

Is Freedom Free? So...What's In It For Me?

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Introduction

The twenty-first century is the information-age of the internet, cellular phones and social networks. What is perceived to be personal and private may actually be available for public consumption. Although we may be 'free' to express ourselves in new and different ways, the question may be: "Although we may be free to exercise the level of freedom to express our individual thoughts and opinions using the new methods and resources available, should we and to what costly end?"

Students in middle school think that they are well informed and aware of what it means to be free. Freedom, for them, is a nebulous concept that has always existed, and never questioned; but not easily defined. In the United States, citizens are afforded certain 'inalienable rights' that ensure that "we, the people" have the perception of control over our individual lives.

However, the cost of freedom is much more expensive than many can even fathom. The reality may be that, although we are free...free to follow the rules and regulations established by our forefathers, each individual person can come perilously close to losing individual freedoms every single day.

Through engaging and interactive lessons, this unit entices students to become involved in the world in which they live while the grapple to answer the essential question, "How do interpretations affect the rights guaranteed to United States citizens under the fourth amendment to the United States Constitution?"

Rationale

This unit will analyze the freedoms of students who attend public schools in the United States. My middle school students are an eclectic mix of approximately three equal parts White-American, Hispanic-American, and African-American. Many of the families representing each ethnic group are first or second generation immigrants to the United States. For my students, the issue of freedom is one that very well may resonate with them at some point along life's journey. The Civics benchmarks for middle school address the power of the government; the rights of the people as protected by the government; the politics of the government; and the responsibility of citizens to participate in government. In particular, the standards address the civil rights of the citizenship and how the fundamental rights of all United States citizens are protected by the government.

My students, when surveyed, do not readily identify with their level of empowerment to effect change; even though they believe themselves to be keenly aware of their rights as free citizens. They do, however, have a strong sense of what is fair, just, or equal, and the concepts of choices and consequences are discussed between students and administration almost daily with regard to the newly adopted changes to the Stanton Code of Conduct or the school's Bill of Rights.

Many feel as middle school children, they lack the voice to take a stand against actions that they feel may violate their sense of what is right as related to individual freedoms. At the middle school level of their academic journey, they think they know that they have certain freedoms that cannot be violated by anyone, but they lack the knowledge or the skills to appropriately defend their individual rights. Therefore, this unit will keep the subject real to them by creating an environment that encourages free thought and expression. Students will discover a topic that is current and relevant to them with which they can identify and which evokes an emotional response.

Middle school students are passionate about their perceived rights and will actively engage in discussions that allow them to explore and express their opinions about a topic that is important to them. A discussion will take place regarding the general purpose of the Bill of Rights and, in particular, the fourth amendment. Students will come to the understanding that rights are not absolute and the courts can change what is meant by one's rights as stated in the Constitution depending on the social and/or political atmosphere at the time of the court decision; and may be subject to the disposition of the sitting judge. In addition, they will explore legislative precedent while learning to recognize an emotional response based on opinion and work through it towards rational thought; with the outcome being a well-thought out and well-constructed expository essay on the fourth amendment.

Demographics

A total of 733 students currently attend Stanton Middle School, located in a suburban town near Wilmington, Delaware. The student population is made up of approximately 32% African-American, 35% Hispanic, 30% White, and three percent other. Of the total student population, 77% receive free or reduced lunch. The teacher-to-student ratio is 1 to 18 with a staff comprised of 30% African-American, two percent Hispanic, and 68% White. We have a block-schedule with 88 minute classes in which I teach 7th and 8th grade honors English Language Arts to an average class size of 32.

While the overall mission of our district is to provide the environment, resources, and commitment necessary for each student to be college and career ready, our individual school's mission is connected by establishing an environment that nurtures the academic growth of young adolescents by addressing their intellectual, physical, social, and emotional development. Although we were categorized as a 'Partnership Zone' school in

2011-2012 (which identifies us as a school struggling to meet AYP), our school met our Annual Yearly Progress (AYP) goals in 2012 and are on target to repeat that performance this year.

Background Information

In theory, the *Constitution of the United States* is a document that applies to all people, regardless of race, age, religion, or any other category that places a label on its citizenry. It is important that students understand that the purpose of the Constitution and the Bill of Rights is to limit the powers of government and protect the rights of individuals. The freedoms afforded individuals apply equally to both federal and state levels of government. However, none of the freedoms are absolute. The rights of the individual are balanced against the rights of the community at large, so it is important that students understand that the constitution is a changing document, in that there are checks and balances.

