**The Fourth Amendment and School Searches**

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This lesson explores the Fourth Amendment protection against unreasonable searches and seizures through the lens of “School Searches.” Using role-play scenarios, individual and class opinion polls, and a PowerPoint overview of the relevant case law, students will explore their own views, and learn what the law says about reasonable expectations of “privacy” at school.

Objectives:

1. Students will grow in understanding their feelings about their sense of personal privacy.
2. Students will gain some knowledge about how the law balances citizens’ right to privacy with police officers’ need to fight crime.
3. Students will get an overview of federal and state constitutional law relating to search and seizure.
4. Students will be empowered to: (1) articulate their privacy own expectations, and (2) explain and justify their opinions.
5. Grade Level: This lesson is appropriate for grades 9-12.

Time to Complete**:** 60 minutes

Materials Needed:

**-** Props for role-playing activity: (police uniform, badge, etc, baggie with fake drugs for search).

- Student Name Cards

- STUDENT ROLES Handouts for 3 volunteers in role-play

- OPINION POLL Handouts for all students

\* Optional: TAKE A STAND signs

- STATE OF THE LAW PowerPoint

-Caselaw Sheet for Teachers

Procedure:

1. Introduce today’s topic of:Searches in Schools. Ask students if they have ever heard the term “search and seizure.” O*ptional: You may use the PowerPoint (attached) to lead this discussion.*

* Have they ever seen anyone searched by the police?
* Have they ever had a bag (or their person) searched in a courtroom, at the airport, bus station, at school?
* How did it feel to be searched (did they feel it was an invasion of privacy?)
* Why (if ever) would the government sometimes need to search people or their bags?

