**Civil Discourse and Difficult Decisions**

*Legal Skills as Life Skills*

1. **Background**

* **Program Description** – Advance Handout: For the Judge, Attorney Volunteers, and Teachers

1. **Agendas**

* **Agenda/Generic –** Courtroom Program: For all Participants
* **Agenda/Detailed –** Step-by-Step Guidance: For the Facilitator and All Volunteers.

1. **Reality Check Quiz**

* **Reality Check Quiz** – Questions: For All Participants

1. **Civil Discourse Activity**

* **Civility Self-Reflection Sheet --** Activity Handout: For all Participants
* **Setting Ground Rules for Civil Discourse** – Activity Handout: For All Participants

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

* **Facts and Case Summary** – Handout: For All Participants
* **Fictional Scenario** – Handout: For All Participants

1. **Student Attorney Preparation**

* **Opening Protocol** – Handout: Only for Attorney Coaches and Student Attorneys
* **Talking Points** – Handout: Only for Attorney Coaches and Student Attorneys

1. **Evaluation**

* **Feedback Form** – Handout for Participants

**Civil Discourse and Difficult Decisions**

Legal Skills as Life Skills

**Civil Discourse and Difficult Decisions** is a national initiative of the federal courts that brings high school and college students into federal courthouses for legal proceedings that stem from situations that law-abiding young people can find themselves. These court hearings (not mock trials) are realistic simulations that showcase jury deliberations in which all students and learning styles participate in civil discourse.

Proceedings are conducted in courtrooms presided over by federal judges who are assisted by volunteer attorneys, including members of local chapters of the Federal Bar Association. Although student attorneys argue the case, student jurors and their deliberations are at the centerpiece of the courtroom event.

**Learning Objectives – Benefits to Students**

Students leave these three-hour programs with sharpened tools for civil discourse and decision making and a heightened awareness of situations they may not realize can have legal and long-term consequences. They also experience the differences between media portrayals of the court system and what happens in real life. Participants interact with the human face of the justice system – judges, attorneys, and other professionals – and their courtroom experience motivates them to serve willingly on juries when called.

**Roles and Resources**

The roles for the adults are presiding judge and volunteer attorneys who coach the student attorneys and work with the student jurors. Each role has an online folder with detailed guidance. The program facilitator manages the courtroom program and guides the jury deliberations. The judge presides over the simulation and talks with the students in the courtroom after the event.

* **Volunteer Attorney Coaches Who Work with the Two Student Attorney Teams** *(one volunteer per team or two per team, according to local preference)* They present the case information and prepare the student attorneys. Four student attorneys – two on each side – present oral arguments before the judge and jury.
* **Volunteer Attorneys Who Work with the Student Jurors** *(one or two, according to**local preference)*They prepare the jurors for the centerpiece of the program – analyzing all sides of the issues during jury deliberations. All students who are not attorneys serve as jurors.

**What Happens in the Courtroom Program?**

**1. Reality Check Quiz and Civility Self Reflection Sheet**

Students start by taking an attention-getting Reality Check Quiz that tests their knowledge of situations that can put them in legal jeopardy. At the end of the program, they discuss the issues with the host judge and leave with insights that have practical applications in their lives. As part of the program icebreaker, they also fill out a civility self-reflection sheet on how they measure up in using civil discourse skills.

**2. Civil Discourse Skill Building**

This activity has two parts: 1) Students discuss their own civil discourse attitudes, behaviors, and language. 2) Students establish their own ground rules and group norms for civil discussion.

**3. Courtroom Simulation**

Student jurors are featured in the program as they decide a contemporary Supreme Court case that is modified with a fictional scenario that is applied to their lives. The jurors base their verdict on arguments made by the student attorneys. Not a mock trial, this abbreviated hearing helps participants differentiate between what they see in the media and what they experience in a real courtroom.

**4. Reality Check Discussion**

The program concludes with a candid conversation with the host judge about the real-life scenarios in the Reality Check Quiz that can have legal and long-term consequences.

