



MINNESOTA SUPREME COURT  
HISTORICAL SOCIETY

## Minnesota Supreme Court Historical Society Mondale-Quie Essay Contest

The Minnesota Supreme Court Historical Society, with the support of the Minnesota Chapter of the American Board of Trial Advocates and the Civil Litigation Section of the Minnesota State Bar Association, is sponsoring an essay contest that is open to Minnesota high school juniors and seniors. Students have an opportunity to compete for scholarships as they examine the role of the judiciary in our society.

### **Mondale-Quie Essay Contest Issue for 2016-2017:**

The Fourth Amendment prohibits unreasonable searches and seizures. In a school setting situations may arise which would give rise to Fourth Amendment protections; however, there are certain limitations to these protections. The goal of the 2016-2017 Mondale-Quie Essay Contest is to have participants think critically about their Fourth Amendment rights, the circumstances in which these rights may be asserted, and the limitations on these rights.

In a school setting, schools are asked to balance students' legitimate expectations of privacy against the school's need to maintain a learning environment. In balancing these issues, the courts have addressed the constitutionality of searches of student lockers, backpacks and cars, the use of drug-sniffing dogs, and the use of drug tests.

**Question to be answered:** Given the prevalence of cellular telephones in schools, under what circumstances do you think a school may search a student's phone? Under what circumstances should a student's Fourth Amendment right to privacy prevail? Provide examples and reasons for your conclusion.

### **Important Dates:**

<b>Online Contest Registration Begins:</b>	<b>November 14, 2016</b>
<b>Online Essay Submission Deadline:</b>	<b>January 20, 2017</b>
<b>Announcement of Winners:</b>	<b>March 10, 2017</b>
<b>Awards Luncheon:</b>	<b>April 28, 2017</b>

The winners will be announced via email and online at <https://mncourthistory.wildapricot.org/Essay-Contest>.

Awards will be distributed before the close of the school year at an awards ceremony or via U.S. mail if winners are unable to attend the awards ceremony.



## **What is the Minnesota Supreme Court Historical Society?**

The Minnesota Supreme Court Historical Society (MSCHS) was founded by lawyers, educators, judges, and other legal professionals who have a deep and abiding interest in the history of this State and the profound role that Minnesota's courts have played in that history. Our mission is to collect, preserve, and promote Minnesota's judicial history and to serve the interests of the bench and bar, the academic community, and the general public through educational programs, publications, and support of scholarly research.

## **Contest Objective**

High school juniors and seniors must prepare to engage in everyday civil society where significant issues involving historical and constitutional issues arise; therefore, the Mondale-Quie Essay Contest issue has been developed to:

- Provide high school students with an understanding of the judiciary, including its role in society;
- Engage high school teachers and students in the exploration of the role of the judiciary in their lives; and
- Challenge high school students to strengthen their analytic and writing skills.

## **Eligibility**

Minnesota high school students in grades 11 and 12 who attend a public or private school (including charter and alternative-learning programs) or who are home schooled in Minnesota are eligible to apply.



## ESSAY REQUIREMENTS

*ANY ENTRY THAT DOES NOT CONFORM TO ALL OF THE FOLLOWING REQUIREMENTS  
MAY BE DISQUALIFIED.*

### Format

- Type essay in English — free from spelling, punctuation, and grammatical errors.
- Use Arial or Times New Roman font, 12-point
- Double-space essay with 1" margins – top, bottom, right, and left.
- Place essay title on first page, top center
- Include your **first and last name** and page number on all pages, top right.

### Length

The essay must be between 750 and 1,250 words. Report the number of words used at the end of your essay text, prior to the bibliography or works-cited page.

Word count does not include the bibliography or works-cited page, nor works cited in footnotes, if footnotes are used.

To obtain essay word count without the number of words used in the bibliography or works cited, highlight essay text only, go to computer word-count tool (under tools on computer tool bar). The word-count tool will read only the highlighted words.

### Bibliography – Works Cited

**A minimum of four books, academic journals, news magazines, newspapers, court cases, summaries of court cases, government documents or publications are required for research on this year's assigned topic.** With the exception of the Lesson Plans for Teachers, all of the resource suggestions on page 5 are acceptable. You are not required to use, nor are you limited to, the resource suggestions on page 5.

