

THE KEYS TO THE CASTLE: A NEW STANDARD FOR WARRANTLESS HOME SEARCHES IN *United States v. Knights*, 122 S.Ct. 587 (2001).

The technicalities of the Fourth Amendment have permeated popular culture to such an extent that many Americans are conversant about basic constitutional search and seizure issues.¹ Some of that knowledge may have recently become largely obsolete. In *United States v. Knights*,² the Supreme Court held that a warrantless search of a probationer's apartment in which the search was based on reasonable suspicion and a condition of probation was that defendant would submit to such searches was reasonable within the meaning of the Fourth Amendment. While the holding in *Knights* is wholly consistent with prior cases, the opinion introduces a new straightforward standard of reasonability for warrantless home searches that reflects an increased consideration of society's interest in aggressive prosecution of criminal activity. Critics have complained that modern Fourth Amendment jurisprudence has been a "vast jumble of judicial pronouncements that is not merely complex and contradictory, but often perverse."³ With *Knights*, the Court has offered a streamlined Fourth Amendment jurisprudence with a straightforward test to determine whether a search is constitutional.

1. Wayne R. LaFave, *The Fourth Amendment as a "Big Time" TV Fad*, 53 HASTINGS L.J. 265 (2001).

2. *United States v. Knights*, 122 S.Ct. 587, 593 (2001).

3. Akhil Reed Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757, 758 (1994). For an example of the complications that *Knights* has addressed, see Theodore P. Metzler, Iris Y. Gonzalez, Matthew V. Johnson, and Peter S. Choi, *Warrantless Searches and Seizures*, 89 GEO. L.J. 1084 (2001):

Under the Fourth Amendment, every search or seizure by a government agent must be reasonable. The Supreme Court has generally interpreted this requirement to mean that an arrest or search must be based on probable cause and executed pursuant to a warrant. There are, however, many exceptions to the probable cause and warrant requirements, including investigatory detentions, warrantless arrests, searches incident to a valid arrest, seizure of items in plain view, exigent circumstances, consent searches, vehicle searches, container searches, inventory searches, border searches, searches at sea, administrative searches, and searches in which the special needs of law enforcement make the probable cause and warrant requirements impracticable.

Id. at 1084.

I. FACTS

Mark Knights was sentenced to summary probation for a drug offense by a California trial court. The probation order Knights signed read, in part, that he would "[s]ubmit his . . . person, property, place of residence, vehicle, personal effects, [sic] to search at anytime, with or without a search warrant, warrant of arrest or reasonable cause by any probation officer or law enforcement officer."⁴ In 1996, Knights and his associate Steven Simoneau were identified as suspects in a vandalism spree against Pacific Gas & Electric (PG & E) facilities in Napa County. The spree began shortly after PG & E filed a theft-of-services complaint against Knights and discontinued his service for failure to pay. Detective Todd Hancock of the Napa County Sheriff's Department had noticed that the acts of vandalism coincided with Knights's PG & E-related court appearances. On May 24, 1998, a sheriff's deputy had stopped Knights and Simoneau near a PG & E gas line. Knights and Simoneau could not explain their presence in the area. The deputy observed pipes, pieces of chain, tools, and gasoline in the pickup truck. He asked permission to search the vehicle, but was refused. A few days later a pipe bomb was detonated not far from Knights's residence. On June 1, 1998, after Knights was placed on probation, a PG & E power transformer and a Pacific Bell telecommunications vault were set on fire using gasoline accelerants. Brass padlocks had been pried off to allow the arsonists access. After the arson a sheriff's deputy drove past Knights's residence and saw Simoneau's truck parked in front. He felt the hood of the truck and found it was warm. On June 3, 1998, Detective Hancock ordered surveillance of Knights's apartment. Early in the morning, Simoneau was observed exiting the apartment carrying three cylindrical items. He walked across the street to the bank of the Napa River and returned without the cylinders, wiping a glass jar with a cloth. Detective Hancock heard three splashes from the river at the time Simoneau was at its bank. Simoneau drove away, parked his truck in a driveway, and left. Detective Hancock approached the truck and observed a Molotov cocktail and explosive materials, a gasoline can, and two brass padlocks that fit the description of those removed from the PG & E

