SUMMARY

After the Bill of Rights was ratified in 1791, it became the responsibility of the new federal government, not the state governments, to ensure these protections for all Americans. More than 100 years later, the Supreme Court started applying some of these rights to the states on a case-by-case basis through the Fourteenth Amendment.

It wasn’t until 1961, however, that the Court applied the Fourth Amendment guarantee against “unreasonable search and seizure” to state governments. The case was *Mapp v. Ohio*, and it relied on the same rule of evidence used in the 1914 federal case *Weeks v. United States*, the exclusionary rule. According to this rule, otherwise admissible evidence cannot be used in a criminal trial if it was obtained as the result of illegal conduct by law enforcement officers. The exclusionary rule helped define what is meant by “unreasonable search and seizure.”

*We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.* Justice Tom C. Clark, *Mapp v. Ohio* (1961)

This lesson is based on a video about the landmark Supreme Court search-and-seizure case that also makes state governments responsible for protecting our Fourth Amendment right. With the exclusionary rule, this right becomes real for all of us.

NOTES AND CONSIDERATIONS

- This lesson presumes that students are familiar with the background story and Court’s opinion in *Brown v. Board of Education* (1954) and understand basic legal terminology.

- Technology is relied on to facilitate learning and instruction.

- This is a self-contained lesson with resources and activities that can be adapted to different teaching styles, length of classes, and levels of students.
Grades 5-8 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

I. What are civic life, politics, and government?
   A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
   B. What are the essential characteristics of limited and unlimited government?
   C. What are the nature and purposes of constitutions?

II. What are the foundations of the American political system?
   A. What is the American idea of constitutional government?
   B. What are the distinctive characteristics of American society?
   C. What is American political culture?
   D. What values and principles are basic to American constitutional democracy?

III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
   A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
   C. How are state and local governments organized and what do they do?
   E. What is the place of law in the American constitutional system?

V. What are the roles of the citizen in American democracy?
   B. What are the rights of citizens?
   C. What are the responsibilities of citizens?
   D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?
   E. How can citizens take part in civic life?
Grades 9-12 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

I. What are civic life, politics, and government?
   A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
   B. What are the essential characteristics of limited and unlimited government?
   C. What are the nature and purposes of constitutions?

II. What are the foundations of the American political system?
   A. What is the American idea of constitutional government?
   B. What are the distinctive characteristics of American society?
   C. What is American political culture?
   D. What values and principles are basic to American constitutional democracy?

III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
   A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
   B. How is the national government organized, and what does it do?
   C. How are state and local governments organized and what do they do?
   D. What is the place of law in the American constitutional system?

IV. What are the roles of the citizen in American democracy?
   B. What are the rights of citizens?
   C. What are the responsibilities of citizens?
   D. What civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy?
   E. How can citizens take part in civic life?

Note: A more detailed standards-level alignment related to these questions can be found in the “Standards” section at the end of this lesson plan.
STUDENT OUTCOMES

Knowledge, skills, and dispositions

Students will . . .

- Reconstruct the chronology of events and decisions related to the topic of search and seizure.
- Gain insight into the reasoning behind Supreme Court decisions.
- Understand the development, use and controversy surrounding the exclusionary rule.
- Appreciate the role of ordinary citizens in our system of justice.
- Recognize the challenges involved in keeping us safe and protecting our rights under the Fourth Amendment.
- Make real-world connections.

Integrated Skills

1. Information literacy skills

Students will . . .

- Extract, organize and analyze information from different sources.
- Use skimming and research skills.
- Organize information into usable forms.
- Build background knowledge to support new learning.
- Use technology to facilitate learning.

2. Media literacy skills

Students will . . .

- Gather and interpret information from different media.
- Use online sources to support learning.

3. Communication skills

Students will . . .

- Write and speak clearly to contribute ideas and information and express own point of view.
- Write in response to questions.
- Respect diverse opinions and points of view.
- Develop and interpret visual models.
- Develop interpretive skills.

4. Study skills

- Take notes
- Manage time and materials

5. Thinking skills

Students will . . .

- Describe and recall information.
- Make personal connections.
- Explain ideas or concepts.
- Draw conclusions.
- Analyze and evaluate issues.
- Use sound reasoning and logic.
- Evaluate information and decisions.
- Critique arguments.

6. Problem-solving skills

Students will . . .

- Identify issues and facts.
- Analyze cause and effect relationships.
- Examine reasoning used in making decisions.
- Evaluate proposed solutions.
- Ask meaningful questions.
- Base decisions on sound reasoning.

7. Participation skills

Students will . . .

- Contribute to small and large group discussion.
- Work responsibly both individually and with diverse people.
- Express own beliefs, feelings and convictions.
- Show initiative and self-direction. Interact with others to deepen understanding.
Evidence of understanding may be gathered from student performance related to the following:

- Class-Prep Assignment
- Responses to video study questions
- Project: A Contextual Timeline
- Activity: Legal or Illegal? You Be the Judge
- Lesson Quiz
- Class participation

**VOCABULARY**

A man’s house is his castle.
ACLU
amicus curiae brief
appeal
Bill of Rights
Boston Tea Party
brief
civil liberties
civil right
Constitution
contraband
criminal case
defendant
dissenting opinion
due process
evidence
exclusionary rule
Fifth Amendment
First Amendment
Fourteenth Amendment
Fourth Amendment
framers
good faith exception
grand jury
illegal
incorporation
justice
law
legislative branch
liberty
magistrate
majority opinion
obscenity laws
overrule
overturn
precedent
principle
probable cause
remedy
right to privacy
rights
rule
rule of law
rules of evidence
seditious literature
self-incrimination
statute
Supreme Court
tyranny
unconstitutional
unreasonable search and seizure
warrant
writ of assistance

**Resources for Definitions**

FindLaw—Law Dictionary
http://dictionary.lp.findlaw.com/

National Standards for Civics and Government: Glossary

NOLO’s Free Dictionary of Law Terms and Legal Definitions
http://www.nolo.com/dictionary

Understanding Democracy, A Hip Pocket Guide—John J. Patrick
http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide

Merriam-Webster Online
http://www.merriam-webster.com/
LESSON OVERVIEW

Goal

Students will...
- Learn about the people, events and decisions that made state governments accountable for protecting our Fourth Amendment right in the landmark search-and-seizure case of *Mapp v. Ohio* (1961)
- Gain insight into the development, use and controversy surrounding the exclusionary rule.
- Develop an appreciation for what is required of all Americans to help ensure the protection of individual rights and society under the Fourth Amendment.

Class-Prep Assignment

Students complete an independent assignment to build background knowledge for the video they will watch and study during the first in-class session.

DAY 1: Getting Even

Students participate in a guided study of the video *The Constitution Project: Search and Seizure—Mapp v. Ohio* to learn about the case that also made state governments responsible for protecting our Fourth Amendment right.

DAY 2: Connect the Dots — A Contextual Timeline

Students develop a contextual timeline to “retell” the story in the video of *Mapp v. Ohio* in chronological order by identifying and placing significant historical events and Supreme Court decisions within the larger context of U.S. history.

DAY 3: Legal or Illegal? You Be the Judge

When the People Decide

Students experience the challenge of deciding search-and-seizure cases under the Fourth Amendment as they “rule” on the legality of real scenarios, then compare their decisions to those made by the Supreme Court. They also take a Lesson Quiz to conclude the study.

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Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.

Justice Tom C. Clark
*Mapp v. Ohio* (1961)
Class-Prep Assignment

The following assignment provides important background knowledge and context for the video *The Constitution Project: Search and Seizure—Mapp v. Ohio* and should be completed as an independent activity before the first in-class session.

Readings:

- Chapter 15: The Right to Protection Against Illegal Search and Seizure from *Our Rights* by David J. Bodenhamer
  
  Note: This chapter closely parallels the content in the video.
  
  Copies are available from the teacher or the chapter may be viewed at the following link.
  

- Third & Fourth Amendments from *Our Constitution* by Donald Ritchie & Justicelearning.org (Skim to read the parts related to the Fourth Amendment)
  
  Copies are available from the teacher or the chapter may be viewed at the following link.
  

Student Materials: (Included)

- Class-Prep Assignment

Procedure:

1. Distribute and review the Class-Prep Assignment. Allow students enough time to complete it at home in advance of the first in-class session.

2. Remind students to bring their completed work to class.
DAY 1: Getting Even


Goal: Gain information, understanding and appreciation for the principles, people and processes that make state governments also responsible for protecting our Fourth Amendment right.

Materials/Equipment Needed:

**Technology**
- Computer lab with Internet connection
  Available from Annenberg Classroom: [http://www.annenbergclassroom.org/page/all-videos](http://www.annenbergclassroom.org/page/all-videos)

**Student Handouts (Included)**
- Select the materials appropriate for the chosen Guided Study Option.
  - Student’s Video Guide (Includes transcript with Pause & Reflect boxes after each section)
  - Video Study Questions (Includes questions only grouped by section)
  - Video Transcript (Includes section headings only)

**Teacher Resource (Included)**
- Teacher’s Video Guide: *The Constitution Project: Search and Seizure – Mapp v. Ohio*

**Guided Viewing:**
Due to the pace of the video and the complexity of the content, this approach provides multiple opportunities for students to absorb and process what they are seeing and hearing during the video.

To support a guided study of the content, the following topical sections are identified and time marked in the video study guide. Pause & Reflect questions are also included for each section.

1. Constitutional Context
2. Background Story for *Mapp v. Ohio*
3. Writs & Warrants
4. Warrantless Searches
5. Exclusionary Rule: Origin & Rationale
6. Mapp’s Case in the Supreme Court
7. Reasoning Behind the *Mapp* Decision
8. Exclusionary Rule: Exceptions & Controversy
9. Keeping Us Safe v. Protecting Our Rights

**Guided Study Options:**

- **Teacher-Guided Study**
The teacher leads the class through a discussion-based study by following the Teacher’s Video Guide. Students may be given the Video Study Questions to assist with note-taking.

- **Small Group Study**
In small study groups, students work through the video using the Student’s Video Guide. They view each section, then interact to discuss and complete the questions.

- **Self-Guided Study**
Students work independently through the video using the Student’s Video Guide and answer the questions.
DAY 2: Connect the Dots—A Contextual Timeline

Overview: Students develop a contextual timeline to “retell” the story in the video of Mapp v. Ohio in chronological order by identifying and placing significant historical events and Supreme Court decisions within the larger context of U.S. history.

Goal: Students develop skills in historical analysis and interpretation by thinking through the cause-and-effect connections between historical events and Supreme Court decisions that led to the protections we have today under the Fourth Amendment.

Materials

Resources
• Video Transcript: The Constitution Project: Search and Seizure – Mapp v. Ohio
• Chapter 15: The Right to Protection Against Illegal Search and Seizure from Our Rights by David J. Bodenhamer
• Third & Fourth Amendments from Our Constitution by Donald Ritchie & Justicelearning.org

Student Handouts (Included)
• Project: A Contextual Timeline
• Rubric for a Contextual Timeline
• Legal or Illegal? You Be the Judge

Teacher Materials (Included)
• Teacher’s Timeline Notes
• Answers & Explanations: Legal or Illegal? You Be the Judge

Other Needs
• 3x5 cards
• Highlighters
• Software tools to facilitate information gathering and organization if available
• Computer lab with Internet access

Procedure:
1. Students work in pairs, study groups, or independently on this project.
2. Distribute and review the project and rubric for a contextual timeline.
3. Use this period for note-taking, then assign timeline development for homework.
DAY 3: Legal or Illegal? You Be the Judge

Overview: Students experience the challenge of deciding search-and-seizure cases under the Fourth Amendment as they “rule” on the legality of real scenarios, then compare their decisions to those made by the Supreme Court. They also take a Lesson Quiz to conclude the study.

Goal: Develop understanding and appreciation for the challenges faced by the Supreme Court as it seeks to interpret and apply the Fourth Amendment in a changing society.

Materials/Equipment Needed:
- Student Handout (Included)
  - Legal or Illegal? You Be the Judge
  - Lesson Quiz
- Teacher Resource (Included)
  - Answers & Explanations: Legal or Illegal? You Be the Judge
  - Lesson Quiz (KEY)
  - Essentials for American Constitutional Democracy
- Additional Needs
  - Computer lab with Internet access

Procedure:
1. Reflect on the meaning of “unreasonable” in the Fourth Amendment, then consider the recent case of Kentucky v. King (2011) by posing this question:

   If police are outside a house, and they can smell burning marijuana and hear the sounds of evidence being destroyed, are they allowed to enter without a warrant?

   (This question is part of an interactive quiz from the National Constitution Center that students will use for this lesson.)

   http://blog.constitutioncenter.org/how-well-do-you-know-the-4th-amendment/

2. Pass out the student activity Legal or Illegal? You Be the Judge.

   Review the instructions. Students must respond to all scenarios first, then enter their responses and check their answers by using the interactive quiz from the National Constitution Center.

   If the Internet is not available to all students, use the Teacher Resource page to provide answers for this activity. If there is time, share and discuss the explanations.

3. Tally class scores for each of the scenarios.

4. Debrief by discussing any or all of the following depending on the time.

   a. Will there ever be a clear definition of unreasonable?
   b. Predict what might happen if there was a hard line drawn.
   c. Is “unreasonable” a matter of perspective?
   d. What is an appropriate response if we believe our rights have been violated?
   e. What essential principles, values and traits of character are needed to ensure justice for all?
   f. Is justice always fair?
   g. Identify the different “actors” involved in a search-and-seizure case (e.g., criminal, public servant, victim,innocent, government, judge, lawyer, police, society, private individual), then discuss the commitments, behaviors, attitudes, interactions, interests, rights and responsibilities associated with each role.
   h. Compare and contrast life under the rule of law vs. the rule of men.

5. Pass out the Lesson Quiz for students to take in class with or without access to their notes.
EXTENSION ACTIVITIES

Have more time to teach?

1. Explore contemporary challenges related to interpreting the Fourth Amendment’s protection against “unreasonable search and seizure.”

     Slip opinion

     Oral arguments

     CNN article summarizing the case:
     “Justices rule against the police, say GPS surveillance requires warrant”

     A blog on the case from the National Constitution Center:
     U.S. v. Jones was a landmark digital privacy decision—but what about privacy in 2025?
     http://blog.constitutioncenter.org/u-s-v-jones-was-a-landmark-digital-privacy-decision%e2%80%94but-what-about-privacy-in-2025/

   • Kentucky v. King (2011) - Warrantless Searches OK’d by Supreme Court
     Court’s opinion

     Annenberg Classroom: Speak Out
     http://www.annenbergclassroom.org/speakout/does-the-supreme-courts-ruling-on-a-warrantless-search-undermine-the-fourth-amendment

     Blogs from the National Constitution Center
       • How well do you know the 4th Amendment?
         http://blog.constitutioncenter.org/how-well-do-you-know-the-4th-amendment/
       • You be the judge: Drug dealers and the Fourth Amendment
         http://blog.constitutioncenter.org/you-be-the-judge-drug-dealers-and-the-fourth-amendment/

2. Compare and contrast the Fourth Amendment with a copy of the federal search-and-seizure warrant shown in the video.

   A federal search-and-seizure warrant may be obtained from the following link:
   http://www.uscourts.gov/FormsAndFees/Forms/CourtFormsByCategory.aspx

3. Learn more about decision-making and judicial interpretation at the Supreme Court.

   • View the video: Conversation on the Constitution: Judicial Interpretation (37 min.)
     http://www.annenbergclassroom.org/page/a-conversation-on-the-constitution-judicial-interpretation
     Justices Stephen G. Breyer and Antonin Scalia and a group of students discuss the different theories of how to interpret and apply the Constitution to cases.
• View the video: Origin, Nature and Importance of the Supreme Court (37 min.)
  http://www.annenbergclassroom.org/page/a-conversation-on-the-origin-nature-and-importance-of-the-supreme-court
  Chief Justice John G. Roberts Jr. and a group of students discuss the Supreme Court: its history, how it selects and decides cases, and the role of an independent judiciary.

• Interpreting the Constitution
  o “The Court and Constitutional Interpretation”
    http://www.supremecourt.gov/about/constitutional.aspx
  o Chapter 5: How is the Constitution Interpreted? from Our Constitution by Donald Ritchie & Justicelearning.org

4. Learn more about the role of James Otis in the birth of independence in America.
   Read an award-winning high school essay on James Otis.

5. Learn more about the Bill of Rights.
   • View the video: Story of the Bill of Rights (16:20)
   • Play the Bill of Rights Game
     http://www.annenbergclassroom.org/page/the-bill-of-rights-game

RESOURCES

**Mapp v. Ohio (1961)**

- United States Reports
  367 U.S.643.236

- OYEZ: Case Summary

- Cornell University Law School
  Syllabus, Opinion, Dissent

- FindLaw

**Fourth Amendment**

- Annenberg Online Video Documentaries
  Story of the Bill of Rights (16:20)
  Fourth Amendment (1:38)

- Interactive Constitution
  National Constitution Center
  http://blog.constitutioncenter.org/how-well-do-you-know-the-4th-amendment/
• Fourth Amendment  
  http://www.annenbergclassroom.org/page/fourth-amendment

• U.S. Constitution: Fourth Amendment  

• Fourth Amendment: Search and Seizure  

• iCivics (Interactives)  
  The Constitution and Bill of Rights  
  http://www.icivics.org/subject/constitution-and-bill-rights

• Criminal Procedure Capsule Summaries  
  Overview of Fourth Amendment Principles  
  http://www.lexisnexis.com/lawschool/study/outlines/html/crimpro/crimpro01.htm

Search and Seizure

• Annenberg Issue Page: Unreasonable Search and Seizure  
  http://www.annenbergclassroom.org/timeline/right-against-unreasonable-search-and-seizure  
  http://www.annenbergclassroom.org/issue/unreasonable-search-and-seizure

• Learn about Search and Seizure  

Court System

• Annenberg Classroom  
  The Role of the Courts  
  http://www.annenbergclassroom.org/page/the-role-of-the-courts

• Supreme Court of the United States  
  http://www.supremecourtus.gov

• United States Courts  
  http://www.uscourts.gov

Online Books from Annenberg

• Understanding Democracy, A Hip Pocket Guide – John J. Patrick  
  http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide

• Our Constitution—Donald Ritchie and Justicelearning.org  
  http://www.annenbergclassroom.org/page/our-constitution

• Our Rights—David J. Bodenhamer  
  http://www.annenbergclassroom.org/page/our-rights

“The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples.”

Justice Felix Frankfurter  
Wolf v. Colorado (1949)
Student Materials

- Class-Prep Assignment Sheet
- Video Study Questions
- Project: A Contextual Timeline
- Rubric for A Contextual Timeline
- Legal or Illegal? You Be the Judge
- Lesson Quiz
The following assignment provides important background knowledge and context for the video The Constitution Project: Search and Seizure—Mapp v. Ohio and related class work.

Instructions
Read the following resources, then complete the Questions and review the Vocabulary.

- Chapter 15: The Right to Protection Against Illegal Search and Seizure from Our Rights by David J. Bodenhamer
  Note: This chapter closely parallels the content of the video.
  Copies are available from the teacher or the reading may be viewed at the following link.
  http://www.annenbergclassroom.org/page/our-rights

- Third & Fourth Amendments from Our Constitution by Donald Ritchie & JusticeLearning.org (Skim to read the parts related to the Fourth Amendment.)
  Copies are available from the teacher or the reading may be viewed at the following link.

Questions
The following questions are largely based on the Chapter 15 reading. Whenever possible, add specific quotes to support your answers. Should another source be used, write the title of the book in parentheses following the quote. All quotes, therefore, will come from Chapter 15 unless otherwise indicated. If you copy and paste text, remember to use quotation marks.

1. What is the primary purpose of the Bill of Rights?

2. Write the full text of the Fourth Amendment.

3. Tell why the right to protection “against unreasonable searches and seizures” could be considered uniquely American.

4. Identify the following and tell how they were used:
   Writ of assistance:
   General search warrant:

5. Identify James Otis and explain the impact that he had on the colonists.

6. Explain this statement: “The colonial and revolutionary experience provided examples to guide interpretation [of the Fourth Amendment], but it left no settled answers.”

7. What is the problematic language in the Fourth Amendment that needs clarification so decisions can be made in a court of law?

8. What is the significance of Boyd v. United States (1886)?

9. The principles in the Constitution need defining so they can be enforced. Which body and branch of government is responsible for defining what the law means? Which branch of government is responsible for enforcing the law?
10. Why do you think the practice of admitting illegally seized evidence as proof that a crime was committed was acceptable for over 100 years before the Court began to rein it in?

11. What is the significance of *Weeks v. United States* (1914)?

12. Is the exclusionary rule part of the Constitution?

13. After the ruling in Weeks, explain why the author said, “The Fourth Amendment, it appeared, gave Americans a right but not a complete remedy.”

14. Summarize the relevant background facts in Dollree Mapp’s story that eventually became the grounds for the decision in *Mapp v. Ohio* (1961).

15. What is the significance of *Mapp v. Ohio*?


17. Is the exclusionary rule a “hard and fast” rule? Explain.

18. Give 4 examples of Court-allowed exceptions to the exclusionary rule.

19. Compare and contrast “a rule” and “a law.” Consider some English idioms we have about rules.

   - Rules are made to be broken.
   - There are exceptions to every rule.
   - The exception proves the rule.
   - Bend the rules.
   - Stretch the rules.
   - As a rule.

   Could some of those idioms be applied to the exclusionary rule? Explain.

20. Why were the police and prosecutors infuriated by the decision in Mapp? Was their anger justified?

21. In search-and-seizure cases, protecting individual rights and promoting the common good often are at odds. Deciding how to tip the scales of justice is not easy for any criminal court. Through its decisions, the Supreme Court has provided guidelines, such as the exclusionary rule and its exceptions, to help balance the rights of individuals with the need for order. Though the cases are different, the same question must always be considered in each one. What is the question and why is it so important for every case?

22. Explain how the Fourth Amendment protects our privacy and also helps ensure the security of our society.

23. Consider the challenges ahead for protecting our Fourth Amendment right. How do we balance our right to privacy with our need for security in a rapidly changing technological society with devices that make our private lives more comfortable and flexible yet have the potential to make our society more vulnerable? How do we protect Fourth Amendment rights when matters of national security are at stake?

24. Why, in the author’s opinion, is the Constitution, an 18th century document, able to help us sort through critical search-and-seizure issues in the 21st century and beyond?

25. With warrantless searches, the colonists lived in fear of a knock at the door by the authorities. Today, we live in a society where we do not fear a knock at the door. What helps protect us from an unauthorized or surprise invasion of privacy by the police?
Vocabulary
The following terms and phrases are used by the speakers in the video you will see in class. Do a self-check to make sure you understand those with legal definitions.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>A man’s house is his castle</td>
<td>law</td>
</tr>
<tr>
<td>ACLU</td>
<td>legislative branch</td>
</tr>
<tr>
<td>amicus curiae brief</td>
<td>liberty</td>
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<tr>
<td>appeal</td>
<td>magistrate</td>
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<tr>
<td>Bill of Rights</td>
<td>majority opinion</td>
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<tr>
<td>Boston Tea Party</td>
<td>obscenity laws</td>
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<tr>
<td>brief</td>
<td>overturn</td>
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<tr>
<td>civil liberties</td>
<td>remedy</td>
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<tr>
<td>civil right</td>
<td>precedent</td>
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<tr>
<td>Constitution</td>
<td>principle</td>
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<tr>
<td>contraband</td>
<td>probable cause</td>
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<tr>
<td>criminal case</td>
<td>remedy</td>
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<tr>
<td>defendant</td>
<td>right to privacy</td>
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<tr>
<td>dissenting opinion</td>
<td>rights</td>
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<td>due process</td>
<td>rule</td>
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<td>evidence</td>
<td>rule of law</td>
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<tr>
<td>exclusionary rule</td>
<td>rules of evidence</td>
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<tr>
<td>Fifth Amendment</td>
<td>seditious literature</td>
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<tr>
<td>First Amendment</td>
<td>self-incrimination</td>
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<tr>
<td>Fourteenth Amendment</td>
<td>statute</td>
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<tr>
<td>Fourth Amendment</td>
<td>Supreme Court</td>
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<tr>
<td>framers</td>
<td>tyranny</td>
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<tr>
<td>good faith exception</td>
<td>unconstitutional</td>
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<td>grand jury</td>
<td>unreasonable search and seizure</td>
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<td>illegal</td>
<td>warrant</td>
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<td>incorporation</td>
<td>writ of assistance</td>
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<td>justice</td>
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</table>

Resources for Definitions

- FindLaw—Law Dictionary

- National Standards for Civics and Government: Glossary

- NOLO’s Free Dictionary of Law Terms and Legal Definitions

- Merriam-Webster Online

**Bring this sheet with you to class.**
Note: The following transcript is divided into sections to support guided viewing. These sections are not noted in the video. However, they are indicated in the transcript at transitional points where one may stop, check for understanding, and process what was seen and heard. A Pause & Reflect box is included after each section with questions.

Speakers in the Video:
1. NARRATOR
2. PROF. CAROLYN LONG, Washington State University
3. VINCENT WARREN, Executive Director, Center for Constitutional Rights
4. PROF. RICHARD LABUNSKI, University of Kentucky
5. DOLLREE “DOLLY” MAPP, resident of Cleveland, Ohio
6. SUSAN HERMAN, President, ACLU
7. CRAIG UCHIDA, Former Director of Criminal Justice Research, NIJ
8. PROF. KERMIT ROOSEVELT, University of Pennsylvania Law School
9. RICHARD THORNBURGH, Former U.S. Attorney General
10. JAMES OTIS (Actor)
11. PROF. GEOFFREY STONE, University of Chicago Law School
12. THEODORE OLSON, Former U.S. Solicitor General
13. PROF. AKHIL AMAR, Yale Law School
14. JUSTICE FELIX FRANKFURTER, Supreme Court Justice (audio)
15. A.L. KEARNS, Lawyer for Dolly Mapp
16. BERNARD A. BERKMAN, ACLU Lawyer (audio)
17. POLICEMAN (audio)
18. DAVID BOIES, Attorney, Boies, Schiller & Flexner LLP

Time: Beginning – 1:30

1. Constitutional Context

NARRATOR: This film is a project of the Leonore Annenberg Institute for Civics of the Annenberg Public Policy Center of the University of Pennsylvania in partnership with the Annenberg Foundation Trust at Sunnylands. “Citizenship is every person’s highest calling.” – Ambassador Walter H. Annenberg

The Constitution Project: SEARCH and SEIZURE
MAPP v. OHIO

NARRATOR: The case of Mapp v. Ohio might seem like it was made for TV. Look at this. It’s got a bomb, gambling, a world famous boxing promoter, a determined heroine, and a cop who breaks the rules when they get in his way. But to people that study the Constitution, what makes Mapp v. Ohio really exciting is the Fourth Amendment.

PROF. RICHARD LABUNSKI: The Fourth Amendment is vital.

PROF. CAROLYN LONG: The Fourth Amendment requires that we be free from unreasonable searches and seizures.

NARRATOR: The Fourth Amendment gives us a right to privacy, preventing government from searching or taking us, our homes, papers, or property without a good reason. It says so right here. The government has to show probable cause, that is, a good reason to suspect that you have done something wrong. And in many cases it has to issue a warrant…to put its reasons and what it’s looking for down in writing.

VINCENT WARREN: That protects you from the police or the government generally invading your privacy.

PROF. RICHARD LABUNSKI: It really is an essential right of the people.
NARRATOR: But, there’s a problem. The Constitution doesn’t exactly say how to make sure this right is enforced. Back in 1957, Dolly Mapp thought she knew.

DOLLREE “DOLLY” MAPP: I had to stand up for my rights.

NARRATOR: She did. And when police rang Dolly Mapp’s doorbell, they had no idea they were about to open the door to a new era in American civil liberties. But they did have a pretty good idea they were going to get a fight from Dolly Mapp.

DOLLREE “DOLLY” MAPP: I could not just ignore this. My freedom was at stake.

NARRATOR: Before dawn on May 20th, 1957, a small bomb went off at this house in Cleveland, Ohio. The owner of the house, Donald King, wasn’t hurt, but he was pretty scared and he called the police to investigate.

PROF. CAROLYN LONG: Don King was well known to law enforcement. He was suspected of running an illegal gambling business, known as the numbers game.

NARRATOR: The numbers game was essentially a lottery, long before lotteries were run by states. In 1957 this kind of gambling was highly illegal. Sometimes that led to violence between the people called clearinghouse operators.

PROF. CAROLYN LONG: The clearinghouse operator is the one who sort of oversees the whole operation.

NARRATOR: And Donald King, who later became world famous as Don King, promoter of Muhammad Ali and other boxing champions…not to mention that hair. Young Donald King had a record and a number of encounters with police over the numbers game. So when his house was bombed, he called the division of the police department he knew personally.

