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LAW ENFORCEMENT OFFICERS IN PUBLIC SCHOOLS: STUDENT CITIZENS IN SAFE HAVENS?

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&
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Police involvement in school searches has become a controversial issue since the Supreme Court, in *New Jersey v. T.L.O.*,¹ refused to express an opinion on what constitutes a legal search when school officials act "in conjunction with or at the behest of law enforcement agencies."² The *T.L.O.* Court classified school personnel as state officials for Fourth Amendment purposes, but allowed them broad authority to conduct searches under the "reasonable suspicion" standard, a less restrictive standard than the "probable cause" standard generally required of police officers.³

However, the *T.L.O.* decision generates more questions than answers when police and security guards are involved in the investigation of students. This is especially true when trying to determine what standard applies to the search. When the fram-

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1. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). The initials T.L.O. stand for Terry Lee Owens the student involved in the case. At the time the case went to trial, Terry Lee Owens was 14 years old. Because she was a minor, the legal system protected her by identifying her with initials only. This means of identification is often used with minors.

2. *Id.* at 341, n.7.

3. *See id.* at 341.

ers of the United States Constitution included the Fourth Amendment in the Bill of Rights, they did so to protect the privacy and security of all Americans from arbitrary invasions by government officials. They did not anticipate that one day this country would have a large public school system, and that the school officials would be so concerned with violence and safety that they would need the assistance of the police in conducting student searches.

I. HISTORICAL BACKGROUND

The Fourth Amendment to the United States Constitution guarantees that "the right of 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 particularly describing the person or thing to be seized."⁴

For many years, the United States Supreme Court found the Fourth Amendment inapplicable to public school students. Up until the late 1960s, search and seizure was not really an issue in public schools. Accepted methods of discipline fell under the *in loco parentis* doctrine.⁵ *In loco parentis* means that school officials stood in the place of parents in maintaining supervision and discipline of students.

Teachers and administrators "enjoyed many of the same rights and privileges afforded to parents in matters of safety, discipline, and the general well-being of school children."⁶ More

4. U.S. CONST. amend. IV. It is important to note that the U.S. Constitution protects citizens only against unlawful interference or infringement of their rights by the government. Public school officials are considered government agents. Thus, while public school students are protected by the Bill of Rights, students in private schools are not.

5. The legal term for the relationship between teacher and student is *in loco parentis* or in the place of the parent. Blackstone, in his commentaries, stated:

a parent may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then in loco parentis, and has such a portion of the power of the parent committed to his charge, viz, that of restraint and correction, as may be necessary to answer the purposes for which he is employed.

1 WILLIAM BLACKSTONE, COMMENTARIES 453. Originally, *in loco parentis* gave teachers and administrators almost unlimited authority in disciplining students. The doctrine applied when students were in school, en route to and from school, and at school sponsored activities in and away from school.

over, under the doctrine of *in loco parentis*, school officials, like parents, were considered private individuals, not officials of the state.⁷ As a result, they were not subject to the constraints of probable cause and search warrants specified in the Fourth Amendment.

It followed that if parents could search their children and take from them things that they considered unacceptable, school officials could search the same children at school and seize materials deemed inappropriate in the school setting.⁸ In the case *In re Donaldson*,⁹ a California court of appeals held that in matters of discipline, the school stood *in loco parentis* which included the right of school officials to conduct searches.¹⁰ The *Donaldson* court even allowed the use of "moderate force" in obtaining obedience from students just as parents had the right to use force to gain obedience from their children.¹¹

By classifying school searches as falling under the *in loco parentis* theory, the courts were able to side step the question of applicability of the Fourth Amendment.

Thus, *T.L.O.* clarifies that the reasonableness standard applies to searches by school officials. As long as school searches were for harmless contraband, such as bubble-gum, spit balls, water pistols, or pea shooters, neither the courts nor anyone else gave much consideration to the rights of children to be free from teachers' searches. A handful of bubble-gum, if confiscated from a student's pocket, did not seem to raise a constitutional issue. However, once school officials began discovering illegal drugs and dangerous weapons like guns, knives, and razor blades on school property, search and seizure became an issue in public schools.¹²

6. M. Teresa Harris, *New Jersey v. T.L.O.: New Standard of Review or New Label?*, 9 AM. J. TRIAL ADVOC. 157, 163-64 (1985).

7. *See id.* at 164.

8. *See* David Alden Walls, *New Jersey v. T.L.O.: The Fourth Amendment Applied to School Searches*, 11 OKLA. CITY U. L. REV. 225, 230 (1986).

9. 75 Cal. Rptr. 220 (Cal. Ct. App. 1969).

10. *See id.* at 223. *See also* Dale Edward F.T. Zane, Note, *School Searches Under the Fourth Amendment: New Jersey v. T.L.O.*, 72 CORNELL L. REV. 368, 378 (1987).

11. *In re Donaldson*, 75 Cal. Rptr. at 223.

12. John C. Hogan and Mortimer D. Schwartz, *The Fourth Amendment and the Public Schools*, 7 WHITTIER L. REV. 527, 529 (1985).

No longer were students simply breaking the rules, they were committing crimes in school. School officials were confiscating evidence of those crimes and, in many instances, handing the evidence over to the police.¹³

As a result, the Supreme Court handed down the landmark case of *New Jersey v. T.L.O.* in 1985.¹⁴ The Court found that the Fourth Amendment prohibition of unreasonable searches and seizures applied to public school officials under the Fourteenth Amendment.¹⁵ *New Jersey v. T.L.O.* laid to rest the concept of *in loco parentis* as the basis for a school's authority: "In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as *representatives of the State*, not merely as surrogates for the parents, and they cannot claim the parents' immunity from the strictures of the Fourth Amendment."¹⁶

Even more important was the Court's establishment of the reasonable suspicion standard which clarified the criteria under which school officials could conduct student searches.¹⁷ However, the Court refused to clarify what constituted a legal student search by school officials working with the police. This paper attempts to outline what constitutes a legal search in such circumstances.

The remainder of this article is divided into the following parts. Part II examines issues of school safety and violence, setting the stage for understanding the nature of police involvement in schools and why it has become such an important legal issue. Part III describes students' Fourth Amendment rights in schools and the legal standards used in conducting student searches. Part IV concentrates on the doctrines to consider in

13. In many states school officials are required by law to hand over to police any evidence of a crime committed in school. Common types of evidence confiscated from students include drugs, drug paraphernalia, weapons, and money. See generally CONN. GEN. STAT. ANN. § 10-154a (West 1998).

14. 469 U.S. 325 (1985).

15. "It is now beyond dispute that 'the Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by *state officer*s.'" *Id.* at 334 (quoting *Elkins v. United States*, 364 U.S. 206, 213 (1960)) (emphasis added).

16. *Id.* at 336-37 (emphasis added).

17. See *id.* at 342. Under the reasonable suspicion standard, school officials must have a reasonable belief that the search will uncover evidence that the student(s) committed a crime or violated a school rule. They must also limit the search so that it is not excessively intrusive in light of the age and sex of the student(s) and the nature of the offense.

framing a standard to be used when police are involved in school searches. Part V discusses the standards used when police are involved in school searches. Part VI discusses the dilemma raised due to the ambiguous role of school security guards, who may act as school officials or law enforcement officers. Part VII summarizes the legal issues and problems arising from police involvement in schools and proposes that students be subject to the same legal standards as adults when police and security guards are involved in school searches.

