Dear Educator on the U. S. Constitution,

The attached materials have been used by Kansas judges, lawyers and teachers to help educate children on the Constitution. Please feel free to use and modify them. Also, think about how you might like to present the materials. It is a good idea to talk with the teachers you will be working with about how much time you will have.

The best programs are those which are interactive. Making the programs fun will help to make them more interesting to the students. Please feel free to contact me if you have any questions.

G. Joseph Pierron

Judge, Kansas Court of Appeals

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About this case:

This case addresses unreasonable searches and seizures. The case involves a teacher who finds a 14-year-old girl in the school restroom smoking.

Appropriate for grades: 6th-12th
NOTES ON T.L.O. v. NEW JERSEY

This juvenile offender case was decided in 1985. It involved a 14 year old girl who is identified only by her initials. This is commonly done in cases involving juvenile offenders. We will need some volunteers to play the parts of the participants. We need T.L.O., her friend, a teacher, (all girls) a vice-principal and a judge. (Pick five “volunteers”and arrange them. Let the judge wear a robe. Give TLO a prop purse which has been prepared.)

What happened in this case is that the teacher walked into a school restroom and discovered T.L.O. and her friend smoking, which was in violation of school rules. (Maybe the students could ham it up a little. Teacher has outraged look and shakes her finger.) The teacher took the two to see the Assistant vice-principal. Now T., the vice-principal asks you if you were smoking, and what do you say? Right, you say, not only were you not smoking, but you don’t smoke at all.

Well, vice-principal Meaney (that’s your name, isn’t it?) do you believe what T. is telling you. No? How can you check out her story? That’s right, check her purse. Let’s see what we have here. Hmmm. Cigarette packages, cigarette rolling papers, some green leafy vegetation, a pipe, some plastic bags, a nice wad of money, an index card with some names of fellow students who owe T. money, and two letters which refer to drug deals T. has been involved in. Vice-principal Meaney, are you getting a little suspicious of T’s protestations on innocence? Yes, me too. So T. gets reported to juvenile authorities and gets charged with drug offenses.

T., I think you need a lawyer. Who in this crowd is your lawyer. (Let her pick one.) Alright lawyer --------, you are going to have to come up with a defense here or your client is in deep do-do. (Point very ostentatiously to the Fourth Amendment in the copy of the constitution) Is there anything in the U.S. constitution that might help your client? The Fourth Amendment? Very good! Why don’t you read it to the judge? Lawyer does so.

When the U.S. constitution was written, one of the things our founders wanted to protect the people from was unreasonable searches and seizures. The British had made a practice of forcing their way into the homes of the colonists to look for smuggled goods. Our founders really didn’t like that and wrote protections against that into the Bill of Rights. But for a long time, the court’s ruled this protection under the U.S. constitution applied only to federal officers, not state officers. But this changed because of a woman named Dollree Mapp.

Dollree, or Dolly as she was generally known, was what we would call a usual suspect. If something happened in Cleveland, Ohio, there was a passable chance that Dolly was involved. So the Cleveland police were not really surprised when they got an anonymous tip that if they went over to Dolly’s house, they would find a man who had been involved in a bombing, and they would also find some illegal gambling paraphernalia.
The police had nothing to corroborate this, but they decided to check it out. They went over to Dolly’s house and told her they wanted to look through her house. What do you think Dolly said? Right, no way. Why? Right, they didn’t have a search warrant. But they pushed their way in anyway. Dolly got into a scuffle with them and got handcuffed. They searched the house but didn’t find a bomber, a bomb or any gambling stuff. They did find what they called obscene materials and charged Dolly with possession of them.

Dolly’s lawyer said the judge should throw out the evidence because it had been seized in violation of Dolly’s rights. The officers had no search warrant and no good reason to search her home without permission. The Ohio state court acknowledged that if federal officers had done this the evidence would be suppressed. But since these were state officers, Dolly was not protected by the Fourth Amendment.

Dolly’s case went all the way to the U.S. Supreme Court which ruled in 1961 that they were going to apply the Fourth Amendment protections to actions of state police through the use of the Fourteenth Amendment. So, from then on, if evidence was obtained through an unlawful search and seizure, it would not be allowed, under most circumstances, to be used against the person whose rights were violated. This is called the exclusionary rule.

So here we are back in Piscataway New Jersey. Lawyer---------, why do you think this search was unlawful? (There was no warrant and they had no reason to believe that T. had drugs on her.) All right. Vice-principal Meaney, why should we keep the evidence in the case? (You had reasonable grounds for searching the purse to see if the cigarettes were there that the teacher had reported. And besides, you are not a police officer, you are more like a parent. In fact, they say school officials act in loco parentis, “in place of parents” in many ways.)

Well judge, we have two different questions here. One is whether the Fourth Amendment should be applied to teachers. What do you think about that question? (The correct answer is that the judge believed the Fourth Amendment did apply to school officials.)

The second is whether the search was reasonable. The court said a school official may properly conduct a search of a student’s person if the official has a reasonable suspicion that a crime has been or is in the process of being committed, or reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies. So the evidence came in and T. was convicted and placed on probation.

