

**Topic:**

The Principal found WHAT in her purse?

**Time:**

1½-2 class periods

**Historical Period:**

The Present

**Core:**

US I 6120 - 0202

US II 6250 - 0102

Gov. 6210 - 0201

**Objectives:** Students will:

1. Learn (or review) the Fourth Amendment to the U. S. Constitution.
2. Understand that the Fourth Amendment has specific and timely application to them as students.
3. See how the Supreme Court interprets Constitutional Amendments in light of contemporary issues.

**Procedure:**

1. Discuss the Fourth Amendment to the U. S. Constitution with the students. Discuss the words and phrases using the discussion questions that follow Handout 1.
2. Before having the students read the case of *New Jersey v. T.L.O.*, describe the situation and facts of the case as though it took place yesterday at your (junior) high school. Discuss students' immediate reactions.
3. Have students read the case (Handout 2).
4. Using Handout 3, have students decide which arguments would be used to support the State (New Jersey) and which would be used in support of T.L.O.
5. After a discussion of the arguments, have students write (either in groups or separately) their "opinion" of the case for the next day.
6. Discuss with students the Supreme Court decision summarized in Handout 4.
7. Have the school principal or an assistant principal come into your class and discuss how such an incident would likely be handled in your (junior) high school.

**Additional Resources:**

1. Fourth Amendment to the U. S. Constitution
2. *New Jersey v. T.L.O., A Juvenile*
3. Distinguishing Arguments
4. *New Jersey v. T.L.O.* Decision

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## **INTRODUCTION**

Does the Fourth Amendment apply to searches of students by public school officials? May a male teacher conduct a pat-down of female high school students when searching for contraband cigarettes? Is there reasonable expectation of privacy in a school restroom?

These questions and others were hurled at counsel in the argument before the Supreme Court in *New Jersey v. T.L.O., a Juvenile*. Also, because of the increasing problem with drugs and theft in the public schools, the Fourth Amendment is figuring more and more prominently in education/law discussions.

This lesson, using an actual United States Supreme Court case, presents a situation and its consequences to which students can relate.

## HANDOUT 1

### FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The Fourth Amendment to the United States Constitution states:

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.

What are the significant words and/or phrases in this Amendment? Most of these have been interpreted, defined and explained by the U. S. Supreme Court.

Searches conducted outside the judicial process without approval before the search by a judge or magistrate are automatically considered “unreasonable” under the Fourth Amendment. There are only a few well-defined exceptions to this requirement of a court order before the search. Briefly, these exceptions include:

- **Lawful Inspection:** Airport and border searches.
- **Consent:** A person agrees to be searched without a warrant or probable cause.
- **Incident to Lawful Arrest:** Police search lawfully arrested person for weapons or evidence before it is disposed of.
- **Emergency:** Situations such as bomb threats and fires when there isn’t time to get a warrant.
- **Plain View:** Objects related to a crime are in plain view of an officer during lawful performance of his/her duties.
- **Stop and Frisk:** A police officer stops when the officer has good reason to believe the person has weapons and is acting suspiciously.
- **Automobile Searches:** An officer has good reason to believe an automobile contains stolen goods.

The U. S. Supreme Court case, *Katz v. United States*, 1967, thoroughly discussed these exceptions:

To secure a warrant, an officer of the law must appear before a magistrate and state the facts upon which the request for the warrant is based. The magistrate issues the warrant if there is probable cause. The warrant must specify the person and the place to be searched and the materials expected to be seized. The guarantee against unreasonable search applies to a person, his automobile and his personal belongings. Probable cause is also the standard measure of the reasonableness of a search permissible without a warrant.

## HANDOUT 2

### ***NEW JERSEY v. T.L.O., A JUVENILE*** 105 Supreme Court 733 (1985)

On March 7, 1980, a New Jersey teacher walked into a high school restroom and caught two students smoking cigarettes. Although smoking was permitted in designated areas of the school, it was prohibited in the restrooms. Because the girls were in violation of school property, they were escorted to the vice-principal's office.