4. See *Knights*, 122 S.Ct. at 589.

transformer vault. The truck was seized, impounded, and later searched pursuant to a warrant. Hancock then conducted a search of Knights's apartment. Hancock was aware of Knights's probation order and its conditions. Based on the probation order, he believed he did not need a warrant for the search. The search revealed a detonation cord, ammunition, liquid chemicals, chemistry and electrical circuitry manuals, bolt cutters, telephone pole-climbing spurs, drug paraphernalia, and brass padlocks stamped "PG & E." Thereafter, Knights was arrested. A federal grand jury subsequently indicted him for conspiracy to commit arson, possession of an unregistered destructive device, and being a felon in possession of ammunition.

II. DISTRICT COURT DECISION

Knights moved to suppress the evidence obtained during the warrantless search of his apartment. The district court found that Hancock had reasonable suspicion⁵ that Knights was involved with incendiary materials, but nevertheless granted the motion to suppress on grounds that the probationary search was a subterfuge for an investigative search. The Ninth Circuit Court of Appeals had made it expressly clear that the consent of probationers did not extend beyond those searches that the officer believed were related to the interests of effective probation supervision.⁶ The court determined that Detective Hancock's search was made to further his arson investigation and was substantially unrelated to the administration of Knights's probation. For such an investigative search to be legitimate, in the district court's view, Detective Hancock needed probable cause⁷ to believe that Knights was involved with a crime. The evidence found in Simoneau's truck and the behavior of Simoneau on leaving Knights's house, combined

5. The Supreme Court has described reasonable suspicion as "a particularized and objective basis for suspecting the person stopped of criminal activity." *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)).

6. *See United States v. Merchant*, 760 F.2d 963, 969 (9th Cir. 1985).

7. "Probable cause exists where 'the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." *Draper v. United States*, 358 U.S. 307, 313 (1959) (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)).

with an officer's earlier observation of Knights and Simoneau with potential explosives, were determined by the court to only rise to the level of reasonable suspicion that Knights was involved in a crime. The evidence did not meet the standard of probable cause for Knights. Even with probable cause, Hancock's search of the house may not have withstood a constitutional challenge under traditional Fourth Amendment jurisprudence because home searches have almost always required a warrant.

III. NINTH CIRCUIT COURT OF APPEALS DECISION

The Ninth Circuit Court of Appeals affirmed the trial court's decision in an opinion by Judge Fernandez.⁸ The court of appeals determined that the proper standard of review was for clear error, on the basis that the contested issue, whether or not the probation search was a subterfuge for investigation, was a factual determination.⁹ Couching its decision in language strongly supporting the sanctity of the home,¹⁰ the court of appeals went beyond finding that there was no clear error and roundly endorsed the trial court's holding that the distinction between investigatory and probationary searches demanded that the evidence be excluded.¹¹ Although the Supreme Court of California had rejected such a distinction based on the

8. *United States v. Knights*, 219 F.3d 1138 (9th Cir. 2000).

9. *See id.* at 1141.

10. *Id.* at 1141-42. Judge Fernandez cited the rich lineage supporting the special protection afforded the home: *Semayne's Case* 5 Coke's Rep. 91a, 91b (K.B. 1603) ("the house of every one is to him as his . . . castle and fortress."); 1 MATTHEW HALE, *PLEAS OF THE CROWN* 547 (1736) ("every man by the law hath a special protection in reference to his house and dwelling."); THOMAS WOOD, *AN INSTITUTE OF THE LAWS OF ENGLAND* 71 (1734) ("A sheriff cannot break into a home without first giving proper notice and cause."); 4 WILLIAM BLACKSTONE, *COMMENTARIES* 223 (1765-1769) ("the law of England has so particular and tender a regard to the immunity of a man's house, that it styles it his castle, and will never suffer it to be violated with impunity."); JOSEPH STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES*, §1902 (2d Ed. 1851) (The Fourth Amendment "is little more than the affirmance of a great constitutional doctrine of the common law."); THOMAS M. COOLEY, *THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW* 218 (1891) ("[E]very man's house is his castle. The meaning of this is that every man under the protection of the laws may close the door of his habitation, and defend his privacy in it, not against private individuals merely, but against the officers of the law and the state itself."). *See also* *United States v. United States Dist. Court for the E. Dist. of Mich.*, 407 U.S. 297, 313 (1972) ("[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.").