T., do you like this decision? No. So what can you do? That’s right, you can appeal from the juvenile court to the New Jersey appellate court. So we go to the New Jersey Court of Appeals. The chief judge of the New Jersey Court of Appeals is here. Judge, did you agree that the Fourth Amendment applies to school officials because they are representatives of the state in this context? (Yes). But you found that even though they were subject to the Fourth Amendment, there had been no violation of the Amendment.
T. didn’t like that part of the ruling, so she appealed to the New Jersey Supreme Court. Now chief justice, you agreed that the Fourth Amendment should be applied to school officials didn’t you? (Yes). And you agreed that a school official could search if they had a reasonable suspicion under the circumstances to believe that a crime or serious rule infraction was going on. But, did you think that the search was reasonable under these circumstances? No, you didn’t. So that means the evidence got suppressed.

What can the school do now? The only higher court on a question like this is the Supreme Court of the United States. But will they take this case, since they only take about 100 cases a year? Well, they do, so we all go down to Washington D.C. from New Jersey to argue the case at the Supreme Court building. (Send the participants back to their seats.)

You are now all on the Supreme Court of the United States Supreme Court. Let’s conference this case now. Is there any Justice here who thinks the Supreme Court of New Jersey might have been wrong on the issue of whether we should apply the Fourth Amendment to school officials? Tell us why.

Let’s analyze the situation here. Schools and teachers are often said to be acting “in loco parentis”, in place of parents. Can we say that since a kid can’t use the Fourth Amendment against a parent, they can’t use it against teachers? No, we have generally found that, except in very rare situations, the concept of parental delegation as a source for school authority, is not really consistent with compulsory education law. Schools still are a public agency.

Another issue is whether we should apply the exclusionary rule only to strictly law enforcement authorities. This gets us back to the original purpose of the Fourth Amendment, which was to protect our citizens from having their reasonable expectations of privacy interfered with. Now, even if some schools do have some security problems, I don’t think we are ready to equate schools with jails or other high security institutions where there is no expectation of privacy.

We can say reasonably that kids have some need to bring personal items to school, such as keys, money and the necessaries of personal hygiene and grooming. In addition, we can certainly see that highly personal and lawful items such as photographs, letters and diaries might be on a kid’s person. So, there is a certain expectation of privacy that should be respected.

So how do we strike a balance between the legitimate need of the schools to keep order, and the legitimate interest of the kids to a certain amount of privacy?

The Fourth Amendment prohibits “unreasonable” searches and seizures. How reasonable would it be to require school officials to go downtown and get a search warrant every time they want to search someone? That is not very practical. And although we
demand "probable cause" before a search warrant can be issued, we often don’t demand that when searches are for areas where there are lesser expectations of privacy than in a residence. We have had lots of cases where we thought searches were reasonable where the circumstances were suspicious, although not rising to the level of probable cause.

A number of lower courts have taken the position that these types of searches should be judged on whether there were reasonable grounds to suspect that evidence of violation of law or school regulations would be found and whether the search was performed in a reasonable manner.

Well, we need to vote on this case. On the one hand, we have the school needing to keep order, and on the other hand, we have the student’s right to privacy at some level. How many of the justices think under a reasonable interpretation of the Fourth Amendment, the school had a right to look into T.’s purse? How many think they didn’t? (Compute for a nine member court.)

As often happens, the justices of the United States Supreme Court had different views on the case. But essentially, with some qualifications, they voted 6 to 3 in favor of the school district. They did believe that the Fourth Amendment applies to school officials, but also found that the requirements and special circumstances of a school setting make a flexible standard appropriate.

They found it was appropriate for the vice-principal to look into the purse for evidence of smoking when there was a dispute between a teacher and student over whether the student had been smoking. When the cursory search turned up cigarette rolling papers, this gave support to a further search because rolling papers are often connected to drug use among children. Finding marihuana and a rather substantial amount of money then gave support to a further search which turned up the incriminating letters.

The court therefore found that under these facts the search was appropriate. Different facts might well lead to different results.
Vernonia School District v ACTON

About this case: This case involves a school district that adopted a Student Athlete Drug Policy. A parent of a student athlete filed an injunction to prevent the enforcement of the policy. The issue of reasonableness as it applies to the Fourth Amendment is reviewed.

Appropriate for grades: 6th-12th
The Vernonia, Oregon school district is located about 40 miles northwest of Portland, Oregon. Vernonia is a logging community, and like a lot of small towns in America, school sports is a big part of community life. Let’s have Vernonia’s school superintendent, president of the PTA and the football/wrestling coach up here. (Pick three “volunteers.” Get their names.)

Superintendent ________, I understand your PTA president here has informed you that the parents of Vernonia are concerned. In years gone by drug use by students in the local schools had not been a big problem in Vernonia. But in the mid-to-late 1980’s the teachers and administrators of the school system began noticing the signs of increased drug usage among the students.

Students talked more and more about their attraction to drugs and began to openly brag that the schools couldn’t do anything about it. Along with the apparent increase in drug use came more disciplinary problems. By 1989 the number of disciplinary referrals doubled over what they had been a few years before. Students became increasingly rude in class and outbursts of obscene language became common.

