"Don't Bother Knockin' ... Come On In!:" The Constitutionality of Warrantless Searches as a Condition of Probation

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NOTES

“DON'T BOTHER KNOCKIN'... COME ON IN!":1 THE CONSTITUTIONALITY OF WARRANTLESS SEARCHES AS A CONDITION OF PROBATION

I. INTRODUCTION

As prison populations across the nation rise, community supervision has become an attractive means of punishing and monitoring criminals under sentence.2 In fact, approximately 4.4 million people are currently on probation or parole.3 Community supervision relieves overcrowded correctional facilities and offers criminal offenders an opportunity for genuine rehabilitation in the context of society rather than within the walls of a prison cell. However, probation, like incarceration, is also a criminal penalty imposed by the court after an offender is found guilty.4 Probation falls along a continuum of punishments that includes solitary confinement in a maximum-security prison at one end, to several hours of community service at the other.5 To facilitate rehabilitation and secure the community, courts require a number of conditions that encumber a probationer’s freedom.6 Common conditions include: obey all laws, refrain from drug and alcohol use, avoid associating with other convicts, report any change in employment or home address, and consent to searches by probation

2. Brief of Center of Community Interest as Amicus Curiae at 3, United States v. Knights, 534 U.S. 112 (2001) (No. 00-1260). At the end of 1999, the entire correctional population of the United States was 6.3 million. Of these, over half, 3.7 million, were on probation.
3. Id. at 3.
5. Id.
officers and other law enforcement officials. The search condition has prompted recent discussions relating to the breadth of Fourth Amendment protection afforded to probationers.

In the first case since Griffin v. Wisconsin, the United States Supreme Court took the opportunity to address the scope of Fourth Amendment protection for probationers in United States v. Knights. In Knights, a unanimous Court upheld a warrantless search condition, concluding that the balance of government and private interests justify such an intrusion on a probationer's privacy interests.

This note will examine the Supreme Court's decision in United States v. Knights. Part II presents factual background and the basis for the district court's decision to suppress evidence seized during the search of Knight's home, as well as the Ninth Circuit's affirming opinion. The note then presents the Supreme Court's analysis and reasoning for reversing the lower court. Part III discusses the jurisprudence leading to the Court's decision and part IV addresses the impact of the Court's decision.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Factual Background

On May 29, 1998, Mark James Knights was convicted of a misdemeanor drug offense and sentenced to three years summary probation by the court. In California, summary probation does not require direct supervision by probation officers or law enforcement officials, but does require the offender to comply with a number of conditions. The conditions placed on Knights included an order to pay a

8. Griffin, 483 U.S. at 868. (holding that a warrantless search of Griffin's home was reasonable under the Fourth Amendment because it was conducted pursuant to a reasonable condition of probation).
10. Id. at 120.
11. Id. at 114.
12. CAL. PENAL CODE § 1203b provides:
All courts shall have the power to suspend the imposition or execution of a sentence and grant a conditional sentence in misdemeanor and infraction cases without referring such cases to a particular officer. Unless otherwise ordered by the court, persons granted conditional sentence in the community shall report only to the court and the probation officer shall not be responsible in any way for supervising or accounting for such persons.

one-hundred dollar fine, violate no other laws, submit to drug, alcohol, or other tests, and "submit [his] person, property, place of residence, vehicle, [and] personal effects, to search at any time, with or without a search warrant, warrant of arrest, or reasonable cause by any probation officer or law enforcement officer." Knights signed the probation order. At the end of the probation order and just above Knights' signature a statement reads, "I HAVE RECEIVED A COPY, READ AND UNDERSTAND THE ABOVE TERMS AND CONDITIONS OF PROBATION AND AGREE TO ABIDE BY THE SAME"

Three days after Knights was placed on probation, a Pacific Gas & Electric (PG&E) transformer and Pacific Bell telecommunications vault were vandalized and set on fire. Police suspected Knights and his friend, Steven Simoneau, of similar acts against other PG&E facilities, particularly after PG&E filed a theft-of-services complaint against Knights and shut off his service for failing to pay his bill. Detective Todd Hancock, the officer investigating the PG&E arsons, noticed that each act coincided with Knights' court dates for the theft-of-services. In the week prior to the vault arson, a sheriff's deputy stopped Knights and his friend Steven Simoneau near a PG&E gas line and noticed pipes and gasoline in Simoneau's pickup truck.

