



Grades 9-12

A note from
the Hon. G. Joseph Pierron, Jr.
Chair
Law Related Education Committee

Dear Educator on the U. S. Constitution,

The attached materials have been used by Kansas judges, lawyers and teachers to help educate children on the Constitution. Please feel free to use and modify them. Also, think about how you might like to present the materials. It is a good idea to talk with the teachers you will be working with about how much time you will have.

The best programs are those which are interactive. Making the programs fun will help to make them more interesting to the students. Please feel free to contact me if you have any questions.

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Bennis v. Michigan

Brief Fact Summary. A husband used a car he jointly owned with his wife to have sex with a prostitute. The government seeks forfeiture of the car.

Synopsis of Rule of Law. An owner's interest in property may be forfeited by reason of the use to which to property is put even though the owner did not know how her property was being used.

Facts. Tina Bennis (Petitioner) jointly owned a car with her husband. The police arrested him after observing him having sex with a prostitute in their car. An indecency law states that the government can seek forfeiture of property that is a public nuisance. The government sought to declare the car a public nuisance.

Issue. If an owner of property does not know how her property is being used by another, can the owner's interest still be forfeited?

Provided by www.casebriefs.com

Appropriate for grades: 9th-12th

NOTES ON *BENNIS v. MICHIGAN*

Choose a girl to be Tina Bennis and a boy to be John Bennis. Tell "Tina" that she and "John" live in Detroit, Michigan. They own two cars which they both contributed money to pay for and which they own jointly. Tell her to imagine she has been awakened from a sound sleep at 2 a.m. by a phone call from you. You are John's lawyer. Your conversation will be something like the following. Improvise where necessary.

"Tina, this is Joe Pierron and I'm John's lawyer. We are here at the Detroit Police station. I'm afraid John is in a little trouble. (Tina, what is the first question you ask? That's right -- what is he charged with) Well, Tina I'm afraid this is a little embarrassing to talk about, but John has been charged with what we call a "gross public indecency." To be specific, a Detroit policeman came upon John in your old Pontiac with another woman -- a professional woman -- the oldest profession. Based on what the officer observed, John has been charged with patronizing a prostitute."

"I'm afraid that's not our only problem. The officer tells me that since John was using the car to commit an act of prostitution, they are going to seize the car and try and get it forfeited to the state as a public nuisance. Under that provision of state law, that would mean the state would sell the car and neither of you would get anything from it. I think we might have some arguments we can make to the court about fairness, but it looks pretty grim. Oh, and by the way, John wonders if you could come down and bond him out of jail."

So that's the situation. In addition to his criminal charge for patronizing a prostitute, John has given the state of Michigan the opportunity to seize the car as a public nuisance, sell it, and keep all the proceeds. Now in this case, we aren't talking about a lot of money. The car was so old it was only worth about \$600. The storage and auction costs were about \$300. But no matter how much money is involved, Tina, do you think it's fair that John's actions cause you to lose your half of the car? (Tina doesn't think it's fair. Elicit from her that it isn't fair because she is an innocent owner who did nothing wrong.)

So we go to court. (Make the boy who was John the judge at the trial court (let him wear a robe) and appoint someone else the assistant district attorney who is handling the forfeiture action.) Now, assistant district attorney -----, what arguments can you make to the court as to why the state ought to be able to confiscate the car. (Elicit from the asst. D.A. that this is a punishment, it will be a deterrent, the car will probably not be used for prostitution again, and that we are actually proceeding against the nuisance and not the person.)

Now the judge considers the case. Under the law he can give Tina some relief if he thinks it equitable. "Judge, how do you rule on the question of whether Tina gets a share of the proceeds from the sale of the car?" If he denies Tina any relief, tell him that's the way the trial court ruled. If he grants her relief, accuse him of being soft-hearted and say the trial judge denied her any share.

“Tina, do you think the decision was fair? No, of course not! You didn’t do anything wrong so you shouldn’t lose your half of the car.” So you appeal the case to the Michigan Court of Appeals where they agree with you. But then assistant district attorney _____ appeals to the Michigan Supreme Court where they reverse the Court of Appeals and affirm the trial court. Too bad Tina. But you are still so sure of your position that you and your lawyer ask the Supreme Court of the United States to review the decision.

Now usually this is an attempt that is not very successful. The U.S. Supreme Court takes fewer than 100 cases a year. They turn down cases involving millions of dollars and look at lots of cases involving the death penalty and life sentences. What are the chances that they will look at your little \$300 case?

But wonder of wonders, they grant the writ of certiorari and allow you to present your case to them. Now you (pick out a student) present the case for Tina before the court. You argue that under the Fifth Amendment to the U.S. constitution a person’s property cannot be taken without due process and that property may not be taken for public use without just compensation. (Have them read the Amendment)

At this point is there a justice here who thinks that the Michigan Court of Appeals was right and that under the U.S. constitution the state of Michigan cannot take Tina’s share of the vehicle without compensating her? (Get someone to take that position.) “Well, justice --- ----, there is much to be said for your position, but we have a problem. In the law we have a Latin term “stare decisis”. This is a policy to stand by precedents, former decisions, and not disturb settled points. This is a good policy to follow as it gives sureness to the law and helps to guarantee that it is applied uniformly to everyone.

We have a case arising out of the state of Kansas that I am sure you are familiar with, Justice. That being *Van Oster v. Kansas*, which was decided in 1926. As you recall, Van Oster purchased an automobile from a dealer but agreed that the dealer could retain possession of the car for use in his business. The dealer allowed an associate to use the car, and the associate used it for the illegal transportation of intoxicating liquor, this being during Prohibition. Just as in our case here, the state brought a forfeiture action and Mr. Van Oster said, “Heah! You can’t take my car! I didn’t know it was being used for illegal purposes!”

As you recall, we could be a little suspicious of Mr. Van Oster’s claim of innocence, but we didn’t even get to that. We said that we didn’t care if Mr. Van Oster was telling the truth or lying like a rug. We didn’t care if he was an innocent owner or not, as long as he had voluntarily given his car over to people who used it in an illegal venture.

This line of cases goes all the way back to the *Palmyra* case of 1827, where we allowed a ship to be confiscated when it had been shown to have been engaged in pirate-like activities and the owner claimed he didn’t know that was being done. What do we do about

these cases and the others that don't seem to give much shrift to the "innocent owner" defense.

Maybe we could distinguish our present case from these old cases.

To distinguish a case means to see if the present case is different in significant ways from older cases so we should take a slightly different position on it, even though at first glance, it might look like it needs to be handled like some similar cases. How is this case distinguishable from the Palmyra and Van Oster cases? (Elicit that this is a domestic situation and not a business or quasi-business situation; that this was apparently a one-time happening and not a continuous course of conduct and involved a fairly low level of criminality as opposed to piracy and liquor running for profit.)

On the other hand, let's imagine that an acquaintance asks to borrow your target pistol for some target practice. You lend him the gun and a little ammunition, believing he will do as he says. Instead, he goes down to a local bank, tries to hold it up, gets involved in a gun fight with two guards, kills one guard and is himself killed by the other. Do you get your gun back? (Why or why not?)

Well, we have to take a vote to decide this case. Remember, your decision will be taken down, put into books, and if you are wrong, law professors and students will laugh at you for 100 years. But don't let that bother you. How many believe the state can keep all the money without a violation of the U.S. constitution even if we might not necessarily agree with the way they did it? How many believe the state can't do what they did because it violates the U.S. constitution? (Count the votes and convert it into how it would be in a nine vote format.)

The court actually voted five to four in favor of the state. Chief Justice Rehnquist said in the opinion that they believed they needed to follow the old precedents. On the hypothetical question of whether you could forfeit a whole boat because someone smoked some marijuana on board, he essentially said that was not the case before them. Four justices went the other way and thought this decision was wrong. It will be interesting to see if the court changes its mind if we have a case where there is a lot of money or property involved and the owner is really innocent of any wrong-doing. Sorry, Tina.



Chandler v. Georgia

Brief Fact Summary. Libertarian Party nominees challenged a Georgia statute requiring proof of urinalysis drug test to qualify for nomination to election.

Synopsis of Rule of Law. “Special need for drug testing must be substantial-important enough to override the individual’s acknowledged privacy interest, sufficiently vital to suppress the Fourth Amendment’s normal requirement of individualized suspicion.”

Facts. Under a Georgia statute, a candidate must present a certificate from a state-approved laboratory showing that the candidate had a negative urinalysis drug test within 30 days prior to qualifying for nomination. Petitioners were candidates from the Libertarian Party, seeking injunctive and declaratory relief.

Issue. “Whether a Georgia requirement that candidates take a drug test ranks among the limited circumstances in which suspicionless searches are warranted.”

