

Cell Phone Searches for Schools

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The 4th Amendment

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .
- Key words – unreasonable searches

Riley v. California

- Two cases combined for appeal
- Riley
 - Traffic violation – weapons charge
 - “Smart” phone seized – search incident to arrest - “gang terms”
 - Gang detective reviews pictures and videos – charged for shooting
 - Trial court denied motion to suppress
 - Cal. COA aff’d, Cal. SC denied petition

Riley v. California

- **Wurie**
 - Arrested after drug sale
 - “Flip” phone seized at station, received repeated calls from “my house”
 - Accessed call log, traced to Wurie’s apt.
 - Warrant – drugs, firearm, ammunition, and cash – charged for drugs and gun.
 - Trial court denied motion to suppress
 - First Circuit – reversed denial.

Riley v. California

- **May the police search digital information on a cell phone seized from an arrestee without a warrant?**
- **In other words, testing the reasonableness of search incident to lawful arrest.**
- **HELD: Police must generally obtain warrant before searching cell phone.**

Riley v. California

- **Search incident to arrest**
 - Allowed to search person and personal property immediately associated w/ person or area “within immediate control” without warrant
 - Purpose is officer safety/to look for weapons, to prevent concealment or destruction of evidence

Riley v. California

- Search incident to arrest (SITA)
 - Vehicle search allowed only if arrestee is unsecured with within reaching distance of passenger compartment at time of search or if reasonable to believe evidence relevant to crime of arrest might be found in vehicle.

Riley v. California

“These cases require us to decide how the search incident to arrest doctrine applies to modern cell phones, which are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.”

Riley v. California

- Declined to extend SITA cases to cell phones
- Officer Safety
 - Digital data is not a weapon and can't harm
 - Cigarette pack v. phone
 - Exigent circumstances exception still applies

Riley v. California

- Preventing destruction of evidence
 - Once secured, arrestee can't delete
 - Remote wiping and data encryption – “little reason to believe that either problem is prevalent”
 - Remote wiping - Turn phone off or remove battery
 - Data encryption – “Faraday bags”

Riley v. California

- Preventing destruction of evidence
 - Still have exigent circumstances exception if true “now or never” situation, and phone is target of “imminent” remote wipe attempt

Riley v. California

- SITA exception – rests on “heightened government interest” AND arrestee’s reduced privacy interests after in police custody
- U.S. – Search of cell phone is “materially indistinguishable” from searches of billfold and address book, wallet, and purse
- USSC: “That is like saying a ride on horseback is materially and indistinguishable from a flight to the moon.”

Riley v. California

- Cell phones are quantitatively and qualitatively different
- They do everything and store everything
- “[M]ore than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives – from the mundane to the intimate.”
- Browsing history, location history, apps (“there’s an app for that”)
- Search of pockets v. house v. cell phone

Riley v. California

- Cloud computing – equivalent of finding a key does not allow you to search a house.
- U.S. – use the *Gant* vehicle standard – allow warrantless search of phone if reasonable to believe it contains evidence of the crime of arrest
- USSC – No. There is reduced expectation of privacy and heightened police need when it comes to vehicles.
- *Gant* standard = no standard for cell phones. Potential info on phones is unlimited.

Riley v. California

- USSC also rejected argument to restrict search of phone to certain areas, to call log, or to if cops could have obtained same info from pre-digital counterparts.
- USSC not saying cell phones can’t be searched. Police just need:
 - Warrant
 - Exigent Circumstances

Riley v. California

“Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans ‘the privacies of life.’ The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.”

How Does Riley Apply to Schools?

- Technically, it doesn’t, but . . .
- USSC emphatic about cell privacy
- Same privacy concerns that apply to criminal’s cell phones also apply to student’s cell phones at school
- May want to review and revise policies and procedures
- On the other hand . . .

Vernonia Sch. Dist. 47J v. Acton

515 U.S. 646 (1995) (random urinalysis of student athletes Const’l.)

“Fourth Amendment rights . . . are different in public schools than elsewhere; the ‘reasonableness’ inquiry cannot disregard the schools’ custodial and tutelary responsibility for children.”

Vernonia Sch. Dist. 47J v. Acton

“Particularly with regard to medical examinations and procedures, therefore, ‘students within the school environment have a lesser expectation of privacy than members of the population generally.’”

