

Judges in the Classroom

Public Safety Searches

Source:

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Objectives:

1. Students will identify legal requirements of searches conducted with and without a warrant.
2. Students will explore the legal standard for conducting random searches of passenger vehicles preparing to board state ferries, and other public safety scenarios.

Grade Level:

Grades 9-12

Time:

One class period (approximately 50 minutes) – however, the related hypotheticals at the end could be added to create a longer class or to fill two class periods.

Materials:

One copy of Handout 1 (Ferry Search Case Study) for each student

Note: This lesson will require more time if the teacher has not already taught students the federal and state constitutional sources of rights for search and seizure, identified the competing interests of privacy and law enforcement, and reviewed the requirements for a search warrant.

Procedures:

1. **Begin the class by introducing yourself** and telling a little bit about what you do. Tell students that today's class will deal with search and seizure, specifically, when issues of public safety might justify not getting a search warrant. You might also describe to students how your particular judicial responsibilities relate to search and seizure: authorizing warrants, ruling on motions to suppress, reviewing on appeal the admission of questioned evidence, etc.

2. **Summarize the Fourth 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.”

3. **Discuss the Washington Constitution.** Article I, section 7 provides: “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” WASH. CONST. art. I, § 7. Courts apply a two-step analysis to questions involving article I, section 7. The court first determines whether a “private affair” has been disturbed. “Private affairs” are “those privacy interests which citizens of this state have held, and should be entitled to hold, safe from government trespass.” *State v. Maxfield*, 133 Wn.2d 332, 339, 945 P.2d 196 (1997). If a “private affair” has been disturbed, the court determines whether “authority of law” justifies the intrusion. *State v. Surge*, 160 Wn.2d 65, 71, 156 P.3d 208 (2007) (plurality opinion).

Explain that a reviewing court starts by analyzing the U.S. Constitution (Fourth Amendment) unless it is an area where – or there is an argument that – the Washington Constitution provides greater protection.

4. **Review briefly that both** the Fourth Amendment and the Washington State Constitution require that search warrants issue "upon probable cause." Ask students what that means.

5. **Draw this line graph on the board to demonstrate probable cause.**

Scale that measures how much information and what kind of information.

0%					50% +	95%	100%
No Information	Hunch	Suspicion	Reasonable Grounds	Probable Cause	Preponderance of Evidence	Beyond Reasonable Doubt	Certainty

6. **Explain each entry on the chart.**

No Information means the officer does not know anything about the location of evidence linked to a crime.

Hunch means the officer has a gut feeling that something is not right, but the officer cannot point to any specific facts; it is something like intuition.

Suspicion means the officer knows a minor fact or knows some larger fact from an unknown or unreliable source that suggests evidence may be located somewhere. For instance, an officer stops a person on the street to ask a question, and the person quickly puts a hand in a pocket. Or, the officer may find a piece of paper on the street, which says that a particular person is selling drugs.

Reasonable Grounds (also called Reasonable Belief and Reasonable Suspicion)

means the officer knows several minor facts, or a larger fact, or a large fact from a source of unknown reliability that points to a particular person engaging in some criminal activity. For example, a teacher standing outside a girls' lavatory smells cigarette smoke coming from the lavatory. The only two girls in the lavatory then leave together. The teacher has reasonable grounds, but not probable cause, to believe the girls have cigarettes in their purses (a violation of a school rule).

Probable Cause means an officer has enough evidence to lead a reasonable person to believe that the specific items to be searched for are connected with criminal activity and will be found in the specific place to be searched. For example, an increase of 200 to 300 percent in power consumption within a building is not enough alone to establish probable cause to believe that a drug-growing operation is under way inside. However, such an increase, with other suspicious facts including witness report claiming that people at a certain place are growing drugs, may be enough for probable cause and a search warrant.

Preponderance of the Evidence is the amount of evidence needed to be successful when suing in a civil case. It means that evidence must be "more likely than not," or more than 50 percent.

Beyond a Reasonable Doubt is the highest amount of proof; it is required to convict a person of a criminal charge.

Certainty means that there is not even an unreasonable doubt as to its truth.

7. **Remind students** that searches with a warrant are presumed to be reasonable (and therefore legal), while searches without a warrant are presumed to be unreasonable (and therefore illegal) unless they fall within a specific exception to the search warrant requirement.

Tell students there are many exceptions to the search warrant requirement in Washington. Brainstorm a quick list without expanding on the exceptions: incident to a lawful arrest, emergency searches as part of the community caretaking function of police, plain view, consent searches, appropriate investigative stop and frisk for weapons for officer safety, exigent circumstances with probable cause to search, proper inventory searches, and schools.

8. **Tell students that this class will focus on searches related to public safety.** Washington does not have a blanket exception to the search warrant requirement for public safety.
9. **Pass out Handout 1** and have students read individually. Divide the class into small groups of no more than five students. Refer to each small group as a different circuit court (e.g., First Circuit Court, Second Circuit Court, etc.). Ask the "judges" in each court to decide how they would rule in this case study and why. Give students five minutes to decide (increase time if students are not finished in five minutes). Tell students to elect a chief judge to report their decision and reasons to the class. Ask students if they understand the assignment.