**Time Commitment**

**Judge and Lawyers:** Spend 30**-**45 minutes reading the courtroom-ready program materials; participate in one orientation meeting with the Judge; and commit two hours to 3.5 hours to the courtroom event.

**Teachers’ Time Commitment:** No classroom preparation or pre-reading for the students or teachers.

**Courtroom Program:** An average of three hours for the students – from orientation to adjournment.

**Generic Agenda:** *Courtroom Handout for All Participants and Observers*

**Civil Discourse and Difficult Decisions**

Legal Skills as Life Skills

**8:00 – 8:25 a.m**. **Students Arrive and Complete**

*(25 minutes)*  **1) Reality Check Quiz**

**2) Civility Self-Reflection Sheet**

**8:25 —8:35 a.m.** **Welcome and Interactive Courtroom Tour**

*(10 minutes)*

**8:35—9:05 a.m. Introductions and Civil Discourse Activity**

*(30 minutes)*Attorneys Introduce Themselves: *Why I Chose the Law*

* **Discussion:** *Civility Self Reflection*
* **Handout**: *Setting Civil Discourse Ground Rules*

**9:05 – 9:15 a.m. Attorney Coaches #1 and #2 Present**

*(10 minutes)*  **1)** *New Jersey v. T.L.O.* Facts and Case Summary **2)** Fictional Scenario

**In Advance**: **Teacher Selects Four Students to be Attorneys**

**+**

**9:15 –9:40 a.m. Student Attorneys and Student Jurors Prepare for the Simulation**

*(25 minutes)* **In two rooms outside the courtroom:** One attorney coach works with Sandy Simmons’s lawyers. One attorney coach works with the Government’s lawyers.

**In the courtroom:** An attorney volunteer works with the student jurors to identify possible arguments for both sides. The volunteer talks about jury service and the importance of civility in jury deliberations.

**9:40 – 9:45 a.m. Stretch Break in the Courtroom**

*(5 minutes) Student attorneys and coaches may continue preparing, if they wish.*

**9:45 – 10:45 amSimulation: *New Jersey v. T.L.O.***

*Total: 60 minutes*

*(~30 minutes)* **Oral Arguments**

Student attorneys present their arguments to the Judge and student jury.

*(~30 minutes)* **Jury Deliberations in the Gallery of the Courtroom**

The facilitator guidesthe deliberations. Only student jurors participate.

**The Judge Asks for a Show-of -Hands Verdict**

If there is time, the Judge might ask one juror on each side to volunteer to explain their rationale.

**10:45 – 11:30 p.m. The Judge Leads a Discussion on the Reality Check Quiz**

*(45 minutes)*  **Students Complete Feedback Forms**

**Group Photo and Informal Socializing with the Judge and Attorneys**

**Adjournment**

**Detailed Agenda** *-- Guidance for the Judge, Facilitator, and other Attorney Volunteers*

**Civil Discourse and Difficult Decisions**

Legal Skills as Life Skills:

**Key Responsibilities of the Facilitator**

* Make sure that your folder contains everything listed in the checklist/table of contents.
* Keep the program moving.
* Manage and adjust the timing of the program elements, as necessary.
* Involve as many students as possible. Don’t hesitate to call on students who don’t raise their hand. Read facial expressions, body language, and note side conversations to draw in students.

**I. WARM UP**

**8:00 – 8:25 a.m. Students Arrive, Go Through Security, and Settle in the Courtroom**

*(25minutes)* **Facilitator:** While waiting in the courtroom, have students take complete the two handouts:

1. **Reality Check Quiz** *(Exhibit A)*

Reality Check Answer Key *(Exhibit A-1)* is for the Judge Only

1. **Civility Self Reflection Sheet** *(Exhibit B)*

**8:25 —8:35 Facilitator Welcomes Group and Explains Program**

*(10 minutes) The Facilitator involves students in* **Courtroom Tour** *(Exhibit C)*

**8:35 – 9:05 All Volunteer Attorney Coaches Briefly Introduce Themselves**

*(30 minutes)*The coaches introduce themselves by telling: *Why I Chose the Law.*

This is an opportunity to tell students your “heart” reason.