Following this last arson, Detective Hancock set up surveillance of Knights' apartment. At approximately 3:10 a.m. the next morning, Detective Hancock saw Simoneau leave the apartment carrying three cylindrical items believed to be pipe bombs. Simoneau walked across the street to the bank of the Napa River, after which Hancock heard three splashes. Simoneau then returned without the cylinders and left the area. Hancock followed Simoneau until Simoneau stopped in a driveway and left the truck. Hancock walked up the

14. Id.
15. Id. This statement is placed at the bottom of the probation order and just above the signature block. The statement is entirely capitalized and in a font larger than the rest of the probation order.
17. Id.
18. Id.
19. Id. at 115.
20. Id.
21. Id.
22. Id.
23. Id.
24. Id.
driveway of the apartment and observed several suspicious objects in
the bed of Simoneau’s truck, including a Molotov cocktail, explosive
materials, a gasoline can, and two brass padlocks matching the
description of those from the vandalized PG&E transformer.25

On June 3, 1998, under the authority of the consent-to-search pro-
vision in Knights’ probation order, Detective Hancock searched
Knights’ apartment for evidence connecting Knights to the recent van-
dalism.26 Police arrested Knights after the search uncovered a detona-
tion cord, ammunition, various liquid accelerants, chemistry, physics,
and electrical circuitry instructions manuals, bolt cutters, telephone
pole climbing spurs, and a brass padlock stamped PG&E.27

B. District Court Decision

A federal grand jury indicted Knights for conspiracy to commit
arson,28 and for felony possession of ammunition.29 Knights moved to
suppress the evidence seized during the June 3rd search.30 Guided by
the Ninth Circuit’s ruling in United States v. Ooley,31 the district court
granted Knights’ motion.32 The court noted that Ooley “implicitly, if
not directly stands for the proposition that acceptance of a search
clause as a condition of probation does not fully abrogate the defen-
dant’s Fourth Amendment rights.”33 The court reasoned that Detective

25. Id.
26. Id.
27. Brief for the United States at 9a, Knights (No. 00-1260).
    If two or more persons conspire either to commit any offense against the
    United States or to defraud the United States . . . and one or of more such
    persons do any act to effect the object of the conspiracy, each shall be fined
    under this title or imprisoned not more than five years, or both.
    Whoever maliciously damages or destroys, or attempts to damage or destroy,
    by means of fire or an explosive, any building, vehicle, or other real or
    personal property used in interstate or foreign commerce or, any activity
    affecting interstate or foreign commerce shall be imprisoned for not less than
    five years and not more than twenty, fined under the title, or both.
    been convicted in any court of, a crime punishable by imprisonment for a term
    exceeding one year to ship or transport in interstate or foreign commerce, or possess in
    or affecting commerce, any firearm or ammunition.”
30. Brief for the United States at 4, Knights (No. 00-1260).
    probationers, we have long recognized that the legality of a warrantless search
    depends upon a showing that the search was a true probation search.”
32. Brief for the United States at 4, Knights (No. 00-1260).
33. Id.
Hancock had reasonable suspicion to conduct the search of Knights' apartment, but held that the search was motivated by investigative rather than probationary purposes.\textsuperscript{34}

\section*{C. Ninth Circuit Decision}

The Ninth Circuit agreed with the district court's decision to suppress the evidence.\textsuperscript{35} The Ninth Circuit recognized that a person "can consent to a search of his home" and agreed that Knights did consent to warrantless searches of his home.\textsuperscript{36} However, the court made clear that consent must be limited to "probation searches" and stop short of "investigation searches."\textsuperscript{37} The court refused to recognize a more expansive search and condemned the practice of using a search imposed as a condition of probation as a broad tool of law enforcement.\textsuperscript{38} Searches pursuant to a probation order should be directed toward advancing the goals of probation, namely giving the probationer an opportunity to demonstrate and aide rehabilitation while serving part of the sentence outside prison.\textsuperscript{39} The search in this case could not be sustained as serving the same interests. "Detective Hancock and his cohorts were not a bit interested in Knights' rehabilitation. They were interested in ending a string of crimes in which Knights was thought to be the perpetrator."\textsuperscript{40} To hold otherwise, the court noted, would "indirectly eliminate our cases which rely on the difference between probation and investigative searches."\textsuperscript{41}

