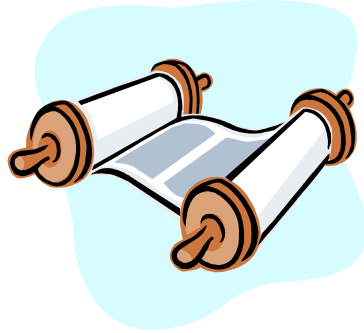


THE CONSTITUTION IN THE CLASSROOM



TEACHING MODULE:
Fourth Amendment Rights
College Version
National Constitution Day
September 17, 2006

Fourth Amendment Rights

Description: This unit can be taught during the week before Constitution Day or afterwards. The goal is to commemorate this important day in our Nation's history by teaching students about the importance of the Constitution as a living document that confers rights upon them as young people.

Objectives: To learn about *Katz v. United States* and *New Jersey v. T.L.O.*, two seminal Fourth Amendment cases.

Length of Lesson: 1 class period

Supplies Needed: This packet – Case excerpts should be read during class

Age Group: Undergraduate

OVERVIEW OF LESSON PLAN

- Part One:** Summary of the Fourth Amendment
- Review of the text of the Fourth Amendment
 - Exercise on application of the Fourth Amendment
 - Second exercise on application of Fourth Amendment to conversations
- Part Two** - Case Excerpt of *Katz v. United States*
- *Katz* Case Review
- Part Three** - Case Excerpt from *Greenwood v. California*
- *Greenwood* Case Review
- Part Four** School Searches
- Case Excerpt of *New Jersey v. T.L.O.*
 - *T.L.O.* Case Review
- Part Five:** For the Class/ Class Debate on the Fourth Amendment -
- For the Class (an activity to be completed in class after the first two parts)

The lesson plan can be taught in one class, or sections can be highlighted depending on the time and interest of the students. Handouts are included at the end of the lesson to focus on portions of the constitutional text and cases for class discussion.

Part One: Background on the Fourth Amendment



The Fourth Amendment (see *handout 1*)

The Fourth Amendment to the United States Constitution reads:

“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

-- *United States Constitution, Amendment IV.*

Part Two BASIC REVIEW – THE CONSTITUTIONAL TEXT

- What does the Fourth Amendment protect?: “**Persons**,” “**Houses**,” “**Papers**,” and “**Effects**.”
 - Beyond the text:
 - Regarding “persons” – what about a person’s clothes? (yes), how about the wallet they are carrying? (yes), how about a person’s blood or bodily fluid? (yes).
 - Regarding “houses” – what about an apartment? (yes), your front porch? (probably), a mobile home? (maybe depending on whether it is being used as a home or a car).
 - Regarding “papers” – what about a diary? (yes), a book in your house? (yes), your email? (probably not), your IM text messages? (probable not).
 - Regarding “effects” – what about your backpack? (yes), your ipod? (yes), your collection of comics? (yes).
 - These questions of interpretation are the questions lawyers and judges argue over to determine the meaning of the Constitution.
- Who does the Fourth Amendment protect?: “**The right of the people**” -- All those who live under the protections of the Constitution. Does that include “citizens”? (yes). Does that include children under 18? (yes). How about undocumented immigrants? (yes).
- What does the Fourth Amendment protect those people from? “**Against unreasonable searches or seizures**” by the government. In determining what is an “unreasonable” search or seizure, courts look to balance individual liberty within the need to keep an ordered society. Figuring out what is reasonable or unreasonable is one of the central challenges of the Fourth Amendment.
- What about justified intrusions by the government? The second part of the Fourth Amendment talks about “**no warrants shall issue but upon probable cause**.” A warrant is a formal document signed by a judge that allows police to search or arrest you. Warrants allow law enforcement officer who have reason to suspect you (“probable cause”) to ask a judge for permission to interfere with your privacy. Thus, if a warrant is supported by enough specific information, the government can search you, or your house, or even arrest you.

EXERCISE 1 – The Fourth Amendment and Your Things in Class Right Now

What does the Fourth Amendment really mean to you right now in class on Constitution Day?

As you sit in class you are carrying your “effects.” You have personal belongings in your pocket, purse, or backpack – essentially your stuff. What right do you have to keep your stuff private? Does it change depending on where you are (home, school, courtroom, airplane)? Does it change depending on what it is that you are trying to keep private? That’s the question and the challenge of the Fourth Amendment.

