



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute  
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## Search and Seizure

Curriculum Unit 00.02.04  
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### Introduction

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The curriculum unit presented will examine Amendment Four of the Constitution. Certain provisions in the Constitution contain express limitations on governmental activities in criminal investigations. These important limitations were adopted to protect all citizens against the excesses of law enforcement and to safeguard the privacy interests of each citizen. The Fourth Amendment provides such protection stating-" The right of people to be secure in their persons, houses, paper, 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."

Two general rules should be stated regarding the Fourth Amendment. First, since it is unreasonable searches and seizures that are prohibited, the legality of a search is determined by a standard of reasonableness. One example of this rule is the probable cause requirement, which provides that an officer must have probable cause to conduct a search without a warrant. Second, the Fourth Amendment is generally interpreted to require that a warrant be obtained for a search whenever it is practicable to do so.

This unit will investigate pivotal issues surrounding the controversy of search and seizure as they have evolved over the years. The Bill of Rights promises individuals protection against the strong hands of the government. It is the Supreme Court, however, that has made this guarantee a practical, living reality. Often at odds with public opinion and the interests of the powerful, the Supreme Court has woven individual rights into the fabric of American life.

Teachers will find this unit helpful when studying the Bill of Rights. Students will come to understand that there is a delicate balance between the protections guaranteed to citizens under the Fourth Amendment and the protections provided to society from crime. This balance is constantly changing and often reflects the changing values and attitudes of our society, as well as the changing political face of the United States Supreme Court. Supreme Court cases will be studied and students will be challenged to think about the complex questions raised by the need to balance criminal enforcement with the value of privacy and individual freedom. This topic offers many opportunities for involving a class in lively discussions about some of the critical issues of our time.

There will be six objectives in this unit. First, students will be able to trace the development of the Fourth

Amendment as well as understand the purposes it serves. Second, students will become aware of the necessary requirements that must be included in a valid search warrant. Third, students will examine the many instances when a legal search may be conducted without a warrant. Fourth, students will understand that automobile searches have proven controversial and in recent years the concept of racial profiling has been examined. Fifth, students will understand the significance of the exclusionary rule. Sixth, students will examine the issue of the right to privacy versus search in the schools.

## Objectives and Strategies

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Students will be able to trace the development of the Fourth Amendment and understand the purposes it serves. Long before the American Revolution, the general warrant existed in England. This warrant was an order signed by a judge that allowed the agents of the king to conduct a blanket search. There were four major aims of the general search warrant. First, it provided a way to enforce the payment of custom duties commonly known as taxes. Goods, which were imported or exported from England, were subject to such taxes. Second, it allowed for the search and capture of criminals. Third, it discouraged the colonists from engaging in poaching. Fourth, it allowed the agents to search for stolen goods.

The general warrant was used in the colonies for the same purposes as it was in England. However, the major goal of general warrants in the colonies was to enforce taxes. In the 1700's with writs in hand, British agents could enter the home or office of a colonist at will. It could be during the day or in the middle of the night. Furthermore, they could seize any items they wished and claim it as evidence. You can imagine how this would anger many of the colonists. While the British claimed they were trying to stop smuggling by American merchants, the colonists argued that such writs violated their basic right to privacy. At this point teachers might lead a discussion with students on the following issue. Courts need to weigh carefully two competing values in deciding cases of search and seizure. On the one side of the scale is the ancient principle of Anglo Saxon law, "Every man's home is his castle." On the other side is the need for authorities to obtain any and all evidence that will help them in solving crimes and bringing criminals to justice. Ask students for their interpretation of the Anglo Saxon principle? Should there be any exceptions to this idea? What exactly do they believe is protected under this principle?

