



Social Studies Virtual Learning

AP Government:

Unit 3- 4th Amendment Search & Seizure

April 8, 2020



AP Government (Unit 3)
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Objective:

LOR 2.B- Describe the rights protected in the Bill of Rights.

Warm Up: The 4th Amendment to the US Constitution

Read the text of the 4th Amendment below. Try to rewrite it in a summary sentence in EXACTLY 10 words.

“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.”

Warm Up: The 4th Amendment to the US Constitution

Okay! So here's mine:

Unreasonable searches & seizures? Unconstitutional!

Warrant must be super specific.

Lesson:

As you watch, answer the following on your paper

- Usually police need a warrant. Why don't they have to all the time?
- What is the Exclusionary Rule?
- Why is Mapp v. Ohio such a big deal for the 4th Amendment?
- Why don't students have the same rights?



Lesson:

What I was thinking about when I watched the video:

- **Usually police need a warrant. Why don't they have to all the time?**
 - What I was thinking as I watched this is that sometimes the police have to act quickly. They are in pursuit of a suspect and the suspect enters a building. The police don't have time to call up a judge and wait for a warrant to search the building. So the police have a little leeway when it comes to searches.
- **What is the Exclusionary Rule?**
 - Well, if a warrant isn't used properly- the warrant says they're going to search your *car*, but search your *freezer* and find the gun there, they can't use the gun in your court case, because they improperly searched for it!
- **Why is *Mapp v. Ohio* such a big deal for the 4th Amendment?**
 - It was the case that the court set the Exclusionary Rule as precedent.
- **Why don't students have the same rights?**
 - Well... they are students! And schools (a government entity) want to ensure a safe, drug-free, and weapon-free environment to allow for learning. So they take away some of your rights to be able to do this.

Your Turn! Let's Practice this Amendment.



Back in the 2000s, Jay-Z wrote the song 99 Problems. Obama referenced it in a speech and it was ranked the #2 song of the 2000s by Rolling Stone. However, that's just part of the story.

The second verse was based on an actual experience of Jay-Z in the 1990s in New Jersey. Jay-Z wrote that in 1994 he was pulled over by police while carrying cocaine in a secret compartment in his sunroof. Jay-Z refused to let the police search the car and the police called for the drug sniffing dogs. However, the dogs never showed up and the police had to let Jay-Z go. Moments after he drove away, he wrote that he saw a police car with the dogs drive by.

In 2011, Southwestern Law School Professor Caleb Mason wrote an article with a line-by-line analysis of the second verse from a legal perspective referencing the 4th Amendment to the Constitution. He said this song is a useful tool for teaching students about a variety of 4th Amendment issues.

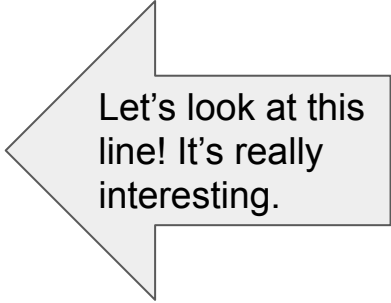
Your Turn! Let's Practice this Amendment.

Please create this chart in your notes. As you read the selected lines of the verse, you'll be instructed to look at a specific part of the song analysis and complete this chart.

What did you learn about Civil Liberties from Jay-Z & Caleb Mason in these lines?	What (if anything) did Jay-Z get wrong in his song?
(If I was filing this out, I'd write the line # where I took the information from so I know. I'd also make sure I have information from the song and the Caleb Mason excerpts.)	

99 Problems (Lines 1-8)

1. The year is '94 and in my trunk is raw
2. In my rearview mirror is the ***** law
3. I got two choices y'all, pull over the car or
4. Bounce on the double put the pedal to the floor
5. Now I ain't trying to see no highway chase with jake
6. Plus I got a few dollars I can fight the case
7. So I . . . pull over to the side of the road
8. And I Heard "Son do you know what I'm stopping you for?"