PROF. CAROLYN LONG: He called the Bureau of Special Investigations.

NARRATOR: This division was in charge of cracking down on the numbers game, and it was headed by Detective Carl Delau. Carl Delau was not just an 11-year veteran of the Cleveland Police Department, but a World War II vet as well. A hard-nose cop, he didn’t like people he thought were connected to the numbers game, and he figured King’s house was bombed by one of them.
SUSAN HERMAN: When the police were investigating this, there were a number of other racketeers who they suspected of involvement in this bombing.

NARRATOR: Three days after the bombing, Delau got a tip that a possible suspect might be hiding in a house on Milverton Road. He knew who lived there… Dollree Mapp.

PROF. CAROLYN LONG: He had suspected that she was involved in gaming for some time.

NARRATOR: Dollree Mapp

DOLLREE “DOLLY” MAPP: Most my friends call me Dolly. Very few called me Dollree.

NARRATOR: OK, Dolly Mapp was known around town. Tough, outgoing, and driven, she was married to local boxing star Jimmy Bivens. Later she was engaged to World Light Heavyweight Champion Archie Moore. She owned this house in Shaker Heights, one of Cleveland’s nicest neighborhoods, living upstairs and renting out the basement. She was a fighter then, and she’s a fighter now.

PROF. CAROLYN LONG: She’s a very determined person. She doesn’t suffer fools. She’s very forthright. In many respects, she’s a woman ahead of her time.

DOLLREE “DOLLY” MAPP: I take care of myself. I’m not going to sit down and let you know what you run over me.

NARRATOR: Sgt. Delau knew this wasn’t going to be easy. He told the two officers with him…

PROF. CAROLYN LONG: I know Dollree, and she’s not going to let us in this house.

CRAIG UCHIDA: But they believed that the suspect was there.

PROF. KERMIT ROOSEVELT: When they showed up at the house, they just said that we’d like to come inside and talk to you.

SUSAN HERMAN: And Ms. Mapp said to them, “Do you have a search warrant?”

Stop: 4:40 Pause & Reflect #2 Background Story for Mapp v. Ohio

3. Briefly recount Dolly’s story thus far.

4. What did you learn about Dollree Mapp? Respond in 1 or 2 words or phrases.
   • her life situation
   • knowledge
   • civic dispositions

5. What did you learn about law enforcement practices in 1957?

6. When the police showed up at Dolly’s door, what did she want to see? Why?

Transition
What do you think Dolly knew about search warrants?
NARRATOR: Most of us have learned about search warrants from TV or the movies. But a warrant actually comes from the Fourth Amendment.

CRAIG UCHIDA: A search warrant must be very specific about what is to be searched, where is it going to be searched, and who is going to be searched. And it must be signed by a judge who is neutral who can read the document and determine that probable cause actually exists for going into this person’s house, or car, or place of business.

SUSAN HERMAN: The whole idea of a search warrant is to get a second opinion from a neutral and detached magistrate about whether the police really have enough cause to search your home for whatever they are looking for.

CRAIG UCHIDA: And so that piece of paper really does represent the Fourth Amendment.

NARRATOR: To the framers, liberty was not a vague notion or something to be fought for far away from home, it was just the opposite. Liberty was urgent. It was deeply personal. The framers understood the importance of liberty exactly because they had experienced tyranny inside their own homes.

RICHARD THORNBURGH: The Fourth Amendment was a response to a specific grievance.

CRAIG UCHIDA: The British had what was called the writs of assistance. And the writs of assistance gave British troops the right to just search anybody’s house and look for contraband, look for all kinds of different things.

PROF. CAROLYN LONG: And so it was very much a blank check for people to engage in searches. And people were quite alarmed at this.

SUSAN HERMAN: So the whole idea of the illegal searches and seizures was something that was tremendously important to the framers. I’ve always had my own suspicion that part of it was because probably a lot of them had seditious literature in their basements, they were revolutionaries.

NARRATOR: OK, now, you probably heard of this. The Boston Tea Party was an early symbol of resistance to British rule. But 12 years before that in 1761, attorney James Otis fought the British empire over writs of assistance in a Boston courtroom

JAMES OTIS (Actor): A man’s house is his castle.

SUSAN HERMAN: He was arguing about the importance of privacy, about why it was just offensive to people and to democracy itself to allow the government to have that much power that they could just search and seize at will.

JAMES OTIS (Actor): These writs of assistance, if declared legal, would totally annihilate this sacred human right.

NARRATOR: But for us, future President John Adams heard the real Otis, and not this actor.

JAMES OTIS (Actor): A man’s right to his home is derived from nature.

NARRATOR: After hearing Otis make his final argument, Adams said

SUSAN HERMAN: Then and there the child Liberty was born.

NARRATOR: That’s how central the idea of restricting searches and seizures is to American democracy.
PROF. GEOFFREY STONE: The idea of somebody knocking on the door or breaking down the door at 2 in the morning to toss you out of bed and possibly to take you into custody without ever telling you why or showing any justification was the kind of power that needed to be reined in because in order to have a successful self-governing society individual citizens have to understand that they are in charge.

THEODORE OLSON: So the colonials put in the Fourth Amendment the right to be free from unreasonable searches and seizures, now we have come to understand that an unreasonable search and seizure is something that is done without a warrant so the judge decides whose home gets to be invaded.

PROF. CAROLYN LONG: Police officers knowing that a warrant was not necessary would conduct warrantless searches because they knew that there were no ramifications for their actions. And so there was nothing to deter them from acting in an illegal fashion.

PROF. KERMIT ROOSEVELT: She was a legally sophisticated person. She went back. She talked to an attorney and the lawyer said don’t let them in if they don’t have a warrant.

SUSAN HERMAN: So the police went away. Three hours later they come back again.

Stop: 8:11 Pause & Reflect #3 Writs & Warrants

7. Compare and contrast warrants in colonial America with those today.

8. Summarize the argument James Otis made in court.

9. Explain the meaning and significance of these statements by James Otis:
   - “A man’s house is his castle.”
   - “A man’s right to his home is derived from nature.”

10. Discuss: “In order to have a successful self-governing society individual citizens have to understand that they are in charge.” How are citizens in charge in a self-governing society?

Transition
At the time of Mapp, the federal government and the state governments didn’t operate under the same rules when it came to requiring the use of warrants. Why?

Time: 8:11 – 10:58 4. Warrantless Searches

NARRATOR: But look at this, unreasonable, warrant, probable cause…what’s missing from the Fourth Amendment is a way to make sure the police obey it. Not only that, most crime is handled by local police and state courts, and several states never enforced the use of warrants so police just stopped getting them. If they searched a house without one, that evidence would be used in a trial anyway so…

PROF. CAROLYN LONG: Police officers knowing that a warrant was not necessary would conduct warrantless searches because they knew that there were no ramifications for their actions. And so there was nothing to deter them from acting in an illegal fashion.

NARRATOR: So when Sgt. Delau rang Dolly Mapp’s doorbell, he didn’t have a warrant and she didn’t invite him in. She believed she had rights to protect her.

DOLLREE “DOLLY” MAPP: I hadn’t committed a crime, so why are you here. I called a lawyer.

PROF. KERMIT ROOSEVELT: She was a legally sophisticated person. She went back. She talked to an attorney and the lawyer said don’t let them in if they don’t have a warrant.
PROF. CAROLYN LONG: They broke a window. And then they pried open the door in order to gain entry to the house.

DOLLREE “DOLLY” MAPP: When I looked up, they were in my house.

PROF. CAROLYN LONG: So it’s important to recognize that Dollree had not let them in the home. In fact she continued to tell them they were not welcome, but they entered the home anyway.

SUSAN HERMAN: And they say, “We have a search warrant.” And Dollree Mapp says…

DOLLREE “DOLLY” MAPP: May I see the warrant?

SUSAN HERMAN: So the police officer there pulls out a piece of paper and waves it in front of her and starts putting it back.

CRAIG UCHIDA: She grabbed the piece of paper and put it down her blouse.

NARRATOR: Turned out that paper was not a warrant. The police never got one. At this point, though, they handcuffed Dolly Mapp and searched her house. They actually found their suspect downstairs so he was there, but he was also released the next day because it turns out he had nothing to do with the bombing. They didn’t find anything else related to the bomb, but in an upstairs dresser the police found some pornography that Dolly Mapp says was owned by one of her former boarders.

SUSAN HERMAN: They found some materials that led to her being prosecuted for obscenity, possession of obscene materials. One of the things they found up on the second floor were erotic comic books.

NARRATOR: OK, take a moment, it’s OK to giggle. Even Dolly and one of the officers laughed that day.

DOLLREE “DOLLY” MAPP: I didn’t think I was in any trouble. The officer enjoyed looking at ‘em himself.

NARRATOR: But the laughter ended quickly. Although they didn’t charge her with anything having to do with the bombing, Dolly was charged with possession of obscene materials for having this in her home. Even though it wasn’t hers she was facing one to seven years in prison and a fine of up to two thousand dollars.

PROF. CAROLYN LONG: Astonishing. It’s a terrible law. The Ohio law prohibited possession of obscene materials, so it was quite a broad anti-obscenity law.

### Stop: 10:58  
### Pause & Reflect #4  
### Warrantless Searches

11. Were federal or state law enforcement officers involved? Why does it matter?

12. What were the police after? What did they find?


14. Identify possible Fourth Amendment violations in the investigation.

### Transition

States have the authority to make their own laws. What recourse do individuals have if they believe a law infringes on their personal rights?
NARRATOR: At her trial here in the Cuyahoga Courthouse, Dolly and her attorney A.L. Kearns tried to have the evidence thrown out or excluded. They claimed the search was unconstitutional, since there was no warrant. That’s called the exclusionary rule.

PROF. KERMIT ROOSEVELT: The exclusionary rule is a rule that says if police obtain evidence in violation of your Fourth Amendment rights through an unreasonable search or seizure, that evidence can’t be introduced against you in a prosecution.

NARRATOR: The exclusionary rule in the American legal system goes back to 1914 in a case called *Weeks v. United States* where the court said that if a federal law enforcement officer found evidence illegally, that evidence could not be used against the defendant.

SUSAN HERMAN: This was tremendously important because it was the first time that the Supreme Court recognized that the Fourth Amendment sets out certain rules and that if the police don’t follow those rules and they obtain evidence, that that evidence should not be used.

NARRATOR: OK, so a minute ago I pointed out that missing from the Fourth Amendment was any way to enforce it. The *Weeks* decision was the Supreme Court’s way of trying to fix that. It said to police, if you don’t have a warrant, you can’t use the evidence. The exclusionary rule was the Court’s way of enforcing the Fourth Amendment. But at the time of *Weeks*, the Fourth Amendment did not apply to the states. It’s a little confusing, but here, check this out.

The Bill of Rights gives us all these wonderful rights and freedoms, but it only applied to the federal government. See, Congress shall make no law... and in the early 20th century the Court started to apply some of these fundamental rights to the states through the Fourteenth Amendment, written and ratified after the Civil War to reign in the states. This process is called incorporation. But the Court was split about how far to go.

PROF. KERMIT ROOSEVELT: And what happened eventually was the Court said, we’re not going to say take the Bill of Rights as a whole it applies against the states, we’re going to consider each right individually and we’re going to ask is it sufficiently important that we think the states have to observe it.

NARRATOR: So 35 years after *Weeks*, the Supreme Court handed down a ruling on the Fourth Amendment in *Wolf v. Colorado*. The *Wolf* decision said that states have to incorporate the rights in the Fourth Amendment, but states don’t have to use the exclusionary rule to enforce those rights, because the exclusionary rule isn’t in the Constitution.

PROF. KERMIT ROOSEVELT: In the *Wolf* decision, the Supreme Court had said you got this right, a right to be free of unreasonable searches and seizures, but that right is quite distinct from the exclusionary rule.

PROF. AKHIL AMAR: The Supreme Court says, oh, the Fourth Amendment applies against the states, but not the exclusionary rule, because the exclusionary rule isn’t really a key part of the Fourth Amendment, that’s just something that we judges have come up with as a device for enforcing the Fourth Amendment.

NARRATOR: Justice Felix Frankfurter wrote the 6 to 3 majority opinion in *Wolf*, calling the exclusionary rule a judicial-made remedy that is not actually in the Constitution, so the states didn’t have to use it.

PROF. KERMIT ROOSEVELT: The Constitution itself doesn’t give you that remedy, then you’re not necessarily going to have it in state courts.
DOLLREE “DOLLY” MAPP: So here’s what all this means for our case and for Dolly Mapp. Ohio didn’t recognize the exclusionary rule; instead, the state allowed evidence found illegally to be used in court. So the pornography that police discovered at Dolly’s house was introduced into her trial, and a jury found Dolly guilty for breaking Ohio’s obscenity law.

PROF. CAROLYN LONG: She was sentenced to the maximum, which was seven years plus a two thousand dollar fine.

DOLLREE “DOLLY” MAPP: Seven years, for what? My case wasn’t right. It was illegal to do this to me.

DOLLREE “DOLLY” MAPP: Dolly’s lawyer appealed, but mainly on the issue that Ohio’s obscenity law violated the First Amendment protecting freedom of speech and her case went all the way to the United States Supreme Court. That’s when the American Civil Liberties Union, or ACLU, joined in.

SUSAN HERMAN: The ACLU asked for permission to file a brief in this case in order to support the argument that Dollree Mapp’s lawyer was making that her conviction violated the First Amendment.

PROF. CAROLYN LONG: An amicus curiae brief is what we call a friend of the court brief. It’s a brief that is written by outside parties which lay out legal arguments that pertain to the case before the Court. The amicus brief written by the ACLU focused primarily on the legality of the anti-obscenity law.

NARRATOR: After arguing the First Amendment case that Dolly had a right to own any book she wanted…for 20 pages…the ACLU brief added 11 lines at the very end, almost as an afterthought. It turned back to the search of Dolly’s home without a warrant and asked the court to overturn the Wolf decision and apply the exclusionary rule to the states.

NARRATOR: On March 29th, 1961, oral arguments at the United States Supreme Court were equally complicated. Was the Mapp case a First Amendment case about free speech or was it a Fourth Amendment case about unlawful search and seizure? You can almost understand how Dolly Mapp’s attorney A.L. Kearns got a little confused. His argument confused Justice Felix Frankfurter.
PROF. CAROLYN LONG: He was rambling, and at one point, Frankfurter interrupted him to ask him what the case was about...what was the question before the court.

JUSTICE FELIX FRANKFURTER (audio): Are you asking us to overrule the Wolf case in this Court? I noticed it isn’t even cited in your brief.

NARRATOR: Remember, Justice Frankfurter actually wrote the Wolf decision and he didn’t want to see it overturned. He strongly believed that the exclusionary rule was not a right and should be left up to the states. When pressed on the issue, attorney Kearns just sounded lost.

JUSTICE FELIX FRANKFURTER (audio): Well, that means you’re asking us to overrule Wolf against Colorado.

ATTORNEY KEARNS (audio): No

NARRATOR: Fortunately for Dolly, the ACLU attorney, Bernard Berkman, was also granted 15 minutes to address the Court, recognizing just how badly things were going. The very first thing he said was…

BERNARD BERKMAN (audio): The American Civil Liberties Union is very clear that we are asking this Court to reconsider Wolf versus Colorado and to find that evidence which is unlawfully and illegally obtained should not be permitted into a state proceedings.

NARRATOR: The ACLU made the case that the state of Ohio should not be allowed to use the evidence found in Dolly Mapp’s home against her because it was obtained illegally. The state of Ohio acknowledged that the police had no warrant, but argued that the Wolf decision should stand and the state should decide for itself whether or not it could use evidence illegally obtained without a warrant. In the end, the Court decided to overturn Wolf by a 6 to 3 margin in Mapp. The majority ruled that the search and seizure at Dolly's house was unlawful because it was done without a warrant so the evidence should have been excluded…and that the exclusionary rule should apply to the states through the due process clause of the Fourteenth Amendment. Justice Tom Clark wrote the majority decision.

PROF. KERMIT ROOSEVELT: Justice Clark’s view was basically that Fourth Amendment rights are worthless if the exclusionary rule is not available, because if the police know they can use the evidence against you, why not go ahead and break down the door. There’s no meaningful disincentive to police.

NARRATOR: Justice Hugo Black had actually joined the majority in Wolf back in 1949 because he didn’t think the exclusionary rule was a fundamental right. This time he changed his mind.

PROF. AKHIL AMAR: By the early Sixties, Hugo Black has decided that the exclusionary rule is part of the Constitution, maybe not the Fourth Amendment alone, but the Fourth Amendment in combination with the Fifth Amendment’s self-incrimination clause.
NARRATOR: Justice Black thought that using evidence obtained illegally in court was like forcing someone to testify against yourself, which is banned by the Fifth Amendment. Taken together, a constitutional basis emerges which not only justifies but actually requires the exclusionary rule. Justice Potter Stewart ruled in Mapp’s favor, but on the First Amendment issue that Ohio’s obscenity law was too broad. And Justice John Harlan criticized the majority for using the exclusionary rule to overturn a precedent even though it can’t be found in the Constitution.

Stop 19:33  Pause & Reflect #7
Reasoning Behind the Mapp Decision

20. Explain the reasoning used for making the exclusionary rule a part of the Constitution when it is not stated in the Constitution. Consider these words: explicit, implicit, inherent, inferred, exact, specific. Review principles used for interpreting written words.

Transition
Based on the reasoning of the justices, what do you think will be required of the states?


PROF. KERMIT ROOSEVELT: He was saying basically this is something that the justices think is a good idea; they want the states to have to do this and so they are going to make them do it even though it’s not what the Constitution says. In dissent, Justice Harlan was joined by Justice Frankfurter. This take on Mapp and the exclusionary rule pretty much frames the controversy about this case to this day. It’s complicated stuff. The police chief said the Mapp ruling led to tighter police procedure and more professionalism.

CRAIG UCHIDA: That case had very important ramifications for every police department in the United States and every police officer in the United States.

NARRATOR: Craig Uchida was the Director of Criminal Justice Research at the National Institute of Justice. He worked with police departments across the country to improve their performance.

CRAIG UCHIDA: Mapp had a huge effect on police behavior and the subsequent rulings in the 1960s as well.

NARRATOR: Starting with the Mapp case, the Supreme Court under Chief Justice Earl Warren began to apply criminal procedure protections found in the Bill of Rights to the states through incorporation of the Fourteenth Amendment. Some people have labeled it the Due Process Revolution. After Mapp, the Court under Warren ruled that everyone, in every state, should have legal counsel, and that everyone in custody should have their rights clearly explained to them to avoid self-incrimination.

POLICEMAN (audio): You have the right to remain silent. Anything you say can and will be used against you in a court of law.

DAVID BOIES: Criminal procedure is primarily designed to protect the innocent. Most of what you see…the hearsay rules, the right to trial by jury, the right to subpoena are all things that are designed to protect the innocent.

NARRATOR: But the controversy over the exclusionary rule is still going on. In the 50 years since the Mapp decision, the Court has chipped away at it, reducing its status again to a remedy, something less than a right.
PROF. AKHIL AMAR: Since the Warren Court, the exclusionary rule has been cut back in all sorts of ways. The Court has created a whole series of exceptions.

NARRATOR: It’s limited where the exclusionary rule is applied.

PROF. CAROLYN LONG: The Court determined that the exclusionary rule was not appropriate in grand jury hearings.

NARRATOR: And the Court has placed limitations on how the exclusionary rule is applied. For instance, if the police obtain a warrant, but the warrant has mistakes, a judge might allow the evidence because the police did their best to follow proper procedure.

PROF. AKHIL AMAR: They said for example, oh, the exclusionary rule doesn’t apply in general if the police acted in good faith.

PROF. KERMIT ROOSEVELT: The Court says even if it’s the police who make the mistake, they’re still entitled to this good faith exception.

NARRATOR: And the Court will almost certainly hear more cases because we haven’t finished debating the exclusionary rule. One side thinks it helps the guilty.

PROF. AKHIL AMAR: We’re letting a guilty person go free.

NARRATOR: The other side says it keeps the police disciplined.

SUSAN HERMAN: That’s the only way we need to ensure that they’re going to get the warrant.

NARRATOR: And we certainly haven’t finished debating the language in the Fourth Amendment. To protect these rights do we need warrants or do we simply need the police to be reasonable?

PROF. KERMIT ROOSEVELT: It says, no warrants shall issue, except upon probable cause. And people have taken that to mean the Fourth Amendment is designed to get the government to obtain a warrant.

PROF. AKHIL AMAR: Ninety-nine percent of the stuff that actually happens today and every day happened without a warrant. You’re crossing a border and your baggage is searched at the airport, you go through a metal detector, there’s no warrant.

Stop: 23:07          Pause & Reflect #8
Exclusionary Rule: Exceptions & Controversy

21. How can the Supreme Court require states to use the exclusionary rule when it is not explicitly stated in the Constitution?
22. How did the exclusionary rule affect police practices and individual rights?
23. Give examples of exceptions to the exclusionary rule. Name the cases.
24. Why do you think the number of exceptions to the rule have increased over the years?
25. Identify pro and con viewpoints on the exclusionary rule.
26. Are all search-and-seizure situations involving the government Fourth Amendment violations? Explain and give some examples.

Transition
In your opinion, are there times when people should voluntarily give up some of their rights? Explain.
NARRATOR: The framers left room for debate because they knew they didn’t have all the answers. But they also knew they wanted to ensure certain rights and created a system intended to make us safe from criminal behavior and from a government that sometimes might cut corners with our liberty.

SUSAN HERMAN: The framers said, sometimes it is not so important to us to catch criminals that we are willing to throw our privacy and our liberty to the winds.

DAVID BOIES: We have a system of government that balances the need to convict the guilty against the desire to protect the innocent, very, very heavily in favor of protecting the innocent.

NARRATOR: And in this case, our system protected Dolly Mapp.

DOLLREE “DOLLY” MAPP: I felt good. I knew there was something that I should do and I did everything that I knew how.

NARRATOR: Even without legal training, Dolly Mapp knew she had certain rights and intended to defend them.

DOLLREE “DOLLY” MAPP: And I felt that I had been treated wrong. If the search was illegal, then you got the law on your side.

NARRATOR: Her case represented a struggle for the ultimate goal of the American legal system…justice… delivered by way of the Constitution.

The End

Pause & Reflect #9
Keeping Us Safe vs. Protecting Our Rights

27. What motivated Dolly and gave her confidence to keep going?

28. In our system of government, who ultimately has the power to tip the scales of justice?

29. Discuss the importance of ordinary people like Dolly Mapp to our justice system.

30. What did you gain from Dolly’s participation? What did America gain?
Video Study Questions

Use the following questions to assist with a guided study of the video. View each section indicated by the time, then pause to reflect and answer the questions. A transcript of the video is also available to supplement your study.

**Time: Start - 1:30**

1. **Constitutional Context**

   **Pause & Reflect**

   1. What right does the Fourth Amendment give us? What protections?

   2. Write the full text of the Fourth Amendment from your Class-Prep Assignment.

   **Transition**

   After a principle is established by the Constitution, it becomes the law of the land. In practical terms, what is the next challenge for the federal government?

   Who interprets the Constitution…decides what the law means?

   Who enforces the laws?

**Time: 1:30 - 4:40**

2. **Background Story for Mapp v. Ohio**

   **Pause & Reflect**

   3. Briefly recount Dolly’s story thus far.

   4. What did you learn about Dollree Mapp? Respond in 1 or 2 words or phrases.

      - her life situation

      - knowledge

      - civic disposition

   5. What did you learn about law enforcement practices in 1957?

   6. When the police showed up at Dolly’s door, what did she want to see? Why?

   **Transition**

   What do you think Dolly knew about search warrants?
Pause & Reflect

7. Compare and contrast warrants in colonial America with those today.
8. Summarize the argument James Otis made in court.
9. Explain the meaning and significance of these statements by James Otis:
   - “A man’s house is his castle.”
   - “A man’s right to his home is derived from nature.”
10. Discuss: “In order to have a successful self-governing society individual citizens have to understand that they are in charge.” How are citizens in charge in a self-governing society?

Transition
At the time of Mapp, the federal government and the state governments didn’t operate under the same rules when it came to requiring the use of warrants. Why?

Pause & Reflect

11. Were federal or state law enforcement officers involved? Why does it matter?
12. What were the police after? What did they find?
14. Identify possible Fourth Amendment violations in the investigation.

Transition
States have the authority to make their own laws. What recourse do individuals have if they believe a law infringes on their personal rights?

Pause & Reflect

15. Restate the exclusionary rule.
16. What is the significance of the decision in Weeks v. United States (1914)?
17. Explain the process and purpose of incorporation. When did the Fourth Amendment get incorporated? Which case? Why wasn’t the exclusionary rule included, too?
18. Justice Frankfurter called the exclusionary rule called a judicial-made remedy. Explain what he meant. Why would the Supreme Court create such a rule?

Transition
The stage was set, and, in the interest of justice, a new legal precedent was about to be made. What is a precedent?
6. Mapp’s Case in the Supreme Court

Pause & Reflect

19. Recount the trouble that Dolly’s case faced in the Supreme Court.

Transition
Put yourself in Justice Frankfurter’s shoes.
Discuss the unique challenges that you had to face and overcome.

7. Reasoning Behind the Mapp Decision

Pause & Reflect

20. Explain the reasoning used for making the exclusionary rule a part of the Constitution when it is not stated in the Constitution.
Consider these words: explicit, implicit, inherent, inferred, exact, specific.
Review principles used for interpreting written words.

Transition
Based on the reasoning of the justices, what do you think will be required of the states?

8. Exclusionary Rule: Exceptions & Controversy

Pause & Reflect

21. How can the Supreme Court require states to use the exclusionary rule when it is not explicitly stated in the Constitution?

22. How did the exclusionary rule affect police practices and individual rights?

23. Give examples of exceptions to the exclusionary rule. Name the cases.

24. Why do you think the number of exceptions to the rule have increased over the years?

25. Identify pro and con viewpoints on the exclusionary rule.

26. Are all search-and-seizure situations involving the government Fourth Amendment violations? Explain and give some examples.

Transition
In your opinion, are there times when people should voluntarily give up some of their rights? Explain.

9. Keeping Us Safe vs. Protecting Our Rights

Pause & Reflect

27. What motivated Dolly and gave her confidence to keep going?

28. In our system of government, who ultimately has the power to tip the scales of justice?

29. Discuss the importance of ordinary people like Dolly Mapp to our justice system.

30. What did you gain from Dolly’s participation? What did America gain?
Project: A Contextual Timeline

Instructions:
Synthesize information from the following resources to develop a contextual timeline that “retells” the story in the video and extends learning related to search-and-seizure cases and the exclusionary rule.

- Video: *The Constitution Project: Search and Seizure—Mapp v. Ohio*
  Available from Annenberg Classroom: [http://www.annenbergclassroom.org/page/all-videos](http://www.annenbergclassroom.org/page/all-videos)
- Annotated Video Transcript: *The Constitution Project: Search and Seizure—Mapp v. Ohio*
- Chapter 15: The Right to Protection Against Illegal Search and Seizure from *Our Rights* by David J. Bodenhamer
- Third & Fourth Amendments from *Our Constitution* by Donald Ritchie & JusticeLearning.org
- Annenberg Classroom: Timeline—Unreasonable Search and Seizure

Materials Needed:
- 3x5 cards
- Highlight markers
- Rubric for a Contextual Timeline
- Option: Use technology to collect and organize information.

Procedure:
1. Identify at least 20 significant and relevant events and Supreme Court decisions* composed of
   - 10 entries from the video (7 Supreme Court cases* & 3 historical events)
   - 4 additional historical events (Distribute so there is 1 event associated with each historical period named in #3 below. An event may also relate to more than one historical period.)
   - 2 “Extra” recent Supreme Court decisions* (defined by the teacher or “your choice”)
   - 3 additional Supreme Court cases* that allowed warrantless searches
   * Use this APA text citation form for citing Supreme Court decisions: Name v. Name (Year)

2. Take notes for each event/decision that include the following information:
   - Date:
   - Title of entry:
   - Description/Significance/Relevance:
   - Citation:

3. For the context, incorporate the following eight chronological periods of U.S. history into your timeline. Some periods do overlap.
   - Beginnings to 1607
   - Colonization, settlement, and communities (1607 to 1763);
   - The Revolution and the new nation (1763 to 1815);
   - Expansion and reform (1801 to 1861);
   - Crisis of the Union: Civil War and Reconstruction (1850 to 1877);
   - The development of modern America (1865 to 1920);
   - Modern America and the World Wars (1914 to 1945); and
   - Contemporary America (1945 to present).

4. Order the events/decisions chronologically, then design a scaled timeline that relates the 20 significant and relevant entries to the periods of U.S. history. Add color or images as appropriate.

