
**Fourth Amendment Lesson Plan: Students' Right to be Free from Unreasonable Searches and Seizures
Lesson Plan for Longer Classes**

Included in this lesson plan are the following materials:

- 1) An introductory activity relating to the Fourth Amendment and students' expectations of privacy
 - 2) An overview of Constitution Day, American governmental structure, and the Bill of Rights
 - 3) The Fourth Amendment and relevant case summaries
 - 4) The Fourth Amendment hypothetical
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Dear Law Student and Lawyer Presenters:

Thank you so much for participating in the Colorado Law Constitution Day Project! With your help, we will be visiting more than 100 classrooms in Boulder, Broomfield, Lafayette, Erie, Centennial, Aurora, Commerce City, Greeley, Fort Collins, Glenwood Springs, Watkins, Wray, Carbondale, Denver, Longmont, Colorado Springs and Kremmling.

In order to make this project a success, it is essential that you read through this packet carefully and ask any questions that you may have, either at one of the trainings sessions or between now and the day of your Constitution Day presentation. Please note that specific instructions for each segment of the lesson are included at the top of each page in bold, italicized text.

When the Byron White Center for the Study of American Constitutional Law was established 20 years ago, its founder hoped the Center would be a source of increased discussion and study of the Constitution not only within the University, but also in the broader community. This Constitution Day Project is a fulfillment of that founding vision and I am honored that you are willing to help make it happen.

Again, thank you for your participation!

Sincerely,

Melissa Hart

Presenters: Please begin the lesson with the following activity to engage the students and help provide some context for the 4th Amendment and expectations of privacy.

Introductory Activity

Begin the activity by casually asking to see a student's backpack. Take the backpack to the front of the room and "rifle" through it (give the impression you are searching; however, do not actually dig through the student's personal effects). You may wish to ask the teacher to recommend a student who will be a good sport about this kind of "search."

Then, gauging student reaction, discuss what the students felt when they saw you search the bag. Were they surprised? Did the student whose bag was searched feel like you were not respecting his or her privacy? Generally, do students expect privacy in their belongings at school?

Based on this initial experience, lead the students through the following exercise:

- a. **Discuss:** What right do you have to keep your stuff private?
 - How does this right change depending on whether you are at home or at school?
 - Does it change depending on what it is that you are trying to keep private?
- b. **Rank:** On a scale of 1-10, with 1 being the lowest and 10 being the highest, let's rank the expectation of privacy you have in the following areas and items (write the areas/items on the board and tally responses):
 - The backpack we just searched
 - School locker in main hallway
 - The contents of a purse in school locker
 - Gym locker in girls' locker room
 - Bathroom stall with closed door
 - Clothing, including pockets and underwear, while you're wearing it
 - Clothing that you're not wearing (e.g., a coat draped on the back of a chair)
 - Bodily fluids such as urine and blood
 - The contents of your cell phone

Presenters: Following the activity, take a moment to “step back” and provide a big-picture overview of Constitution Day, the American governmental structure, and the Bill of Rights. Ask students what they know about Constitution Day before giving your brief description. Ask for volunteers to describe the branches of government. Then, go over the Bill of Rights, calling on students to describe them, name any that they can remember, and offer reasons why each is important.

Introduction

Constitution Day

The United States Constitution was adopted on September 17, 1787. One hundred and sixty-five years later, President Harry S. Truman signed a bill declaring September 17 a holiday. We're here today to celebrate the signing of the supreme law of the land and to study the privileges and responsibilities of American citizens. That is the meaning of Constitution Day.

The Constitution and the Branches of Government

The first three Articles of the Constitution divide the federal government into three branches: the legislative branch, or Congress; the executive branch, which is overseen by the President; and the judicial branch, which is headed by the Supreme Court.

Congress is responsible for legislating, or passing laws. Congress consists of two bodies: the House of Representatives and the Senate. The House of Representatives controls the nation's finances. Each of the 50 states is allocated Representatives based on their population. The Senate, on the other hand, consists of 100 Senators, or two from each state. Both bodies of Congress can propose bills. If both bodies pass a bill, it is sent to the President.

The President, as head of the executive branch, can either sign or veto a bill. If he signs a bill, it becomes the law. If he vetoes the bill, it is sent back to Congress. At that point, Congress can overcome the President's veto if both bodies pass the bill with a two-thirds majority. If that happens, the bill becomes law.

Finally, the Supreme Court acts as a referee in this process. The Supreme Court can hear cases involving federal law. They also have the power to rule federal laws unconstitutional, invalidating the law. The authority to invalidate laws is not contained in Article III of the Constitution. Instead, the Court secured this power in the 1803 case *Marbury v. Madison*. Today, that power is firmly established.

The U.S. legal system is one of shared power: some authority rests with the federal government and some with each state government. There are limitations to what laws the federal government can pass because the federal government is limited to the powers included in the Constitution. All other government power is left to the states.

