Overview

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

Applied to Seizure of Illegal E-Cigarettes During a Backpack Search at School

This Fourth Amendment activity raises the same question as in the landmark Supreme Court case *New Jersey v. T.L.O.*: Can a school search a student’s backpack? The fictional scenario is based on the discovery of vaping materials during the search of an underage student’s backpack.

Although *New Jersey v. T.L.O.* was decided in 1985, it still has an impact on every student who brings a purse or backpack to school.

The landmark case involved a high school girl who, because she was a juvenile at the time, was referred to in court and in court records by her initials – T.L.O. When she denied an allegation that she was smoking in the restroom, a school official searched her purse and found cigarettes and marijuana paraphernalia.

In a 6-3 decision, the Supreme Court of the United States ruled that the school’s search was reasonable and had not violated T.L.O.’s Fourth Amendment rights. The Court decided that students in primary and secondary school should not have the same level of search and seizure protection as adults and as juveniles in non-school settings.

The court simulation in this activity uses a fictional scenario that is updated to include the discovery of vaping materials in the backpack of an underage student. The scenario raises questions that can have an impact on students regardless of whether they vape at school or not.

**What Makes This Activity Different**

* Teaches a Landmark Case and Makes It Relevant
* Incorporates the Teen Vaping Craze
* Ready in 30 Minutes
* Involves Every Learning Style
* Centerpiece is Jury Deliberations

**How to Use These Resources**

1. To start, the leader/facilitator goes over the **proposed agenda** with the participants.

2. An attorney volunteer presents the **facts and case summary**.

3. An attorney volunteer presents the **fictional scenario**.

**Preparation of Four Student Attorneys**

Students volunteer or are selected in the courtroom by a teacher:

* Assign two opposing teams of student attorneys – two on each team. One team represents the school. One team represents the student. These teams need the **scripted opening protocol** and the **suggested talking points** documents.
* During the preparation period at the courthouse, have each team practice the suggested talking points. They are suggested points for the debate – not a script. Student attorneys are encouraged to modify the points.
* Just before returning to the courtroom, have students practice the scripted opening protocol.

**For the Student Jurors – All Other Students**

* While the student attorneys practice, all other students work with attorney volunteers to prepare to serve as jurors. They work with their two attorney volunteers to prepare for listening to and deliberating on the issues after oral arguments. Jury deliberations happen in the courtroom after the student attorneys present their arguments.
* Preparation:
	+ The student jurors fill out the **juror questionnaire** and discuss it with the attorneys.
	+ They complete and discuss the **arguments worksheet**. An attorney volunteer leads the discussion, using the **worksheet answer key**.

**During the Hearing**

* The hearing starts with the judge and student attorneys reading the scripted opening protocol out loud, then they begin the oral arguments.
* After the oral arguments, the judge gives the **jury instructions**.
* Jurors deliberate in open court as the judge, student attorneys, and adult attorney volunteers observe without participating. Due to time constraints, the jury does not have to come to a verdict.
* The facilitator guides the deliberations and, when they wind down, the facilitator asks the judge to take a show-of-hands vote.

Agenda

New Jersey v. T.L.O.

Applied to Seizure of Illegal E-Cigarettes During a Backpack Search at School

*(20 minutes)* **Participants Go Through Security and Settle in the Courtroom**

 **Roles:**

* The facilitator manages the program and facilitates jury deliberations.
* The judge presides over the hearing and asks questions of the student attorneys after each presents arguments.
* Two attorney coaches prepare the volunteer student attorneys in two nearby rooms.
* Two attorney volunteers/law clerks help the student jurors prepare for the jury deliberations in the courtroom.
* All participants, except student attorneys, are jurors seated in the gallery.

*(10 minutes)* **Facilitator Explains Program**

 Attorney coaches/law clerks introduce themselves: Why I Chose the Law

*(10 minutes)* **Attorney Volunteers or Law Clerks Present**

 1. Introduction to *New Jersey v. T.L.O*.

 2. Fictional teen scenario.

*(30 minutes)* **Attorney Coaches Prepare Student Attorneys**

 Four students are attorneys – two on each side. Typically, they are selected by the teacher(s) at the event (not in advance). Ask the teachers to keep in mind gender and racial balance when choosing participants. Once selected, the student attorneys work with their respective attorney coaches in two nearby rooms, using the program handouts.

