

The Fourth Amendment: Changes and Trends for the 90's
by Alan Anderson

This is to be used after students know the Fourth Amendment principles and the Exclusionary Rule. We will look to how recent cases have changed the interpretation of the Fourth Amendment and analyze where that might lead.

Students will:

1. Learn how everyday cases change America
2. Learn the importance of case decisions
3. Understand that an interpretation will either give the government more power or the individual more power
4. Analyze current decisions and form opinions as to the direction they believe constitutional law is headed.
5. Learn three current opinions on trends dealing with the Fourth Amendment.

Materials needed: Copies of: **Student Handout: FOURTH AMENDMENT DISCUSSION QUESTIONS**

OVERHEAD: The Fourth Amendment: Trends in the 1990's

Time needed: 1 to 2 days

Grade level: 10th - 12th grades

Procedure:

1. Students will separate into small groups and answer questions giving reasons for their answers. First questions will review Fourth Amendment principles and the later ones will emphasize new trends.
2. Students will participate in class discussion, giving opinions on **Student Handout: FOURTH AMENDMENT DISCUSSION QUESTIONS**. Teacher will provide additional information.
3. Teacher will use **OVERHEAD: The Fourth Amendment: Trends in the 1990's** on group trends, and build case results into the whole picture of the Bill of Rights.

RIGHTS OF THE ACCUSED

THE FOURTH AMENDMENT: CHANGES AND TRENDS FOR THE 90'S

Procedure cont.

- 4.** Teacher will end with summation and student questions that can be handled as class discussion or as an individual student assignment.

Student Handout: FOURTH AMENDMENT DISCUSSION QUESTIONS

- 1.** Upon stopping a car full of teenagers, a police officer smells the odor of alcohol. Can he search the vehicle? People inside? Containers inside? Trunk? (Make sure to give reasons for your answers.)
- 2.** You tell Mary on the phone that you robbed a Tom Thumb store. Police may use testimony gathered from tapping your phone without a warrant? Does it matter if it is a cordless phone?
- 3.** Police enter a home without warrant or consent. They are not in "hot pursuit," and they discover a mutilated body that has been dead for five days. Can the finding of the body be used in court?
- 4.** Police get an anonymous tip that Joe Smith is a drug dealer, that he goes to Florida and gets drugs and returns them to Alabama, and that he has been bragging about it. Joe goes to Florida and meets his family to drive home with them. Can police stop and search him?
- 5.** Police have a warrant for a house to seize electronic equipment. They find cocaine in a pill box in the medicine cabinet. Can they use it in court?
- 6.** John looked drowsy in class. Suspecting drug use, his teacher decided to search his locker and found drugs in it. Can these be used in court against John?
- 7.** Police crossed a fence and several barbed wire fences and a wooden fence. They peeked into a garage away from the house and saw many drugs. They confiscated the drugs. Can they use them in court when they did not have a search warrant?
- 8.** Shawn is entering the country from a trip to Mexico. Police officers stop him because they suspect that he is carrying drugs inside of his body. They do not have a warrant or probable cause. Can they keep him until he goes to the bathroom?
- 9.** Police fly over a house and use a high technological camera to take pictures of a marijuana plant growing in a planter on your deck. They do not have a warrant. Can they now get one and arrest you?

ANSWER KEY: Fourth Amendment Discussion Questions

1. Upon stopping a car full of teenagers, a police officer smells the odor of alcohol. Can he search the vehicle? People inside? Containers inside? Trunk? (Make sure to give reasons for your answers.)
Yes, he has probable cause and may search all of the above. CO vs. Bertine (1987)
(Trunk is questionable until arrest.)

2. You tell Mary on the phone that you robbed a Tom Thumb store. Police may use testimony gathered from tapping your phone without a warrant? Does it matter if it is a cordless phone?
Police can not use testimony from a phone without a warrant. Katz v. U.S. (1985) But if you were using a cordless phone they could, because you are using public airways. State v. Delaurier (1985)

3. Police enter a home without warrant or consent. They are not in "hot pursuit," and they discover a mutilated body that has been dead for five days. Can the finding of the body be used in court?
No. The exclusionary rule would disqualify the use of evidence found without a warrant.

4. Police get an anonymous tip that Joe Smith is a drug dealer, that he goes to Florida and gets drugs and returns them to Alabama, and that he has been bragging about it. Joe goes to Florida and meets his family to drive home with them. Can police stop and search him?
Yes. Even though the informer was never known, enough evidence was found relating to the tip to give cause for the search. Alabama v. White (1990)

5. Police have a warrant for a house to seize electronic equipment. They find cocaine in a pill box in the medicine cabinet. Can they use it in court?
No. The cocaine was not in "plain view."

6. John looked drowsy in class. Suspecting drug use, his teacher decided to search his locker and found drugs in it. Can these be used in court against John?
Yes! The court ruled in New Jersey v. T.L.O. that the school is a special situation and you do not need probable cause but only need reasonable suspicion for a legal search.

7. Police crossed a fence and several barbed wire fences and a wooden fence. They peeked into a garage away from the house and see many drugs. They confiscated the drugs. Can they use them in court when they did not have a search warrant?
Yes! U.S. vs. Dunn (1987) ruled in a similar case that this was not a person's home so that it did not constitute a legal search.

