenant consents?

**Conclusion**  
Sort: [by seniority](#) | [by ideology](#)

6-3 DECISION FOR CALIFORNIA  
MAJORITY OPINION BY SAMUEL A. ALITO, JR.

The Fourth Amendment does not prohibit warrantless searches where a co-tenant consents to the search even where the defendant has previously objected.










No. Justice Samuel A. Alito, Jr. delivered the opinion for the 6-3 majority. The Supreme Court held that, although a warrant is generally required for a search of a home, the ultimate touchstone of the Fourth Amendment is whether the search was reasonable. Although warrantless searches are unreasonable when two co-tenants are present and one objects to the search, the Court has held that the same search is reasonable when the objecting tenant leaves. In this case, because the objecting tenant was arrested and no longer present, the Court held that the search was reasonable because the consenting tenant had the authority to allow the police into her home.

**Question**  
Does the Fourth Amendment prohibit warrantless searches when the defendant has previously objected but is no longer present and the co-tenant consents?

**Conclusion**  
Sort: [by seniority](#) | [by ideology](#)

6-3 DECISION FOR CALIFORNIA  
MAJORITY OPINION BY SAMUEL A. ALITO, JR.

The Fourth Amendment does not prohibit warrantless searches where a co-tenant consents to the search even where the defendant has previously objected.

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### Module Three: Three Golden Rules 15 minutes

- 1) **Pro Tip:** These Golden Rules are intended to help cops stay out of trouble and make good case law  
**Teach them every time!**
- 2) **Rule One:** The more you articulate why you did something, the more likely it will be upheld in court.
- 3) **Rule Two:** The more serious the crime, the more reasonable your actions are likely to be viewed.
- 4) **Rule Three:** Conduct all warrantless searches and seizure in the same manner as if you had a warrant.

### Module Four: Fourth Amendment Analysis 15 minutes

- 1) **Question One:** Who did the search or seizure?

- 2) **Legal Rule:** Teach students that **private searches are not government searches** and evidence can be used even if it would have violated the Fourth Amendment

Advanced Search & Seizure 2020  
How to Teach Search & Seizure

### When does a private search become a government search?

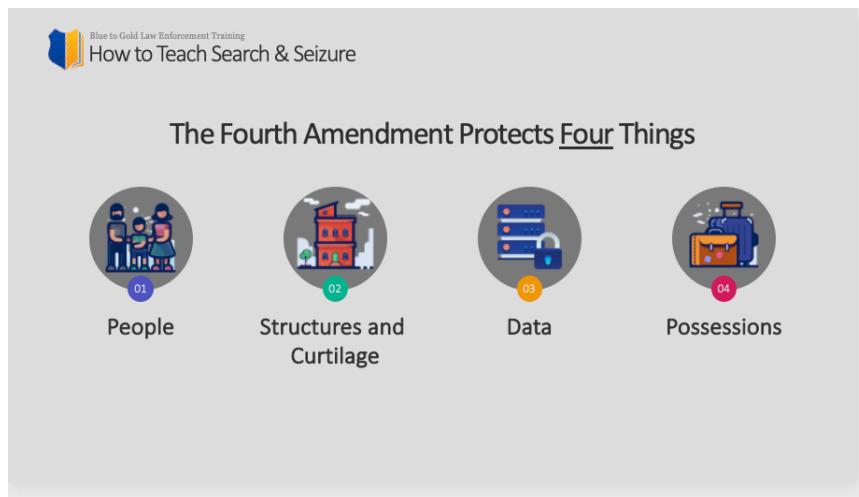
The diagram illustrates the criteria for a government search. It features three main components arranged horizontally. On the left is an icon of a police officer in a blue uniform and cap, enclosed in a blue dashed square frame. Below this icon is the text: "Police direct, participate, or encourage the activity". In the center is a black plus sign (+) enclosed in a green dashed square frame. Below this is the text: "Plus". On the right is an icon of a man in a white shirt and blue tie, enclosed in a red dashed square frame. Below this icon is the text: "Person is acting on behalf of police".

