



AMERICAN  
CONSTITUTION  
SOCIETY FOR  
LAW AND POLICY

## Fourth Amendment Constitution in the Classrooms Lesson Summary

### **Background on the Constitution**

The Constitution is the central organizing document of our nation. It sets up the structure of the federal government, creating three branches: the legislature, the judiciary and the executive. This separation of powers creates a system of checks and balances. The Constitution also grants limited power to the federal government and reserves other powers to the States and citizens. The Supreme Court of the United States is the final decision-maker on the interpretation of the Constitution.

The Bill of Rights consists of the first ten Amendments of the Constitution, and includes many of our fundamental guarantees of individual liberty, including the freedom of speech, freedom of religion, right to a jury, right to a lawyer and the right to be free from unreasonable searches and seizures. We will discuss the right against unreasonable searches and seizures today.

### **The Text of the Fourth Amendment and Related Questions**

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

“The right of the people...” → Who are “the people”? Does this include non-citizens? Yes. Does that include high school students? Yes.

“...to be secure in their persons, houses, papers and effects,...” → Does “persons” include the clothes a person is wearing or purses and wallets that a person is carrying? Is an apartment a “house”? Are messages you send over the Internet considered “papers”? What are “effects”? Are your conversations protected under any of these categories?

“...against unreasonable searches and seizures,...” → What is a search? What is a seizure? How can you tell if a search or seizure is reasonable or unreasonable?

“...no Warrants shall issue but upon probable cause,...” → To obtain a warrant, the police must get the signature and approval of a judge to conduct a search or seizure. What is probable cause? What if the police have not obtained a warrant and they do not have probable cause?

When and where do you have a “reasonable expectation of privacy”? Sitting in this room at school right now, do you have a reasonable expectation of privacy over the items in your bag? Does your expectation have to appear reasonable just to you or to a jury of your peers? Or to both?

### ***Katz v. United States***

**Issue** → In 1967, The Supreme Court of the United States was faced with determining whether a person using a public telephone booth had a right to privacy such that a wiretap placed on the outside of the booth, without a warrant, could not be lawfully used by law enforcement agents to listen to and record the phone user’s conversation.

**Facts** → Charles Katz was using a public telephone booth, which was partially made of glass such that he could be seen from the outside, to transmit wagering information from Los Angeles to Miami and Boston, in violation of federal law.

**Holding** → “The Fourth Amendment protects people, not places.” The Court held that with regard to the Fourth Amendment, the primary issue is the expectation of privacy of the person who was subject to the wiretap. The facts in this case, especially the fact that Mr. Katz shut the door of the telephone booth before he made the call, show that he had a subjective expectation of privacy.

This case is famous for the concurring opinion issued by Justice Harlan, who stated that in assessing whether the conduct of law enforcement officials triggers a Fourth Amendment violation, a court must look to (1) whether the person exhibited an actual (subjective) expectation of privacy, and (2) whether that expectation is one that society is prepared to recognize as ‘reasonable’.

**Questions:** What do you think of this case? If the police could hear the conversation without any electronic devices, would the conversation have been protected? Would a conversation on a cell phone be protected?

### **A Reasonable Expectation of Privacy in School**

Just as in society at large, we must balance the need to maintain the personal freedoms of students while in school and the need to maintain safety in our schools. How can we respect the students’ constitutional rights while allowing schools to enforce their rules?

The Supreme Court considered the Fourth Amendment rights of students in *New Jersey v. T.L.O.* The Court dropped the requirement of probable cause and a search warrant in favor of a “reasonable suspicion” standard, because the privacy interests of school children are outweighed by the substantial need of teachers and administrators to maintain order in the schools. Students at school have some Fourth Amendment rights, but not many.

### ***New Jersey v. T.L.O.***

**Do public school officials, such as a high school principal, need probable cause or a warrant to search a student's purse if he believes she was smoking cigarettes in the school bathroom, in violation of a school rule?**

**A 14-year old high school freshman, with the initials T.L.O., was suspected of smoking cigarettes in the bathroom with another student. The other student confessed, but T.L.O. denied smoking. T.L.O. and the other student were sent to the principal's office, where the Assistant Vice Principal searched T.L.O.'s purse. He found the cigarettes and decided that T.L.O. had been smoking. The Assistant VP proceeded to search the purse further, finding cigarette rolling papers, marijuana and other items indicating that T.L.O. had been selling marijuana.**

**T.L.O. argued that her 4<sup>th</sup> amendment rights had been violated by the search. The State of New Jersey argued that students did not retain any reasonable expectation of privacy in school. The State contended that there is an incompatibility of expectations of privacy with the maintenance of a sound educational environment and the student has a minimal interest in bringing any items of personal property into the school.**

**The Supreme Court disagreed, stating that the Fourth Amendment's prohibition on unreasonable searches and seizures applies to public school officials. However, instead of requiring probable cause or a warrant for a search by public school officials, the Court balanced the student's interest in privacy against the "substantial interest of teachers and administrators in maintaining discipline," and held that a lesser standard of "reasonable suspicion" should apply. The court held that what is relevant in such searches is whether the search was justified at its inception and reasonably related in scope to the justification. The Court said that the word "reasonable" can be defined in various ways, depending on the context of the search. The Court said that the first search was justified because of the suspicion of smoking, and the second search was justified because marijuana and other suspicious items were found with the cigarettes. Two Justices dissented, arguing that the search was "entirely unjustified" because T.L.O.'s conduct was "neither unlawful nor significantly disruptive of school order..."**

**Questions: Do you agree that schools could not be functional institutions if administrators needed to obtain search warrants before searching students' belongings? If they do not obtain a warrant, should schools be allowed to turn over evidence of crime to state prosecutors?**