Provided by www.casebriefs.com

Appropriate for grades: 9th-12th

NOTES ON *CHANDLER v. GEORGIA*

Our first case arose out of the state of Georgia. To present this matter we need a man to play the part of Walker L. Chandler (choose one from the audience), a lady to play the part of Sharon T. Harris (choose one), and another gentleman to play the part of James D. Walker (choose one). I will play the part of a Georgia state election official.

(Get into character) Well, I'm very happy to meet you. I'm Joe Pierron and I'm here to process your candidate's filing forms. I understand the three of you want to run for Georgia state offices. Let's see, Mr. Chandler, you have filed for the Georgia state office of Lieutenant Governor; Ms. Harris, you've filed for Commissioner of Agriculture; and Mr. Walker, you have filed for one of the seats in Georgia's General Assembly, our legislature. And you all want to run as Libertarians. Everything appears to be in order in your applications. You know, I really enjoy this part of my job. It's always such a pleasure to meet public spirited citizens, such as yourselves, who are willing to run for public office.

Yes, well there appears to be only one more little formality to get out of the way. Mr. Chandler, here is your specimen jar; Ms. Harris, here is yours; and Mr. Walker, here is yours. (Note their puzzlement) Is there a problem? Oh, I understand. You must not be familiar with our new state law. I have it right here. It was passed in 1990, Section 21-2-140(b). It says that "each candidate seeking to qualify for nomination or election to a state office shall as a condition of such qualification be required to certify that such candidate has tested negative for illegal drugs." The drugs we're talking about are marijuana, cocaine, opiates, amphetamines, and phencyclidines.

Now, under our law you can provide the test specimen at a laboratory approved by the State, or at the office of your personal physician. Once the urine sample is obtained, a state approved laboratory determines whether any of the five specified illegal drugs are present and prepares a certificate reporting the test results to the candidate. I'm sure your test results will be negative, and all you have to do is turn in the form that we provide to the labs that will certify you were negative for those drugs, 30 days prior to qualifying for election or nomination. All right? (The three seem a little skeptical) I sense that you three aren't as excited about our law as we are. You know, Georgia is the only state in the nation to pass such a law and we're really proud of it.

(Get out of character) Are you three Libertarian candidates going to quietly go along with this requirement? I didn't think so. How can you object? (Discuss who can help. Governor and legislature not likely. State judges, maybe. But in Georgia they are part of the state political process and might not want to be identified as soft on drugs when they have to run for re-election. Who is left? Federal courts, who have the obligation to protect the U.S. Constitution from all who might want to violate it. The rights here being the Fourth Amendment concerning search and seizure and possibly the First Amendment right of Freedom of speech)

You need a lawyer. (Have them pick one out) We also need a judge. Pick one and have them wear a robe. Ask the lawyer if there is anything in the U.S. Constitution that might help their client and point very demonstrably to the Fourth Amendment in a copy of the Constitution. "The Fourth Amendment! Very good idea! Read it to the judge." (Does so)

Well, judge, are you going to rule in favor of the people of Georgia, or are you going to rule in favor of the Georgia Three? (The federal district judge in the Northern District of Georgia found that due to the importance of the state offices being sought, and the relative unintrusiveness of the testing procedure, the Georgia Three probably weren't going to win. Having made that finding, the judge denied an injunction to keep the law from being applied.) If the judge gives the right decision say, "That was the way the judge ruled." If he or she is wrong say, "No, judge, the way you really ruled was in favor of the state."

What do you think about that decision? You don't like it? Well, I understand, but you still want to run in the election. So the three of you kept your lawsuit going but went ahead and took the drug test so you could get on the ballot. In the election, unfortunately, you got beat like drums. Now the three of you go back to the district court. "Judge, do you change your mind? No, I didn't think so."

So what can you three do? Right, you appeal the district judge's ruling to the Eleventh Circuit Court of Appeals. We have the chief judge of the Eleventh Circuit right here. (Same judge)

Counsel, why do you think the Eleventh Circuit should rule in favor of your clients? Do they have something to hide? (Discuss the Fourth Amendment provision that "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." You don't have to give up that right just because someone wants to look into your affairs.)

Point out that there is no warrant here, and no reason to believe that any of the three are using drugs. But, on the other hand, the state is not searching the person, it is simply requiring the person to produce a test result in return for the privilege of running for office. Ask the chief judge how the court voted. If the chief judge says they ruled against the three, tell them that was in fact the way they ruled. If the answer is in favor of the three, say that one of the judges voted in favor of the three but the majority voted against them.

"Counsel, what do we do now? Try to get the Supreme Court to review the decision? Counsel, what makes you think the Supreme Court will take this little tinkle in the jar case? With all the big cases they have to decide?" Well, we don't know how they decided to do it, but they took the case. They are not required to, but they decide this is an important enough issue to be one of the about 100 cases they take.

The whole audience is now the Supreme Court of the United States. Find a judge who believes the three are right and ask why. Find some validity with the reasons, but say there appears to be a problem. We have the judicial policy of stare decisis, which is to generally follow the decisions that have come before and there appear to be some adverse rulings.

For instance, in the 1995 Vernonia Oregon School District case we said it was allowable for a school district to have random drug tests for students who wanted to participate in school district sports.

In the 1989 case of Treasury Employees v. Von Raab, we said it was all right to have drug tests for United States Customs Service employees who seek transfer or promotion to certain sensitive positions involving drug control.

And in the 1989 Skinner v. Railway Labor Executives Association case we allowed drug and alcohol tests for railway employees involved in train accidents and for those who violate particular safety rules even if they didn't clearly appear to be under the influence of drugs or alcohol.

Don't these cases seem to indicate that you don't always have to have solid grounds to believe that a person is under the influence of drugs in order to test them? (See if you can get the lawyer or someone else to pick up on the distinguishing facts. Vernonia involved minor children in school where the district has a semi-parental role. Van Raab dealt with government employees involved in drug interdiction. Skinner dealt with people who are driving trains. We might argue that these cases dealt with special health or safety issues beyond the usual needs of law enforcement.)

But, on the other hand, don't the people of Georgia place in the trust of their elected officials their liberty, their safety, their economic well-being, and ultimate responsibility for law enforcement? Don't they deserve to at least be confident that their officials are being screened for drug use? The test would only reveal the presence or absence of illegal drugs and the candidate would not have to release the results. That seems pretty reasonable.

On the other hand, the Fourth Amendment does seem to require individualized suspicion for searches and seizures unless we are dealing with some very special health or safety issues.

Well, we have to decide this case. Remember, when you vote on this case, they will take it down, publish it in books that will be distributed all over the world, and if you are wrong, people will laugh at you for the next 100 years. But don't let that bother you.

All right, how many think we should sustain the Eleventh Circuit Court of Appeals and approve the constitutionality of the Georgia law, whether we like it or not, because it does not violate the Fourth Amendment's ban against unreasonable searches and seizures? How many think this is an unconstitutional unreasonable search and seizure which we must

strike down as a violation of the Fourth Amendment? (Convert the vote into what it would be if decided by a nine judge court).

The U.S. Supreme Court was pretty clear in its decision. By a vote of 8 to 1 the court found the law violated the Fourth Amendment to the U.S. Constitution, because this was an unreasonable search and seizure. Justice Ginsburg wrote the majority opinion, which was even joined by Justices Scalia and Thomas, who are considered to be the anchors of the conservative viewpoint on the court.

The opinion pointed out there was no contention that the state of Georgia was really all that worried about possible drug use by state officials. It's different if you have a situation like in *Skinner*, where people are involved daily in fighting the drug trade, or in *Van Raab* where there is a limited history of drug use by persons involved in transportation. Even in the *Vernonia* case, where it was being used in the schools with children involved in sports, you can demonstrate a need for random tests or tests following certain events, even if there is not solid evidence of drug use.

In this case, you don't have any of those things. In fact, the way the tests were set up, they were not likely to catch anyone, as the candidates could control the timing of the testing. The court noted that this provision appeared to be symbolic of the state's efforts to fight drugs as opposed to attempting to really accomplish anything. The court pointed out that the Fourth Amendment shields society from state action that diminishes personal privacy for a symbol's sake.

Justice Ginsburg did stress however, that the court was not expressing an opinion on medical examinations designed to provide certification of a candidate's general health or on financial disclosure requirements, and it was not speaking to drug testing in the private sector.

Chief Justice Rehnquist dissented because he thought there was authority under *Skinner* and the other cases to allow the states to do this kind of testing. He pointed out that nothing in the Fourth Amendment prevents a state from enacting a statute whose principal vice is that it may seem misguided or even silly to the members of a court.