In several decisions the Supreme Court has held that students (specifically minors) are a special category that is not entitled to the same rights as adults under the Constitution. Due to the condition of a student as a minor, there is the legal implication that minor students lack the cognitive ability to make informed adult decisions, by law. For example, although an adult possesses the freedom to remain outside of the home all night if so chosen, a minor child that is witnessed walking the streets without supervision during late-night hours could be taken into protective custody by law enforcement whether or not the minor consented.

There are other situations involving lesser protections for rights of a minor that have been set by legal precedents. The most common category is the rights of the minor as a student in the public school system. Students across the nation have cried, "Foul," believing that their rights and freedoms – of free speech, free press, freedom to assemble, freedom from illegal search and seizure – have been violated by school administrators. But there are specific reasons why the actions of schools have been upheld in court, seemingly in violation of student rights.

We will review the fourth amendment as follows: "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 person or things to be seized."

With regard to public education, while a student is on the bus on the way to school, in school, and on the way home from school on the bus, that student is in the custody of the school. In the absence of the parent or guardian while the student is in the schools' custody, the school acts as the parent or guardian ('in loco parentis'). Therefore,

decisions made by the school are made as the guardian of that child. Since the main purpose of the school is to educate the child, if the actions of the child as a student interfere with the educational process, those actions may be halted or proactively prevented in the best interest of all of the students. The school, in the act of stopping the students' actions, may appear to be violating the student's individual rights.

Not all of the cases that have gone to court have been decided in the schools' favor. For example, in a case addressing the freedom of expression, the Supreme Court ruled that students could not be forced to recite the Pledge of Allegiance, nor could a student be forced to salute the flag (*Board v Barnette* (319 US 624[1943])). Basically, the courts rule in favor of schools when there is an apparent or presumed risk to the safety of other students; but courts do not find in favor of schools when students, by their actions, are not presumed to cause harm or be in violation of any school rules.

Making It Personal

Students tend to perceive an expectation of privacy that extends beyond what courts have deemed to be constitutionally protected. Students feel that cell phones, lockers, back packs, etc. are items that are personal property. However, at what point does the expectation of privacy become unreasonable? There is an unrealistic expectation of privacy build on unreliable perceptions of secure sites on which students chat with abandon.

As a class, we will watch the Lifetime movie, Not Like Everyone Else, for the purposes of discussing student rights in the United States. Not Like Everyone Else is a 2006 made-for-television movie starring Alia Shawkat, Ileana Douglas, and Eric Schweig. The movie is based on true events that happened to Brandi Blackbear while she attended high school in 1999-2000.

The plot: Union Intermediate High School, Tulsa Oklahoma, increased security measures following the Columbine High School massacre. Brandi Blackbear, a student, wrote original horror stories similar to those of Stephen King. Brandi dressed in a way that is associated with 'Goth' (black clothing, black make-up, etc.) and she was very outspoken. She was not afraid to stand up to bullying and her perceived hostility made her a target from other students in the school. False allegations of violence were made by students with a vendetta against her. With the combination of her appearance, her creative writing, the rumors, and the school administration's hyperawareness, Brandi's belongings were checked and she was subsequently suspended from school. Upon her return to school, a popular teacher took ill right after speaking with her; and students reported that she was seen checking out a library book on world religions, which included WICCA – the religion associated with witchcraft. Fear spread and Brandi was, once again, falsely accused of wrong-doing; which resulted in yet another suspension from school.

Her parents, at their wits' end, sought help from the American Civil Liberties Union (ACLU), where they were told that they had a good case against the school for violating Brandi's civil rights. On behalf of the Blackshears, the ACLU sued the school district who offered a settlement to the family. The movie shows the struggles that the family, as a whole, experienced as a result of what Brandi was forced to go through.

The movie is a good non-print text representation of what the Bill of Rights was written to prevent. Utilizing non-print text for the purposes of making a connection with the class is an effective way to make the issue personal for the students as well as encouraging a dialogue about the issues presented in the movie. The movie is 90 minutes in length and is not rated. It is part of the A&E Television Networks.

Objectives and Strategies

The main objective of this unit is to utilize Social Studies curriculum to address English Common Core Standards. English Language Arts curriculum can often be staid, made up of teaching units with which today's students have difficulty connecting. Attempting to engage students in lessons that are not exhilarating is daunting. On the other hand, experiential learning is a key component to engaging students in their own academic success. This unit provides ways to connect skills required to be taught with current and relevant topics that students find intriguing.

