



MOCK HEARING BEFORE THE U.S. SUPREME COURT: *A DEBATE ON PRIVACY IN SCHOOL*

OVERVIEW: This “mock hearing” allows students to act out a real Supreme Court argument dealing with the privacy rights of students at a public school. The case, *New Jersey vs. TLO*, was the landmark decision in 1985 that established many of the legal rules on school searches that persist to this day.

TIME: At least **one hour** is needed for this workshop, but ideally a little more.

BACKGROUND KNOWLEDGE NEEDED: A basic familiarity with the 4th Amendment is useful for the teacher when introducing the topic and answering student questions. However, the mock hearing itself is easy to conduct and is mostly led by the students themselves. No background knowledge is necessary for the students.

TABLE OF CONTENTS:

- I. Preparation**
- II. Workshop Introduction**
- III. Analyze 4th Amendment**
- IV. Assign Roles for Mock Hearing**
- V. Conduct Hearing**
- VI. Draw Conclusions**
- VII. ****Student Handouts******
 - a. New Jersey vs. T.L.O. – Facts
 - b. Justice
 - c. Petitioner
 - d. Respondent
 - e. Results of Previous Hearings

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– LESSON OUTLINE –

This lesson, created by the ACLU of Maine, addresses just how much privacy a student can expect in school. Students will be asked to grapple with the difficult question of how we balance the safety of schoolchildren against their constitutionally guaranteed right to privacy, focusing specifically on the search and seizure of backpacks, lockers, and other personal belongings. Students will have the opportunity to play a role in the U.S. Supreme Court and either argue or decide the real-life case of *New Jersey vs. TLO*, which to this day remains the landmark decision on the 4th Amendment rights of students at school. (**Note: All student handouts can be found at the bottom of this lesson outline.**)

PREPARATION

This workshop requires at least an hour, if not more. If possible, the **room should be pre-arranged** like a courtroom:

- A table or tables facing the rest of the room, with the required number of chairs for the justices: three, five, or seven, but always an odd number
- A podium facing the justices
- Two large tables, each surrounded by chairs (ideally 6-8) for the remaining students, one for the petitioners and one for the respondents
- An easel or chalk trough to be used at the end of the workshop to put up a tally sheet of previous court and student decisions on *N.J. v. T.L.O.*

In addition, **on the board** should be the following:

- The text of the 4th 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.”
- The following phrases:
 - Prior expectation of privacy
 - *In loco parentis*
 - Plain view doctrine
 - Suppression of evidence
 - Fruit of the poisoned tree
 - Exigent circumstances

THE WORKSHOP ITSELF

Begin by briefly **introducing yourself** or selves.

Tell the students what we are going to talk about and that they are going to do an exercise involving the 4th Amendment. Tell them that you are not there to tell the students what to think about the meaning or interpretation of the 4th Amendment or to sell the ACLU view, but rather to tell them what courts so far have said about it and to get them to think about what they think it means. Tell the students that this exercise is going to work only if they engage in thoughtful disagreement.

In order to **engage the students immediately**, go directly to the following **two questions**:

—Can you think of a real incident or else invent one where you would find a school staff request to search you or your belongings completely **unacceptable**? (Ex., when another student has told a staff member that you aren't wearing any underwear)

—Can you think of a real incident or else invent one where you would find a school staff request to search you or your belongings completely **acceptable**? (Ex., a credible bomb threat)

Use student responses to **develop the idea that there is a broad spectrum of student search possibilities**, some acceptable and some unacceptable, and that the goal of this workshop is to refine students' understanding of the complexities inherent in the 4th Amendment.

Outline the workshop plan:

—Review typical considerations a court uses with 4th Amendment cases

—Conduct mock hearing before SCOTUS (Supreme Court of the United States)

—No right or wrong answers; court rarely agrees with itself (split decisions) and often disagrees with earlier decisions (slavery; women's suffrage; New Deal; conscientious objection to military service; abortion; *Citizens United* ruling on campaign contributions). Court hears only 80-100 cases each year.

Look closely **at the text of the 4th Amendment**. Point out how the language is very antiquated to our ears. It is written in the passive voice and is written backwards.

Ask the students to point out where in the text of the amendment it states when the police need a warrant to do a search. In fact, the amendment does not say when a warrant is required; rather it says (1) that searches cannot be unreasonable and (2) that if a warrant is required the police must provide "probable cause" under oath to a judge to get him or her to issue a warrant. As to when a warrant is required, the key word here is "unreasonable," which in turn must be decided by a court. Explain that the courts have said that a warrant is required only if the court finds that without a warrant the search would be "unreasonable." Ask the students to look at the amendment and state what you need to get a warrant. Discuss "probable cause." What does it mean? Can you get a warrant based only on "suspicion?"

