

The Rights of the Accused in Search and Seizure
by Chieu Dao and Seng Lo

Search and seizure law is designed to protect the right to privacy. Like other Bill of Rights protections, the right to privacy is not absolute. Only "*unreasonable*" searches and seizures are prohibited. What makes a search unreasonable is the subject of a large and sometimes conflicting body of judicial opinion. Recent decisions of the U.S. Supreme Court seem to have given the police greater leeway to use evidence against defendants when the seized evidence was not on the defendant's person but was in some other place or in the possession of a third party. For example, the Court held that a person who did not own an auto in which he was riding could not object to the introduction at trial of a shotgun seized from the car even though the search may have been illegal.

Students will:

- 1.** Explain the rationale behind the Fourth Amendment,
- 2.** Identify the types of activity that are regulated by the Constitution's prohibition against unreasonable searches.
- 3.** List common situations in which search warrants are not required.
- 4.** Analyze situations in order to determine whether a search is lawful or unlawful.
- 5.** Explain the rights a citizen has when the police make an unlawful search or seizure.

Materials needed: Copies of: **4th & 14th Amendments** (See Appended Material)
Student Handout: SEARCHES WITH A WARRANT
Student Handout: SEARCHES WITHOUT A WARRANT
Student Handout: MAPP V. OHIO
Student Handout: THE CASE OF BILLY GREENWOOD
Student Handout: COMPARING RIGHTS

Time needed: 2-3 class periods

Grade level: 9th - 12th grades

RIGHTS OF THE ACCUSED
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Procedure

- 1.** Have students read the **Fourth and Fourteenth Amendment** and use **Student Handout: SEARCHES WITH A WARRANT** and **Student Handout: SEARCHES WITHOUT A WARRANT**. Briefly discuss the content of each, asking the students what each means to them.
- 2.** Read **Student Handout: MAPP V. OHIO**. Ask students to review the case. Questions to ask:
 - A.** What happened?
 - B.** Did a search occur? evidence?
 - C.** Was there a warrant?
 - D.** What evidence was found?
 - E.** Where was it located?
 - F.** Did the trial court allow the
 - G.** What was the state's argument on appeal?
 - H.** What did the U.S. Supreme Court say?
 - I.** Do you agree or disagree?
- 3.** Tell students they are going to consider a more current search case. Have students read **Student Handout: THE CASE OF BILLY GREENWOOD**.
- 4.** Discuss questions. (See **ANSWER KEY: The Case of Billy Greenwood**)
- 5.** Invite an attorney or a judge to class to talk with students about different aspects of the accused in **Student Handout: SEARCHES WITH A WARRANT**. Answer questions they might have.
- 6.** Have students do research on other country's law pertaining to the rights of the accused in searches and seizures by using library or interviewing people from that country.
- 7.** Have students read **Student Handout: COMPARING RIGHTS**. Ask them to list the rights that Americans have that are not present today in Vietnam. Student answers will include protection from unreasonable searches, right to a speedy trial, right to bail, prohibition against cruel and unusual punishment.

RIGHTS OF THE ACCUSED

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Student Handout: SEARCH WITH A WARRANT

SEARCH AND SEIZURE

Americans have always valued their privacy. They expect to be left alone, to be free from unwarranted snooping or spying, and to be secure in their own homes. This expectation of privacy is important and is protected by the U.S. Constitution. The Fourth Amendment sets out the right to be free from "*unreasonable searches and seizures*" and establishes conditions under which search warrants may be issued.

Balanced against the individual's right to privacy is the government's need to gather information. In the case of the police, this is the need to collect evidence against criminals and to protect society from crime.

The Fourth Amendment does not give citizens an absolute right to privacy, and it does not prohibit all searches - only those that are unreasonable. To determine what searches are prohibited, the courts look to the facts and circumstances of each case. As a general rule, the courts have held that searches and seizures are unreasonable unless authorized by a valid warrant.