Sixty-three Boston merchants united to oppose the writs. They hired James Otis, a young and famous lawyer as their spokesman. Otis delivered a fiery four- hour plea to the Massachusetts Bay council chamber. He argued very strongly against allowing these writs. He admitted that some search warrants were legal, however, he believed they applied to searches of a particular house for a set purpose by a specific officer. He felt that the writs of assistance did not make such limitations. Otis believed that the writs were too general. With one of these writs an officer could enter private property at will, breaking locks and spreading terror. He was accountable to no one. The writs were not temporary permits-they could be used again and again. This was against "fundamental principles of law," declared Otis, "A man who is quiet, he said, is as secure in his house as a prince in his castle." He went on to state that the "writs of assistance were the worst instrument of arbitrary power," because they put "the liberty of every man in the hands of every officer" (Ratcliffe, 40). Ask students on what grounds did James Otis oppose the writs? Under what conditions did he feel searches were legal? With which of his arguments do you agree? With which do you disagree? If you had been a judge in the 1761 hearing, how would you have ruled? After the discussion is over present students with the actual decision in the writs of assistance case. Tell students that after a long period of indecision the Massachusetts

court upheld the writs of assistance. The English Parliament had permitted these writs as an exception in the colonies, to the common law that prevailed at home. The common law at the time in the mother country required specific details for a search warrant. The writs of assistance were one of the sore points that eventually led to the American Revolution. John Adams, one of the important figures of the time, later wrote of Otis' speech: "Then and there the child of Independence was born. The freedom of one's home was essential to personal liberty" (Ratcliffe, 41).

Students should be encouraged to research the life of James Otis. Tell them they should browse through books or encyclopedia articles about him. Then they should use what they have learned to input key words in an electronic library catalog of print and nonprint sources of information. They should begin with an outline or draft. Explain to students that they should concentrate on getting their ideas on paper and organize their research to support the important experiences in the person's life. When they revise they should make sure they have written an introduction that explains the historical importance, a generally organized biography according to a chronological order of Otis' life. They should support all inferences and generalizations with facts as well as write a conclusion that sums up the significance of the person's life. After the written work is completed students might make an oral presentation to the entire class. This assignment may be used for any of the leading figures presented in this unit.

The second part of this objective is to understand the basic purpose of the Fourth Amendment. In order to do this I suggest that the students read the amendment very carefully and then try and use their own words or phrases that they believe are the best substitutes for the language of the amendment. For example, ask students to interpret the first phrase, "The right of persons to be secure in their persons, houses, papers, and effects... Ask students to explain what they think the words in bold mean in the context of the Fourth Amendment. Once they have interpreted the language of the amendment, ask them to use their own words to state what is the purpose of the Fourth Amendment.

Virginian James Madison, a member of the House of Representatives was a staunch supporter of the Constitution and the leader in the effort to draft a Bill of Rights. On June 8, 1788, he introduced a list of proposed amendments to the Constitution. In order to compile a Bill of Rights he thought the states would be more likely to approve, Madison looked to the individual state constitutions for guidance, especially the one in his home state of Virginia. Virginia had been the first state to condemn the general search and arrest warrants. The proposal Madison submitted was almost identical to the words we now know as the Fourth Amendment to the Constitution of the United States. When the Bill of Rights was added to the Constitution, the Fourth Amendment set forth the basic rights of privacy for all Americans. The Fourth amendment has two parts. One requires that searches and seizures be reasonable; the other requires specific warrants be obtained.

Students will become aware of the necessary requirements that must be included in a valid search warrant. American law regards a reasonable search and seizure as one that follows the procurement of a proper warrant. If a valid search warrant is obtained prior to the search, the search will be considered reasonable if the search is conducted according to the warrant. A proper warrant must be one issued by a public official—a judge or a magistrate who is clearly empowered to issue warrants. Before a judge issues a warrant, someone, usually a police officer, must testify under oath concerning the facts and information that provide the probable cause or good reason to believe that a search is justified. Probable cause is shown, not by a mere statement that information has been received from a reliable source, but by showing how the information was received and why the person who conveyed the information is to be trusted. The police officers must show what they expect to find as a result of the search. There must be probable cause to believe that a crime is being carried

out on the premises in question, and the evidence found there would prove the crime. If probable cause is based on information from an informer, the police officer must demonstrate that both the informer and the information provided are reliable (*Aguilar v. Texas*, 1964).

The sworn statement of facts and circumstances is known as an affidavit. Once a judge issues a search warrant, the warrant must be executed within a limited period of time. Also, in many states a search warrant must be carried out in the daytime unless the warrant expressly states otherwise. Finally, a search warrant does not necessarily authorize a general search of everything in a specified place. For example, if a warrant were issued to search for stolen appliances, it would not be reasonable to look for them in a person's dresser drawers.

