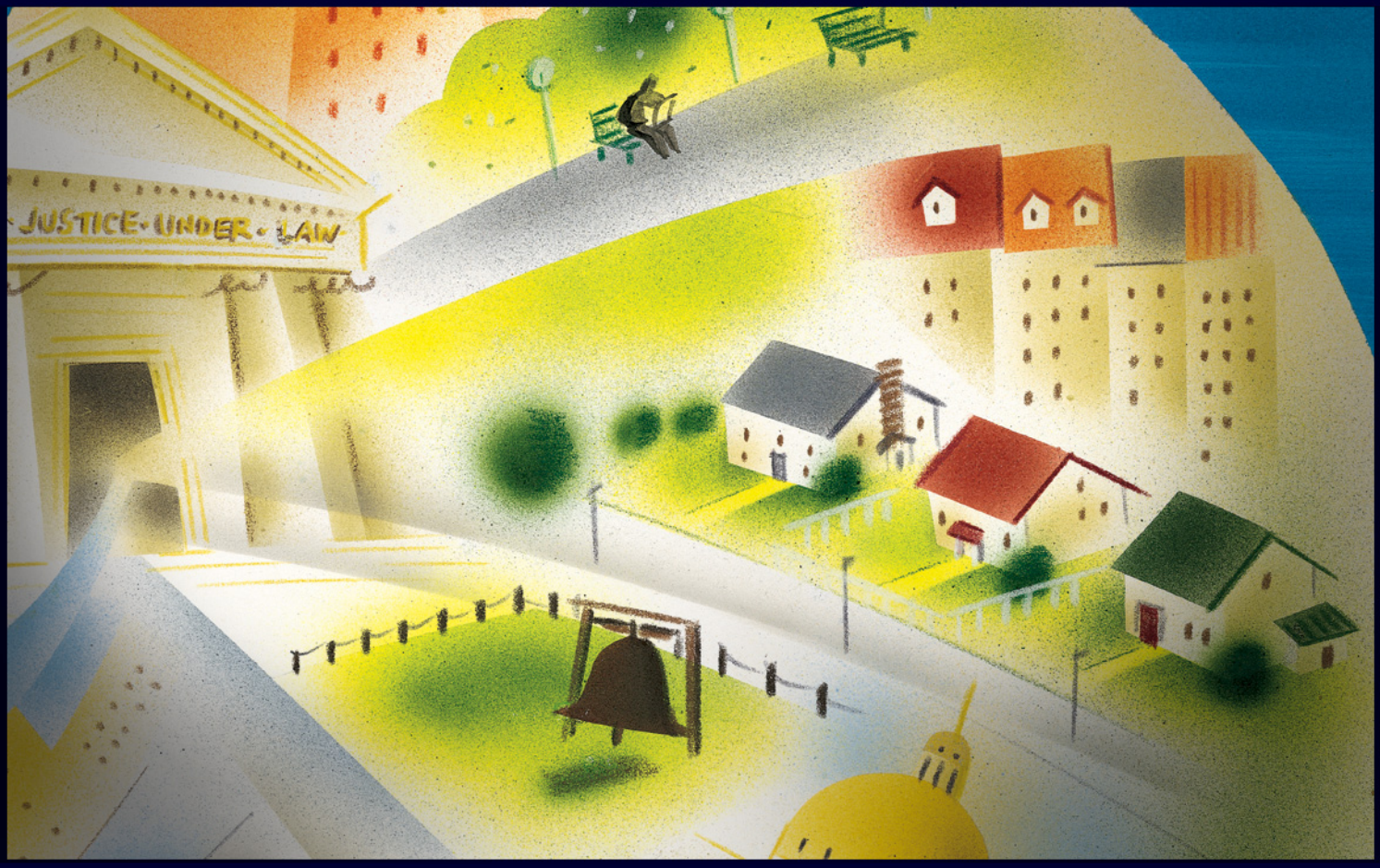
Open Doors to Federal Courts



Simulation of a Supreme Court Oral Argument

Content Areas: U.S. Government, Law

Grades: *9-12*
Time: *Two and one-half or three class periods*
45 minutes each

Overview

Every year the Supreme Court hears dozens of cases related to key constitutional issues. These cases can be used to teach enduring concepts in government and law. In this lesson, students will learn about important concepts in Fourth Amendment law and stage a mock Supreme Court oral argument in small groups on a case decided in the 1999-2000 term.

