Searching Cell Phones

Presented by:
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AGENDA

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02 Searching in Schools

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05 Child Pornography

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What is (and is not) a Search?

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The 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.

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Can one search...

A Car?

Where there is probable cause to believe that a vehicle contains evidence of a criminal activity, an officer may lawfully search any area of the vehicle in which the evidence might be found.
Arizona v. Gant, 129 S. Ct. 1710 (2009)

A Person?

When an officer observes unusual conduct which leads him reasonably to conclude that criminal activity may be afoot, the officer may briefly stop the suspicious person and make reasonable inquiries aimed at confirming or dispelling the officer's suspicions.
Terry v. Ohio, 392 U.S. 1 (1968)

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Can one search...

A Home?

Searches and seizures inside a home without a warrant are presumptively unreasonable.

Payton v. New York, 445 U.S. 573 (1980).

However, there are some exceptions. A warrantless search may be lawful:

- If an officer is given consent to search; *Davis v. United States*, 328 U.S. 582 (1946)
- If the search is incident to a lawful arrest; *United States v. Robinson*, 414 U.S. 218 (1973)
- If there is probable cause to search and exigent circumstances; *Payton v. New York*, 445 U.S. 573 (1980)
- If the items are in plain view; *Maryland v. Macon*, 472 U.S. 463 (1985).

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Searches at School

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New Jersey v. TLO

469 U.S. 325 (1985)

- On March 7, 1980, a teacher at Piscataway HS in N.J. discovered two girls smoking in the restroom.
- Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the Principal's office, where they met with the AVP. In response to questioning, T.L.O.'s companion admitted that she had violated the rule. T.L.O., however, denied that she had been smoking and claimed that she did not smoke at all.
- AVP asked T.L.O. to come into his private office and demanded to see her purse. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T.L.O. as he accused her of having lied to him.

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New Jersey v. TLO

469 U.S. 325 (1985)

- As he reached into the purse for the cigarettes, AVP also noticed a package of cigarette rolling papers.
- Suspecting that a closer examination of the purse might yield further evidence of drug use, the AVP proceeded to search the purse thoroughly. The search revealed a small amount of marihuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of students who owed T.L.O. money, and two letters that implicated T.L.O. in marihuana dealing.
- T.L.O. later confessed that she had been selling marijuana at the high school.

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New Jersey v. TLO

469 U.S. 325 (1985)

"School officials need not obtain a warrant before searching a student who is under their authority; rather, a search of a student need only be reasonable under all the circumstances."

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New Jersey v. TLO

469 U.S. 325 (1985)

The search:

(1) must be "justified at its inception" by the presence of "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;" and

(2) must be "permissible in scope" such that "the measures adopted are 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."

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Caselaw to Know

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Riley v. California

573 U.S. 373 (2014)

- David Riley was stopped by a police officer for driving with expired registration tags. In the course of the stop, the officer also learned that Riley's license had been suspended.
- The officer impounded Riley's car, pursuant to department policy, and another officer conducted an inventory search of the car.
- Riley was arrested for possession of concealed and loaded firearms when that search turned up two handguns under the car's hood.

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Riley v. California

573 U.S. 373 (2014)

- An officer searched Riley and found items associated with the "Bloods" street gang. He also seized a smartphone from Riley's pants pocket.
- At the station after the arrest, a detective specializing in gangs further examined the contents of the phone.
- The detective testified that he "went through" Riley's phone "looking for evidence, because … gang members will often video themselves with guns or take pictures of themselves with the guns."

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Riley v. California

573 U.S. 373 (2014)

- The Court characterized cell phones as minicomputers filled with massive amounts of private information, which distinguished them from the traditional items that can be seized from an arrestee's person, such as a wallet.
- Nonetheless, the Court held that some warrantless searches of cell phones might be permitted in an emergency: when the government's interests are so compelling that a search would be reasonable.

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Riley v. California

573 U.S. 373 (2014)

> "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," *Boyd*, supra, at 630, 6 S.Ct. 524. 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. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant."

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Mendoza v. Klein ISD

2011 WL 13254310, at *3 (S.D. Tex. Mar. 16, 2011)

- Klein ISD had a policy of no cell phone usage during school time.
- Between 2nd and 3rd periods at Krimmel MS, Plaintiff A.M., an eighth-grade student, was observed by AP Langner showing a group of 7-10 students something in her hand. Believing that the students were looking at a cell phone, Langner approached the group of students.

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Mendoza v. Klein ISD

2011 WL 13254310, at *3 (S.D. Tex. Mar. 16, 2011)

- A.M. observed Langner, turned the phone off and placed it in her pocket. Langner demanded that the phone be turned over to her.
- Langner testified that A.M. became upset and protested Langner's taking her phone. According to Langner, A.M. stated that she had not been using the phone and her friends would verify that fact.