A bibliography or works-cited page is required to identify research sources and should follow the Modern Language Association (MLA) guidelines. For more information, refer to the MLA Handbook for Writers of Research Papers, 7th edition at <http://owl.english.purdue.edu/owl/resource/747/01>. (Click on links in left column for more in-depth instruction.)

Research should include sources that examine more than one side of the issue. General encyclopedias (e.g., Wikipedia, Britannica, Americana, World Book) are unacceptable resources. Reputable free web sources may be used only to obtain primary source materials



(i.e. Internet Modern History Sourcebook), and the bibliography or works cited must list the primary document source as the reference.

Online databases that index reference books, journals, magazines and newspapers are valid sources and must be cited according to the Modern Language Association's guidelines. See again: <http://owl.english.purdue.edu/owl/resource/747/01>.

**The bibliography or works-cited page should be on a separate page at the conclusion of the essay.**

## **Resource Suggestions**

Below are resources that you may, but are not required to, consider. You are not limited to these resources.

### **U.S. Constitution, Amendment IV**

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.

### **Cases**

New Jersey v. T.L.O., 469 U.S. 325 (1985). Background summary, overview, and additional resources available at,

[http://landmarkcases.org/en/landmark/cases/new\\_jersey\\_v\\_tlo#Tab=Overview](http://landmarkcases.org/en/landmark/cases/new_jersey_v_tlo#Tab=Overview)

Safford v. Redding, 557 U.S. 364 (2009). Case summary available at,

[http://www.streetlaw.org/en/resource\\_library](http://www.streetlaw.org/en/resource_library)

Riley v. California, 573 U.S. \_\_\_\_ (2014), 134 S. Ct. 2473. Case summary available at,

[http://www.streetlaw.org/en/resource\\_library](http://www.streetlaw.org/en/resource_library)

G.C. v. Owensboro Public Schools, 711 F.3d 623 (6th Cir. 2013). Case summary available at

<http://www.lexology.com/library/detail.aspx?q=f734d476-0fe8-4e44-be52-6357eeee4d4a>

In re Welfare of S.M.L., No. A05-1632, 2006 WL 2255834 (Minn. Ct. App. Aug. 8, 2006).

Opinion available at <http://mn.gov/law-library-stat/archive//ctapun/0608/opa051632-0808.htm>



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In re B.M.T., A11-936, 2012 Minn. App. Unpub. LEXIS 123, 2012 WL 426600 (Minn. Ct. App. Feb. 13, 2012). Opinion available at: <http://mn.gov/law-library-stat/archive/ctapun/1202/opa110936-021312.pdf>

### **Articles**

Center for Public Education, *Search and Seizure, Due Process, and Public Schools*, See Attachment A.

Student Press Law Center, *Call for Help: Analyzing School Searches and Seizures of Cell Phones*, See Attachment B.

### **Videos**

<https://www.youtube.com/watch?v=0BjbZtLQnQA>

<http://study.com/academy/lesson/the-fourth-amendment-search-seizure.html>

### **Websites**

Judicial Learning Center, *Your 4th Amendment Rights*, <http://judiciallearningcenter.org/your-4th-amendment-rights/>.

Student Press Law Center, *Supreme Court Cellphone-Search Ruling Sends A Cautionary Message To Schools*, <http://www.splc.org/blog/splc/2014/06/supreme-court-cellphone-search-ruling-sends-a-cautionary-message-to-schools>

### **Lesson Plans for Teachers (Not for Use in Essay Contest)**

American Constitution Society for Law and Policy, *The Constitution in the Classroom*, available at <http://www.acslaw.org/conclass#Curricula>

American Bar Association, *25 Great Lessons Plans for Constitution Day*, available at [http://www.americanbar.org/groups/public\\_education/initiatives\\_awards/constitution\\_day/25-great-lesson-plans-.html](http://www.americanbar.org/groups/public_education/initiatives_awards/constitution_day/25-great-lesson-plans-.html)

American Bar Association, *Constitutional Rights*, available at [http://www.americanbar.org/groups/public\\_education/initiatives\\_awards/constitution\\_day/lessons/lessons\\_3.html](http://www.americanbar.org/groups/public_education/initiatives_awards/constitution_day/lessons/lessons_3.html)