**Facilitator or Another Attorney Leads the Civil Discourse Activity Using the Following Handouts:**

* **Discussion:** *Civility Self Reflection Discussion Prompts (Exhibit B-1)*
* **Activity**: *Setting Civil Discourse Ground Rules (Exhibit D)*

**Questions to Stimulate Discussion About Ground Rules**

**Effective Discussion Starter**: What are some of your pet peeves when you’re having a contentious conversation with someone? What do people do that gets on your nerves? What ground rules might address your pet peeves?

* + - How do nonverbal cues (rolling your eyes, sighing, etc.) have an impact on the climate of civility? How would you phrase a ground rule for that?
    - Why are side conversations inappropriate? How could this be addressed in a ground rule?
    - What ground rules would encourage positive behavior and not just condemn bad behavior?
    - Is listening a form of participation? What is active listening?

**II. PREPARATION FOR THE COURTROOM SIMULATION**

**9:05 – 9:15 Attorney Coaches #1 and #2 Present**

*(10 minutes)* Attorney #1 Tells the Story of the **Facts and Case Summary** *(Exhibit E)*

Attorney #2 Tells the Story of the **Fictional Scenario** *(Exhibit F)*

**Attorney Coaches:** Use a simple, storytelling style. The students have the s, so it is preferable not to read to them. See the students as jurors – not as law school students, or CLE participants. Choose one or two clean, primary issues in the Supreme Court case and apply them to the fictional scenario. Don’t get into exceptions, nuances, or complexities. The limited amount of time will help you zero in on the key points. Avoid a lecture style. Ask questions and encourage the students’ questions.

**9:15 – 9:40 Student Attorneys and Student Jurors Prepare for the Simulation**

*(25 minutes)* **Note to the Facilitator:**The student attorneys and their coaches leave the courtroom to prepare. To maintain order, have the student jurors remain seated until the attorney teams exit.

**Attorney Coaches Take the Teams to Two Nearby Rooms.**

Each team goes with its coach to separate practice rooms – one for each team -- where they read and talk through the handouts. **First order of business**: Go through the folders and make sure that they contain the following:

* Opening Protocol *(Exhibit G)*
* Talking Points *(Exhibit H)*

**Go over them with you team in this order:**

1. Talking Points
2. Opening Protocol, just before they go to the courtroom.

**Tips for the Attorney Coaches: What to Do in the Practice Room**

**About the Talking Points Handout**

Students can use it any combination of the following when presenting to the Judge and jury:

* Read the fully scripted talking points as they are.
* Use selected content from the talking points and add their own arguments.
* Develop their own arguments that might include key points from the script.

**Preparing the Student Attorneys**

1. Have both students read out loud the two **questions (only)** in the **Talking Points** **Handout.** The first read- through makes them just familiar enough with the questions to be able to choose the one they want to present. Ask the students to volunteer for which question they want to argue in the courtroom.
2. Give the student attorneys time to read, underline, and make notes on their copies. They will have questions for the coaches.
3. Prepare them for the Judge’s questions. In court, after each student attorney presents, the Judge will ask questions of the presenter. Brainstorm examples of questions and discuss possible responses. Reassure them that the Judge wants them to succeed and to look good in front of their peers in the courtroom. The Judge won’t ask trick questions or try to embarrass them. In fact, the Judge will help them if they get stuck.
4. End the preparation session by having them read out loud and practice the **Opening Protocol**

before they go back to the courtroom*.*

**Preparing the Student Jurors.** They stay in the courtroom with the attorney volunteer who is the jury coach. Their task is to identify and discuss possible arguments that will come up on the hearing and jury deliberations. This segment also is a practice time for the civil discourse skills they have learned.

The coach guides the student jurors through the **Arguments Worksheet** **for Jurors** *(Exhibit I).* Student jurors read each statement and discuss it. The coach may ask them to start by talking with their neighbor, then in groups of four, then with the large group. Coaches may use the Socratic Method to draw out more comments. **See Arguments Worksheet Answer Key for the Juror Coaches** *(Exhibit I-1).*

**If there is time, the attorney volunteer talks about jury service and the importance of civility in jury deliberations.** Here are some discussion questions to stimulate conversation about what can happen during jury deliberations that might require civil discourse skills.

