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Using the Fourth Amendment as a Weapon to Keep Students in School

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Education Connection:

Using the Fourth Amendment as a Weapon to Keep Students in School

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Surveillance and law enforcement's presence in public schools has increased in recent years, changing the role of teachers and administrators to rule enforcers for students. A surge in school shootings resulted in increased federal funding for placing police officers in schools. This change calls into question the state of Fourth Amendment protections which guarantees students the right to be free of unreasonable searches and seizures. Public safety concerns must be balanced with individual liberties protected by the Fourth Amendment, especially in school settings where the need for public safety is incredibly high, and equally important is the need for students' rights. The judiciary and legislature must find a way to take the current precedents set by the Supreme Court and adapt them to evolving technologies and a changing academic world. Teachers and administrators must be able to maintain the original goals of keeping students safe in a proper educational setting without sacrificing Fourth Amendment rights. This article will explore two sectors of searches taking place in schools: cellphone searches and searches performed by law enforcement officers. Schools should adjust current procedures to promote compliance with the Fourth Amendment and to afford more rights to keep students safe physically and mentally.

I. BACKGROUND

Since 1985 when *New Jersey v. T.L.O.* was decided, United States (U.S.) courts have debated where to draw the line when considering the Fourth Amendment rights of juveniles at school. In *New Jersey v. T.L.O.*, the Supreme Court held that requiring a teacher or school official to obtain a warrant before searching a student would interfere with the disciplinary procedures necessary in schools. The Court reasoned that to preserve order in the educational environment, schools must be given leniency when supervising children. The Court developed a two-fold reasonableness test for school officials to consider in conducting individualized, school-based searches: (1) whether "the action was justified at its inception," and (2) whether the "search as actually conducted was 'reasonably related in scope to the circumstances that justified interference in the first place.'"

The Court further reduced students' privacy and Fourth Amendment rights in schools through their holdings in *Vernonia School District 47J v. Action* and *Board of Education v. Earls*. In deciding *Vernonia* in 1995, the Court rejected a Fourth Amendment challenge to the school district's policy allowing random urinalysis drug testing of student athletes, creating an even lower standard than that created in *T.L.O.* The *Vernonia* ruling held that the school's interest in preventing students' drug use

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outweighed their privacy interests allowing the drug testing to continue. This low standard was reaffirmed in *Earls* in 2002. The Court determined that students who participated in extracurricular activities have a reasonably lowered expectation of privacy, and the lack of privacy was balanced by the governmental concern for lowering drug rates.

Twenty-four years after *T.L.O.* in 2009, the Supreme Court held for the first time that a school-based search was unreasonable and unconstitutional in *Safford Unified School District #1 v. Redding*. In *Redding*, school officials suspected a thirteen-year-old girl of possessing prescription strength ibuprofen and, after a fruitless search of her backpack, school officials made her undress to her bra and underwear as part of the search. The Court held that the extent of the strip-search was unreasonable. However, the Court left open the path for strip-searches in schools under other circumstances which justify the scope of the search.

Although schools continue to use these four Supreme Court cases as standards when conducting searches, the technology presently used in school surveillance goes far beyond the reach of what the precedents set. These cases, though applicable in their time, fail to address many of the surveillance questions asked today where schools are patrolled by police officers and students' devices are monitored for their data and private information.

II. DEVICE SEARCHES

In the years since these four cases, drastic changes have occurred both in the use of mobile devices and in violence among students. Most students now bring cellphones with them to school every day; most of them are smartphones with internet capabilities. Having access to such devices during school increases the risk that students will engage in cyberbullying or other prohibited behavior which could result in searches of students' personal devices. Courts apply the standards from *T.L.O., Vernonia,* and *Redding* when determining if these searches are reasonable, however, those cases did not involve mobile devices or the internet.

