

NM Bar Student Essay Contest

By: Bryce Newcomer

Ocate High School

Teacher: Mr. Joel Hutchinson

Word count: 1,115

I. Background:

Three high school students were recently part of a school investigation, which they dispute was a violation of their Fourth Amendment rights. The three students, who participate in producing their high school newspaper, went to a local college to take pictures and report on a public rally. Unfortunately, the rally turned into a full blown riot. Later, articles in the high school newspaper included reports, along with several photos, of the riot at the college. When news of a valuable object was missing from the college during the riot, reports surfaced that the three students were seen in the vicinity of the object. Furthermore, one of the photos printed in the high school newspaper showed the missing object. Having reasonable suspicion that the three students were involved in the theft of the missing object, school administrators decided it was within their right to conduct searches on the students. They searched the students' classroom, lockers, phones, and backpacks. The school had gone to extensive measures in these searches, including confiscating the students' phones to check for pictures, text messages, and cutting the locks on their backpacks to inspect the contents. The students challenge that the searches were extreme and an infringement of their Fourth Amendment rights. The school disagrees with the students' claim that their Fourth Amendment rights were violated. In fact, administrators supply

students with a written statement at the beginning of the school year that addresses school policy to implement spontaneous, random searches of student's desks, lockers, and any other areas they deem necessary within the school and to regard all areas to be "public" not "private."

Question 1:

Did school officials have the right to search the schoolroom?

Yes, school officials had the legal capacity to search the students' schoolroom because they had reasonable suspicion that the three students were involved in a theft while on school business. The Fourth Amendment states that the rights of people are to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures without a warrant. However, the case of *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) dictates that "a warrantless search by a school official does not violate the Fourth Amendment so long as the official has reasonable grounds to believe that a student possesses evidence of illegal activity." In the case of a classroom, it is considered the property of the school, and school officials had reason to believe from eyewitnesses that three of their students were involved in stealing a valuable object from the college. Therefore, school officials had the legal grounds to conduct any search they felt necessary inside the schoolroom without a warrant. Furthermore, because all students are informed in writing of the school's policy of random searches, there should be no expectations of privacy of goods within the student population.

Question 2:

Did school officials have the right to confiscate and search the students' phones?

Yes, school officials had the right to confiscate and search the students' phones. While cellular phones are considered a students' private property, school officials had the legal jurisdiction to confiscate the students' phones because of reasonable suspicion of an unlawful activity. Evaluating the case of *Klump v. Nazareth Area School District (2006)*, it was concluded that “although the meaning of unreasonable searches and seizures’ is different in the school context than elsewhere, it is nonetheless evident that there must be some basis for initiating a search.” During the riot at the college, it was reported that the three students were seen in the area of the missing valuable object. Also, the three students took photos of the missing object on their cell phones and used them for the school newspaper. This gave school officials enough probable cause to collect the students’ cell phones without a warrant to look for evidence of the crime.

Question 3:

Did school officials have the right to search the lockers?

Yes, school officials had the legal right to search the students’ lockers. The high school provided students with a written statement detailing the school’s policy of conducting unannounced searches of any targeted areas on school property. The case of *Madison High School v. Lukoff (1995)* involved school faculty searching over a hundred student lockers due to rumors of a planned school shootout. When an armed gun was found in a student’s personal locker, the student took the school to court stating that the search was a violation of his Fourth Amendment rights. The court ruled in favor of the school stating that “neither the boy nor his

classmates had a right to privacy in their lockers because officials had warned them in a school handbook that the school owned the lockers and could search them at any time." Therefore, school officials had the right to search students' lockers without a warrant as lockers are deemed property of the school.

Question 4:

Did school officials have the right to search the backpacks?

Yes, school officials had the right to search the students' backpacks. School officials had reasonable cause to search the backpacks as eyewitnesses spotted the three students near the valuable object. In addition, a picture taken by the students of the missing object was printed in the school newspaper. In the case of *State of Washington vs. J.M.*, the court ruled that school officials can search a student's backpack without a warrant if they have reasonable cause to suspect a student has violated school policy or the law. The school had the legal right to search the students' backpacks as school officials had reasonable suspicion from eyewitness reports, and photos of the missing object, that an illegal activity by their students had taken place.