The trend in education is towards STEM (Science, Technology, Engineering, Mathematics) topics, with history taking a back seat; but reading comprehension and critical thinking skills are always in the forefront of education, regardless of the subject area. Therefore, this unit is developed to address both English and Social Studies standards providing teachers of middle school students with tools to engage students. The ultimate goal of the unit is to develop student skill sets to analyze United States history as it applies to them individually and collectively; review legal and historical documents objectively; draw independent conclusions through critical thought processes; and effectively communicate those conclusions both verbally and in writing.

Essential Questions: How does the Constitution directly affect my life? As a student, do I have the ability to alter the Constitution? What is the importance of the Bill of Rights?

Enduring Understanding: Students will learn how they can make a difference and have a voice in the political process. Students will be provided with information about how they can get involved in their community in a positive way to impact what happens in their lives. Students will understand that the community is the responsibility of each individual citizen.

Essential Question: How are a person's individual rights altered, if at all, with regard to an individual's physical location (i.e. home versus work; home versus school; etc.)? Explain an individual's right to privacy.

Enduring Understanding: Students will reflect upon and develop an opinion regarding one's individual rights and freedoms as a citizen in the United States. Students will work towards developing a personal vocabulary that includes real-world contexts.

Essential Question: How do interpretations by the court systems affect the rights guaranteed to citizens under the 4th amendment?

Enduring Understanding: Students will understand that rights are not absolute and that courts, through their decisions, can change what is meant by a person's rights under the constitution depending on the social and political implications (atmosphere) as well as the disposition of the judges.

Essential Question: How does word choice impact the meaning of a text?

Enduring Understanding: Students will utilize given passages as text to decipher the author's meaning. The lesson will delve into word choice, denotation and connotation as applicable in reading comprehension.

Essential Question: What is the purpose of comprehending the Constitution and the Bill of Rights? Why study the past?

Essential Understanding: Students will have a general understanding of the workings of the legal system and will be able to follow a debate about laws and legal decision making.

Students will analyze and delineate original text in order to develop an understanding of how the legal and political systems interact and react. They will participate in active debates and form individual opinions that they will communicate to their peers. In addition, as students delve into the freedoms protected by the fourth amendment of the Constitution, they will begin to internalize the lessons learned, making connections with their world on the way towards becoming responsible citizens.

Getting middle schools to care about their community as it relates to what is going on in their individual worlds is not an easy task. Getting students to actively participate in the classroom is an ongoing challenge; but not when the activities are interactive and interesting.

Classroom Activities

Lesson: The United States Constitution and the Bill of Rights

Start off the lesson by providing each student with an index card. Ask each student to write their name in the top left-hand corner of one side. Ask students to write down one thing that they have the absolute freedom to do. On the back, have students rate on a scale of 1 to 10 (1 is low, 10 is high), how important freedom is to them. Collect the index cards and save them for later.

Present to students a copy of the Cornell Notes blank form for note taking. Discuss **political freedom** versus **personal freedom** and have an open discussion about the Constitution and how the Bill of Rights apply to students and their rights. Have students take notes, modeling how notes should be taken on the Cornell form. Practice delineating a text; develop analytical skills; and discuss the importance of word choice, connotation and denotation by modeling the skills using the preamble to the Constitution as the formal text.

The Constitution is the key document of the United States. It sets up the structure of our government with the legislative, executive, and judicial branches. It gives certain powers to the federal government and also designates powers to the States and the citizenry. In other words, the legislature creates the law, the executive branch enforces the law, and the judicial branch interprets the law.

The Bill of Rights represents the first ten amendments to the constitution. It grants individuals the freedom of speech, freedom of religion, right against self-incrimination, right to a jury, right to a lawyer, and the right against cruel and unusual punishment by limiting the government's interference in individual's lives.

The Supreme Court is the last word when it comes to interpreting the law and how the constitution applies the law. Judges on the Supreme Court level review past cases and history to decide cases that are brought before them.

Now, take the time to discuss the First Amendment and the freedoms provided to each citizen. Break students up into groups of five based on how they ranked the importance of Freedom (all 1's together, etc. to ensure that students with like-minds are working together). In their groups, students will be discussing the school board's recent decision to ban certain books from the school library and alter the dress code to include uniforms. As a group, students will delineate the Tinker Verdict text (utilize iCivics lesson worksheets under, "I Can't Wear What?": What is the Tinker Case Saying and What If...).

