

John Morrison
Mr. Graham
AP Government
13 December 2016

Hand It Over:

Exploring the Danger Of Power In an Age of Technological Advancement

The United States was founded on basic principles; the most salient was to limit the power of government to intrude on the rights of citizens. Addressing a public school setting, the institutions of education must uphold students' fundamental rights. Student's privacy must be prioritized over the hypothetical order that government imposition may or may not create. Schools must not have the authority to search the contents of a student's cell phone, unless they have a warrant or probable cause that contents on the phone are in violation of the law.

The Fourth Amendment establishes the right of citizens to be secure from "unreasonable search and seizure" unless an official has probable cause or a warrant.¹ In 1985, the Supreme Court ruled on the landmark student privacy case, *New Jersey v. T.L.O.*, that Fourth Amendment rights are still protected in schools, but the restrictions preventing searches must be eased from probable cause to reasonable suspicion. If a search is justifiable by the evidence and not overly intrusive, schools have the authority to search students, according to the Supreme Court case.² The New Jersey school searched Tracy, a student at the school, and found cigarettes and

¹ "Bill of Rights - Bill of Rights Institute."

² Ascd. "The Right to Search Students."

marijuana in her purse. The court upheld the search, arguing that a teacher's report of a student smoking in the bathroom constituted as “reasonable” suspicion.³

Undeniably, in today's modernized world, seizing and searching the data contents of a phone is massively more intrusive than searching a purse. The limitless information stored on a phone is extremely personal. According to the Court's ruling in the aforementioned case, increasing the intrusiveness of a search decreases the grounds to execute one. However, when is a search actually justified by “reasonable suspicion”? In a later case, the Court admitted the ambiguity, saying, “articulating precisely what reasonable suspicion means . . . is not possible. Reasonable suspicion is a commonsense, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.”⁴ The Supreme Court’s ruling gives power to school officials to dictate what qualifies as “reasonable suspicion”. Government should never give unchecked powers, especially to unelected, unvetted employees. While most teachers, administrators, and officers working at schools are unquestionably good people, the system must not allow for an abuse of power for the exceptions. The Court acknowledges they draw a fuzzy line. Citizens cannot rely on school officials to draw it.

Why should children be forced to give up their rights when they go to public school? The Court’s ruling in *New Jersey v. T.L.O* restricts privacy rights by allowing search and seizure with reasonable instead of probable cause. However, students are forced by law to attend a public education. Why should Fourth Amendment rights not apply when they go? School is to children, as government is to citizens----the institution of authority. If the U.S. restricts privacy of students

³ *New Jersey v. T.L.O*, 1985

⁴ *Ornelas v. United States*, 1996, at 695

they support a perilous philosophy: suppression of rights is justifiable. Entitling schools to seize and search phones at their discretion will breed a deep mistrust of authority within students. It will also set a precedent of allowing unwarranted violations of privacy to hide behind the claim of “protecting citizens”. While a dystopia seems unrealistic, allowing the search of phones without any check of power, a slow advancement towards a police state within the public school system, tempts a dangerous fate. These implications apply to the national government both principally and directly, for children will age with fermenting seeds of rebellion. Proponents of searching phone's contents will discard a rebellion as absurd. Nonetheless, while far fetched, there is already deep mistrust of the government, as illustrated by Hillary Clinton, the far more experienced and institutional candidate, losing the presidency to a man running, essentially, on anti-establishmentarianism.

Advocates of searching phones at school will readily point to the fact that security comes at the price of liberty, and sometimes security is necessary. Admittedly, searching students phones can sometimes lead to order in schools by catching illegal and unsanctioned activity; however, all violations of rights can be prefaced under a good cause. When there are good people with good intentions, these methods can be effective, but a system must account for times when this is not the case. For example, the 2006 court case *Klump v. Nazareth Area School District* addressed a situation where a school confiscated a student's phone because it fell out of his pocket. Displaying a phone in class was against the school policy. The school subsequently called nine of the students contacts who also attended the school and texted the student's brother without making clear that it was not the student typing.⁵ This is an outrageous overreach, and the

⁵ Justin Patchin, "When Can Educators Search Student Cell Phones?"

Court deemed it as such, saying, “There must be some basis for initiating a search. A reasonable person could not believe otherwise.”⁶ The U.S. must take it further. Under no circumstances should student’s Fourth Amendment right be violated. If laws do not make that clear, they allow for grotesque abuses of power such as this.

Other proponents may point to the 2010 case, *J.W. v. Desoto County School District*, where a Mississippi federal court approved the school’s search and seizure of J.W.’s phone because he was using it at school even though there was a school wide ban. The court noted the difference between the Klump case and this situation, referencing that J.W. had intentionally violated policy while Klump had done so accidentally. They searched J.W.’s photos and found incriminating pictures that indicated he was a member of a gang. Regardless, just because someone breaks a school rule does not mean that their constitutional right to privacy is immediately revoked. In addition, as established in the Supreme Court case *Riley v. California*, even when someone is arrested they do not give up the right to the privacy of data and the contents of their phone. The officer still needs probable cause because of the Fourth Amendment.

⁷ Obviously, a law is a more powerful statute than a school rule, so if a citizen is not forced to release their phone upon arrest, a student should not be forced to release their phone upon a simple violation of school policy. Those more inclined to defer to the judgment of authority, may argue that this view is incredibly black-and white, too idealist, and that under actual circumstances it is clear that many times it makes sense to search students phones, and they might cite how this case uncovered that the student was involved in a gang. There are times, though, when a search will be unwarranted and the power will still be used. Many “realists” feel

⁶ *Klump v. Nazareth Area School District*, 2006

⁷ Electronic Frontier Foundation. "Know Your Rights."

vindicated because they are unable to see the consequences of asserting power, when others use the power they helped establish immorally.

The only time a school may search a phone, as in accordance with the Fourth Amendment, is when they have a warrant or there is probable cause that criminal activity is taking place on the phone. Even under this situation, schools do not have the right to password information without the consent of the student, having been universally established by courts as a manifestation of the Fifth Amendment right to not self-incriminate.⁸ Overall, the government, schools included, needs to respect civil liberties of citizens by honoring privacy rights and retreating the imposition of mass data collection in all aspects of people's lives.

Word Count: 1,249

⁸ Electronic Frontier Foundation, "Know Your Rights."

Bibliography

- Ascd. "The Right to Search Students." *Educational Leadership: Understanding the Law: The Right to Search Students*. Web. 12 Dec. 2016.
- "Bill of Rights - Bill of Rights Institute." *Bill of Rights Institute*. Web. 12 Dec. 2016.
- Patchin, Justin. "When Can Educators Search Student Cell Phones?" *Cyberbullying Research Center*. 07 Sept. 2016. Web. 12 Dec. 2016.
- "Know Your Rights." *Electronic Frontier Foundation*. Web. 12 Dec. 2016.
- "New Jersey v. T.L.O." *LII / Legal Information Institute*. Web. 12 Dec. 2016.
- "New Jersey v. T.L.O. Podcast." *United States Courts*. Web. 12 Dec. 2016.
- "Ornelas v. United States 517 U.S. 695 (1996)." *Justia Law*. Web. 12 Dec. 2016.
- "Searches and Seizures: The Limitations of the Police - FindLaw." *Findlaw*. Web. 12 Dec. 2016.
- "New Jersey v. T.L.O.: The Fourth Amendment in Public Schools." *Constitution Daily*. 14 Jan. 2016. Web. 12 Dec. 2016.