

# Can You Hear Me Now? Cell Phone Searches in the Schools

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# *Riley v. California* (2014)

“[M]odern cell phones . . . 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.”

**Chief Justice John Roberts**

**Cell phones at school can cause problems:  
cheating, sexting, bullying, distractions, drug  
sales, etc.**



# ***Riley v. California* (2014):** A traffic stop leads to the Supreme Court



# *Riley v. California* (2014)

## 15 years to Life



# *Riley v. California* (2014)

“Our answer to the question of what police must do before searching a cell phone seized incident to arrest is accordingly simple—get a warrant.”

Chief Justice John Roberts



# Do school authorities need a warrant to search a student's cell phone?

- *Richard Jackson v. David McCurry*
  - (M.D. Ga. Dec. 22, 2017)



# ***Jackson v. McCurry: facts***

- Rumors spread that Jackson's daughter, EDJ, was "bad talking" another student, M.. M. threatened EDJ, who reported threat to school officials. They got information that EDJ was sending derogatory texts about M.
- Oats, assistant principal, took phone from EDJ, viewed messages to friends and family members, and concluded EDJ had done nothing wrong.
- Jackson (EDJ's father) called Superintendent McCurry and threatened to sue. Jackson asked to speak to school board. McCurry said J. could not attend meeting or speak to school board—because Jackson threatened litigation.



# *Jackson v. McCurry*: facts

- Jackson also called principal and assistant principal about the incident and talked to EDJ's volleyball coaches. Coaches reported that Jackson threatened Asst. Principal's safety.
- McCurry decided Jackson was a threat. He met Jackson outside of school and prohibited him from entering. Instructed not to talk with school officials or students and to direct all communications to school board's lawyer.
- McCurry told Smith, school resources officer, that Jackson not to be allowed on school property and to remove or arrest him if Jackson came back.
- McCurry sent Jackson letter banning him from school property with exception of daughter's volleyball games and picking up or dropping of daughter at school.
- Jackson then goes to volleyball game and is escorted off premises by resource officer and administrative assistant to principal.

# *Jackson v. McCurry*: Court's ruling

- Riley does not apply to school searches of student's cell phones
- Cell phone searches covered by T.L.O. Reasonable to search based on suspicion phone was used to harass another student.
- Viewing text messages between EDJ and family not a constitutional violation.
- “Though technology has changed since T.L.O. was handed down, a school official's search of a student's cell phone on school property still fits within the framework announced in T.L.O.”

# ***Jackson v. McCurry*: Court's ruling**

- **Seizure of Jackson** at volleyball game was reasonable and force used was de minimus.
- Resource officer mistakenly believed Jackson was at game in violation of superintendent's ban.
- **McCurry's ban against Jackson speaking to school board not a clear constitutional violation.** School board meetings take place in *limited public forum*, and ban on litigants or potential litigants speaking to the board was reasonable. Limited forum is one where speech is limited to certain groups or certain topics. Restriction was viewpoint neutral.

# ***Jackson v. McCurry*: Court's ruling**

- “Had he not threatened litigation, then any attempt to prevent him from speaking at the public school board meeting could have been construed to be based upon his specific viewpoint. But the undisputed evidence establishes that he was denied the opportunity to speak because he had threatened litigation.”

**Can schools legally ban cell phones at school?**



# Price v. New York City Board of Educ. (2008)

- Parents and Teachers Association challenge N.Y. City School District's cell phone ban.
- Ban contained exception for students needing their phones for medical reasons.
- Plaintiffs argued that a ban on use was sufficient and that phones were “lifeline” for many students & their parents.
- Gave examples of students commuting to school in the dark, through dangerous neighborhoods with few pay phones, need for parents to contact students in cases of emergencies, need for parents to coordinate transportation etc.

