SROs & the 4th Ammendment

1.5 Hour Webinar

Course Outline

Blue to Gold Law Enforcement Training
1818 W. Francis Ave #101, Spokane Washington 99205
888-579-7796 | bluetogold.com | info@bluetogold.com

Module One: Course Introduction – 10 minutes

1) Instructor introduction.

2) Explain the course objective.

3) Encourage attendees to ask questions and share feedback with other attendees.

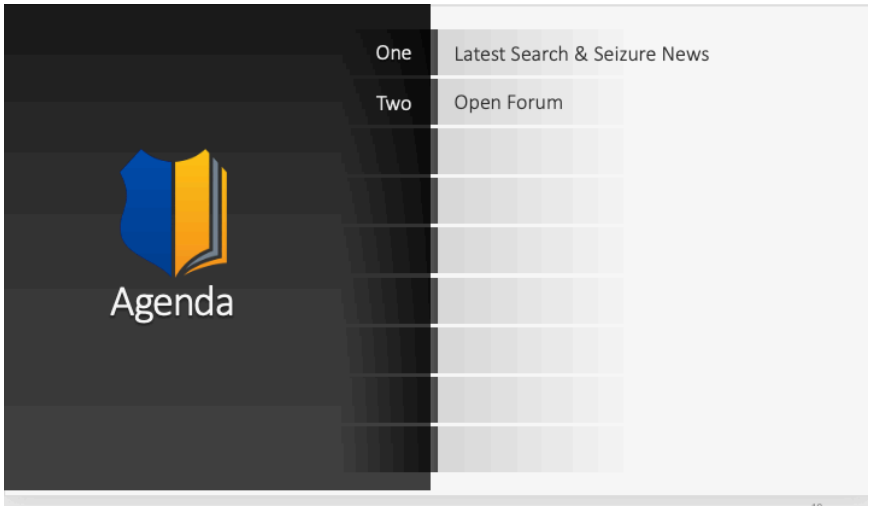
4) Explain that certificates will be emailed after the class.

5) Go over the three disclaimers:

   a) Laws and agency standard operating procedures may be more restrictive. Blue to Gold teaching the federal standard unless otherwise stated. Therefore, students must know their state and local requirements in addition to the federal standard.

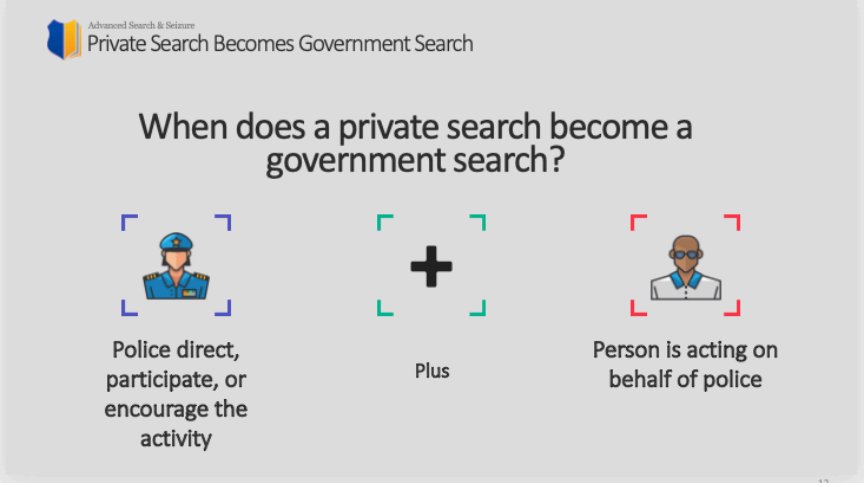
   b) If students have any doubts about their actions, ask a supervisor or legal advisor.

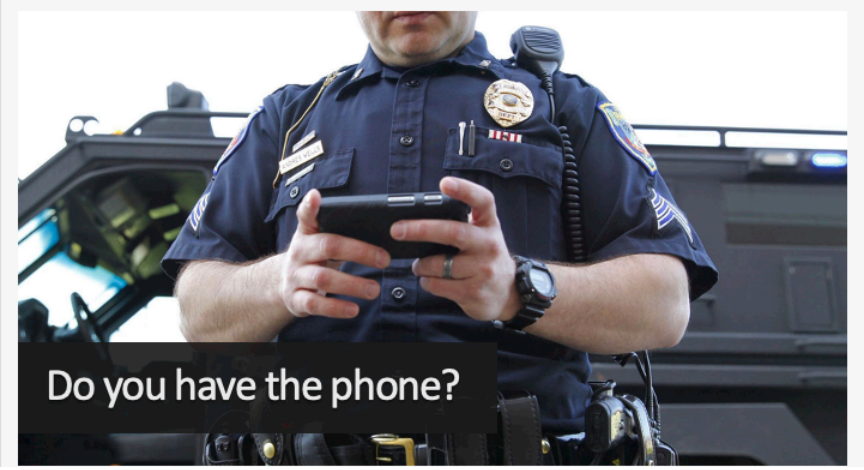
   c) The course is not legal advice, but legal education. Therefore, nothing we teach should be interpreted as legal advice. Check with your agency's legal advisor for legal advice.



Module Two: Latest Search & Seizure News – 50 minutes

Blue to Gold
LAW ENFORCEMENT TRAINING

1) 

2) 

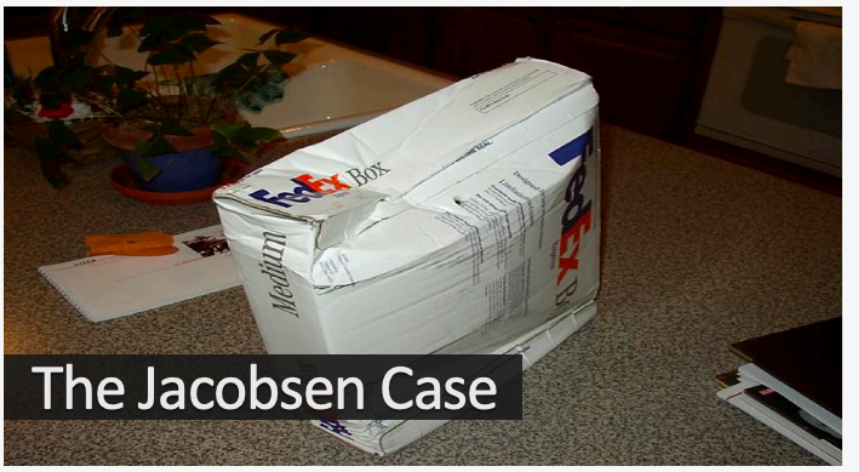
On February 19, 2015, the Sioux Falls Police Department received a domestic-disturbance call from a young boy, who reported that a man was harassing his mother. Andrew Mattson was the first officer to respond to the call. Upon arriving at the scene, Officer Mattson was flagged down by Michelle Janis, the mother of the boy who placed the call. Janis can be heard on a recording from Officer Mattson's body microphone exclaiming that someone had just taken off running. Officer Mattson asked her what was going on, and she responded: "I wanted to sign a complaint on him. He went and had pictures of my daughter naked, and she's only 13." Janis identified the man as Highbull and informed Officer Mattson that the red Ford Taurus that was left running in front of her building belonged to him. A license plate check revealed that the Taurus was registered to Highbull at Janis's address. Janis then entered the vehicle, and Officer Mattson asked if she was "going to grab the keys." Although she said yes, Janis merely turned off the car, leaving the keys in the ignition. Rejoining Officer Mattson on the sidewalk in front of her apartment, Janis explained that she and Highbull had been

arguing several days earlier because she refused to let him see their infant daughter. It was during this argument that she looked at Highbull's phone and saw the naked pictures of her thirteen-year-old daughter, who was not related to Highbull. At that point Officer Mattson asked Janis, "Do you have the phone?" Without explanation, she began walking back toward the Taurus and stammered, "Um, I don't know if it's this ... I think it's ... I don't know ... I think he does have one. He probably got rid of it or whatever." She then reentered the vehicle just as Officer Mattson's backup arrived. The two officers conferred several feet away from the Taurus for the thirty seconds Janis was inside the vehicle. Officer Mattson later testified that he never directed Janis to enter the Taurus or to look for the phone, that he himself neither opened nor entered the car, and that his attention was on the backup officer while Janis was in the vehicle. United State v. Highbull

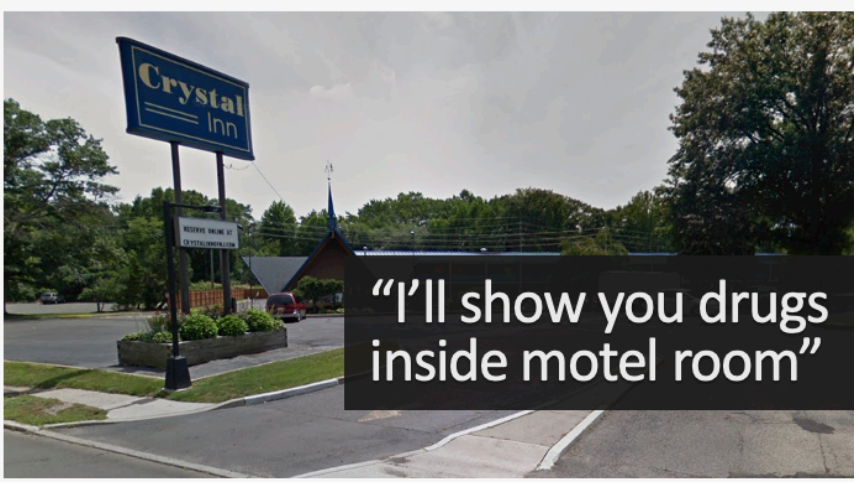
3) 

Where a private party seizes a piece of evidence, examines or searches it, and then delivers the evidence to a police officer, the officer's "subsequent, confirmatory examination of that evidence" does not violate Article I, section 9, at least to the extent that the officer's examination of the evidence does not exceed the scope of the private search. State v. Luman, 347 Or 487, 495-96, 223 P3d 1041 (2009). That is because the private party's search of the evidence destroys the property owner's privacy interest in that evidence, "to the extent of the scope of the private search." Id; see also State v. Stokke, 235 Or App 477, 237 P3d 829, rev den, 349 Or 370 (2010) (officer's examination of contents of hotel safe after hotel staff made it available to the officer was not a search). If police exceed the scope of the private search, however, they conduct a search that requires probable cause and a warrant or exception to the

warrant requirement. State v. Sines, 287 Or App 850, 875, 404 P3d 1060 (2017), rev den, 362 Or 545 (2018) (forensic testing of underwear given by defendant's housekeeper to police exceeded scope of private search and thus violated Article I, section 9).