\section*{D. United States Supreme Court Decision}

The United States Supreme Court granted certiorari to address the constitutionality of warrantless search conditions and whether the Fourth Amendment limits searches pursuant to a probationary condition to those with a probationary purpose.\textsuperscript{42} The touchstone of the Fourth Amendment is reasonableness, and reasonableness of a search is determined by balancing the degree to which the search intrudes on an individual's privacy and the degree necessary for the promotion of

\begin{enumerate}
\item[34.] Id. at 5.
\item[35.] United States v. Knights, 219 F.3d 1138 (9th Cir. 2000).
\item[36.] Id. at 1142.
\item[37.] Id.
\item[38.] Id.
\item[39.] Id. (citing Ooley, 116 F.3d at 372).
\item[40.] Id. at 1143.
\item[41.] Id. at 1144.
\end{enumerate}
legitimate government interests.\textsuperscript{43} From the individual side of the bal-
ance, the Court noted that probation is a criminal sanction and that
probationers do not enjoy the same freedoms afforded to law-abiding
 citizens.\textsuperscript{44} Like other punishments for criminal activity, the court
may, within bounds, impose conditions on probationers that deprive
them of certain freedoms.\textsuperscript{45} The clarity of the probation order
together with Knights' signature significantly diminished his "reasonable
expectation of privacy."\textsuperscript{46}

Moving to the government's side of the scale, the State has a dual
concern with probationers: rehabilitation of the offender, and protect-
ing the community from future violations.\textsuperscript{47} A probationer is more
likely to engage in criminal conduct than the average member of the
community and has more incentive to conceal criminal activities.\textsuperscript{48}
Weighing these interests, the Court held that the state needs nothing
more than \textit{reasonable suspicion} to search a probationer's home.\textsuperscript{49} The
Court stated, "[w]hen an officer has a reasonable suspicion that a pro-
bationer subject to a search condition is engaged in criminal activity,
there is enough likelihood that the criminal conduct is occurring that
an intrusion on the probationer's significantly diminished privacy is
reasonable."\textsuperscript{50} The Court reversed the Ninth Circuit and held that the
warrantless search of Knights' apartment was supported by reasonable
suspicion and authorized by probation condition. Therefore, the
search was reasonable within the bounds of the Fourth Amendment.\textsuperscript{51}

III. Discussion

A. Fourth Amendment Foundations for Warrantless Search Conditions

Before looking at the Court's analysis of warrantless search condi-
tions, a brief overview of the Court's Fourth Amendment jurispru-

\textsuperscript{43} Id. at 118-19. See also Wyoming v. Houghton, 526 U.S. 295, 300 (1999).
\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{46} Id. at 120.
\textsuperscript{47} Id.
\textsuperscript{48} Id. The Court explained that the recidivism rate of probationers is significantly
higher than the general crime rate. The Court cited a study conducted by the U.S.
Department of Justice, Bureau of Justice Statistics reporting that 43% of 79,000 felons
placed on probation in seventeen states were rearrested for a felony within three years
while still on probation.
\textsuperscript{49} Id. at 121. See Illinois v. McArthur, 531 U.S. 326, 330 (2001) (noting that a
"diminished expectation of privacy" may justify an exception to the warrant
requirement).
\textsuperscript{50} Id.
\textsuperscript{51} Id. at 122
In some cases, evidence will provide some indication of the Court's direction and its reasons for adding warrantless probation searches to the list of warrant exceptions.

The Fourth Amendment reads:

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. 52

Much of the Fourth Amendment analysis finds its roots in decisions coming out of the Warren Court. In 1967, Justice Harlan, in a concurring opinion, set out a clear definition of a search. 53 The test requires "first that a person has exhibited an actual (subjective) expectation of privacy, and, second, that expectation be one that society is prepared to recognize as reasonable"54 The definition of a search is a threshold consideration before the Court will find a violation of the Fourth Amendment.

