



Search and Seizure:
Exploring the Fourth Amendment
Study Guide

Search and Seizure: Exploring the Fourth Amendment Study Guide

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Search and Seizure: Exploring the Fourth Amendment Study Guide

The Search and Seizure: Exploring the Fourth Amendment Study Guide is a part of a collaboration between the Annette Strauss Institute for Civic Life at the University of Texas at Austin and the Texas Young Lawyers Association.



Annette Strauss Institute for Civic Life

The Annette Strauss Institute for Civic Life was established at The University of Texas at Austin in 2000 to respond to growing political cynicism and disaffection in the United States. The goals of the institute are (1) to conduct cutting-edge research on the ways in which civic participation and community understanding are undermined or sustained and (2) to develop new programs for increasing democratic understanding among citizens. To learn more visit, www.annettestrauss.org.



Texas Young Lawyers Association

The Texas Young Lawyers Association (TYLA) is commonly referred to as the "public service arm" of the State Bar of Texas. TYLA's primary purposes are to facilitate the administration of justice, foster respect for the law, and advance the role of the legal profession in serving the public. TYLA is dedicated to providing valuable learning materials and resources to educators at no cost. For a full description of all our inspiring projects, visit TYLA.org.

Introduction

Recent surveys tell us that 40% of Americans would restrict musical performances that might offend others, 50% feel that the press should not pressure government officials about touchy international matters, 68% believe that the pursuit of happiness is a Constitutionally-protected right, and while only 25% can name two First Amendment freedoms, more than half can identify two members of the Simpson family. Young people are part of these same trends, and the Annette Strauss Institute at the University of Texas at Austin and Texas Young Lawyers Association are looking for new ways to teach and share our Constitutional principles.

This project, called Turning Points, introduces young people to the Nation of Questions they inherited with a video series and study guides. The search and seizure video and study guide are the sophomore effort of the series that highlights the Constitutional question: when is it acceptable for the government to intrude into a person's private affairs? Ambitiously, we aim to improve civil argument, build a comfort and tolerance for debate and diverse opinions, improve Constitutional knowledge, and support our democratic values.

About the Turning Points project

The short film, "Search and Seizure," is the second piece in what will become a 12 part series of videos exploring the knottiest constitutional questions ever formulated. A seemingly simple question—*Must we go out of our way to respect minority rights in a country governed by the majority?*—has spawned endless roiling in the U.S., more than a few domestic riots, and thousands of law suits. Another simple question—*What should we do when state and federal laws come in conflict?*—has spawned great debate throughout our nation's history.

Our premise is that young people in the U.S. must learn to love such questions and to become comfortable arguing about them. Why? Because these are the "turning points" upon which the nation's history has pivoted. Questions like these inspired the colonists to break with England, caused a young nation to fight a civil war, and led directly to the emancipation of slaves and enfranchisement of women. The U.S. has not been united by ethnicity, religion, class, or region, but only by questions.

The series is being designed to expose these political fault lines. Importantly, the segment's central question will remain unresolved, inviting students to work through the constitutional complexities themselves. Drawing students closer to these questions, we reason, will bring them closer to the nation that gave them birth.

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About the Study Guide

The following guide provides a few ways of viewing the “Search and Seizure” film in the classroom and using it to explore the fourth amendment. There are four lessons in the collection – “Stringing together our Liberties,” “Exploring the Balance between Security and Privacy,” “Debating the Admissibility of Evidence,” and “Conducting a Links Test.” In the lessons, the students will (1) explain the protections guaranteed by the Fourth Amendment, (2) evaluate the actions of individuals according to their Fourth Amendment rights, (3) analyze U.S. Supreme Court’s interpretations of the Fourth Amendment, and (4) identify and analyze available evidence from multiple sources.

The sequence of lessons below are not a unit, and teachers can pick and choose between the lessons to best match the needs of the class. Each lesson has been created for the high school classroom but could be modified for the middle grades. Students will be asked to create a detailed timeline of the Fourth Amendment (“Stringing together our Liberties”), conduct historical research about the tension between security and privacy (“Exploring the Balance between Security and Privacy”), debate the admissibility of evidence (“Debating the Admissibility of Evidence”), and apply a links test to determine if the suspect is guilty (“Conducting a Links Test”). Each lesson includes a previewing activity, modifications, and assessment.

Lesson Plans

Lesson Title: Stringing together our Liberties

Essential Question:

How has the Fourth Amendment been interpreted by the Supreme Court over time?

