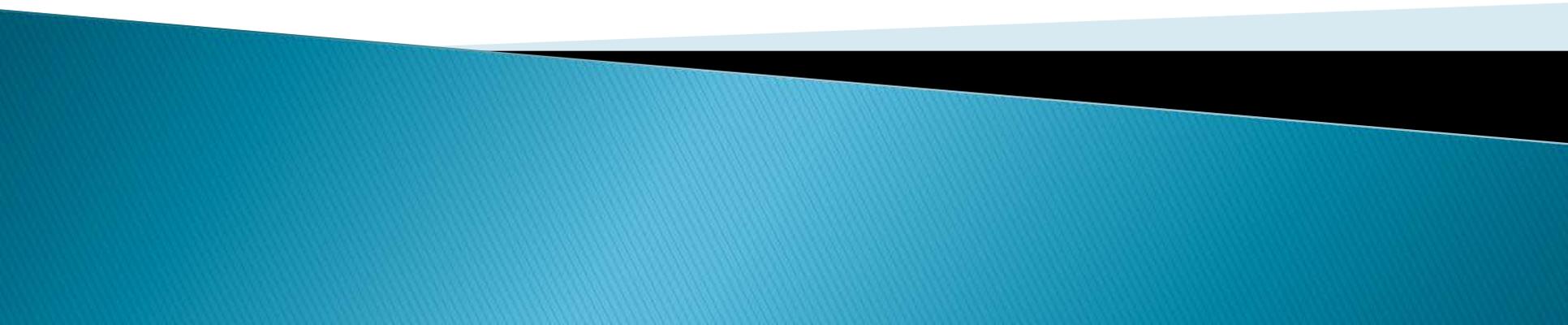


Searches and Seizures



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.



4th Amendment Issues: To search or not to search...

- ▶ T.L.O. v. New Jersey (1985): held that a student search must be reasonable in its scope
 - In this case, 2 girls were caught by a teacher smoking in the bathroom. When questioned by the principal, one girl denied the allegation. He then demanded to search the girl's purse and found the cigarettes, rolling paper, marijuana, a pipe, empty plastic bags and a large quantity of \$1 bills. Police were called. Girl was arrested.
 - Supreme Court held that school officials only need a "reasonable suspicion", not probable cause, to perform a search



Not To Search...

- ▶ Safford v. Redding, (2009): held that a strip search of a middle schooler violated the Fourth Amendment where the school lacked reasons to suspect either that the drugs (Ibuprofen) presented a danger or that they were concealed in her underwear.
- ▶ “[T]he content of the suspicion failed to match the degree of intrusion.”



Reasonable suspicion... what does it mean?

A particularized and objective basis, supported by specific articulable facts, for suspecting a person of criminal activity



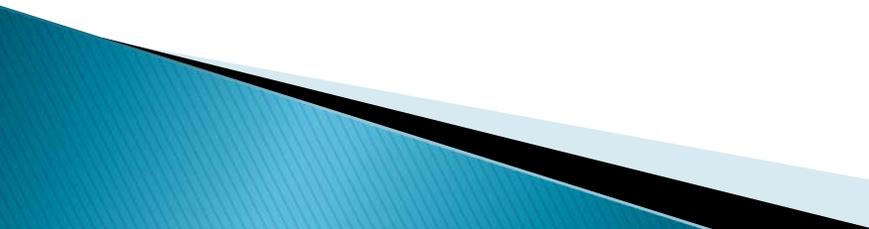
Reasonableness



NOTE: Both the reason for the search AND the appropriateness of the scope of the search must be reasonable

- For example, the school official must have reasonable grounds for expecting that the search will turn up evidence that the student has violated the law or rules of the school AND
- The breadth of the search should be reasonably related to the objectives of the search (ie, looking in a student's backpack for a stolen textbook does not give free reign to search student's pockets)

Reasonably Suspicious Circumstances?