Additionally, law enforcement must have probable cause to conduct a search and intrude on the privacy of a citizen. The Court defined probable cause as a fair probability that contraband or evidence of a crime will be found.55 In other words, "probable cause exists where facts and circumstances of an arrest are sufficient to warrant a reasonable and prudent man to believe that a suspect has committed or is committing a criminal offense."56

With the definition of search in place and the high threshold of information required to establish probable cause, the Court made clear its preference for warrants for those times intrusions into individual privacy are required.57 The Court acknowledged in 1971 that "searches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well delineated exceptions."58 The exceptions are "jealously and carefully drawn"59 and there must also be a "showing by those who seek

52. U.S. CONST. amend. IV.
54. Id. at 361.
56. United States v. Ushery, 968 F.2d 575 (6th Cir. 1992) (citing United States v. Steele, 727 F.2d 580, 588 (6th Cir. 1984)).
58. Id. at 455-56 (quoting Katz v. United States, 389 U.S. 347, 357 (1967)).
the exception that the exigencies of the situation have made that course imperative."60 Beyond this limited exception, the Court continues to affirm its preference for warrants.61

One exception to the warrant requirement is searches incident to lawful arrest.62 The grounds for warrantless searches incident to lawful arrest "grows out of the inherent necessities of the situation at the time of arrest."63 As the exception suggests, the search is limited to periods following lawful arrest of a suspect and extends to areas in possession of the arrestee or within his immediate control.64

One of the most familiar warrantless searches are those conducted on vehicles. The Court made a sharp distinction between the search of a "store, dwelling house, or other structure, in respect of which a proper warrant may be readily obtained" and "the search of a ship, motor boat, wagon, or automobile . . . where it is not practical to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."65 It was in the context of warrantless vehicle searches that the Court first adopted the term "lesser expectation of privacy."66 The Court cited the nature of auto travel as public, its contents and occupants as open to plain view, and the regulations, licensing, and other government controls over auto travel.67

B. Validity of Warrantless Search Conditions

Probation offers an attractive solution to rising prison populations and has led a number of states and the federal government to rely significantly on this form of punishment for administering justice. Not surprisingly, courts often affirm the imposed probation conditions when challenged by offenders.68 When drafting search conditions, the Court's Fourth Amendment jurisprudence circumscribes the

63. Id. at 755.
64. Id. at 760.
67. Id. at 368. See also Cady v. Dombroski, 413 U.S. 433, 441 (1973) (explaining the police's "community caretaking function" as a basis for one's lesser expectation of privacy in an automobile).
conditions and ensures that law enforcement officials do not conduct constitutionally illegal searches. As the Court instructed in *Knights*, "the touchstone of the Fourth Amendment is reasonableness." The Court defines reasonableness according to the level of suspicion required to initiate a search. At one end are searches of person, home, and personal effects, which require the traditional showing of probable cause. A man's house is his "castle of defense and asylum." Searches of this kind are intrusive and very personal, thus requiring a high level of suspicion. At the other end of the spectrum are those searches that are permissible without any individualized suspicion. The law allows these searches where intrusion is minimal and the danger to be averted by the search is substantial. Finally, the Court has recognized searches by a showing of "reasonable grounds" or "reasonable suspicion." By creating this middle ground the Court recognizes a lesser level of suspicion is permissible, particularly where the balance of government and private interests make such a standard reasonable. The Court characterized these circumstances as "special needs", a doctrine first applied to probation in *Griffin v. Wisconsin*.

1. *Griffin v. Wisconsin and “Special Needs”*

On September 4, 1980, Joseph Griffin was convicted in Wisconsin of resisting arrest, disorderly conduct, and obstructing an officer. The court placed him on probation subject to a number of restrictions including that he submit to searches of his home without a warrant as

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72. *Id.* (citing Payton v. New York, 445 U.S. 573 (1980)).


74. *Id.* (citing United States v. Martinez-Fuerte, 428 U.S. 543 (1976)).

75. *Id.* (citing Griffin v. Wisconsin, 483 U.S. 868, 873 (1987)).


78. *Id.* at 870.
long as there were reasonable grounds to believe the presence of contraband existed.79 On April 5, 1983, acting on a tip by a police officer that Griffin had guns in his apartment, his probation officer conducted a search turning up a handgun.80 Griffin was charged with possession of a firearm by a convicted felon.81 The trial court denied Griffin's motion to suppress evidence gathered from the search and was later convicted.82 On appeal both the Wisconsin Court of Appeals and Wisconsin Supreme Court upheld the trial court's order and affirmed the conviction.83

On review, the Supreme Court articulated that certain "special needs" would sometimes render a warrant and probable cause impracticable.84 The Court concluded that operating a probation system presented a "special need," which justified the departure from usual warrant and probable cause requirements.85