Learning Objective(s):

- Students will identify the freedoms and rights guaranteed by the Fourth Amendment.
- Students will determine how the Fourth Amendment has been interpreted over time

TEKS: 11th Grade 1.A, Govt. 7.D, and Govt.13. D

Materials:

- DVD player (if you have the DVD) OR to watch the film online using a computer with Internet access, external speakers, and a projector OR access to a computer lab with Internet access and headphones for each student
- Updated Media Player (recommended)
- Textbook, research materials, Internet, and/or library access
- Research Worksheet
- Yarn or string
- Pen or pencil
- Paper or Journal

Preview:

Describing the Fourth Amendment and Viewing (20 min.)

1. Describe to the students that this lesson will explore the Fourth Amendment. The Fourth Amendment is part of the Bill of Rights. The Bill of Rights was added to the Constitution to restrict the national government and provide protection for individual liberties.
2. Describe to your students that today they will be watching a film about the Fourth Amendment -- "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 film will present a situation in which this amendment or parts of it will be implicated.

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3. Ask students to describe what they learned about the Fourth Amendment from watching the film.
4. Ask your students: Has the Fourth Amendment always been this way? If so, how has its interpretation changed? Prime your students for a brief conversation about how the Supreme Court works. Describe how the Courts interpret the law and may change their decisions over time.

Research:

Set-up (10-15 min.)

1. Describe the activity to your students. They will be creating a timeline of the major Supreme Court cases around the Fourth Amendment and how the Court's interpretation of the Amendment has changed over time.
2. Distribute the handout. Divide your students into groups of five. Assign (or allow them to pick) a Supreme Court case to research.

Cases/Research Topics:

Weeks v. United States, 232 U.S. 383 (1914)
Mapp v. Ohio, 367 U.S. 643 (1961)
Katz v. United States, 389 U.S. 347 (1967)
New Jersey v. T.L.O. , 469 U.S. 325 (1985)
Kyllo v. United States, 533 U.S. 27 (2001)

Teachers Note: Alternately, you could distribute the "Answer Key" (pg. 9-13 of the study guide) to the students and ask them to create a timeline based on these summaries. If you select this option, skip to the "Presentation/Culmination" section.

Conduct (90 min.)

1. Library, Internet, or classroom research: Students need to complete their research questions using sources from the library, Internet, or classroom. Students need to divide the work so that everyone has a job and each student needs to complete all of the questions on their worksheet.
2. Below is a list of websites that your students can use in their research. However, students are expected to find most of the information on their own.

The Oyez Project, Chicago-Kent College of Law

<http://www.oyez.org/>

The Preview- American Bar Association (for contemporary cases)

http://www.americanbar.org/publications/preview_home.html

Cornell Legal Information Institute

<http://www.law.cornell.edu/>

Exploring Constitutional Law, University of Missouri-Kansas

<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/home.html>

Bill of Rights Institute, Landmark Cases

<http://www.billofrightsinstitute.org/page.aspx?pid=469>

Presentation/Culmination:

Create a poster and present (90 min.)

1. After the students have completed their research worksheets. Ask the students to create a poster of their findings. Ask the students to hang their posters chronologically.
2. Students present their findings to one another.

Summarize (45 min)

3. Ask your students to generate a headline for each case.
4. If the space permits, ask a student volunteer(s) to string the posters together with a piece of yarn or string.
5. As a class, discuss whether the cases protect the individual, the government interest, or both. Move the string up or down depending on how the class sees it.

Teacher's Note: You can set the y axis however you would like. The ceiling is individual liberty and the floor is the government (security) or vice versa.

6. Reflection: Ask students to respond in writing. What do you notice about how the Fourth Amendment has changed over time? Ask your students to document their observations in a journal or on a blank sheet of paper.

Modification:

- You should assign groups purposefully to ensure that each student is able to engage with the reading material
- You may modify the assessment component by shortening the writing product or asking that the student focus on questions 1, 2, and 4 from the research worksheet
- If needed, students may dictate responses to the teacher or classmate or use word processing equipment
- Learning will be supported through group discussion

Assessment:

- a. Research Worksheet (individual)
- b. Presentation (group)
- c. Journal entry (reflection about how the 4th Amendment has changed)

Name: _____

Class: _____

Date: _____

Stringing Together our Liberties Worksheet

Complete the following:

1. Case Title	
2. Summary of Facts	
3. Plaintiff Arguments	
4. Defendant Arguments	
5. Ruling of the Majority	
6. Why does it matter?	

