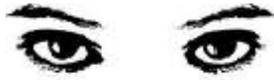


## Analyzing Rights through Another's Eyes



**Directions:** Through the eyes of the person in the role you have been assigned, how would you answer the following questions?

My assigned role is: \_\_\_\_\_

1. Should a search occur within the classroom? Why or why not?
  
2. Assume there is a search. Which of the following should conduct the search? Explain your reasoning for each.
  - The classroom teacher?
  - Other students in the classroom?
  - An administrator?
  - A police officer?
  
3. If a search did occur, which of the following should be searched? Explain your reasoning for each.
  - Student book bags?
  - Student purses?
  - The teacher's bag or purse?
  - Student coats?
  - In a student's pocket?
  - Under the tables or desks?
  - In the trash can?
  - Other: \_\_\_\_\_?
  
4. Should everyone be searched? Why or why not?
  
5. State at least two questions the person performing the search should be allowed to ask.
  
6. If someone is suspected of stealing the wallet and money, what, if anything, should they be allowed to do? Explain your reasoning for each.
  - Call their parents?
  - Call an attorney?
  - Remain silent and not answer any questions?
  - Other \_\_\_\_\_?

## 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.”

-- United States Constitution, Amendment IV.

## What Does the Fourth Amendment Protect?

	<b>What is protected? What does it mean?</b>	<b>Pair Answer</b>	<b>Class Vote</b>	<b>US Supreme Court Answer</b>
Persons	The clothing a person is wearing?			
	The wallet a person carries?			
	A person's blood or bodily fluid?			
Houses	Does this include apartments?			
	Does this include mobile homes?			
	Does this include the front porch?			
Papers	Does this include a personal diary?			
	A book in your house?			
	Your email?			
Effects	Does this include your backpack?			
	Your phone?			
	Your car?			
	Your computer?			
	The garbage?			

## Teacher's Guide - What Does the Fourth Amendment Protect?

	<b>What is protected? What does it mean?</b>	<b>US Supreme Court Answer</b>
Person	The clothing a person is wearing?	<b>Yes</b>
	The wallet a person carries?	<b>Yes</b>
	A person's blood or bodily fluid?	<b>Yes</b>
Houses	Does this include apartments?	<b>Yes</b>
	Does this include mobile homes?	<b>Maybe, depends on whether it is used as a home or a car</b>
	Does this include the front porch?	<b>Probably yes</b>
Papers	Does this include a personal diary?	<b>Yes</b>
	A book in your house?	<b>Yes</b>
	Your email?	<b>Probably not, but this depends on a "reasonable expectation of privacy" (family email or work email may differ than private individual email)</b>
Effects	Does this include your backpack?	<b>Maybe, but this depends on location (school environment differs than other public places or homes)</b>
	Your phone?	<b>Maybe, but this depends on location (school environment differs than other public places or homes)</b>
	Your car?	<b>Maybe (There are lots of exceptions to the warrant requirement here because cars are mobile, contents that can be seen in "plain view" can be seized, police can stop on reasonable suspicion that criminal activity is "afoot" (Terry Stop), consent, etc.)</b>
	Your computer?	<b>Yes, however, publicly used computers are not protected</b>
	The garbage?	<b>Maybe, depends on the location of the garbage (at curb or on street is unprotected)</b>

## Overview of the Fourth Amendment

### **Amendment IV – Search and Seizure**

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.

### **“Unreasonable” Searches and Seizure are Forbidden**

The Fourth Amendment generally creates a **right to privacy**. The privacy enjoyed extends beyond just the person to their residence and property. In order for a search to be constitutional, it must be reasonable.

### **What is Reasonable?**

There is no consistent definition or interpretation of “reasonable.” Thus, there is room for argument and debate. The key to deciding if a search is reasonable is through **balancing the right to privacy against the needs of society**. It is up to the prosecution to explain how the societal needs are more important than the individual’s right to privacy.

### **What if the Search and Seizure are Unreasonable?**

The **exclusionary rule** states that evidence gathered in an illegal search and seizure cannot be used in a criminal case. This rule helps assure that the police will be careful so they do not jeopardize the admissibility of the evidence sought. The rule is also very important because it holds the government to a high standard of integrity. People are more likely to trust the government and follow their rules if the government follows rules.

### **What about Warrants?**

Warrants allow the police to arrest and/or search a person or place. They can only be issued by a judge or magistrate. Those seeking a warrant must make a detailed, **sworn statement** why the warrant should be issued. The judge or magistrate must be convinced that there is **“probable cause”** that a crime has taken place. Beyond that, the warrant must be specific enough to only allow for a narrow search for items or people described in the detailed statement of those seeking the warrant.

