

RIGHTS OF THE ACCUSED
UNDERSTANDING SOME IMPLICATIONS OF THE FOURTH AMENDMENT

Procedure:

DAY 1

1. The first day's activity starts with a role play situation. (**Student Handout: ROLEPLAY**) Ask for 4 volunteers (2 boys and 2 girls). Provide these four students with their appropriate roles. Let them dismiss to the hall for 4 or 5 minutes while you and the remainder of the students set up the room.
2. Set up four chairs with two in a row --like the seating capacity in a midsize car. Let the remaining students in the room realize that the setting is about 10:30 pm on Friday night.
3. Ask the four students to return to the room and to take a seat in the "car."
4. The teacher now plays the role of the police officer. As the students start to "play their part," have a siren start to blow. The teacher approaches the driver's side of the car. Here are some possible questions that the teacher may ask:
 - A. Did you know that your taillight was broken?
 - B. Do you have any identification? (ask for each)
 - C. Do you own this car?
 - D. Where were you this evening?
 - E. What have you been doing?
 - F. Have you been drinking? (you smell liquor from the vehicle: probable cause)
"victims" becoming angry.
 - G. Please remove yourself from the car.
 - H. Search the car -- you find 5 empty beer cans and 1 full can
 - I. Is this your beer?
 - J. Where did you get the beer?...the questioning should continue as far as it can possibly go without the four
5. **STOP.** Have the entire class divide into pairs. The students are to make a listing of the events as they remember what happened. Give them 5-10 minutes maximum.
6. Now, with the class as a whole, have one person as scribe write the events on the board. After the situation is fully reviewed, ask the students two questions.
 - A. What are your rights in this situation?
 - B. What would you have done?
7. With the discussion of the first question, if the class has trouble getting started, you may want to pose some of these questions.

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Procedure cont.

- A. Do we as citizens (juveniles) have any rights? If yes, where do we get them?
 - B. How could we find a list of those supposed rights? Where should we look?
8. With the discussion of the second question, possible starter questions might include:
- A. Would you get angry?
 - B. What would you answer the officer?
 - C. Would you have responded like the four "*characters*" did?
 - D. Would your response have been different?

DAY 2

1. Continue discussion from Day 1 if the students were not ready to stop. Have the **Fourth Amendment** (see Appended Materials) printed on the chalkboard for the entire class to see. (You may want them to jot the Fourth Amendment down in their notebooks.)
2. Have the students identify what they believe are the key words in the Amendment. Make sure to discuss the meaning of specific terms such as "*unreasonable*," "*search and seizure*," and "*probable cause*."
3. Have the students divide into groups of two or three. They will be given 5-7 minutes to write the Fourth Amendment in their own words as they see fit. One person is the recorder. At the end of this time, someone other than the recorder reads the group's version of the Fourth Amendment to the class. After each group has participated, the class identifies some of the **good** statements (or parts of) which were provided by **each** group. Have some reread if necessary.

DAY 3

1. Have the class divide into groups of four. Organize these groups as soon as class begins. Explain to the class that to better understand the implications and interpretations of the Fourth Amendment, they will look into some of the Supreme Court cases that directly relate to this amendment.
2. Have each student in each group of four take a number from one to four. Have the ones from each group gather in a specific location in the room. Do the same with the twos, threes, and fours. Each new group will be given a specific case that they are assigned to read/note for the day. (**Student Handouts 1-4**) They may start discussing the case if everyone finishes reading/noting the case. (Jigsaw Method)

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Procedure cont.

Group 1: *Wolf v. Colorado*

Group 2: *Mapp v. Ohio*

Group 3: *U.S. v. Rabinowitz*

Group 4: *New Jersey v. T.L.O.*

A very brief summary of the Supreme Court's decision in each case is:

Wolf v. Colorado (1949)

Since this case involved a state court for a state crime, the Fourth Amendment, which is a federal law, does *not* necessarily eliminate evidence which was acquired by an unreasonable search and seizure.

Mapp v. Ohio, 376 U.S. 643 (1961)

The Supreme Court ruled that evidence that was acquired in an illegal search and seizure situation was *not* admissible in a state court just as it wouldn't be in a federal court. (This overruled the *Wolf v. Colorado* decision)

U.S. v. Rabinowitz (1950)

Since this case involved a legal arrest, the evidence acquired at the scene was indeed admissible in court even though the arresting officers had no search warrant. (Search incident to an arrest is an exception to the search warrant requirement.)

New Jersey v. T.L.O., 469 U.S. 325 (1985)

The Supreme Court ruled that students do not lose their rights at the school door, but that school authorities are within their rights to search without a warrant provided they have reasonable grounds to do so.

DAY 4

1. The numbered groups are to meet and identify the key facts and issues of their particular case. Each group is to come up with a brief summary of the case and the decision of the Supreme Court. Halfway through the class period these "*groups*" will go back to their original groups. Each person's responsibility will be to "*teach*" their original group about their specific case. (maximum time per student would be 15 minutes.)