Now as I understand it, the three of you were very concerned and the community had a pretty thorough discussion and study of the problem. You found that student athletes in the school system were not only sometimes using drugs, but were identified as leaders in the drug culture.

Coach, what were your main concerns when your suspicions of drug use by your athletes were confirmed? (Greater risk of injury to themselves and others.) And was the PTA and the school administration worried when they heard about the problems of motivation, memory, judgment, reaction, coordination, and performance that drug use can cause? You bet!

So, you did the logical things. You brought in speakers on drugs and offered classes on the dangers of drug and alcohol abuse. You even brought in a drug-snooping dog on campus to deter drugs from being brought into school buildings. But nothing worked. So you had a community meeting where input on what could be done was gathered. As a result of this meeting and other actions, the school adopted a Student Athlete Drug Policy that everybody pretty much agreed on.

The policy applied to all students participating in interscholastic athletics. Students wishing to play sports had to sign a form consenting to a drug testing program. Athletes would be tested at the beginning of the season, and each week there would be random testing of 10% of the athletes. We won’t go into all the details, but the tests were arranged with respect for the students’ privacy, but in a way that would make tampering extremely difficult.
If a test came up positive for an illegal drug, a second test would be given to confirm the result. If the second test came up negative, no further action would be taken. If the second test came up positive, the athlete’s parents would be notified, and the school principal would convene a meeting with the parents and the student. The student would be given the option of participating for six weeks in an assistance program that included weekly urinalysis, or suffering suspension from athletics for the remainder of the current season and the next athletic season.

The student would be retested prior to the start of the next athletic season for which he or she was eligible if they wanted to go out for the team. Further violations would result in similar consequences. Everyone in the school district thought that the policy was fair. Students who tested positive were not reported to the police.

We now need someone to play the parts of James Acton and his parents. (Pick them.) James wanted to play football. Does James use drugs or alcohol? No, certainly not. Does he ever appear to be under the influence of drugs or alcohol? No, again. You Actons don’t like this school policy because you think it’s a kind of “Big Brother is Watching You” kind of thing, right? So you file a law suit asking that one of the federal judges for the District of Oregon issue an injunction to prevent the enforcement of this policy.

Who is your lawyer? (Bring them up.) And we need a judge. (Bring up a judge and let them wear a robe.) Now lawyer __________, what do you think you can present to the good old judge here that will show that your clients are right? (Point in an exaggerated way to the Fourth Amendment in a copy of the Constitution.) The Fourth Amendment! Very good! Why don’t you read the Fourth Amendment to the judge. (Lawyer reads the Amendment.) (Maybe talk briefly about the reasons why the Founders wanted a Fourth Amendment.)

Now the U.S. Supreme Court has ruled that the Fourth Amendment is applicable to the actions of the States by the Fourteenth Amendment. The most important word we need to talk about in the Fourth Amendment is "reasonable." Judge, we know the requirement to provide a urine sample by a state agency is a search. How are you going to rule on the question of whether this is a reasonable search and why. (Discuss the issue with the judge briefly.) (The original trial judge found the search policy was reasonable and threw the case out after a hearing. If the judge here goes the other way, you will say something like, “No, judge, what you really ruled was that the search policy was constitutionally correct, all things considered.” Otherwise, you say something like, “That is just what the trial judge ruled.”)

Well, Actons, what can you do? Right, you can appeal to the Ninth Circuit Court of Appeals. And (turn to the same judge) we have the chief judge right here. Judge, did your court agree with that hard-nosed trial judge? No, you didn’t. Your court said the search was unreasonable and threw out the school policy.

School people, is there anywhere else you can go after we lose at the Circuit court level? The Supreme Court of the United States? The Supreme Court only takes about 90 to
100 cases a year. They turn down cases concerning millions of dollars. They deal with death penalty cases. Do you think they will take this little tinkle in the jar case? Well, they do. So we all get to go to Washington D.C. where the Court sits. The Supreme Court building is right across the street from the U.S. Capitol Building and you really ought to see it if you are in the area. (Have the participants sit down.)

You (everyone in the room) are now all Justices on the U.S. Supreme Court. Is there a Justice here who believes that the Ninth Circuit Court of Appeals was incorrect and that this is a reasonable search? Justice________, why do you think this was a reasonable search?

Issues that can be discussed: (Try and get wide participation. Call everyone Justice.)

1. This is not a law enforcement/criminal search.

2. Griffin v. Wisconsin (1987) said a search unsupported by probable cause can be constitutional "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."

3. In T.L.O. v. New Jersey (1985) the court upheld a search of a school girl’s purse based on a reasonable individualized suspicion of unlawful smoking that did not rise to the level of probable cause. We allowed this lessened standard because a warrant-probable cause standard "would unduly interfere with the maintenance of the swift and informal disciplinary procedures " that are needed in schools.

4. The court has also upheld testing of railroad personnel involved in accidents, even though there was no probable cause to believe there had been drug use. Skinner v. Railway Executives Assn. (1989). The court also found no Fourth Amendment problem with random testing of federal officers who carry arms or are involved in drug interdiction. Treasury Employees v. Van Rabb (1989). The reasons for these cases are pretty obvious.