II. SCHOOL SAFETY AND VIOLENCE

A. *The Rise of Police Involvement in Public Schools*

At the time *New Jersey v. T.L.O.*¹⁸ was decided, there was mounting concern for the safety of students in public schools. In the opinion, Justice White stated:

Against the child's interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems.¹⁹

Justice White made reference to a 1978 study by the National Institute of Education, (NIE) which surveyed principals, teachers, and students on the large extent of criminal activity in schools across the nation.²⁰ The NIE survey, however, was only

18. 469 U.S. 325 (1985).

19. *Id.* at 339.

20. *Id.*; See Keith Baker, *Research Evidence of a School Discipline Problem*, PHI DELTA KAPPAN, March 1985, at 483-85 (noting that in the NIE study, data on criminal activity were gathered on a monthly basis and included the following statistics during the period studied: 282,000 students were physically attacked; 112,000 students were robbed through force, weapons or threat; 2.4 million students had personal property stolen; 800,000 students stayed home because they were afraid to attend school; 6,000 teachers were robbed; 1,000 teachers were assaulted and required medical attention; 125,000 teachers were threatened with physical harm; more than 125,000 teachers encountered at least one situation in which they were afraid to confront misbehaving students; one out of two teachers was on the receiving end of an insult or obscene gesture; 2,400 fires were set in schools; 13,000 thefts of school property occurred; 24,000 incidents of vandalism occurred; 42,000 cases of damage to school property occurred).

one of a series of surveys on school violence conducted at that time.²¹

President Ronald Reagan made school safety an issue in a 1984 radio address. Pointing out that violence in schools negatively affects learning and teaching, Reagan called on the country to begin solving discipline problems.²² At the same time, he directed the Justice Department to establish the National School Safety Center (NSSC). Funded by a grant from the office of Juvenile Justice and Delinquency Prevention, the NSSC focused on providing a central headquarters to help school board members, educators, law enforcement officials, lawyers, community leaders, and the general public promote safety and academic excellence.²³

In the early 1990s there was even more public concern for school safety. The results of polls conducted by a variety of organizations ranging from the Metropolitan Life Insurance Company to the National Rifle Association reflected these concerns.²⁴

21. See Gary L. Bauer, *Restoring Order to Public Schools*, PHI DELTA KAPPAN, March 1985, at 490 (noting that in 1983, two years before *T.L.O.* was decided, the *Detroit Free Press* surveyed Michigan teachers and found that 46 percent had been threatened with violence during the past year; one out of five had been assaulted by a student. In the same year, a Boston study found that 63 crimes had occurred for each 100 students, and one out of four high school students admitted to carrying a weapon to school. Further, half of Boston's teachers had been victims of crime five or more times during the school year. And another survey, conducted by the National Education Association, found that 28 percent of all teachers across the nation had been victims of theft or vandalism; 4.2 percent had been attacked by students; and over 90 percent of teachers surveyed stated that student misbehavior had "deleterious" effects on their teaching).

22. See Ronald Reagan, *The President's Radio Address to the Nation on Education*, reproduced in AM. EDUC., Jan.-Feb. 1984, at 2-3.

23. See George Nicholson, *An Introduction to the National School Safety Center*, PHI DELTA KAPPAN, March 1985, at 492.

24. See *CNN News: NSBA Study Shows Increased Violence within Schools* (CNN television broadcast, Jan. 5, 1994) (transcript on file with author) (noting that in its survey of over 700 school districts representing thousands of schools, the National School Boards Association found that violence had increased 82 percent over the last five years, crippling students' ability to learn); *How School Districts are Responding to Violence*, EDUC. USA, Jan. 17, 1994, at 6 (showing a large majority of school officials believed school violence had increased during the previous five years and that three-fourths of the 720 who responded to the NSBA poll reported that their schools had dealt with violent student-on-student incidents in 1993, and 13 percent reported a knifing or shooting); *Back to School Survey*, ATLANTA J. & CONST., Aug. 5, 1993 (noting that the National Rifle Association found that one-third of parents surveyed worried about gun violence in schools and that twenty percent of the parents reported that their children were concerned about the presence of guns in schools) *Survey Finds School Violence Hits 1 in 4 Students*, N.Y. TIMES, Dec. 17, 1993, at 37 (reporting that in the

At the same time, the media reported numerous instances of shootings and other violent incidents in schools.²⁵ These occurrences often involved the police.²⁶ As Jessica Portner noted:

Metropolitan Life Insurance Company (MetLife) survey, nearly one in four students and one in ten teachers said they had been victims of violence on or near school property).

25. See, e.g., WEAPONS: A DEADLY ROLE IN THE DRAMA OF SCHOOL VIOLENCE, CENTER NEWS SERVICE, 1993 (noting how, in Junction City, Kansas, a 14-year-old was accidentally shot in the head after an argument between boys resulted in gunfire and on that same day, in Atlanta, Georgia, a 15-year-old student was shot and killed in a crowded lunch room by a fellow student with whom he had been feuding, wounding another student in the scuffle); Carol Innerst, *Pistol Packing Kids Put Schools on Alert: School Officials Find More Students Armed*, WASH. TIMES, Aug. 23, 1993, at 1A (stating that in Queen Annes County, Maryland, there have been incidents involving middle school children carrying guns and in Montgomery County schools, incidents of students carrying and using guns, stunners, and localizers quadrupled).

26. See Sam Dillon, *On the Barricades Against Violence in Schools: As Fears over Security Grow, New York's School Safety Force Struggles to Keep Up*, N.Y. TIMES, Dec. 24, 1993, at B1 (stating that 3,000 uniformed, but unarmed, security officers are posted in schools throughout New York City, their main mission—to protect students and staff, and that the force is the country's ninth largest police agency with 990 vehicles and a budget of 73 million dollars); Alison Mitchell, *Giuliani Sees Role for Police in the Schools*, N.Y. TIMES, Nov. 9, 1993, at B1 (reporting that school police, though armed with only handcuffs and radios, are peace officers with authority to make arrests and they have their own training academy and report to the Board of Education's Division of School Safety); Joseph P. Fried, *Queens Experiment to Fight School Violence*, N.Y. TIMES, Nov. 11, 1993, at B5 (reporting that school officials and community members at Rockaway High School in Queens, New York want a more expanded police presence to help faculty teach students about the dangers of guns and violence and to resolve conflict in nonviolent ways); Todd J. Gillman, *Securing Our Schools: Badges in the Halls*, DALLAS MORNING NEWS, Oct. 18, 1993, at 1A (reporting that forty-six school districts in Texas have their own police departments that handle gang violence); Aline McKenzie, *Mesquite District Approves Police in Schools*, DALLAS MORNING NEWS, July 15, 1993, at 12 (reporting that like other school police in Texas, these resource officers wear uniforms, are armed, and their primary function is to provide increased security and to teach and counsel students); Carol Innerst, *Pistol Packing Kids Put Schools on Alert: School Officials Find More Students Armed*, WASH. TIMES, Aug. 23, 1993, at 1A (reporting that in Oakland and Los Angeles, California, and even in places as small as Oakeville, Wyoming, bullet drills are commonplace, and in Tacoma, Washington, security officers and principals wear bullet proof vests); Rochelle L. Stanfield, *Safe Passage*, NAT'L J., Sept. 25, 1993, at 2305 (reporting that in Indianapolis school security officers meet sixth to twelfth graders as they walk into school); Lauren Robinson, *\$16.3 Million is Asked for Safer Schools: Boston Task Force Targets Violence*, BOSTON GLOBE, June 24, 1992, at 2 (reporting that Boston's City-wide Youth Safety Committee has requested 16.3 million dollars to be spent over the next three years to stop violence in public schools); Susan Reed, *Reading, Writing, and Murder*, PEOPLE, June 14, 1993, at 44 (noting that teachers in Rochester, New York placed safety ahead of salary in their labor negotiations, and in Dade County, Florida, 14 million dollars was budgeted for school security); Laura Wisniewski, *State Plans Task Force on Violence in Schools*, ATLANTA J., July, 20, 1993, at D1 (noting that an Atlanta task force comprised of educators, law enforcement officials, and business leaders sought creative solutions to school violence other than metal detectors and police officers).

