

Fourth Amendment Lesson Plan

Included in this lesson plan are the following materials:

- (1) Constitution Day and Fourth Amendment overview
 - (2) Fourth Amendment case summaries (will be distributed to students as homework before presentation)
 - (3) Fourth Amendment Hypothetical and corresponding classroom activity
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Dear Law Student/Attorney Presenters,

Thank you so much for participating in the Colorado Law Constitution Day Project! With your help, we will be visiting dozens of classrooms all over the state this month.

In order to make this project a success, it is essential that you read through this packet carefully and ask any questions you may have, either at one of the training sessions or between now and the day of your Constitution Day presentation.

The Byron R. White Center is deeply committed to serving as 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 central part of that commitment, and we are honored to you are willing to help make it happen.

Again, thank you for your participation!

Sincerely,

Colene Robinson

Fourth Amendment Lesson Agenda

Learning Objective: Students will be able to determine how the Fourth Amendment applies in schools and how that might interact with the Fourth Amendment as it applies outside of school.

- (1) Introductions (5 minutes)
- (2) Constitution Day and Fourth Amendment overview (15 mins)
- (3) Case Summary review with students (10-15 mins)
- (4) Hypothetical and group discussion activity (20-25 mins)

Teaching Tip:

Many schools require teachers to write the learning objective and agenda on the board each day before class. Ask the classroom teachers if this is an expectation at their school. Even if it is not an expectation at the school, it is still helpful to post this information so that students can follow along.

Materials to bring with you to your school:

- (1) Student Handouts (enough for each student—email the teacher in advance to find out the number)
 - a. Packet with graphic organizers and hypothetical
 - b. Case summaries (in case the teacher didn't give students copies ahead of time)
- (2) Reward candy (email teacher in advance to ask if ok)

Presenters: *Start by introducing yourself, maybe ask how many of the students have ever thought about being lawyers or doing something related to law when they grow up.*

Constitution Day and Fourth Amendment Overview (15 mins)

Briefly explain what Constitution Day is and its purpose

The United States Constitution was adopted on September 17, 1787. 165 years later, President Harry S. Truman signed a bill declaring September 17 a holiday to celebrate the Constitution. We're here today to celebrate the signing of the Constitution and to study the rights and responsibilities granted in the Constitution to American citizens and non-citizens living in America.

Although the Constitution was signed in 1787, the parts of the Constitution that get the most attention were actually added two years later, in 1789. The first 10 Amendments to the Constitution—called the Bill of Rights—were added all at once that year. Today the Bill of Rights protects key freedoms. What are some of those freedoms?

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.

You might ask the students to read the Fourth Amendment, calling on one student to read either the whole amendment or just the search and seizure provision and a second student to read the warrant provision out loud. Ask the students why the Fourth Amendment is included in the Bill of Rights.

The purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials. When an individual seeks to preserve something as private, and his expectation of privacy is one that society is prepared to recognize as reasonable, the Supreme Court has held that official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause.

Courts considering a claim that a search violated the Fourth Amendment conduct a balancing test. They look at the individual's reasonable expectation of privacy and the government interest at stake in the case and weigh those two things against each other.

For reasonable expectation of privacy, we have to consider whether society thinks a person can reasonably expect privacy – it is objective. Depending on how much time you have in the class, you can get the students to talk about how much privacy they think society would expect a person to have in their home, their car, their physical self (pockets, purse) when they are on the street, their cell phone. Then you can shift to what privacy expectations student might have at school: in their lockers, their backpacks, a bathroom stall, etc.

Case Law Summaries

***New Jersey v. T.L.O.* (U.S. Supreme Court 1985)**

A teacher caught a high school freshman, T.L.O., smoking in the school bathroom, and took her to the principal's office. T.L.O. denied she had been smoking. The principal demanded to see her purse. He opened it and found a pack of cigarettes. He also saw a packet of cigarette rolling papers, which he believed was closely associated with marijuana use.

Because he suspected a further search of the purse would turn up evidence of drug use, he searched the purse thoroughly. He found a small amount of marijuana, a pipe, a large amount of cash, and what appeared to be a list of students who owed T.L.O. money. The state brought charges. At trial, T.L.O. argued that the evidence seized from her purse should be suppressed, because the principal searched it in violation of her Fourth Amendment Rights.