5. Review the Rubric for a Contextual Timeline.
Follow-Up

1. After your timeline is made, analyze it to select 4 events that in your view were the most significant turning points. Mark them in some way on your timeline, list them below, and explain your reasoning for each one.

2. Be prepared to discuss the following in class.
   a. The relationship of events to the decisions made by the Supreme Court
   b. The application of the Fourth Amendment over time
   c. Issues and challenges in changing times
   d. The changing definition and understanding of “unreasonable searches and seizures”
   e. Constants that have endured despite all the changes
   f. Balancing our right to privacy with our need for security
   g. Tipping the scales of justice the other way
<table>
<thead>
<tr>
<th>Criteria</th>
<th>4 points</th>
<th>3 points Basic Requirements</th>
<th>2 points</th>
<th>1 point</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparation</td>
<td>Extensive notes on every entry; well organized; formal citations</td>
<td>Simple notes on all required entries; sources are informally cited</td>
<td>Notes for most entries; some information is sketchy or missing</td>
<td>Few notes; little information gathered; missing or incomplete citations</td>
</tr>
<tr>
<td>Historical Periods</td>
<td>All 8 historical periods clearly indicated; additional events marked for 5 periods</td>
<td>All 8 historical periods accurately indicated; 1 historical event related per period</td>
<td>All 8 historical periods represented; 1 or 2 periods missing an event</td>
<td>Fewer than 8 historical periods represented; 3 or more periods missing events</td>
</tr>
<tr>
<td>Scale</td>
<td>Scale is consistent and accurate; increments are marked; all entries appropriately sequenced for scale</td>
<td>Scale is accurate; increments marked; entries placed in sequence</td>
<td>Scale is roughly drawn; unequal increments; some entries out of sequence</td>
<td>No apparent scale; increments are not marked; many entries out of sequence.</td>
</tr>
<tr>
<td>Title</td>
<td>Creative and well placed title; accurately describes the topic of the timeline</td>
<td>Effective title; accurately describes the material; easy to locate</td>
<td>Simple title; easy to locate</td>
<td>Title missing or hard to locate</td>
</tr>
<tr>
<td>Dates</td>
<td>Accurate; some are mm/dd/yr specific; correctly sequenced according to scale</td>
<td>Accurate for all entries</td>
<td>Some dates are inaccurate; several entries out of order</td>
<td>Many dates are inaccurate; sequence is significantly out of order</td>
</tr>
<tr>
<td>Number of Relevant Entries</td>
<td>More than 20 entries</td>
<td>20 entries</td>
<td>10-19 entries</td>
<td>5-9 entries</td>
</tr>
<tr>
<td>Content/Facts</td>
<td>Accurate for all entries; highlights salient points; shows clear, concise relevance</td>
<td>Accurate for all entries; shows basic relevance</td>
<td>Accurate for most of the entries; many do not show relevance</td>
<td>Accurate for only a few entries; shows little relevance</td>
</tr>
<tr>
<td>Supreme Court Decisions</td>
<td>More than 12; case names accurate; in correct form; relevance accurately described</td>
<td>12 cases named; in correct format; decisions accurately described</td>
<td>Missing some cases; inaccurate case names; decisions not fully described</td>
<td>Missing many of the cases; case names inaccurate or incomplete</td>
</tr>
<tr>
<td>Design, Organization, Appearance</td>
<td>Enhances understanding; creative design; clear organization; good use of color and images</td>
<td>Supports understanding; simple, neat design; color contributes to understanding; images present are appropriate</td>
<td>Weak design and organization; ineffective use of color; images present are distracting or inappropriate</td>
<td>Shows lack of effort at design and organization; messy work; no color; missing or inappropriate images</td>
</tr>
<tr>
<td>Mechanics (spelling, grammar, punctuation)</td>
<td>Virtually no errors</td>
<td>A few minor errors</td>
<td>Quite a few errors</td>
<td>Number of errors makes it hard to read and understand</td>
</tr>
</tbody>
</table>
Introduction:

Finding the right balance between catching criminals and protecting our privacy is not an easy task. The Court even ignores its own rules sometimes to draw a line between reasonable and unreasonable. As it turns out, the line between reasonable and unreasonable is like a moving target.

“The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails.”

—Justice William H. Rehnquist, Bell v. Wolfish (1979)

Instructions:

Using what you know about the Fourth Amendment, consider each of the following scenarios. Make a decision and provide your reasons.

1. If police are outside a house, and they can smell burning marijuana and hear the sounds of evidence being destroyed, are they allowed to enter without a warrant?
   - Legal Search
   - Illegal Search
   Reasons:

2. The police, without a warrant, find incriminating evidence after searching trash bags that have been placed on the curb for garbage collection.
   - Legal Search
   - Illegal Search
   Reasons:

3. A student is declared to be a delinquent after school officials, based on allegations that she was smoking in the restroom, search her possessions and discover drug paraphernalia.
   - Legal Search
   - Illegal Search
   Reasons:

4. After she violates her school’s cell phone policy, a student’s confiscated cell phone is searched by school officials for evidence of illegal activity.
   - Legal Search
   - Illegal Search
   Reasons:

5. A potential candidate for state office is required to take a drug test before his name is added to the ballot.
   - Legal Search
   - Illegal Search
   Reasons:
6. A student trying out for a spot on a high school sports team is required to take a drug test before he can join.
   ☐ Legal Search  ☐ Illegal Search
   Reasons:

7. In order to collect evidence, the police place a wiretap in a public phone booth frequently used by an individual who is suspected of illegal gambling.
   ☐ Legal Search  ☐ Illegal Search
   Reasons:

FOLLOW-UP

1. The above questions were taken from an Interactive Quiz from the National Constitution Center. Visit the following website to enter your answers and score your quiz.
   http://blog.constitutioncenter.org/how-well-do-you-know-the-4th-amendment/

2. Were you surprised by any of Supreme Court decisions? __________
   If so, which ones? __________

3. My score: _____ out of _____ = _____%
**Mapp Lesson Quiz**

**Instructions:**
Circle the letter next to each correct answer. There may be more than one per question.

1. If you lived in 1775, your protections under the Fourth Amendment . . .
   a. would be up to the U.S. government.
   b. would be nonexistent.
   c. would not be guaranteed.
   d. would be dependent on the good will of the British.

2. When the Constitution was ratified, it . . .
   a. did not include the Fourteenth Amendment.
   b. did not include the Bill of Rights.
   c. included the Fourth Amendment.
   d. gave the people power to control the government.

3. The founders feared . . .
   a. home invasions by soldiers.
   b. a powerful government.
   c. loss of privacy.
   d. their neighbors.

4. The Fourth Amendment protects us from searches and seizures by the police and federal officers.
   a. Always
   b. Sometimes
   c. Only if you’re innocent
   d. Under certain circumstances

5. What is missing from the Fourth Amendment?
   a. Specifics for a warrant
   b. A test for unreasonableness
   c. A way to enforce it
   d. Nothing

6. Before 1865, the Constitution held the ________________ responsible for enforcing the Fourth Amendment.
   a. federal government
   b. state government
   c. judicial branch
   d. legislative branch

7. The purpose of a search warrant is to
   a. look for any interesting evidence of a crime.
   b. notify the judge that a search was conducted.
   c. prevent illegal searches and seizures.
   d. give police permission to invade your privacy any time.

8. A search warrant represents which amendment?
   a. First Amendment
   b. Fourth Amendment
c. Fifth Amendment

d. Fourteenth Amendment

9. Identify the exclusionary rule as it is used today.
   a. The exclusionary rule prevents the government from using most evidence gathered in violation of the Fourth Amendment protection against unreasonable search and seizure in a federal criminal trial.
   b. The exclusionary rule prevents the government from using most evidence gathered in violation of the Fourth Amendment protection against unreasonable search and seizure in a state or federal criminal trial.
   c. The exclusionary rule prevents the government from using all evidence gathered in violation of the Fourth Amendment protection against unreasonable search and seizure in a federal criminal trial.
   d. The exclusionary rule prevents the government from using most evidence gathered in violation of the Fourth Amendment protection against unreasonable search and seizure in state or federal trials.

10. The process of incorporation of rights to the states . . .
   a. makes the states accountable for enforcing all of our constitutional rights.
   b. makes the states accountable for enforcing some of our constitutional rights.
   c. allows the states to choose which rights they want to enforce.
   d. is used by the Supreme Court to apply certain rights to the states.

11. Which case incorporated the Fourth Amendment to the states?
   b. Wolf v. Colorado ((1949)
   c. Weeks v. United States (1914)
   d. Boyd v. United States (1886)

12. Which case established the exclusionary rule?
   b. Wolf v. Colorado ((1949)
   c. Weeks v. United States (1914)
   d. Boyd v. United States (1886)

13. Why did the Court decide not to include the exclusionary rule when it incorporated the Fourth Amendment to the states?
   a. It was not a right.
   b. It was not in the Constitution.
   c. States should have a choice to use it or not.
   d. It wasn’t useful any more.
   e.

14. Identify the statement(s) that are not true about Dollree Mapp’s case in the Supreme Court.
   a. Her lawyer presented well-organized arguments.
   b. A clear question was presented to the justices for a decision.
   c. A precedent was at risk of being overturned.
   d. The ACLU clarified the focus of the case.

15. In the Mapp decision, what did the Court decide about the exclusionary rule?
   a. It was a right.
   b. It was in the Constitution.
   c. It would make it easier for law enforcement to catch criminals.
   d. States should be required to follow it.

16. The exclusionary rule is controversial today because . . .
   a. it’s not a hard and fast rule.
b. warrantless searches have been allowed by the Court.
c. valuable evidence may be dismissed and the criminal set free.
d. it deters law enforcement from illegal behavior.

17. Which of the following is always a violation of the Fourth Amendment?
   a. a warrantless search
   b. the warrant contains mistakes made by police
   c. drug searches without permission by the individual
   d. none of the above

18. Which of the following is true about a civil right?
   a. It is guaranteed.
   b. It is specifically stated in the Constitution.
   c. It is supported by the Court in certain cases.
   d. The Court may come up with exceptions.

19. Which of the following is true about a remedy?
   a. It is guaranteed.
   b. It is specifically stated in the Constitution.
   c. It is supported by the Court in certain cases.
   d. The Court may come up with exceptions.

20. In a constitutional democracy, justice is achieved when . . .
   a. both sides are treated fairly under the law.
   b. your side wins.
   c. criminals never go free.
   d. the government protects your rights.
Teacher Materials

• Class-Prep Assignment Sheet (KEY)

• Teacher’s Video Guide: The Constitution Project: Search and Seizure—Mapp v. Ohio

• Video Study Questions (KEY)

• Teacher’s Timeline Notes

• Rubric for A Contextual Timeline

• Answers & Explanations: Legal or Illegal? You Be the Judge

• Lesson Quiz (KEY)
The following assignment provides important background knowledge and context for the video "The Constitution Project: Search and Seizure—Mapp v. Ohio" and related class work.

**Instructions**
Read the following resources, then complete the Questions.

- Chapter 15: The Right to Protection Against Illegal Search and Seizure from *Our Rights* by David J. Bodenhamer
  Note: This chapter closely parallels the content of the video.
  Copies are available from the teacher or the reading may be viewed at the following link.

- Third & Fourth Amendments from *Our Constitution* by Donald Ritchie & JusticeLearning.org (Skim to read the parts related to the Fourth Amendment)

Copies are available from the teacher or the reading may be viewed at the following link.

**Questions**
The following questions are largely based on the Chapter 15 reading. Whenever possible, add specific quotes to support your answers. Should another source be used, write the title of the book in parentheses following the quote. All quotes, therefore, will come from Chapter 15 unless otherwise indicated. If you copy and paste text, remember to use quotation marks.

1. What is the primary purpose of the Bill of Rights?
   - It is “designed to guarantee fairness to individuals accused of crimes.”

2. Write the full text of the Fourth Amendment.
   (Students may not recognize that it is quoted in part in the Chapter 15 reading.)
   “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.” (*Our Constitution*)

3. Tell why the right to protection “against unreasonable searches and seizures” could be considered uniquely American.
   “It was a right not previously included in colonial charters, laws, or declarations.”

4. Identify the following and tell how they were used.
   - Writ of assistance: documents that “gave [British] officers broad power to conduct searches and seize property based only on their general suspicion of unlawful actions.” Their frequent use in the colonies symbolized the continued overreach of British power.
   - General search warrant: documents issued by the British that “did not allege a specific crime.” They were used in the colonies so “custom officials could enter and search buildings simply on the authority of their royal appointments.”

5. Identify James Otis and explain the impact that he had on the colonists.
   James Otis was a lawyer hired by the Boston merchants to challenge the legality of the writs of assistance. He made an impassioned speech in court that “electrified the colonists because he asserted the supremacy of fundamental law, such as individual rights, over legislative power.”
6. Explain this statement: “The colonial and revolutionary experience provided examples to guide interpretation [of the Fourth Amendment], but it left no settled answers.”
“The language they used, although pregnant with meaning, lacked specific definition”

7. What is the problematic language in the Fourth Amendment that needs clarification so decisions can be made in a court of law?
“unreasonable”
“search”
“seizure”
“secure in their persons, houses, papers, and effects”
“probable cause”
“violated”

8. What is the significance of Boyd v. United States (1886)?
After almost a century of relative silence on Fourth Amendment questions, the Court heard a case in which the Fourth Amendment “loomed large.”
In its decision, the U.S. Supreme Court agreed an illegal seizure had taken place “because no official had provided sufficient evidence, or probable cause, to justify a warrant.” An illegal warrantless search had been conducted. With the Court’s ruling in Boyd, a definition of what constitutes an “unreasonable search and seizure” begins to emerge in case law.

9. The principles in the Constitution need defining so they can be enforced. Which body and branch of government is responsible for defining that the law means? Supreme Court, Judicial Branch
Which branch of government is responsible for enforcing the law? Executive Branch

10. Why do you think the practice of admitting illegally seized evidence as proof that a crime was committed was acceptable for over 100 years before the Court began to rein it in?
Answers will vary.

11. What is the significance of Weeks v. United States (1914)?
“Weeks had been convicted of using the mails to transport lottery tickets, but evidence to convict him came from a warrantless search. He argued that this illegally obtained evidence should be excluded from trial, and the Supreme Court agreed. The decision announced what came to be known as the exclusionary rule: federal courts must exclude, or not use, evidence obtained through unconstitutional searches. The rule applied only to U.S. courts [federal], and even then there was one exception.”

12. Is the exclusionary rule part of the Constitution?
Not explicitly

13. After the ruling in Weeks, explain why the author said, “The Fourth Amendment, it appeared, gave Americans a right but not a complete remedy.”
The exclusionary rule only applied in federal courts, not state courts, so illegally seized evidence could still be used in state courts.

14. Summarize the relevant background facts in Dollree Mapp’s story that eventually became the grounds for the decision in Mapp v. Ohio (1961).
• Police “claimed to have a warrant, and when Mapp denied them entry, they broke open the door, waving a piece of paper”
• “Officers began to search the entire house” while searching, they discovered obscene materials and she was arrested and convicted on possession of obscene materials according to Ohio state law.

15. What is the significance of Mapp v. Ohio?
State governments must now follow the same rules as the federal courts when it comes to excluding illegally seized evidence in criminal trials.
“Justice Tom Clark noted that the law excluded illegally seized evidence in federal courts but not in state courts. The result, he concluded, defied logic: “The state, by admitting evidence unlawfully seized, serves to encourage disobedience of the Federal Constitution which it is bound to uphold.” Applying the exclusionary rule to both state and federal courts “is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense.”

   No. Though the Supreme Court decision made evidence gathering practices more uniformly fair across the state and federal courts, it also complicated matters by approving a number of exceptions to the rule.

17. Is the exclusionary rule a “hard and fast” rule? Explain.
   “Hard and fast” is an English idiom that means not to be modified or evaded, cannot be changed, strict.
   No, the exclusionary rule is not a hard and fast rule. Exceptions to the rule are allowed. [In Weeks] “The decision announced what came to be known as the exclusionary rule: federal courts must exclude, or not use, evidence obtained through unconstitutional searches. The rule applied only to U.S. courts, and even then there was one exception. If state or local police turned over illegally obtained evidence to federal prosecutors, the evidence could be used in federal courts”
   “The Supreme Court also recognized instances when circumstances made it impractical or unnecessary to obtain a warrant.”

18. Give 4 examples of Court-allowed exceptions to the exclusionary rule.
   • “... if prosecutors prove that the discovery of otherwise illegal evidence was inevitable, then courts can admit it at trial. This situation might arise if law officers discovered a murder victim after they obtained evidence illegally. They could claim an exception to the exclusionary rule if they could prove that they would have searched the area anyway and thereby discovered the body.”

   • “a ‘good faith’ exception if an unintentional mistake occurs, as when, for example, an officer obtains a warrant but the warrant contains an error in its description.

   • warrantless searches allowed in certain situations
     o “Police do not need court permission to search whenever an individual consents voluntarily or when the officer is acting legally and spots something in plain view.”
     o “They may also search an area under the defendant’s immediate control, as well as conduct searches to protect themselves, when making an arrest.”

19. Compare and contrast “rule” and “law.” Consider some English idioms we have about rules.
   Rules are made to be broken
   There are exceptions to every rule
   The exception proves the rule
   Bend the rules
   Stretch the rules
   As a rule

Could some of those idioms be applied to the exclusionary rule? Explain. Answers will vary.

20. Why were the police and prosecutors infuriated by the decision in Mapp? Was their anger justified?
   “because it had important practical consequences: any evidence seized in violation of the Constitution would no longer be admissible at any criminal trial, federal or state. The exclusionary rule would handcuff them in fighting crime, they claimed, and it would let criminals go free. “

   “These concerns certainly were legitimate, but as it turned out, they were largely unfounded. Numerous studies have demonstrated that few criminals go unpunished because of the rule. Instead, law enforcement officers became more careful and more professional in their work. ‘Cops learned to obtain warrants, secure evidence, and prepare cases,’ the police chief of Minneapolis reported later. ‘Arrests that had been clouded by sloppiness, illegality, and recklessness were now much tidier.’ The result was better law enforcement.”
21. In search-and-seizure cases, protecting individual rights and promoting the common good often are at odds. Deciding how to tip the scales of justice is not easy for any criminal court. Through its decisions, the Supreme Court has provided guidelines, such as the exclusionary rule and its exceptions, to help balance the rights of individuals with the need for order. Though the cases are different, the same question must always be considered in each one. What is the question and why is it so important for every case?
   “When does privacy give way to a more important public purpose, and for what reasons?
   Reasons given will vary.

22. Explain how the Fourth Amendment protects our privacy and also helps ensure the security of our society.
   “Cases about search and seizure are, in fact, cases about privacy and security. The great object of the Fourth Amendment is to protect privacy. The amendment’s language signals the value the framers placed on protecting our right to be left alone unless there is a strong and justifiable reason to invade that privacy. We are free to live in private and to possess things in private. As a society, we believe the right to “to be secure in [our] persons, houses, papers, and effects” is an essential liberty, one equally necessary for our individual happiness and for the common good. But we also recognize that this right is not absolute. The amendment provides a way for society to ensure its security against individuals who would use their privacy to harm others. It allows the government to invade our privacy for probable cause if it can demonstrate to an independent authority—a judge—good and legitimate reasons for doing so.”

23. Consider the challenges ahead for protecting our Fourth Amendment right.
   How do we balance our right to privacy with our need for security in a rapidly changing technological society with devices that make our private lives more comfortable and flexible yet have the potential to make our society more vulnerable? How do we protect Fourth Amendment rights when matters of national security are at stake?
   Answers will vary.

24. Why, in the author’s opinion, is the Constitution, an 18th century document, able to help us sort through critical search-and-seizure issues in the 21st century and beyond?
   The framers gave us a “flexible amendment able to adapt” to societal changes and they gave us a “vital principle of liberty . . . We live under a government of laws, not of men, and the role of government and of law is to protect and promote our individual rights and not simply our collective security. “

25. With warrantless searches, the colonists lived in fear of a knock at the door by the authorities. Today, we live in a society where we do not fear a knock at the door. What helps protect us from an unauthorized or surprise invasion of privacy by the police?
   The Fourth Amendment of the Constitution

** Bring this sheet with you to class. **
Summary

After the Bill of Rights was ratified in 1791, it became the responsibility of the new federal government, not the state governments, to ensure these protections for all Americans. More than 100 years later, the Supreme Court started applying some of these rights to the states on a case-by-case basis through the Fourteenth Amendment.

It wasn’t until 1961, however, that the Court also applied the Fourth Amendment guarantee against “unreasonable search and seizure” to state governments. The case was Mapp v. Ohio, and it relied on the same rule of evidence used in the 1914 federal case of Weeks v. United States, the exclusionary rule. According to this rule, otherwise admissible evidence cannot be used in a criminal trial if it was obtained as the result of illegal conduct by law enforcement officers. In Mapp, the Court ruled that a warrantless search violated the Fourth Amendment and the exclusionary rule helped define what is meant by “unreasonable search and seizure.”

Dollree “Dolly” Mapp was an ordinary citizen with foibles of her own, but she knew her rights and ultimately had the law on her side. It was her case that “represented a struggle for the ultimate goal of the American legal system…justice…delivered by way of the Constitution.”

Preparation for Viewing and Study

• Build essential background knowledge
  This fast-moving video presents a lot of information about search-and-seizure matters related to the Fourth Amendment. Completion (and discussion) of the Class-Prep Assignment will help students develop essential background knowledge and understanding before viewing the video.

  It would also be helpful if viewers have advance knowledge about the following:
  Bill of Rights
  civic dispositions
  federalism
  principles, rules and laws
  constitutional principles
  courtroom procedures
  early American history
  rule of law
  rights and responsibilities of citizens
  Supreme Court cases

• Review essential vocabulary
  Students had the opportunity to review and/or learn key terms as part of their Class-Prep Assignment. Take a few minutes to discuss any that may need additional clarification or reinforcement, such as remedy and civil right, before starting the video study.

  remedy— the means to achieve justice in any matter in which legal rights are involved.
  civil right— protections and privileges given to all U.S. citizens by the Constitution and Bill of Rights.

• Preview the video.
## Guided Viewing

### Instructions:
This video guide divides a word-for-word transcript into sections to support guided viewing. Each section is time-marked at a transitional point where one may stop, check for understanding, and process what was seen and heard. A Pause & Reflect box is included after each section with questions.

### Speakers in the video:

1. NARRATOR
2. PROF. CAROLYN LONG, Washington State University
3. VINCENT WARREN, Executive Director Center for Constitutional Rights
4. PROF. RICHARD LABUNSKI, University of Kentucky
5. DOLLREE “DOLLY” MAPP, resident of Cleveland, Ohio
6. SUSAN HERMAN, President, ACLU
7. CRAIG UCHIDA, Former Director of Criminal Justice Research, NIJ
8. PROF. KERMIT ROOSEVELT, University of Pennsylvania Law School
9. RICHARD THORNBURGH, Former U.S. Attorney General
10. JAMES OTIS (Actor)
11. PROF. GEOFFREY STONE, University of Chicago Law School
12. THEODORE OLSON, Former U.S. Solicitor General
13. PROF. AKHIL AMAR, Yale Law School
14. JUSTICE FELIX FRANKFURTER, Supreme Court Justice (audio)
15. A.L. KEARNS, lawyer for Dollree Mapp
16. BERNARD A. BERKMAN, ACLU lawyer (audio)
17. POLICEMAN (audio)
18. DAVID BOIES, Attorney, Boies, Schiller & Flexner LLP

### Time: Beginning – 1:30

#### 1. Constitutional Context

**NARRATOR:** This film is a project of the Leonore Annenberg Institute for Civics of the Annenberg Public Policy Center of the University of Pennsylvania in partnership with the Annenberg Foundation Trust at Sunnylands. “Citizenship is every person’s highest calling.” – Ambassador Walter H. Annenberg

### The Constitution Project: SEARCH and SEIZURE

#### MAPP v. OHIO

**NARRATOR:** The case of *Mapp v. Ohio* might seem like it was made for TV. Look at this. It’s got a bomb, gambling, a world famous boxing promoter, a determined heroine, and a cop who breaks the rules when they get in his way. But to people that study the Constitution, what makes *Mapp v. Ohio* really exciting is the Fourth Amendment.

**PROF. RICHARD LABUNSKI:** The Fourth Amendment is vital.

**PROF. CAROLYN LONG:** The Fourth Amendment requires that we be free from unreasonable searches and seizures.

**NARRATOR:** The Fourth Amendment gives us a right to privacy, preventing government from searching or taking us, our homes, papers, or property without a good reason. It says so right here. The government has to show probable cause, that is, a good reason to suspect that you have done something wrong. And in many cases it has to issue a warrant…to put its reasons and what it’s looking for down in writing.

**VINCENT WARREN:** That protects you from the police or the government generally invading your privacy.

**PROF. RICHARD LABUNSKI:** It really is an essential right of the people.
Stop: 1:30
Pause & Reflect #1
Constitutional Context

1. What right does the Fourth Amendment give us? What protections?
   Right to privacy; prevents the government from searching our homes, papers, or property without a good reason; protections against the police or government from invading your privacy

2. Write the full text of the Fourth Amendment from your Class-Prep Assignment.
   “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.”

Transition
After a principle is established by the Constitution it becomes the law of the land. In practical terms, what is the next challenge for the federal government?
Figuring out what it means and how to enforce it.
Who interprets the Constitution…decides what the law means?
The Supreme Court
Who enforces the laws?
The executive branch

Time: 1:30 – 4:40

2. Background Story for Mapp v. Ohio

NARRATOR: But, there’s a problem. The Constitution doesn’t exactly say how to make sure this right is enforced. Back in 1957, Dolly Mapp thought she knew.

DOLLREE “DOLLY” MAPP: I had to stand up for my rights.

NARRATOR: She did. And when police rang Dolly Mapp’s doorbell, they had no idea they were about to open the door to a new era in American civil liberties. But they did have a pretty good idea they were going to get a fight from Dolly Mapp.

DOLLREE “DOLLY” MAPP: I could not just ignore this. My freedom was at stake.

NARRATOR: Before dawn on May 20th, 1957, a small bomb went off at this house in Cleveland, Ohio. The owner of the house, Donald King, wasn’t hurt, but he was pretty scared and he called the police to investigate.

PROF. CAROLYN LONG: Don King was well known to law enforcement. He was suspected of running an illegal gambling business, known as the numbers game.

NARRATOR: The numbers game was essentially a lottery, long before lotteries were run by states. In 1957 this kind of gambling was highly illegal. Sometimes that led to violence between the people called clearinghouse operators.

PROF. CAROLYN LONG: The clearinghouse operator is the one who sort of oversees the whole operation.

NARRATOR: And Donald King, who later became world famous as Don King, promoter of Muhammad Ali and other boxing champions…not to mention that hair. Young Donald King had a record and a number of encounters with police over the numbers game. So when his house was bombed, he called the division of the police department he knew personally.

PROF. CAROLYN LONG: He called the Bureau of Special Investigations.

NARRATOR: This division was in charge of cracking down on the numbers game, and it was headed by Detective Carl Delau. Carl Delau was not just an 11-year veteran of the Cleveland Police Department, but a World War II vet as well. A hard-nose cop, he didn’t like people he thought were connected to the numbers game, and he figured King’s house was bombed by one of them.
SUSAN HERMAN: When the police were investigating this, there were a number of other racketeers who they suspected of involvement in this bombing.

NARRATOR: Three days after the bombing, Delau got a tip that a possible suspect might be hiding in a house on Milverton Road. He knew who lived there… Dollree Mapp.

PROF. CAROLYN LONG: He had suspected that she was involved in gaming for some time.

NARRATOR: Dollree Mapp

DOLLREE “DOLLY” MAPP: Most my friends call me Dolly. Very few called me Dollree.

NARRATOR: OK, Dolly Mapp was known around town. Tough, outgoing, and driven, she was married to local boxing star Jimmy Bivens. Later she was engaged to World Light Heavyweight Champion Archie Moore. She owned this house in Shaker Heights, one of Cleveland’s nicest neighborhoods, living upstairs and renting out the basement. She was a fighter then, and she’s a fighter now.

PROF. CAROLYN LONG: She’s a very determined person. She doesn’t suffer fools. She’s very forthright. In many respects, she’s a woman ahead of her time.

DOLLREE “DOLLY” MAPP: I take care of myself. I’m not going to sit down and let you know what you run over me.

NARRATOR: Sgt. Delau knew this wasn’t going to be easy. He told the two officers with him…

PROF. CAROLYN LONG: I know Dollree, and she’s not going to let us in this house.

CRAIG UCHIDA: But they believed that the suspect was there.

PROF. KERMIT ROOSEVELT: When they showed up at the house, they just said that we’d like to come inside and talk to you.