[T]wenty years ago, most school officials would never have dreamed of allocating their precious resources to hire armed police to protect campuses. If increased security was required for a football game or a school dance, a district typically hired security officers for the night. . . . Today, more than 50 school districts have spent millions of dollars to set up professionally trained school police forces that operate around the clock. In the late 1970s, there were fewer than 100 school police officers in the United States. Today, there are more than 2,000.²⁷

Shortly after Portner made her observations, Congress passed the Safe Schools Act of 1994. This act, among other things, allowed school districts with high rates of crime, violence, and disciplinary problems to compete for federal grants.²⁸ These grants could be used for a variety of violence prevention and school safety issues. Up to one-third of each grant could be spent on metal detectors or hiring security guards.²⁹ While this federal program focused on developing long-term goals and strategies to prevent violence in schools, the framers of this legislation also recognized a need to increase the presence of security guards in schools. Thus police and quasi law enforcement officers became increasingly involved in public schools for a variety of reasons ranging from protection of students to education programs, such as peer mediation and crime prevention.

B. The Nature of Police Involvement in Public Schools

Police involvement in searches may take on many faces, such as patrolling schools, participating in crime-prevention programs, teaching about drug abuse and prevention, and dealing with truancy. It can also ultimately affect students' Fourth Amendment rights. There are a variety of ways police become involved in school searches.

27. Jessica Portner, *Cops on Campus*, 13 EDUC. WEEK 26, 30, June 22, 1994.

28. See 20 U.S.C. §§ 5961, 5962 (1998). School districts that develop a comprehensive, long term plan to combat and prevent violence could receive as much as three million dollars per year for a period of up to two years. School districts, however, must be able to show evidence that they have experienced a high rate of murders committed by youth; school expulsions, suspensions, or alternative placements; youth involvement in the criminal justice system; and crimes in which youth are victims.

29. See *id.* at § 5965(a)(13).

First, police may give tips to school officials that a crime has been committed or is about to be committed on school property. In this situation the police have shared information with school administrators but have not told them what to do with the information. Second, police may give tips to school security guards. The information shared usually relates to criminal activity, warning the guards that a crime has been committed on school property. Third, police may become involved in school searches when they investigate a crime that started outside of school. Fourth, school officials may request police presence to witness a search or to act as consultants.³⁰ Fifth, police are involved in school searches when they are called into school to help with a discipline problem and end up conducting an investigation and then a search. In the latter situation, police may be the fact finders, make the decision to search, and direct and conduct the search with the outcome being possible criminal prosecution for the student. Police may also simply “stand by” while school officials conduct a search. In this latter capacity, police are present but involved neither in the fact-finding nor in the search. Sixth, police may be involved in school searches when they are hired by school districts. In such situations, police help deter crime by patrolling the halls and school grounds. Finally, they also do routine police work in a school setting.³¹

School security guards are also involved in school searches. Because these guards are hired to assist with school safety and discipline, they are in a unique position to witness a crime occurring and to conduct a search. As employees of the school district, they are familiar with their assigned school. They get to know students and staff and gain their trust. As a result they develop networks of communication, which provide crucial information that leads to finding students who have broken school rules, who have committed a crime, or who are about to commit a crime.³²

30. See, e.g., LAWRENCE F. ROSSOW & JACQUELINE A. STEFKOVICH, *SEARCH AND SEIZURE IN PUBLIC SCHOOLS* (2d ed. 1995).

31. See *id.*

32. See Judith A. Miller, *How Police Involvement in Public School Searches Creates a Dilemma in Determining the Applicable Fourth Amendment Standard: Reasonable Suspicion or Probable Cause* (1996) (unpublished Ed.D. dissertation, Temple University) (on file with author).

Security guards become involved in school searches when they receive a tip from the police or when they assist a school administrator with a search. As part of their job, school security officers often patrol parking lots, which could result in searching students or their automobiles. Finally, security officers may be involved in school searches through the use of metal detectors. They may use hand-held detectors or install monitor detectors that are installed to search students and staff for weapons.³³

III. *New Jersey v. T.L.O.*: THE STANDARD FOR SEARCHING STUDENTS IN PUBLIC SCHOOLS

New Jersey v. T.L.O. was the first Supreme Court opinion to address the Fourth Amendment rights of students in public schools.³⁴ The Court set a reasonableness standard for searching students.³⁵ Although the standard of reasonableness was clearly defined in *T.L.O.*, the Court's decision was limited to personal searches of individual students by school administrators and did not address the standard needed for school searches involving police officers.³⁶

A. Facts of *New Jersey v. T.L.O.*

In 1980, at Piscataway (New Jersey) High School, a teacher discovered two students smoking in a lavatory.³⁷ One of the students was T.L.O., a fourteen-year-old ninth grade student.³⁸ The teacher took both students to the office because smoking was a violation of school rules.³⁹ The assistant principal, Ted Choplick, questioned both students.⁴⁰ T.L.O.'s companion admitted that she had been smoking and so was suspended. T.L.O., however, denied that she had been smoking in the lavatory. She also claimed that she did not smoke at all.⁴¹

33. *See id.*

34. 469 U.S. 325 (1985).

35. *See id.* at 341.

36. *See id.* at 342-43.

37. *See id.* at 328.

38. *See id.*

39. *See T.L.O.*, 469 U.S. at 328.

40. *See id.*

41. *See id.*

At that point in the investigation, the assistant principal asked T.L.O. to come into his office.⁴² He demanded to see her purse.⁴³ When he opened T.L.O.'s purse, he found a pack of cigarettes.⁴⁴ He then removed the cigarettes from the purse.⁴⁵ In the process of removing the cigarettes, he also saw a package of cigarette rolling papers.⁴⁶ The assistant principal's previous experience had led him to the conclusion that possession of rolling papers by high school students was associated with marijuana use.⁴⁷ This led him to search T.L.O.'s purse for further evidence of drug use.⁴⁸ His search revealed a small amount of marijuana, a pipe, a number of empty plastic bags, a substantial quantity of one dollar bills, an index card containing a list of students who owed T.L.O. money, and two letters implicating T.L.O. in marijuana dealing.⁴⁹ The assistant principal notified T.L.O.'s mother and the police and turned over to the police evidence of T.L.O.'s drug dealing.⁵⁰ At the police station, T.L.O., in the presence of her mother and the police, admitted to selling marijuana in school.⁵¹

B. Procedural History of *New Jersey v. T.L.O.*

The State brought delinquency charges against T.L.O. based on her confession and the evidence seized by the assistant principal.⁵² T.L.O. contended that the assistant principal's search of her purse violated her Fourth Amendment rights.⁵³ As a result, she moved to suppress the evidence found in her purse. She also moved to suppress her confession, which she claimed was tainted by the allegedly unlawful search.⁵⁴ Finding the search reasonable, the juvenile court denied T.L.O.'s motion to suppress the evidence.⁵⁵ The court held that T.L.O. was a delinquent and

42. *See id.*

43. *See id.*

44. *See T.L.O.*, 469 U.S. at 328.