Make a list of all of the items you currently have or could have in class right now. Hold up an “effect” you have in your possession. These items might include:

- Books.
- Notes.
- Phone numbers.
- Keys.
- Wallets
- Identification cards.
- Medicines.
- Make up.
- Purses.
- Religious materials.
- A small pocket knife.
- Embarrassing notes about who you like and who you don’t like.
- Your grades.

These are your “effects” (although some are arguably “papers”), we know you are in school, and the question is: Does the Constitution protect these “effects” from unreasonable searches or seizures without a warrant based on probable cause?

The answer depends on whether you have a “reasonable expectation of privacy” in the items. In most Fourth Amendment cases, the question will be whether that “reasonable expectation” was violated by the unreasonable actions of government agents or officials.

Exercise 1 Analysis: A “Reasonable Expectation of Privacy”

So what is a “reasonable expectation of privacy”? There are two parts to the analysis.

1. First, do you actually expect privacy in your effects that you bring with you to class?
 - a. The answer is usually yes, you expect to keep the things you want private to remain private. If you come to school with a closed and locked briefcase, it is reasonable to think that you hoped to keep the contents of the briefcase from others.
 - b. It might be less reasonable if you carried the same things in a clear, see through plastic bag.
 - i. Go through the list you wrote of your effects? Do you expect those things to remain private? Why?
2. Second, is this expectation of privacy one that others agree is reasonable?
 - a. This is usually the more difficult question. Does the larger society agree that the medicine in your purse, or religious materials in your wallet should remain private.
 - b. Are there other interests government officials (professors, administrators, teachers, police) have in maintaining an orderly and safe school environment.
 - i. For example, even if you wanted to keep the things private in your briefcase, if there is a clear school rule that requires all bags and briefcases to be opened to search for weapons, your personal desire that things would remain private is not really a reasonable one. You know that it will be opened if the school just follows its own rules.
 - ii. Go through the list of effects again, ask each other if you think that everyone would agree that certain things deserve more privacy than others... (Medicine? Personal notes? Etc.)

Exercise 1 Application:

Take one of the “effects” that you have in class right now (for example a notebook). Imagine that a police officer comes in and wants to read the notebook.

1. First question: Do you the student who owns the notebook expect that what you wrote will remain private?
2. Second question: Do you – the class – think that what is written is reasonable to keep private? Why?
 - a. What are the values that are important in keeping the notebook private? (Privacy, autonomy, creativity, individuality, freedom etc.).
 - b. On the other side, what are the reasons a police officer might want to read it? (to find evidence of a crime, to find reasons to suspect you, think about the notebooks just released by the Columbine massacre students, what if there was a concern about violence in the schools).
 - c. If the police do not have any real reason to suspect you, should you have a reasonable expectation of privacy?

Exercise 2 – The Fourth Amendment and Conversations:

Instead of a thing, like a notebook, backpack, or book, what about the expectation of privacy you have in what you say to each other. Should you have an expectation that what you say will remain private?

1. 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 a normal tone alone in the bathroom.
 - A conversation between two people whispering on stage in the school auditorium.
 - A conversation between two people whispering in class.
 - A conversation between two people in the middle of the football field with no one around.

2. Why are your answers different? Is it where you are when you are talking, or how you are talking that should control your “expectation”?

Or take another slightly different example. Think about the conversations you have on the phone – do you have a reasonable expectation of privacy that what you say on the phone will remain private?

The Supreme Court addressed such an issue in a criminal case called Katz v. United States.

Part Three – The Katz Case

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

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

Katz Case Summary (in lieu of reading the case)

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

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

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

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

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

Katz Case Excerpt (handouts 2 & 3 contain bolded text for discussion)

Charles Katz, Petitioner

v.

United States

Supreme Court of the United States

Argued October 17, 1967

Decided December 18, 1967

MR. JUSTICE STEWART delivered the opinion of the Court.

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

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

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

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

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

very limited search and seizure that the Government asserts in fact took place.

...It is apparent that the agents in this case acted with restraint. Yet the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer. They were not required, before commencing the search, to present their estimate of probable cause for detached scrutiny by a neutral magistrate. They were not compelled, during the conduct of the search itself, to observe precise limits established in advance by a specific court order. Nor were they directed, after the search had been completed, to notify the authorizing magistrate in detail of all that had been seized. In the absence of such safeguards, this Court has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive means consistent with that end. Searches conducted without warrants have been held unlawful 'notwithstanding facts unquestionably showing probable cause,... for the Constitution requires 'that the deliberate, impartial judgment of a judicial officer be interposed between the citizen and the police ... 'Over and again this Court has emphasized that the mandate of the (Fourth) Amendment requires adherence to judicial processes,' ... and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions.

