

## **James Madison Foundation: The Fourth Amendment and Cellphone Searches in Schools**

### **Recommended Grade/Ability Level**

High School Students

### **Recommended Lesson Length**

90 minute lesson length

### **Central Engagement Question/Essential Question**

How should schools balance the need for a safe and respectful learning environment with the constitutional protections of students? (Should schools be able to search student's cellular phones?)

### **Overview**

This lesson will first review the history of Supreme Court rulings on student rights in schools and explain the constitutional protections on unreasonable search and seizure and how those protections apply to students in public schools. Students will then examine a contemporary case study and using the precedents set by the Supreme Court, debate the constitutionality of a school's ability to search student's cellular phones.

### **Materials**

1. Handout 1a and 1b: 4<sup>th</sup> Amendment to the Constitution and the timeline of the relevant supreme court decisions relating to search and seizure
2. Handout 2a-2c: Cellphone search case studies
3. Handout 3: court decisions

### **Objectives**

1. Students will be able to understand the application of the Fourth Amendment in public schools
2. Student will be able to understand the role of the supreme court in interpreting the constitution
3. Students will be able to analyze and discuss the application of the Fourth Amendment to cellphone searches by school officials

### **Standards**

NCSS Themes: Individuals, Groups and Institutions, Power, Authority and Governance

C3 Framework:

D2.Civ.9.9-12. Use appropriate deliberative processes in multiple settings.

D2.Civ.12.9-12. Analyze how people use and challenge local, state, national, and international laws to address a variety of public issues.

### **Background Information/Homework/Pre-Learning**

Students should understand the function of the Supreme Court and have a basic understanding of the Bill of Rights. Students should be familiar with differing interpretations of some amendments to the constitution and the way in which vague language in law can lead to ambiguities in policy.

### **Anticipatory Activity/Bell-Ringer**

- Teacher should display the 2 questions listed below on the board and ask students to write their answers to each question on a sheet of paper.

*Should public schools be able to limit some rights of students in order to prevent disruption to the learning community? Why or why not?*

*Should public safety/ the safety of the school community ever take precedence over the preservation of constitutional protections? Provide an explanation for your answer*

- Once students have answered each question individually the teacher should explain that we are going to take the pulse of the classroom.
- Students should move to a side of the room that corresponds with their answer choice (so students who answered yes to question 1 should move to the front and students who answered no to question 1 should move to the back).
- The teacher should ask a few students to share with the class their initial reasoning for their position. The teacher should repeat this take-a-stand activity with the second question.
- If the classroom is not big enough for students to move around, students can instead discuss the reasoning with a colleague sitting next to them and then share answers from their seats OR hold up a red card or green card to indicate their agreement or disagreement with the question. (think-write-pair –share).

### **Activity (Activities)**

1. Explain to students that today we are going to be examining the application of the 4<sup>th</sup> amendment, the freedom from unreasonable search and seizure in schools, and we are going to be discussing the extent to which schools can or should limit your 4<sup>th</sup> amendment rights in order to ensure school safety.
2. *Optional background information/ rationale:*
  - Schools have to balance a commitment to equality under the law versus protection of young people in their care.
  - Until they are 18 “children” are treated as second class citizens and the state and parents are able to exercise tremendous authority over young people “for their own good”
  - For example, young people are not able to vote until they turn 18, they must attend school or risk arrest, there are limits on how many hours a week they can work, etc.
  - In the 1950s and 60s, The Supreme Court expanded some rights and protections for young people against parents and authority figures, including basic procedural rights. The basic tension is between laws that are instituted for the “good” of children who do not yet have the same maturity as adults, and how much protection are all citizens entitled to form the government?<sup>1</sup>
3. Hand out copies of *Handout 1a*, and *Handout 1b* the 4<sup>th</sup> amendment and the timeline of Supreme Court cases. Ask students to read the 4<sup>th</sup> Amendment. For students for whom reading comprehension is a concern it may be helpful to ask students to write the amendment in their own words. If necessary provide some examples of ways the 4<sup>th</sup> Amendment protects adults from unreasonable search and seizure.

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<sup>1</sup> Scot Wilson and Paul Burneko, “Testing the Limits of Youth Rights Lesson Plan”, *The Close Up Foundation*. 2001.

