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Balancing Student Rights and Student Safety: An Exploration of the Constitutionality of Searches in Schools under the Fourth Amendment

Brittany Haracz Begley

On November 30, 2021, just after lunchtime, a student went into a bathroom in a school located just north of Detroit, Michigan.¹ He exited the bathroom and fired thirty rounds from a semiautomatic gun, striking eleven people and killing four students at Oxford High School within a matter of five minutes.² This is not a unique scene. In fact, it is a rather familiar one as there were fifty-one total school shootings in 2022.³ The school, then, must have done everything in its power to have prevented such a shooting. But did it?

The signs were certainly there as the student, a fifteen-year-old sophomore, had recently been caught by a teacher researching “ammunition” on a school computer.⁴ On the morning of the shooting, the student had expressed written words of his thoughts: “It won’t stop. Help me.”⁵ Not only did the student communicate his thoughts in words, but he also drew images depicting a person who appears to be shooting bullets.⁶ The concern was so high that school administrators requested the student’s parents to remove him from school and begin counseling within forty-eight hours.⁷ During this meeting regarding the troubling images and messages, the student further showed concerning signs, requesting his backpack to the point of preoccupation.⁸ All the while, a semi-

¹ Livia Albeck-Ripka and Sophie Kasakove, *What We Know About the Michigan High School Shooting*, N.Y. TIMES (Dec. 9, 2021), <https://www.nytimes.com/article/oxford-school-shooting-michigan.html>.

² *Id.*

³ Lesli Maxwell et al., *School Shootings This Year: How Many and Where*, EDUCATION WEEK (Jan. 5, 2022), <https://www.edweek.org/leadership/school-shootings-this-year-how-many-and-where/2022/01>.

⁴ Dana Goldstein, et al., *In the Michigan Shooting, What Is the School’s Responsibility?*, N.Y. TIMES (Dec. 4, 2021), <https://www.nytimes.com/2021/12/04/us/oxford-high-school-responsibility-legal.html>.

⁵ *Id.*

⁶ Albeck-Ripka and Kasakove, *supra* note 1.

⁷ *Id.*

⁸ Sarah Rahal, *Attorney: Four Signs in Oxford Shooting Case Show Student was ‘Troubled’*, THE DETROIT NEWS (Sept. 22, 2022, 5:40 PM), <https://www.detroitnews.com/story/news/local/oakland-county/2022/09/22/attorney-details-four-red-flags-in-oxford-shooting-that-show-teen-was-troubled/69510087007/>.

automatic weapon capable of mass destruction likely sat undisturbed in the student's backpack.⁹

What, then, could the school have done? Could, and should, the student have been searched? In the context of student searches under the Fourth Amendment, this case study offers a multi-faceted perspective in balancing student rights and student safety. Students have rights surrounding unreasonable searches, but surely, they must have a right to school safety as well, right? If a student brings a gun to school, demonstrating warning signs, does the school have the ability to conduct such searches? This case seeks to assert that the Oxford High School officials could have and should have conducted a reasonable search without violating the student's constitutional rights.

SEARCHES IN SCHOOLS UNDER THE FOURTH AMENDMENT

Under the Fourth Amendment, people have the right to be free from “unreasonable searches and seizures” unless there is substantiated probable cause to conduct such a search or seizure.¹⁰ When it comes to students in schools, a hallmark Supreme Court decision on the issue, *N.J. v. T.L.O.*, held that the Fourth Amendment protects the rights of students from public school officials, applying the Fourth Amendment to the school setting.¹¹ However, the Court in *T.L.O.* held that a lower standard applies in justifying student searches under the Fourth Amendment, demonstrating that students do not receive the same protection of privacy within a school.¹² Specifically, the *T.L.O.* court held that a search of a student and their property by a teacher or another school official is justified when there are reasonable grounds for believing that the search will produce evidence that the student has violated a law or school rule.¹³

Professor Josh Gupta-Kagan of Columbia Law School explained the lower *T.L.O.* standard further.¹⁴ He argued that the rule maintains some level of privacy for students under the Fourth Amendment, as “the goals of maintaining discipline within schools justify an exception to the warrant and probable

⁹ Jonathan Oosting, *The Case Against the Parents of Oxford Shooting Suspect: Gun was Xmas Present*, BRIDGE MICHIGAN (Dec. 3, 2021), <https://www.bridgemi.com/michigan-government/case-against-parents-oxford-shooting-suspect-gun-was-xmas-present>.