Objectives

At the end of this lesson, students will be able to

- Describe standards used by courts and police concerning stops and frisks under the Fourth Amendment;
- Apply their understanding of Fourth Amendment law to a recent Supreme Court case, *Illinois v. Wardlow*, dealing with flight from police;
- Formulate opposing arguments and questions in order to conduct a moot court hearing on *Illinois v. Wardlow*; and
- Describe the Supreme Court's decision in *Illinois v. Wardlow*.

Links to National Standards for Civics and Government

Content Standard III (A), 1. Distributing government power and preventing its abuse. Students should be able to explain how the U.S. Constitution grants and distributes power to national and state governments, and how it seeks to prevent abuse of power.

Content Standard III (D), 2. Judicial protection of the rights of individuals. Students should be able to evaluate, take, and defend positions on current issues regarding the judicial protection of individual rights.

Link to National Council for the Social Studies Standards

Power, Authority, and Governance
Social studies programs should include experiences that provide for the study of how people create and change structures of power, authority, and governance.

Materials

Student Handout 1: *Illinois v. Wardlow* — Focus Scenarios for Discussion

Student Handout 2: *Illinois v. Wardlow* — Background Information

Student Handout 3: *Illinois v. Wardlow* — Background to the Fourth Amendment

Student Handout 4 or Overhead Transparency 1: *Illinois v. Wardlow* — The Case in the Courts

Student Handout 5: *Illinois v. Wardlow* — Classifying Arguments for the Case

Teacher Answers: Student Handout 5

Student Handout 6 or Overhead Transparency 2: Moot Court Activity — Introduction

Student Handout 7 or Overhead Transparency 3: Initial Steps in the Process for All Groups

Student Handout 8 or Overhead Transparency 4: Preparations for Specific Groups

Student Handout 9 or Overhead Transparency 5: Moot Court Procedures

Student Handout 10: *Illinois v. Wardlow* — Majority Decision

Student Handout 11: *Illinois v. Wardlow* — Dissenting Opinion

Procedure

Focus

Ask students to pair up and distribute a copy of Student Handout 1: *Illinois v. Wardlow* — Focus Scenarios for Discussion to each pair. Explain to students that the law sometimes gives police the right to stop people in public who are acting suspiciously in order to determine if a crime is taking place or is about to take place. However, the police must be able to cite specific facts about the situation that make them believe that a person is acting suspiciously. They cannot act on a hunch.

Ask students to imagine that they are police officers. Have them read through each scenario in pairs and determine whether, in their opinion, the situation is suspicious enough to justify stopping the person to investigate. The students should discuss the scenario with their partner and mark their papers. This should take five-to-seven minutes.

When students are finished with the activity, discuss each scenario with them.

The first scenario would be definitely considered suspicious. From a police officer's experience, the white substance being exchanged for money is likely cocaine. The police officer would have reasonable cause to stop the people involved to determine whether criminal activity was taking place.

The second scenario would not be considered suspicious enough to justify stopping the man. Simply wearing gang colors does not implicate the man in any illegal activity.

The third scenario is more ambiguous. The men involved could be "casing" the store with the aim of robbing it. However, there could be another explanation for their behavior. This scenario was the situation in the famous *Terry v. Ohio* (1968) case, which is one of the precedents in the case for this lesson plan. The Supreme Court determined that the police could reasonably conclude from their experience that the actions of the men might lead to a robbery and that they could be armed. The Court allowed the search in this circumstance which, in fact, led to the arrest of the men on weapons charges.

The last scenario deals with whether running away from police officers is suspicious in and of itself. Have students discuss their viewpoints on this issue and then explain that the Supreme Court recently heard a case on this topic and that they will conduct a moot court hearing to help learn about the case.

1. Input and Checking for Understanding

Distribute Student Handout 2: *Illinois v. Wardlow* — Background Information. Ask students to read through the scenario silently, or ask one or more students to read the scenario aloud. When they are finished, ask the following focus questions to check for understanding. It may be helpful to use Overhead Transparency 1: *Illinois v. Wardlow* — The Case in the Courts, to help students understand the progress of the case. Here are some focus questions to check for student understanding.

