

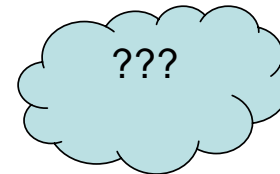
The Man on the Clapham Omnibus:



A Case of Multiple Opinions?"

Jacquelyn Burkell

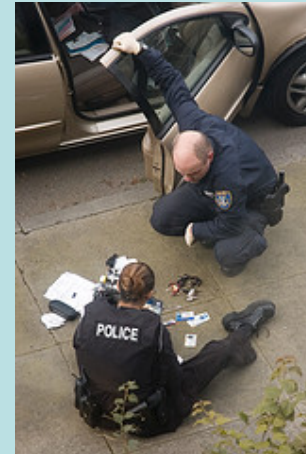




The Clapham Omnibus

STANDING high in judicial favour, the "reasonable man" is a more complex creature than might be supposed at a first meeting. His preheminance¹ as a standard for determining whether or not conduct is properly described as being negligent owes much to the flair for public relations of some of his sponsors. Who could resist an introduction in the form "the ordinary reasonable man, 'the man on the Clapham omnibus,' as Lord Bowen phrased it"²? As Sir Percy Winfield pointed out, "he has not the courage of Achilles, the wisdom of Ulysses or the strength of Hercules," although Lord Bramwell occasionally attributed to

Is a search reasonable?



Has it already happened?

The police asked an obviously drunk driver to take a breathalyzer test without telling him that he had a right to consult a lawyer.

70% of respondents say
“Allow the evidence”

Should a judge allow the breathalyzer evidence to be used in court or should he exclude it even if the driver may go free as a result?

Fletcher and Howe, 2000

I would like you to consider now an instance where the police see a young man they do not recognize walking very near a house where they know drugs are being sold. They search him and find he is carrying drugs.

Do you think this search is a reasonable search, or does it violate the young man's rights?

45% of respondents say
“violates rights”

- Search in alley next to home?
- Reading a personal diary?
- Looking in the trunk of a car on a public street?
- Not very intrusive
- Highly intrusive
- Moderately intrusive

Slobogin and Schumacher, 1993

Is it a search of me?

- Following a pedestrian in a police car?
- Low level of intrusiveness
More intrusive for *me* than for someone else
- Using an undercover agent to pose as a secretary?
- Relatively high level of intrusiveness
More intrusive for *me* than for someone else

Is the person 'guilty'?

- Looking in the trunk of a car on a public street?
 - Moderate level of intrusiveness
Less intrusive if the search reveals the suspected evidence
- Using an undercover agent to pose as a secretary?
 - Relatively high level of intrusiveness
Less intrusive if the search reveals the suspected evidence

Who am 'I' right now?



idtrail.org

ON THE IDENTITY
TRAIL 

Typically, we don't want the government or anyone else keeping track of what we do ...

<http://www.computerworld.com/blogs/government?from=120>

idtrail.org

ON THE IDENTITY
TRAIL 

“[Increased airport security is] a reality of life that we have to deal with and we have to make sure that we're safe and what we've gone through in New York and what the whole country has gone through, we understand that we have to pay a price for security and freedom.”

“I think we have to take these extra precautions just to ensure that we're all safe. So I think it's okay.”

<http://khon.com/khon/displayStory.cfm?storyID=14885>

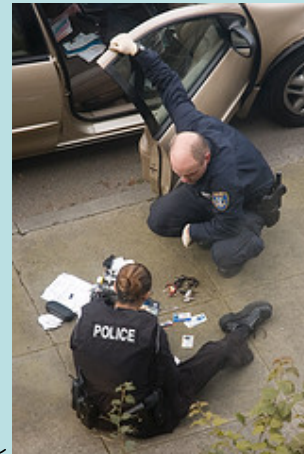
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I said that if you weren't doing anything wrong, if you had nothing to hide, then having your backpack searched before alighting on the subway was a small price to pay for insuring the safety of New York City's mass transit system.

<http://rogovoy.com/news1056.html>

If I put myself in the role of the person who is searched, do I find this search reasonable?



We cannot give Charter protection only to the virtuous. Who would decide who they are in any event? It must be given to all citizens to have true meaning.

By giving it to all, we protect the rights of all.

R. v. Nguyen [2005] 2005 ABQB 403