United States v. Christopher Drayton & Clifton Brown

Brief Fact Summary. Libertarian Party nominees challenged a Georgia statute requiring proof of urinalysis drug test to qualify for nomination to election.

Synopsis of Rule of Law. “Special need for drug testing must be substantial-important enough to override the individual’s acknowledged privacy interest, sufficiently vital to suppress the Fourth Amendment’s normal requirement of individualized suspicion.

Facts. Under a Georgia statute, a candidate must present a certificate from a state-approved laboratory showing that the candidate had a negative urinalysis drug test within 30 days prior to qualifying for nomination. Petitioners were candidates from the Libertarian Party, seeking injunctive and declaratory relief.

Issue. “Whether a Georgia requirement that candidates take a drug test ranks among the limited circumstances in which suspicionless searches are warranted.”

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Appropriate for grades: 9th-12th

NOTES ON *UNITED STATES v. CHRISTOPHER DRAYTON & CLIFTON BROWN*

United States versus Christopher Drayton and Clifton Brown was decided by the United States Supreme Court on June 17, 2002. To present this case we will first need a couple of volunteers to play the parts of Mr. Drayton and Mr. Brown. I think we have the two volunteers right here. We also need three cheerful volunteers to play the parts of Officer Hoover, Officer Lang, and Officer Blackburn. And we have the three right here. We will also need a volunteer to play the part of some distinguished judges and I see a distinguished judge type right here. Put this robe on while you are waiting for your case to get to you judge.

This case arose out of an incident that occurred at the Greyhound bus station in Tallahassee, Florida, which is probably the state capital that is most often misspelled. Mr. Drayton and Mr. Brown were traveling together on the bus en route from Ft. Lauderdale, Florida to Detroit, Michigan. The bus made a scheduled stop in Tallahassee where the riders had to disembark so the bus could be refueled and cleaned. As the passengers reboarded, the driver checked the tickets and then went into the terminal to complete some routine paperwork.

As the driver left, he allowed three members of the Tallahassee police force to board the bus as part of a routine drug and weapon interdiction effort. The officers were dressed in plain clothes, sort of like the way you are dressed today, and carried concealed weapons and visible badges.

Now Officer Hoover, according to your report on this incident, you knelt on the driver's seat and faced the rear of the bus. I understand you did this to ensure the safety of the other two officers, correct ? I thought so. But you didn't block the aisle or otherwise obstruct the bus exit, did you ? That's what I thought.

Now Officer Blackburn, you went to the back of the bus with Officer Lang and you stayed there looking forward, right ? And Officer Lang, you started working your way toward the front of the bus, speaking with individual passengers as you went, Correct ? And you asked the passengers about their travel plans and tried to match their passengers with their luggage in the overhead racks, correct ? While you were talking to the passengers, you tried to avoid blocking the aisle, didn't you ? To do this, you would stand next to or just behind each passenger you were talking to, right ?

Officer Lang, in your experience, are most people perfectly willing to cooperate ? Sure the are. They are generally real glad to see police checking for things like guns and drugs, aren't they ? But, if passengers don't want to talk to you and want to exit the bus, they can do so without argument from you, right ? In fact, you recall about a half dozen passengers in the past year who did just that, don't you ? Sometimes, I understand, you tell the passengers explicitly, that they don't have to cooperate, but my understanding is that you didn't on the day in question.

So you are proceeding down the aisle and you come to where Mr. Drayton and Mr. Brown are seated, and you showed them your badge and said, "I'm Investigator Lang with the Tallahassee Police Department. We're conducting bus interdiction, attempting to deter drugs and illegal weapons being transported on the bus. Do you have any bags on the bus?" And you said it pretty much the way I said it, right? You are always pretty nice to the people on the busses because almost all of them are good, law-abiding folks, aren't they? Sure, they are. You don't get gruff and you don't wave a gun around or anything like that, do you? Of course not.

So after you asked them if they had a bag they both pointed to a single green bag in the overhead luggage rack as I understand it. And you asked, "Do you mind if I check it?" And you asked in a conversational tone without being gruff, right? And I understand Mr. Brown said, "Go ahead." Then you took the bag down and gave it to Officer Blackburn to check and it contained no contraband of any kind. So far, so good.

But then, I understand, you noticed something. Both the men were wearing heavy jackets and baggy pants, despite the fact that it was pretty warm that day, as it often is in Tallahassee. Now as an experienced investigating police officer, what does your experience tell you might be going on if men are wearing heavy, baggy clothing in warm weather? They might be trying to conceal weapons or drugs, right? So you inquired about the possibility of Brown having weapons or drugs on him and asked him if you could check his person. And you did it with a conversational tone and he said "Sure," and cooperated by leaning up in his seat, pulling a cell phone out of his pocket, and opening up his jacket.

Now, again, people usually cooperate this way, and in the overwhelming majority of cases they have nothing illegal on them, right? Sure. So you patted Brown's jacket and pockets, including his waist area, sides, and upper thighs. And in both thigh areas, you felt something very suspiciously like drug packages you have found on previous occasions, right? So Mr. Brown was taken off the bus for a further check and you asked Mr. Drayton if you could check him, and he agreed. He lifted his hands about eight inches from his legs and you patted him down, and you detected things just like what you had detected on Brown.

You then checked the two more carefully and you found that they had duct-taped plastic bundles of powder cocaine between several pairs of their boxer shorts. Brown had about a half pound of cocaine so hidden and Drayton had a little less than that. So they were arrested and charged with possessing cocaine and with conspiring to distribute cocaine.

Now Mr. Brown and Mr. Drayton, you are in pretty deep trouble and much in need of a lawyer. Would you please have your lawyer come up here? (Have them select someone from the audience.) Alright, you are going to represent Mr. Brown and Mr. Drayton. Things look pretty bad. After reviewing the case, you decide to file a motion to suppress the cocaine. In order to do that, you need to find some legal support for your position. Where do you think you can find some help. (Point to your copy of the U.S. Constitution and get them to say that.) What particular part of the constitution do you think will be of aid to your clients?

(Point to the Fourth Amendment and get them to say it.) Right, the Fourth Amendment. Now I'm sure the judge has it committed to memory, but please read it so the audience knows what we are talking about. (Have them read the Fourth Amendment.)

So your argument is going to be that the officers were violating your clients' Fourth Amendment rights, correct? They had no probable cause to believe that your clients were committing a crime, did they? There was no reason to believe, before they started questioning them and frisking them, that they had anything illegal on them, did they? Of course not! They obviously would not have been able to get a search warrant before they started searching them. So under that famous case of *Mapp v. Ohio*, you contend that because the incriminating evidence was found in violation of the Fourth Amendment, it should be suppressed and not used against them, right?

We go over to the federal judge for the Northern District of Florida, and judge, you don't buy the defendants' arguments, do you? No indeed. You point out that the officers were dressed in plain clothes, they did not brandish their badges in an authoritative manner, did not make a general announcement to the entire bus, and did not address anyone in a menacing tone of voice. You note that the officers did not block the aisle or the exit, and stated that it was obvious that the defendants could have left the bus and not answered any questions. In general, you noted that everything that took place between Officer Lang and Mr. Brown and Mr. Drayton suggested that it was cooperative. There was nothing confrontational about it.

Well, Mr. Brown and Mr. Drayton, you don't like that decision, do you? If you don't like what a trial court does, what can you do about it? Appeal, that's right. So you go up to the Eleventh Circuit Court of Appeals and the chief here (same person as playing the trial judge) reverses the trial court. They say under a couple of their decisions, the *Washington* and *Gupai* cases, that bus passengers cannot reasonably be expected to feel free to disregard police officers' requests to search unless there is some positive indication that consent can be refused. So they reverse the trial court and throw out the evidence.

Well, Officers, you obviously don't like that result, do you? But where can you go if the United States Court of Appeals rules against you? Right, to the Supreme Court of the United States, that is the only higher court. So a petition for review is filed and the Supreme Court decides to hear the appeal and issues a writ of certiorari which tells the Eleventh Circuit to send the case on up, and we get to go to Washington D.C. to see it argued. Alright, you can all have a seat now.

Everyone here is now on the Supreme Court of the United States and you are going to decide this case. Do we have a justice here who has an idea on whether we should go along with the Eleventh Circuit and suppress the evidence because the search and seizure violated the Fourth Amendment, or whether we should go with the decision of the trial court and find that the search and seizure were not in violation of the Fourth Amendment? (Choose someone and briefly get their take on the case.) Now Justice, you know that here in the

Supreme Court, in fact, in all American courts, we operate under the principal of stare decisis, that Latin phrase which means that we generally follow the cases that we have decided before. Since the U. S. Supreme Court will usually try to fully explain its decisions, I'd like to discuss a few cases that we have decided in this area before.

