Search and Seizure Position Paper

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Introduction

A 13-year old student, Savana Redding, was called to the office of Assistant Principal Wilson, who opened a day planner on his desk, in which there were several knives, lighters, and a cigarette. Redding admitted the planner was hers, but that she had lent it to her friend, Marisa, a few days before and none of the items were hers. The planner had been found by a teacher within Marisa’s reach. Wilson had received reports from staff that respondent and Marisa were part of a rowdy group at a school dance where alcohol and cigarettes were found in the girl’s bathroom, and another student reported that respondent had a party before the dance where alcohol was served. Wilson showed respondent four prescription-strength ibuprofen pills and one over-the-counter naproxen pill, both banned under school rules without advance permission, which had been obtained from Marisa. Wilson told respondent he received a report that she was giving the pills to fellow students (the report had come from Marisa). Respondent denied this and said she knew nothing about the pills, and agreed to let Wilson search her belongings. He and an administrative assistant searched her backpack and found nothing. Wilson then ordered respondent to the nurse’s office for a strip search. The female nurse had her strip down and then pull her bra out and to the side and shake it and pull out the elastic on her underpants. No pills were found.

Was Redding’s Fourth Amendment rights violated? Was this search reasonable? Was it Constitutional? Should assistant principal Wilson and the school district be held liable? What was the language of the Safford Unified School District in regards to student policy in regards to searches, especially strip searches? These were essentially the facts of Safford Unified School Dist. v. Redding, a 2009 Supreme Court case. The Court held that the search was unconstitutional. In the end, it leads us towards our overarching question,

Is it a Fourth Amendment violation to strip search a student who is reasonably believed to have meth in school?

The following states our position that it is constitutional to conduct a strip search, as long as it is reasonable in suspicion and justified in scope. This question will be supported through the analysis of four cases; New Jersey v. TLO vs., Vernonia School District v Acton , Phaneuf v. Fraikin, Cornfield v. Consolidated HS District 230.

**TLO IRAC**

**Issue:** In New Jersey v. T.L.O., 469 U.S. 325 (1985), does the exclusionary rule, grounded under the 4th Amendment, apply to searches conducted by school officials in public schools? Did the search in this case violate defendant’s reasonable expectations of privacy as protected by the Fourth Amendment?

**Rule/Holding:** The New Jersey Supreme Court believed that the school met a standard of
reasonableness for conducting searches at school through the exclusionary rule grounded under the 4th Amendments. The Supreme Court also believed that, “school administrators don’t need to have a search warrant or probable cause before conducting a search because students have a reduced expectation of privacy when in school.” Also, the Supreme Court ruled that educators did not act *in loco parentis* and were in fact representatives of the State. Therefore, yes, school officials act as agents of the state and are subject to the restrictions of the Fourth Amendment. And no, the defendant’s rights were not violated. The search in question was based on reasonable suspicion that the defendant was in violation of a school rule, and reasonably limited to the scope of that suspicion.

**Analysis:** This case explained that school officials are subject to the requirements of the Fourth Amendment. However, students in public school do not have the same expectations of privacy as citizens in public generally. Rather, searches are subject to a reasonableness standard rather than one of probable cause as states have a valid interest in maintaining the safety and security of school learning environments. Searches should be evaluated in light of all of the circumstances, and judged on the basis of their overall reasonableness. Ordinarily, reasonableness requires only that reasonable grounds exist under the belief the search will uncover evidence that the student is violating either the law or school rules. In this case, the scope of the search was directly related to reasonable suspicion that the defendant had cigarettes in her possession in violation of school rules. Next, the discovery of rolling papers, which were in plain sight and thus, gave suspicion to the reasonable conclusion that the defendant was likely concealing marijuana, justifying the more thorough search. The discovery of additional evidence of drug possession came from an initially valid search, expanded on a reasonable basis with proper suspicion, entirely consistent with the requirements of the Fourth amendment in a public school setting.

**Conclusion:** School officials are agents of the state subject to the limitations of the Constitution. School officials, however, need not conduct searches under the same circumstances as law enforcement officers outside of the schoolhouse, and are subject to a reasonableness standard rather than one of probable cause. This landmark case established that students’ privacy interests, related to the need of a school, to maintain order does not require strict adherence to probable cause standard in the 4th amendment.

**VERNONIA IRAC**

**Issue:** In Vernonia School District 47j v Acton, 94 U.S. 590 (1995), (US Court of Appeals, 9th Circuit), does random drug testing of high school athletes violate the reasonable search and seizure clause of the 4th and 14th Amendment for student participation in school athletic programs?

