



THE CONSTITUTION IN THE CLASSROOM

**THE FOURTH AMENDMENT
SEARCH AND SEIZURE**

MIDDLE SCHOOL LESSON PLAN

INTRODUCTION / PRELIMINARIES **“THE CONSTITUTION IN THE CLASSROOM”**

The purpose of this exercise is for students to come away better informed about the Bill of Rights and, more generally, about the American legal and justice systems.

You will want to make contact with school personnel in advance – first, to get your visit authorized, and second, to get a better understanding of the class(es) you’ll be addressing. Be prepared that there may be some questions or concerns about the age-appropriateness of the material, and be flexible in deciding what’s right for your community and for the maturity of the listeners.

These lesson materials are meant to be used and adapted according to the needs and interests of the class. Don’t feel wedded to the sequence of events and don’t feel obliged to use everything.

Make sure you leave 5 minutes at the end of class to complete and collect evaluation forms.

Above all, have fun!

This lesson plan was produced in cooperation with the legal staff of the Student Press Law Center, www.splc.org, a nonprofit advocacy group that works with students and school law on a daily basis protecting young people’s First Amendment rights.

ICEBREAKER

The League of Women Voters of Alameda County, in partnership with ACS, has created an online trivia game with general questions about the Constitution, **VerifyIt!**. This is a great, interactive way to start a virtual CITC lesson. You can either send the link to the students and they can play a round on their own or you can screen share and allow students to answer questions either out loud or by writing answers down and sharing their results at the end of the round.

The game is easily played on mobile phones, computers, or tablets using - **Individual Player** (on your own) or **Multi-Player** (in the classroom - virtual or online). These instructions for Multi-Player games will help you set up a game that all your students can play on their computers at one time - with you tracking their progress and knowledge as the "game runner." You will also be able to use the Leaderboard to make it fun to play - and you can choose whether to show students' names or give them anonymous numbers to keep names private.

Instructions for using a Game with your class:

1. On your computer, go to VerifyIt! Game **URL**: <https://verifyit.buzz>.
2. Click on the "**I'm a Game Runner**" link. It's near the bottom, under the "Play Multiplayer" button.
3. Select the game you want to play: "**U.S. Constitution-4th Amendment - 4 questions**" is recommended for this lesson plan. like "U.S. Constitution-Civics" and click on it. (note the Game Code in the box)
4. Find the "**Start a new game**" button at the bottom of the list and click on it. Note that the next screen shows the questions selected for this Game
5. Follow the instructions listed on this screen to **distribute the Game** to your students - you have two different ways to do this: 1) click on the clipboard icon on the top of the screen to copy the Game number and email or text it to your students, or, if you are conducting class via Zoom, put it in the Chat; or 2) give the students this URL with the game code and they can enter the game themselves.
6. Students will enter their "handle" (name) and sign into the Game. You will see their names on your screen when they successfully sign in - and you can track their progress!

ORGANIZATION / PROCEDURE

We suggest that you start with a quick overview on the Bill of Rights and the workings of the legal system, to provide context for the discussion to follow. Give out the page with the text of the Fourth Amendment at the start of the class, and give out the other supplemental handouts as you go along.

(Remember that “state action” applies only to the *public* schools – if you are speaking to *private* school students, be careful not to leave the impression that the Fourth Amendment case law about school searches will apply to them.)

As you go through the exercise, be thinking of more general points about the workings of the legal system that you can reinforce or use as taking-off points for class discussion. Examples might include:

- What is the purpose of a Supreme Court justice writing a dissenting opinion?
- The concept of the Constitution as a “living document” – for instance, the protection of “papers” in the 4th Amendment will apply to *any* means of storing information (e-mails, DVDs), even technologies well beyond what the Framers could have imagined.

The preliminary overview should be primarily give-and-take, and you can use the following pages for prompting. Rather than furnishing examples, think about whether the students are capable of volunteering their own.

THE CONSTITUTION AND THE BILL OF RIGHTS

The Constitution is the central organizing document of our nation. It sets up the structure of government with the legislative, executive, and judicial branches. It grants limited power to the federal government and reserves other powers to the States and citizens.

- For example, Article I of the Constitution creates the United States Congress, with a Senate and House of Representatives.
- Article II grants the power of the Executive Branch to the President of the United States.
- Article III creates the federal court system vesting power in the Supreme Court.

