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Searches and Seizures in Schools

An Inquiry Pack to Accompany LegalTimelines.org

Inquiry Question: How should schools balance their need to maintain a safe learning environment with students' protection against unreasonable search and seizure?

Developed by

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Introduction: Searches and Seizures in Public Schools

The Fourth Amendment to the U.S. Constitution protects people from "unreasonable searches and seizures." It requires the police to get a search warrant before conducting a search of someone's property in some cases. A search warrant is a document issued by a judge granting police officers permission to search a particular location to uncover evidence of a crime. An application for a search warrant must be supported by probable cause. Probable cause means that the facts would lead a "reasonable person" to believe evidence of a crime will be found in that location. There are several exceptions to the search warrant requirement, such as emergency circumstances and searches of a person at the time of a lawful arrest.

When deciding whether a search is "unreasonable" and a violation of the Fourth Amendment, courts consider how much it will intrude on an individual's privacy. They balance the intrusion with the government's need to keep the public safe. The standard used by the Supreme Court when it analyzes criminal searches is the "reasonableness" of the search. To decide if a search is "reasonable," the Court considers all the facts and circumstances of the search and weighs the intrusion of the privacy of the person being searched against the government's important need to protect public safety. The Court also considers whether the person being searched had a "reasonable expectation of privacy" meaning that the person thought their actions were private and that a typically "reasonable" person would think the same.

In cases about searches in public schools, the school's interest in keeping students safe and providing a good environment for learning is a critically important concern. In a school, for example, the administration might be concerned about preserving an environment that allows students to learn. Schools also want to protect the safety of their students and make sure they are not exposed to harmful substances like illegal drugs, alcohol, and tobacco. Several cases about student searches have come before the Supreme Court. Because the school acts as the guardian of their students during the school day, the Supreme Court has granted school officials a lot of discretion (choice) about when to search students, but that discretion has limits.

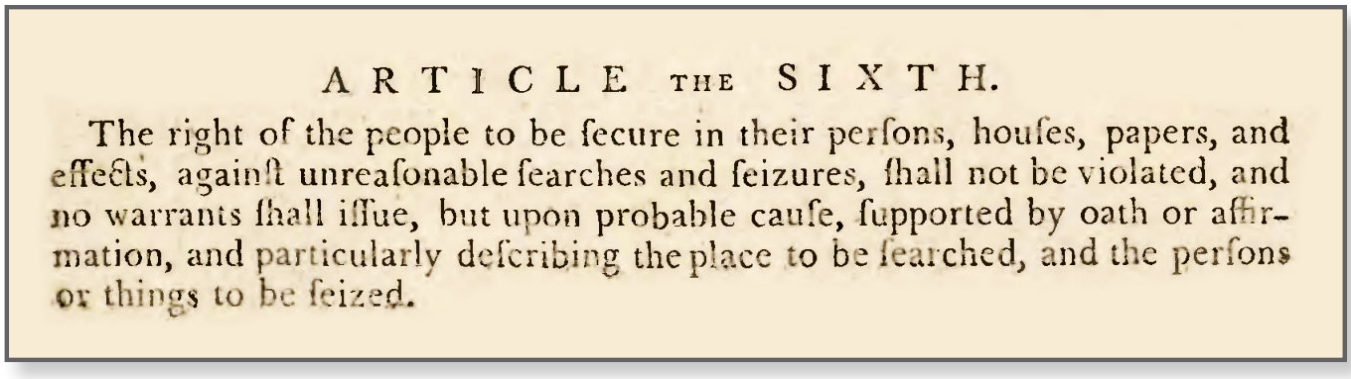
Because drug use is a serious issue in some schools, courts have given schools discretion in coming up with solutions to the problem. For example, courts allow schools to search student lockers reasoning that lockers belong to the school and are just being used temporarily by students. Therefore, students do not have a reasonable expectation of privacy of property they might keep in a school-owned locker. However, searches of students' bodies, where students have a higher expectation of privacy, are more difficult for schools to justify.

Whether or not a search is reasonable and lawful under the Fourth Amendment is very important because the "exclusionary rule" applies if the search is unreasonable. The exclusionary rule prohibits the introduction at trial of evidence that was not properly obtained. A defendant may file a motion to suppress (keep out) the evidence, claiming the search was not lawful. If the motion is granted, the evidence seized unlawfully cannot be introduced at trial.

