

Lesson Plan
State of Oregon v. Dominguez-Martinez
Prepared by Alisa Harvey

Lesson Objectives

- To define, explain, and evaluate racial profiling as a law enforcement tool.
- To understand how courts resolve cases on statutes first before referring to the Oregon Constitution.
- To examine the importance of provisions against unreasonable search and seizure.

Benchmarks

Oregon CIM/CAM

Understand personal and political rights of citizens of the U.S.

Center for Civic Education's *National Standards for Civics and Government*

Students should be able to evaluate, take, and defend positions about issues concerning the disparities between American ideals and realities.

National Council for the Social Studies' *Expectations of Excellence: Curriculum Standards for Social Studies*

Social studies programs should include experiences that provide for ideals, principles, and practices of citizenship in a democratic republic.

Materials

"What's your opinion?" Worksheet
Article I, Section 9 of the Oregon Constitution
4th Amendment of the U.S. Constitution
ORS 810.410(3)(b)
State of Oregon v. Dominguez-Martinez
ORS 810.410(3)(e)

Time

90 minutes

Vocabulary

racial profiling
probable cause
unreasonable search and seizure
right to privacy
warrant

Activities

Activity #1

Begin by having the students individually complete the opinion poll, which they then discuss as a group, realizing that the issue of profiling becomes increasingly complex as examples of it get closer to their personal experience. By physically engaging students (they move around from "Agree" to "Disagree" to "Undecided" positions as the discussion proceeds), they get a visual sense of the controversy. The poll is primarily a motivating activity to engage students' interest.

Activity #2

Introduce Article I, Section 9 of the Oregon Constitution and review the 4th Amendment of the U.S. Constitution. Define and discuss vocabulary terms. Discuss the importance of these rights. Have students read ORS 810.410(3)(b) relating to police authority during a traffic stop and explain that the courts will always decide on a statute (if one exists), and only listen to arguments on constitutional rights as a last resort.

Activity #3

Introduce and discuss the *State of Oregon v. Dominguez-Martinez*. Ask for two volunteers to act out the scenario between the state trooper and the driver, using the facts provided.

Questions for discussion:

- Why did the Oregon State Police Trooper stop the car?
- What does ORS 810.410(3)(b) allow the police to do? What is the officer *not* allowed to do?
- Why was the evidence suppressed?
- Do some cultures consent to searches more readily?
- When does a traffic stop become a conversation? (When does a conversation become a traffic stop?)
- If someone refuses to answer questions by the police, are we entitled to assume that the person is hiding something, and must be guilty?
- If you were the attorney for Dominguez-Martinez, what steps would you take to decide how to argue the case?
 - What is the injury?
 - Who caused the injury?
 - What constitutional rights and statutory provisions exist?
 - Which court has jurisdiction (state or federal)?

Activity #4

In response to the court's decision to limit police authority, the Oregon State Legislature amended ORS 810.410 in 2001. Have students read the new language and interpret its significance.

Questions for discussion:

What does the new amendment allow law enforcement officers to do?

If you were the judge listening to this case, how would you decide the case based on the amended ORS 810.410?

If courts decide on statutes first, why have Article 1, Section 9 of the Oregon Constitution?

After the court decides the facts under this new law, does this become an Article 1, Section 9 case?

What's Your Opinion?

Each of the following statements deals with an issue related to the tension that exists between two constitutional provisions. First, there is the constitutional responsibility of government in exercising its police powers to control crime and promote the general welfare of all citizens. Second, the Constitution provides for individual constitutional rights for citizens, including the right of persons accused of crimes to be free from government abuse. In each of the following situations the tension exists. Select the response that most closely reflects your opinion and be prepared to share your thoughts.

Questions:

What constitutional rights do we value most highly in our justice system?

When do the government's constitutional rights outweigh these rights? Explain specific situations.

Who should decide the delicate balance between these tensions? The public? The police? Elected officials? Courts?

U.S. Constitution - 4th 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."

Oregon Constitution - Article 1, Section 9

"No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure, and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

ORS 810.410(3)(b)

"A police officer (b) May stop and detain a person for a traffic infraction for the purposes of investigation reasonably related to the traffic infraction, identification and issuance of citation."

Amendment to ORS 810.410 (2001)

A BILL FOR AN ACT

Relating to traffic violation stops; amending ORS 810.410.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 810.410 is amended to read:

810.410. (1) A police officer may arrest or issue a citation to a person for a traffic crime at any place within or outside the jurisdictional authority of the governmental unit by which the police officer is authorized to act as provided by ORS 133.235 and 133.310.

(2) A police officer may issue a citation to a person for a traffic violation at any place within or outside the jurisdictional authority of the governmental unit by which the police officer is authorized to act:

(a) When the traffic violation is committed in the police officer's presence; or

(b) When the police officer has probable cause to believe an offense has occurred based on a description of the vehicle or other information received from a police officer who observed the traffic violation.

(3) A police officer:

(a) Shall not arrest a person for a traffic violation.

(b) May stop and detain a person for a traffic violation for the purposes of investigation reasonably related to the traffic violation, identification and issuance of citation.

(c) May make an inquiry into circumstances arising during the course of a detention and investigation under paragraph (b) of this subsection that give rise to a reasonable suspicion of criminal activity.

(d) May make an inquiry to ensure the safety of the officer, the person stopped or other persons present, including an inquiry regarding the presence of weapons.

(e) **After informing the person stopped that detention has ended and that the person is free to leave,** may request consent to search in relation to the circumstances referred to in paragraph (c) of this subsection or to search for items of evidence otherwise subject to search or seizure under ORS 133.535.