

## Mondale-Quie Essay Contest

The line between the expectation of privacy of an individual and the welfare of the public is blurred the second a foot hits the ground on public school property. Throughout the years since the Bill of Rights was written there have been evolutions of its interpretation. Freedom of Speech in the First Amendment was reinterpreted when electronic means of communication were used to spread hate speech. Similarly, with the usage of lockers in schools, the Fourth Amendment helped redefine what personal privacy is and how the government can respect it as it conducts searches. In today's world, cell phone usage is rampant among teens and children, including in school settings. There are times when cellular devices are encouraged at school: Quizlet, Kahoot, Google Classroom, and other learning forums. Throughout this essay, I will show that search and seizure of personal telephones should only be constitutional when there is a probable cause of harm to others or a harm to oneself and when the investigation does not exceed its boundaries to unrelated issues or jurisdictions.

Owning personal property comes with the expectation of privacy. That is defined as when "a citizen expects privacy and that expected privacy is a universal norm." Probable cause is defined as a time where there "must be enough evidence that a reasonable person would believe a crime was committed." Because of this, public schools have the right to investigate certain belongings of a student where there is probable cause of violation of school rules. These belongings include purses, backpacks, lockers, and outer layer pockets. We see an example of this in the 1985 case of *New Jersey v. T.L.O.* In this situation, a teacher found two girls smoking in a bathroom, where smoking was prohibited. T.L.O. was one of the young women. The other girl admitted to smoking, but T.L.O. denied the allegations. Thinking that school rules were

violated, the principal looked through T.L.O.'s purse and found cigarettes. The U.S. Supreme Court ruled that "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 age and sex of the student and the nature of the infraction." *New Jersey v. T.L.O.* can also be applied to cell phones. If students were suspected of using phones to participate in unlawful actions, as deemed by a reasonable person, then the school would have the right to search the phones.

The notion of "not excessively intrusive," in the aforementioned case, is pivotal. The issue is how much information must a school have to be able to search a student's cell phone. A phone is so much more than a communication device; it holds photos, memories, calendars, notes, games, apps, passwords, addresses, and more. A considerable amount of this information should be kept private. There are apps where one is able to check medical status and history and even one's bank account. The search of a phone should only extend to the matter at hand. In 2010, in Mississippi, there was a student, J.W., who was caught texting during class. The teacher took away his phone and began rifling through the text messages. The search continued until photos on the mobile device were found, "which showed him dancing in front of his parents' bathroom mirror and flashing what the school described as 'gang signs.'" As a result, the district expelled J.W. According to *J.W. v. Desoto County School District* (2010) this violated his constitutional rights because the school was "excessively intrusive" and specifically searched for something with which to castigate him.

In the *Safford Unified School District v. Redding* (2009) case a 13 year old named Savana Redding was accused of doling out prescription medications (Ibuprofen). The school decided to conduct "a search which included not only her backpack and pockets, but also inside her

undergarments.” The U.S. Supreme Court ruled that the search was unconstitutional “[b]ecause there were no reasons to suspect the drugs presented a danger or were concealed in her underwear.” This is another example of a school being “excessively intrusive,” just as the *J.W. v. Desoto County School District* case.

Throughout these three cases there have been commonalities and differences referenced in this essay. The commonalities include a student allegedly going against a school code, an investigation of an individual or his/her property, and the Fourth Amendment being put into question, starting at a state level and advancing to the U.S. Supreme Court.. The differences touch on the geographical location of the incidents (New Jersey, Mississippi, and Arizona), the age of the students, the era from which the cases come, the outcomes, and the intrusiveness of the school.

The commonalities between *Safford* and the other two cases are that each student was accused of wrongdoing, a search of personal property occurred, the Fourth Amendment was questioned, and other than *New Jersey v. T.L.O.*, the school’s actions were ruled as unconstitutional.

The differences between these cases are that in 1985 mobile devices were not commonplace, the students varied in age and gender, and the schools’ degrees of intrusiveness differed. In *New Jersey v. T.L.O.* the school was not intrusive, it was ruled constitutional to search through T.L.O.’s purse. In the other two cases, the schools exceeded the scope of the allowable search. The intrusiveness had to do with the search of a 13 year old in her underwear and the invasion of a seventh grader’s personal pictures on his mobile device where he was dancing in front of the bathroom mirror.

If one extrapolates from these incidents, what becomes clear is that the Fourth Amendment protects citizens only until there is substantial harm against oneself or others. In *Safford v. Redding*, when an unsubstantiated allegation led to a invasive body search, the Fourth Amendment protected the 13 year old girl in the court of law from an improper search.

A hypothetical example of an appropriate constitutional search and seizure would be a revealing picture of a girl being passed around by middle school boys and a school official confiscating the phone and determining that the girl's privacy rights were violated, resulting in repercussions for the boys.

There are two main points to my position: 1) There must be sufficient reliable evidence to warrant investigation into a telephone; and 2) The level of intrusiveness must be directly related and limited to only relevant matters. This impacts students because they must know they do not have complete privacy, but if something occurs where their phone is searched, some matters may remain private. Students must know that their behaviour cannot put themselves or others in harm or they may lose their expectation of privacy.

In conclusion, probable cause and expectations of privacy are important in the Fourth Amendment. Applying extra emphasis on those two concepts should be imperative. They allow for a stronger promise of confidentiality; privacy should exist until the threat of harm to a citizen rises and overpowers the need for personal privacy. Cell phones are a constant in the modern age and the right to search them should be limited by protective restrictions.

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