**Discussion Questions**

* + - What can you say to keep the conversation civil if someone’s comment is insulting or untrue?
    - What can you say if someone’s nonverbal cues are disrespectful?
    - What can you say if someone is engaging in a distracting side conversation?
    - What can you say to keep the conversation positive when it gets tense?
    - What can you say and do to show respect for someone’s statements and opinions?

If you agree with them? If you disagree with them?

**9:40—9:45 Stretch Break in Courtroom**

*(5 minutes)*Student attorneys may use this time to continue their preparation.

**III. COURTROOM SIMULATION**

**9:45 – 10:45 Judge Takes the Bench**

*Total 60 min.* **Courtroom Simulation**

*(~30 minutes)* **Student Attorneys Present Before the Judge and Jury**

**Attorney Introduction:** The Judge invites counsel to introduce themselves. Students use the scripted Opening Protocol.

**Attorneys for Issue #1 present.** They use the semi-scripted**Talking Points** and add their own arguments as they feel comfortable**.**

**Attorneys for Issue #2 present.** They use the semi-scripted**Talking Points** and add their own arguments as they feel comfortable**.**

*(~30 minutes)* **Jury Deliberations are Conducted in the Courtroom. Only Jurors Participate.**

**Tips for Facilitating Jury Deliberations**

* After the student attorneys present their arguments, the facilitator guides student jurors in the deliberations to ensure that everyone has the opportunity to speak. The facilitator also helps enforce the civil discourse rules.
* During deliberations, the Judge remains seated on the bench and all student attorneys and attorney coaches remain seated at the counsel tables. Only the student jurors may participate in the deliberations and jurors may not ask questions of anyone in the well.
* The facilitator has student jurors form two groups. Student jurors initially favoring one side sit in the gallery behind that counsel table. Those initially favoring the other side sit in the gallery behind that counsel table. Stress that this is not a commitment. It is a straw poll.
* Student jurors sit down while in each section, however, they stand to express their opinions – and they must use a microphone (even if they prefer not to) so that the Judge and everyone (of varying hearing abilities) can hear all comments.

**Logistics.** As the deliberations progress, students stand up and move between the section behind one party and the section behind the other party in the gallery as their opinions change in response to points made by fellow jurors.

**Expectations.** Set the expectation that students will move back and forth throughout the discussion. Frequently create that opportunity and use it as an example of the courage required to go against the crowd.

**Involve Everyone.** Call on as many students as possible, not just those who raise their hand. The techniques below, and others, can encourage all students to speak. Read the students’ body language and give them an opportunity to share their thoughts, reassuring them that all views are valid.

**Here are examples of questions and comments that can keep the deliberations interactive.** These questions are not designed to be sequential. They can be peppered in any order throughout the deliberations after a student juror makes a statement.

* I can see that people are very animated about what was just said and there is a lot of energy around it. Who else wants to speak up in support of the argument? Who has an argument on the other side?
* Let’s get everyone involved. Raise your hand if you disagree with the argument that was just made. How many of you want to explain your position?
* On the other side, what aspect of that argument do you agree with?
* Hmm, you look like you have an opinion. You’ve just heard the argument, what is faulty about it?
* Who agrees with that statement? Let’s hear from two people who will tell us why that’s valid.
* Who is unsure about your position? If you are in between the two positions, come stand in the center aisle between them. Let’s hear a round of applause. Tell us what you are thinking.
* Who has unanswered questions – on either side? Let’s make a list of them. Now, I’ll give each side the opportunity to respond to the open issues.
* It’s time to show that you have courage and an open mind. Everyone who needs to move to the other side of the argument, should do so now. Let’s give them a round of applause.
* What persuaded you to change your mind and move to the other side? How difficult was it to go public with your change of mind? Another round of applause, please.
* After considering all the arguments, who feels even stronger about your original position and is staying where you are? What arguments made you question your strong opinion?