School searches continue to be the subject of court cases involving drug testing, drug-detecting dogs, and metal detectors at school entrances. Cases about school officials' searches and seizures of cellphones have not been argued at the Supreme Court but have been the subject of cases in lower courts.

Constitutional Right to Be Protected from Unreasonable Search and Seizure

Source A: The Fourth Amendment to the U.S. Constitution as proposed to Congress[1]



ARTICLE THE SIXTH.

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.

Source A Information: This source is excerpted from a longer document containing 12 articles, or proposed amendments, to the U.S. Constitution. In this draft of not-yet-ratified amendments, the numbers differ from the final, ratified amendments in the Bill of Rights. That is why what we now call the Fourth Amendment is labeled "Article the Sixth" in this source. The document was printed in New York by Thomas Greenleaf around the year 1789. (See source at Library of Congress.)

Questions to Consider for Source A:

1. **Observe:** What do you notice first about this 1789 printing of the proposed Bill of Rights?
2. **Reflect:** Who is protected by the Fourth Amendment? Whose actions are limited by the Fourth Amendment? What rights does the Fourth Amendment guarantee in your own words? Why do you think the Framers of the Bill of Rights included the Fourth Amendment?
3. **Question:** Write at least one question you have about this source.

Do School Administrators Need a Warrant?

A New Jersey high school student, (known by her initials: T.L.O.) was accused of violating school rules by smoking in the restroom, leading an assistant principal to search her purse for cigarettes. The search revealed marijuana and other items that suggested the student was dealing marijuana, which was illegal. The student tried to have the evidence from her purse excluded from being used at trial because it was obtained illegally, arguing that the search violated her Fourth Amendment rights.

In *New Jersey v. T.L.O.* (1985) the U.S. Supreme Court decided that public school administrators can search a student and their belongings if they have a reasonable suspicion of a violation of criminal law or of school rules. Reasonable suspicion is a lower standard than probable cause, which police need for searches of individuals outside public schools. However, school resource officers or other law enforcement within the school still require a warrant or a valid exception for a warrantless search, like an emergency that threatens the security of the school.

Source B: Majority opinion in *New Jersey v. T.L.O.* (1985)[2]

2. Schoolchildren have legitimate expectations of privacy. They may find it necessary to carry with them a variety of legitimate, non-contraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items by bringing them onto school grounds. But striking the balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject. Thus, school officials need not obtain a warrant before searching a student who is under their authority. Moreover, school officials need not be held subject to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a determination of whether the search was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Under ordinary circumstances the search of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. And such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and the nature of the infraction.

Source B Information: This source is an excerpt from the majority opinion in *New Jersey v. T.L.O.* (1985), written for the Court by Justice Byron White. (See source at Library of Congress.)

Glossary of key terms from the source:

- *writs of assistance:* general search warrant
- *legitimate: lawful*
- *expectations: something expected*
- *non-contraband: not illegal or prohibited*
- *inception: beginning*
- *intrusive: intruding*
- *infraction: violation*

Questions to Consider for Source B:

1. **Observe:** What do you notice first about the excerpt from the majority opinion?
2. **Reflect:** What reasoning does the majority opinion give for students having an expectation of privacy while at school? According to the majority opinion, why don't school officials need to obtain a warrant before a search? According to the majority opinion, how should the reasonableness of a search be determined? Do you think this language is clear? Would you have reached the same decision the Supreme Court reached in *New Jersey v. T.L.O.*? Why or why not?
3. **Question:** Write at least one question you have about this source.

Are Drug Tests in Public Schools Reasonable?

Vernonia v. Acton

Vernonia School District in Oregon had a drug problem. An investigation showed that student athletes were among those using illegal drugs, so the school district began a program of random urinalysis drug testing on student athletes. Urinalysis requires the person being tested to produce a urine sample in a secure sometimes supervised setting. A student going out for the football team, James Acton, refused to consent to the testing. The Acton family challenged the policy as a violation of James Acton's Fourth Amendment protection against unreasonable search.

