

Lesson 5: The Rights of the Accused Part I: Introduction and the Fourth Amendment

Lesson Abstract: This lesson, along with Lesson 6, addresses the group of amendments that work within the criminal justice system to protect the rights of the accused. Armed with hindsight from the colonial days and their experience under British rule, the Framers understood that individual rights could not be protected and democracies cannot function unless those accused of crimes receive what we now call due process of law. The rights of the accused were established in the Bill of Rights and have been continuously refined in courtrooms ever since. The Fourth Amendment protects individuals against unreasonable governmental searches (not searches by private citizens) and seizures. This amendment requires legal authorities to obtain a search warrant before conducting a search of a person's possessions. Over the years, the Supreme Court has carved out certain exceptions to the Fourth Amendment warrant requirement. Through a simulation, textual analysis, and a case study, students explore the meaning and implications of the protections under the Fourth Amendment.

Content Expectations: C2.2.5; C3.1.3; C3.2.1; C3.2.3; C3.4.4; C5.3.5; 5.3.7

Common Core State Standards for Literacy in History and Social Studies: RH.9-10.1, 2, 4, 6, 8, 9, and 10; WHST.9-10.4, 9, and 10

Key Concepts:

- adversary system
- constitutional supremacy
- government (state) action
- individual rights
- judicial review
- precedent
- rule of law

Teacher Notes

- Lesson Length – This lesson has three distinct parts: a simulation, textual analysis, and a case study. It is recommended that this lesson be conducted over a few days. The breakdown will vary depending on your class schedule.
- Preparation Needed – Prior to this lesson, identify a student for the introductory activity described in Step 1 in the Lesson Sequence below. Be sure they are willing to effectively role-play in front of the class. Determine a point in Step 1 where the student is to begin the role-play and communicate this to the student ahead of time.

Before the role-play begins, the student will need to know and do the following:

- The point at the beginning of class when the student should scream, “Someone took my wallet!”
- Give a description of the wallet.

- Identify the point in time when he/she last saw the wallet. For example, the student could mention that he/she had just taken the wallet out at the beginning of class to find their ID for lunch.
- Provide a description of the contents of the wallet – including three \$20 bills.

Lesson Sequence:

1. Be sure to close the door at the beginning of class and intentionally let the students mingle and get settled for a few minutes before starting the lesson. Begin the lesson by having students review a partner's Citizenship Notebook entry from the previous lesson. Begin to discuss how the First Amendment protects against governmental action, otherwise known as "state action". Begin to describe how state action differs from private action of parents or employers, etc. This is the cue to start the role-play activity identified in the Teacher Notes above. The selected student for the role-play will now scream, "Someone took my wallet!" The teacher, acting concerned, should ask the student to:
 - Give a description of the wallet.
 - Identify the point in time when he/she last saw the wallet.
 - Provide a description of the contents of the wallet – including three \$20 bills.

Since no other students are present in the room, the implication is that the only person who could have taken the wallet is in the class. The teacher should indicate to the class that obviously the wallet did not have legs and must be in the room somewhere. Allow a few minutes for students' anxiety to rise before proceeding with the lesson.

2. Break the class into groups of three to four students each. Assign each group one of the following roles:
 - a. The guilty student
 - b. A female student with a controlled substance on her person
 - c. A male student with chewing tobacco and cigarettes in his book bag (illegal in school)
 - d. An innocent student
 - e. The student who lost the wallet
 - f. An administrator or teacher
 - g. A student with a wallet that coincidentally has three \$20 bills in it
 - h. A male student who was recently suspended for stealing in school

Teacher Note: If more roles are needed, be creative.

Distribute to the students the handout, "**Analyzing Rights through Another's Eyes**" located in the *Supplemental Materials (Unit 5, Lesson 5)*. Explain to students that they are to examine these questions from their assigned perspective. For example, even if a male student is assigned "an innocent female student" as his role, he should answer the discussion questions as if he were an innocent female student (i.e., taking into consideration that a female student is likely to carry a purse in school, etc.).

3. Have the students first individually read each question on the handout (see Step 2) and jot down their initial answers through the eyes of the person they have been assigned to role-play. Allow about 5 minutes. Then have students combine into groups according to their assigned role to

share their opinions and come to a group consensus. Each group of students should select a speaker to share its consensus opinion. Allow about 5-7 minutes for small group discussion.