4) 

Defendants were convicted in the United States District Court for the District of Minnesota of possession of an illegal substance with intent to distribute, and they appealed. The Court of Appeals for the Eighth Circuit, 683 F.2d 296, reversed, and petition was filed for certiorari. The Supreme Court, Justice Stevens, held that: (1) removal by federal agents, who had been informed by employees of a private freight carrier that they observed a white powdery substance in the innermost of a series of four plastic bags that had been concealed in a tube inside a damaged package, of the tube from the box, the plastic bags from the tube and a trace of powder from the innermost bag infringed no legitimate expectation of privacy and therefore did not constitute a "search" within meaning of Fourth Amendment and, while agents' assertion of dominion and control over the package and its contents did constitute a "seizure," that warrantless seizure was not unreasonable, and (2) federal agents were not required to have a warrant before testing small quantity of a powder to determine whether it was cocaine.
Reversed.

5) 

The facts are culled from the testimony elicited at the suppression hearing. Florida resident Jasmine Hanson was staying at the Crystal Inn motel in Neptune City, New Jersey. She called the front desk to complain she had been bitten by bed bugs and demanded a full refund. She was referred to the motel's owner. Later that afternoon, the motel owner inspected Hanson's room. When no one answered his knocks, he entered her room using his pass key. In search of bed bugs, the motel owner pulled a bed comforter down, revealing a plastic bag containing what he suspected were narcotics. The motel owner called the police and reported his suspicion. Upon his arrival, Officer Jason Rademacher had the motel owner lead him to Hanson's room where, again using his pass key, the motel owner unlocked the door for the officer to enter. Inside, Rademacher saw a clear plastic bag containing what appeared to him to be two other clear plastic bags of crack cocaine and several small glassine bags of heroin. Nearby, the officer saw a jar of what he suspected was synthetic marijuana on the nightstand and a glass measuring cup containing a spoon and a white, rock-like substance in a drawer. Next to the measuring cup was a black scale dusted with a white powder.

Rademacher contacted his supervisor, who sent Sergeant William Kirchner to the motel as backup. The officer requested a criminal history check on Hanson. It revealed an outstanding traffic warrant and a recently issued traffic summons on a 2012 black Chevrolet Tahoe, and its plate number. Rademacher collected all the drug evidence and photographed Hanson's motel room

6) **Legal Rule:** The Fourth Amendment does not protect abandoned property.

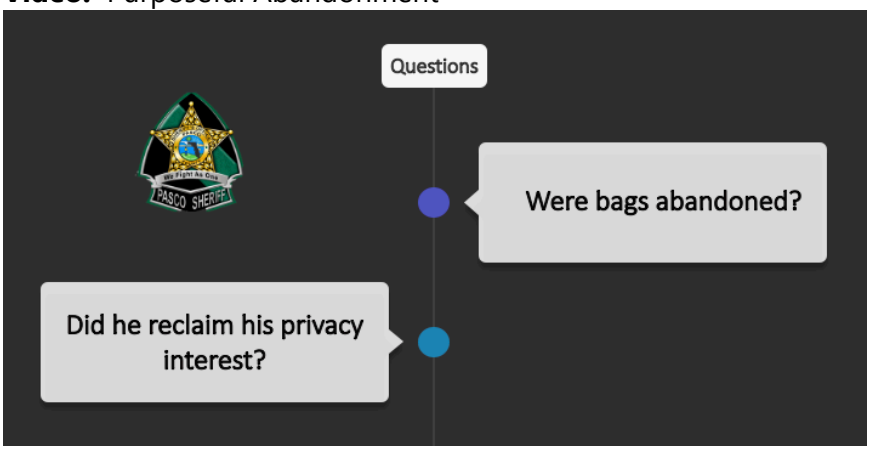
7) "Abandonment . . . is not meant in the strict property right sense, but rests instead on whether the person so relinquished his interest in the property that he no longer retained a reasonable expectation of privacy in it at the time of the search."

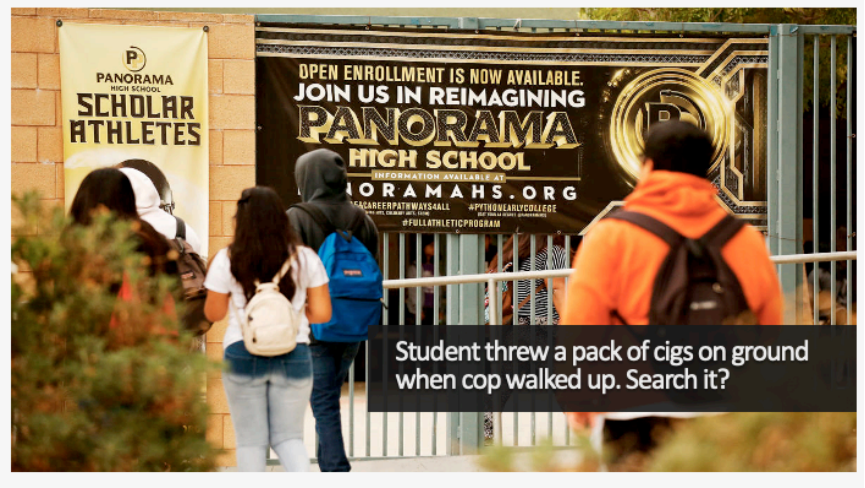
8) Pro Tip: Words and/or action can help prove abandonment in NM: Dropping, throwing out window, leaving in public place' repeated disclaimers of ownership

9) 

Inadvertent abandonment comes from the fact that courts use the Katz test. That's why there is a limit of what can be done. The distinction between abandonment in the property—law sense and abandonment in the constitutional sense is critical to a proper analysis of the issue. In the law of property, the question, as defendant correctly states, is whether the owner has voluntarily, intentionally, and unconditionally relinquished his interest in the property so that another, having acquired possession, may successfully assert his superior interest. … In the law of search and seizure, however, the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure and search is reasonable within the limits of the Fourth Amendment. … In essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein. Where the presence of the police is lawful and the discard occurs in a public place where the defendant cannot reasonably have any continued expectancy of privacy in the discarded property, the property will be deemed abandoned for purposes of search and seizure.

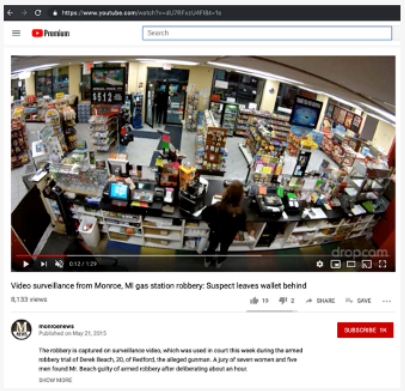
10) **Video:** Purposeful Abandonment"

11) 

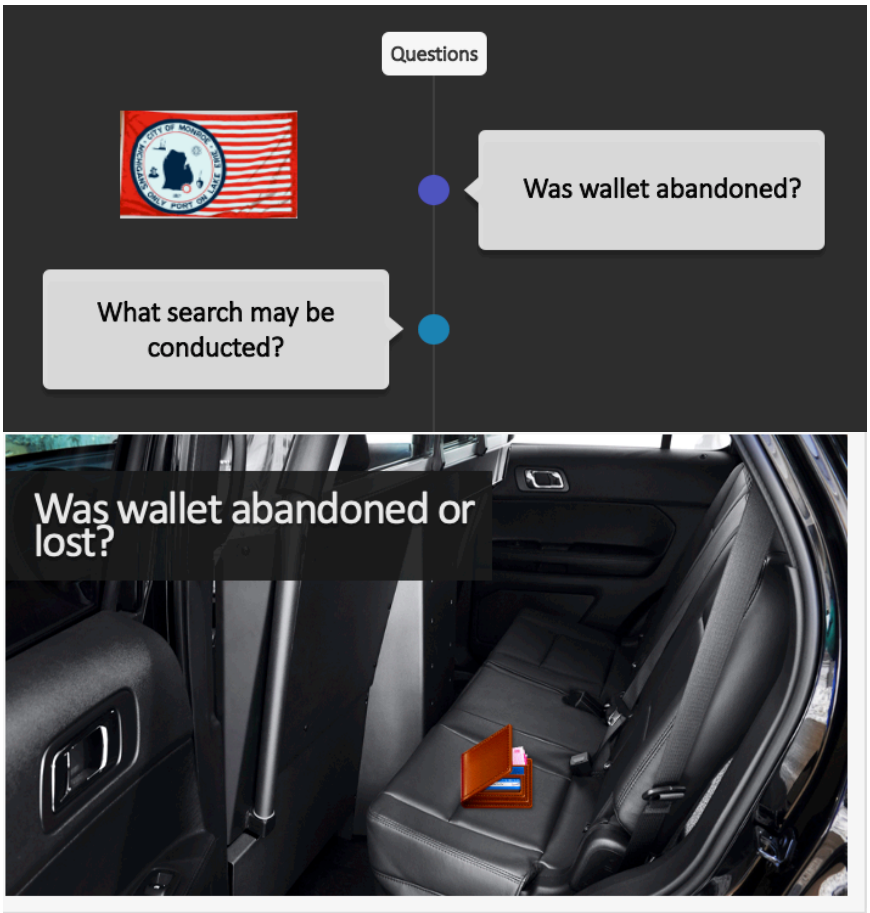
12) 