49

- 3)
- 4) **Casino security illegally searched patron and found cocaine. Admissible?** Requirements of Casino Control Act that casino establish detailed security procedure did not establish "state action" such as rendered illegal search of defendant and seizure from him of cocaine, even though defendant, who was suspected by casino personnel of being card counter, was unlawfully ejected from casino premises after being unlawfully taken to casino holding room and searched. (State v. Sanders)
- 5) **Case Sample:** The facts are culled from the testimony elicited at the suppression hearing. Florida resident Jasmine Hanson was staying at the Crystal Inn motel in Neptune City, New Jersey. She called the front desk to complain she had been bitten by bed bugs and demanded a full refund. She was referred to the motel's owner. Later that afternoon, the motel owner inspected Hanson's room. When no one answered his knocks, he entered her room using his pass key. In search of bed bugs, the motel owner pulled a bed comforter down, revealing a plastic bag containing what he suspected were narcotics. The motel owner called the police and reported his suspicion. Upon his arrival, Officer Jason Rademacher had the motel owner lead him to Hanson's room where, again using his pass key, the motel owner unlocked the door for the officer to enter. Inside, Rademacher saw a clear plastic bag containing what appeared to him to be two other clear plastic bags of crack cocaine and several small

glassine bags of heroin. Nearby, the officer saw a jar of what he suspected was synthetic marijuana on the nightstand and a glass measuring cup containing a spoon and a white, rock-like substance in a drawer. Next to the measuring cup was a black scale dusted with a white powder. Rademacher contacted his supervisor, who sent Sergeant William Kirchner to the motel as backup. The officer requested a criminal history check on Hanson. It revealed an outstanding traffic warrant and a recently issued traffic summons on a 2012 black Chevrolet Tahoe, and its plate number. Rademacher collected all the drug evidence and photographed Hanson's motel room. (State v. Shaw)

- 6) **Question Two:** Was it a protected area?
- 7) **Legal Rule:** Teach students that the Fourth Amendment protects certain **people, things, and places**. Two big exceptions are open fields and abandoned property.



- 8)
- 9) **Content:** A person's body and their clothes is highly protected, and police must use caution before going "hand's on." Illegal persons, in general, receive the same protections, especially during typical police confrontations.  
**Key points:** Person's include their bodies and clothes.  
**Content:** Houses includes apartments, hotel rooms, garages, business offices, and warehouses.  
**Key points:** Almost every physical structure, unless abandoned, is protected by the Fourth. Activity that is "private, "intimate," or "familial" is more protected than commercial areas.  
**Content:** Effects include automobiles, cell phones, luggage and so forth. It includes most personal property but not every

piece of real property. For example, not all real estate is covered by the Fourth or property that is disclosed "to the world."

**Key points:** The Fourth covers effects, but usually only those where the person has a reasonable expectation of privacy.

- 10) **Pro Tip:** Essentially everything has some Fourth Amendment protection **except abandoned property and open fields**
- 11) **Question Three:** Did a search and seizure occur?
- 12) **Legal Rule:** Teach students the **two types** of searches under the Fourth Amendment.

Blue to Gold Law Enforcement Training  
What is a Search?

“ The term “search” is said to imply some exploratory investigation, invasion, quest, looking for or seeking out. A search implies some **sort of force**. Implies a prying into hidden places for that which is concealed or hidden.

Though searching relies mostly on sight, the mere looking at that which is **open to view is not a Fourth Amendment search**.

A Fourth Amendment search involves a **protected area**...if not it's not a “search.”

13)

Blue to Gold Law Enforcement Training  
How to Teach Search & Seizure

### Two Searches



Reasonable expectation of privacy



Trespass into a protected area

14)



15)

United States v. Jones, 565 U.S. 400, was a landmark United States Supreme Court case which held that installing a Global Positioning System tracking device on a vehicle and using the device to monitor the vehicle's movements constitutes a search under the Fourth Amendment.

- 16) **What would you do?** If police fly a drone above a public park and see a stolen car in someone's backyard, does this violate privacy?
- 17) **What would you do?** If police fly a drone above a public park and use magnification to see inside a kitchen window and see contraband, does this violate privacy?
- 18) **Case Sample:** United States v. Jones, 565 U.S. 400, was a landmark United States Supreme Court case which held that installing a Global Positioning System tracking device on a vehicle and using the device to monitor the vehicle's movements constitutes a search under the Fourth Amendment.