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

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

It is so ordered.

Judgment reversed.

Mr. Justice HARLAN, concurring.

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

As the Court's opinion states, '**the Fourth Amendment protects people, not places.**' The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a 'place.' **My understanding of the rule that has emerged from prior decisions**

is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.' Thus a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the 'plain view' of outsiders are not 'protected' because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable.

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

Case Review – Katz

- What do you think of the Court's decision?
- Do you agree that someone who makes a telephone call to another person on a public (or private phone) has a reasonable expectation that the content of the call would remain public?
 - What if someone had been lurking outside listening?
 - What if Katz had been yelling into the phone?
- The Court's decision is based on the fact that the police did not get a warrant. Why should they get a warrant to listen into the phone, when they know the person is breaking the law?
- Why should the police have to ask a judge for a warrant, when they had probable cause?
- There have been recent articles about warrantless wiretapping in the name of national security? It is thought that certain government organizations have been listening to some conversations. Do you think the *Katz* case would be decided differently in today's era with today's concern about terrorism?
- What about cell phones?
 - Where you speak into your cell phone, do you expect it to be private?
 - What if you are on a crowded bus?
 - What if you are in the hallway in school?
 - What if you are in a field in the middle of the prairie?
 - What if you are in a field in the middle of the prairie but someone has planted a listening device next to you?
- Does the person's expectation change, or is it society's expectation that controls?

Part Three – Constitutional Trash

So you have an expectation of privacy in what you possess and in what you say to others – how about in what you throw away? You know what you have in your backpacks, dorm rooms, or lockers, but what about the stuff you throw in the trash everyday?

If you live on campus, you probably are required to recycle items and sort your trash. What if police suspected you of underage drinking or other illegal dealings – could they search your trash to develop evidence against you? What if you lived off campus?

The Supreme Court addressed a similar question in Greenwood v. California, 486 U.S. 35 (1988).

Greenwood Case Summary (in lieu of reading the case)

The question for the Supreme Court was whether Billy Greenwood retained a reasonable expectation of privacy in his garbage.

FACTS: Police suspected that Billy Greenwood was involved in drug dealing and set up surveillance of his home. During the surveillance, they observed him bring his trash outside to be collected by the city garbage trucks. Hoping to discover incriminating evidence, police took the garbage before the city could dump it, and found information that they used in a criminal prosecution of Greenwood. At trial Greenwood contested the evidence claiming his Fourth Amendment rights were violated by the search.

HOLDING: The Supreme Court upheld the search, reasoning that there was no reasonable expectation of privacy in the trash you leave outside your house.

LEGAL ISSUE: The issue was whether it was reasonable for Greenwood to expect that the trash he left in opaque bags to be picked up by the city would be free from inspection. The majority and dissent differ in part about the privacy violation in having one's personal refuse exposed to public view.

GREENWOOD CASE EXCERPT (handouts 4 & 5 contain bolded text for class discussion)

Supreme Court of the United States

CALIFORNIA, Petitioner

v.

Billy GREENWOOD and Dyanne Van Houten.

No. 86-684.

Argued Jan. 11, 1988.

Decided May 16, 1988.

Justice WHITE delivered the opinion of the Court.

The issue here is whether the Fourth Amendment prohibits the warrantless search and seizure of garbage left for collection outside the curtilage of a home [note: “curtilage is the area right outside a home]. We conclude, in accordance with the vast majority of lower courts that have addressed the issue, that it does not. ...

II

The warrantless search and seizure of the garbage bags left at the curb outside the Greenwood house would violate the Fourth Amendment only if respondents [Greenwood and friend] manifested a subjective expectation of privacy in their garbage that society accepts as objectively reasonable. ... Respondents do not disagree with this standard.

They assert, however, that they had, and exhibited, an expectation of privacy with respect to the trash that was searched by the police: The trash, which was placed on the street for collection at a fixed time, was contained in opaque [note: opaque bags are non-see through] plastic bags, which the garbage collector was expected to pick up, mingle with the trash of others, and deposit at the garbage dump. The trash was only temporarily on the street, and there was little likelihood that it would be inspected by anyone.