Was Wardlow engaged in illegal conduct when the police officers saw him? What made the officers suspicious of him? What did the police officers find when they stopped Wardlow?

Why did Wardlow's attorney file a motion to have the gun evidence suppressed in the Cook County circuit court? Why did the judge deny the motion?

How did the Illinois Appellate Court decide Wardlow's appeal? How did the Illinois Appellate Court's decision on the appeal differ from the Cook County circuit court judge's decision on the motion to suppress evidence?

Why did the State of Illinois appeal the case to the Illinois Supreme Court? What was the decision in the Illinois Supreme Court? How was that decision similar to the decision in the Illinois appellate court? How was it different?

2. Input and Checking for Understanding

Distribute Student Handout 3: *Illinois v. Wardlow* — Background to the Fourth Amendment. Again, ask students to read the information. Here are some focus questions to check for students' understanding.

Is there a precise definition of what a reasonable search is? How do courts determine whether a search is reasonable? Do searches always have to have a warrant?

How does a stop-and-frisk differ from a full-blown search? What case set the precedent for the stop-and-frisk? According to the quote from the Terry case, when may police conduct a stop-and-frisk?

What does it mean to be able to cite articulable facts to support an inference of suspicion? How does this differ from acting on a hunch?

What is the question that the Supreme Court must decide? What is an argument for Sam Wardlow? What is an argument for the state of Illinois?

Why is determining the suspiciousness of flight important for Wardlow's case?

3. Input and Checking for Understanding

If there is time remaining in the class, distribute Student Handout 5: *Illinois v. Wardlow* — Classifying Arguments for the Case, and ask students to complete it individually or in pairs. If you are short on time, this can be assigned for homework. Review the answers with students and discuss. Answers are included in these materials.

Activity

Divide students into equal numbers of attorneys for Wardlow, attorneys for Illinois, and judges. You can select a few students to be journalists to report on the hearings and write a news article, but this is optional.

The attorneys for Wardlow should gather to develop arguments for his side of the case. They should use arguments from the classification handout in addition to any arguments that they devise on their own. Attorneys for Illinois should do the same. Judges should draft a list of questions to ask each side of the case. Overhead Transparencies 2-5 should help you explain the activity and moot court procedures to the students. Give students about 15 minutes to develop arguments.

When students are finished, select one student from each group to form a triad consisting of one attorney for Wardlow, one attorney for Illinois, and one judge. Continue forming groups until each student is in a triad. Review the procedures of the moot court with students. Overhead Transparency 5: Moot Court Procedures, should help with this explanation. Explain that the judge should keep the time strictly so that all groups are finished delivering their arguments together. You can tell students that in real Supreme Court hearings the justices can interrupt the speeches of the attorneys with questions, but for our purposes, because time is limited, they should hold their questions until the attorneys have each finished their arguments.

1. Checking for Understanding
As students are presenting their arguments, check for understanding of the material among students. The presentation of the arguments should not take more than 12 minutes.

When students are finished, ask the student justices to deliberate for a few minutes and be ready to make their decision. Each justice should stand and give his/her decision with a brief explanation. Someone, preferably the teacher, should tally the decisions and announce the outcome.

2. Input and Checking for Understanding
If there is time, you can distribute Student Handouts 10 and 11, the majority and minority decisions from the actual case, for students to read for homework.

Discuss the decisions with the students. The following focus questions may help you check for student understanding.

- How was the majority decision similar to or different from the students' reasoning?
- Why did the Court refuse to create an absolute rule allowing police to declare flight suspicious, or keep them from declaring flight suspicious?
- How was the minority decision similar to the majority decision? How was it different?
- Do you believe it is more likely or less likely that police will infer suspicion from flight after this case? Explain.

Extending Understanding
You may wish to have students research a related case from the same 1999-2000 term, *Florida v. J.L.,* which deals with an anonymous tip about weapons possession.

Student Handout 1
Illinois v. Wardlow — Focus Scenarios for Discussion

Imagine that you are a police officer. The law gives you the right to stop a person who is acting suspiciously in order to conduct a brief investigation to determine whether a crime is taking place or is about to take place. However, you must be able to cite specific facts to support your position. You cannot stop someone on a hunch. Read through the following scenarios and determine, in your opinion, whether or not you would stop those involved to conduct an investigation.

