

# Search & Seizure

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# Disclaimer

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The information being presented is for general information purposes only to permit you to learn more about the discussed topics. The information presented is not legal advice and is not to be acted on as such.

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Pearce Durick PLLC

# Search & Seizure

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## Fourth 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, and no Warrants shall 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.*

# Overview

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1. Development of Case Law
2. Current Trends in Case Law – Cell Phones, Facebook
3. What you need to know
4. Questions

# Development of Case Law

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

- Facts:
- Teacher saw TLO smoking in bathroom. TLO denied smoking at all when asked by Asst Principal.
- Asst Vice Principal demanded to see her purse.
- 1) Searched for cigarettes and immediately found pack.
- 2) Also saw rolling paper, which led to further search for marijuana.
- Asst Vice Principal notified TLO's mother and police.
- TLO confessed to police of selling marijuana at the high school. State brought charges juvenile delinquency.



**NO SMOKING**

# Development of Case Law

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*New Jersey v. T.L.O.*, 469 U.S. 325 (1985), *cont'd.*

- Does 4<sup>th</sup> Amendment apply to searches conducted by school officials? YES
- Does the warrant requirement apply to schools? NO
- Does a school official need probable cause? NO
- School official needs reasonable suspicion which involves twofold inquiry: (1) whether the search was justified at inception; and (2) whether search, as actually conducted, was reasonably related in scope to the circumstances which justified the interference in the first place

# Development of Case Law

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*New Jersey v. T.L.O.*, 469 U.S. 325 (1985), *cont'd.*

- So was the search of TLO reasonable? YES

# Development of Case Law

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## *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646 (1995)

- Facts:
- School policy allowing for random urine drug testing of student athletes
- Student athletes required to get parental consent in order to play sports
- Tested at beginning of season for their sport
- Once a week, names of athletes put into “pool” from which student (with supervision of 2 adults) blindly draws names of 10% of athletes for random testing
- Some students refused to undergo random urine test, and were excluded from sport





# Development of Case Law

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## *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646 (1995)

- Several factors Court considered:
  - School athletes have a “reduced expectation of privacy”
  - The search was relatively unobtrusive
  - Severity of the need met by the search
- Did the policy violate the 4<sup>th</sup> Amendment? NO. It was deemed reasonable.

# Development of Case Law

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## *Doe v. Little Rock Sch. Dist.*, 380 F.3d 349 (8th Cir. 2004)

- Facts:
- Jane Doe = secondary student
- Student Handbook – “Book bags, backpacks, purses and similar containers are permitted on school property as a convenience for students. If brought onto school property, such containers and their contents are at all times subject to random and periodic inspections by school officials.”
- During random classroom search, found marijuana in Doe’s purse



# Development of Case Law

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*Doe v. Little Rock Sch. Dist.*, 380 F.3d 349 (8th Cir. 2004), *cont'd.*

- Schoolchildren are entitled to some degree of privacy in the personal items they bring to school, like backpacks and purses

Did search violate 4<sup>th</sup> Amendment? YES

- This policy was too broad – where student's personal belongings could be searched at any time without notice, without reasonable suspicion, or any limit
- Search of individual after metal detector or dog alerted is much more reasonable and less intrusive

# Current Trends in Case Law - Cell Phones

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*Mendoza v. Klein Indep. Sch. Dist.*, (S.D. Tex. Mar. 16, 2011)

- Facts:
- Teacher observed 8<sup>th</sup> grader looking at her phone with some friends
- Student claimed she wasn't using the phone.
- Teacher took phone, searched through sent text messages, and found nude photos of student.
- Student confessed to sending the photos to her boyfriend because he had sent similar photos of himself to her
- Student suspended and assigned to disciplinary program

# Current Trends in Case Law - Cell Phones

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*Mendoza v. Klein Indep. Sch. Dist.*, (S.D. Tex. Mar. 16, 2011)

- Did search violate student's 4<sup>th</sup> Amendment rights? MAYBE
- Teacher justified in checking to see if student violated school policy by sending text during school
- But, up to the jury to determine whether opening the texts was unreasonable search

# Current Trends in Case Law - Cell Phones

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*J.W. v. Desota Cnty. Sch. Dist.*, 2010 WL 4394059 (N.D. Miss. Nov. 1, 2010)

- Facts:
- 7<sup>th</sup> grader caught using cell phone on school grounds – violation of school rule
- School officials, including police, confiscated phone, opened it and looked at photos
- One photo was of friend holding a BB gun and other pictures depicted gang clothing
- Student expelled for suspected gang activity

# Current Trends in Case Law - Cell Phones

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*J.W. v. Desota Cnty. Sch. Dist.*, 2010 WL 4394059 (N.D. Miss. Nov. 1, 2010),  
*cont'd.*

- Did the search violate the student's 4<sup>th</sup> Amendment rights? NO
- Court in Mississippi determined that search was reasonable. Violated school policy on use and possession and reasonable to search it to see if also cheating by using phone or evidence of other wrongdoing.