## ***Price v. New York City Board of Educ. (2008)***

- N.Y. Appellate Court ruled for school board.
- Found cell phone ban to be rational.
- Mere ban on use may be difficult to enforce. “While vast majority of public school children are respectful and well-behaved, it was not unreasonable for the Chancellor to recognize that if adults cannot be fully trusted to practice proper cell phone etiquette, then neither can children.”
- “Certainly the Department has a rational interest in having its teachers and staff devote their time to educating students and not waging ‘war’ against cell phones.”
- Ban does not interfere with parents’ constitutional right to care, custody and control of children.

## ***Klump v. Nazareth Area Sch. Dist. (E.D. Pa. 2006)***

- High school policy permits students to carry, but not use or display cell phones during school hours. Christopher's cell phone fell out of his pocket and came to rest on his leg. Teacher confiscated phone.
- Teacher & Assistant began making phone calls with Christopher's cell phone. They called nine other High School students listed in Christopher's phone number directory to determine whether they, too, were violating the school's cell phone policy.
- Next they accessed Christopher's text messages and voice mail. Finally, they held an America Online Instant Messaging conversation with Mr. Klump's younger brother without identifying themselves as being anyone other than the primary user of the cell phone, Christopher Klump.



## ***Klump v. Nazareth Area Sch. Dist.* (E.D. Pa. 2006)**

- Teacher was justified in seizing the cell phone, since Klump had violated the school's policy. In calling other students, however, teacher & asst. principal were conducting a search to find evidence of other students' misconduct, which they may not do under *T.L.O.*'s reasonableness standard.
- School authorities had no reason to suspect that such a search would reveal that Klump himself was violating another school policy; rather, they hoped to utilize his phone as a tool to catch other students' violations.
- Assuming plaintiff's allegations are true, there was no justification for the school officials to search Christopher's phone for evidence of drug activity.
- Moreover, the law in this area is not as unsettled. It is clear, that students have a [4<sup>th</sup> Amendment](#) right to be free from unreasonable searches and seizures by school officials. There must be some basis for initiating a search. A reasonable person could not believe otherwise.

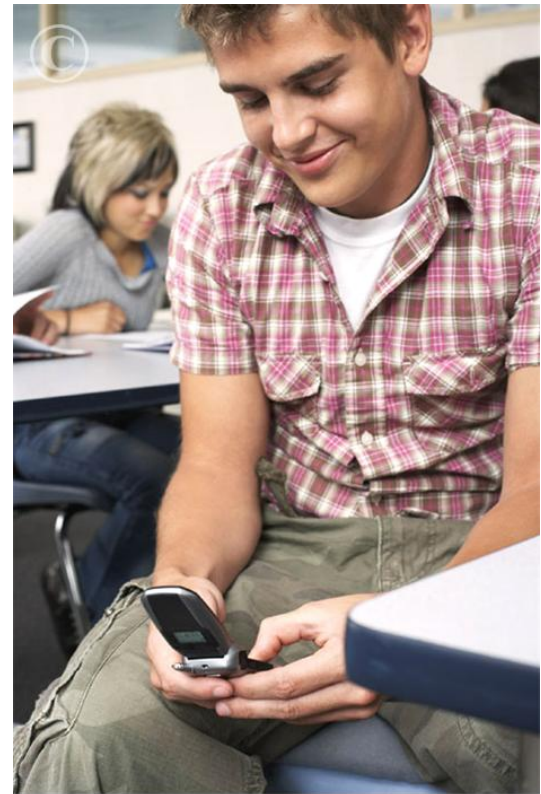
## J.W. v. Desoto County Sch. Dist. (ND. Miss. 2010)

- J.W. expelled for violating rule against displaying anything affiliated with a gang after he was caught using cell phone in violation of rule against possessing or using cell phone at school.
- Phone confiscated. Principal & police sergeant viewed photos. At hearing, sergeant said photos displayed “gang signs.”
- Court: No valid argument that school defendants acted contrary to well established law.



## *J.W. v. Desoto County Sch. Dist.* (ND. Miss. 2010)

- Search justified at inception & reasonable in scope.
- “Upon witnessing a student improperly using a cell phone at school, it strikes the court as being reasonable for a school official to seek to determine to what end the student was improperly using that phone.” Student might be engaged in cheating or calling another student who would also be violating the rule against cell phone usage.