1. Role Playing Activity: Ask 3 students to volunteer for a role-playing activity. Give each of the volunteers a copy of the STUDENT ROLES handout and give them a minute to read their role description. Explain to the class that you will be doing a role-play to demonstrate the Fourth Amendment protection against unreasonable government searches.
   * 1. Acting as the police officer (try to get a hat or badge to make this more realistic), ask “Andrew” for permission to look in his wallet. He reluctantly consents. Take his wallet and go through all of its contents, displaying them to the class and laying them out on a desk. Finding nothing incriminating, put contents back in wallet and return to student.
     2. Walk up to “Betty” and take her purse without asking. Start rifling through its contents. Betty protests, saying it’s not fair, and demanding her purse back. Explain that you just need to make sure she’s not carrying any contraband. She continues to protest. Find a baggie of drugs. (Use powdered sugar or dried herbs in a baggie for props to give Betty prior to class.) Inform her that you’re going to have to arrest her and take her to the police for questioning.
     3. Approach “Chris” and hand him a sterile urine sample cup. Tell him, “We’re doing random drug screens of all basketball players today, and we need to make sure you haven’t used any illegal drugs. Give a sample to your basketball coach at practice this afternoon.”
2. Opinion Poll
   * 1. Tell students they will now participate in an opinion poll to determine their views on what just happened. Remind students that they’re being asked for their opinions, NOT what the current state of the law is. There are no right or wrong answers. Ask students if they have any questions. Pass out opinion poll. Allow five minutes or so for students to complete poll.
     2. Once students have finished the poll, have people raise hands and count all the opinions. Record results on the Composite Opinion Poll Sheet (You can also use an overhead projector or just keep tally on the chalkboard).
     3. Next, go through each question and have students take a stand under the sign indicating their opinion. See TAKE A STAND SIGNS. Elicit opinions from students about why they feel the way they do, responses to other students, etc. Ask students on both sides of the issue to state the reasons for their opinions. Ask undecided students if anything might sway them, or if they are persuaded by any of their classmates’ arguments.
     + *Variation: If moving around the classroom is too disruptive, let students vote from their seats.*
     + *Optional: Consider using some kind of reward or point system to motivate students to strongly advocate others to agree with their position.*
3. State of the Law:After discussing each question, tell students what the current law is relating to each question. Use PowerPoint Presentation as springboard for discussion.
4. **Searches in School:** *New Jersey v. T.L.O*., 469 U.S. 325 (1985)**;** *Safford Unified School Dist. No. 1 v. Redding*, 129 S.Ct. 2633 (2009
   * + 1. QUESTION: The cocaine the officer found in Betty’s bag should be admissible to prove that Betty committed the crime of drug possession. True or False?
       2. GENERALLY: Probably False. Before searching a person’s belongings for evidence of a crime, police must have what is called **“probable cause”** to believe a crime has been committed or “probable cause” to believe they will find evidence of a crime.
          1. What is probable cause? Get student input.
          2. Display overhead continuum. Discuss examples of each level of “certainty.”
       3. P/C IN SCHOOLS: In *New Jersey v. T.L.O.,* 468 U.S. 325 (1985), the U.S. Supreme Court held that the Fourth Amendment’s prohibition on unreasonable searches and seizures also applied to searches conducted by public school officials. However, probable cause is not required; rather, the legality of a search of a student should depend simply on ***the reasonableness, under all the circumstances, of the search***. To be reasonable the search must be (1) justified at the inception and (2) reasonable in scope under the circumstances (based on the student (age, sex etc) and nature of infraction (severity)).
          1. *See also* *Safford***:** reasonable suspicion that 13 year old was giving away Tylenol justified search in backpack, but not strip-search to her underwear.
5. **Exclusionary Rule**
6. U.S. SUPREME COURT: The U.S. Supreme Court has developed a rule called the “exclusionary rule” that basically says when police conduct an illegal search that violates a person’s Fourth Amendment rights, the evidence the police find cannot be admitted into evidence to show the person’s guilt.
   * + - 1. What do you think the purpose of the Exclusionary Rule is?
         2. The Exclusionary Rule under the federal constitution is designed to deter police from conducting illegal searches.
         3. E.g., If the cocaine found in Betty’s bag was the only evidence that she committed a crime, and the police/principal had no reason for searching her, then the evidence would not be admissible under the Exclusionary Rule. Some people would say Betty “got off on a technicality.” Rather than a technicality, it was the officer’s violation of Betty’s constitutional rights that would result in Betty’s aquittal.
         4. (a) Do you think it’s fair for people to avoid being punished for crimes in situations like this?
         5. (b) Can you think of reasons why the Exclusionary Rule might be good? Bad?
   1. **Consent Searches:**
      * 1. QUESTION: The police officer’s search of Andrew’s wallet did not violate his right to privacy at all, because, if Andrew did not want the officer to conduct the search, he should have felt free to say “no” to the officer’s request.
        2. GENERALLY: Because Andrew gave the officer permission to look in his wallet, Andrew cannot later claim that the officer violated his privacy rights. Unless the officer coerced Andrew into giving consent, such as using threats or force, the search is perfectly legal even if the officer had no reason to suspect that Andrew had committed any crime. *See Schneckloth v. Busamonte*.
        + (1) Do you think Andrew could have said “no” to the officer?
        + (2) What do you think would have happened then?
        + (3) What sorts of things might constitute coercion?
        1. NOTE: If Andrew could prove that his consent was not voluntary, that he didn’t feel free to say no to the officer, he might be able to prove that his Fourth Amendment rights were violated. In these circumstances, though, the U.S. Supreme Court has held that a reasonable person would know that he could refuse to give consent and that by giving consent, the police may search the wallet. In fact, police can always ask permission to conduct a search. If you give consent to the search, you have waived your Fourth Amendment privacy rights.
   2. **Drug Testing of Athletes**
      * 1. QUESTION: Chris plays basketball, receives good grades in all of his classes, and volunteers as a tutor at a nearby grade school. Nonetheless, because he is a student athlete and the school has a strict “zero tolerance” policy that bars any drug-using student from playing sports, he must provide urine samples for random drug tests whenever asked. This violates his privacy and is unfair.
        2. U.S. SUPREME COURT: In 1995, the United States Supreme Court ruled that public school athletes can be required to undergo drug testing even if they are not suspected of using drugs. In that case, a 7th grader refused to sign a form consenting to drug testing; the school district would not allow him to play on the football team without signing the form. Justice Scalia gave two main reasons for testing student athletes before anyone else in the student body: (1) student athletes have lesser privacy expectations because they are accustomed to dressing and showering in locker rooms, and (2) student athletes are role models to other students. *Vernonia School Dist. v. Acton,* 115 S.Ct. 2386 (1995).

(a) What do you think of Justice Scalia’s reasoning?

(b) Do you think student athletes are role models?

(c) Should schools be able to test all students involved in other extracurricular activities as well? Why or why not?

1. **Closing Discussion:**

Seek students’ opinions on whether the law is fair. (See attached “answer” sheet.) If time, also could prompt a discussion of what people can do when they believe a law is unfair. (Write their legislators, lobby, volunteer with an activist group, work with lawyers pursing test cases to change the law, etc.)