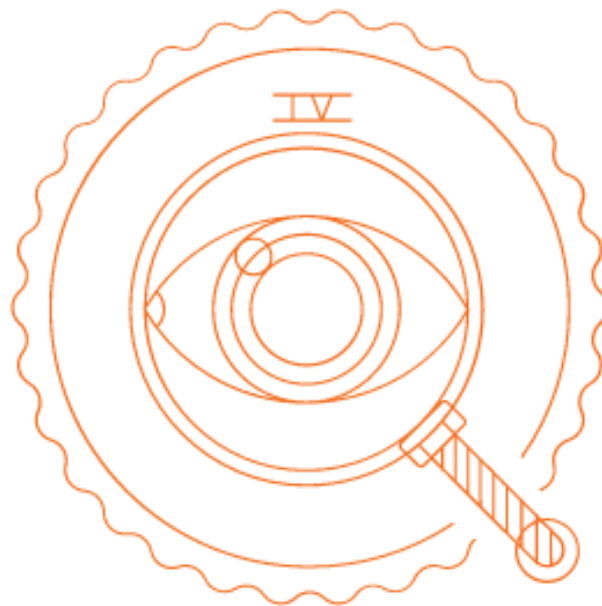




FOURTH AMENDMENT
**SEARCH AND
SEIZURE**

LESSON PLAN



The Fourth Amendment: Search and Seizure – The Basics

Lesson Plan

GRADE LEVELS:**9th through 12th****NUMBER OF CLASS PERIODS:****1-2 class periods (approximately 55 minutes each)****AUTHOR:****David Olson, National Constitution Center Teacher Advisory Board Member**

David Olson teaches at James Madison Memorial High School in Madison, WI. Beyond teaching AP U.S. Government and Politics and Criminal Justice, David helps spread his passion for civic education by serving on the iCivics Educator Network, the Teacher Advisory Board for the National Constitution Center, and the Wisconsin Council for the Social Studies (WCSS) Executive Board. He holds an undergraduate degree in Government and International Affairs and Social Studies Teaching from Augustana University in Sioux Falls, SD, and a master's degree in Political Science from the University of Wisconsin-Madison.

INTRODUCTION/LESSON OVERVIEW:

What does the Fourth Amendment say? When can the government search you or seize your property? When is a government's search or seizure "reasonable"? Most Americans are unaware about when and where Fourth Amendment rights are at issue. This lesson will allow students to examine the text and interpretations of the Fourth Amendment to describe key terms and ideas like searches, seizures, and privacy, as well as define some of the key debates about where the Fourth Amendment is headed in an age of technology.

When can the government search you or seize your property? When is a government's search or seizure "reasonable"?

Essential Questions:

- What protections does the Fourth Amendment guarantee to all within the United States?
 - What was the framers' vision of the Fourth Amendment and what influenced that vision?
 - Why does the Fourth Amendment protect against state and federal intrusion?
 - How have the protections guaranteed by the Fourth Amendment changed over time?
 - How do we define key terms like search, seizure, privacy, and reasonable?
-

Objectives:

- Students will be able to describe how the Fourth Amendment contributes to debates about individual privacy.
- Students will be able to describe the history behind the creation of the Fourth Amendment and the framers' vision.
- Students will be able to hypothesize how technology has impacted Fourth Amendment debates.
- Students will be able to define key terms like search, seizure, privacy, and reasonable.

Materials:

- “A Reasonable Expectation of Privacy?” – handout (included)
- Access to the *Interactive Constitution* (online or via mobile app) or printed copies of the following essays:
 1. Common Interpretation: “The Fourth Amendment” by Barry Friedman and Orin Kerr (Essays accessible at: <https://constitutioncenter.org/interactive-constitution/interpretation/amendment-iv/interps/121>)
 2. Fourth Amendment video – created by the National Constitution Center (Essays accessible at: <https://constitutioncenter.org/interactive-constitution/learning-material/fourth-amendment>)
- “Discussion Questions” – handout (included)

Procedures:**1. Warm Up/Activation of Prior Knowledge**

The teacher will ask the full class to brainstorm their definition of the word “privacy.” *What is it? Where do we have it? Why is it important?*

2. Activity A

After going over the brainstorming question, have students spend five minutes evaluating the short scenarios on the “A Reasonable Expectation of Privacy?” handout. When all students have completed the evaluation, the teacher will provide directions for the “Ranking” activity (directions below).

