

A SHORT, SHORT LESSON ON THE FOURTH AMENDMENT

By Millie Aulbur, Director of law-related education
The Missouri Bar

1. This short lesson on the Fourth Amendment can be used with students Grades 5 and higher. The objective of the lesson is to quickly acquaint students with the protections in the Fourth Amendment and to explore some Fourth Amendment situations involving young people.
2. Materials needed: Sufficient copies for all participants of materials used.
3. Distribute copies of the Fourth Amendment or make an overhead. (attached) Read together as a class. Depending on time, consider discussing these aspects of Fourth Amendment:
 - Why did the men who wrote the Constitution want a right like this included? (The colonists had experienced unannounced searches by the British and the right to be free from unreasonable searches was a right English citizens enjoyed and the colonists felt should have been accorded to them.)
 - How important is this right to you?
4. Two questions that are almost always litigated with Fourth Amendment issues are did a search really occur and was the search reasonable.
 - What is a search? (Put up overhead of kinds of searches or distribute copies.)
 - Depending on the class, you may want to consider discussing that the right to be free of unreasonable searches, also means that there is an *expectation of privacy* in the thing being searched. Give some examples of something private: home, locker, car, purse, pockets, hotel room. But what about a friend's house or a friend's car? What would you say about trash bags in front of your home? What would you see about heat radiating from your home?
 - A search with a warrant is considered per se reasonable. What is the warrant requirement? Who can get a warrant? Who do they get the warrant from? (May want to discuss use of informants, observations, etc.)
 - What is reasonable when there is no warrant? Discuss exceptions. (See handouts)
5. What do you think happens to evidence that the police or the government obtains from an illegal search—one where there was no warrant and one that does not fall within one of the exceptions? Prior to 1961, the court would basically say that it was illegal but still allow the evidence. In 1961, in a landmark case called *Mapp. V. Ohio*, the Supreme Court created the exclusionary rule. (Explain how there is a hearing, how sometimes cases are thrown out.)
6. Do the role plays with the students. After each role play, explore the various Fourth Amendment issues. (Attached are explanations of both cases.) Keep these aspects of the role play in mind:
 - At the time *TLO* was decided, it was not illegal for minors to possess cigarettes.
 - The *It's My Body* role play makes it clear that there is not probable cause for the urine testing in this school—there is no drug problem

THE FOURTH 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 person or things to be seized.

KINDS OF SEARCHES

- LOOKING AROUND IN A HOME OR APARTMENT**
- LOOKING INTO AN AUTOMOBILE**

➤ **WIRE TAPS**

➤ **TAKING BLOOD**

➤ **TAKING URINE**

➤ **LOOKING THROUGH BINOCULARS
AND TELESCOPES**

➤ **X-RAYS**

➤ **LOOKING THROUGH POCKETS
AND PURSES**

➤ **DOG-SNIFFING**

LEGAL WARRANTLESS SEARCHES

»»» **SEARCHES AFTER AN ARREST**

»»» **CONSENT SEARCHES**

»»» **PLAIN VIEW**

»»»» STOP and FRISK

»»»» HOT PURSUIT

»»»» AUTOMOBILE

»»»» INVENTORY

»»»» BORDER and AIRPORT
SEARCHES

»»»» EXIGENT CIRCUMSTANCES
IT 'S MY LOCKER!

PLAYERS: Ms. Jones, the principal, and two students, Patty and Peter

Setting: School hallway in front of Peter's and Patty's lockers.

Ms. Jones: Peter and Patty, please open your lockers. It has been reported to the office that you brought pagers to school. You know it is against the rules to have a pager at school.

Peter: I do not have a pager in my locker. I will not open this locker without you getting a search warrant.

Patty: I also do not have pagers in my locker. Unless you have a search warrant, you have no right to search my locker.

Ms. Jones: I have here the combinations to both of your lockers. If you will not open the lockers for me, I will open them on my own.

Peter: If you find anything, you cannot use it against me to punish me.

Patty: Don't you know anything about the Fourth Amendment? You can't just search anywhere that you want. This is my private locker.

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1. Who is right? Patty and Peter? The principal?