4. Conduct a whole class discussion in which the groups share their opinions based on the assigned perspective. Do not discuss the constitutional issues yet, as these questions are meant to provoke thought and discussion leading into the rights of the accused lesson. After eliciting the responses from the different perspectives, debrief the activity by using the following questions to guide the discussion:
 - How did one's perspective affect how they answered the questions 1-4?
 - For instance, how would an innocent girl or boy feel if coincidentally they too had three \$20 bills on them? Would they still be comfortable with a search? Why or why not?
 - What about the students who possessed illegal items? How would they respond to the search? Should they get into trouble for what is found on them or in their belongings? Should they expect that their personal items are private and cannot be searched? Why or why not?
 - What about the student who was recently suspended for stealing in school? How might that affect their view of the search?
 - How would the class feel being subjected to a search that ultimately reveals nothing?
 - Should officials be allowed to search when/where they want because innocent people have nothing to fear? Wouldn't that cut down on crime?
 - Do you think it makes a difference if this incident occurred outside of school? Why or why not?
 - Suppose the authorities kept all of the students in the classroom for questioning.
 - Should there be limit to the kinds of questions authorities can ask students?
 - Do you think it should matter if students felt free to leave without answering the questions? Why or why not? **Teacher Note:** The idea here is to get the class to think about if it should matter whether students feel they can leave the situation or if they are "in custody." Remember, however, that the goal is to heighten students' awareness without discussing the constitutional issues at this point.
5. Explain to the class that they are going to examine the scenario in light of the Constitution. Ask students which parts of the Constitution might apply to the situation. Guide students to recognize that the Bill of Rights is the part of the Constitution that protects individual rights, including the rights of the accused. Using the list of the rights in "**Exploring the Bill of Rights**" handout from Lesson 3, have students work individually to place a checkmark next to each right they believe is involved in the scenario. After a quick pair-share of their responses, elicit students' responses. Guide students to recognize that the Fourth, Fifth, and Sixth Amendments are at issue. Use the following questions in a class discussion of the rights involved in the scenario:
 - What amendments would apply to this situation?
 - To the search? (*Fourth Amendment – Right to be free from unreasonable searches and seizures*)
 - To the questioning? (*Fifth Amendment – Right to be free from self-incrimination; Sixth Amendment – Right to counsel (if in custody)*)
 - Assume that a student has been arrested. What amendments would apply? (*Fifth Amendment – Cannot be compelled to be a witness against oneself; Sixth Amendment*

– *Right to a speedy and public trial, the assistance of counsel, to confront witnesses, to an impartial jury, and to be informed of nature and cause of the accusation.*)

- If the student is found guilty, what amendment protects the individual from abusive punishment by the government? (*Eighth Amendment protection against cruel and unusual punishment*)

Teacher Note: The remainder of this lesson is dedicated to the Fourth Amendment. The Fifth, Sixth, and Eighth Amendments are addressed in Lesson 6.

6. Display the text of “**The Fourth Amendment**,” a copy of which is located in the *Supplemental Materials (Unit 5, Lesson 5)*. Read it together as a class. Point out to students that the entire amendment contains one sentence – one **really** long sentence. Explain that the first task is to be sure they understand the words being used in the amendment. Divide students into pairs and distribute “**What Does the Fourth Amendment Protect?**” located in the *Supplemental Materials (Unit 5, Lesson 5)*. Instruct students to work with their partner to place a check mark in the column entitled, “Pair Answer” for each item they believe the Fourth Amendment protects.
7. Reconvene the class and tally the students’ responses on a display of the chart, “**What Does the Fourth Amendment Protect?**” Have students add this information to their own charts. Then review the U.S. Supreme Court’s answer to each question. Use the “**Teacher’s Guide – What Does the Fourth Amendment Protect?**” located in the *Supplemental Materials (Unit 5, Lesson 5)*. Point out to students that there are several gray areas because the result depends on the facts of the particular case.
8. Next, discuss with the students the other features of the language of the Fourth Amendment.
 - **WHO does the Fourth Amendment protect?** Explain to students that “**The right of the people**” includes everyone in the United States. This includes “citizens,” children under 18, undocumented immigrants, and vacationers. Everybody on U.S. soil is protected.
 - **From WHAT does the Fourth Amendment protect?** Explain to students that the Fourth Amendment protects “against **unreasonable searches and seizures**” by the **government**. In determining what is an “unreasonable” search or seizure, courts look to balance individual liberty with the need to keep an ordered society. Figuring out what is reasonable or unreasonable is one of the central challenges of the Fourth Amendment. Courts continue to grapple with Fourth Amendment issues because they are very fact dependent. Be sure to explain that the Bill of Rights provides protection from government (state) action, not your parents. Thus, your parents can search your room, computer, backpack, etc.
 - **How does the Fourth Amendment protect you?** The second part of the Fourth Amendment talks about “**no warrants shall issue but upon probable cause.**” This means that, unless there is a recognized exception, the government must go to court to show a reason for the search or seizure. A judge makes a determination whether or not the government has shown enough evidence to meet the “probable cause” requirement.
9. Now distribute the handout “**Overview of the Fourth Amendment**” located in the *Supplemental Materials (Unit 5, Lesson 5)*. Have students read the handout and then show them a short video clip (under 2 minutes) on the Fourth Amendment “Reasonable Searches and Seizures” at <http://www.annenbergclassroom.org/page/the-story-of-the-bill-of-rights>. Once

at the website click on “The Fourth Amendment.” Then, discuss the Fourth Amendment using the following questions:

- Why did the Framers include the Fourth Amendment? *Guide students to colonial history and the practice of the British issuing generalized warrants which gave broad powers to search and which could be transferred to others (writs of assistance). In essence, these allowed practically unlimited discretion for anyone to search for any reason.*
- Why is the Fourth Amendment so complicated? Guide students to the following:
 - *The Framers of the Constitution did not provide a clear framework for what is considered to be a “reasonable” search and seizure.*
 - *Courts, under their power of judicial review, have interpreted the term “unreasonable” in the Fourth Amendment. Courts apply a balancing test (right to privacy v. government interest) and cases are fact dependent. Searches in schools and of vehicles do not have the same Fourth Amendment protections as homes, businesses, and other private property.*
 - *There are many exceptions to the warrant requirement such as plain view, consent, when a search is incident to a lawful arrest, and when done in hot pursuit (or emergency circumstances).*
- Airport scanners, heat-sensing devices, GPS tracking devices, eavesdropping devices, etc., were not available when the Framers created the Fourth Amendment. How might these technological advances affect one’s rights under the Fourth Amendment? *Courts have broadened the meaning of the term “search” in response to these technological advances.*

10. Next, have students read and analyze a hypothetical case. Begin by distributing the handout “**Amanda Apple and her Laptop**” found in the *Supplemental Materials (Unit 5, Lesson 5)*. After students have read the handout, have them turn and talk about the case with a partner, using these questions as a guide:

- What happened?
- What was searched or seized?
- Was a warrant involved?
- Do you think Amanda had a reasonable expectation of privacy that was violated?

11. Select three or five students to be the judges or arrange for parent or community volunteers (or other teachers) to act as judges. Divide the remaining students into two law firms that will argue the case before the panel of three federal district judges. Identify which half of the class is representing the school and which half is representing Amanda.

12. Provide all students with copies of the case summaries for **Katz v. United States (1967)** and **New Jersey v. T.L.O. (1985)** found in the *Supplemental Materials (Unit 5, Lesson 5)*. Explain to students that they are to read both case summaries, highlighting or underlining information that will likely be used in their case. For each underlined or highlighted portion, students need to identify which side would be likely to use that information in the argument. The idea here is to use case law precedent to uncover both arguments and counter-arguments for their side. If students are acting as judges, they should read the case summaries highlighting/underlining precedent to help them decide the case. For homework or additional preparation, distribute the “**Excerpts from Katz v. United States**” and “**Excerpts from New Jersey v. T.L.O.**,” located in the *Supplemental*

Materials (Unit 5, Lesson 5). It is recommended that students select one quote from either of the case excerpts that best helps their side. Student judges should also find a quote from the case excerpts that best represents their own thinking on this issue.

13. Once students have read the documents provided in Step 12 above, have them compare their highlights/underlining with a partner from their legal team. The judge panel should also compare their notes and own thinking on the Fourth Amendment. Distribute the handout “**Building an Argument**” located in the *Supplemental Materials (Unit 5, Lesson 5)*. Have each legal team divide up the handout among smaller working teams, with each smaller team completing a portion of the handout that they will later be responsible for arguing before the court. The judges should also divide up the questions. Allow time for students to work on their questions (20-30 minutes).
 14. Have the legal teams and judges regroup to share the results of their work on the “**Building an Argument**” handout with their team. It is recommended that the teacher move around the room and assist students as necessary using the “**Teacher’s Guide to Legal Analysis and Arguments to be Made,**” located in the *Supplemental Materials (Unit 5, Lesson 5)* for reference.
 15. Distribute the handout “**Focus Questions for Oral Argument**” located in the *Supplemental Materials (Unit 5, Lesson 5)*. Instruct the legal teams to begin to prepare their oral arguments before the judges (court), using their answers from the “**Building an Argument**” handout to answer the focus questions that will be decided by the court. While the legal teams are preparing their arguments, the judge panel should discuss the focus questions and make a list of questions they would like to ask the attorneys for each side during oral arguments.
 16. Inform students of the following process for the oral arguments:
 - Each team will have approximately 20 minutes to argue its side of the case (the time period for each side should be roughly even and enough for each student to participate).
 - The legal team for Amanda Apple will go first, followed by the school’s legal team, followed by a brief (2 minute max) response by Amanda Apple’s side.
 - Every student on the legal team should participate in the oral arguments.
 - While the legal teams are presenting their side of the case, the judges may interrupt them with questions. Students should answer the questions to the best of their ability. (You may want to have the students listen to a portion of the oral arguments for the T.L.O. case at oyez.org (http://www.oyez.org/cases/1980-1989/1983/1983_83_712/argument) so they understand what oral arguments and interruptions by judges sound like.)
- Teacher Note:** Use the “**Teacher’s Guide to Amanda Apple Case Analysis**” located in the *Supplemental Materials (Unit 5, Lesson 5)* to familiarize yourself with the main legal arguments so you can assist the students during their preparation.
17. Have the students present their case as mentioned above. Following the oral arguments, the judges should leave the room to decide the case and elect one judge to state the court’s opinion as to whether or not Amanda Apple’s Fourth Amendment rights have been violated and whether her suspension was constitutional. When stating their ruling, the judge panel should state their reasoning by addressing how they answered each of the focus questions and how they applied the case law (*T.L.O.* and *Katz*) in reaching their decision.