Let's look at this line! It's really interesting.

Using the information below, fill out your chart about Line #5

(continued on the next two slides)

C. Line 5

I ain't trying to see no highway chase with jake . . . “Jake” is the cops,²³ and Jay-Z’s narrator is making a prudential business decision here. High-speed chases are almost always bad for the perp. If you’re caught after a high-speed chase, you can be certain that the police will impound the car, run a dog over it, and search it thoroughly. So if you’re going to run, you’d better either get away or ditch your load mid-chase. But the latter is dicey, because your load will likely be found,²⁴ and you’ll have no suppression remedy because you abandoned it before you were technically seized.²⁵ And it’s not an option

at all if the load is in the trunk or a concealed compartment where you can't get at it.

You're also not likely to get away. The Supreme Court recently held that the Fourth Amendment permits the use of deadly force to terminate high-speed chases.²⁶ In that case, the suspect fled from an ordinary traffic stop, the police chased him, and when he still didn't stop, the police rammed him from behind at over eighty-five miles an hour, sending his car spinning off the road and into a tree, killing him.²⁷ The Court watched the dashboard camera video and pronounced the response reasonable.²⁸

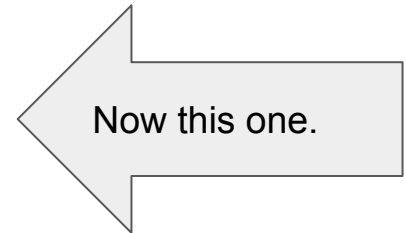
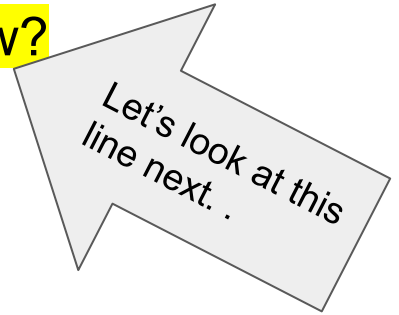
Here you have to know the local rules, because some jurisdictions have banned high-speed chases as a matter of policy. Washington, D.C., for example, did so after two children were killed by a driver being chased by police.²⁹ In those jurisdictions, the cops will take your plates and come find you later.³⁰ They'll still find you, of course, but you'd probably have time to get the contraband out of the car and hide or discard it. Then you'd avoid the trafficking bust, and you would just have to eat a reckless endangerment charge for the flight itself. And even better for the perp, if the car or the plates are stolen, you might get clean away.

But Jay-Z didn't have a stolen car or plates ("*all my papers legit*"), the New Jersey State Police are not a no-chase department, and he was on an interstate.³¹ They would have chased him, and even if he had been able to open the sunroof compartment and throw the load out, it would likely have been found. The better business decision was to stay cool.

99 Problems (Lines 9-16)

9. "Cause I'm young and I'm black and my hat's real low?"
10. Do I look like a mind reader sir, I don't know
11. Am I under arrest or should I guess some mo?"
12. Well you was doing fifty-five in a fifty-four

13. License and registration and step out of the car
14. Are you carrying a weapon on you, I know a lot of you are"
15. "I ain't stepping out of **** all my papers legit"
16. "Do you mind if I look around the car a little bit?"



Using the information below, fill out your chart about Line #9

(continued on the next slide)

G. Lines 9–10

Cause I'm young and I'm black and my hat's real low? At the time the song takes place, the New Jersey State Police had an active “drug courier profiling” program⁴¹ that would absolutely have included the observable facts here: Jay-Z was: (1) young, (2) male, (3) black, (4) wearing attire favored by drug dealers (the hat way down low), (5) driving an expensive car (in the video), (6) traveling on I-95 (the primary route for bringing drugs into and out of the city).⁴² Such profiles are of questionable validity as the sole basis for a stop,⁴³ but there is no constitutional reason why they cannot inform an officer’s subjective determination to stop someone if there is objective probable cause for the stop (for example, speeding). The Supreme Court has answered this

question definitively: pretext is not a basis for Fourth Amendment suppression if there is objective probable cause.⁴⁴

I don't know . . . Smart response for two reasons. First, it allows you to make a record of the officer's asserted basis for the stop. Second, it doesn't admit any misconduct. There's no need whatsoever to blurt out, "Sorry, officer, I know I was speeding!"