6. Kids in public schools don’t have the same expectation of privacy that an adult on the public street or in their own home would have. Kids going out for sports also agree to further discipline in the normal course of training and participation. In this policy, the testing was not revealed to the police, but was pursued for the physical health and safety of the athlete and those he or she would compete with. Also, DRUGS ARE A BIG PROBLEM.

On the other hand, there is certainly a slippery-slope argument that we need to consider. This policy allows testing without any showing of even a reasonable suspicion of drug use. If we can do this with no objective evidence of any wrong-doing, where do we stop? Wouldn’t it make more sense to do random testing of students who actually engaged in
the kind of disruptive behavior that was causing the school administrators and teachers the concern? Why subject student-athletes who have done nothing wrong to testing, when rule-breakers are not?

Well, we have to make a decision. This is why you get to wear the black robes and everyone treats you like a very important person. Of course, everything you write on this case will be printed in many thousands of books and circulated all over the world. If you are wrong, people will be able to laugh at you for the next 100 years. But don’t let that worry you, that’s what being a judge is all about.

How many think the school district and the federal district judge were right, at least to the extent that this policy does not violate the Fourth Amendment because it is reasonable, even if we might do it differently? How many agree with the Ninth Circuit Court of Appeals and the Actons who think this policy, even if passed with good intentions, violates the Fourth Amendment? (Translate into a nine judge vote).

The Supreme Court actually ruled 6 to 3 in favor of the school district. Justice Scalia, who wrote the majority opinion, talked about the issues we discussed. He said that, all things considered, this was a reasonable exercise of school authority, which was exercised in a reasonable way. The minority opinion, written by Justice O’Connor, pointed out the dangers of allowing testing of students who had given no indication of wrong-doing. They were concerned by the possible erosion of the Fourth Amendment, which is a very important protection of our freedoms.

It will be interesting to see if any school districts attempt to expand testing for drugs beyond the limits of the Vernonia policy. Any comments or questions?
Board of County Commissioners of Wabaunsee County, Kansas v Umbehr

About this case: This case involves the First Amendment to the constitution of the United States and trash hauling. This case also looks at the difference between public and private actions.

Appropriate for grades: 6th-12th
NOTES ON
BOARD OF COUNTY COMM'RS OF WABAUNSEE COUNTY, KANSAS v. UMBEHR

Does anyone know where Wabaunsee County, Kansas is? (The county west of Shawnee county) Does anyone know the county seat? (Alma)

The next case originated in Wabunsee County. It involves the First Amendment to the constitution of the United States and trash hauling. We need you three students (pick three) to play the parts of the county commissioners of Wabaunsee County. (Discuss briefly the trials and tribulations of running for and holding public office at the county level. Then briefly discuss their obligation to contract for trash hauling for six small towns in the county and how they would probably go about choosing someone.)

And you decide to give the year to year contract to Keen Umbehr. (Pick a student to be Umbehr) Keen does a very good job hauling the trash in his first year, so you give him the contract the next year and the three succeeding years, because he was doing a good job. Then, the problem that got you to the Supreme Court boiled over. Keen, instead of being grateful for your business and keeping quiet, soon became a constant critic of the commission. He criticizes you for lots of things in your running of the county from landfill fees to general inefficiency. He does it at commission meetings and in letters to the newspaper. Even worse, he claims you violated the Kansas open meetings act, and he’s right. You have to sign a consent decree that you won’t do that again, and that is very embarrassing.

Keen even runs against one of you for commissioner. You beat him like a drum, but it’s still pretty irritating.

So it comes time to decide if you want to give Keen the annual contract again. The three of you think about the situation. You know there are other people around who could probably do the job. We aren’t talking about a technical job, although you want to have a responsible and reliable person doing it. What do you think you decide? Well, the Board actually voted 2 to 1 not to give the contract to Keen again.

Keen, what do you think about this? (Discuss with Keen why he should be disgruntled with this decision.) So you talk to a lawyer and the lawyer thinks you might have a case of a violation of your constitutional rights. What constitutional right do you think is being infringed upon? (Either lead him into or just announce that freedom of speech is involved.) You and your lawyer file a lawsuit in the federal district court in Topeka and the county is represented by (pick a student). Their attorney files for what we call summary judgement. The county says that even if the only reason they didn’t renew the contract was because you criticized them, that they can do that because you are an independent contractor, not an employee, and you have no right to the contract, which has to be renewed every year.
Judge Rogers agrees with the county. Keen, are you going to give up? No! You appeal to the Tenth Circuit Court of Appeals in Denver and you win! They reverse the district court and rule in your favor.

Is the county going to give up? No! You ask the Supreme Court to review the case and they agree to hear it. So here we are in Washington. Justice (choose a student) do you think the county commissioners should be allowed to give the trash hauling contract to someone else, just because Keen criticizes the county commissioners? (Discuss that and the following questions with other “Justices” as time and student interest permits)

Why do we have the First Amendment protections of freedom of speech? What benefits might we get from having Keen speaking up? (Information about governmental practices) What happens if we discourage people like Keen from speaking up? (Public might be denied useful information about their government) Should it make a difference if the people doing the suppressing are public officials? (Discuss difference between public and private actions in this area) Does it make a difference that this is just a failure to renew, as opposed to breaking a contract or firing someone? Hasn’t what the commissioners have done always been the way these things were handled?