 **Attorney Volunteers or Law Clerks Prepare Student Jurors**

 All other participants are jurors. They stay in the courtroom where they first fill out the Juror Questionnaire. Then, working in two groups – one attorney for each group – they discuss and fill out the blank Arguments Worksheet. The adult attorneys guide them through the activity, using the Worksheet Answer Key. **The Purpose: Preparing Jurors to Listen, Analyze, and Deliberate**

 During the jury deliberations in the courtroom, student jurors stand up and present their arguments. They need to understand that their role is the most important in the program. They need to be ready to stand and present their positions in a civil and persuasive way. The goal: To have as many students, as possible, participate in the small group discussions and the jury deliberations.

*(60 minutes)* **Judge Takes the Bench, Opens the Hearing**

 Two student attorneys (Attorneys #1 and #2) on each side of the issues argue the fictional case. After each attorney presents, the judge asks spontaneous questions of that attorney. To keep the students in the gallery involved, the judge also may ask them a question after each student attorney speaks.

*(30 minutes)* **Jury Deliberations**

 The facilitator asks the student jurors to form two groups and sit in the gallery behind the party they initially favor – the Government or Sandy Simmons. Guided by the facilitator, student jurors make their arguments, directing their comments only to the jurors on the other side of the issues, seated on the other side of the gallery. As their opinions change, student jurors move to the side of the gallery behind the party they support. The facilitator proactively invites them to move several times during the deliberations. When the deliberations wind down, the facilitator returns the program to the judge.

 **Jury Verdict**

The judge asks the jury for a show-of-hands vote to determine the verdict. The judge may ask several participants to explain their decision.

*(20 minutes)* **Q&A with the Judge**

 The judge opens the floor to questions from participants. At this time, the students also fill out the feedback forms. (The forms are their ticket out of the courtroom and must be collected from each student.)

* Q&A is followed by photos taken with the judge.
* Students then have the opportunity to talk informally with the judge, law clerks, and attorney coaches.

 **Adjournment**

Facts and Case Summary

New Jersey v. T.L.O.

469 U.S. 325 (1985)

**FACTS**

T.L.O. was a 14-year-old female student at a New Jersey high school. A teacher found T.L.O. and another student smoking cigarettes in the girls’ restroom in the school building in violation of school rules. The teacher brought the two students to a school administrator, who questioned each of them. The second student admitted to smoking cigarettes. T.L.O. denied the allegations. The administrator then accused T.LO. of lying to him, and demanded to see her purse in an attempt to find the cigarettes. Among other things, when the administrator opened her purse, he found a pack of cigarettes, and cigarette rolling paper. Due to the fact that the administrator knew that cigarette rolling paper is used to smoke marijuana he now suspected T.L.O. of marijuana use. He further searched T.L.O.’s purse, and found a small plastic bag containing a grass-like substance and items that could be drug paraphernalia, including a pipe, a wad of money, a piece of paper with the names of students who apparently owed T.L.O. money, and a letter that appeared to implicate T.L.O. in dealing marijuana. The administrator contacted the police who, in turn, contacted T.L.O.’s mother. Her mother brought T.L.O. to the police station, where she confessed to selling marijuana.

Due to her age, T.L.O. faced delinquency charges in Juvenile Court. The Juvenile Court denied T.L.O.’s motion to suppress (keep out) her confession and the evidence from the search. Her lawyer argued that the search of her purse was a violation of the Fourth Amendment. T.L.O. was found delinquent, and was put on probation for one year. After a lengthy appeal process in the New Jersey state court system, the U.S. Supreme Court of the United States agreed to hear the case.

**The Fourth Amendment Provides:**

“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.”

**PROCEDURE**

**Lower Court 1:** Juvenile and Domestic Relations Court of Middlesex County, N.J.

**Lower Court 1 Ruling:** The Fourth Amendment applies to searches carried out by school officials, but a school official may conduct a search of a student’s person under certain circumstances. Specifically, the Juvenile Court held that a school official may search a student if the official has reasonable suspicion that a crime has been or is in the process of being committed, or has reasonable cause to believe the search is necessary to maintain school discipline or enforce polices. Applying this standard to the facts of this case, the Court held that the Fourth Amendment was not violated by the school administrator’s search. T.L.O. was found delinquent and sentenced to probation for one year.

**Lower Court 2:** Appellate Division (New Jersey State Court System)

**Lower Court 2 Ruling:** Affirmed the Juvenile Court’s decision that there was no Fourth Amendment violation, but vacated the delinquency adjudication and remanded (sent back) the case to the Juvenile Court decide if T.L.O. had knowingly and voluntarily waived her Fifth Amendment right against self-incrimination before confessing.

