Search and Seizure: Crash Course Government and Politics #27

Crash Course: U.S. Government and Politics
https://youtube.com/watch?v=_4O1OlGyTuU
https://nerdfighteria.info/v/_4O1OlGyTuU

Hi, I'm Craig, and this is Crash Course Government and Politics, and today, we're gonna continue our discussion of the Bill of Rights, and talk about something that may actually be useful to you. We're gonna talk about when the police are allowed to search your house, your car, and even you. But not me. I have immunity. I'm on YouTube. Right, is that how it works, Stan? It's not how it works? I'm in trouble.

You might think that this only matters if you are, you know, a criminal, and if you are, then you should be paying close attention, but even if you haven't committed any crimes and you are unlucky enough to be stopped by the police, these protections apply.

[Intro]

The question of when and where and how the police can conduct a search falls under the general topic of Criminal Procedure.

In this case, the second word is important. The courts usually look at how the police are acting, and the protections courts have supported are primarily procedural. What this means is that there is no unlimited, sometimes called substantive, right to have the police not search you or your home. The criminal procedure civil liberties are found in the Fourth, Fifth, and Sixth amendments, but today we're only gonna look at the Fourth amendment, which reads, "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." You can see right away that this is not an absolute right. The framers made sure that we are only protected from unreasonable searches and seizures, and they added that the police are supposed to get a warrant before they search you.

Let's start with the warrant requirement, because it's kinda confusing. A search warrant is a piece of paper issued by a judge, authorizing law enforcement officers to search something, usually your house, but possibly your car or your person or your desk eagle. I'm not hiding anything in there. What? According to the Fourth Amendment, for the police to get a judge to issue a warrant, they must have probable cause, which is more than just a suspicion or an anonymous tip, although sometimes judges will issue warrants on pretty flimsy probably cause. When they are issued, warrants are supposed to be specific, laying out what the police are searching for and where they expect to find it. This means that if the warrant says the police can search your garage for a stolen car, they can't look in your kitchen drawers and cupboards, because A, the warrant says they can search your garage and B, they're looking for a car, and you can't hide a car in your kitchen drawers, unless it's a very small car. I drive a Prius, which is pretty small, but it doesn't fit in my kitchen drawers. I've tried. Even when I take the whisk out.

You'll notice that I qualified my statement about warrants. You do this a lot when you're talking about criminal procedure. I said, "When they are issued," despite the fact that the Fourth Amendment seems to say that the police always need a warrant, the courts have ruled that it is not always required for the police to engage in a reasonable search. What this means is that if the police have probable cause to search you, say, they catch you pocketing powdered donuts in the grocery store, they don't always need to go to the judge to search you. What makes a reasonable search is a question that the courts have wrestled with. Sometimes, like with a stolen car in the kitchen cabinet, it's pretty obvious. But many times it isn't.

For example, if the warrant allows the police to search your kitchen for illegal hand grenades and they look in your freezer and find illegal drugs instead, that's probably reasonable, because freezers are where most people store their illegal hand grenades, and also their drugs, and if the police stop you for speeding, which is a violation of traffic laws, also known as a crime, and then search your car and find a dead body in the trunk, the courts have ruled that this is reasonable, too. It's important to realize that the warrant and reasonableness requirements are not meant to prevent the police from stopping criminals caught in the act. If the police, after chasing a masked man carrying a bag with a dollar sign on it running away from a bank that has just been reported robbed by a man with a gun and mask manage to catch him, they don't need an arrest warrant to take him into custody, and because the running away and the bag of money are pretty suggestive, the police will have probable cause to search the guy, who in my mind, looks like the Hamburglar for the gun. And the question is, can they use the gun as evidence?