Procedural Posture: Defendant appealed a decision from the District Court of Oklahoma County (Oklahoma), which convicted him of possession of a controlled dangerous substance with intent to distribute after former conviction of two or more felonies, in violation of Okla. Stat. tit. 63, § 2-401 (1981) and sentenced him accordingly. **Overview:** During an unrelated drug raid, police learned that defendant was selling controlled substances. An officer watched for defendant within his territory to investigate the report. On the day of defendant's arrest, the officer arrested his daughter, who told him which bar defendant was frequenting. When the officer entered the bar, defendant dropped a crumpled cigarette package on the floor under the table and turned away. The officer retrieved the package, which contained illegal drugs, and arrested defendant. On appeal from defendant's conviction, the court held that: (1) defendant abandoned the package of drugs when he dropped it and had no further expectation of privacy when the officer picked it up, (2) defendant had failed to preserve for review his objection to

the officer's statements at trial, (3) because defendant had prior convictions based on at least two different occurrences, the trial court property enhanced his sentence, (4) defendant's failure to object to the introduction of evidence regarding sentences for prior convictions waived his right to do so, and (5) the prosecutor could enhance defendant's sentence under a general rule when he had non-drug convictions. **Outcome:** The court affirmed the decision of the trial court.

13) 

14) **Video:** "Inadvertent Abandonment"

15) 

Morris v. State, 908 P.2d 931 (Wyo.1995) (where defendant apparently inadvertently left his wallet in police car, he "did not abandon his expectation of privacy; rather the wallet was islaid or lost").

16) **Pro Tip:** When establishing abandonment, ask the student whether he has "**anything to do with**" the item, not just whether it's his.

17) The Fourth Amendment

18) 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.

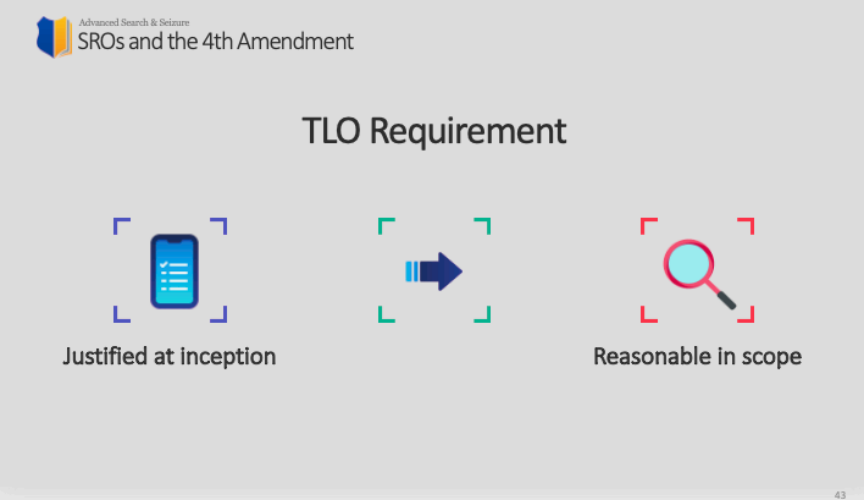
19) The right of the people to be secure in their **persons**, **houses**, **papers**, and **effects**, against **unreasonable searches** and **seizures**, shall not be violated, and…No Warrants shall issue, but

upon **probable cause**, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

20) Searches are presumed unlawful unless there is a recognized exception – usually **probable cause + exigency**

21) **Case Sample:** What happened in T.L.O:
2 students were caught smoking in bathroom
T.L.O. denied having cigarettes in her possession
Vice-principal searched her purse
VP found cigarettes, and kept searching
VP found evidence that T.L.O. was selling marijuana.

22) **Pro Tip:** Virtually all states use the **T.L.O. standard** for school searches

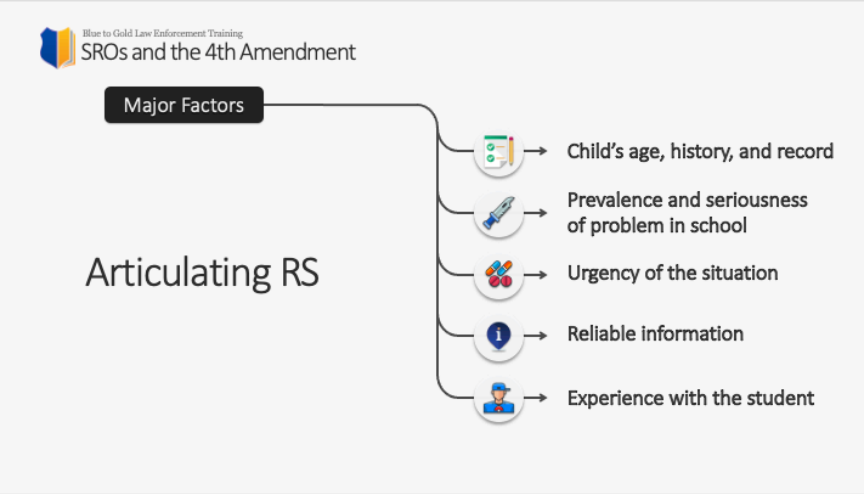
23) 

In the absence of warrants and probable cause, the legitimate privacy interests of public schoolchildren are protected by requiring that searches and seizures must be "reasonable" under all circumstances. New Jersey v. T.L.O., 469 U.S. 325, 341, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985). To satisfy this requirement a student search must be:

• *Justified at its inception.* Officials must "reasonably" suspect that evidence indicating that a student has violated or is violating the law, or a school rule will be found in a particular place. New Jersey v. T.L.O., 469 U.S. 325, 342, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985). Such a "reasonable" suspicion requires only sufficient probability, not absolute certainty. New Jersey v. T.L.O., 469 U.S. 325, 346, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985). The requirement for at least a reasonable suspicion applies to any student search

no matter how serious or relatively minor the suspected infraction may be. New Jersey v. T.L.O., 469 U.S. 325, 342 n.9, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985).

• *Reasonable in scope*. Student searches are gauged in relation to the circumstances that originally justified them. Thus, the scope, intensity, and methods of a search as it is actually conducted must be consistent with its original objective and not excessively intrusive in relation to the nature of a suspected infraction or the student's age and sex. New Jersey v. T.L.O., 469 U.S. 325, 342, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985).



24) To assist in determining whether a reasonable suspicion to search exists such as to warrant searches by teachers and other school personnel, factors to be considered include those of child's age, history and record in school, prevalence and seriousness of problem in school to which the search was directed, exigencies in making a search without delay and further investigation, probative value and reliability of information used as justification for the search, and particular teacher or school official's experience with the student. U.S.C.A. Const.Amend. 4.

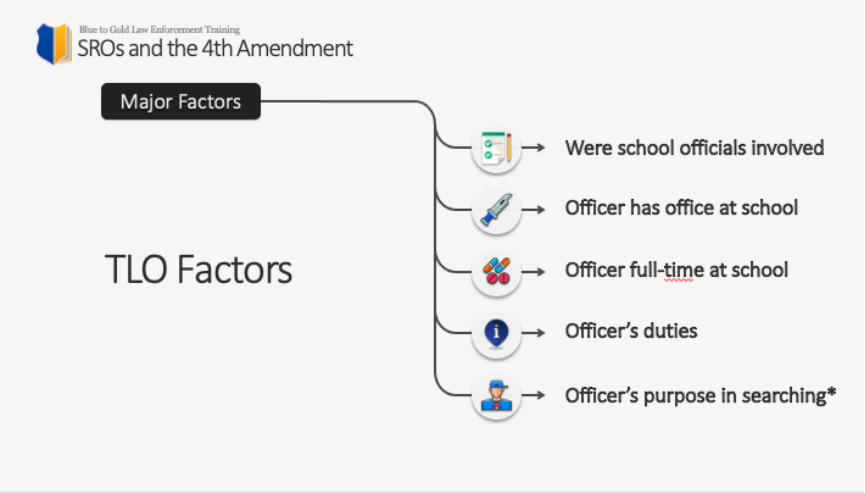
25) Cop vs. School Official: The Supreme Court has not yet specifically decided whether evidence seized by school officials in a T.L.O.-type search is admissible in criminal court proceedings.