The Bill of Rights

The first Congress of the United States met in 1789. That year, a series of amendments to the Constitution were proposed. Ten of these amendments were ratified by the states, and became known as the Bill of Rights. Today they protect key freedoms including freedom of speech, freedom of religion, and the freedom from unreasonable searches and seizures by the government.

Presenters: After going over the Bill of Rights, focus on the Fourth Amendment. Write the text of the Fourth Amendment on the board. Ask different students to read each major section before clarifying what each means (see below).

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 persons or things to be seized. “

“The right of the people to be secure in their persons, houses, papers, and effects . . .”

- a. What does “persons” really mean?
 - What about a person’s clothes? (yes)
 - How about the wallet they are carrying? (yes)
 - How about a person’s blood or bodily fluid? (yes)
- b. What does “houses” really mean?
 - What about an apartment? (yes)
 - A mobile home? (depends on whether it is being used as a home or as a car)
- c. What does “papers” really mean?
 - What about a diary? (yes)
 - Your email? (probably not)
- d. What does “effects” really mean?
 - What about your backpack? (yes)
 - Your collection of comics? (yes)
- e. Should the protections of the Fourth Amendment be limited to just these four categories?

“ . . . against unreasonable searches and seizures, shall not be violated . . . ”

- a. Why the qualification? Why not protect against *any* search?
 - The goal is to balance individual liberty with public safety and welfare, so we draw the line at unreasonable searches. When searches are reasonable in the interest of public safety, are they not as offensive to individual liberty?
- b. BUT, what is unreasonable?
 - What about a search of a person who is clearly selling drugs in public?
 - A search of a person’s car who is being arrested for DUI?
 - A TSA-operated body scanner at an airport?

“ . . . no warrants shall issue, but upon probable cause . . . ”

- a. The second part of the Amendments sets a standard of justification for searches.
 - It prohibits searches unless they are supported by “probable cause”
- b. Which could be “probable cause” for searching a home?
 - An officer sees a woman with no criminal history put a small package of drugs into her pocket before entering her house? (yes)
 - An officer sees a known drug-dealer carry a bag of groceries into her house? (no)

Presenters: Review the rule, background, and legal analysis of each case. As you go, write the name of each case on the board. Beneath the name, briefly list the rule and a few key facts so the students can use the board as a reference during the debate.

Judicial Decisions

1. *Katz v. United States*, 389 U.S. 347 (1967)

Rule: Searches conducted without a search warrant issued by a judge are assumed to be unreasonable under the Fourth Amendment except in a few limited circumstances. The Fourth Amendment protects people, not places, from unreasonable searches and seizures.

Background: Charles Katz placed gambling bets by telephone from inside a glass phone booth in California. Unknown to him, the FBI had attached a listening and recording device to the outside of the booth to monitor his calls. The government used these recordings to convict Katz of breaking the law. Katz appealed his conviction, and the U.S. Supreme Court decided to hear the case.

Legal Analysis: Originally, the Fourth Amendment was thought to protect specific places—for example, your home—from unreasonable searches and seizures. In *Katz*, the government argued that a glass phone booth was not a protected place since anyone could see inside the booth and the FBI recording device was outside, not inside, the phone booth. The Supreme Court concluded the Fourth Amendment doesn't protect places, it protects people. What people seek to keep private, even in a public place like a phone booth, can be constitutionally protected.

2. *New Jersey v. TLO*, 469 U.S. 325 (1985)

Rule: Students are entitled to some Fourth Amendment protection while they are in school. Searches of students are reasonable if they are justified when they begin and if the scope of the search is reasonable compared to the reasons for the search.

Background: A high school teacher caught two students smoking in the school bathroom. She brought the students to the principal's office. One of the students denied that she had been smoking. The principal, Mr. Choplick, demanded to see her purse. He opened it and found a pack of cigarettes. He also noticed a package of cigarette rolling papers, which he believed was closely associated with the use of marijuana.

Suspecting that a closer examination of the purse might yield further evidence of drug use, Mr. Choplick proceeded to search the purse thoroughly. This extended search revealed a small amount of marijuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of people who owed the student money, and two letters that implicated the student in marijuana dealing. The student challenged the reasonableness of the search.

Legal Analysis: To determine the reasonableness of the principal's search of the purse, the Court asked 2 questions: 1) Was the search justified when it began? 2) Was the scope of the search reasonably related to the circumstances which justified the search?

On Question 1, the Court held that the search was justified when it began because the principal had reasonable grounds for suspecting that the search would turn up evidence that the student had violated either the law or the rules of the school. The principal had reasonable grounds because the teacher had reported that the students were smoking.

On Question 2, the Court held that the scope of the search, including the extended search of the entire purse, was permissible. The scope of the principal's search was reasonably related to the circumstances which had justified the search because the principal discovered rolling paper in addition to cigarettes, leading him to believe that an extended search of the purse would yield further evidence of illegal behavior. Because the search was justified by individual suspicion of wrongdoing and the scope of the search was related to that suspicion, the search was reasonable.

3. *United States v. Finley*, 72 F.3d 250 (5th Cir. 2007)

Rule: The Fourth Amendment protects the contents of cell phones, including text messages and call history.

