

Judges in the Classroom Lesson Plan

Search and Seizure In Utah

Introduction:

Americans have always valued their privacy. They expect to be left alone, to be free from unwarranted snooping or spying, and to be secure in their own homes. This expectation of privacy is important and is protected by the U.S. Constitution. The Fourth Amendment sets out the right to be free from “unreasonable searches and seizures” and establishes conditions under which search warrants may be used.

Balanced against the individual’s right to privacy is the government’s need to gather information. In the case of the police, this is the need to collect evidence against criminals and to protect society against crime.

The Fourth Amendment does not give citizens an absolute right to privacy, and it does not prohibit all searches—only those that are unreasonable. In deciding if a search is reasonable, the courts look to the facts and circumstances of each case. As a general rule, courts have found searches and seizures reasonable when authorized by a valid warrant. In addition, courts have recognized that certain searches conducted without a warrant can also be reasonable.

(For more information, go to Street Law website at http://www.glencoe.com/sec/socialstudies/street_law/textbook_activities/chapter_overview_s/index.php)

Objectives:

1. Students will identify legal requirements of searches conducted with and without a warrant.
 2. Students will identify the legal standard for conducting searches in public schools.
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Grade Level:

Grades 9-12

Time:

One class period (approximately 50 minutes).

Materials:

One copy of Handout 1 (School Search Case Study) for each student.

Note: This lesson assumes the teacher has already taught students the two constitutional sources of rights for search and seizure, identified the competing interests of privacy and law enforcement, and taught the state statute on school searches, Utah Code Ann. § 78-3e-1, *et seq.*

Procedures:

1. **Begin the class by introducing yourself** and telling a little bit about what you do. Tell students that today's class will deal with search and seizure. You might also describe to students how your particular judicial responsibilities relate to search and seizure: authorizing warrants, ruling on motions to suppress, reviewing on appeal the admission of questioned evidence, etc.
2. **Tell students that both** the Fourth Amendment of the United States Constitution and Section 14 of the Utah State Constitution require that warrants issue "upon probable cause." Ask students what that means.

Explain that judicial officers considering whether or not to permit the search must have a sufficient amount of information before issuing a search warrant. If the information is not enough to amount to probable cause, the judicial officer must deny the request for a warrant. Report on any recent example in which you denied an officer's request for a warrant or ruled that a search done with or without a warrant was unconstitutional.

3. **Draw this line graph on the board to demonstrate probable cause.**

This scale measures how much information is required, and what kind of information.

0%					50%	95%	100%
No Information	Hunch	Suspicion	Reasonable Grounds	Probable Cause	Preponderance of Evidence	Beyond Reasonable Doubt	Certainty

4. **Explain each entry on the chart.**

No Information means the officer doesn't know anything about the location of evidence linked to a crime.

Hunch means the officer has a gut feeling that something is not right, but the officer cannot point to any specific facts; it is something like intuition.

Suspicion means the officer knows a minor fact or knows some larger fact from an unknown or unreliable source that suggests evidence may be located somewhere. For instance, an officer stops a person on the street to ask a question and the person quickly puts a hand in a pocket. Or, the officer may find a piece of paper on the street, which says that a particular person is selling drugs.

Reasonable Grounds (also called Reasonable Belief and Reasonable Suspicion) means the officer knows several minor facts or a larger fact, or a large fact from a source of unknown reliability that points to a particular person engaging in some criminal activity. For example, a teacher standing outside a girls' lavatory smells cigarette smoke coming from the lavatory. The only two girls in the lavatory then leave together. The teacher has reasonable grounds, but not probable cause, to believe the girls have cigarettes in their purses (a violation of a school rule).

Probable Cause means an officer has enough evidence to lead a reasonable person to believe that the items searched for are connected with criminal activity and will be found in the place to be searched. For example, an increase of 200 to 300 percent in power consumption within a building is not enough alone to establish probable cause to believe that a drug-growing operation is under way inside. However, such an increase, with other suspicious facts including an anonymous phone call claiming that people at a certain place are growing drugs, is enough for probable cause and a search warrant.

Preponderance of the Evidence is the amount of evidence needed to be successful when suing in a civil case. It means that evidence must be "more likely than not," or more than 50 percent.

Beyond a Reasonable Doubt is the highest amount of proof; it is required to convict a person of a criminal charge.

Certainty means that there is not even an unreasonable doubt as to its truth.

5. **Remind students of the rule** that searches with a warrant are presumed to be reasonable (and therefore legal), while searches without a warrant are presumed to be unreasonable (and therefore illegal) unless they fall within a specific exception to the search warrant requirement.
6. **Tell students there are many exceptions** to the search warrant requirement in Utah. This class will focus on school searches, which is one of the exceptions.
7. **Let the students know** that Utah has a statute governing school searches. Inform students that searches by school officials on school property, school busses, and at school events are justified if the following two-prong test is met:
 1. **Justified at its inception.** A student search is justified when there are reasonable grounds for suspecting that the search will reveal evidence demonstrating a criminal-law or school-rule violation.
 2. **Reasonable scope.** The search must be reasonably related in scope to the circumstances that justified the initial interference. In other words, a search will be permissible when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive given the type of infraction and the age and sex of the student.
 3. **Source** – Utah Code Ann. § 78-3e-4; *Utah Search Manual for Schools*, developed by Utah Attorney General's Office, and available at:

<http://attorneygeneral.utah.gov/Schoolsearch/Utah%20School%20Search%20Manual%20in%20PDF.pdf>