In simple terms, the legislature creates the laws, the executive administers the laws, and the judicial branch interprets the laws. The power in our constitutional system is thus divided up between three separate powers (this is called the “separation of powers”) and also between the federal government and the fifty States (this is called “federalism”). The Constitution intentionally divides the power of government – both among its branches and between the states – to create a system of “checks and balances” protecting citizens from a single source of power.

The Bill of Rights represents the first Ten Amendments to the Constitution. It includes our fundamental guarantees of individual liberty including, the freedom of speech, freedom of religion, right against self-incrimination, right to a jury, right to a lawyer, right against cruel and unusual punishment, and reserves rights to the several States and citizens.

The Bill of Rights limits government interference in certain areas of life. Unlike some systems, the American constitutional system begins with the assumption that we have certain basic freedoms. For example, the First Amendment in the Bill of Rights says that Congress shall make no law interfering with freedom of speech. The Constitution assumes we have a freedom to speak and think as we wish, and ensures that the government does not interfere with it. In the same way, the Fourth Amendment guarantees that all Americans will be free from unreasonable searches or seizures. As we will see in this lesson, this assumes that we have the right to live free from unreasonable governmental interference.

THE SUPREME COURT AND CASE LAW

The Supreme Court is the final decision-maker when it comes to interpreting the Constitution. Questions about how to interpret the Constitution constantly arise and must be addressed by federal courts.

Each court, from the trial level to the Supreme Court, decides cases based on arguments by lawyers, looking at how other courts have decided similar issues in the past. There is a vast body of cases about the terms and ideas in the Constitution. Judges look to past cases, history, and other legal principles to answer the question of how to decide the cases before them. Today we will focus on a few of those cases involving the Fourth Amendment.

FULL 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.

-U.S. Constitution, Amendment IV

FOURTH AMENDMENT FUNDAMENTALS

Review the text. What does the 4th Amendment protect against?

- FIRST, there must be “state action”
 - WHO is a state actor – examples? (Police, prison guard, teacher)
 - WHO is not a state actor – your boss at a private business, store manager, your family

Go over text of the amendment – there are 3 separate protections:

- No unreasonable SEARCHES of: (1) persons, (2) houses, (3) papers, and (4) effects.
- No unreasonable SEIZURES
- Warrant for search or arrest must be based on PROBABLE CAUSE

OPTIONAL DISCUSSION POINT: Why do we even have a Fourth Amendment? Why isn't it good enough to say that the police can look where they want to when they want to, and if you're innocent you have nothing to hide?

Explain the mechanics of how a Fourth Amendment case would get in front of a judge:

- As a defense in a criminal case – e.g., “This evidence was taken from my house without a warrant and it can't be used at my trial.”
- As a claim in a civil lawsuit for violation of rights – e.g., “I was falsely arrested.”

OPTIONAL DISCUSSION POINT: If the police come into your house or reach into your pockets without a good enough justification, a judge can throw out the evidence and pretend it doesn't exist, even if what they find is pretty bad. This is called the EXCLUSIONARY RULE, and the Supreme Court's view of when to exclude evidence has changed over time. The trend is to find ways to let the evidence be used, as long as the police made an honest mistake. What do you think about that? If the police break the rules when they are gathering evidence, is it fair to let the evidence in anyway? What are the dangers if we have blanket rules that say, “No evidence from a flawed search can ever be used in court?” What are the dangers if we have blanket rules that say, “Evidence can be used no matter how the police got it?”

What does it mean to be “searched?”

- DEFINE: Not every method of getting information is a “search.” For instance, a police officer walks up to you on the street, asks you a question, and you answer it. No search, because you offered the information freely. The Fourth Amendment comes into play only where a government employee actually looks at something private – meaning that there was a reasonable expectation of privacy in the location being searched.

- “Reasonable expectation of privacy” means two things: (1) You personally believed that what you were doing was not going to be visible to the public, and (2) Society in general recognizes that your expectation was legitimate and realistic.

When is there a reasonable expectation of privacy?