### **Is a Warrant always needed?**

No, there are many exceptions that allow for warrantless searches. The most common exception is when a person **consents** to a search when asked by the police. Another common exception occurs when a crime is ongoing and dangerous to the community. In those situations, the police are allowed to search while in **hot pursuit** of a suspect. A third exception is when the search is when the search is happening after a **lawful arrest** (usually a pat-down or inventory of the suspect). The last common exception is when the evidence seized is sitting out in **plain view** and obvious (not requiring any search to find).

### **Amanda Apple and her Laptop**

Last year, every student in Wayside High was given a new laptop computer by the Will and Melinda Rights Foundation. The computers were for students to keep for the year, and then they had to return them to the school. The computers had the capacity to do only two things – first, word processing, meaning writing papers, taking notes, and saving information that the user chose to type into the computer. The computers also were capable of instant messaging (IM), meaning having the ability to communicate to friends in real time, when plugged into a classroom port. Email and the Internet were not permitted.

All the students at Wayside High were very excited. Before the gift of computers, Wayside students did not have computers in their school. The only computers available to students were 10 public computers at the Wayside School and Public Library, which was attached to the high school. The library was open to everyone in the neighborhood, student and citizen alike. To use the public computer you had to pay \$1 for 30 minutes of computer access. The new computers were greeted with great enthusiasm. Students could now do their work without worrying about accessing computers at the Wayside School and Public Library.

After receiving the computers, Amanda Apple discovered a new way to cheat on her history tests. Amanda learned that she could IM her friends to get the answers to her tests. All she needed was a pass to the bathroom. Once released from class, she could hightail it to the library or use her school loaned laptop to obtain the test answers. Amanda decided to use the public library computer to communicate with her friends during the tests. She figured it would be impossible to sneak out her laptop when she asked to go to the bathroom. Even if she kept her computer in her locker, there would be no place in the hall to plug in to IM her friends. Besides, the public computer would only cost her \$1 to get an A+.

Her teacher Darnell Dudley began to suspect that Amanda might be doing something strange, because her answers seemed to improve with the frequency of her trips to the bathroom during tests. Based on his concerns, Dudley asked the principal of the school to place an electronic bug on the public computers to monitor the IM traffic going back and forth during his class. The bug allowed Dudley to read all of the IM traffic going out. In addition, right after the fourth test, Dudley confiscated Amanda's computer to see what she was up to.

Because Dudley believed that Amanda was cheating, he read everything on her computer. He read her homework assignments, her papers, her diary entries, and her application to transfer to another school because of emotional problems. In one electronic folder, he found a document entitled "How To Expand Your Knowledge And Use Technology To Cheat And Not Get Caught."

Dudley also then looked at the information that was intercepted over the public computers through the IM system. In a series of conversations, Amanda's record of use showed that she was asking explicit questions from his exam and receiving correct answers from friends at school.

Based on the two discoveries, Amanda was suspended from school. Outraged, Amanda sued the school arguing that her Fourth Amendment rights were violated.

Adapted from: [http://www.band-of-rights.org/fourth\\_amendment\\_lesson\\_plan.pdf](http://www.band-of-rights.org/fourth_amendment_lesson_plan.pdf)

## Summary of Katz v. United States (1967)

### Overview:

In 1967, the Supreme Court had to address whether or not “bugging” a conversation from a local pay phone was an “unreasonable” search or seizure.

Charles Katz was a rather unsavory character who was involved in an illegal gambling operation. To further his betting, he regularly used a particular payphone on a particular street in Los Angeles to make phone calls to Miami and Boston. The F.B.I suspected Katz of running the gambling operation and, thus, placed an electronic surveillance device (a “bug”) on the payphone to record his calls. Based on the calls, Katz was arrested and in court he challenged the use of the calls saying that his Fourth Amendment rights were violated by the “search” of his conversations. Katz claimed he had a reasonable expectation of privacy in the conversations.

### Question for the Court:

The question for the Supreme Court was whether the phone calls made from this payphone were made with a justifiable expectation of privacy.

### Facts of the Case:

The payphone at issue was an old-fashioned telephone booth that was partly made out of glass. The FBI simply put a listening device on the phone and had it record when Katz made his phone calls. The calls were recorded and used in Katz’s trial for illegal gambling.

### Holding:

The Court held that Katz had a reasonable expectation that his calls would not be heard by anyone except the intended listener, and that the Fourth Amendment was violated.

### Reasoning:

The issue for the Court was less the type of property at issue (the phone booth) but more the expectation of the person. “The Fourth Amendment protects people, not places...” is a famous line from the case.

