Vernonia v. Acton, 515 U.S. 646 (1995): Notes for Teachers and Facilitators

Key Points:

- The Supreme Court in *Vernonia* by a vote of 6-3, ruled that random drug testing of student athletes was reasonable under the Fourth Amendment. In doing so, it balanced the intrusion on student privacy against the government interest in curbing drug use among students. The students representing James Acton will have to argue that subjecting students to supervised urinary drug tests is an excessive invasion of privacy, especially when there is no reason to suspect the individual student of drug use. The students representing the School District have to argue that student athletes have a low expectation of privacy at school, and the government has a compelling interest in stopping drug use among students.
- The key word here is "reasonableness" – no precedent is exactly on point, so students are arguing over whether the search policy is reasonable or not. The case could have come out either way, which makes it a great debate activity.

Additional Resources:

Legal Information Institute: The Case Text
Legal Dictionary: Case Brief

Vernonia School Dist. 47J v. Acton

This moot court concerns the case of *Vernonia v. Acton* in which the Supreme Court found that random drug testing for student athletes is not a Fourth Amendment violation.

Facts

In the mid-1980s, drug use was increasing among students in Vernonia, Oregon. Teachers and school faculty also reported increases in student disciplinary problems. The school district attributed these issues to the rising drug culture, which it believed was led by student athletes. Vernonia School District tried to curb student drug use by holding special classes, presenting guest speakers, and bringing in drug-sniffing dogs, all to no avail. At a parent "input night," the District proposed a Student Athlete Drug Policy ("Policy"), and the parents in attendance gave unanimous approval for a drug-testing program.

The policy required that all student athletes agree to submit to a drug test before their sport's season begins. Additionally, 10% of student athletes were to be randomly selected for drug testing each week. The urinary drug test required a school official to accompany the student into the restroom to ensure no tampering occurred. If the drug test was positive, students had to complete a second test. If that was also positive, parents were notified and the student had two options: (1) participation in a 6-week assistance program with weekly drug testing, or (2) suspension from the rest of the athletic season as well as the next season.

Procedure:

In 1991, seventh-grader James Acton wanted to participate in his school's football program but refused to consent to the drug testing. He filed a lawsuit in United states District Court claiming that the mandatory drug testing was unconstitutional under the Fourth Amendment of the federal Constitution.[1] The District Court dismissed the claim. Acton appealed to the Ninth Circuit, which reversed and held that Vernonia's policy violated the Fourth Amendment. The Supreme Court granted *certiorari*, meaning it was one of the select cases that the Supreme Court viewed as having national significance. In this lesson, you will consider the case from the vantage point of the Supreme Court.

Legal Issues

Fourth Amendment in the School Context:

The Fourth Amendment to the Constitution applies to both state and federal actors. It states in pertinent part:

[1] Acton also claimed that Oregon's constitution was violated, but because the Supreme Court never reaches that issue, this lesson focuses on the federal Constitution's Fourth Amendment.

> "The right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated . . ."

The reason that drug testing is considered a "search" under the Fourth Amendment is because the government is assessing material from a person's body that would normally be kept private. As the text of the Fourth Amendment makes clear, the constitutionality of school searches hinges on "reasonableness." Reasonableness is determined by "balancing the need to search against the invasion which the search entails." *New Jersey v. T.L.O.* 469 U.S. 325, at page 337 (1985). Put differently, the Supreme Court considers whether students have a legitimate expectation of privacy against these types of searches, and whether the government has a compelling interest that overrides the privacy expectation.

The Supreme Court has recognized that students have legitimate expectations of privacy while at school. However, it has also recognized that school officials must be able to conduct reasonable searches to prevent drug use and keep order. The most relevant precedent before the *Vernonia* case was *T.L.O.*, where the Court held that the Fourth Amendment is less restrictive in the school setting. In *T.L.O.*, unlike in *Vernonia*, the school searched the student because it suspected her of drug use, rather than a randomized testing program.

Key Issue: In this case, Acton argues that requiring student athletes to submit to random drug testing violates his Fourth Amendment rights because it constitutes an unreasonable search. The Vernonia School District argues that the policy is constitutionally sound because the government has a compelling need to curb drug use that outweighs the student athletes' expectation of privacy, and thus the searches are reasonable. In sum, both sides should address two issues: (1) do student athletes have a reasonable expectation of privacy against these searches, and (2) does the government's interest outweigh that expectation?

Our Mission in this Moot Court

Our moot court begins at the point that the United States Supreme Court has agreed to resolve the issue of whether random drug testing of student athletes violates the Fourth Amendment right against unreasonable searches. Because the School District lost in the Ninth Circuit Court of Appeals, it will argue first as the petitioner.

Brainstorming

Break into three groups:

Group 1: Attorneys representing Vernonia School District
Group 2: Attorneys representing Acton
Group 3: Justices who will ask probing questions and decide the case.

Each side will have 15 minutes to present its arguments. Those representing Vernonia School District will go first and may reserve 5 minutes for rebuttal. Justices who will hear the case will have engaged in brainstorming and will interrupt the arguments with questions.

Hints for attorneys representing Vernonia School District: You must argue that the state's interest in curbing drug use among students is compelling enough to outweigh any minor privacy expectation the students have. The Supreme Court held that curbing drug use was compelling in two other important cases: *Skinner v. Railway Labor* and *Nat'l Treasury Employees v. Von Raab*. Think about why it might be even more important in the school context. You should also think about what level of privacy students can reasonably expect at school. Schools set lots of rules for students, particularly student athletes. Does that lower their expectation of privacy?

As the side that appealed the case to the Supreme Court, remember that you can reserve five minutes for rebuttal. That means you can have the last word to counter what the other side says.