**When the time expires, the facilitator closes the deliberations and returns the program to the Judge.**

**Judge Asks for a Show-of-Hands Verdict.**  The facilitator counts the hands. Due to time constraints, it’s not unanimous. If there is time, the Judge asks one student juror from each side to explain his/her side’s rationale. The judge congratulates the student attorneys and student jurors.

**IV. WRAP UP The Judge Enters the Well**

**10:45 – 11:30**

*Total 45 minutes* **Judge Leads** **Reality Check Discussion Using the Answer Key** *(Exhibit A-1)*

* **Note to the Judge:** Instead of going through the situations in numerical order, have students raise the issues that are of interest to them first. There may not be time to go through all scenarios.
* **Open Floor Q/A Session with the Judge and Attorney Volunteers**
* **Students Fill Out Feedback Forms (***Exhibit J)*

*Must be collected before group photo.*

* + - **Group Photo**

**Exhibit A** *Quiz Questions for Participants to Fill Out as They Wait for the Program to Start*

**Reality Check Quiz: Sometimes There Are No Do-Overs**

*Today’s Decisions Can Have Legal and Long-Term Consequences*

1. Because I’m 18, if I’m convicted of a federal crime, a lot of factors come into play and it won’t, necessarily, have an impact on the rest of my life. **True False**

1. My parents know that my friends and I are going to drink and they want to keep us off the road, so they buy the beer and we get together at our house, where my parents can keep an eye on us. If the party gets busted, anyone who is underage is breaking the law, but my parents won’t get charged. Of course, they’re over the legal age and they won’t be drinking because they are driving some kids home. **True False**
2. My friends and I have been driving for two years. One of my friends has never been caught speeding and she’s never had an accident. But, she’s got a lot of unpaid parking tickets stuffed in her glove compartment. I keep telling her that if she ever gets stopped, they could take her license. **True False**

1. When I go to a bar, I use the fake I.D. I bought it on the Internet. I’ve heard that the site could be part of a national ring, but I’m not going to get caught. Besides, if I do, the worst that will happen is that they’ll take my I.D. and kick me out of the bar. **True False**
2. If I’m hiking in Colorado, where pot is legal, and my friends bring some back to our home state where it’s not legal, they could end up in federal court, if they’re caught with it. **True False**
3. I order nutritional supplements off the Internet that I get in the mail. I use them to improve my athletic performance. I need every edge I can get to win a college scholarship. These are pharmaceuticals and not illegal drugs that I’m getting from some street dealer, so I’m okay.

**True False**

1. If I ever did get convicted of something in federal court, because of my age, I’d get probation. My older brother says that means I might not be able to travel with my tennis team. **True False**
2. My buddies on the football team were joking around in the locker room after a big win. One of the guys popped open a bottle of sparkling cider that looked like champagne. He dropped his towel while he was guzzling from the bottle on his way into the shower. It was hysterical so, when he turned his back, I captured some video on my phone. I sent it to the other guys on the team who weren't in the showers at the time. I thought it was a harmless moment that we'll laugh about at our high school reunion, some day. The coach says we could be in big trouble. **True False**
3. My classmates and I were sitting in first period when our teacher was called to the office for an emergency. Before he left, we noticed that he was in the middle of posting an announcement on the class website. We thought it would be funny to change the message and post it. I kept watch while my friends posted a music video and a message that our class will be cancelled next week. I figured he’d have a good laugh and just delete it later.

**True False**

1. A friend of mine was a witness to a car wreck and now she has to testify before a grand jury. She’s not sure that she’s willing to tell the whole truth because it implicates her and could jeopardize her scholarship. The details are not that important because she’s not the one on trial. Since the proceedings aren’t in court, the standard of “telling the truth, the whole truth, and nothing but the truth” doesn’t apply. **True False**

