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High School Legal Curricula: Fourth Amendment Hypotheticals

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FOURTH AMENDMENT HYPOTHETICALS

SEARCH OF THE HOME

Hypothetical 1

Police officers on foot patrol pass by Jim Compton's home. While standing on the public sidewalk, they look through Jim's large picture window and observe contraband (illegal objects such as marijuana) lying on the table near the window. Jim is arrested.

Is the search legal?

HINT TO TEACHER: Generally, it is not a search to observe what is open and obvious in daylight or artificial light. Also, an observation made from a *public place* of an activity clearly constituting a crime or resulting in *probable cause* to believe that a crime is occurring is a valid search. This is known as the *plain view doctrine*. The problem becomes more complicated if the police trespass upon private land to look through a window. Under those circumstances, courts frequently deem those searches illegal because of the policemen's conduct.

Hypothetical 2

An arrest warrant is issued for John Falkin, suspected of committing robbery. He is arrested inside his home. As the police are taking John out the front door, one of the officers sees what appears to be narcotics on a table near the door. The material is confiscated and, after analysis, turns out to be heroin. John is then charged with possession of a dangerous drug.

Is the seizure legal?

HINT TO TEACHER: To protect themselves after an arrest has been made, police officers only have the *legal right to search and seize objects under the suspect's immediate control* (objects on his person or those in an area that he can easily reach). But the *doctrine of plain view* was still in effect. As they were leaving John's home, the contraband came into plain view and, therefore, was subject to seizure.

Hypothetical 3

Officers knocked on the front door of Stan William's home. His sister, Sarah, who was visiting for a few days, answered the door. The police asked if they could search Stan's bedroom. Sarah, identifying herself as Stan's sister, said she was sure Stan wouldn't mind because he was such an honest citizen. Stan was the local leader of a radical group. While searching, the police found four machine guns, two mortars, and five thousand rounds of ammunition.

Is the search legal?

HINT TO TEACHER: No. While a person can consent to a search of his own possessions or mutually shared possessions, one without any interest in the property cannot give legal consent for searching that property. In the above example, if Stan's wife had consented, the search would have been valid because she mutually shares Stan's bedroom. A roommate could also consent, if the roommate shared the bedroom with Stan. If they did not share the bedroom, then the roommate could only legally

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consent to a search of mutually shared rooms. Parents can consent to the search of their children's rooms.

SEARCH OF THE PERSON

Hypothetical 4

Bill, while walking home late at night, was stopped by the police, asked for his I.D. and then given a "pat down" search. During the search, the officer felt a small object in Bill's pocket. The officer thought that it might be a plastic bag with marijuana in it. Therefore, he reached into Bill's pocket and pulled out the soft object. It was marijuana and Bill was arrested.

Is the search valid?

HINT TO TEACHER: No. The purpose of a "pat down" search is to see if the person is concealing any object that could threaten the officers' or someone else's life. After touching the small soft object, the officers should not have reached into Bill's pocket because their lives were not in jeopardy. If the object had felt like a gun or knife, and, upon recovery proved to be marijuana or other contraband, the search would have been valid.

Hypothetical 5

After spending the night at a party, Mary Jo was involved in an accident in the car she was driving. She appeared to the policemen to be under the influence of alcohol and was taken to the hospital for a

blood-alcohol test. The test revealed that she was "legally" drunk.

Is the search legal?

HINT TO TEACHER: Yes. Physical evidence, such as blood tests for alcohol and narcotics, is admissible in court and not violative of the accused's privilege against self-incrimination. It may be "seized" if the seizure is "reasonable." For the seizure to be reasonable, (1) the alcohol test must be conducted in a medically-approved manner by qualified medical personnel; (2) there must be a *clear indication* that the desired evidence will be found (probably more than the *probable cause* required for an arrest); and (3) the police and medical personnel can use only reasonable force to secure the blood test. Some states, like California, have passed special legislation requiring vehicle drivers to submit to sobriety tests upon request or have their drivers' licenses suspended.

SEARCH OF AN AUTO

Hypothetical 6

Carol, while driving 75 in a 65 miles per hour zone, is stopped and given a traffic ticket for speeding. After giving the ticket (a technical arrest), the officer makes a search incident to an arrest and finds narcotics in the car.

Is the search legal?

HINT TO TEACHER: No. Usually there are no weapons involved in crimes of speeding, going through a red light, or illegally parking and

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a search in those circumstances is not justified unless the officer has *probable cause* to believe that another crime is or has been committed. The policeman is justified in searching only if there is enough probable cause to secure a search warrant from a magistrate. Clearly, there was no probable cause to believe Carol was committing or planning to commit another crime. The search was illegal. The general rule, therefore, prohibits a search following an "arrest" for a traffic violation.

Hypothetical 7

Al, a hippie from Milltown, was stopped by a police officer because Al's left brake light was out. When Al rolled down his car window to converse with the officer, the policeman smelled what seemed to be marijuana smoke. Al also had a glassy look in his eyes. The officer asked Al to step out of the car, and a search of the car turned up a marijuana roach.

Is the search legal?

HINT TO TEACHER: Because of the mobility of a car, courts have allowed police authorities greater freedom to search automobiles than homes. A strong alcoholic odor or the smell of marijuana smoke is usually enough probable cause for a search under the *emergency situation exception*.*

*In situations such as this, the officer must be able to prove at trial that he is experienced at detecting the smell of marijuana and interpreting the "glazed look" of one under the influence of marijuana. Otherwise, the police could fabricate such reasons as the grounds for searching an auto.

The emergency is created by the mobility of the car and the possibility of being able to destroy the evidence. However, if the officer had stuck his head far inside the car before smelling a suspicious odor or seeing a suspicious object, then the search and seizure would probably be considered illegal.