Let's go to the Thought Bubble. One of the most important Supreme Court cases dealing with searches and seizures is Mapp v. Ohio, decided in 1961. The facts of the case are pretty wild. The police went to the home of Dollree Mapp to search for explosives and gambling equipment. They didn't have a warrant, so she didn't let them in. They came back a bit later with a fake warrant and searched the house. They didn't find explosives or gambling equipment, but they did find a trunk full of pornography, which was illegal at the time, so they arrested her. The main evidence against her, naturally, was the pornography, but the cops' probable cause was to search for explosives. The Court ruled that the evidence had been seized through an illegal search. There was no warrant, and even if there had been one, it probably wouldn't have included the trunk in which they found the porn. More important, they ruled that this evidence and any evidence seized pursuant to an illegal search cannot be used against a defendant in a trial. This is called an exclusionary rule, unlawfully obtained evidence is excluded from the trial, and it's sometimes called the "Fruit of the Poisoned Tree," possibly because lawyers are better at naming things than historians are. This is incredibly important, especially for cop shows on TV, but also for you if you happen to have your home searched illegally and the police find evidence of criminal activity. Thanks, Thought Bubble.

So it seems like there are some pretty strong protections against the police searching your home because of Mapp, but there are also plenty of exceptions, and no, we're not talking about the Mongols.

Many of these exceptions involve your car. In general, the courts have been very lenient when police search your car, probably because very often, when they pull you over, it's because of some kind of moving violation, like speeding, which can be probable cause, especially if they think you might be speeding away from a crime. The court decisions on this issue are really, really complicated, but the general rule of thumb is that the police can usually search your car and you if they pull you over, despite what Jay-Z may think. Another question that comes up is random traffic stops to check for drunk driving. A breathalyzer is a type of search, so it would seem that the police should have probable cause to stop you and check to see if you're drunk.

But the Courts have ruled that drunk driving checkpoints are okay, assuming they don't disproportionately target people of a specific race, but that's for another episode. While we're talking about cars and specific groups of people, I should probably add that there's one group of people who don't have the same protections against searches: students. Students often think that it's not okay for school officials to search their lockers or their bookbags, but those students are wrong. Most students go to public schools, where the officials are mostly government workers, and are subject to the Bill of Rights. The Courts have ruled that students don't have the

same protections as other citizens, and that the interests of the state in keeping a safe, drug and weapon-free educational environment trumps their privacy interest. Although there are limits to how intrusive these searches can be. Drug tests for student athletes? Fine. Strip searches? Not okay.

And bee tee dubs, in the same way that a breathalyzer test is a search, so is a drug test, or as they say in England, a drugs test, which is probably a more accurate way to say it, because they usually test more than one drug. These can seem pretty intrusive, but the Courts usually rule that they are okay, especially where public safety is concerned. The state interest in drug-free schools is a pretty strong one, but the cases on student drug tests are really interesting, especially when they get into the issue of whether schools can test all students without probable cause, or only specific groups, like athletes. If you're really interested, you should look these cases up, but why are you so interested? Maybe you should take a drug test. Or a drugs test.

So I'm gonna stop here before I get too deep in the weeds about search and seizures and the Fourth Amendment. There are two important things to remember. The first is that, like all the Constitutional protections of civil liberties, it only applies to government agents. You have no Fourth Amendment protection against your parents searching your room, unless your parents are police officers and they're on duty, and it's like, official police business. The second thing to remember is that the protections in the Fourth Amendment are far from absolute. The Amendment itself includes a reasonableness standard, and what is reasonable as well as when warrants are necessary has been, and continues to be, determined by the Courts. In this case, as with most civil liberties cases, the Court's attempt to balance an individual's interest in maintaining her privacy against the state's interest in preventing crime and keeping citizens safe. It's not an easy balance, but that's what makes the issue complex and interesting, at least to us here at Crash Course, because we're complex and interesting. Right, Stan?

Thanks for watching. See ya next time.

Crash Course Government and Politics is produced in association with PBS Digital Studios. Support for Crash Course US Government comes from Voqal. Voqal supports nonprofits that use technology and media to advance social equity. Learn more about their mission and initiatives at Voqal.org. Crash Course was made with the help of these complex and interesting people. Thanks for watching.