8. **Explain** that schools are a special environment in search and seizure law. Students can be searched with less than probable cause; **they can be searched when officials have a reasonable suspicion that a student has violated a school rule or law, and that the scope of the search is reasonable.**
 1. Many schools have codified this understanding in School Behavior Policies and Consent to Search Forms, which students are required to sign and agree to before they are permitted to attend school. Where a student signs a Consent to Search form, they are giving up their Fourth Amendment privacy rights and are subject to search at any time. Ask students whether they have signed Consent to Search Forms.
9. The United States Supreme Court has stated that school officials are not required to obtain a warrant before searching a student who is under their authority. The legality of school searches of students depends on the reasonableness, under all the circumstances, of the search. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
10. The Supreme Court has also approved random drug search policies for student athletes. *Vernonia v. Acton*, 115 S.Ct. 2386 (1995). Students have a reduced expectation of privacy and should expect intrusions on their normal rights and privileges when they choose to participate in high school athletics.
11. Ask students to brainstorm places where they may have a legitimate expectations of privacy.
 1. Items and places that are not in the open or exposed to public view.
 2. A student's body or clothing, including pockets.
 3. Personal possessions such as purses, backpacks, bags, books, notes, calendars, appointment books, and closed containers.
 4. Closed or locked areas, containers, or possessions.
12. What about lockers?
 1. Locker searches by school officials do not require a reasonable grounds justification. A student locker is property of the school. A student has no expectation of privacy in a locker or its contents. *Zamora v. Pomeroy*, 639 F.2d 662 (10th Cir. 1980); *State v. Hunter*, 831 P.2d 1033 (Utah App. 1992).
13. Discuss factors or events that may justify a search.
 1. School official observing a criminal-law or school-rule violation in progress.
 2. Observed weapon or portion of a weapon.
 3. Observed illegal item.
 4. Observed item believed to be stolen.
 5. Student found with incriminating items.
 6. Odor of tobacco, marijuana, alcohol, or other prohibited substances.
 7. Student appears to be under influence of alcohol or drugs.
 8. Student admits to criminal-law or school-rule violation.
 9. Student fits description of suspect of recently reported criminal-law or school-rule violation.
 10. Student flees from vicinity of scene of recently reported criminal-law or school-rule violation.
 11. Information from a reliable source that student is committing, has committed, or is about to commit a criminal-law or school-rule violation.
 12. Student uses threatening words or behavior suggesting imminent substantial injury.

13. Student consents to search, such as by signing a Consent to Search Form, or by orally consenting.
14. **Pass out Handout 1** and have students read individually. Divide the class into small groups of no more than five students. Refer to each small group as a different district court (e.g., First District Court, Second District Court, etc.). Ask the "judges" in each court to decide how they would rule in this case study and why. Give students five minutes to decide (increase time if students are not finished in five minutes). Tell students to elect a chief judge to report their decision and reasons to the class. Ask students if they understand the assignment.
15. **Debrief the class** by having each district court give its ruling without giving reasons at first. Write their responses on the board using this chart:

	Vice-Principal	Student
First District	X	
Second District		X
Third District		X

16. **Refer to the chart** and ask one of the districts that ruled that the vice-principal's search was constitutional to give **only one** reason why the search was constitutional. Then, ask a district that ruled the student's rights were violated by the search to give **one reason** why. Make sure that each district has a chance to provide at least one reason why it ruled as it did.

In the unlikely event that all students vote the same way, ask students to think like lawyers and provide the arguments to support the other view. Allow up to 15 minutes for group responses and discussion.

17. **Let students know** that in this case, *State v. Slattery*, 787 P.2d 932, review denied, 791 P.2d 534 (1990), the Washington Court of Appeals ruled that under the school search exception to the warrant requirement, this search was legal. The court determined that the search was reasonable, based on an analysis of the same two factors used to analyze Utah searches: whether it was justified at the start of the search and whether the search was reasonably related in scope to the circumstances that justified the interference in the first place.
18. **Review the standard** for school searches and compare it to the standard of probable cause required to obtain a search warrant for searches of a person's home. Ask students to justify this difference if they can.
19. **Conclude with a comment** on the tension between efficient police work and privacy of the individual.

HANDOUT 1

SCHOOL SEARCH CASE STUDY

A junior contacted the high school vice-principal to report that another junior student, Michael Slattery, was selling marijuana in the school parking lot. The vice-principal had received reports that Slattery was involved with drugs before from a senior who had provided the vice-principal with reliable information about illegal activities of other students in the past.

The vice-principal then called Slattery into his office and asked him to empty his pockets. Slattery was carrying \$230 cash in small bills and a piece of paper with a telephone pager number on it. The vice-principal knew that drug dealers often use pagers. The vice-principal called school security who searched Slattery's locker but found nothing.

When the vice-principal told Slattery they would have to search his car, which was parked in the school lot, Slattery refused. After speaking to Slattery's mother by phone, Slattery turned over the keys. The school officials found a pager and a notebook inside the car. The notebook had names with dollar amounts written next to the names. They opened the locked trunk of the car and found a locked briefcase. Slattery first said he didn't know who owned the briefcase, then he said a friend owned it and that he did not know the combination. The school security officers pried it open and discovered 80.2 grams of marijuana. Police were called and Slattery was arrested.

Slattery claims that the searches of his official person, his locker, car, and locked briefcase were unconstitutional. Decide if the searches were constitutional and give your reasons.

Source:

Modified and updated with permission in 2006 by the Utah Administrative Office of the Courts (AOC) for Judicial outreach in Utah. For more information regarding Utah's modifications, contact AOC Public Information Office, 450 South State Street, P.O. Box 140241, Salt Lake City, Utah, 84114.

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(For more information, go to Street Law website at http://www.glencoe.com/sec/socialstudies/street_law/textbook_activities/chapter_overviews/index.php)