The Fourth Amendment Strikes Back: When Can Student Phones Lawfully Be Searched?

In the early 1980s, when the fourteen year old student now known to the American public as "T.L.O." objected to the police's use of evidence of her illegal drug activity found while her principal searched her purse without her consent, the United States Supreme Court could not possibly have predicted that it would see countless cases like this over the next 30 years.[1] Since cell phones now dominate the lives of America's youth, schools have been charged with devising policies concerning what cell phone use, if any, is acceptable during school. Most schools across the nation have instituted explicit rules and punishments for violating them, including confiscation of the device. Yet these same educators, who are charged with the duty of upholding proper standards of conduct within an academic environment and maintaining the safety of all students, have on many occasions searched confiscated cell phones without student permission for a variety of reasons. In many such cases, the search of student cell phones has led to long, complicated lawsuits as the U.S. judiciary seeks to determine the exact circumstances under which teachers may search student cell phones. Students are inarguably entitled to their rights from unwarranted searches and seizures under the Fourth Amendment; however, since schools are charged with protecting a large community of students and faculty, if there is reasonable suspicion that a student is using a cellphone to emotionally or physically hurt themselves or others or to commit a crime, the school has the obligation to search the student's phone according to the severity of the suspected violation regardless of whether the student gives consent and/or if a search warrant has been issued by a court.

[1] New Jersey v. T.L.O, 469 U.S. (Jan. 15, 1985). Accessed December 7, 2016. https://www.law.cornell.edu/supremecourt/text/469/325#writing-USSC_CR_0469_0325_ZO.

Students and their parents object to schools searching their phones due to the rights granted to them under the Fourth Amendment, which states that "the right of the people… against unreasonable searches and seizures, shall not be violated, and no warrants shall be 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."[2] In the digital era, the Court has determined that police are required to have a search warrant and/or have arrested the person in order to search their cell phone.[3] However, students' expectation of privacy rights realistically needs to be different within a school environment because the school is entrusted with the safety and liability for *all* students, so if one student's use of a cell phone is breaching the school's policies which *specifically concern* student safety, most would agree that a search is warranted.

This common sense argument is referred to as the "standards of reasonableness" test, which was first established by the case New Jersey vs. T.L.O., which was decided by the United States Supreme Court in the late spring of 1985.[4] A student (TLO) who was caught smoking in a school bathroom was taken to the principal's office, where the principal demanded to look inside her purse and found evidence that she had been selling marijuana at school. The student subsequently confessed to selling marijuana and was convicted in a juvenile court. However, she quickly defended herself, saying that the search was unlawful and thus the evidence and her subsequent confession could not be used against her in court.[5] Her case went through the judicial hierarchy until, in a 6-3 ruling, the Supreme Court ruled in favor of the school and principal, stating that, while there is indeed a "reasonableness test" that needs to be performed

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[2] U.S. Const. amend. IV (amended 1791). Accessed December 7, 2016. https://www.law.cornell.edu/constitution/fourth_amendment.

[3] Daniel L. Eyer, "Perfectly Reasonable: The Overextension of Fourth Amendment Privacy Protections to Students and Their Cell Phones," last modified April 2014, PDF.

[4] New Jersey v. T.L.O.

[5] Eyer, "Perfectly Reasonable."

before searching student property, in this particular case that benchmark was met. The Court determined that schools act “in loco parentis,” and as a result educators’ role is more comparable to that of a parent than to the state, justifying students’ reduced privacy at school.[6] This standard of reasonableness is twofold; first, it must be determined "whether the . . . action was justified at its inception,"; second, one must determine whether the search as actually conducted "was reasonably related in scope to the circumstances which justified the interference in the first place.”[7]

Despite the apparent clarity of this precedent, courts have had substantial difficulties implementing these criteria consistently and effectively due to the wide variety of circumstances that could potentially lead to educators searching student belongings, especially cell phones.[8] The case Klump vs. Nazareth illuminates the difficulties in applying the New Jersey vs. T.L.O precedent. A student’s cell phone fell out of his pocket during an exam. In accordance with the school’s ban of cellphones, the school confiscated the phone and proceeded to access the student’s text messages and voicemail and also called other students to see if they were breaching school policy. Eventually, they found evidence of other students’ illegal drug activity.[9] The court ruled that the school was justified in confiscating the phone due to the rule breach, but that the school was not justified in calling other students because they had no reason to suspect that these students were breaking rules.[10] That is, while the court indirectly asserted that the student had more limited privacy rights in school than outside, it still states that the *scope* of a search must be proportional to the rule/law assumed to be broken.

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[6] New Jersey v. T.L.O.
[7] New Jersey v. T.L.O.
[8] Eyer, "Perfectly Reasonable."
[9] G.C. v. Owensboro Public Schools, 11-6476 U.S. 17, (6th Cir. Mar. 28, 2013). Accessed December 7, 2016. http://www.opn.ca6.uscourts.gov/opinions.pdf/13a0078p-06.pdf.
[10] Eyer, "Perfectly Reasonable."

While this statement is certainly reasonable, it raises yet another question: how can it be determined what scope of search is proportional to a given (presumed) violation? Sadly, there is no purely objective way to determine what violation is proportional to a certain degree of a search. Thus the Supreme Court continues to see cases very similar to Nazareth vs. Klump because educators and students disagree about what level of search is appropriate. In deciding these cases, the court's intent is to draw the most objective line possible so that students and teachers both understand the circumstances under which student phones can be confiscated and searched. The Supreme Court distinguishes between these cases based on the educators' suspicion that the student was violating school rules. Searches that are conducted without any reasonable suspicion that the student was breaking rules are unanimously agreed to be violations of their privacy rights.[11]

Determining when student property can be seized and searched is further complicated by schools' vastly differing rules concerning the use of cellphones during school hours. In general, courts have previously ruled that it is entirely appropriate for educators to confiscate student phones if they are used in violation of the school's, but there are specific criteria that must be met before a school can search the phone's contents, especially if educators are looking for incriminating evidence for other students without any reasonable suspicion. Each school needs to an objective cell phone search policy that is known to students. If schools adopt a reasonable policy in which student phones are searched *only* if it is suspected that they are breaking additional rules or laws with the phone, then fewer cases such as NJ vs. T.L.O. and Nazareth vs. Klump will need to reach the Supreme Court in the future.

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[11] Eyer, "Perfectly Reasonable."

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