45. *See id.*

46. *See id.*

47. *See id.*

48. *See id.*

49. *See T.L.O.*, 469 U.S. at 328.

50. *See id.*

51. *See id.* at 328-29.

52. *See id.* at 329.

53. *See id.*

54. *See T.L.O.*, 469 U.S. at 329.

55. *See id.* at 328.

sentenced her to one year of probation.⁵⁶ On appeal, a divided state court affirmed the finding that the search was reasonable but vacated the delinquency judgment.⁵⁷ The case was remanded to determine "whether T.L.O. had knowingly and voluntarily waived her Fifth Amendment rights before confessing."⁵⁸

T.L.O. appealed the court's ruling that the search was legal under the Fourth Amendment.⁵⁹ The New Jersey Supreme Court agreed with the lower courts that the Fourth Amendment applies to school officials but held that the search conducted by Mr. Choplick was unreasonable.⁶⁰ The school rule that T.L.O. was accused of violating was smoking in the lavatory.⁶¹ Possession of cigarettes, as revealed by the search, was not in violation of school rules.⁶² Hence, the search was not justified.⁶³ Moreover, Mr. Choplick had no reasonable suspicion that T.L.O. possessed cigarettes.⁶⁴ Finally, the court held that the evidence of drug use Mr. Choplick found in the purse did not justify his "rummaging" through its contents.⁶⁵ The New Jersey Supreme Court also maintained that the exclusionary rule is applicable to juvenile proceedings.⁶⁶ Therefore, if school officials violate a student's Fourth Amendment rights through means of an illegal search, then evidence confiscated during the search would not be admissible in subsequent criminal proceedings.⁶⁷

The State of New Jersey appealed this decision to the United States Supreme Court on the exclusionary issue only.⁶⁸ On appeal the question was "whether the exclusionary rule should operate to bar consideration in juvenile delinquency proceedings of evidence unlawfully seized by a school official without the involvement of law enforcement officers."⁶⁹ The Supreme Court granted certiorari but, upon reconsideration, decided this ques-

56. *See id.* at 330.

57. *See id.*

58. *Id.*

59. *See T.L.O.*, 469 U.S. at 330.

60. *See id.* at 330-31.

61. *See id.* at 328.

62. *See id.* at 331.

63. *See id.*

64. *See T.L.O.*, 469 U.S. at 331.

65. *See id.*

66. *See id.* at 330.

67. *See id.* at 331.

68. *See id.*

69. *T.L.O.*, 469 U.S. at 331.

tion could not be answered in isolation from the Fourth Amendment issue.⁷⁰ After hearing arguments from both sides, the Supreme Court ruled that the search of T.L.O.'s purse was reasonable and did not violate the Fourth Amendment.⁷¹ Because the search was legal, the New Jersey Supreme Court's decision to exclude the evidence was erroneous.⁷² However, the Court reserved opinion about whether the exclusionary rule would apply if the search had been illegal.⁷³ The Court stated:

[I]n holding that the search of T.L.O.'s purse did not violate the Fourth Amendment, we do not implicitly determine that the exclusionary rule applies to the fruits of unlawful searches conducted by school authorities. The question whether evidence should be excluded from a criminal proceeding involves two distinct inquiries: whether the evidence was seized in violation of the Fourth Amendment, and whether the exclusionary rule is the appropriate remedy for the violation. Neither question is logically antecedent to the other, for a negative answer to either question is sufficient to dispose of the case. Thus, our determination that the search at issue in this case did not violate the Fourth Amendment implies no particular resolution of the question of the applicability of the exclusionary rule.⁷⁴

C. The *T.L.O.* Standard for School Searches

T.L.O. is important because it set reasonable suspicion as the standard for searching students in public schools.⁷⁵ This means that a school official may properly conduct a search of a student if, in consideration of all the circumstances, the official has a reasonable belief that a crime or violation of school rules has been, or is in the process of being, committed.⁷⁶ To determine whether reasonable suspicion existed, the court developed a two prong test.⁷⁷ First, the search must be justified at its inception, (i.e., school officials from the very beginning must reasonably believe that the search will uncover evidence of a viola-

70. See *id.* at 332.

71. See *Id.* at 332-33.

72. See *Id.* at 348.

73. See *Id.* at 333 n.3.

74. *T.L.O.*, 469 U.S. at 333.

75. See *Id.* at 341.

76. See *Id.* at 341-42.

77. See *Id.* at 341.

tion of law or a school rule).⁷⁸ Second, the scope of the search must be "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."⁷⁹

The reasonable suspicion standard is different from the stricter Fourth Amendment probable cause standard the police must meet to search citizens. Probable cause exists "when facts and circumstances within an officer's knowledge and of which he has reasonable trustworthy information are sufficient to warrant a man of reasonable caution in believing that an offense has been or is being committed."⁸⁰ The police generally need to present this information to a magistrate to secure a warrant to search. On the other hand, the U.S. Supreme Court has found that absolute application of this rule in all situations would greatly hamper police work. For this reason, the Court created exceptions to the warrant requirement.⁸¹

The reasonable suspicion standard affords students in schools fewer protections than are normally afforded to citizens under the stricter probable cause standard. The reason for this is that the rights of students in schools must be balanced against the administrator's duty to maintain order and discipline in school.⁸² In *T.L.O.* the Court found that "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment . . . [and] would unduly interfere with the mainte-

78. *Id.* at 341-42.

79. *T.L.O.*, 469 U.S. at 342.

80. BLACK'S LAW DICTIONARY 1081 (6th ed. 1990).

81. See RICHARD D. STRAHAN & CHARLES TURNER, *THE COURTS AND THE SCHOOL ADMINISTRATOR AND LEGAL RISK MANAGEMENT TODAY* 134 (Longman Press, New York) (1987). When police search ordinary citizens, they need probable cause and a warrant unless they search under one of the exceptions to the warrant requirement. These exceptions include searches conducted: (a) incident to a valid arrest; (b) under exigent circumstances (generally used to ensure that evidence is not destroyed, when there is danger to life, or when police are in "hot pursuit" of a suspect who would otherwise escape); (c) when evidence is in "plain view"; (d) after consent is obtained; (e) relative to the "stop and frisk" doctrine and (f) as inspections or regulatory searches. If there is an exception to the warrant requirement, then the reasonable suspicion standard or the probable cause standard or neither may apply depending upon the exception or the circumstances. For instance, consent requires no suspicion at all, while "stop and frisk" searches require some suspicion but not probable cause.

82. *T.L.O.*, 469 U.S. at 339.

nance of swift and informal disciplinary procedures needed in the schools."⁸³

Furthermore, the *T.L.O.* court maintained that by focusing attention on the question of reasonableness, this standard would:

[S]pare [school officials] the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense. At the same time, the reasonableness standard should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools.⁸⁴

Thus, *T.L.O.* clarifies that the reasonableness standard applies to searches by school officials.

IV. DOCTRINES TO CONSIDER IN FRAMING A STANDARD FOR POLICE INVOLVEMENT IN SCHOOL SEARCHES

While *T.L.O.* established the standard for public school officials to search students in schools, the decision did not state which standard would apply to searches by the police in schools. The Court observed:

We here consider only searches carried out by school authorities acting alone and on their own authority. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question.⁸⁵

Neither did the *T.L.O.* court speak of the standard that should be applied to those in the schools performing quasi police functions, such as security guards.