26) Legal Rule: If the **SRO is employed by the school**, and is motivated to enforce school rules, the **TLO standard applies**

27) **Example:** if a search is conducted by a person who works directly for the school or school district, that person is almost always viewed as a school official who is authorized to conduct a search under the reasonable suspicion standard. In re Murray, 136 N.C. App. 648, 525 S.E.2d 496, 498, 142 Ed. Law Rep. 546 (2000) (ruling that the reasonable suspicion standard applied to a search conducted by a school official assisted by the school's "Resource Officer" who had been summoned to provide "greater strength" and who had handcuffed the student); Russell v. State, 74 S.W.3d 887, 165 Ed. Law Rep. 829 (Tex. App. Waco 2002), petition for discretionary review refused, (Sept. 11, 2002) (ruling that the "reasonable suspicion" standard applied to a school police officer assisting a principal in conducting a search); Cason v. Cook, 810 F.2d 188, 193, 37 Ed. Law Rep. 473 (8th Cir. 1987), and Shade v. City of Farmington, Minnesota, 309 F.3d 1054, 170 Ed. Law Rep. 529 (8th Cir. 2002) (both ruling that the reasonable suspicion standard applies when school liaison officers conduct a search with school officials); Griffin v. Wisconsin, 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987) (a duty that serves a "special need" of the State "may justify departures from the usual warrant and probable-cause requirements," unlike a police officer who conducts an ordinary search within the scope of his job); In Interest of S.F., 414 Pa. Super. 529, 607 A.2d 793, 75 Ed. Law Rep. 332 (1992) (a plainclothes police officer for the Philadelphia School District was authorized to conduct a search based on the reasonable suspicion standard); People v. Dilworth, 169 Ill. 2d 195, 214 Ill. Dec. 456, 661 N.E.2d 310, 107 Ed. Law Rep. 226 (1996) (ruling that the "reasonable suspicion" standard applies to the activities of a police liaison officer); People v. Pruitt, 278 Ill. App. 3d 194, 214 Ill. Dec. 974, 662 N.E.2d 540, 108 Ed. Law Rep. 329 (1st Dist. 1996) (same); In Interest of Angelia D.B., 211 Wis. 2d 140, 564 N.W.2d 682, 118 Ed. Law Rep. 1191 (1997) (same, emphasizing that the search was initiated by school officials who then sought the assistance of the police liaison officer); Com. v. J.B., 719 A.2d 1058 (Pa. Super. Ct. 1998) (applying the "reasonable suspicion" standard to a search undertaken by a school police officer); In re Sumpter, 2004-Ohio-6513, 2004 WL 2806428 (Ohio Ct. App. 5th Dist. Stark County 2004) (the reasonable suspicion standard applied to a search conducted by a police officer assigned full-time to the high school); In re J.F.M., 168 N.C. App. 143, 607 S.E.2d 304 (2005) (ruling that the reasonable suspicion standard applies to actions taken by law enforcement officers "where these officers are primarily responsible to the school district

rather than the local police department"). *See generally* Mary A. Lentz, *Lentz School Security*§ 11:1 (2018 to 2019 edition).

28) **Legal Rule:** If the **SRO is employed by police agency**, and assigned to school, then courts should evaluate **certain factors**



29) In State v. Alaniz, 2012 ND 76, 815 N.W.2d 234, 280 Ed. Law Rep. 1051 (N.D. 2012), the Supreme Court of North Dakota enumerated a list of factors that are useful in determining how much police involvement occurred and which standard applies to a school search. It suggested that the factors considered should include whether the officer was in uniform, whether the officer has an office on the school campus, how much time the officer is at the school each day, whether the officer is employed by the school system or an independent law enforcement agency, what the officer's duties are at the school, who initiated the investigation, who conducted the search, whether other school officials were involved, and the officer's purpose in conducting the search.

30) **Pro Tip:** If you're investigating a **serious infraction**, that could turn criminal, comply with **typical 4th Amendment requirements**

31) **What would you do?** Are metal detectors where every student must walk through a "search" under the Fourth Amendment?

32) Legal Rule: A **metal detector** is a **search** under the Fourth Amendment

33) **Per the 7th Circuit:** Metal detectors are allowed "if the search is conducted as part of a general practice and is not associated with a criminal investigation to secure evidence."

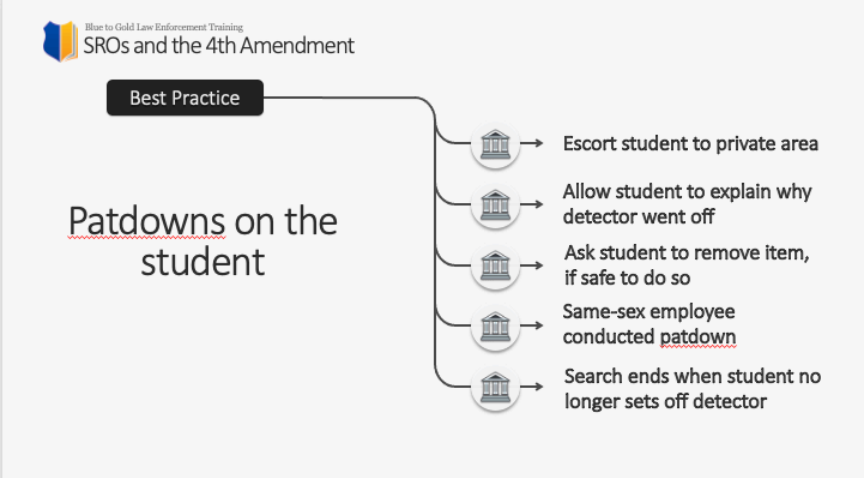
34) **What would you do?** What about random metal detector or wand" searches?

35) **Legal Rule:** Random searches are constitutional if students have **notice** and there is a **formula** for randomly choosing students – officer discretion must be reduced or eliminated.

36) **Case Sample:** A school had a policy of "rolling dice" to determine which classroom would be targeted for using a hand-held metal detector. **Held:** Policy upheld as valid random suspicionless search.

37) What would you do? What about targeting a specific student for a metal detector search?

38) Legal Rule: The officer needs **reasonable suspicion**

39) 

40) What would you do? Finally, what about more intrusive searches, like patting down all students, inspecting shoes, emptying pockets?

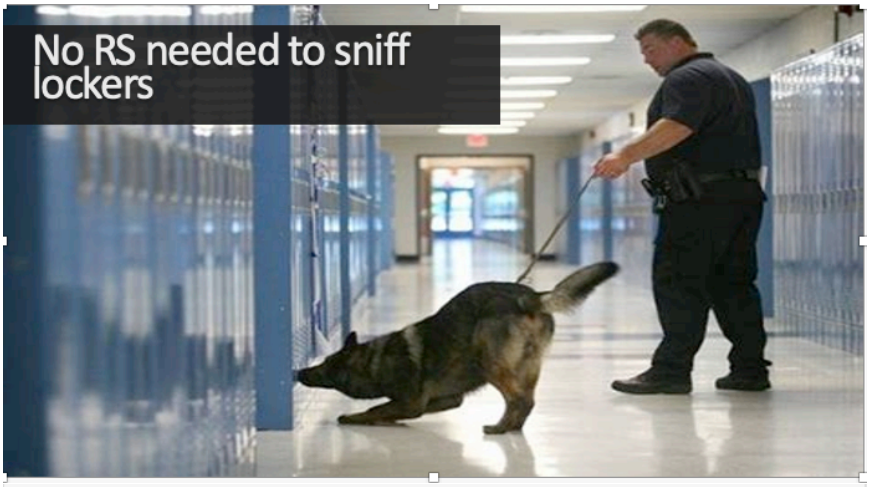
41) **Legal Rule:** If the school can articulate a **special need** for these intrusive searches, they should be upheld

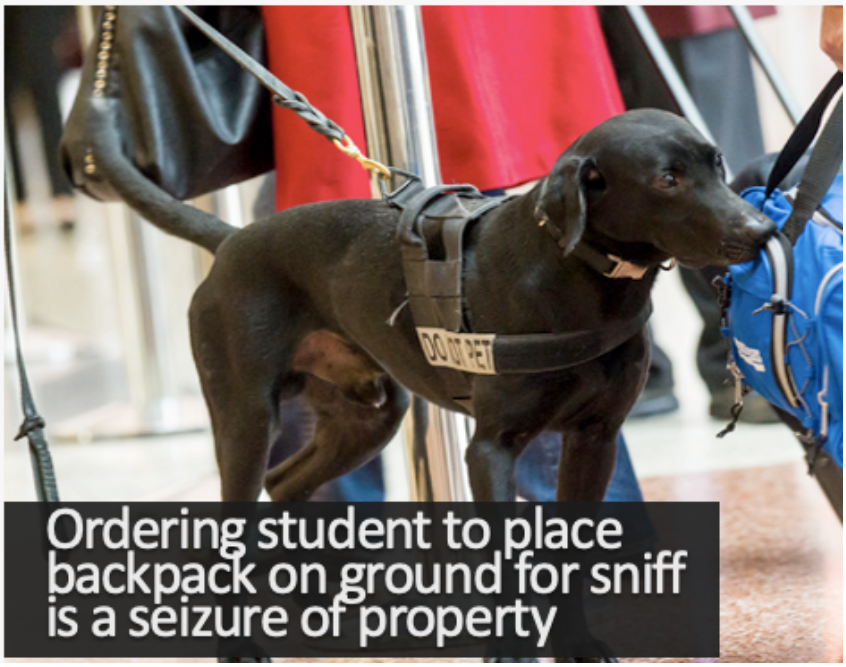
42) **Case Sample:** The Austin Alternative Learning Center required all students to pass through a metal detector, be patted down, empty their pockets into a tray, and remove their shoes for inspection. **Held:** This was a valid "administrative search"