Write "Y" if you would stop the person and "N" if you would not stop the person. Be ready to explain your reasoning.

_____ 1. A woman standing on a corner gives a clear bag with a white substance to a man who gives her money in exchange.

Explain:

_____ 2. A young man is walking down the street dressed in gang colors.

Explain:

_____ 3. One man walks up a street, peers into a store, and continues walking. He then comes back and looks into the same store. He meets a companion who also peers into the window of the store. The two of them continue walking back and forth checking out the store several more times before following a third man up the street.

Explain:

_____ 4. As you are driving down the street, you notice a woman running away from you.

Explain:

Student Handout 2
Illinois v. Wardlow — Background Information

The Case Facts
Sam Wardlow, a 44 year-old-black man, was standing on a sidewalk in what is considered one of Chicago's high-crime areas when four police cars containing eight officers came into sight. Though Wardlow was not doing anything visibly suspicious, he fled the scene when he saw the police officers. Timothy Nolan, a veteran police officer, chased Wardlow. They believed that his flight indicated unlawful activity since Wardlow was in what the officers believed to be a high crime area. They caught Wardlow and frisked him. During the pat-down search, the two officers found a handgun.

Wardlow was charged in the Cook County Circuit Court with several counts of unlawful use of a weapon by a felon and unlawful use of a weapon. His attorney filed a motion to have the gun evidence suppressed before the trial. Wardlow and his attorney contended that the pat-down search violated the Fourth Amendment right against unreasonable search and seizure because the police had no reasonable cause to stop him. However, the motion was denied by the trial court. The court found that, although Wardlow was not engaged in a crime or acting otherwise suspiciously, the combination of Wardlow's flight and the knowledge that drugs and weapons are commonly carried in the area justified the stop and frisk by the police.

The evidence was then allowed in court. Wardlow was convicted for unlawful use of a weapon by a felon. He appealed his case to the Illinois Appellate Court. That court unanimously ruled in Wardlow's favor, reversing the lower court decision. The appeals court ruled that there was not enough evidence to support the police allegations that Wardlow was in a high crime area. That being the case, the officers could not stop Wardlow for simply fleeing the scene.

This time the state of Illinois appealed the case to the Illinois Supreme Court. That court sided unanimously with Wardlow, affirming the appellate court's decision. The Illinois Supreme Court agreed with the circuit court that the area where they saw Wardlow was indeed a high crime area; however, this did not justify the stop-and-frisk. The Illinois Supreme Court declared that the search violated the Fourth Amendment. The state of Illinois then appealed the case to the U.S. Supreme Court.

Student Handout 3
Illinois v. Wardlow — Background to the Fourth Amendment

The Fourth Amendment

> *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.*
>
> *— Fourth Amendment to the U.S. Constitution*

The Fourth Amendment was included in the Bill of Rights to protect people from unreasonable and arbitrary intrusion on their privacy by the government. It sets out broad guidelines for police searches of persons and property — that searches can be conducted with a warrant and they must be reasonable — but the courts have had to make significant interpretations of the Fourth Amendment over time. For instance, it is not always clear what a reasonable search is; the courts must examine the facts and circumstances of each case to determine if the search was reasonable. In addition, the courts have found that some searches can be conducted without a warrant.

When can police stop a person and conduct a frisk?

At the time the Wardlow case was heard, past courts had determined that the police were allowed to conduct a warrantless stop-and-frisk search if the officer saw the person acting suspiciously or had reason to believe the person was likely to be armed. A frisk is a brief search of a person with the aim of determining whether the person is armed. It is not a full search. Instead, it is a pat-down of the outer clothing. The rule allowing a stop and frisk in certain circumstances came from the Supreme Court's ruling in *Terry v. Ohio* (1968). The Court said

> *"Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the person with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquires, ... he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him." (p. 30)*

The Terry decision requires that police have reasonable cause to conduct a stop-and-frisk. This is a lower standard of proof than probable cause. In determining whether there is reasonable cause to stop a person, the police must be able to point to specific and articulable facts that support the inference of suspicion. In other words, the police cannot act on gut feelings. The consequence of this lower standard is that police can stop and frisk when they have a suspicion, grounded in concrete facts, that illegal activity may be taking place, or about to take place. They do not have to see the illegal activity itself.

