



The Remote Proctoring Room Scan Decision: How Test Providers Can Protect Against Legal Challenges

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- ***Ogletree v. Cleveland State Univ.*, 1:21-cv-00500 (N.D. Ohio Dec. 20, 2022)**
- **“How Public Test Offerors Can Minimize Legal Exposure in Light of *Ogletree v. Cleveland State University*,” CLEAR Exam Review; Winter 2023**



Parties and Court

- **Plaintiff: Aaron Ogletree, student at Cleveland State University**
- **Defendant: Cleveland State University (CSU)**
- **United State District Court, Northern District of Ohio (a federal trial court)**



Statement of the Case

- **“Plaintiff alleges that Defendant violated his rights under the Fourth Amendment [as applied to Ohio by the Due Process Clause of the Fourteenth Amendment] and seeks injunctive and declaratory relief.”**



Fourth Amendment

- The 4th Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.”
- Applicable only to government actors (e.g., state universities and licensing bodies)



Court's Decision

- “[T]he Court issues a declaratory judgment and permanently enjoins Cleveland State from violating Mr. Ogletree’s Fourth Amendment rights...”



Facts

- **Immunocompromised (Feb. 2021)**
- **Failed Daily Health Assessments**
- **Not allowed on campus for classes or exams**



Facts

- **General Chemistry II syllabus (Jan. 2021)—“Must show surroundings, screen, work area.”**
- **Objected to by Ogletree**
- **Removed by professor**



Facts

- **Feb 2021 test—Ogletree's bedroom**
- **Only suitable testing environment in the house**
- **Was informed of room scan two hours before test**



Facts

- Not enough time to organize and put away Form 1099s
- Ogletree was relying on the fact that the professor removed the scan requirement.
- Ogletree acquiesced and performed scan.



Legal Analysis

- **Fourth Amendment: When does a search become unreasonable?**
- **“A 4th Amendment search ‘occurs when the government violates: (1) a subjective expectation of privacy that; (2) society recognizes as reasonable.’”**



Legal Analysis

- **Was Ogletree's expectation of privacy reasonable?**
- **CSU argued that it was not. Room scans are an "industry-wide practice" and students "frequently acquiesce in their use."**



Was Ogletree's expectation of privacy reasonable?

- **One's home, especially one's bedroom, has heightened constitutional protection.**
- **What's the big deal?**
- **But, two-hours notice!?**



Test of Reasonableness

- **“Whether a particular search meets the reasonableness standard ‘is judged by balancing its: (1) intrusion on the individual’s 4th Amendment interests against its: (2) promotion of legitimate governmental interests.”**



CSU's Interests

- **Room scans facilitate proctoring of tests and academic fairness and integrity.**
- **Defendant has a legitimate purpose in preserving test integrity.**



Points Against CSU

- **1. Examinees can still cheat.**
“...[S]tudents could access their cell phones or notes in another room, since CSU does not require students to remain on camera for the duration of the test.”



Arguments Against CSU

- Therefore, the CSU room scan practice is not sufficient for preserving test integrity.
- (But, in reality, there is no foolproof way of preventing all cheating!)



Arguments Against CSU

- 2. The CSU room scan practice is not necessary for preserving test integrity.
- “Plaintiff points to other procedural safeguards...against cheating.”



Arguments Against CSU

- **Other procedural safeguards:**
- **Programs that prevent Internet access**
- **Recording students during tests**
- **Using artificial intelligence (AI) to detect suspicious movement or plagiarism**



Arguments Against CSU

- **3. CSU DOES NOT REQUIRE room scans and does not have a uniform policy.**
- **“[CSU has] a variable policy—enforced, unevenly, in the discretion of a combination of proctors and professors—of using remote scans...”**



Arguments Against CSU

- **“The decision [to require room scans] is left to individual faculty in their discretion—a policy that acknowledges that such means are not strictly necessary, but an available option among many.”**



Arguments Against CSU

- **4. Examinees are able to see the room scans of other examinees, thus increasing the privacy concerns.**
- ***(My understanding is that this is not usually the case with room scans.)***



Arguments Against CSU

- **5. Mr. Ogletree was given only two-hours notice.**
- **Apparently, the professor's change in the syllabus was not communicated adequately to the proctor.**



Court's Conclusion

- “[T]he Court concludes that Mr. Ogletree’s privacy interests in his home outweigh Cleveland State’s interests in scanning his room.”
- Unreasonable under the 4th Amendment



Precedential Weight

- **Binding precedent (controlling authority) only in the Northern District of Ohio**
- **Non-binding precedent (persuasive authority) elsewhere**
- **Precedential weight may be lessened by the factual anomalies of this case.**



Recommendations to Public Test Providers

- 1. Public testing bodies should implement written policies and practices that minimize the likelihood of cheating on remotely-proctored exams.



Recommendations to Public Test Providers

- **2. Public testing bodies should gather evidence that room scans for remotely-proctored tests enhance test security in ways that cannot be provided by other security measures.**



Recommendations to Public Test Providers

- **3. Public testing bodies should issue to test candidates written test policies and procedures and that are uniformly and consistently enforced.**



Recommendations to Public Test Providers

- **4. Room scans should not be visible to other examinees.**
- **5. All test candidates should be given adequate, written notice of all relevant matters.**



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Thank You

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