SUSAN HERMAN: And Ms. Mapp said to them, “Do you have a search warrant?”

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Stop: 4:40 Pause & Reflect #2 Background Story for Mapp v. Ohio

3. Briefly recount Dolly’s story thus far. Answers will vary
4. What did you learn about Dollree Mapp? Respond in 1 or 2 words or phrases.
   • her life situation
   • knowledge
   • civic dispositions
5. What did you learn about law enforcement practices in 1957? Answers will vary
6. When the police showed up at Dolly’s door, what did she want to see? Why?
   A search warrant; she figured it was against the law for police to enter the home of a private individual without a search warrant.

Transition
What do you think Dolly knew about search warrants?
Required for police to enter the house; she had a right to prevent police from entering if they didn’t have a warrant;
NARRATOR: Most of us have learned about search warrants from TV or the movies. But a warrant actually comes from the Fourth Amendment.

CRAIG UCHIDA: A search warrant must be very specific about what is to be searched, where is it going to be searched, and who is going to be searched. And it must be signed by a judge who is neutral who can read the document and determine that probable cause actually exists for going into this person’s house, or car, or place of business.

SUSAN HERMAN: The whole idea of a search warrant is to get a second opinion from a neutral and detached magistrate about whether the police really have enough cause to search your home for whatever they are looking for.

CRAIG UCHIDA: And so that piece of paper really does represent the Fourth Amendment.

NARRATOR: To the framers, liberty was not a vague notion or something to be fought for far away from home, it was just the opposite. Liberty was urgent. It was deeply personal. The framers understood the importance of liberty exactly because they had experienced tyranny inside their own homes.

RICHARD THORNBURGH: The Fourth Amendment was a response to a specific grievance.

CRAIG UCHIDA: The British had what was called the writs of assistance. And the writs of assistance gave British troops the right to just search anybody’s house and look for contraband, look for all kinds of different things.

PROF. CAROLYN LONG: And so it was very much a blank check for people to engage in searches. And people were quite alarmed at this.

SUSAN HERMAN: So the whole idea of the illegal searches and seizures was something that was tremendously important to the framers. I’ve always had my own suspicion that part of it was because probably a lot of them had seditious literature in their basements, they were revolutionaries.

NARRATOR: OK, now, you probably heard of this. The Boston Tea Party was an early symbol of resistance to British rule. But 12 years before that in 1761, attorney James Otis fought the British empire over writs of assistance in a Boston courtroom

JAMES OTIS (Actor): A man’s house is his castle.

SUSAN HERMAN: He was arguing about the importance of privacy, about why it was just offensive to people and to democracy itself to allow the government to have that much power that they could just search and seize at will.

JAMES OTIS (Actor): These writs of assistance, if declared legal, would totally annihilate this sacred human right.

NARRATOR: But for us, future President John Adams heard the real Otis, and not this actor.

JAMES OTIS (Actor): A man’s right to his home is derived from nature.

NARRATOR: After hearing Otis make his final argument, Adams said

SUSAN HERMAN: Then and there the child Liberty was born.

NARRATOR: That’s how central the idea of restricting searches and seizures is to American democracy.
Warrants in colonial America, called writs of assistance, were nonspecific and allowed British troops to conduct general searches in the hopes of finding something that could be used against the people.

Otis was arguing against the writs of assistance and stressed the importance of privacy; he talked about why it was just offensive to people and to democracy itself to allow the government to have that much power that they could just search and seize at will.

“People enjoy the position of ‘ruler’ in their own homes and no one has the right to enter without express permission of the owner. Therefore, no person should be able to freely enter and search at will, especially the government.”

Significance: Otis motivated the colonists against the British and made the issue of liberty ever more paramount. It showed how central idea of restricting searches and seizures is to American Democracy.

**PROF. GEOFFREY STONE:** The idea of somebody knocking on the door or breaking down the door at 2 in the morning to toss you out of bed and possibly to take you into custody without ever telling you why or showing any justification was the kind of power that needed to be reined in because in order to have a successful self-governing society individual citizens have to understand that they are in charge.

**THEODORE OLSON:** So the colonials put in the Fourth Amendment the right to be free from unreasonable searches and seizures, now we have come to understand that an unreasonable search and seizure is something that is done without a warrant so the judge decides whose home gets to be invaded.

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<tr>
<th>Time: 8:11 – 10:58</th>
<th>4. Warrantless Searches</th>
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<td><strong>Narrator:</strong> But look at this, unreasonable, warrant, probable cause...what’s missing from the Fourth Amendment is a way to make sure the police obey it. Not only that, most crime is handled by local police and state courts, and several states never enforced the use of warrants so police just stopped getting them. If they searched a house without one, that evidence would be used in a trial anyway so...</td>
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<td><strong>Prof. Carolyn Long:</strong> Police officers knowing that a warrant was not necessary would conduct warrantless searches because they knew that there were no ramifications for their actions. And so there was nothing to deter them from acting in an illegal fashion.</td>
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<td><strong>Narrator:</strong> So when Sgt. Delau rang Dolly Mapp’s doorbell, he didn’t have a warrant and she didn’t invite him in. She believed she had rights to protect her.</td>
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<td><strong>Dollree “Dolly” Mapp:</strong> I hadn’t committed a crime, so why are you here. I called a lawyer.</td>
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<td><strong>Prof. Kermit Roosevelt:</strong> She was a legally sophisticated person. She went back. She talked to an attorney and the lawyer said don’t let them in if they don’t have a warrant.</td>
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SUSAN HERMAN: So the police went away. Three hours later they come back again.

PROF. CAROLYN LONG: They broke a window. And then they pried open the door in order to gain entry to the house.

DOLLREE “DOLLY” MAPP: When I looked up, they were in my house.

PROF. CAROLYN LONG: So it’s important to recognize that Dollree had not let them in the home. In fact she continued to tell them they were not welcome, but they entered the home anyway.

SUSAN HERMAN: And they say, “We have a search warrant.” And Dollree Mapp says...

DOLLREE “DOLLY” MAPP: May I see the warrant?

SUSAN HERMAN: So the police officer there pulls out a piece of paper and waves it in front of her and starts putting it back.

CRAIG UCHIDA: She grabbed the piece of paper and put it down her blouse.

NARRATOR: Turned out that paper was not a warrant. The police never got one. At this point, though, they handcuffed Dolly Mapp and searched her house. They actually found their suspect downstairs so he was there, but he was also released the next day because it turns out he had nothing to do with the bombing. They didn’t find anything else related to the bomb, but in an upstairs dresser the police found some pornography that Dolly Mapp says was owned by one of her former boarders.

SUSAN HERMAN: They found some materials that led to her being prosecuted for obscenity, possession of obscene materials. One of the things they found up on the second floor were erotic comic books.

NARRATOR: OK, take a moment, it’s OK to giggle. Even Dolly and one of the officers laughed that day.

DOLLREE “DOLLY” MAPP: I didn’t think I was in any trouble. The officer enjoyed looking at ‘em himself.

NARRATOR: But the laughter ended quickly. Although they didn’t charge her with anything having to do with the bombing, Dolly was charged with possession of obscene materials for having this in her home. Even though it wasn’t hers she was facing one to seven years in prison and a fine of up to two thousand dollars.

PROF. CAROLYN LONG: Astonishing. It’s a terrible law. The Ohio law prohibited possession of obscene materials, so it was quite a broad anti-obscenity law.

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Stop: 10:58
Pause & Reflect #4

Warrantless Searches

11. Were federal or state law enforcement officers involved? Why does it matter?
   State officers; state police are responsible for handling most of the local crime, not federal officers. This is a state criminal matter.

12. What were the police after? What did they find?
   The police were after evidence related to a bombing, but they didn’t find any. But they did find obscene pictures during their search.

   Dolly was charged with possession of obscene material, a violation of Ohio state law. Yes it was legal under Ohio law which prohibited the possession of obscene materials.

14. Identify possible Fourth Amendment violations in the investigation.
   Officers entered Dolly’s house without permission; Officers faked having a warrant; no warrant produced; gathered evidence unrelated to the initial investigation

Transition
States have the authority to make their own laws. What recourse do individuals have if they believe a law infringes on their personal rights? They can seek justice in the court system by challenging the constitutionality of the law and appealing it all the way to the Supreme Court.
NARRATOR: At her trial here in the Cuyahoga Courthouse, Dolly and her attorney A.L. Kearns tried to have the evidence thrown out or excluded. They claimed the search was unconstitutional, since there was no warrant. That’s called the exclusionary rule.

PROF. KERMIT ROOSEVELT: The exclusionary rule is a rule that says if police obtain evidence in violation of your Fourth Amendment rights through an unreasonable search or seizure, that evidence can’t be introduced against you in a prosecution.

NARRATOR: The exclusionary rule in the American legal system goes back to 1914 in a case called Weeks v. United States where the court said that if a federal law enforcement officer found evidence illegally, that evidence could not be used against the defendant.

SUSAN HERMAN: This was tremendously important because it was the first time that the Supreme Court recognized that the Fourth Amendment sets out certain rules and that if the police don’t follow those rules and they obtain evidence, that that evidence should not be used.

NARRATOR: OK, so a minute ago I pointed out that missing from the Fourth Amendment was any way to enforce it. The Weeks decision was the Supreme Court’s way of trying to fix that. It said to police, if you don’t have a warrant, you can’t use the evidence. The exclusionary rule was the Court’s way of enforcing the Fourth Amendment. But at the time of Weeks, the Fourth Amendment did not apply to the states. It’s a little confusing, but here, check this out.

The Bill of Rights gives us all these wonderful rights and freedoms, but it only applied to the federal government. See, Congress shall make no law... and in the early 20th century the Court started to apply some of these fundamental rights to the states through the Fourteenth Amendment, written and ratified after the Civil War to reign in the states. This process is called incorporation. But the Court was split about how far to go.

PROF. KERMIT ROOSEVELT: And what happened eventually was the Court said, we’re not going to say take the Bill of Rights as a whole it applies against the states, we’re going to consider each right individually and we’re going to ask is it sufficiently important that we think the states have to observe it.

NARRATOR: 35 years after Weeks, the Supreme Court handed down a ruling on the Fourth Amendment in Wolf v. Colorado. The Wolf decision said that states have to incorporate the rights in the Fourth Amendment, but states don’t have to use the exclusionary rule to enforce those rights, because the exclusionary rule isn’t in the Constitution.

PROF. KERMIT ROOSEVELT: In the Wolf decision, the Supreme Court had said you got this right, a right to be free of unreasonable searches and seizures, but that right is quite distinct from the exclusionary rule.

PROF. AKHIL AMAR: The Supreme Court says, oh, the Fourth Amendment applies against the states, but not the exclusionary rule, because the exclusionary rule isn’t really a key part of the Fourth Amendment, that’s just something that we judges have come up with as a device for enforcing the Fourth Amendment.

NARRATOR: Justice Felix Frankfurter wrote the 6 to 3 majority opinion in Wolf, calling the exclusionary rule a judicial-made remedy that is not actually in the Constitution, so the states didn’t have to use it.

PROF. KERMIT ROOSEVELT: The Constitution itself doesn’t give you that remedy, then you’re not necessarily going to have it in state courts.
DOLLREE “DOLLY” MAPP: So here’s what all this means for our case and for Dolly Mapp. Ohio didn’t recognize the exclusionary rule; instead, the state allowed evidence found illegally to be used in court. So the pornography that police discovered at Dolly’s house was introduced into her trial, and a jury found Dolly guilty for breaking Ohio’s obscenity law.

PROF. CAROLYN LONG: She was sentenced to the maximum, which was seven years plus a two thousand dollar fine.

DOLLREE “DOLLY” MAPP: Seven years, for what? My case wasn’t right. It was illegal to do this to me.

DOLLREE “DOLLY” MAPP: Dolly’s lawyer appealed, but mainly on the issue that Ohio’s obscenity law violated the First Amendment protecting freedom of speech and her case went all the way to the United States Supreme Court. That’s when the American Civil Liberties Union, or ACLU, joined in.

SUSAN HERMAN: The ACLU asked for permission to file a brief in this case in order to support the argument that Dollree Mapp’s lawyer was making that her conviction violated the First Amendment.

PROF. CAROLYN LONG: An amicus curiae brief is what we call a friend of the court brief. It’s a brief that is written by outside parties which lay out legal arguments that pertain to the case before the Court. The amicus brief written by the ACLU focused primarily on the legality of the anti-obscenity law.

NARRATOR: After arguing the First Amendment case that Dolly had a right to own any book she wanted…for 20 pages… the ACLU brief added 11 lines at the very end, almost as an afterthought. It turned back to the search of Dolly’s home without a warrant and asked the court to overturn the Wolf decision and apply the exclusionary rule to the states.

NARRATOR: On March 29th, 1961, oral arguments at the United States Supreme Court were equally complicated. Was the Mapp case a First Amendment case about free speech or was it a Fourth Amendment case about unlawful search and seizure? You can almost understand how Dolly Mapp’s attorney A.L. Kearns got a little confused. His argument confused Justice Felix Frankfurter.
PROF. CAROLYN LONG: He was rambling, and at one point, Frankfurter interrupted him to ask him what the case was about…what was the question before the court.

JUSTICE FELIX FRANKFURTER (audio): Are you asking us to overrule the Wolf case in this Court? I noticed it isn’t even cited in your brief.

NARRATOR: Remember, Justice Frankfurter actually wrote the Wolf decision and he didn’t want to see it overturned. He strongly believed that the exclusionary rule was not a right and should be left up to the states. When pressed on the issue, attorney Kearns just sounded lost.

JUSTICE FELIX FRANKFURTER (audio): Well, that means you’re asking us to overrule Wolf against Colorado.

ATTORNEY KEARNS (audio): No

NARRATOR: Fortunately for Dolly, the ACLU attorney, Bernard Berkman, was also granted 15 minutes to address the Court, recognizing just how badly things were going. The very first thing he said was…

BERNARD BERKMAN (audio): The American Civil Liberties Union is very clear that we are asking this Court to reconsider Wolf versus Colorado and to find that evidence which is unlawfully and illegally obtained should not be permitted into a state proceedings.

Time: 17:28 – 19:33

Transition
Put yourself in Justice Frankfurter’s shoes. Discuss the unique challenges that you had to face and overcome. *(requires a first-person response)*

Stop: 17:28
Pause & Reflect #6
Mapp’s Case in the Supreme Court

19. Recount the trouble that Dolly’s case faced in the Supreme Court.

Initially, there was not a clear question presented to the Court for a decision. Dolly’s lawyer and the ACLU brief filed in support of his argument focused on a First Amendment free speech violation related to the possession of obscenity materials. The ACLU also wanted the court to find that a violation of the Fourth Amendment had occurred. The arguments were not clear. Finally, the ACLU clearly stated what they were asking of the court—overturn Wolf and not allow states to use illegally gathered evidence in criminal proceedings. For the Justices to do so, would require overturning the precedent in Wolf by applying the exclusionary rule to state proceedings.

NARRATOR: The ACLU made the case that the state of Ohio should not be allowed to use the evidence found in Dolly Mapp’s home against her because it was obtained illegally. The state of Ohio acknowledged that the police had no warrant, but argued that the Wolf decision should stand and the state should decide for itself whether or not it could use evidence illegally obtained without a warrant. In the end, the Court decided to overturn Wolf by a 6 to 3 margin in Mapp. The majority ruled that the search and seizure at Dolly’s house was unlawful because it was done without a warrant so the evidence should have been excluded…and that the exclusionary rule should apply to the states through the due process clause of the Fourteenth Amendment. Justice Tom Clark wrote the majority decision.

PROF. KERMIT ROOSEVELT: Justice Clark’s view was basically that Fourth Amendment rights are worthless if the exclusionary rule is not available, because if the police know they can use the evidence against you, why not go ahead and break down the door. There’s no meaningful disincentive to police.

NARRATOR: Justice Hugo Black had actually joined the majority in Wolf back in 1949 because he didn’t think the exclusionary rule was a fundamental right. This time he changed his mind.
PROF. AKHIL AMAR: By the early Sixties, Hugo Black has decided that the exclusionary rule is part of the Constitution, maybe not the Fourth Amendment alone, but the Fourth Amendment in combination with the Fifth Amendment’s self-incrimination clause.

NARRATOR: Justice Black thought that using evidence obtained illegally in court was like forcing someone to testify against yourself, which is banned by the Fifth Amendment. Taken together, a constitutional basis emerges which not only justifies but actually requires the exclusionary rule. Justice Potter Stewart ruled in Mapp’s favor, but on the First Amendment issue that Ohio’s obscenity law was too broad. And Justice John Harlan criticized the majority for using the exclusionary rule to overturn a precedent even though it can’t be found in the Constitution.

Stop 19:33      Pause & Reflect #7      Reasoning Behind the Mapp Decision

20. Explain the reasoning used for making the exclusionary rule a part of the Constitution when it is not stated in the Constitution. Consider these words: explicit, implicit, inherent, inferred, exact, specific. Review principles used for interpreting written words.

Answers will vary. Principles for interpretation include: Interpreting written words involves understanding explicit and implicit definitions, use of context (surrounding words), figures of speech, cultural and historical context, intent, internal consistency etc.

Transition
Based on the reasoning of the justices, what do you think will be required of the states?

Time: 19:33– 23:07

8. Exclusionary Rule: Exceptions & Controversy

PROF. KERMIT ROOSEVELT: He was saying basically this is something that the justices think is a good idea; they want the states to have to do this and so they are going to make them do it even though it’s not what the Constitution says. In dissent, Justice Harlan was joined by Justice Frankfurter. This take on Mapp and the exclusionary rule pretty much frames the controversy about this case to this day. It’s complicated stuff. The police chief said the Mapp ruling led to tighter police procedure and more professionalism.

CRAIG UCHIDA: That case had very important ramifications for every police department in the United States and every police officer in the United States.

NARRATOR: Craig Uchida was the Director of Criminal Justice Research at the National Institute of Justice. He worked with police departments across the country to improve their performance.

CRAIG UCHIDA: Mapp had a huge effect on police behavior and the subsequent rulings in the 1960s as well.

NARRATOR: Starting with the Mapp case, the Supreme Court under Chief Justice Earl Warren began to apply criminal procedure protections found in the Bill of Rights to the states through incorporation of the Fourteenth Amendment. Some people have labeled it the Due Process Revolution. After Mapp, the Court under Warren ruled that everyone, in every state, should have legal counsel, and that everyone in custody should have their rights clearly explained to them to avoid self-incrimination.

POLICEMAN (audio): You have the right to remain silent. Anything you say can and will be used against you in a court of law.

DAVID BOIES: Criminal procedure is primarily designed to protect the innocent. Most of what you see…the hearsay rules, the right to trial by jury, the right to subpoena are all things that are designed to protect the innocent.

NARRATOR: But the controversy over the exclusionary rule is still going on. In the 50 years since the Mapp decision, the Court has chipped away at it, reducing its status again to a remedy, something less than a right.
PROF. AKHIL AMAR: Since the Warren Court, the exclusionary rule has been cut back in all sorts of ways. The Court has created a whole series of exceptions.

NARRATOR: It’s limited where the exclusionary rule is applied.

PROF. CAROLYN LONG: The Court determined that the exclusionary rule was not appropriate in grand jury hearings.

NARRATOR: And the Court has placed limitations on how the exclusionary rule is applied. For instance, if the police obtain a warrant, but the warrant has mistakes, a judge might allow the evidence because the police did their best to follow proper procedure.

PROF. AKHIL AMAR: They said for example, oh, the exclusionary rule doesn’t apply in general if the police acted in good faith.

PROF. KERMIT ROOSEVELT: The Court says even if it’s the police who make the mistake, they’re still entitled to this good faith exception.

NARRATOR: And the Court will almost certainly hear more cases because we haven’t finished debating the exclusionary rule. One side thinks it helps the guilty.

PROF. AKHIL AMAR: We’re letting a guilty person go free.

NARRATOR: The other side says it keeps the police disciplined.

SUSAN HERMAN: That’s the only way we need to ensure that they’re going to get the warrant.

NARRATOR: And we certainly haven’t finished debating the language in the Fourth Amendment. To protect these rights do we need warrants or do we simply need the police to be reasonable?

PROF. KERMIT ROOSEVELT: It says, no warrants shall issue, except upon probable cause. And people have taken that to mean the Fourth Amendment is designed to get the government to obtain a warrant.

PROF. AKHIL AMAR: Ninety-nine percent of the stuff that actually happens today and every day happened without a warrant. You’re crossing a border and your baggage is searched at the airport, you go through a metal detector, there’s no warrant.

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**Stop: 23:07**  
**Pause & Reflect #8**  
**Exclusionary Rule: Exceptions & Controversy**

21. How can the Supreme Court require states to use the exclusionary rule when it is not explicitly stated in the Constitution?

22. How did the exclusionary rule affect police practices and individual rights? Police: Better procedures; more professionalism. Individual: because more informed; everyone had a right to legal counsel and be informed of rights at time of arrest (Miranda rights)

23. Give examples of exceptions to the exclusionary rule. Name the cases.
   - Not appropriate in grand jury trials
       - Good Faith Exception: Police acted in good faith but simply made a mistake.

24. Why do you think the number of exceptions to the rule have increased over the years?
25. Identify pro and con viewpoints on the exclusionary rule.
   Pro: Keeps the police disciplined; improved procedures; more professionalism; helps ensure police will have a warrant
   Con: Helps the guilty; lets the guilty go free

26. Are all search-and-seizure situations involving the government Fourth Amendment violations? Explain and give some examples.
   No. The Constitution restricts the issuing of search-and-seizure warrants to situations involving probable cause. Examples: searching of baggage at the airport, going through a metal detector.

**Transition**
In your opinion, are there times when people should voluntarily give up some of their rights? Explain.
Answers will vary

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<tr>
<th>The End</th>
<th>Pause &amp; Reflect #9</th>
<th>Keeping Us Safe vs. Protecting Our Rights</th>
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<tbody>
<tr>
<td>27. What motivated Dolly and gave her confidence to keep going?</td>
<td>She knew her rights. Because the search was illegal, the law was on her side.</td>
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<td>28. In our system of government, who ultimately has the power to tip the scales of justice?</td>
<td>The people under the authority of the Constitution.</td>
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<td>29. Discuss the importance of ordinary people like Dolly Mapp to our justice system.</td>
<td>Answers will vary</td>
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<tr>
<td>30. What did you gain from Dolly’s participation? What did America gain?</td>
<td>Answers will vary</td>
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After the Video
For follow-up, address one or more of the following through discussion, written response, or both.

1. Discussion: Ask students if they got a sense of the complicated issues and often conflicting values that are present in search-and-seizure cases. Help them gain perspective and understanding by discussing the role of such conflict in a constitutional democracy that operates according to the rule of law.

“The values and principles of American constitutional democracy are sometimes in conflict, and their very meaning and application are often disputed. . . . Disparities have always existed between the realities of daily life and the ideals of American constitutional democracy. . . . Citizens, therefore, need to understand that American society is perpetually ‘unfinished’ and that each generation must address ways to narrow the disparity between ideals and reality.” (National Civics and Government Standards)
Answers will vary.

2. Early in the film, the narrator made this comment about the Fourth Amendment:

“But, there’s a problem. The Constitution doesn’t exactly say how to make sure this right is enforced.”

Discuss: When is the problem indeed a problem and when might it be an advantage?

Possible questions to get students thinking:
Is there a problem with the lack of specificity in the Constitution? Yes.
What are the logical consequences? Conflicts over interpretation and implementation.
Does the Constitution say how to make sure other rights are enforced? No.
Are there problems with enforcing other rights, too? Yes.
Why does the Supreme Court get involved? It is responsible for ensuring that the Constitution is not violated.
What if the Constitution did say how to enforce each right in very specific terms?
It would have 18th century specifics and not be flexible enough to apply to a changing society.
Will the problem ever go away? Explain. No.
As society changes, so do interpretations of the Constitution. Do you find that comforting or not?
Answers will vary.

3. Would you consider the exclusionary rule a right or a remedy? Explain.
Discuss the legal implications of each view.
Answers will vary.

4. If warrantless searches are indeed unconstitutional under the Fourth Amendment, why do you think are they allowed to continue?
Answers will vary.
Use the following questions to assist with a guided study of the video. View each section indicated by the time, then pause to reflect and answer the questions. A transcript of the video is also available to supplement your study. Suggested answers are in red.

**1. Constitutional Context**

### Pause & Reflect

1. What right does the Fourth Amendment give us? What protections? Right to privacy; prevents the government from searching our homes, papers, or property without a good reason; protections against the police or government from invading your privacy.

2. Write the full text of the Fourth Amendment from your Class-Prep Assignment. “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.”

### Transition

After a principle is established by the Constitution, it becomes the law of the land. In practical terms, what is the next challenge for the federal government? Figuring out what it means and how to enforce it.

Who interprets the Constitution…decides what the law means?
- The Supreme Court

Who enforces the laws?
- The executive branch

**2. Background Story for Mapp v. Ohio**

### Pause & Reflect

3. Briefly recount Dolly’s story thus far. Answers will vary.

4. What did you learn about Dollree Mapp? Respond in 1 or 2 words or phrases.
   - her life situation
   - knowledge
   - civic disposition

5. What did you learn about law enforcement practices in 1957? Answers will vary.

6. When the police showed up at Dolly’s door, what did she want to see? Why? A search warrant; she figured it was against the law for police to enter the home of a private individual without a search warrant.

### Transition

What do you think Dolly knew about search warrants? Required for police to enter the house; she had a right to prevent police from entering if they didn’t have a warrant.
Pause & Reflect

7. Compare and contrast warrants in colonial America with those today.
Warrants in colonial America, called writs of assistance, were nonspecific and allowed British troops to conduct general searches in the hopes of finding something that could be used against the people.

8. Summarize the argument James Otis made in court.
Otis was arguing against the writs of assistance and stressed the importance of privacy; he talked about why it was just offensive to people and to democracy itself to allow the government to have that much power that they could just search and seize at will.

9. Explain the meaning and significance of these statements by James Otis:
- “A man’s house is his castle.”
  People enjoy the position of “ruler” in their own homes and no one has the right to enter without express permission of the owner. Therefore, no person should be able to freely enter and search at will, especially the government.
- “A man’s right to his home is derived from nature.”
  Animals in nature have their own homes which are private unto them. Significance: Otis motivated the colonists against the British and made the issue of liberty ever more paramount. It showed how central idea of restricting searches and seizures is to American democracy.

10. Discuss: “In order to have a successful self-governing society individual citizens have to understand that they are in charge.” How are citizens in charge in a self-governing society?
Ultimately citizens are the ones with the power to make and change the laws; they are responsible for limiting the power of the government.

Transition
At the time of Mapp, the federal government and the state governments didn’t operate under the same rules when it came to requiring the use of warrants. Why?
The Constitution gave the responsibility for protecting rights (in the Bill of Rights) to the federal government, not the state governments. So it was up to each state to decide how to handle warrants.

Pause & Reflect

11. Were federal or state law enforcement officers involved? Why does it matter?
State officers; State police are responsible for handling most of the local crime, not federal officers. This is a state criminal matter.

12. What were the police after? What did they find?
The police were after evidence related to a bombing, but they didn’t find any. But they did find obscene pictures during their search.

Dolly was charged with possession of obscene material, a violation of Ohio state law. Yes it was legal under Ohio law which prohibited the possession of obscene materials.

14. Identify possible Fourth Amendment violations in the investigation.
Officers entered Dolly’s house without permission; Officers faked having a warrant; no warrant produced; gathered evidence unrelated to the initial investigation.
Transition
States have the authority to make their own laws. What recourse do individuals have if they believe a law infringes on their personal rights? They can seek justice in the court system by challenging the constitutionality of the law and appealing it all the way to the Supreme Court.

Pause & Reflect

15. Restate the exclusionary rule.
   A rule that says if police obtain evidence in violation of your Fourth Amendment rights through an unreasonable search or seizure, that evidence can’t be introduced against you in a prosecution.

16. What is the significance of the decision in *Weeks v. United States* (1914)?
   This case marks the first use of the exclusionary rule. The court said that if a federal law enforcement officer found evidence illegally, that evidence could not be used against the defendant.

17. Explain the process and purpose of incorporation. When did the Fourth Amendment get incorporated? Which case? Why wasn’t the exclusionary rule included, too?
   When the Bill of Rights was ratified, it applied only to the Federal government, not the states. Gradually the Supreme Court started applying certain rights to the states. The decision in *Wolf v. Colorado* (1949) incorporated the Fourth Amendment, but not the exclusionary rule because it was a court-made rule and not explicitly part of the Constitution.

18. Justice Frankfurter called the exclusionary rule called a judicial-made remedy. Explain what he meant. Why would the Supreme Court create such a rule?
   It was a court-made rule that the justices came up with to help define what is meant by “unreasonable search and seizure” in the Fourth Amendment and it would help ensure more consistent enforcement.

