

CELL PHONE SEARCHES

With the start of the new school year, the ACLU of Ohio is concerned that we will again, as we did frequently last year, hear complaints from around the state of public school officials confiscating cell phones from students and then listening to voice mail, searching text and e-mail messages, viewing photo-images, and the like. Because we believe the law is clear, and because our interest is in stopping unconstitutional practices rather than suing over them, we hope that school officials will understand that these practices are prohibited by the Constitution. See *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

Schools may certainly prohibit cell phone usage during school time, and may temporarily confiscate phones from students who violate those rules, returning them at the end of the day or to a parent or guardian (if the student is underage) according to a set policy. But schools cannot, without reasonable and particularized suspicion at the inception, conduct searches of student phones. They cannot simply go on fishing expeditions through the phones' content on the chance (or in the hope) of discovering things that will be troubling to the officials.

Cell phones are different from notes, pictures, or even Internet sites such as MySpace or Facebook. Almost by definition, student cell phones brought to school will contain records of outside activity. They may contain messages and communications with friends, significant others, doctors, therapists, or counselors that are personal or embarrassing but do not violate school rules or disrupt school proceedings. Confiscating cell phones and reviewing their contents, including but not limited to communications to and from students, absent reasonable and particularized suspicion of wrongdoing that affects the school, is an intrusion into the private lives of students that simply should not occur.

If I may be of any assistance, please feel free to call or e-mail.

Jeffrey M. Gamsco
Legal Director
ACLU of Ohio Foundation, Inc.
Max Wohl Civil Liberties Center
4506 Chester Avenue
Cleveland, Ohio 44103
[REDACTED]
contact@acluohio.org