Each group will take a stand on the issues and address the pro/con of each position to present to the class. Every student will complete an essay summarizing their group's

position, while incorporating their personal opinion. In addition, essays must include valid claims with evidence that supports each claim (both pro and con).

In their presentations, the groups will answer the following questions: Is a ban on school books constitutional? Is a forced dress code in a public school constitutional? What was the purpose for these changes in the Student Code of Conduct? How can students change the school board's position? What is the process for change?

Model the format of the essay to include specific examples of school censorship and the outcomes. Bring students back as a group and discuss their opinions. Have each group pick a spokesperson to present a brief summation of their group's opinion on the topics, answering each of the four questions listed above. Allow 3 to 5 minutes per presentation. Give the class, as a whole, the opportunity to address each group. Students should be handing in iCivics worksheets as classwork. Essays should be completed as homework.

Possible extended activities: develop a debate over school rules and whether or not they are constitutionally sound. Be sure to work ahead so that the school's position is solid. Discussing students' constitutional rights can get heated; so be sure to have a lot of open discussion with established rules of order and conduct for the classroom.

Prior to the start of the lesson, talk with students informally about school rules and how they are established. Get a feel for how students will react to the lesson to find out if there is prior knowledge. Otherwise, teachers will need to develop the knowledge necessary to complete the lesson.

Lesson: The Fourth Amendment

Review the text of 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.

Ask students the question: What does the Fourth Amendment protect?
Ask the students to think about their answers. Now review the difficulty in interpreting the text: Regarding persons – what about a person's clothing, or wallet, or bodily fluids? Regarding houses – what about an apartment, or a front porch, or a mobile home? Regarding papers – what about a person's diary, a book in the house, your email or text messages? Regarding effects – what about a backpack, or iPod, or comic book collection?

The interpretations are not always clear. Consider who the Fourth Amendment protects: it is the right of the people. Does that mean everyone lives under the protections

of the Constitution – citizens; children under 18 years; undocumented immigrants? Consider from what the Fourth Amendment is protecting those people: against unreasonable searches and seizures by the government or those representing the government. What does that mean? Who determines what is unreasonable? The courts will attempt to balance individual liberties with the responsibility of the government to protect its citizens and keep order. Finally, what does it mean for property to be seized? In the case of personal property, the individual is no longer ‘free’ to take the property back. In the case of a person being seized, that person is no longer free to move around as they please because they have been detained.

The second part of the Amendment says that the government cannot issue warrants without something called ‘probable cause’. What is a warrant: It is a formal document signed by a judge that allows police to search or arrest an individual. The warrant gives police permission to interfere with an individual’s privacy provided there is good reason to suspect that individual of violating the law. A judge will require specific details of the reason for the warrant before allowing the invasion. Probable cause, which is the good reason for police to suspect a law violation, means that the details or circumstances of the situation are convincing to a reasonable person that a crime may have been committed. Although it is not proof enough to find someone guilty of committing a crime, it is enough proof to justify the invasion of an individual’s privacy to investigate potential crime.

Lesson: What is Freedom? What is Liberty?

At the opening of class, students will be asked to write a personal definition for freedom and liberty. After giving time to formulate definitions, ask the students to share with a partner near them each of their definitions. Allow informal partner discussions and then show on the board for a class discussion the formal Webster’s Dictionary definitions: Freedom – (noun) the power or right to act, speak, or think as one wants without hindrance or restraint; absence of subjection to foreign domination or despotic government; liberation from slavery or restraint or from the power of another – independence; unrestricted use; a political right. Liberty – (noun) the state of being free within society from oppressive restrictions imposed by authority or one’s way of life. Establish note-taking as a class expectation utilizing some organized method of note-taking (suggestion: Cornell Notes).

As a group discussion, have a conversation about the text book definitions of the words, freedom and liberty. Introduce the idea of freedom, the costs associated with freedom, and allow students to verbalize their individual opinions on the topics. The goal is for each to come to a realization about the extent to which they, as students are free.

Introduce the unit vocabulary: search and seizure, warrant, probable cause, expectation of privacy, reasonableness, justified at its inception, related in scope to

circumstances, intrusive, infraction (words should be visible on a Word Wall for the duration of the unit since words will be referenced multiple times in the unit).