Well, we have to vote. How many Justices think that the commissioners, because they are public officials and have the right to award this contract every year, can refuse to give the contract to Keen again because he has criticized them on matters of public interest? How many think Keen should get the contract again because he has done a good job and should not loose it because he has criticized the commission on matters of public interest? (Compute the vote into a nine judge vote)

Well, the Supreme Court came down with a somewhat complicated decision on this. By a vote of 7 to 2 they said that a public agency like this is different from a private company or individual. We expect public officials to be able to bear criticism on matters of public concern. We want to encourage open and robust discussion of public matters. We know the criticism of public officials might not always be fair, but that is the price we pay for freedom of speech and open government. The answer to unfair criticism is to present the other side to the public. If the criticism is so scurrilous, untrue and unfair as to constitute libel or slander, there are ways to deal with that.

The court said if there are a number of reasons why an individual like Mr. Umbehr does not get a contract renewed, he will have to prove the inappropriate reason was the substantial reason he wasn’t renewed and we will usually give the governmental bodies the benefit of the doubt. The courts will have to balance the free speech rights of people like Mr. Umbehr against the legitimate interests of the governing body in determining whether the refusal to renew was appropriate. They also said, it might have been a very different story had Mr. Umbehr not had such a good record as a trash hauler.
The court sent the case back to the district court in Topeka for a determination of whether Mr. Umbehr was not renewed only because of his criticism and whether his criticism was of the kind protected by the Supreme Court’s decision. When we checked with the court in Topeka, apparently the county admitted that the only reason for Mr. Umbehr not getting renewed was his criticism and the county admitted his criticism was probably the kind protected by the court’s decision. Mr. Umbehr will probably get his attorney fees paid for, but he probably won’t have much other damages. After the county didn’t renew him, five of the six towns went with him anyway, as they had a right to do.

So Keen, you win!
Whren v. United States

**Brief Fact Summary.** A stopped vehicle attracted the attention of a vice officer. A subsequent chase and search revealed drugs.

**Synopsis of Rule of Law.** In a conventional civil traffic stop, the Fourth Amendment is met by the traditional common-law rule that probable cause justifies a search and seizure.

**Facts.** A truck stopped at an intersection for an unusually long time attracted the attention of a vice-squad officer patrolling a “high drug” area of D.C. When the police officer made a U-turn, the truck turned and sped off. The officer caught up with the truck, and forced it to pull over. The officer went to the truck and immediately saw two bags of crack cocaine.

**Issue.** “Whether the temporary detention of a motorist who the police have probable cause to believe has committed a civil traffic violation is inconsistent with the Fourth Amendment’s prohibition against unreasonable seizures unless a reasonable officer would have been motivated to stop the car by a desire to enforce traffic law.”

*Provided by www.casebriefs.com*

Appropriate for grades: 6th-12th
NOTES ON WHREN v. UNITED STATES

This case arises out of an incident that took place only a few miles from the U. S. Supreme Court’s building. Officer Ephraim Soto and his partner (choose the two toughest looking guys in the class to play the parts) were patrolling a high crime area in Washington D.C. They were doing so under-cover, in plain clothes, in an unmarked vehicle. They were part of the District of Columbia Police Department vice-squad and were on the look-out for drug activity.

During their patrol they came upon a Pathfinder truck with temporary plates and youthful occupants. The Pathfinder appeared to be stopped at an intersection. As the officers observed the vehicle, it appeared to be remaining at the intersection in the high crime area for a long time. (At this time, you might consider engaging the “officers” in a dialogue about what they were probably thinking about the vehicle <drug trafficking> and what they might do as a result of their observations <check them out!>)

As the officers turned their vehicle around to make a pass by the Pathfinder, the Pathfinder turned suddenly to the right, without signaling, and took off at a high rate of speed. Both of these actions are in violation of the traffic code of the District of Columbia. (Officer Soto, what do you do now? Right! You go after them! Why? Because you’re police officers and you have just observed a breach of the law!).

You are able to catch the Pathfinder in a couple of blocks and you go up to the driver (assign the part to a student) Mr. Brown, identify yourself as a police officer, and tell him to put the vehicle in park. You then note the passenger, Mr. Whren, had two large plastic bags on his lap which appeared to contain a white powder. (Officer Soto, based on your experience as a drug officer, what do you think is in those bags? Right! It’s crack cocaine! You check the contents of the bags and confirm they are cocaine and place Brown and Whren under arrest.

The next morning you meet with an assistant district attorney to discuss the case. The assistant D.A. is trying to get a handle on the case and asks you why you were interested in the Pathfinder. You are honest and say it was because you had a strong feeling that, based on its location and its actions, the occupants were probably engaged in drug activity. The assistant D.A. then asks you if you had probable cause to believe that the occupants were involved in drug activity. You reply, no, you just had a well founded hunch, based on your experience. Then why did you stop the vehicle if you didn’t have probable cause to believe they were involved in drug activity, asks the assistant D.A. And what do you say in response? Right! You are a police officer and they violated the traffic laws right in front of your eyes!