DAY 5

1. Each person continues explaining to their original group members. The maximum time to finish would be 30 minutes.

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Procedure cont.

2. At the end of this thirty minute time period, bring the entire class back together. Briefly review the implications/interpretations of the Fourth Amendment as they were used in each specific court case.
3. **Assignment: (A)** Ask students to write a brief paragraph explaining how the Fourth Amendment could have been used in the role play from the first day of the lesson, or **(B)** How does the Fourth Amendment apply to you?

DAY 6

1. Collect the student essays. Provide students with **Student Handout: YOU BE THE JUDGE**. Their assignment is to read the case and to write a decision on what they believe the Supreme Court would have decided. Student decisions will be individually collected the next class period.

DAY 7

1. **Summary Day:** Collect the decisions from the students, then discuss the case in question and provide the actual Supreme Court decision. (**TEACHER BACKGROUND: *Alabama v. White***) Discuss the changes in the Supreme Courts interpretation and have them predict how they believe the future Supreme Court will interpret this amendment. What will be some of the items they will consider? What other situations may come into question?

Student Handout: ROLEPLAY

Instructions: Make one copy per class, cut and give to the respective volunteer

Joe

You are a 17-year-old junior in the local high school. You come from a middle income family and are presently driving your family's second car, a 1977 Ford LTD. You and your three friends spent the evening in a local community park. You drank a couple of beers between 8:00 - 10:00 p.m. It is now 10:30 p.m., and you are driving your friends home. You are dominating the conversation in the car on the way home; you are a member of varsity speech. You have **never** been stopped by a police officer.

Shelly

You are a sixteen-year-old cheerleader for the local varsity basketball team. You and your three friends had spent the evening in a local community park. You consumed two cans of beer between 8 and 9 p.m. You are a passenger in the car driven by Joe. You normally are very talkative, but tonight in the car with your friends on the way home you are **very** loud and then **very** quiet. The alcohol had this effect on you. You also develop the hiccups.

Reggie

You are the local high school jock who plays basketball. You and your three friends had spent the evening drinking and talking in the park. A friend of yours from a local college supplied your group with the six-pack of beer. Even though you are a jock, you normally are quite reserved in your actions as well as in your conversations, but you do get sarcastic when you have been drinking. Tonight you had two beers, and you are quite rude in the car on the way home.

Beth

You are a seventeen-year-old junior from a middle income family. You and your three friends spent the evening drinking and talking in a local community park. You didn't drink any beer tonight, but you have done so in the past. You are a very opinionated person who speaks exactly what you believe. You had volunteered to drive home, but Joe refused to let you because it was his parent's car and he claimed that he was fine. You and your friends are now on the way home. Much talking and laughing fills the car.

Student Handout 1: *Wolf v. Colorado*, 338 U.S. 25 (1949)

Dr. Wolf was a practicing physician who was convicted of the crime of conspiracy to commit abortion. The police seized his appointment books from his office without a search warrant. The evidence was admitted during the trial. Dr. Wolf appealed his conviction.

On appeal, the question asked by the Supreme Court was: Does a conviction by a state court for a state offense deny the "*due process of law*" required by the 14th Amendment, solely because evidence that was admitted at the trial was obtained under circumstances which would have rendered it inadmissible in a prosecution for violation of a federal law in a court of the United States because there deemed to be an infraction of the Fourth Amendment?

"The security of one's privacy against arbitrary intrusion by the police--which is at the core of the Fourth Amendment--is basic to a free society." However, the Court went on to say that the way in which this right is protected is not limited to the methods used by the Federal Courts (excluding evidence illegally obtained from the trial). Recognizing that there may be varying solutions in addition to the exclusionary rule, the Court held that the State of Colorado was not prohibited from admitting evidence obtained in an unreasonable search and seizure.

Student Handout 2: *Mapp v. Ohio*, 367 U.S. 643 (1961)

On May 23, 1957, three Cleveland police officers arrived at the home of Ms. Mapp looking for a person hiding out in the home, who was wanted for questioning in connection with a recent bombing, and for a large amount of gambling materials being hidden in the home. Ms. Mapp refused to let the officers enter without a search warrant. The officers waited until three hours later when four additional officers arrived. Then they forced open a door and entered the home. The officers would not permit Ms. Mapp's lawyer to either enter the house or to talk to Ms. Mapp. When Ms. Mapp demanded to see a search warrant, the officers held up a piece of paper that they claimed was a search warrant. Ms. Mapp grabbed the paper and placed it inside her shirt. The police officers struggled with Ms. Mapp, retrieving the paper. They then handcuffed Ms. Mapp because she was belligerent and thoroughly searched the whole house. In the basement, they found a trunk containing obscene materials. Ms. Mapp was charged with and convicted of possessing obscene materials.

During the trial, no search warrant was produced by the prosecution nor was the failure to produce one explained. Ms. Mapp's attorney argued to have the evidence excluded, but the Court denied the request.