Teaching Civics, *The Fourth Amendment and School Searches*, available at <http://teachingcivics.org/lesson/the-fourth-amendment-and-school-searches/>



## **Judging Criteria — *Total points possible – 100 points***

Submission will be judged using the following criteria:

- **Organization** – use of introduction, discussion, and conclusion (20 points)
  - **Your essay should be well organized and include:**
    - **A clear introduction**
    - **A discussion portion with many supporting details**
    - **A clear conclusion**
  
- **Position Analysis and Support** (30 points)
  - **Your essay must state your position, which must be:**
    - **Clearly stated**
    - **Logical**
    - **Well-focused**
    - **Supported by many details or examples**
  
- **Impact of Your Position on Students** (20 points)
  - **Your essay must include a clear statement of the impact and many examples**
  
- **Mechanics** (15 points)
  - **Your essay must contain few or no grammar, spelling, punctuation or capitalization errors, and include appropriate and varied word choice**
  
- **Form** (15 points)
  - **Your essay must follow the requirements for format and length. It must also include a bibliography**



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### **Timeline**

Online Registration Begins: November 10, 2016

#### **Registration Process**

- Visit [www.mncourthistory.org](http://www.mncourthistory.org) and click on the “Register Here” link
- Complete all required fields. **Please include your first and last name**
- Click “Send”

Essay Submission Deadline: **January 20, 2017**

#### **Submission Process**

- Email your essay and bibliography/works cited page to [director.mschs@gmail.com](mailto:director.mschs@gmail.com)

### **Prizes**

The MSCHS may award up to nine \$500 scholarships. Contest winners will be required to complete and sign a release form and, if the student is under the age of 18, that form must be countersigned by the student’s parent/guardian. (Where the countersignature is required, the parent/guardian must also sign the parent/guardian release form at the bottom of the page.) Winners will be contacted and mailed the release form, which must be completed and returned within 10 working days. (A sample of the release form appears at the end of this packet.)

***There is no entry fee for participating.***



## Essay Contest Checklist

### Deadlines:

- Complete online registration at <https://mncourthistory.wildapricot.org/Essay-Contest> (and include both your first **and last name**)
- Submit essay online NO LATER than January 20, 2017**

### Essay Format:

- Essay is written in English and free from spelling, punctuation, and grammatical errors
- Essay is typed in Arial or Times New Roman font, 12-point, and is double-spaced
- Pages are formatted with 1" margins on all sides
- Essay has title on first page at the top and centered
- Essay contains writer's first and last name and a page number on each page in the top right corner
- Essay is 750 to 1,250 words and word count is noted at the end of the work before the bibliography (refer to the essay requirements about what words to count and how to obtain a word count)

### Bibliography:

- Essay contains a bibliography or works-cited page on a separate page at the end
- A MINIMUM of 4 works have been cited (see essay requirements for acceptable works)





**Release Form:**

*Minnesota Supreme Court Historical Society (MSCHS) Mondale-Quie  
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*The release form must be fully completed and submitted by winners in order to receive an award. Each winner will be notified and mailed the release, which must be returned to the Minnesota Supreme Court Historical Society Education Committee within 10 working days.*

**Student Release Form**

Name: (please print first and last name) \_\_\_\_\_

Street address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_

Phone number: \_\_\_\_\_ E-mail: \_\_\_\_\_

*Note: School information is not required for home-schooled students.*

School: \_\_\_\_\_

I state as follows:

1. I have read and accept the terms of the contest guidelines for the Minnesota Supreme Court Historical Society (MSCHS) Mondale-Quie Essay Contest (hereinafter the "Competition").
2. I warrant and represent that I personally created the essay that I submitted to the Competition. I further warrant and represent that the essay I submitted has not been published before its submission to this Competition and that any reference material I have used has been properly cited and not plagiarized.
3. I am a high school student in the 11th or 12th grade in Minnesota.
4. I am 18 years old or older, or, if I am younger than 18 years old, I have obtained the countersignature of my parent or legal guardian at the bottom of my release form.
5. I hereby release, discharge and hold harmless the MSCHS and its successors, assigns, officers, employees, and agents associated with the Competition from and against any and all liability, loss, damage, expense, claims, settlements, or judgments of any kind whatsoever, including attorneys' fees, whether in contract or in tort, arising directly or indirectly as a result of my participation in the Competition, and my acceptance and use of a prize awarded to me.