43) Case Sample: An intermediate school patted down all students on Halloween morning because previous egg-throwing incidents. A handgun was found. **Synopsis:** The facts were

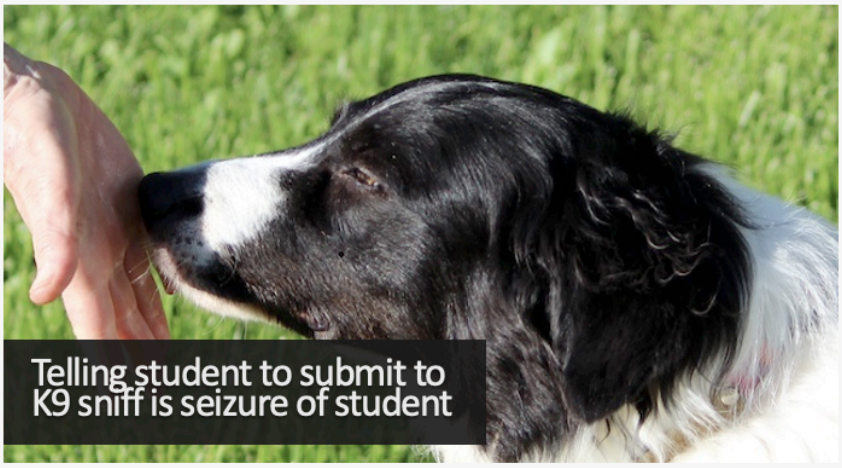
somewhat different, but the result was the same, in Matter of Haseen N., 251 A.D.2d 505, 674 N.Y.S.2d 700, 127 Ed. Law Rep. 958 (2d Dep't 1998). The principal of an intermediate school instructed his staff to pat down the outer clothing of students as they arrived on Halloween morning in 1996 "with the aim of preventing a recurrence of the egg-throwing melees that had occurred on the three previous Halloweens." The pat down discovered that one 13-year-old was bringing a.22-caliber pistol. The court characterized the pat-downs as an unobtrusive and constitutionally legitimate administrative search. **Held:** This was a valid "administrative search"

44) **Case Sample:** "A dog sniff conducted during a … lawful traffic stop that reveals no information other than … a substance that no individual has any right to possess does not violate the Fourth Amendment."

45) 



46) Sims v. Bracken County School Dist., 2010 WL 4103167, *13–19 (E.D. Ky. 2010) (upholding searches for students' persons, lockers, and cars after canine alerts, stating that "[t]he school's randomized drug patrols constitute a facially valid school-wide policy that allows for the search of a student's belongings or person only if reasonable suspicion has first been established," and citing U.S. v. Diaz, 25 F.3d 392, 393–94, 1994 FED App. 0193P (6th Cir. 1994) for the proposition that "[a] positive indication by a properly-trained dog is sufficient to establish probable cause.



47) Doe has been widely criticized and later cases have ruled that indiscriminate canine-sniff searches of a student's person are unconstitutional for lack of individualized suspicion. In a 1980 case involving almost identical facts (dog walking up classroom aisles sniffing students required to remain seated), the court

held that the indiscriminate search was unconstitutional because the school officials lacked any individualized suspicion that the students possessed illegal substances. Jones v. Latexo Independent School Dist.

48) **Legal Rule:** Generally, Miranda rules for adults and juveniles are the same. However, **age is an important factor.** Most juvenile requirements are addressed by state law and cases.

49) **Case Sample:** Florida trial court suppressed several confessions made by a 12-year-old boy where multiple experts determined that "it would be difficult for any twelve-year-old boy to understand Miranda warnings and the consequences of waiving their rights." **Synopsis:** Despite properly read Miranda warnings, indications from the minor that he understood each of his rights, and the minor's alert and responsive appearance, a Florida trial court suppressed several confessions made by a 12-year-old boy where multiple experts determined that "it would be difficult or any twelve-year-old boy to understand Miranda warnings and the consequences of waiving their rights." State v. Fernandez

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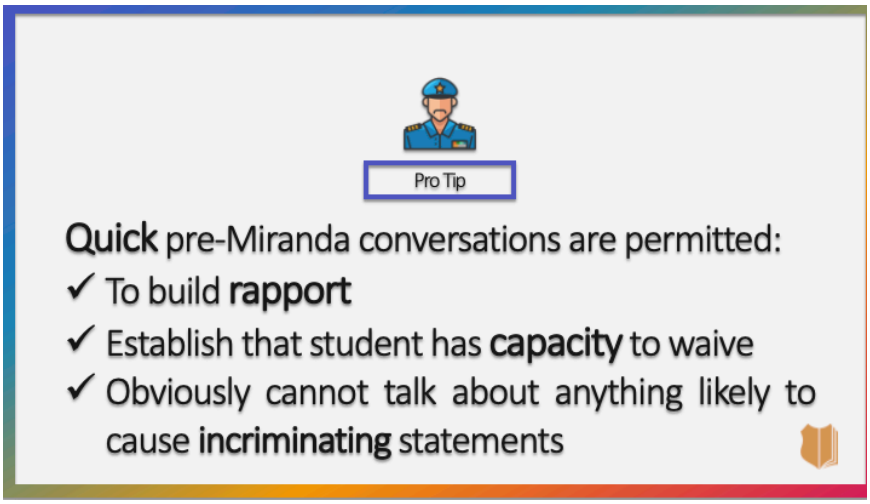
51) What would you do? What about talking to the student about general things before you seek your waiver?

52) 

53) **Case Sample:** Massachusetts court suppressed 17-year old's confession because officers did not prove she had the requisite intelligence, knowledge, experience, or sophistication to voluntarily or knowingly waive her rights. **Synopsis:** A Massachusetts trial court suppressed the confession of an almost-17-year-old girl to the murder of her daughter, despite validly read Miranda warnings, because she did not have the requisite intelligence, knowledge, experience, or sophistication to voluntarily or knowingly waive her rights. The court also held that confronting the suspect with knowingly false statements about her child's cause of death, coupled with suggestions that she would be treated leniently if she confessed because of her juvenile status and more harshly if she did not, rendered the interrogation unduly coercive and the confession involuntary. State v. Fernandez

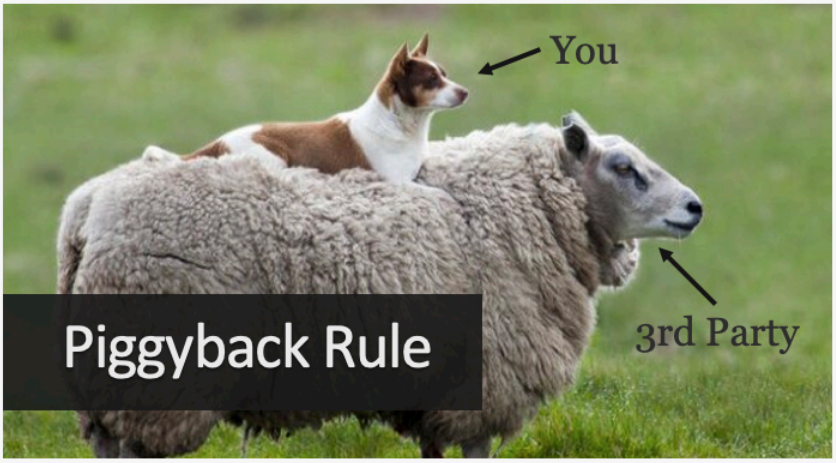
54) 

55) **Pro Tip:** Getting confessions from juveniles requires top-notch report writing. Over-articulate why it was **knowing** and **voluntary**.

56) **Pro Tip:** Also consider removing "custody" from "detention" by: Telling student he's not under arrest (if true). Remove handcuffs Be inquisitive not accusatory (witness v suspect). Other efforts to reduce coercive atmosphere

57) **Legal Rule:** A person with common authority over an area or item can allow you to perform the same search they could.

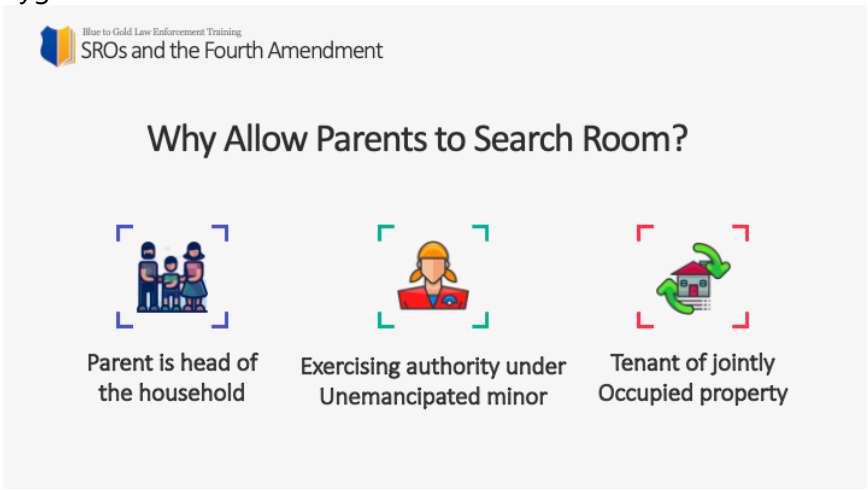
58) **Pro Tip:** Common authority means you reasonably believe they have either: joint ownership, joint access, or control.