- Get the students talking about the “effects” that they are carrying on them, and their expectation of privacy in them.
 - E.g., the exterior versus the interior of your backpack – no expectation of privacy in the exterior, because that is open to public display.
- What about their expectation of privacy in conversations – would an expectation of privacy be reasonable in:
 - A conversation with your best friend in front of the mirror in the school bathrooms
 - A cell-phone conversation while riding on a city bus
- To illustrate that a “search” is broader than just looking through your effects, give some examples of what courts have held to be searches, and ask if the students agree:
 - Giving a blood, hair or urine sample for drugs
 - Being videotaped by hidden cameras in the locker room
 - Having your phone wiretapped and your conversations recorded
- Give some examples of what courts have held NOT to be searches, and ask if the students agree there is no expectation of privacy:
 - Being sniffed by a drug-sniffing dog (what you smell like when you’re out in public is not a private fact)
 - Flying a plane over your fenced backyard
 - Having your garbage picked through, *after* you put it on the curb
 - Looking through car window to see what’s on the passenger seat
 - EMPHASIZE the diminished expectation of privacy in an automobile. Searches of the passenger compartment of an automobile are routinely upheld – though searches of the closed areas of a car (sealed box, trunk) will require greater proof, unless incident to arrest or unless exigent circumstances exist.

OPTIONAL DISCUSSION POINT: How has technology changed people’s expectations of privacy? Do you have more or less privacy than your parents or your grandparents had? How should the Fourth Amendment treat text messages, e-mails and other electronic communications – should the rules be the same as for a letter written on a piece of paper?

What does it mean to be “seized?”

- DEFINE: The key is that you are not free to leave where you are detained – if you can end the conversation and walk away, then you aren’t “seized.” (Or in the context of property, that you are not free to take your property back.)
- Police put the cuffs on you, put you in the squad car, take you down to be booked – that’s the easy one. But there are other ways you can be seized:
 - Police smash their car into your car as you are driving away.
 - Police shoot you.
 - And “seizure” applies to your property as well as to your person – e.g., freezing the money in your bank account, towing your car to the impoundment lot.

What does it mean to have “probable cause?”

- “Probable cause” means that the facts and circumstances would convince a reasonable person that a crime has been or is being committed.
 - This is not enough proof to actually find someone guilty if they were charged with a crime and brought to trial. It’s just enough proof to justify intruding on privacy to continue the investigation.

When can the police search without a warrant?

- With the person’s CONSENT
 - And that can get confusing – sometimes more than one person has the power to consent. Can you think of examples?
 - Roommates
 - A couple who owns a house
 - Renter who is renting the apartment and the landlord (sometimes, depending on circumstances)
 - Guest in a hotel and the owner of the hotel
- When it’s necessary to protect the officer’s safety – sometimes known as a “stop and frisk,” when police are questioning a person who is not yet “seized,” but they want to make sure the person isn’t armed.
- When you’ve already been “seized” based on valid grounds for seizure, then the police can search you, your belongings and your vehicle (but almost certainly not your house, without a separate warrant). This is known as “search incident to arrest” or an “inventory search.” Examples:
 - Police tow your car to the police department lot after they’ve arrested you – they can look all over the car, even the trunk and glove box.
 - Police can empty your pockets when they take you into the jail.

- When evidence is in PLAIN VIEW, so that it is immediately obvious what it is – for instance, a transparent plastic bag of drugs that a person leaves sitting on the passenger seat of his car.
- When there are “EXIGENT CIRCUMSTANCES” – sometimes the law recognizes that the police have to make snap decisions because the decision is so urgent or so time-sensitive. Examples:
 - The evidence is about to be destroyed – *e.g.*, police hear a person through the hotel room door yelling, “The police are coming – get rid of the drugs!” and then hear the toilet flushing.
 - “Hot pursuit” – *e.g.*, if a suspect is being chased, runs into an apartment and slams the door, the police don’t have to wait outside until they can get a court order.

OPTIONAL DISCUSSION POINT: We’ve talked about the normal ground rules for searches that the courts have put in place over the last 200 years, but does terrorism change those rules? After the 9/11/2001 terrorist attacks, should there be different sets of rules that make it easier for the police to stop, search and even detain people, even if they may *not* have probable cause? What would be the risks?

How does this work in the setting of the public schools?

