Cell Phones in Schools

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CELL PHONES & SMARTPHONES:
THE BASICS

MAY I SEARCH YOUR DIGITAL DEVICE?

CELL PHONES & SMARTPHONES:
THE BASICS
**Terminology**

- **Cell Phone:**
  - telephone that doesn't need landline connection;
  - send/receive voice calls & send text messages
- **Smartphone**
  - **Cell Phone +**
    - advanced computing capability, inc. 3rd party apps
    - Internet connectivity: 3G/4G data and wi-fi
    - large storage capacity

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**Mobile Phone Ownership Over Time**

<table>
<thead>
<tr>
<th>Dates Surveyed (Annually As Data Allows)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source: Surveys conducted 2002-2018.</td>
</tr>
<tr>
<td>PEW RESEARCH CENTER</td>
</tr>
<tr>
<td><a href="HTTP://WWW.PEWINTERNET.ORG/FACT-SHEET/MOBILE/">HTTP://WWW.PEWINTERNET.ORG/FACT-SHEET/MOBILE/</a></td>
</tr>
</tbody>
</table>
### Who Owns Cell Phones and Smartphones

#### U.S. Teens

<table>
<thead>
<tr>
<th>Demographic</th>
<th>Smartphone</th>
<th>Desktop or Laptop</th>
</tr>
</thead>
<tbody>
<tr>
<td>Girls</td>
<td>85%</td>
<td>62%</td>
</tr>
<tr>
<td>Boys</td>
<td>90%</td>
<td>68%</td>
</tr>
<tr>
<td>White</td>
<td>90%</td>
<td>75%</td>
</tr>
<tr>
<td>Black</td>
<td>85%</td>
<td>70%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>80%</td>
<td>60%</td>
</tr>
</tbody>
</table>

Source: Surveys conducted March 7-April 10, 2018.

#### Household Income:

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Smartphone</th>
<th>Desktop or Laptop</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $30K</td>
<td>80%</td>
<td>60%</td>
</tr>
<tr>
<td>$30K-$74,999</td>
<td>90%</td>
<td>75%</td>
</tr>
<tr>
<td>$75K+</td>
<td>95%</td>
<td>85%</td>
</tr>
</tbody>
</table>

#### Parent's level of education:

<table>
<thead>
<tr>
<th>Education Level</th>
<th>Smartphone</th>
<th>Desktop or Laptop</th>
</tr>
</thead>
<tbody>
<tr>
<td>HS or less</td>
<td>75%</td>
<td>55%</td>
</tr>
<tr>
<td>Some College</td>
<td>85%</td>
<td>70%</td>
</tr>
<tr>
<td>College +</td>
<td>90%</td>
<td>80%</td>
</tr>
</tbody>
</table>

Source: Surveys conducted March 7-April 10, 2018.

PEW RESEARCH CENTER
HTTP://WWW.PEWINTERNET.ORG/2018/05/31/TEENS-SOCIAL-MEDIA-TECHNOLOGY-2018/
How Many Kids Take a Phone to School?

- Every Day: 77%
- At least several times a week: 7%
- Less often: 8%
- Never: 8%


How Often Do You Use Your Phone?

- Have your phone turned on
  - Several Times a Day: 12%
  - At Least Once a Day: 22%
- Send or receive texts during class
  - Several Times a Week: 12%
  - Less Often: 14%
  - Never: 36%

In 2015, 53 percent of elementary school students, 66 percent of middle school students, and 82 percent of high school students reported using smartphones regularly. These numbers are up from 44 percent, 58 percent, and 75 percent, respectively, in 2014.

Seven-in-ten elementary school students, two-thirds of middle school students, and over half of high school students reported that they would like to use mobile devices more often in the classroom.

The data paint a clear picture: the overwhelming majority of teens are accessing the internet, most teens are almost certainly accessing it via smartphones, and many are doing it at school.

70 percent of surveyed high school teachers say student use of smartphones causes "tension and disruption" in the classroom.

50 percent of those teachers report weekly disruptions due to students' smartphone use; 36 percent report daily disruptions.

While these teachers report that technology like WiFi, laptops, learning software, smartboards, and school-specific web portals have a positive effect on the classroom, smartphones are viewed negatively.

Distraction due to smartphone use is so pervasive that the California State Teachers' Pension Fund, an investor in Apple, recently drafted an open letter calling on Apple to study the issue and make it easier to limit juvenile students' use of the devices.
Additional Data

- Smartphone use among middle-school-aged youth is increasing with the average age that a child gets a smartphone at 10.3 years old.
- 56% of middle schools allow students to carry their cell phones with them all day, while 82% of parents do not want their middle schoolers to use their phones during the school day.
- Public schools are twice as likely to allow middle schoolers to carry phones all day than are private schools.
- Teens average 30 texts/day.
- Low-income/youths of color more likely to be “Smartphone-only” Internet users.