59) 

60) 

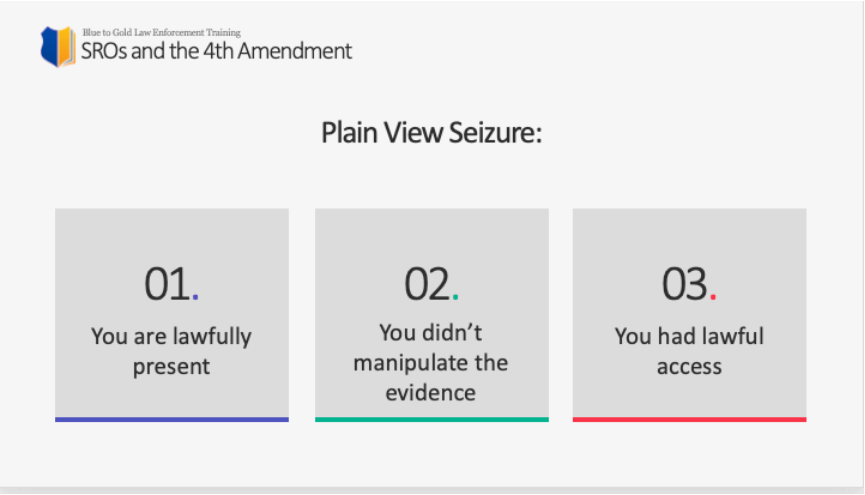
But the consent of a parent to search a child's room has been upheld even when the child did not share the room with another member of the family and the mother never entered to clean the room,[61] which suggests that some broader principle is operative in these cases. There is, and it derives from the

essential fact that the consenting party has the status of a parent.[62] As stated in *Vandenberg v. Superior Court*,[63] holding valid a father's consent to the police search of his 19-year-old son's room: In his capacity as the owner of the legal interest in the property, a father can transfer to the police the limited right to enter and search the entire premises including that portion of the real property which has been designated by the parent for the use of his children. ... In his capacity as the head of the household, a father has the responsibility and authority for the discipline, training and control of his children. In the exercise of his parental authority, a father has full access to the room set aside for his son for purposes of fulfilling his right and duty to control his son's social behavior and to obtain obedience. ... Permitting an officer to search a bedroom in order to determine if his son is using or trafficking in narcotics appears to us to be a reasonable and necessary extension of a father's authority and control over his children's moral training, health, and personal hygiene.



61) Does a parent have actual authority to consent to a search of his or her child's bedroom? Yes. Absent evidence the child, even an adult child, exercised exclusive control over a particular room, compartment or container, the search will be upheld. (See, for example, People v. Oldham, 81 Cal. App. 4th 1, 96 Cal. Rptr. 2d 343 (4th Dist. 2000).) In the case of In re Scott K., 24 Cal. 3d 395, 155 Cal. Rptr. 671, 595 P.2d 105 (1979), the court held it was not reasonable for the police to believe the father had authority to consent to a search of the son's locked toolbox. Although the court did not question the authority of the parent to consent to a search of the son's bedroom, the toolbox was locked and only the minor had the key. The search of closed containers within a residence is evaluated differently from the

authority to consent to the residence itself. Assume police receive consent from a parent to search the child's bedroom but the child, age 15, stands at the door and objects. If police seize incriminating evidence from the child's bedroom and seek to introduce this evidence against the child in Juvenile Court proceedings, does *Randolph* require suppression? No. In the case of In re D.C., 188 Cal. App. 4th 978, 115 Cal. Rptr. 3d 837 (1st Dist. 2010), police obtained the permission of the minor's mother to search the minor's bedroom for stolen property. The minor stood at the doorway and told the officers they could not enter; the mother (in a wheelchair) told her son to get out of the way. He did, and the officers found stolen property in his bedroom. The minor moved to suppress based upon Randolph. The court held that it was reasonable for the police to believe the parent had the authority to give consent. Given the difference between adult co-tenants and the parent/child relationship, the parent has authority over the child such that the officers were not required to respect the minor's objection. The court discussed, but distinguished, In re Scott K., 24 Cal. 3d 395, 155 Cal. Rptr. 671, 595 P.2d 105 (1979), which had held invalid the parent's consent to search the minor's toolbox. A parent has the authority to consent to a search of the child's room, although perhaps not as to a particular closed container inside the residence. Parents may not summarily waive their child's right to search and seizure protections.

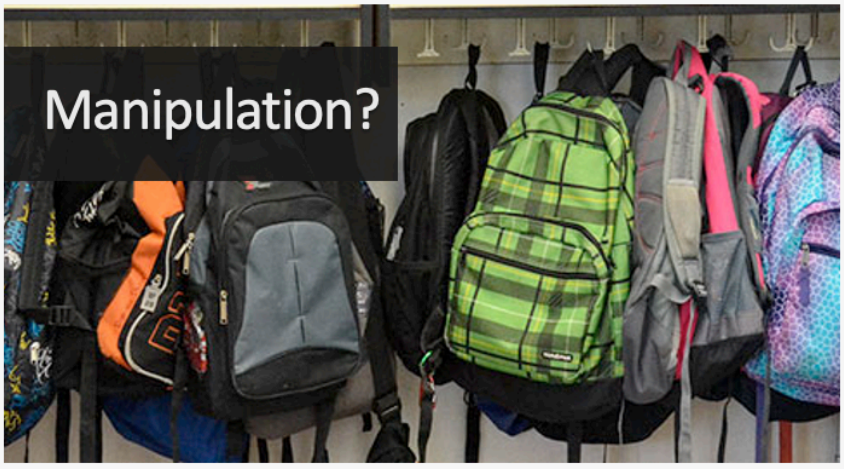


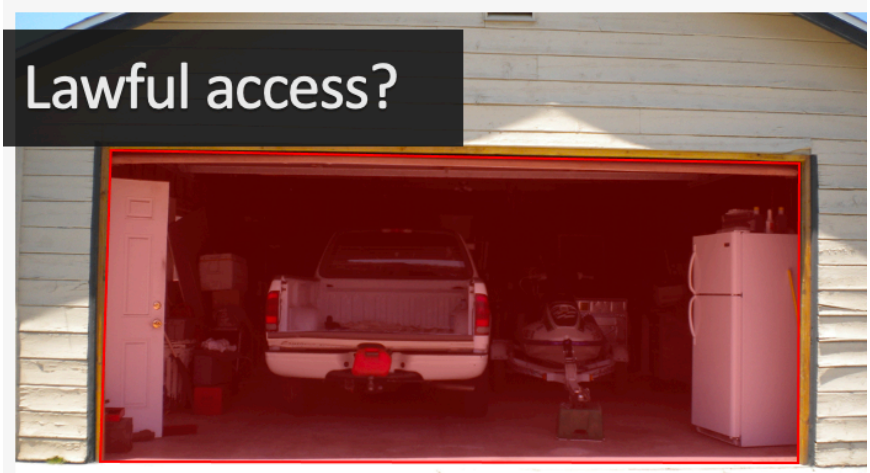
62)

63) **Pro Tip:** Remember Plain View (including smell and hearing) is nothing more than right to be, right to see.

64) 

Rorvik v. Snohomish School District, 2018 WL 3917932 (W.D. Wash. 2018), appeal dismissed, 2018 WL 7575588 (9th Cir. 2018) (dismissing claims against school officials arising out of search of student vehicle on school grounds where school Security Monitor saw bong in student's car which meant a search of the passenger area during which vape devices, a BB gun, more drug paraphernalia, and two knives were also found was justified at its inception and not excessively intrusive.).

65) 

66) 

You are driving by a house with its garage door open, you see a stolen ATV inside. Can you seize it? You see suspect in driveway. Can you make consensual encounter? Arrest? What if suspect is in backyard?

67) **Legal Rule:** To prove constructive possession, you must show that the defendant **intentionally** exercised **dominion** and **control** over the contraband.

68) **Case Sample:** Customs discovered heroin inside a package and a controlled delivery was conducted. Defendant answered door and accepted package (fake name on label). Minutes later, police entered apt and found roommate opened package and defendant was in another room. **Synopsis:** In United States v. Samad (1984, CA5 Va) 754 F2d 1091, the defendant was convicted of importation and possession of a controlled substance with the intent to distribute. The defendant was born in Afghanistan and was granted political asylum in the United States. The defendant resided with a co-defendant by the name of Hanan for one year prior to their arrest. Hanan leased the Washington apartment in which the two defendants resided. The events leading to the defendant's arrest began when Custom officials at Kennedy International Airport opened a package mailed from Pakistan. The package was addressed to the Washington Apartment, in the fictitious name of "M. Amin."When the package was opened, the agents discovered 22 grams of 72% pure heroin sewn inside a shirt collar. The agents arranged for a controlled delivery of the package to the address where the defendants resided. The agents put the heroin under the shirt collar, and enclosed a beeper designed to emit a signal when the package was opened. A local letter carrier, working with the DEA, delivered the package to the defendants'

residence. When defendant Samad answered the door, the carrier asked for "M. Amin," the addressee on the package. The defendant replied "yes," whereupon the letter carrier gave him the package. The defendant asked if he needed to sign for the package and the carrier responded that he did not. At trial, the defendant testified that he gave the package to his housemate, co-defendant Hanan. The defendant said that while Hanan opened the package, he left the room to get a sweater. In fact, when the agents entered the apartment, they found the defendant in another room.