The case, *Vernonia v. Acton,* was decided by the U.S. Supreme Court in favor of Vernonia School District. The Court weighed the intrusiveness of the search and the school district's legitimate interest in maintaining safety. The Court ruled that the search was reasonable because urinalysis is not overly intrusive and the safety concerns of ensuring athletes are not under the influence of drugs is a legitimate interest of the school district.

Source C: Majority Opinion in *Vernonia v. Acton* (1995)[3]

(c) The privacy interests compromised by the process of obtaining urine samples under the Policy are negligible, since the conditions of collection are nearly identical to those typically encountered in public restrooms. In addition, the tests look only for standard drugs, not medical conditions, and the results are released to a limited group. Pp. 658–660.

(d) The nature and immediacy of the governmental concern at issue, and the efficacy of this means for meeting it, also favor a finding of reasonableness. The importance of deterring drug use by all this Nation's schoolchildren cannot be doubted. Moreover, the Policy is directed more narrowly to drug use by athletes, where the risk of physical harm to the user and other players is high. The District Court's conclusion that the District's concerns were immediate is not clearly erroneous, and it is self-evident that a drug problem largely caused by athletes, and of particular danger to athletes, is effectively addressed by ensuring that athletes do not use drugs. The Fourth Amendment does not require that the "least intrusive" search be conducted, so respondents' argument that the drug testing could be based on suspicion of drug use, if true, would not be fatal; and that alternative entails its own substantial difficulties. Pp. 660–664.

. . .

Taking into account all the factors we have considered above—the decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search—we conclude Vernonia's Policy is reasonable and hence constitutional.

Source C Information: This source is an excerpt from the majority opinion in *Vernonia v. Acton* (1995), written for the Court by Justice Antonin Scalia. (See source at Library of Congress.)

Glossary of key terms from the source:

- *deterring:* preventing from acting
- *efficacy:* ability to produce an effect
- *erroneous:* wrong
- *immediacy:* urgency
- *negligible:* very small, of little consequence
- *severity:* seriousness
- *unobtrusiveness:* not intruding

Are Drug Tests in Public Schools Reasonable? (cont.)

Pottawatomie School District v. Earls

In Tecumseh, Oklahoma, a school district adopted the policy of requiring consent to random urinalysis drug testing by students involved in extracurricular activities. Two Tecumseh High School students and their parents sued the school district arguing the policy was a violation of the students' Fourth Amendment protection against unreasonable search.

The case, *Pottawatomie School District v. Earls,* was decided by the U.S. Supreme Court in favor of the school district. As in an earlier case about drug testing of student athletes, *Vernonia School District v. Acton* (1995), the Court weighed the intrusiveness of the search and the school district's legitimate interest in maintaining safety. The Court ruled that the search was reasonable because preventing drug use is a legitimate interest of the school district, and the school's role in regulating extracurricular activities meant a lowered expectation of privacy for the students.[4]

Source D: Majority Opinion in *Pottawatomie School District v. Earls* (2002)[5]

Held: Tecumseh's Policy is a reasonable means of furthering the School District's important interest in preventing and deterring drug use among its schoolchildren and does not violate the Fourth Amendment. Pp. 828–838.

(a) Because searches by public school officials implicate Fourth Amendment interests, see, *e. g., Vernonia*, 515 U. S., at 652, the Court must review the Policy for "reasonableness," the touchstone of constitutionality. In contrast to the criminal context, a probable-cause finding is unnecessary in the public school context because it would unduly interfere with maintenance of the swift and informal disciplinary procedures that are needed. In the public school context, a search may be reasonable when supported by "special needs" beyond the normal need for law enforcement. Because the "reasonableness" inquiry cannot disregard the schools' custodial and tutelary responsibility for children, *id.*, at 656, a finding of individualized suspicion may not be necessary. In upholding the suspicionless drug testing of athletes, the *Vernonia* Court conducted a fact-specific balancing of the intrusion on the children's Fourth Amendment rights against the promotion of legitimate governmental interests. Applying *Vernonia*'s principles to the somewhat different facts of this case demonstrates that Tecumseh's Policy is also constitutional. Pp. 828–830.