In addition, Justice Harlan’s concurrence sets forth what remains as the test of a reasonable expectation of privacy. That there must be both a subjective expectation of privacy, and also that this expectation must be one that society would think is reasonable.

Source: [http://www.band-of-rights.org/fourth\\_amendment\\_lesson\\_plan.pdf](http://www.band-of-rights.org/fourth_amendment_lesson_plan.pdf)

## Summary of New Jersey v. T.L.O. (1985)

### Overview:

*New Jersey v. T.L.O.* established a lower standard for official searches in public schools by school authorities: reasonable suspicion.

### Question for the Court:

The question for the Supreme Court was whether public school officials (a Principal) needed probable cause or a warrant to search a student's purse when he believed she was smoking cigarettes in school.

### Facts of the Case:

A fourteen-year-old student (initials T.L.O.) was suspected of smoking cigarettes in the bathroom with another student. Both girls were brought to the principal's office. T.L.O. denied smoking. The other girl confessed. The Principal decided to search T.L.O.'s purse. He did so and found a pack of cigarettes. After finding the cigarettes he continued to search and found marijuana and other items associated with marijuana selling. During her juvenile prosecution, T.L.O. challenged the Principal's search as a violation of her Fourth Amendment rights.

### Holding:

The Court held that the Fourth Amendment applies to high school students in public schools, and that students retained a limited reasonable expectation of privacy. However, the Court upheld the constitutionality of the search, reasoning that the Principal has reasonable suspicion to search the purse for a violation of school rules. The initial search was reasonable because the Principal suspected T.L.O., of violating the school rules on smoking. The second, continued search of the purse was reasonable because cigarettes and other suspicious items had been found. Thus, there was no violation of the Fourth Amendment.

### Reasoning:

The first legal issue was whether the Fourth Amendment even applied to high school students. The State of New Jersey had argued that because of the extensive regulations that students have to follow in schools, students did not retain any reasonable expectation of privacy. The Supreme Court rejected this argument, holding that students did retain a reasonable expectation of privacy in the things they brought to school.

The second legal issue was whether the "probable cause/warrant requirement" should be applied to a school setting. The Court held that a lesser standard made more sense in the context of a school. The Court adopted the "reasonable suspicion" standard holding that if the search is reasonable considering all of the circumstances. The Court offered a two-part test: (1) whether the search was justified at its inception; and (2) whether the search was reasonably related in scope to the justification. In T.L.O.'s case, the initial search was justified by the suspicion of smoking, and the second search, was justified because other suspicious items (rolling papers etc.) were found with the cigarettes.

Source: [http://www.band-of-rights.org/fourth\\_amendment\\_lesson\\_plan.pdf](http://www.band-of-rights.org/fourth_amendment_lesson_plan.pdf)

## Excerpts from Katz v. United States

Supreme Court of the United States

Argued October 17, 1967

Decided December 18, 1967

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioner was convicted in the District Court for the Southern District of California under an eight-count indictment charging him with transmitting wagering information by telephone from Los Angeles to Miami and Boston in violation of a federal statute. At trial the Government was permitted, over the petitioner's objection, to introduce evidence of the petitioner's end of telephone conversations, overheard by FBI agents who had attached an electronic listening and recording device to the outside of the public telephone booth from which he had placed his calls.

**[T]he Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. ... But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.**

The Government stresses the fact that the telephone booth from which the petitioner made his calls was constructed partly of glass, so that he was as visible after he entered it as he would have been if he had remained outside. **But what he sought to exclude when he entered the booth was not the intruding eye—it was the uninvited ear. He did not shed his right to do so simply because he made his calls from a place where he might be seen. No less than an individual in a business office, in a friend's apartment, or in a taxicab, a person in a telephone booth may rely upon the protection of the Fourth Amendment. One who occupies it, shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world.** To read the Constitution more narrowly is to ignore the vital role that the public telephone has come to play in private communication.

...The question remaining for decision, then, is whether the search and seizure conducted in this case complied with constitutional standards. In that regard, the Government's position is that its agents acted in an entirely defensible manner: They did not begin their electronic surveillance until investigation of the petitioner's activities had established a strong probability that he was using the telephone in question to transmit gambling information to persons in other States, in violation of federal law. Moreover, the surveillance was limited, both in scope and in duration, to the specific purpose of establishing the contents of the petitioner's unlawful telephonic communications. The agents confined their surveillance to the brief periods during which he used the telephone booth, and they took great care to overhear only the conversations of the petitioner himself.

Accepting this account of the Government's actions as accurate, it is clear that this surveillance was so narrowly circumscribed that a duly authorized magistrate, properly notified of the need for such investigation, specifically informed of the basis on which it was to proceed, and clearly apprised of the precise intrusion it would entail, could constitutionally have authorized, with appropriate safeguards, the very limited search and seizure that the Government asserts in fact took place.