Hints for attorneys representing Acton: You must argue that the students' expectations of privacy outweigh the government's interest, and therefore the testing policy is unreasonable. Do students expect to have privacy against drug tests? Is the test itself unreasonably intrusive because it requires an adult to monitor the student while they use the bathroom? Is the government's interest in reducing drug use important enough to justify this invasion?

Hints for Justices: Your job is to think about both sides of the case and develop questions for each side. Good questions will dig deeper into the arguments made and help clarify both sides.

Summary of tasks:

1. Engage in general brainstorming of arguments for your side or if you are a justice of questions to ask.

2. As part of that brainstorming, review and consider the arguments on the Argument Sheet.
3. Attorneys: Write out a bullet point list of the arguments you want to make and begin with the most persuasive.
4. Attorneys: Think of counters to those arguments and develop answers.
5. Justices: Fill out the Justice worksheet
6. Attorneys: Designate the person to make the argument (All attorneys can answer questions posed by the Justices)

Attorneys making argument: Introduce yourself by saying, “May It Please the Court, I’m _____ and I represent_____ in this matter.”

Arguments

Look over these arguments. Decide whether they help Vernonia School District or Acton. Or does the argument help both sides or neither side? Or can our case be distinguished or aligned in some other way?

1._____ The primary precedential case is *New Jersey v. T.L.O.* In that case, a student was suspected of smoking cigarettes at school. School officials searched her purse and found cigarettes, marijuana, and a list of students who owed her money. The student argued that the Fourth Amendment protects her from warrantless searches while at school. The Supreme Court disagreed and held that school officials do not need warrants to search students and the search here was reasonable under the Fourth Amendment. Does this mean Vernonia's searches are reasonable? Can the case be distinguished (meaning are the facts of this case different enough that it should have a different outcome than the Vernonia case)?

2. _____ Two prior Supreme Court cases upheld mandatory drug testing by government officials. In *Skinner v. Railway Labor*, the Court recognized a "compelling government interest" in stopping railway employees from using drugs because of public safety concerns. In *National Treasury Employees v. Von Raab*, the Court again recognized a "compelling government interest" in identifying drug use among enforcement officers because of the safety risks – these officers need to be physically fit to carry out their duties and also need their judgment unimpaired when carrying out enforcement. Are the Vernonia School District's interests compelling when compared to these cases?

3. _____ It is well established that students do not "shed their constitutional rights… at the schoolhouse gate." *Tinker v. Des Moines*. This means that students retain a constitutional right to privacy and are protected against unreasonable searches even while at school. Students have a legitimate expectation that they will not be randomly drug tested. Vernonia's drug testing involves having an adult monitor the urinary production, and this constitutes a great invasion of a student's expected privacy.

4. _____ It is well established that drug use is dangerous for students. In Vernonia, drug use had become pervasive and was led by student athletes. Schools have the responsibility to care for their students and protect them, including against the dangers of drug use. Therefore, the state has a compelling interest in the drug testing policy it enacted.

5._____ The Fourth Amendment is about reasonableness, and the testing here was reasonable. Even though students have some expectation of privacy, the compelling need to curb drug use outweighs that, and the testing itself was reasonable. Students, especially student athletes, often use locker rooms and bathrooms while other people are present. The monitoring by adults is only to ensure the students do not tamper with the samples. This is reasonable.

6._____ The Fourth Amendment is about reasonableness, and the testing here was not reasonable. Adults accompany students into the restroom and can observe them producing urine samples. Students must agree to

these unreasonable conditions in order to participate in sports, which is an improper inducement. Forcing students to produce regular urine samples in the presence of adults is unreasonable.

7._____ Though students have some expectation of privacy, that expectation is lower than the general public. Think about it – students are required to have vaccines and follow specific rules that the general public does not. Plus, the policy is limited to student *athletes*, who have a lower expectation than even regular students. Student athletes have to get physical examinations and share locker rooms, both of which lower their expectation of privacy.

8._____ This policy is supported by the parents of Vernonia students, and the Court has no business overriding the parents' decisions about their kids. Before enacting the policy, the school district held a parent meeting where 100% of the parents in attendance voted in favor of the drug-testing policy. Should the Supreme Court invalidate a *state* policy that the local parents approved of? Is that an overstep by the Court?

9._____ This policy would be okay if it tested students who were suspected of drug use. But Vernonia's Policy randomly selects students to get tested. Even the best-behaved students who have never used drugs are subject to this invasive test. Even though the government has an interest in curbing drug use, this interest is not advanced by random tests, and the privacy interests of students who are *not* suspected of drug use (like James Acton) outweighs any government interest.

10. _____ General searches are inherently unreasonable. The Fourth Amendment was particularly designed to counter the British practice of issuing general search warrants or "writs of assistance."

11._____ Student participation in inter-scholastic athletics is on a voluntary basis. Those who do so in Veronia know that they are waiving some of their rights to privacy.

Justice Brainstorming Worksheet

You are a Supreme Court Justice hearing *Vernonia v. Acton.* Please answer the following questions. Be sure to reference the facts and the relevant cases on the argument sheet.

1. Pretend that you are listening to the oral arguments of the attorneys representing Vernonia School District. What two questions would you ask?

   A.

   B.

2. Pretend that you are listening to the oral arguments of the attorneys representing Acton. What two questions would you ask?

   A.

   B.

3. At the conclusion of hearing the case, you have to write a court opinion ruling either in favor of Vernonia School District or Acton. Remember that you need to weigh the government's interest in reducing drug use among students with the students' legitimate expectation of privacy.

   _____ Vernonia School District _____ Acton

4. Prepare a bullet point list of your reasons. Include why you rejected the losing side's arguments.