2. If the principal does not find anything, does this mean she violated Patty's and Peter's Fourth Amendment rights?

3. Did the principal need a reason to search their lockers?

4. *See T.L.O. v. New Jersey*. (In this case, the U.S. Supreme Court held that if the school had probable cause to believe that a school rule had been broken, a search could be made.)

NEW JERSEY v. T.L.O.¹

Facts of the Case

On March 7, 1980, a teacher at Piscataway High School in New Jersey found two girls smoking in a restroom. Since this was a violation of school rules, the teacher took the two students to the principal's office. The assistant vice-principal questioned the two girls separately. One student admitted that she had been smoking. However, T.L.O. denied that she had been smoking in the restroom and claimed she did not smoke at all. The assistant vice principal then asked to see T.L.O.'s purse. When he opened the purse he found a pack of cigarettes and also noticed a package of rolling papers which the vice-principal knew were associated with marijuana use. He then searched the purse more thoroughly and found a small quantity of marijuana, a pipe, several empty plastic bags, a substantial amount of money, a card that appeared to be a list of students who owed T.L.O. money, and two letters that implicated T.L.O. in the distribution and sale of marijuana, a crime under New Jersey law.

What Happened in State Court

The State of New Jersey brought delinquency charges against T.L.O. in Juvenile Court. T.L.O. argued that the vice-principal violated her Fourth Amendment rights to be free from unreasonable searches and seizures by government officials because the vice-principal had no reason to believe a crime had been committed and had no search warrant. The Juvenile Court agreed that a vice-principal was a government official and that Fourth Amendment protections applied to searches by school officials, but found that the vice-principal's search of her purse was reasonable. The New Jersey Supreme Court reversed the Juvenile Court and found that once the vice-principal had found the cigarettes in T.L.O.'s purse, the search should have ended and there should have been no further exploration of the purse.

Appellant's (State of New Jersey) argument: The vice-principal's search of the purse was reasonable because a teacher had told the vice-principal that T.L.O. had been smoking. Thus, the vice-principal had *reasonable cause to suspect* a school rule had been broken. When the vice-principal was searching for the cigarettes, the drug-related evidence was in plain view. Plain view is an exception to the warrant requirement of the 4th Amendment.

Respondent's (T.L.O.) argument: The vice-principal had no probable cause to believe that T.L.O. had committed a crime when he searched her purse. Possession of and use of cigarettes (at that time) were not crimes. Belief that a school rule has been broken is not grounds for a warrantless search. Furthermore, even if the vice-principal had the right to search T.L.O.'s purse for cigarettes that the search should have ended when the cigarettes were found.

Food for thought: If the Court should find that the vice-principal's search of T.L.O.'s purse was reasonable, does this open the door to school administrators randomly searching students' lockers, desks and belongings?

IT'S MY BODY!

¹T.L.O. is the initials of the juvenile in this case. Since the person involved in the case is a minor, her name may not be used in order to protect her privacy.

Setting: High School classroom during a meeting for winter sports

Players: Girls' basketball coach--Coach Champ, Boys' basketball coach--Coach Winner, Players--Jack and Jill

Coach Champ: All of you players need to know that at any time we can require you to give us a urine sample.

Jack: No way! That is an invasion of our privacy.

Coach Winner: The United States Supreme Court says we can do it and we will.

Jill: Why are you doing this?

Coach Champ: To test for drug use among the athletes.

Jack: I didn't think we had a drug problem in this school

Coach Winner: We don't, but we are going to test so we can keep drugs out.

Jill: I don't think the United States Supreme Court allows you to do that.

Coach Champ: The school lawyers, Joanie Cochran and Mark Clark, say we can legally do this.

Jack: Those two got their law degrees by correspondence courses.

1. Who's right, the coaches or the students? See *Vernonia v. Acton*, 115 Supreme Court Reporter, Page 2386.

2. Additional activity: Have the students read the *Vernonia* decision and list the necessary criteria for allowing the urine testing.