**Lower Court 3:** New Jersey State Supreme Court

**Lower Court 3 Ruling:** Agreed with the lower courts that the Fourth Amendment is applicable to the conduct of school officials; also agreed that school officials may conduct a warrantless search of a student when they have reasonable grounds to believe that a student possesses evidence of illegal activity or activity that interferes with school discipline and order. However, New Jersey’s highest court ultimately reversed, holding, in T.L.O.’s case, the school administrator’s conduct was not reasonable because the mere possession of cigarettes did not violate school rules. The administrator’s desire to catch T.L.O. in a lie did not justify rummaging through her purse.

**ISSUE BEFORE THE SUPREME COURT OF THE UNITED STATES**

Whether evidence unlawfully seized by a school official – without involvement of law enforcement officials – should be allowed in as evidence at juvenile delinquency proceedings.

**U.S. SUPREME COURT RULING**

The Court did not reach this issue. As explained in the reasoning section below, the Court concluded that, under the circumstances of this case, the search of T.L.O.’s purse did not violate the Fourth Amendment to the U.S. Constitution. The Court did not address the issue of whether unlawfully seized evidence should be suppressed in a juvenile delinquency hearing. However, the Court decided that the Fourth Amendment applies to school officials.

**Supreme Court Vote:** 6-3

**Argued:** March 28, 1984

**Re-argued:** October 2, 1984

**Decided:** January 15, 1985

**Majority Opinion:**

Justice White

**Concurrences:**

Justice Powell, with Justice Day O’Connor

Justice Blackmun

**Concurrence in Part and Dissent in Part:**

Justice Brennan, with Justice Marshall

Justice Stevens, with Justices Marshall and Brennan

**REASONING**

The Court held that the Fourth Amendment’s prohibition on unreasonable searches and seizures is not limited solely to the actions of law enforcement personnel. It also applies to the conduct of public school officials. Public school teachers act as agents of the state, and not merely agents of the students’ parents. Thus, the Fourth Amendment applies to their actions.

The Court also held that students have some legitimate expectation of privacy at school. However, the students’ expectation of privacy must be balanced against the needs of school authorities to maintain an educational environment. As such, school authorities do not need to obtain a warrant or have probable cause that a crime occurred before searching a student. Rather, the reasonableness of a search, under all circumstances, will determine its legality.

The Court established the following test to determine the reasonableness of a search: whether the search was 1) justified at its inception and 2) as the search was conducted, was it reasonably related in scope to the circumstances that justified the interference in the first place.

Finally, the Court evaluated the facts of T.L.O.’s search in light of this test. First, the Court concluded that the search was justified at its inception. The initial report from the teacher that T.L.O. had been smoking in violation of school rules constituted reasonable suspicion that cigarettes were in her purse (a fact that would be relevant to the smoking accusation).

Second, the Court noted that the discovery of rolling paper provided reasonable suspicion that T.L.O. possessed marijuana, and this justified the further search of her purse. Since the school administrator’s actions were justified at the inception and were reasonably related in scope to the circumstances that justified the interference, the search was reasonable. Although the Court held that the Fourth Amendment applied to the school administrator’s actions, the court ultimately determined that his actions in this case did not violate the Fourth Amendment.

In a concurrence, Justice Powell, joined by Justice O’Connor, agreed with the majority’s opinion, but he would have emphasized the fact that, in a school setting, the Constitution may not afford students all of the constitutional protections they would otherwise have in a non-school setting.

In a concurrence, Justice Blackmun agreed with the majority. However, he emphasized that the need for school authorities to immediately respond to threats to safety and to protect the education environment would justify a special exception from the Fourth Amendment’s warrant and probable cause requirements for school searches.

Justice Brennan, joined by Justice Marshall, concurred in part and dissented in part. Justice Brennan, joined by Justice Marshall, agreed with the Court’s finding that the Fourth Amendment applies to public school teachers and that school officials may generally search students without a warrant. However, he disagreed with the Court’s holding that reasonable suspicion as opposed to probable cause should be the test for determining whether such searches may be permitted. Applying the probable cause standard, Justice Brennan held that the school administrator’s actions violated T.L.O.’s rights and, thus, the evidence from the illegal search should be suppressed.