III. Conclusion

Addressing the four questions presented; the right of the school to search the three students' schoolroom, cell phones, lockers, and backpacks is well established through a written statement detailing school policy on searches and eyewitness reports connecting the three students near the missing object. The school, receiving eyewitness reports of the students being seen in the area of the missing object, along with a picture of the missing object that was published in the school newspaper, justified the warrantless searches conducted on the three

students. While the case of *In re Josue T.*, 1999-NMCA-115, ¶ 14, 128, N.M. 56, 989 P.2d 431 states “whether a search was reasonable is a legal determination for the Court,” school officials had enough reasonable cause to satisfy the legal definition of a school's authority to conduct a search of the three student's classroom, lockers, cell phones, and backpacks on school grounds in this case.

State Bar of New Mexico 2012 Student Essay Contest Entry Form

(Please type or print. Complete all information. Download an entry form at www.nmbar.org.)

Name of Student: Bryce Newcomer

Check One: Junior Senior

Word Count: 1,115

Name of School: Drake H.S.

Name of Teacher: Mr. Joel Hutchison

School Phone:

School Street Address: 5700 Mesa Grande Dr,

(575)-527-9430

City: Las Cruces Zip: 88011

I hereby certify that the essay I submit is my original work.

Student Signature

Bryce Newcomer

Entries that do not follow all rules will be disqualified. Email essay and entry form to dseago@nmbar.org.
For further assistance or questions, call Dorna Seago, 505-797-6030.

Cathy Cook
Onate High School
Joel Hutchinson
Word Count: 1,134

Bar Essay

Summary

Doug, Stan, and Chris are three average students who produce their high school newspaper. The high school they attend has a policy of conducting random searches of desks, lockers, and “targeted areas within the school”, due to the area’s gang problem. The three students recently reported on a public rally at a local college, which turned into a riot, during which an object of value was stolen from the college. Witnesses claimed they saw the three boys in the area of the object. As a result the high school administrators searched the classroom where the newspaper is made, cut the locks on and searched the boys’ backpacks, searched the boys’ lockers, and confiscated and searched their mobile phones, the cellular devices having been used to photograph the object in question. No evidence was found connecting the boys with the theft. The three boys claim the searches were a violation of their fourth amendment rights, while the school defends its actions.

Question 1

Did school officials have the right to search the school room?

The school room is part of the school’s property. The school has a standing policy that areas such as lockers are to be considered “public” not “private”. Therefore one would assume that students are aware that already public areas such as classrooms are fair game for random searches. They also had details, such as the witness claims of seeing the boys near the valuable object and the fact that they had a picture of the stolen object, thinly linking the three boys to the theft of the valuable object. New Mexico uses the standard set by *New Jersey v. T.L.O.* (469

U.S. 325), “A warrantless search by a school official does not violate the Fourth Amendment so long as the official has reasonable grounds to believe that a student possesses evidence of illegal activity”. Their search was reasonable, because of their established policy of random searches and the connection, albeit weak, between the boys and the crime. They were also searching a public area in their own building.

Question 2

Did school officials have the right to confiscate and search the students’ phones?

The students’ phones constitute private property. They belong to the students or their parents rather than the school. According to *State v. Gage R.* (2010-NMCA-104, 14, 243P.3d 453) New Mexico applies, “the two-prong standard articulated in *T.L.O.* to determine whether searches of students are justifies. 1 Whether the school authority’s search was justified at its inception and 2 Whether the search was reasonably related in scope to the circumstances that justified the interference.” The administrators confiscated and searched the phones on the basis that they had been used to take pictures of the stolen objects. However, while that indicates that they were around the object at some point it does not explicitly indicate that they stole it, or that evidence of its theft would be on their phones. It was reasonable for them to search the school room based on the mildly suspicious connections between the boys and the theft, because the school room is a physical part of the school’s property, but within the school’s privacy policy it defines areas subject to search as geographic locations within the school. A student’s phone is not a geographic area subject to the policy. It is a private item belonging to the individual boys. Searching their phones is akin to the schools confiscating and searching a private journal and is a violation of their privacy according to the fourth amendment. A picture of the object taken by one of their phones as part of a news story for the school paper is not reasonable grounds to

justify a warrantless search of their phones as such a picture provides no direct evidence linking the boys to the crime (phone pictures typically have no time stamp or date on them). It is entirely feasible that the picture was taken before the object was stolen for the legitimate reason of supporting their article. The scope of the search was not reasonably related to the circumstances that justified it.

Question 3

Did school officials have the right to search the lockers?

The school follows a policy that lockers are “public” rather than “private” areas. At the beginning of the school year they provide all students with a written statement detailing this policy, and explaining that the school officials perform random searches of student lockers throughout the year. As stated in the fourth amendment, people have a right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures”, and the fourteenth amendment reaffirms that “No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States”. However, the search of the lockers did not violate these amendments, as students knew the lockers were not “private areas” in which to keep things they wished to stay private.