11. *See id.* at 1145.

common California probation condition,¹² the court of appeals found that the state court's determination of the legality of the search under the state probation condition for Fourth Amendment purposes was unpersuasive and not controlling.¹³ The court of appeals cited a line of cases decided by the Ninth Circuit that reiterated the distinction and its importance.¹⁴ The distinction was justified, according to the Ninth Circuit, by a need to advance the goals of probation. The overriding aim of probation "is to give the [probationer] a chance to further and to demonstrate his rehabilitation while serving a part of his sentence outside the prison walls."¹⁵ Detective Hancock, who used the probation condition to justify the search, was "not a bit interested in Knights' rehabilitation."¹⁶ The court "condemned the practice of using a search condition imposed on a probationer as a broad tool for law enforcement."¹⁷ Replying to the government's assertion that the Supreme Court's decision in *Whren v. United States*¹⁸ undercut the Ninth Circuit's probation search jurisprudence, the court of appeals said that the Ninth Circuit has reiterated its rule since *Whren*,¹⁹ and that the issue here was not the officer's subjective state of

12. *People v. Woods*, P.2d 1019, 1027 (Cal. 1999), cert. denied, 529 U.S. 1023 (2000).

13. *Knights*, 219 F.3d at 1144. The court stated:

Application of the exclusionary rule regarding searches does not ordinarily turn on state law, even if the state courts would take a more stringent view. See *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Mota*, 982 F.2d 1384, 1387 (9th Cir. 1993). . . . [A]ccepting the government's argument [that application of the exclusionary rule to state law should be determined by state law] would amount to the recrudescence of the silver platter doctrine.

Id. The silver platter doctrine refers to a situation that arose before the exclusionary rule was incorporated into the Fourteenth Amendment and applied to the states in *Mapp v. Ohio*, 367 U.S. 643, 658 (1961), in which federal law enforcement officers would seize evidence and turn it over to the state law enforcement officers in cases where such evidence, if obtained directly by state law enforcement officers, would be inadmissible under the exclusionary rule.

14. See *Knights*, 219 F.3d at 1143. The line of cases cited by Judge Fernandez included: *United States v. Ooley*, 116 F.3d 370 (9th Cir. 1997), *United States v. Johnson*, 722 F.2d 525 (9th Cir. 1983), *United States v. Consuelo-Gonzalez*, 521 F.2d 259 (9th Cir. 1975) (en banc), and *Smith v. Rhay*, 419 F.2d 160 (9th Cir. 1969).

15. *Ooley*, 116 F.3d at 372.

16. *Knights*, 219 F.3d at 1143.

17. *Id.* at 1142.

18. 517 U.S. 806, 813 (1996) (an officer's subjective intentions should not be considered in determining whether or not a warrantless search with probable cause is reasonable).

19. *Ooley*, 116 F.3d at 372.

mind, but whether or not this warrantless search was consented to in the first place.²⁰ Referring back to its determination that probation orders can only authorize consent to probationary searches, the court concluded that warrantless non-probationary searches required probable cause to qualify as reasonable under the Fourth Amendment.²¹

IV. THE SUPREME COURT DECISION

The Supreme Court unanimously reversed. Writing for the Court, Chief Justice Rehnquist rejected the distinction between probationary and investigatory searches²² and concluded that the special needs exemption used in *Griffin* did not preclude other warrantless searches that did not have an identical fact pattern from being reasonable.²³ The Court held that the government's interest in preventing crime, combined with Knights's diminished expectation of privacy, required only reasonable suspicion to make the search of Knights's apartment reasonable under the Fourth Amendment.²⁴ To determine the constitutionality of the search, the Court examined its reasonableness in light of the totality of the circumstances.²⁵ According to the Court, the probation search condition was a salient circumstance to be considered.²⁶ The Court rejected the Ninth Circuit's determination that the overriding aim of probation is rehabilitative and acknowledged that probation is

20. *Knights*, 219 F.3d at 1143.