In light of the Fourth Amendment's traditional standards of reasonableness, the Court in both Griffin and Knights agreed that the State has a special interest in protecting the community and effectuating the probation system.86 Probationers are not average citizens. They have been convicted of a crime and are more likely than others to violate the law again.87 In addition, the possibility of probation revocation and subsequent incarceration give probationers a greater incentive to conceal criminal activities and quickly dispose of incriminating evidence.88 Thus, in society's eye, probationers enjoy a diminished expectation of privacy.89 In the words of the Court, probationers do

79. Id. at 871.
80. Id.
81. Id.
82. Id. at 872.
83. Id.
84. Id. at 873. The Court went on to cite specific instances where it has applied the "special needs" exemption: O'Conner v. Ortega, 450 U.S. 709 (1987) (holding that government employers and supervisors may conduct warrantless, work-related searches of employers desks and offices without probable cause); New Jersey v. T.L.O., 469 U.S. 325 (1985) (holding that school officials could conduct warrantless searches of some student property); Camara v. Municipal Court, 387 U.S. 523 (1967) (holding that government investigators conducting warrantless searches pursuant to a regulatory scheme where searches meet reasonable legislative or administrative standards were valid).
85. Id. at 874. The court noted that the operation of a probation system was similar to the operation of a school, government office, prison, or regulated industry.
86. Id. See also Knights, 534 U.S. at 116.
87. Id. at 880.
88. Knights, 534 U.S. at 120.
89. Id. at 591. See Katz v. United States 389 U.S. 347 (1967).
not enjoy “the absolute liberty to which every citizen is entitled, but only . . . a conditional liberty properly dependent on the observance of special [probation] restrictions.”

2. **The effect of requiring a warrant**

Enforcing a strict warrant requirement would interfere appreciably with the probation system, setting up a magistrate rather than a probation or law enforcement officer as the judge of how close a standard of supervision the probationer requires. The delay inherent in obtaining a warrant would make it difficult for probation officials to respond quickly to evidence of misconduct, thus reducing the deterrent effect expeditious searches create.

Likewise, demanding the same level of certainty required in other contexts would be destructive and unrealistic to the probation system. Probation officers must have the authority to act based on a lesser degree of certainty than the Fourth Amendment requires for law abiding citizens in order to intervene before a probationer does damage to himself or society. Officers and probation agents often have long histories and experiences with their probationers. They are better prepared in assessing the probability of illegal activity in light of the probationer’s life, character, and circumstances, and may effectively proceed on that basis.

C. **Consent to Warrantless Search Conditions**

In addition to the government interest in protecting the community and probationers’ lessened expectation of privacy, offenders recognize the legitimacy of search conditions by consenting to abide by them. Early in the *Knights* opinion, Chief Justice Rehnquist, writing for the Court, took special note that Knights signed the probation order acknowledging to having read and understood the terms of probation as well as agreeing to abide by them. However, since the Court

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91. *Id.* at 876.
92. *Id.* at 879.
93. *Id.* at 879.
94. *Id.*
95. *Id.*
96. *Id.*
held the search reasonable given the totality of circumstances, it chose not to address whether Knights' acceptance of the terms constituted consent. Nevertheless, Knights' agreement to the probation terms, including warrantless searches, is significant in assessing their constitutionality.

One of the exceptions to the warrant and probable cause requirement of the Fourth Amendment is when a search conducted pursuant to consent. Consent effectively removes the issue of reasonableness from Fourth Amendment discussions. The ability to agree to warrantless searches runs consistent with the general principle that a person may waive constitutional protections. However, for consent to justify warrantless searches and pass constitutional muster, a person must consent freely and voluntarily. The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness. Thus, in the probation context, the question is: what would the reasonable person have understood given the terms of the probation agreement and the plea allocution? Given the consent-to-search terms agreed to by Knights are similar to those included in most California probation agreements, a reasonable person could construe them to permit warrantless searches for purposes the California Supreme Court has deemed valid.