Question four

Did school officials have the right to search the backpack?

School officials did not have the right to search the backpacks. According to *State v. Crystal B*, “particularized suspicion is required in order to justify a search at its inception.” The school had no evidence or statements supporting the idea that they would find the stolen object in the students backpack. Nothing in the case indicated that their backpacks were related to the

incident. The witness accounts did not directly implicate the students in the crime, making the evidence the school had against the boys meager at best. The fourth amendment states that people have a right to be secure in their papers and effects against unreasonable searches, and the fourteenth amendment prevents states from amending that right. The school did not have particularized suspicion to justify the search of the boys' backpacks. Nor did they have a warrant. The searches were a violation of the boys' fourth amendment rights.

Conclusion

The school officials had a right to search the school room and the students' lockers, because they were both geographical locations within the school designated by the school as, "public" and belonging to the school. The school officials did not have the right to search the students' cell phones or backpacks because they were both private property of the students and the school did not have evidence directly linking either the backpack or cell phones to the crime, nor would the situation allow the school to search the students' belongings as "acting parent" because the circumstances did not endanger the safety of the boys or any other students on campus. Coupled with the scant original evidence they had, those searches were not reasonably related to the circumstances that justified a search. The school violated the students' fourth amendment rights.

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Name of Student: Catherine Cook

Check One: Junior Senior

Word Count: 1,134

Name of School: Oñate High School

Name of Teacher: Joel Hutchinson

School Phone:

School Street Address: 5700 Mesa Grande Drive

575-527-9430

City: Las Cruces

Zip: 88001

I hereby certify that the essay I submit is my original work.

Student Signature

Catherine Cook

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For further assistance or questions, call Dorma Seago, 505-797-6030.

**Jennifer Romero
Oate High School
Joel Hutchinson
Word Count: 1496**

I. Summary of Facts

At a local high school, serious gang problems are a present threat. In order to combat these problems, the school has installed metal detectors and employed security patrols. At the start of the academic year the school issued a written statement outlining the school's policies on searches. It states that random, unannounced searches will be conducted throughout the year of student lockers, desks, and any other targeted areas—all of which are "public".

Doug, Stan, and Chris are all students at this high school. They are "average" students and are the producers of a school newspaper. In the hopes of getting a report the boys travelled to a nearby private college. A public rally was being held to protest, and it soon developed into a riot. Some participants were injured—some of whom were teenagers—and a valuable object was stolen while the college was being vandalized. The three boys took pictures of the riot on their cellular phones, and they reported what they had witnessed upon returning to the media room.

When the school newspaper was released, the high school administrators noticed that one of the pictures depicted the stolen object. They had also received reports that the three boys had been in the area where the object was located during the riot. The administrators checked the schoolroom where the newspaper was produced then proceeded to check the students' lockers, backpacks, and cellular phones. No evidence was found linking the boys to the theft. The students argued that the searches were a violation of the Fourth Amendment.

II. Questions

- 1. Did the school officials have the right to search the schoolroom?**

The school officials **did** have the right to search the schoolroom. As stated in the school policy, officials may conduct random, unannounced searches throughout the year of student lockers, desks, and any other targeted areas within the school. The schoolroom falls into the category of other targeted areas. The room is a public area and is not considered of one's "person, house, papers, [or] effects" (*Fourth Amendment*). All of the equipment in the schoolroom is owned by the school and is under the authority of the school officials. The room is therefore not under the jurisdiction of the Fourth Amendment. You would not need a warrant to search your office even if others had access to it—it is still considered yours. The same concept applies to the schoolroom, and no warrant is needed for a search. The search is also legal because it is not based merely on "an inchoate and unparticularized suspicion or hunch" (*In re Josue T.*, 1999-NMCA-115). The newspaper that depicted pictures of the stolen object was created in the schoolroom, and the students had been in the room following the theft. The search was therefore based on *individualized suspicion* due to the fact that the students were present during the riot and may possess evidence concerning the theft.