First of all we have the Royer and Rodriguez cases, both also out of Florida where we have said that we don't generally see a Fourth Amendment problem with officers approaching individuals on the street or in other public places, such as bus and airline terminals, and putting questions to them if they are willing to listen and respond. We have held this position even when law enforcement officers have no basis for suspecting a particular individual. We have held that the officers may pose questions, ask for identification, and request consent to search luggage – provided that they do not induce cooperation by “coercive means.”

In the Bostick case in 1991 we had another Florida case out of the Florida Supreme Court where two police officers requested permission to search a bus passenger's luggage. The passenger agreed, and the search revealed cocaine in the suitcase. The Florida Supreme Court suppressed the cocaine as the result of an unreasonable search and seizure. While doing so it adopted a rule that due to the cramped confines onboard a bus, the act of questioning would deprive a person of his or her freedom of movement and would therefore be a seizure under the Fourth Amendment.

I'm sure you remember we reversed the Florida Supreme Court. First we reminded everyone that in applying the Fourth Amendment we take all the circumstances surrounding the encounter into consideration. Then we noted the traditional rule that states a seizure does not occur so long as a reasonable person would feel free to disregard the police and go about his business, is not an accurate measure of the coercive effect of a bus encounter. A passenger may not want to get off a bus if there is a risk it will depart before there is an opportunity to reboard. A bus rider's movements are confined in this sense, but this is the natural result of choosing to take the bus. It says nothing about whether the police conduct is coercive. The proper inquiry is whether a reasonable person would feel free to decline the officer's request or otherwise terminate the encounter. And finally, the Court rejected Bostick's argument that he must have been seized because no reasonable person would consent to a search of luggage containing drugs. The reasonable person test, the Court explained, is objective and presupposes an innocent person.

Because we didn't have all the facts we needed, the Court in Bostick didn't decide whether a seizure had occurred. But, I'm sure you remember we identified two factors particularly worth noting when we sent it back for further consideration. One of the facts in Bostick we thought was important was that, although the officer was armed, he didn't remove the gun from its holster or use it in a threatening manner. The other fact was that the officer told the passenger he could refuse his consent to the search.

In Mr. Drayton and Mr. Brown's case, the Eleventh Circuit court looked at Bostick and came up with a rule that evidence obtained during suspicionless drug interdiction efforts aboard buses must be suppressed unless the officers have advised the passengers of their right not to cooperate and to refuse consent to a search.

We now have to decide if the Eleventh Circuit was right. Let's hear what members of this court think about the situation. Do the facts of this case cause us to believe that the actions of the officers here went too far and became a suspicionless seizure that we should find unreasonable, or were the actions of the officers non-coercive to the extent that we should find the actions of the defendants were not unreasonably coerced. If we find the actions were coerced, we will suppress the evidence. If we find the officers' actions were not unreasonably coercive, we will let the evidence in. (Discuss the Fourth Amendment implications of the case, trying to get members of the audience to give their views.)

Well, we need to take a vote. All the justices who agree with the Eleventh Circuit judges and think we had a violation of the Fourth Amendment and we should suppress the evidence in, raise your hands. (Get an approximate count) All those who agree with the trial court and find that the officers' actions did not violate the Fourth Amendment, and that we should let the evidence in, raise your hands. (Convert the vote to a nine judge format and announce that the Court has voted something to something that the evidence either should or shouldn't be suppressed.)

The Supreme Court of the United States voted 6 to 3 that the evidence should not be suppressed and that the officers' conduct was not unlawful. Justice Kennedy wrote the majority opinion. He pointed out that the trial court was correct in finding that everything that took place between Officer Lang and the defendants suggests that it was cooperative and that there was nothing coercive or confrontational about the encounter. There was no application of force, no intimidating movement, no overwhelming show of force, no brandishing of weapons, no blocking of exits, no threat, no command, not even an authoritative tone of voice.

While there were three officers in the bus, the officers said nothing to suggest that people could not exit and the aisle was left clear. Finally, the Court felt that the evidence appears to show that people generally cooperate and consent to searches not out of fear, but because the passengers feel that their participation enhances their own safety and the safety of those around them. In a society based on law, said Justice Kennedy, the concept of agreement and consent should be given a weight and dignity of its own. Police act in full accord with the law when they ask citizens for consent. It reinforces the rule of law for the citizen to advise the police of his or her wishes, and for the police to act in reliance on that understanding. When this exchange takes place, it dispels inferences of coercion.

Justices Souter, Stevens and Ginsburg dissented. They agreed with the Eleventh Circuit and found the situation to be unlawfully coercive unless efforts were made to make sure the passengers knew they could refuse to cooperate. The decision will probably lead to

more searches by police in bus stations and other public gathering places. The Court will probably continue to be concerned about how the operation takes place and the totality of the circumstances. Reading the opinion leads us to believe that informing passengers that they don't have to cooperate would go a long way to making sure that the procedure will be valid, but it is not required.



M.L.B. v. S.L.J.

About this case:

This case arose out of the state of Mississippi and involves what we call a termination of parental rights. Essentially, termination cases decide whether a person continues to be a parent to the children involved. Depending on the statute in the state where the case is tried, if the court finds certain facts exist, it can terminate a person's parental rights, and they are no longer legally the parent of the children. This case addresses Due Process of law and Equal Protection of the law.

Appropriate for grades: 9th-12th

NOTES ON *M. L. B. v. S. L. J.*

Cases involving children are often some of the most difficult matters that courts must resolve. Most judges who handle a wide variety of cases will tell you that they worry and fret over those involving children more than any others. This next case arose out of the state of Mississippi and involves what we call a termination of parental rights.

Essentially, termination cases decide whether a person continues to be a parent to the children involved. Depending on the statute in the state where the case is tried, if the court finds certain facts exist, it can terminate a person's parental rights, and they are no longer legally the parent of the children.

To help present this case, we will need an attorney for the father, who is identified by his initials of S. L. J., an attorney for the mother, who is identified as M. L. B., and someone who will be the Chief Justice of the Supreme Court of Mississippi.

Our basic facts are this. M.L.B. and S.L.J. are the biological parents of a boy born in 1985, and a girl born in 1987. They got a divorce in 1992 after a marriage of eight years. The children, by agreement, stayed with the father, who married someone else three months after the divorce. About 14 months after their marriage, the father and stepmother filed a petition asking that the parental rights of the mother be terminated and the stepmother be allowed to adopt the children. They claimed the mother had not maintained reasonable visitation and was in arrears in her child support payments.

The mother counterclaimed, seeking primary custody of both children. She claimed the father had not permitted her reasonable visitation, despite a provision in the divorce decree that he do so.

After taking a substantial amount of evidence on three different hearing dates, the judge filed a decision terminating the mother's parental rights, and approved the adoption request by the stepmother, who would now be shown as the children's mother on their birth certificates.

The trial court in its decision quoted the applicable Mississippi state statute saying there had been a substantial erosion of the relationship between the mother and the children, which had been caused at least in part by the mother's serious neglect, abuse, prolonged and unreasonable absence or unreasonable failure to communicate with her minor children.

The judge said in the decision, without giving any details, that the father and stepmother had met their burden of proof by "clear and convincing evidence" that what they said about the mother was true.

Now you are the mother's attorney. You read the decision and, to say the least, you disagree with it. You think the evidence presented against your client was totally inadequate

to establish that her rights to her children should be terminated. In fact, you think the evidence established that she ought to be given custody of the children. You suspect the judge was only parroting the words of the statute for the decision, because it refers to the mother's abuse of the children, and the father and stepmother didn't even claim there was abuse. So what do you do now? Right, you want to appeal to the Mississippi Supreme Court so they can review the decision and decide whether any reasonable judge could arrive at the decision based on the evidence that was presented.

Chief Justice, the mother wants to appeal the case to your court. She says the trial judge was totally wrong about the evidence. And looking at the reported cases, 3 of the 8 appeals of terminations that we know about over the last 16 years were reversed because your Supreme Court found the trial court was in error to find that there was sufficient evidence for termination. So your court knows there are sometimes problems with cases like this. How are you going to be able to determine if there was enough evidence to justify the verdict? Right, you will have to look through all 1,119 pages of the transcript of the proceedings and other things in the record. But you don't have that yet.

Counsel for the mother, does your client have the \$2,352.36 that it will take to pay for the record on appeal? Of course not. It was all she could do to scrape together the \$100 appeal fee. So what do you want the state to do? Right, you want the state to pay for the transcript. Father's attorney, do you want the state to pay for your adversaries record costs? I didn't think so.

Chief Justice, the state of Mississippi pays for the transcripts of appeals for any serious criminal appeal. But, notwithstanding the serious nature of this case, it is a civil matter, and the state of Mississippi doesn't usually pay for civil party's appellate transcripts, except for appeals by persons who have been committed to mental hospitals and who want to appeal that commitment.