The Holding of the Court

Vernonia, Oregon, is a small community of about 3,000 people with a student population of 690 students. In this small logging community, most of the students participated in school athletics and school athletic programs are a major focus of the community. Between 1985 and 1989, the teachers and administrators of Vernonia School District became concerned about what they observed to be a dramatic increase in the use of illegal drugs among the students, many of them student athletes. The increase in drug use corresponded with an increase in student disciplinary problems. Many student athletes openly bragged about using drugs.

Prior to 1989, administrators instituted drug education programs and used drug-sniffing dogs to combat the escalating drug problem. These measures did not work. Thus, in 1989, the administration adopted a policy that required all students who participated in interscholastic athletics to take a drug test at the beginning of the athletic season and at random times throughout the season. The urine of athletes was tested strictly for the presence of drugs. The type of test used is considered 99.94% accurate. The results were kept confidential and were strictly used by the school. Those athletes who tested positive for drugs had to participate in a drug-counseling program for six weeks. They also had to agree to weekly drug testing or face being suspended from the team for the current season and all following seasons. If a student refused to be tested, the student was suspended from inner scholastic athletics for the season.

After the policy went into effect, disciplinary complaints dropped by 50%. Teachers saw a drop in the use of drugs among their students and saw approval for drug use also drop.

James Acton was in seventh grade during the 1991-1992 school year and wanted to play football. However, he and his parents refused to sign the consent form for the drug testing. In accordance with the school policy, he was suspended from interscholastic athletics. The Actons brought a suit against the school in the federal district court, claiming that the school's policy violated James' Fourth Amendment right to be free from unreasonable searches and seizures. The Actons lost in district court and then

appealed to the Ninth Circuit Court of Appeals. They won in the Ninth Circuit. The School district then asked the United States Supreme Court to review the case:

Justice Scalia's Views:

- Collecting a student athlete's urine is a "search" and, therefore, the Fourth Amendment issue of whether the search is reasonable. Reasonableness is judged in this case by balancing the intrusion of requiring a student athlete to provide a urine sample against the school's interest in curbing illegal drug use.
- School children require a greater degree of supervision than do adults. The requirements that school children receive physical examinations and have vaccinations indicate that they have a lesser expectation of privacy than the general population. Student athletes have an even lesser expectation of privacy because they undress in open locker rooms, are subject to preseason physical exams and rules regulating their conduct.
- The urine is tested only for drugs and only a very limited group know the results. The results are not released to medical personnel or the law enforcement community.
- The importance of deterring illegal drug use by school children cannot be doubted. Moreover, the policy of drug testing athletes is directed strictly to student athletes who are more susceptible to injuring themselves or others while using illegal drugs.

Justice O'Connor's Views:

- The Fourth Amendment generally forbids searches of whole groups. There must be suspicion of the individual to justify the search.
- Students who are disruptive or act suspicious should be tested--this would not violate anyone's constitutional rights.
- By focusing on individual suspicion, the whole process is kept confidential and then "any distress arising from what turns out to be a false accusation can be minimized."
- "It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search."

Justice Scalia was writing for the majority in this case. Four other judges in this 6-3 decision joined him. They were Chief Justice Rehnquist and Justices Kennedy, Breyer, Ginsburg, and Thomas. Judge O'Connor wrote the minority, or dissenting, opinion and was joined by Justices Stevens and Souter. The Court held as follows:

- Requiring a student to submit to a urine test is a search within the meaning of the Fourth Amendment.
- An individual's right to privacy must be balanced against the school's interest in curbing illegal drug use among the student body.
- The state, as the schoolmaster of school-age children, may exercise greater supervision over school children than it can over adults.
- Students do not leave their constitutional rights at the school door; therefore, any search or seizure must be considered reasonable.
- School children have a lesser expectation of privacy than free adults in that they are required to have physical examination and vaccinations in order to attend school.
- Student athletes have an even lesser expectation of privacy in light of the fact that they often undress in open locker rooms.

- As to the balancing test, the privacy interests involved with urine testing are minimal compared to the school's interest in curbing the use of illegal drugs among the students.
- Student athletes have a greater potential to harm themselves and otherwise while using illegal drugs.
- In the Vernonia School District, the results of the drug test would be kept confidential and not turned over to the authorities.