

# SEARCH, SEIZURE, AND MIRANDA

## MATERIALS

- 1) Enough handouts for each student (at end of lesson – also available in the PICC).
- 2) Re-useable white board, markers, eraser (provided in the PICC).
  - This is probably going to be useful during this lesson, so if your room doesn't already have one, you're encouraged to bring one.
- 3) One sign that says "Mr. Terry" (provided in the PICC).
- 4) Two signs that say "Police Officer" (provided in the PICC).

## TAKEAWAYS

- Students will understand the importance of being observant during interactions with the police.
- Students will understand that cops can perform limited searches to ensure their own safety without probable cause and without placing a person under arrest.
- Students will remember the 'magic words' to use when questioned by the police: "I want to speak with a lawyer."
- Students will be able to understand what it means to keep cool and in what situations it is most important.

## WELCOME

**(Time Check: 1 minute)**

Remind everyone what StreetLaw is, why you are there (to teach lessons about the law and legal rights), and what your names are. Remind them that in asking questions and making comments they should not refer to their own cases any way, but may ask questions based on hypothetical scenarios. Tell them what you will be covering today: search and seizure laws, and Miranda rights.

## INTRODUCTION

**(Time Check: 2 minutes)**

1. *Who knows what the Miranda rights or Miranda warnings are?*
  - Answer: You have the right to remain silent; anything you say can and will be used against you in a court of law; you have the right to an attorney; if you cannot afford an attorney one will be appointed to you.
2. *Should people be told these rights when they are arrested?*

Tell the students that we're going to talk more about Miranda rights in a little while. But first, we're going to tell a story.

**ACTIVITY 1: MR. TERRY'S STOP**  
**(Time Check: 12 minutes)**

**Summary for Teachers:** This exercise is a freeze-frame scene of the true story of the origins of a "Terry stop." A teacher will read the story as the other teachers act it out. When the narrator says "Freeze," the other teachers will freeze and the narrator will give an explanation to the class. A discussion of the particulars of a Terry stop follows.

→ *Teaching Tip* – If your class is particularly active you can invite them to act out the story through your directions. But be careful, since this activity involves patting someone down, so in some instances this might be inappropriate. You could also have a student play the officer and a teacher play Mr. Terry.

**Invite your acting volunteers to the front of the room.**

**Tell the story<sup>1</sup>:**

→ *Teaching Tip* – Adding details to the story (e.g. what the cops are doing, where they are, what Mr. Terry is doing with his hands, how he looks, etc) will let the student volunteers act more (and make it more fun for them) and make the visual more interesting for the rest of the class.

→ *Teaching Tip* – Consider adding in more "freeze" moments and more questions throughout the scene.

- Mr. Terry was walking down the street, back and forth, over and over in front of a store.
- A police officer watched Mr. Terry and suspected that he was casing the store for a robbery.
- The officer wanted to do some investigating and to ask Mr. Terry some questions.
- **FREEZE!**
  - Ask the class: Do you think the officer could ask Mr. Terry questions now? Would Mr. Terry have to answer? Could the police search Mr. Terry?
- The officer approached Mr. Terry to investigate, but was afraid that Mr. Terry might have a gun.
- **FREEZE!**
  - Ask the class: Knowing that the police were worried Mr. Terry might have a gun, do you think they could search him? Should they search him?
- The officer patted Mr. Terry down. When he did, he found a gun.

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<sup>1</sup> These facts are a simplified version of those in *Terry v. Ohio*, 392 U.S. 1 (1968).

- Mr. Terry later complained to the court that the police had no right to search him just because he looked suspicious.
- But the Court agreed with the police, and said that searching Mr. Terry in those circumstances was ok.