Is your court going to allow the mother to proceed in forma pauperis, and have the state pay for the record? (The answer is no, so either agree if that is what he says, or if he says yes, say something like "That would make this a lot easier, but that isn't what you ruled.)

Counsel for the mother, are you just going to give up since your client can't afford to pay for the record on appeal? I didn't think so. But the only place we can go above the Supreme Court of Mississippi on a case like this is the U.S. Supreme Court. And they don't have to hear the case if they choose not to. But they choose to hear it so we go to Washington, D.C.

Counsel for the father, under our 1956 case of Griffin v. Illinois, and our 1971 case of Mayer v. Chicago, we said the constitutional guarantees of due process of law and equal protection under the law pretty much makes state payment of transcript costs of indigent criminal defendants a necessity. If the right to appeal is to be fairly available to all persons

where a very important issue is involved, a poor person sometimes needs state assistance. We haven't done it for much in the way of civil cases, but don't you think fundamental fairness requires it? How should we determine which ones we pay for, and which ones we don't? (Discuss relative importance)

Does it make any difference that a number of states, including Kansas, do pay for the transcript for an indigent parent who wants to appeal a termination of parental rights? (Discuss evolution of concepts of fairness).

There are some other cases where we have struck down making certain kinds of legal proceedings available only after the payment of a fee, regardless of whether the person needing the legal service was indigent or not. For example, in the 1971 case of *Boddie v. Connecticut*, we held a state could not deny people the right to seek a divorce if they were unable to pay about \$60 in court costs.

On the other hand, in a 1973 case, we held it was permissible for a state to require a \$25 fee before you were allowed to appeal a state decision that you were not eligible for welfare benefits. Additionally, the Supreme Court has ruled in the past that the U.S. Constitution does not even require that the states allow appeals. Of course, they all do, because even judges make mistakes. But if the U.S. Constitution doesn't require something, and the state decides to make it possible, does it make much sense to say that the state might be required to pay for something that it's not even required to give?

Can't we also say that the trial court is usually right on these things, so we shouldn't encourage people to appeal what may be a foregone conclusion? Don't we have other things we could better spend scarce tax money on?

Another problem with requiring states to pay for things like this is how far do you take it? Do we give a free transcript to every indigent who wants to appeal a paternity decision, a divorce, or a child custody decision? One of the things which keeps the wheels of justice turning is that it's not all free. Especially in non-criminal cases, if you want the courts to be involved, you often have to pay something for it. This helps keep people from clogging things up even worse than they are in some areas. Any other comments from the justices?

Well, we have to vote on this issue. How many think we have to reverse the Supreme Court of Mississippi and find that the U.S. Constitution requires that states pay for the transcript in cases where an indigent parent wants to appeal the termination of their parental rights? How many think, whether its a nice thing to do or not, that the U.S. Constitution does not require a state pay for an indigent's transcript to appeal their termination of parental rights? (Convert to 9 justice result.)

The U.S. Supreme Court ruled 6 to 3, that our Constitution's provisions that every citizen is entitled to Due Process of law and Equal Protection of the law requires that if the state is going to take children away from parents, and they are going to allow appeals of

those decisions if you can afford to take them, that they must make an appeal available to indigent persons also. The appeal must be available, even if that means the state has to pay for the transcript and other costs.

Justice Ruth Bader Ginsburg, writing for the majority, pointed out that choices about marriage, family life, and the upbringing of children are among the rights we consider of basic importance in our society. Severing a person's parental rights forever is a very serious step that should be carefully considered.

The court looked at the trial court's decision on the matter and was more than a little concerned about it. The trial court didn't really say why it was severing the mother's parental rights, other than to quote the very general language of the termination statute. The Supreme Court found only a transcript could reveal whether there was evidence that would be considered clear and convincing proof of the need to terminate the mother's parental rights.

The court considered the possible financial burden such a requirement would put on the state. It determined that, given the important rights involved, and the relatively small amount involved, that argument did not hold water.

So, the court ruled that the state of Mississippi did have to provide a transcript to someone who wanted to appeal the termination of their parental rights by the state, if they were truly indigent and were unable to pay for it themselves. They did not say transcripts had to be provided to indigents in every important civil action, but found that this was one where it had to be provided.



State of Maryland v. Wilson

About this case. After a Maryland state trooper stopped the driver of a speeding car, he ordered the driver, Jerry Lee Wilson, to step out. As he did, a quantity of cocaine fell on the ground. When arrested for possession with intent to distribute, Wilson challenged the manner in which the evidence against him was obtained.

This case examines Fourth Amendment search and seizure issues and reasonableness in all the circumstances of the situation.

Appropriate for grades: 9th-12th

NOTES ON *MARYLAND v. WILSON*

A lot of U.S. Supreme Court decisions concerning the law on searches and seizures arise out of traffic stops. One of the most recent ones occurred in the state of Maryland. We will need a few volunteers to help illustrate what happened. We need someone to play highway patrolman David Hughes, someone to play the driver, and someone to play Jerry Lee Wilson, a passenger in the suspect vehicle.

On a June evening at about 7:30 p.m. trooper Hughes was patrolling southbound Interstate 95 in Baltimore County. He clocked a passenger car doing 64 in a posted 55 mile zone. He also noted the car had no regular license tag, although there was a torn piece of paper reading "Enterprise Rent-A-Car" dangling from its rear. Officer Hughes, what do you think you ought to do? Yes, you probably should pull them over to check the registration and maybe admonish them about speeding. But things don't go smoothly. You activate your lights and sirens, signaling the car to pull over. But it continues on for another mile and a half until it finally pulls over.

Now during the pursuit, officer, you notice that there were three occupants in the car and that the two passengers turned to look at you several times and they repeatedly ducked below sight level and then reappeared. After the car pulled over, you parked behind it and approached the car on foot. The driver here gets out and tries to meet you halfway. You note the driver is trembling and appears to be very nervous.

What do you want to see? Right, a drivers license. And the driver has a valid Connecticut license. You then send him back to the car to get the rental documents for the vehicle.

While you are talking to the driver, you see the front seat passenger, Mr. Wilson, also appears to be sweating more than you would expect, and also appears to be very nervous. Speaking of nervous, how are you feeling? A little nervous yourself perhaps? How come? (Three people in the car, who are nervous and have been acting a little funny). While the driver is sitting in the car looking for the rental papers, you become a little apprehensive and order Mr. Wilson out of the car. As he gets out of the car, what do you think falls to the ground? What a surprise! A fair sized quantity of crack cocaine.

Don't you find it amazing that people carrying quantities of illegal drugs will sometimes violate traffic laws and transport the drugs where they can be easily discovered?

In any event, Mr. Wilson was arrested and charged with possession of cocaine with intent to distribute. Before trial Mr. Wilson's lawyer filed what we call a motion to suppress, asking that the evidence not be used against Mr. Wilson because it was seized in violation of the Fourth Amendment to the U.S. Constitution. Let's have the participants sit down and call up Mr. Wilson's lawyer, an assistant district attorney, the trial judge, and the chief judge of the Maryland Court of Special Appeals.

Now what Mr. Wilson's lawyer is asking for is the application of what we call the exclusionary rule of evidence. There are a lot of cases involved in the development and explanation of the exclusionary rule, but the most important one is *Mapp v. Ohio*. Dollree Mapp was living in Cleveland, Ohio in 1957. From the record in the appeal it appears that she may have been what we call one of "the usual suspects". Cleveland police wanted to search her home based on a "tip" that a person wanted for questioning in a bombing was there, and that there was a large amount of illegal gambling paraphernalia hidden in the house. The police probably didn't have enough to get a search warrant. When they showed up and wanted to search Mapp's house, what do you think she said? Right! Where's your search warrant?

Well, the story gets a little complicated, but the bottom line is that the police forced their way into the house and searched it thoroughly. They didn't find anything related to any bombing or gambling, but they found what they considered to be obscene materials and charged Mapp with possession of them. They apparently didn't have a search warrant.

Up to that time, the U.S. Supreme Court had ruled that the Fourth Amendment would be enforced against federal officers by not allowing them to use as evidence anything that was seized in violation of the Fourth Amendment. A number of states had decided to do it also, but the U.S. Supreme Court had not made it mandatory for all states. The court in *Mapp* said if we were serious about enforcing the freedoms guaranteed under the Fourth Amendment, we needed to enforce it in every state and in state prosecutions also. In *Mapp's* case, they didn't have a search warrant and they had no reasonable ground for forcing their way into her house. So the evidence was not allowed to be used against *Mapp*.