Present considerations bearing on reasonableness or unreasonableness of a search, and whether a warrant should be required:

—**Prior expectation of privacy:** whether a warrantless search is unreasonable depends on whether the courts believe that people have a prior expectation of privacy in the premises being searched so as to require a warrant, e.g. a search of your home versus a search of a public place.

—**Plain view doctrine:** beer in trunk versus open beer bottles on back seat.

—**Suppression of Evidence:** evidence that is gathered in violation of 4th Amendment rights cannot be used as evidence at trial.

—**Fruit of the poisoned tree:** evidence/confession which itself resulted from illegally obtained evidence also cannot be used in court.

—**In loco parentis:** an argument that school staff has both the power as well as the responsibilities of a parent when a student is in school.

—**Exigent Circumstances:** a situation where a cop is entitled to conduct a search of a premises where a warrant would ordinarily be required because it was an emergency, e.g. a cop walking down the street hears gun shots and screams coming from a house and runs in without a warrant to stop what appears to be a crime actually occurring.

Outline *N.J. v. T.L.O. case.* Narrate the case history and provide handout entitled “N.J. v. T.L.O. – The Facts.”

Assign students roles for mock hearing:

—Odd number of justices; need to select Chief Justice; encourage them to **ask challenging questions** aggressively but not rudely. See sheet “The Task of the Justices of the U.S. Supreme Court.” The Justices may meet in the hallway or another part of the room.

—Petitioners and Respondents choose a lead attorney or two, who will **present oral arguments based on ideas developed in discussion.** See sheets of suggested arguments for each side. Attorneys, first the Petitioners—for N.J.—and then the Respondents—for T.L.O., will begin addressing the Court with “May it please the Court, my name is _____, and I am here to ask the Court to (reverse or uphold) the ruling of the N.J. Supreme Court.”

Remind students that the **focus should not be on T.L.O.’s guilt or innocence, but on the reasonableness or unreasonableness of the search** of her purse. In effect, this hearing is to determine—in the Court’s opinion—whether the search was or was not a violation of a student’s 4th Amendment protection against an unreasonable search in a school environment.

Split the students into teams to work on their respective arguments, and in the case of the Supreme Court, their questions. The presenter(s) circulate among the tables to assist the students with marshaling arguments and the court with devising questions.

HOLD ACTUAL HEARING

Acting as the **Marshal**, the presenter announces, "All rise. The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!" Once the Court is seated, the Marshal instructs those present that they may be seated.

The **Chief Justice summons first the Petitioners and then the Respondents to present oral arguments** before the court. The Justices' role is to ask probing, even challenging questions, on occasion even interrupting the attorneys.

The **Court then retires from the room to deliberate and vote**, again to the Marshal's command to rise. One Associate Justice is selected to present the Court's opinion, together with its reasoning. A second Associate may present a dissenting view.

The Court returns as the Marshal intones "All rise." The **Court's opinion is rendered**, plus any dissenting opinion.

Ask **all the students** present, including those playing justices, to **vote**.

The presenter then gives the **U.S. Supreme Court's 1985 ruling**: 6-3 in favor of the Petitioners, thereby reversing the decision of the N.J. Supreme Court and ruling that the search of T.L.O.'s purse was reasonable and thus allowable, or constitutional.

The following are from the Supreme Court's opinion:

"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 needs of the school."

"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... Rather, the legality of a search of a student should depend simply on reasonableness..."

Also share with the students, if they are available, **any previous decisions** in earlier mock hearings.

CONCLUSIONS

Time permitting, it is interesting to contrast the *T.L.O.* case with that of *T.J. v. Florida*, decided by the Florida Supreme Court in 1989. In this case, a girl under suspicion of carrying a knife to back up a threat made the previous school day had her purse searched by school staff, who found cocaine in a very small zippered pocket. The ruling here was that the search was unreasonable, or unconstitutional, because the pocket was too small to have held the knife which was being sought.

If time permits, offer three closing observations:

1. That anyone who says the Constitution is “clear” need only look at the 4th Amendment. Look at all the arguments that have resulted from the use of the seemingly simple term “unreasonable.”
2. The Supreme Court has historically changed the interpretation of the Constitution as the membership on the court changes. Remember that at one time the court said it was OK to discriminate in schools on the basis of race (*Plessy v. Ferguson*) and that at one time the court said you could go to jail for speaking out in opposition to a war (World War I jailings by the Woodrow Wilson administration, which resulted in the creation of the ACLU).
3. The students need to stay involved. There are real issues being argued now about whether their email and text messages and personal bank and medical records are private or whether the government can look at them whenever it wants. This is real stuff that demands their involvement.