**Whole class discussion:**

- Ask the class why they think the police is allowed to do this?
- The Court was trying to balance our privacy interests (our interest in not being bothered by the government) with our interest in having a government that can protect us (and having police who can protect themselves and us by seeing if suspicious people have weapons).
- The 4<sup>th</sup> Amendment to the U.S. Constitution gives us the right not to be searched in unreasonable ways.
  - But in Mr. Terry’s case, the Court said this type of search, which is now called a **Terry stop** (after Mr. Terry), is okay because it is not as invasive as a full-blown arrest.
- To do a **Terry stop**, a police officer must first have **reasonable articulable suspicion** that criminal activity has occurred, is occurring, or is about to occur **AND** this person is involved in that activity.
  - *Teaching Tip* – Write this phrase on the whiteboard now.
  - Define the phrase:
    - The suspicion must be **reasonable** (i.e. it must make sense).
      - Ask the students if they know what “reasonable” means.
      - Must be more than a guess, but there does not have to be definite proof.<sup>2</sup>
    - The suspicion must be **articulable** (i.e. the police officer must be able to explain it later to the judge).
      - Ask the students if they know what “articulable” means.
      - The officer does not have to give the reason to the person he is patting down; the officer just has to be able to explain to a supervisor or a judge later on.<sup>3</sup>
- Explain the following points.
  - *Teaching Tip* – You may want to demonstrate some of what follows by acting it out. If so, teachers should play the roles, not students. One teacher should describe the actions, while other teachers act them out. Be prepared and know your roles ahead of time.
  - *Teaching Tip* – Many questions will probably arise during this activity. If they are clarifying questions (e.g. what does *that* mean?), then answer them. But if they are hypothetical questions about particular situations, it’s best to have the students wait until the next activity when we will be talking about more specific situations.

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<sup>2</sup> See 4 WitCrim ch.13, s.241

<sup>3</sup> Prof. Weisberg.

- Knowing exactly when a **Terry stop** can occur is not easy, so we are going to take some time to discuss it.
  - PAT-DOWNS/FRISKS:
    - If an officer is doing a **Terry stop** (which means she has a **reasonable articulable suspicion**) **AND a reasonably careful person would believe that her safety or that of others was in danger**, then she may pat down the outer clothing of the suspect to feel for a weapon. She may manipulate objects to determine if they are weapons, but not to make determinations beyond that. She may not go into the pockets, unless she feels a weapon.<sup>4</sup>
    - An officer can also potentially go into a pocket if she feels something that is likely to be drugs. **BUT** the officer can only start the pat-down to look for weapons, not to look for drugs (i.e. if the officer believes the suspect has drugs but does not feel she is in danger, the officer cannot pat the suspect down).<sup>5</sup> If she actually finds drugs, she can legally seize them and hold them as evidence.<sup>6</sup>
  - PURSES AND BACKPACKS:
    - Ask the students if they think police are allowed to search inside purses and backpacks.
    - Inaccessible purses and backpacks are outside the scope of a Terry stop search (meaning officers may not look into them during a Terry stop).<sup>7</sup>
    - However, officers often ask to look into inaccessible backpacks and purses if they think there may be illegal contraband (such as drugs or weapons).
    - If I say “yes,” then the officer can legally look into my inaccessible bag. If I say “no,” then the officer cannot look into my inaccessible bag *unless she has **probable cause***.
      - To search an inaccessible bag (or to **arrest** me), the officer needs more than **reasonable articulable suspicion**. She needs **probable cause**, which means that she has very good reasons to think I have committed a crime. If that is the case, then she can look in my inaccessible backpack (she could also **arrest** me).<sup>8</sup>

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<sup>4</sup> Prof. Weisberg.

<sup>5</sup> *Minnesota v. Dickens*, 508 U.S. 366 (1993)

<sup>6</sup> Prof. Weisberg.

<sup>7</sup> Prof. Weisberg; stressed the importance of the test being concerned with access (hypothetically a closed bag could still be accessible if it's easily openable/ within the suspect's “immediate control”). See *Michigan v. Long* and *Arizona v. Gant*, 556 U.S. 332 (2009).

<sup>8</sup> Prof. Weisberg (stated that the sequence—whether the search or arrest comes first—doesn't matter, provided that probable cause exists).