Mr. Whren and Mr. Brown, what do you think your lawyers argue when you get to court? Right! The evidence ought to be suppressed under the exclusionary rule because this was a pretextual search. The officers didn’t stop you because of the traffic infraction. The
officers have very honestly admitted they would not have stopped the vehicle if they hadn’t thought there were drugs in the car. In fact there is even a District of Columbia Police Department policy that states undercover police officers should generally not attempt to enforce traffic infractions, unless they are very serious ones, because of the dangers involved. And, as your lawyers point out, the officers did not have probable cause to believe there were drugs in the vehicle, only a hunch.

Mr. Whren and Mr. Brown, how well do you think your argument will do with the trial judge here? (Pick another student). Actually, the kindly old judge thinks you have a lousy argument, doesn’t suppress the evidence, and you are both convicted of serious drug offenses. You appeal to the Court of Appeals, who affirms your conviction, but the Supreme Court of the United States agrees to take your appeal.

Now you (pick another student) are representing Mr. Whren and Mr. Brown in the Supreme Court. Your argument is that the officers were not operating in good faith when they made the stop. You maintain that there is no doubt that the officers would not have stopped the vehicle just for the traffic violations without their hunch that the occupants were involved in drug activity. There is also no doubt that they did not have probable cause to believe Whren and Brown were involved in drug activity. Therefore, you argue brilliantly, they were not operating in good faith, and we should not allow the introduction of evidence that is not obtained in good faith, by honest means, by the police.

On the other hand, you (pick another student) argue for the state that there is nothing in the exclusionary rule as developed by the Supreme Court that requires the police to have completely pure motives when they do something. As long as they have a legal justification for what they are doing, even if it isn’t the real reason for what they are doing, it’s lawful and should not be grounds for excluding any evidence they find.

Does anyone here on the Court have a preliminary opinion as to how we should resolve the issue of whether to allow the introduction of evidence the police see in plain view after a traffic stop like the one we have here? (See if you can get some opinions. Maybe call on someone.)

Might we have a problem here, if we allow such stops, of selective enforcement of traffic laws? How many think it’s possible to drive for any period of time without violating at least a minor traffic law? Might officers harass particular persons or groups of people with ultra-strict traffic enforcement so they could get the opportunity to at least stop the cars and take a quick look inside? (Discuss).

Well, we have to take a vote. How many believe the police have the right to stop someone for a traffic violation, when the real reason for the stop is suspicion of something else, and that they can then use any evidence they see in plain view after they stop them? How many think they can’t do that. (Convert the vote to a nine judge vote). Well, Judge Scalia wrote the opinion on this cases for the court (which is probably bad news for a
criminal defendant) and the vote was unanimous. The court said they were not going to require the police to have pure motives in cases like this. As long as the police have a technically lawful reason to stop defendants for a traffic violation, even if that is not the real reason for the stop, we will not exclude evidence obtained as a result of the stop, as long as it is otherwise lawfully obtained.

So, Mr. Whren and Mr. Brown, you loose.
Constitution Day Projects for 6\textsuperscript{th} and 7\textsuperscript{th} Grade Students
Hon. Karen Arnold-Burger

This lesson includes a discussion about the three branches of government, an overview of the Bill of Rights, and scenarios on searches, the rights of government, the right to protest, the trial, and punishment.

Appropriate for grades: 6th and 7th
CONSTITUTION DAY PROJECTS  
HON. KAREN ARNOLD-BURGER

SIXTH AND SEVENTH GRADE

NEEDED: Lesson Plan  
Scripts of Skits  
At least one robe (preferably 3) and a gavel

Group Size: 50-60

Number off group 1,2,3 (for judges, plaintiffs, and defendants). Then within each group, number off 1,2,3, 4, 5 (for each scenario). Hand out appropriate scenarios to each group and let them read while you explain to the judges their role. Let them read and meet in their smaller groups for 10-15 minutes. You will need teachers help. Then call up each scenario (All the 1's from each group). Put them in their places, judges [3], prosecutors [3], defense [3] and have them make their argument. Discuss, then call up the next scenario (all the 2's from each group), etc.

Beginning Discussion:

Our ancestors fought the Revolutionary War so they could establish a democratic government where people had a say in their government instead of the King being the only one to decide. The King had taxed them without giving them a chance to argue it was too much or not necessary. The King raided their homes without cause and required them to house soldiers in their homes. If a crime was committed, no one got a trial, there were presumed guilty and thrown in jail. So the founding fathers and mothers decided when they set up the new country it would be different. The Constitution starts out with this language (READ PREAMBLE).

Ask students to name the three branches of government and what they do.

Legislative Branch: Power to make laws  
Executive Branch: Power to enforce laws (police, prosecutors, etc.)  
Judicial Branch: Power to interpret the laws

Bill of Rights (read or have them read aloud)
Constitution Day "Bill of Rights" Lesson Plan
Length: 50 - 60 minutes
Supplies needed: paper/pens for the kids (optional)

(Disclaimer: I make no promises that this won't flop in a dramatic and spectacular manner.)