**Exhibit B** *Civility Self-Reflection for Students to Fill Out While Waiting for the Program to Start*

**Civil Discourse Self Reflection and Discussion Starter**

**Instructions:** Circle the option that best applies to you when you are with your peers.

**1. When a conversation gets heated, I contribute to the conversation.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**2. When peers disagree about an issue, I remain silent.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**3. I take an active role in creating a welcoming environment for differing opinions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**4. I give my peers eye contact and my full attention when they speak, even when I disagree.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**5. When I disagree with someone, I keep an open mind and, momentarily, put aside what I plan to say next.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**6. I can’t control others’ behavior or opinions, so I focus on my own actions and civility.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**7. When I’m speaking, sometimes, I use silence to get the attention of others.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**8. I speak respectfully to people with whom I disagree, even if they disrespect me.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**9. I ask clarifying questions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**10. I am careful not to take over a conversation by talking longer than others**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**11. When I get excited, I interrupt the person speaking.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**12. I have side conversations that distract the person I’m talking with – and others -- from the person who has the floor.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**13. I listen for what people mean – not just what they say -- when I disagree with them.** Very Frequently • Frequently • Occasionally • Rarely • Never

**14. When peers disagree, I find common ground and call attention to areas of agreement.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**15. Sometimes I tune out, then realize I’ve repeated something that already has been said.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**16. I roll my eyes, or make subtle faces when I disagree with someone’s opinion.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**Exhibit D***Handout for Setting Ground Rules**for All Participants and the Facilitator*

**Civil Discourse and Difficult Decisions**

*Setting Ground Rules for a Civil Discussion*

In courtrooms, it’s not the loudest voice that prevails. Opposing arguments are grounded in reason and evidence and they are put forward within strict guidelines for courtroom decorum. Each side tests the arguments of the other side, and a judge holds everyone to the same protocol and standards of appropriate behavior. Asking questions of each side is an integral part of the process. The adversarial system is no place for incivility. In fact, court proceedings are set up to promote effective civil discourse.

**Put an X next to the actions and attitudes that are most important to you.**

**1. Be mindful of your own behavior**. Notice how you internally are reacting/responding when others speak. Pay attention to how your words and your silence are impacting the experience for others in the group.

**What are you doing to create a welcoming environment for differing** **opinions?** Are you looking at each speaker and giving your full attention? Are you listening with an open mind – momentarily putting aside what you will say next?

Are you asking clarifying questions? Are you being careful not to take over the conversation by talking longer than others? Are you refraining from subtle, but disrespectful behavior or not paying attention when others speak?

**2.**  **Wait** to be recognized by the moderator before speaking. This allows time – before you speak -- for reflection on what the previous speaker(s) have said.

**3. Don’t interrupt** or talk over someone else who is speaking, even when you are excited.

**4. No side conversations.** They are disrespectful to the speaker and distract listeners from the person who has the floor.

**5. Listen for content** inthe statements of others, especially when you disagree. Listen for what the speakers are trying to communicate, even if they aren’t expressing their points concisely.

**6. Find common ground.** Identify and call attention to areas of agreement.

**7. Follow the direction** **of the discussion.**  Don’t repeat what already has been said. **Relate** your comments to those of previous speakers.

**8. Ask questions.** Don’t assume that you know what someone else means**.** Ask the speaker to help you understand perspectives different from your own.

**9. Don’t embarrass yourself or disrespect others by making** demeaning or inappropriate comments, facial expressions, or gestures. No eye rolling, sighing, or checking out of the conversation.

**10. Differentiate between facts and opinions**. Both are valid when expressed appropriately.

**WHAT WOULD YOU ADD?**

**Example of Student-Developed Civility Rules**

**How to engage in civil discourse:**

**1.** Tell the truth, the whole truth, and nothing but the truth.

**2.** Moderate your tone, so that you don’t sound aggressive.

**3.** Be conscious and mindful of your facial expressions.

**4.** Be attentive and considerate of your opponent’s point of view:

* Process what is being said
* Give equal time to opposing opinions.

**5.** Don’t repeat yourself. Use a variety of evidence.

**How to interact respectfully with someone who fails to obey the agreed-upon rules of civility:**

**1.** Respectfully ask for evidence that supports the statements made.

**2.** Stay calm and consider taking a break from the conversation.

**3.** Tell your opponent that you don’t know how to interpret his/her facial expression.

* Ask for help in understanding what they mean.

