



THE EXCHANGE

NATIONAL
CONSTITUTION
CENTER



A MARKETPLACE OF STUDENT IDEAS



 SCHOLASTIC

“When should increased
security measures
outweigh your privacy
rights in school?”

When should increased security measures outweigh your privacy rights in school?

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.

– Fourth Amendment to the U.S. Constitution

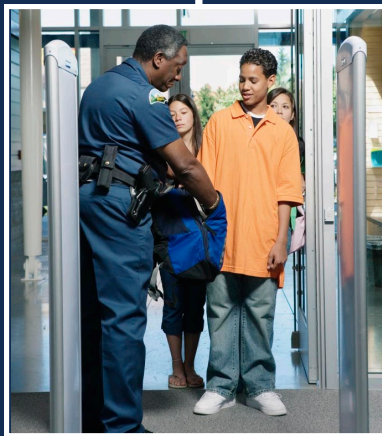
"The supervision and operation of schools present 'special needs' beyond normal law enforcement and, therefore, a different framework is justified... Searches and seizures of students' cellular phones and laptops are permitted when there is a reasonable suspicion that the student is violating the law or the rules of the school..."

– 2010 legal opinion by Virginia Attorney General, Ken Cuccinelli

The Fourth Amendment to the U.S. Constitution protects a citizen's right to privacy by prohibiting unreasonable searches and seizures by government authorities. The Supreme Court is constantly trying to find the right balance under the Fourth Amendment between securing the safety of citizens and protecting privacy rights. But how has this right been defined in the lives of students?

The Fourth Amendment does not define what is "unreasonable." In school, as in the larger community, the Court has attempted to decide this on a case-by-case basis. Often a school district's responsibility to protect the safety of the entire student body weighs heavily. After the shootings at Columbine High School in 1999, increased security

measures, such as bag searches, metal detectors, security guards, and cameras became a way of life in most schools across the country.



With new technology, schools face new challenges to ensure the safety of the classroom learning environment. Will the balance between privacy and security become more difficult to define? Is it constitutionally permissible, for example, for a school official to search the contents of a confiscated cell phone?

Consider the security measures in your own school. Do they strike the right balance between privacy and security?

What do you think?

Arguments in favor of privacy.

Arguments in favor of security.

INTRODUCTION

Grades:

6-12

Classroom Time:

Two 45-min classes or
one 90-min class

Constitution Connections:

- Preamble
- Fourth Amendment
- Fourteenth Amendment

Materials:

- Student Handouts
- Student Worksheets

NCSS Standards:

- VI
Power, Authority and Governance
- VIII
Science, Technology and Society
- X
Civic Ideals and Practices

National Standards for Civics and Government:

- NSS-C.9-12.2
Foundations of the Political System
- NSS-C.9-12.3
Principles of Democracy
- NSS-C.9-12.5
Roles of the Citizen in American Democracy

National Standards for History:

- NSS-US.5-12.10
Contemporary United States

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About this Lesson

This deliberation activity encourages students to review privacy rights in schools. Using landmark U.S. Supreme Court cases as a guide, students will gain a deeper understanding of the debate surrounding schools' ability to have fewer restrictions than law enforcement agencies when searching students. As in most discussions regarding school policy, students will apply legal precedents to current dilemmas as they deliberate the possibility of increasing security measures in schools. This lesson is designed to promote an atmosphere of mutual understanding between school administrators and students when discussing their roles in creating a safe and respectful learning environment.

Objectives

Through the use of court cases and school policy, students will be able to define student privacy rights and then evaluate the necessity and constitutionality of increased security measures in schools, such as cell phone content searches.

What Is Deliberation?

The Framers of the Constitution envisioned deliberation among a diverse citizenry that disagreed on issues because they felt that, through compromise, Americans could find ways to promote the common good.

Deliberation is often confused with debate, but the two are different. **Debate** creates a dichotomy while **deliberation** allows for careful consideration of multiple points of view, so the best choice can be made. Essentially, debate is competitive, focusing on who is right and who is wrong, while deliberation allows for compromise and consensus by encouraging a conversation about the pros and cons of each perspective in an atmosphere of mutual respect.

Point of View and Plan of Action

Your students will work to craft a personal **Point of View** statement based on the questions presented in the handouts. After developing a point of view, your students will rank their school and develop a **Plan of Action** to continue the discussion by participating in the online poll and posting their views on the National Constitution Center's new blog, *Constitution Daily* at <http://blog.constitutioncenter.org>.