So back to Maryland. Trial judge (use name), Mr. Wilson's lawyer has cited to you some U.S. Supreme Court precedent that he says require us to find this search was unreasonable and the evidence should be suppressed and not used against Mr. Wilson. In the 1977 case of *Pennsylvania v. Mimms* the court allowed the officer who had stopped a traffic violator to remove the driver from the vehicle for the officer's safety, even though there had been nothing unusual or suspicious to justify it.

The court said that the touchstone of any analysis under the Fourth Amendment is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security. And that the reasonableness depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.

In *Mimms*, the court noted the safety of police officers is always a concern that is both weighty and legitimate. In addition, the court observed that the danger to the officer in standing by the driver's door and in the path of traffic might be appreciable.

On the other side of the balance, the court considered the driver's rights, but found since the car was already validly stopped for a traffic infraction, the additional intrusion of asking him to step outside his car was minimal. Accordingly, the court ruled officers may order the driver to get out of the vehicle without violating the Fourth Amendment's bar against unreasonable seizures.

Now judge, even though the U.S. Supreme Court has discussed the issue concerning the right of the officer to ask a passenger to get out of a vehicle, without a solid reason to do so, the court has never actually ruled on the issue. How did you rule? (The trial court actually suppressed. You either say "Yes, that is how the trial court ruled.", or "No, judge, the way you really ruled was that we must suppress the evidence.")

Is the assistant district attorney going to let this one go? No! You appeal to the Maryland Court of Special Appeals. Chief judge, how did your court rule? (Either agree or correct the ruling depending on the answer. The court actually affirmed.)

Well, assistant district attorney, are you going to appeal? Sure you are! But the Maryland high court declines to review. Is there anywhere else you can go? Right! Since this was decided as a federal constitutional issue the nation's highest court might review it. And they do!

So everybody drives down to Washington, which isn't very far away, to argue the case. Once again, everyone here is on the U.S. Supreme Court.

Mr. Wilson's lawyer, what do you say about the 1981 case of *Michigan v. Summers*. Officers had a search warrant for contraband thought to be located in a residence, but when they arrived to execute the warrant they found Summers coming down the front steps. In that case, this court said it was acceptable to require Summers to re-enter the house and to remain there while they conducted the search

The court said, although no special danger to the police was apparent, the execution of a search warrant for narcotics is the kind of event that may give rise to sudden violence or efforts to destroy evidence. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation. Shouldn't we say the same thing here? Getting people out of the car, whether they are drivers or passengers would seem to help defuse possibly dangerous situations, wouldn't it? (Possibly discuss briefly).

Of course, assistant district attorney can't it be said that the only crime at the time the officer orders the passenger out is a minor traffic infraction, and the passenger hasn't even done that?

On the other hand, since the passenger has been lawfully stopped along with the offending vehicle, the additional intrusion, like in *Mimms*, is minimal.

Well, we have to take a vote. How many believe we should sustain the Maryland courts and suppress the evidence that was seized? How many believe we should reverse the Maryland courts and allow the evidence in, as we believe, all things considered, the search was reasonable? (Convert to fractions of nine).

The court ruled seven to two that the search was reasonable. The court saw no big difference in allowing the officers to get passengers as well as drivers out of stopped vehicles for their protection during traffic stops. They reasoned everyone was already stopped and there are very real dangers to the officers in these circumstances.

The court declined to say whether an officer could keep a passenger from leaving during the entire duration of a stop if the passenger decided to leave and there was no discernable cause to hold them. Maybe that will come up in a case in the future.



Pennsylvania Board of Probation and Parole v. Scott

Brief Fact Summary. Respondent Keith M. Scott was a parolee whose house was searched by parole officers. He argues unsuccessfully at his parole violation hearing for exclusion of the seized evidence on grounds that under the 4th Amendment, the search was unreasonable.

Synopsis of Rule of Law. The exclusionary rule does not apply beyond the criminal trial context, thus it does not apply to parole board hearings.

Facts. One of the conditions of the respondent's parole in Pennsylvania was that he not possess weapons. Based on evidence that he had violated this condition, parole officers entered his home and found firearms and a bow. Respondent objected to this evidence being introduced at his parole violation hearing on the grounds that it was obtained in violation of the Fourth Amendment ban on unreasonable searches. The parole examiner admitted the evidence, and as a result, he was forced to serve 3 years backtime. The Commonwealth Court of Pennsylvania reversed the decision, and the Pennsylvania Supreme Court affirmed the reversal, stating that the Fourth Amendment does not usually apply to parole violation hearings, but it did here because the searching officers were aware of the respondent's parole status and such illegal searches would otherwise go undeterred. The Pennsylvania Parole Board was granted certiorari.

Issue. Does the exclusionary rule barring unconstitutionally obtained evidence from being admitted into a hearing apply to a parole violation hearing?

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Appropriate for grades: 9th-12th

NOTES ON *PENNSYLVANIA BOARD OF PROBATION AND PAROLE v. SCOTT*

To present this case we are going to need the help of a judge. (Pick someone, get their name, and have them wear a robe.) Judge _____, this case involves an illegal search and seizure. Don't we have a provision in our U.S. Constitution about search and seizure? (Point extravagantly to the Fourth Amendment in a copy of the Constitution.) The Fourth Amendment ! Absolutely right ! Why don't you read the Fourth Amendment to everyone. (Judge does so.)

Now it's obvious the founders of our country didn't like unlawful searches and seizures, because they said they were bad in our Constitution. But does the Constitution say what you do if there is an unlawful search and seizure ? No, it doesn't. So the courts do what we expect courts to do by interpreting the law. Back in 1914 in the Weeks case, the U.S. Supreme Court said if federal agents or officers violated the Fourth Amendment, the federal officers wouldn't generally be able to use the evidence they got illegally against the person whose rights were violated. This was called the "exclusionary rule." I'm right so far, aren't I judge? Good.

Some states thought it was appropriate to adopt the rule for their own state officials. And in 1961, in the famous case of Mapp v. Ohio, the U.S. Supreme Court said the exclusionary rule should apply to all law enforcement officers in the United States whether they were state or federal. They did this because they hoped by excluding what they called the fruits of illegal actions, they would discourage officers from violating people's constitutional rights. I'm still doing all right, aren't I judge?

All right, now we need to bring up the Pennsylvania parole officer who is involved in this case. (Pick one and get their name.) OK officer _____, now I understand you are the parole officer for Keith Scott. Mr. Scott pled nolo contendere to what Pennsylvania calls third degree murder and received a term of 10 to 20 years imprisonment. After completing 10 years of his sentence he was granted parole. One of the conditions of his parole was set out in his parole agreement. It said,

"I (Keith Scott) consent to the search of my person, property and residence, without a warrant by agents of the Pennsylvania Board of Probation and Parole. Any items the possession of which constitutes a violation of parole/reparole shall be subject to seizure, and may be used as evidence in the parole revocation process."

About five months later, you arrested Mr. Scott on a parole revocation warrant on charges that he had violated several terms of his probation, including possessing firearms, consuming alcohol, and assaulting a co-worker. Mr. Scott gave you the keys to his residence and you went over to his home and waited for his mother to arrive, who actually owned the home. You neither requested nor obtained permission to search the residence, but the mother directed you to his bedroom. After searching his bedroom, you searched another room and found five firearms, a compound bow, and three arrows.

After a parole hearing Mr. Scott's parole was revoked. On an appeal of this to a trial court, the revocation was reversed. The court ruled that the search violated the Fourth Amendment because it was conducted without permission and was not allowed by any state law or regulation. The trial court also believed the exclusionary rule should apply as in the circumstances of Scott's case, because the deterrence value of the rule outweighed its costs.

Mr. Parole officer, do you think we ought to appeal? Sure you do, so we go to the Supreme Court of Pennsylvania. Well, chief justice (same judge) do you affirm the wise trial judge? Sure you do ! You find Scott's Fourth Amendment rights were unaffected by his parole agreement allowing warrantless searches, and that the search in question was supported by "mere suspicion" rather than a "reasonable suspicion" of a parole violation. You also found that to allow parole officers to do this would encourage them to violate people's rights when they know the person is on parole.

Does the State of Pennsylvania like this decision? No, indeed. But after the Supreme Court of Pennsylvania, what is the only higher court for a case like this? Right, the Supreme Court of the United States. And they agree to take the case to determine if the Fourth Amendment exclusionary rule applies to parole revocation proceedings because this would be a situation that could come up often and could sometimes be very important to defendants and the states. (Send everybody back to their seats.)

We are now in the Supreme Court of the United States and you are all justices of the court. Do any of the justices here have an opinion on whether we should apply the exclusionary rule to parole revocation proceedings? (Get someone to venture an opinion and refer to them as Justice_____.)