4. Ask students to think-write-pair-share their answers to the guiding questions on Handout 1A, and conduct a brief discussion on why schools might limit 4<sup>th</sup> amendment protections in schools.
5. Provide students with a brief history of the 4<sup>th</sup> amendment and examples.
  1. The 4th amendment was created to ensure that the government and government agencies, including schools, do not violate your right to privacy and thus the government cannot search your home without probable cause or a search warrant (there are some exceptions to this, lawful arrest, items in plain view, consent). In schools the 4<sup>th</sup> amendment prevents unjustified government searches in private places which include lockers, clothing and your body, outside of school the question typically asked if someone has a “reasonable expectation of privacy.”<sup>2</sup> Because schools do need to ensure the safety of their students, they are given more freedom than most government institutions to search students. However, there are still some limits on school ability to search students. Today we are going to examine the extent to which schools can and should search your cellphones.
6. Explain that in order to understand how the 4<sup>th</sup> amendment applies to schools, we must first understand how past Supreme Court cases have ruled on the issue of student privacy and apply them to modern-day case studies. Ask students to read the each of the 3 cases listed on handout 1b, and to follow the directions on the handout. This may be done in pairs or groups at the teacher’s discretion.
7. Once students have completed work on their own, review each case with students and clarify any misconceptions about each case and its application.
8. Explain that we will now examine case studies in which cellphone searches have occurred, and as a class attempt to come to a conclusion about the constitutionality of each search.
9. Divide students into 3 groups, A, B and C. Give students in group A handout 2A, students in group B handout 2B, and students in group C handout 2C. Students should read their assigned case study and answer the guiding questions below, and be ready to present their case to their peers.
10. Once students have completed their case study and guiding question, have students with like case studies (so all of the As, Bs, and Cs) gather to discuss their answers to the guiding questions, and their overall opinions of the constitutionality of the cellphone search in their case. It may be helpful to assign a group facilitator for each group, someone who will ensure that everyone is given a chance to voice their opinion about the case. During this time the teacher should circulate among the groups to ensure that each group understands their individual case study.
11. Once the groups have completed their discussion of their individual case studies, the teacher should jigsaw the students into groups of 3 in which each student has a different case. Each student should present a brief summary of their case, and more importantly their own opinion of whether or not students’ 4<sup>th</sup> amendment rights were violated in their case. Once each student in the small group has presented their case study, the group should engage in a final discussion on the last question, *In schools, should public schools be able to limit some rights of students in order to prevent disruption to the learning community? Why or why not?* The group should use

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<sup>2</sup> Edwin C. Darden, “Search and Seizure, Due Process and Public Schools,” *Center for Public Education*, April 5, 2006, <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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examples from each case to write a convincing position on this question. It may be helpful for students to write their groups opinion on a piece of butcher paper.

### **Wrap-Up**

12. Whole class discussion. Once each group has had sufficient time to discuss the final question, the teacher can conduct a whole class discussion on the constitutionality of cell phone searches, and as a class discuss parameters for when a principal or school official should search cell phones based on the application of the 4<sup>th</sup> amendment to public schools.
13. If time permits, the teacher may wish to share the lower court's decisions (Handout 3) on the case studies, and conduct a brief evaluation of the rulings in each case.

### **Assessment**

**Exit ticket or Homework** (teacher should select from one of the following suggestions)

1. Students can either read the official decisions in the case studies and discuss their agreement or disagreement with the court's decision
2. Students can write a reflection on the central question: *How should schools balance the need for a safe and welcoming learning environment with the constitutional protections of students?* The reflection should use examples from the case studies and the Supreme Court precedents to support the student's opinion.
3. Students can write a new "cell phone search regulation" to suggest to the principal that fits balances the need for constitutional protection and school safety.

**Extensions:** Students can research similar cases involving locker searches, car searches while on school grounds, etc. and comment on the application of the Supreme Court cases to these cases.

### **Additional Resources**

<http://www.ericdigests.org/1998-2/safety.htm>

<http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1092&context=bjcl>

<http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does-0>

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### **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.”<sup>3</sup>*

#### **Guiding Questions:**

1. What protections does the 4<sup>th</sup> amendment provide citizens from the government?
2. Why might some people argue these protections should not apply to students in a school setting?

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<sup>3</sup> “Fourth Amendment” *Legal Information Institute, Cornell University Law School*. Accessed October 31, 2016, [https://www.law.cornell.edu/constitution/fourth\\_amendment](https://www.law.cornell.edu/constitution/fourth_amendment)

**Directions:** Reach and annotate each Supreme Court Case below, each case applies either to students rights while in school OR to search and seizure of cellular phones. For each case write the court's opinion in your own words, and explain *how* the case might apply to school officials who wish to search a student's cell phone.