In Sam Wardlow's case, the only indication that the police had of suspicious activity was Wardlow's flight from the police. He was not engaged in other activity, nor did they have any indication he was carrying a gun. The question then became whether Wardlow's flight from the police was reason enough to justify a stop and frisk. The state of Illinois claims in this case that fleeing from police officers is suspicious in and of itself. In case the court doesn't agree, Illinois also claims that a person's flight in combination with the surroundings of a high crime area are enough to make the fleeing person suspicious. On the other hand, Wardlow claims that there are many reasons a person might flee at the sight of police, making it impossible to determine suspicion or not. Ambiguities like these make search and seizure law very complex and force the courts to address the law on a case-by-case basis. This is why it is very important to examine carefully the circumstances of the Wardlow case.

Why is the suspicion attached to flight so important for Wardlow?
Generally speaking, if a court finds a search to be unreasonable, then the evidence obtained during the search cannot be used against a defendant during trial. The principle by which illegally seized evidence is kept out of trials is called the exclusionary rule. When Sam Wardlow was preparing for trial, his attorney filed a pretrial motion to get the gun evidence suppressed. They claimed that the search was unreasonable because Wardlow was doing nothing suspicious and was not obviously engaged in crime. Therefore, the gun should not be allowed as evidence to support the weapons charge. However, in this case, the trial court declared that his flight in a high crime area was suspicious and denied the motion to suppress the gun. During the trial, this evidence was enough to convince a jury to convict Wardlow. The evidence also became the reason for Wardlow's appeal to the Illinois Appellate Court.

Student Handout 4 or Overhead Transparancy 1

Illinois v. Wardlow — The Case in the Courts

Illinois v. Wardlow

Supreme Court of the United States

Is a person's sudden and unprovoked flight from a clearly identifiable police officer, who is patrolling a high-crime area, sufficiently suspicious to justify a temporary investigatory stop, pursuant to *Terry v. Ohio*?

Illinois Supreme Court

Court sides with Wardlow. An individual's flight from police in a high-crime area is not sufficient cause to justify a police investigatory stop.

Illinois Appellate Court, First Division

Court sides with Wardlow. Not enough evidence of a high-crime area and the flight alone cannot justify a police investigatory stop.

Cook County Circuit Court (trial)

Trial court denies Wardlow's motion to suppress the gun evidence stating that the high-crime area, coupled with Wardlow's flight, justifies the investigatory stop. Wardlow is convicted of unlawful use of a weapon by a felon.

Student Handout 5
Illinois v. Wardlow — Classifying Arguments for the Case

The following is a list of arguments used in the Wardlow court case. Read through each argument and decide whether it supports Illinois (**I**), Wardlow (**W**), both sides (**B**), or neither side (**N**). Write the appropriate letter(s) beside the argument in the space provided. Take notes on each argument justifying your position.

_____ 1. It is common sense that when a person sees the police and runs away, the police would have reason to believe that the person is engaged in illegal activity. As a rule, the police must be able to stop those who flee at their sight.

_____ 2. People may have many different reasons for wanting to flee the police. The Supreme Court stated in *Alberty v. United States* (1896) that the innocent sometimes flee the police because they are scared of being accused of a crime they didn't commit or out of fear of humiliation. Establishing a general rule allowing the police to stop and search fleeing subjects would not account for these ambiguous circumstances. In this case, any reasonable person might leave the scene where four police cars converged suddenly.

_____ 3. In the case of *Terry v. Ohio*, the Supreme Court gave police the right to conduct warrantless stops and searches to protect themselves and bystanders from those who may be carrying a concealed weapon. Police can stop a person when they have reasonable suspicion supported by articulable facts that a person is engaged or about to engage in illegal activity. However, to search the subject, the police must have reasonable suspicion, again supported by articulable facts, that the person is armed.

_____ 4. In the case of *Terry v. Ohio*, the Supreme Court established a lower standard, that of reasonable suspicion, to guide warrantless investigatory stops. Police do not need probable cause to stop a person, only a reasonable suspicion that illegal activity is taking or about to take place. A reasonable police officer would consider flight suspicious and should not ignore that behavior.