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6. I consent to the use of my name, relevant biographical data and related pictures, portraits, photographs, voice or likeness, in any form of the essay entered by me in the Competition for editorial, advertising, promotional, and trade purposes in connection with the promotion by the MSCHS of this Competition and succeeding programs sponsored by the MSCHS. I release the MSCHS from all liabilities arising out of distortion, optical illusions, or faulty mechanical reproductions of my likeness. I acknowledge that I have no right to approve the advertising or promotional materials that include my likeness or the essay submitted by me to the Competition.

Student's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Phone number: \_\_\_\_\_

Parent's or legal guardian's countersignature (if student is under 18): \_\_\_\_\_

Please print name here: \_\_\_\_\_

**Parent or Guardian Release Form**

(To be completed by parent or guardian of a student under age 18.)

I, \_\_\_\_\_, hereby represent and warrant that I am the parent or legal guardian of the identified student and that I accept the same legal obligations in connection with this Competition, including but not limited to, the use of the minor's name, likeness and essay, and consent to the minor named herein accepting and receiving a prize. I also hereby release, discharge and hold harmless the MSCHS, successors, assigns, officers, employees and agents associated with the Competition from and against any and all liability, loss, damage, expense, claims, settlements or judgments of any kind whatsoever, including attorney's fees, whether in contract or in tort, which I or my heirs, executors or administrators may have arising directly or indirectly as a result of the minor's participation in the Competition and acceptance and receipt of a prize.

Name: (please print first and last name) \_\_\_\_\_

Street address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_

Phone number: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Attachment A



### MINNESOTA SUPREME COURT HISTORICAL SOCIETY

#### ***Search and seizure, due process, and public schools*** / Center for Public Education

***By Edwin C. Darden***

The mission of public schools is to maximize the academic and social development of their students. In performing that function, occasional misdeeds by youngsters . . . cause districts to investigate violations and mete out punishment.

The situations in which school officials can conduct a search, what level of suspicion is necessary to legally justify it, when contraband can be seized, and what process must precede any consequences are all subject to the U. S. Constitution and the special protections it extends.

The Fourth Amendment prohibits “unreasonable” searches and seizures. . . .

. . . .

The Fourth Amendment is concerned with privacy and making sure that government entities, such as public schools, do not get overzealous in investigating violations. Investigatory techniques in a school setting often mirror activities used by police officers, but school probes lack the criminal enforcement power.

. . . .

The challenge for school districts and the courts is to balance students’ constitutional rights with the need for safety and preventing violence or disregard for schools rules.

The hurdles erected by the U. S. Constitution’s Fourth . . . Amendment[] [is] exclusive to the nation’s public schools. Private K-12 institutions have far more leeway to conduct unfettered investigations, withhold findings if they choose, and unceremoniously ask a student or faculty member to leave. Tuition and employment contracts rule private school relationships, while America’s social compact and legal contract (the Constitution) governs how public officials must act.

Situations where the Fourth Amendment . . . might apply:

- Drug testing students in extracurricular activities.
- Drug-sniffing dogs on campus.
- Locker searches and metal detectors.
- Backpacks, wallet, and personal computer searches.

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\* This is not a full reproduction. All omissions are noted with an ellipse (. . .). The full article is available at: <http://www.centerforpubliceducation.org/Main-Menu/Public-education/The-law-and-its-influence-on-public-school-districts-An-overview/Search-and-seizure-due-process-and-public-schools.html>.

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- Searching a student's car in the parking lot.

Given the need for school safety, the authority to conduct searches and reprimand students frequently pre-empts a student's right to privacy or demand for greater process. But it's hardly an open invitation. Schools routinely lose court cases when searches they conduct are not reasonable at the start or become too sweeping once they begin.

#### **Fourth Amendment**

The Fourth Amendment prevents unjustified government intrusion into private places, such as clothes, lockers, and one's body. In cases outside the school setting, the overriding question is whether someone has a reasonable expectation of privacy.