Before discussing these standards in any depth, several bright-line laws created by the courts need to be considered. First, police (who are generally required to use a probable cause standard in conducting searches) may not use school officials

83. *Id.*

84. *Id.* at 343.

85. *Id.* at 341 n.7.

(who have the lesser standard of reasonable suspicion) to search students and then ask the officials to hand them the evidence on a "silver platter."⁸⁶ Similarly, the appropriate standard for police-related searches in schools will be determined by who is the agent of the search. Finally, as mentioned earlier, the exclusionary rule states that evidence obtained through an illegal search may not be used in subsequent criminal proceedings.

A. *The Silver Platter Doctrine*

At the time of the U.S. Supreme Court's decision in *T.L.O.*, there was concern that police would abuse the reasonable suspicion standard. When the Supreme Court agreed to hear the *T.L.O.* case, the American Civil Liberties Union (ACLU) wrote an *amicus curiae* brief⁸⁷ requesting the Court to apply the probable cause standard to the search and seizure of a juvenile by a school official or to affirm the decision of the New Jersey Supreme Court.⁸⁸ The ACLU argued that juvenile students, like adults, are *persons* whose rights are protected from intrusion by the U.S. Constitution.⁸⁹

The ACLU was further concerned that the reasonable suspicion standard would infringe on students' rights by allowing police to receive evidence of a crime from school officials without having to enter the school, without satisfying the requirement of probable cause, and without obtaining a warrant. Moreover, under the reasonable suspicion standard this evidence could be used to convict a student of a crime. What made the reasonable suspicion standard even more of a concern at the time was the existence in some states (like New Jersey) of a mandate requir-

86. *Elkins v. United States*, 364 U.S. 206, 208 (1960).

87. *Amicus curiae*, or friend of the court is defined as:

A person with strong interest in or views on the subject matter of an action may petition the court for permission to file a brief, ostensibly on behalf of a party but actually to suggest a rationale consistent with its own views. Such *amicus curiae* briefs are commonly filed in appeals concerning matters of a broad public interest.

BLACK'S LAW DICTIONARY 82 (6th ed. 1990). In *T.L.O.* the broad public interest was the violation of a student's Fourth Amendment right to be free from unlawful search and seizure.

88. See *Amicus Curiae Brief of the American Civil Liberties Union and the American Civil Liberties Union of New Jersey in support of affirmance for Respondent at 39, New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (No. 83-712) (on file with author) [hereinafter *Amicus Curiae Brief*].

89. See *id.* at 3.

ing school officials to report any criminal acts to the police.⁹⁰ Similarly, local school boards had policies requiring school officials to notify the police when a crime had been committed in school. This factor strengthened the ACLU's argument in favor of applying the exclusionary rule in T.L.O.'s case.⁹¹

The thrust of this argument was that school officials would be able to search a student under a lesser standard, obtain evidence of a crime, and turn that evidence over to police "on a silver platter" for use in the criminal prosecution of the student.⁹² The ACLU argued that, just as the Court had struck down the silver platter doctrine in *Elkins v. United States*,⁹³ the Court should not allow the police to benefit from a rule permitting school officials such broad discretion in conducting searches under the guise of maintaining discipline.⁹⁴

B. Agency Theory

Commentators have voiced concern about the danger of police abuse of the reasonable suspicion standard. This concern emanates from the Court's refusal to delineate a standard governing school searches in conjunction with or at the behest of law enforcement agencies.⁹⁵ What is the appropriate standard to

90. *See id.*

91. *See id.* at 4. In its brief the ACLU explained that "applying the exclusionary rule would inhibit collusion between school officials and the police, deter arbitrary and unchecked searches of students by school officials, and provide a meaningful mechanism for discouraging unwarranted invasions of the right of juveniles to be secure from unreasonable searches and seizures."

92. *Amicus Curiae Brief, supra* note 87 at 23. The silver platter doctrine allowed evidence obtained illegally by state officials to be admissible in federal prosecutions because no federal official had participated in the violation of the defendant's rights. The doctrine was struck down in *Elkins v. United States*, 364 U.S. 206 (1960), when the Supreme Court noted that such a distinction became patently illogical once the Fourth Amendment became applicable to the States.

93. 364 U.S. 206, 223 (1960).

94. *See id.* at 221-22. As the Court reasoned in *Elkins*, although cooperation between various governmental entities is to be encouraged, where one of those entities is not entitled to conduct a search in order to obtain evidence, it can neither directly nor indirectly encourage another entity to obtain such evidence nor accept such evidence from the other governmental entity. *See also Amicus Curiae Brief, supra* note 87 at 23.

95. *See, e.g.,* Patrick K. Perrin, Comment, *Fourth Amendment Protection in the School Environment: The Colorado Supreme Court's Application of the Reasonable Suspicion Standard in State v. P.E.A.*, 61 U. COLO. L. REV. 153, 169 (1990) (noting that school searches are the only category of searches that allow a full-scale search for evidence of criminal wrongdoing based on less than probable cause, and that the flexible reasonable suspicion standard could lead to abuses by school officials and the

apply when police become involved in school searches? Professor Van Geel commented on the dilemma associated with the standard: "When police collaborate with school officials in student searches, the collaboration is often viewed as a police search, invoking the stricter probable cause standard. [Knowing this,] school officials might tend to shy away from working with police which could lead to no collaboration or possibly covert collaboration."⁹⁶ On the other hand, "when police and school officials collaborate extensively, a real danger exists that the police will try to circumvent the stricter probable cause standard in favor of the less stringent reasonable suspicion standard."⁹⁷

The problem with identifying the appropriate standard in schools is the difficulty in determining whether the police are acting alone, or as agents of the school, or if school officials conducting the searches are acting as agents of the police. Several courts have proposed tests to determine whether an agency relationship exists. In *Illinois v. Gates*,⁹⁸ the United States Supreme Court proposed that in deciding whether a search was valid, a "totality of the circumstances" must be considered. In *State v. P.E.A.* the Colorado Supreme Court interpreted this test as also applying to a determination of agency.⁹⁹

The Ninth Circuit in *U.S. v. Snowadzki*¹⁰⁰ provided a more specific test to determine whether an agency relationship exists. This test, however, relies heavily on the subjective state of mind of school officials and police.¹⁰¹ This test has two parts: whether the government knew of and acquiesced in the intrusive conduct (search) and whether the party (school official or school security officer) intended to assist law enforcement efforts or to further his own ends.¹⁰²

police).

96. Tyll Van Geel, *The Safe & Orderly School*, THE COURTS AND AMERICAN EDUCATION LAW 315, 334-35 (1987).

97. *Id.* at 335.

98. 462 U.S. 213, 238 (1983). See also *Williams by Williams v. Ellington*, 936 F.2d 881 (6th Cir. 1991) (quoting *Alabama v. White*, 110 S.Ct. 2412 (1990)) (maintaining that totality of the circumstances is also applicable to the reasonable suspicion standard).

99. 754 P.2d 382, 385 (Colo. 1988).

100. 723 F.2d 1427 (9th Cir. 1984).