Transition
The stage was set, and, in the interest of justice, a new legal precedent was about to be made.
What is a precedent?
It is a judicial decision that may be used as a standard in subsequent similar cases.

Pause & Reflect

19. Recount the trouble that Dolly’s case faced in the Supreme Court.
   Initially, there was not a clear question presented to the Court for a decision. Dolly’s lawyer and the ACLU brief filed in support of his argument focused on a First Amendment free speech violation related to the possession of obscenity materials. The ACLU also wanted the court to find that a violation of the Fourth Amendment had occurred. The arguments were not clear. Finally, the ACLU clearly stated what they were asking of the court—overturn *Wolf* and not allow states to use illegally gathered evidence in criminal proceedings. For the Justices to do so, would require overturning the precedent in *Wolf* by applying the exclusionary rule to state proceedings.

Transition
Put yourself in Justice Frankfurter’s shoes. Discuss the unique challenges that you had to face and overcome. (requires a first-person response)
I wrote the *Wolf* decision and didn’t want to see it overturned. I strongly believed that the exclusionary rule was not a right and should be left up to the states. How can I change my mind now?
7. Reasoning Behind the Mapp Decision

Pause & Reflect

20. Explain the reasoning used for making the exclusionary rule a part of the Constitution when it is not stated in the Constitution.
Consider these words: explicit, implicit, inherent, inferred, exact, specific.
Review principles used for interpreting written words.
Answers will vary.
Principles for interpretation include: Interpreting written words involves understanding explicit and implicit definitions, use of context (surrounding words), figures of speech, cultural and historical context, intent, internal consistency etc.

Transition
Based on the reasoning of the justices, what do you think will be required of the states?

Time: 19:33 - 23:07

8. Exclusionary Rule: Exceptions & Controversy

Pause & Reflect

21. How can the Supreme Court require states to use the exclusionary rule when it is not explicitly stated in the Constitution?

22. How did the exclusionary rule affect police practices and individual rights?
Police: Better procedures; more professionalism
Individual: because more informed; everyone had a right to legal counsel and be informed of rights at time of arrest (Miranda rights)

23. Give examples of exceptions to the exclusionary rule. Name the cases.
Not appropriate in grand jury trials
• United States v. Calandra (1974)
Good Faith Exception: Police acted in good faith but simply made a mistake.
• United States v. Leon (1984)
• Massachusetts v. Sheppard (1984)
• Herring v. United States (2009)

24. Why do you think the number of exceptions to the rule have increased over the years?
Answers will vary

25. Identify pro and con viewpoints on the exclusionary rule.
Pro: Keeps the police disciplined; improved procedures; more professionalism; helps ensure police will have a warrant
Con: Helps the guilty; lets the guilty go free

26. Are all search-and-seizure situations involving the government Fourth Amendment violations? Explain and give some examples.
No. The Constitution restricts the issuing of search-and-seizure warrants to situations involving probable cause.
Examples: searching of baggage at the airport, going through a metal detector.

Transition
In your opinion, are there times when people should voluntarily give up some of their rights? Explain.
Answers will vary.
27. What motivated Dolly and gave her confidence to keep going?
   She knew her rights. Because the search was illegal, the law was on her side.

28. In our system of government, who ultimately has the power to tip the scales of justice?
   The people under the authority of the Constitution.

29. Discuss the importance of ordinary people like Dolly Mapp to our justice system.
   Answers will vary

30. What did you gain from Dolly’s participation? What did America gain?
   Answers will vary.
Introduction:
The following chart is provided to help teachers check the contextual timeline activity. It contains brief notes taken from the following resources that students will use to develop their timelines containing 20 significant and relevant entries. The shaded rows in the chart highlight the historical events and Supreme Court cases (decisions) discussed in the video.

Resources for the Activity:
- Video: *The Constitution Project: Search and Seizure—Mapp v. Ohio*
  Available from Annenberg Classroom: [http://www.annenbergclassroom.org/page/all-videos](http://www.annenbergclassroom.org/page/all-videos)
- Annotated Video Transcript: *The Constitution Project: Search and Seizure—Mapp v. Ohio*
- Chapter 15: The Right to Protection Against Illegal Search and Seizure from *Our Rights* by David J. Bodenhamer
- Third & Fourth Amendments from *Our Constitution* by Donald Ritchie & JusticeLearning.org
- Timeline—Unreasonable Search and Seizure

The following eight periods of U.S. history will provide historical context for the timeline. These periods were used in the 2010 NAEP U.S. history assessment, and some do overlap. [http://nces.ed.gov/nationsreportcard/ushistory/whatmeasure.asp](http://nces.ed.gov/nationsreportcard/ushistory/whatmeasure.asp)

1. Beginnings to 1607
2. Colonization, settlement and communities (1607 to 1763)
3. The Revolution and the new nation (1763 to 1815)
4. Expansion and reform (1801 to 1861)
5. Crisis of the Union: Civil War and Reconstruction (1850 to 1877)
6. The development of modern America (1865 to 1920)
7. Modern America and the World Wars (1914 to 1945)
8. Contemporary America (1945 to present)

<table>
<thead>
<tr>
<th>Notes for Timeline Entries</th>
<th>Resources for the Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Note:</strong> In a few cases, students will need to provide additional dates (highlighted in red). Outside sources may also be used as needed to gather more details.</td>
<td><strong>Video</strong></td>
</tr>
<tr>
<td>1. 1513-47: Reign of Henry VIII—during his reign writs of assistance first introduced</td>
<td>X</td>
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<tr>
<td>2. 1688: Glorious Revolution—Parliament began to limit the power of writs after it forced King James II from the throne during the revolution</td>
<td>X</td>
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<td>3. 1773: Boston Tea Party—early symbol of resistance to British rule</td>
<td>X</td>
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<td>4. 1761: James Otis challenged legality of writs in court; rallied the colonists in the pursuit of liberty</td>
<td>X</td>
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<td>5. 1776: Virginia Declaration of Rights—including a statement against the use of general warrants saying they were “grievous and oppressive, and ought not to be granted.</td>
<td>X</td>
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<tr>
<td>6. 1775-1783: American Revolution—use of general warrants had declined as a tool to restrain the press but continued unchecked in the enforcement of custom laws</td>
<td>X</td>
</tr>
<tr>
<td>7. 1787: U.S. Constitution ratified: established the federal government and defined its powers, responsibilities, and limits; federal government responsible for protecting individual rights; also gave certain powers to the states</td>
<td>X</td>
</tr>
<tr>
<td>8. 1791: Bill of Rights: ratified—applied only to the federal government initially, not the states.</td>
<td>X</td>
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</tbody>
</table>
### Notes for Timeline Entries

**Note:** In a few cases, students will need to provide additional dates (highlighted in red). Outside sources may also be used as needed to gather more details.

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<tbody>
<tr>
<td>9.</td>
<td>1791: Fourth Amendment adopted; applied to the federal government only</td>
<td>X</td>
<td>X</td>
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<tr>
<td>10.</td>
<td>1861-1865: Civil War—After the Civil War, the Court started to incorporate some rights to the states.</td>
<td>X</td>
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<tr>
<td>11.</td>
<td>1868: Fourteenth Amendment ratified—Later it was used by the Supreme Court to incorporate some of the rights to the states, including Fourth Amendment protections.</td>
<td>X</td>
<td>X</td>
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<tr>
<td>12.</td>
<td>1886: <em>Boyd v. United States</em>—Signals the appearance of Fourth Amendment questions after almost 100 years of silence on such matters. The Court ruled an illegal seizure was indeed conducted because no warrant was used. It is significant because it gave life to the Fourth Amendment and kept it from becoming a “dead letter in the federal courts.”</td>
<td>X</td>
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<td>13.</td>
<td>1914: <em>Weeks v. United States</em>—The decision announced the exclusionary rule and one exception: Exclusionary rule: federal courts must exclude, or not use, evidence obtained through unconstitutional searches Exception: silver platter doctrine—If state or local police turned over illegally obtained evidence to federal prosecutors, the evidence could be used in federal courts.</td>
<td>X</td>
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<td>14.</td>
<td>1928: <em>Olmsted v. United States</em>—first opportunity for the Court to consider whether the use of illegal wiretapping could be used as evidence in a federal court. Court ruled that it could because it did not constitute a physical invasion. Later the Court would change its mind.</td>
<td>X</td>
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<td>15.</td>
<td>1934: Federal Communications Act—Congress made a law prohibiting the government from wiretapping without a warrant.</td>
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<td>X</td>
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<td>16.</td>
<td>1949: <em>Wolf v. Colorado</em>—states have to incorporate the Fourth Amendment rights but not the exclusionary rule—judicial-made remedy and states didn’t have to use it because it was not part of the Constitution</td>
<td>X</td>
<td>X</td>
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<tr>
<td>17.</td>
<td>1957: Dolly Mapp’s story begins with an illegal search and seizure by Ohio police at her home. The case ultimately led the landmark decision in <em>Mapp v. Ohio</em> that applied the exclusionary rule to the states.</td>
<td>X</td>
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<td>18.</td>
<td>1960: “Silver platter” doctrine abandoned—justices changed their mind. No longer could federal courts use illegally obtained evidence handed over to prosecutors by state or local police</td>
<td>X</td>
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<td>19.</td>
<td>1961: <em>Mapp v. Ohio</em>—decision applied the exclusionary rule to state as well as federal courts</td>
<td>X</td>
<td>X</td>
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<td>20.</td>
<td>1967: <em>Katz v. United States</em>: people have a reasonable expectation of privacy; wiretapping without a warrant qualifies as an unreasonable search and seizure</td>
<td>X</td>
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<tr>
<td>21.</td>
<td>1968: <em>Terry v. Ohio</em>—”stop and frisk” is legal if there is reasonable suspicion—warrantless search allowed</td>
<td>X</td>
<td>X</td>
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<td>22.</td>
<td>1974: <em>United States v. Calandra</em>—exception: not appropriate in grand jury trials</td>
<td>X</td>
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<tr>
<td>23.</td>
<td>1976: <em>U.S. v. Watson</em>—police may take a suspect into custody in a public place without an arrest warrant when there is “probable cause” to do so</td>
<td>X</td>
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<td>24.</td>
<td>1983: Oliver v. United States—The court says the a field qualifies as an “open field” in which the man could not have had a legitimate expectation of privacy. Consequently, a warrant is not needed</td>
<td>X</td>
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<td>25.</td>
<td>1984: <em>United States v. Leon</em>: good faith exception recognized</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Notes for Timeline Entries</td>
<td>Resources for the Activity</td>
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<tr>
<td><strong>Note:</strong> In a few cases, students will need to provide additional dates (highlighted in red). Outside sources may also be used as needed to gather more details.</td>
<td>Video</td>
<td>Ch. 15</td>
<td>3rd &amp; 4th Amend</td>
<td>Timeline</td>
</tr>
<tr>
<td>27. 1986: <em>California v. Ciraolo</em> — aerial surveillance does not constitute an illegal search — no expectation of privacy when material knowingly exposed to view</td>
<td>X</td>
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<tr>
<td>28. 1995: <em>Veronica School District v. Acton</em> — upholds school district’s policy requiring students participating in interscholastic sports to consent to random drug testing</td>
<td>X</td>
<td>X</td>
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<tr>
<td>29. 2001: September 11 — Questions around security and privacy got even more complicated when terrorists attacked the World Trade Center and the Pentagon. Now there was a special urgency.</td>
<td>X</td>
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<tr>
<td>30. 2001: <em>Kyllo v. United States</em> — when the police “use a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion,” the homeowner retains his expectation of privacy and a warrant is needed for such a search.</td>
<td>X</td>
<td>X</td>
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<tr>
<td>31. 2001: U.S.A Patriot Act — passed by Congress: greatly expands government’s authority to monitor suspected terrorists’ communications and obtain online records</td>
<td>X</td>
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<tr>
<td>32. 2002: <em>Board of Education v. Earls</em> — upholds school district’s policy of random drug tests for students in non-athletic activities</td>
<td>X</td>
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<tr>
<td>33. 2009: <em>Arizona v. Gant</em> — prevents police officers from searching the vehicle of a person who has been arrested except in two situations. Those circumstances are: If the person has access to the car and can reach a weapon or tamper with evidence or if the officer believes the car holds evidence related to the arrest.</td>
<td>X</td>
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<tr>
<td>34. 2009: <em>Herring v. United States</em> — good faith exception</td>
<td>X</td>
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</tbody>
</table>

**Extra Entries to Add:**

- *Kentucky v. King* (2011) - Warrantless Searches OK’d by Supreme Court

(Refer to the section on Extension Activities in this lesson for more information on these cases.)
# Rubric for a Contextual Timeline

<table>
<thead>
<tr>
<th>Criteria</th>
<th>4 points</th>
<th>3 points</th>
<th>2 points</th>
<th>1 point</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Basic Requirements</strong></td>
<td></td>
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</tr>
<tr>
<td>Preparation</td>
<td>Extensive notes on every entry; well organized; formal citations</td>
<td>Simple notes on all required entries; sources are informally cited</td>
<td>Notes for most entries; some information is sketchy or missing</td>
<td>Few notes; little information gathered; missing or incomplete citations</td>
</tr>
<tr>
<td>Historical Periods</td>
<td>All 8 historical periods clearly indicated; additional events marked for 5 periods</td>
<td>All 8 historical periods accurately indicated; 1 historical event related per period</td>
<td>All 8 historical periods represented; 1 or 2 periods missing an event</td>
<td>Fewer than 8 historical periods represented; 3 or more periods missing events</td>
</tr>
<tr>
<td>Scale</td>
<td>Scale is consistent and accurate; increments are marked; all entries appropriately sequenced for scale</td>
<td>Scale is accurate; increments marked; entries placed in sequence</td>
<td>Scale is roughly drawn; unequal increments; some entries out of sequence</td>
<td>No apparent scale; increments are not marked; many entries out of sequence.</td>
</tr>
<tr>
<td>Title</td>
<td>Creative and well placed title; accurately describes the topic of the timeline</td>
<td>Effective title; accurately describes the material; easy to locate</td>
<td>Simple title; easy to locate</td>
<td>Title missing or hard to locate</td>
</tr>
<tr>
<td>Dates</td>
<td>Accurate; some are mm/dd/yr specific; correctly sequenced according to scale</td>
<td>Accurate for all entries</td>
<td>Some dates are inaccurate; several entries out of order</td>
<td>Many dates are inaccurate; sequence is significantly out of order</td>
</tr>
<tr>
<td>Number of Relevant Entries</td>
<td>More than 20 entries</td>
<td>20 entries</td>
<td>10-19 entries</td>
<td>5-9 entries</td>
</tr>
<tr>
<td>Content/Facts</td>
<td>Accurate for all entries; highlights salient points; shows clear, concise relevance</td>
<td>Accurate for all entries; shows basic relevance</td>
<td>Accurate for most of the entries; many do not show relevance</td>
<td>Accurate for only a few entries; shows little relevance</td>
</tr>
<tr>
<td>Supreme Court Decisions</td>
<td>More than 12; case names accurate; in correct form; relevance accurately described</td>
<td>12 cases named; in correct format; decisions accurately described</td>
<td>Missing some cases; inaccurate case names; decisions not fully described</td>
<td>Missing many of the cases; case names inaccurate or incomplete</td>
</tr>
<tr>
<td>Design, Organization, Appearance</td>
<td>Enhances understanding; creative design; clear organization; good use of color and images</td>
<td>Supports understanding; simple, neat design; color contributes to understanding; images present are appropriate</td>
<td>Weak design and organization; ineffective use of color; images present are distracting or inappropriate</td>
<td>Shows lack of effort at design and organization; messy work; no color; missing or inappropriate images</td>
</tr>
<tr>
<td>Mechanics (spelling, grammar, punctuation)</td>
<td>Virtually no errors</td>
<td>A few minor errors</td>
<td>Quite a few errors</td>
<td>Number of errors makes it hard to read and understand</td>
</tr>
</tbody>
</table>
Introduction:
Finding the right balance between catching criminals and protecting our privacy is not an easy task. The Court even ignores its own rules sometimes to draw a line between reasonable and unreasonable. As it turns out, the line between reasonable and unreasonable is like a moving target.

“The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails.”


Scenarios and Reasoning from an Interactive Quiz
National Constitution Center
http://blog.constitutioncenter.org/how-well-do-you-know-the-4th-amendment/

1. If police are outside a house, and they can smell burning marijuana and hear the sounds of evidence being destroyed, are they allowed to enter without a warrant?

**Number One: Legal Search** If you said yes, the police can go ahead and enter the house, then you were right! This was the ruling of the Supreme Court’s May 16, 2011, case *Kentucky v. King*. But this decision was certainly a controversial one, and if you disagree with the Court, you have plenty of company. Lower courts had not ruled in favor of the police, saying that the defendants began destroying evidence only after the police knocked on the door, announcing themselves. Justice Ruth Bader Ginsburg, who had the only dissenting vote, seemed to agree. She wrote, “The Court today arms the police with a way routinely to dishonor the Fourth Amendment’s warrant requirement in drug cases. In lieu of presenting their evidence to a neutral magistrate, police officers may now knock, listen, then break the door down, nevermind that they had ample time to obtain a warrant.”

2. The police, without a warrant, find incriminating evidence after searching trash bags that have been placed on the curb for garbage collection.

**Number Two: Legal Search** This search is OK, as far as the Supreme Court is concerned. In *California v. Greenwood*, the court determined that since garbage bags that have been placed outside are “readily accessible to animals, children, scavengers, snoops, and other members of the public,” there should be no reasonable expectation of privacy when it comes to their contents.

3. A student is declared to be a delinquent after school officials, based on allegations that she was smoking in the restroom, search her possessions and discover drug paraphernalia.

**Number Three: Legal Search** In *New Jersey v. T.L.O.*, the Supreme Court determined that searches can take place in a public school without a warrant, as long as there is reasonable belief that a crime is being committed. There are some limits to this, however. In *Safford Unified School District v. Reddin*, the Court ruled that a student’s rights were violated when she was strip-searched after being accused of possessing pills.
4. After she violates her school’s cell phone policy, a student’s confiscated cell phone is searched by school officials for evidence of illegal activity.

**Number Four: Illegal Search** In *J.W. v. DeSoto County School District*, the Court found that while confiscating the cell phone was legal, the subsequent search of the phone’s contents was not.

5. A potential candidate for state office is required to take a drug test before his name is added to the ballot.

**Number Five: Illegal Search** Georgia tried this one, but the Court, in *Chandler v. Miller*, said that since there was no threat to public safety, there were no grounds to require candidates to submit to drug tests.

6. A student trying out for a spot on a high school sports team is required to take a drug test before he can join.

**Number Six: Legal Search** The rules on drug testing are a bit different when it comes to school students. The Supreme Court ruled in *Vernonia School District 47J v. Acton* that schools had the right to require a drug test from any student trying out for a sports team. Later, in *Board of Education v. Earls*, the court determined that the same standards applied to all extracurricular activities. According the Court, not only is no warrant necessary, but the schools also don’t even need a “suspicion of wrongdoing” to require the tests.

7. In order to collect evidence, the police place a wiretap in a public phone booth frequently used by an individual who is suspected of illegal gambling.

**Number Seven: Illegal Search** Even though it was a public phone booth, it was also a confined space, complete with a door, and in *Katz v. United States*, the Court determined that the defendant would have had a “reasonable expectation of privacy.” They ruled that the wiretapping constituted an unlawful search.
KEY  Mapp Quiz

Instructions: Correct answers are highlighted in red.
Circle the letter next to each right answer. There may be more than one per question.

1. If you lived in 1775, your protections under the Fourth Amendment . . .
   a. would be up to the U.S. government.
   b. would be nonexistent.
   c. would not be guaranteed.
   d. would be dependent on the good will of the British.

2. When the Constitution was ratified, it . . .
   a. did not include the Fourteenth Amendment.
   b. did not include the Bill of Rights.
   c. included the Fourth Amendment.
   d. gave the people power to control the government.

3. The founders feared . . .
   a. home invasions by soldiers.
   b. a powerful government.
   c. loss of privacy.
   d. their neighbors.

4. The Fourth Amendment protects us from searches and seizures by the police and federal officers.
   a. Always
   b. Sometimes
   c. Only if you’re innocent
   d. Under certain circumstances

5. What is missing from the Fourth Amendment?
   a. Specifics for a warrant
   b. A test for unreasonableness
   c. A way to enforce it
   d. Nothing

6. Before 1865, the Constitution held the ___________________ responsible for enforcing the Fourth Amendment.
   a. federal government
   b. state government
   c. judicial branch
   d. legislative branch

7. The purpose of a search warrant is to
   a. look for any interesting evidence of a crime.
   b. notify the judge that a search was conducted.
   c. prevent illegal searches and seizures.
   d. give police permission to invade your privacy any time.

8. A search warrant represents which amendment?
   a. First Amendment
   b. Fourth Amendment
   c. Fifth Amendment
   d. Fourteenth Amendment
9. Identify the exclusionary rule as it is used today.
   a. The exclusionary rule prevents the government from using most evidence gathered in violation of the Fourth Amendment protection against unreasonable search and seizure in a federal criminal trial.
   b. The exclusionary rule prevents the government from using most evidence gathered in violation of the Fourth Amendment protection against unreasonable search and seizure in a state or federal criminal trial.
   c. The exclusionary rule prevents the government from using all evidence gathered in violation of the Fourth Amendment protection against unreasonable search and seizure in a federal criminal trial.
   d. The exclusionary rule prevents the government from using most evidence gathered in violation of the Fourth Amendment protection against unreasonable search and seizure in state or federal trials.

10. The process of incorporation of rights to the states . . .
   a. makes the states accountable for enforcing all of our constitutional rights.
   b. makes the states accountable for enforcing some of our constitutional rights.
   c. allows the states to choose which rights they want to enforce.
   d. is used by the Supreme Court to apply certain rights to the states.

11. Which case incorporated the Fourth Amendment to the states?
   c. *Weeks v. United States* (1914)
   d. *Boyd v. United States* (1886)

12. Which case established the exclusionary rule?
   c. *Weeks v. United States* (1914)
   d. *Boyd v. United States* (1886)

13. Why did the Court decide not to include the exclusionary rule when it incorporated the Fourth Amendment to the states?
   a. It was not a right.
   b. It was not in the Constitution.
   c. States should have a choice to use it or not.
   d. It wasn’t useful any more.

14. Identify the statement(s) that are not true about Dollree Mapp’s case in the Supreme Court.
   a. Her lawyer presented well-organized arguments.
   b. A clear question was presented to the justices for a decision.
   c. A precedent was at risk of being overturned.
   d. The ACLU clarified the focus of the case.

15. In the *Mapp* decision, what did the Court decide about the exclusionary rule?
   a. It was a right.
   b. It was in the Constitution.
   c. It would make it easier for law enforcement to catch criminals.
   d. States should be required to follow it.

16. The exclusionary rule is controversial today because . . .
   a. it’s not a hard and fast rule.
   b. warrantless searches have been allowed by the Court.
   c. valuable evidence may be dismissed and the criminal set free.
   d. it deters law enforcement from illegal behavior.
17. Which of the following is always a violation of the Fourth Amendment?
   a. A warrantless search
   b. The warrant contains mistakes made by police
   c. Drug searches without permission by the individual
   d. None of the above

18. Which of the following is true about a civil right?
   a. It is guaranteed.
   b. It is specifically stated in the Constitution.
   c. It is supported by the Court in certain cases.
   d. The Court may come up with exceptions.

19. Which of the following is true about a remedy?
   a. It is guaranteed.
   b. It is specifically stated in the Constitution.
   c. It is supported by the Court in certain cases.
   d. The Court may come up with exceptions.

20. In a constitutional democracy, justice is achieved when . . .
   a. both sides are treated fairly under the law.
   b. your side wins.
   c. criminals never go free.
   d. the government protects your rights.
Lesson: The Power of One Decision: Brown v. Board of Education

Source Document:
National Standards for Civics and Government (1994) Center for Civic Education

- Grades 5-8
- Grades 9-12
## Grades 9-12 Content Standards Alignment
The following chart shows a more granular alignment at the standards level.