The language of the Fourth Amendment is relatively simple, but search and seizure law is complex. Courts look at the law on a case by case basis, and there are many exceptions to the basic rules. If an individual on trial was the victim of an unreasonable search, any evidence found in the search cannot be used at the trial against the defendant. This principle, called the "exclusionary rule," does not mean that the defendant cannot be tried or convicted, but it does mean that evidence seized in an unlawful search cannot be used at the trial.

SEARCH WITH A WARRANT

A search warrant is a court order. It is obtained from a judge who is convinced that there is a real need to search a person or place. Before a judge issues a warrant, someone, usually a police officer, must appear in court and testify under oath concerning the facts that provide the probable cause to believe that a search is justified. This sworn statement of facts and circumstances is known as an affidavit. If a judge issues a search warrant, the warrant must specifically describe the person or place to be searched and the particular things to be seized.

Once issued, the search warrant must be executed within a limited period of time, such as 10 days. Also, in many states, a search warrant must be executed only in the daytime unless the warrant expressly states otherwise. Finally, a search warrant does not necessarily authorize a general search of everything in the specified place. For example, if the police have the warrant to search a house for stolen televisions or other large items, it would be unreasonable for them to look in desk drawers, envelopes, or other small places where a television could not possibly be hidden.

Excerpts taken from: Arbetman, O'Brien and McMahon, *Street Law, A Course in Practical Law*, Fourth Edition

Student Handout: SEARCHES WITHOUT A WARRANT

While the police are generally required to get a search warrant, the courts have recognized a number of situations in which searches may be legally conducted without a warrant.

Search incident to a lawful arrest. This is the most common exception to the warrant requirement. It allows the police to search a lawfully arrested person and the area immediately around that person for hidden weapons or for evidence that might be destroyed.

Stop and frisk. A police officer who reasonably thinks a person is behaving suspiciously and is likely to be armed may stop and frisk the suspect for weapons. This exception to the warrant requirement was created to protect the safety of officers and bystanders who might be injured by a person carrying a concealed weapon.

Consent. When a person voluntarily agrees, the police may conduct a search without a warrant and without probable cause. Normally, a person may grant permission to search only his or her own belongings or property. In some situations, however, one person may legally allow the police to conduct a search of another person's property (e.g., parent/child).

Plain view. If an object connected with a crime is in plain view and can be seen by an officer from a place where he or she has a right to be, it can be seized without a warrant. For example, if a police officer issuing a routine traffic ticket observes a gun on a seat of a car, the officer may seize the gun without a warrant.

Hot pursuit. Police in hot pursuit of a suspect are not required to get a search warrant before entering a building that they have seen the suspect enter. It is also lawful to seize evidence found during a search conducted while in hot pursuit of a suspected felon.

Vehicle searches. A police officer who has reasonable cause to believe that a vehicle contains contraband may conduct a search of the vehicle without a warrant. This does not mean that the police have a right to stop and search any vehicle on the streets. The right to stop and search must be based on probable cause.

Emergency situations. In certain emergencies, the police are not required to get search warrants. These situations include searching a building after a telephoned bomb threat, entering a house after smelling smoke or hearing screams, and other situations in which the police don't have time to get a warrant.

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Student Handout: SEARCHES WITHOUT A WARRANT cont.

Border and airport searches. Customs agents are authorized to search without warrants and without probable cause. They may examine the baggage, vehicles, purse, wallet, or similar belongings of people entering the country. Body searches or searches conducted away from the border are allowed only in limited circumstances. Courts have also held it reasonable for airlines to search all carry-on luggage and to search all passengers by means of a metal detector.

Excerpts taken from: Arbetman, O'Brien and McMahon, *Street Law, A Course in Practical Law*, Fourth Edition.

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Student Handout: Mapp v. Ohio

Justice Clark delivered the opinion of the Court.