On appeal, the court reversed the defendant's conviction. The validity of the defendant's conviction depends upon whether the government adduced sufficient evidence to show that the defendant knew that the package contained heroin. The court said that the evidence of the defendant's knowledge was too slim to sustain a conviction. The conviction cannot stand merely because a package containing drugs was mailed to the defendant's address and he accepted the package. **Held:** The acceptance of a package addressed to someone else is not enough to prove constructive possession.

69) **Legal Rule:** The **mere presence** around contraband, without more evidence, is **not enough** to prove constructive possession. But P.C?

70) **Pro Tip:** Look at it this way: What if you were in a car that contained contraband in the trunk, would that be **enough to convict** you for constructive possession?

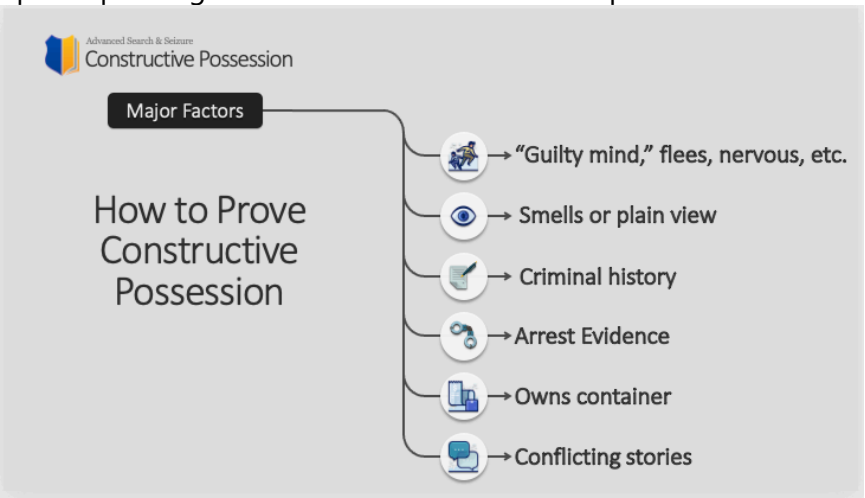
71) **Case Sample:** The defendant set-up a drug deal between dealer and undercover officer. Later, dealer and defendant were arrested for possession. **Synopsis:** In a leading federal case, the defendant, upon being approached by a narcotics agent, proceeded to take the agent to a known seller. The defendant located the seller, negotiated a sale of narcotics, and received ten dollars from the agent for his efforts. The defendant was convicted of a number of narcotics offenses, including possession. The court on appeal, however, held that the government cannot rely on the mere fact of the defendant's knowledge that another possesses narcotics, short of actual possession by the defendant himself, to establish the necessary scienter to convict him of possession. More is required than mere proof of participation in a transaction with knowledge that the commodity involved is a narcotic. United States v. Jones.

Held: Only dealer can be convicted for possession because defendant had no intent to possess the drugs. **Question:** Good case for conspiracy?

72) **What would you do?** A large amount of cocaine was found in the trunk of a vehicle following a consent to search by student. Without any other circumstantial evidence, you arrest the student and his passenger. **Question:** Good case against the passenger?

73) **Pro Tip:** The key is to articulate **how** and **why** a reasonable person near the contraband would **know** the contraband was there and either **previously possessed** it or would in **the future.**

74) **Case Sample:** Trafficking amount of drugs were found in trunk during PC search. The car was owned by driver, only one small bag was in passenger compartment, both driver and passenger denied having a key to trunk, passenger was with driver when car was picked up, and both gave conflicting stories. **Synopsis:** Cases arise in which the weight of the circumstantial evidence is so strong that the inference of possession seems reasonable. For example, where the passenger had taken several flights between two major cities with the driver of the auto in which the drugs were found, the passenger's connection with the driver's activities in relation to drugs was found to support the passenger-defendant's conviction for possession. United States v. Phillips **Held:** There was enough circumstantial evidence to uphold passenger's conviction for constructive possession.

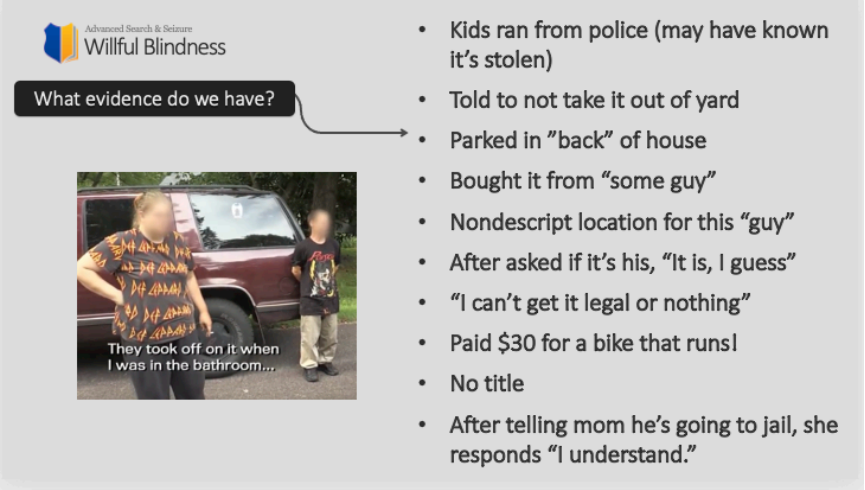
75) 

76) **What would you do?** A student was caught with a locked backpack which had a gun inside. He told cops it wasn't his backpack, was paid $50 to give it to a student named "TJ," never looked inside backpack, didn't have key, and claimed no knowledge about the gun.

77) **What would you do?** Possession requires that the defendant knew he was possessing contraband, not just mere possession. Otherwise, every UPS driver could be arrested that unknowingly delivered drugs.

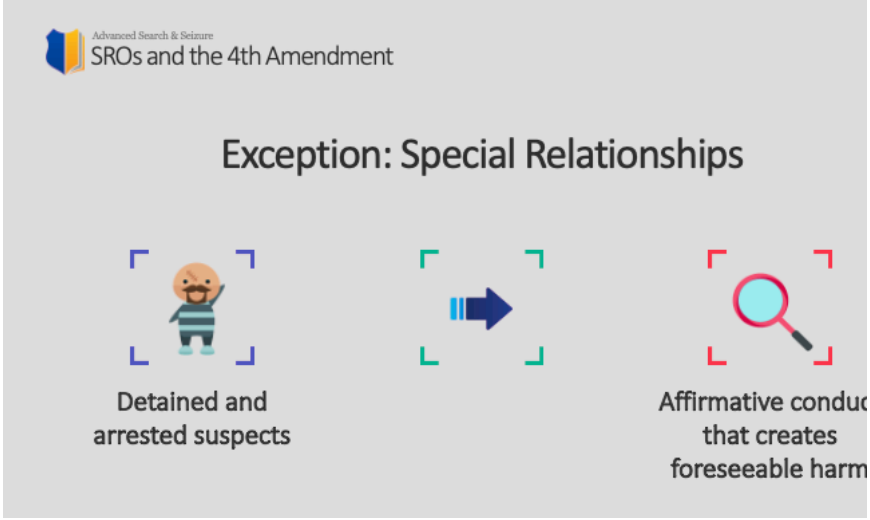
78) **Pro Tip:** The legal concept here is called willful blindness. Articulate based on your training and experience a reasonable person would know drugs were in the car or container, not generalized criminal activity.

79) **Video:** "Willful Blindness"

80) 

81) **Legal Rule:** Generally, SROs are held to the same standards as other specialized units and have no obligation to protect people from harm

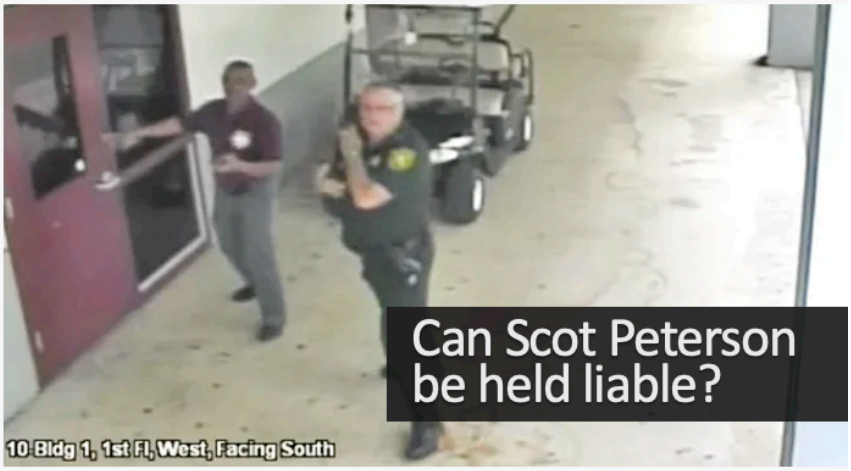
82) **Case Sample:** In DeShaney v. Winnebago County, the Supreme Court held that "nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors."