Create a line in the classroom (or other instructional space)—either along a wall, chalkboard, or on the floor. Place a sign or card that reads “High” at one end of the line, one that reads “Medium” at the midpoint, and one that reads “Low” at the opposite end (signs can also include the corresponding statements below). The teacher will read out the scenarios (the teacher may choose some or all of the scenarios) and students should move to a corresponding spot along the line. The teacher will ask individual students why they chose to stand where they did. This is an activity that the teacher can spend five minutes on, or an entire class period. The amount of discussion and the depth of follow-up questions from the teacher can vary with their discretion.

Some suggested follow-up questions for this activity include:

- *Why did you choose that place to stand?*
- *What is the rationale for why the police would want to search in that situation?*
- *What is the rationale for why the public would want the police to search in that situation?*
- *Why would we want privacy for ourselves and others in that particular situation?*
- *Would your answer change if you knew specific things about the person? Age, occupation, gender, criminal background, etc.?*
- *What facts would be necessary to change your answer from High to Low?*
- *What generalizations can you make about where we ought to have privacy and where we may not?*

3. Activity B

Students will pair up with a partner to analyze the *Common Interpretation* essay and answer questions. Students will need access—either digitally or physically—to the *Common Interpretation* essay.

After reading, students should either answer the questions on the “Discussion Questions” handout on their own and then discuss with a partner or small group, or they can talk through the answers together collaboratively.

Next, the teacher should play the National Constitution Center’s *Fourth Amendment* video. As they watch, students should answer the remaining questions on the “Discussion Questions” handout. The teacher can facilitate as much discussion about these questions as he/she chooses. A key goal for students is to create working definitions of the key terms. This can be done on their own, in small groups, or with the whole class, but it provides an important opportunity for formative assessment.

4. Optional Extension Activity – Amendment Comparison

If students have already explored other amendments—particularly the First Amendment—they can compare how our understanding of the Fourth Amendment has changed over time in relation to other rights.

Questions to consider:

- Compared to rights like Freedom of Speech and Freedom of the Press, has our understanding of our Fourth Amendment rights changed more or less than those?
- How has technology changed how we communicate with other people and how has our understanding of privacy changed?
- Looking at the Bill of Rights, what, if any, other rights have changed as drastically as the Fourth? Are there any rights that have changed very little since America’s founding? Why might this be?

5. Closure/Exit Ticket

Handout #2 (Discussion Questions) can be collected as an Exit Ticket. If the class will be looking at additional issues or cases related to the Fourth Amendment, the definitions that students create for the key terms are essential for them to know and be able to refer back to. These would be good items to display around the room or use them to create a Word Wall (particularly if you are providing scaffolds for students with IEPs or ELL students).

Another closure option would be to have students conduct a “whip-share” where they explain one thing they learned about the Fourth Amendment during this activity. This could also be created as a physical or digital exit ticket.



Handout #1:

A Reasonable Expectation of Privacy?

Directions: Prior to reading the *Common Interpretation* essay, evaluate the scenarios below. What level of privacy or protection from government searches do you think you should have in each of the scenarios below? Use the following scale to rate each scenario by marking with an “X” for each. Note that it is possible to answer with more than one category—for instance, differences in time and place might change the expectation of privacy:

Low

The government should be able to search or seize for any reason; neither the individual nor society generally would recognize an expectation of privacy

Medium

The government needs a good and fairly specific reason to search; there might be an individual expectation of privacy, but not one recognized broadly by society as reasonable