Justice Stevens, in his concurrence in part and dissent in part, noted that the Court should address the original issue, i.e., whether the exclusionary rule applies to searches made by public school officials and teachers in school. Justice Stevens concluded that the search was not justified at its inception because the school administrator had no reason to believe that T.L.O.’s purse contained evidence of criminal activity or a violation of school rules at the time that he searched it. Thus, the search violated the Fourth Amendment and the evidence should be suppressed.

*Fictional Scenario*

New Jersey v. T.L.O.

Applied to Seizure of Illegal E-Cigarettes During a Backpack Search at School

Sandy Simmons is an 18-year-old senior at Sierra View High School in a state where the legal vaping age has been raised to 21. Sandy has a serious − but secret − vaping habit.  To keep her vaping on the down low, she starts an underground organization of underage vapers called The Salon. They meet discreetly at different places on and off campus where they vape and hang out.

When her state raises the legal vaping age, Sandy gets a group of Salon members together to order a large quantity of e-cigarettes and vaping pods on the Internet. She makes the purchase herself using a fake I.D. borrowed from her 21-year-old sister. The e-cigarettes arrive, she fills up her backpack and takes it to school.

A few weeks later, Sandy’s friend Bobby Browning gets caught vaping in the restroom by Vice Principal Mario Martin. When Mr. Martin walks him to the administrative office and closes the door, Bobby panics and admits to vaping. When asked, Bobby says he buys his vaping supplies from Sandy.

Mr. Martin calls Sandy into his office, where she denies the allegations. The vice principal asks Sandy to open her backpack. When she puts the backpack on a chair and unzips the largest compartment, Mr. Martin sees the packaging of a popular brand of e-cigarettes. He takes the backpack off the chair and unzips the other pockets. Sandy is very distressed and tells Mr. Martin that he is not her father and he has no right to invade her privacy. He finishes looking through the pockets and returns the backpack to her.  He then notices that a small notebook has fallen from the backpack. When Mr. Martin picks it up from the floor and turns it over, he finds a list of names with dates and dollar amounts on the outside back cover.

Suspecting that Sandy is selling e-cigarettes, Mr. Martin asks her to turn over the backpack, which she does. Mr. Martin searches it and finds three, unopened e-cigarette packages and about $350 in cash. The vice principal calls the local police. They arrive and arrest Sandy.

An assistant U.S. attorney charges Sandy in federal court with conspiracy to violate 18 U.S.C. §2342, because of the Salon’s possession and distribution of e-cigarettes across state lines.  He also charges her with a violation of 18 U.S.C. §1028(a)(7) − identity fraud − because Sandy used her sister’s I.D. to buy the e-cigarettes. With Bobby’s cooperation, law enforcement collects evidence that Sandy sold e-cigarettes at school to persons under 21. Sandy is told that she has violated state and federal laws.

At her first hearing in federal court, Sandy, through her federal public defender, moves to suppress (keep out) the e-cigarettes and other items found in her backpack. Her attorney argues that the vice principal conducted an unlawful search of her backpack in violation of the Fourth Amendment.

The public defender argues that, before the search, Mr. Martin did not have probable cause to go through Sandy’s backpack and there was no basis for believing that she violated any anti-vaping laws. The government argues against the motion, taking the position that, under the circumstances at school, the search was reasonable, and the evidence should be allowed into the trial.

The question before the U.S. District Court is:  Are students’ Fourth Amendment rights violated when school officials search a student’s backpack at school and seize illegally purchased e-cigarettes?

United States District Court

Juror Qualification Questionnaire

**Dear Prospective Juror:**

Your name has been drawn by random selection, and you are being considered for jury service in the United States District Court. Jury service is a privilege and it is a legal obligation of every American. In order for us to obtain some information about you from which we can objectively determine whether you are qualified to serve pursuant to federal law, please complete this questionnaire. **You must answer every question, sign, date, and return the form in the enclosed envelope within ten days**.

1. Are you a citizen of the United States?

2. Are you 18 years of age or older?

Date of Birth: Month \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Day \_\_\_\_\_\_\_\_ Year \_\_\_\_\_\_\_ Give your age \_\_\_\_\_\_\_

3. Have you lived in Maryland or D.C. for the past year?

4. Do you speak the English language?

* Do you read, write, and understand English well enough to answer the rest of the questions?