It may well be that respondents did not expect that the contents of their garbage bags would become known to the police or other members of the public. An expectation of privacy does not give rise to Fourth Amendment protection, however, unless society is prepared to accept that expectation as objectively reasonable.

Here, we conclude that respondents exposed their garbage to the public sufficiently to defeat their claim to Fourth Amendment protection. It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. ... Moreover, respondents placed their refuse at the curb for the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through respondents’ trash or permitted others, such as the police, to do so. Accordingly, having deposited their garbage “in an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it,” ... respondents could have had no reasonable expectation of privacy in the inculpatory items that they discarded.

...

Justice BRENNAN, with whom Justice MARSHALL joins, dissenting.

Every week for two months, and at least once more a month later, the Laguna Beach police clawed through the trash that respondent Greenwood left in opaque, sealed bags on the curb outside his home. ... Complete strangers minutely scrutinized their bounty, undoubtedly dredging up intimate details of Greenwood's private life and habits. ...

Scrutiny of another's trash is contrary to commonly accepted notions of civilized behavior. I suspect, therefore, that members of our society will be shocked to learn that the Court, the ultimate guarantor of liberty, deems unreasonable our expectation that the aspects of our private lives that are concealed safely in a trash bag will not become public.

I

"A container which can support a reasonable expectation of privacy may not be searched, even on probable cause, without a warrant." ... Thus, as the Court observes, if Greenwood had a reasonable expectation that the contents of the bags that he placed on the curb would remain private, the warrantless search of those bags violated the Fourth Amendment.

The Framers of the Fourth Amendment understood that "unreasonable searches" of "paper[s] and effects"--no less than "unreasonable searches" of "person[s] and houses"--infringe privacy. ... Our precedent, [], leaves no room to doubt that had respondents been carrying their personal effects in opaque, sealed plastic bags--identical to the ones they placed on the curb--their privacy would have been protected from warrantless police intrusion....

II

Respondents deserve no less protection just because Greenwood used the bags to discard rather than to transport his personal effects. Their contents are not inherently any less private, and Greenwood's decision to discard them, at least in the manner in which he did, does not diminish his expectation of privacy.

A trash bag, ..., "is a common repository for one's personal effects" and, even more than many of them, is "therefore ... inevitably associated with the expectation of privacy... "[A]lmost every human activity ultimately manifests itself in waste products...." A single bag of trash testifies eloquently to the eating, reading, and recreational habits of the person who produced it. A search of trash, like a search of the bedroom, can relate intimate details about sexual practices, health, and personal hygiene. Like rifling through desk drawers or intercepting phone calls, rummaging through trash can divulge the target's financial and professional status, political affiliations and inclinations, private thoughts, personal relationships, and romantic interests. It cannot be doubted that a sealed trash bag harbors telling evidence of the "intimate activity associated with the 'sanctity of a man's home and the privacies of life,' " which the Fourth Amendment is designed to protect. ...

Beyond a generalized expectation of privacy, many municipalities, whether for reasons of privacy, sanitation, or both, reinforce confidence in the integrity of sealed trash containers by "prohibit[ing] anyone, except authorized employees of the Town ..., to rummage into, pick up, collect, move or otherwise interfere with articles or materials placed on ... any public street for collection." ... In fact, the California Constitution, as interpreted by the State's highest court, guarantees a right of privacy in trash vis-a-vis government officials. ...

That is not to deny that isolated intrusions into opaque, sealed trash containers occur. When, acting on their own, "animals, children, scavengers, snoops, [or] other members of the public,"... *actually* rummage

through a bag of trash and expose its contents to plain view, “police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public,”....

Had Greenwood flaunted his intimate activity by strewing his trash all over the curb for all to see, or had some nongovernmental intruder invaded his privacy and done the same, I could accept the Court’s conclusion that an expectation of privacy would have been unreasonable. Similarly, had police searching the city dump run across incriminating evidence that, despite commingling with the trash of others, still retained its identity as Greenwood’s, we would have a different case. But all that Greenwood “exposed ... to the public,” were the exteriors of several opaque, sealed containers. ...

The mere *possibility* that unwelcome meddlers *might* open and rummage through the containers does not negate the expectation of privacy in their contents any more than the possibility of a burglary negates an expectation of privacy in the home; or the possibility of a private intrusion negates an expectation of privacy in an unopened package; or the possibility that an operator will listen in on a telephone conversation negates an expectation of privacy in the words spoken on the telephone. “What a person ... seeks to preserve as private, *even in an area accessible to the public*, may be constitutionally protected.” ...