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Answer Key:

Title	<i>Weeks v. United States</i> , 232 U.S. 383 (1914)
Summary of Facts	Weeks was convicted for using the mail to transmit tickets in a lottery enterprise. He was arrested by police without a warrant at his place of business. Without a warrant or consent, the police entered his home, took possession of various papers and articles, and turned them over to a United States marshal. Late in the day, the marshal returned with policemen and conducted another search that resulted in seizure of additional property. While awaiting prosecution, the trial court denied Weeks' request for the return of everything that had been seized. The question of the case is whether "the Court in a criminal prosecution [can] retain for the purposes of evidence, the letters and correspondence of the accused, seized in his house in his absence and without his authority, by a United States marshal holding no warrant for his arrest and none for the search of his premises." ¹
Weeks Arguments	Weeks petitioned for the return of his possessions claiming it was a violation of his Fourth Amendment rights.
<i>United States</i> Arguments	Before the <i>Weeks</i> decision, courts operated on the premise that the need for justice outweighed the search-and-seizure protections of the Fourth Amendment, so they regularly admitted evidence that had been seized without a warrant.
Ruling of the Majority and Why it Matters	<p>The Supreme Court unanimously ruled that the seizure of Weeks' items from the second invasion of his home, in which the marshal was present, violated his constitutional rights because the marshal was a United States official "acting under the color of his office." It agreed that the evidence from this seizure couldn't be admitted. This was the first application of what became known as the "exclusionary rule," which states that the federal courts must exclude, or not use, evidence obtained through unconstitutional searches.</p> <p>However, evidence seized by police officers from the first invasion of the home was not excluded and did not have to be returned because those officers didn't act "under any claim of Federal authority such as would make the amendment applicable." Thus, under <i>Weeks</i>, the exclusionary rule applied only to federal-court trials, not to state-court trials. It wasn't until the case of <i>Mapp v. Ohio</i> that the exclusionary rule applied to state criminal trials.²</p>

¹ *Weeks v. United States*, 232 U.S. 383 (1914)

² Bodenhamer, D. J. (2007). *Our Rights*. Oxford: Oxford University Press.

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Title	<i>Mapp v. Ohio</i> , 367 U.S. 643 (1961)
Summary of Facts	Several hours after being denied entry to Dollree Mapp’s boarding house, officers forcibly opened the doors and searched the house without a warrant. After they discovered lewd books and betting materials, they arrested Mapp for violating Ohio’s obscenity law. Despite her protests that the materials belonged to a tenant, Mapp was convicted.
<i>Mapp</i> Arguments	<i>Mapp</i> appealed her conviction. She argued that the trial court should not have allowed the prosecution to use illegally seized evidence. The trial court had admitted the evidence because “the evidence had not been taken from the defendant’s person by the use of brutal or offensive physical force against the defendant.”
<i>Ohio</i> Arguments	The state agreed that the search was unlawful because the police had no warrant. It argued that it could use the evidence at trial because the exclusionary rule applied to federal, but not state, government officials.
Ruling of the Majority and Why it Matters	The Supreme Court found that all evidence obtained by searches and seizures that violates the Constitution is inadmissible in a criminal trial, even in a state court. Before <i>Mapp</i> , illegally seized evidence was excluded from court only in federal cases. However, cases decided after <i>Weeks v. United States</i> had held that the Fourteenth Amendment’s Due Process Clause made the protections of the Bill of Rights apply to state governments as well as the federal government. The Supreme Court applied the reasoning and held that “[s]ince the Fourth Amendment’s right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government.” <i>Mapp</i> extended the “exclusionary rule” and required that “illegally obtained evidence” be excluded “from court at all levels of the government.” ³

³ *Mapp v. Ohio*, 367 U.S. 643 (1961)