21. *Id.* at 1145.

22. See *Knights v. United States*, 122 S.Ct. 587, 590. Knights argued that that on the basis of *Griffin v. Wisconsin*, 483 U.S. 867, 875 (1987) (a State's probation system presents a special need for exercise of supervision that justifies replacing a probable cause standard with a reasonable grounds standard for satisfaction of the Fourth Amendment) an investigatory search demanded probable cause. Chief Justice Rehnquist quickly dispatched this claim by pointing out that:

[t]his dubious logic—that an opinion upholding the constitutionality of a particular search implicitly holds unconstitutional any search that is not like it—runs contrary to *Griffin's* express statement that its 'special needs' holding made it 'unnecessary to consider whether' warrantless searches of probationers were otherwise reasonable within the meaning of the Fourth Amendment.

Knights, 122 S.Ct. at 590-91 (quoting *Griffin*, 483 U.S. at 878, 880).

23. 483 U.S. 868. See *supra* note 22.

24. *Id.* at 592-93.

25. *Id.* at 591. The Court used the test established in *Ohio v. Robinette*, 519 U.S. 33, 39 (1996) ("The touchstone of the Fourth Amendment is reasonableness. . . . Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances.").

26. See *Knights*, 122 S.Ct. at 591.

a criminal sanction against the guilty²⁷ and a deterrent to future crime.²⁸ Although the Court recognized that society has a legitimate interest in the rehabilitation of probationers, it found the State's argument that a probationer is more likely to commit a crime than a non-probationer compelling.²⁹ The court of appeals would have had the States focus exclusively on the former. The Supreme Court refused to limit a State in such a manner, and accepted the view that a State's "interest in apprehending violators of the criminal law, thereby protecting potential victims of criminal enterprise, may therefore justifiably focus on probationers in a way that it does not on the ordinary citizen."³⁰ The Court argued that the outcome of the totality of circumstances test is determined "by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy, and, on the other, the degree to which it is needed for the promotion of legitimate government interests."³¹ The Court noted that the probationer was already on notice that his privacy interest would not be treated as substantially as that of an ordinary citizen.³² In addition, the Court identified a justifiable reason for the State to devalue the probationer's

27. *Id.* "Probation, like incarceration, is 'a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty.'" (citing *Griffin*, 483 U.S. 868 (1987) (quoting G. KILLINGER, H. KERPER, & P. CROMWELL, PROBATION AND PAROLE IN THE CRIMINAL JUSTICE SYSTEM 14 (1976))).

28. *Id.* at 592. The Court provided the following support for this statement:

'The very assumption of probation' is that the probationer 'is more likely than the ordinary citizen to violate the law.' *Griffin*, 483 U.S. at 880. The recidivism rate of probationers is significantly higher than the general crime rate. See U.S. Dept. of Justice, Office of Justice Programs, Bureau of Statistics, *Recidivism of Felons on Probation, 1986-89*, pp. 1, 6 (Feb. 1992) (reporting that forty-three percent of 79,000 felons placed on probation in 17 States were rearrested for a felony within three years while still on probation); U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Probation and Parole Violators in State Prison, 1991*, p. 3 (Aug. 1995) (stating that in 1991, twenty-three percent of state prisoners were probation violators).

Id.

29. See *id.*

30. *Id.*

31. *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999).

32. Even without a probation order including the search clause, a probationer's rights are limited in a way that an ordinary citizen's are not. See *Griffin*, 483 U.S. at 873-74 (Probation is "one point . . . on a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service. . . . [Probationers] do not enjoy 'the absolute liberty to which every citizen is entitled.'" (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972))).

privacy interest, namely the protection of the victims of crime. Although the only adequate justification for intruding on a normal individual's privacy interest is probable cause,³³ according to the Court, the balance of governmental and private interests made reasonable suspicion sufficient grounds for an intrusion of the probationer's privacy interest.³⁴ Because the Court found that the totality of the circumstances justified the search, Chief Justice Rehnquist did not find it necessary to examine the issues on which the Ninth Circuit had determined the case³⁵ such as whether consent to the search was actually given under the rationale of *Zap v. United States*³⁶ and *Schneckloth v. Bustamante*,³⁷ nor did he examine the individual motivations of the officers in light of the Court's decision in *Whren*.³⁸ The Court held that the facial reasonability of the search allowed the case to be decided on what the Court considered narrower grounds.