Teacher Resources

Links to the documents used in this lesson and extension readings are available at the National Constitution Center's website at:
www.constitutioncenter.org/exchange

Searchable U.S. Constitution and annotated guide available at:
<http://ratify.constitutioncenter.org/constitution>

Landmark court cases available at:
<http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks.aspx>
<http://www.oyez.org/>

LESSONS AND ACTIVITIES

OPENING: TOWN HALL WALL

1. Distribute the **Town Hall Wall** handout to your students. Next, have them read the question and description on the poster. Have students complete **Student Worksheet 1 – Evaluating Search Procedures**, which provides examples of students' possessions that could potentially be searched by school officials. The students also are asked to review search policies in their own school. After discussing these possible scenarios, have students use sticky notes to fill in the circles on the poster (arguments for privacy vs. security).

RESEARCH AND ASSESS: Identify the Constitutional Principles that Apply

2. Have students read the Fourth Amendment and select language that needs to be defined further in order to gain a better understanding of when schools may search a student's body or possessions. Discuss as a class words or phrases they selected. The Fourth Amendment can be found at www.constitutioncenter.org/constitution.

POINTS OF VIEW

3. Using **Student Handout 1 – Court Cases**, students will review relevant U.S. Supreme Court and federal district court cases regarding searches in schools. The class also can use the National Constitution Center's *Constitution Hall Pass: The Bill of Rights*, as well as a clip of the theater production, *Living News*. These videos summarize the Bill of Rights and discuss several student privacy landmark court cases. The teacher is encouraged to have students conduct deeper research on these cases using the websites provided.

To access both the *Constitution Hall Pass* and *Living News* video clips, visit http://www.constitutioncenter.org/ncc_edu_The_Exchange_videos.aspx

4. Use **Student Worksheet 2 – Developing a Point of View** to have your students answer the following questions: Why is there a difference between citizens' and students' right to privacy and what is different about a school setting? When is it reasonable to search a student's personal belongings? Do schools have unlimited authority to search a student and his or her belongings? Should a school official be allowed to search the contents of a student's confiscated cell phone? What security measures does your school take? Are current safety measures in schools working, that is, are schools safer? In your view, when should increased security measures outweigh your privacy rights?

PLAN OF ACTION: Take the Next Steps

5. Consider the question: "Is our school safe?" by evaluating the policies and effectiveness of your school's safety measures and determining if changes are necessary. This evaluation could consist of acquiring the number of serious incidents that occurred, conducting a survey regarding the perception of the school's safety, and reviewing the constitutionality of current school policies. Present the findings to the principal or at the next school board meeting.
6. Let the nation know what you think! Visit the National Constitution Center's blog, *Constitution Daily*, at <http://blog.constitutioncenter.org/> and have your students take our poll and post their comments.

STUDENT WORKSHEET 1

Evaluating Search Procedures

Directions: Take a look at the following items below and fill in your answers. Be sure to explain why you agree or disagree with a school's right to search these items.

Searchable Item	Is this item searched by your school?	Does the school have the right to search?	Explain.
locker	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe	
book bag	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe	
wallet/purse	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe	
cell phone	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe	
social networking page	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe	
email	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe	
full body search	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe	
urine	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe	
home	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Maybe	

STUDENT HANDOUT 1 Court Cases

Directions: Below are landmark U.S. Supreme Court cases that frame students' privacy rights in schools. Students should read about these court cases, determine their implications, and write any other important findings from the case in the space provided.

New Jersey v. T.L.O. (1985) – U.S. Supreme Court Case http://www.oyez.org/cases/1980-1989/1983/1983_83_712

Court Case	Arguments in Favor of Privacy Rights	Arguments in Favor of Security
<p>Summary: A teacher accused T.L.O. of smoking in the bathroom. When she denied the allegation, the principal searched her purse and found cigarettes and marijuana paraphernalia. A family court declared T.L.O. a delinquent. The Supreme Court ruled that her rights were not violated since students have reduced expectations of privacy in school.</p> <p>Implications:</p>	<p>"Students at a minimum must bring to school not only the supplies needed ... but also keys, money, and the necessities of personal hygiene ... there is no reason to conclude they have to necessarily waive all rights to privacy to such items merely by bringing them onto school grounds."</p> <p>"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."</p> <p>"The schoolroom is the first opportunity most citizens have to experience the power of government ... The values they learn there, they take with them in life."</p> <p>Other Findings:</p>	<p>"Maintaining discipline in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime ... the preservation of order and a proper educational environment requires close supervision of school children Requiring a teacher to obtain a warrant before searching a child ... would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools."</p> <p>"The discovery of the rolling papers concededly gave rise to a reasonable suspicion that T.L.O. was carrying marijuana as well as cigarettes in her purse."</p> <p>Other Findings:</p>