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Title	<i>Katz v. United States</i> , 389 U.S. 347 (1967)
Summary of Facts	Katz was involved in an illegal gambling operation. He regularly used a pay phone to make calls. The F.B.I put an electronic surveillance device called a “bug” on the pay phone that he used.
Katz Arguments	Katz claimed that bugging the public phone booth violated the Fourth Amendment because he expected that conversations in the phone booth would be private.
<i>United States</i> Arguments	The government argued that bugging the phone booth didn’t violate the Fourth Amendment because the phone booth was public and the electronic surveillance device (the bug), which was on the outside of the phone booth, didn’t physically intrude into a space that Katz expected would be private. The trial court agreed with the government and found no Fourth Amendment violation because “[t]here was no physical entrance [by the F.B.I.] into the area occupied by” Katz.
Ruling of the Majority and Why it Matters	<p><i>Katz</i> laid the foundation for the modern statutory approach to both criminal and national security surveillance procedures. While the Court famously described that the “...Fourth Amendment protects people, not places,” and there was no general right of privacy in a phone booth, it also recognized that “what [a citizen] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.” To determine whether Katz had an expectation of privacy, the Court established a test for an “expectation of privacy:”</p> <ol style="list-style-type: none"> 1. Did the individual have a subjective expectation of privacy? 2. Was this expectation one which society would find reasonable? <p>The Court ruled that Katz had an expectation of privacy in the public phone booth because he believed that his conversations were private, and that belief was reasonable. Therefore, the bug constituted an illegal, warrantless search. Today, judges consider these questions when a defendant asks for evidence to be excluded from trial.</p>

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Title	<i>New Jersey v. T.L.O.</i> , 469 U.S. 325 (1985)
Summary of Facts	Two students were caught smoking in a school restroom, a violation of school policy. One of the students, T.L.O., denied violating the rule but was taken to the assistant principal's office where her purse was searched. The assistant principal found cigarettes and also saw rolling papers that may have been connected to marijuana use. Upon closer examination, the principal found a small amount of marijuana and other paraphernalia that implicated T.L.O. in dealing drugs. She was prosecuted on delinquency charges.
<i>TLO</i> Arguments	T.L.O. argued that she had a right of privacy on school campus and asked the court not to admit the evidence found in her purse, or her confessions, because she argued that they were tainted by the invasion of privacy.
<i>New Jersey</i> Arguments	The state argued that because students are very closely supervised in schools, a child has virtually no expectation of privacy in what they bring to school.
Ruling of the Majority and Why it Matters	The Court held that students have an expectation of privacy under the Fourth Amendment and that the Fourteenth Amendment applied to searches conducted by school officials. However, it held the searches to a lower standard than searches conducted by law-enforcement officials. First, the Court ruled that school officials don't need to obtain a warrant before searching a student who is under their authority. Next, the Court decided that a search of a student didn't require probable cause; such a search could be based on the lower standard of reasonableness if the search was justified and reasonably related in scope to the reason that justified the search. Because T.L.O had been caught smoking in the restroom and denied the accusation, the search of her purse for cigarettes, which also revealed marijuana and rolling papers, was reasonable.

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Title	<i>Kyllo v. United States</i> , 533 U.S. 27 (2001)
Summary of Facts	Suspicious that Danny Kyllo was growing marijuana, a federal agent used a thermal-imaging device to scan his home. The imaging was used to determine if high-intensity lamps typically used for indoor marijuana growth were present. The thermal imaging revealed relatively hot areas inside the home. A warrant was issued and a search of the home revealed that the suspect was growing marijuana.
<i>Kyllo</i> Arguments	The use of thermal imaging of a home is a "search" and thereby unreasonable.
<i>United States</i> Arguments	<p>Kyllo had no expectation of privacy because he had made no attempt to conceal the heat escaping from his home. Even if he had, there was no objectively reasonable expectation of privacy because the imager "did not expose any intimate details of Kyllo's life," only "amorphous 'hot spots' on the roof and exterior wall."</p> <p>"The observations were made with a fairly primitive thermal imager that gathered data exposed on the outside of [Kyllo's] home but did not invade any constitutionally protected interest in privacy," and were, thus, "information in the public domain."</p>
Ruling of the Majority and Why it Matters	The Court ruled that using a thermal-imaging device to detect relative amounts of heat emanating from someone's home was a search that violated the Fourth Amendment because it was used to obtain information "regarding the interior of the home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area." ⁴

⁴ *Kyllo v. United States*, 533 U.S. 27 (2001)

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Lesson Title: Exploring the Balance between Security and Privacy

Essential Question: When is it acceptable for the government to intrude into a person's private affairs?

Learning Objective(s):

- Students will analyze the U.S. Supreme Court's interpretations of the Fourth Amendment
- Students will identify the rights guaranteed in the Fourth Amendment
- Students will identify and analyze available evidence from multiple sources

TEKS: 11th Grade 1.A, Govt. 7.D, and Govt. 20.C

Materials:

- DVD player (if you have the DVD) OR to watch the film online using a computer with Internet access, external speakers, and a projector OR access to a computer lab with Internet access and headphones for each student
- Updated Media Player (recommended)
- Index cards or 3x5 pieces of paper
- Markers
- Pen, pencil
- Paper or Journal

Previewing:

Video Viewing and Brainstorming (25-30 min.)