## Two Requirements



Police touch or enter  
a protected area



Plus



They have an intent  
to gather information

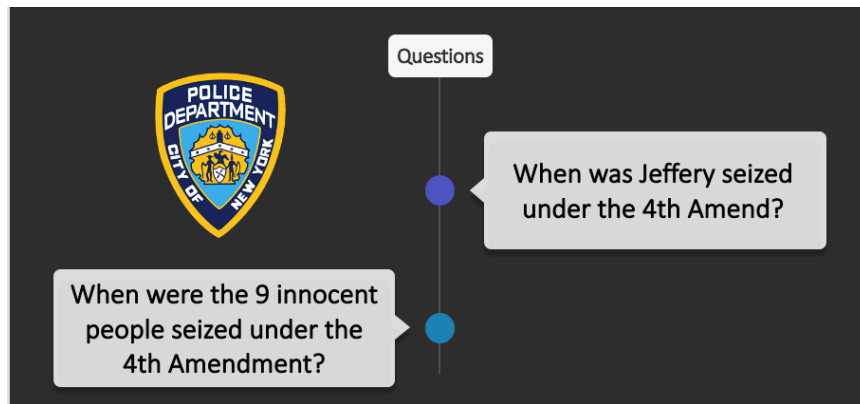
19)

20) **Case Sample: "The Wobbling Tire"** United States v. Richmond 5th Cir. February 8, 2019 In the first Broadcast BLUE podcast of the 2019 season, retired FLETC Senior Legal Instructor Bruce-Alan Barnard summarizes and analyzes the case US v Richmond. This is a significant decision because it applies the definition of a search established by the Supreme Court in *United States v. Jones* (Jan 2012) to an automobile on the side of a highway. Jennifer Lynn Richmond from Tucson, AZ 15 pounds of heroin, 61 pounds of meth worth 7 million.

21) **Legal Rule:** Physical seizure occurs when you prevent someone's freedom. Your intentions do matter! Accidental seizures may result in civil liability, but not a constitutional violation.

22) **Video: "Empire State Building Shooting". Synopsis:** On Friday, August 24, 2012, at approximately 9:03 a.m. EDT, at the 33<sup>rd</sup> Street side of the Empire State Building, Jeffrey Johnson, a clothing designer who had been laid off, emerged from hiding behind a van, pointed a .45-caliber semiautomatic handgun at a former co-worker's head, and fired one round. Once the victim fell to the ground, Johnson stood over him and fired at him four more times, killing him. A coworker of the victim said she witnessed Johnson walk up to him and pull a gun out of his jacket. After the shooting, Johnson concealed the handgun in a briefcase he was carrying, while pedestrians in the vicinity of the site of the shooting screamed and panicked. A construction worker followed him east on 33rd Street then north on Fifth Street and alerted police officers who were stationed in front of the Empire State Building's Fifth Avenue entrance. When confronted by the two officers, Johnson raised his weapon, but

did not fire. The officers fired with a total of 16 rounds, killing Johnson and injuring nine bystanders, none of whom suffered life-threatening wounds. Three of the bystanders were directly hit by police gunfire, while the rest of the injuries were caused by fragments of ricocheting bullets, or by debris from other objects hit by police. Johnson's handgun, which held eight rounds, still had two rounds remaining when he was shot, and extra ammunition was found inside his briefcase. A witness said people at the scene were shouting, "Get down! Get down!" and that the gunfire lasted about fifteen seconds. The victims, five women and four men ranging in age from 20 to 43, were hospitalized at Bellevue Hospital Center, and New York-Presbyterian Hospital/Weill Cornell Medical Center. By Friday evening, six of the nine were treated and released from the hospitals.



23)

24) **Question Four:** Do you have C.R.E.W.?

25) **Legal Rule:** Finally, students must understand that if their actions implicate the Fourth Amendment, they need a reason! No exceptions.

26) **Pro Tip:** "That's the way I was trained," "I've always done it that way," "I did it as a best-practice," and "I did it for officer safety" are **NOT** Fourth Amendment exceptions!



C  
Consent

R  
Recognized

E  
Exception

W  
Warrant

Every Search & Seizure Requires C.R.E.W.  
There are no exceptions!

27)

C  
Can't

R  
Really

E  
Explain

W  
Why

Not "Can't Really Explain Why"

28)

