

Search and Seizure in Oregon

curriculum produced by Janelle Sowers

Objectives:

1. With an understanding of warrant exceptions, students will be able to determine if any of them apply in this case.
2. Using case briefs, students will trace the history of the Exclusionary Rule through the state and federal courts. This will also give students exposure to how justices write opinions.
3. Students will be able to explain the difference in the federal and state interpretations of the Exclusionary Rule. They will be able to recognize the strength in Oregon's position and how it gives more rights to the people.

Procedures:

1. Ask: Where do your rights regarding search and seizure come from? (Students are likely to shout out about the Fourth Amendment – show copy of Fourth Amendment on overhead projector) So...where else do these rights come from? As citizens of Oregon? (Introduce to them Article 1 Section 9 by showing a copy of that on the overhead projector.) Discuss the two as a class – they are pretty much identical. Focus the discussion on the last part, the details about warrants.
2. Have students examine a copy of a warrant. Discuss the details included on the warrant such as specific materials to be searched for and times the warrant can be served. (Note: there is an excellent warrant in the Street Law textbook on pg. 125. Also, it may help to show the students the affidavit for it on pg. 123, too, because it explains the probable cause that was needed.)
3. Discuss the reasoning behind warrants. Judicial Branch check on Executive Branch, etc. Also, the process by which a warrant is obtained may need to be explained.
4. Ask: Could there be situations where a police officer does not need a search warrant, but the search is valid? Like what? This conversation should lend itself to the next step.
5. Warrant Exceptions Skits. Students, in small groups of 2-4 depending on class size, receive a short explanation of a warrant exception. They have approximately five minutes to put together a skit to explain to the class the exception. The Street Law book on pp. 122, 125-126 has an excellent list of exceptions with clear explanations. These are:
 - a. Search incident to a lawful arrest
 - b. Stop and Frisk
 - c. Consent
 - d. Plain view
 - e. Hot pursuit
 - f. Vehicle searches
 - g. Emergency situations
 - h. Border and airport searches

Students then regroup with the rest of the class and perform their skits. The warrant exceptions can be listed on the board before the skits begin so observing students can determine which exception is being demonstrated. Between skits, ask: Why is this an exception? What could be the concern about getting a warrant first? Etc.

6. Ask: Assume a case comes up in court where a search occurred without a warrant. The state says that the case met the requirements of one of the exceptions. The defendant says it did not. Who carries the burden of proof? (The state, according to the courts.)

7. Ask: So, what happens if it is determined that the police should have had a warrant, if the evidence was illegally seized? Introduce the Exclusionary Rule. Some hypothetical situations could be appropriate here depending on student understanding.

8. Introduce assignment packet. Read through the first page with the students explaining the plan to look deeply at one specific Oregon case, *State of Oregon v. Davis* (1983). Explain that the class will work together on pieces of the assignment.

9. Have students work the facts (pages 2 & 3 of the packet) by themselves. Class discussion would be appropriate after students have spent some time on it.

10. In small groups, students will evaluate the warrant exceptions in regards to the *Davis* case (page 4 of the packet). There should be a good amount of discussion on some of these. Others will be quickly obvious. Full class discussion would be beneficial here after the smaller groups are finished.

11. For the last page in the packet, small groups of students (hopefully, no more than 3) will evaluate the precedent set by the included cases to determine the court jurisdiction that will be best for *Davis*. To keep students engaged, each group should be responsible for one, maybe two, cases. Some of the cases are longer than others so teachers could use discretion in determining the cases for each group. Possibly, the best route would be to have each small group discuss a state and a federal case. Each group then presents to the class (the other junior partners) their findings. Students should focus their presentations on a short summary of the case, the court's final decision, and the support given to the Exclusionary Rule.

12. The court cases point to the fact that the Oregon Supreme Court and the United States Supreme Court have come to diverging opinions about the Exclusionary Rule as of late. The US Court has been moving farther away from the idea that the Exclusionary Rule is a necessity while the Oregon Supreme Court has not.

13. Students will write their official letters to the senior partner in the law firm outlining the major reasons why *Davis* would want to file his case in state court.

14. Students will then read excerpts from the actual *State of Oregon v. Davis* decision that cemented the strong commitment Oregon has to the Exclusionary Rule and then discuss as a class the strength of their argument.

Materials Needed:

Packet (attached)

Cited Court Cases (to be attached)

Oregon v. Davis excerpts (to be attached)

Assessments:

Skits

Completed Data Retrieval Mechanisms

Presentations on Interpretations

Final Letter

Discussion