Justice Souter wrote a brief concurring opinion. Justice Souter in his concurrence reserved the question of whether *Whren's* holding that "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis"³⁹ should extend beyond searches based on probable cause to those based on reasonable suspicion.⁴⁰

V. COMMENT

The Supreme Court's decision in *Knights* suggests a willingness to streamline Fourth Amendment jurisprudence by supplanting a test riddled with exceptions with a straightforward balancing test. This balancing test is a simpler

33. See *Draper v. United States*, 358 U.S. 307, 310 (1959).

34. *Knights*, 122 S.Ct. at 592-93. The opinion cites as other instances of balances of interest requiring less than probable cause for search or seizure *Terry v. Ohio*, 392 U.S. 1 (1968) (holding that officers may pat-down for weapons for their protection when investigating suspicious behavior of persons he reasonably believes to be armed) and *United States v. Brignoni-Ponce*, 422 U.S. 873 (1976) (holding that the border patrol may stop motorists near the border on reasonable suspicion).

35. *Knights*, 122 S.Ct. at 591.

36. 328 U.S. 624 (1946).

37. 412 U.S. 218 (1973).

38. *Knights*, 122 S.Ct. at 593. *Whren* asserted "we have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers." *Whren v. United States*, 517 U.S. 806, 813 (1996).

39. 517 U.S. at 813.

40. See *Knights*, 122 S.Ct. at 593.

and more elegant way to determine constitutionality. In addition, the Court in *Knights* declared the importance of ensuring that the Fourth Amendment's reasonability standard is not interpreted in such a way as to excessively protect the individual rights of the accused at the expense of society's legitimate interest in protecting itself. *Knights* presents a Fourth Amendment freshly interpreted, one that is substantially more willing to take into account the interests of society.

Most of the earlier Fourth Amendment jurisprudence dealing with home searches had focused almost exclusively on the privacy expectations of the subject of the search. Just months before deciding *Knights*, the Court had reaffirmed the special place of the home in the eyes of the Fourth Amendment.⁴¹ In *Knights*, the Court upholds the reasonability of a warrantless search of the home despite the special consideration that privacy in the home had long been given⁴² and presents a test for Fourth Amendment searches that is simple and coherent.

Knights continues the modern trend in Fourth Amendment jurisprudence. The Supreme Court's test for determining whether searches comply with the Fourth Amendment had been to inquire:

whether the action was regarded as an unlawful search or seizure under the common law when the Amendment was framed . . . [and w]here that inquiry yields no answer . . . to evaluate the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.⁴³

Given the high level of protection afforded the home under the common law at the Fourth Amendment's adoption, the Court had long maintained that under that standard, "[w]ith few exceptions, the question of whether a warrantless search of a home is reasonable and hence constitutional must be answered

41. *Kyllo v. United States*, 533 U.S. 27 (2001).

42. See *United States v. U.S. Dist. Court for the E. Dist. of Mich.*, 407 U.S. 297, 313 (1972) ("[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.").

43. *Wyoming v. Houghton*, 526 U.S. 295, 299-300 (1999) (citing *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995); *California v. Hodari D.*, 499 U.S. 621, 624 (1991); *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 652-53 (1995)).

no."⁴⁴

Many situations arose in the twentieth century, however, that had not been addressed by eighteenth century common law. The Court recognized exceptions to the prohibition on the warrantless searches of the home as a result.⁴⁵ Over time, and particularly in the last ten years, the exceptions to the rule seemed poised to swallow it.⁴⁶ Increasing numbers of cases arose in which the exclusion of evidence obtained in warrantless searches seemed unreasonable. As a result, exceptions to the rule were created and expanded. No exception covered more ground than the special needs exception. Such an exception was granted in *Griffin*, a case closely analogous to *Knights*, because "special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable."⁴⁷ The Court in *Knights* declined to broaden the definition of special needs search, deciding instead that the special needs exception was irrelevant in its decision.⁴⁸ A second, and fairly obvious, exception to warrantless searches of homes is consent. Again, the Court in *Knights* declined to consider the issue of consent.⁴⁹ The Court's decision to ignore the exceptions and instead

44. *Kyllo v. United States*, 533 U.S. at 31. See also *Silverman v. United States*, 365 U.S. 505, 511 (1961) ("At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion."); *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990); *Payton v. New York*, 445 U.S. 573, 586 (1980).