5. Are you currently charged with a crime?

6. Have you ever been convicted of a crime that had a penalty of one year or more in prison?

7. Do you have any physical or mental disability that would interfere or prevent you from serving as a juror?

8. Are you a full-time paid employee as a:
Government official? Police or Fire? Military?

9. Are you Hispanic or Latino?

10. Federal law requires you to indicate your race to avoid discrimination in jury selection.

 Black/African American \_\_\_ Asian \_\_\_ American Indian/Alaska Native \_\_\_

 White \_\_\_ Native Hawaiian/Pacific Islander \_\_\_Other (specify) \_\_\_\_\_\_\_\_\_\_\_\_\_\_

11. Male \_\_\_ Female \_\_\_

12. Are you now employed?

13. Are you an employee of the U.S. government?

14. What is your usual occupation, trade, or business?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(print)*

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Jury Preparation Exercise*

**Arguments Worksheet – To Be Filled Out and Discussed by Students**

*New Jersey v. T.L.O.* Applied to E-Cigarettes Seized During a Backpack Search at School

 **Directions:** Put **SS** next to arguments for Student Sandy and **SO** for arguments for the School Officials.

1. Students do not shed their constitutional rights at the schoolhouse gate.

2. Due to the extensive supervision of students in school, students do not have a reasonable expectation of privacy when they bring personal property to school.

3. Students may have legitimate reasons for bringing personal property to school. Some of these items may contain personal information that students do not want shared.

4. Students do not give up their expectation of privacy when they bring personal property to school.

5. In a school environment, the legality of searching students should depend – in all circumstances – on concerns about maintaining a safe and orderly learning space.

6. Order is what gives students freedom. They lose the freedom to even learn about their rights if the school doesn’t maintain an orderly environment.

7. School authorities must have probable cause to believe that a student is violating the law or school rules before conducting a search of the student and/or the student’s property. 8. Based on the unique nature of the educational environment, in which school officials take the place of the parents, the school does not need a warrant or probable cause before searching a student under their authority.

9. If school officials conduct an unlawful search, any evidence they obtain in that search should not be admissible in court.

10. Evidence found during a search can only be used in court if it is what school authorities say they are looking for when they start the search. If they find something else, it can’t be used in court against the student.

*Jury Preparation Exercise*

**Arguments Worksheet – Answer Key**

*New Jersey v. T.L.O.* Applied to the Search of a Backpack and the Seizure of E-Cigarettes

**Directions:** Put **SS** next to arguments for Student Sandy Simmons and **SO** for arguments for the School Officials.

1. Students do not shed their constitutional rights at the schoolhouse gate. **SS**

2. Due to the extensive supervision of students in school, students do not have a reasonable expectation of privacy when they bring personal property to school. **SO**

3. Students may have legitimate reasons for bringing personal property to school. Some of these items may contain personal information that students do not want shared. **SS**

4. Students do not give up their expectation of privacy when they bring personal property to school. **SS**

5. In a school environment, the legality of searching students should depend – in all circumstances – on concerns about maintaining a safe and orderly learning space. **SO**

6. Order is what gives students freedom. They lose the freedom to even learn about their rights if the school doesn’t maintain an orderly environment. **SO**

7. School authorities must have probable cause to believe a student is violating the law or school rules before searching the student and/or the student’s property. **SS**

8. Based on the unique nature of the educational environment, in which school officials take the place of the parents, the school does not need a warrant or probable cause before searching a student under their authority. **SO**

9. If school officials conduct an unlawful search, any evidence they obtain in that search should not be admissible in court. **SS**

10. Evidence found during a search can only be used in court if it is what school authorities say they are looking for when they start the search. If they find something else, it can’t be used in court against the student. **SS**

*Jury Instructions*

The Judge goes through pertinent points in these instructions with the jury prior to deliberations

After the evidence is presented and the lawyers have made their closing arguments, the judge advises the jury on the law that applies to the facts of the case and the manner in which they should conduct their deliberations.

**Judge**: Members of the Jury,

* **Charge One:** **Introduction of the Final Charge-Province of the Court and the Jury**

Now that you have heard all of the evidence that is to be received in this trial and each of the arguments of counsel it becomes my duty to give you the final instructions of the Court as to the law that is applicable to this case. You should use these instructions to guide you in your decisions.

It is your duty as jurors to follow the law as stated in all of the instructions of the Court and to apply these rules of law to the facts as you find them to be from the evidence received during the trial.

You are not to single out any one instruction alone as stating the law but must consider the instructions as a whole in reaching your decisions.