1. Before screening the short video, ask the students:
When is it acceptable for the government to intrude into a person's private affairs?

Capture student responses on the board.

Teacher's Note: If your students are stumped that is okay. The video may help to reveal some ideas. You could also prompt them to think about when and why it might be acceptable for a police officer to search someone.

2. As a class, show the video titled "Search and Seizure" from the Turning Points video series (either from the Turning Points DVD or online at turningpoints.org)
3. After the students have watched the film, ask them if they have any additional ideas about when an intrusion on privacy might be justified.

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Teacher's Note: You may prompt students to think about the film and about *why the police pulled the car over*. Answer: It was because a child's life was on the line.

4. Ask the students if they can think of other times when the government may interfere with a person's privacy. If the students are eager, you may want to take a couple of examples from the group.
5. Break students into groups of five. Distribute index cards or slips of paper and markers. Ask students to brainstorm as many ideas as they can about why and when the government might interfere with an individual's privacy. Encourage the students to generate as many ideas as possible. They can use textbooks or Internet sources, depending on how much time you have. Items may include threats to a child, terrorist attacks, health, disease or viral outbreak, etc. Ask students to put one idea per index card.

Teacher's note: If students seem stuck, you may try asking some additional questions about why they think police officers search for drugs or weapons.

6. After 10 minutes, ask one representative from the group to come to the front of the room and post their ideas.

Teacher's Note: As they are posting their index cards, try to help students cull and group the duplicates.

7. Ask the students to group the items by theme. Ask the students: what do all of these items have in common. You will hope to see a list of security-related items.

Teacher's Note: If the students are stuck, remind them of the film and ask them for the purpose of an Amber Alert?

Exploration:

Learning about the Fourth Amendment (10-15 min.)

1. Teacher describes:

The Fourth Amendment's essential question is when does privacy give way to a more important public purpose, and for what reasons?

Set up: Today we're going to analyze questions raised by the Fourth Amendment and explore its interpretations.

2. Write the first part of the Fourth Amendment on the board:
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures...

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3. Ask the students to jot down what they think that the amendment means. Check for understanding by asking the students to respond with what they wrote.
4. Teacher describes: As a society, we believe in our right to be “secure in [our] persons, houses, papers, and effects” as an essential liberty.

But it is not absolute. “The amendment provides a way for society to ensure its security against individuals who would use their privacy to harm others.”⁵ Our privacy can be invaded with probable cause, and in some cases, with reasonable suspicion.

Teacher’s Note: You may need to take a moment to describe key terms such as, probable cause.

5. Using the list that the students generated above, describe that the student will be focused on issues where the balance between security and privacy have been called into question. (Ideally, the students will have come up with some ideas that connect to the historical examples below.) Help the students to connect their ideas with times in history.
6. Put students into groups of five. Assign them a subject or allow them to choose their topic. Each team will be conducting research and doing a short class presentation on what they have learned.

Possible Historical Moments to Research:

- WWII, Japanese Internment
- Patriot Act, 9/11
 - Airport Security
 - Online surveillance
 - Wiretapping
 - Guantanamo Bay detainment camp
- Civil Rights Movement
- The War on Drugs
- Prohibition
- DUI/DWI or Driver’s License Checkpoints

Below is a website to assist your students with their research. However, students are expected to find most of the information on their own:

Justice Learning, Annenberg Classroom
Justicelearning.org

⁵ Bodenhamer, D. J. (2007). Our Rights. Oxford: Oxford University Press.

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Teacher's Note: Depending on the size of your class you may not need to use all of these subjects listed above. You and your class may come up with additions, as well.

7. Describe the research that they will do and the worksheet they will use to create short (3-5 minutes) classroom presentations.
8. Review the "Research Worksheet" (see below) with your students. Assign students to explore the various issues answering:
 - What was the security threat?
 - Whose privacy was violated?
 - What was the Supreme Court's holding during the time of the "incident"?
 - How would you have solved the problem? Advise students to come to a consensus for their presentation.
9. Library or Internet research: Students need to complete his or her research questions using sources from the library (or Internet). Students need to divide the work so that everyone has a job and each student needs to complete all of the questions on their handout. Grade each person on their answers on the worksheet and the team on its presentation.
10. Depending on time, you may ask your students to create a poster board of their findings. Students present their findings to one another.
11. After the presentations, ask your students to write about:
 - How this "balance" changed over time.
 - In its current state, does it still need revision and, if so, how?

