

Searches Conducted by Public School Officials under the Fourth Amendment



4th 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.

Searches under the Fourth Amendment

- The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures of persons or property.
- The Fourth Amendment protects a person's reasonable expectations of privacy.
 - Start with a reasonable expectation of privacy
 - Subjective manifestation of privacy interest
 - No REP if a person doesn't take normal/reasonable precautions to manifest and protect his/her privacy. You only have to take precautions against ordinary/common/generally available means of sensory enhancement.
 - No REP in cases of misplaced trust -- revealing info to someone who turns out to be an undercover informant or cop.
 - Society Accepts a privacy interest in the right
 - Control over property, freedom from disruption, privacy.

Searches in a Law Enforcement Setting



- To conduct a search, a government official must establish “probable cause” to believe that a crime has been committed and must obtain a valid warrant.
- Probable cause can be established by showing that a government official has knowledge of facts and circumstances based on sufficiently trustworthy information to permit a reasonably prudent person to believe that a crime has been committed.
- Under the Fourth Amendment, probable cause amounts to “more than a bare suspicion but less than evidence that would justify a conviction.”

Probable Cause Continuum

- **NO INFORMATION**
 - The officer doesn't know anything about where the evidence is.
- **HUNCH**
 - The officer has a gut feeling that something isn't right, but they can't point to any specific facts. This is similar to intuition.
- **SUSPICION**
 - The officer knows a minor fact or knows a major fact from an unreliable source that suggests evidence might be located somewhere. One example is if a police officer stops someone on the street, asks them a question, and they get shy as if they are hiding something

Probable Cause Continuum

- **REASONABLE SUSPICION**
 - The officer knows many minor facts, or a larger fact that points to a particular person who is committing a crime.
- **PROBABLE CAUSE**
- **PREPONDERANCE OF THE EVIDENCE**
 - Equals more likely than not or more than 50%.
- **BEYOND A REASONABLE DOUBT**
 - The highest amount of proof in the legal world. You need this to convict someone of a criminal charge.
- **COMPLETE CERTAINTY**



Exceptions to Probable Cause

- Terry Stop and Frisk (not a full search)
 - If cop has Reasonable Suspicion that someone has a weapon, they can stop them and do a pat down and may remove any weapons or drug paraphernalia they see or feel
- Consent to Search
- Airports
 - Public safety outweigh expectation of privacy
- Schools
 - We will discuss shortly

Warrants

- 4th amendment requires a warrant for a search to be reasonable
- Police don't create warrant.
- Neutral Judge determines if there is probable cause to issue the warrant.
- The warrant must be specific as to the place to be searched and what is being searched for.

Exceptions to Warrant Requirement

- **Exigent Circumstances**
 - exigent circumstances exception to the general search warrant requirement allows for police officers to conduct a warrantless search if police officers are in “hot pursuit” of a fleeing suspect who is believed to have committed a significant crime, to preserve evidence that can easily be destroyed before a warrant is issued, and/or to ensure the safety of individuals in a given location.
- **Search Incident to Arrest**
 - once a full custodial arrest has been made, it is reasonable for a police officer to, contemporaneous with the arrest, (1) search the person of the individual being arrested and (2) areas into which the arrested individual may attempt to reach in order to retrieve weapons or destroy evidence.
- **Plain View**
 - If a police officer is lawfully present within premises to make an arrest or conduct a search, he/she may observe certain items not within the “immediate control” of the individual being arrested/searched which will nonetheless be subject to warrantless seizure under the “plain view” doctrine
- **Searches of Cars**
 - No warrant, just probable cause that driver has committed a crime/traffic violation

Remedies for Illegal Searches

- Mapp v. Ohio
 - Cops broke down her door, used a fake warrant, then searched most of her house.
 - Court found this was an egregious violation of her 4th amendment rights.
 - Holding extended federal exclusionary rule to all the states.
 - All evidence obtained by searches and seizures in violation of the Constitution is, by the same authority, inadmissible in a state court.



Why Exclude Improperly Obtained Evidence?

- 4th amendment rights aren't lower than any other, need protection.
- You can't have the right without a remedy
- Maintain integrity of the judicial system.
 - Don't let them use tainted evidence
 - Especially Important for Criminal Cases
- Prevents government from profiting from its own wrong
- Not costly
- Necessary to deter police conduct



Argument Against Exclusionary Rule

- Police officers are well trained, need to be able to act off their “finely tuned” instincts.
 - Law makes it more important to protect the individual privacy rights than intelligent, courageous, and vigorous initiative to expose criminal activity and bring those responsible for it to the bar of justice.
- The rule only protects people who are guilty of a crime.

Alternatives to the Exclusionary Rule

- Civil Damages (Civil lawsuits)
 - Difficult to win and to collect upon.
 - Cops have qualified immunity (immune unless law is clearly established and they violated it. A lot of 4th amendment law isn't very clearly settled)
- Criminal Prosecutions of offending officers
 - Statute makes federal officers who participate in illegal searches guilty of a misdemeanor and subject to substantial fines.
 - No officer has ever been convicted under the statute.
 - States have similar statutes, but they usually lie dormant unless the police actions result in serious injury or death.
- Police Rulemaking and other administrative solutions. (administrative discipline).
 - Extensive training in the implications of Mapp and the exclusionary rule.

Searches in a Public Schools

- “Students do not shed their constitutional rights at the schoolhouse gate.” ~*Tinker v. Des Moines Independent Community School District* (1969).
- The Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials.
- How should public school officials strike a balance between protecting a student's legitimate expectations of privacy and the school's legitimate need to maintain a safe environment in which learning can take place?



Searches in Public Schools

- In a school setting, teachers or other school officials are not required to establish “probable cause” or to obtain a search warrant for a search to be constitutional under the Fourth Amendment:
 - “The accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.”
 - “Requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools.”
- A public school official must have “reasonable suspicion” to justify a search of a student.

Searches in Public Schools

- Determining the “reasonableness” of any search involves a two-step inquiry:
 - First, one must consider “whether the action was justified at its inception.”
 - Second, one must determine whether the search as actually conducted “was reasonably related in scope to the circumstances which justified the interference in the first place.”
- A search of a student by a public school official will be “justified at its inception” when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.
- Further, a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

- *New Jersey v. T.L.O.*, (1985).

Jigsaw Activity

- Each group will read one of the following four Supreme Court cases:
 - *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)
 - *Veronica School District 47J v. Acton*, 515 U.S. 646 (1995)
 - *Board of Education of Independent School District #92 of Pottawatomie County v. Earls*, 536 U.S. 822 (2002)
 - *Hough v. Shakopee Public Schools*, 608 F. Supp. 2d 1087 (D. Minn. 2009)
- Next, each student will have to present and discuss the case to his or her new group.

Conclusion

- The 4th amendment of the constitution provides the right to be free from unreasonable searches and seizures.
- The exclusionary rule (from Mapp v. Ohio) protects the 4th amendment rights by excluding improperly obtained evidence
- School administrators don't need probable cause to perform a search on school grounds, the search just has to be reasonable based on all the circumstances.