"On May 23, 1957, three Cleveland police officers arrived at appellant's residence in that city pursuant to information that "a person was hiding out in the home who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home." Miss Mapp and her daughter by a former marriage lived on the top floor of the two-family dwelling. Upon their arrival at that house, the officers knocked on the door and demanded entrance but appellant, after telephoning her attorney, refused to admit them without a search warrant.

"The officers again sought entrance some three hours later when four or more additional officers arrived on the scene. When Miss Mapp did not come to the door immediately, at least one of the several doors of the house was forcibly opened and the policemen gained admittance. Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house. When the officers broke into the hall, Miss Mapp demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the "warrant" and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper and as a result of which they handcuffed appellant because she had been "belligerent" in resisting their official rescue of the "warrant" from her person. Appellant, in hand-cuffs, was then forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. The search spread to the rest of the second floor. The basement of the building and a trunk found therein were also searched. The obscene materials for possession of which she was ultimately convicted were discovered in the course of that widespread search."

At the trial no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for. At best, as the Ohio Supreme Court, which affirmed the conviction, expressed it, *"there is, in the record, considerable doubt as to whether there ever was any warrant for the search of defendant's home."*

The State says that *"even if the search were made without authority, or otherwise unreasonably, it is not prevented from using the unconstitutionally seized evidence at trial."*

Miss Mapp appealed her case to the U.S. Supreme Court and won with the following court opinion: *"Today we once again ... examine the constitutional documentation of the right to privacy free from unreasonable state intrusion, and, after its dozen years on our books, are led by it to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court."*

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Student Handout: MAPP v. OHIO cont.

In extending the substantive protections of due process to all constitutionally unreasonable searches, state or federal, it was logically and constitutionally necessary that the exclusionary doctrine—an essential part of the right to privacy—be also insisted upon as an essential ingredient of the right newly recognized by the case. In short, the admission of the new constitutional right could not consistently tolerate denial of its most important constitutional privilege, namely, the exclusion of the evidence which an accused had been forced to give by reason of the unlawful seizure.

There are those who say, as did Justice Cardozo, that under our constitutional exclusionary doctrine, *"the criminal is to go free because the constable has blundered."* In some cases this will undoubtedly be the result. But, as has been said *"there is another consideration—the imperative of judicial integrity. The criminal goes free, if he must, but it is the law that sets him free."* Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard for the charter of its own existence. As Mr. Justice Brandeis said *"Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example."*

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Student Handout: The Case of Billy Greenwood

The police suspected that Bill Greenwood was involved in dealing drugs. They observed many vehicles making brief stops at his house during late-**night hours**, and one truck was followed from Greenwood's house to another residence which had previously been investigated for drug sales.

The police asked the garbage collector to pick up Greenwood's plastic garbage bags which he had left on the curb in front of his house and turn them over without mixing them with other garbage. Upon opening them, the police found evidence of narcotics use. Based on this evidence, they obtained a search warrant for Greenwood's house and discovered quantities of cocaine and hashish. Greenwood was arrested and convicted based on this evidence.

Was the police search of the garbage illegal? Should the evidence of that search have been allowed to be the basis of a search warrant which resulted in Greenwood's conviction? This case was appealed to the U.S. Supreme Court, and the justices wrote two different opinions in the case. Read summaries of the two opinions and answer the questions that follow.

Opinion #1

"The Framers of the Fourth Amendment understood that 'unreasonable searches' of 'papers and effects'--no less than 'unreasonable searches of persons and houses'--infringe privacy. . . . In short, so long as a package is 'closed against inspection,' the Fourth Amendment protects its contents, 'whenever they may be,' and the police must obtain a warrant to search it just 'as is required when papers are subjected to search in one's own household.' . . .

"A trash bag . . . 'is a common repository for one's personal effects,' and, even more than many of them, is 'therefore . . . inevitably associated with the expectation of privacy.' . . . A search of trash, like a search of the bedroom, can relate intimate details...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, person 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."

Allowing searches of trash bags without warrants paints a grim picture of our society. It would be a society which says that it is unreasonable to expect privacy in personal effects sealed in a container and disposed in a manner where it would be combined with the trash of others. Consequently, we hold that the search was illegal under the Fourth Amendment, and that the items found should not have been used to convict Greenwood.