At this point I would ask students to describe what they consider to be probable cause. I would remind them that there is no exact formula for determining probable cause. Police must use their own judgment as to what is reasonable under the circumstances of each case. Tell students that it must be more than a hunch. Teachers might divide the class into groups and have them brainstorm their ideas by creating scenarios on what would constitute probable cause for a valid search warrant. Have one student play the role of a judge and the other students play the role of police officers trying to convince the judge to issue a warrant.

Students will examine the many instances when a legal search may be conducted without a warrant. The United States courts have ruled that there are instances when search warrants are not needed. There are a number of situations when searches may be legally conducted without a warrant. The most common exception to the warrant requirement is to search at the time of a lawful arrest. The key word here is lawful, for if the search is to be upheld, it is necessary to have a legal arrest; that is, one that has probable cause. This allows the police to locate any hidden weapons or evidence that might be destroyed. The Supreme Court regards this invasion of privacy as reasonable for two reasons. First, a police officer, for his or her own protection must discover if the prisoner is armed with a deadly weapon and second, it may be necessary to prevent the prisoner from disposing of evidence under his or her immediate control (*Agnello v. United States*, 1925).

For a more extensive search, a warrant is required. In the 1969 case of *Chimel v. California* the Court severely tightened the standards under which the police may conduct warrantless searches following arrests. On September 13, 1965, three police officers arrived at the home of Mr. Chimel. The police had a warrant for his arrest for burglarizing a coin shop. When the police arrived the wife of the accused admitted them into the house and told the police her husband was not at home. After fifteen minutes Mr. Chimel arrived. The police then proceeded to arrest him and then proceeded to search his entire three-bedroom house. They had no search warrant to conduct such an extensive search. Remind students that at the time of a lawful arrest police have the right to search the arrestee and the immediate area he or she is in. During this extensive search they seized coins and other evidence that was later used against him at the trial. This case was appealed to the United States Supreme Court on the basis that an illegal search had been conducted. The Supreme Court sided with Mr. Chimel and stated that although the police were justified in searching Mr. Chimel and the immediate area at the time of the arrest, there was no justification for "routinely searching any room other than that in which an arrest took place, or for that matter searching all the desk drawers or other closed or concealed areas in the room itself. Such searches may be made only under the authority of a search warrant..." (*Chimel v. California*, 1969). The court concluded that evidence against Mr. Chimel had been illegally claimed and could not be used in court. This case struck a new balance between an individual's right to privacy and the police officer's need to conduct a search. Teachers might present students with the facts of this case and not give them the majority decision until they had discussed how they would have decided if

they were Supreme Court justices stating the majority opinion.

A second case that I found interesting was *United States v. Robinson*, 1973. Here the Court ruled that when the police make a lawful arrest by taking a person into custody, a full body search incident to that arrest was permissible. Mr. Robinson was stopped by the police for a traffic violation. Police found marijuana on the accused after he had been arrested and taken into custody for driving without a license. The Court rejected the argument that since there was no evidence to be protected in connection with a license violation, the search should have been limited to the self-defensive pat down search conducted in *Terry v. Ohio*, 1968. Teachers might wish to present students with the complete facts of this case and have students argue both sides.

### **Stop and Frisk**

This takes place when a police officer has reason to believe a person is behaving suspiciously and is likely to be armed. Police officers may ask for identification as well as an explanation for what they consider to be suspicious behavior. However, if you are asked specific questions about a crime you do not have to answer. Point out to students that sometimes refusal to cooperate may result in further detention. Ask students at what point do they believe cooperation should end and incrimination might begin? Class discussion should be encouraged by telling students that a recent court decision now allows police to detain a person if they see him or her running away from them.

Further examination of the stop and frisk procedure may be examined through the case *Terry v. Ohio*. In this case the Supreme Court held that the police practice of stopping suspicious persons and frisking them for weapons is a reasonable search within the boundaries of the Fourth Amendment. The Court has found such searches permissible even without a search warrant or enough information to constitute probable cause for arrest. Chief Justice Earl Warren announced that "there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed, the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or others was in danger"(*Terry v. Ohio*.1968). Prior to *Terry*, the rule had been that before a person could be arrested and searched as incident to that arrest, the police had to have probable cause that a person had committed crime.