- CARS<sup>9</sup>:
  - Ask the students if they think police are allowed to search inside cars.
  - The same logic applies when officers stop a person in a car (like for a traffic stop). The officer can search the inside of the car for a weapon (in order to ensure the safety of the cop).
  - The officer may look anywhere the person could reach for a weapon. She may not look inside inaccessible bags that are not within the suspect's reach.<sup>10</sup> The police need **probable cause** to look in bags or containers in the car *unless they are accessible bags where a person in the car could easily reach for a weapon*.
  - The trunk: The officer may not search the trunk unless someone in the car can reach into the trunk (like in an SUV).
- Explain that there are other circumstances (besides an **arrest**) where a **full search** (more than a **Terry stop**) can occur:<sup>11</sup>
  - **NOTE**: These are very important points to make explicit; be sure the students understand these exceptions, but ask the students what these exceptions are (many of them will know some of them).
  - If someone is on probation and the terms of her/his probation so allow, that person can be searched (including bags, car, and sometimes room)<sup>12</sup>;
  - If the person consents (says ok) then he can be searched;<sup>13</sup>
  - When a person is on school property and administrators, teachers, or school security guards have a reasonable suspicion of rule-breaking behavior, then they can conduct a **full search** without needing probable cause;<sup>14</sup>
  - Private security guards (e.g. mall security)
    - **NOTE**: Since this is private property and private actors, there is no constitutional problem, but there may be local laws limiting the authority of private security guards.<sup>15</sup>

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<sup>9</sup> Prof. Weisberg. *See also* 4 WitCrim ch.13, s.254; *See also Michigan v. Long*, 463 U.S. 1032 (1983) and *Chimel v. California*, 395 U.S. 752 (1969). This cite covers the four bullet points that follow.

<sup>10</sup> Again, the important question is accessibility/within the suspect's immediate control. *Michigan v. Long*, 463 U.S. at 1049 ("We also held that the police may examine the contents of any open or closed container found within the passenger compartment, 'for if the passenger compartment is within the reach of the arrestee, so will containers in it be within his reach.'")

<sup>11</sup> Prof. Weisberg (all of the below bullet points)

<sup>12</sup> *United States v. Knights*, 534 U.S. 112, 121 (2001); *Samson v. California*, 547 U.S. 843 (2006).

<sup>13</sup> *See* 4 WitCrim ch.13, s.40

<sup>14</sup> *See* 4 WitCrim ch.13, s.319

<sup>15</sup> Prof. Weisberg. *See also Walter v. United States*, 447 U.S. 649 (1980) ("a wrongful search or seizure conducted by a private party does not violate the Fourth Amendment")

- While in detention (in jail or in juvenile hall), a person can be searched.

Ask the students why they think these exceptions exist.

**Transition:** Now we are going to talk about more particular circumstances and see if we can tell whether or not a search could legally occur.

## ACTIVITY 2: SEARCH SCENARIOS (Time Check: 10-12 minutes)

**Summary for Teachers:** This is essentially a time to allow for the students' specific questions about particular search and seizure situations. The scenarios are a guide to review the information presented in Activity 1.

→ *Teaching Tip* – You should use the time for this activity to answer all the students' questions. If they have a lot of questions, you may find the scenarios unnecessary. But still refer them to the rules on the handout when you're answering their questions.

**Introduction for Students:** Now we're going to use the rules we just talked about to see what can happen in different situations.

Pass out the lesson handout (at end of the lesson), which has on it both rules and the scenarios (without the answers, of course).

NOTE: There are various ways to run this activity, and different ways will work with different class dynamics. Use your judgment. Three possible models are:

- (1) Run the activity as a whole-class discussion, with teachers switching off between the scenarios.
- (2) Run the activity in small groups, with one teacher per group as the groups work through the scenarios simultaneously.
- (3) Split the class into two groups. Have the groups switch off giving an answer to the scenario and explaining their reasoning.