The standard for the Fourth Amendment is different and considerably lower in the school context. The criminal standard requires law enforcement officials to demonstrate that they have "probable cause" that a crime has been committed. Often that means presenting evidence to a judge and obtaining a warrant before police can take the intrusive steps of conducting a search of private property.

On school grounds or when students are within school district care—like a field trip—the standard is "reasonable suspicion" and no warrant is necessary. While privacy is still a factor, that relaxed approach allows school officials to conduct a search when one might be prohibited by the police.

The reason the U. S. Supreme Court has recognized the need for a different standard for public schools is to take into account the age and vulnerability of the student population and the need of school officials to look out for their health and safety.

In 1999, when two students gunned down classmates at Columbine High School in Littleton, Colo., school officials across the country saw a need to impose more stringent disciplinary measures. In the wake of the incident, which drew nationwide horror and attention, schools became more vigilant about investigating potential violations. Most significantly, perhaps, many passed "zero-tolerance" policies that specified strict punishments for certain offenses. The circumstances behind the infraction didn't matter.

A zero tolerance policy is unflinching, faithfully mandating punishment if certain offenses have been committed. For example, when a student is found on campus with a knife, the policy might provide for immediate placement in an alternative high school. It does not matter that the student might have taken it from a student intent on committing suicide.

The zero-tolerance approach raised questions about both the investigatory techniques being employed and whether a student's due process was being sufficiently respected. Although schools are somewhat more relaxed now than in the immediate aftermath of Columbine, the ripples of that debate continue today.

#### **Students' rights**

If contraband items are in plain view, then they can be seized without probable cause, reasonable suspicion, or a warrant.

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**Lockers:** Although there is an expectation of privacy, it is low, and courts have generally upheld locker searches.

**Purses and book bags:** School officials need reasonable suspicion to search personal items. The key case, decided by the U. S. Supreme Court in 1985, was *New Jersey v. T.L.O.* In that case, an assistant principal opened and searched a purse after a student was accused of violating the school's no-smoking policy. The search turned up a pack of cigarettes, rolling papers, marijuana, a pipe, money, and other items.

The court concluded that school officials acted within the Constitution and did not need a warrant because they had reasonable grounds for suspecting that a search would turn up a violation of school rules.

**Body Searches:** Pat-down searches are minimally intrusive, but strip searches are seen as highly invasive. Some states prohibit no-clothes searches by law.

**Canine Searches:** Generally seen as non-intrusive since there is no expectation of privacy in the air around objects. Drug-sniffing dogs only explore what is within "plain smell."

**Student Drug Testing:** An Oregon school district's drug-testing policy reached the U. S. Supreme Court in 1995. In *Vernonia School District 47J v. Acton*, justices ruled that it is fine for a district to require students participating in interscholastic athletics to submit to a urinalysis. Opponents argued that the policy violated the Fourth Amendment, because it was not based on specific suspicion of the person.

The Supreme Court said the school had accurately judged that athletes were the leaders of the drug culture. Because students voluntarily participated in athletics, they placed themselves under the rule. The Court also noted that the test's purpose was not punishment, but remediation and health.

That idea was expanded upon by the Tecumseh, Okla., school district. Its Supreme Court case established that school districts have a right to impose random drug testing as a condition for students to participate in virtually any extracurricular activity.

. . . .

### **The future**

Issues of privacy [and] search and seizure . . . rights can be highly charged and emotional. Because it calls for balancing school safety and discipline versus student rights, many of these cases never get to court, but are settled by discussions with school officials.

The collision between the need to keep students safe . . . and the desire to let them learn and grow will continue to be a central question for schools for years to come. The results will say a lot about how much we value both privacy and process.

## Attachment B



### MINNESOTA SUPREME COURT HISTORICAL SOCIETY

#### ***Call for Help: Analyzing School Searches and Seizures of Cell Phones*<sup>†</sup> / Student Press Law Center**

***By Laura Napoli***

Many K-12 schools ban or restrict the use of cellular phones in school. Imagine that you attend a school with a strict no-cell phone policy: phones can't be turned on during school hours, and you can't use your phone to text or to access social networking sites while at school. Can your school conduct a search to determine which students are violating this rule? If school administrators find out that students have been using phones during school, can they search the phones to see who the students have called or texted, or what websites they've visited?