**4.** Ask for equal time, using a polite tone: “May I finish my point?”

**5.** Express understanding: “I understand,” or “I hear you."

**Exhibit E** *Handout: Facts and Case Summary for Everyone (Volunteers and Participants)*

**Facts and Case Summary**

***New Jersey v. T.L.O., 459 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. Because 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.

**Exhibit F** *Handout: Fictional Scenario for Everyone (Volunteers and Students)*

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

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

Fictional Scenario:

Did the vice principal violate Sandy’s Fourth Amendment rights?

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?

**Exhibit G** *Opening Protocol: ONLY for the Judge, Attorney Coaches, and 4 Student Attorneys*

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

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

**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.

**A Law Clerk Announces the Judge.**

**The Judge takes the bench, welcomes the group, and 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?

**Judge: Is Counsel for the Defendant ready?**

**Ms. Simmons’s Attorney #1** *(Stands at counsel table)* Yes, Your Honor.

**Judge : Is Counsel for the Government ready?**

**Government’s Attorney #1** *(Stands at counsel table)* Yes, Your Honor.

**Judge:**  **Counsel for the Defendant may proceed.**

**Attorneys for Sandy Simmons, the Defendant**

**Attorney #1 *(Goes to the lectern)***

"May it please the Court. My name is \_\_\_\_\_\_\_\_\_\_\_\_. I am from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (real school). My colleague and I are counsel for Ms. Sandy Simmons, the Defendant before this Court today. There are two issues before the Court. I will argue the first issue: Are school officials considered government actors who must comply with Fourth Amendment restrictions when they conduct searches at school? Seated at the Defendant’s counsel table is my colleague who will handle the second issue. He/she will introduce him/herself and tell you where he/she is from. *(Attorney #1 sits down)*

**Attorney #2 *(Stands at counsel table)***

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

*(Sits down)*

**Judge: Counsel for the Government may proceed with your introductions.**

**Attorneys for the Government**

**Attorney #1** ***(Goes to the lectern)***

"May it please the Court. My name is \_\_\_\_\_\_\_\_\_\_\_\_. I am from \_\_\_\_\_\_\_\_\_\_\_ (real school), and I will be arguing the first issue on behalf of the United States: Are school officials considered government actors who must comply with Fourth Amendment restrictions when they conduct searches at school? Seated at the Government’s counsel table is my colleague who will handle the second issue. He/she will introduce him/herself and tell you where he/she is from. *(Sits down)*

**Attorney #2 *(Stands at counsel table)***

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

**Judge: Now we will turn to the major questions about this issue. The attorneys will make their arguments, then we will open the floor to you, in the audience, to join in the debate as jurors. The moderator will facilitate your deliberations so that everyone has the opportunity to speak. At the end, we will take a vote to determine the verdict.**

**Exhibit H** *Talking Points: ONLY for the Judge, Attorney Coaches, and the Four Student Attorneys*

***New Jersey v. T.L.O.* Applied to Seizure of Illegal E-Cigarettes During a Backpack Search at School** *Talking Points – Can be Modified by Student Attorneys.*

**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.** |

**After the Fourth Student’s Argument**

**Judge***:* **Now that you’ve heard all of the arguments, I will turn over the program to the moderator who will facilitate the jury deliberations.**

**Exhibit J** *Feedback Form for Students*

**Civil Discourse and Difficult Decisions**

*Student Feedback*

**Judge’s Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_**

**Your Name** \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(first) (last)*

**School \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ City \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Your Grade \_\_\_\_\_\_\_**

**\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***

*Feel free to use the back for additional comments.*

**1. Setting.** What was it like to have the program in a courtroom?

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**2. Judge.** How is this judge different from television/movie judges?

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**3. Volunteer Attorneys.** How were the attorneys different from television/movie lawyers?

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**4. Student Attorneys:** If you were a student attorney, what was the experience like for you?

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**5. Student Jurors:** If you were a student juror, what were the deliberations like for you?

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**6. As a result of this program:**  How do feel about serving on a real jury?

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**7. What will you remember from the Reality Check discussion?**

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**8. What civility skill do you plan to practice in class?**

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**9. Would you recommend the program?** Yes \_ No \_ What will you tell your peers about it?