III

In holding that the warrantless search of Greenwood’s trash was consistent with the Fourth Amendment, the Court paints a grim picture of our society. It depicts a society in which local authorities may command their citizens to dispose of their personal effects in the manner least protective of the “sanctity of [the] home and the privacies of life,” ... and then monitor them arbitrarily and without judicial oversight--a society that is not prepared to recognize as reasonable an individual’s expectation of privacy in the most private of personal effects sealed in an opaque container and disposed of in a manner designed to commingle it imminently and inextricably with the trash of others. The American society with which I am familiar “chooses to dwell in reasonable security and freedom from surveillance,” ... and is more dedicated to individual liberty and more sensitive to intrusions on the sanctity of the home than the Court is willing to acknowledge. ... I dissent.

Greenwood Case Review

- Which side do you agree with? The majority or the dissent? Why?
- What are ways you could keep your trash private? Is there any way to dispose of trash and still keep an expectation of privacy?
- Should it change the analysis that it is against the law not to recycle and dispose of trash in a proper manner? For example, if it is a crime to not dispose of your trash through official governmental services, are you not forced to relinquish your reasonable expectation of privacy? How can you ever claim an expectation of privacy in the things you throw out, when you know that by law the government will dispose if it?
- Does your analysis of the case turn on where the trash was kept? What if the trash was kept in the house until pick up? Would that matter?
- Does your analysis turn on how the trash was kept? What if it the bag had been a clear plastic bag?
- Does your analysis change on who regularly has access to the trash? For example, we know that occasionally people “dumpster-dive” either out of necessity or fun. Since we know that people will go through our trash, how can we ever claim any expectation of privacy?

Part Four: A Reasonable Expectation of Privacy in School

What about public high school or universities? What sort of reasonable expectation of privacy do you have when you come to school?

Schools are places of learning. They are also places of living, where students bring their non-school personalities and problems with them when they show up to learn.

Let's go back to the question of your "effects" that you have with you in class. We know that it cannot be the case that you should be able to bring anything you want to class. All schools have rules designed to protect students and teachers, and to create a positive learning environment. So bringing a gun or a knife to class would be impermissible and illegal.

But, at the same time, even in dangerous times, we do not want all of our personal freedoms to be taken away. Just like out of school, we value some level of freedom from governmental intrusion. We want people to bring parts of their normal personalities and creative lives into school.

How can a public school enforce its rules without infringing on students rights?

The easiest way to analyze the question is by looking at public high schools.

School Searches

EXCERPT FROM YOUTH JUSTICE IN AMERICA (CQ PRESS 2005)

... So what are the rules governing official school searches of students and their belongings for drugs, weapons and other harmful things?

On the one hand, some people defending student rights think that school authorities should be forced to go to court and prove probable cause and then get a search warrant from a judge before ever searching anyone or anything at school.

On the other hand, some people, invoking the doctrine of *in loco parentis* (in the place of the parent), say schools should simply have the right to search students and their property however they want and whenever they want.

But the Supreme Court has refused to side with either of these polar opposite positions, which assert, in one case, that students have all the same rights at school as they have elsewhere and, in the other, that they essentially have no rights at all because the schools are acting in the place of the parents.

In *New Jersey v. TLO*, the Court found that school authorities need not obtain search warrants or even show probable cause to search students at school. But they cannot simply search whenever they want. In carrying out searches and discipline, school officials act as representatives of the State, not merely as surrogates of the parents.

When it comes to the bodies and personal belongings of students, schools can search without a warrant so long as they have a "reasonable suspicion" to think that the students are breaking the law or the rules of the school community.

...

The bottom line is that students have some Fourth Amendment rights at school but not many. In theory, this particular balance struck by the Court increases security for students and teachers while reducing student liberty and privacy. Is this a good trade-off?

Are schools secure? Do students feel free or restricted at school? How much educational time is consumed by security investigations, metal detector lines, locker searches, drug-testing, dog sniffs, automobile searches, suspension hearings and the whole apparatus of discipline and punishment at school? Is there any alternative? ...

Search of Belongings

Because the privacy interests of schoolchildren are outweighed by the substantial need of teachers and administrators to maintain order in the schools, the Supreme Court has dropped the requirement of probable cause and a search warrant when schools are investigating violations of school rules and criminal laws.