Before the assistant vice-principal, Theodore Choplick, one student admitted she had been smoking and was ordered to attend a smoking clinic for three days.

Choplick asked T.L.O. to speak to him in a private office. He then asked to look through her purse. The assistant principal saw a package of cigarettes and, in plain view, a pack of rolling papers. Having learned from experience that rolling papers often indicate marijuana, he dug further into T.L.O.'s purse and found marijuana, drug paraphernalia, \$40 in one-dollar bills, and an index card reading "people who owe me money" followed by a list of names.

T.L.O.'s mother was called, and the police were notified. When questioned at the police station, T.L.O. confessed to selling marijuana to other students. The juvenile court found her delinquent, and she was sentenced to one year probation. (She completed this before the U. S. Supreme Court heard arguments in the case.) The school suspended her for seven days for possession of marijuana and three days for smoking.

The Appellate Division of the New Jersey Superior Court affirmed the ruling on the purse search, but ordered the case remanded on the question whether Owens was denied her right to counsel before interrogation in the police station.

The New Jersey Supreme Court reversed Owens' conviction. The majority held that the Fourth Amendment applied to searches by school officials; the constitutional provision is not limited to searches by police and law enforcement agents.

The United States Supreme Court granted the state's petition for certiorari in T.L.O., which raised a single question: Does the Exclusionary Rule apply to searches by public school officials?

## HANDOUT 3

### DISTINGUISHING ARGUMENTS

After reviewing the facts and issues of the case, indicate whether the following statements would best be used in support of T.L.O. or New Jersey.

1. The Fourth Amendment prohibition of unreasonable search and seizure applies to public school officials.
2. School officials are exempt from the dictates of the Fourth Amendment by virtue of the special nature of their authority over students.
3. Teachers and administrators act in loco parentis. Their authority is that of a parent, not the state, and is not limited by the Fourth Amendment.
4. School administrators act as representatives of the state, not surrogate parents. Similar to the police, they are subject to the commands of the First and Fourth Amendments.
5. The Court should balance the individual's legitimate expectation of privacy and personal security with the government's need for effective methods to deal with breaches of public order.
6. A student has no legitimate expectation of privacy in personal property brought to the school.
7. Students do not shed their constitutional rights at the schoolhouse gate. A search by school authorities should be based on probable cause.
8. The school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject.
9. Requiring that a teacher obtain a warrant before searching a child suspected of breaking a law or rule would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in school.
10. A reasonableness standard, instead of probable cause, will result in searches over trivial school rules.

## HANDOUT 4

### **DECISION** ***NEW JERSEY v. T.L.O., A JUVENILE***

In a January, 1985 decision, the Supreme Court declared that a search in school can be conducted if there are “reasonable grounds” that it will turn up evidence that either laws or school rules have been broken. While the 6-3 decision did not strip students of all Fourth Amendment protections, critics fear it has created an ill-defined standard, easily misapplied.

While the Court agreed that, like other citizens, students are afforded Constitutional protections, the ruling requires a less stringent standard for teachers than for police officers for searching a student. Teachers and school officials do not need probable cause nor a court ordered search warrant.

Student privacy must be balanced with “the school’s equally legitimate need to maintain an environment in which learning can take place.” “In recent years, school disorder has often taken particularly ugly forms: drug use and violent crimes in the schools have become major social problems,” wrote Justice White for the majority.

Justice White specified that the legality of the search involves a two-fold inquiry: (1) Was the search justified in its inception? Was it reasonable? (2) Once conducted, was the search reasonably related in scope to the circumstances which justified the interference in the first place? “It should not be excessively intrusive in light of the age and sex of the student and nature of the infraction.”

Justices Stevens, Brennan, and Marshall dissented calling the new “reasonableness” rule “a full scale intrusion upon privacy.” In his partial dissent, Justice Brennen wrote that the rule would not provide clear guidance, but send educators “hopelessly adrift as to when a search may be permissible.”