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Mendoza v. Klein ISD

2011 WL 13254310, at *3 (S.D. Tex. Mar. 16, 2011)

- A.M. surrendered the phone to Langner and went to her next class.
- Langner turned on the phone to determine if A.M. had used the phone during school hours.
- Langner also stated in her affidavit that, based on A.M.'s and the other students' reactions upon seeing Langner, she also suspected that what they had been looking at on the phone was probably inappropriate for a school setting.

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Mendoza v. Klein ISD

2011 WL 13254310, at *3 (S.D. Tex. Mar. 16, 2011)

- Determining there were texts that had been sent during school hours, Langner scrolled to the earliest "sent" text on the menu for that day.
- Langner testified that, "[V]ery soon after opening the sent box, I found a picture of A.M. and she had taken it in front of the mirror and she was nude."

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Mendoza v. Klein ISD

2011 WL 13254310, at *3 (S.D. Tex. Mar. 16, 2011)

- Langner called A.M. into her office to discuss the picture, and A.M. explained that she had sent the picture to a boy because he had sent similar pictures to her.
- Langner asked if A.M. had shown the pictures to any other student, and A.M. admitted she had shown the pictures of the nude male to her friend, B.M.
- Langner notified the school principal, Crowe, that she had confiscated A.M.'s phone.

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Mendoza v. Klein ISD

2011 WL 13254310, at *3 (S.D. Tex. Mar. 16, 2011)

- Langner called the police, per Crowe's instruction, and A.M.'s mother, Plaintiff Mendoza, and asked her to come to the school for a conference.
- Langner explained to Mendoza that she had found nude pictures on A.M.'s phone and that she would speak to Mendoza the following day to tell her what the consequences would be for A.M.

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Mendoza v. Klein ISD

2011 WL 13254310, at *3 (S.D. Tex. Mar. 16, 2011)

- Langner turned over the phone to the Klein ISD Police Officer.
- After an investigation by the school, the school determined A.M. violated the student code of conduct and assigned A.M. to the Klein ISD ("DAEP") for a period of thirty school days.
- Mendoza filed a grievance which upheld the administration's decision.

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Mendoza v. Klein ISD

2011 WL 13254310, at *3 (S.D. Tex. Mar. 16, 2011)

- Mendoza sued pursuant to Section 1983.
- Mendoza claimed that Crowe and Langner violated the constitutional rights of herself and A.M. when Crowe and Langner accessed A.M.'s phone in violation of the Fourth Amendment.
- Plaintiff Mendoza also claims that Klein ISD is liable for the acts of Crowe and Langner because it failed to train them on student rights and failed to create policies and procedures to prevent illegal searches and seizures.

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Mendoza v. Klein ISD

Section 1983 Claims

- "There is no question that the cell phone in question contained private information, that A.M. had a reasonable expectation of privacy regarding this information, and that any search of the phone was subject to the limitations of the Fourth Amendment. However, in the context of a search of a student in a school setting, a more lenient standard of reasonableness under the Fourth Amendment has developed."

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Mendoza v. Klein ISD

Section 1983 Claims - Langler

- Langner admitted that all she needed to do was to determine if texts were sent by A.M. that day and she did not have to open any text message to determine that
- In light of Langner's testimony, the court cannot conclude as a matter of law that her search of the contents of A.M.'s text messages was reasonable. The trier of fact must determine if Langner's actual search was reasonable under the circumstances or if it violated A.M.'s Fourth Amendment rights.

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Mendoza v. Klein ISD

Section 1983 Claims - Langler

- "Although there is a fact issue whether the scope of Langner's search violated A.M.'s Fourth Amendment rights, Langner may still be entitled to qualified immunity if the search she actually performed did not violate clearly established law at the time of the search."

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Mendoza v. Klein ISD

Section 1983 Claims - Crowe

- "Here, even if the finder of fact determines that Langner violated A.M.'s right to be free from an unreasonable search, Crowe's determination that A.M. should be disciplined for showing nude pictures of a young man to other students is not such an "extreme factual situation" to warrant application of a ratification theory of liability."
- Thus, Plaintiffs failed to raise a fact issue that Crowe violated A.M.'s constitutional rights, and Crowe's motion for summary judgment was granted.

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Mendoza v. Klein ISD

Section 1983 Claims – Klein ISD

The policy is not unconstitutionally vague simply because two administrators have slightly different interpretations of the policy when it comes to enforcement. The policy was specific enough to put A.M. on notice that her use of a phone during school hours was a violation of school rules. And, the search of the phone in this case was not a disciplinary sanction requiring advance notice in the school policy, but was to ascertain if A.M. broke the rule in the first place.