...It is apparent that the agents in this case acted with restraint. Yet the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer. They were not required, before commencing the search, to present their estimate of probable cause for detached scrutiny by a neutral magistrate. They were not compelled, during the conduct of the search itself, to observe precise limits established in advance by a specific

court order. Nor were they directed, after the search had been completed, to notify the authorizing magistrate in detail of all that had been seized. In the absence of such safeguards, this Court has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive means consistent with that end. Searches conducted without warrants have been held unlawful ‘notwithstanding facts unquestionably showing probable cause,... for the Constitution requires ‘that the deliberate, impartial judgment of a judicial officer be interposed between the citizen and the police ... ‘Over and again this Court has emphasized that the mandate of the (Fourth) Amendment requires adherence to judicial processes,’ ... and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions.

The Government does not question these basic principles. Rather, it urges the creation of a new exception to cover this case. It argues that surveillance of a telephone booth should be exempted from the usual requirement of advance authorization by a magistrate upon a showing of probable cause. We cannot agree. Omission of such authorization ... ‘bypasses the safeguards provided by an objective predetermination of probable cause, and substitutes instead the far less reliable procedure of an after-the-event justification for the ... search, too likely to be subtly influenced by the familiar shortcomings of hindsight judgment.’ And bypassing a neutral predetermination of the scope of a search leaves individuals secure from Fourth Amendment violations ‘only in the discretion of the police.’

These considerations do not vanish when the search in question is transferred from the setting of a home, an office, or a hotel room to that of a telephone booth. Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures. The government agents here ignored ‘the procedure of antecedent justification ... that is central to the Fourth Amendment, a procedure that we hold to be a constitutional precondition of the kind of electronic surveillance involved in this case. Because the surveillance here failed to meet that condition, and because it led to the petitioner’s conviction, the judgment must be reversed.

It is so ordered.

Judgment reversed.

Mr. Justice HARLAN, concurring.

I join the opinion of the Court, which I read to hold only (a) that an enclosed telephone booth is an area where, like a home, ... a person has a constitutionally protected reasonable expectation of privacy; (b) that electronic as well as physical intrusion into a place that is in this sense private may constitute a violation of the Fourth Amendment; and (c) that the invasion of a constitutionally protected area by federal authorities is, as the Court has long held, presumptively unreasonable in the absence of a search warrant. ...

As the Court’s opinion states, **‘the Fourth Amendment protects people, not places.’** The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a ‘place.’ **My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as ‘reasonable.’** Thus a man’s home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the ‘plain view’ of outsiders are not ‘protected’ because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable.

The critical fact in this case is that '(o)ne who occupies it, (a telephone booth) shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume' that his conversation is not being intercepted. The point is not that the booth is 'accessible to the public' at other times, ... but that it is a temporarily private place whose momentary occupants' expectations of freedom from intrusion are recognized as reasonable. ...

Source: [http://www.band-of-rights.org/fourth\\_amendment\\_lesson\\_plan.pdf](http://www.band-of-rights.org/fourth_amendment_lesson_plan.pdf)

## Excerpts from New Jersey v. T.L.O.

Supreme Court of the United States

No. 83-712

Decided January 15, 1985

JUSTICE WHITE delivered the opinion of the Court....

### I

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N. J., discovered two girls smoking in a lavatory. One of the two girls was the respondent T. L. O., who at that time was a 14-year-old high school freshman. Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the Principal's office, where they met with Assistant Vice Principal Theodore Choplick. In response to questioning by Mr. Choplick, T. L. O.'s companion admitted that she had violated the rule. T. L. O., however, denied that she had been smoking in the lavatory and claimed that she did not smoke at all.

Mr. Choplick asked T. L. O. to come into his private office and demanded to see her purse. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T. L. O. as he accused her of having lied to him. As he reached into the purse for the cigarettes, Mr. Choplick also noticed a package of cigarette rolling papers. In his experience, possession of rolling papers by high school students was closely associated with the use of marihuana. Suspecting that a closer examination of the purse might yield further evidence of drug use, Mr. Choplick proceeded to search the purse thoroughly. The search revealed a small amount of marihuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of students who owed T. L. O. money, and two letters that implicated T. L. O. in marihuana dealing.