School District No. 92 of Pottawatomie County v. Earls

536 U.S. 822 (2002) (Drug testing for all students involved in competitive extracurricular activities constitutional)

A “student’s privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety.”

TLO

- **Standard to search is whether there is “reasonable suspicion” to believe there will be evidence of violation of law or school rule**
- **Reasonable suspicion does not require absolute certainty**
- **“common sense conclusion about human behavior” upon which “practical people” are entitled to rely**

Is Search Reasonable?

For a search to be reasonable, a school official must satisfy two separate inquiries:

1. Was the search justified at its inception?
2. Was the scope of the search appropriate?

Justified at Inception

A search is justified at its inception when there are reasonable grounds to suspect that it will reveal the violation of a law or school rule

Factors of Reasonableness

- The student's
 - Age
 - History
 - Record in school
- Prevalence & seriousness of problem
- Exigency – need to search
- Value and reliability of informant

Justified in Scope

A search is justified in scope when the measures are reasonably related to its objectives and are not excessive in light of student's age and sex and nature of the infraction

Gallimore v. Henrico County Sch. Bd.

No. 14-009 (E.D. Va. Aug. 5, 2014)

- Two parents told administrators that “a longhaired student” smoked marijuana on bus
- Principal summoned Gallimore to office – no explanation
- Student emptied pocket, then principals began search

Gallimore v. Henrico County Sch. Bd.

- Asst. PAL did pat down and searched backpack, shoes, and pockets
- Assoc. PAL searched Vaseline jar, sandwich wrapper, and cell phone.
- No marijuana was found
- Parents sued alleging 4th Amendment violation and state assault and battery against board and administrators

**Gallimore v.
Henrico County Sch. Bd.**

- All claims dismissed on MTD except 4th Am. Claim against Assoc. PAL for cell phone search
- Cited TLO; no mention of Riley
- Search justified at inception – fit description

**Gallimore v.
Henrico County Sch. Bd.**

- Scope – search of backpack, shoes, pockets, Vaseline jar, and sandwich wrapper reasonable b/c drugs could be hidden there
- Cell phone search unreasonable because drugs could not be hidden there

**Gallimore v.
Henrico County Sch. Bd.**

- Qualified Immunity denied:
“No reasonable school administrator could believe that searching a student’s cell phone would result in finding marijuana – the purpose for which the administrator initiated the search.”

Gallimore v. Henrico County Sch. Bd.

- School's brief cited *Riley*, but said TLO still controlled and unchanged by *Riley*
- Student's brief said *Riley* "reaffirms the importance of reasonableness" for school searches
- Court – didn't mention *Riley* but did say in a footnote . . .

Gallimore v. Henrico County Sch. Bd.

"The Court does not suggest that [the Assoc. PAL] did not have reasonable cause to check the cell phone contents. For instance, she could have had reason to suspect that the text messages or telephone calls stored in the phone would disclose marijuana supplier or purchaser in the school. On the record before the Court, however, no such facts justify the search."

It's not a Search if:

- The student or parents authorize you to conduct the search
- You observe an object in plain view where it is exposed to the public
- You examine an object after a student denies ownership of it

It's not a Search if:

- You examine an object that a student has abandoned
- You detect anything openly exposed to the senses when you are in a place where you have a right to be
- You use extraordinary means to enhance perceptions in open areas

What about *In Loco Parentis*?

Constitution Rights trump doctrine of *In Loco Parentis*

Recommendations

- Continue to follow TLO, but . . .
- Given the USSC's position on the privacy and sensitivity of cell phone data, be careful weighing school's need to know v. student's privacy
 - Weigh seriousness of rule or law violation (tardy v. guns, drugs, alcohol, threats to injure, etc.) before looking at phone

Recommendations

- **If in doubt, safety over privacy**
- **Don't go fishing – make sure:**
 - You have reasonable belief that cell phone contains evidence of violation of school rule or law; and
 - Search is reasonably related to purpose of search – limit search to appropriate areas

Recommendations

- **Exigent circumstances or emergency - Actual or imminent threat to public health or safety that would result in loss of life, injury, or damage to property**
- **Search for educational reasons, not law enforcement purposes**

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