Source: Survey Reveals That The Majority of US Middle Schools Allow Students to Carry Cell Phones Throughout the School Day

Authors: Delaney Ruston, MD, Andrew Orlebeke MPA, Talia Friedman, Lisa Tabb

December 13, 2017

https://static1.squarespace.com/static/5a69fe629f8dce3218418fe2/t/5a8ee7be652deaae30b8eb23/1519314881193/CPC+Survey.pdf

What Kind of Content is on Students’ Phones?
School Official Searches: The Basics

New Jersey v. TLO, 469 U.S. 325 (1985)
- 4th Amendment applies in schools
  - School officials = government actors
- Students maintain right to privacy while on school grounds
- No need for a warrant or probable cause
- “the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search”
"Reasonableness"

- Justified at its inception;
- Reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.
- Reasonably related in scope to the circumstances that justified the initial interference.
- Reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

The Justification

- "Against the child's interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems. Even in schools that have been spared the most severe disciplinary problems, the preservation of order and security and order in school children, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult….

- "It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools."
Balancing the Interests

Courts weigh **intrusiveness of search** against the **school’s interest**.

- Nature of the offense implicates the importance of the school’s interest:
  - Drugs and weapons – legitimate interest
  - Stolen money – low interest
  - Threats???

What About School Resource Officers?

- Nationally, more often than not, SROs are considered school officials for purposes of search and seizure.
  - No CT case law on this.
- Factors courts consider include:
  - Nature of employment
    - Are they employed by the school or members of the police force?
    - Look to Memos of Understanding and/or other school policies
  - Nature of job responsibilities within the school (TRIAD Model)
    - Is the SRO furthering educationally-related goals?
How Many SROs are in Our Schools?

- The United States Department of Justice sought once to count the number of SROs and found that there were more than 17,000 SROs deployed in public schools nationwide, but the DOJ has not repeated the data collection since 2007.

- The National Association of School Resource Officers estimates there are between 14,000 and 20,000 SROs currently working in public schools across the country.

- A 2018 survey by the National Center for Education Statistics, a sub-agency of the United States Department of Education, noted that 42 percent of public schools reported that they had at least one SRO present at least one day a week.

- However, because many SROs serve more than one school and some schools have more than one SRO, it is difficult to "reliably extrapolate the number of SROs from the percentage of schools" in the survey data.

SROs and the School-to-Prison Pipeline

- The National Association of School Resource Officers maintains that widespread utilization of SROs does not contribute to the School-to-Prison Pipeline.

- The existing data, however, suggest that SROs result in more students being disciplined or coming in contact with law enforcement:
  - Zero-tolerance policies have increased as a reaction to high-profile school shootings.
  - The number of students suspended or expelled in secondary schools nationwide for trivial infractions of school rules or offenses increased from one in thirteen in 1972-1973 to one in nine in 2009-2010.
  - School-based referrals to law enforcement have increased.
  - Evidence suggests that incarcerating juveniles limits their future educational, housing, employment, and military opportunities...negatively affects a youth's mental health, reinforces violent attitudes and behavior, and increases the odds of future involvement in the justice system.

- Schools sometimes refuse to admit students, or, if admitted, students face stigma and increased monitoring by school officials and SROs.
When Police Search in Schools

- Exclusively by Police
  - Not requested or authorized by school officials
  - Probably requires probable cause
- Police in cooperation with school officials
  - Standard depends on the level of police involvement
  - Factors include:
    - Who initiated or requested the search?
    - Did school officials authorize the search?
    - Who conducted the search?

CELL PHONE SEARCHES: RILEY
Means by Which Schools Obtain Phones

- Use of phone during school hours = rule infraction under Student Code of Conduct = seizure
- Student arrested while on-campus = SITA
- Student investigated by school administrators and/or SROs, who seize phone arguing that a search is necessary under T.L.O.
Riley v. California,
134 S.Ct. 2473 (2014)

- **Facts**
  - Case #1 Stop/search of car after impoundment, arrest for gun possession, search #1-incriminating contacts (“CK”), search #2 incriminating photo/video
  - Case #2 SITA search of cell phone-incoming calls/photo-search of house - drugs
- **Holding:**
  - Police must obtain warrant to search cell phones/smartphones
- **Reasoning:**
  - SITA exception doesn’t apply for smartphones/cell phones
  - Minimal risk to officer
  - Vast amounts of personal data
- **Caveat:** Exigent circumstances
  - Texting to detonate bomb
  - Child abductor with information about child