Board of Education of Independent School District #92 of Pottawatomie County v. Earls (2002) – U.S. Supreme Court Case http://www.oyez.org/cases/2000-2009/2001/2001_01_332

Court Case	Arguments in Favor of Privacy Rights	Arguments in Favor of Security
<p>Summary: In <i>Vernonia School District v. Acton</i> (1995), the Supreme Court held that random drug tests of student athletes do not violate the Fourth Amendment's prohibition of unreasonable searches and seizures. Some schools then began to require drug tests of all students in extracurricular activities. The Supreme Court in <i>Earls</i> upheld this practice.</p> <p>Implications:</p>	<p>"... to test the urine of an academic team member solely by reason of her participation in a nonathletic, competitive extracurricular activity – participation associated with neither special dangers from, nor particular predilections for, drug use the testing program upheld today is not reasonable, it is capricious, even perverse: Petitioners' policy targets for testing a student population least likely to be at risk from illicit drugs and their damaging effects ..."</p> <p>"If a student has a reasonable subjective expectation of privacy in the personal items she brings to school, surely she has similar expectations regarding the chemical composition of her urine. Had the <i>Vernonia</i> Court agreed that public school attendance, in and of itself, permitted the State to test each student's blood or urine for drugs, the opinion in <i>Vernonia</i> could have saved many words."</p> <p>"While extracurricular activities are 'voluntary'... they are part of the school's educational program ... participation in such activities is a key component of school life ... applying to college ..."</p> <p>Other Findings:</p>	<p>"In <i>Vernonia</i>, the context of the public school environment serves as the backdrop for the analysis of the privacy interest at stake ... [it] is responsible for maintaining discipline, health, and safety. Schoolchildren are routinely required to submit to physical examination and vaccinations against disease."</p> <p>"... students who participate in competitive extracurricular activities voluntarily subject themselves to any of the same intrusions on their privacy as do athletes."</p> <p>"... test results are not turned over to any law enforcement authority. Nor do the test results here lead to the imposition of discipline or have any academic consequences ... only after a third positive test will the student (according to the school's policy) be suspended from participation in any extracurricular activity ..."</p> <p>Other Findings:</p>

STUDENT HANDOUT 1 (cont.) Court Cases

Safford Unified School District v. Redding (2009) – U.S. Supreme Court Case http://www.oyez.org/cases/2000-2009/2008/2008_08_479

Court Case

Summary: After four prescription-strength pills, and one over-the-counter pain relief pill were found on a 13-year-old female student, a female administrative assistant and a nurse had the student remove her outer clothing. They told her to pull her bra out and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. The Court ruled (8-1) that school officials had violated the student's rights. The search was deemed unconstitutional.

Implications:

Arguments in Favor of Privacy Rights

"... the suspected facts pointing to [the student] did not indicate that the drugs presented a danger to students or were concealed in her underwear, [the principal] did not have sufficient suspicion to warrant extending the search to the point of making [the student] pull out her underwear Here, the content of the suspicion failed to match the degree of intrusion."

"It does not require a constitutional scholar to conclude that a nude search of a 13-year-old child is an invasion of constitutional rights of some magnitude."

"[The student's] subjective expectation of privacy is inherent in her account of it as embarrassing, frightening, and humiliating."

"Nondangerous school contraband does not conjure up the specter of stashes in intimate places, and there is no evidence of such behavior at the school ..."

Other Findings:

Arguments in Favor of Security

"School officials have a specialized understanding of the school environment, the habits of the students, and the concerns of the community, which enables them to 'formulat[e] certain common-sense conclusions about human behavior.' " *United States v. Sokolow*, 490 U. S. 1, 8 (1989)... And like police officers, school officials are 'entitled to make an assessment of the situation in light of [this] specialized training and familiarity with the customs of the [school].'"

"A search of a student therefore is permissible in scope under T. L. O. so long as it is objectively reasonable to believe that the area searched could conceal the contraband."

"Had the suspected infraction involved a street drug, the majority implies that it would have approved the scope of the search... School officials cannot be expected to halt searches based on the possibility that a court might later find that the particular infraction at issue is not severe enough to warrant an intrusive investigation."

Other Findings:

J.W. v. DeSoto County School District (2010) – Federal District Court Case <http://legalclips.nsba.org/?p=3607>

Court Case

Background: In 2006, a federal court upheld the T.L.O. decision in *Clump v. Nazareth Area School District* by saying that a teacher had the right to confiscate a student's cell phone because it was used during class, which violated school policy. The administrators then searched through the student's phone, which the court ruled was a violation of the Fourth Amendment.