Begin the lesson activity by providing background information about the Constitution. Direct students to consider the following excerpt: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.* Facilitate a discussion about what the students feel their rights are in a school setting; and if those rights are upheld by the above excerpt (note-taking opportunity)

Schools and Expectations of Privacy Activity:

On a scale of 1 to 10 (1 is low, 10 is high), rate the expectation of privacy that you believe you have against search and seizure by school authorities in the following areas and with the following items:

_____ School locker

_____ Gym locker in the locker room

_____ Backpack

_____ Bathroom stall with the door closed

_____ Hallway

_____ A girl's purse in the school locker

_____ A girl's purse on her person

_____ Desk in a classroom

_____ Clothing, including pockets, while you are clothed

_____ Clothing that you are not currently wearing (like your coat)

_____ Cellular device

_____ School computer or laptop

Lesson: Search and Seizure *New Jersey v. TLO 1985*

Present background knowledge through read-aloud of a legal case involving search and seizure precedents: *New Jersey v. TLO 1985* (an opportunity for note taking strategies)

T.L.O. was a female student attending Piscataway High School in Middlesex County, New Jersey. In 1985, she was arrested as a result of a search and seizure conducted by a school administrator. T.L.O. questioned the constitutionality of the search and the case went to the Supreme Court, which set the parameters for searches and seizures in schools, according to the 4th amendment.

T.L.O. and another student were accused by a teacher of smoking in the restroom which was designated as a non-smoking area. The incident was reported to the principal's office and both students were questioned. T.L.O. denied smoking at all, while the other student admitted smoking in the restroom. The administrator investigating the incident demanded to see T.L.O.'s purse. In it, the administrator found cigarettes, rolling papers, a pipe, marijuana, rolls of small bills, and letters that implicated T.L.O. in the sale and distribution of marijuana at the school.

After being taken to the police station, T.L.O. confessed to selling marijuana and a juvenile court sentenced her to a year's probation. However, the decision was overturned by the State Supreme Court which stated that T.L.O.'s 4th amendment rights had been violated. In response, the State of New Jersey asked the Supreme Court to hear its appeal.

Questions at issue:

1. Do students in a school have the same rights under the 4th amendment as adults?
2. Does 'probable cause' have to be established for the search of a student in a school, or is 'reasonable cause' sufficient?

Legal Claims:

New Jersey: The State's claim is that the school officials act for the parents of students when students are in their care. Like parents, they do not need a warrant to conduct searches or seize property. Since school officials are charged to control student conduct, they must have the power to control student behavior, including the power to search and seize. T.L.O.'s actions provided a reasonable basis to search her purse. Therefore, the exclusionary rule is not applicable.

T.L.O.: Public school officials are not parent representatives, but rather employees of the State. Therefore, they do not have the right to act as parents. However, since they are employees of the State, they must respect an individual student's rights, including the right to privacy. Searching T.L.O.'s purse and the subsequent seizure of any contents were not reasonable acts by the school administration. The search ultimately led to her admission, which means the exclusionary rule does apply.

Court Decision and Rationale: The Court ruled in favor of New Jersey (6 to 3) stating that students in public schools do have a constitutional right to privacy under the 4th Amendment. Therefore, school officials are bound by those restrictions. However, the rights of children are not the same as the rights of adults. Schools have an obligation to maintain structure and discipline in the school environment so that education may occur in a safe atmosphere. The Court stated that the rights of the students must be balanced with the needs of the school. Therefore, the level of suspicion is modified in a school versus outside of a school.

Typically, before a search takes place, the person in authority must have probable cause that a legal violation has taken place; but in a school setting, if a school official has a 'reasonable suspicion' that there has been a violation, or a crime has been committed, the search may be necessary to maintain school discipline and safety. In such a case, a search would be reasonable by 4th Amendment standards without probable cause as long as there is a reasonable suspicion of wrong doing.

Under this definition, the search in the T.L.O. case was reasonable because an initial violation of school rules had taken place (smoking in the restroom) and T.L.O. had been a suspected participant. Therefore, the school official's search of the purse was reasonable. The Court offered a two-part test to determine reasonable cause: (1) Was the search justified at inception? (2) Was the search reasonably related in scope to the justification? In the T.L.O. case, the initial search was justified by the suspicion of smoking and the second search was justified when other items were found with the cigarettes.