ANSWER KEY: Fourth Amendment Discussion Questions cont.

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8. Shawn is entering the country from a trip to Mexico. Police officers stop him because they suspect him of carrying drugs inside of his body. They do not have a warrant or probable cause. Can they keep him until he goes to the bathroom?

Yes! U.S. vs. Hernandez (1985) held a lady on suspicion for 16 hours until she did actually pass eight balloons of narcotics. 20 minutes is the normal maximum for a momentary stop.

9. Police fly over a house and use a high technological camera to take pictures of a marijuana plant growing in a planter on your deck. They do not have a warrant. Can they now get one and arrest you?

Yes! State v. Nevler (1985) This means was used and evidence accepted. Satellite photos are the only technology currently classified as government only.

OVERHEAD: The Fourth Amendment: Trends in the 1990's

I. EXPANDING THE LEGALITY OF SEARCHES WITHOUT WARRANTS.

- A. Consensual Encounters -- (no justification needed)

- B. Brief Seizures -- (minimal cause needed)

- C. Arrest -- (probable cause needed)

II. REDUCING THE LEVEL OF SUSPICION REQUIRED FOR A VALID SEARCH.

- A. Probable Cause

- B. Good Faith

- C. Reasonable Suspicion

III. ENTIRELY ELIMINATING INDIVIDUAL SUSPICION IN SOME CASES.

TEACHER NOTES: The Fourth Amendment: Trends in the 1990's

1. EXPANDING THE LEGALITY OF SEARCHES WITHOUT WARRANTS.

- A. *Consensual Encounters*** -- (no justification needed)
- B. *Brief Seizures*** -- (minimal cause needed) reasonable
- C. *Arrest*** -- (probable cause needed)

1A. To be considered a *consensual encounter*, a reasonable person must feel free to leave or end encounter. Police are free to ask you questions, such as identification as well as other questions. You do not need to answer the questions. Key issues are: did the police summon the person, how did the police act, did police show any weapon, and what kind of voice did police use.

1B. What constitutes a *brief encounter and minimal cause*? In this situation, the person does not feel entirely free to leave but also doesn't feel arrested.

1C. The key term is *probable cause for arrest*. Much police discretion is used here when police are in "hot pursuit" Recall cases you just discussed to show these things.

KEY POINT: In practice, the Supreme Court has expanded the search area by expanding the term reasonable person to be an incredibly snoop and technological person. By limiting a person's reasonable expectation of privacy, the Court opens up more areas for searches without warrants.

DISCUSS: How is this affecting a person's personal privacy. How much can be learned about you from your garbage, phone, and personal checks.

II. REDUCING THE LEVEL OF SUSPICION REQUIRED FOR A VALID SEARCH.

- A. *Probable Cause***
- B. *Good Faith***
- C. *Reasonable Suspicion***

Probable Cause by definition is stated to occur when the facts are such that a reasonable person would be more likely than not to believe the situation occurred.

A question always arises as to what a reasonable person would believe.

Early tests for this had two criteria: **1)** Can the informant be trusted? **2)** Is the informant's information solid? (Not just a rumor.)

In 1983, this changed to accept using one criterion if substantial information existed in this one area. For example, if a questionable source seemed very well informed, the criteria used could be the extent of the information.

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TEACHER NOTES: The Fourth Amendment: Trends in the 1990's cont.

In 1984, this criterion was changed to *Good Faith* by the Warren Burger court.

This changed once again in 1990 when the Court looked at *Reasonable Suspicion* in the *Alabama vs. White* decision. The Court now allows a criminal profile to show reasonable suspicion.

III. ENTIRELY ELIMINATING INDIVIDUAL SUSPICION IN SOME CASES.

Administrative procedures may now take rights away from groups of people even when suspicion exists.

Terry v. Ohio (1968) Stopping people on street with reasonable suspicion for investigatory purposes.

New Jersey v. T.L.O. (1985) School in New Jersey was ruled to have special needs, allowing search of students with reasonable suspicion.

Skinner v. Railway Labor Executives Assn. et al. (1989) Mandatory drug testing of train operators is permitted.

Treasury v. Von Ran (1989) Mandatory drug testing for certain government workers is permitted.

Sobriety check points provide the most recent example of administrative procedures infringing on rights absent suspicion.

SUMMATION: Discuss Questions:

1. Does each decision affect an individual's rights? How?

Answer: Each decision gives either government or the individual more rights.

2. What benefits do we receive when government has more power than individual rights?

Answer: Public safety.

3. What benefits do we receive when individuals have more rights?

Answer: Personal freedom.

4. What areas of person privacy are affected by search and seizure?

Answer: Telephone, mail, property, house, person, job, etc.

5. On what principles are our Bill of Rights based?

Answer: Personal freedom and strong individual rights. 100 guilty may go free if we can save 1 innocent person from going to jail. (Does America support this statement? Should it?)

(This information is based on a lecture presentation by Professor Ed Butterfoss, Hamline University School of Law, July 1991.)