**Rule/Holding:** The US Supreme Court held that the 4th Amendment was extended (by the 14th Amendment) to cover search and seizures by state officers. The collection of urine under the school policy was considered a search for the purposes of keeping individuals safe, in their capacity as athletes
and students of the district. It was also assumed that student athletes have lesser expectations of privacy than their peers who are not athletes. The court viewed the policy as a deterrent of drug use by student athletes, as well as, to prevent harm to them. The court found that the school’s policy met the 14th Amendment’s reasonableness requirement and was thus constitutional by a 6-3 vote.

**Analysis:** In Vernonia School District 47j v Acton, the Supreme Court established that if a school district requires authorization for random urinalysis drug testing of its student athletes, the district is acting as the state. When the district excluded Acton from football participation, his liberty interest, as it pertains to the 14th Amendment, was at odds with the school districts role of enforcing policy. The 4th Amendment has bearing on this case as it pertains to the reasonableness of the search and seizure of a student’s urine. The court determined that the random urinalysis drug testing was considered reasonable because it was nonintrusive, was acting to reduce the risk of sports related injuries, and student athletes have a decreased expectation of privacy.

**Conclusion:** The U.S. Supreme Court ruled that random drug testing of high school athletes does not violate the 4th or 14th Amendment, and therefore Vernonia School District 47j district’s policy was reasonable. It is important to note that this was also a special circumstance related to search because these students, also athletes, were upheld to a higher standard of safety compared to the general student body. Additionally, the Court held that, since the athletic program was extracurricular, the 4th Amendment did not apply with the rigor. Therefore, it would otherwise have credits at stake.

**Tie above 2 cases and then go into narrative supporting that search and strip search are the same**

In drawing from TLO and Vernonia, both cases applied in a common sense fashion with a high degree of focusing on the scope of the search. In TLO, the scope of the search really is tied to the reasonableness of its objective. There was scope in TLO, that is why the school official, was able to proceed, which was ruled constitutional. In Vernonia, the high school athletes were under State supervision, by school officials, therefore they are under greater control. In both cases, school officials warranted their search based on scope and reasonableness and to ensure that the safety of minors in schools or in school-sponsored events are upheld. If a search and seizure is warranted by school officials, due to reasonableness and of their scope, then it can be administered. With the terms of search being defined and proved to be constitutional in the above cases, as long as it is in suspicion and scope. Therefore, in the following two cases, search lead to a strip search. A strip search falls within the means of the term “search” because it is the schools responsibility to keep the learning environment free of distraction. The court rulings in the following cases ruled that schools are not prohibited from searching students—even strip-searching students—particularly in cases that involve the suspicion of weapons or contraband on the school’s grounds. When looking at district policy, it will contain an explanation of when and how it will conduct searches, especially a strip search.
Phaneuf IRAC

Issue: KELLY PHANEUF, Plaintiff, v. ROSE MARIE CIPRIANO; DORENE M. FRAIKIN; KATHLEEN BINKOWSKI; TOWN OF PLAINVILLE; and PLAINVILLE BOARD OF EDUCATION, Defendants. The defendant, Kelly Phaneuf alleges that the defendants, Plainville High School substitute nurse Dorene Fraikin, Plainville High School principal Rose Marie Cipriano, superintendent of Plainville public schools Kathleen Binkowski, the Plainville Board of Education, and the Town of Plainville, subjected her to a strip search in which she claims violated her Fourth Amendment rights per the United States Constitution.

Rule/Holding: Phaneuf initially filed suit in the Connecticut Superior Court, alleging that her fourth Amendment and state law rights were violated when she was subjected to the strip search. The school officials removed the case to the District Court of Connecticut, and moved for a summary judgment on the grounds that the strip search was reasonable and that they were entitled to qualified immunity. The district court held that the search was reasonable under the precedent created by the Supreme Court in New Jersey v. T.L.O.

Analysis: The court found that, as required by T.L.O., the search was both “reasonable at its inception” and “reasonable in scope.” The court followed the two-step approach that was created as a result of New Jersey v. T.L.O. The court found that the school officials had reasonable suspicion to re-check Phaneuf’s purse because a tip came in from a “reliable student,” Phaneuf had past disciplinary issues within the school, and Cipriano and Birdsall were suspicious in the manner in which Phaneuf denied the accusation that she possessed marijuana. Second, the district court found that the finding of a lighter and cigarettes in Phaneuf’s purse generated a “higher level of suspicion that Phaneuf could also be carrying contraband on her person.” Which in the court’s opinion “justified the extended level of intrusion necessary to conduct a search of Kelly Phaneuf’s person for the evidence of drug possession in school?”