Have students check-in with their opinions after reading the case background. Either answer the following questions as a group discussion, or have students weigh-in individually (may be considered a summative assessment):

1. Of what was T.L.O. accused?
2. For what reason was T.L.O.'s purse searched?
3. Is the item being searched for something really dangerous?
4. How reliable is the information based on which the search was completed?
5. What did the school official find when the search of T.L.O.'s purse was completed?
6. Of what was the school official accused?
7. What did the court decide with regard to students' expectation of privacy in school?
8. On what basis was the initial search considered reasonable?
9. On what basis was the continued search considered reasonable?
10. Explain the two-part test the court offered to determine reasonable cause.
11. Reflect on the outcome of *New Jersey v. T.L.O. (1985)*. How could the scenario be changed which would result in a different legal outcome, given

similar initial circumstances? In other words, what could T.L.O. have done differently after being accused that would result in the Courts deciding in her favor against the search?

Lesson: The Fourth Amendment and Your Things

What does the Fourth Amendment really mean to you right now in class? As you sit in class, many of you have your 'effects'. You have personal belongings in your pockets, in your purse, in your backpacks – you have your stuff. Do you have a right to keep your stuff private? Does that right change depending on where you are (at home, in a plane, in a car, in a courtroom, at school)? Does that right change depending on what it is that you're trying to keep private?

Students are asked to remember the list of personal objects considered private and discuss responses. Consider the following items that students may have with them: books, notes, wallets, identification cards, grade sheets, personal notes. Reflect on the following questions in group mode:

1. Does the Constitution protect your personal items from unreasonable searches without a warrant or probable cause while you are in school?
2. Do you have a reasonable expectation of privacy with regard to personal items that you bring to school?

The answer: it depends. Do you have a reasonable expectation of privacy of those items? With regard to your rights, the question will be whether that reasonable expectation was violated by the unreasonable actions of government officials.

Which of the following seems like a situation that would give you the most privacy?

A conversation between two people loudly yelling in a packed school auditorium...

A conversation between two people speaking in normal tones alone in a bathroom...

A conversation between two people whispering on a stage in school...

A conversation between two people whispering in class...

A cell phone conversation with one person walking down the street while talking...

A conversation between two people talking in the middle of a football field with no one around.

Have a group discussion regarding the reasonable expectation of privacy. Consider your notebook that you have in class right now. Let's imagine that a police officer comes into the classroom and wants to read your notes in your notebook. Do you expect that what you have written in your notebook will remain private? Do you think that it is reasonable to keep it private? What are the values that are important in keeping your notebook private (privacy, individuality, freedom, etc.)? On the other hand, what are the reasons that a police officer might want to read what you've written (to find evidence of a

crime that may have been committed by you or someone that you have written about in your book)? If the police have no reason to suspect you, should you have a reasonable expectation of privacy? What if it's not the police who wish to read your notes, but your teacher after you have been disruptive in class by laughing out loud or being inattentive?

Have students brainstorm potential violations of privacy in the school community. Consider using the movie, Not Like Everyone Else as a talking point for discussion. Engage in a discussion of a student's rights while attending school. Analyze the non-print text for essential information. Have students take notes.

Lesson: Student Constitutional Rights: Private versus Public Domain

Have students provide an opinion on the following: How has technology changed the expectation of privacy? Do you have more or less privacy than your parents or grandparents? How should the Fourth Amendment treat text messages, emails, and other electronic communication – should they be treated the same as a handwritten letter?

Should you expect privacy when using school electronic equipment (laptops, desk top computers)? Weigh in on the debate: The following excerpt is adapted from the February 11, 2010 Philadelphia Inquirer.

Lower Merion School District officials used school-issued laptop computers to illegally spy on students, according to a lawsuit filed in U.S. District Court. The suit says that unnamed school officials remotely activated the webcam on a student's computer because officials believed he was 'engaging in improper behavior at home.'

An assistant principal at the school confronted the student for 'improper behavior' on November 11 and cited a photograph taken by the webcam as evidence. In a statement on the district website, the official statement available was, "The laptops do contain a security feature intended to track lost, stolen, or missing laptops. This feature has been deactivated effective today."

In a later statement, the district said, "Upon a report of a suspected lost, stolen, or missing laptop, the feature was activated by the District's security and technology departments....This feature has only been used for the limited purpose of located a lost, stolen, or missing laptop. The District has not used the tracking feature or web cam for any other purpose or in any other manner whatsoever."

Why did the district distance itself from the assistant principal's actions? Is there any justification in activating the camera on the laptops? Explain your responses. Some schools require students to have a laptop. Does it make a difference if accepting the laptop is mandatory? Is it ever appropriate for the school to activate the camera for discipline purposes?