- Students do not give up all of their Fourth Amendment rights, even when they are on school grounds during the school day.
- But the courts have recognized a reduced burden on the government to justify a search of a student’s person or possessions at school.
- The Supreme Court set out the ground rules for when schools can search students in 1985 in a case called *New Jersey v. T.L.O.* In the *T.L.O.* case, the Supreme Court said that a school can search a student’s person or possessions if there is at least a “reasonable suspicion” that the student will have drugs or weapons or some other contraband items. And in that case, there was a reasonable suspicion for searching the student’s purse for cigarettes, because she and one of her friends were caught smoking in the bathroom.
 - REASONABLE SUSPICION is not the same as PROBABLE CAUSE. You can have a reasonable suspicion even if you are not convinced there has been a crime committed. Reasonable suspicion means that a person in the police officer’s position, knowing the information that is available to him, could reasonably believe that a crime has been committed or is about to be committed. It’s not just a hunch, it has to be backed up by some evidence, but less than what you’d need for probable cause.
 - “Reasonable suspicion” is also the standard if the police want to make a brief stop, like a traffic stop, where they detain you for a few minutes for questioning but haven’t yet placed you under arrest.

- DISCUSS – why reduce the burden in schools? Do you agree? Are there other places, like airports, where it also makes sense to give the government more leeway to search people and property?
- The key question in a search of a student's person or belongings on school property will be REASONABLENESS – and the keys to reasonableness are:
 - Is the item that the school is searching for something really dangerous?
 - How reliable is the information?
 - How badly was the person's privacy invaded?
 - EXAMPLE: Just last year (2009), the Supreme Court decided in *Safford v. Redding* that it was NOT reasonable to make a 13-year-old middle school student undress so she could be searched for Tylenol based on one student's unconfirmed tip. The drug was not all that dangerous, the information was not very detailed, and the intrusion on the student's privacy was severe.

OPTIONAL DISCUSSION POINT: The *Safford* case was about a strip-search – the most intrusive type of search. Under what circumstances, if ever, do you think a school can constitutionally make a person undress to be searched? What types of measures could a school take that might make the search *less* intrusive so that it might be constitutional?

THE *VERNONIA* CASE: DRUG TESTING OF ATHLETES

INSTRUCTIONS: The full text of the Supreme Court's 1995 *Vernonia School District v. Acton* is too long to hand out for reading in class – edited excerpts of both the Scalia majority and the O'Connor dissent follow.

- Hand out the excerpts and get a student volunteer to “read the part” of Justice Scalia and the part of Justice O'Connor.
- Designate four areas of the room, each representing three competing views of the law, and instruct the students that they'll be asked to “take a stand” by standing at the location that represents their view, and to be prepared to discuss and defend that view:
 1. Schools should be allowed to drug-test any or all students at any time for any reason.
 2. Schools should be allowed to drug-test groups of students as a condition for a privilege such as playing varsity sports or serving in a student government office.
 3. Schools should be allowed to drug-test only if there is reliable information that a specific individual student is using drugs.
 4. Schools should never be allowed to drug-test students for any reason.
- Give the students no more than 10 minutes to assemble and discuss their positions.
- Test them with additional probing questions such as:
 - (1) Does it make a difference in your answer if there is known to be a serious drug abuse problem that is all over the school? Does that make anyone want to move from the group they're with to a different group?
 - (2) Suppose a new technology was invented that would allow drug testing just by painlessly shooting a tester into the student's ear, like taking your temperature with one of those ear thermometers, so that the student didn't have to urinate in a cup to be tested and the test would be over in five seconds. Does that make anyone want to move from the group they're with to a different group?
 - (3) Suppose the school's policy was not just to test for drugs but to post the results of the drug tests on a bulletin board so that the students caught using drugs could be made an example of. Does that make anyone want to move from the group they're with to a different group?

As the students are “deliberating,” move about the groups to keep the conversation on-task and to prompt it along with discussion points, and be prepared to answer additional questions (it may be a good idea to review the entire case at 515 U.S. 646 in preparation for the class).

SUMMARY FOR INSTRUCTOR'S PRESENTATION

Vernonia School District 47J v. Acton (U.S. 1995)

This is a case about whether high school athletes can be required to take drug tests, even if there is no suspicion that the particular person being tested has ever used drugs.

The teachers and administrators at Vernonia School District 47J ("District") in Oregon noticed an increase in drug use during the late 1980s. Students were heard openly bragging that the school could do nothing about their drug use. Athletes were the leaders of the drug culture. This was a special concern to the school, because there was fear that athletes under the influence of drugs would be more like to injure themselves or other athletes.