Introduction
5 - 7 minutes
Your general introduction as to who you are, your position on the Court of Appeals, the role of an appellate court, and however introductions to these things generally go

The Bill of Rights: An Overview
10 - 15 minutes
Reading the Bill of Rights aloud (either as a group or just you; I think it will depend on how you feel about the timing for the rest of this plan) and generally explaining the various protections present in the Bill of Rights

Instructions on the debate
5 - 7 minutes
Reading the instructions on the debates (on next page), splitting the kiddos into groups to put together their arguments, explaining the role of the "court"

Debate planning
10 minutes
The kids spend about 10 minutes developing their ideas as to the constitutionality of the actions in their "case" (this will make more sense in conjunction with the scenarios on the next page)

The Court hears arguments & rules
10 minutes
A representative from each group explains their side to the "court" group and the "court" group rules on the outcome

Real outcomes
5 minutes
Explaining how a real court would rule if, of course, a real court has ever ruled on the scenarios (I am sure some extrapolation here is fine)
Constitution Day Debate Scenarios & Directions

Directions: Attached are four "case scenarios." The class will need to be split into nine groups for this: eight debate groups and one court group.

The role of the debate groups: each group will get a half-sheet that has the scenario and says either you must argue that this is allowed or you must argue that this is not allowed on the bottom. This determines the debate group's issue and stance on the matter. Their goal is to argue their side to the court group and win.

The role of the court group: the court group will receive all four scenarios so they know what is going to happen before it is their turn. Their job is to hear the arguments and decide the outcome. This group should be an odd number (5, 7, 9) to ensure there are no ties.

(Note: I have no idea the best way to split up the kiddos. You could count off 1 through 9 and just adjust the ninth group (the court) in order to ensure that they're an odd number. Alternately, you could join an even-numbered court group.)

Each debate group will have 10 minutes to talk over their scenario and come up with their argument. At the end of 10 minutes, each group will present their case to the court group. The court group will vote on the winner.

The scenarios are on the next page.
Scenario 1: The Search

A fifteen-year-old high school student is waiting in line outside the high school before school starts for the day. He has his backpack on the ground next to him. There are police officers outside the school who keep the school secure. One of them has a police dog with him. As the officer walks by with the dog, the dog starts barking at the student's backpack. The officer knows that the dog only barks like that when it can smell something illegal. He takes the student's backpack to search it.

Is this legal?

You must argue that this is allowed / legal.

Possible reasons: The officer had reason to believe drugs were in the student's bag. The school has a right to protect its students from drugs. This was not unreasonable. If a student is going to bring a backpack into the school, to protect the other students police or administrators can search it if they believe there is something illegal in it. The dog sniffing gave them that reason.

Scenario 1: The Search

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Is this legal?

You must argue that this is NOT allowed / legal.

Possible reasons: The 4th Amendment of the constitution prohibits unreasonable searches and searches. The searches also have to be based on probable cause. This student has a right to privacy in his backpack and the officers had no reason to send the dog over to sniff his backpack.
Scenario 2: The Rights of the Government

The city of Topeka has designed a new road. The road is necessary to get people from one part of the city to a newly developed area. The only place the road can go is right through Mr. and Mrs. Farmer's land. The City tells Mr. and Mrs. Farmer that they must sell the land for the road to the City. Mr. and Mr. Farmer do not want to sell their land, even though the city is going to pay them a fair market price.

Can the city make them sell their land?

You must argue that this is allowed / legal.

Possible reasons: The 5th amendment to the constitution says that a person's property cannot be taken for public use without just compensation. The City is taking it for a public purpose, a road that will benefit many, and they are giving a fair price, so Mr. and Mr. Farmer must sell.

Scenario 2: The Rights of the Government

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Can the city make them sell their land?

You must argue that this is NOT allowed / legal.

Possible reasons: Mr. and Mrs. Farmer own the land. They cannot be forced to sell it. They get their income from the land by farming it. By taking the land they will no longer have that income. They cannot find another place as nice as this to live with the money they get. The land has been owned by Mr. Farmer's family for over 200 years. This isn't fair. The City allowed the new development to go in, they should find a way to get people to the property without going through Mr. and Mrs. Farmer's land.
Scenario 3: The Protest

A group of people who really love the dog park are upset because the city wants to tear down the dog park and build a parking garage there. They decide to get together on Saturday afternoon to protest the new parking garage. They make signs, buy bullhorns, and come up with songs about how much they love the dog park. But on Saturday afternoon, the police show up and tell them to stop their protest because they are being loud. When they won't stop, the police arrest everybody and their dogs.

Is this legal under the 1st Amendment, which promises the freedom of speech?

You must argue that this is allowed / legal.

Possible reasons: The police (the executive branch) has a right to protect the public peace and these protesters may be disturbing others that live around the park by being too loud. They can protest, but they have to act right and in a way not to disturb others.

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Is this legal under the 1st Amendment, which promises the freedom of speech?

You must argue that this is NOT allowed / legal.