School searches and seizures of students' cell phones are becoming increasingly common . . . .

While administrators often argue that searches are necessary to protect students from harassment and to protect the school from liability, the searches also impact student privacy rights. This article will describe the current law on cell phone searches and seizures . . . .

#### **Student privacy vs. student protection**

Because public schools are government agencies, their ability to seize and search property is limited by the Fourth Amendment. The Fourth Amendment provides that people have a right to be free from unreasonable searches and seizures.[1] This right applies to minors as well as adults; however, the question of what constitutes an "unreasonable" search and seizure in a K-12 school is different from what is "unreasonable" in the adult world.

Outside of school and for all adults, law enforcement needs to show "probable cause" before a person's possessions may be searched. "Probable cause" essentially means that the person conducting the search (usually a police officer) must have a reasonable belief that the person or place to be searched is concealing evidence of a crime.[2] In contrast, school administrators need only show "reasonable suspicion" before they may search a student's possessions. To show "reasonable suspicion," school administrators don't need the same level of certainty that would be required to establish probable cause.[3] Thus, although "reasonable suspicion" may sound similar to "probable cause," courts have acknowledged that it is a less exacting standard. What constitutes a "reasonable" suspicion in the school context depends on the dangerousness of the suspected offense and the certainty of the information that the school has.[4] Importantly,

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<sup>†</sup> This is not a full reproduction. All omissions are noted with an ellipse (. . .). The full article is available at: <http://www.splc.org/article/2012/02/a-call-for-help?id=1626&edition=57>.

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having a “reasonable suspicion” means that administrators must be reasonably certain that their search will turn up something related to a rule violation or a crime.

Requiring that government agents have a provable factual basis to believe that a rule or law has been broken before conducting a search helps protect people from unconstitutional invasions of privacy. The courts have developed standards such as probable cause and reasonable suspicion as a means of balancing public safety against personal privacy. Some schools, however, are stretching these limits with policies that push student privacy into the background when it comes to the contents of cellular phones.

#### **Troubling occurrences**

Changes in technology are presenting greater opportunities for conflicts over student privacy. A generation ago, book-bags and lockers were the center of disagreements over the scope of schools’ search-and-seizure authority. Today, advancing phone technology has given students the ability to carry around vast amounts of information, as well as to communicate through texts, chats and Facebook messages.

Now that students can send instantaneous electronic messages, administrators fear that harmful communication, such as harassment or bullying, will proliferate. Schools have responded to this perceived threat by adopting policies and practices that increasingly encroach on students’ personal privacy. In recent years, administrators have attempted to access student information in new . . . ways . . . .

In one recent example, a high school cheerleader in Mississippi was told that she needed to provide her Facebook login information to her coach as a condition of remaining on the cheerleading squad.[5] Mandi Jackson was disciplined after her coach logged into Jackson’s Facebook account and read private electronic messages in which the student criticized a classmate. The school justified the coach’s behavior by saying that the coach was looking at all team members’ social media pages for evidence of alcohol or drug use.

. . . .

In 2010, a school in Virginia sought guidance from the state’s Attorney General, asking whether a teacher could confiscate and search a student’s phone if a classmate complained that the student had sent a harassing text message.[6] Attorney General Ken Cuccinelli responded that the teacher’s actions would not violate the student’s Fourth Amendment rights; however, he went further, noting that searches of student cell phones and laptops were permissible

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whenever they were based on reasonable suspicion that the student was violating the law or school rules.

....

Although the Virginia opinion is merely advisory and affects only one state, many schools across the country have adopted similarly worded policies . . . . For example, the policy at one high school near Bakersfield, Calif., provides for the confiscation of phones if students bring them to school . . . .

....

### **A split in the courts**

Some of the lack of clarity in schools' approach to the privacy of cell phones can be attributed to the failure of federal courts to set down clear constitutional standards. Courts have reached differing results when analyzing the constitutionality of cell phone searches, whether in schools or in the off-campus realm of citizen/police encounters.