- ▶ A student's bulging pockets
 - ▶ Student's flushed face, glassy and red and bloodshot eyes
 - ▶ Student looked stoned, smelled of marijuana and was incoherent
 - ▶ Student made furtive gestures and had "obvious consciousness of guilt"
 - ▶ Student had nervous or fidgety behavior
 - ▶ Student failed to consent to search after other class members gave consent
 - ▶ A student known-drug experimenter refused to give principal his coat
 - ▶ Student gave evasive statement, used profane language and gave false names
 - ▶ Student's record of concealed weapons plus suspicious behavior
 - ▶ Student's history, suspicion, or appearance of drug use
- 

- ▶ Students entered a school bathroom where others had been arrested for possession and students acted as look-outs
- ▶ Student's presence in a school bathroom w/o a pass, together with student's faltering and nervous behavior—school restrooms frequent scenes of narcotic activities
- ▶ Student out of class and in a prohibited area w/o a pass
- ▶ Student in an immediate vicinity of an incident together w/ a suspicious reaction when questioned
- ▶ Observation of students smoking and/or the odor of marijuana
- ▶ Drug paraphernalia seen through car window of student's car

- ▶ Observation of a request to sell drugs or of several pill sales
- ▶ Overhearing student's conversation about drinking beer at school
- ▶ Smell of marijuana from students, students' hotel rooms
- ▶ Admission by a student that he had illegal items in his backpack
- ▶ Student threats of crime or violence
- ▶ Information from reliable student informants



WHO can search?

- ▶ The person to do the search should be the “most appropriate school employee”
- ▶ The more intrusive the search, the higher the level of school official should be who conducts the search
- ▶ Consider factors like: age of the child, gender, if the child has a disability, child’s background, seriousness of the item(s) being searched for, which official is available, urgency of the situation, etc.



Police officer v. law enforcement official v. school resource officer v. school security officer

- ▶ The distinction is important because most often, trained law enforcement personnel/police officers, even when working in a school, are usually held to the probable cause standard when initiating a search of a student
- ▶ SROs: if primarily educators w/ supplementary law enforcement duties, the reasonable suspicion standard applies

WHAT can be searched?

- ▶ Searches of students:
 - Body searches should be infrequent.
 - More often, searches are limited to student's pockets, outer clothing, bags, or belongings.
 - A “pat-down” may be justified and is a comparatively slight invasion of a student's privacy.
 - Age of students, necessity for search and nature of items being searched for should be evaluated prior to touching students
 - Strip searches? Rarely justified



(WHAT, cont.)

- ▶ Searches of pockets, clothing, bags and effects
 - Usually justified and upheld by courts
 - Search must be reasonable in scope. I.e., an Oregon court did not uphold a search of a student's jacket for a weapon when the search was continued to look for drugs
- ▶ Searches of places, things
 - Lockers: usually allowed, especially if school board policies express joint control of lockers
 - Motor vehicles: yes, if on school property. Best if there's a policy that allow parking permits on the basis that cars may be searched based on reasonable suspicion. Off campus cars not as easy to search



(WHAT, cont.)



- ▶ Urinalysis or drug tests
 - Okay to require drug tests for individualized reasonable suspicion
 - Suspicionless testing? YES, IF the policy is limited to students participating in athletics or extracurricular activities, even without statistical evidence of widespread drug problems in the school
- ▶ Electronic devices
 - Yes, if there is reasonable suspicion that the electronic device has some evidence of wrongdoing and the scope of the search is reasonable (ie, a reliable tip that a student's phone has nasty pictures would not justify a search of all the student's contacts)

(WHAT, cont.)

- ▶ Drug-sniffing dogs
 - Generalized canine searches of student lockers, automobiles, backpacks and personal items have been approved as not involving a search
 - Cases are divided on whether dogs can sniff students.
- ▶ Surveillance and videotaping of students
 - Various types of surveillance of students are not held to be violations of student privacy.
 - Patrolling school parking? School smoking area? Student common area? → OK.
 - Locker rooms? → Not OK.
 - Classrooms? → Maybe. Maybe not.



Consent

- ▶ If student consents to a search, there are no 4th Amendment issues involved.
- ▶ Consent must be age-appropriate and not coerced.
- ▶ Schools officials have broad authority to question students—with or without cause—in the interest of school safety.