Possible reasons: The first amendment of the constitution gives us all the right of free speech, to tell the government that we think they are wrong and to assemble peaceably. So the protestors have a right to be there. They can be loud, but if the police thought they were too loud they needed to ask them first to quiet down and then maybe arrest the people that were too loud, but they can't stop the whole protest. It is our constitutional right to protest government action.
Scenario 4: The Trial

A person is charged with murder. After a long trial, the jury finds the person not guilty. Several months after the trial is over, additional evidence comes to light that proves the person really did commit the crime. Based on this new evidence the prosecutor charges the person with murder again.

Is this legal under our constitution?

**You must argue that this is allowed / legal.**

Possible reasons: A person should not be able to get away with murder. This evidence wasn't available at the time. The victim and the victim's family deserve to see the murderer convicted and punished.

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Is this legal under our constitution?

**You must argue that this is NOT allowed / legal.**

Possible reasons: The Fifth Amendment to our Constitution says that no person shall be twice put in jeopardy for the same crime. The murderer was already found not guilty that ends it. It may not seem right, but otherwise people could be charged again and again with the same crime until the prosecutor gets a jury that will convict the person. That's not right either.
Scenario 5: The Punishment

A man is caught stealing a loaf of bread from a local store. He is arrested and convicted of the crime. The judge sentenced him to 30 days in jail and ordered that his right hand be cut off. Should the sentence be struck down under the constitution?

You must argue that this allowed:

Possible reasons: The constitution says that the legislature gets to decide the laws and the punishments. The people in a democracy vote for their elected representatives and those representatives decided that cutting your hand off was the appropriate punishment, just like they decided that you should get life in prison or the death sentence if you kill someone. The judicial branch can't overrule something the legislative branch says because we have separation of powers.

Scenario 5: The Punishment

A man is caught stealing a loaf of bread from a local store. He is arrested and convicted of the crime. The judge sentenced him to 30 days in jail and ordered that his right hand be cut off. Should the sentence be struck down under the constitution?

You must argue that this NOT allowed:

Possible reasons: The 8th amendment to the constitution prohibits cruel and unusual punishment. The judicial branch interprets the law to determine if they violate the constitution.
AMENDMENT 1
Freedom of Religion/Political Freedoms

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Five Freedoms of the First Amendment
1. Freedom of Religion
2. Freedom of Speech
3. Freedom of the Press
4. Right to Assemble
5. Right to Protest/Petition
AMENDMENT 2
The Right to Bear Arms

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Because it is necessary to maintain a militia of men ready to defend the country, Congress does not have the right to keep people from owning and carrying gun. This issue has been greatly debated in the past few years.
AMENDMENT 3
Quartering Soldiers

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

During peacetime, no soldier can be forced into the homes of private citizens. During war, soldiers can be placed in private homes only in a manner as prescribed by Congress.
AMENDMENT 4
Regulation of Search and Seizure

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.

The government cannot search a person, his home, his papers, or his personal effects unless a proper search warrant has been authorized. A search warrant can only be issued through a court of law if proper explanation of why the search needs to be made has been provided. That explanation must include the place to be searched, the reason for the search, and exactly who or what is expected to be found.

The fourth Amendment protects our right to privacy including the right to be free of unwarranted and unwanted government intrusion into one's personal and private affairs, papers, and possessions.
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militias, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, not shall be compelled in any criminal case to be a witness against himself, no be deprived of life, liberty, or property be taken for public use without just compensation.

No one can be held in jail for a crime that is punishable by death or imprisonment, unless a Grand Jury evaluates the evidence presented to it and determines that there is enough evidence for a trial.

1. No one can be tried for the same crime twice. Once you are found not guilty by a jury, you cannot be tried for that crime again.

2. A defendant does not have to testify against himself. The defendant has the “right to remain silent.”

3. All citizens are entitled to the due process of law. All citizens are entitled to all courses of the law before the government can take away life, liberty, or property.

The government cannot take private property for public use (to build a highway, for example) without paying a fair market value to the owner.
AMENDMENT 6
Rights of Persons Accused of a Crime

In all criminal prosecutions, the accused shall enjoy the right to a speedy public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.
AMENDMENT 7
Right of Trial by Jury

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in a Court of the United States, than according to the rules of the common law.

Amendments 5 and 6 deal with criminal cases, but Amendment 7 deals with civil cases. To keep the court from harassing private citizens, this amendment guarantees trial by jury for cases involving more than 20 dollars.
AMENDMENT 8
Protection Against Excessive Fines, Bail, Punishment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

This Amendment protects against overzealous and unreasonable treatment of the citizens by the court. Note that many punishments common at the time, are now considered to be "cruel and unusual" by today's standards.
AMENDMENT 9
Guarantee of Unspecified Rights

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

This Amendment has been interpreted to protect "natural rights" including life, liberty, and the right to pursue happiness including the freedom of choice in the basic decisions of one's life with respect to marriage, divorce, and the education and upbringing of children. The colonists did not want a tyrant or a tyrannical government to control certain aspects of their life. However, many of these rights can be regulated by the state government.
AMENDMENT 10
Powers Reserved to the States and the People

The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The governmental powers not listed in the Constitution are powers that the states, or the people of those states, can have. This Amendment guarantees that the federal government cannot usurp power from the states by claiming powers not delegated to it by the Constitution. The Constitution leaves it to the states to make laws about marriage, divorce, education, zoning, public health, driving regulations, state roads, among others.