

Topic:

Writs of Assistance:
Understanding the Fourth
Amendment

Time:

2 class periods

Historical

Period:
Colonial
Period 1890

Core:

US I 6120 - 0501 & 0604
US II 6250 - 0203 & 0301
Gov. 6210 - 0103 & 0202

Objectives: Students will:

1. Recognize the violation of privacy rights by studying writs of assistance.
2. Understand historical background which led to the writing of the Fourth Amendment and its inclusion in the Bill of Rights.
3. Recognize situations (as interpreted by the courts) in which a search warrant is or is not needed.

Procedure:

1. Start the activity with springboard questions such as:
 - a. Have you heard the saying, "A man's home is his castle?" What does it mean?
 - b. What do you think that "privacy" and "secure" mean?
2. Give students the historical background on the writs of assistance.
3. Distribute Handout 1. Read through the information and discuss the questions with the students.
4. Discuss Handout 2 with students. If possible, have a police officer or a criminal attorney in class as a resource person to explain and discuss warrants and warrantless searches.
5. Explain that students will role play situations in which search warrants are not necessary. Divide the class into eight groups, giving each group one of the situations on Handout 3.
6. Instruct groups to create roles and plan their role plays to illustrate the situations described.
7. Have each group perform its role play in front of the class. After each role play, ask the students these questions:
 - a. What kind of search was enacted?
 - b. What was the reason for the search?
 - c. Why was a warrant not needed?
 - d. What possible changes in the circumstances would make it necessary for the officer to have a warrant?
8. Ask the police officer to comment on the search after each role play. Perhaps you would like to include the officer as a member in one or more of the role play situations.
9. Have the students apply the case study method to *Doe v. Renfrow*, Handout 4. See Case Study Method in the Teaching Strategy section of this book.

Handouts/Worksheets:

1. Understanding the Fourth Amendment
2. Searches With and Without Warrants
3. Role-playing Instructions for Students
4. *Doe v. Renfrow* and Application

Author: Paula Olsen and
Nancy Mathews

INTRODUCTION

In these lessons, students examine the historical and legal development of the right to privacy from colonial times to contemporary interpretations of Fourth Amendment guarantees. Students learn under what circumstances a search warrant is or is not required and role play situations that do not require warrants. It is recommended that a police officer be invited to class to participate in the discussion and to act as a resource. The final activity utilizes higher level thinking skills in applying the case study method to a recent strip search.

HANDOUT 1

UNDERSTANDING THE FOURTH AMENDMENT

Origins of the Right of People to be Secure: The Writs of Assistance.

During the 1700's, England wanted to control the trade of goods between England and the colonies. It passed laws that said certain goods could be bought and sold only with England. If colonists bought and sold goods with other countries, they had to pay taxes to England. (These import duties came under the Townsend Act of 1767.)

This made the colonists angry. They tried to get around these laws by hiding goods from other countries in their houses. To control this, English officials searched colonists' homes, buildings, and ships. To make this legal, England said the courts could issue orders, called **writs of assistance**. These writs allowed custom officials to enter homes and stores to search for hidden goods. The writs were similar to **search warrants**, but they allowed officials to search colonists at any time. The colonists were angry because they thought the writs violated the rights to privacy that Englishmen in England had.

A Massachusetts lawyer, James Otis, Jr., resisted these searches as a form of tyranny. "A person with this writ," said Otis, "may enter all houses, shops, etc., at will and command all to assist him." But said Otis, "a man's house is his castle."

When the Continental Congress of 1774 asked the King to do something about unjust and arbitrary rules and laws, it gave as one example the abuse of search and seizure powers by the King's officers. The right to be secure in their persons, houses, papers and other property from government search and seizure had long been a part of the rights and liberties of English people.

These practices became one of the many reasons that led to the Revolutionary War.

1. What were the writs of assistance?
2. How did the English officials use the writs?
3. Why did colonists think the writs violated their rights to privacy? Do you agree?
4. Were suspected violators of these acts and laws treated fairly?

The writers of the Constitution believed that privacy was a basic right of citizens and included this guarantee in the Bill of Rights.