The District tried offering special classes and speakers, and even brought in a drug-sniffing dog, but the drug problem persisted. So the District officials began considering a drug testing program. The school presented the idea to a meeting of parents, who approved it unanimously, and the policy went into effect for the fall of 1989.

Here's how the policy works. Students wanting to play sports have to sign a drug testing consent form and get their parents to sign. Athletes are tested at the beginning of the season. Once each week of the season, the names of the athletes are placed in a pool and 10% of team members are tested by random draw.

If the athlete is male, he produces his urine sample at a urinal in the locker room, with a male monitor in the room 12-15 feet away. If the athlete is a girl, she produces her sample in an enclosed bathroom stall with a female monitor listening outside. Only the superintendent, principals, vice-principals, and athletic directors have access to test results, and the results are not kept for more than one year.

In the fall of 1991, James Acton, a seventh grader, signed up to play football but was denied participation because he and his parents refused to sign the testing consent forms. They brought suit under the Fourth Amendment, and the case made it all the way to the U.S. Supreme Court.

The Supreme Court ruled in favor of the school and said the drug testing requirement was not a violation of James Acton's Fourth Amendment rights. Justice Scalia wrote the opinion that explains the Court's reasoning. Justice O'Connor wrote a dissenting opinion that said the testing was unconstitutional. The focus of their two opinions was on whether the government needs to have a reasonable suspicion that the individual person being tested is using drugs before they can make that person give a urine sample. Justice Scalia said no, you can test students in this situation even without individual suspicion. Justice O'Connor's opinion said that this type of a so-called "suspicionless" testing system violates the Fourth Amendment.

The following is an edited summary and excerpt from:
SUPREME COURT OF THE UNITED STATES
No. 94-590
VERNONIA SCHOOL DISTRICT 47J v. WAYNE ACTON
June 26, 1995

Justice Scalia delivered the opinion of the Court.

A search unsupported by probable cause can be constitutional, we have said, when special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impractical. We have found such "special needs" to exist in the public school context. In schools, the warrant requirement would unduly interfere with the maintenance of the swift and informal disciplinary procedures that are needed.

For their own good and that of their classmates, public school children are routinely required to submit to various physical examinations, and to be vaccinated against various diseases. Particularly with regard to medical examinations and procedures, therefore, students within the school environment have a lesser expectation of privacy than members of the population generally.

Legitimate privacy expectations are even less with regard to student athletes. School sports are not for the bashful. They require suiting up before each practice or event, and showering and changing afterwards. Public school locker rooms, the usual sites for these activities, are not notable for the privacy they afford.

By choosing to go out for the team, athletes voluntarily subject themselves to a degree of regulation even higher than that imposed on students generally. They must submit to a preseason physical exam, they must acquire adequate insurance coverage or sign an insurance waiver, maintain a minimum grade point average, and comply with any rules of conduct, dress, training hours and related matters as may be established for each sport by the head coach and athletic director with the principal's approval.

School years are the time when the physical, psychological, and addictive effects of drugs are most severe. And of course the effects of a drug infested school are visited not just upon the users, but upon the entire student body and faculty, as the educational process is disrupted. Finally, it must not be lost sight of that this program is directed more narrowly to drug use by school athletes, where the risk of immediate physical harm to the drug user or those with whom he is playing his sport is particularly high.

It seems to us self evident that a drug problem largely fueled by the "role model" effect of athletes' drug use, and of particular danger to athletes, is effectively addressed by making sure that athletes do not use drugs.

Justice O'Connor, dissenting

For most of our constitutional history, mass suspicionless searches have been generally considered unreasonable within the meaning of the Fourth Amendment. And we have allowed exceptions in recent years only where it has been clear that a suspicion based regime would be ineffectual. Because that is not the case here, I dissent.

It remains the law that the police cannot, say, subject to drug testing every person entering or leaving a certain drug ridden neighborhood in order to find evidence of crime. And this is true even though it is hard to think of a more compelling government interest than the need to fight the scourge of drugs on our streets and in our neighborhoods.

By invading the privacy of a few students rather than many (nationwide, of thousands rather than millions), and by giving potential search targets substantial control over whether they will, in fact, be searched, a suspicion-based scheme is significantly less intrusive.