### Scenarios

- Scenario 1: The police see James standing at a bus stop on a downtown street, in an area where there is extensive drug dealing. The officers ask James if they can look in his bag and he says yes. They open the bag and find drugs. (**Yes**, legal search: consent.)<sup>16</sup> What if James says no? Are the cops allowed to open his bag and search it? (**No**, not unless they have **probable cause** or reasonably suspect that he has a weapon immediately accessible in the bag, which is unlikely since they stopped him for drug suspicions.)  
→ At this point (or, inevitably, at some point), the students usually raise the issue of the cops searching them no matter what they say (and/or the cops always being

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<sup>16</sup> Prof. Weisberg.

able to say they have probable cause in any situation). *You should not deny this*, but acknowledge that sometimes the police do not follow their own rules. Emphasize to students that it is vital for them to say no (politely!) if the police ask to search them – remind them to *keep cool, pay attention* to what is happening, and then *tell their lawyer* what happened (if they end up getting in trouble). That way, their lawyer will be more able to argue in court to keep the evidence out of any trial.

→ Remind the students: Even when the cops break the rules, it's important to keep your cool. It's not a good idea to struggle or physically resist a search or an arrest by a police officer. If someone does that, they can be charged with *another* crime, separate from the one they are being arrested for, called *Resisting Arrest*, or, if the person touches the officer aggressively (even a little push) s/he could be charged with *Assaulting an Officer*.

- Scenario 2: After Tyler checks out of a hotel, the police ask the manager to turn over the contents of the trash can, where they find notes planning a murder. (**Yes**, legal search: public place.)<sup>17</sup>
- Scenario 3: A student tells the principal that Julia, another student, is selling drugs on school grounds. The principal opens Julia's locker with a master key, finds drugs, and calls the cops. (**Yes**, legal search: school exception.)<sup>18</sup>
- Scenario 4: The police send Sarah's ex-boyfriend into her house to search for drugs. He finds marijuana in her desk drawer, which he gives to the police. (**No**, illegal search: can't send in third parties under authority of police.)<sup>19</sup>
- Scenario 5: Chris is stopped for going 52 in a 45 mph zone (with no other reason). The police see a gun on the backseat through an open window. (**Yes**, legal search: plain view.<sup>20</sup>) What if the gun was in the trunk? (**No**, illegal search: not a grab-able place.)
  - NOTE: In some cities, giving a traffic ticket is considered an arrest. If this is the case, the search of the trunk might be considered a "search incident to arrest" and would therefore be legal.<sup>21</sup>
- Scenario 6: Ray is seen shoplifting at the mall. Police arrest him outside the mall. They then drive him to his home, search his house, and find a room full of illegal car stereos.

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<sup>17</sup> Prof. Weisberg. See also *United States v. Jackson*, 448 F.2d 963 (9<sup>th</sup> Cir. 1971).

<sup>18</sup> Prof. Weisberg.

<sup>19</sup> Prof. Weisberg. See also 4 WitCrim ch.13, s.329 ("Search by Private Person Acting as Police Agent").

<sup>20</sup> Plain view doctrine permits police to seize an object without a warrant if they are lawfully in a position to view it, if its incriminating character is immediately apparent, and if they have a lawful right of access to it.

<sup>21</sup> Prof. Weisberg.

(No, illegal search: search of house without a warrant.) What if Ray was on probation?  
(Yes, legal search: probation exception.)<sup>22</sup>

- Scenario 7: Ray is seen walking back and forth in front of a liquor store. The police stop him and frisk him looking for weapons. (Yes, legal search: Terry stop.) After finding a weapon in his pocket, they search his backpack and find another gun. (Yes, legal search: after finding the gun in his pocket, they had probable cause to search his backpack.)

### ACTIVITY 3: COMMUNICATING WITH THE POLICE

(Time Check: 5-10 minutes)

**Summary for Teachers:** We are going to run two scenarios to show the importance of being respectful when interacting with the police.

**Tell the class:** You are going to be the police and we are going to be a suspect. An individual matching our description beat someone up. You, as the police, are going to question the suspect.

