

## Basic Constitutional Principles in the Fourth Amendment

Created By: Kathryn Benjamin and Cindy Cordell (2014)

Grade Level: 8th grade

Subjects/Courses: South Carolina History

Time/Duration: 1-2 days

Overview/Description: Familiarize students with their basic constitutional rights regarding searches and seizures as defined by the Fourth Amendment.

Standards: 8<sup>th</sup> grade standard 8-3

Objectives/Goals: Expose students to factual situations presented to the U.S. Supreme Court and must make relevant decisions based on the Fourth Amendment

Materials: Fourth Amendment Set of 15 hypotheticals, paper, pencil/pen

Instruction/Demonstration: Introduce the Fourth Amendment, review vocabulary, and video. Print the hypotheticals, cut into strips, then distribute one strip to each pair of students. Have students research their hypothetical case and try to determine how the Supreme Court would have decided the case based on previous cases. Depended on your class you may have to provide websites and guidance during their research. Students will present their findings to the class.

Vocabulary: Secure, Seizure, Oath, Warrant, Probable Cause, Affirmation

Activity: Hypotheticals

Supplemental Activity: 4<sup>th</sup> Amendment video game

<http://teachingfoundingprinciples.org/slide2.php>

Links:

<http://www.youtube.com/watch?v=cNM6TrHRUp8>

[www.fourthamendmentsummaries.com](http://www.fourthamendmentsummaries.com)

[www.fourthamendment.com/ccl.php](http://www.fourthamendment.com/ccl.php)

[www.revolutionary-war-and-beyond.com/fourth-amendment-court-cases.html](http://www.revolutionary-war-and-beyond.com/fourth-amendment-court-cases.html)

[www.knowmyrights.org/knowledgebase/case-law/4th-amendment-supreme](http://www.knowmyrights.org/knowledgebase/case-law/4th-amendment-supreme)

Assessment/Evaluation: Participation

Source: DAC Educational Publications by Daniel A. Conforti, J.D. 1996

# HYPOTHETICALS

## Hypothetical #1

---

**Facts:** The FBI intercepted a telephone conversation by attaching a listening device (wiretap) to the exterior of a public phone booth. Information gained from the conversation was used to convict the defendant on illegal gambling charges.

**ISSUES:** Did the defendant have a reasonable expectation of privacy in his phone conversation? Must the police obtain a search warrant before wiretapping a public phone booth?

## Hypothetical #2

---

**Facts:** The defendant enters an airport with his luggage. The luggage is “sniffed” by a trained canine to determine if drugs are present. The defendant did not consent to such a search.

**ISSUES:** Did the defendant have a reasonable expectation of privacy in his luggage? Must the police obtain a search warrant before conducting such searches?

## Hypothetical #3

---

**Facts:** During a campus demonstration against the Vietnam War, nine policemen were injured by demonstrating students. The school newspaper had photographs of the individuals responsible for injuring the officers. Neither the newspaper nor its staff was involved or responsible for the injuries to the officers. Newspaper officials refused to turn over these photographs to the police.

**Issue:** May a search warrant be issued to search property belonging to an innocent third party?

## Hypothetical #4

---

**Facts:** Police lawfully arrest the defendant in his home when he returned after work. The police then conducted a warrantless search of the defendant’s entire house. Evidence was discovered that linked the defendant to a series of burglaries.

**Issue:** May the police search a defendant’s entire home when a valid arrest is executed?

## Hypothetical #5

---

**Facts:** Watson was suspected of possessing and selling stolen credit cards. Watson was arrested without a warrant during an arranged meeting between the defendant and a police informer. Watson was searched but no stolen credit cards were discovered. Watson consented to a search of his car where police found two stolen credit cards.

**Issues:** Did the police need an arrest warrant to arrest Watson? Was the search of Watson’s car legal?

## Hypothetical #6

---

**Facts:** A teacher enters a student restroom and smells cigarette smoke. The teacher then approaches two students who had just left the restroom. The teacher makes the students open their purses and backpacks. Cigarettes and matches are discovered and confiscated. The students are subsequently disciplined by the school.

**Issues:** Did the action of the teacher constitute an illegal search and seizure?

# Hypothetical Explanations

Hypothetical #1: The question is based on the case of Katz v. United States. The Court ruled that a search warrant was necessary to wiretap a public phone booth. "Areas or places are not protected, but people are." What a person could reasonably expect to preserve as private, even in an area accessible to the public, is protected from unlawful invasion without a warrant. Wherever a person is, he is entitled to remain free from unreasonable search and seizure. The caller had a reasonable expectation of privacy in the phone booth.

*Related Issue: Is a search warrant needed to intercept a cellular phone call? No, since these calls can be picked up with a radio tuned to the proper frequency, there is a lesser expectation of privacy than with traditional phone calls.*

Hypothetical #2: The question is based on the case of United States v Place. Exposure of luggage located in a public place to a trained canine does not constitute a search under the Fourth Amendment and therefore no warrant is required.

Related Issue: The same rationale exists for luggage checks with metal detectors at airports.

Hypothetical #3: The question is based upon Zurcher v. Stanford Daily. A valid warrant may be issued to search any property regardless if the property is occupied by a third party. The need for the evidence in a criminal prosecution outweighs the privacy rights of Stanford Daily.

Hypothetical #4: The hypothetical is based on Chimel v. California. A search may be made after a valid arrest of a person. However, his house cannot be entirely searched. Only the immediate area within the defendant's control can be searched. This is often referred to as "the lunge test." How far can the defendant lunge in an attempt to acquire an object? Sub sequential material found during an illegal search is unconstitutional because the scope of the search was unreasonable. The exclusionary rule applies and the evidence of the burglary is inadmissible.

*Related Issue: If the police have a warrant for a house, does this permit them to search the defendant's car if on the property? No, a separate warrant must be secured.*

Hypothetical #5: The question is based upon United States v. Watson. The law permits a police officer to arrest a person for a felony without an arrest warrant. The arrest of Watson was based on probable cause, in a public place and in accordance the states' arrest regulations. Since Watson consented to the search of the car, he waived his rights under the Fourth Amendment. The evidence is admissible.

*Related Issues: The police ask for and are granted permission to search the backyard and subsequently search the garage. Is this a valid search? No, the search exceeded the scope of the permission. Anything found in the garage is inadmissible.*

Two roommates share an apartment at college. Can one roommate give permission for the police to search the room of the other roommate? Yes and no. Permission can be given for the areas under joint control. However, the private areas of one roommate cannot be searched without his permission.

Note: It is still an open question of law if a parent may give permission for the police to search the bedroom of a minor.

Hypothetical #6: This question is based upon New Jersey v T.L.O. It was reasonable for school officials to search a student's purse after a teacher accused the student of smoking in violation of school rules. The Court explained the standard for a school official to search a student is "reasonableness under all of the circumstances."

*Related Issue: If the school calls the police to conduct a search of a student, they must have reasonable suspicion in order to search a student.*