Nowhere is it less clear that an individualized suspicion requirement would be ineffectual than in the school context. In most schools, the entire pool of potential search targets – students – is under constant supervision by teachers and administrators and coaches, be it in classrooms, hallways, or locker rooms. The great irony of this case is that most (though not all) of the evidence the District introduced to justify its suspicionless drug testing program consisted of first- or second-hand stories of particular, identifiable students acting in ways that plainly gave rise to reasonable suspicion of in school drug use – and thus that would have justified a drug related search.

Physical exams (and of course vaccinations) are not searches for conditions that reflect wrongdoing on the part of the student, and so are wholly non-accusatory and have no consequences that can be regarded as punitive. These facts may explain the absence of Fourth Amendment challenges to such searches. ... Any testing program that searches for conditions plainly reflecting serious wrongdoing can never be made wholly non-accusatory from the student's perspective. The substantial consequences that can flow from a positive test, such as suspension from sports, are invariably – and quite reasonably – understood as punishment.

I find unreasonable the school's choice of student athletes as the class to subject to suspicionless testing – a choice that appears to have been driven more by a belief in what would pass constitutional muster, than by a belief in what was required to meet the District's principal disciplinary concern. ... It seems to me that the far more reasonable choice would have been to focus on the class of students found to have violated published school rules against severe disruption in class and around campus – disruption that had a strong nexus to drug use.

EXERCISE – THE FOURTH AMENDMENT GOES TO THE MALL

Divide class into 3 – two sets of lawyers (the District Attorney’s prosecutors and Wendy’s defense lawyers) and one set of judges. Everyone gets a set of facts and squibs of six real Fourth Amendment cases to work with (on the two pages that follow).

Give a little setup for the exercise:

We’re going to walk through the way that lawyers would present a Fourth Amendment case in front of a judge, and the way that judges would decide that case. This case involves criminal charges against a teenager, Wendy Nugent. We’re going to split into teams. One team representing the prosecutors will handle the case on behalf of the government, trying to prove that Wendy is guilty of a crime. One team will represent Wendy 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 court. And the third team will serve as judges – they’ll be allowed to ask the lawyers questions during the arguments, and they’ll vote, just like justices on the Supreme Court would vote amongst themselves, as to which side has the better legal argument.

Give the students 10-12 minutes to review the cases and formulate their arguments. Drift between the groups to help move along the discussion and offer prompts.

After the students have reviewed the facts and the caselaw, get the lawyers for each side to make their best arguments. Try to get a different person from each team to address each of the two issues:

- (1) “Officer” Blart was or was not subject to the Fourth Amendment as an agent of the government.
- (2) Assuming that the answer to Question 1 turns out to be “yes,” Wendy’s Fourth Amendment rights were violated by Officer Blart’s stop and/or by his and inspection of her purse.

Encourage the judges to tease out the issues by asking questions, and be prepared to ask some of your own to move the discussion along.

When the arguments are done, ask the judge team to “deliberate” aloud as to which side has the superior legal argument and why, and take a vote as to whether the evidence can or can’t be used against Wendy.

EXERCISE – The Fourth Amendment Goes to the Mall

Fourteen-year-old Wendy is shopping at Mammoth Mall. Paul Blart is working as a security guard at Mammoth Mall. “Officer” Blart is not a real police officer, but he dresses and acts like one: he wears a police uniform and badge, and he carries a radio given to him by the real Police Department. The Police Department has trained him to radio them if he sees a crime being committed.

While looking at new gloves, Wendy takes off her old gloves and shoves them in her coat pocket. Then she hurries to the exit to meet her friends at the food court. Officer Blart sees what he thinks is a shoplifting incident and takes off in hot pursuit on his Segway scooter.

“Hold it right there, I need to talk to you,” says Officer Blart, parking his Segway directly in Wendy’s path. Though there is plenty of room to walk around him, Wendy is frightened and stays put.

“What’s going on? Am I being arrested?” she asks.

“No, no, no – all I want is to get the store’s property back,” Blart tells her. “If you cooperate now, you’ll make this a whole lot easier on yourself. Or maybe you’d rather talk down at the station instead?” He smiles and pats the gold “POLICE” shield pinned on his chest.

“I need to call my mom, she’s a lawyer,” Wendy says, reaching into her purse for her phone. Officer Blart, afraid that Wendy might be going for a gun, grabs the purse and squeezes it to see if there’s anything that feels like a gun.

He immediately realizes there’s no gun. He does feel something small and rectangular, but he has no idea what it is.