45. See, e.g., *United States v. Leon*, 468 U.S. 897 (1984); *Massachusetts v. Shepard*, 468 U.S. 981 (good faith exception); *United States v. Havens*, 446 U.S. 620 (1980) (impeachment of defendant's testimony with illegally-seized evidence); *Harris v. New York*, 401 U.S. 222 (1971) (impeachment of defendant's testimony with statements obtained in violation of the Fifth Amendment); *Segura v. United States*, 468 U.S. 796 (1984) (exception for evidence initially obtained in violation that could be independently by lawful means); *United States v. Payner*, 447 U.S. 727 (1980) (exception for evidence obtained from a third party regardless of the constitutionality of the search that produced it). The Court also produced decisions that sacrificed substantial state interests based on the lack of a categorical exception. See *Mincey v. Arizona*, 437 U.S. 385 (1978) (a four-day warrantless search on an apartment in which a police officer was killed during a drug raid by apartment's owner, who had been arrested for the murder, was an unconstitutional seizure).

46. See Jennifer Y. Buffaloe, Note, "*Special Needs*" and the Fourth Amendment: An Exception Poised to Swallow the Warrant Preference Rule, 32 HARV. C.R.-C.L. L. REV. 529, 529 (1997).

47. *Griffin v. Wisconsin*, 483 U.S. 867, 873 (1987) (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985)) (Blackmun, J., concurring in judgment).

48. *Knights v. United States*, 122 S.Ct. 587, 590-91 (2001).

49. *Id.* at 591.

decide the case on the basis of straight reasonableness are what mark *Knights* as a potentially landmark case.

Prior to *Knights*, warrantless home searches had only been acceptable when they could be pigeonholed into one of the categorical exceptions. Since the initial basis for those categorical exceptions was that they were not unreasonable given the compelling government interests they reflected, the court in fact had been performing a reasonableness test under the guise of identifying exceptions to the rule. In *Knights*, the Court openly adopted *Houghton's* straightforward balancing test, having surreptitiously used it for some time. The Court coupled this balancing test with the test it had used in *Robinette*, which measures reasonableness "in objective terms by examining the totality of the circumstances."⁵⁰

The Court easily could have identified *Knights* as exempt from the ordinary Fourth Amendment protections of privacy at home based on the special needs exception and decided the case in the State's favor without altering their Fourth Amendment jurisprudence. They could have determined that *Knights* had consented to the search in his probation order. They could have decided that, like prisoners, probationers' constitutional rights are abrogated in situations in which there is a compelling government interest for the search. The Court could also have adopted an original intent line of reasoning, arguing that this situation is distinguishable from the nature of search that the Founders had in mind when they drafted the Fourth Amendment by virtue of *Knights's* consent in signing the probation order authorizing searches. Under this line of reasoning, *Knights* would not be entitled to the traditional standard of reasonableness under the first prong of the *Houghton* test, which considers the degree to which the search intrudes on an individual's privacy.

Instead, the Court discussed *Knights's* lessened expectation of privacy and the heightened government interest in supervising probationers. The Court determined that the

50. *Id.* (quoting *Ohio v. Robinette*, 519 U.S. 33, 39). *Robinette* involved a question of whether or not consent had been given when the defendant, a speeding driver, had agreed to let a police officer search his car when the officer did not inform him that he did not have to give such consent. The Ohio court adopted a bright-line standard saying that such searches were only consensual when the detainee was informed that he was free to go.

search was constitutional not because of any exception to the general rule, and not because Knights gave consent to the probationary order, but because it was reasonable. Knights's diminished privacy expectations as a result of his probation order, combined with the State's special interest in supervising Knights and the reasonable suspicion of Detective Hancock, created a totality of circumstances that made the search reasonable.