101. See *Perrin*, *supra* note 95, at 172.

102. See *id.* at 171-72.

C. *The Exclusionary Rule*

Many commentators favor applying the exclusionary rule to evidence obtained in searches of students by school officials and turned over to the police.¹⁰³ One reason for this is that the exclusionary rule acts as a deterrent to law enforcement officials by keeping them from engaging in unconstitutional searches. Another reason is that judicial integrity is at stake if the court allows the use of tainted evidence.¹⁰⁴ A third reason is that the government should not profit from its own wrongdoing. This means that if the government discovers evidence in an unlawful search, it should not benefit from its own lawlessness by using tainted evidence. Commentators argue that when such occurrences happen in schools, students who see their teachers engaging in unlawful searches without consequences will not be encouraged to obey the law.¹⁰⁵

These concerns are not unlike those of Justice Brennan who dissented against setting aside the probable cause standard for determining the validity of a school search.¹⁰⁶ Expressing his concern over the importance of student privacy issues, Justice Brennan stated in *T.L.O.* that "the Court fails to cite any case in which a full-scale intrusion upon privacy interests has been justified on less than probable cause."¹⁰⁷ He noted that "categories of intrusions that are substantially less intrusive than full-scale searches and seizures may be justifiable in accordance with a balancing test even absent a warrant or probable cause, provided that the balancing test used gives sufficient weight to the privacy interests that will be infringed."¹⁰⁸ Justice Brennan goes even further, stating that school districts should consult court decisions and other legal materials and "prepare a booklet expounding the rough outlines of the concept [of probable cause

103. See, e.g., Charles W. Harden, Jr., *Searching Public Schools: T.L.O. and the Exclusionary Rule*, 47 OHIO ST. L.J. 1099, 1111-14 (1988).

104. See *id.* n.104 at 112-13. "If a court tolerates official lawlessness by allowing use of tainted evidence seized by a school authority, students 'cannot help but feel they have been dealt with unfairly' and their once well-founded respect for the judiciary may be forever lost."

105. See *id.* See also Jefferson L. Johnson and Donald W. Crawley, *T.L.O. and the Student's Right to Privacy*, 36 EDUC. THEORY 211, 221 (1986).

106. See *T.L.O.*, 469 U.S. at 354 (1985) (Brennan, J., dissenting).

107. *Id.* at 360.

108. *Id.* at 355.

and distribute it to teachers to] . . . provide them with guidance as to when a search may be lawfully conducted."¹⁰⁹

Similarly, Justice Stevens in his *T.L.O.* dissent, expressed the fear that the reasonable suspicion standard would allow school officials to search students under suspicion of the "most trivial" violations of school rules.¹¹⁰ "For the Court, a search for curlers and sunglasses in order to enforce the school dress code is apparently just as important as a search for evidence of heroin addiction or violent gang activity."¹¹¹ Stevens argued that the *T.L.O.* decision would permit school administrators to search students to enforce school rules in a wide variety of situations, including secret societies, use of parking lots, attendance at athletic events, and unauthorized absences.¹¹²

While Justice Stevens was willing to adopt an exception to the warrant requirement, he believed that the appropriate standard would permit a search only when a school official had reason to believe that "the search will uncover *evidence that the student is violating the law or engaging in conduct that is seriously disruptive of school order, or the educational process.*"¹¹³ In his conclusion, Justice Stevens stated, "The rule the Court adopts today is so open-ended that it may make the Fourth Amendment virtually meaningless in the school context. Although I agree that school administrators must have broad latitude to maintain order and discipline in our classrooms, that authority is not unlimited."¹¹⁴

A number of commentators agreed with Stevens' view that the "reasonableness under all the circumstances" test leaves itself open to abuse.¹¹⁵ One school official's definition of reasonable may not agree with that of another official.¹¹⁶ Such discrep

109. *Id.* at 365-66. This argument, however, overlooks the difficulty that even experienced police officers sometimes have in understanding and applying the probable cause standard.

110. *Id.* at 371 (Stevens, J., dissenting).

111. *T.L.O.*, 469 U.S. at 377 (1985).

112. *See id.* at 377 n.16.

113. *Id.* at 378 (emphasis in original).

114. *Id.* at 385.

115. *See, e.g.,* John A. Hamilton, *The United States Supreme Court's Erosion of Fourth Amendment Rights: The Trend Continues*, 30 S.D. L. REV. 574, 594-95 (1985).

116. *See id.* But see Joseph R. McKinney, *The Fourth Amendment and the Public Schools: Reasonable Suspicion in the 1990s*, 91 ED. LAW REP. 455, 457 (1994); J.M. Sanchez, *Expelling the Fourth Amendment from American Schools: Students' Rights Six Years after T.L.O.*, 21 J.L. & EDUC. 381, 409 (noting that the vast majority of Fourth

ancies leave the door wide open for police to abuse the reasonable suspicion standard by using, in a subsequent criminal proceeding, evidence gathered in a search of a student who broke a school rule.¹¹⁷

V. STANDARDS USED WHEN POLICE ARE INVOLVED IN SCHOOL SEARCHES

While *T.L.O.* did not specifically address the standard to be used when police and school security guards are involved in school searches, lower courts and legal commentators have offered opinions on this topic. A review of cases and commentary implies that the standard may vary depending upon the nature of the involvement. The more that police and security guards are involved in the investigation leading up to the search, in the decision to search, and in the actual search, the more likely the court will enforce the stricter probable cause standard. When involvement is limited, courts are more apt to allow the search under the reasonable suspicion standard.

A. *The Probable Cause Standard*

In general, the probable cause standard is required when the police initiate the search or when the search is done at the behest of the police.¹¹⁸ When school officials search at the urging of the police, they act as agents of the police. In such situations, police are involved before the actual search. For example, in *Picha v. Wieglos*,¹¹⁹ a phone call tipped off school officials that a student was in possession of illegal drugs.¹²⁰ School officials called the police before gathering any additional facts.¹²¹ The reason for involving police was to uncover evidence of a crime. Reasoning that police involvement at the outset turns a search into a hunt for contraband, the *Picha* court found that such a search went beyond the school's interest in maintaining disci-

Amendment cases in schools are decided in favor of the school district).

117. See Gwendolyn G. Combs, Note, *How the Fourth Amendment Applies to Public High School Students - New Jersey v. T.L.O.*, 6 MISS. C. L. REV. 149, 167 (1986).

118. See *Perrin*, *supra* note 95, at 169 (noting that the majority of courts that have considered the issue indicate probable cause as the appropriate standard).

119. 410 F. Supp. 1214 (N.D. Ill. 1976).

120. See *id.* at 1216.

121. See *id.*

pline.¹²² Therefore, a search done at the behest of the police had to meet the probable cause requirement of the Fourth Amendment.¹²³

Courts often distinguish between police searches for evidence of a criminal violation and those searching for evidence of a violation of a school rule. The latter instance rarely requires a probable cause standard while the former often does. For instance, in *F.P. v. State*¹²⁴ the police were investigating a burglary.¹²⁵ In the process, a police officer questioned a middle-school student, who told him that F.P. had shown him car keys and an "automotive paper."¹²⁶ The student also told the police that F.P. said he had a stolen car.¹²⁷ The police officer then told the school resource officer, an employee of the sheriff's office, who worked at the school.¹²⁸ The resource officer was paid by the school board, but handled law enforcement matters in the school.¹²⁹ The school resource officer found F.P.¹³⁰ After summoning the police, she took him to her office and asked if he had anything to give her.¹³¹ F.P. put car keys and the automotive paper on the officer's desk.¹³² The police officer joined F.P. and the resource officer.¹³³ F.P. was given Miranda warnings by the police officer.¹³⁴ F.P. waived his rights and admitted that he had found the keys and paper on a car behind a rental agency and that he had intended to drive the car around later that day.¹³⁵

The state appeals court reversed the trial court stating that the school official exception to the probable cause requirement for a warrantless search does not apply when the search is carried out at the behest of the police.¹³⁶ Because the resource officer acted at the behest of the police officer, the state had to

122. See *id.* at 1221.

123. See *id.*

124. 528 So. 2d 1253 (Fla. Dist. Ct. App. 1988).