2. Did school officials have the right to confiscate and search the students' phones?

The school officials **did** have the right to confiscate and search the phones. In *New Jersey v. T.L.O.*, 469 U.S. 325 a warrantless search by a school official is legal so long as they have reasonable grounds to conduct the search. These grounds are determined reasonable only if they pass the two-prong standard which consists of, "(1) whether the school authority's search was justified at its inception and (2) whether the search was reasonably related in scope to the circumstances that justified the interference". Beginning with the first prong, "a search is justified at its inception when there are reasonable grounds that the search will turn up evidence that the student has violated either the law or the rules of the school" (*New Jersey v. T.L.O.*, 469

U.S. 325). The cellular phones were used to take pictures of the stolen object; the pictures are considered evidence because they can help prove or disprove that the students were involved in theft or indicate who may have been involved. The school officials could therefore infer that the cellular phones could harbor other evidence, such as text messages. In relation to the second prong, the search was related to the circumstances of the theft at the college. Witnesses placed the three students at the location of the theft during the riot. As the pictures were published in the school newspaper, a source that is widely public, officials had *individualized suspicion* that the three students had been in the area—which was supported by factual evidence and not merely claims. This *individualized suspicion* allows school officials to go so far as to conduct a strip search of a student as determined in *Kennedy v. Dexter Consol. Sch.*, 2000-NMSC-025. The confiscation of the phones was only mildly intrusive compared to a strip search. The search passes the two-prong standard that New Mexico courts apply and is therefore legal.

3. **Did the school officials have the right to search the lockers?**

The school officials **did** have the right to search the lockers. In the written school policy, lockers are specifically subject to random searches. The administrators also have master keys to all the lockers, making them truly public. As stated in *State v. Crystal B.*, 2001-NMSC-010, “particularized suspicion is required in order to justify a search at its inception.” The search was justified at its inception due to the belief that the students could have hidden the actual stolen object or other incriminating evidence in the lockers. This definition of a justifiable search is provided by *New Jersey v. T.L.O.*, 469 U.S. 325, and the search therefore passes the first prong in the standard that determines the legality of a search because of the expectation of finding evidence in the lockers. The search is relevant to the theft at the college due to the fact that the three students were placed at the scene of the incident during the riot, making them suspects.

This relevance allows the search to completely pass the two-prong standard, and it is justified on the same basis as the search of the phones.

4. Did the school officials have the right to search the backpacks?

The school officials **did** have the right to search the students' backpacks. As determined in *In re Doe*, 887 P.2d 645, 655 (Haw. 1994), *individualized suspicion* is needed "because a search of a student's wallet, purse or other bag carried on his or her person is undoubtedly a severe violation of subjective expectations of privacy". All three students had *individualized suspicion* because they were present at the scene of the theft during the time period in which it occurred as proved by the photos. Backpacks can reasonably be thought to hold evidence. The fact that no evidence was found is irrelevant. Say a police officer is informed of a theft in progress and he is given descriptions of a car, clothing the suspects are wearing, and the *modus operandi* of such persons—in other words, he has *individualized suspicion* for suspects of the theft. If he stops a car fitting this description, he has probable cause to pursue a search—whether through obtaining a warrant or through an exception to the warrant requirement (i.e. search incident to lawful arrests, plain view, automobile exception, hot pursuit etc.). Say no evidence is found and the suspects were not involved in the theft at all. *Individualized suspicion* made the officer liable to pursue all possible leads, whether or not they turned up evidence. The same concept applies to the search of the students. The school officials acted on the *individualized suspicion* set precedent by *New Jersey v. T.L.O.*, 469 U.S. 325, and the search of the backpacks was therefore legal.

III. Conclusion

Although the searches of the three students were performed without a warrant, they were legal. The decisions of *New Jersey v. T.L.O.*, 469 U.S. 325 are the basis for determining the

legality of warrantless searches in schools in New Mexico. The court established a two-prong standard for cases in which violation of the Fourth Amendment may have occurred. This standard is centered on whether or not *individualized suspicion* is present at a search's inception. All three students were suspects for the theft because they were not only present during the college riot, but they also took pictures of the stolen object. The school also had a policy on searches in place that was outlined to every student well before the incident. The school is obligated to ensure that the school grounds are a safe environment free of crime. Although school officials cannot prevent all crime, they can investigate possible crimes that involve students. So long as a search is reasonably based on *individualized suspicion* and the expectation of finding evidence, school officials have the right to conduct warrantless searches in order to promote the safety and wellbeing of others. School officials are to schools what police officers are to society.

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Name of Student: Jennifer Romero

Check One: Junior Senior

Word Count: 1496

Name of School: Oñate High School

Name of Teacher: Joel Hutchinson

School Phone: (575)
527-9430

School Street Address: 5700 Mesa Grande Drive

City: Las Cruces

Zip: 88011

I hereby certify that the essay I submit is my original work.

Student Signature *Jennifer Romero*

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