The following circumstances should be considered when studying the case *Terry v. Ohio*. Point out to students that the police were patrolling an area in downtown Cleveland, an area that was known for shoplifting and pickpockets. The detective in this case had been patrolling the area for thirty years. He became suspicious of the actions of two men. The police officer believed that Mr. Terry and an accomplice, Mr. Chilton were casing a jewelry store. A third man approached Mr. Terry and Mr. Chilton. When the police stopped them a pat down search was conducted. In the pockets of Mr. Terry and Mr. Chilton the detective found guns. The third man was unarmed. Mr. Terry and Mr. Chilton were subsequently arrested, tried and convicted of possessing concealed weapons. The issue in this case became whether the police had the right to conduct a pat down search. Given Mr. Terry's suspicious behavior, the Court decided the police officer was found justified in questioning him, and was entitled to conduct a pat down search. Teachers should encourage class discussion by asking students how they would define "suspicious behavior?" Can it be defined? Maybe, what is considered to be suspicious behavior for one person is not for another? Ask them to create a scenario where police would definitely be justified as to defining behavior as suspicious. Have them create a second scenario where the behavior might be questionable, but is it suspicious? Do they think that race or sex might play a role in this

scenario? How about the wealth or the location of the area? Did the officer have sufficient reason to investigate the situation? How would they have decided this case?

### **Consent**

Consent takes place when a person voluntarily agrees the police may conduct a search without a warrant and without probable cause. Normally a person may only grant permission to search his or her belongings or property. The consent to search must be wholly voluntary; it may not be coerced or implied in any manner (Schneckloth v. Bustamonte, 1973). Consent given on the basis of deception by the police is not voluntary (Bumper v. North Carolina, 1968). Another issue concerns the authority to consent. The Supreme Court stated the general rule in *United States v. Matlock*, 1974, holding that consent may be given by the defendant or any third party with common authority to the premises or property. Common authority means that the party has joint access to or control over a patron's room. Thus, in *Matlock*, a woman who lived with the defendant could give consent to search the bedroom. Ask students if they would give consent to have the belongings of their roommate searched? Would this violate the trust between the two people in any way? How about if the student knew that their roommate was engaged in a criminal activity of some kind? Would that make a difference? Should a parent be able to give consent to have a child's room searched? These questions usually stimulate lively discussion in the classroom for students normally have very strong opinions on their right to privacy.

### **Plain View**

Plain View is when an object connected with a crime can be seen by the police from a place where he or she has a right to be. However, sometimes, a search under a warrant naming certain specific objects to be seized may result in discovery of evidence of an unrelated crime. In *Harris v. U.S.*, 1968, the Supreme Court has upheld seizure of the evidence of a second offense as long as what is found was in plain view during the legitimate search for something else. The discovery of evidence must be genuinely accidental, however, if constitutional limits on the search warrant or the scope of the original search are to be extended. At this point I would ask students to create a scenario where evidence in plain view could be legally used against someone in court.

### **Hot Pursuit**

Hot pursuit occurs when the police are chasing a suspect and know where he or she is. They are not required to get a search warrant before entering the building that they have seen the suspect enter. It is also lawful to seize evidence found during a search conducted while in hot pursuit.

### **Emergency**

Emergency situations do not require a search warrant. This is true when the police must act to prevent damage or death. Situations include bomb threats, entering a house after smelling smoke, or hearing screams etc.

Students will understand that automobile searches may follow different rules and have come to be considered controversial. Since 1925 the Court has made numerous decisions dealing with searches of automobiles, their occupants, and even closed packages in the automobile. In general, the Court has decided that people and their paraphernalia are entitled to less privacy in their automobile than in their homes or places of business. The landmark case in this area was *Carroll v. United States*, 1925. The facts of this case are the following. George Carroll was convicted of transporting liquor in violation of the federal prohibition law and the Eighteenth Amendment. Liquor had been seized from his automobile without a search warrant. Carroll

appealed his case to the United States Supreme Court and claimed his Fourth Amendment rights had been violated. Chief Justice William Howard Taft stated..." the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house or other structure... and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practical to secure a warrant, because the vehicle can be quickly moved..."(Carroll v. U.S., 1925).

In 1964, the Supreme Court made a distinction between a moving and a parked vehicle. In the case of *Preston v. United States*, the Supreme Court held the warrantless search of an automobile to be unconstitutional. The car in question was locked in a garage at the time. Since there was no cause to believe the car was going to be removed, the Court ruled that there was ample time to obtain a search warrant.