The Ninth Circuit expressed a legitimate concern as to whether consent can be deemed voluntary when it is motivated by the offender's belief that refusal will result in concrete disadvantages or avoid greater intrusion. As the Court observed in Schneckloth v. Bustamonte, "if the search is conducted and proves fruitless, that in itself may convince the police that an arrest with its possible stigma and embarrassment is unnecessary, or that a far more extensive search pursuant to a warrant is not justified. In short, a search pursuant to consent may result in considerably less inconvenience for the subject of the search." However, a consent search cannot be found involuntary simply because an individual consents to avoid further intru-

103. Brief for the United States at 12, Knights (No. 00-1260).
104. Id.
105. Schneckloth, 412 U.S. at 228.
sion. In United States v. Drayton, officers boarded a Greyhound bus for a drug interdiction. One officer walked down the aisle matching passengers to luggage and asking if he could search luggage. The officer approached Drayton and his friend, Brown, and asked to search the bag the two shared. Finding no drugs or weapons, the officer asked if he could search their persons. Brown agreed and the officer then patted Brown down. The officer detected hard objects consistent with drug packages. Brown was handcuffed and escorted off the bus. The officer then asked Drayton. Drayton "lift[ed] his hands about eight inches from his legs" and the officer patted Drayton down. Similar hard objects were detected and Drayton was arrested. Although the Court focused its opinion on dispelling the need for warning citizens of the right to refuse the search, the Court's holding implicitly recognizes that consent, in this case Drayton's, is not vitiated by the person's belief that consent will avoid greater intrusion.

At the same time, receipt of a government benefit does not render consent involuntary. For example, a search of a business' books is lawful when a person agrees to permit inspection of such books in order to procure the government's business. The Court stated in Zap v. United States, "when [Zap], in order to obtain the Government's business, specifically agreed to permit inspection of his accounts and records, he voluntarily waived such claim to privacy which he otherwise might have had as respects business documents related to those contracts." The idea that an individual may enter into agreements with the government forgoing certain constitutional rights in return for favorable treatment reflects the general principle that an individual may voluntarily consent to a search that might otherwise be prohibited by the Fourth Amendment.

106. Brief for the United States at 16, Knights (No. 00-1260).
108. Id.
109. Id. at 199.
110. Id.
111. Id.
112. Id.
113. Id. at 207.
114. Brief for the United States at 15, Knights (No. 00-1260).
115. Zap v. United States, 328 U.S. 624 (1946). See also United States v. Griffin, 555 F.2d 1323 (5th Cir. 1977) (holding that Griffin consented to warrantless search and seizure of pharmaceutical records for welfare recipients when he contracted with the State to allow inspection in return for reimbursement of prescription expenses).
116. Id. at 628.
117. Brief for the United States at 18, Knights (No. 00-1260).
Additionally, consent may be granted in advance without specific restrictions. The defendant in Zap did not give consent at the time of the contested search, and, in fact, attempted to hinder the search.\textsuperscript{118} But the Court ultimately found that he was bound by his prior contractual commitment to allow inspection of his books and records.\textsuperscript{119} Zap makes clear that an individual may give valid, prospective consent to searches performed at unspecified times in the future.

Looking to Knights’ situation and indeed all probationers, it is important to remember that acceptance of probation, in light of the Court’s prior rulings, represents a voluntary choice. Defendants are not compelled to accept probation, and the fact that incarceration or other punishment are the only alternatives does not render the choice involuntary. Thus, a search conducted pursuant to a term in the probation agreement should be treated as consensual and therefore reasonable under the Fourth Amendment.

\textbf{D. Scope of the Search}

The Ninth Circuit took special note of the scope of searches pursuant to probation conditions. Acknowledging that Knights did, in fact, consent to warrantless searches when he agreed to the terms of probation, the court said that such consent must be viewed as limited strictly to probation searches and stop short of those conducted for investigative purposes.\textsuperscript{120} The Ninth Circuit reasoned that the legality of searches depends on showing that the search was a true probation search, designed to further the goals of probation.\textsuperscript{121} From the record, the circuit court concluded that law enforcement officials had no interest in furthering Knights' rehabilitation when they entered his home pursuant to his probation condition. Rather, officers were interested in ending a string of crimes Knights was suspected to have committed.\textsuperscript{122}

\textsuperscript{118} Zap, 328 U.S. at 627.
\textsuperscript{119} Id.
\textsuperscript{120} Knights, 219 F.3d at 1142.
\textsuperscript{121} Id. at 1145. (citing United States v. Ooley, 116 F.3d 370, 372 (9th Cir. 1997)). See also United States v. Consuelo-Gonzales, 521 F.2d 259 (9th Cir. 1975). In Consuelo-Gonzales, officers had information that a probationer, arrested for heroin smuggling, was engaged in importation and sale of narcotics. Officers searched the defendant’s premises pursuant to a condition, turning up 11.7 grams of heroin. The circuit court reversed the district court decision to admit the evidence, noting that the search was not reasonably related to Federal Probation Act, which rehabilitates the criminal and protects the public.
\textsuperscript{122} Id.
1. **Scope defined according to the terms of the agreement**