Using the information below, fill out your chart about Line #16

(continued on the next two slides)

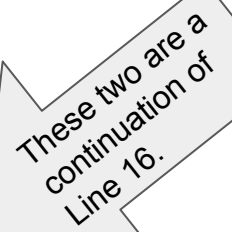
K. Line 16

Do you mind if I look around . . . ? Cops are trained to ask for consent, and almost everyone gives it.⁶⁶ Consent is useful for them because voluntary consent renders moot any other problems that might arise with the search (for example, a later determination that the officer lacked probable cause).⁶⁷ Furthermore, awareness of the right to refuse is not a prerequisite to a voluntary consent to search.⁶⁸ A suspect who thinks he has no choice can nonetheless give voluntary consent as a matter of law.⁶⁹

Searches, in this respect, are unlike statements. Under *Miranda*, a statement made during custodial interrogation will be presumed involuntary (and thus suppressed)⁷⁰ if not preceded by the required warning, which includes telling the suspect that he has the right to remain silent.⁷¹ But seven years after *Miranda*, the Court considered adopting such a warning regime for consent searches and declined to do so.⁷² The Court said that street encounters with the police are inherently less coercive than jailhouse interrogation.⁷³ I find the Court's reasoning unpersuasive: for a lot of people, street encounters and traffic stops are still pretty coercive. But who cares what I think: that's the law. The burden is on the public to be aware of its rights—in this case, the right to decline consent. As a rule of thumb, think of it this way: if the police have the authority to search, they'll just search. If they have to get your consent, it's because they don't have the authority to search unless you


consent.⁷⁴ So a good response to memorize is: “I do not consent.” If the cop asks to search without threatening you, and you give consent, you are flat out of luck even if you had no idea that you had the right to refuse.

99 Problems (Lines 17-24)



These two are a continuation of Line 16.

17. “Well, my glove compartment is locked, so is the trunk and the back,
18. And I know my rights so you go’n need a warrant for that”
19. “Aren’t you sharp as a tack, some type of lawyer or something
20. Or somebody important or something?”
21. “Nah I ain’t pass the bar but I know a little bit
22. Enough that you won’t illegally search my ****”
23. “We’ll see how smart you are when the K-9s come”
24. I got 99 problems but a ***** ain’t one



And finally, we need to analyze this one.

Using the information below, fill out your chart about Lines #17-18

(continued on the next two slides)

L. Lines 17–22

And I know my rights, so you go'n need a warrant for that . . . If this Essay serves no other purpose, I hope it serves to debunk, for any readers who persist in believing it, the myth that locking your trunk will keep the cops from searching it. Based on the number of my students who arrived at law school believing that if you lock your trunk and glove compartment, the police will need a warrant to search them, I surmise that it's even more widespread among the lay public. But it's completely, 100% wrong.

There is no warrant requirement for car searches. The Supreme Court has declared unequivocally that because cars are inherently mobile (and are pervasively regulated, and operated in public spaces), it is reasonable under the Fourth Amendment for the police to search the car—the whole car, and everything in the car, including containers—whenever they have probable cause to believe that the car contains evidence of crime.⁷⁵ You don't have to arrest the person, or impound the vehicle. You just need probable cause to believe that the car contains evidence of crime. So, in any vehicle stop, the officers may search the entire car, without consent, if they develop probable cause to believe that car contains, say, drugs.