It is hoped that students will take from this exercise:

—**A more sophisticated understanding of the subjectivity** of any determination of the reasonableness of a search of their person or property in a school setting.

—Equally important is **an understanding of the many factors that may contribute to this determination** (*in loco parentis*, fruit of the poisoned tree, et al.).

—Finally, it is hoped that students will gain a **greater appreciation for the role they ultimately play** in the evolution of court decisions and the public policies which may influence them.

STUDENT HANDOUTS

The following pages contain copies of all the handouts needed to conduct this workshop.

The size of your group will dictate how many copies to make of each, but the formula is simple:

-Every student should receive the first handout, titled “New Jersey vs. T.L.O. – Facts”

-Students are broken up into three roughly equal groups – Justices, Respondents, and Petitioners – and they will only need the handout for their particular group. So if you have 21 students you’ll need 7 copies of each handout. Some variance is fine, though you’ll at least want an odd number of Justices to avoid a split verdict from the Court.

-The final attachment, titled “N.J. vs. T.L.O Results,” is not a student handout. Rather it is an optional supplement that allows you to compare the results of your workshop against previous iterations conducted by the ACLU of Maine.

NEW JERSEY vs. T.L.O. - FACTS

On March 7th, 1980, a teacher at Piscataway High School in Middlesex County, N.J. discovered two girls smoking in a lavatory. One of the girls was the respondent T.L.O., who was a 14 year-old high school freshman at the time. Because smoking in the lavatory was a violation of a school rule (though at the time smoking was allowed for students in student smoking lounges), the teacher took the two girls to the Principal's office, where they met with Assistant Vice Principal Theodore Choplick. In response to questions by Mr. Choplick, T.L.O.'s companion admitted that she had violated the rule. T.L.O. 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 marijuana. 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 marijuana, 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 marijuana dealing.

Mr. Choplick notified T.L.O.'s mother and the police and turned the evidence of drug dealing over to the latter. 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 marijuana 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 4th 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.

Based on the evidence in the purse and T.L.O.'s confession, the N.J. Juvenile Court found T.L.O. to be a juvenile offender. She appealed and the N.J. Supreme Court reversed that decision holding that (1) the objects in the purse were not admissible in court since they resulted from a search in violation of T.L.O.'s 4th Amendment rights and (2) the confession was also inadmissible in court since it was the "fruit of the poisoned tree." New Jersey appealed that decision to the U.S. Supreme Court.

THE TASK OF THE JUSTICES OF THE U.S. SUPREME COURT

DESCRIPTION OF ROLE:

The U.S. Supreme Court is the highest judicial body in the country. It consists of a Chief Justice and 8 associate justices. Justices are appointed by the President and confirmed by the Senate and serve for life. A justice can only be removed by resignation, retirement or conviction on impeachment.

Today you will hear arguments from attorneys on behalf of the state of New Jersey and on behalf of T.L.O. You will decide whether the search of T.L.O.'s bag was reasonable or not, using the 4th amendment as a guide. In the highest court in the state of New Jersey, judges found that the search was unreasonable. You must decide whether that court was right - was the search reasonable or unreasonable?

YOUR TASK:

As a judge it is your task to question both sides and to politely but firmly challenge their arguments and make the lawyers think. **You must ask questions of both sides.** Possible questions to ask include:

Questions to the Respondent T.L.O.

- Why does the 4th Amendment even apply to administrators at school? Shouldn't they have more latitude to maintain discipline to have a proper learning environment?
- But if the marijuana evidence was in plain sight in the purse, why should Choplick have been required not to see what was in plain sight?

Questions to the Petitioner New Jersey

- Why shouldn't the 4th Amendment apply to schools? Students are young and unsophisticated. Shouldn't they have more protection for their rights, not less?
- Shouldn't Choplick have obtained a warrant to the search? He had time. What was the rush?
- This started out as a violation of the school's smoking rules. Once Choplick found cigarettes, what right did he have to continue looking through the purse? Shouldn't he have stopped?

Questions to both sides

- How should we as a court balance the child's expectation of privacy against the school's need to maintain order and discipline? What factors should we look at when we weigh these interests against each other?
- What makes a search reasonable and what makes a search unreasonable? What factors should we as a court weigh in deciding that question?

THINK OF MORE QUESTIONS OF YOUR OWN.

ARGUMENTS TO BE MADE BY THE ATTORNEYS FOR THE PETITIONER: NEW JERSEY

You will argue before the Supreme Court supporting the argument that the search of T.L.O.'s bag was reasonable. You will use the Fourth Amendment to support your argument.

YOUR TASK

To persuade the U.S. Supreme Court that the decision of the N.J. Supreme Court was wrong and should be reversed, that the search of T.L.O.'s purse was "reasonable" under the 4th Amendment and that the objects found in her purse and her confession were properly admissible in court.