**Run the role-play.** Have the students question first “Bad Suspect” (played by a teacher who should generally be rude and uncooperative—but don’t act out too much, because we want the class to focus on the good way to behave with cops and not get distracted). When that goes as far as it can, have them do it again with “Good Suspect”, who will politely tell officers (a) his or her name and (b) any other information that can be found on a drivers’ license (address, age).<sup>23</sup>

**DO NOT GIVE OUT ANY INFORMATION BEYOND THAT. When pressed further, politely tell the officers that you don’t feel comfortable speaking with them and ask if you’re under arrest. If you are, ask for a lawyer. If you’re not, continue politely refusing to answer questions.** Good phrases to use include “I know you’re just doing your job, officer, but I really don’t feel comfortable answering any questions...” “I’m sorry, officer, I’d really prefer not to answer any questions right now...” etc. **Don’t lie, but don’t talk either: KEEP COOL AND KEEP QUIET AND POLITE.**

- End the roleplays.
- Ask the class how they felt when they were the officers and you were being rude and uncooperative.
  - Ask how they would have felt if you had reached into your pocket as if you were reaching for a weapon.
  - Ask if they know how officers can respond if someone does pull a weapon.
    - The officer can always respond with greater force. If I punch the officer, he can hit me with a billy club. If I pull a knife, he can use his gun.<sup>24</sup>

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<sup>22</sup> Prof. Weisberg.

<sup>23</sup> *Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County*, 542 U.S. 177 (2004) (state laws that require *Terry* stop suspects to identify themselves do not violate the 4<sup>th</sup> Amendment).

<sup>24</sup> [Thompson v. County of Los Angeles, 142 Cal. App. 4th 154 \(Cal. Ct. App. 2006\)](#)

(“The Fourth Amendment’s prohibition on unreasonable seizures protects individuals from



- Ask the class how they felt when you cooperated.

**As a whole class:**

- Introduce the concept of “*keeping cool*” while interacting with the police.
  - → Keeping your cool, even when a situation heats up.
  - → Because nothing good happens as a situation heats up.
  - → The authorities/police are always one step above the other person
    - Figuratively: dealing with authorities/police can be tense and scary.
    - Literally: cops can always respond to an act of force with greater force.
- *Teaching Tip* – Write “KEEP COOL” on the board. Refer back to it throughout.
  - Get examples from the students of what happens if someone gets angry and responds negatively to a police officer. Answers should include: jail, more time locked up, physical violence, and even death.

**ACTIVITY 4: MIRANDA RIGHTS**  
(Time Check: 10 minutes)

**Summary for Teachers:** This exercise is a fairly brief elaboration of some rules about Miranda warnings. As you’ll see below, we suggest running this as a whole-class discussion – but, depending on how you ran the previous activity, you might want to adapt that plan.

**Introduction for Students:** Remember the questions we asked at the very beginning of the period today? We were talking about the Miranda warnings. The Miranda warning is basically a list of certain rights that the police have to read to every person they arrest and question.<sup>25</sup>

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excessive force in the context of an arrest or seizure. Claims that the amount of force used during an arrest or seizure was excessive are analyzed under the objective reasonableness standard of the Fourth Amendment. Determining whether the force used was reasonable requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake. Fourth Amendment jurisprudence has long recognized that the right to make an arrest necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.”)

<sup>25</sup> There are exceptions to the Miranda rule that may come up in a question. The first exception is known as the “rescue doctrine,” and applies when pre-warning questioning is necessary to save a person’s life (usually a victim, but also potentially the arrestee). A California court has defined the rare circumstances of an emergency that are sufficient to justify an exception to the requirements of *Miranda* as: (1) urgency of need in that no other course of action promises relief; (2) the possibility of saving a human life by rescuing a person whose life is in danger; and (3) rescue is the primary purpose and motive of the interrogators. *See* 5 WitCrim ch.14, s.100; *See also People v. Dean*, 39 C.A.3d 875 (1974) and *People v. Riddle*, 83 C.A.3d 563 (1978). The second exception is the “public safety exception,” which essentially says that in rare circumstances a threat to the public safety outweighs the prophylactic *Miranda* warning rule

**Whole Class Discussion:**

→ *Teaching Tip* – Try to keep this interactive by inviting questions and asking questions of the students. Don't just throw the information at them – get their ideas and respond.