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## ***G.C. v. Owensboro Public Schools (6th Cir. 2013)***

- Case involved out-of-district student freshman with discipline problems, who expressed suicidal ideations.
- March 2009, student walked out of meeting with counselor, left building, and texted father. Asst. principal confiscated phone as being in violation of school rule and examined contents for signs of suicidal tendencies.
- Fall 2009, teacher caught G.C. texting. Phone confiscated again and examined. Another Asst. principal examined phone “to see if I could help him so that he would not do something harmful to himself or someone else.”
- Out of district privileges revoked. G.C. sued, but trial court granted summary judgment to school district.

## *G.C. v. Owensboro Public Schools (6th Cir. 2013)*



- “[A]ll students are afforded due process prior to expulsion, regardless of their in-district or out-of-district status . . .
- District cannot unilaterally remove student after school year begins without due process.

## ***G.C. v. Owensboro Public Schools (6th Cir. 2013)***



- Second search of cell phone not justified at inception.
- “General background knowledge of drug abuse or depressive tendencies, without more, [does not enable] a school official to search a student’s cell phone when a search would otherwise be unwarranted.”

## *G.C. v. Owensboro Public Schools* (6th Cir. 2013)

- At time phone was confiscated, no evidence that G.C. was engaging in unlawful activity or contemplating injuring himself or someone else.
- “On these facts, defendants did not have a reasonable suspicion to justify the search at its inception.”



# Gallimore v. Henrico County Sch. Bd. (E.D. Va.2014)

- Two asst. principals get reports of long-haired student smoking marijuana on school bus that morning.
- W.S.G. called to assistant principal's office. Pat down search of person & backpack. Searched Vaseline jar, sandwich wrapper & cell phone. No marijuana found.





# Gallimore v. Henrico County Sch. Bd. (E.D. Va.2014)



- Court ruled that pat down of W.S.G. & search of backpack, shoes & pockets were reasonable because drugs could be hidden. Search of Vaseline jar & sandwich wrapper also reasonable.

## ***Gallimore v. Henrico County Sch. Bd. (E.D. Va.2014)***

- Unlike Vaseline jar & sandwich wrapper, cell phone could not contain drugs and was not reasonably related to objective of search
- W.S.G. sufficiently pled Fourth Amendment violation.
- No qualified immunity. “No reasonable school administrator could believe that searching a student’s cell phone would result in finding marijuana,” which was purpose of search.

## *G.M. v. Casalduc* (D.N.M. 2013)

- Student ignored teacher's request to stop texting in class, a violation of school policy. Policy authorized confiscation for violation of cell-phone ban.
- Teacher summoned Dean O'Gawa. Student sent to administrative office. Student ignored repeated requests to turn over phone. Finally, school resource officer told her she would be arrested if she refused to give up her phone.
- Still refused. School resource officer arrested her for disrupting school functions and placed her in handcuffs.



## ***G.M. v. Casaduc* (D.N.M. 2013)**

Student sued school resource officer, claiming violation of Fourth Amendment , but court rules for officer.

- A search incident to arrest requires no additional justification.
- “It is certainly reasonable for a school official to confiscate a student’s cell phone, as required by school policy, when that cell phone is being used during the school day in violation of school rules.”
- School resource officer is treated as a school official when acting to protect school security or enforce school policy.



# Bottom Line:

- In *Riley v. California* the Supreme Court made clear that cell phones cannot be searched incident to arrests without a warrant.
- Courts have not placed school cellphone searches under *Riley*.
- Courts have ruled that school officials cannot search confiscated student cell phones without independent justification.
- Have clear policies in place concerning cell-phone use by students, including a policy explaining that cell phones used in violation of policy are contraband subject to confiscation.
- Policy should explain when a student can retrieve a confiscated cell phone.
- Unless there is an independent justification for searching the cell phone's contents, do not view the phone's photos, text messages, or other substantive content.