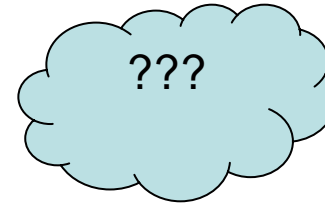


# *Reasonable Expectations of Privacy*

## *The Psychological Perspective*

# *The Man on the Clapham Omnibus:*

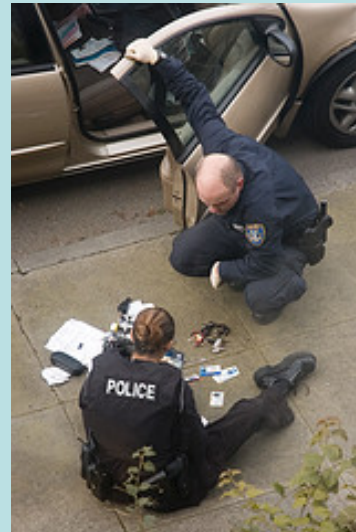
*Who is he and  
what does he expect?*



### *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 preheminance<sup>1</sup> 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"<sup>2</sup>? 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

# Reasonable expectation of privacy?



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

*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?*

70% of respondents say  
“Allow the evidence”

*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?*

46% of respondents say  
“violates rights”

53% say “reasonable  
search”

*Fletcher and Howe, 2000*

- 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*

- 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

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

# Who am 'I' right now?



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

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

**“[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.”**

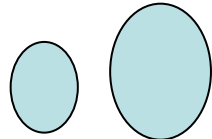
**“I think we have to take these extra precautions just to ensure that we're all safe. So I think it's okay.”**

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

**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>

# Is 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

**Reasonable expectations are inherently too nebulous, too unfocussed, to do the difficult jobs in the courtroom. Nevertheless, society must admit the principle into the courtroom, and into the floor of the legislature. As an opening argument it goes far to identify some of the main concerns of society, even though it does little to close the debate.**

Kuklin, 2001