(b) Considering first the nature of the privacy interest allegedly compromised by the drug testing, see *Vernonia*, 515 U. S., at 654, the Court concludes that the students affected by this Policy have a limited expectation of privacy. Respondents argue that because children participating in nonathletic extracurricular activities are not subject to regular physicals and communal undress they have a stronger expectation of privacy than the *Vernonia* athletes. This distinction, however, was not essential in *Vernonia*, which depended primarily upon the school's custodial responsibility and authority. See, *e. g., id.*, at 665. In any event, students who participate in competitive extracurricular activities voluntarily subject themselves to many of the same intrusions on their privacy as do athletes. Some of these clubs and activities require occasional off-campus travel and communal undress, and all of them have their own rules and requirements that do not apply to the student body as a whole. Each of them must abide by OSSAA rules, and a faculty sponsor monitors students for compliance with the various rules dictated by the clubs and activities. Such regulation further diminishes the schoolchildren's expectation of privacy. Pp. 830–832.

Source D Information: This source is an excerpt from the majority opinion in *Pottawatomie School District v. Earls* (2002), written for the Court by Justice Clarence Thomas. (See source at Library of Congress.)

Glossary of key terms from the source:

- *communal:* shared, not private
- *compliance:* fulfilling requirements
- *custodial:* relating to providing protective care
- *extracurricular:* outside of school curriculum
- *implicate:* convey without directly stating
- *OSSAA:* Oklahoma Secondary Schools Activity Association
- *respondents:* the party who won in the lower courts, in this case the students (Earls)
- *touchstone:* a test for determining something
- *tutelary:* relating to a guardian
- *unduly:* excessively, intolerably

Questions to Consider for Sources C and D:

1. **Observe:** What do you notice first about the excerpts from the majority opinions?
2. **Reflect:** According to the excerpt from the majority opinion for *Vernonia v. Acton* (Source C), how does the Court weigh the safety interests of Vernonia School District against the privacy interests of athletes such as James Acton? Would you have reached the same decision the Supreme Court reached in *Vernonia v. Acton?* Why or why not? According to the excerpt from the majority opinion for *Pottawatomie School District v. Earls* (Source D), how does the Court weigh the safety interests of Pottawatomie School District against the privacy interests of students involved in extracurricular activities? How does the Court use the decision in *Vernonia v. Acton* to reach a decision in *Pottawatomie School District v. Earls?* Would you have reached the same decision the Supreme Court reached in *Pottawatomie School District v. Earls?* Why or why not?
3. **Question:** Write at least one question you have about these sources.

Is a Strip Search of a Student Reasonable?

Savana Redding was a middle school student in Arizona who was accused of having ibuprofen (Advil) in violation of a school policy. She was taken to the nurse's office and made to undress for a strip search by an administrative assistant, Helen Romero, and the school nurse, Peggy Schwallier. Redding's mother sued the school, challenging the search as a violation of the protection against unreasonable searches in the Fourth Amendment.

The case, *Safford Unified School District v. Redding*, was decided by the U.S. Supreme Court, which ruled that the school violated Redding's Fourth Amendment rights when school officials conducted the strip search. The Court noted there was enough suspicion to justify a search of Redding's bag and outer clothing, but not enough to warrant a strip search. But because there was not a reasonable suspicion of danger to students nor a reasonable suspicion that Redding was hiding the ibuprofen in her underwear, the strip search exceeded the "reasonable suspicion" standard set out in *New Jersey v. T.L.O.* (Source B).

Source E: Majority opinion in *Safford Unified School District v. Redding* (2009)[6]

Held:

1. The search of Savana's underwear violated the Fourth Amendment.

. . .

(c) Because the suspected facts pointing to Savana did not indicate that the drugs presented a danger to students or were concealed in her underwear, Wilson did not have sufficient suspicion to warrant extending the search to the point of making Savana pull out her underwear. Romero and Schwallier said that they did not see anything when Savana pulled out her underwear, but a strip search and its Fourth Amendment consequences are not defined by who was looking and how much was seen. Savana's actions in their presence necessarily exposed her breasts and pelvic area to some degree, and both subjective and reasonable societal expectations of personal privacy support the treatment of such a search as categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings. Savana's subjective expectation of privacy is inherent in her account of it as embarrassing, frightening, and humiliating. The reasonableness of her expectation is indicated by the common reaction of other young people similarly searched, whose adolescent vulnerability intensifies the exposure's patent intrusiveness. Its indignity does not outlaw the search, but it does implicate the rule that "the search [be] 'reasonably related in scope to the circumstances which justified the interference in the first place.'"