“It’s OK if I look inside, isn’t it?” Officer Blart asks Wendy. Wendy, believing that she has no choice, says yes.

Officer Blart pulls out a pack of cigarettes. “You’re too young to have these!” he barks. He immediately radios the police, who rush to the scene and write Wendy a citation for unlawful possession of cigarettes by a minor.

Wendy is pretty sure her rights have been violated. Her mother, attorney Kendra Nugent, goes to court with her to fight the citation for possession of cigarettes.

Mrs. Nugent says Wendy was illegally seized and searched in violation of the Fourth Amendment, so the evidence found in her purse can’t be used against her.

District Attorney McCoy prosecutes the case for the City of Newark. He tells the judge that: (1) there’s no Fourth Amendment case here, because Officer Blart was not working for the government, (2) Wendy wasn’t “seized” because she was free to leave and (3) searching the purse was reasonable to protect Officer Blart’s safety.

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 with his 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 protecting 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.

Bond v. Unites States (Supreme Court 2000)

U.S. Border Patrol agents boarded a bus to check for illegal immigrants, and patted and squeezed several passengers' bags. They felt a hard brick inside of Bond's bag, so they asked if they could look inside. Bond agreed, and the pulled out a brick of illegal methamphetamine, and charged Bond with drug possession. Bond argued that the search violated his Fourth Amendment rights. The Supreme Court agreed that the search was illegal and threw out the evidence. There was no expectation that police officers would manipulate the luggage, so there was an expectation of privacy. The search was not necessary for officers' safety because the luggage was on overhead racks outside of the passengers' reach.

United States v. Mattoralo (9th Circuit 2000)

Police stopped Mattoralo on suspicion of burglary. For their safety, they patted down his pockets. In his front pocket was something tube-shaped, which the officer thought might be a pocketknife. As soon as he patted the pocket, the officer realized it was a bag filled with rocks of illegal methamphetamine. The court said this was a legal search and Mattoralo's Fourth Amendment rights were not violated, because the search was necessary for officer safety and the officers realized the object was drugs as soon as they touched it.

United States v. Miles (9th Circuit 2001)

Police stopped Miles on suspicion that he had fired shots into a house. While patting him down for weapons, they felt a small square box in his jacket pocket. They realized it was not a weapon but were not sure what it was, so they rattled and shook it, and figured out it was bullets. The bullets matched the ones used in the house shooting, so they charged Miles with the shooting. The court threw out the evidence and found the search illegal, because once the police knew that Miles had no weapon, they could no longer continue the "safety pat-down" search to check for other evidence of a crime, like bullets, which did not pose a danger to them.

DISCUSSION TOPIC: WHEN THE SCHOOL'S EYES FOLLOW YOU HOME...

The following excerpt is adapted from the February 11, 2010 *Philadelphia Inquirer*. The entire story is viewable on the *Inquirer's* website at:

<http://www.philly.com/philly/news/breaking/84715512.html?cmpid=15585797>

Suit: School-issued laptops used to spy on kids on Main Line

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 unnamed school officials at Harriton High School in Rosemont remotely activated the webcam on a student's computer last year because the district believed he “was engaged in improper behavior in his home.”

An assistant principal at Harriton confronted the student for “improper behavior” on Nov. 11 and cited a photograph taken by the webcam as evidence.

In a statement on its website, the district said that “The laptops do contain a security feature intended to track lost, stolen and 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 locating 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.”

Questions for Class Discussion:

- So, is this a Fourth Amendment search at all? Does it depend on where the student was when the camera was activated? What if the camera was used only during the school day while the student had the computer on campus?
- Assuming that activating the camera in the laptop is a “search,” what do you think of the justification for turning on the cameras: to recover lost or stolen computers? And what if the school is trying to locate a lost computer but sees something totally different – should they be required to ignore what they saw?
- The lawsuit says that students were given no notice that the computers contained cameras that might be activated. Would that matter? Could accepting the computer after you've received notice equal “consent” to be photographed?
- Some schools require everyone to have a laptop. Does it make a difference if accepting one of these computers is mandatory?
- What do you think: is it *ever* appropriate for a school to activate a camera inside a student's computer and then use what's in the photo as grounds for discipline?
- Based on everything we've discussed in this class, if the student's family claims an illegal search under the Fourth Amendment, how should their lawsuit come out? What more would you need to know to make a decision?