Part Five – New Jersey v. T.L.O.

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

T.L.O. Case Summary (in lieu of reading the case)

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

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

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

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

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

T.L.O. CASE EXCERPT (handouts 6, 7, & 8)

NEW JERSEY v. T. L. O.
Supreme Court of the United States
No, 83-712
Decided January 15, 1985

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

I

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

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

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

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

II

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

III

To hold that the Fourth Amendment applies to searches conducted by school authorities is only to begin the inquiry into the standards governing such searches. Although the underlying command of the Fourth

Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place. The determination of the standard of reasonableness governing any specific class of searches requires “balancing the need to search against the invasion which the search entails.” On one side of the balance are arrayed the individual’s legitimate expectations of privacy and personal security; on the other, the government’s need for effective methods to deal with breaches of public order.

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

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

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

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

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

How, then, should we strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place? It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools. Just as we have in other cases dispensed with the warrant requirement when "the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search," we hold today that school officials need not obtain a warrant before searching a student who is under their authority.

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

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

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

IV

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

The New Jersey Supreme Court pointed to two grounds for its holding that the search for cigarettes was unreasonable. First, the court observed that possession of cigarettes was not in itself illegal or a violation

of school rules. Because the contents of T. L. O.'s purse would therefore have "no direct bearing on the infraction" of which she was accused (smoking in a lavatory where smoking was prohibited), there was no reason to search her purse. Second, even assuming that a search of T. L. O.'s purse might under some circumstances be reasonable in light of the accusation made against T. L. O., the New Jersey court concluded that Mr. Choplick in this particular case had no reasonable grounds to suspect that T. L. O. had cigarettes in her purse. At best, according to the court, Mr. Choplick had "a good hunch."

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

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

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

The judgment of the Supreme Court of New Jersey is

Reversed.

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

III

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

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

IV

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

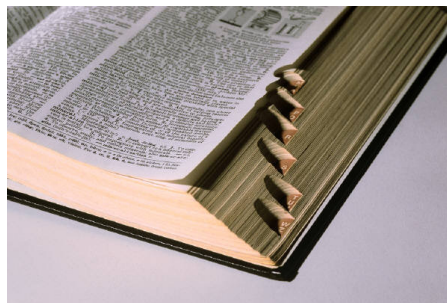
I respectfully dissent.

Points to Ponder:

- Do you agree with the majority in this case that schools could not be functional institutions if administrators needed to go to court to get search warrants before searching students' belongings? Why or why not?
- If schools do not have to seek warrants to search students, should the schools then be able to turn over evidence of crime they find—drugs and guns, for example—to state prosecutors? Right now, they can do that and the students can be prosecuted. Does that make sense?

T.L.O. Review

The Court in *T.L.O.* applied a two-part test to determine the reasonableness of any search: (1) whether the search was justified when it began; and (2) whether the search that took place was reasonably related in scope to its original purpose. A search of a student ordinarily would be justified when reasonable grounds exist for suspecting that it would produce evidence that the student has violated or is violating either the law or the rules of the school. Such a search would be reasonable in its scope when the measures adopted are reasonably related to the purpose of the search and not excessively intrusive in light of the age and gender of the student and the nature of the infraction.



PART FIVE: FOR THE CLASS

LOCKER SEARCHES. This exercise requires you to integrate your knowledge of *Katz and T.L.O.* cases and apply it to a contemporary problem.

You are a lawyer hired to argue one side of the following legal case. Half the class will represent the student, and half the school district that is being sued.

The Case

Imagine that every student in a particular public university is given a new laptop computer by the William and Melinda Rights Foundation. The computers are students to keep for the year, and then they have to return them to the school. Students are informed that the computers have the capacity to do only two things – first, word processing, meaning writing papers, taking notes, and saving information that you choose to type into the computer, and second, instant messaging, meaning having the ability to communicate to your friends in real time. Email and the Internet are not permitted.

All the students are very excited because before the gift of computers they only shared one row of 10 public computers that was open to everyone in the neighborhood, student and citizen alike. To use the public computer you even had to pay \$1 for 30 minutes of computer access. The new computers were greeted with great enthusiasm.