SEARCHES WITH A WARRANT

Police officers need to conduct searches to gather evidence against persons suspected of crimes. In interpreting the Fourth Amendment, the courts have set down general guidelines for issuing search warrants for searches and seizures. To get a search warrant, the person — usually a police officer — must have probable cause. This means that he/she has facts and information that provide a good reason to believe a search is justified. The officer must swear under oath that the information he/she is giving is true to the best of his/her knowledge. The search warrant must specifically describe the person or place to be searched and the items to be seized. The warrant does not authorize a general search. The warrant must be issued by a judge.

SEARCHES WITHOUT A WARRANT

The courts have recognized that there are some situations in which a search can be conducted without a search warrant.

Lawful Inspection: Airport and border searches.

Consent: A person agrees to be searched without a warrant or probable cause.

Incident to Lawful Arrest: Police search a lawfully arrested person for weapons or evidence before it is disposed of.

Emergency: Situations, such as bomb threats and fires, when there isn't time to get a warrant.

Plain View: Objects related to a crime are in plain view of an officer during lawful performance of his/her duties.

Stop and Frisk: A police officer stops a person when the officer has good reason to believe the person has weapons and is acting suspiciously.

Automobile Searches: An officer has good reason to believe an automobile contains stolen goods.

Hot Pursuit: A police officer in hot pursuit of a suspect may enter a building he/she has seen the suspect enter.

ROLE PLAYING INSTRUCTIONS FOR STUDENTS

1. **Lawful Inspection**

Set up a scene for searching passengers about to board a train. Give the security personnel doing the searching, badges to show their authority. The searchers should show courtesy to all the passengers, but they also should be insistent about searching luggage, packages, purses, or anything the passengers are carrying.

2. **With Consent**

Two officers knock on the door of a home. The owner of the house answers the door. The officers ask to search the room of the owner's 16-year-old son for drugs. The officers say:

- You need not give consent if you do not wish.
- The search will not be made if you do not consent.
- If you do consent, anything we find may be used against your son in a criminal prosecution.

The father gives consent, and the officers find some drugs under the son's pillow.

3. **Incident to Arrest**

A person breaks into a drugstore window and sets off a burglar alarm. An officer, responding to the alarm, arrives just as the burglar is climbing into his car. The officer arrests the burglar and searches his car finding watches, electric razors, and other items possibly stolen from the drugstore or other stores.

4. **Emergency**

Neighbors call the police to report that they have not seen a 70-year-old man in or around his home for the past two days. The neighbors say they are worried because he lives alone and had a heart attack a few years previously. The man did not mention he was leaving on a trip.

When the officers approach the house, they see the newspapers for the past two days at the front door. After ringing and knocking at the front and back doors, they look in and knock on the windows. They try the doors and windows. Finding all locked, they break a window and enter.

5. **Plain View**

A police officer stops a car for a routine license check. He notices an open whisky bottle on the seat beside the 16-year-old driver. He arrests the driver.

6. **Stop and Frisk (Temporary Detention)**

An officer sees three men on the street corner. They take turns walking down the street, looking in store windows, and coming back to the corner. After they have repeated this five or six times, the officer approaches them, identifies himself/herself as a police officer, and asks for their names. They mumble answers. Fearing that they might have a gun, the officer pats them down and finds guns on two of the men. The officer arrests these two men.

7. **Searches of an Automobile for Illegal Items**

A sheriff receives a phone call from a reliable informant, who says that some stolen merchandise is now on a truck leaving for another state. The sheriff gives the license plate number, description, and location to one of his/her deputies to go quickly and search the truck.

8. **Searching a Student's Locker**

A student informs the principal that Bob, another student, is selling drugs on school grounds. The principal opens Bob's locker with a master key, finds drugs, and calls the police.

9. **Hot Pursuit**

Larry is observed shoplifting items in a store. Police chase Larry into his apartment building and arrest him outside the closed door of his apartment. A search of the apartment reveals a large quantity of stolen merchandise.

HANDOUT 4

DOE v. RENFROW (1979)

The use of drugs by secondary students was increasing as a problem during the 1978-1979 school year in Highland, Indiana. Concern over use and possession of drugs by high school students lead the Highland Board of Education to discuss and plan with district administrators a school-wide drug inspection in March, 1979. Patricia Little, of the Highland Police Department and a trainer of drug-detecting dogs, was also in attendance.