¹⁰ U.S. CONST. amend. IV.

¹¹ *New Jersey v. T. L. O.*, 469 U.S. 325, 334 (1985).

¹² *Id.* at 341–42.

¹³ *Id.*

¹⁴ Josh Gupta-Kagan, *Reevaluating School Searches Following School-to-Prison Pipeline Reforms*, 87 FORDHAM L. REV. 2013 (2019).

cause requirements.”¹⁵ Additionally a Senior Lecturer in Residence at Loyola University Chicago School of Law and education law attorney of more than 25 years, Kathleen Hirsman explained that the Fourth Amendment standard has been modified in school settings when searches are conducted by school personnel.¹⁶ She emphasized that this Supreme Court case illustrates the clear legal principle of a reformed standard, in which there must be reasonable suspicion that the search will turn up evidence that the student broke a school rule or law.¹⁷ Such a lower standard suggests a priority in balancing student safety, by monitoring discipline, with students’ Fourth Amendment rights, through adherence to the limitation of reasonableness. Particularly, the Court in *T.L.O.* discussed the balancing test at play, contemplating the “schoolchild’s legitimate expectations of privacy and the school’s equally legitimate need to maintain an environment in which learning can take place.”¹⁸ This resulted in a decision to modify the level of suspicion needed to justify a search.¹⁹ Instead of “probable cause,” school personnel need only have a “reasonable suspicion” of evidence implicating a student.²⁰

OXFORD HIGH SCHOOL: A CASE STUDY

With a reasonable suspicion standard at play in schools, what could the public school officials of Oxford High School have done to prevent the shooting? Could the school have conducted a search of the student under the constitutional limits of the Fourth Amendment? In order to determine the answer, it first proves necessary to identify the adults involved in the hours leading up to the school shooting. The *T.L.O.* standard applies to school personnel, application of which should be distinguished from the involvement of law enforcement officials, such as police officers. This is made more complicated by the “muddy middle” composed of school resources officers (SROs) who tow a line between school personnel and police.²¹ In applying this standard, the Court requires that the legality of the search depend on the reasonableness of the search.²² This is determined by asking whether the action was justified and

¹⁵ Gupta-Kagan, *supra* note 14.

¹⁶ Interview with Kathleen Hirsman, Distinguished Lecturer in Residence, Loyola University School of Law, in Chicago, Ill. (Oct. 5, 2022).

¹⁷ *Id.*

¹⁸ *T. L. O.*, 469 U.S. at 340.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Interview with Kathleen Hirsman, *supra* note 16.

²² *T. L. O.*, 469 U.S. at 341 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)).

whether the search was “reasonably related in scope to the circumstances which justified the interference in the first place.”²³

In the case of Oxford High School, the student’s teacher found a note depicting violent images aside disturbing thoughts and notified school officials.²⁴ School officials met with the student’s parents to inform them of their child’s concerning behavior and advised that they seek therapy.²⁵ Based on reports surrounding the Oxford High School shooting, the only involvement of SROs took place during the disarming process of the student.²⁶ Therefore, the *T.L.O.* standard for searching students likely applies as Oxford High School officials were involved in the early disciplinary stages. In the case of Oxford High School, *T.L.O.*’s reasonableness standard would govern a search of the student—a search that notably did not take place.

Importantly, the student’s parents told the school that they did not want their son removed from school, nor did they search his backpack prior to sending him to school that morning.²⁷ Could the school have taken both of these steps under *T.L.O.*? Most likely, yes. The Court in *T.L.O.* reasoned that a teacher reporting a student smoking in the bathroom gave rise to reasonable suspicion that there may be cigarettes in her purse, concluding that the vice principal had not acted unreasonably in searching the student’s purse.²⁸ Analogous to these facts, a teacher reporting the Oxford High School student’s drawings containing depictions of a gun and a person appearing to have been shot, along with the words “The thoughts won’t stop. Help me,” suggest a strong foundation for the reasonable suspicion necessary for school officials to have searched this student’s belongings.²⁹

²³ *Id.*

²⁴ Albeck-Ripka and Kasakove, *supra* note 1.