According to the Court, "[a]lthough the Fourth Amendment ordinarily requires the degree of probability embodied in the term 'probable cause',⁵¹ a lesser degree satisfies the Constitution when the balance of governmental and private interests makes such a standard reasonable."⁵² That lesser degree in *Knights* is a reasonable suspicion.⁵³ This is not a radical new standard; in less intrusive searches such as stop-and-frisk searches, it has been the standard for some time.⁵⁴ Warrantless searches of the home, however, have always demanded extraordinary justification.⁵⁵ Only a few categorical exceptions have justified such searches.⁵⁶ With *Knights*, the Court may have stripped the home of its sanctity and returned to the plain language of the Fourth Amendment: only searches that are unreasonable are unconstitutional.⁵⁷ The holding in *Knights*, therefore, frees courts from the constraints of the old system's formalism and inflexibility.

VI. CONCLUSION

The outcome in *Knights* was not surprising; *Griffin*, particularly in light of *Whren*, demanded that the searches be

51. See *Draper v. United States*, 358 U.S. 307, 310 (1959).

52. *Knights*, 122 S.Ct. at 592. See *supra* note 33, for other instances of balances of interest requiring less than probable cause for search or seizure.

53. See *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)).

54. See *Terry v. Ohio*, 392 U.S. 1 (1967).

55. See, e.g., *Mincey v. Arizona*, 437 U.S. 385 (1978) (a warrantless search on a drug dealer's apartment in which a police officer was killed by the dealer during a drug raid, after the dealer was arrested for the murder, was an unconstitutional search and seizure).

56. See Theodore P. Metzler, Iris Y. Gonzalez, Matthew V. Johnson & Peter S. Choi, *Warrantless Searches and Seizures*, 89 GEO. L.J. 1084 (2001). At least two of the recognized categorical exceptions, special needs and consent, could have allowed the court to reach the same outcome without adopting a simple reasonability test.

57. The Court's decision in *Knights* closely accords with the reasonableness standard proposed by Professor Amar. See Amar, *supra* note 3, at 758.

evaluated on the basis of reasonability. The surprise in *Knights* was that the Court chose to sidestep its longstanding jurisprudence concerning warrantless searches of the home. The historical deference given to the home, which was heavily emphasized in the Ninth Circuit's opinion, was entirely ignored by the Supreme Court. With little fanfare, the Court seemed to remove warrantless home searches from their unique position and universalize the reasonableness test; Fourth Amendment jurisprudence for warrantless searches now might rely solely on the reasonability requirement.⁵⁸ *Knights* also implies that the interests of society in protection from those who have already demonstrated criminal behavior will play a more prominent role in determining the constitutionality of a search. As a consequence, warrantless searches should have an easier time satisfying the Fourth Amendment.⁵⁹ The increased emphasis on the government's interest should not be surprising in light of the fact that *Knights* was the first search and seizure case the Court decided after the attacks on September 11. With another warrantless search case to be decided in the near future,⁶⁰ we shall see soon whether the standard the Court adopted in *Knights* will be reinforced and whether society's interest will weigh so heavily. Given that the home was the last bastion of unreasonability in Fourth Amendment jurisprudence, it seems likely that the jurisprudence of *Knights* will prevail. The more interesting question is whether, in future warrantless home search cases, the Court will apply the *Knights* balancing test. Should the Court do so, the inviolability of the home under the Fourth Amendment will be substantially reduced.

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58. Although it seems clear that the interests represented by the earlier categorical exceptions will be given their due in the balancing.

59. See Laurie L. Levenson, *Search and Seizure*, NAT'L L.J., Jan. 21, 2002, at B11.

60. *United States v. Drayton*, 231 F.3d 787, (11th Cir. 2000), cert. granted, 123 S.Ct. 803 (2002) (In *Drayton*, police officers asked two riders on a Greyhound bus if they could pat them down for weapons but never specifically advised them that they could refuse to consent. Based on these facts, The Eleventh Circuit Court of Appeals decided to suppress the cocaine found on the men).