_____ 5. Common law at the time the Fourth Amendment was passed regarded flight as a confession of guilt. However, many, if not all, Supreme Court cases that deal with common law on this issue are associated with post-accusation flight. In other words, if a person fled after being accused of a crime the flight would be considered evidence of guilt. Whether this also applies to pre-accusation flight is disputed by law experts.

_____ 6. If the Supreme Court allows officers to stop people who are in flight, how are police officers supposed to determine whether a person is in flight or merely refusing police contact? The Court in *Florida v. Royer* (1983) and *Brown v. Texas* (1979) ruled that people have the right to refuse police contact and go their own way. The Court did not say how quickly or slowly the person had to walk. If the police are given the right to stop anyone they say is fleeing the scene, this will give them too much discretion to conduct groundless searches.

_____ 7. The environment of the fleeing suspect should be a factor in determining the suspiciousness of the flight. There are a number of Supreme Court cases that stress that police are able to take into account their knowledge and experience about an area where a suspect is located in order to determine suspicion.

_____ 8. Allowing the police to use their judgment about the reputation of a geographic area in determining the suspicion of a person fleeing from them in that area is not fair. Just because a person happens to be in a particular part of a city does not automatically make them guilty or suspicious of a crime. In addition, if the Court allows police to consider this factor, it would essentially allow people to flee the police in some areas, but not in others.

_____ 9. In the case of *California v. Hodari* (1991), a man fled when he saw an approaching police car. While the police were giving chase, he threw away what appeared to be crack cocaine. The police retrieved the cocaine and then were able to subdue Hodari. Hodari asserted that the police stopped him without reasonable suspicion, but the Supreme Court held that the police seized him after the crack cocaine was picked up. The police then certainly had reasonable suspicion to seize him.

Teacher's Answers - Student Handout 5
Illinois v. Wardlow — Classifying Arguments for the Case

The following is a list of arguments used in the Wardlow court case. Read through each argument and decide whether it supports Illinois (**I**), Wardlow (**W**), both sides (**B**), or neither side (**N**). Write the appropriate letter(s) beside the argument in the space provided. With each argument, take notes justifying your position.

I 1. It is common sense that when a person sees the police and runs away, the police would have reason to believe that the person is engaged in illegal activity. As a rule, the police must be able to stop those who flee at their sight.

W 2. People may have many different reasons for wanting to flee the police. The Supreme Court stated in *Alberty v. United States* (1896) that the innocent sometimes flee the police because they are scared of being accused of a crime they didn't commit or out of fear of humiliation. Establishing a general rule allowing the police to stop and search fleeing subjects would not account for these ambiguous circumstances. In this case, any reasonable person might leave the scene where four police cars converged suddenly.

W/B 3. In the case of *Terry v. Ohio*, the Supreme Court gave police the right to conduct warrantless stops and searches to protect themselves and bystanders from those who may be carrying a concealed weapon. Police can stop a person when they have reasonable suspicion supported by articulable facts that a person is engaged or about to engage in illegal activity. However, to search the subject, the police must have reasonable suspicion, again supported by articulable facts, that the person is armed.

I 4. In the case of *Terry v. Ohio*, the Supreme Court established a lower standard, that of reasonable suspicion, to guide warrantless investigatory stops. Police do not need probable cause to stop a person, only a reasonable suspicion that illegal activity is taking or about to take place. A reasonable police officer would consider flight suspicious and should not ignore that behavior.

N 5. Common law at the time the Fourth Amendment was passed regarded flight as a confession of guilt. However, many, if not all, Supreme Court cases that deal with common law on this issue are associated with post-accusation flight. In other words, if a person fled after he or she was accused of a crime, then the flight would be considered evidence of guilt. Whether this also applies to pre-accusation flight is disputed by law experts.

W 6. If the Supreme Court allows officers to stop people who are in flight, how are police officers supposed to determine whether a person is "in flight" or merely refusing police contact? The Court in *Florida v. Royer* (1983) and *Brown v. Texas* (1979) ruled that people have the right to refuse police contact and go their own way. The Court did not say how quickly or slowly the person had to walk. If the police are given the right to stop anyone they say is fleeing the scene, this will give them too much discretion to conduct groundless searches.