²⁵ *Id.*


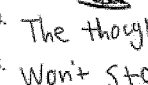
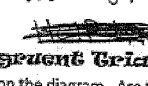


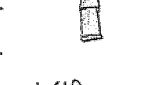
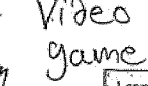
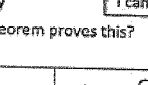
²⁶ Stephen Sawchuk, *What This Week’s Mass Shooting Can Teach Us About School Safety*, EDUCATION WEEK (Dec. 1, 2021), <https://www.edweek.org/leadership/what-this-weeks-mass-shooting-can-teach-us-about-school-safety/2021/12>.

²⁷ Albeck-Ripka and Kasakove, *supra* note 1.

²⁸ *T. L. O.*, 469 U.S. at 345–46.

²⁹ Albeck-Ripka and Kasakove, *supra* note 1.

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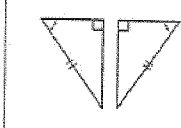

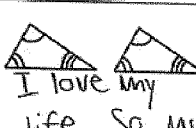
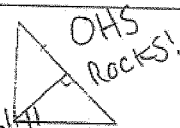
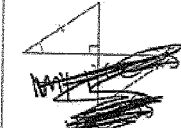
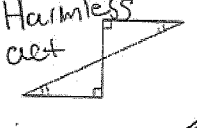
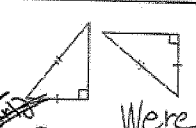
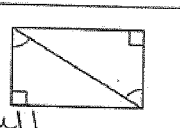
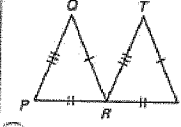
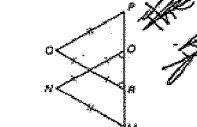

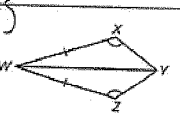
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|---|---|--|--|
| <p>1.</p> <p>2. $\angle 1 \cong \angle 2$</p> <p>3. $\overline{MT} \cong \overline{MT}$</p> <p>4. $\triangle MNT \cong \underline{\hspace{2cm}}$</p> <p>5.</p> | <p>1. </p> <p>2. </p> <p>3. The thoughts Won't stop</p> <p>4. </p> | <p>1. RMX 808</p> <p>2. $\angle 1 \cong \angle 2$</p> <p>3. $\overline{XZ} \cong \overline{XZ}$</p> <p>4. $\triangle XYZ \cong \triangle XYZ$</p> <p>5. </p> | <p>1. </p> <p>2. </p> <p>3. </p> <p>4. Video game this is</p> <p>5. </p> |
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- o SAS
- o Reflexive Property
- o Reflexive Property
- o Def'n of Bisector
- o Alt. Int. \angle s Thm.

5.3, 5.5-5.6: Congruent Triangles

Using any given information on the diagram, are the triangles congruent? Which theorem proves this?

Write congruent statements for the bottom row.

| | | | |
|--|--|---|--|
|  |  |  |  |
| | Harmless cut | I love my life so much!!! | OHS Rocks! |
|  |  |  |  |
|  |  |  |  |
| $\triangle PQR \cong$ | $\triangle PQR \cong$ | $\triangle ABC \cong$ | $\triangle WXY \cong$ |

(EXHIBIT FROM OAKLAND COUNTY PROSECUTOR KAREN McDONALD)³⁰

Such images, compounded with the student's search history for ammunition observed only a day prior, would satisfy the first prong of the reasonableness analysis justifying a search.³¹

Another important detail from the events leading up to the Oxford High School shooting involves the student's longing for his backpack during the conference between school officials and his parents.³² Reportedly, the student desired his backpack during a forty-five-minute discussion surrounding the concerning images and notes, which sat on the back of a classroom chair and contained a gun and magazines.³³ Would the student's violent images, written

³⁰ Sarah Rahal, *supra* note 8.
³¹ *Id.*
³² Sarah Rahal, *supra* note 8.
³³ *Id.*

thoughts, internet search history, and preoccupation with his backpack have offered reasonable grounds for suspecting a search of the backpack that may have turned up evidence that this student violated a school rule or broken a law?³⁴ Arguably, yes, and in applying the governing standard for school searches, Oxford High School likely had substantial justification for searching the student's backpack.