When an automobile is in motion, however, the Supreme Court has taken a different standpoint. In *Gustafson v. Florida*, 1973. The Court maintained that a warrantless search of a driver's body and his car following an arrest for a routine traffic violation was constitutional. More recent cases have allowed the police even more leeway. The justices ruled in *California v. Acvedo* 1991, that police do not need a warrant to search a car and all closed containers inside if they have probable cause to believe that one of the containers contains contraband. Furthermore, in 1990 in *Michigan v. Sitz*, the use of motor vehicle checkpoints to check motorists for sobriety was upheld. In an opinion by Judge Rehnquist the Court said..." that states have a strong interest in deterring drunk drivers and that the checkpoints advance the interest and the intrusion on motorists stopped is slight" (*Michigan v. Sitz*, 1990).

## **Racial Profiling**

Also included in this section is what has come to be known as racial profiling. It has been suggested that on our nation's highways today, police under the pretext of looking for drug criminals routinely stop drivers based on the color of their skin. This practice has been termed by the minority community as "driving while brown or black," a play on the real offense of driving while intoxicated (Harris, 2). According to a report by the American Civil Liberties Union, racial profiling is not a new problem. Since the 1967 Kerner Commission Report, one of the complaints that repeatedly came up was the "stopping of Negroes on foot or in cars without an obvious basis." In recent years racial profiling became more obvious as the war on drugs became more intense. It is based on the premise that most drug offenses are committed by minorities. An example of this belief was the Carl Williams situation. Mr. Williams, New Jersey's Chief of troopers was dismissed in March 1999 when he was quoted as saying "Mostly minorities trafficked in marijuana and cocaine." His remarks became national news and the media soon began to scrutinize incidents of profiling (Harris, 3).

At the same time that racial profiling by law enforcement was expanding, the Supreme Courts decisions narrowing the Fourth Amendment were occurring. In 1996, in *Whren v. U.S.* the Supreme Court stated that any traffic violation was a legitimate basis for a stop, regardless of the officer's subjective state of mind. Proponents of the concept of "driving while brown or black" believe that this case has now provided the police unlimited authority to stop and search any vehicle they want. They believe that every driver probably violates some part of the vehicle code (Harris, 9). Media coverage during the last year has intensified. Teachers should assign students the task of researching newspapers and magazines articles on this topic. They might work in teams and have the option of preparing a visual as well as an oral report on the information they have acquired. Tell students that there has been a report of racial profiling in our own state in the town of Trumbull. Tell them that Trumbull is now under investigation by the FBI for excessive stops of motorists of color. According to the American Civil Liberties Union virtually all of the complaints filed by Driving While Black involve the use of traffic stops for non-traffic purposes. Ask students what suggestions they could offer the

state and local police departments on this problem?

Students will understand the significance of the exclusionary rule. What became known as the exclusionary rule was first set out by the Supreme Court in 1914. In the case *Weeks v. United States*, the Court said that illegally obtained evidence would no longer be accepted in federal courts. The facts of the case include the following. Fremont Weeks was arrested without a warrant. Federal agents searched his home, also without a warrant and took letters and documents that were later used against him at his trial. He then challenged his conviction and stated that his Fourth Amendment rights had been violated. The Supreme Court agreed and in a unanimous decision explained that the exclusion of such evidence was necessary to discourage unlawful practices by enforcement agents (*Weeks v. United States*, 1914).

Application of the exclusionary rule has been the subject of continuing legal controversy. Many have argued that by denying prosecutors the right to the use of certain evidence, the rule can collapse the government's case and allow a guilty person to go free. Extension of the exclusionary rule began to change in the 1960's, as the Supreme Court and federal appeals courts reviewed and overturned hundreds of convictions from state courts. Among the famous cases was *Mapp v. Ohio*, 1961, in which the Supreme Court ruled that evidence seized in an unlawful manner could not be used in a state criminal trial. The Supreme Court overturned Mapp's conviction because the evidence used against her had been illegally obtained. The majority decision was written by Justice Tom Clark. He stated..."Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of their charter of its own existence..." (*Mapp v. Ohio*, 1961)). Teachers might provide students with the facts of the case as provided in *The Supreme Court and Individual Rights* page 197. Then they should ask students to identify the two issues that the Supreme Court was addressing. The issues were first, whether the officers had the right to enter the women's home without a warrant and second, whether the evidence taken could be introduced as evidence in a state court.