On the third week of receiving the computers, Amanda Undergrad discovers a new way to cheat on her pre-law quizzes and exams. Amanda realizes that if she leaves her class and goes to one of the public computers she can IM her friends in the library to get the answers to her test. It only cost her \$1 to get an A+. Her teacher Darnell Dudley suspects that Amanda might be doing something strange, because her answers seem to improve with the frequency of her trips to the bathroom during tests. Based on his concerns, Dudley asks the Dean to place an electronic bug on the public computers to monitor the IM traffic going back and forth during his class. The bug allows Dudley to read all of the IM traffic going out. In addition, right after their next test, Dudley confiscates Amanda's computer to see what is inside it.

Because of what he believes Amanda to be doing, he begins reading everything on her computer. He reads her homework assignments, her papers, her diary entries, and her application to transfer to another university because of emotional problems. In one electronic folder, he finds a document entitled "*How To Expand Your Knowledge And Use Technology To Cheat And Not Get Caught.*" Dudley does not find any of the answers to the quizzes or exams.

Dudley then looks at the information that was intercepted over the public computers through the IM system. In a series of conversations, Amanda is observed asking

explicit questions from his exam and receiving correct answers from her friends in the library.

Dudley also sees a deleted copy of the IM conversations in the computer's "Recycle Bin" on the computer that Amanda was using to communicate during her last exam.

Based on the three discoveries, Amanda is expelled from school. Outraged, Amanda sues the school arguing that her Fourth Amendment rights were violated.

FOURTH AMENDMENT ARGUMENT

Questions the lawyers should consider in arriving at a decision:

- Does the Fourth Amendment apply?
- Was there a search of the computer?
- Was there a search of the IM messages?
- Were the search(es) reasonable?

Analysis:

First level of questions.

1. Does the Fourth Amendment apply?
 - a. Yes. Under *T.L.O.*, the Supreme Court said that the Fourth Amendment does apply to public school students.
 - b. *T.L.O.* was obviously a high school situation, but basic Fourth Amendment protections also protect public university students.
 - c. Since Amanda is a public school student, she retains the protections of the Fourth Amendment against searches by teachers.
2. Did Amanda have a reasonable expectation of privacy in her laptop computer?
 - a. In terms of Amanda's subjective expectation of privacy, she clearly had a personal expectation of privacy. She wanted to keep things secret. She wanted to keep things hidden.
 - b. The question really is whether this expectation is reasonable.
 - i. For students arguing on behalf of Amanda, things they should argue are (1) that it is her computer; (2) she wrote and kept personal things on it (3) it is like a virtual purse and thus deserving of protections.
 1. If we consider it analogous to a purse, which presumably has a greater expectation of privacy than a computer, the logic is close to that in the *T.L.O.* case.
 2. Essentially, if the teacher could search the purse based on his suspicion of wrongdoing, Dudley can probably search the computer.

- a. Some students may argue that a computer should deserve greater protection because it contains human and creative thoughts not just physical objects.
 - b. In that case, there would be a greater expectation of privacy – more like a diary.
 - ii. For students arguing on behalf of the school, things they should argue are (1) that it was a school computer, not Amanda's; (2) she was expected to use it for school work, not to cheat on school work, (3) there was no guarantee that school officials would not look at the computer (again analogous to the school locker).
 1. If they analogize it to a school locker, they are probably on safer ground for a search, because of the understanding that the property belongs to the school.
 2. For example, if the teacher suspected that you had the answer key to an upcoming test in your locker, the school could probably search the locker.
3. Second question, the search of Amanda's computer did not reveal anything fully incriminating. The document "*How To Expand Your Knowledge And Use Technology To Cheat And Not Get Caught*" obviously looks bad for Amanda but was not proof that she had been cheating. Remember, the document itself would not result in being kicked out of school.
 - a. Maybe it would give the teacher a reason to continue to look into her computer, but there is nothing else incriminating on the computer.
 - b. Thus, even if the teacher can search the computer, it might not be grounds for the suspension.
4. What about the IM surveillance? The real reason Amanda was suspended was because of the IM bugging. Did she have a reasonable expectation of privacy?
 - a. For students arguing on behalf of Amanda, Katz is the obvious case to rely on to find a violation of the Fourth Amendment. The computer terminals were like the payphone, she paid a toll to use it, and she expected her conversation to be private.
 - b. For students arguing on behalf of the school, they would have to claim that IM-ing is different and that the information you send over the computer is not necessarily private. Maybe it is more like email than a conversation. Or if you wrote a note that was sharing the answers in

class and it was intercepted by the teacher, would you really expect any privacy in the note?