<table>
<thead>
<tr>
<th>National Standards for Civics and Government Gr. 9-12 Specific Content Standards</th>
<th>Lesson: Making Our Fourth Amendment Right Real Understandings Reinforced by the Lesson</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I.A.1. Defining civic life, politics, and government.</strong> Students should be able to explain the meaning of the terms civic life, politics, and government.</td>
<td>Interpreting laws and resolving legal disputes are the responsibilities of the judicial branch of government. Government is responsible for managing conflicts in society. Through its decisions, the Supreme Court directs behavior in a society.</td>
</tr>
<tr>
<td><strong>I.A.3. The purposes of politics and government.</strong> Students should be able to evaluate, take, and defend positions on competing ideas regarding the purposes of politics and government and their implications for the individual and society.</td>
<td>Conflicts in search and seizure cases often involve competing ideas related to promoting individual security, protecting individual rights, providing for national security, and promoting the common good. Our system of government is responsible for protecting society and protecting the right to privacy, responsibilities that are often at odds with one another.</td>
</tr>
<tr>
<td><strong>I.B.1. Limited and unlimited governments.</strong> Students should be able to explain the essential characteristics of limited and unlimited governments.</td>
<td>Federal and state government officials have limited powers and cannot act arbitrarily, such as conducting warrantless searches without a good reason.</td>
</tr>
<tr>
<td><strong>I.B.2. The rule of law.</strong> Students should be able to evaluate, take, and defend positions on the importance of the rule of law and on the sources, purposes, and functions of law.</td>
<td>Adherence to the rule of law by all parties makes it possible to resolve legal disputes peacefully through the judicial process. The rule of law restricts the actions of both private citizens and the government in order to protect rights of individuals and promote the common good.</td>
</tr>
<tr>
<td><strong>I.C.1. Concepts of “constitution.”</strong> Students should be able to explain different uses of the term “constitution” and to distinguish between governments with a constitution and a constitutional government.</td>
<td>The U.S. Constitution is the highest law in the land and has been amended over time to protect basic rights.</td>
</tr>
<tr>
<td><strong>I.C.2. Purposes and uses of constitutions.</strong> Students should be able to explain the various purposes served by constitutions.</td>
<td>The U.S. Constitution defines the relationship of the federal government to the people and places limits on its power in order to protect individual rights and promote the common good. It also gives certain powers and responsibilities to the states.</td>
</tr>
<tr>
<td><strong>II.A.1. The American idea of constitutional government.</strong> Students should be able to explain the central ideas of American constitutional government and their history.</td>
<td>The Bill of Rights was added to the Constitution to hold the federal government responsible for protecting certain rights. A government of limited powers is a central idea of American constitutional government.</td>
</tr>
<tr>
<td>National Standards for Civics and Government Gr. 9-12</td>
<td>Lesson: Making Our Fourth Amendment Right Real</td>
</tr>
<tr>
<td>------------------------------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td><strong>Specific Content Standards</strong></td>
<td><strong>Understandings Reinforced by the Lesson</strong></td>
</tr>
<tr>
<td><strong>II.A.2. How American constitutional government has shaped the character of American society.</strong> Students should be able to explain the extent to which Americans have internalized the values and principles of the Constitution and attempted to make its ideals realities.</td>
<td>The incorporation of the Fourth Amendment to the states through the Fourteenth Amendment helped make our Fourth right real and improved both law enforcement and legal procedures.</td>
</tr>
<tr>
<td><strong>II.B.3. The role of organized groups in political life.</strong> Students should be able to evaluate, take, and defend positions on the contemporary role of organized groups in American social and political life.</td>
<td>The American Civil Liberties Union (ACLU) submitted a brief to support the defense of Dollree Mapp which ultimately changed the question before the Court in <em>Mapp v. Ohio</em> to a Fourth Amendment question. It was the decision of the Court related to this question that overturned a precedent and applied the exclusionary rule to the states.</td>
</tr>
<tr>
<td><strong>II.C.1. American national identity and political culture.</strong> Students should be able to explain the importance of shared political and civic beliefs and values to the maintenance of constitutional democracy in an increasingly diverse American society.</td>
<td>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for the law, protection of individual rights, and justice under the law. The Fourth Amendment is part of the Bill of Rights and describes a right that is central to the concept of liberty—the right to be protected against unreasonable searches and seizures.</td>
</tr>
</tbody>
</table>
| **II.D.3. Fundamental values and principles.** Students should be able to evaluate, take, and defend positions on what the fundamental values and principles of American political life are and their importance to the maintenance of constitutional democracy. | Values fundamental to American civic life:
- individual rights
- liberty
- common good
- justice
Principles fundamental to American constitutional democracy:
- popular sovereignty
- rule of law
- federalism
- individual rights
- separated and shared powers |
<p>| <strong>II.D.4. Conflicts among values and principles in American political and social life.</strong> Students should be able to evaluate, take, and defend positions on issues in which fundamental values and principles may be in conflict. | Fourth Amendment conflicts are inevitable in a changing society. A timeline of events and decisions identifies and traces some of the issues involved in applying the Fourth Amendment and the exclusionary rule. |
| <strong>III.A.1. Distributing governmental power and preventing its abuse.</strong> Students should be able to explain how the United States Constitution grants and distributes power to national and state government and how it seeks to prevent the abuse of power. | The Constitution defines the power and limits of the federal government. It also gives powers to the states. Over time Supreme Court interpretations of the Fourteenth Amendment have applied certain rights to the states as well. |
| <strong>III.A.2. The American federal system.</strong> Students should be able to evaluate, take, and defend positions on issues regarding the distribution of powers and responsibilities within the federal system. | Our system of government makes it possible for citizens to hold their governments accountable for protecting individual rights. Dollree Mapp knew her rights and sought justice through the court system. |
| <strong>III.B.1. The institutions of the national government.</strong> Students should be able to evaluate, take, and defend positions on issues regarding the purposes, organization, and functions of the institutions of the national government. | The Supreme Court is part of the judicial branch of the federal government. |</p>
<table>
<thead>
<tr>
<th><strong>National Standards for Civics and Government Gr. 9-12</strong></th>
<th><strong>Lesson: Making Our Fourth Amendment Right Real</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>III.C.1. The constitutional status of state and local governments.</strong> Students should be able to evaluate, take, and defend positions on issues regarding the proper relationship between the national government and the state and local governments.</td>
<td>The U.S Constitution places limits on the behavior of state governments through restrictions imposed by the Fourteenth Amendment and the Fourth Amendment through the process of incorporation which enabled the exclusionary rule to be applied to the states.</td>
</tr>
<tr>
<td><strong>III.D.1. The place of law in American society.</strong> Students should be able to evaluate, take, and defend positions on the role and importance of law in the American political system.</td>
<td>Courts make decisions based on the rule of law in order to protect the rights of citizens and promote the common good. The rule of law places establishes boundaries of acceptable behavior and places limits on those in law enforcement and the people. When both the government and the people respect the rule of law, a system of ordered liberty is possible that protects the basic rights of citizens. An individual’s rights are protected by the trial and appellate levels of the judicial process and the implementation of legal rules of evidence such as the exclusionary rule. Generally illegal searches and seizures are warrantless searches in criminal cases.</td>
</tr>
<tr>
<td><strong>III.D.1. Judicial protection of the rights of individuals.</strong> Students should be able to evaluate, take, and defend positions on current issues regarding the judicial protection of individual rights.</td>
<td>The Constitution ensures judicial fairness and protection of individual rights. Supreme Court decisions related to the Fourth Amendment help define how those protections are enforced in society.</td>
</tr>
</tbody>
</table>
| **V.B.1. Personal rights.** Students should be able to evaluate, take, and defend positions on issues regarding personal rights. | In our system of government, there is a constant struggle between protecting our Fourth Amendment right to privacy and protecting society. A vigilant and informed citizenry that participates in the judicial system is needed to protect and secure our rights. Personal rights include:  
- privacy  
- right to due process of law and equal protection of the law |
| **V.B.5. Scope and limits of rights.** Students should be able to evaluate, take, and defend positions on issues regarding the proper scope and limits of rights. | The scope and limit of rights is very much involved in deciding search and seizure cases. Which way the scales of justice will tip in any given case is up to interpretation. Exceptions to the exclusionary rule do place limits on our Fourth Amendment right. These exceptions are often guided by some of the following considerations:  
- clear and present danger  
- national security  
- public safety  
- good faith actions  
- compelling government interest |
| **V.C.1. Personal responsibilities.** Students should be able to evaluate, take, and defend positions on issues regarding the personal responsibilities of citizens in American constitutional democracy. | Personal responsibilities of citizens include:  
- taking care of one's self  
- behaving in a civil manner  
- accepting responsibility for the consequences of one's actions |
<table>
<thead>
<tr>
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<th>Lesson: Making Our Fourth Amendment Right Real</th>
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</thead>
<tbody>
<tr>
<td><strong>Specific Content Standards</strong></td>
<td><strong>Understandings Reinforced by the Lesson</strong></td>
</tr>
</tbody>
</table>
| V.C.2. Civic responsibilities. Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society. | Civic responsibilities associated with being an American citizen:  
  - obeying the law  
  - being informed  
  - monitoring the way government behaves  
  - taking appropriate actions when wronged by the government  
  There is a direct connection between the way people behave in a society, the laws that are made, and the way the Constitution is interpreted and applied. Civic participation is required to determine the right balance of justice that the people want and expect at any given time. |
| V.D.4. Dispositions that facilitate thoughtful and effective participation in public affairs. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that facilitate thoughtful and effective participation in public affairs. | Traits that facilitate thoughtful and effective participation in public affairs include  
  - respect for the rights of other individuals  
  - respect for law  
  - courage  
  - tolerance of ambiguity  
  - civility  
  - honesty  
  - open mindedness  
  - critical mindedness |
| V.E.1. The relationship between politics and the attainment of individual and public goals. Students should be able to evaluate, take and defend positions on the relationship between politics and the attainment of individual and public goals. | Participation in the judicial process is not only a way to resolve current disputes, but a way to affect our way of life in the future by bringing justice to the people by way of the Constitution. |
| V.E.3. Forms of political participation. Students should be able to evaluate, take, and defend positions about the means that citizens should use to monitor and influence the formation and implementation of public policy. | Those who are knowledgeable citizens and seek to “fight” for their own rights through the courts, ultimately end up protecting the rights of others. |
| V.E.5. Knowledge and participation. Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy. | A constitutional democracy requires the participation of an attentive and knowledgeable citizenry. |
Grades 5-8 Content Standards Alignment
The following chart shows a more granular alignment at the standards level.

<table>
<thead>
<tr>
<th>National Standards for Civics and Government Gr. 5-8</th>
<th>Lesson: Making Our Fourth Amendment Right Real Understandings Reinforced by the Lesson</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.A.1. Defining civic life, politics, and government. Students should be able to explain the meaning of the terms civic life, politics, and government.</td>
<td>The government includes those responsible for enforcing the laws and managing disputes about the law</td>
</tr>
<tr>
<td>I.A.2. Necessity and purposes of government. Students should be able to evaluate, take, and defend positions on why government is necessary and the purposes government should serve.</td>
<td>The Supreme Court is part of the federal government, are responsible for interpreting the Constitution, evaluating the constitutionality of laws, and the peaceful resolution of legal disputes. The purpose of government is to protect individual rights and promote the common good—two competing purposes.</td>
</tr>
<tr>
<td>I.B.1. Limited and unlimited governments. Students should be able to describe the essential characteristics of limited and unlimited governments.</td>
<td>Federal and state government officials have limited powers and cannot act arbitrarily, such as conducting warrantless searches without a good reason.</td>
</tr>
<tr>
<td>I.B.2. The rule of law. Students should be able to explain the importance of the rule of law for the protection of individual rights and the common good.</td>
<td>Adherence to the rule of law by all parties makes it possible to resolve legal disputes peacefully through the judicial process. Court decisions help ensure that the law is interpreted consistently and applied fairly for the protection of individual rights and the common good. The rule of law restricts the actions of both private citizens and the government in order to protect rights of individuals and promote the common good.</td>
</tr>
<tr>
<td>I.C.1. Concepts of “constitution.” Students should be able to explain alternative uses of the term constitution” and to distinguish between governments with a constitution and a constitutional government.</td>
<td>The U.S. Constitution is the highest law in the land and has been amended over time to protect basic rights. A government with a constitution must have a way to enforce its limitations.</td>
</tr>
<tr>
<td>I.C.2. Purposes and uses of constitutions. Students should be able to explain the various purposes constitutions serve.</td>
<td>The U.S. Constitution defines the relationship of the federal government to the people and places limits on its power in order to protect individual rights and promote the common good. It also gives certain powers and responsibilities to the states. It is the Constitution that defines the judicial branch of government and gives it the power to interpret the laws and resolve disputes. As the supreme law of the land, the U.S. Constitution protects individual rights and promotes the common good.</td>
</tr>
<tr>
<td>I.C.3. Conditions under which constitutional government flourishes. Students should be able to explain those conditions that are essential for the flourishing of constitutional government.</td>
<td>Under the Constitution there are expectations placed on the people and those serving in the government. Citizens need to understand their rights and insist that government officials respect constitutional limitations on their authority. Law enforcement officials must also respect constitutional limitations placed on their authority.</td>
</tr>
<tr>
<td>National Standards for Civics and Government Gr. 5-8</td>
<td>Lesson: Making Our Fourth Amendment Right Real</td>
</tr>
<tr>
<td>---------------------------------------------------</td>
<td>------------------------------------------------</td>
</tr>
<tr>
<td><strong>II.A.1. The American idea of constitutional government.</strong> Students should be able to explain the essential ideas of American constitutional government.</td>
<td>The People are the ultimate source of the power in American constitutional government. The Bill of Rights was added to the Constitution to hold the federal government responsible for protecting certain rights. The Fourth Amendment gives us protections against unreasonable searches and seizures and the exclusionary rule helped define it in ways that make it enforceable. Cases involving warrantless searches, however, may qualify as exceptions to the rule.</td>
</tr>
<tr>
<td><strong>II.B.1. 1. Distinctive characteristics of American society.</strong> Students should be able to identify and explain the importance of historical experience and geographic, social, and economic factors that have helped to shape American society.</td>
<td>The tyranny experienced by the colonists led directly to our Fourth Amendment protections against unreasonable search and seizure and warrantless searches.</td>
</tr>
<tr>
<td><strong>II.C.1. American identity.</strong> Students should be able to explain the importance of shared political values and principles to American society.</td>
<td>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for the law, protection of individual rights, and justice under the law. The Fourth Amendment is part of the Bill of Rights and describes a right that is central to the concept of liberty—the right to be protected against unreasonable searches and seizures.</td>
</tr>
<tr>
<td><strong>II.D.1. Fundamental values and principles.</strong> Students should be able to explain the meaning and importance of the fundamental values and principles of American constitutional democracy.</td>
<td>Values fundamental to American civic life: • individual rights • liberty • common good • justice Principles fundamental to American constitutional democracy: • popular sovereignty • rule of law • federalism • individual rights separated and shared powers</td>
</tr>
<tr>
<td><strong>II.D. 2. Conflicts among values and principles in American political and social life.</strong> Students should be able to evaluate, take, and defend positions on issues in which fundamental values and principles are in conflict.</td>
<td>Fourth Amendment conflicts are inevitable in a changing society. A timeline of events and decisions identifies and traces some of the issues involved in applying the Fourth Amendment and the exclusionary rule.</td>
</tr>
<tr>
<td><strong>III.A.1. Distributing, sharing, and limiting powers of the national government.</strong> Students should be able to explain how the powers of the national government are distributed, shared, and limited.</td>
<td>The Supreme Court has the power to overrule decisions made by lower courts.</td>
</tr>
<tr>
<td><strong>III.A.4. Sharing of powers between the national and state governments.</strong> Students should be able to explain how and why powers are distributed and shared between national and state governments in the federal system.</td>
<td>Most crime is handled by local police and state courts. Through the process of incorporation, the Fourth Amendment has also been applied to the states so the responsibility for protecting this right is shared.</td>
</tr>
<tr>
<td>National Standards for Civics and Government Gr. 5-8</td>
<td>Lesson: Making Our Fourth Amendment Right Real</td>
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<td>---------------------------------------------------</td>
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</tr>
<tr>
<td><strong>III.C.2. Organization and responsibilities of state and local governments.</strong> Students should be able to describe the organization and major responsibilities of state and local governments.</td>
<td><strong>Understandings Reinforced by the Lesson</strong></td>
</tr>
<tr>
<td>State governments are responsible for law enforcement within the state.</td>
<td></td>
</tr>
<tr>
<td><strong>III.E.1. The place of law in American society.</strong> Students should be able to explain the importance of law in the American constitutional system.</td>
<td>The courts make decisions based on the rule of law. These decisions are made to protect individual rights and promote the common good.</td>
</tr>
<tr>
<td>The rule of law places establishes boundaries of acceptable behavior and places limits on those in law enforcement and the people.</td>
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</tr>
<tr>
<td>When both the government and the people respect the rule of law, a system of ordered liberty is possible that protects the basic rights of citizens.</td>
<td></td>
</tr>
<tr>
<td>The exclusionary rule is a legal rule developed by the Supreme Court to help enforce the Fourth Amendment.</td>
<td></td>
</tr>
<tr>
<td><strong>III.E.2. Criteria for evaluating rules and laws.</strong> Students should be able to explain and apply criteria useful in evaluating rules and laws.</td>
<td>The exclusionary rule helps states enforce the Fourth Amendment, but there are also many exceptions, which some say weakens the rule.</td>
</tr>
<tr>
<td><strong>III.E.3. Judicial protection of the rights of individuals.</strong> Students should be able to evaluate, take, and defend positions on current issues regarding judicial protection of individual rights.</td>
<td>The Constitution ensures judicial fairness and protection of individual rights. Supreme Court decisions related to the Fourth Amendment help define how those protections are enforced in society.</td>
</tr>
<tr>
<td><strong>V.B.1. Personal rights.</strong> Students should be able to evaluate, take, and defend positions on issues involving personal rights.</td>
<td>In our system of government, there is a constant struggle between protecting our Fourth Amendment right to privacy and protecting society. A vigilant and informed citizenry that participates in the judicial system is needed to protect and secure our rights.</td>
</tr>
<tr>
<td>Personal rights include:</td>
<td></td>
</tr>
<tr>
<td>• privacy</td>
<td></td>
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<tr>
<td>• right to due process of law and equal protection of the law</td>
<td></td>
</tr>
<tr>
<td><strong>V.B.4. Scope and limits of rights.</strong> Students should be able to evaluate, take, and defend positions on issues regarding the proper scope and limits of rights.</td>
<td>The scope and limit of rights is very much involved in deciding search and seizure cases. Which way the scales of justice will tip in any given case is up to interpretation. Exceptions to the exclusionary rule do place limits on our Fourth Amendment right. These exceptions are often guided by some of the following considerations:</td>
</tr>
<tr>
<td>• clear and present danger</td>
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<tr>
<td>• national security</td>
<td></td>
</tr>
<tr>
<td>• public safety</td>
<td></td>
</tr>
<tr>
<td>• good faith actions</td>
<td></td>
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<td>• compelling government interest</td>
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<td><strong>V.C.1. Personal responsibilities.</strong> Students should be able to evaluate, take, and defend positions on the importance of personal responsibilities to the individual and to society.</td>
<td>Personal responsibilities of citizens include:</td>
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<td>• taking care of one’s self</td>
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<td>• behaving in a civil manner</td>
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<td>• accepting responsibility for the consequences of one’s actions</td>
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<tr>
<td>National Standards for Civics and Government Gr. 5-8</td>
<td>Lesson: Making Our Fourth Amendment Right Real</td>
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<td><strong>Specific Content Standards</strong></td>
<td><strong>Understanding Reinforced by the Lesson</strong></td>
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| **V.C.2. Civic responsibilities.** Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society. | Civic responsibilities associated with being an American citizen:  
• obeying the law  
• being informed  
• monitoring the way government behaves  
• taking appropriate actions when wronged by the government  
There is a direct connection between the way people behave in a society, the laws that are made, and the way the Constitution is interpreted and applied. Civic participation is required to determine the right balance of justice that the people want and expect at any given time. |
| **V.D.1. Dispositions that enhance citizen effectiveness and promote the healthy functioning of American constitutional democracy.** Students should be able to evaluate, take, and defend positions on the importance of certain dispositions or traits of character to themselves and American constitutional democracy. | Traits that enhance citizen effectiveness and support a well functioning constitutional democracy:  
• respect for the rights of other individuals  
• respect for law  
• courage  
• civility  
• honesty  
• open mindedness  
• critical mindedness  
• persistence  
• negotiation and compromise |
| **V.E.3. Forms of political participation.** Students should be able to describe the means by which Americans can monitor and influence politics and government. | Those who are knowledgeable citizens and seek to “fight” for their own rights through the courts, ultimately end up protecting the rights of others. |
| **V.E.5. Knowledge and participation.** Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy. | A constitutional democracy requires the participation of an attentive and knowledgeable citizenry. |
• Annotated Video Transcript: The Constitution Project: Search and Seizure—*Mapp v. Ohio*

• Chapter 15: The Right to Protection Against Illegal Search and Seizure from *Our Rights* by David J. Bodenhamer

• Third & Fourth Amendments from *Our Constitution* by Donald A. Ritchie & JusticeLearning.org

• Constitutionalism; Federalism; Government, Constitutional and Limited; Justice, Rights, Rule of Law from *Understanding Democracy, a Hip Pocket Guide* by John J. Patrick
1. Intro and Constitutional Context

**NARRATOR:** This film is a project of the Leonore Annenberg Institute for Civics of the Annenberg Public Policy Center of the University of Pennsylvania in partnership with the Annenberg Foundation Trust at Sunnylands. Citizenship is every person’s highest calling.

**The Constitution Project: SEARCH and SEIZURE**

**MAPP v. OHIO**

**NARRATOR:** The case of *Mapp v. Ohio* might seem like it was made for TV. Look at this. It’s got a bomb, gambling, a world famous boxing promoter, a determined heroine, and a cop who breaks the rules when they get in his way. But to people that study the Constitution, what makes *Mapp v. Ohio* really exciting is the Fourth Amendment.

**PROF. RICHARD LABUNSKI:** The Fourth Amendment is vital.

**PROF. CAROLYN LONG:** The Fourth Amendment requires that we be free from unreasonable searches and seizures.
NARRATOR: The Fourth Amendment gives us a right to privacy, preventing government from searching or taking us, our homes, papers, or property without a good reason. It says so right here. The government has to show probable cause, that is, a good reason to suspect that you have done something wrong. And in many cases it has to issue a warrant...to put its reasons and what it’s looking for down in writing.

VINCENT WARREN: That protects you from the police or the government generally invading your privacy.

PROF. RICHARD LABUNSKI: It really is an essential right of the people.

Time: 1:30 – 4:40

2. Background Story for Mapp v. Ohio

NARRATOR: But, there’s a problem. The Constitution doesn’t exactly say how to make sure this right is enforced. Back in 1957, Dolly Mapp thought she knew.

DOLLREE “DOLLY” MAPP: I had to stand up for my rights.

NARRATOR: She did. And when police rang Dolly Mapp’s doorbell, they had no idea they were about to open the door to a new era in American civil liberties. But they did have a pretty good idea they were going to get a fight from Dolly Mapp.

DOLLREE “DOLLY” MAPP: I could not just ignore this. My freedom was at stake.

NARRATOR: Before dawn on May 20th, 1957, a small bomb went off at this house in Cleveland, Ohio. The owner of the house, Donald King, wasn’t hurt, but he was pretty scared and he called the police to investigate.

PROF. CAROLYN LONG: Don King was well known to law enforcement. He was suspected of running an illegal gambling business, known as the numbers game.

NARRATOR: The numbers game was essentially a lottery, long before lotteries were run by states. In 1957 this kind of gambling was highly illegal. Sometimes that led to violence between the people called clearinghouse operators.

PROF. CAROLYN LONG: The clearinghouse operator is the one who sort of oversees the whole operation.

NARRATOR: And Donald King, who later became world famous as Don King, promoter of Mohammad Ali and other boxing champions...not to mention that hair. Young Donald King had a record and a number of encounters with police over the numbers game. So when his house was bombed, he called the division of the police department he knew personally.

PROF. CAROLYN LONG: He called the Bureau of Special Investigations.
NARRATOR: This division was in charge of cracking down on the numbers game, and it was headed by Detective Carl Delau. Carl Delau was not just an 11-year veteran of the Cleveland Police Department, but a World War II vet as well. A hard-nose cop, he didn’t like people he thought were connected to the numbers game, and he figured King’s house was bombed by one of them.

SUSAN HERMAN: When the police were investigating it, there were a number of other racketeers who they suspected of involvement in this bombing.

NARRATOR: Three days after the bombing, Delau got a tip that a possible suspect might be hiding in a house on Milverton Road. He knew who lived there... Dollree Mapp.

PROF. CAROLYN LONG: He had suspected that she was involved in gaming for some time.

NARRATOR: Dollree Mapp

DOLLREE “DOLLY” MAPP: Most my friends call me Dolly. Very few called me Dollree.

NARRATOR: OK, Dolly Mapp was known around town. Tough, outgoing, and driven, she was married to local boxing star, Jimmy Bivens. Later she was engaged to World Light Heavyweight Champion Archie Moore. She owned this house in Shaker Heights, one of Cleveland’s nicest neighborhoods, living upstairs and renting out the basement. She was a fighter then, and she’s a fighter now.

PROF. CAROLYN LONG: She’s a very determined person. She doesn’t suffer fools. She’s very forthright. In many respects, she’s a woman ahead of her time.

DOLLREE “DOLLY” MAPP: I take care of myself. I’m not going to sit down and let you know what you run over me.

NARRATOR: Sgt. Delau knew this wasn’t going to be easy. He told the two officers with him...

PROF. CAROLYN LONG: I know Dollree, and she’s not going to let us in this house.

CRAIG UCHIDA: But they believed that the suspect was there.

PROF. KERMIT ROOSEVELT: When they showed up at the house, they just said that we’d like to come inside and talk to you.

SUSAN HERMAN: And Ms. Mapp said to them, “Do you have a search warrant?”

Time: 4:40 – 8:11

3. Writs & Warrants

NARRATOR: Most of us have learned about search warrants from TV or the movies. But a warrant actually comes from the Fourth Amendment.

CRAIG UCHIDA: A search warrant must be very specific about what is to be searched, where is it going to be searched, and who is going to be searched. And it must be signed by a judge who is neutral who
can read the document and determine that probable cause actually exists for going into this person’s house, or car, or place of business.

SUSAN HERMAN: The whole idea of a search warrant is to get a second opinion from a neutral and detached magistrate about whether the police really have enough cause to search your home for whatever they are looking for.

CRAIG UCHIDA: And so that piece of paper, you know, really does represent the Fourth Amendment.

NARRATOR: To the framers, liberty was not a vague notion or something to be fought for far away from home, it was just the opposite. Liberty was urgent. It was deeply personal. The framers understood the importance of liberty exactly because they had experienced tyranny inside their own homes.

RICHARD THORNBURGH: The Fourth Amendment was a response to a specific grievance.

CRAIG UCHIDA: The British had what was called the writs of assistance. And the writs of assistance gave British troops the right to just search anybody’s house and look for contraband, look for all kinds of different things.

PROF. CAROLYN LONG: And so it was very much a blank check for people to engage in searches. And people were quite alarmed at this.

SUSAN HERMAN: So the whole idea of the illegal searches and seizures was something that was tremendously important to the framers. I’ve always had my own suspicion that part of it was because probably a lot of them had seditious literature in their basements, they were revolutionaries.

NARRATOR: OK, now, you probably heard of this. The Boston Tea Party was an early symbol of resistance to British rule. But 12 years before that in 1761, Attorney James Otis fought the British empire over writs of assistance in a Boston courtroom.

JAMES OTIS (Actor): A man’s house is his castle.

SUSAN HERMAN: He was arguing about the importance of privacy, about why it was just offensive to people and to democracy itself to allow the government to have that much power that they could just search and seize at will.

JAMES OTIS (Actor): These writs of assistance, if declared legal, would totally annihilate this sacred human right.

NARRATOR: But for us, future President John Adams heard the real Otis, and not this actor.

JAMES OTIS (Actor): A man’s right to his home is derived from nature.

NARRATOR: After hearing Otis make his final argument, Adams said

SUSAN HERMAN: Then and there the child Liberty was born.
NARRATOR: That’s how central the idea of restricting searches and seizures is to American democracy.

PROF. GEOFFREY STONE: The idea of somebody knocking on the door or breaking down the door at 2 in the morning to toss you out of bed and possibly to take you into custody without ever telling you why or showing any justification was the kind of power that needed to be reined in because in order to have a successful self-governing society individual citizens have to understand that they are in charge.

THEODORE OLSON: So the colonials put in the Fourth Amendment the right to be free from unreasonable searches and seizures; now we have come to understand that an unreasonable search and seizure is something that is done without a warrant so the judge decides whose home gets to be invaded.

Time: 8:11 – 10:58

NARRATOR: But look at this, unreasonable, warrant, probable cause...what’s missing from the Fourth Amendment is a way to make sure the police obey it. Not only that, most crime is handled by local police and state courts, and several states never enforced the use of warrants so police just stopped getting them. If they searched a house without one, that evidence would be used in a trial anyway so...

PROF. CAROLYN LONG: Police officers knowing that a warrant was not necessary would conduct warrantless searches because they knew that there were no ramifications for their actions. And so there was nothing to deter them from acting in an illegal fashion.

NARRATOR: So when Sgt. Delau rang Dolly Mapp’s doorbell, he didn’t have a warrant and she didn’t invite him in. She believed she had rights to protect her.

DOLLREE “DOLLY” MAPP: I hadn’t committed a crime, so why are you here. I called a lawyer.

PROF. KERMIT ROOSEVELT: She was a legally sophisticated person. She went back. She talked to an attorney, and the lawyer said don’t let them in if they don’t have a warrant.

SUSAN HERMAN: So the police went away. Three hours later they come back again.

PROF. CAROLYN LONG: They broke a window. And then they pried open the door in order to gain entry to the house.

DOLLREE “DOLLY” MAPP: When I looked up, they were in my house.

PROF. CAROLYN LONG: So it’s important to recognize that Dollree had not let them in the home. In fact she continued to tell them they were not welcome, but they entered the home anyway.

SUSAN HERMAN: And they say, “We have a search warrant.” And Dollree Mapp says...

DOLLREE “DOLLY” MAPP: May I see the warrant?
SUSAN HERMAN: So the police officer there pulls out a piece of paper and waves it in front of her and starts putting it back.

CRAIG UCHIDA: She grabbed the piece of paper and put it down her blouse.

NARRATOR: Turned out that paper was not a warrant. The police never got one. At this point, though, they handcuffed Dolly Mapp and searched her house. They actually found their suspect downstairs so he was there, but he was also released the next day because it turns out he had nothing to do with the bombing. They didn’t find anything else related to the bomb, but in an upstairs dresser the police found some pornography that Dolly Mapp says was owned by one of her former boarders.

SUSAN HERMAN: They found some materials that led to her being prosecuted for obscenity, possession of obscene materials. One of the things they found up on the second floor were erotic comic books.

NARRATOR: OK, take a moment, it’s ok to giggle. Even Dolly and one of the officers laughed that day.

DOLLREE “DOLLY” MAPP: I didn’t think I was in any trouble. The officer enjoyed looking at ’em himself.

NARRATOR: But the laughter ended quickly. Although they didn’t charge her with anything having to do with the bombing, Dolly was charged with possession of obscene materials for having this in her home. Even though it wasn’t hers, she was facing one to seven years in prison and a fine of up to two thousand dollars.

PROF. CAROLYN LONG: Astonishing. It’s a terrible law. The Ohio law prohibited possession of obscene materials, so it was quite a broad anti-obscenity law.

NARRATOR: At her trial here in the Cuyahoga Courthouse, Dolly and her attorney, A.L. Kearns, tried to have the evidence thrown out or excluded. They claimed the search was unconstitutional, since there was no warrant. That’s called the exclusionary rule.

PROF. KERMIT ROOSEVELT: The exclusionary rule is a rule that says if police obtain evidence in violation of your Fourth Amendment rights through an unreasonable search or seizure, that evidence can’t be introduced against you in a prosecution.

NARRATOR: The exclusionary rule in the American legal system goes back to 1914 in a case called Weeks v. United States where the court said that if a federal law enforcement officer found evidence illegally, that evidence could not be used against the defendant.

SUSAN HERMAN: This was tremendously important because it was the first time that the Supreme Court recognized that the Fourth Amendment sets out certain rules and that if the police don’t follow those rules and they obtain evidence, that that evidence should not be used.

NARRATOR: OK, so a minute ago I pointed out that missing from the Fourth Amendment was any way to enforce it. The Weeks decision was the Supreme Court’s way of trying to fix that. It said to police, if
you don’t have a warrant, you can’t use the evidence. The exclusionary rule was the Court’s way of enforcing the Fourth Amendment. But at the time of Weeks, the Fourth Amendment did not apply to the states. It’s a little confusing, but here, check this out.

The Bill of Rights gives us all these wonderful rights and freedoms, but it only applied to the federal government. See, Congress shall make no law... and in the early 20th century the Court started to apply some of these fundamental rights to the states through the Fourteenth Amendment, written and ratified after the Civil War to reign in the states. This process is called incorporation. But the Court was split about how far to go.