Since the 1960's, rising crime rates have helped create a reaction against the exclusionary rule. The increase in crime has many causes, among them growing drug use, the flight of jobs and middle class workers from the cities, and the resulting decay of inner city neighborhoods. These social problems are difficult to fix and that has tempted many people to search for causes to correct that can be easily identified. One is the idea that the Court has been too soft on criminals; that criminals are being let out of prison on legal technicalities. In the 1980's the Court approved several exceptions to the exclusionary rule. A "good faith exception" approved by the Court in the 1984 case, *United States v. Leon*, permitted the use of illegally obtained evidence at trial if the police who seized it had a search warrant and thought they were acting legally- only to find that because of some technical flaw their search was in fact illegal. According to Justice Byron White," In such a case where the police were acting in good faith, the exclusion of valid evidence has no deterrent effect and exacts too high a price from society"(United States v. Leon, 1984). Should the exclusionary rule be curtailed or thrown out altogether? This is a question that the students should be asked to address. Split students into groups and ask them to identify imaginary situations in which they would not allow police to use evidence against an accused person and when they would allow this evidence to be used into court.

Students will examine the issues of their rights versus search in the school The question of the rights of public school students to be free from unreasonable searches and first came to the attention of the Court in the 1985 case *New Jersey v. T.L.O.* The facts of the case seem simple enough. A New Jersey high school student- referred to in the courts as T.L.O had been caught smoking in the girl's bathroom. That was a violation of school rules. She was brought before the assistant principal. She denied that she had been smoking and claimed that she did not smoke at all. The assistant principal asked for her purse, and found cigarettes inside. But there was also some marijuana, rolling papers, as well as a list of students who owed her money. It



appeared as if she had been selling drugs. Her parents were called and in their presence she was read her Miranda warnings. After admitting to selling the drug, the girl was suspended for ten days. Her case went to juvenile court where she was sentenced to one-year probation for juvenile delinquency based on possession of marijuana with the intent to sell. The attorney hired by her parents challenged both the school suspensions and the delinquency charge on the grounds her Fourth Amendment rights were violated. T.L.O. first asked the New Jersey high court to review her case. She claimed that the assistant principal had violated her rights by asking to see what was in her purse. The New Jersey court agreed. The State of New Jersey then appealed the case to the United States Supreme Court. In this case the Court ruled that the school officials did not need a search warrant or probable cause to conduct a reasonable search of a student. Instead, Justice Byron White stated..." that school officials may search a student so long as there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rule of the school." In deciding this case the Court recognized a child's right to a legitimate expectation of privacy and agreed that the Fourth Amendment does not apply to searches by school officials (*New Jersey v. T.L.O.*, 1985). However, since the interest of the school in maintaining order and discipline outweighs the privacy interest of the student, a lesser standard for searches was justified, reasonable suspicion rather than probable cause. The key word in the debate is reasonable. When is a search reasonable? This is a question that students like to discuss at length. With the onset of metal detectors and metal wands, and the searching of book bags used on a daily basis students still make a distinction when having their pocketbooks searched. However, in many of the New Haven schools all book bags will be examined on a daily basis. Students will engage in a lively discussion on what should be considered reasonable suspicion for a search in the schools.

Another issue of interest to the student is the matter of strip search in the schools. Strip searches, which involve the visual inspection of a person's body, are far more intrusive. Reasonableness is a standard to determine if the search was necessary and whether it was conducted appropriately. The member of the same sex as the minor should carry out these searches in private, when there is good reason to believe that the minor is in criminal possession of drugs or a firearm. There have been strip searches conducted in the schools where the item being searched for was stolen money. The courts have ruled in these cases that although stealing is not to be condoned, it does not present the threat of immediate danger to others. What about across the board searches that are not based on individualized suspicion? In the 1995 case *Veronica School District v. Acton* the question of mandatory drug testing was addressed in order to play sports. James Acton, age 12 wanted to play football, but refused to submit to a mandatory drug test because he felt the school had no reason to believe he was on drugs, The test, a urine sample, collected in school, in private was a school board policy, put in place to combat a growing drug problem, especially among the athletes. His parents challenged the drug policy and the blanket-testing program. The Supreme Court heard this case and Justice Antonin Scalia, writing for the majority stated, " that students have a lesser Fourth Amendment right than adults, especially because of the growing drug problem. Athletes, he said have an even lesser expectation of privacy considering they are routinely expected to take showers and also they have a somewhat exalted role model position in the schools. School sports are not for the bashful." Justice Sandra O'Connor dissented stating "this policy of blanket testing was excessively intrusive, particularly destructive of privacy and offensive to personal dignity. She concluded that it would have been far more reasonable to limit the test to those students with disciplinary problems" (*Veronica School District v. Acton*, 1995). The Court did not address the issue of random drug testing. Ask students what is their position on drug testing for athletes? Random drug testing for athletes? Presently, court rulings have generally established that blanket searches of lockers, desks, as well as the use of metal detectors are reasonable in view of the deterrence they have in drug use and firearms in the public schools.