All the action, in short, is about probable cause. Warrants never come into the picture. The fact that the trunk and glove compartments are locked is completely irrelevant. Now, Jay-Z may have just altered the lyrics for dramatic effect, but that would be unfortunate insofar as the song is going to reach many more people than any criminal procedure lecture, and everyone should really know the outline of the law in this area.⁷⁶ What the line should say is: “You’ll need some p.c. for that.” Given that we’ve established (it appears) that Jay-Z is not under arrest, and given that the *Terry* frisk of the car is limited to accessible places a weapon could be hidden, the trunk is definitely off limits at this point. What that means is that if the officer opened the trunk by force, without developing articulable probable cause, the contraband found inside would be suppressed. That is the point of the next line.

Using the information below, fill out your chart about Line #23

(continued on the next four slides)

M. Line 23

We'll see how smart you are when the K-9s come . . . A sniff by a drug-sniffing dog is not a “search,” for purposes of the Fourth Amendment.⁷⁷ Dog sniffs are “*sui generis*,” the Court has held—they’re unique in that they don’t reveal any information about the contents of the object sniffed except the presence of contraband, as to which you have no privacy right.⁷⁸ Thus, if the police have a dog ready to sniff your car when they pull you over for a traffic violation, you have no basis for objecting to the sniff. And, of course, if the dog does alert to the car, that is probable cause, so the police can then search the whole car.⁷⁹ That’s what the officer wanted to do with Jay-Z, but the K-9 unit wasn’t there when he was pulled over, and was late arriving. And this brings us to the final legal issue implicated by the song: excessive prolongation of a traffic stop.

A traffic stop is a legitimate seizure of the person, for purposes of investigating the violation of the traffic law and writing up the citation.⁸⁰ But it cannot be prolonged for longer than reasonably necessary to complete that legitimate activity.⁸¹ If in fact the patrol car's computer is slow, so you have to sit there for ten minutes while the cop runs your license, that's one thing. But increasingly, given dashboard cameras and records of department computer activity, that sort of "delay" is getting harder to fudge.⁸² And the Fourth Amendment rule is very clear: if the police detain you after they've finished processing the ticket—or if they simply dawdle over the ticket processing for an unreasonable length of time—in order to get a K-9 team there, then the eventual dog sniff will be the fruit of an illegal detention, and any evidence

found will be suppressed.⁸³ The officer in Jay-Z's case apparently knew this, and so released Jay-Z after the stop when the K-9 unit he'd called was late in arriving.⁸⁴

Of course, if, during the traffic stop, you provide the officer with reasonable suspicion that you're smuggling, then the traffic stop becomes a *Terry* stop for the purpose of investigating the suspected smuggling.⁸⁵ And then it can be extended—not indefinitely, but for a few minutes, anyway, depending on the circuit.⁸⁶ Courts will uphold reasonable suspicion for all the usual reasons—but there still has to be something beyond the traffic stop itself. This is a crucial distinction that all cops and perps need to be aware of, and be prepared to litigate.⁸⁷

The best practice for law enforcement, if you're planning to use traffic stops to make drug busts, is to have the dog unit there when you make the initial stop. But drug dogs and their handlers are valuable commodities—the dogs take a long time to train, are expensive to house, and typically work only with a designated officer.⁸⁸ So there aren't as many K-9 units available as there are potential pretext traffic busts to make in a given night. The cops in Jay-Z's case could have rolled the dice on holding him there until the unit arrived. But this is always a cost-benefit game: what are the chances that I'll actually find something, and what are the chances it'll be suppressed if I do find it?

And also: what are the chances that if I intentionally violate someone's rights, I'll get in trouble? On the last question, the prevalence of cell-phone

cameras, video-sharing sites, and departmental policies on dashboard cameras and body recorders for officers have worked a huge cultural shift in most departments.⁸⁹ And you're not going to have qualified immunity for intentionally prolonging a traffic stop to allow the dog to arrive. The law's much too clear for that.⁹⁰

Reflection

Think about the work you just did. What is something interesting you learned about this song and the 4th Amendment?