You were chosen as a juror for this trial in order to evaluate all of the evidence received and to decide each of the factual questions presented by the allegations brought by the government in the indictment and the plea of not guilty by the defendant.

In resolving the issues presented to you for decision in this trial you must not be persuaded by bias, prejudice, or sympathy for or against any of the parties to this case or by any public opinion.

* **Charge Two: Judging the Evidence**

There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would deal with any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case.

* **Charge Three: Direct and Circumstantial Evidence**

There are two types of evidence which are generally presented during a trial-direct evidence and circumstantial evidence. Direct evidence is the testimony of a person which asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence.

* **Charge Four: Inferences from the Evidence**

Inferences are simply deductions or conclusions from reason and common sense which lead the jury to draw from the evidence received in the case.

* **Charge Five: Jury's Recollection Controls**

If any reference by the Court or by counsel to matters of testimony does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

* **Charge Six: Consider Only the Offense Charged**

The defendant is not on trial for any act or any conduct not specifically charged in the indictment.

* **Charge Seven: Presumption of Innocence, Burden of Proof, and Reasonable Doubt**

I instruct you that you must presume the Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to be innocent of the crime charged. Thus, the defendant, although accused of a crime in the indictment, begins the trial with a clean slate-with no evidence against him. The indictment is not evidence of any kind. The law permits nothing but legal evidence presented before the jury in court to be considered in support of any charge against the defendant. The presumption of innocence alone, therefore, is sufficient to acquit the Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to produce any evidence by cross-examining the witness for the government.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense-the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

Unless the government proves, beyond a reasonable doubt, that Defendant \_\_\_\_\_\_\_\_\_\_ has committed each and every element of the offense charged in the indictment, you must find Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ not guilty of the offense. If the jury views the evidence in the case as reasonably permitting either of two conclusions-one of innocence, the other of guilt-the jury must, of course, adopt the conclusion of innocence.

* **Charge Eight: The Nature of the Offense Charged**

The indictment charges that between October 1, 2005 and March 31, 2006, in the District of [name of District, e.g., District of Maryland], the Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, reproduced and distributed some 714 sound recordings and 54 motion pictures from various sources on the Internet without seeking permission from, or paying compensation to, the owner of the copyrights of these materials in violation of 17 U.S.C.A., SS506(a) and SS 18 U.S.C.A. SS2319 (a)(b)(2). Moreover, the indictment charges that between October 1, 2005 and March 31, 2006, in the District of [name of District, e.g. District of Maryland], the Defendant \_\_\_\_\_\_\_\_\_\_\_\_, willfully infringed the aforesaid copyrights for private financial gain.

The defendant has entered a plea of "not guilty" and has denied that he is guilty of the offense charged in the indictment.

* **Charge Nine: The Statute Defining the Offense Charged**

Section 506 (a) of Title 17 of the United States Code provides, in part, that:

(a) Criminal infringement. Any person who infringes a copyright willfully either
(1) for purposes of commercial advantage or private financial gain, or      (2) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total value of more than $1,000, shall be punished as provided under section 2319 of title 18, United States Code. For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement.

Section 2319 (a)(b)(2) of Title 18 of the United States Code provides, in part, that:

(a) Whoever violates section 506(a) (relating to criminal offenses) of title 17 shall be punished as provided in subsection (b) of this section and such penalties shall be in addition to any other provisions of title 17 or any other law.
(b) Any person who commits an offense under subsection (a) of this section:
(2) shall be fined not more than $250,000 or imprisoned for not more than
two years, or both, if the offense
(a) involves the reproduction or distribution, during any one-hundred-
and-eighty-day period, of more than one hundred but less than one
thousand phonorecords or copies infringing the copyright in one or
more sound recordings; or
(b) involves the reproduction or distribution, during any one-hundred-
and-eighty-day period, of more than seven but less than sixty-five
copies infringing the copyright in one or more motion pictures or
other audiovisual works.

* **Charge Ten: The Essential Elements of the Offense Charged**

In order to sustain its burden of proof for the offense of criminal copyright infringement as charged in the indictment, the government must prove the following essential elements beyond a reasonable doubt, either:

|  |  |  |
| --- | --- | --- |
| (1) | (a) | The Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name) |
|   | (b) | Violated \_\_\_\_\_\_\_\_\_\_\_\_: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|   | (c) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|   | (d)  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| (2) | (a) | The Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_ (name) |
|   | (b) | Violated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|   | (c) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|   |  |  |
|   |  |  |

* **Charge Eleven: Effect of the Defendant's Failure to Testify**

 The defendant in a criminal case has an absolute right under our Constitution not to testify.