# Current Trends in Case Law – Cell Phones

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*G.C. v. Owensboro Pub. Schs.*, 711 F.3d 623 (6<sup>th</sup> Cir. 2013)

- Facts:
- Student violated school cell phone policy – was seen texting in class.
- Administration took his phone and searched text messages
- Supt. revoked student's out-of-district status (similar to open enrollment), essentially expelling him





# Current Trends in Case Law – Cell Phones

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*G.C. v. Owensboro Pub. Schs.*, 711 F.3d 623 (6<sup>th</sup> Cir. 2013), *cont'd.*

- Did the search violate the student's 4<sup>th</sup> Amendment rights? YES
  - Using a cell phone on school grounds does not give unlimited right for school officials to search any content stored on a phone that is not related either substantively or temporally to the infraction.
  - A search is justified only if there is reasonable suspicion the search will uncover evidence of further wrongdoing or of injury to the student or another, and not all infractions involving cell phones will present such indications.
- Disagreed with the *JW v. Desoto* decision – this court has more authority than the court in *JW*

# Current Trends in Case Law - Cell Phones

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*Gallimore v. Henrico Cnty. Sch. Bd.*, 38 F. Supp. 3d 721 (E.D. Va. 2014)

- Facts:
- Two parents reported that long-haired student had smoked marijuana on a school bus that morning
- Asst Principal calls student into Principal's office. Did pat down, searched backpack, shoes, pockets, a jar, sandwich wrapper and cell phone. Found no marijuana and sent student back to class.
- Student sued the school district for violation of his 4<sup>th</sup> Amendment and for assault and battery.



# Current Trends in Case Law - Cell Phones

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*Gallimore v. Henrico Cnty. Sch. Bd.*, 38 F. Supp. 3d 721 (E.D. Va. 2014), *cont'd.*

- Did search violate student's 4<sup>th</sup> Amendment rights? YES (as to cell phone)
- Pat down and search of backpack, shoes, pockets, Vaseline jar, and sandwich wrapper were all reasonable because these are places where drugs could have been found.
- Search of cell phone was not reasonable, because based on the facts, it exceeded the scope of a reasonable search initiated to find drugs. Cell phone could not have contained drugs and was therefore not reasonably related to the objective of the search.



# Current Trends in Case Law - Facebook

*R.S. v. Minnewaska Area Sch. Dist. No. 2149*, 894 F. Supp. 2d 1128 (D. Minn. 2012)

- Facts:
- RS, 12 year-old girl, posted message to her Facebook wall – “I hate a Kathy person at school because Kathy was mean to me.”
  - Detention and had to apologize.
- RS posted a second message to her Facebook wall – “I want to know who the f%\$# told on me.”
  - One-day in school suspension and prohibited from going on class ski trip
- RS communicating with male classmate about sexual topics via internet, off school grounds, and outside school hours.
  - Forced to give usernames and passwords to school officials.
  - School officials logged into RS’s Facebook account, viewed her public postings and private messages

# Current Trends in Case Law - Facebook

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*R.S. v. Minnewaska Area Sch. Dist. No. 2149*, 894 F. Supp. 2d 1128 (D. Minn. 2012), *cont'd*

- Was there a violation of student's 4<sup>th</sup> Amendment rights? MAYBE
- No reasonable expectation that looking at these posts would return evidence of illegal behavior or violations of school policy (RS and male classmate had both admitted to having a sex-related discussion; classmate said he initiated the discussion)

# What You Need to Know

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Fourth Amendment does apply to public schools, but with a less stringent requirement of reasonable suspicion.

Reasonable suspicion requires:

1. Search being justified at the inception
2. Search, as actually conducted, reasonably related in scope to the circumstances which justified the interference in the first place

Random searches of students and their property is allowed in some circumstances

- Random drug testing of athletes – typically allowable
- Random searches of students and their personal property – typically not allowable
- Search based on metal detectors or dogs that alert to weapon or drugs – typically allowable

# What You Need to Know

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Can I confiscate (seize) a cell phone? MAYBE

- It would help if you had a cell phone policy.
- Without a policy allowing for seizing a cell phone, it can still be allowed in more limited circumstances.
- If evidence of crime, inform SRO or local law enforcement right away. SRO can then make arrest or determine if probable cause exists to seize phone.
- If not an immediate issue, talk to a lawyer before you seize a cell phone.

# What You Need to Know

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## Can I search a cell phone?

- If you have reasonable suspicion that the cell phone has evidence of wrongdoing, violation of a policy, procedure, rule, crime, it could possibly be searched.
- You could only search the parts of the phone that reasonably would show the violation.
- However, since seizing the phone is generally less of an issue, I highly recommend, in those emergency situations when you need to decide right now whether to take the phone away from the student, you go ahead and seize it (confiscate it) and then contact an attorney about whether to search it.





# What You Need to Know

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Can I search a cell phone?, cont.

- What if I have the student's permission to search it? Still not clear whether can search.
- What if I have the parent's permission to search it? Still not clear whether can search.
- Law in this area is evolving, and there's no obvious legal answer. It depends on the circumstances.

# Questions?

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