83) 

In the absence of warrants and probable cause, the legitimate privacy interests of public schoolchildren are protected by requiring that searches and seizures must be "reasonable" under all circumstances. New Jersey v. T.L.O., 469 U.S. 325, 341, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985). To satisfy this requirement a student search must be:

• *Justified at its inception*. Officials must "reasonably" suspect that evidence indicating that a student has violated or is violating the law, or a school rule will be found in a particular place. New Jersey v. T.L.O., 469 U.S. 325, 342, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985). Such a "reasonable" suspicion requires only sufficient probability, not absolute certainty. New Jersey v. T.L.O., 469 U.S. 325, 346, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985). The requirement for at least a reasonable suspicion applies to any student search no matter how serious or relatively minor the suspected infraction may be. New Jersey v. T.L.O., 469 U.S. 325, 342 n.9, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985).

• *Reasonable in scope*. Student searches are gauged in relation to the circumstances that originally justified them. Thus, the scope, intensity, and methods of a search as it is actually conducted must be consistent with its original objective and not excessively intrusive in relation to the nature of a suspected infraction or the student's age and sex. New Jersey v. T.L.O., 469 U.S. 325, 342, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985).

84) 

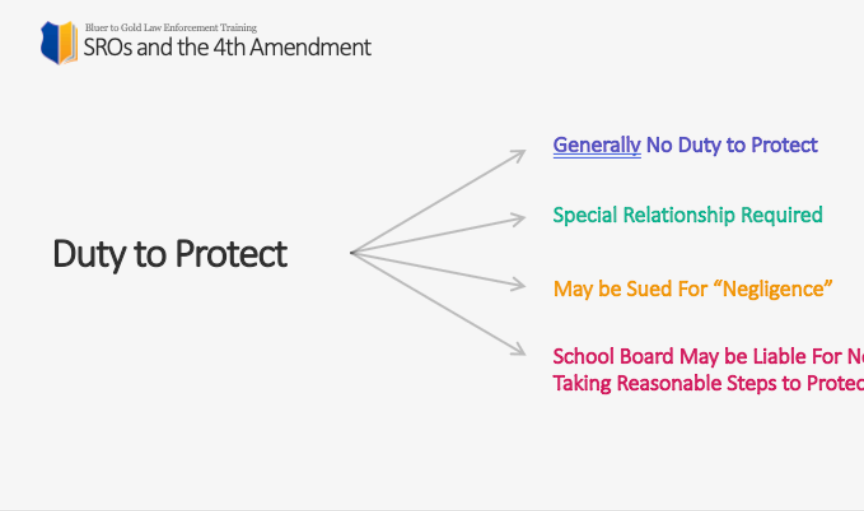
"I can't think of a case where someone has been charged with not going into harm's way," said Laurie Levenson, a professor at Loyola Law School in Los Angeles. "Basically, they're charging him with being a coward."

85) 

As violence in public schools has increased, courts have been more explicit and detailed in explaining the special legal regime that governs the rights of students in relation to school officials. A New York judge provided the following overview of this subject: Schools have a very different relationship to their students than police officers have to the private citizens they encounter on the street. Attendance is mandatory, and those required to attend must attend "regularly as prescribed where [the student] resides or is employed, for the entire time the appropriate public schools are in session and … be subordinate and orderly while attending" (Education Law sec. 3210(1)(a)). In assuming physical custody and control over its students, a school stands in loco parentis; it has the duty "to exercise such care of them as a parent of ordinary prudence would observe in comparable circumstances." … Schools have a duty to

adequately supervise the students in their charge and may be held liable for foreseeable injuries proximately related to the absence of adequate supervision .... To that end, a school may discipline a student ... People v. Butler, 188 Misc. 2d 48, 725 N.Y.S.2d 534, 538, 154 Ed. Law Rep. 271 (Sup 2001). Although the "in *loco parentis*" standard remains controversial, and is somewhat inconsistent with language in *T.L.O.*, 469 U.S. at 336, the liability of schools that do not provide safe school environments has become clear (*see* Chapter 14), and that concern requires some closer regulation of potential troublemakers in the school.

86) **Pro Tip:** It's unclear whether courts can hold SROs liable under a "in loco parentis" rationale but be assured lower courts will try! In loco parentis = "in the place of a parent"

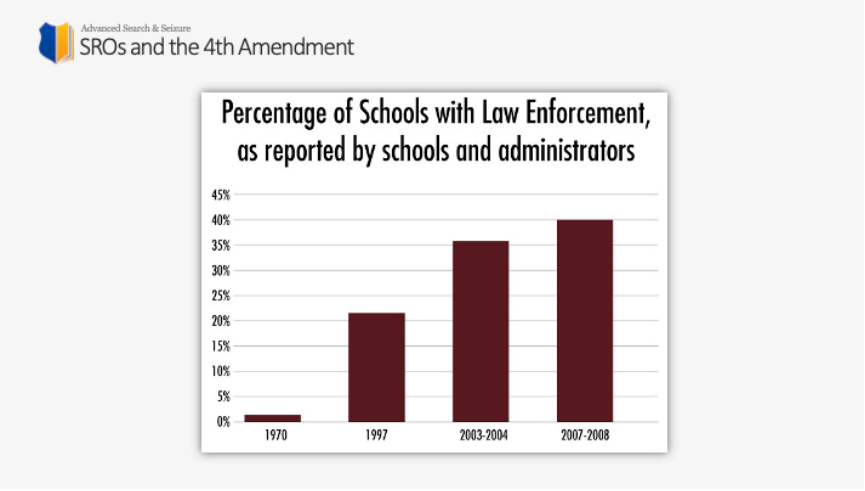
87) 

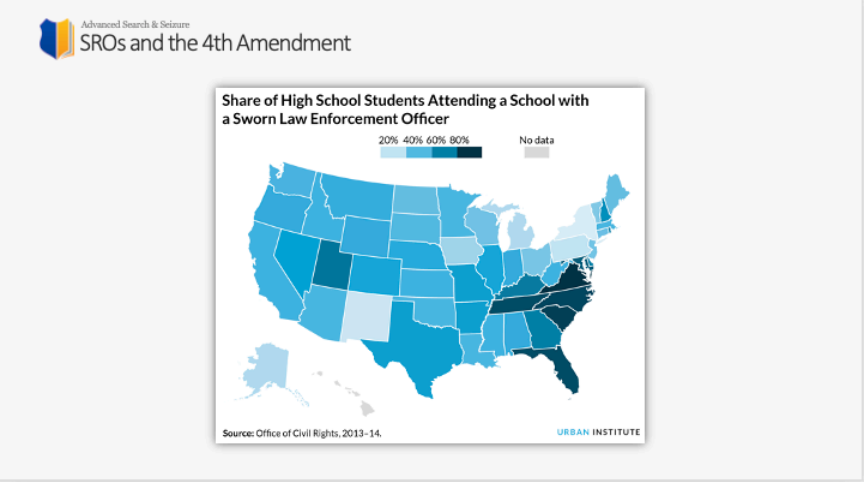
In addition to these common-law causes of action, it also needs to be mentioned that many states now emphasize the duty imposed on school officials to provide safe schools and a drug-free environment, and that school officials may be liable if they fail to meet this responsibility.

88) **Video:** "Excessive Force"

89) 

Most courts evaluate claims of excessive force under the banner of substantive due process, even those claims that involve a student and a school official. The substantive due process inquiry in school corporal punishment cases, as outlined in Hall v. Tawney, 621 F.2d 607, 613 (4th Cir. 1980), is: whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience.

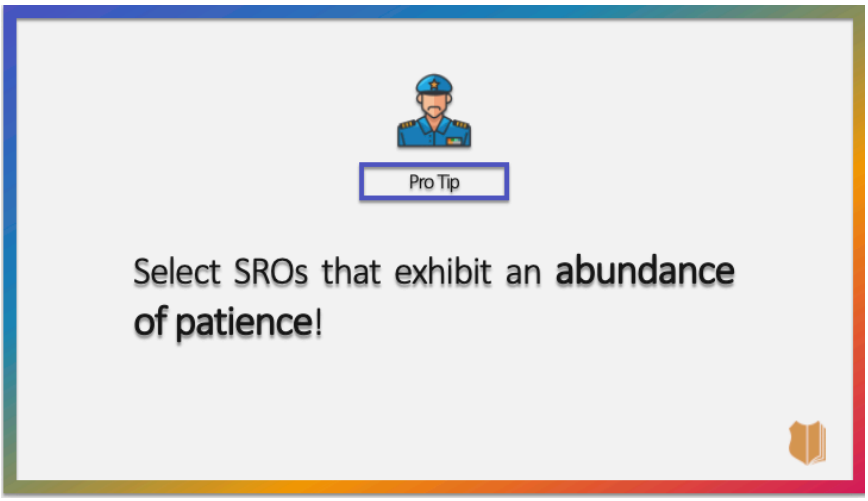
90) 

91) 

92) **Pro Tip**: The Fourth Amendment provides better guidance than a "due process" standard

93) **Pro Tip:** While the liability rules may be the same as your fellow officers, lawsuits involving children are tricky because it can create run-away juries

94) **Video:** "Excessive Force"

95) 

Module Three: Open Forum - 30 minutes

End of class.