Mr. Choplick notified T. L. O.'s mother and the police, and turned the evidence of drug dealing over to the police. At the request of the police, T. L. O.'s mother took her daughter to police headquarters, where T. L. O. confessed that she had been selling marihuana at the high school. On the basis of the confession and the evidence seized by Mr. Choplick, the State brought delinquency charges against T. L. O. in the Juvenile and Domestic Relations Court of Middlesex County. Contending that Mr. Choplick's search of her purse violated the Fourth Amendment, T. L. O. moved to suppress the evidence found in her purse as well as her confession, which, she argued, was tainted by the allegedly unlawful search. ...

...[W]e are satisfied that the search did not violate the Fourth Amendment.

### II

**In determining whether the search at issue in this case violated the Fourth Amendment, we are faced initially with the question whether that Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. We hold that it does.... In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents' immunity from the strictures of the Fourth Amendment.**

### III

To hold that the Fourth Amendment applies to searches conducted by school authorities is only to begin the inquiry into the standards governing such searches. Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place. The determination of the standard of reasonableness governing any specific class of

searches requires “balancing the need to search against the invasion which the search entails.” On one side of the balance are arrayed the individual’s legitimate expectations of privacy and personal security; on the other, the government’s need for effective methods to deal with breaches of public order.

We have recognized that even a limited search of the person is a substantial invasion of privacy. We have also recognized that searches of closed items of personal luggage are intrusions on protected privacy interests, for “the Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view.” A search of a child’s person or of a closed purse or other bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy.

To receive the protection of the Fourth Amendment, an expectation of privacy must be one that society is “prepared to recognize as legitimate.” The State of New Jersey has argued that because of the pervasive supervision to which children in the schools are necessarily subject, a child has virtually no legitimate expectation of privacy in articles of personal property “unnecessarily” carried into a school. This argument has two factual premises: (1) the fundamental incompatibility of expectations of privacy with the maintenance of a sound educational environment; and (2) the minimal interest of the child in bringing any items of personal property into the school. Both premises are severely flawed.

**Although this Court may take notice of the difficulty of maintaining discipline in the public schools today, the situation is not so dire that students in the schools may claim no legitimate expectations of privacy.** We have recently recognized that the need to maintain order in a prison is such that prisoners retain no legitimate expectations of privacy in their cells, but it goes almost without saying that “[the] prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration.” We are not yet ready to hold that the schools and the prisons need be equated for purposes of the Fourth Amendment.

Nor does the State’s suggestion that children have no legitimate need to bring personal property into the schools seem well anchored in reality. **Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessities of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries. Finally, students may have perfectly legitimate reasons to carry with them articles of property needed in connection with extracurricular or recreational activities. In short, schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds.**

Against the child’s interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems. Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult....

How, then, should we strike the balance between the schoolchild’s legitimate expectations of privacy and the school’s equally legitimate need to maintain an environment in which learning can take place? It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would

unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools. Just as we have in other cases dispensed with the warrant requirement when “the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search,” we hold today that school officials need not obtain a warrant before searching a student who is under their authority.

The school setting also requires some modification of the level of suspicion of illicit activity needed to justify a search. Ordinarily, a search -- even one that may permissibly be carried out without a warrant -- must be based upon “probable cause” to believe that a violation of the law has occurred. However, “probable cause” is not an irreducible requirement of a valid search....

**We join the majority of courts that have examined this issue in concluding that the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider “whether the ... action was justified at its inception”; second, one must determine whether the search as actually conducted “was reasonably related in scope to the circumstances which justified the interference in the first place.”** Under ordinary circumstances, a search of a student by a teacher or other school official will be “justified at its inception” when 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 rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

This standard will, we trust, neither unduly burden the efforts of school authorities to maintain order in their schools nor authorize unrestrained intrusions upon the privacy of schoolchildren. By focusing attention on the question of reasonableness, the standard will spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense. At the same time, the reasonableness standard should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools.

#### IV

... The incident that gave rise to this case actually involved two separate searches, with the first – the search for cigarettes -- providing the suspicion that gave rise to the second -- the search for marihuana. Although it is the fruits of the second search that are at issue here, the validity of the search for marihuana must depend on the reasonableness of the initial search for cigarettes, as there would have been no reason to suspect that T. L. O. possessed marihuana had the first search not taken place. Accordingly, it is to the search for cigarettes that we first turn our attention.

The New Jersey Supreme Court pointed to two grounds for its holding that the search for cigarettes was unreasonable. First, the court observed that possession of cigarettes was not in itself illegal or a violation of school rules. Because the contents of T. L. O.’s purse would therefore have “no direct bearing on the infraction” of which she was accused (smoking in a lavatory where smoking was prohibited), there was no reason to search her purse. Second, even assuming that a search of T. L. O.’s purse might under some circumstances be reasonable in light of the accusation made against T. L. O., the New Jersey court concluded that Mr. Choplick in

this particular case had no reasonable grounds to suspect that T. L. O. had cigarettes in her purse. At best, according to the court, Mr. Choplick had “a good hunch.”