Based on the unit discussion, if the family of the student claims an illegal search under the Fourth Amendment, how should their lawsuit come out? Is additional information needed to make a decision? On what basis is your decision made? Support your decision citing specific details and precedence.

Lesson: Trial but No Jury

Divide the class into three groups: two sets of lawyers (the District Attorney's prosecutors and Jasmine's defense team) and one set of judges. Provide each student with a set of facts and summaries from actual Fourth Amendment cases found on the ACS web site.

Background information: we are going to walk through this case the way that lawyers would present the Fourth Amendment in front of a judge, and the way that judges would decide the case. This case will involve criminal charges against a female teen, Jasmine Jones. One team will represent the prosecution and handle the case for the State (government), trying to prove that Jasmine is guilty of a crime. Another team will represent Jasmine as her defense attorneys, trying to prove that the evidence being used against her was obtained in violation of her Fourth Amendment rights, so it cannot be used against her in a court of law. The third team will serve as judges. They will be allowed to ask questions during the arguments, and they will vote, just like the Supreme Court Justices, as to which team presents the better legal argument.

Provide students with sufficient time to review the case law and formulate their arguments. Travel among the groups to answer questions, move along the discussion, or offer prompts. After students have reviewed the facts and case law, get the lawyers from each side to present their best arguments. Have a different person from each team address each of the following issues: (1) The Mall officer was or was not subject to the Fourth Amendment as an agent of the government. (2) Assuming that the answer to question 1 is yes, Jasmine's Fourth Amendment rights were violated by Officer Blart's stop and/or by his inspection of her purse.

Have the judges prepare leading (thought provoking) questions to get to the issues. Be prepared with questions of your own to move along the discussion. When the arguments are over, ask the judges to deliberate out loud as to which side has the superior legal argument and why. Take a vote as to whether the evidence can or cannot be used against Jasmine.

Fourteen-year-old Jasmine is shopping at Christiana Mall. Officer Paul Blart is working as the security guard. Although he is not a real police officer, Officer Blart dresses and acts like one; wearing a police uniform and badge. He carries a radio given to

him by the actual Police Department; and he has been trained to radio them if he witnesses a crime being committed.

While browsing, a colorful scarf catches Jasmine's eye. Jasmine takes off her old scarf, shoves it in her coat pocket, and tries on the new scarf. While admiring her reflection in a store mirror, she gets a call from her friends, but the call keeps fading in and out. Jasmine wanders through the store in a failed attempt to get a clear signal. Giving up, she hangs up, replaces her phone in her purse, and hurries to the exit to meet her friends in the food court, realizing that she is already 15 minutes late for their agreed upon time. Officer Blart sees what he thinks is a shoplifting incident and takes off in hot pursuit on his Segway Scooter.

"Hold it! I need to talk to you," Officer Blart shouts out, parking his Segway directly in Jasmine's path. Though there is plenty of room to walk around him, Jasmine is frightened and stays still. "What is going on?" She asks, "Am I being arrested?"

"No, not at all. I just want the store's property back," Blart replies. "If you cooperate, everything will be ok and you will make things a lot easier for yourself. Or maybe you would prefer that we talk down at the station?" He smiles at her while patting his gold badge that has POLICE embossed on it.

"I need to call my mom," Jasmine says as she reaches for her phone. Officer Blart, afraid that Jasmine may be reaching for a gun, grabs her purse and squeezes it to see if there's anything in it that feels like a gun. He immediately surmises that she doesn't have a gun, but he does feel something small and rectangular. He has no idea what it might be so he asks, "It's ok if I just take a little look inside, isn't it?" Jasmine begins to shake her head, yes, fearing that she has no other choice. Taking her nod as assent, Blart looks inside and pulls out a pack of cigarettes.

"You're too young to have cigarettes!" Bart shouted. He called the police who responded immediately to write Jasmine a citation for unlawful possession of cigarettes by a minor.

A distraught Jasmine was pretty sure her rights were violated. Her mother, attorney Jada Jones, goes to court with her to fight the citation. Mrs. Jones's position is that Jasmine was illegally seized and searched in violation of her Fourth Amendment rights, so the evidence found in her purse cannot be used against her.

District Attorney Dallas prosecuted the case for the county of New Castle. He tells the judge that there's no Fourth Amendment issue in question in this case since Officer Paul Blart was not working for the government; Jasmine was not seized since she was free to leave; and searching her purse was reasonable to protect Officer Blart's safety.