125. See *id.* at 1254.

126. *Id.*

127. See *id.*

128. See *id.* at 1254, 1254 n.1.

129. See *F.P.*, 528 So. 2d at 1254, n.1.

130. See *id.* at 1254.

131. See *id.*

132. See *id.*

133. See *id.*

134. See *F.P.*, 528 So. 2d at 1254.

135. See *id.*

136. See *id.* at 1255.

prove that F.P. consented to the search or that there was probable cause to believe that F.P. had violated the law and possessed evidence of that violation.¹³⁷

B. The Reasonable Suspicion Standard in Individual Searches

The reasonable suspicion standard generally applies when school officials request the police to conduct a search. For example, in *Martens v. District No. 220*,¹³⁸ the school's dean of students, Joan Baukus, received an anonymous tip that a student kept drug paraphernalia in the lining of his coat.¹³⁹ Ms. Baukus brought the student to her office and confronted him about the information obtained from the anonymous tip.¹⁴⁰ The student denied that he possessed a controlled substance and refused to consent to a search until his parents were contacted.¹⁴¹ Meanwhile, Officer Hentig, a sheriff's deputy, arrived at the school on another matter.¹⁴² He came to the assistant principal's office and spoke to the student encouraging him to cooperate with school officials.¹⁴³ The deputy then asked the student to empty his pockets and the student did so.¹⁴⁴ In his pockets was a pipe containing marijuana residue.¹⁴⁵ The student was suspended from school but faced no criminal charges as a result of the search.¹⁴⁶

In finding for the school district, the court stated that there was a basic difference between *Martens* and *T.L.O.*¹⁴⁷ In *T.L.O.* the entire investigation and search was conducted by school officials.¹⁴⁸ In *Martens*, the search was done at the urging of and in the presence of the deputy.¹⁴⁹ Despite the official presence of Hentig as a law enforcement officer, the court held that reasonable suspicion was the appropriate standard because of the relatively limited role played by the deputy.¹⁵⁰ More specifically, the

137. See *id.*

138. 620 F. Supp. 29 (N.D. Ill. 1985).

139. See *id.* at 30.

140. See *id.*

141. See *id.*

142. See *id.* at 31.

143. See *Martens*, 620 F. Supp. at 31.

144. See *id.*

145. See *id.*

146. See *id.*

147. See *id.* at 32.

148. See *Martens*, 620 F. Supp. at 32.

149. See *id.*

150. See *id.* Under the totality of the circumstances, the court found that the

search was conducted in the administrator's office.¹⁵¹ Officer Hentig had nothing to do with developing the facts that instigated the search nor did he direct school officials to detain and search Martens.¹⁵²

In short, Hentig's urging was the immediate cause of Marten's [sic] emptying his pockets, but there is no indication that a criminal investigation was contemplated, that this was a cooperative effort with law enforcement, or that but for this intervention Martens would not have been searched eventually. . . . [And t]here is . . . no basis for thinking that school official action was a subterfuge to avoid warrant and probable cause requirements.¹⁵³

The reasonable suspicion standard may also suffice in searches involving a "tip" passed on to school officials from the police, but where the police do not actually conduct the search. *State v. P.E.A.*¹⁵⁴ involved a police officer who was investigating a bicycle theft at the local junior high school.¹⁵⁵ During the questioning of a student, he discovered that two high school students had stolen marijuana from a backyard, dried it, cured it, and packaged it with the intent to sell it to other high school students that morning.¹⁵⁶ The officer went to the high school and advised the assistant principal of these allegations.¹⁵⁷ The officer was asked to remain at the school while the assistant principal investigated.¹⁵⁸

The assistant principal asked the school security officer to help investigate the officer's report.¹⁵⁹ The two students were questioned and searched in separate rooms.¹⁶⁰ The investigation produced no evidence, but the students stated that they came to school in P.E.A.'s car.¹⁶¹ P.E.A. was then questioned and

higher standard of probable cause had been met.

151. *See id.*

152. *See id.*

153. *Martens*, 620 F. Supp. at 32.

154. 754 P.2d 382 (Colo. 1988).

155. *See id.* at 384.

156. *See id.*

157. *See id.*

158. *See id.*

159. *See P.E.A.*, 754 P.2d at 384.

160. *See id.*

161. *See id.*

searched.¹⁶² After first lying and claiming he had ridden the bus to school, P.E.A. admitted that he had driven his car.¹⁶³ The security officer took P.E.A.'s keys, which were found in the search and searched the car despite P.E.A.'s objection.¹⁶⁴ The security officer found marijuana in the car.¹⁶⁵ The police officer was not present during the questioning or searches of the students.¹⁶⁶

The issue before the Colorado Supreme Court was whether the assistant principal and security officer acted as agents of the police.¹⁶⁷ According to the court, the agency rule prevents the police from circumventing the Fourth Amendment by having a private individual conduct a search or make a seizure that would be unlawful if performed by the police themselves.¹⁶⁸ Further, the acquisition of evidence by an individual acting as an agent of the police must be viewed by the same Fourth Amendment standards that govern law enforcement officials.¹⁶⁹

The *P.E.A.* court refused to find that an agency relationship existed:

The focal issue in this case is whether P.E.A.'s [F]ourth [A]mendment rights were violated when school officials questioned and searched him, and then searched his car and seized marijuana that belonged to F.M.. If the questioning which led to the search had been by law enforcement officials, the constitutionality of the search would be determined under the probable cause standard of the [F]ourth [A]mendment. Since the search was incidental to the maintenance of order by school officials and the protection of other students and was not performed by individuals acting as agents of the police, the prosecution maintains that acts of the principal and security officer are to be governed by standards set forth in *New Jersey v. T.L.O.* We agree.¹⁷⁰

The court found that the only police involvement in the search occurred when the officer told the assistant principal that stu-

162. *See id.*

163. *See id.*

164. *See P.E.A.*, 754 P.2d at 384.

165. *See id.*

166. *See id.*

167. *See id.* at 385.

168. *See id.*

169. *See P.E.A.*, 754 P.2d at 385.

170. *Id.* at 386 (citation omitted).

dents were planning to sell marijuana in school.¹⁷¹ The officer remained at school, but the assistant principal carried out the investigation.¹⁷²

The reasonable suspicion standard may also be appropriate in situations where police are present, but the search is initiated and conducted by school officials. In *Cason v. Cook*,¹⁷³ two students told the assistant principal that they were missing belongings from their gym lockers.¹⁷⁴ The assistant principal asked a police officer, who was assigned to the high school as a liaison officer as part of a cooperative program between the school district and the police department, to accompany her to the locker room where she investigated and learned the names of four girls who were in the locker room at the time of the thefts.¹⁷⁵ Cason was one of these girls.¹⁷⁶

These students did not have permission to be in the locker room nor had they been in gym class the prior period.¹⁷⁷ The assistant principal also asked the officer to accompany her as she interviewed each girl.¹⁷⁸ The officer remained in the hallway and did not participate in the questioning of one student.¹⁷⁹ The officer was present during the investigation of Cason although she did not participate in the questioning.¹⁸⁰

After Cason admitted to being in the locker room, the assistant principal searched her purse and found a coin purse matching the description of the one stolen.¹⁸¹ The officer did a pat down search.¹⁸² Both students were taken to the office and given juvenile appearance cards by the officer.¹⁸³ The appearance cards required them and their parents to report to the officer at

171. See *id.* at 385-86.

172. See *id.* at 385.

173. 810 F.2d 188 (8th Cir. 1987).

