

The Court Should Clarify, and do so with Care

Imagine a world where the daily, seemingly private, conversations you have on your mobile phone were constantly monitored not by a reclusive government agency headquartered halfway across the country, but by the very people you see and interact with every single day. This would become a reality for students across the country if the authority of schools to investigate their students were to be left unchecked by the judiciary. Therefore, the judiciary must tread carefully and exercise judicial restraint, as their decisions could have far reaching implications on students' digital privacy. Under the current law the only acceptable circumstance that should allow for a school official to search a student's phone is one where the school reasonably believes that they will find evidence that the student has broken school rules, or is a danger to other students.

The landmark Supreme Court case *New Jersey vs T.L.O* has formed much of the established policy on student privacy. In this case a student was caught smoking in a school bathroom, and a school administrator's subsequent search of her purse revealed more incriminating information. The verdict made two important conclusions. First, although teachers are government employees, the way in which they can investigate students is different from that of law enforcement. This makes sense. A teacher's role as a disciplinarian is just to enforce school rules, while police officers enforce laws. The nature of searches made by teachers isn't as official as the tangle of arrest procedures and warrant requirements officers must navigate. Additionally, teachers aren't typically given the type of training as officers are, because they are educators, not law enforcers. The second conclusion established a vague criteria for which student searches are acceptable and which aren't. The verdict again distinguished school teachers from law enforcement, declaring that while a police officer still needs to show a "probable

cause” for a search or seizure, Teachers can carry out a search simply on the basis of a “reasonable suspicion” as long as the search is “not excessively intrusive.” Unfortunately, applying this ‘rule of thumb’ to cases involving searches of students cell phones is difficult. The Supreme Court hasn’t elaborated on the specific differences between a “reasonable suspicion” and a “probable cause” other than suggesting educators aren’t held to as strict of a standard. Various courts have disagreed on what constitutes a “reasonable suspicion” and struggle to find agreement on what procedures are “excessively intrusive”.

Somewhat recently, in the 2014 Supreme Court case *Riley vs California*, the Court offered some clarity on the issue of cell phone searches. David Riley was arrested during a traffic stop. Following Riley’s arrest the police searched his belongings and found evidence on his cell phone linking him to other crimes. Riley asked to have the evidence turned up by the search of his cell phone excluded from any trial, believing that the search violated his Fourth Amendment right. The Court agreed unanimously. They ruled that although the search and seizure of Riley’s personal belongings was acceptable, scouring his cell phone for evidence was excessively intrusive. The justices believed that “cell phones can store millions of pages of text, thousands of pictures, or hundreds of videos” whereas very few other personal items contain such broad reserves of evidence. This ruling, in conjunction with *New Jersey vs. T.L.O.*, implies that it would be unconstitutional for a teacher to thoroughly search a student's phone, even on the basis of a “reasonable suspicion,” because the court has flagged the act as “excessively intrusive.” Under this policy, it would be acceptable for a teacher to confiscate a student’s belongings, if they believed the student might be breaking school rules, but it would be unacceptable for them to search through a student’s phone. Policies such as monitoring students internet use while at school might be upheld, because they are minimally intrusive. However, stalking students online,

investigating their posts made on social media inside and outside of school, and looking through messages sent between students, would likely be frowned upon by the Court, as each is much more intrusive.

The Supreme Court still has some grey area to clear up with regard to students' digital privacy while at school; multiple lower courts disagree over what circumstances allow for a school to search a student's phone. The case *Klump v. Nazareth Area School District* involved a situation where a student was seen using his phone in class, so it was seized. (That was the school's policy). However, the school then searched through the student's contacts, trying to bust other students for having their phones in school. According Klump's family, the school then made public and circulated the false notion that Klump had been dealing drugs, a speculation that originated from the search of his cell phone. This severely damaged Klump's reputation. In 2006, a district court in Pennsylvania ruled that "by accessing Christopher Klump's phone number directory, voice mail and text messages, and subsequently using the phone to call individuals listed in the directory, defendants Grube and Kocher violated Christopher's Fourth Amendment right to be free from unreasonable searches and seizures." However, a conflicting ruling emerged 4 years later in Mississippi. In the Mississippi Supreme Court case *J.W vs Desoto County School District*, a similar scenario occurred. A student was caught using his phone in class, it was confiscated and school officials searched unsuspectingly through the student's photos, finding evidence that the student was part of a gang. The student was expelled and his parents challenged this claiming that the search of his cell phone photos violated his Fourth Amendment rights. The Court responded in its verdict "In the Court's view, plaintiff has failed to establish that any defendant in this case might be liable for a Fourth Amendment violation," a decision exactly opposite that of the case in Pennsylvania.

In conclusion, schools should only be allowed to search students phones in circumstances where they reasonably expect to find evidence that will show a student to have violated the school's rules. Previous court rulings have made it clear that the seizure of a student's cell phone for any reason is acceptable, but there remains disagreement over what circumstances allow a school to search the contents of a student's cell phone. In the coming years, the Supreme Court should aim to make a decision that reinforces students' privacy rights by necessitating that school official have more than "reasonable suspicion" that the search of a student's phone will reveal a violation of the school's rules or help to prevent a student from harm. Although the ramifications of such a decision would make it harder for schools to enforce their rules, it would prevent gross invasions of students privacy. When centuries-old constitutional rights are in question, school rules should be an afterthought.

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