QUESTIONS TO CONSIDER / ARGUMENTS TO MAKE:

- The decision in this case sets precedent for cases like it in the future. It is important to allow administrators to search in circumstances like the one involving T.L.O.
- The 4th Amendment only prohibits searches that are "unreasonable." Why is it "unreasonable" to permit administrators at school to have the same kind of latitude that parents do at home?
- Isn't it an "unreasonable" burden on school administrators to have to run off and get a search warrant every time they need to search a student? That takes a lot of time.
- What if the school had reason to believe that a student had a weapon? Shouldn't the school have leeway to conduct a search when the school administrator thought it was necessary to maintain order or safety?
- What is "unreasonable" about concluding that schools are different? They are not the "real world." Students are there to learn and are in the custody and care of the school administrators. Why should the school be limited by the same rules as other institutions?
- The fact that Choplick started out looking for cigarettes did not mean that once he saw marijuana paraphernalia that he had to ignore what he saw. If the paraphernalia was in "plain view" when he picked up the cigarettes, then why did he have to pretend that he didn't see what was in plain sight?
- You can't have school discipline depend on student consent. The search did not require T.L.O.'s consent any more than it requires student consent to give a detention. A student isn't entitled to a "due process" hearing before getting after-school detentions and they're not entitled to prevent a search by refusing consent.
- A police officer is not required to call the parents of a juvenile before searching a student's car and Choplick didn't need to call T.L.O.'s parents before conducting the search. Either Choplick had the right to do the search or he didn't. Consent makes no sense.

ARGUMENTS FOR THE ATTORNEYS FOR RESPONDENT: T.L.O.

You will argue before the Supreme Court in support of the decision of the N.J. Supreme Court. You want the U.S. Supreme Court to “affirm” that decision and find that the search and confession violated your client’s 4th Amendment rights.

QUESTIONS TO CONSIDER / ARGUMENTS TO MAKE

- Where does it say in the 4th Amendment that it does not provide protection to students in school? Isn’t New Jersey asking the Supreme Court to read an exception into the 4th Amendment that is not supported by the language?
- Why shouldn’t the 4th Amendment apply to administrators at school? Just because the children are young, why should they have fewer rights than adults? In fact, shouldn’t they have more rights just because they are young and unsophisticated?
- If this search was permissible under the 4th Amendment, then where does it end? Does a decision in favor of the school mean that there are really no limits to the school’s ability to intrude on the student’s privacy?
- Suppose that T.L.O. had objects in her purse that were really private – birth control pills, pills to control her seizures, a private letter to her from her father discussing confidential family matters. Doesn’t she have the right to expect that she can protect her privacy and not have a school principal rummaging around in her purse?
- The administrator should have obtained a warrant in this case. There was no rush. The student couldn’t go anywhere. If this were a search of her car on a street in town, the police would have had to get a warrant. Why should she have fewer rights in school?
- This whole thing started off as an issue about smoking cigarettes. Even if no warrant was required, the scope of this search was too broad and unreasonable. Once Choplick found the cigarettes, which is what started this whole thing, he should have stopped. He had no right to go “fishing” for other stuff in her purse.
- At the very least, Choplick should have first called T.L.O.’s parents before doing a search. She is just a kid. What does she know about her rights?
- What about the fact that TLO didn’t consent to the search? If it had been an adult they couldn’t have searched a briefcase without a search warrant or consent. Why shouldn’t she have the right to refuse?
- T.L.O. only confessed because she was confronted with the drug paraphernalia in her purse. But if the search was a violation of her rights, shouldn’t her confession be suppressed in court as “the fruit of the poisoned tree?”

N.J. v. T.L.O – Results

SCOTUS (1985)

6 – 3 in favor of Petitioners, N.J., that search was reasonable and therefore constitutional

Student Mock Hearing Results

Group Voting	Student Court N.J. – T.L.O.	All Students N.J. – T.L.O.
Freeport 1 (2013)	2 – 3	9 – 7
Freeport 2 “	0 – 7	2 – 19
Freeport 3 “	0 – 5	0 – 18
USM 1 “	1 – 4	9 – 11
USM 2 “	4 – 1	15 – 10
USM 3 “	7 – 0	23 – 0
UMF 1 “	1 – 4	8 – 12
UMF 2 “	0 – 3	3 – 8
UMF 3 “	3 – 1	3 – 9
Belfast 1 “	0 – 5	3 – 12
Belfast 2 “	0 – 5	4 – 14
Belfast 3 “	0 – 5	0 – 15
TOTALS	18 – 43	79 – 135

**Note: Any schools that conduct this workshop are encouraged to contact the ACLU of Maine so that we may add your results to this ongoing tabulation of student votes.*