Although the Ninth Circuit argues that warrantless searches should be limited to those conducted to further the probation program, courts should examine the terms articulated in the agreement to define the scope of search conditions.\(^{123}\) In California, where the *Knights* case began, relevant authority makes clear that consent-to-search provisions are not limited simply to probation searches. In *People v. Woods*, defendants on felony probation were arrested on later drug charges after a police officer, acting on a tip, entered the defendant's premises pursuant to a search condition and found methamphetamine and marijuana.\(^{124}\) The defendants contended that warrantless searches, when conducted for reasons unrelated to the probation violate the Fourth Amendment.\(^{125}\) The court, in upholding the search, concluded that "whether the purpose of the search is to monitor the probationer or serve some other law enforcement purpose, or both, the search in any case remains limited in scope to the terms articulated in the search clause."\(^{126}\) This decision conformed with the California Supreme Court's prior holding in *People v. Bravo*, where the court held that a condition of probation permitting warrantless searches at anytime by a law enforcement officer also includes searches where officers believed any violation of the law was taking place, so long as searches were not initiated for harassing, arbitrary, or capricious reasons.\(^{127}\)

A look at *Knights*' consent to search "by any probation officer or other law enforcement official" reveals no distinction between probation and investigative searches.\(^{128}\) Thus, a court has no basis on which to limit the search condition to probationary purposes.\(^{129}\) *Knights*, in order to reach a probation agreement, gave unqualified consent to search by any law enforcement or probation officer.\(^{130}\)

2. **Subterfuge for criminal investigations**

After concluding surveillance of *Knights*’ apartment, Detective Hancock exercised the search condition to gather evidence tying

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124. *Id.* at 1022.
125. *Id.* at 1025.
126. *Id.* at 1027.
128. Brief for the United States at 50a, *Knights* (No. 00-1260).
129. *Id.* at 14.
130. *Id.*
Knights to the vandalism of PG&E property. In light of this fact, the Ninth Circuit expressed its concern not only for searches patently conducted for investigation purposes, but also for times when an officer investigates matters under the auspices of a probation search. "[W]hen a probationer has consented to searches of his home as a condition of probation, those searches must be conducted for probation purposes and not mere subterfuge for the pursuit of criminal investigations." Although, in Knights the Supreme Court reserved the Ninth Circuit's judgment relating to the motivations of officers when conducting a search, the prior rulings by the Court indicate that officers' subjective motivations do not necessarily invalidate a search when the circumstances justify the actions. In Whren v. United States, police officers, while patrolling a known "high drug" area, detained a motorist for an alleged traffic violation. As the officers approached the vehicle, they noticed in plain view a gram of cocaine in the defendant's hands. At trial, the defendants argued that the traffic stop was pretextual; nothing more than a front for investigating suspected drug activity. The Court dismissed the idea that ulterior motives might serve to strip agents of their legal justification. The Court stated that "the fact that an officer does not have the state of mind hypothecated by reasons which provide legal justification for the officer's action does not invalidate the action as long as the circumstances, viewed objectively, justify the action."

Applying the Whren analysis would justify searches unrelated to probation. Included in Knights' probation order was a provision requiring that he observe and obey all laws. Evidence gathered by Detective Hancock prior to the search of Knights' apartment pointed to his involvement in recent acts of vandalism - a warrantless search

131. Knights, 534 U.S. at 116. A copy of Knights' probation order was on file at the Napa County Sheriff's Department.
132. Knights, 219 F.3d at 1145.
133. Id.
135. Id. at 806.
136. Id.
137. Id.
138. Id. at 812. See also United States v. Robinson, 414 U.S. 218 (1973) (holding that a traffic violation arrest was not rendered invalid by the fact that it was a pretext for a narcotics search).
139. Id. at 813.
140. Brief for the United States at 50a, Knights (No. 00-1260).
141. See Knights, 534 U.S. at 114.
was conducted merely to confirm or dispel that lead.\textsuperscript{142} Thus, Hancock, from an objective standpoint, exercised the search condition based on reasonable suspicion of criminal behavior on the part of Knights. Hancock believed that Knights was involved in criminal activity in direct violation of his probation agreement. Therefore the search advanced both investigative and probationary purposes as well.