18. As a conclusion to this activity or during the judges' deliberation, each student should write their own legal opinion on this case in their Citizenship Notebook. Students should use evidence to support their legal opinion, including the facts of the case, as well as court precedent from *T.L.O* and *Katz* cases.

Assessment

The writing assignment in Step 16 may serve as the assessment of student learning.

Reference Section

Content Expectations

- C2.2.5: Use examples to investigate why people may agree on constitutional principles and fundamental values in the abstract, yet disagree over their meaning while applied to specific situations.
- C3.1.3: Analyze the purposes, organization, functions, and process of the judicial branch as enumerated in Article III of the Constitution.
- C3.2.1: Explain how the principles of enumerated powers, federalism, separation of powers, bicameralism, checks and balances, republicanism, rule of law, individual rights, inalienable rights, separation of church and state, and popular sovereignty serve to limit the power of government.
- C3.2.3: Identify specific provisions in the Constitution that limit the power of the federal government.
- C3.4.4: Describe considerations and criteria that have been used to deny, limit, or extend protection of individual rights (e.g., clear and present danger, time, place, and manner restrictions on speech, compelling government interest, security, libel or slander, public safety, and equal opportunity).
- C5.3.5: Explain considerations and criteria commonly used in determining what limits should be placed on specific rights.
- C5.3.7: Using the 4th, 5th, 6th, 7th, and 8th Amendments, describe the rights of the accused and using case studies and examples explore the limit and scope of these rights.

Common Core State Standards for Literacy in History and Social Studies:

- RH.9-10.1:* Cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text.
- RH.9-10.2:* Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.

- RH.9-10.4:* Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social studies.
- RH.9-10.6:* Compare the point of view of two or more authors for how they treat the same or similar topics, including which details they include and emphasize in their respective accounts.
- RH.9-10.8:* Assess the extent to which the reasoning and evidence in a text support the author's claim.
- RH.9-10.9:* Compare and contrast treatments of the same topic in several primary and secondary sources.
- RH.9-10.10:* By the end of grade 10, read and comprehend history/social studies texts in the grades 9-10 text complexity band independently and proficiently.
- WHST.9-10.4:* Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.
- WHST.9-10.9:* Draw evidence from informational texts to support analysis, reflection, and research.
- WHST.9-10.10:* Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences.

Resources

Equipment/Manipulative

Computer with Internet Access and Projector

Student Resource

Chase, Alycia and Jennifer Simone. *Supplemental Materials (Unit 5, Lesson 5)*. Teacher-made materials. Oakland Schools. 2012.

"The Fourth Amendment." Annenberg Classroom. The Leonore Annenberg Institute for Civics. 10 Jan. 2013 <<http://www.annenbergclassroom.org/page/the-story-of-the-bill-of-rights>>.

Fourth Amendment to the United States Constitution. Legal Information Institute. Cornell University Law School. 10 Jan. 2013 <http://www.law.cornell.edu/constitution/fourth_amendment>.

Katz v. United States, 389 U.S. 347 (1967). The Oyez Project at IIT Chicago-Kent Collage of Law. 10 Jan. 2013 <http://www.oyez.org/cases/1960-1969/1967/1967_35>.

New Jersey v. T.L.O., 469 U.S. 325 (1985). The Oyez Project at IIT Chicago-Kent Collage of Law. 10 Jan. 2013 <http://www.oyez.org/cases/1980-1989/1983/1983_83_712>.

Teacher Resource

Fourth Amendment. Annotated Constitution. Legal Information Institute. Cornell University Law School. 10 Jan. 2013 <http://www.law.cornell.edu/anncon/html/amdt4toc_user.html>.

The Fourth Amendment. Revolutionary War and Beyond. 2008-2012. 10 Jan. 2013 <<http://www.revolutionary-war-and-beyond.com/4th-amendment.html>>.

Teaching Module: Fourth Amendment Lesson Plan. Band of Rights. 10 Jan. 2013 <http://www.band-of-rights.org/fourth_amendment_lesson_plan.pdf>.