- Ask the class if anyone knows the Miranda warning (if not, read it to them):
  - “You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed to you.”
  - → In other words:
    - You have the right not to answer questions.
    - And you have the right to a lawyer no matter what.

- Tell the class: The best thing a person can do in an interrogation is to
  - (1) Remain silent; and
  - (2) Ask for a lawyer.

→ *Teaching Tip* – Write this on the board.

- Tell the class: But there are still a few details you should know.
  - Miranda only applies after someone is in **custody**.<sup>26</sup>
    - This doesn't necessarily mean I have to be in handcuffs, or even that I've been arrested – it just means that I am not free to leave (a reasonable person would feel she was detained and was unable to leave).<sup>27</sup> If I am not sure if I am under arrest, I should ask the officer – and I should always be polite (Keep cool!).
    - NOTE: If a defendant comes voluntarily to the station for questioning, **custody** will probably not be found to exist.<sup>28</sup>
    - NOTE: The police don't actually have to “Mirandize” a person until they begin interrogation. That technically means that I can be arrested and not read my Miranda rights for hours if the police don't ask me any questions. For juveniles, courts might look more closely at this issue, but there is no bright line rule.<sup>29</sup>

- **How do I invoke my Miranda rights?**

- **THE MAGIC WORDS** = “*I want to talk to a lawyer.*”
  - *Teaching Tip* – Write this line (and “the magic words”) on the whiteboard so they remember it better.
  - NOTE: For juveniles, asking for a parent is **NOT** the same as asking for an attorney (constitutionally, the cops do not have to stop questioning if a juvenile asks for a parent, nor do the cops even have to let the parents in the

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(example: suspect is chased down and is found to be wearing an empty gun holster; pre-warning, cop is allowed to ask where gun is in order to protect public safety). See 5 WitCrim ch.14, s.101

<sup>26</sup> See 5 WitCrim ch.14, s.93

<sup>27</sup> *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

<sup>28</sup> Prof. Weisberg.

<sup>29</sup> Prof. Weisberg.

- room – though there may be police conduct rules or local laws that are more juvenile-friendly).<sup>30</sup>
- Tell the kids: Say the magic words, *and then stay silent!*
  - If the police ask a person any more questions after s/he says the magic words, the person’s Miranda rights have been violated and anything s/he says should be inadmissible in court. Obviously, though, that doesn’t mean they should start talking. Say the magic words, and then stay silent.
    - Importantly, once a person has said the magic words and kept quiet, that person should be careful not to re-start the conversation with the cops themselves. If the suspect reinitiates the conversation on his or her own, then that information IS admissible. *Just stay silent!*
  - If for some reason a person does not remain silent (or even sometimes if they do), the police will try to make them believe they are better off talking.
    - → *No one is ever better off talking – ask for a lawyer, keep quiet, and wait for the lawyer.*
    - Why?
      - Even if it seems totally harmless, I can never be sure if something I say is going to hurt me later.
        - Easy example: I was at a store earlier in the day. The cops ask me if I was there. I say yes. Little do I know that right around the time I was there, the store got robbed. I’ve made myself look a little guilty, even though I’m not.
      - The police are allowed to be deceitful and tricky, and can scare me by lying about evidence they have against me:
        - e.g. photos, security videos, forensic evidence (fingerprints, ballistics, etc), who else they have talked to, what other people have told them

### CONCLUSION (Time Check: 3-4 minutes)

To conclude today’s lesson:

(1) Tell the students a quick story: There was a shooting in my friend’s neighborhood. He was hanging out outside his brother’s house. He resembled the description of the suspect the cops were looking for. The cops walked up to him and asked if they could speak to him. Before he could answer, the cops patted him down to search for weapons.

- Ask the students:
  - Was the pat-down a legal action? (**Yes**, Terry stop.)
  - Then, still before my friend had responded, the cops searched his closed backpack. Was that a legal action? (**Maybe**, will be a judgment call by the judge whether or not the cops had probable cause for that search.)

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<sup>30</sup> Prof. Weisberg.