Source E Information: This source is an excerpt from the majority opinion in *Safford Unified School District v. Redding* (2009), written for the Court by Justice David Souter. (See source at Library of Congress.)

Glossary of key terms from the source:

- *categorically:* absolutely, unconditionally
- *distinct:* different
- *implicate:* convey without directly stating
- *indignity:* treatment causing a loss of dignity, embarrassment
- *inherent:* by its very nature, intrinsic
- *subjective:* influenced by personal beliefs

Questions to Consider for Source E:

1. **Observe:** What do you notice first about the excerpts from the majority opinion?
2. **Reflect:** According to the excerpt from the majority opinion for *Safford Unified School District v. Redding,* how does the Court weigh the safety interests of Safford Unified School District against the privacy interests of students like Savana Redding? How does the Court use the decision in *New Jersey v. T.L.O.* to reach a decision in *Safford Unified School District v. Redding?* Would you have reached the same decision the Supreme Court reached in *Safford Unified School District v. Redding?* Why or why not?
3. **Question:** Write at least one question you have about this source.

Inquiry Question

How should schools balance their need to maintain a safe learning environment with students' protection against unreasonable search and seizure?

Extension Inquiry Question

What rules should apply to school administrators' in-school cellphone searches?

In *Riley v. California* (2014), the Supreme Court considered the reasonable expectation of privacy in cellphone data. In this case, David Riley was arrested by police who searched his cellphone. One officer first searched the text messages on his smartphone and found evidence that he may have been part of a gang. Once they returned to the police station, two hours later, a detective looked through the contacts, photos, and videos. A photograph linked Riley to a car used in an earlier gang shooting. Riley's phone records also placed him at the scene of the shooting. The police never got a warrant for these searches.

Read the following excerpt from the majority opinion in *Riley v. California* (2014):

> "...a cell phone collects in one place many distinct types of information—an address, a note, a prescription, a bank statement, a video—that reveal much more in combination than any isolated record. Second, a cell phone's capacity allows even just one type of information to convey far more than previously possible. The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, the data on a phone can date back to the purchase of the phone, or even earlier. A person might carry in his pocket a slip of paper reminding him to call Mr. Jones; he would not carry a record of all his communications with Mr. Jones for the past several months, as would routinely be kept on a phone...".

The Supreme Court ruled unanimously for Riley. As a result of this case, the police may still seize (take away) a cell phone when they arrest someone, but they cannot search the digital contents of the phone without a warrant. The Court decided that police may only search data on a cell phone without a warrant when there is an ongoing emergency (for instance a child abduction or bomb threat).

The Supreme Court has not yet taken up any cases dealing specifically with cellphone searches in public schools. Study the precedents the Court has set in school search cases (in this inquiry pack) and consider its ruling in *Riley v. California.*

Notes

[1] "The conventions of a number of the states having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added ...," (New York: Thomas Greenleaf, 1789). From Library of Congress Rare Book and Special Collections Division, https://www.loc.gov/resource/rbc0001.2010madison38253/?sp=1&r=-1.656,-0.605,4.313,1.828,0.

[2] *New Jersey v. T.L.O.,* 469 U.S. 325 (1985). From Library of Congress U.S. Reports, https://www.loc.gov/item/usrep469325/.

[3] *Vernonia School District 47J v. Acton,* 515 U.S. 646 (1995). From Library of Congress U.S. Reports, https://tile.loc.gov/storage-services/service/ll/usrep/usrep515/usrep515646/usrep515646.pdf.

[4] "*Board of Ed. of Independent School Dist. No. 92 of Pottawatomie Cty. v. Earls,*" Oyez, https://www.oyez.org/cases/2001/01-332.

[5] *Board of Education of Independent School District No. 92 of Pottawatomie County et al. v. Earls et al.,* 536 U.S. 822 (2002). From Library of Congress U.S. Reports, https://www.loc.gov/item/usrep536822/.

[6] *Safford Unified School Dist. #1 v. Redding,* 557 U.S. 364 (2009). Library of Congress U.S. Reports, https://www.loc.gov/item/usrep557364/.