Carpenter v. United States
138 S.Ct. 2206 (2018)

- **Facts:** Police obtained, through federal statute, 127 days’ worth of Cell Site Location Information (CSLI) data on Defendant
- **Holding:** Acquisition of CSLI = search
- **Reasoning**
  - People have reasonable expectation of privacy in their movements
  - Third-party doctrine inapplicable b/c people don’t “voluntarily” turn over info
- **Narrow:** does not question “conventional” surveillance techniques (security cameras)
TYING IT ALL TOGETHER:
CELL PHONE SEARCHES IN SCHOOL

Jackson v. McCurry

- EDJ, a senior in high school, was rumored to have been “bad-talking” another student.
- Assistant principal questioned EDJ.
- EDJ denied “bad-talking” M via text message.
- AP demanded that EDJ unlock and hand over her phone, which he searched.
- Several of EDJ’s contacts were identified by emojis.
- AP searched relevant messages, including a review of messages exchanged with family, and concluded EDJ did nothing wrong.
- EDJ brought several claims, including a claim alleging Oates’s search violated Fourth Amendment Rights.
Jackson v. McCurry

- The court applied T.L.O. and found:
  - Reasonable grounds to suspect that a search EDJ’s cell phone would reveal evidence that she was violating/had violated the school’s rule against harassment.
  - The search not unreasonably intrusive, even though it included reading messages of non-students, because AP could not have been certain that texts between EDJ and family members identified by emojis were not, in fact, texts to other students.

- The court determined that the Supreme Court in Riley did not suggest its rationale would apply to students or overrule T.L.O.
  - “The court rejects Plaintiffs’ contention that the Supreme Court’s decision in [Riley] made it clear to all school officials that they will violate the Fourth Amendment if they search a student’s cell phone without a warrant.”


- M.D., who was subsequently expelled, was ordered to the school disciplinarian’s office and questioned and searched in the presence of a sheriff’s deputy regarding allegations that M.D. purchased, sold and possessed drugs.
- During the search of M.D., school officials uncovered a smartphone, demanded that M.D. unlock it (which he eventually did), and searched it.
- The court held that, under T.L.O., the search was reasonable, and Riley did not usurp M.D.’s “lesser expectation of privacy” as a juvenile student; moreover, this was not a SITA.
- Even if the conduct was established, it did not violate a “clearly established” right under the 4th amendment, and is thus unable to overcome a qualified immunity defense.
In re Rafael C.  
245 Cal. App. 4th 1288, 200 Cal. Rptr. 3d 305 (Mar. 25, 2016)

- A firearm was discovered at Rafael’s school, and administrators suspected his involvement.
- In the course of questioning Rafael, school administrators seized and searched his cell phone and subsequently uncovered digital images of Rafael with what appeared to be the firearm in question.
- On appeal of an unsuccessful motion to suppress these photos, Rafael’s counsel contended that, per Riley, school officials were required to obtain a warrant to search Rafael’s phone.
- The court rejected this argument because Rafael’s trial counsel only argued that the search was unreasonable at its inception. Even if the argument had been properly preserved, the court found it unpersuasive because:
  1) TLO, dispensing with the warrant and probable cause requirements, controls searches by school officials;
  2) Riley was not about a school search;
  3) Riley offered hypotheticals wherein warrantless cell phone searches would be justified, and this case is analogous to one such hypothetical; and
  4) The search in this case occurred before the Supreme Court decided Riley.

38 F.Supp.3d 721 (E.D. Va. 2014)

Facts: 2 parents told school administrators that “a long-haired student” was smoking marijuana on the school bus in the morning

- That afternoon, AP brought WSG to office and did patdown & searched backpack, shoes, pockets, Vaseline jar, sandwich wrapper, and cell phone

Holding:

- Patdown and search of items reasonable under TLO b/c could have hidden drugs in those places
- BUT search of cell phone not reasonably related to objective of search, which Court defines as “finding evidence of drug use on the school bus earlier that day.”
HYPO and Discussion

ONature of government interest
OJustified at inception?
OREasonable in scope?
OA Agency

Takeaways

Things to Consider in Searching a Cell Phone at School
O How did officials obtain the phone (SITA, etc)
O Who conducted the search?
   OSchool official, SRO, law enforcement
O Is the school official an agent of law enforcement?
O Scope of the search as it relates to the alleged infraction
Counseling/Take-aways

- School suspension as discovery
- Digital Privacy More Aspiration than Reality for Youths
  - Legally
  - Practically
    - Most users sync data to the Cloud
    - Factory resets not always effective
- A Word About Spoiliation
- A Word About Passcodes vs. Fingerprints

Questions?