 The fact that Defendant \_\_\_\_\_\_did not testify must not be discussed or considered in any way when deliberating and arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his privilege under the Constitution and did not testify.

* **Charge Twelve: Verdict**

Election of Foreperson; Duty to Deliberate; Unanimity; Punishment; Form of Verdict; Communication with the Court

*Scripted Opening for the Host Judge and the Student Attorneys*

**Courtroom Protocol for Attorneys***New Jersey v. T.L.O.*
Applied to Seizure of Illegal E-Cigarettes During a Backpack Search at School

The Host Judge is announced, takes the bench, and welcomes the group, then says:

The issue before us today is: Are students’ Fourth Amendment rights violated when school officials search a student’s backpack at school and seize illegally purchased e-cigarettes?

**Host Judge: Are Counsel for the student Ms. Simmons ready?**

**Counsel for the Students** *(Attorney #1 stands at counsel table)*

Yes, Your Honor.

**Host Judge: Are Counsel for the school and for Vice Principal Mario Martin ready?**

**Counsel for the Vice Principal** *(Attorney #1 stands at counsel table)*

 Yes, Your Honor.

**Host Judge: Instructs Counsel to introduce themselves.**

**Attorneys for the Student Sandy Simmons**

**Student Attorney #1** *(Stands at the podium)*

Good morning and may it please the Court. My name is \_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(first and last names).* I am from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (real school).

My colleague and I are representing the student Sandy Simmons today. I will be handling Issue #1: **Are school officials considered government actors who must comply with Fourth Amendment restrictions when they conduct searches at school?**

My colleague will be handling Issue #2, and now he/she will come to the podium and introduce himself/herself. Then our Attorney Coach will introduce himself/herself. *(Sits down)*

**Student Attorney #2** *(Stands at the podium)*

I am \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*first and last names)*

from\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (real school) and I will be handling issue #2: **Do students have a reasonable expectation of privacy at school?**

**Attorney Coach introduces himself/herself.** *(Stands at the counsel table.)*

*I am \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (first and last names)*

**Note to Participating Attorneys:**

Address the Judge as “Your Honor.”

The first time each attorney addresses the Judge, the opening is: *“May it please the court.”*

Always stand when speaking to the Judge.

**Attorneys for the School and Vice Principal Mario Martin**

**Student Attorney #1** *(Stands at the podium)*

May it please the Court.

My name is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(first and last names).*

I am from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (real school). My colleague and I represent the school and Vice Principal Mario Martin.

I will handle Issue #1 – **Are school officials considered government actors who must comply with Fourth Amendment restrictions when they conduct searches at school?** My colleague will handle Issue #2, and, at this time, he/she will come to the podium and introduce himself/herself. Our Attorney Coach also will introduce himself/herself.

 **Student Attorney #2** *(Stands at the podium)*

I am \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(first and last names).* I will be arguing the second issue:  **Do students have a reasonable expectation of privacy at school?** *(Sits down)*

**Attorney Coach introduces himself/herself.** *(Stands at the counsel table.)*

I am *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (first and last names)*

**Note to Participating Attorneys:**

Address the Judge as “Your Honor.”

The first time each attorney addresses the Judge, the opening is: *“May it please the court.”*

Always stand when speaking to the Judge.

*Talking Points*

Suggested points that the student attorneys can use and/or modify for their oral arguments.
*New Jersey v. T.L.O.*
Applied to Seizure of Illegal E-Cigarettes During a Backpack Search at School

**Judge**: The issue before us today is: Are students’ Fourth Amendment rights violated when school officials search a student’s backpack at school and find illegally purchased e-cigarettes?

|  |  |
| --- | --- |
| **Issue #1:** **Are school officials considered government actors who must comply with Fourth Amendment restrictions when they conduct searches at school?** | **Issue #1:** **Are school officials considered government actors who must comply with Fourth Amendment restrictions when they conduct searches at school?**  |
| **Students’ Attorney #1** | **School Officials’ Attorney #1** |
| **YES*** School officials are government actors and the Fourth Amendment applies to their actions.
* The 4th Amendment applies to actions taken by government agencies – like schools – not just the police. School officials are government actors. They can enforce education-related laws and regulations. They also are responsible for a safe and orderly learning environment.
* Teachers and administrators are government officials, just like government health and building inspectors, and firefighters. The state gives them the power to conduct searches. Teachers, like other government officials, must comply with 4th Amendment restrictions.
* At one time, schools were considered stand-ins for the parents. Today that is an outmoded concept. Schools aren’t parents. They are government entities.
* The basic purpose of the Fourth Amendment is to protect the privacy and security of individuals from arbitrary invasions by government officials – including school administrators and teachers.