On March 23, 1979, a school-wide drug inspection was conducted by the administrators of the Highland School System. Assistance was provided by the administrators of the Highland Police Department and volunteer canine units trained in marijuana detection in both the junior and senior high school campuses during first period class.

Teachers were informed of the inspection by means of a sealed note when they arrived at school. The dogs were sniffing for the odor of marijuana. In eleven cases, a body search was conducted because the dog continued to alert after the student had emptied his/her pockets and/or purses. One of the students, Diane Doe, was escorted to a nurse's station in the junior high and, in the presence of two women, was asked to remove her clothing. When nothing was found on her body or in her clothing, Diane was permitted to dress and return to class.

The Highland drug inspection was generally considered successful with seventeen students being found in possession of drugs. Diane Doe, however, filed suit in U. S. District Court against school and police officials, alleging that the sniffing by the dogs, the pocket and strip searches, were in violation of her constitutional rights because they were conducted without a search warrant.

Assignment

1. Was the use of dogs to detect marijuana and other drugs in school a valid search under the Fourth Amendment?
2. Were students' rights violated under the Fourth Amendment to be free from unreasonable search and seizure when the only "device" used was a drug-detecting canine?
3. How would you decide the case? In favor of Doe, that her Fourth Amendment rights had been violated? Or in favor of the school (Renfrow), that the search was for the valid educational purpose of eliminating drug use and abuse within the school?
4. What facts are needed to justify a warrantless search of a student?

DECISION
DOE v. RENFROW

The District Court decided in favor of Diane Doe. Judge Allan Sharp wrote the opinion. There were several issues in the case. The court agreed with Doe that the body search made without a finding of any reasonable cause was a violation of her Fourth Amendment rights. However, the court did not grant any money damages because it found that the school administrators had acted in good faith . . . “And with a regard for the welfare and health of [Miss Doe].”

According to Judge Sharp, a search does not occur unless there is an intrusion into an area where the individual has an expectation of privacy. “Because of the constant interaction among students, faculty, and school administrators, a public school student cannot be said to enjoy any absolute expectation of privacy while in the classroom setting.” Additionally, Judge Sharp concluded:

The operation was carried out in an unintrusive manner in each classroom. Moreover, the procedure of bringing the trained dogs into each classroom was planned so as to cause only a few minutes’ interruption. All students were treated similarly up until an alert by one of the dogs. No student was treated with any malice, nor was the operation planned in a way so as to embarrass any particular student. Weighing the minimum intrusion against the school’s need to rid itself of the drug problem, the actions of the school officials leading up to an alert by one of the dogs was [sic] reasonable and not a search for purposes of the Fourth Amendment.

On the issue of pocket searches, Judge Sharp held that this pocket search was not in violation of the Fourth Amendment because of the limited purpose of the searches. Judge Sharp stated, “It should be noted . . . that had the role of the police been different, this court’s reasoning and conclusion may well have been different.” An alert by a narcotics dog constitutes reasonable cause to believe that a student is concealing drugs.

The final issue was the strip search. On this issue Judge Sharp drew a firmer line:

. . . [C]onducting a nude search of a student solely upon the continued alert of a trained drug-detecting canine is unreasonable even under the lesser reasonable cause to believe standard. Subjecting a student to a nude search is more than just the mild inconvenience of a pocket search. Rather, it is an intrusion into an individual’s basic justifiable expectation of privacy The continued alert by the trained canine alone is insufficient to justify a search because the animal reacts only to the scent or odor of the marijuana plant, not the substance itself.

Doe v. Renfrow is significant because it legally sets a precedent for the use of scent dogs in the schools. The legal reasoning in the case becomes more important as increasingly sophisticated security techniques are employed in the schools to combat drug use and violence.

The answer to *Doe* and future cases depends on answers to two questions: (1) What kind of search took place?, and (2) What happened to any evidence obtained during the search? *Doe v. Renfrow* anticipated no criminal prosecutions. If the school or state had intended to prosecute, it is likely the judge would have found the pocket and purse searches to be illegal.