Case Law to Review:

Abraham v. Raso (3rd Circuit 1999)

An off-duty police officer working security at a shopping mall shot a suspect after he tried to ram her car. She was accused of violating his Fourth Amendment rights by using excessive force (shooting) to restrain him. The court ruled that the officer was acting as an agent of the government and was subject to the Fourth Amendment, because she was wearing a police uniform, she ordered the suspect repeatedly to stop, and she tried to place him under arrest.

United States v. Shadid (7th Circuit 1997)

Two mall security guards followed Shadid to the parking lot because a store manager said he had shoplifted a ring. They stopped Shadid and patted him down for their safety, finding ammunition and a gun; they called police, who charged Shadid with unlawful weapons possession. The court ruled that Shadid's Fourth Amendment rights were not violated. The guards were not state officials because they acted with the primary purpose of protection the mall's property and because there was no evidence that the police department directed or controlled their actions.

Chapman v. Higbee Company (6th Circuit 2003)

An off-duty police officer working at a department store (wearing his police uniform, badge, and gun), suspected that Chapman was shoplifting clothes, so he and a store manager followed Chapman into the dressing room and made her lift up her clothes to see if she was sneaking out merchandise. They found nothing, and Chapman sued the store for illegally searching her. The court ruled that, even though he was off-duty, the officer could be a state official because he did a job – strip searching a customer – that is normally the police's job, and Chapman may not have felt free to leave since the officer had on a uniform, badge, and gun.

Resources

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<http://www.aclu.org/>

American Constitution Society For Law and Policy: *The Constitution in the Classroom Teaching Module*. Accessed December, 2012. <http://www.acslaw.org/>

Barber, Sotirios A. *On What the Constitution Means*. Baltimore: Johns Hopkins University Press, 1984.

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Constitution information and handouts. Accessed November, 2012.

<http://www.icivics.org/subject/constitution>

Foner, Eric. *The story of American freedom*. New York: W.W. Norton, 1998.

Freedom definition <http://www.merriam-webster.com/dictionary/freedom>

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James, Bernard. *Safe Schools, Cell Phones, and the Fourth Amendment*. This paper written by a professor of law at Pepperdine University is a discussion on safety in the schools. The scenarios can be adapted to fit school demographics.

Johnson, John W. *The Struggle for Student Rights: Tinker v DesMoines and the 1960s*. Kansas: University Press, 2007.

Key Learning, Enduring Understanding, Etc.

Enduring Understanding:

- Students will reflect upon and develop an opinion regarding one's individual rights and freedoms as a citizen in the United States. Students will work towards developing a personal vocabulary that includes real-world contexts.
- Students will understand that rights are not absolute and that courts, through their decisions, can change what is meant by a person's rights under the constitution depending on the social and political implications (atmosphere) as well as the disposition of the judges.
- Students will utilize given passages as text to decipher the author's meaning. The lesson will delve into word choice, denotation and connotation as applicable in reading comprehension.
- Students will have a general understanding of the workings of the legal system and will be able to follow a debate about laws and legal decision making.
- Students will analyze and delineate original text in order to develop an understanding of how the legal and political systems interact and react.

Essential Questions

- How does the Constitution directly affect my life? As a student, do I have the ability to alter the Constitution? What is the importance of the Bill of Rights?
- How are a person's individual rights altered, if at all, with regard to an individual's physical location (i.e. home versus work; home versus school; etc.)? Explain an individual's right to privacy.
- How do interpretations by the court systems affect the rights guaranteed to citizens under the 4th amendment?
- How does word choice impact the meaning of a text?
- What is the purpose of comprehending the Constitution and the Bill of Rights? Why study the past?

Concept A

What is Freedom?

Concept B

Legal terminology

Concept C

Power Verbs

Concept D

Debates

Vocabulary A

freedom
liberty
personal freedom
political freedom

Vocabulary B

precedence
probable cause
search and seizure
reasonableness
justified at inception
intrusive
infraction
warrant
expectation of privacy
related in scope

Vocabulary C

delineate
evaluate
analyze

Vocabulary D

claim
evidence

Additional Information/Material/Text/Film/Resources

- A&E Lifetime Movie, *Not Like Everyone Else*, based on true events
- <http://www.acslaw.org/>
- ICivics.org
- Cornell Notes
- Materials needed: note cards, copies of Cornell Notes, DVD player