**The host judge asks follow-up questions** | **NO*** School officials are not law enforcement officers and, therefore, the Fourth Amendment doesn’t apply in this case.
* Vice Principal Martin was not acting as a law enforcement officer. He didn’t carry a weapon. He has no training, and he has not taken a law enforcement oath. He was acting in good faith to maintain an orderly learning environment and protect other students from exposure to vaping.
* Although the Court in Tinker v. Des Moines stated that students do not shed their constitutional rights at the schoolhouse gate, it did find that the rights of students are necessarily restricted when they are in an educational environment.
* The search was not carried out in connection with enforcing any statutes or regulations. It was conducted in order to ensure compliance with school regulations. Therefore, the Fourth Amendment doesn’t apply to the search at issue here.

**The host judge asks follow-up questions.**  |
| **Issue #2:** **Do students have a reasonable expectation of privacy at school?** | **Issue #2:** **Do students have a reasonable expectation of privacy at school?** |
| **Students’ Attorney #2** | **School Officials’ Attorney #2** |
| **YES*** The safeguards provided by the Constitution are not limited to adults. As the Supreme Court held in Tinker v. Des Moines in the free speech context: “School officials do not possess absolute authority over their students. Students in school, as well as out of school, are persons under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the state.”
* In the landmark Tinker case, the Court found that “students do not shed their constitutional rights at the schoolhouse gate;” and that actions by school officials that infringe on these rights constitute governmental action.
* If schools want to improve the safety and order of the learning environment, searching students is not the way to do it. In balancing the privacy interest of the students against the government interest in a search, the outcome is clear. Students have a reasonable expectation of privacy in their belongings at school.

**Conclusion** Your Honor, this Court must affirm the privacy rights of all Americans – to protect students from intrusive, unwarranted searches; to prevent teachers from becoming law enforcement officers; and to prevent schools from becoming a police state. Searches conducted by school officials are government action and are subject to Fourth Amendment scrutiny; students have a legitimate expectation of privacy in their belongings at school.**Judge asks follow-up questions.**  | **NO*** There is no absolute right to privacy, and students have, at most, a minimal expectation of privacy at school.
* The Supreme Court has established the key question. In this case it is whether students at school have a “justifiable, reasonable, or legitimate expectation of privacy that has been invaded by government action.”
* The primary question before the Court here is whether a student’s claim of privacy is reasonable.
* Courts use a balancing test to determine if an expectation of privacy is reasonable. In this case, the balance is between society’s substantial interest in educating young people and in the security of its schools. Those concerns are balanced against the limited privacy interests of a student.
* The school is responsible for managing and protecting students. At school, it may be necessary to curtail the rights of the individual student to promote the school’s interest in preserving and promoting the welfare of the general student body.

**Conclusion**When these interests are balanced against each other, there is an obvious result. A student’s limited privacy interest is severely outweighed by the public interest in education and the orderly running of schools. Therefore, students have no reasonable expectation of privacy at school.**Judge asks follow-up questions.**  |

*Student Feedback*

***New Jersey v. TLO* Applied to the Seizure of E-Cigarettes**

**During a Backpack Search at School**

**Name** \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Date \_\_\_\_\_\_\_\_\_\_**

 *(first) (last)*

**School \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Year You’ll Graduate \_\_\_\_\_\_**

**Career Aspirations \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**1. Setting.** What was it like having the program in a real courtroom?

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**2. Judge.** What was it like having a judge preside?

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**3. Adult Attorneys.** What were the differences between the real attorneys and those on TV?

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**4. Jury Deliberations:** What were the judicial deliberations like for you? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**5. Future Jury Service:** How do you feel about serving on a real jury after this event?

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**6. What did you learn from anything in the program that you can apply in your life?**

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**7. How would you rate your civil discourse skills during the program?**

*Poor Good Very Good Excellent*

**8. What civility skill will you practice after today’s experience?**

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**9. What did you learn from the host judge during the Q/A session?**

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**10. What will you tell your friends about this experience? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**