- The cops found a gun in my friend's backpack, so they arrested him. They put him in a squad car and started questioning him immediately about the crime. Was the questioning a legal action? (**No**, no Miranda warning.)
- How should my friend not react?
  - He should not get mad at the police or get uncooperative.
- How should my friend react?
  - Keep cool!
  - Tell his lawyer about the search violation and the Miranda violation.

Thank the students for their participation.

# StanfordStreetLaw

## SEARCH, SEIZURE AND MIRANDA

### RULES FOR SEARCHES:

Complete searches are allowed when:

1. Cop has **probable cause** (on its own OR with a warrant OR with an arrest).
  - a. *Probable cause* = Cop has facts that support the reasonable belief that the person broke the law.
2. The person says it is okay (consents).
3. School official has “reasonable suspicion” that a student broke a law or rule.
4. The person is on probation.
5. The person is locked up (juvenile hall, jail, etc).

Limited searches for weapons (like a Terry-Stop & Frisk) are allowed when:

1. Cop has **reasonable articulable suspicion**.
  - *Reasonable articulable suspicion* = Cop can give a reason that he or she thought a crime had happened or was about to happen and a reason she believes she or others are in immediate danger. Cop is not just guessing, but is not sure and does not have actual proof.
2. If a car is pulled over for a traffic violation, the cops can search anywhere inside the car where a passenger could reach to get a weapon.

If an object has been abandoned or is just sitting out in plain view where the cops can see it, then the cops can take it – that’s not even really a search at all.

### SEARCH SCENARIOS:

1. The police see James standing at a bus stop on a downtown street, in an area where there is extensive drug dealing. The officers ask James if they can look in his bag and he says yes. They open the bag and find drugs.
2. After Tyler checks out of a hotel, the police ask the manager to turn over the contents of the trash can, where they find notes planning a murder.
3. A student tells the principal that Julia, another student, is selling drugs on school grounds. The principal opens Julia’s locker with a master key, finds drugs, and calls the cops.
4. The police send Sarah’s ex-boyfriend into her house to search for drugs. He finds marijuana in her desk drawer, which he gives to the police.
5. Chris is stopped for going 52 in a 45 mph zone (with no other reason). The police see a gun on the backseat through an open window. What if the gun was in the trunk?
6. Ray is seen shoplifting at the mall. Police arrest him outside the mall. They then drive him to his home, search his house, and find a room full of illegal car stereos. What if Ray was on probation?
7. Ray is seen walking back and forth in front of a liquor store. The police stop him and frisk him looking for weapons. After finding a weapon in his pocket, they search his backpack and find another gun.

### MIRANDA WARNINGS:

- You have the right to remain silent.
- Anything you say can and will be used against you in a court of law.
- You have the right to an attorney.
- If you cannot afford an attorney, one will be appointed to you.

### THE MAGIC WORDS:

*I want to talk to a lawyer.*

## Searches of Friends/Roommates of Parolees and Probationers



All people on **Parole** (*parolees*) and some people on **Probation** (*probationers*) are subject to a “**Fourth Waiver**” (The person has agreed, prior to the search, to be subjected to more frequent searches as a condition of their probation or parole). This may change the rights of people who are friends or live with that individual:

If someone **lives** with a person subject to a Fourth Waiver:

- Common Areas: The police **MAY** search the common area shared by a parolee and other people.
  - Any evidence lawfully seized can be used even if it is the roommates’ (and not the parolee’s)
- Private Areas: The police **MAY NOT** search the *exclusive* private areas (bedroom, etc.) of the residents who are not subject to the Fourth Waiver.
  - However, if the police have *some cause* to believe the parolee has hidden contraband in his roommate’s private areas they **CAN** search it.
- Individual Detention: A roommate **MAY** be detained (kept out of the house) during the search so that the police can complete the search.
- Individual Searches: Police **MAY NOT** pat down roommates **UNLESS** there is evidence that they are connected to the parolee’s crimes that are being investigated. In that case they **MAY** pat down or detain the person.