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Student Handout: THE CASE OF BILLY GREENWOOD cont.

Opinion #2

People are only protected by the Fourth Amendment's freedom from "*unreasonable search and seizure if they have a reasonable expectation of privacy*" with respect to the trash that was searched by the police. It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, or others. They have also been left there so that a third party, a trash collector, can take the garbage and perhaps sort through it.

Accordingly, having deposited their garbage in "*an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it,*" the persons could have had no reasonable expectation of privacy in the items they discarded.

Prior cases of the court have held that "*a person has no expectation of privacy in information he voluntarily turned over to third parties.*" For example, one case allowed the police to install a pen register at the phone company to record the phone numbers a suspect called and then used this information as evidence against him in court. In addition, another case allowed surveillance by an airplane without a warrant of a fenced backyard for purposes of detecting marijuana begin grown. The police should be permitted to gather evidence that any member of the public could also see and gather. Therefore, we hold that the trash collected may be used as evidence against Greenwood.

Questions:

- A. What are the two strongest arguments in Opinion #1? Why?
- B. What are the two strongest arguments in Opinion #2? Why?
- C. Which opinion do you agree with? Give reasons.
- D. Which opinion do you think represents the views of the majority of the justices on the Supreme Court? Which is the minority view?
- E. What is the importance of allowing the evidence to be used in the case against Greenwood? Could he be arrested and convicted without such evidence?
- F. Can private citizens go through one's trash without violating the law? What if a reporter does this to gather information for a news article? Should the law protect against such searches? Why or why not? Is your answer different if the reporter went into the person's garage to go through the trash? Could the police do that without a warrant?

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ANSWER KEY: The Case of Billy Greenwood

- A.** Two arguments for Opinion 1 are that **1)** the search violated the right to privacy, and **2)** the individual disposed of the containers that were closed, with the belief that the bags would be mixed with others, and therefore has a reasonable expectation to privacy.
- B.** Two arguments for Opinion 2 are based on the concept that there was not a reasonable expectation of privacy because **1)** the trash is collected by a third party, and **2)** the trash is easily accessible to the public.
- C.** Students' answers may vary.
- D.** The Supreme Court, in a 6 to 2 decision, found the search was legal, thus restricting the circumstances under which one has a reasonable expectation of privacy.
- E.** The results set the precedent that trash inspection by police is legal, thus restricting the circumstances under which one has a reasonable expectation of privacy. Without this evidence, it appears from the facts in the case that the police would not have had probable cause to arrest Greenwood.
- F.** Reporters sometimes search trash to learn more about the people in the news. When the trash taken is on the person's property, the reporter may be trespassing and committing theft. If trash is on the street, it is probably legal to take it.

Student Handout: COMPARING RIGHTS

The Rights of the Accused in the Case of Search and Seizure in South Viet Nam.

Viet Nam is a country in southeast Asia. Under the Geneva Agreement in 1954 Viet Nam was divided into two countries at the 17th parallel: North Viet Nam was under the Communist regime, and South Viet Nam was a Republic. After the division of the country, Vietnamese communists waged a war in South Viet Nam for many years until it could control the whole country in 1975. The rights of the accused in the South Viet Nam before and after 1975 were different.

Before 1975

The Republic of Viet Nam had a Constitution much like the U.S. Constitution, but it did not have the 10 Amendments. Therefore, the rights of the accused were not constitutional rights.

Although a search warrant was also mentioned in South Viet Nam criminal procedure, in many cases, the police did not obtain a search warrant, the accused person seldom questioned this practice, and the evidence seized in this case was admissible in the court.

After 1975.

Under the Communist regime, although the Communist government claims that it is a Republic and has a Constitution, it seems that the country is a lawless state. The police can search people or houses anytime they want, and the people can be arrested and put in jail without a trial for an unlimited time.