Ask your students to document their feelings in a journal or on a blank sheet of paper.

Extension:

Using the preceding journal entry, ask your students to craft a research paper about their argument for or against a revision to our current Fourth Amendment interpretation.

Modifications:

- You should assign groups purposefully to ensure that each student is able to engage with the reading material
- You may modify the assessment component by shortening the writing product (in the extension) or asking that students focus on questions 1 and 2 from the "Research Worksheet"
- If needed, students may also dictate responses to the teacher or classmate and/or use word processing equipment

- Learning will be supported through group discussion

Assessment:

- a. Research Worksheet (individual)
- b. Presentation (group)
- c. Journal entry (reflection about modern day search v. privacy)

Name: _____

Class: _____

Date: _____

Exploring the Balance between Security and Privacy: Research Worksheet

Historical Moment:

1. What was the security threat?

2. Whose privacy was violated?

3. What was the Supreme Court's holding during the time of the "incident"?

4. How would you have solved the problem?

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Lesson Title: Debating the Admissibility of Evidence

Essential Question: What constitutes “probable cause” and “reasonable suspicion”?

Learning Objective(s):

- Students will explain the protections guaranteed by the Fourth Amendment
- Students will identify and analyze available evidence from multiple sources
- Students will evaluate the actions of individuals according to their Fourth Amendment rights

Materials:

- DVD player (if you have the DVD) OR you can watch the film online using a computer with Internet access, external speakers, and a projector OR access to a computer lab with Internet access and headphones for each student
- Updated Media Player (recommended)
- Search and Seizure handouts
- Pen/pencil

Warm-up (5 min.):

1. Post the following quote: "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in court." -- Justice Tom C. Clark, *Mapp v. Ohio* (1961)
2. Briefly discuss as a class the meaning of the quote: What rights do individuals have when it comes to the government searching their possessions, including their bodies? What does it mean for evidence to be inadmissible in court? Why might a search or seizure be against the law?

Procedure:

Video Viewing and Research (30 min.)

1. View the video “Search and Seizure.”
2. As a class, discuss what the students think each officer must be thinking at the end of the video when Sellers notices the height discrepancy between the suspects.
3. Tell the students that they will be watching the video once more and afterwards will be part of a debate arguing either that the drug evidence is admissible or inadmissible in court.
4. Assign each student to one side of the debate:

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- a. Arguing FOR admissibility of evidence
 - b. Arguing AGAINST admissibility of evidence
5. Distribute the “Evidence and Actions” and the “Search and Seizure Background” handouts to each student. Students should read and discuss the background with a partner who is on the same side of the debate. Clarify any questions the class has before moving forward. The information should guide the students to identify specific actions (or lack of actions) that may lead to the admissibility or inadmissibility of the drug evidence.
6. View the video for the second time. As they watch, students will fill in their “Evidence and Actions” handout with details from the scene that either support their side or refute their opponents’.

Debate Preparation (20 min.)

1. At least five members from each side will speak during the debate: three will present specific arguments and two will question members of the opposing side (see debate format under “Conduct Debate” below, but feel free to modify the format and/or times).
2. Students will meet with members of their side of the debate to review the details they recorded on their handout, prepare their arguments and questions for the opposition, and choose their roles.

Conduct Debate (35 min.)

1. The debate format is as follows (you may want to write this on board):
 - a. (3 min.) FOR constructive – introduces main arguments
 - b. (1 min.) AGAINST – cross-examines
 - c. (3 min.) AGAINST constructive – introduces main arguments
 - d. (1 min.) FOR – cross-examines
 - e. (3 min.) FOR rebuttal – explains a new point or refutes opposition
 - f. (1 min.) AGAINST – cross-examines
 - g. (3 min.) AGAINST rebuttal – explains a new point or refutes opposition
 - h. (1 min.) FOR – cross-examines
 - i. (2 min.) FOR conclusion – restate main arguments and explain why the side should win
 - j. (2 min.) AGAINST conclusion – restate main arguments and explain why the side should win
2. Sides may meet briefly between rounds to clarify their arguments and propose questions.

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Assessment (in-class or homework):

After experiencing the debate, students will write a final argument/synthesis individually. The writing should address the issues of search and seizure, probable cause, and reasonable suspicion as they apply to this case and in general.