- c. A broad interpretation of the *Katz* decision may support the argument that Amanda has a reasonable expectation of privacy in her IM messages on a public computer because, like a public pay telephone, Amanda could argue that she had a reasonable expectation of privacy when she paid to use her school's computers.
 - i. However, an argument may also be made for the monitoring of school computers to maintain order and adherence to school rules under *TLO*. If that is the case, and the *TLO* decision applies to the public school computers, the school may be able to make a persuasive argument that Dudley's use of the bug was 1) justified when he began it because he believed Amanda to be cheating and 2) that his bugging the computer was reasonably related in scope to the original purpose of discovering if Amanda was cheating.
 - ii. Conversations on cell phones and over email have been deemed not to have any real expectation of privacy by modern courts. Courts have analogized email to sending a postcard. Do those decisions seem applicable to IM-ing?
 - iii. There is also the fact that a copy of her conversation was recorded and discarded in the "recycle bin" of the public computer.
- d. Applying the *Greenwood* case, it is likely that the information left in the recycle bin would be deemed abandoned and thus not subject to a reasonable expectation of privacy.
 - i. One question to ask is how is a virtual trash can different from a real trash can? Would that mean that anything you did on the public computer would be open to government observation?
 - ii. How can you square that idea, with the idea in *Katz*, that the owner paid for the right to privacy by using the phone? Why wouldn't *Katz*'s conversation be the equivalent of verbal trash that was left out for people to listen to?

Handout 1

The Fourth Amendment to the United States
Constitution:

“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

-- *United States Constitution, Amendment IV.*

Handout 2

Katz Case Excerpt 1

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

“... [W]hat he sought to exclude when he entered the booth was not the intruding eye-it was the uninvited ear. He did not shed his right to do so simply because he made his calls from a place where he might be seen. No less than an individual in a business office, in a friend’s apartment, or in a taxicab, a person in a telephone booth may rely upon the protection of the Fourth Amendment. One who occupies it, shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world.”

Handout 3

Katz Case Excerpt 2

“The Fourth Amendment protects people, not places.’

The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a ‘place.’ My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as ‘reasonable.’

Thus a man’s home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the ‘plain view’ of outsiders are not ‘protected’ because no intention to keep them to himself has been exhibited.

On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable.”

Handout 4

Greenwood Case Excerpt 1

Here, we conclude that respondents exposed their garbage to the public sufficiently to defeat their claim to Fourth Amendment protection. It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. ... Moreover, respondents placed their refuse at the curb for the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through respondents' trash or permitted others, such as the police, to do so. Accordingly, having deposited their garbage "in an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it," ... respondents could have had no reasonable expectation of privacy in the inculpatory items that they discarded.

Handout 5

Greenwood Case Excerpt 2

“A trash bag, ..., “is a common repository for one’s personal effects” and, even more than many of them, is “therefore ... inevitably associated with the expectation of privacy...”

“[A]lmost every human activity ultimately manifests itself in waste products....” A single bag of trash testifies eloquently to the eating, reading, and recreational habits of the person who produced it. A search of trash, like a search of the bedroom, can relate intimate details about sexual practices, health, and personal hygiene. Like rifling through desk drawers or intercepting phone calls, rummaging through trash can divulge the target’s financial and professional status, political affiliations and inclinations, private thoughts, personal relationships, and romantic interests. It cannot be doubted that a sealed trash bag harbors telling evidence of the “intimate activity associated with the ‘sanctity of a man’s home and the privacies of life,’ “ which the Fourth Amendment is designed to protect. ...”

Handout 6

T.L.O. Case Excerpt 1

“In determining whether the search at issue in this case violated the Fourth Amendment, we are faced initially with the question whether that Amendment’s prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. We hold that it does....

In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents’ immunity from the strictures of the Fourth Amendment.”

Handout 7

T.L.O. Case Excerpt 2

“Although this Court may take notice of the difficulty of maintaining discipline in the public schools today, the situation is not so dire that students in the schools may claim no legitimate expectations of privacy. ...”

“...Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessities of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries. Finally, students may have perfectly legitimate reasons to carry with them articles of property needed in connection with extracurricular or recreational activities. In short, schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds.”

Handout 8

T.L.O. Case Excerpt 3

...“We join the majority of courts that have examined this issue in concluding that the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider “whether the ... action was justified at its inception”; second, one must determine whether the search as actually conducted “was reasonably related in scope to the circumstances which justified the interference in the first place.”