## Lessons and Activities

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### Lesson Plan One-Language of Amendment Four

Objective: Students will become familiar with and understand the language that is used in the Fourth Amendment.

Procedure: Teachers should write the entire text of the Fourth Amendment on the blackboard. They should underline the words that are in bold below. Teachers should tell students that the language of the Fourth Amendment might be somewhat different than the everyday language that is used in the classroom. Dictionaries should then be distributed and students should be assigned the task of looking up the meaning that best applies to the content of the Fourth Amendment. Students should then write the definitions in their notebook. Once the students have completed this task ask them to clearly state in their own words what they think the Fourth Amendment means.

Materials used: Text of the Fourth Amendment, dictionaries

"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."

Terms used:

01. Secure- to be safe
02. Persons- bodies
03. Effects- belongings
04. Unreasonable- arbitrary
05. Seizures- arrests
06. Violated- abused
07. Warrants- order of a judge to seize property or search for property
08. Issue- be made
09. Probable cause- strong evidence
10. Oath- a promise to God to be truthful
11. Affirmation- a solemn declaration made under the penalties of perjury
12. Particularly-specifically
13. Describing- stating

## Lesson Plan Two- Drug Testing

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Objective: Students will understand that there are certain situations where drug testing is allowed that do not violate our rights under the Fourth Amendment Procedure: Tell students that one of the major issues involving the Fourth Amendment today is drug testing. Ask students under what circumstances should drug testing be required without at least reasonable suspicion that a person is under the influence of drugs? Remind students that the Fourth Amendment says nothing about drug testing specifically, however, the Supreme Court has held that drug testing constitutes a search and usually must be done in accordance with the Fourth Amendment. There are, however, special circumstances where drug testing has been held not to violate the Fourth Amendment. One such case was *Skinner v. Railway Labor Executives Association*, 1989. In this case the Supreme Court ruled that an announcement by the Federal Railroad Administration that railroad employees involved in train accidents would be tested for drugs does not violate the Fourth Amendment. Point out to students that there are many other situations where testing for drugs without reasonable suspicion is being challenged. In many of these situations, no final decision has been made.

Now split the class into smaller groups and assign them the following task. Give them a list of the occupations provided below. Then tell them that for each occupation they are to decide if drug testing should be performed without a warrant; in other words, without reasonable suspicion that a person is under the influence of drugs. Make sure they give reasons for their answers. Once students have finished their discussions, one student from each group should be prepared to deliver the findings back to the entire class for a full class discussion.

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|-------------------------|------------------------------|------------------------|
| 01. All police officers | 08. Students                 |                        |
| 02. All fire fighters   | 09. Student athletes         |                        |
| 03. Judges              | 10. Subway drivers           |                        |
| 04. Teachers            |                              | 11. Television newsmen |
| 05. Doctors             | 12 The President of the U.S. |                        |
| 06. Dentists            | 13. All governors            |                        |
| 07. Pilot               | 14. School bus drivers       |                        |

Finally tell students that they are to write a position paper explaining why they believe drug testing should or should not be allowed in various occupations.

## Lesson Plan Three-Search in the Schools

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Objective: Students will understand that there are certain conditions under which they may be searched in schools for violating school rules.