In looking at the second prong of reasonableness, the school's search of the student's backpack would likely be reasonable in scope, since searching a backpack for a weapon capable of inflicting harm is related to the justifying circumstances that the portrayed images and internet search history suggest.³⁵ Reasonableness of student searches has been further explored in another Supreme Court case involving a middle school student who was subjected to a strip search for drugs.³⁶ In *Safford Unified School District v. Redding*, the Court held that the school had sufficient justification for searching the student's backpack and outer clothing, but held that a search for pills in her underwear and bra exceeded the reasonable scope of a search.³⁷ Here the Court relied upon *T.L.O.* in requiring that "the search [be] 'reasonably related in scope to the circumstances which justified the interference in the first place.'"³⁸

Importantly, this case is distinguishable from the case of Oxford High School.³⁹ The Court in *In Safford Unified School District* reasoned that a suspicion of drugs did not amount to the degree of search conducted by school officials.⁴⁰ This is further explained by the Court's rationale that "nondangerous school contraband does not conjure up the specter of stashes in intimate places."⁴¹ In *Safford Unified School District*, the Court found that a suspicion of student possession of drugs from a few days prior to the search did not reasonably suggest that such pills were on her person, much less stowed in her underwear, thus finding that the search exceeded the reasonableness of the scope.⁴²

Conversely, in *T.L.O.*, the Court found that the vice principal's search of the student's purse *was* permissible in scope as it was reasonably related to the

³⁴ *T. L. O.*, 469 U.S. at 342.

³⁵ *Id.* at 341.

³⁶ *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364, 365 (2009).

³⁷ *Safford Unified Sch. Dist. #1*, 557 U.S. at 365.

³⁸ *Id.* (citing *T. L. O.*, 469 U.S. at 341).

³⁹ *Id.* at 379.

⁴⁰ *Id.*

⁴¹ *Id.* at 366.

⁴² *Safford Unified Sch. Dist. #1*, 557 U.S. at 366.

possession of cigarettes; in fact, the Court concluded that this was “the obvious place in which to find them.”⁴³ Likewise, had Oxford High School officials chosen to examine the contents of the student’s backpack, the search would likely have been reasonable in scope based on the likelihood of a backpack being an obvious place in which to find a gun related to the violence depicted in the concerning images eliciting the need for the search. Relatedly, law enforcement officials stated that the school did not search the student’s locker either.⁴⁴ The student’s locker, large enough to store a gun or other related weapon, would similarly prove to be an obvious place in which to find an object reasonably related to the school’s concern. Had the school searched the student’s locker, this too would have proved permissible in scope under *T.L.O.* reasoning.⁴⁵

Examining again the circumstances leading up to the shooting at Oxford High School, both the student’s preoccupation with his backpack and his ability to store something the size of a gun in both his backpack and locker indicate signs that the search would have been permissible in scope. Under both prongs of the reasonableness standard explained in *T.L.O.*, a search of the student’s backpack would have proved constitutionally permissible and would have maintained both the student’s rights and the safety of his peers. Sadly, the absence of such a search resulted in a sacrifice of student safety.

CONCLUSION

Based on an analysis of school search permissibility under the *T.L.O.* standard, Oxford High School officials would likely have been justified in conducting a search of the student’s backpack after the student demonstrated conduct amounting to the necessary degree of reasonable suspicion. The hallmark Supreme Court case guiding student searches in schools by school officials offers a way for schools to prioritize student safety, while maintaining student rights protections.⁴⁶ It proves the responsibility of the school to preserve both, where the sacrifice of either one could possibly result in grave error. In this case, had the Oxford High School officials conducted a search of the student’s backpack and locker, searches that would have been permissible

⁴³ *T. L. O.*, 469 U.S. at 345–46.

⁴⁴ Becky Sullivan, *Actions by School Staff before Michigan Shooting Fuel Questions about their Liability*, NPR (Dec. 9, 2021), <https://www.npr.org/2021/12/09/1062374685/michigan-high-school-shooting-charges>.

⁴⁵ *T. L. O.*, 469 U.S. at 346.

⁴⁶ *T. L. O.*, 469 U.S. at 341.

under the guiding *T.L.O.* standard, they may have discovered the gun prior to the extreme sacrifice of other students' safety in the building. While this article does not seek to place blame on the school in this tragic case, it offers a perspective. Schools can and should conduct searches when they see warning signs that school safety may be in jeopardy, while still adhering to the protections governed by the Fourth Amendment.