

# **Mapp v. Ohio / When is a Warrant Not Needed?**

## **Directions:**

1. Read the **Background** section below.
  2. Participate in the **Legal or Illegal?** activity (page 2).
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## **Background**

Most Americans understand that police officers sometimes need a warrant to search for information believed to be related to criminal activity. They may also be aware that, according to the exclusionary rule, evidence gained in an illegal search cannot be used to convict someone of a crime. However, in many circumstances the police do not need a warrant in order for a search to be legal and the evidence to be used in court.

In each of the situations below, a police officer does not need a search warrant to conduct a search.

- **Consent:** If an individual voluntarily consents (agrees to) a search, no warrant is needed. The key question in this kind of search is what counts as a voluntary agreement? In order for a consent search to be legal, the individual must be in control of the area to be searched and cannot have been pressured or coerced into agreeing to the search.
- **Plain view (smell or hearing):** A police officer that spots something in plain view does not need a search warrant to seize the object. In order for a plain view search to be legal, the officer must be in a place they have the right to be in and the objects the police officer seizes must be plainly visible in this location. This exception has been extended to smell and hearing as well.
- **Search incident to arrest:** If a suspect has been legally arrested, the police may search the defendant and the area within the defendant's immediate control. In a search incident to arrest, no warrant is necessary as long as a spatial relationship exists between the defendant and the object.
- **Protective sweep:** Following an arrest, the police may make a protective sweep search if they reasonably believe that a dangerous accomplice may be hiding in an area near where the defendant was arrested. To do so, police are allowed to walk through a residence and complete a "cursory visual inspection" without a warrant. If evidence of or related to a criminal activity is in plain view during the search, the evidence may be legally seized.
- **Automobile exception:** If the police stop a car based on probable cause, they can search for objects related to the reason for the stop without obtaining a warrant. During

a car search, the police are also allowed to frisk the subject for weapons, even without a warrant if they have reasonable suspicion that the suspects may be involved in illegal activities.

- **“Stop and Frisk”:** Police, under certain circumstances, can conduct pat down searches for weapons or drugs when members of the public are stopped for questioning.  
Hint: Although the term is used frequently, stops and frisks do not always occur together. Police can stop a person if they find them to exhibit suspicious behavior. A frisk, however, follows if the police officer feels there is an immediate danger to themselves or others.
- **Emergency circumstances:** When there is a search that takes place in emergency circumstances, for instance a bomb threat, the officer does not need a warrant. The Supreme Court has recognized that emergency circumstances can be when an officer has good reason to believe that evidence is probably being destroyed or someone is in danger.
- **Checkpoints:** Law enforcement agencies can conduct drunk driving and other roadside checkpoints without a warrant. The Supreme Court has upheld roadside checkpoints to check for drunk driving due to the interest in the safety of citizens outweighing the liberty of an individual. There is also no other method police could utilize that could effectively monitor and deter drunk driving.

## Legal or Illegal?

You will be given an index card with an **L** on one side and an **I** on the other. The **L** stands for **LEGAL**. The **I** stands for **ILLEGAL**. Read the scenario in which the police did not have a search warrant. Decide, based on the information above, whether the search and/or seizure was legal or illegal. When the teacher says “go,” raise your index card, displaying the **L** if you think the search was legal or the **I** if you think the search was illegal. Be prepared to explain and defend your answer.

1. At the local shopping mall, an undercover detective notices a group of teenagers shopping together. Following them, he observes no illegal behavior. However, once they exit the mall, he stops them and orders them to turn over their purses, wallets, and jackets.
2. Using a valid arrest warrant, police arrest a woman for running a drug ring out of her house. Believing that her boss, one of the biggest drug dealers in the country, may be hiding inside the house, they walk through the house looking for him.
3. Officer Jones is trying to find a convicted felon who escaped from a nearby jail. Going door-to-door in the neighborhood surrounding the jail, she asks permission to enter each house and search it. The Nguyens allow her to enter their house. Once in the house, the officer sees and seizes an unregistered firearm that is on a bookshelf.

4. In a neighborhood well known for producing methamphetamines, the police have a warrant to search the basement of one home to find a production lab. Finding nothing in the basement, they perform a quick search of the rest of the house.
5. While chaperoning a high-school football game, police in Mississippi see a gun on the front seat of a parked car. Opening the car door, they discover not only the gun but also bullets and a knife.
6. Jody and Chandra attend a keg party where everyone drinking was under-age. The police break up the party without arresting anyone. They seize Jody's purse. Inside it they find marijuana and arrest Jody for possession.
7. Late for work, Diego was driving five miles over the speed limit when pulled over by the police. Ordering Diego out of the car, the police proceed to frisk him and find a small weapon in his jacket pocket.
8. A fire breaks out in a college fraternity house. A member of a nearby sorority calls 911 to report the fire. The firefighters and police arrive, enter the house, and quickly extinguish the fire. Before they leave, they check each room to make sure the fire is contained, and no one is harmed. They discover a room filled with marijuana plants (which are illegal in their state).