I 7. The environment of the fleeing suspect should be a factor in determining the suspiciousness of the flight. There are a number of Supreme Court cases that stress that police are able to take into account their knowledge and experience about an area where a suspect is located to determine suspicion.

W 8. Allowing the police to use their judgment about the reputation of a geographic area in determining the suspicion of a person fleeing from them in that area is not fair. Just because a person happens to be in a particular part of a city does not automatically make them guilty or suspicious of a crime. In addition, if the Court allows police to consider this factor, it would essentially allow people to flee the police in some areas, but not in others.

__W__ 9. In the case of *California v. Hodari* (1991), a man fled when he saw an approaching police car. While the police were giving chase, he threw away what appeared to be crack cocaine. The police retrieved the cocaine and then were able to subdue Hodari. Hodari asserted that the police stopped him without reasonable suspicion, but the Supreme Court held that the police seized him after the crack cocaine was picked up. The police then certainly had reasonable suspicion to seize him.

Student Handout 6 or Overhead Transparency 2
Moot Court Activity — Introduction

This moot court will simulate an appellate court or Supreme Court oral argument. The appeals court rules on a lower court's decision. No witnesses will be called, and the basic facts in the case will not be disputed. You will prepare, present, and consider arguments on a legal question.

The party bringing the appeal is called the petitioner or the appellant. The other side (the one that won in the lower court) is called the respondent or appellee. Students will play one of three or four of the following roles:

- Appellate court judges or justices
- Lawyers for the petitioner / appellant
- Lawyers for the respondent / appellee
- Journalists, who will prepare to report the oral arguments and decisions of justices. Some simulations might not include journalists.

Student Handout 7 or Overhead Transparency 3
Initial Steps in the Process for All Groups

Preview the facts of the case. Be sure to know:

- What happened in the case?
- Who are the parties involved?
- How did the lower court(s) rule?
- Which party is bringing this appeal?

Be sure you clearly understand the issue(s) in this case. Phrase the issue(s) in the form of a question. For example: Did the state of Virginia violate the 14th Amendment guarantee of equal protection by not allowing women to attend Virginia Military Institute?

Student Handout 8 or Overhead Transparency 4
Preparations for Specific Groups

Justices — discuss the issue(s) and

- Study any precedents that your teacher gives you;
- Prepare questions to ask each side; and
- Select a chief justice to preside over the hearing.

Lawyers for each side discuss the issue(s) and

- Write the strongest legal and policy arguments for your side;
- Decide which precedents help your side;
- Determine how to counter the strongest legal and policy arguments for the other side;
- Decide which precedents help the other side and think of how to counter them;
- Brainstorm the questions that the justices might ask you and think of answers; and
- Select two speakers to present your side's arguments. One speaker will make the initial argument (3-5 minutes) and the other will offer the rebuttal argument (1-2 minutes). Remember that the justices may interrupt you with questions. Be sure to discuss the arguments, not the facts of the case, since these are already determined.

Journalists — observe other groups and make notes to use in a news article about the case, the oral arguments, and the court's decision.

Student Handout 9 or Overhead Transparency 5
Moot Court Procedures

1. The chief justice calls the court to order, announces the case, and asks the petitioner to begin.
2. The lawyer for the petitioner presents that side's initial argument in 2 minutes.
3. The justices should ask questions for 2 minutes.
4. The lawyer for the respondent presents that side's initial argument in 2 minutes.
5. The justices should ask questions for 2 minutes.
6. The lawyer for the petitioner presents rebuttal arguments in 1 minute.
7. The lawyer for the respondent presents rebuttal arguments in 1 minute.
8. Once arguments have been completed, the justices (in our simulation) should deliberate. Each justice will stand and give his / her decision and reason(s). The teacher will tally the votes and announce the decision of the Court.

Student Handout 10
Illinois v. Wardlow — Majority Decision

Chief Justice Rehnquist delivered the opinion of the Court.

In finding for the petitioner, the state of Illinois, the Court referred back to the standard for a stop-and-frisk established in the case of *Terry v. Ohio* (1968). In that case, the Supreme Court held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. While noting that "reasonable suspicion" is a lower standard than "probable cause," the Court nonetheless reinforced that the officer must have at least a minimum level of objective (i.e. observable) justification for making the stop. The officer cannot act on a hunch.