10. Debrief the class by having each circuit court give its ruling without giving reasons at first. Tally responses.

11. Circle back and ask one of the circuits that ruled that the random search was constitutional to give **only one** reason why the search was constitutional. Then, ask a circuit that ruled the passenger's rights were violated by the search to give **one reason** why. Make sure that each circuit has a chance to provide at least one reason why it ruled as it did.

In the unlikely event that all students vote the same way, ask students to think like lawyers and provide the arguments to support the other view. Allow up to 15 minutes for group responses and discussion.

Students' viewpoints in favor of the searches may include that the risk of harm is at least equal to the problems at airports where these types of searches are legal; the intrusion is minimal; and other arguments.

Viewpoints against the searches may include issues such as how long the state of crisis will last, since terrorism is an on-going problem; democracy is risky; the terrorists win if citizens give up their privacy rights; the constitution has only limited exceptions to the warrant requirement and should not allow for expansions; and other arguments.

12. Review the standard for random ferry searches (no information) and compare it to random searches at the airports (no information). Should the fact that random airline searches of people and their belongings are permitted justify random vehicle searches of boarding ferry passengers? Is there a difference in terms of privacy interests and intrusion? Where does federal versus state law apply? While Washington courts have not addressed this issue, existing case law suggests that random searches of vehicles would be held unconstitutional under article I, section 7.

13. Ask students how the government could check for explosive devices without having information about individual vehicles posing specific risk and without random searches of the interior of vehicles. Raise the possibility of dogs trained and certified for sniffing for explosives sniffing the outside of all vehicles. Are dog sniffs for explosives or drugs legal searches? Explain that whether or not a canine sniff is a search depends on the circumstances of the sniff itself. In *State v. Boyce*, 44 Wn. App. 724, 729, 723 P.2d 28 (1986), the Court of Appeals held that as long as the canine "sniffs the object from an area where the defendant does not have a reasonable expectation of privacy, and the canine sniff itself is minimally intrusive, then no search has occurred." Recent cases have held that persons did not have a reasonable expectation of privacy in the air around their vehicles when parked in a public location. See *State v. Hartzell*, 156 Wn. App. 918, 929–30, 237 P.3d 928, 934 (2010); *State v. Espinoza*, 200 Wn. App. 1011, review denied, 189 Wn. 2d 1030, 406 P.3d 632 (2017). But see *State v. Dearman*, 92 Wn. App. 630, 637, 962 P.2d 850 (1998) (holding that under article I, section 7, a dog sniff of the front door of a private dwelling was so intrusive that it was an illegal search absent a warrant), review denied, 137 Wn.2d 1032 (1999).

14. If time, ask students about security screening at courthouses and other public buildings and whether those are lawful? The recent published Division III Court of Appeals opinion holds that they are – at least under certain circumstances. See *State v.*

Griffith, No. 35848-8-III, ___ Wn. App. 2d ___, 2019 WL 7343145, at *8–9 (Wash. Ct. App. Div. III, Dec. 31, 2019).

- 15. If time, ask students about “checkpoint” stops for DUI** and whether they believe those are lawful? Discuss the fact that the federal constitution generally does not prohibit them, and that they are allowed in many states, but not Washington. See *City of Seattle v. Mesiani*, 110 Wn.2d 454, 457–58, 755 P.2d 775, 777 (1988) (reasoning that because sobriety checkpoints involve seizures, they are valid only if there is “authority of law.” Article 1, section 7 “unlike any provision in the federal constitution, explicitly protects the privacy rights of Washington citizens, and these privacy rights include the freedom from warrantless searches absent special circumstances. The burden is on the City to show that the stop falls within an exception to the warrant requirement. It has failed to do so.”).

Query: might it be possible to enact legislation for checkpoint stops that provides the required authority of law?

- 16. Conclude with a comment** on the tension between efficient police work, public safety, and privacy of the individual. The teacher may follow up on this lesson by teaching additional exceptions to the search warrant requirement from the *Washington Supplement to Street Law*.

HANDOUT 1

Ferry Searches During Times of Crisis Case Study

The ferry system is one of the major people-movers in the Puget Sound. The Washington State Ferries operate a fleet of 25 vessels carrying 26 million passengers a year to 20 ports of call, from Tacoma to Sidney, British Columbia. Thousands of workers commute daily to Seattle from places such as Bremerton, Bainbridge Island, and Vashon Island.

In the aftermath of 9-11, motorists who ride ferries across Puget Sound were presented with a choice in order to make in their commute: submit to vehicle searches or risk missing the boat.

Washington State troopers began randomly inspecting cars and trucks as they line up on docks around Seattle for ferry rides. "It's not a huge hassle because our customers are already waiting in line anyway," said a spokeswoman for Washington State Ferries. "So far, people have been very obliging. They understand that this is just the tenor of the times."

Each day, police choose a different ferry dock on Puget Sound – there are 20 of them – to stage the random searches.

During these searches, only three motorists have balked at the request, and two of them changed their minds once they heard they could be banned from coming aboard a ferry unless they let officers look inside their vehicles. The third motorist who protested demanded his money back and drove away.

The state patrol claims the searches were voluntary; although, motorists who did not consent to the searches were prevented from boarding the boat. Civil liberties groups complained that these random searches violated the state and federal constitution.

1. Is a random search of the cars and trucks boarding Washington State Ferries during times of crisis an unconstitutional search? Why or why not?
2. Should random vehicle searches be included as part of the security measures on Washington State Ferries?