Summary: In 2008, a 12-year-old Mississippi student's cell phone was confiscated after he was caught reading a text message from his father during class. The school searched his phone and found pictures considered to be gang-related (the student dancing with a BB gun in his home, and displaying gang signs), according to an officer trained in gang activity, and he was ultimately expelled. In 2009, the ACLU filed a federal civil rights lawsuit in support of the student stating a violation of the student's First, Fourth and Fourteenth Amendment rights. The federal district court in Mississippi ruled the school did not violate the Fourth Amendment, and suggested a jury decide if the Fourteenth Amendment's due process clause had been violated in terms of the decision to expel the student from school.

Implications:

Arguments in Favor of Privacy Rights/Due Process

Privacy Rights: "The court is confident that the school district acted with the best of intentions when it expelled R.W., but it must recognize that there are limits (including in its own rules) upon the power of school officials to police the private lives of their students ..."

"Public actors step upon a very slippery slope when students are expelled on this basis, particularly if the school district's opinions in this regard are based largely upon subjective impressions of a student's private activities off school grounds. The slope is even slipperier when, as here, the school district only obtained the evidence of these activities by conducting a search which, while not unconstitutional, does tread into a constitutionally sensitive area ..."

Due Process: "The court is troubled by the fact that R.W. somehow found himself expelled for an entire school year when the only offense he committed was the minor offense of bringing a phone on school grounds. Under school district rules, this offense called for - at most - a three-day suspension. It thus seems clear that R.W. was expelled based on the contents of his cell phone, rather than the fact that he brought the phone onto school grounds."

Other Findings:

Arguments in Favor of Security

"The district court found that the school officials' actions were reviewable under the reasonable suspicion standard established by the U.S. Supreme Court in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)."

"... open defiance of the [school's] policy gave rise to a reasonable suspicion that he might have violated other school rules, such as using the phone to cheat on a test or to contact another student ..."

"... a student's decision to violate school rules by bringing contraband on campus and using that contraband within view of teachers appropriately results in a diminished privacy expectation ... Moreover, the decision by the school officials in this case to merely look at the photos on R.W.'s cell phone was far more limited, and far more justified, than that taken by the school officials in *Clump*. In light of the foregoing, the court concludes that the search of R.W.'s phone itself was not contrary to clearly established law, and the individual defendants are entitled to a dismissal of the Fourth Amendment claims against them."

Other Findings:

STUDENT WORKSHEET 2

Developing a Point of View

1.) Why is there a difference between citizens' and students' right to privacy? What is different about a school setting?

2.) When is it reasonable to search a student's personal belongings?

3.) Do schools have unlimited authority to search a student and his or her belongings?

4.) Should a school official be allowed to search the contents of a student's confiscated cell phone?

5.) What security measures does your school take?

6.) Are current safety measures in schools working, that is, are schools safer?

7.) In your view, when should increased security measures outweigh your privacy rights? Explain your answer.

WE THE PEOPLE

Our country faces enormous challenges both foreign and domestic. We need citizens who believe that democracy demands more than voting in November. A sustainable democracy needs citizens who believe in taking part in our nation's political, social and economic discourse. The responsibility for maintaining a democracy that protects the freedoms enshrined in our Constitution is in the hands of the people.

This is why Abraham Lincoln's words still ring true today:

“... government of the people, by the people, for the people ...”

COMING SOON: WE THE SCHOOL

Constitution High's Blueprint for a Democratic School Government:

Imagine a school government that provides students with avenues to engage meaningfully in civic discourse. Using the United States Constitution as a blueprint, *We the School* offers a model of student government that gives students a stronger voice in school affairs and encourages democratic participation. This model allows faculty and students to address issues facing the community together, and enables students to practice the skills of democratic governance. We the School, created by Constitution High School in Philadelphia, will give you the tools necessary to replicate this innovative form of student government in your own school. To learn more, visit www.constitutioncenter.org.

BE HEARD

The Exchange is a free dynamic way for high school students to discover how their peers in their classroom and other parts of the country view important constitutional issues facing the nation.

Past topics include:

- *Should the U.S. reduce immigration?*
- *Should the government make sure that every American has affordable health insurance?*
- *Should same-sex couples have the right to marry?*

All you need to get involved is:

- Interest in deliberating current events in your classroom
- Interest in constitutional issues
- Internet connectivity

Join the nationwide conversation by:

- Downloading the free lesson plan and educational resources we provide
- Viewing or participating in the live Internet webcast
- Taking our online nationwide poll

Join the conversation online at:

www.constitutioncenter.org/exchange