PROF. KERMIT ROOSEVELT: And what happened eventually was the Court said, we’re not going to say take the Bill of Rights as a whole it applies against the states, we’re going to consider each right individually and we’re going to ask is it sufficiently important that we think the states have to observe it.

NARRATOR: So 35 years after Weeks, the Supreme Court handed down a ruling on the Fourth Amendment in Wolf v. Colorado. The Wolf decision said that states have to incorporate the rights in the Fourth Amendment, but states don’t have to use the exclusionary rule to enforce those rights, because the exclusionary rule isn’t in the Constitution.

PROF. KERMIT ROOSEVELT: In the Wolf decision, the Supreme Court had said you got this right, a right to be free of unreasonable searches and seizures, but that right is quite distinct from the exclusionary rule.

PROF. AKHIL AMAR: The Supreme Court says, oh, the Fourth Amendment applies against the states, but not the exclusionary rule, because the exclusionary rule isn’t really a key part of the Fourth Amendment, that’s just something that we judges have come up with as a device for enforcing the Fourth Amendment.

NARRATOR: Justice Felix Frankfurter wrote the 6 to 3 majority opinion in Wolf, calling the exclusionary rule a judicial-made remedy that is not actually in the Constitution, so the states didn’t have to use it.

PROF. KERMIT ROOSEVELT: The Constitution itself doesn’t give you that remedy, then you’re not necessarily going to have it in state courts.

6. Mapp’s Case in the Supreme Court

DOLLREE “DOLLY” MAPP: So here’s what all this means for our case and for Dolly Mapp. Ohio didn’t recognize the exclusionary rule, instead, the state allowed evidence found illegally to be used in court. So the pornography that police discovered at Dolly’s house was introduced into her trial and a jury found Dolly guilty for breaking Ohio’s obscenity law.

PROF. CAROLYN LONG: She was sentenced to the maximum, which was seven years plus a two thousand dollar fine.

DOLLREE “DOLLY” MAPP: Seven years, for what? My case wasn’t right. It was illegal to do this to me.
DOLLREE “DOLLY” MAPP: Dolly’s lawyer appealed, but mainly on the issue that Ohio’s obscenity law violated the First Amendment protecting freedom of speech, and her case went all the way to the United States Supreme Court. That’s when the American Civil Liberties Union, or ACLU, joined in.

SUSAN HERMAN: The ACLU asked for permission to file a brief in this case in order to support the argument that Dolly Mapp’s lawyer was making that her conviction violated the First Amendment.

PROF. CAROLYN LONG: An amicus curiae brief is what we call a friend of the court brief. It’s a brief that is written by outside parties which lay out legal arguments that pertain to the case before the Court. The amicus brief written by the ACLU focused primarily on the legality of the anti-obscenity law.

NARRATOR: After arguing the First Amendment case that Dolly had a right to own any book she wanted...for 20 pages... the ACLU brief added 11 lines at the very end, almost as an afterthought. It turned back to the search of Dolly’s home without a warrant and asked the court to overturn the Wolf decision and apply the exclusionary rule to the states.

NARRATOR: On March 29th, 1961, oral arguments at the United States Supreme Court were equally complicated. Was the Mapp case a First Amendment case about free speech or was it a Fourth Amendment case about unlawful search and seizure? You can almost understand how Dolly Mapp’s attorney A.L. Kearns got a little confused. His argument confused Justice Felix Frankfurter.

PROF. CAROLYN LONG: He was rambling, and at one point, Frankfurter interrupted him to ask him what the case was about...what was the question before the Court.

JUSTICE FELIX FRANKFURTER (audio): Are you asking us to overrule the Wolf case in this Court? I noticed it isn’t even cited in your brief.

NARRATOR: Remember, Justice Frankfurter actually wrote the Wolf decision and he didn’t want to see it overturned. He strongly believed that the exclusionary rule was not a right and should be left up to the states. When pressed on the issue, Attorney Kearns just sounded lost.

JUSTICE FELIX FRANKFURTER (audio): Well, that means you’re asking us to overrule Wolf against Colorado.

ATTORNEY KEARNS (audio): No

NARRATOR: Fortunately for Dolly, the ACLU attorney, Bernard Berkman was also granted 15 minutes to address the Court, recognizing just how badly things were going. The very first thing he said was...

BERNARD BERKMAN (audio): The American Civil Liberties Union is very clear that we are asking this Court to reconsider Wolf versus Colorado and to find that evidence which is unlawfully and illegally obtained should not be permitted into a state proceedings.

Time: 17:28 – 19:33

7. Reasoning Behind the Decision in Mapp v. Ohio
NARRATOR: The ACLU made the case that the state of Ohio should not be allowed to use the evidence found in Dolly Mapp’s home against her because it was obtained illegally. The state of Ohio acknowledged that the police had no warrant, but argued that the Wolf decision should stand and the state should decide for itself whether or not it could use evidence illegally obtained without a warrant. In the end, the Court decided to overturn Wolf by a 6 to 3 margin in Mapp. The majority ruled that the search and seizure at Dolly’s house was unlawful because it was done without a warrant so the evidence should have been excluded...and that the exclusionary rule should apply to the states through the due process clause of the Fourteenth Amendment. Justice Tom Clark wrote the majority decision.

PROF. KERMIT ROOSEVELT: Justice Clark’s view was basically that Fourth Amendment rights are worthless if the exclusionary rule is not available, because if the police know they can use the evidence against you, why not go ahead and break down the door. There’s no meaningful disincentive to police.

NARRATOR: Justice Hugo Black had actually joined the majority in Wolf back in 1949 because he didn’t think the exclusionary rule was a fundamental right. This time he changed his mind.

PROF. AKHIL AMAR: By the early Sixties, Hugo Black has decided that the exclusionary rule is part of the Constitution, maybe not the Fourth Amendment alone, but the Fourth Amendment in combination with the Fifth Amendment’s self-incrimination clause.

NARRATOR: Justice Black thought that using evidence obtained illegally in court was like forcing someone to testify against yourself, which is banned by the Fifth Amendment. Taken together, a constitutional basis emerges which not only justifies but actually requires the exclusionary rule. Justice Potter Stewart ruled in Mapp’s favor, but on the First Amendment issue that Ohio’s obscenity law was too broad. And Justice John Harlan criticized the majority for using the exclusionary rule to overturn a precedent even though it can’t be found in the Constitution.

Time: 19:33 – 23:07

PROF. KERMIT ROOSEVELT: He was saying basically this is something that the justices think is a good idea; they want the states to have to do this and so they are going to make them do it even though it’s not what the Constitution says. In dissent, Justice Harlan was joined by Justice Frankfurter. This take on Mapp and the exclusionary rule pretty much frames the controversy about this case to this day. It’s complicated stuff. The police chief said the Mapp ruling led to tighter police procedure and more professionalism.

CRAIG UCHIDA: That case had very important ramifications for every police department in the United States and every police officer in the United States.

NARRATOR: Craig Uchida was the Director of Criminal Justice Research at the National Institute of Justice. He worked with police departments across the country to improve their performance.

CRAIG UCHIDA: Mapp had a huge effect on police behavior and the subsequent rulings in the 1960s as well.
NARRATOR: Starting with the *Mapp* case, the Supreme Court under Chief Justice Earl Warren began to apply criminal procedure protections found in the Bill of Rights to the states through incorporation of the Fourteenth Amendment. Some people have labeled it the Due Process Revolution. After *Mapp*, the Court under Warren ruled that everyone, in every state, should have legal counsel, and that everyone in custody should have their rights clearly explained to them to avoid self-incrimination.

POLICEMAN(audio): You have the right to remain silent. Anything you say can and will be used against you in a court of law.

DAVID BOIES: Criminal procedure is primarily designed to protect the innocent. Most of what you see...the hearsay rules, the right to trial by jury, the right to subpoena are all things that are designed to protect the innocent.

NARRATOR: But the controversy over the exclusionary rule is still going on. In the 50 years since the *Mapp* decision, the Court has chipped away at it, reducing its status again to a remedy, something less than a right.

PROF. AKHIL AMAR: Since the Warren Court, the exclusionary rule has been cut back in all sorts of ways. The Court has created a whole series of exceptions.

NARRATOR: It’s limited where the exclusionary rule is applied.

PROF. CAROLYN LONG: The Court determined that the exclusionary rule was not appropriate in grand jury hearings.

NARRATOR: And the Court has placed limitations on how the exclusionary rule is applied. For instance, if the police obtain a warrant, but the warrant has mistakes, a judge might allow the evidence because the police did their best to follow proper procedure.

PROF. AKHIL AMAR: They said for example, oh, the exclusionary rule doesn’t apply in general if the police acted in good faith.

PROF. KERMIT ROOSEVELT: The Court says even if it’s the police who make the mistake, they’re still entitled to this good faith exception.

NARRATOR: And the Court will almost certainly hear more cases because we haven’t finished debating the exclusionary rule. One side thinks it helps the guilty.

PROF. AKHIL AMAR: We’re letting a guilty person go free.

NARRATOR: The other side says it keeps the police disciplined.

SUSAN HERMAN: That’s the only way we need to ensure that they’re going to get the warrant.

NARRATOR: And we certainly haven’t finished debating the language in the Fourth Amendment. To protect these rights do we need warrants or do we simply need the police to be reasonable?
PROF. KERMIT ROOSEVELT: It says, no warrants shall issue, except upon probable cause. And people have taken that to mean the Fourth Amendment is designed to get the government to obtain a warrant.

PROF. AKHIL AMAR: Ninety-nine percent of the stuff that actually happens today and every day happened without a warrant. You’re crossing a border and your baggage is searched at the airport, you go through a metal detector, there’s no warrant.

Time: 23:07–End

9. Keeping Us Safe vs. Protecting Our Rights

NARRATOR: The framers left room for debate because they knew they didn’t have all the answers. But they also knew they wanted to ensure certain rights and created a system intended to make us safe from criminal behavior and from a government that sometimes might cut corners with our liberty.

SUSAN HERMAN: The framers said, sometimes it is not so important to us to catch criminals that we are willing to throw our privacy and our liberty to the winds.

DAVID BOIES: We have a system of government that balances the need to convict the guilty against the desire to protect the innocent, very, very heavily in favor of protecting the innocent.

NARRATOR: And in this case, our system protected Dolly Mapp.

DOLLREE “DOLLY” MAPP: I felt good. I knew there was something that I should do and I did everything that I knew how.

NARRATOR: Even without legal training, Dolly Mapp knew she had certain rights and intended to defend them.

DOLLREE “DOLLY” MAPP: And I felt that I had been treated wrong. If the search was illegal, then you got the law on your side.

NARRATOR: Her case represented a struggle for the ultimate goal of the American legal system...justice... delivered by way of the Constitution.
The Right to Protection against Illegal Search and Seizure

The Bill of Rights is a miniature code of criminal procedure. These ten amendments list seventeen rights designed to guarantee fairness to individuals accused of crimes. The Fourth Amendment contains the first of these protections: “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.” The right had its roots in English history, but the American struggle for independence gave it special significance for the new nation.

One of the colonial grievances against the British government concerned warrants (written authorization) that officials in charge of trade used to search colonists’ property for smuggled goods. These documents, called writs of assistance, gave officers broad power to conduct searches and seize property based only on their general suspicion of unlawful actions. First introduced during the reign of Henry VIII (1513–47), the British government claimed that general search warrants, which did not allege a specific crime, were necessary for effective law enforcement, especially against publications the government considered dangerous. This practice was controversial, however, and Parliament began to limit the power after it forced King James II from the throne in the Glorious Revolution of 1688. By the eve of the American Revolution, general warrants had declined dramatically as a tool to restrain the press, but they continued to be used unchecked in the enforcement of customs law. Britons did not object to broad search and seizure powers in this area because the writs were used infrequently in the search for smuggled goods in England. The American experience was dramatically different.

Opposition to general warrants came to a head in Boston, one of the busiest ports in the colonies and center of the smuggling trade. In Massachusetts, as elsewhere, customs officials could enter and search buildings simply on the authority of their royal appointments. In 1761, Boston merchants hired lawyer James Otis to challenge the legality of these writs. His presentation in court electrified the colonists because he asserted the supremacy of fundamental law, such as individual rights, over legislative power. A man’s home and property, he argued, were sacred; his privacy could not be invaded on the whim of government officials. Here, Otis anticipated Sir William Pitt, a prominent member of Parliament who gave eloquent voice to this right two years later. “The poorest man may in his cottage bid defiance to all the force of the Crown,” Pitt thundered. “It may be frail—its roof may shake—the wind may blow through it—the
"The 'unreasonable searches and seizures' condemned in the fourth amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the fifth amendment; and compelling a man 'in a criminal case to be a witness against himself,' which is condemned in the fifth amendment, throws light on the question as to what is an 'unreasonable search and seizure.'"

—Justice Joseph P. Bradley, Boyd v. United States (1886)
opinion declared. “It is the duty of the courts to be watchful for the constitutional rights of the citizen, and guard against any stealthy encroachments thereon.” The case was significant because it gave life to the Fourth Amendment and kept it, as Justice William Brennan said almost a century later, from becoming “a dead letter in the federal courts.”

The Court’s impassioned defense of individual rights overshadowed its failure to address the question of how to enforce the right. Under previous practice, even illegally seized evidence could be admitted as proof of a crime. The solution was obvious: exclude such evidence from trial. The Court took this step three decades later in 1914 in the case of Weeks v. United States. Weeks had been convicted of using the mails to transport lottery tickets, but the evidence against him came from a warrantless search. He argued that this illegally obtained evidence should be excluded from trial, and the Supreme Court agreed. The decision announced what came to be known as the exclusionary rule: federal courts must exclude, or not use, evidence obtained through unconstitutional searches. The rule applied only to U.S. courts, and even then there was one exception. If state or local police turned over illegally obtained evidence to federal prosecutors, the evidence could be used in federal courts. The practice, appropriately called the “silver platter” exception because evidence figuratively came to investigators the way servants once delivered invitations to a ball, too often was a routine method of investigation for federal officials. It continued even after the Court decided in 1948 that the ban on illegal searches, but not the exclusionary rule, applied to states under the Fourteenth Amendment. Two-thirds of the states chose to continue the practice of allowing improperly seized evidence at trial.

The Fourth Amendment, it appeared, gave Americans a right but not a complete remedy. Finally in 1960, the justices abandoned the silver platter doctrine. More significantly, the next year they abruptly applied the exclusionary rule to state as well as federal courts. The case began with a future national celebrity, a woman who possessed obscene materials, and an impatient police force. It would end with angry protests that the Supreme Court was willing to let criminals go free simply because law officers had made a mistake.

On May 20, 1957, Don King was not yet the boxing promoter and celebrity he would become; he ran an illegal lottery in Cleveland, Ohio—and his house had just been bombed. His call to a local policeman set in motion a case that would affect every station house in America.

Three days later, an anonymous tip led plainclothes police to the home of Dollree Mapp, who rented out rooms in her house to boarders from the fight game and illegal betting or numbers racket. When she appeared after several hours, the detectives asked for permission to search her house. She called her lawyer, who advised her not to let the cops in without a search warrant. Soon the plainclothesmen were back, this time accompanied by uniformed officers. They claimed to have a warrant, and when Mapp denied them entry, they broke open the door, waving a piece of paper that she grabbed and stuffed down her sweater. A struggle followed, during which police recovered the paper and handcuffed Mapp. By this time her lawyer had arrived, but they prevented him from entering the house.

After dragging her upstairs, officers began to search the entire house. In the basement, they opened a trunk containing pictures of nude males and females, “lewd” books, and betting materials. They arrested her for violating Ohio’s obscenity law, despite her protests that the materials belonged to a former tenant. Convicted of possessing the betting equipment and pornographic books, Mapp re-

“That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.”

—Virginia Declaration of Rights (1776)
ceived a one-to-seven year sentence in the Ohio State Reformatory for Women.

She appealed, arguing that the police violated her Fourth Amendment rights by seizing items not listed specifically in the search warrant. The prosecution, in fact, could not produce a warrant—it had been lost, the state said—but argued that, even if the search was improper, Ohio law still allowed illegally seized evidence to be admitted at trial. On this point, the state was correct. The U.S. Supreme Court had ruled that a police search without a specifically worded warrant was illegal. Rather than impose the exclusionary rule, however, the Court had allowed individual states to correct the wrong done by an illegal search in whatever manner they chose. Ohio decided to accept improperly seized evidence at trial but to punish the offending police officer as a trespasser.

In 1961, the Supreme Court reversed Mapp’s conviction by a vote of 6 to 3. Writing for the majority, Justice Tom Clark noted that the law excluded illegally seized evidence in federal courts but not in state courts. The result, he concluded, defied logic: “The state, by admitting evidence unlawfully seized, serves to encourage disobedience of the Federal Constitution which it is bound to uphold.” Applying the exclusionary rule to both state and federal courts “is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense.” Clark acknowledged that criminals could go free “because the constable blundered,” in the words of an earlier justice, Benjamin Cardozo, but “it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.”

Dollree Mapp won her case, but her troubles did not end. She moved to New York City, where she dabbled unsuccessfully in several businesses before being convicted in 1971—after a proper search—on charges of receiving stolen property. Sentenced to twenty years in prison, she was pardoned after serving nine years. Later she recalled her role in the case that changed police practices: “I know right from wrong, and I knew I was right in this case. You have to be man enough or woman enough to stand and fight if it’s something worth fighting for. And Mapp v. Ohio was worth fighting for.”

The decision in Mapp infuriated police and prosecutors because it had important practical consequences: any evidence seized in violation of the Constitution would no longer be admissible at any criminal trial, federal or state. The exclusionary rule would handcuff them in fighting crime, they claimed, and it would let criminals go free. These concerns certainly were legitimate, but as it turned out, they were largely unfounded. Numerous studies have demonstrated that few criminals go unpunished because of the rule. Instead, law enforcement officers became more careful and more professional in their work. “Cops learned to obtain warrants, secure evidence, and prepare cases,” the police chief of Minneapolis reported later. “Arrests that had been clouded by sloppiness, illegality, and recklessness were now much tidier.” The result was better law enforcement.

The Supreme Court also recognized instances when circumstances made it impractical or unnecessary to obtain a warrant. In a series of cases since Mapp v. Ohio, the justices allowed exceptions to the exclusionary rule. For example, if prosecutors prove that the discovery of otherwise illegal evidence was inevitable, then courts can admit it at trial. This situation might arise if law officers discovered a murder victim after they obtained evidence illegally. They could claim an exception to the exclusionary rule if they could prove that they would have searched the area anyway and thereby discovered the body. The justices also
“We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical ‘intrusion into a constitutionally protected area,’ . . . constitutes a search—at least where (as here) the technology in question is not in general public use. This assures preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.”

—Justice Antonin Scalia, Kyllo v. United States (2001)

recognized a “good faith” exception if an unintentional mistake occurs, as when, for example, an officer obtains a warrant but the warrant contains an error in its description.

Other circumstances may not require a warrant at all. Police do not need court permission to search whenever an individual consents voluntarily or when the officer is acting legally and spots something in plain view. They may also search an area under the defendant’s immediate control, as well as conduct searches to protect themselves, when making an arrest. With these exceptions, the Court has tried to fit its guidelines to the real-life situations police encounter. It has sought to balance the rights of individuals with the need for order. The central questions are always the same: when does privacy give way to a more important public purpose, and for what reasons?

Cases about search and seizure are, in fact, cases about privacy and security. The great object of the Fourth Amendment is to protect privacy. The amendment’s language signals the value the framers placed on protecting our right to be left alone unless there is a strong and justifiable reason to invade that privacy. We are free to live in private and to possess things in private. As a society, we believe the right to “to be secure in [our] persons, houses, papers, and effects” is an essential liberty, one equally necessary for our individual happiness and for the common good. But we also recognize that this right is not absolute. The amendment provides a way for society to ensure its security against individuals who would use their privacy to harm others. It allows the government to invade our privacy for probable cause if it can demonstrate to an independent authority—a judge—good and legitimate reasons for doing so.

Today, questions surrounding security and privacy are more complicated than ever. The September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon gave the issue a special urgency. New technologies also raise new problems. The Supreme Court has always taken into account new means of communication when considering the Fourth Amendment, as when it decided in the 1920s that monitoring telephone conversations through wiretaps required a warrant even though no physical intrusion on privacy occurred. Now we have instruments that can see inside buildings, powerful computers that collect and manipulate vast amounts of personal information, machines that permit us to communicate instantly with people all over the globe. These technologies make our private lives more comfortable and more flexible; they also have the potential to make our society more vulnerable. How do we balance our right to privacy with our need for security?

Although the framers never could have imagined these new technologies, they gave us an amendment flexible enough to adapt to them. They left us no formula to apply in any and all circumstances, but they did provide us with a vital principle of liberty and a durable achievement. The principle? We live under a government of laws, not of men, and the role of government and of law is to protect and promote our individual rights and not simply our collective security. Justice Felix Frankfurter, in the 1950s, said it eloquently: “A knock on the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police. . . [is] inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples.” The durable achievement? We live in a society where we do not fear a knock on the door.
The Exclusionary Rule

The case of Weeks v. United States (1914) marked the beginning of the federal exclusionary rule that bars improperly seized evidence from being used at trial. Prior to this decision, courts operated on the premise that the need for justice outweighed the search and seizure protections of the Fourth Amendment, so they regularly admitted evidence taken without a proper warrant. In the Supreme Court's majority opinion, Justice William Day emphasized the obligation of federal courts and law officers to respect the constitutional rights of individuals. He concluded that the essential violation of the Fourth Amendment was the invasion of Weeks's right of personal security, personal liberty, and private property. The illegally seized evidence, the Court ruled, could not be used in a federal trial. The decision did not restrict the states, however. Not until Mapp v. Ohio (1961) did the Court apply the exclusionary rule to state criminal trials.

The defendant was arrested by a police officer, so far as the record shows, without warrant, at the Union Station in Kansas City, Missouri, where he was employed by an express company. Other police officers had gone to the house of the defendant, and being told by a neighbor where the key was kept, found it and entered the house. They searched the defendant's room and took possession of various papers and articles found there, which were afterwards turned over to the United States marshal. Later in the same day police officers returned with the marshal, who thought he might find additional evidence, and, being admitted by someone in the house, probably a boarder, in response to a rap, the marshal searched the defendant's room and carried away certain letters and envelopes found in the drawer of a chiffonier. Neither the marshal nor the police officer had a search warrant. . . .

The effect of the 4th Amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers, and effects, against all unreasonable searches and seizures under the guise of law. This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws. The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures and enforced confessions, the latter often obtained after subjecting accused persons to unwarranted practices destructive of rights secured by the Federal Constitution, should find no sanction in the judgments of the courts, which are charged at all times with the support of the Constitution, and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights. . . .

The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land. . . .

We therefore reach the conclusion that the letters in question were taken from the house of the accused by an official of the United States, acting under color of his office, in direct violation of the constitutional rights of the defendant; that having made a seasonable application for their return, which was heard and passed upon by the court, there was involved in the order refusing the application a denial of the constitutional rights of the accused, and that the court should have restored these letters to the accused. In holding them and permitting their use upon the trial, we think prejudicial error was committed.
New Means of Invading Privacy

In the late 1920s, Roy Olmstead was convicted of unlawfully transporting and selling liquor in violation of the National Prohibition Act. His appeal offered the Supreme Court the first opportunity to consider whether the use of illegal wiretapping to gather evidence could be used in federal trials. The majority ruled 5 to 4 in Olmstead v. United States (1928) that wiretapping did not involve the physical invasion of a defendant’s home, which meant that it fell outside the Fourth Amendment’s requirement of a warrant for a legal search. In his dissent below, Justice Louis Brandeis argued that the Fourth and Fifth Amendments were linked and together they protected a general right to privacy, which illegal wiretapping violated. Later, both the Supreme Court and Congress agreed with Brandeis’s position, with the result that law officers must secure a warrant before using this means of search and seizure.

When the Fourth and Fifth Amendments were adopted, “the form that evil had heretofore taken” had been necessarily simple. Force and violence were then the only means known to man by which a government could directly effect self-incrimination. . . . Protection against . . . invasion of “the sanctities of a man’s home and the privacies of life” was provided in the Fourth and Fifth Amendments by specific language. . . . But “time works changes, brings into existence new conditions and purposes.” Subtler and more far-reaching means of invading privacy have become available to the government. Discovery and invention have made it possible for the government, by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet. Moreover, “in the application of a Constitution, our contemplation cannot be only of what has been, but of what may be.” The progress of science in furnishing the government with means of espionage is not likely to stop with wire tapping. . . . Can it be that the Constitution affords no protection against such invasions of individual security?

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man’s spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect, that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment. And the use, as evidence in a criminal proceeding, of facts ascertained by such intrusion must be deemed a violation of the Fifth.

By the laws of Washington, wire tapping is a crime. . . . To prove its case, the government was obliged to lay bare the crimes committed by its officers on its behalf. A federal court should not permit such a prosecution to continue. . . .

Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.
Third & Fourth Amendments

(1791)

“...The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails.”

—Justice William H. Rehnquist, Bell v. Wolfish (1979)

WHAT IT SAYS

[Third Amendment] 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.

[Fourth Amendment] 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.

WHAT IT MEANS

The Third and Fourth Amendments are intended to protect citizens’ rights to the ownership and use of their property without government intrusion. The men who drafted the Constitution, like many other citizens of their era, were resentful of the pre-Revolutionary laws that allowed British soldiers to use private homes for their barracks. The Third Amendment therefore bars the government from forcing individuals to provide lodging, or quarters, for soldiers in their homes, except under very extreme circumstances when national security may override individuals’ right to privacy.

The Third Amendment has never been the subject of a Supreme Court decision and has rarely been addressed in federal court cases. The Third Amendment has instead been cited by courts as evidence that the Constitution created a general right of privacy for individuals, to protect them from government intrusion into their personal affairs.

The Fourth Amendment protects people against unreasonable searches and seizures by government officials. A “search” can mean everything from being “frisked” by a police officer to taking a blood test to having one’s home and car examined. A “seizure” refers to the government taking control of something in individuals’ possession, including the individuals themselves. Items that are “seized” are often used against a person as evidence at trial.

As a general rule, before police can search anyone’s property they must go to the courts for a warrant, which is granted on probable cause of finding evidence of a crime. The Fourth Amendment also suggests that some searches may be reasonable without a warrant. For instance, a car stopped for speeding can be subject to search if the police observe evidence of illegal narcotics. But the courts will not accept evidence seized without a warrant when the police stop cars randomly for safety purposes to check drivers’ licenses.

The Fourth Amendment also protects people against arbitrary arrest. The courts will not accept as evidence a confession taken from a person who is being held in custody illegally, nor consider evidence that is col-
lected as a result of unlawful arrest. However, there are certain “special needs” for which the courts have allowed searches without warrants, because they meet the constitutional requirement of reasonableness. For instance, prison authorities may search prisoners and their cells for weapons, school authorities may search students and their lockers for drugs, and airport authorities may search passengers and their luggage for explosives.

The invention of electronic eavesdropping equipment in the twentieth century complicated the definition of “search.” At first the Supreme Court accepted evidence gathered by wiretapping, declaring it outside the Fourth Amendment’s protections, as it involved no physical trespassing of a person’s property, and that simply overhearing evidence was not a “seizure.” But, Congress, in writing the Federal Communications Act of 1934, specifically prohibited the government from wiretapping without a warrant. And, in later years, the Supreme Court concluded that the Fourth Amendment protections went beyond “physical intrusion” and included evidence collected electronically.

The Fourth Amendment has been frequently cited as evidence that the Constitution recognizes the right to privacy, that is, people have a right to be “secure” from the government with regard to their bodies, homes, papers, and other effects.

On Halloween afternoon in 1963 a Cleveland plainclothes police officer was walking his beat when he spotted two men, Richard Chilton and John Terry, standing on a corner. The men walked a short distance down the road, looked in a store window, and then continued a few feet farther before turning around and returning to the corner, where they held a brief discussion. The two men repeated this pattern twenty-four times as the officer watched them. A third man approached them, talked with them, and then walked away. Chilton and Terry followed this third man, joining him a few blocks away. The officer suspected them of preparing to hold up the store, and approached them, identified himself, and asked for their names. The men only mumbled, fueling the officer’s suspicions.

Fearing that the men were armed, the officer frisked the outside of Terry’s clothing and found a gun. He then patted down the other two men and found a weapon in Chilton’s coat. He brought all three men to the police station, where Terry and Chilton were charged with carrying concealed weapons. At their trial, Terry and Chilton argued that the weapons had been “seized” as the result of an “unreasonable search” in violation of the Fourth Amendment. They contended that the search was “unreasonable” because the officer lacked “probable cause” to believe that they were carrying guns. Because the search was improper, they argued, the guns should be excluded from the evidence against them. The trial judge rejected this argument, admitted the guns into evidence, and Terry and Chilton were found guilty. They appealed their convictions, eventually to the U.S. Supreme Court. In Terry v. Ohio (1968), the Supreme Court agreed that the searches of Terry and Chilton had been “reasonable” under the Fourth Amendment, and upheld their convictions. This type of “stop and frisk” of a suspect is now known to law enforcement officials as a “Terry stop.”
The Supreme Court finds that the police conducted an illegal search and seizure.