### **1985: New Jersey v. T.L.O.**

"T.L.O. was a high school student. School officials searched her purse suspecting she had cigarettes, after she violated the school's no smoking policy. The officials discovered cigarettes, a small amount of marijuana, and a list containing the names of students who owed T.L.O. money. T.L.O. was charged with possession of marijuana."<sup>4</sup> The case rules that schools do *not* need to meet the "probable cause" standard of the 4<sup>th</sup> Amendment<sup>5</sup> but instead need to have "reasonable suspicion" to search personal items (purses, coats, etc.).<sup>6</sup> T.L.O. established a two-step approach, first examining the justification for the search and then deciding if the *scope* of the search was reasonable.<sup>7</sup> The search must be "'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."<sup>8</sup>

### **2009: Safford Unified School District v. Redding**

"Savanna Redding, an eighth grader at Safford Middle School, was strip-searched by school officials on the basis of a tip by another student that Ms. Redding might have ibuprofen on her person in violation of school policy. Ms. Redding subsequently filed suit against the school district and the school officials responsible for the search in the District Court for the District of Arizona...She alleged her Fourth Amendment right to be free of unreasonable search and seizure was violated." The Supreme Court held that Savanna's Fourth Amendment rights were violated when school officials searched her underwear for non-prescription painkillers...the Court reiterated that, based on a reasonable suspicion, search measures used by school officials to root out contraband must be "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." Here, school officials did not have sufficient suspicion to warrant extending the search of Savanna to her underwear.<sup>9</sup>

### **2014 Riley v. California:**

"David Leon Riley belonged to the Lincoln Park gang of San Diego, California. On August 2, 2009, he and others opened fire on a rival gang member driving past them. On August 22, 2009, the police pulled Riley over driving a different car; he was driving on expired license registration tags. During the search, police located two guns and subsequently arrested Riley for possession of the firearms. Riley had his cell phone in his pocket when he was arrested, so a gang unit detective analyzed videos and photographs of Riley making gang signs and other gang indicia that were stored on the phone to determine whether Riley was gang affiliate."<sup>10</sup> Riley claimed the search of his cellphone violated his 4<sup>th</sup> Amendments rights. The Supreme Court agreed and said that cellphones are "minicomputers filled with massive amounts of private information which distinguished them from traditional items that can be seized from an arrestee's person, such as a wallet."<sup>11</sup>

<sup>4</sup> Chicago-Kent College of Law at Illinois Tech. "New Jersey v. T.L.O.." Oyez. <https://www.oyez.org/cases/1983/83-712> (accessed November 1, 2016).

<sup>5</sup> Scot Wilson and Paul Burneko, "Testing the Limits of Youth Rights Lesson Plan", *The Close Up Foundation*. 2001.

<sup>6</sup> Edwin C. Darden, "Search and Seizure, Due Process and Public Schools," *Center for Public Education*, April 5, 2006, <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>

<sup>7</sup> Amy Vorenberg, "Indecent Exposure: Do Warrantless Searches of a Student's Cell Phone Violate the Fourth Amendment?", *17 Berkeley Journal of Criminal Law*. 62 (2012). <http://scholarship.law.berkeley.edu/bjcl/vol17/iss1/2>

<sup>8</sup> "New Jersey v. T.L.O.", *Legal Information Institute, Cornell University Law School*, accessed October 31, 2016, <https://www.law.cornell.edu/supremecourt/text/469/325>

<sup>9</sup> Chicago-Kent College of Law at Illinois Tech. "Safford Unified School District v. Redding." Oyez. <https://www.oyez.org/cases/2008/08-479> (accessed November 1, 2016).

<sup>10</sup> Chicago-Kent College of Law at Illinois Tech. "Riley v. California." Oyez. <https://www.oyez.org/cases/2013/13-132> (accessed November 1, 2016).

<sup>11</sup> Chicago-Kent College of Law at Illinois Tech. "Riley v. California." Oyez. <https://www.oyez.org/cases/2013/13-132> (accessed November 1, 2016).

**Directions:** Read your assigned case and answer the guiding questions below. Your answers should reference at least 1 of the Supreme Court Cases we studied.

**Case 1:**

Mendoza v. Klein Independent School District

“In a 2010 Texas case, *Mendoza v. Klein Independent School District*, a teacher confiscated an eighth grader’s phone after observing her looking at it with some friends. Because of the students’ guilty reactions when they were confronted, the teacher inferred that they were probably looking at something inappropriate for a school setting. The teacher took the phone, searched through sent text messages, and found nude photos of the student. The student confessed that she had sent the photos to her boyfriend because he had sent similar photos to her. The student was suspended and assigned to a disciplinary program. She subsequently sued the school for violating her Fourth Amendment rights and for intentional infliction of emotional harm.”<sup>12</sup>

**Guiding Questions**

1. Do you think searching the student’s cellphone was necessary to secure the safety of the students at the school? Why or why not?
2. In this case, do you think the cellphone search met the “reasonable justification” requirements established by the Supreme Court? Why or why not?
3. In this case, was the *scope* of the investigation reasonable? Why or why not?

**Final Discussion Question:**

*In schools, should public schools be able to limit some rights of students in order to prevention disruption to the learning community? Why or why not?*

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<sup>12</sup> Amy Vorenberg, “Indecent Exposure: Do Warrantless Searches of a Student’s Cell Phone Violate the Fourth Amendment?”, 17 Berkeley Journal of Criminal Law. 62 (2012). <http://scholarship.law.berkeley.edu/bjcl/vol17/iss1/2>

Directions: Read your assigned case and answer the guiding questions below. Your answers should reference at least 1 of the Supreme Court Cases we studied.