Both these conclusions are implausible. T. L. O. had been accused of smoking, and had denied the accusation in the strongest possible terms when she stated that she did not smoke at all. Surely it cannot be said that under these circumstances, T. L. O.’s possession of cigarettes would be irrelevant to the charges against her or to her response to those charges. T. L. O.’s possession of cigarettes, once it was discovered, would both corroborate the report that she had been smoking and undermine the credibility of her defense to the charge of smoking. To be sure, the discovery of the cigarettes would not prove that T. L. O. had been smoking in the lavatory; nor would it, strictly speaking, necessarily be inconsistent with her claim that she did not smoke at all. But it is universally recognized that evidence, to be relevant to an inquiry, need not conclusively prove the ultimate fact in issue, but only have “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” The relevance of T. L. O.’s possession of cigarettes to the question whether she had been smoking and to the credibility of her denial that she smoked supplied the necessary “nexus” between the item searched for and the infraction under investigation. Thus, if Mr. Choplick in fact had a reasonable suspicion that T. L. O. had cigarettes in her purse, the search was justified despite the fact that the cigarettes, if found, would constitute “mere evidence” of a violation.

Of course, the New Jersey Supreme Court also held that Mr. Choplick had no reasonable suspicion that the purse would contain cigarettes. This conclusion is puzzling. A teacher had reported that T. L. O. was smoking in the lavatory. Certainly this report gave Mr. Choplick reason to suspect that T. L. O. was carrying cigarettes with her; and if she did have cigarettes, her purse was the obvious place in which to find them. Mr. Choplick’s suspicion that there were cigarettes in the purse ... was the sort of “common-sense [conclusion] about human behavior” upon which “practical people” -- including government officials -- are entitled to rely.... It cannot be said that Mr. Choplick acted unreasonably when he examined T. L. O.’s purse to see if it contained cigarettes.

Our conclusion that Mr. Choplick’s decision to open T. L. O.’s purse was reasonable brings us to the question of the further search for marihuana once the pack of cigarettes was located. The suspicion upon which the search for marihuana was founded was provided when Mr. Choplick observed a package of rolling papers in the purse as he removed the pack of cigarettes. Although T. L. O. does not dispute the reasonableness of Mr. Choplick’s belief that the rolling papers indicated the presence of marihuana, she does contend that the scope of the search Mr. Choplick conducted exceeded permissible bounds when he seized and read certain letters that implicated T. L. O. in drug dealing. This argument, too, is unpersuasive. The discovery of the rolling papers concededly gave rise to a reasonable suspicion that T. L. O. was carrying marihuana as well as cigarettes in her purse. This suspicion justified further exploration of T. L. O.’s purse, which turned up more evidence of drug-related activities: a pipe, a number of plastic bags of the type commonly used to store marihuana, a small quantity of marihuana, and a fairly substantial amount of money. Under these circumstances, it was not unreasonable to extend the search to a separate zippered compartment of the purse; and when a search of that compartment revealed an index card containing a list of “people who owe me money” as well as two letters, the inference that T. L. O. was involved in marihuana trafficking was substantial enough to justify Mr. Choplick in examining the letters to determine whether they contained any further evidence. In short, we cannot conclude that the search for marihuana was unreasonable in any respect....

The judgment of the Supreme Court of New Jersey is Reversed.

JUSTICE STEVENS, with whom JUSTICE MARSHALL joins, and with whom JUSTICE BRENNAN joins as to Part I, concurring in part and dissenting in part....

...In this case, Mr. Choplick overreacted to what appeared to be nothing more than a minor infraction -- a rule prohibiting smoking in the bathroom of the freshmen's and sophomores' building. It is, of course, true that he actually found evidence of serious wrongdoing by T. L. O., but no one claims that the prior search may be justified by his unexpected discovery. As far as the smoking infraction is concerned, the search for cigarettes merely tended to corroborate a teacher's eyewitness account of T. L. O.'s violation of a minor regulation designed to channel student smoking behavior into designated locations. Because this conduct was neither unlawful nor significantly disruptive of school order or the educational process, the invasion of privacy associated with the forcible opening of T. L. O.'s purse was entirely unjustified at its inception.

...Although I agree that school administrators must have broad latitude to maintain order and discipline in our classrooms, that authority is not unlimited.

#### IV

The schoolroom is the first opportunity most citizens have to experience the power of government. Through it passes every citizen and public official, from schoolteachers to policemen and prison guards. The values they learn there, they take with them in life. One of our most cherished ideals is the one contained in the Fourth Amendment: that the government may not intrude on the personal privacy of its citizens without a warrant or compelling circumstance. The Court's decision today is a curious moral for the Nation's youth....