(No matter what they say, discuss the following issues.) As you know, Justice_____, courts in America usually follow a principal known as stare decisis, a Latin term meaning we generally follow the cases that have gone before, the earlier precedents. Of course, you knew that, didn't you? And we have said in cases like U.S. v. Leon, Stone v. Powell, U.S. v. Callandra, and U.S. v. Janis, that the exclusionary rule is not an absolute requirement of the U.S. Constitution. We have generally held that we will apply the exclusionary rule only where the benefits of applying it outweigh its substantial social costs.

Because of this, we have usually limited the use of the exclusionary rule to criminal trials only. We have declined to extend it to cases involving grand jury proceedings, civil tax proceedings and civil deportation proceedings. Right? Sure.

And there is another issue to consider. Justice_____ (get the person's name) if a person is on parole, what does that mean has already happened? Right, the person has already been convicted and has lost some rights anyway. They are not your presumedly law-abiding citizen. If we apply the exclusionary rule to parole hearings, we are excluding

reliable evidence that may well indicate a particular convicted person should not be on the streets. To exclude evidence like this is a pretty heavy price to pay to teach the police a little lesson, isn't it?

But, on the other hand, I can just hear Justice _____, here saying that if we want to do something about enforcing our liberties under the Fourth Amendment, we should not ignore parole revocation proceedings because there are a lot of them. If we don't enforce the exclusionary rule in parole revocation proceedings, we are applying the law inconsistently, and indirectly encouraging the police to violate rights in certain situations. And besides, we believe even guilty people have rights.

Well, we have to vote on this case. How many believe the court should affirm the lower courts and enforce the exclusionary rule in parole revocation proceedings, so the law will be consistent and we will be encouraging the police to follow the law? How many think we should not extend the exclusionary rule to parole revocation proceedings because it is too high a price to pay for teaching the police a lesson on these kinds of cases? (Count up the votes for both sides and translate them into what they would be in a 9 member court.)

The court was closely divided on this case. By a vote of 5 to 4 they decided not to extend the exclusionary rule to parole proceedings for the reasons we have discussed. In Justice Thomas' majority opinion, he essentially said the cost of excluding this evidence in parole proceedings is too high for the benefit society gets from it. The 4 justice minority pointed out that the majority was leaving a big hole in our protection against unlawful searches and seizures which would probably lead to more unlawful searches and a lesser respect for those rights. The close vote shows how difficult a question it was for the court.



U.S. v. Ramirez

About this case:

This case addresses unreasonable searches and seizures. It also addresses constitutional reasonableness and a federal statutory question.

Appropriate for grades: 9th-12th

NOTES ON *U.S. v. RAMIREZ*

To help present this case we need a person to play the defendant Hernan Ramirez; someone to play a federal Alcohol, Tobacco and Firearms agent named George Kim; and a judge. (Pick three and let the judge wear a robe).

Agent Kim, you are an ATF agent in Oregon and you are on the look-out for a real desperado named Alan Shelby. Alan is a real mean guy. He was serving concurrent state and federal sentences in the Oregon State prison system. An Oregon Sheriff's officer took temporary custody of him, expecting to transfer him to an Oregon county courthouse where he was scheduled to testify. On the way to the courthouse, Shelby slipped his handcuffs, knocked over a deputy sheriff, and escaped from custody.

This was not the first time Shelby had escaped from custody. A few years before he struck an officer, kicked out a jail door, assaulted a woman, stole her vehicle, and used it to ram a police vehicle. Another time he attempted to escape by using a rope made from torn bedsheets. He was reported to have made threats to kill witnesses and police officers, to have tortured people with a hammer, and to have said that he would not do federal time. It was also thought that Shelby had access to large supplies of weapons.

So Agent Kim, when the authorities in Oregon hear that Shelby has escaped, they put out a press release seeking information that would help to lead to his apprehension. A day or so later (maybe give Kim a phony telephone) you get a tip from a reliable informant that he had seen a person he believed was Shelby at the home of Hernan Ramirez in Boring, Oregon (great name). You and the informant drive over there and you see someone outside Ramirez's home who resembled Shelby, although you couldn't be absolutely positive.

What do you do now? (Discuss the need to be very careful when dealing with a possibly dangerous man if this is Shelby. But also discuss the possibility that this might not be Shelby so you don't want to just charge in shooting.) Don't we have a provision dealing with this situation in the U.S. Constitution? (Point extravagantly to the Fourth Amendment in a copy of the Constitution until "Kim" catches on). Sure, the Fourth Amendment in the Bill of Rights ! (Have Kim read the Fourth Amendment from the Constitution).

Since you have time to do them, what are the best things to do? Right, get a lot of help and get a search warrant for the Ramirez residence. So you and some federal marshals go over to the magistrate judge here and lay out the information you have gathered. The magistrate agrees that you have probable cause to believe that a dangerous criminal might be in the residence. The confidential informant also tells you that Ramirez might have a stash of guns and drugs in his garage.

Because of all this information, you ask that the search warrant you are seeking be a "no-knock" warrant. This means you don't have to be very polite in executing the warrant because of the possible danger involved. The judge agrees and gives it to you.

In the early morning hours of the following day, approximately 45 officers gather in the area of the Ramirez residence to execute the search warrant. The officers set up a portable loud speaker system and begin announcing that they have a search warrant. At the same time, they break a single window in the garage and point a gun through the opening, hoping to dissuade any of the occupants of the house from rushing to the weapons the officers believe might be in the garage.

Mr. Ramirez, you and your family were asleep in the house when all this started happening. In point of fact, when the officers came into your house, if Mr. Shelby had ever been in your house, he wasn't there then; there were no drugs in the garage, and there weren't any guns in the garage. But you did have a gun in a utility closet. Did you know for sure when all this broke that these strangers were police? (No) In fact, you thought they might be burglars, didn't you? Right. So you got your gun out of the closet and fired a shot into the general direction of where you heard a lot of commotion.

The officers fired back and shouted "police." You then realized they were police, threw your gun down, threw yourself on the floor, and surrendered. The police took you into custody and read you your rights. You admitted the obvious; that you had the gun you fired, there was another gun in the house; and that you were a convicted felon. So although there was no Shelby, no drugs, and no big arsenal, you were indicted as being a felon in unlawful possession of a firearm.

Mr. Ramirez, I think you need a lawyer. Who is your lawyer here? (Have him select a lawyer from the crowd). Now your lawyer needs to think about what can be argued to help you from a legal standpoint. Being a good lawyer he/she knows about the Fourth Amendment and about the 1914 case of *Weeks v. United States*. (Right? Of course you do.) The Fourth Amendment says searches must be reasonable, and the *Weeks* case, way back in 1914, said if federal agents violate the Fourth Amendment, the evidence they get when they violate that Amendment generally cannot be used against the person whose rights are violated. This rule was extended to state officials in the famous *Mapp v. Ohio* case in 1961.

Your lawyer also knows about a federal statute, 18 U.S.C. section 3109, which deals with forced entries to execute search warrants. This statute says:

"The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant."

(You knew that, didn't you? Sure you did.) So your lawyer argues that although the officers had a search warrant, the way they executed it was unreasonable and it specifically violated section 3109. You argue that there were not sufficient exigent circumstances to justify the police actions.

Let's get a prosecutor up here to argue the other side. (Pick one and get them to argue the overall reasonableness of the officers' actions and that the facts don't really violate section 3109.)

So you present the arguments to the district judge here, who looks a lot like the magistrate judge. Judge, do you rule in favor of the defendant's motion to suppress the evidence because there were insufficient exigent circumstances to justify the police's rather extreme actions here? (The trial judge did suppress, so we either say "That is the way the trial judge ruled" if our judge says suppress, or say "No, judge, the way you actually ruled was to grant the motion to suppress" if the judge says to let it in).

Well, prosecutors and police, are you going to accept this ruling? No ! What can you do? Right ! Appeal ! So we go to the Ninth Circuit Court of Appeals. Now we have the chief judge of the Ninth Circuit, who looks a lot like the magistrate and the district judge. Chief, how did your court rule? Did you affirm the suppression, or did you say the evidence should come in? (The Ninth Circuit affirmed, so we either say, "That's the way the court ruled" or "No, judge you actually affirmed the district judge.")

Police and prosecutors, do we like these rulings? No, but what can we do? Appeal? The U.S. Supreme Court is the only higher court and they can only take about 100 cases a year. Do you think they will take this case? Well, they do, so we go off to Washington D.C. for the argument. (Have the participants sit back down) Everyone here is now to play the part of the Supreme Court of the United States, and we have to decide this case.