Background: Jacob Finley drove Mark Brown to a drug deal. Unknown to both, the drug dealer was an informant working for the authorities. Police arrested Finley and Brown and confiscated Finley's cell phone. During questioning, an agent searched Finley's text messages and discovered that many of the texts related to drug deals. The agent did not have a search warrant. Finley appealed his conviction for drug-related crimes, arguing that the contents of his phone were protected by the Fourth Amendment. The government argued that Finley had no expectation of privacy in the cell phone because it was issued by his employer.

Legal Analysis: The court held that Finley had a right to privacy in the contents of his phone. Finley could establish an actual, subjective expectation of privacy in his text messages and call history, and this expectation is one which society recognizes as reasonable.

4. *Klump v. Nazareth Area School Dist.*, 425 F.Supp.2d 622 (E.D.Penn. 2006)

Rule: A school district may be sued when there is a reasonable likelihood that a search violated a student's constitutional rights.

Background: A public high school had a policy that students could carry, but not use or display, their cell phones during school hours. During class a student had his cell phone out of his pocket, resting on his lap. His teacher saw the cell phone and confiscated it because he displayed it during school hours. The teacher and the assistant principal then searched the student's phone and called nine other students listed in the student's phone to determine whether they were also violating the school's cell phone policy. The assistant principal and teacher also accessed the student's text messages and voice mail.

In addition, they had a conversation with the student's younger brother by using the cell phone's America Online Instant Messaging feature, without identifying themselves as being anyone other than the student. The student filed a lawsuit alleging, among other things, that the cell phone search was unreasonable, thus violating the Constitution. The School District filed a motion to dismiss the claim, asserting that it could not be sued.

Legal Analysis: The court observed that for searches at school to be reasonable (and therefore constitutional), the search must be justified from the start and reasonable in scope. In the student's situation, the court found that the school district was justified in seizing the student's phone. However, the court also found that using the cell phone to call other students was unreasonable because the school conducted that search to find evidence of *other students'* misconduct. The school had no reason to suspect at the outset that such a search would reveal that the student himself was violating another school policy. Instead, they hoped to utilize his phone as a tool to catch other students' independent violations.

Presenters: Divide the class into small groups (3-5 students), then direct the class to the Fourth Amendment hypothetical. Allow students to read and discuss the hypothetical for 5-7 minutes. When the class reassembles, either select three students to serve as judges or allow the teacher to serve as the judge. Split the rest of the class into two large groups.

- Assign Group 1 as Ashley's Counsel, and Group 2 as the school's counsel. Explain that each group is going to have an opportunity to plead its case to the judge(s), who will decide if Mr. Smithers's search violated the Fourth Amendment.
- Give each group a few minutes to select three speakers who will address the judge(s) and discuss their litigation strategy using the cases they were given.
- Allow Group 1 to present its case first. Then, after Group 2 presents, ask the class as a whole if there are any arguments that either side missed. Thoroughly discuss.
- Ask the judge(s) to render a verdict and explain why.
- Close the session by asking the students what facts might have changed the outcome of the case had they been different.

Hypothetical

Ashley Bernard, a student at North High School, was suspended last week and is challenging her suspension in court. On Monday Ashley's friend, David, convinced her to sneak out of school so they could smoke a joint. They left the cafeteria during lunch and went to the parking lot. A few minutes later, the school principal, Mr. Smithers, pulled into the parking lot. David and Ashley saw the principal, dropped the joint and ran back inside the building. Mr. Smithers made eye contact with David but didn't get a good look at Ashley. He went over to where David and Ashley had been smoking and found the joint they had dropped.

Later that day, Mr. Smithers called David into his office. Mr. Smithers looked at David and said, "I saw you smoking marijuana in the parking lot earlier today. I even found the joint you dropped." David, recognizing that he was caught, admitted that he had been smoking. Mr. Smithers continued, "I know there was another student with you in the parking lot. If you tell me who it was, your punishment will be more lenient. If you don't tell me, I'll increase your suspension." David was scared, but he refused to give up Ashley's name.

At that moment, David's cell phone vibrated in his pocket and played the chorus from "Call Me Maybe," which was David's text message alert. Mr. Smithers asked to see the phone. David refused at first, but handed over his cell phone when Mr. Smithers threatened a longer suspension.

David's phone did not have a lock feature, so when Mr. Smithers opened the phone he was able to search David's inbox and retrieve the most recent text message. It was from Ashley and read, "Just heard you got called in to talk with Smithers. Lemme know what he says. I can't get caught. My parents will be super mad if they find out I smoked a joint!"

Mr. Smithers called Ashley to his office and said, "Ashley, I know that you were smoking marijuana with David. I saw your text message on David's phone." Ashley was scared and worried, but something about Mr. Smithers looking at David's text messages struck her as odd. "Can you even look at the messages on David's phone without him showing them to you? Is that legal?" Mr. Smithers replied, "Of course it is! Besides, David handed his phone to me. Ashley, you are suspended for the rest of the week."

Was Mr. Smithers's search of David's phone constitutional?