Procedure: Teachers should present to the students the facts of the case in *New Jersey v. T.L.O.* .1985. A New Jersey high school student-referred to in court records as T.L.O. had been caught smoking in the restroom. This was a violation of school rules. T.L.O., a 14-year-old freshman, was brought before the assistant principal. She denied that she had been smoking, and claimed that she did not smoke at all. The assistant principal asked for her purse, and found cigarettes inside. But there was also some marijuana, as well as a list of students who owed T.L.O. money. It appeared as if she had been dealing. Her parents were called and in their presence she was read her Miranda warnings. After admitting to selling the drug, the girl was suspended for ten days.

Her case went to juvenile court where she was charged with delinquency based on possession of marijuana with the intent to sell. The attorney hired by her parents challenged both the school suspension and the delinquency charge on the grounds that her Fourth Amendment rights had been violated. The juvenile court sentenced her to one-year probation for juvenile delinquency.

Tell students that the facts of this case may not seem that unusual. In fact, it is the kind of story that is probably familiar in many high schools where drugs are a problem. Yet the story made front-page news because the U.S. Supreme Court agreed to hear the case. In a 6-3 decision the Supreme Court ruled that public school officials and teachers can search students if there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated the law or school rule.

Present the following questions to students for an open class discussion:

1. Do you think that the fact T.L.O. had cigarettes in her purse proved she was a smoker?
2. Do you think school officials should have the right to search pocketbooks? book bags?
3. Do you think school officials should have the right to search lockers?
4. How should a student's right to privacy be balanced with the school's need to maintain safety and order?
5. Students should comment on the following statement found in the majority decision of the Supreme Court. The majority decision in this case noted that a search of a student by a school official need not adhere to the probable cause standard; rather, school officials must adhere to the justification that there are reasonable grounds to suspect that the search will turn up evidence verifying that a rule or law has been broken.
6. The dissenting opinion in this case was signed by Justices Marshall and Brennan. Ask the students to comment on the following statement: "...A purse typically contains items of a highly personal nature. Especially for shy or sensitive adolescents, it could prove extremely embarrassing for a teacher or principal to rummage through its contents, which could include notes from friends, fragments of love poems, caricatures of school authorities, and items of personal hygiene..."

## Lesson Plan Four-Vocabulary

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Objective: Students will become familiar with and understand terms associated with the Fourth Amendment and related Supreme Court Cases

Procedure: Teachers will distribute the meanings of the vocabulary associated with the Fourth Amendment and its related cases. Students are to take the list home and study them for homework. The next day teachers should divide the class into four or five teams. Teachers will then review the terms by playing the game jeopardy. The team with the highest score should receive a reward to be decided upon by the teacher.

Materials Used: Vocabulary list on the Fourth Amendment

01. Amicus curiae brief -a document filed by an individual or organization (such as the American Civil Liberties Union) who is not a party to a case, but who has an interest in the outcome of the case. Amicus curiae is a Latin term meaning friend of the court.
02. Appeal- to take a case to a higher court for review.
03. Appellant-the party that appeals a lower court decision to a higher court.
04. Appellee -one who has an interest in upholding the decision of a lower court and is compelled to respond when the appellant appeals the case to a higher court.
05. Brief- a legal document stating the facts and legal theories of a party's case.
06. Case law- the law is defined by previously decided cases' distinct from statutes and other sources of law.
07. Certiorari, writ of-a writ issued from the Supreme Court, at its discretion, to order a lower court to prepare the record of a case and send it to the Supreme Court for review.
08. Civil Law-body of law dealing with the private rights of individuals, as distinguished from criminal law.
09. Dissenting opinion- a written opinion by those justices who disagree with the majority court ruling.
10. Due process- a legal concept that establishes procedures to insure an individual's rights and liberties in all legal proceedings
11. Exclusionary rule- a rule of law providing that in certain circumstances unlawfully seized evidence that is seized in violation of an individual's Fourth Amendment rights against unreasonable searches and seizures-is inadmissible in state or federal criminal trials.
13. Fruit of the poisonous tree- if unlawfully seized evidence leads a police officer to other evidence, that secondary evidence is also inadmissible.
14. Probable cause- sufficient reason, based on existing facts that a crime has been committed or that property is evidence of a crime. Probable cause is a required element for a legal search and seizure.
15. Warrant- a legal document authorizing a law enforcement official to take some action.

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Materials to be used in this unit are the books and Supreme Court cases that are listed in the bibliography and the works cited sections of this unit.

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