IV. IMPACT OF KNIGHTS

The unanimous decision by the Court in Knights is important in affirming the legitimacy of a form of punishment states have come to rely upon in order to administer justice. Among other reasons, probation remains a keenly attractive means of reducing the prison population.\textsuperscript{143} The efficacy of probation rises from the assurance that criminals can be closely watched even when not jailed. A correctional facility offers a controlled environment, providing uniformity, maintaining authority, and employing a constant system of monitoring. Probation systems implement the same crucial functions through the existence of conditions that limit a criminal's conduct and remove a number of civil rights otherwise available to law-abiding citizens.\textsuperscript{144} Warrantless search conditions are an effective monitoring technique to assure compliance with conditions. As the California Supreme Court observed in \textit{People v. Bravo}, "with knowledge that he may be subjected to a search by law enforcement officers at any time, [the probationer] will be less inclined to have contraband in his possession."\textsuperscript{145} With such conditions in place, trial judges have assurance that probationers will be closely monitored, and therefore will be more willing to offer probation.\textsuperscript{146}

A probationer is one who has committed a criminal offense, often carrying active time in the event of a violation. Constitutional rights are afforded to those who remain in the bounds of civil society, while those who cross the line forgo certain rights. One can see this notion quite readily in the case of incarceration, where inmates enjoy very few civil rights. However, the idea may be overlooked in the context of probation where criminals are permitted to live within the same community as law-abiding citizens.

\begin{enumerate}
\item[142.] \textit{Id.} at 116.
\item[144.] \textit{Knights}, 534 U.S. at 120.
\item[146.] Brief for the United States at 8, \textit{Knights} (No. 00-1260).
\end{enumerate}
The Court properly reaffirmed its prior holding in *Griffin*, that probation presented a "special need" beyond normal law enforcement that justified the use of warrantless search conditions.\(^{147}\) One fundamental purpose of probation is to prevent future crimes by those involved in prior criminal activity. As the Court noted, probationers have been convicted of a criminal offense and have a greater propensity to violate the law again.\(^{148}\) The State, then, has a compelling interest in protecting the community, particularly from any harms flowing from conditional release.\(^{149}\) When law enforcement officials come to suspect that a probationer is engaged in criminal activity, a search to confirm or dispel that suspicion serves the state's interest. The Court's unanimous decision recognizes the legitimacy of the state's interest by empowering law enforcement and probation officers to conduct warrantless searches at any time, reigning in any chance on the part of probationers to engage in illegal action.

Beyond the salient need to protect the community, states must not lose sight of the important rehabilitative purpose probation advances. Though probationers have stepped beyond the boundaries of civil society, society has an interest in restoring that person back into its ranks and to productive capacity.\(^{150}\) Probation provides a unique alternative for moving criminals from outside society back in. Interestingly, the same reasons for protecting the community apply equally to rehabilitation as well. For meaningful rehabilitation, the criminal must be encouraged not to commit further offenses, and the state needs a mechanism to ascertain compliance with terms of probation.\(^{151}\) Search conditions fill both of these needs, allowing law enforcement to ensure a probationer is progressing, and providing disincentives to engage in further criminal activity. Although the Court did not address this effect in its opinion, the decision will, nonetheless, further this interest.

**V. Conclusion**

Probation has and likely will remain the key means of punishment for years to come. However, the issues brought before the Supreme Court in *United States v. Knights* called into question the very elements that make probation an effective means of dealing with the

\(^{147}\) Id.

\(^{148}\) *Griffin*, 483 U.S. at 880.

\(^{149}\) Id. at 873.

\(^{150}\) I owe this thought to Anthony V. Baker, Professor, Campbell University, Norman Adrian Wiggins School of Law.

\(^{151}\) *People v. Woods*, 981 P.2d 1019, 1026 (Cal. 1999).
rising tide of criminal activity. The Court responded appropriately. It recognized the weight of the government's interest in protecting the community and the probationer's diminished expectation of privacy, and why the balance of those factors warrants a lower level of suspicion in conducting searches of a probationer's home. Finally, the Court held that, unless otherwise provided by statute or agreement, searches might be initiated for any investigatory purposes and not merely to serve the ends of probation.

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