

The Love Note: An Introductory Lesson on the Fourth Amendment Right of Privacy

by Doug Johnson

This discussion activity and review of *California v. Greenwood* can be used to build interest and promote debate on the constitutional right of privacy.

Students will:

1. Analyze the right of privacy at both a personal and governmental level.
2. Recognize the relationship between constitutional decisions and personal liberties.
3. Understand the 4th Amendment and the purpose of warrants.

Materials needed: Copies of: **4th Amendment** (see Appended Materials)
CASE SUMMARY: California v. Greenwood (optional)

Time needed: 1 day

Grade level: 7th - 12th grades

Procedure:

1. The day before this activity arrange to have a student "actor" in the class perform this scene.

At the beginning of class, while the student is seated, the student actor comes in and places a personal note in the trash to be read in class. The class and teacher both observe this. After the "actor" is seated, the teacher retrieves the note and begins to reassemble and read the note. The student actor protests that it is none of the teachers business and demands the note back. This scene should become emotional so the students form instant opinions siding with either the teacher "You put it in the trash so anyone can read it" or the student "I tore it up because I didn't want anyone to read it."

2. At this point the teacher should open up the discussion to the class. Who is right?
3. After hearing various opinions refer students to the **Fourth Amendment**. Continue the discussion with questions like these:

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Procedure cont.

- A. Does Amendment 4 give enough information to solve this dispute?
 - B. The 4th Amendment deals with the relationship between citizens and the state. Does a teacher represent the state?
 - C. Does the privacy in the 4th Amendment include school waste baskets?
 - D. Is trash every private?
 - E. What if it is sealed in a plastic garbage bag and set out for collection on the street?
4. Read to the students or explain the synopsis of the Supreme Court decision in *California v. Greenwood*. **DO NOT** tell the class that Mr. Greenwood was convicted of drug trafficking.

California v. Greenwood 108 SCt. 1625 (1988)

Held:

1. The Fourth Amendment does not prohibit the warrantless search and seizure of garbage left for collection outside the curtilage of a home.
 - (a) Since respondents voluntarily left their trash for collection in an area particularly suited for public inspection, their claimed expectation of privacy in the inculpatory items they discarded was not objectively reasonable. It is common knowledge that plastic garbage bags left along a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. Moreover, respondents placed their refuse at the curb for the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through it or permitted others, such as the police, to do so. The police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public.
5. Continue the discussion, asking students if the police or a teacher should be able to sift through garbage to find evidence of a crime for which they do not have enough probable cause to obtain a warrant. Finally, by show of hands, have students demonstrate which side they are on.
6. After they seem to have decided, tell them that the United States Supreme Court has decided a case concerning criminal evidence gathered from garbage. Describe to them the parts of the case as presented in excerpts taken from the Supreme Court's opinion in *California v. Greenwood*. (See **CASE SUMMARY: *California v. Greenwood***.)

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Procedure cont.

Ask them how many now feel it was correct for the police to search through the trash without a warrant? If they have changed their minds after reading the **CASE SUMMARY** and finding out Mr. Greenwood was convicted of drug trafficking, ask:

1. Why should a drug traffic conviction make a difference?
 2. Why do cases of constitutional rights often center around criminal activities?
 3. If the court had said Mr. Greenwood's trash was private, what would have happened?
 4. Why didn't the police obtain a search warrant to go through the trash?
 5. What is the purpose of a search warrant?
7. Now explain to the class that not all of the judges agreed with the *Greenwood* decision. Describe the dissenting opinion of Justice Brennan.

A single bag of trash testifies eloquently to the eating, reading, and recreational habits of the person who produced it. A search of trash, like a search of the bedroom, can relate intimate details about sexual practices, health, and personal hygiene. Like rifling through desk drawers or intercepting phone calls, rummaging through trash can divulge the target's financial and professional status, political affiliations and inclinations, private thoughts, personal relationships, and romantic interests. It cannot be doubted that a sealed trash bag harbors telling evidence of the "intimate activity associated with the 'sanctity of a man's home and the privacies of life.'" which the Fourth Amendment is designed to protect.

Conclusion:

Ask the students to compare the *Greenwood* case to our student actor? How does the *Greenwood* decision affect the average citizen? This can be done in discussion or in the form of an essay.

**CASE SUMMARY: *California v. Greenwood*
108 S.Ct. 1625 (1988)**

In early 1984, Investigator Jenny Stracner of the Laguna Beach Police Department received information indicating that respondent Greenwood might be engaged in narcotics trafficking. Stracner learned that a criminal suspect had informed a federal drug-enforcement agent in February 1984 that a truck filled with illegal drugs was en route to the Laguna Beach address at which Greenwood resided. In addition, a neighbor complained of heavy vehicular traffic late at night in front of Greenwood's single-family home. The neighbor reported that the vehicles remained at Greenwood's house for only a few minutes.

Stracner sought to investigate this information by conducting a surveillance of Greenwood's home. She observed several vehicles make brief stops at the house during the late-night and early-morning hours, and she followed a truck from the house to a residence that had previously been under investigation as a narcotics trafficking location.

On April 6, 1984, Stracner asked the neighborhood's regular trash collector to pick up the plastic garbage bags that Greenwood had left on the curb in front of his house and to turn the bags over to her without mixing their contents with garbage from other houses. The trash collector cleaned his truck bin of other refuse, collected the garbage bags from the street in front of Greenwood's house, and turned the bags over to Stracner. The officer searched through the rubbish and found items indicative of narcotics use. She recited the information that she had gleaned from the trash search in an affidavit in support of a warrant to search Greenwood's home.

Police officers encountered both respondents at the house later that day when they arrived to execute the warrant. The police discovered quantities of cocaine and hashish during their search of the house. Respondents were arrested on felony narcotics charges. They subsequently posted bail.

The police continued to receive reports of many late-night visitors to the Greenwood house. On May 4, Investigator Robert Rahaeuser obtained Greenwood's garbage from the regular trash collector in the same manner as had Stracner. The garbage gain contained evidence of narcotics use.

Rahaeuser secured another search warrant for Greenwood's home based on the information from the second trash search. The police found more narcotics and evidence of narcotics trafficking when they executed the warrant. Greenwood was again arrested.