Questions to consider/discuss:

- Did Officer Rodriguez have probable cause to restrain the Latino passenger? What is some evidence for or against your response?
- Was there reasonable suspicion to search the vehicle?
- Did the men give consent for the officers to search the car?
- Does it matter that the officers were not originally looking for drugs?
- If an officer finds something that he was not looking for (e.g. narcotics in a car that was being searched for a kidnapping victim), why should or shouldn't the officer have the right to take the accused into custody?
- Would your opinion change if no drugs or other evidence of criminal activity were found during the search?
- Should the officers or passengers have acted any differently?

Modifications:

Special Education and English Language Learner (ELL) modifications:

- You should assign groups purposefully to ensure that each student is able to engage with the reading material
- You may use reading-partner strategy
- You may modify the assessment component by shortening the writing product or asking that students focus on only one aspect of community for initial writing
- If needed, students may also dictate responses to the teacher or classmate and/or use word processing equipment
- Learning will be supported through group discussion

Name _____

Arguing FOR / AGAINST admissibility of evidence (circle your side)

Search & Seizure: Evidence and Actions

Person	Actions Taken	Actions Not Taken	Connections to Law (see background)
Officer Rodriguez (veteran)			
Officer Sellers (rookie)			
Driver			
Front Passenger			
Rear Passenger			

Extension Mini-Lesson: Conducting a Links Test

The law recognizes that sometimes you can be in the wrong place at the wrong time. The mere fact that a person is in an area where drugs are found isn't enough to prove knowing possession of the drugs. However, when combined with other direct or circumstantial evidence, presence in the area may be sufficient to establish a person's possession of a controlled substance beyond a reasonable doubt.

The Texas Court of Criminal Appeals has set forth a "links test" to be used to determine if the evidence presented to the jury was enough to support a conviction. The test consists of a non-exhaustive list of "links" that have been found sufficient, either on their own or in combination, to establish a person's possession of contraband.

Procedure:

1. Tell the students that, assuming the evidence is admissible in court, they will be putting themselves in the shoes of a jury and conducting links tests on each suspect in the video.
2. Distribute three links test handouts to each student. They should fill in the "name" of the suspect (driver, front passenger, or rear passenger) at the top of each sheet.
3. Students may work individually or in partners/groups to complete the links test checklist for each suspect. Alternatively, the three suspects can be divided between students so that each student completes only one links test.
4. As a class, share results and discuss whether a jury would find each suspect guilty or not guilty of possessing the pills found in the trunk. You may choose to have each student act as a juror and cast his/her vote.

Results:

Students should come to the following conclusions:

1. The Links Test and the Driver

The driver meets links test numbers 1, 3, 10, 11, 12, 14, and 15. He was present during the search. Because he had keys to the trunk where the drugs were found, he had access to the contraband. The fact that the plastic bags were found in the rear passenger's backpack could be used against the driver. The car in which the drugs were found belonged to the driver. A car is an enclosed space and the amount of drugs found could be described as a large amount, leading to an inference that the driver knew about the drugs. Finally, the driver's nervous conduct indicated a consciousness of guilt.

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Weighing these factors, a rational jury would be free to find the driver guilty of possessing the drugs in the trunk.

2. The Links Test and the Front Passenger

The front passenger meets links test numbers 1, 3, 10, 12, 14, and 15. He was present when the search was conducted. Even though the front passenger wasn't driving and didn't have keys to the car, he could have equal access to the trunk if it wasn't locked. The plastic bags were found in the rear passenger's backpack. Other factors counting against the front passenger include that the car was an enclosed space, the front passenger was visibly nervous, and the amount of drugs found could be described as a large amount. Weighing these factors, a rational jury could also find the front passenger guilty of possessing the drugs in the trunk.

3. The Links Test and the Rear Passenger

The back passenger meets links test numbers 1, 3, 5, 10, 12, 13, 14, and 15. He was present when the search was conducted. Because he was closest to the trunk, which could be accessed through a backseat compartment behind the armrest, he was in close proximity and had access to the drugs. Meeting factors five and 10, the rear passenger had plastic bags, commonly used by drug dealers to transport and deliver drugs, in his backpack. The drugs were found in an enclosed space, and the rear passenger had a large amount of cash. Because he was nervous, his conduct indicated a consciousness of guilt. The amount of drugs could be described as large. Weighing these factors, a rational jury could also find the back passenger guilty of possessing the drugs in the trunk.