A. Warrant Requirement

In *Riley v. California*, decided in 2014, Riley was stopped for a traffic violation which eventually escalated to an arrest on a weapons charge and an officer searched his phone without a warrant and found evidence of gang affiliation. Riley argued that the evidence should be suppressed as the officer had no warrant to search his phone. The Supreme Court ruled that generally cellphones cannot be searched without a warrant as they contain massive amounts of information which can be seen as a record of a person's entire life.

Although *Riley* does not apply directly to schools, searches are an exception to the warrant requirement, and *Riley's* reasoning suggests that the standard for reasonableness should be increased when it comes to cellphone searches in schools. School officials currently do not need a warrant to search a student's property, but a cellphone could be

viewed as analogous to the strip search in *Redding* as the privacy interest of students to resist a strip-search is like the higher expectation of reasonableness and privacy students now possess in the contents of their cellphones.

Multiple district courts and an appellate court have found that searches of students' cellphones were unconstitutional. Despite this, the Supreme Court has yet to provide clear guidelines on searches of student's phones to date. The basis for a search cannot merely be the fact that a student used the phone on school grounds; rather, justification should be found when school officials have reason to believe that the phone use is leading to the violation of another school policy.

Searching students' personal technological devices can fall into the category of searching without suspicion employed by the school districts in *Vernonia* and *Earls*, where the Court ruled that students involved in extracurricular activities and sports may be randomly drug tested without suspicion of any wrongdoing. Even in these types of cases however, schools must still meet the balancing test standards of weighing the legitimate government interest in drug testing with combatting the drug problem at the time. Although drugs are still a relevant issue in schools, violence and gun usage have increased in modern times prompting schools to increase surveillance of their students. Surveillance through current technology falls outside the boundaries of *Vernonia* and *Earls* and leaves a gaping hole in the guidelines for justified searches of students' cellphones and computers.

B. Balancing Schools' Interests

Using the *Earls* balancing test, schools would likely argue that the interest of promoting safety in schools justifies searching devices without sufficient suspicion. Yet, such reasoning widely expands the justification in *Earls*, which only allowed suspicion-less searches of students in extracurricular activities. Allowing these searches of the entire student body would leave the standard in *Earls* behind and require new standards set by the Court to ensure Fourth Amendment rights are not being diminished without good reason. Additionally, as the Court found in *Riley*, cellphones hold for many "the privacies of life" which are worthy of protection and often contain personal information that no person "would ever have had on his person in hard-copy form." Such information deserves a higher standard of privacy when it comes to students and the Supreme Court has yet to establish clear guidelines on searches of students of this scope.

Though difficult to reconcile the different standards among cases, *Riley* forces the understanding that searching a cellphone, particularly a smartphone, is fundamentally different from searching a backpack or a locker and must be treated as such. Warrants are not required when performing school searches to maintain the speedy pace required when dealing with sensitive school issues. Because cellphones reveal incredible levels of personal information that can be obtained during a search, a warrant should be required to search through its contents, just as a warrant would be required to search a phone on a search outside of school. The standard should not be lowered simply because timeliness is an important factor, but rather that additional time needed to obtain a warrant should be

used for the school administrators and law enforcement officials to reflect on how far the search must go to uncover evidence of wrongdoing.

III. LAW ENFORCEMENT OFFICERS IN SCHOOLS

Within the past decade, schools have focused more on issues of school safety after violence at schools increased exponentially. Due to this increase, school districts have introduced security measures such as heightened surveillance, adding metal detectors, and placing police officers inside schools with programs such as the School Resource Officer (SRO) program. SROs are law enforcement officers stationed in schools who can make arrests and document incidents that occur in their schools. Although law enforcement officers are brought into schools as a measure of safety to maintain a peaceful educational environment, it can also have the opposite effect, funneling many juveniles into the criminal justice system. Heightened security measures have led to wider interpretations of criminal behavior among students who are now brought into the criminal justice system by police officers in their schools for conduct that at one point would have resulted in less severe consequences, such as detention or suspension.