High

The government must have an actual reason based on real and specific information to search in that moment; there is both an individual and society expectation of privacy

| What level of privacy or protection from government searches do you think you should have in each scenario? | L | M | H |
|---|---|---|---|
| Inside your home or apartment | | | |
| The contents of your luggage at an airport prior to boarding the plane | | | |
| A package you receive through the U.S. mail or FedEx/UPS | | | |
| The location data transmitted by your cell phone that shows where you have traveled | | | |
| Inside your car as you travel on a public roadway | | | |
| The contents of your coat pockets and backpack as you walk along the sidewalk | | | |
| The contents of your garbage can when you put it out on the street for collection | | | |
| The text messages and pictures on your cell phone | | | |
| Inside a vehicle that is parked outside of your garage, next to your home | | | |



Handout #1 (continued):

Which of the preceding examples did you feel most strongly about? Provide an explanation for your answer.

After completing the Ranking activity, create a 1-2 sentence statement about what you believe about what would qualify as a “reasonable expectation of privacy.”

Handout #2:

Discussion Questions

Directions: The first set of questions should be answered after reading the *Common Interpretation* essay.

What are “General Warrants” and “Writs of Assistance” and why did they concern the colonists (particularly James Otis)?

According to the authors, what makes the Fourth Amendment fundamentally different from other rights in the Constitution?

What is the general rule that the government must follow if they would like to conduct searches or seizures? Is this rule always followed?

4. What is the “Exclusionary Rule” and what purpose does it serve?



Handout #2 (continued):

Next, watch the *Fourth Amendment* video from the National Constitution Center, and answer the following questions.

Summarize why the Founding Fathers felt the need to create the Fourth Amendment. What problem were they trying to solve?

How does modern technology make Fourth Amendment issues more complicated? Provide an example of a scenario that may be changed by modern technology.

Based on the knowledge you have developed from the preceding resources, work with a small group to form a definition of each of the following terms:

Search:

Seizure:

Privacy:

Reasonable:



Common Core Standards: Addressed in this Lesson Plan:**History/Social Studies**CCSS.ELA-LITERACY.RH.11-12.1

Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-LITERACY.RH.11-12.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

CCSS.ELA-LITERACY.RH.11-12.4

Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and refines the meaning of a key term over the course of a text (e.g., how Madison defines *faction* in *Federalist* No. 10).

CCSS.ELA-LITERACY.RH.11-12.10

By the end of grade 12, read and comprehend history/social studies texts in the grades 11-CCR text complexity band independently and proficiently.

Speaking and ListeningCCSS.ELA-Literacy.SL.11-12.1

Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 11-12 topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.

CCSS.ELA-Literacy.SL.11-12.2

Integrate multiple sources of information presented in diverse formats and media (e.g. visually, quantitatively, orally) in order to make informed decisions and solve problems, evaluating the credibility and accuracy of each source and noting any discrepancies among the data.

CCSS.ELA-Literacy.SL.11-12.3

Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric, assessing the stance, premises, links among ideas, word choice, points of emphasis, and tone used.

CCSS.ELA-Literacy.SL.11-12.4

Present information, findings, and supporting evidence, conveying a clear and distinct perspective, such that listeners can follow the line of reasoning, alternative or opposing perspectives are addressed, and the organization, development, substance, and style are appropriate to purpose, audience, and a range of formal and informal tasks.

CCSS.ELA-Literacy.SL.11-12.6

Adapt speech to a variety of contexts and tasks, demonstrating a command of formal English when indicated or appropriate.



Addendum: Handout #1 Answer Guide

| What level of privacy or protection from government searches do you think you should have in each scenario? | L | M | H |
|---|---|---|---|
| Inside your home or apartment | | | X |
| The contents of your luggage at an airport prior to boarding the plane | X | | |
| A package you receive through the U.S. mail or FedEx/UPS | | | X |
| The location data transmitted by your cell phone that shows where you have traveled | | | X |
| Inside your car as you travel on a public roadway | | X | |
| The contents of your coat pockets and backpack as you walk along the sidewalk | | X | |
| The contents of your garbage can when you put it out on the street for collection | X | | |
| The text messages and pictures on your cell phone | | | X |
| Inside a vehicle that is parked outside of your garage, next to your home | | | X |