Of course, we all know that the Supreme Court follows the principal of stare decisis, which is a latin term meaning we generally follow the cases and rulings that we have made before. Do we have a Justice here who believes that what the police did in this situation, all things considered, were alright? (Try to get a volunteer and get their last name.)

Well, Justice _____, you know that under the old common law rules, an officer was supposed to knock and announce his presence before executing a warrant. However, in our 1995 case of *Wilson v. Arkansas* we said that common law rule would not control our analysis of the appropriate interpretation of the Fourth Amendment.

On the other hand, in our 1997 case of *Richards v. Wisconsin*, we had a decision from the Wisconsin Supreme Court which said that officers executing search warrants in felony drug investigations were never required to knock and announce their presence. We said that blanket rule was overly broad and held instead that in order to justify a no-knock entry, the police must have a reasonable suspicion that knocking and announcing their presence under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.

The question presented here is whether the breaking of the window requires the police to have a higher level of certainty that such actions are necessary than we have here. Under our 1977 case of *Pennsylvania v. Mimms*, we emphasized that reasonableness is the general touchstone which governs our analysis of the Fourth Amendment. Were the officers' actions reasonable? (Discuss the facts which would justify the police conduct, or call it into question. Get other "Justices" involved in the discussion if possible.)

Of course, besides the Constitutional reasonableness question, we have a federal statutory question under section 3109. Remember, Congress or a legislature can put greater restrictions on police practices than are absolutely required by the Constitution. Let's read that law again. (Read it) Doesn't that seem to indicate there are pretty tight restrictions on breaking into a house? (Discuss the facts as they apply to the statute.)

Well, we have to take a vote on this. Remember, your opinions on this case will be written down, published in many thousands of volumes which will be read all over the United States, and even the world. If you are wrong, people will be able to laugh at you for the next 100 years, but don't let that bother you -- that's what being a judge is all about. Who believes the officers' actions were reasonable and did not violate either the U.S. Constitution or the federal law involved? Who believes the officers' actions either violate the Constitution or the federal statute? (Get a show of hands. Make sure everyone votes. Convert the vote into what it would translate to in a 9 judge court and announce that vote.)

The Supreme Court didn't have a big problem with this case. Chief Justice Rehnquist wrote the opinion for a unanimous court where they reversed the lower courts and allowed the evidence to be used. The Chief emphasized that reasonableness is the key, and that based on all the circumstances the court believed the officers acted reasonably. They had obtained a warrant, and had received a "no-knock" ruling from a judge after an appropriate hearing. They were dealing with a potentially very dangerous situation, and their actions were reasonably considered to deal with it.

As their earlier cases had said, while we don't encourage police to burst in unannounced, or to break into the places being searched, that may be appropriate under the facts of individual cases.

Looking at section 3109, the court said that by its terms, the statute prohibits nothing. It merely authorizes officers to damage property in certain circumstances. The court did not believe the statute restricted the execution of search warrants any more than the earlier decisions had.

Therefore, the court reversed the lower courts, and the government will be allowed to use the evidence they seized during the search in prosecuting the defendant.



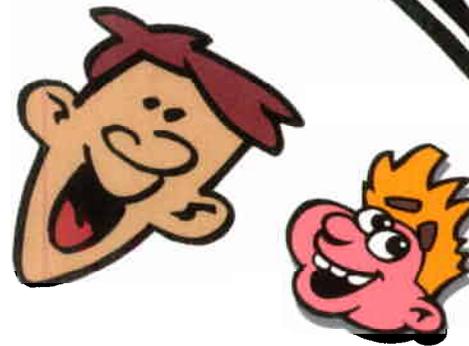
AMENDMENT 1

Freedom of Religion/Political Freedoms

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Five Freedoms of the First Amendment

1. Freedom of Religion
2. Freedom of Speech
3. Freedom of the Press
4. Right to Assemble
5. Right to Protest/Petition





AMENDMENT 2

The Right to Bear Arms

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Because it is necessary to maintain a militia of men ready to defend the country, Congress does not have the right to keep people from owning and carrying gun. This issue has been greatly debated in the past few years.





AMENDMENT 3

Quartering Soldiers

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

During peacetime, no soldier can be forced into the homes of private citizens. During war, soldiers can be placed in private homes only in a manner as prescribed by Congress.





AMENDMENT 4

Regulation of Search and Seizure

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.

The government cannot search a person, his home, his papers, or his personal effects unless a proper search warrant has been authorized. A search warrant can only be issued through a court of law if proper explanation of why the search needs to be made has been provided. That explanation must include the place to be searched, the reason for the search, and exactly who or what is expected to be found.

The fourth Amendment protects our right to privacy including the right to be free of unwarranted and unwanted government intrusion into one's personal and private affairs, papers, and possessions.





AMENDMENT 5

Protection of Persons and Their Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militias, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property be taken for public use without just compensation.



No one can be held in jail for a crime that is punishable by death or imprisonment, unless a Grand Jury evaluates the evidence presented to it and determines that there is enough evidence for a trial.



1. No one can be tried for the same crime twice. Once you are found not guilty by a jury, you cannot be tried for that crime again.

2. A defendant does not have to testify against himself. The defendant has the "right to remain silent."

3. All citizens are entitled to the **due process of law**. All citizens are entitled to all courses of the law before the government can take away life, liberty, or property.



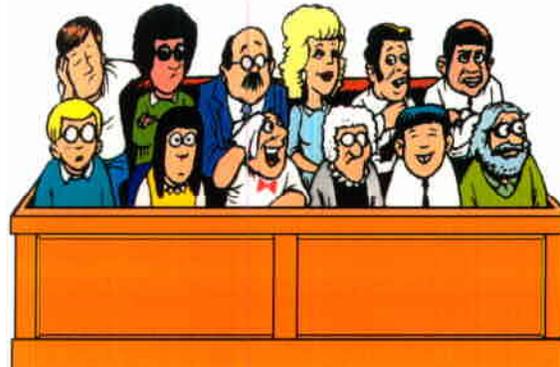
The government cannot take private property for public use (to build a highway, for example) without paying a fair market value to the owner.



AMENDMENT 6

Rights of Persons Accused of a Crime

In all criminal prosecutions, the accused shall enjoy the right to a speedy public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

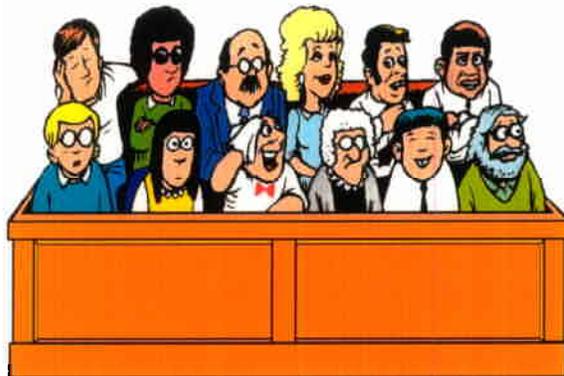




AMENDMENT 7 Right of Trial by Jury

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in a Court of the United States, than according to the rules of the common law.

Amendments 5 and 6 deal with **criminal** cases, but Amendment 7 deals with **civil** cases. To keep the court from harassing private citizens, this amendment guarantees trial by jury for cases involving more than 20 dollars.





AMENDMENT 8

Protection Against Excessive Fines, Bail, Punishment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

This Amendment protects against overzealous and unreasonable treatment of the citizens by the court. Note that many punishments common at the time, are now considered to be "cruel and unusual" by today's standards.



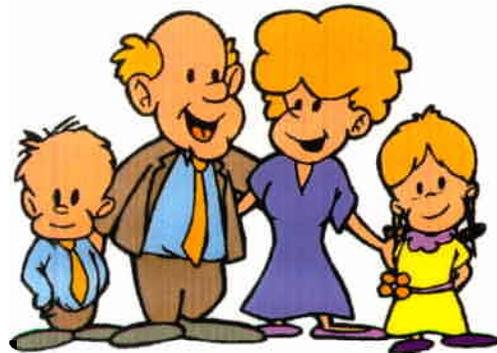


AMENDMENT 9

Guarantee of Unspecified Rights

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

This Amendment has been interpreted to protect "natural rights" including life, liberty, and the right to pursue happiness including the freedom of choice in the basic decisions of one's life with respect to marriage, divorce, and the education and upbringing of children. The colonists did not want a tyrant or a tyrannical government to control certain aspects of their life. However, many of these rights can be regulated by the state government.





AMENDMENT 10

Powers Reserved to the States and the People

The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The governmental powers not listed in the Constitution are powers that the states, or the people of those states, can have. This Amendment guarantees that the federal government cannot usurp power from the states by claiming powers not delegated to it by the Constitution. The Constitution leaves it to the states to make laws about marriage, divorce, education, zoning, public health, driving regulations, state roads, among others.