On appeal to the U.S. Supreme Court, the state argued that even if the search was made without authority or in an otherwise unreasonable manner, the prosecution was not prevented from using the evidence in the trial. Pointing to *Wolf v. Colorado*, the prosecution argued that the Fourth Amendment does not apply to the states.

The U.S. Supreme Court disagreed, ruling that the state as well as federal courts cannot admit evidence in a trial that has been seized in violation of the Fourth Amendment search requirements. The Court said "*the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold.*" Since this case, the exclusionary rule has applied to every trial court in the country.

Student Handout 3: *U.S. v. Rabinowitz*, 339 U.S. 56 (1950)

Federal authorities were informed that the defendant was dealing in stamps bearing forged overprints. On the basis of that information, they secured a warrant for his arrest, which they executed at his one-room business office. At the time of the arrest, the officers searched the desk, safe, and file cabinets in the office for about an hour and a half and seized 573 stamps with forged overprints. The stamps were admitted into evidence at the trial.

The Supreme Court affirmed the conviction, rejecting the contention that the warrantless search had been unlawful. The Court held that the search in its entirety fell within the principle giving law enforcement authorities "*the right to search the place where the arrest is made in order to find and seize things connected with the crime.*" The Court said that the test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable.

This case has come to stand for the proposition that a warrantless search "*incident to a lawful arrest*" may generally extend to the area that is considered to be in the possession or under the control of the person arrested. This is needed to ensure the arresting officer's safety by disclosing and removing any weapons that the defendant might seek to use in order to resist arrest or effect his or her escape.

In a dissent, Justice Frankfurter pointed out that the Fourth Amendment's proscription of unreasonable searches and seizures must be read in light of "*the history that gave rise to the words*" - a history of "*abuses so deeply felt by the Colonies as to be one of the potent causes of the Revolution.*" The Amendment was a reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence.

Student Handout 4: *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

A teacher at a New Jersey high school observed student T.L.O. and another student smoking cigarettes in the girl's restroom. (Initials are used because the student is a minor.) The school allowed smoking in designated areas, but it was against the rules to smoke in a restroom. The two girls were taken to see the vice-principal, Theodore Choplick.

Mr. Choplick questioned T.L.O., but she denied that she had been smoking. Choplick demanded to see her purse. He found a pack of cigarettes and a package of cigarette rolling papers in the purse. Because the rolling papers made him suspicious, Mr. Choplick searched the entire purse. He then found some marijuana, a pipe, plastic bags, an index card reading "*people who owe me money*" followed by a list of names, and two letters that implicated her in marijuana dealing.

T.L.O. was charged with delinquency in juvenile court. T.L.O.'s lawyers tried to have the evidence excluded, claiming that it violated the Fourth Amendment. The court disagreed and found T.L.O. delinquent.

On appeal, the Supreme Court was asked to decide if the Fourth Amendment prohibition against unreasonable searches and seizures, and the requirement for probable cause applied in school situations. The Court stated that although a vice-principal cannot escape the Bill of Rights because of his/her authority over schoolchildren and that schoolchildren have an expectation of privacy, there must be a balance between these interests and the school's equally legitimate need to maintain an environment in which learning can take place. The Court found that the warrant requirement requiring probable cause was not suited to the school environment, that instead schools should be held to a reduced level of suspicion--*reasonable cause*--to justify a search.

Student Handout: YOU BE THE JUDGE!

Instructions: Students are to read the following case and to write their own Supreme Court decision. Make sure your decision is backed with supporting arguments.

On a spring afternoon in 1987, in the afternoon, a local police station received a phone call. The anonymous person calling told the police that a Ms. Smith at 2424 Freming Avenue would be leaving in an old Plymouth station wagon. This Ms. Smith would be heading toward the Ace Motel and that she would have drugs in her possession.

The officers proceeded to the said address and identified a car fitting the description. Shortly thereafter, a woman came out of said address and drove off in the Plymouth station wagon. The police followed the car as it headed in the direction of the Ace Motel. As the station wagon got closer to the motel the officers decided to pull the car over.

The police officer requested that the woman driver please step to the rear of the car. He told her about their suspicion of her carrying drugs. He then asked her for permission to look in her car; she granted him this right. Inside the car they found a locked briefcase. The woman gave them the combination to open it. The police officer found marijuana in this case and placed Ms. Smith under arrest. When the officers went through Ms. Smith's bag at the station, they also found three milligrams of cocaine. Ms. Smith was charged with possession of both controlled substances: marijuana and cocaine.

Q. Did the police have the right to stop and search Ms. Smith and her car? Will the evidence be admissible?

TEACHER BACKGROUND: *Alabama v. White*

The case the students are interpreting is actually *Alabama v. Vanessa Rose White* which was decided by the Supreme Court on June 11, 1990. The Supreme Court held that the police did indeed have the right to make the initial stop. They based their decision on the following pieces of information:

- a)** the anonymous tip did match with the actions/movements of Ms. White
- b)** Since the tip and the police investigation collaborated they would be able to ascertain that the tip was indeed reliable