

# A

## How Have the Protections of the Fourth Amendment been Interpreted, Applied, and Enforced?

### BACKGROUND ESSAY

The Founders knew that those suspected of crimes are often prone to abuse. Suspected criminals are often disliked, and almost all lack the many resources of government (like money, lawyers, time, and knowledge). The Fourth Amendment was added to the Constitution to protect the rights of accused persons—and all citizens—from abuse by government. Due process protections are included in the Fourth, Fifth, Sixth, Seventh, and Eighth Amendments to the Constitution. Due process means that when the government enforces laws, it must follow rules and procedures that respect all citizens' rights. In other words, it is not enough for the laws to be followed. Due process requires that laws themselves are constitutional. The Fourth Amendment's warrant requirement is one of the most important individual protections because it prevents unreasonable searches and seizures. If the police want to search someone, they must first get a warrant by convincing a court that there is probable cause to believe that the person has committed a crime. If the court agrees, it will give the police permission to act.

### When is a Warrant Required?

It is not always clear when law enforcement needs a warrant. In general, a search of someone's home requires a warrant that states the person and place to be searched and the items to be located. The Supreme Court has ruled, however, that many types of searches can be considered "reasonable" even if conducted without a warrant. If a police officer is in a place where he is allowed to be and sees an illegal item in plain sight, he can seize the item without a warrant. A police officer may also conduct a warrantless search if she believes there is an immediate danger to her life or the life and property of others. In these circumstances, a search is considered reasonable, so long as the officer does not mean to either arrest someone or seize evidence. Cars, the Supreme Court has ruled, can be searched without a warrant if the officer legally stopped the vehicle and has reasonable suspicion that a crime may have been committed. Finally, no warrant is required if an individual voluntarily allows a search.

## What is the Exclusionary Rule?

All searches are subject to the Exclusionary Rule, which says that evidence seized through unconstitutional means may not be used against defendants at trial. Police must be certain their warrant is correct and complete, as the Court ruled in *Groh v. Ramirez* (2004). An incorrectly written search warrant could also lead to evidence being excluded from trial.

The Exclusionary Rule has caused some debate. The text of the Fourth Amendment does not require it, and critics argue this method of stopping police from conducting illegal searches threatens public safety by setting guilty people free. Other critics claim the rule does not actually stop officers from conducting illegal searches because they are not personally punished. Supporters tend to agree with the Court that allowing the government to punish people using evidence it obtained in violation of the law would be unjust and violate due process.

Like the warrant requirement of the Fourth Amendment, however, the Exclusionary Rule is not absolute, according to the Court. If the police can prove the evidence would surely have been found through legal means, it may be presented in court. This is called “inevitable [unavoidable] discovery.”

## Has Technology Changed the Meaning of the Fourth Amendment?

New technology and police use of military-grade equipment have greatly improved the government’s power to search. These developments have

forced citizens and the Court to debate the constitutional balance of liberty and security.

In 1965, Charles Katz was suspected by the FBI of illegal gambling. He would often use a pay-phone [a public phone booth] near his apartment to place his bets, so police attached a listening device to the outside of the phone booth to record his conversations. He was arrested and later convicted. He challenged the search on the basis that his conversation, though in a public location, was private and protected by the Fourth Amendment. The Supreme Court agreed in *Katz v. United States* (1967), stating that the Fourth Amendment protected “people, not places,” and that Katz had a “reasonable expectation of privacy” that was protected from an unreasonable government search.

The case of *Kyllo v. United States* (2001) also concerned technology and privacy. Police believed Danny Kyllo was growing marijuana in his home. They used a heat-sensing device to look for heat lamps that are commonly used to grow the illegal plants. The Court found that the police actions were an illegal search, as the government “use[d] a device... to explore the details of the home ... [which is] unreasonable without a warrant.”

The widespread use of GPS tracking devices has prompted constitutional questions about privacy and the Fourth Amendment. Antoine Jones was suspected of possessing and dealing drugs. In 2005, police attached a GPS tracking device to his car without a warrant. They traced his movements for nearly a month. By mapping his location, along with other evidence, police were able to tie Jones

to locations where drug transactions occurred. In *United States v. Jones* (2012), the Supreme Court unanimously agreed that warrantless GPS tracking was an unreasonable search. The Court further argued that while Jones drove on public streets, he did so with a “reasonable expectation” of privacy. This ruling may be important to future cases, as many Americans now carry GPS enabled cell phones as they go about their daily lives.

### **How Does the Fourth Amendment Apply in Public School?**

Public schools have long been considered a special place by the Supreme Court. The Fourth Amendment protects your privacy in school much less than it protects adults in the “real world.”

Terri, a high school student in New Jersey, exited the girl’s bathroom smelling like smoke. A teacher took Terri to the principal’s office, where an assistant vice principal searched her purse, and found cigarettes, rolling papers, a pipe, and other evidence of marijuana use. In *New Jersey v. T.L.O.* (1985), the Supreme Court upheld the constitutionality of the search, adopting a lower standard than is applied to police in criminal situations. The court held that school officials only needed “reasonable suspicion” to search students.

While the Court found that school officials met this lower standard in *T.L.O.*, it found in 2009 that Arizona school

officials acted unreasonably by strip-searching a 13-year-old student who they thought might be distributing ibuprofen [Advil]. In *Safford Unified School District v. Reading* (2009), the Court ruled that while schools have search authority to look for banned items, the search cannot be “excessively intrusive” for the age and sex of the student, and the nature of the items being searched.

Drug tests can also be a kind of “search,” and the Supreme Court has ruled on the use of them by public schools. In the 1995 case of *Vernonia School District v. Acton*, the Court ruled that schools may force athletes to submit to random drug tests. In *Board of Education of Pottawatomie County v. Earls* (2002), students fought a school rule that required drug testing for all after-school activities, not just sports. The drug test was even a condition to take courses like band or choir. The Court upheld the policy because it “reasonably serve[d] the School District’s important interest in preventing drug use among students.”

Due process, like other constitutional principles, is a means to an end. It is a way to ensure our government establishes justice and secures the blessings of liberty for future generations. While technologies and threats to security change, the rights protected by the Constitution do not. This means it will always be important to understand the protections in our Bill of Rights and the reasons for them.



## Comprehension and Critical Thinking Questions

1. How does the Fourth Amendment's warrant requirement protect you?
2. What is the Exclusionary Rule?
3. How has the Supreme Court applied the Fourth Amendment to public school officials? How have they ruled with regard to drug testing in schools? Do you agree with these rulings?
4. Due process is included in the Constitution to achieve a certain goal. What does due process achieve?
5. You may have noticed that the Fourth Amendment applies differently in different situations. Do you think the Court has given government officials (including public school officials) too much power to conduct searches? Just enough power? Not enough power? Explain your answer.