**Case 2:**

J.W. v. DeSoto County School District

“A twelve-year old boy was expelled from school in 2008 for suspected gang activity after his cell phone, confiscated for in-class use, was found to contain a picture of a friend holding what turned out to be a BB gun, and other pictures depicting alleged gang clothing. The student sued the Mississippi school district claiming that he was unlawfully expelled, and the case came before the court on the issue of whether searching the phone violated clearly established law.”<sup>13</sup>

**Guiding Questions**

1. Do you think searching the student’s cellphone was necessary to secure the safety of the students at the school? Why or why not?
2. In this case, do you think the cellphone search met the “reasonable justification” requirements established by the Supreme Court? Why or why not?
3. In this case, was the *scope* of the investigation reasonable? Why or why not?

**Final Discussion Question:**

*In schools, should public schools be able to limit some rights of students in order to prevention disruption to the learning community? Why or why not?*

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<sup>13</sup> Amy Vorenberg, “Indecent Exposure: Do Warrantless Searches of a Student’s Cell Phone Violate the Fourth Amendment?”, 17 *Berkeley Journal of Criminal Law*. 62 (2012). <http://scholarship.law.berkeley.edu/bjcl/vol17/iss1/2>



Directions: Read your assigned case and answer the guiding questions below. Your answers should reference at least 1 of the Supreme Court Cases we studied.

**Case 3:**

Students at Monarch High School in Colorado were called to the principal's office because they were suspected of smoking cigarettes on school grounds. The principal searched the student's backpack and pockets but did not find evidence of smoking so they took the students cell phones and began reading their text messages. After finding mentions of marijuana, the administrators confiscated the cell phones of several of the student's friends as well. Some of the information obtained from the texts landed in the students' discipline files.<sup>14</sup>

**Guiding Questions**

1. Do you think searching the student's cellphone was necessary to secure the safety of the students at the school? Why or why not?
2. In this case, do you think the cellphone search met the "reasonable justification" requirements established by the Supreme Court? Why or why not?
3. In this case, was the *scope* of the investigation reasonable? Why or why not?

**Final Discussion Question:**

*In schools, should public schools be able to limit some rights of students in order to prevention disruption to the learning community? Why or why not?*

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<sup>14</sup> Kirk Siegler, "Text Privacy Issue Heats Up at Colorado Public School", *National Public Radio*, transcript of interview, December 17, 2007, <http://www.npr.org/templates/story/story.php?storyId=17312200>

## Decisions

### Case 1:

“In Mendoza, the court found that the search was justified at its inception because the student had claimed she was not using the phone, but the teacher’s observations suggested otherwise. Accordingly, the teacher was justified in checking to see if the student had violated school policy by sending a text during school. However, the court denied the school’s motion for summary judgment, holding that a jury could find that opening the texts on the phone was not reasonably related to the initial justification for searching the phone.”<sup>15</sup>

### Case 2:

“The court found that the search of the student’s cell phone was not unlawful because the student had brought it to school and used it against school rules. These acts diminished the student’s expectations of privacy. Here, the court said, the Mississippi school’s actions were “limited” to only looking at the student’s photos and was not “fishing” through the students personal life.”<sup>16</sup>

### Case 3:

After the ACLU filed a complaint with the school district the district adopted a regulation that said “Except in cases of emergency, a cell phone or other electronic communication device will not be searched without the consent of either the student or parent” and that the administration must fill out a checklist when a phone is searched.<sup>17</sup>

*Do you agree with the outcomes in each of these cases? Why or why not?*

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<sup>15</sup> Amy Vorenberg, “Indecent Exposure: Do Warrantless Searches of a Student’s Cell Phone Violate the Fourth Amendment?”, 17 Berkeley Journal of Criminal Law. 62 (2012). <http://scholarship.law.berkeley.edu/bjcl/vol17/iss1/2>

<sup>16</sup> Amy Vorenberg, “Indecent Exposure: Do Warrantless Searches of a Student’s Cell Phone Violate the Fourth Amendment?”, 17 Berkeley Journal of Criminal Law. 62 (2012). <http://scholarship.law.berkeley.edu/bjcl/vol17/iss1/2>

<sup>17</sup> Mark Silverstein, “ACLU APPLAUDS BOULDER VALLEY SCHOOL DISTRICT’S DECISION TO LIMIT SEARCHES OF STUDENTS’ CELL PHONE TEXT MESSAGES”, *American Civil Liberties Union*, April 21, 2008, <https://www.aclu.org/news/aclu-applauds-boulder-valley-school-districts-decision-limit-searches-students-cell-phone-text>

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### End Notes:

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