Though Sam Wardlow was not observably engaged in criminal activity, nor acting suspiciously other than running, the Court reiterated past decisions in asserting that "officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation." Therefore, the fact that the stop occurred in a "high crime area" is one of the relevant facts that an officer can consider when evaluating the suspiciousness of a person.

The Court also affirmed the officer's contention that flight is indicative of suspicious behavior. "Headlong flight — wherever it occurs — is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." Based on what the Court understands about human behavior, therefore, the justices concluded that Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity. Therefore, the stop and frisk also was justified.

The justices went on to intercept arguments that their judgment contradicted the Court's findings in *Florida v. Royer* (1983). In that case, the Court held that people have the right to ignore the police and go about their business if there is no reasonable suspicion or probable cause of criminal activity. Rehnquist distinguished between unprovoked flight and refusal to cooperate. "Flight, by its very nature, is not 'going about one's business'; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning."

The Court accepted Wardlow's argument that there are many reasons why a person might flee from officers, and that the circumstances of flight are ambiguous and do not automatically indicate criminal activity. However, the justices countered that *Terry v. Ohio* "recognized that the officers could detain the individuals to resolve the ambiguity."

In the final analysis, the Court did not establish a "bright-line rule" allowing police to stop fleeing people in every circumstance. Nor did the Court adopt a per se rule that fleeing alone could not justify a stop. The justices did establish that flight, in combination with other articulable circumstances, can be considered in evaluating the suspiciousness of the situation.

Student Handout 11
Illinois v. Wardlow — Dissenting Opinion

Justice Stevens, with whom Justice Souter, Justice Ginsburg, and Justice Breyer join, concurring in part and dissenting in part.

The dissenters agreed with the majority that it would be unwise to adopt a rule always allowing the police to detain anyone who flees at the mere sight of a police officer. They also agreed with the Court that it should not adopt the opposite rule, that flight alone can never be sufficient to justify a temporary investigative stop.

Like the majority, the dissenters introduced their opinion with a review of *Terry v. Ohio* (1968) and other Court decisions that clarified the circumstances under which an officer may conduct an investigatory stop. The dissenters remind us that the officers must take into account the totality of the situation and that it is appropriate to rely on "certain common sense conclusions about human behavior" when evaluating the suspiciousness of a person or situation.

The question in this case is "the degree of suspicion that attaches to" a person's flight, or what can an officer reasonably infer about the motives of a person fleeing the police. Certainly, the dissenters agree, there are many reasons why a person may break into flight — to catch up with a friend, to seek shelter, to answer the call of nature — and these reasons may happen to coincide with the arrival of a police officer on the scene. The inferences that police may draw about the motives of a fleeing person must rely on myriad other circumstances at the scene, such as the time of day, the character of the area, the direction of the flight, etc.

In reinforcing this analysis, the dissenters discussed recent research about minorities and those living in high crime areas who are fearful of the police because of actual or perceived police discrimination and abuse. They recognized that for many people the sight of police is enough to provoke flight even though no criminal activity is afoot. "For such a person, unprovoked flight is neither 'aberrant' nor 'abnormal.'" The dissenters include in their decision numerous footnotes regarding bystander victimization, statistics on views of African-Americans toward the police, incidents of innocent people being picked up in drug sweeps, and racial profiling in traffic stops. It is clear to the dissenters that given these and other circumstances, no set rule can be adopted that treats flight as always suspicious, or never suspicious, because incidents must be evaluated on a case-by-case basis.

Where the dissenters part from the majority is in the application of the "totality of the circumstances" test in this particular case. The dissenters support the appellate court's contention that the official record of the incident was "too vague to support the inference that ... defendant's flight was related to his expectation of police focus on him." The dissenters note that Officer Nolan could not recall whether the police cars were marked or unmarked, that the testimony did not indicate how fast the cars were driving, or whether Wardlow noticed the other police cars in the caravan.

The dissenters also part with the majority in the assertion that being in a high crime area can support the suspicion of a person. They note that there are so many factors that might make a person flee in a high crime area that the adverse character of the neighborhood probably makes an inference of guilt even less appropriate.

The dissenters contend that the State of Illinois failed to provide enough objective, articulable evidence to support the reasonable suspicion needed to justify a stop-and-frisk.