I respectfully dissent.

Source: [http://www.band-of-rights.org/fourth\\_amendment\\_lesson\\_plan.pdf](http://www.band-of-rights.org/fourth_amendment_lesson_plan.pdf)

## Building an Argument

### Amanda Apple Case Scenario Legal Analysis



#### Part 1:

(a) *Does the Fourth Amendment apply in schools? Explain.*

(b) *Does the Fourth Amendment apply in this case? If so, indicate the exact wording in the Fourth Amendment that applies to this case.*

#### Part 2:

*Was the “search” of Amanda’s laptop computer issued to her by the school a violation of her rights under the Fourth Amendment?*

(a) Was there a “search” of Amanda’s laptop computer issued to her by the school? Explain.

(b) Does the Fourth Amendment apply to the “search” of Amanda’s laptop computer issued to her by the school? Explain.

(c) Was there a governmental action? (In other words, was the person who performed the search a representative of the government?) Explain.

(d) Did Amanda have a “reasonable expectation of privacy” in the laptop computer issued to her by the school? Explain.

Recall that to show a “reasonable expectation of privacy” Amanda must (1) have an actual expectation of privacy in the laptop computer issued to her and (2) her expectation of privacy in the laptop issued to her by the school has to be one that society is willing to recognize as legitimate.

- (e) Was the search that was performed “reasonable?” Apply the balancing test to determine if the needs of society in performing the search were more important than the individual’s right to privacy.
- (f) What happens if the search and seizure of the laptop issued to Amanda by the school is found to be unreasonable?
- (g) How is the search of the laptop issued to Amanda by the school similar to or different from T.L.O.? Explain.
- (h) Is the laptop computer more like a purse or more like a diary? Under the facts of T.L.O., how might this distinction affect your argument?
- (i) If the teacher suspected that you had the answer key to an upcoming test in your locker, the school could probably search the locker. In what ways is this case similar to a locker search? How does it differ?
- (j) Did the school have a right to search the laptop issued to Amanda by the school? If so, on what basis? If not, on what basis? Explain.
- (k) Did what the teacher find provide grounds for suspension from school?

**Part 3:**

***Was the “search” of the electronic information intercepted by the electronic bug placed on the public computers in the library (including the IM messages) a violation of Amanda’s rights under the Fourth Amendment?***

- (a) Was there a “search” of the electronic communications on the public library computers? Explain.

- (b) Does the Fourth Amendment apply to the “search” of the electronic communications on the public library’s computer? Explain.
- (c) Was there a governmental action? (In other words, was the person who performed the search a representative of the government?) Explain.
- (d) Did Amanda have a “reasonable expectation of privacy” in the electronic communications (i.e. IM messages) that she sent on the public library computers? Explain.

Recall that to show a “reasonable expectation of privacy” Amanda must (1) have an actual expectation of privacy in her electronic communications on the public library’s computer and (2) her expectation of privacy in the electronic communications on the public library computer has to be one that society is willing to recognize as legitimate.

- (e) Was the search that was performed “reasonable?” Apply the balancing test to determine if the needs of society in performing the search were more important than the individual’s right to privacy.
- (f) What happens if the search and seizure of the electronic communications on the public library computer is found to be unreasonable?
- (g) How is this case similar to or different from *Katz*?
- (h) How does the fact that the public library is connected to the school building affect the outcome? Explain.
- (i) Does the fact that Amanda paid to use the public library in the computer matter? Explain.
- (j) Did the school have a right to conduct electronic surveillance of the public computer? Of the electronic conversation?
- (k) Did what the teacher find provide grounds for suspension from school?

## Teacher's Guide to Legal Analysis and Arguments to be Made

1. Does the Fourth Amendment apply in this case?
  - a. Yes. Under T.L.O., the Supreme Court said that the Fourth Amendment does apply to public school students.
  - b. Since Amanda is a public school student, she retains the protections of the Fourth Amendment against searches by teachers.
2. Did Amanda have a reasonable expectation of privacy in her laptop computer?
  - a. As the students discuss the question, it may be helpful to analogize the computer to other objects.
    - i. For example, is the computer like T.L.O.'s purse?
    - ii. Or is it more like a school locker, provided to students to use for the year, but not to keep or own forever?
  - b. In terms of Amanda's subjective expectation of privacy, she clearly had a personal expectation of privacy. She wanted to keep things secret. She wanted to keep things hidden. What she wrote was not meant for other people to read.
  - c. The real question is whether this expectation is "reasonable."
    - i. For students arguing on behalf of Amanda, things they should argue are (1) that it is her computer; (2) she wrote and kept personal things on it (3) it is like a virtual purse and thus deserving of protections.
      1. If we consider it analogous to a purse, which presumably has a greater expectation of privacy than a computer, the logic is close to that in the T.L.O case.
      2. Essentially, if the teacher could search the purse based on his suspicion of wrongdoing, Dudley can probably search the computer.
        - a. Some students may argue that a computer should deserve greater protection because it contains human and creative thoughts not just physical objects. In that case, there would be a greater expectation of privacy – more like a diary.
    - ii. For students arguing on behalf of the school, things they should argue are (1) that it was a school computer, not Amanda's; (2) she was expected to use it for