Share the Conclusion of the Links Test: Because the evidence is sufficient for all three people in the car to be convicted of possession of the drugs, you might be asking yourself which one of them will be prosecuted. Actually, all three of them could be prosecuted for possessing the same drugs, even if one of them says he owns the drugs and the other two do not. That is why it is extremely important to be mindful of the company you keep. Due to the amount of the drug and plastic bags found, they could be charged with the more serious crime of possession of the drugs with intent to deliver them, increasing the possible punishment.

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Conducting a Links Test Worksheet

Directions: Based on the video, determine if the suspect meets each link by placing a check in the appropriate column.

Suspect:

Link	Meets	Does Not Meet
(1) the defendant was present when a search is conducted		
(2) the contraband was in plain view		
(3) the defendant was in close proximity to and had access to the contraband		
(4) the defendant was under the influence of drugs when arrested		
(5) the defendant possessed other contraband or narcotics when arrested		
(6) the defendant made incriminating statements when arrested		
(7) the defendant attempted to flee		
(8) the defendant made sneaky gestures		
(9) there was an odor of contraband		
(10) other contraband or drug paraphernalia was present		
(11) the defendant owned or had the right to possess the place where the drugs were found		
(12) the place where the drugs were found was enclosed		
(13) the defendant was found with a large amount of cash		
(14) the defendant's conduct indicated a consciousness of guilt		
(15) there was a large amount of contraband		
(16) the defendant's physical condition indicated recent consumption of contraband		
(17) the defendant was observed in a suspicious area under suspicious circumstances		

Is there evidence to find this suspect guilty of possessing the pills found in the car's trunk? Explain.

Search and Seizure Background

The Fourth Amendment to the United States Constitution:

"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."

- Evidence that is discovered because of an illegal search or seizure can't be admitted in a criminal trial. *Mapp v. Ohio*, 367 U.S. 643 (1961).
- Police can seize evidence of crime in plain view without a warrant, even where the police intended to discover the evidence. *Horton v. California*, 496 U.S. 128 (1990).
 - The officer must obtain this view from a location where he has the right to be. A plain view obtained because of a trespass doesn't qualify. *U.S. v. Jackson*, 588 F.2d 1046 (5th Cir. 1979).
- An officer is allowed to open a container if he has probable cause to search the entire vehicle that the container is in. An officer may also open a container if it is virtually certain that the container held a controlled substance because it was one of those rare single-purpose containers that by its nature does not support a reasonable expectation of privacy. *Texas v. Brown*, 460 U.S. 730 (1983).
- A warrantless search is permissible under a few exceptions including voluntary consent to search.
 - Because the random car searches in the scenario were warrantless searches, we have to determine whether the prosecutor could meet the burden of establishing the reasonableness of the search.
 - If there is no evidence showing that a passenger had either a legitimate expectation of privacy in the vehicle, the passenger has no standing to contest the search of the vehicle. *Meeks v. State*, 692 S.W.504 (Tex. Crim. App. 1985).
 - A passenger can challenge a search of a vehicle if the search resulted from an infringement of his Fourth Amendment rights. *Lewis v. State*, 676 S.W.2d 136 (Tex. Crim. App. 1984).
- Reasonable Suspicion: Restraining the front passenger was reasonable if, in light of the officer's experience and knowledge, there were specific facts that, taken together with rational inferences from those facts, reasonably permitted the intrusion. *Davis v. State*, 947 S.W.2d 240 (Tex. Crim. App. 1997).
- Once the reason for a stop has been satisfied (i.e. checking drivers licenses as part of an Amber Alert), the stop may not be used as a "fishing expedition" for unrelated criminal activity. *Ohio v. Robinette*, 519 U.S. 33 (1996).

Resource List

Bill of Rights Institute, Landmark Cases

<http://www.billofrightsinstitute.org/page.aspx?pid=469>

Bodenhamer, D. J. (2007). Our Rights. Oxford: Oxford University Press.

Cornell Legal Information Institute

<http://www.law.cornell.edu/>

Exploring Constitutional Law, University of Missouri-Kansas

<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/home.html>

Justice Learning, Annenberg Classroom

Justicelearning.org

Overview timeline “Third and Fourth Amendment” by Annenberg Classroom

<http://www.annenbergclassroom.org/Files/Documents/Timelines/ThirdFourthAmendment.pdf>

The Oyez Project, Chicago-Kent College of Law

<http://www.oyez.org/>

The Preview, American Bar Association (for contemporary cases)

http://www.americanbar.org/publications/preview_home.html

Your Rights On Campus, Texas Young Lawyers Association

<http://tyla.org/tyla/index.cfm/resources/educators-students/>