If someone is **in a car** with a person subject to a Fourth Waiver:

- Car Driven by the Parolee: Police **MAY** detain (keep away from the car) a person so that they can search a parolee’s car.
  - Police **MAY NOT** search the friend’s private purse or bag unless there is “reasonable suspicion” that the parolee also had access to it.
- Parolee just a Passenger: Police **MAY NOT** search a car in which the parolee is only a passenger, if the parolee does not have authority over the interior of the car (it is not his car).
  - *NOTE*: Currently being reviewed by the California Supreme Court – this might change. But you should still tell your lawyer about it if it happens.

★ **\*\*IMPORTANT\*\*** If the Police break any of these rules **KEEP COOL, REMEMBER, and TELL YOUR LAWYER**

Differences for Searches with Parole/Probation:

- Are almost the same, but parolees might be subject to *more* searches

Source: San Diego District Attorney Handbook, *The Fourth Amendment and Search & Seizure: An Update* (January 2012), pp. 654-58, available at:  
<http://www.sdsheriff.net/legalupdates/docs/search2012.pdf>.

Name: \_\_\_\_\_

Date: \_\_\_\_\_



STANFORD LAW SCHOOL

### Introduction

1. Can you name the song and the artist?
2. What's being described in the verse?

So I . . . pull over to the side of the road  
And I heard "Son do you know what I'm stopping you for?"  
"Cause I'm young and I'm black and my hat's real low?  
Do I look like a mind reader sir, I don't know.  
Am I under arrest, or should I guess some mo?"  
"Well you was doing fifty-five in a fifty-four.  
License and registration and step out of the car.  
Are you carrying a weapon on you? I know a lot of you are."  
"I ain't stepping out of s\*\*\* all my papers legit."  
"Do you mind if I look around the car a little bit?"  
"Well, my glove compartment is locked,  
so is the trunk and the back,  
and I know my rights so you go'n need a warrant for that."  
"Aren't you sharp as a tack, some type of lawyer or something  
Or somebody important or something?"  
"Nah I ain't pass the bar but I know a little bit  
Enough that you won't illegally search my s\*\*\*"  
"We'll see how smart you are when the K-9s come"  
I got 99 problems but a \*\*\*\*\* ain't one...

#### **Aim:**

What are my **rights** in a "search and seizure" situation?

How can I effectively **communicate** and **assert my rights** to a police officer?

#### **Objectives:**

Students will be able to determine whether a police stop, frisk, search, or seizure is legal, by distinguishing between two types of searches.

Students will be able to assert their Miranda rights.

#### **Magic Words:**

I want to talk to a lawyer.

#### **Miranda Warning:**

- You have the right to remain silent.
- Anything you say can and will be used against you in a court of law.
- You have the right to an attorney.
- If you cannot afford an attorney, one will be appointed to you.

There are rules that govern what a police officer can do during a **search**. Knowing these rules can help you protect your **rights**. Most searches fall within two categories: a **complete search**, or a **“Terry-Stop & Frisk.”**

COMPLETE SEARCH	TERRY-STOP & FRISK
1. Probable Cause:	1. Reasonable Articulable Suspicion:
2.	2. Traffic violation:
3.	
4.	
5.	



**Consider the following scenarios:**

1. The police see James standing at a bus stop on a downtown street, in an area where there is extensive drug dealing. The officers ask James if they can look in his bag and he says yes. They open the bag and find drugs.
2. After Tyler checks out of a hotel, the police ask the manager to turn over the contents of the trash can, where they find notes planning a murder.
3. A student tells the principal that Julia, another student, is selling drugs on school grounds. The principal opens Julia’s locker with a master key, finds drugs, and calls the cops.
4. The police send Sarah’s ex-boyfriend into her house to search for drugs. He finds marijuana in her desk drawer, which he gives to the police.
5. Chris is stopped for going 52 in a 45 mph zone (with no other reason). The police see a gun on the backseat through an open window... What if the gun was in the trunk?
6. Ray is seen shoplifting at the mall. Police arrest him outside the mall. They then drive him to his home, search his house, and find a room full of illegal car stereos... What if Ray was on probation?
7. Ray is seen walking back and forth in front of a liquor store. The police stop him and frisk him looking for weapons. After finding a weapon in his pocket, they search his backpack and find another gun.