Without a search warrant, the police enter a man’s home and take private documents that are then used to convict him of sending lottery tickets through the mail. In Weeks v. United States (1914) the Supreme Court unanimously rules that the police seizure of Weeks’s belongings violated his constitutional rights and that the government further violated the Fourth Amendment when it refused to return his possessions.

States are bound by the Fourth Amendment.

Fourth Amendment protections against unreasonable searches and seizures apply to officers of state governments (such as police officers or school officials) as well as to officers of the federal government, the Supreme Court decides in Wolf v. Colorado.

The “Exclusionary Rule” is applied to the states.

In Mapp v. Ohio, the Supreme Court applies the Fourth Amendment to the states. It holds that evidence obtained in an illegal search and seizure is not admissible at a state trial, as well as at a federal court trial. This principle is commonly known as the Exclusionary Rule, because it excludes illegally gathered evidence.

Courts prohibit the eviction of strikers for soldiers.

In the only federal court ruling on an alleged violation of the Third Amendment, the U.S. Court of Appeals for the Second Circuit, in Engblom v. Carey, rules in favor of seventy guards in a New York State prison. The guards had been evicted from their employee residences on the prison grounds while they were on strike, and the state prison had given their houses as temporary quarters to the National Guardsmen called in to keep the peace during the strike. The court saw the guardsmen as equivalent to “soldiers” and ruled that the prison guards enjoyed a right to privacy in their residences, even if the prison owned their housing.

Evidence can be accepted on “good faith”.

The Supreme Court recognizes a “good faith” exception to the Exclusionary Rule in United States v. Leon, allowing police to use evidence that was obtained with a warrant issued in good faith but later found to be invalid.

Aerial surveillance of homes is legal.

Acting on a tip and without a warrant, a police officer flew a plane over the backyard of a suspected marijuana dealer and observed and photographed marijuana plants growing in the yard. Attaching his pictures of the yard as evidence, he obtained a warrant for the search of the home. The homeowner argues that the officer’s aerial surveillance was an illegal search under the Fourth Amendment, but fails to get the evidence excluded and pleads guilty to the charges. The Supreme Court in Ciraolo v. California does not find the flight to be an illegal search. Even though the homeowner had erected a tenfoot fence to maintain his privacy, the court concludes that he had no reasonable expectation of privacy when the yard remained “knowingly exposed” to observation by the naked eye from an aerial view.
A general right to privacy is recognized

1965

Addressing a state law that prohibited married couples from purchasing contraceptives, the Supreme Court, in Griswold v. Connecticut, rules that the Constitution gives individuals a “zone of privacy.” In reaching this decision, the Court lists various constitutional provisions, including the Third, Fourth, and Ninth Amendments, as evidence that the framers intended such a right of privacy to exist, even though the Constitution does not contain a specific reference to that right.

In Katz v. United States, the Supreme Court rules that a criminal defendant’s Fourth Amendment right to be free from unreasonable search and seizure was violated when, without a warrant, police wiretapped a public phone booth used by the defendant. The Court also cites the Third Amendment (along with the First and Fifth) to find that individuals enjoy a general right to be free from government involvement in their private affairs.

In Ker v. California (1963), the Supreme Court rules that a state statute required police officers to obtain a warrant before searching a person’s automobile even if the car was parked on public property. The Court rules that this requirement violates the Fourth Amendment and that the search was therefore invalid. The Court finds that the Fourth Amendment’s protection against unreasonable searches and seizures extends to the use of a motor vehicle.

People have a reasonable expectation of privacy

1967

Whenever possible, the police should obtain a warrant before conducting a search of a person or his or her property. In Terry v. Ohio, the U.S. Supreme Court recognizes an exception to the general rule, allowing that the police may “put down” the outside of a suspect’s clothing and search the immediate area for weapons when they have a “reasonable suspicion” of illegal activity.

Police can search suspects when they have reasonable suspicion

1968

The United States detains suspected terrorists at Guantanamo Bay, Cuba. In Padilla v. Rumsfeld, the U.S. Court of Appeals cites the Third Amendment in its finding that President George W. Bush lacks the authority to keep accused terrorist José Padilla confined indefinitely, reasoning that although the Constitution has a few specific grants of special authority to Congress that allow it to override individual rights—e.g., the Third Amendment’s provision for housing soldiers in private homes during war—it makes no such grants of authority to the President.

U.S.A. Patriot Act is passed

2001

In the aftermath of the terrorist attacks on September 11, 2001, Congress passes the U.S.A. Patriot Act to enable capture of those responsible for the attacks and prevent future attacks. The act provides for a dramatic expansion of the federal government’s authority to monitor suspected terrorists’ communications (including those made by e-mail and telephone), and to obtain online records such as organization membership lists and individuals’ purchases.

Schools may conduct random student drug testing

2002

In Vernonia School District v. Acton (1995) the Supreme Court finds that a school district’s policy requiring students participating in interscholastic sports to consent to random drug testing does not violate the Fourth Amendment. The Court stipulates that the use of random testing requires a balancing of a student’s privacy with the school’s legitimate interest in protecting students from harm. It expands upon that decision in Board of Education v. Earls (2002), which finds that an Oklahoma school district’s policy of random drug tests for student participants in non-athletic extracurricular activities was also permissible.

The government cannot imprison suspected terrorists indefinitely

2003

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Constitutionalism

Constitutionalism is a way of thinking about the relationship between the rulers and the ruled in a community. It combines two concepts, limited government and the rule of law, that permeate the constitution, a country’s framework for government. The constitution in an authentic democracy both grants powers to the government and controls or harnesses them in order to protect the rights of the people.

Limited government means that officials cannot act arbitrarily when they make and enforce laws and enact other public decisions. Government officials cannot simply do as they please. Rather, they are guided and limited by the constitution of their country and the laws made in conformity with it as they carry out the duties of their public offices.

The rule of law means that neither government officials nor common citizens are allowed to violate the supreme law of the land, the constitution, or the laws enacted in accordance with it. People accused of crimes are treated equally under the law and given due process—that is, fair and proper legal proceedings—in all official actions against them. Under the rule of law, everyone in the community—public officials and private citizens, from the highest to the lowest ranks—must conform to the constitution.

In every democracy today, limited government and the rule of law are embedded in the constitution. For example, the 1976 constitution of Portugal says:

1. Sovereignty, one and indivisible, rests with the people, who shall exercise it in accordance with the forms laid down in the constitution.

2. The state shall be subject to the constitution and based on democratic legality.

3. The validity of the laws and other acts of the state, the autonomous regions or local authorities shall depend on their being in accordance with the constitution.
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A turning point in the history of constitutionalism occurred in 1787–88, when the U.S. Constitution was drafted and ratified. The Preamble stated the purposes of the constitutional government:

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

In order to carry out its purposes in the Preamble, the government under this constitution was sufficiently empowered to protect the people. And the constitutional government was sufficiently limited so that the government would not be able to turn its power unjustly against the people. Thus, this simultaneously strong and limited government would “secure the Blessings of Liberty” to the people.

Article 6 of the Constitution states the principle of constitutional supremacy that guarantees limited government and the rule of law: “The Constitution and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land.” All laws enacted by any government in the United States must conform to the Constitution. As Alexander Hamilton explained in the 78th paper of *The Federalist*, “No legislative act contrary to the Constitution, therefore, can be valid.” Moreover, any government action that violates the Constitution can be declared unconstitutional and voided by the U.S. Supreme Court.

In 1787–88, Alexander Hamilton and James Madison claimed in *The Federalist* that limited government and the rule of law—principles essential to the U.S. Constitution—would guard the people from tyranny or unjust encroachments against their right to liberty. They feared equally any kind of unrestrained exercise of power. To them, the power of an insufficiently limited majority of the people was just as dangerous as the unlimited power of a king or military dictator.
Hamilton and Madison held that the best government is both constitutionally empowered and limited; it is “energetic”—strong enough to act decisively and effectively for the common good—and “limited by law” in order to protect the inherent rights of individuals. These principles of constitutionalism expressed by Americans in the late 18th century have become guides to the establishment of constitutional governments in many democracies of the world.

SEE ALSO Constitution; Democracy, Representative and Constitutional; Government, Constitutional and Limited
Modern federalism is the division of governmental powers between a central national government and provincial or state governments within the country. Powers granted exclusively to the central government are supreme. Federalism differs from the unitary system of government, which has only one center of authority that prevails throughout the territory of the country. In a unitary system, subdivisions within the country are entirely subordinate to the national government and exist merely to administer or carry out its commands.

The idea of modern federalism was invented by the framers of the United States Constitution. It was their way to bring together 13 separate and sovereign American states into one federal union, the United States of America. It was also one constitutional means, among others, to limit the powers of government to prevent tyranny against the people.

In a modern-era federal republic, there are two levels of government—one national and general in scope and the other local. Each level of government, supreme in its own sphere, can separately exercise powers directly upon the people under its authority.

In traditional forms of federated government, known today as confederations, the states, provinces, or other units of government within the union retained full sovereignty over their internal affairs. The general governments of such confederations only had a few powers pertaining to the need for common foreign policies and defense against external enemies. The Articles of Confederation, by which the United States was formed initially, established a federation of the traditional type, nothing more than a league of sovereign states joined together primarily for purposes of common defense and international relations.

By contrast, the constitution of 1787, which superseded the Articles of Confederation, included a “supremacy clause” in Article 6. This clause declares that the constitutional powers delegated to the federal or general government take precedence over the powers of the state governments, and that these powers prevail throughout the nation, the United States of America.
In the American federal system, the national (federal) government has certain powers that the Constitution grants to it alone. For example, only the federal government may coin money or declare war. Conversely, the Constitution reserves to the state governments all the other powers that the federal government is not granted. According to the U.S. Constitution’s 10th Amendment, “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.” Only the state governments may establish public schools and conduct elections within the state. Some powers, such as levying taxes and borrowing money, are shared by both federal and state governments, and some powers, such as granting titles of nobility, are denied to both the federal and state governments.

The core idea of American federalism is that two levels of government, national and state, exercise certain powers directly and separately on the people at the same time.

This is known as a system of dual sovereignty. So, in the federal system of the United States, the state government of Ohio has authority over its residents, but so does the federal government based in Washington, D.C. Residents of Ohio must obey the laws of their state government and their federal government.

In the 45th paper of The Federalist, James Madison gave his vision of how federalism would work in the United States of America:

The powers delegated by the Constitution to the federal government are few and defined. Those which are to remain in state government are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. . . . The powers reserved to the several states will extend to all objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the states.

The balance of power within the American federal system
has changed continuously since Madison’s time to favor the national government. Through constitutional amendments, Supreme Court decisions, federal statutes, and executive actions, the powers of the federal government have greatly expanded to overshadow those of the states.

In addition to the United States, some other democracies that have federal systems of government include Argentina, Australia, Belgium, Brazil, Canada, Germany, India, Mexico, and Switzerland. In some nations, such as Belgium, India, and Switzerland, a federal system was adopted to reconcile tensions between national unity and the separatist tendencies of diverse ethnic groups with different languages and traditions. For example, the Swiss Federation was designed primarily to protect and preserve the ethnic and linguistic diversity of the three constituent ethnic groups—French, German, and Italian—within the unity of one nation-state, Switzerland.

In contrast to the multicultural federations of Switzerland, India, and Belgium, the protection of separate ethnic groups’ interests was not the reason for federalism in the United States. Rather, it was to forge national unity among 13 separate states that had common cultural characteristics including the primary language of English and legal and constitutional traditions derived from Great Britain. So, in the United States, the national motto E Pluribus Unum (From Many, One) reflects the use of federalism to resolve the potentially destructive tensions between the particular interests of several state governments and the general interests of a federal or national government.

SEE ALSO Citizenship; Diversity; Government, Constitutional and Limited; State; Unitary State
Government is the institutional authority that rules a community of people. The primary purpose of government is to maintain order and stability so that people can live safely, productively, and happily. In a democracy, the source of a government’s authority is the people, the collective body of citizens by and for whom the government is established. The ultimate goal of government in a democracy is to protect individual rights to liberty within conditions of order and stability.

Every government exercises three main functions: making laws, executing or implementing laws, and interpreting and applying laws. These functions correspond to the legislative, executive, and judicial institutions and agencies of any government. In an authentic democracy the government is constitutional and limited. A constitution of the people, written by their representatives and approved directly or indirectly by them, restrains or harnesses the powers of government to make sure they are used only to secure the freedom and common good of the people. There are at least five means to limit the powers of government through a well-constructed constitution.

First, the constitution can limit the government by enumerating or listing its powers. The government may not assume powers that are not listed or granted to it.

Second, the legislative, executive, and judicial powers of government can be separated. Different individuals and agencies in the government have responsibility for different functions and are granted constitutional authority to check and balance the exercise of power by others in order to prevent any person or group from using its power abusively or despotically. An independent judiciary that can declare null and void an act of the government it deems contrary to the constitution is an especially important means to prevent illegal use of power by any government official. The legislature can use its powers of investigation and oversight to prevent excessive or corrupt actions by executive officials and agencies.
Justice

Justice is one of the main goals of democratic constitutions, along with the achievement of order, security, liberty, and the common good. The Preamble to the Constitution of the United States, for example, says that one purpose of the document is to “establish Justice.” And, in the 51st paper of The Federalist, James Madison proclaims, “Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.” So, what is justice? And how is it pursued in a constitutional democracy?

Since ancient times, philosophers have said that justice is achieved when everyone receives what is due to her or him. Justice is certainly achieved when persons with equal qualifications receive equal treatment from the government. For example, a government establishes justice when it equally guarantees the human rights of each person within its authority. As each person is equal in her or his membership in the human species, each one possesses the same immutable human rights, which the government is bound to protect equally.

By contrast, the government acts unjustly if it protects the human rights of some individuals under its authority while denying the same protection to others. The racial segregation laws that prevailed in some parts of the United States until the mid-1960s, for example, denied justice to African American people. America’s greatest civil rights leader, Martin Luther King Jr., said that racial segregation laws were “unjust laws” because they prevented black Americans from enjoying the same rights and opportunities as other citizens of the United States. When he opposed unjust racial segregation laws, King asserted that the worth and dignity of each person must be respected equally because each one is equally a member of the human species. Thus, any action by the government or groups of citizens that violated the worth and dignity of any person, as did the racial segregation laws, was unjust and should not be tolerated. King and his followers, therefore, protested these laws and eventually brought about their demise.
Another example of justice is *procedural justice*. It is pursued through *due process of law* to resolve conflicts between individuals or between individuals and their government. The government administers fair and impartial procedures equally to everyone under its authority in order to settle disputes among them or to prosecute persons charged with crimes against the state. For example, the 5th Amendment of the U.S. Constitution says that no person shall “be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.” The 4th, 5th, and 6th Amendments include several guarantees of fair procedures for anyone accused of criminal behavior, including “the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.”

When procedural due process prevails, conflicts are settled in an orderly and fair manner in a court of law, according to the rule of law, and not by the arbitrary actions of people in power. This equal justice under the law regulates the interactions among private individuals and between individuals and government. Punishments, such as incarceration in prison, payment of fines, or performance of community service, may be carried out against a wrongdoer. One party harmed by another may receive compensation from the perpetrator of the grievance.

*Distributive justice*, another type of justice pursued in every constitutional democracy, pertains to the government’s enactment of laws to distribute benefits to the people under its authority. Distributive justice certainly is achieved when equals receive the same allocation of benefits. For example, public programs that provide social security or medical care to all elderly and retired persons are examples of distributive justice in a constitutional democracy. Public schools, which all children have an equal opportunity to attend, are another example.

When the government of a constitutional democracy protects individuals’ rights to liberty, order, and safety, individuals can freely use their talents to produce wealth and enjoy the results of their labor. Thus, they are able to provide for their basic human needs and to satisfy many, if not all, of their wants. But some per-
sons in every democracy are unable for various reasons to care adequately for themselves. Therefore, the government provides programs to distribute such basic benefits for disadvantaged persons as medical care, housing, food, and other necessities. These public programs for needy persons are examples of distributive justice in a constitutional democracy.

In the various democracies of our world, people debate the extent and kind of distributive justice there should be to meet adequately the social and economic needs of all the people. Should the regulatory power of government be increased greatly so that it can bring about greater social and economic equality through redistribution of resources?

Countries that provide extensive social and economic benefits through the redistribution of resources are known as social democracies or welfare states. The consequences of distributive justice in a social democracy, such as Sweden, are to diminish greatly unequal social and economic conditions and to move toward parity in general standards of living among the people. However, the achievement of this kind of social justice requires a substantial increase in the power of government to regulate the society and economy. Thus, as social and economic equality increase through government intervention in the lives of individuals, there is a decrease in personal and private rights to freedom. People in democracies throughout the world debate whether justice is generally served or denied by big public programs that extensively redistribute resources in order to equalize standards of living among the people.

SEE ALSO Equality; Liberalism; Liberty; Rule of Law; Social Democracy
Rights

The constitution of a democracy guarantees the rights of the people. A right is a person’s justifiable claim, protected by law, to act or be treated in a certain way. For example, the constitutions of democracies throughout the world guarantee the political rights of individuals, such as the rights of free speech, press, assembly, association, and petition. These rights must be guaranteed in order for there to be free, fair, competitive, and periodic elections by the people of their representatives in government, which is a minimal condition for the existence of a democracy. If a democracy is to be maintained from one election to the next, then the political rights of parties and persons outside the government must be constitutionally protected in order for there to be authentic criticism and opposition of those in charge of the government. Thus, the losers in one election can use their political rights to gain public support and win the next election.

In addition to political rights, the constitutions of democracies throughout the world protect the rights of people accused of crimes from arbitrary or abusive treatment by the government. Individuals are guaranteed due process of law in their dealings with the government. Today, constitutional democracies protect the personal and private rights of all individuals under their authority. These rights include

- freedom of conscience or belief
- free exercise of religion
- privacy in one’s home or place of work from unwarranted or unreasonable intrusions by the government
- ownership and use of private property for personal benefit
- general freedom of expression by individuals, so long as they do not interfere with or impede unjustly the freedom or well-being of others in the community

A turning point in the history of constitutionally protected rights was the founding of the United States of America in the late 18th century. The United States was born with a Declaration
of Independence that proclaimed as a self-evident truth that every member of the human species was equal in possession of “certain unalienable rights” among which are the rights to “Life, Liberty, and the Pursuit of Happiness.”

The founders declared that the primary reason for establishing a government is “to secure these rights.” And, if governments would act legitimately to protect the rights of individuals, then they must derive “their just Powers from the Consent of the Governed.” Further, if the government established by the people fails to protect their rights and acts abusively against them, then “it is the Right of the People to alter or to abolish it, and to institute new Government” that will succeed in fulfilling its reason for existence—the protection of individual rights.

Ideas expressed in the Declaration of Independence about rights and government were derived from the writings of political philosophers of the European Enlightenment, especially those of the Englishman John Locke. Enlightenment philosophers stressed that rights belonged equally and naturally to each person because of their equal membership in the human species. According to Locke, for example, persons should not believe that the government granted their rights, or that they should be grateful to the government for them. Instead, they should expect government to protect these equally possessed rights, which existed prior to the establishment of civil society and government. Thus, the rights of individuals, based on the natural equality of human nature, were called natural rights.

This Declaration of Independence, based on this natural rights philosophy, explained to the world that Americans severed their legal relationship with the United Kingdom because the mother country had violated the rights of the people in her North American colonies. As a result, the Americans declared they would independently form their own free government to protect their natural rights. In 1787, the Americans framed a constitution to “secure the Blessings of Liberty” and fulfill the primary purpose of any good government as expressed in the Declaration of Independence, the protection of natural rights, and they ratified this Constitution in 1788.
In 1789, the U.S. Congress proposed constitutional amendments to express explicitly the rights of individuals that the government was bound to secure; in 1791, the requisite number of states ratified 10 of these amendments, which became part of the U.S. Constitution. Thus, the American Bill of Rights was born. Since then, the American Bill of Rights has been an example and inspiration to people throughout the world who wish to enjoy liberty and equality in a constitutional democracy.

Following the tragedies of World War II, which involved gross abuses by some governments and their armies—Nazi Germany and imperial Japan, for example—against millions of individuals and peoples of the world, there was a worldwide movement in favor of the idea of human rights. The United Nations, an organization of the world’s nation-states established after World War II in order to promote international peace and justice, became a leader in the promotion of human rights throughout the world. In 1948, this international body issued the United Nations Universal Declaration of Human Rights, which is a statement of the rights every human being should have in order to achieve a minimally acceptable quality of life.

Its first article says, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.” Article 2 continues, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The remainder of the document details the human rights that ideally should be enjoyed by each person in the world.

Since 1948, the United Nations has issued several other documents on human rights, such as the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights. The UN documents are statements of ideals about human rights intended to guide the actions of the world’s nation-states, but the United Nations cannot enforce them in the way that a sovereign nation-state can compel
obedience to laws within its territory. Thus, practical protection for human rights is possible today only through the governmental institutions of the world’s independent nation-states. The quality of the protection of human rights varies significantly from country to country. It depends upon what the nation’s constitution says about rights and the capacity of the government to enforce the rights guaranteed in its constitution.

There is general international agreement that there are two basic categories of human rights. First, there are rights pertaining to what should not be done to any human being. Second, there are rights pertaining to what should be done for every human being. The first category of human rights involves constitutional guarantees that prohibit the government from depriving people of some political or personal rights. For example, the government cannot constitutionally take away someone’s right to participate freely and independently in an election or to freely practice a particular religion. The second category of human rights requires positive action by the government to provide someone with a social or economic right that otherwise would not be available to her or him. Thus, the government may be expected to provide opportunities for individuals to go to school or to receive healthcare benefits.

The constitutions of many democracies specify certain social and economic rights that the government is expected to provide. In other democracies, for example the United States, programs that provide social and economic rights or entitlements, such as social security benefits for elderly persons and medical care for indigent persons, are established through legislation that is permitted but not required by the constitution.

SEE ALSO Equality; Justice; Liberalism; Liberty; Social Democracy
Rule of Law

In a limited government administered according to the rule of law, the rulers use power following established principles and procedures based on a constitution. By contrast, when the rulers wield power capriciously, there is rule by the unbridled will of individuals without regard for established law. The rule of law is an essential characteristic of every constitutional democracy that guarantees rights to liberty. It prevails in the government, civil society, and market economy of every state with a functional constitution.

The rule of law exists when a state’s constitution functions as the supreme law of the land, when the statutes enacted and enforced by the government invariably conform to the constitution. For example, the second clause of Article 6 of the U.S. Constitution says,

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

The third clause of Article 6 says, “The Senators and Representatives before mentioned and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution.” These statements about constitutional supremacy have been functional throughout the history of the United States, which is the reason that the rule of law has prevailed from the country’s founding era until the present.

The rule of law, however, is not merely rule by law; rather, it demands equal justice for each person under the authority of a constitutional government. So, the rule of law exists in a democracy or any other kind of political system only when the following standards are met:

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Rule of Law

- laws are enforced equally and impartially
- no one is above the law, and everyone under the authority of the constitution is obligated equally to obey the law
- laws are made and enforced according to established procedures, not the rulers’ arbitrary will
- there is a common understanding among the people about the requirements of the law and the consequences of violating the law
- laws are not enacted or enforced retroactively
- laws are reasonable and enforceable

There is a traditional saying about the rule of law in government: “It is a government of laws and not of men and women.” When the rule of law prevails in a democracy, there is equal justice and ordered liberty in the lives of the people. In this case, there is an authentic constitutional democracy. When rule of law does not prevail, there is some form of despotism in which power is wielded arbitrarily by a single person or party.

SEE ALSO Constitutionalism; Government, Constitutional and Limited
D. What values and principles are basic to American constitutional democracy?
The values and principles of American constitutional democracy are sometimes in conflict, and their very meaning and application are often disputed. For example, although most Americans agree that the idea of equality is an important value, they may disagree about what priority it should be given in comparison with other values such as liberty. And they may disagree on the meaning of equality when it is applied to a specific situation. To participate constructively in public debate concerning fundamental values and principles, citizens need to understand them sufficiently.

Disparities have always existed between the realities of daily life and the ideals of American constitutional democracy. The history of the United States, however, has been marked by continuing attempts to narrow the gap between these ideals and reality. For these reasons, Americans have united in political movements to abolish slavery, extend the franchise, remove legal support for segregation, and provide equality of opportunity for each individual. Citizens must be aware of historical and contemporary efforts in which Americans have joined forces to achieve this end.

Citizens, therefore, need to understand that American society is perpetually “unfinished” and that each generation must address ways to narrow the disparity between ideals and reality.

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<tr>
<th>Values and principles fundamental to American civic life</th>
<th>Values and principles fundamental to American constitutional democracy</th>
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<td>□ individual rights, i.e., life, liberty, property, and the pursuit of happiness</td>
<td>□ popular sovereignty--the concept that ultimate political authority rests with the people who create and can alter or abolish governments</td>
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V. WHAT ARE THE ROLES OF THE CITIZEN IN AMERICAN DEMOCRACY?

C. What are the responsibilities of citizens?
The purposes of American constitutional democracy are furthered by citizens who continuously reexamine the basic principles of
the Constitution and monitor the performance of political leaders and government agencies to insure their fidelity to constitutional
values and principles. In addition, they must examine their own behavior and fidelity to these values and principles.

Citizens also need to examine situations in which their responsibilities may require that their personal desires or interests be
subordinated to the common good. To make these judgments requires an understanding of the difference between personal and
civic responsibilities as well as the mutual reinforcement of these responsibilities.

Personal Responsibilities

- taking care of one’s self
- supporting one’s family and caring for, nurturing, and educating one’s children
- accepting responsibility for the consequences of one’s actions
- adhering to moral principles
- considering the rights and interests of others
- behaving in a civil manner

Civic Responsibilities

- obeying the law
- being informed and attentive to public issues
- monitoring the adherence of political leaders and governmental agencies to constitutional principles
  and taking appropriate action if that adherence is lacking
- assuming leadership when appropriate
- paying taxes
- registering to vote and voting
- serving as a juror
- serving in the armed forces
- performing public service
V. WHAT ARE THE ROLES OF THE CITIZEN IN AMERICAN DEMOCRACY?

D. What civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy?

American constitutional democracy requires the responsible self-governance of each individual; one cannot exist without the other. Traits of private character such as moral responsibility, self-discipline, and respect for individual worth and human dignity are essential to its well-being.

American constitutional democracy cannot accomplish its purposes, however, unless its citizens are inclined to participate thoughtfully in public affairs. Traits of public character such as public spiritedness, civility, respect for law, critical mindedness, and a willingness to negotiate and compromise are indispensable for its vitality.

These traits of private and public character also contribute to the political efficacy of the individual, the healthy functioning of the political system, and the individual’s sense of dignity and worth.

Civic Dispositions or Traits of Character

- **individual responsibility**—fulfilling the moral and legal obligations of membership in society
- **self-discipline/self-governance**—adhering voluntarily to self-imposed standards of behavior rather than requiring the imposition of external controls
- **civility**—treating other persons respectfully, regardless of whether or not one agrees with their viewpoints; being willing to listen to other points of view; avoiding hostile, abusive, emotional, and illogical argument
- **respect for the rights of other individuals**—having respect for others’ right to an equal voice in government, to be equal in the eyes of the law, to hold and advocate diverse ideas, and to join in associations to advance their views
- **respect for law**—willingness to abide by laws, even though one may not be in complete agreement with every law; willingness to work through peaceful, legal means to change laws which one thinks to be unwise or unjust
- **honesty**—willingness to seek and express the truth
- **open-mindedness**—considering others’ points of view
- **critical mindedness**—having the inclination to question the validity of various positions, including one’s own
- **negotiation and compromise**—making an effort to come to agreement with those with whom one may differ, when it is reasonable and morally justifiable to do so
- **persistence**—being willing to attempt again and again to accomplish worthwhile goals
- **civic-mindedness**—paying attention to and having concern for public affairs
- **compassion**—having concern for the well-being of others, especially for the less fortunate
- **patriotism**—being loyal to the values and principles underlying American constitutional democracy, as distinguished from jingoism and chauvinism
- **courage**—the strength to stand up for one’s convictions, when conscience demands
- **tolerance of ambiguity**—the ability to accept uncertainties that arise, e.g., from insufficient knowledge or understanding of complex issues or from tension among fundamental values and principles