Border Searches

Consent

Hot & Fresh Pursuit

Community Caretaking

Terry Stops

Highly Regulated Biz

VIN Inspections

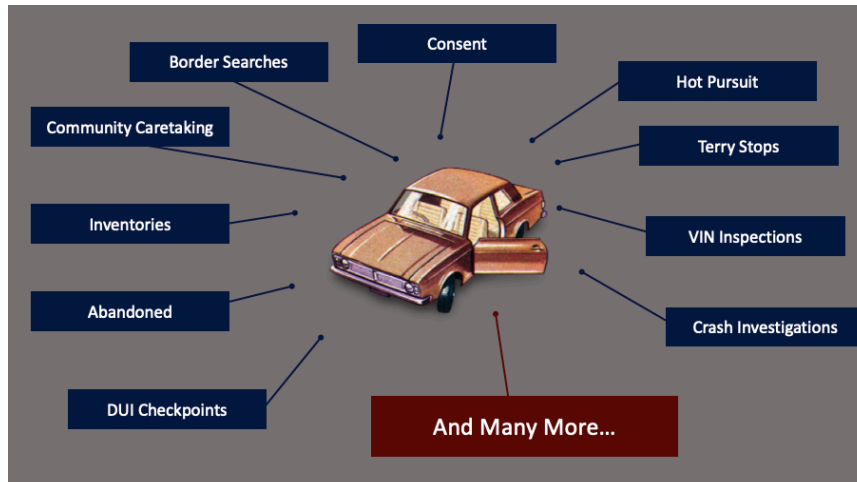
Government Employee

Origin of Fire Search

DUI Checkpoints

And Many More...


29)



30) **Pro Tip:** Teach **doctrines**, not updates

### Module Five Analogs 15 minutes

1) **Legal Rule:** The Fourth Amendment sets the **floor**, state constitutions and statutes are sometimes **more restrictive**



California courts closely follow federal search and seizure standards

- Victim's Bill of Rights -

2)



Though similar, New Jersey courts interpret the state constitution in a way that is much stricter against warrantless searches and seizures.

- New Jersey Constitution Article I, Section 7 -



Although Maryland is free to interpret Art. 26 in a manner that is stricter than the Fourth Amendment, it has rarely done so.

- Doe v. Dep't of Pub. Safety & Corr. Servs. (2013) -



Though similar, Pennsylvania courts interpret the state constitution in a way that is much stricter against warrantless searches and seizures.

- Commonwealth v. Brown (2010) -

3) **Pro Tip:** Students should understand **both** standards

**Module Six: Thinking Through Analogies 15 minutes**

1)

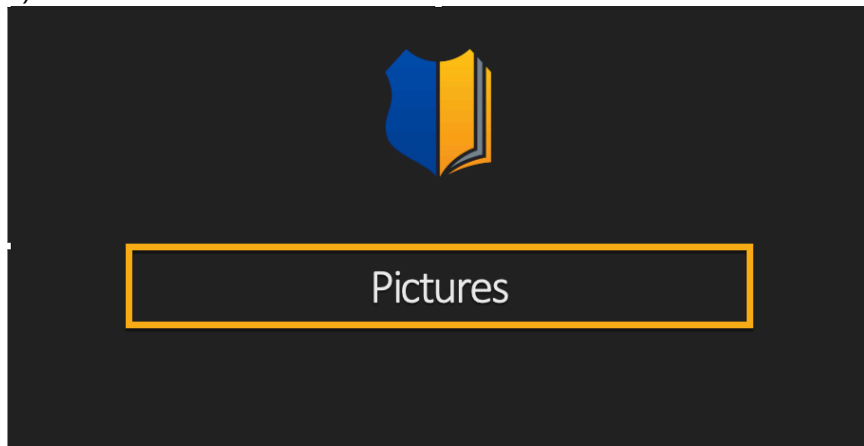


## Phrases





2)



3)



On the evening of March 27, 2012, Dennys Rodriguez was stopped by a police officer on a highway near Waterloo, Nebraska, after the officer observed him swerve out of his lane of traffic.[11] When the officer approached the vehicle, he reported an "overwhelming" scent of air-fresheners emanating from the car. After questioning

Rodriguez and another passenger in the car, the officer placed a call for backup and conducted a records check on the vehicle's passenger. The officer handed a warning ticket to Rodriguez, and then proceeded to walk Floyd, his drug detection dog, around the outside of Rodriguez's vehicle. When the dog indicated the presence of drugs, the officer searched the car and discovered methamphetamine inside the vehicle. The officer reported that approximately seven or eight minutes passed between the time he issued the warning ticket to the time at which the dog indicated the presence of drugs

4)



On the tragic morning of January 1, 2002, Elvira Charley shot three of her six children to death with a .22 caliber semi-automatic rifle, as they slept in the Charley family home located on the Navajo Indian Reservation in Klagehoh, Arizona. When the children were dead, Charley covered their bodies with blankets and went to the home of her aunt, Minnie Begay. After visiting with the Begay's for more than an hour, Charley left, telling those present that she was going home to "check on her kids."

Charley later returned to the Begay residence with one of her remaining children, and then left again to make phone calls. She first called her estranged husband and told him that she had shot their three older children. After hanging up with her husband, Charley called the police dispatcher and asked for police assistance because, as she said, she had "done something bad." She gave the dispatcher directions to the Begay residence and asked the dispatcher to send someone quickly.