The addition of law enforcement officers in schools created stricter guidelines for misbehavior from students. For example, zero tolerance policies take the responsibilities away from teachers, guidance counselors, and school administrators, and places the disciplinary process in the hands of law enforcement officers. Behavior that once would have resulted in a call to a parent or a trip to the principal's office may now result in an arrest or expulsion. School should be a safe haven for many students to escape tumultuous home lives or connect with adults who only have their best interest at heart. Yet, in many cases, disciplinary action at school becomes an entry point to the criminal justice system.

Rather than heighten the surveillance and police activity in schools, a shift should occur which, increases the Fourth Amendment protections afforded to youths, allowing certain issues to be dealt with more holistically. Law enforcement officers inside schools should only be used as backup to aid teachers or administrators, rather than the first person called when a search or disciplinary action is needed. The physical presence of law enforcement officers in schools can create a feeling of unease for students; therefore, such officers should be used sparingly and only when the situation calls for such interventions. In an ideal scenario, law enforcement officers would serve as role models and informal counselors. School should not be a pipeline to prison, but rather a sanctuary for students to feel protected while gaining an education. The goal of programs such as the SRO program should be altered to keep juveniles away from the criminal justice system as much as possible.

A. The Standard of Law

Because law enforcement officers follow the standards of the law, their standard for searching students should be that of probable cause rather than reasonable suspicion, mirroring the standard for officers outside of schools. Teachers, guidance counselors, and

school administrators follow the reasonable suspicion standard because their goals are to find evidence of school rule violations and not to find any criminal liability. Law enforcement officers, on the other hand, search students with the purpose of possibly uncovering evidence of criminal behavior after violations of school rules and thus should be held to a higher standard before taking action that could lead to the arrest of a student. If law enforcement officers who usually patrol the streets are placed in schools, there is no reason they should be held to a lower standard in schools where the suspicion of juveniles is likely even lower. Furthermore, students should have an expectation of safety at school, and the addition of law enforcement should not detract from that expectation. Law enforcement officers should be trained and used as a resource for school officials when fear is warranted or when a school official wants someone trained to perform a search, but not as the first responder when mere reasonable suspicion is found.

The reasonable suspicion standard should be used when school officials believe a student has violated a school rule but is unsuspected of posing any criminal threat or liability. However, when criminal behavior is suspected, law enforcement officers should be used to search under the probable cause standard because they are trained in the area and can perform an arrest if needed. The dual use of these two standards would create a safer and more flexible enforcement of school rules. Requiring probable cause aligns with the values set forth in *T.L.O.* where school officials found evidence of a school rule violations which then turned into criminal activity and law enforcement officers were contacted. This shift in standards for law enforcement officers in schools will create heightened protections for students under the Fourth Amendment while continuing to put the safety of students first and maintaining the convenience of having police officers in public schools.

IV. CONCLUSION

The precedent set by the Supreme Court need not be overruled to create a balance between keeping students safe and protecting their Fourth Amendment rights. Instead, the standards from *T.L.O.*, *Riley*, and *Redding* should be applied in initial stages of misbehavior and adjustments should be developed for escalating situations where more thorough searches are warranted. For example, school personnel could be trained to recognize when there is a real threat of danger, thus warranting a search of a student's cellphone, and articulating this standard to students. Order and safety must be maintained in schools with a variety of options for further action and force if necessary to keep students safe and out of the juvenile or criminal justice system.

As technology advances, the courts should not allow a lack of response to encroach upon anyone's Fourth Amendment rights regardless of their age. Rules that allow for the abolition of Fourth Amendment rights detract from the public good and will result in litigation for individuals to regain their constitutional rights. Policing and unwarranted cellphone searches in public schools undercut the development of a healthy learning environment for students and school districts should craft clear policies specifying when police should be allowed on school grounds and how school officials should engage in searches of a student's personal device. The governmental interest in

keeping schools safe is strong, but so too should be the interest in protecting students Fourth Amendment rights.

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