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Mendoza v. Klein ISD

Section 1983 Claims – Klein ISD

- Langner took a narrow view of what conduct was prohibited by policy and would only confiscate a phone from a student it if had been actually used, in contrast to Crowe's interpretation which conflated a prohibited use with any display of the phone.
- Plaintiffs failed to raise a claim that KISD's cell phone policy was "the moving force of the violation of a federally protected right."

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Mendoza v. Klein ISD

Professional Immunity

Even if Langner's employer had not authorized her to open the phone and search its contents, Langner's search of the phone is still within the scope of her employment because it was taken in furtherance of her responsibility to maintain school discipline. The fact that Langner's search may be determined by a jury to have exceeded the parameters of the Fourth Amendment does not change this result.

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Mendoza v. Klein ISD

Professional Immunity

It is undisputed that Crowe had the authority to discipline A.M. for violating school policy. Thus, his decision sending A.M. to the DAEP was taken in furtherance of his position of principal and was within the scope of his position, even if it is determined that Langner's search of the phone exceeded the Fourth Amendment.

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Protected Cellular Speech

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Mahanoy Area Sch. Dist. v. B.L.

594 US _ (2021)

Facts – Nothing to Cheer About
Ruling – Schools have limited authority as to when they can discipline students for off-campus speech

Reasoning:

1) In loco parentis does not apply to students who are off-campus.
2) Schools cannot regulate students 24/7/365.
3) Schools are a "marketplace of ideas" that facilitate an informed public opinion and must include unpopular opinions and ideas as well as popular ones.

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Mahanoy Area Sch. Dist. v. B.L.

594 US _ (2021)

Schools can still discipline when:

1) serious or severe bullying or harassment targeting particular individuals,
2) threats aimed at teachers or other students,
3) the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities, and
4) breaches of school security devices are areas where schools still have authority to maintain discipline.

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Questioning Students Without Parents Present

School Administrators:

- School administrators can question students at school without a parent or guardian being present
- See board policy FNF(LOCAL) for your district's policy

Questioning Students	District officials may question a student regarding the student's own conduct or the conduct of other students. In the context of school discipline, students may not refuse to answer questions based on a right not to incriminate themselves. For provisions pertaining to student questioning by law enforcement officials or other state or local governmental authorities, see GRA(LOCAL).

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Questioning Students Without Parents Present

SROs/Police Officers:

Police may ask minors questions without parental presence or consent if the interrogation occurs in a non-custodial setting (a school). To meet the qualifications of a non-custodial setting, police must question minors in a setting that meets the following requirements:

- Law enforcement officer has not handcuffed the child.
- Police have not detained the child.
- Police have not placed the child in custody.

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Child Pornography

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Texas Penal Code §43.26

(a) A person commits an offense if:
(1) the person knowingly or intentionally possesses, or knowingly or intentionally accesses with intent to view, visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct, including a child who engages in sexual conduct as a victim of an offense under Section 20A.02(a)(5), (6), (7), or (8); and
(2) the person knows that the material depicts the child as described by Subdivision (1).

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Texas Penal Code §43.75

(h) It is a defense to prosecution under Subsection (a) or (e) that the actor is a law enforcement officer or a school administrator who:
(1) possessed or accessed the visual material in good faith solely as a result of an allegation of a violation of Section 43.261;
(2) allowed other law enforcement or school administrative personnel to possess or access the material only as appropriate based on the allegation described by Subdivision (1); and
(3) took reasonable steps to destroy the material within an appropriate period following the allegation described by Subdivision (1).

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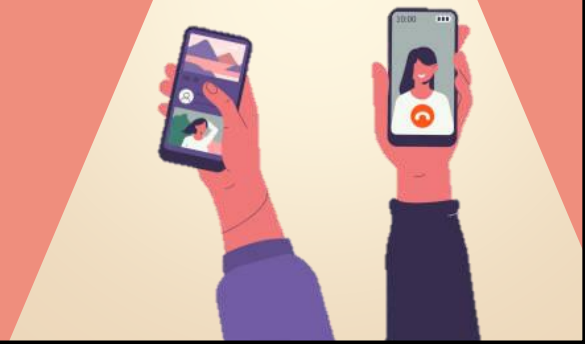
How to Search



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Steps:

1. Can you articulate why you should search?
2. Have you narrowed down exactly where to look?
3. Think: am I the appropriate person to conduct this search?
4. Ask the student to open their phone for you, and show you what you are looking for.
5. If they refuse, call their parents
6. If the parents refuse: can you discipline without the evidence?

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Questions?

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Thank you

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