Charley then went back to the Begay residence and gave her children's birth certificates to one of her cousins saying, "take care of my kids, here [is] all the information you need." Charley did not

explain why she needed someone to care for her children. When the police arrived, Charley began hugging her relatives, saying, "I'm sorry ... I wasn't strong enough."

Sergeant Wallace Billie and Peter Lincoln, an Emergency Medical Technician ("EMT") from the local fire department, were among the government officers dispatched to the Begay residence. Upon his arrival at the Begay home, Sergeant Billie observed Charley crying and hugging another female. Charley then handed Sergeant Billie the keys to her house, stating "that she'd done something very bad, and that she needed [Sergeant Billie] to check on her children." Charley also told Sergeant Billie that he was "going to have to put [her] away for a long time."

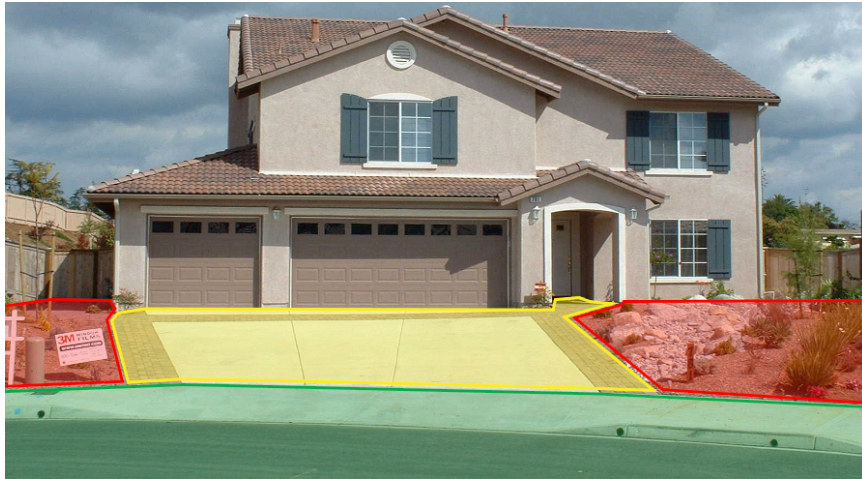
Several of Charley's relatives who were present at the Begay residence began asking Sergeant Billie what was going on. Sergeant Billie asked EMT Lincoln to escort Charley from the house so that Sergeant Billie could talk to Charley's relatives and explain what was happening.

While waiting for Sergeant Billie outside the Begay residence, Charley initiated a conversation with EMT Lincoln, whom she had known in a personal capacity for about twenty years. Charley addressed EMT Lincoln as "Peter" and volunteered that she had done "something very bad." Charley further told EMT Lincoln that she had killed her children and that the bodies were still at her house.

When Sergeant Billie came out to his patrol car, he told Charley, "You're not under arrest. You're being detained. I need to take you to your house and find out what's going on." She replied, "You're going to have to take me away for a long time." Sergeant Billie placed Charley in the patrol car, and she gave him directions to her house. When Sergeant Billie asked for permission to enter Charley's house, Charley responded, "Yes," urging him to hurry because the children were inside.

After finding the lifeless bodies of three of Charley's children inside the house, Sergeant Billie secured the scene, and proceeded to question Charley as she sat in his patrol car. The district court found that Charley received Miranda warnings before the interrogation began and that Charley "knowingly and voluntarily waived her rights and made statements" to Sergeant Billie.

5)



*State v. Waldschmidt, rev. denied* 242 Kan. 905 (1987), the Kansas Court of Appeals held that a fenced back yard was within the curtilage. In that case, the court noted the yard was behind and immediately adjacent to the residence and was surrounded by a six-foot high wooden privacy fence which obstructed the view of the yard. The court found the fence was of the type used for intimate family activities and by erecting it, the defendant exhibited a subjective expectation of privacy that society will protect as reasonable. Thus, when a law enforcement officer scaled the fence, placed his arm and flashlight over the fence, and observed marijuana plants, the court suppressed the plants as the product of an unconstitutional warrantless search.

Where defendant's residence was located one-eighth mile from the public road, along a private drive, and house and yard were enclosed in part by a stone wall with a wire gate, the yard area was protected from unreasonable searches and seizures and warrantless seizure of spent rifle shell from the yard the day after defendant's husband was shot in the yard was unreasonable; seriousness of the homicide investigation did not create exigent circumstances.

6) **Videos**

**Module Seven Takeaways – 5 minutes**



## Major Takeaways



Teach the Golden Rules



All Searches & Seizures Require C.R.E.W.



Let B2G Help Make You an Expert

1)

112

End of class.