The Supreme Court ruled that the Fourth Amendment's prohibition on unreasonable searches and seizures *does* apply to searches by public school officials. The Court said that school students have legitimate expectations of privacy, and they do not waive all rights to privacy by bringing items onto school grounds. But school officials have a responsibility to keep students safe and maintain order at the school, so the Fourth Amendment applies in a slightly different way at school than it does in public. Warrants are not required for searches at school. Also, the "probable cause" standard required for a search outside of school is replaced with a "reasonable suspicion" standard. In assessing a search by school officials, courts must ask two questions: 1) was the search justified by reasonable suspicion when it began? And 2) was the scope of the search reasonably related to the circumstances that justified the search? Here, it was reasonable to believe that a search of T.L.O.'s purse would turn up cigarettes, in violation of school rules. Once the principal saw the rolling papers, it was reasonable for him to search further and his search was not excessively intrusive. The evidence against T.L.O. could be used in court against her.

***People v. Omwanda* (Colo. App. 2014)**

Robert Omwanda was arrested when he was found with drugs and paraphernalia in his car. Police seized his cell phone during the arrest. The officer read three text messages on Omwanda's phone that suggested he was a drug dealer. The officer later got a warrant to search the phone. His warrant application quoted the three text messages that he had read during his initial search. The second search revealed additional messages and information suggesting Omwanda was dealing drugs. Omwanda was charged and convicted of drug possession. Omwanda appealed, arguing that the warrant to search his phone was based on evidence from an illegal search (reading his texts before getting a warrant), so that evidence should be suppressed.

The Supreme Court had ruled in *Riley v. California* (2014) that a police officer must obtain a warrant to search a cell phone seized during an arrest. Applying that case, the Colorado Court of Appeals ruled that reading Omwanda's texts before getting a warrant had been illegal. However, because there were drugs and paraphernalia in the car, and because Omwanda seemed nervous and changed his story during the arrest, the court determined that the officer would have been able to get the warrant even without evidence from the illegal first search. The court therefore said that the illegal search was "harmless error" and the evidence from the second search was admissible.

Hypothetical

ChatChat is a smartphone app that lets users post anonymous messages. The messages are visible only to other users within a half-mile radius. The app has become very popular with high school students, but some people worry that its anonymity leads to bullying.

Nailah Ibrahim is a new freshman at Metro High School (Metro). A Muslim, she wears a hijab to cover her hair. Soon after she started at the school, she noticed some threads on ChatChat that she thought must be about her. These threads included the following:

- “Someone should tell her this is America, dress normal or GO HOME”
- “Saw that freak at school today. at least i think so? couldnt tell thru the bag on her head lololol”
- “WE NEED TO OPEN UP A CAN OF FREEDOM ON THAT TERRORIST GIRL. WHOS WITH ME???”

Nailah showed the messages to her parents and they decided to talk to the Metro principal. During their meeting, the principal asked Nailah if she had any idea who might have posted the messages. She told them she wasn’t sure, but she guessed that it might have been one of her classmates, Ted Hogan. She explained that he had looked at her in a way that she thought was hostile during class.

The next day, the principal called Ted to his office and asked if Ted knew anything about the messages. Ted said that he had seen some of them, but that he hadn’t posted any. The principal thought that Ted looked uncomfortable and suspected he was not telling the truth, so he demanded that Ted show him his ChatChat app. The principal said that Ted could be suspended if he refused. Ted reluctantly unlocked his iPhone and opened his ChatChat app history. The principal saw that Ted had posted the “CAN OF FREEDOM” message, along with some other rough language that may or may not have been about Nailah. The principal warned Ted that his posts violated the school’s anti-bullying policies and that the timestamps on some suggested that Ted had violated the school’s cell phone ban to post them. Then he sent Ted back to class, warning that he would be calling Ted’s parents to discuss appropriate discipline.

Late that night, someone threw a brick through the Ibrahims’ living room window. One side of the brick was painted with a crude American flag. The other side had “SNITCH ON THIS!” written in sharpie. When the Ibrahims reported the vandalism to the police, they mentioned the ChatChat messages and their conversation with the principal.

The police called the school, and the principal told them about the messages he had found on Ted’s phone. On that basis, police investigators went to a judge and asked for a warrant to seize and search Ted’s phone. The warrant was issued and, when the police searched Ted’s phone, they found that the ChatChat app and all of its data had been deleted. They did, however, find a photo of Ted holding the brick that had been thrown through the Ibrahim’s window. Ted was charged with violating Colorado’s Bias-Motivated Crimes law.

At trial, Ted’s lawyer argued that (1) the principal’s original search of Ted’s phone had violated the Fourth Amendment, and (2) the police warrant was invalid because it was based on the results of the principal’s illegal search. Therefore, he argued all evidence found on Ted’s phone should be suppressed.

How should the judge rule?