Conclusion: The district court concluded that that strip search was reasonable in scope because it was not excessively intrusive. The search was conducted in relative privacy in Fraikin’s office, and the search only involved women, including Phaneuf’s mother. The search was reasonably related to the objective of the search due to the allegation that Phaneuf had hidden the marijuana in her underwear. The district court also noted that “the nature of the suspected infraction justified the search because drugs are a pressing concern in every school.” Because the court dismissed Phaneuf’s 4th Amendment claim, the question of qualified immunity for the individual defendants was never addressed.
Cornfield/Lewis vs Consolidates IRAC

**Issue:** In Cornfield v. Consolidated High School District 230, 991 F. 2d (1993) (US Court of Appeals, 7th Circuit), was there a violation of the student’s 4th Amendment right after a strip search was conducted for the suspicion of drugs?

**Rule/Holding:** Both the district and circuit courts granted summary judgements in favor of defendants, Spencer and Frye. The seventh court upheld the ruling of the trial court that the search was not unconstitutional.

**Analysis:** In *New Jersey v. T.L.O.* the Supreme Court established that students privacy interests related to the need of a school to maintain order does not require strict adherence to probable cause standard in the 4th amendment. The term reasonable can be related in context within which a search takes place. The standard of reasonableness in a school setting is a balance between an individual's legitimate expectation of privacy and the government’s (school’s) need to respond to school violations to be able to maintain an effective learning environment. *New Jersey v. T.L.O* also established a two-prong standard for a legitimate search: it has to be justified in its inception and justified in its scope.

**Conclusion:** The court ruled that the strip search was justified in its inception because of the amount of information available to Spencer and Frye. The search was justified in scope because the teachers were both male, did not physically touch him, and afforded as much privacy as possible to Cornfield.

**Narrative supporting that the above 2 cases were justified in inception and reasonable in scope**

*Cornfield v. Consolidated High School District* and *Phaneuf vs Fraikin* both support the right for a school to perform a student strip search. Both were ruled as justified in inception and scope. Abiding by the two-prong test, established in *New Jersey v. T.L.O.*, would be imperative in establishing the necessity of performing a strip search on a student, in our overarching question, *Is it a Fourth Amendment violation to strip search a student who is reasonably believed to have meth in school?*

**Analysis**

Based on the rulings of the cases outlined in this paper, a search is a search, whether it is a strip search, purse search or a dog search. Searches are allowed in a school setting. First, there is a reduction in the amount of protection afforded by the 4th amendment when in a school setting because of the overriding responsibility of a school to keep students safe and protect the learning environment. Second, there must be reasonableness in the justification of a strip search inception and scope. In regards to *Safford Unified District v. Redding*, the strip search was ruled unconstitutional because it failed to meet both
parts (justified in inception and reasonable in scope) of the two prong test established in *New Jersey v. T.L.O.*. This was not a special circumstance case. The search was not justified in its inception because the Supreme Court determined that ibuprofen does not cause a threat to student and school safety. Therefore, reasonableness in scope was irrelevant and should not be considered.

However, a prescription strength (or greater than prescription strength) drug, like Methamphetamine poses a greater risk to student safety rather than an over-the-counter drug, like ibuprofen. Therefore the search for the dangerous substance would be justified in inception. To be reasonable in scope, there must be a layered progression of supporting evidence, i.e. crystal substances in ones purse, drug paraphernalia in a pocket, etc. that warrants the continuation of a more in-depth search.

One whom is in a position of leadership within a school, should always be familiar with board and student conduct code policies. These district adopted policies provide a clear procedure for student searches and may preclude the need or allowability to strip search a student, as long as it follows reasonable in suspicion and justified in scope.

School policies are becoming more detailed on procedures related to searches. If a school district’s board policy does allow strip searches, the negative publicity and probable legal ramifications that are likely to occur are usually going to outweigh a school’s right to exercise a strip search. We looked at cases that provided support for a strip search. However, the majority of cases that were ruled in favor of the plaintiff that 4th Amendment rights were violated because they were not justified in inception and/or scope.

In the event that a school district is challenged by a situation when a student who was believed to have a ban substance on his/her person, district searches are not upheld legally, when a search is not reasonable in scope and justified in their inception. The districts should follow the board protocol for the search. In the event, a district then comes to the point of a strip search, law enforcement should be called to conduct the search because it would greatly reduce the liability of the district and provide a more conservative avenue.