In 2006, a district court in Pennsylvania heard a case in which a teacher confiscated a student's phone after the student displayed it during school hours, in violation of school policy.[9] The teacher and assistant principal proceeded to use the phone to call nine other students listed in the student's directory to ascertain whether those students also had their phones on in school. The administrators also searched the student's text messages and voicemail, and held an instant message conversation with the student's younger brother. The court denied the school district's motion to dismiss the case, holding that the student stated viable claims that his rights had been violated.

In contrast, a court in Mississippi recently held that, upon witnessing a student improperly using a cell phone at school, it was reasonable for school officials to conduct a . . . search of the phone. In that case, *J.W. v. DeSoto County School District*, a teacher saw the student using a cell phone and confiscated the phone.[10] [T]he teacher . . . opened the phone and viewed the pictures stored on it. Several pictures depicted the student dancing in his home bathroom, and one of them showed another student holding a BB gun. After viewing the photos, the teacher ordered the student to the principal's office, where the student was punished for the content on his phone.

The court declined to overturn the discipline. The judge reasoned that the student's phone was contraband the moment it was brought on campus. Consequently, school officials could use the



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phone to determine to what end the student was improperly using it, and that their search of the phone's photos was not unlawful.

The U.S. Supreme Court has not yet weighed in on the subject of searching and seizing phones in school. But the Court's most recent school-search case gives some idea of the standards that the justices would apply if a student challenged a search under the Fourth Amendment.

In *Safford Unified School District v. Redding*,<sup>[11]</sup> the Court decided that Arizona school administrators violated the Fourth Amendment by strip-searching an eighth-grader who, according to a tip, was believed to be carrying ibuprofen pain-relief pills. The Court ruled that the legality of a search varies according to: (1) the severity of the intrusion on privacy, (2) the reliability of the school's information, and (3) the dangerousness of the item that is being searched for.

According to the standards set forth in the *Redding* case, it should be more difficult for a school to justify searching truly private material on a cell phone (such as text messages between individuals) as opposed to non-private material, such as postings to a publicly viewable Facebook wall. And the intrusion will be easier to justify if the school believes that the messages involve dangerous behavior – for example, arranging a drug deal or a fight.

[Remainder of Article Omitted].

Attorney **Laura Napoli**, a former SPLC legal fellow, practices with the New York law firm *Weil Gotshal & Manges*.

### Endnotes

1 U.S. Const. amend. IV.

2 See, for example, *Carroll v. United States*, 267 U.S. 132 (1925) (allowing the warrantless search of an automobile if there was probable cause to believe that evidence was present).

3 *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (requiring that school administrators have a "reasonable suspicion" before performing a search).

4 *Safford Unified School District v. Redding*, 129 S.Ct. 2633 (2009) (holding that strip search of middle school student violated the Fourth Amendment when school lacked reasonable suspicion that over the counter drugs in student's possession presented a danger or that drugs were concealed in student's underwear).

## Attachment B



### MINNESOTA SUPREME COURT HISTORICAL SOCIETY

**5** Brian Stewart, “Student files lawsuit after coach distributed private Facebook content,” SPLC News Flash (July 22, 2009), <http://www.splc.org/news/newsflash.asp?id=1938>.

**6** See Frank LoMonte, “AG Cuccinelli’s go-ahead to search student cell-phones raises Fourth Amendment questions,” SPLC Blog (Nov. 29, 2010), <http://www.splc.org/wordpress/?p=1246>.

**7** Jorge Barrientos, “Schools Examining Cell Phone Policies to Address Distractions,” Bakersfield.com (Jul. 18, 2010), <http://www.bakersfield.com/news/local/x1685666237/Schools-examing-cell-phone-policies-to-address-distractions>.

**8** “School District Agrees to Protect Student’s Privacy,” ACLU of Northern California, [http://www.aclunc.org/issues/technology/blog/school\\_district\\_agrees\\_to\\_protect\\_students\\_privacy.shtml](http://www.aclunc.org/issues/technology/blog/school_district_agrees_to_protect_students_privacy.shtml).

**9** *Klump v. Nazareth Area Sch. Dist.*, 425 F. Supp. 2d 622 (E.D. Pa. 2006).

**10** 2010 WL 4394059 (N.D. Miss. Nov. 1, 2010).