school work, not to cheat on school work, (3) there was no guarantee that school officials would not look at the computer (again analogous to the school locker).

1. If they analogize it to a school locker, they are probably on safer ground for a search, because of the understanding that the property belongs to the school.
2. For example, if the teacher suspected that you had the answer key to an upcoming test in your locker, the school could probably search the locker.
3. The search of Amanda's computer did not reveal anything fully incriminating. The document "How To Expand Your Knowledge And Use Technology To Cheat And Not Get Caught" obviously looks bad for Amanda but was not proof that she had been cheating. Remember, the document itself would not result in being kicked out of school.
  - a. Maybe it would give the teacher a reason to continue to look into her computer, but there is nothing else incriminating on the computer.
  - b. Thus, even if the teacher can search the computer, it might not be grounds for the suspension.
4. What about the IM surveillance? The real reason Amanda was suspended was because of the IM bugging. It was only through watching the IM traffic that the school officials knew she was cheating. Did she have a reasonable expectation of privacy in that electronic conversation?
  - a. For students arguing on behalf of Amanda, Katz is the obvious case to rely on to find a violation of the Fourth Amendment. The computer terminals were like the payphone, she paid a toll to use it, and she expected her conversation to be private.
  - b. For students arguing on behalf of the school, they would have to claim that IM-ing is different and that the information you send over the computer is not necessarily private. Maybe it is more like email than a conversation. Or if you wrote a note that was sharing the answers in class and it was intercepted by the teacher, would you really expect any privacy in the note?
  - c. A broad interpretation of the Katz decision may support the argument that Amanda has a reasonable expectation of privacy in her IM messages on a public computer because, like a public pay telephone, Amanda could argue that she had a reasonable expectation of privacy when she paid to use her school's computers.
    - i. However, an argument may also be made for the monitoring of school computers to maintain order and adherence to school rules under TLO. If that is

the case, and the TLO decision applies to the public school computers, the school may be able to make a persuasive argument that Dudley's use of the bug was 1) justified when he began it because he believed Amanda to be cheating and 2) that his bugging the computer was reasonably related in scope to the original purpose of discovering if Amanda was cheating.

- ii. Conversations on cell phones and over email have been deemed not to have any real expectation of privacy by modern courts. Courts have analogized email to sending a postcard. Do those decisions seem applicable to IM-ing?
  
- d. The answer, in part, rests on the understanding of technology and our own acceptance of what we expect is monitored and what we expect to be private. Getting students to see that what is "reasonable" depends on how each generation weighs the balance between liberty and order is one of the goals of the lesson plan. After all, they are the future decision makers about what is "reasonable."

Source: [http://www.band-of-rights.org/fourth\\_amendment\\_lesson\\_plan.pdf](http://www.band-of-rights.org/fourth_amendment_lesson_plan.pdf)

\* Created by Andrew G. Ferguson, co-author Youth Justice in America (CQ Press 2005) and ACS Member.

## Focus Questions for Oral Argument



The questions to be decided by the judges are whether or not Amanda Apple's Fourth Amendment rights have been violated and whether her suspension is constitutional. The facts of the case are not in dispute.

The main questions judges will consider in arriving at a decision are:

- Does the Fourth Amendment apply?
- Was there a "search" of Amanda's laptop computer issued to her by the school?
- Did Amanda have a "reasonable expectation of privacy" in the content of the laptop computer provided by the school?
- Was the "search" of Amanda's laptop computer issued to her by the school "reasonable?"
- Was there a "search" of the electronic communications (including IM messages) on the public library computers?
- Did Amanda have a "reasonable expectation of privacy" in the electronic communications on the public library computer?
- Was the "search" of the electronic communications (including IM messages) on the public library computers "reasonable?"
- Was Amanda's suspension constitutional?

As the legal teams present their side of the case, they must discuss how the facts of this case are similar to or different from the *T.L.O.* and *Katz* cases and how each of those cases helps their side of the case.