174. See *id.* at 189-90.

175. See *id.* at 190.

176. See *id.*

177. See *id.*

178. See *Cason*, 810 F.2d at 190.

179. See *id.*

180. See *id.*

181. See *id.*

182. See *id.*

183. See *Cason*, 810 F.2d at 190.

the police station.¹⁸⁴ The girls were suspended and no further action was taken.¹⁸⁵

In this case, the United States Court of Appeals for the Eighth Circuit faced the very issue that *T.L.O.* refused to address: what standard applies “when a search is conducted by school officials in conjunction with or at the behest of law enforcement agencies.”¹⁸⁶ The court specifically examined whether the reasonableness standard as stated in *T.L.O.* should apply when a school official acts in conjunction with a police “liaison” officer.¹⁸⁷

In finding that the reasonableness standard was appropriate, the court found no evidence that any activities were at the behest of a law enforcement agency.¹⁸⁸ Instead, the court stated that a school official had conducted the investigation, limiting the officer’s involvement to a pat down search completed after incriminating evidence had been discovered.¹⁸⁹ Moreover, the court found that the officer’s presenting of juvenile appearance cards was, at most, a police officer working in conjunction with school officials.¹⁹⁰ For these reasons, the court held that the imposition of a probable cause warrant requirement based on the limited involvement of the police officer would not serve the interest of preserving swift and informal disciplinary procedures in schools.¹⁹¹

In *Commonwealth v. Carey*,¹⁹² the Massachusetts Supreme Court treated police participation as a marginal issue.¹⁹³ In this case, two high school students told a teacher that Carey, a senior, had brought a gun to school.¹⁹⁴ The teacher reported this information to the assistant principal who, in turn, told the principal.¹⁹⁵ The administrators had never dealt with a gun before, so they immediately called the police.¹⁹⁶ When the police officer

184. *See id.*

185. *See id.*

186. *Id.* at 191 (emphasis added).

187. *Id.*

188. *See Cason*, 810 F.2d at 191.

189. *See id.*

190. *See id.* at 192.

191. *See id.* at 193.

192. 554 N.E. 2d 1199 (Mass. 1990).

193. *See id.* *See also Sanchez*, *supra* note 116 at 401.

194. *See Carey*, 554 N.E.2d at 1200.

195. *See id.*

196. *See id.* at 1201.

arrived, he and the school administrators questioned Carey about the gun.¹⁹⁷ After searching Carey and finding no gun, the administrators searched his locker where they found a sawed-off twenty-two caliber rifle, a gun sight, a black powdery substance, and a bullet.¹⁹⁸ These were turned over to the police.¹⁹⁹ As a result, Carey was advised of his Miranda rights.²⁰⁰

After Carey was convicted of unlawfully carrying a firearm, he appealed on the grounds that involvement of a police officer required application of the stricter probable cause standard.²⁰¹ The Massachusetts court disagreed, holding that school officials conducted the search on their own without the aid of the police, even though the police officer participated in Carey's questioning.²⁰² Further, the court agreed with the lower court, which maintained that the police had no input in the school administrator's plan and were notified for safety reasons. The court cited the testimony of the assistant principal "that school administrators were very, very uptight and very nervous about the possibility that there was a gun in school, both for themselves and for the school community of some 1,200 students and ninety to one hundred employees."²⁰³

In another case involving police in a school search, a California appellate court upheld the use of reasonable suspicion when police searched a student at the request of school officials. In the case of *People v. Alexander B.*,²⁰⁴ members of a gang told the dean of students that a member of a rival gang was carrying a gun in school.²⁰⁵ The dean directed the police officer to investigate the group to see whether anyone had a weapon.²⁰⁶ The officer searched the group and found that Alexander B. had a machete knife.²⁰⁷ Alexander B. was arrested.²⁰⁸ At the trial he filed a motion to suppress the evidence on the grounds that the police

197. *See id.*

198. *See id.*

199. *See Carey*, 554 N.E.2d at 1201.

200. *See id.*

201. *See id.* at 1200.

202. *See id.* at 1202.

203. *Id.* at 1201 n.2.

204. 270 Cal. Rptr. 342 (Cal. Ct. App. 1990).

205. *See id.* at 342.

206. *See id.* at 343.

207. *See id.*

208. *See id.*

conducted the search and therefore needed probable cause.²⁰⁹ The court denied the motion stating that the police officer acted at the request of school officials and, therefore, the appropriate standard was reasonable suspicion.²¹⁰

C. *The Reasonable Suspicion Standard in Administrative Searches*

Another line of cases considers searches that are administrative or regulatory in nature to be satisfied through the use of a reasonableness standard regardless of police involvement. In 1995, the United States Supreme Court rendered its second and only opinion since *T.L.O.* on the Fourth Amendment rights of students in public schools.²¹¹ This decision, *Vernonia School District 47J v. Acton*, upheld random drug testing of student athletes.²¹² Police were not involved in the school's drug testing program and evidence obtained through the program was not turned over to the police. This decision is important because it holds administrative searches in schools to the same standard used in previous Supreme Court decisions addressing the rights of adults.

In determining the legality of administrative searches in schools, the Supreme Court balanced the intrusiveness of the search on the individual's Fourth Amendment interests against the promotion of legitimate governmental interests.²¹³ Because administrative searches have been characterized by most courts as being relatively unintrusive and as involving a low degree of danger, students' Fourth Amendment interests are often outweighed by a legitimate governmental interest. For students in public schools, this may mean a search for drugs or weapons will be held constitutional.

While the Supreme Court has yet to grapple with the issue of police involvement in public school searches, including searches which are administrative in nature, numerous lower courts have rendered opinions on this topic. Cases addressing administrative

209. See *Alexander B.*, 270 Cal. Rptr. at 343.

210. See *id.* at 344. See also *Sanchez*, *supra* note 116, at 403 (concluding that the court chose to ignore the presence and role of the police officer and instead addressed only reasonable suspicion as it applied to school officials).

211. See *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995).

212. See *id.* at 666.

213. See *id.* at 664.

searches that involve police or security guards generally fall into three broad areas. These include metal detector searches, mass or random locker searches, and canine sniff searches.²¹⁴

1. Metal Detector Searches

*People v. Dukes*²¹⁵ was the first recorded decision addressing the use of metal detectors in schools. This case involved Tawana Dukes, a student at the Washington Irving High School in New York City who was scanned with a hand-held metal detector by Jessica Wallace, a member of a team of special police officers from the Central Task Force for School Safety.²¹⁶ Ms. Dukes' bag was then scanned and the device signaled the presence of metal.²¹⁷ Officer Wallace asked Tawana to open her bag.²¹⁸ The officer reached in and removed a manilla folder which contained a switchblade knife.²¹⁹ Ms. Dukes was arrested and charged with criminal possession of a weapon.²²⁰ She moved to suppress this evidence on the ground that her Fourth Amendment rights had been violated.²²¹

Rather than using the test for reasonableness as outlined in the *T.L.O.* decision, the *Dukes* court instead characterized this search as a type of administrative search, which "is never linked with probable cause or the issuance of a warrant."²²² The court maintained that because this type of search is intended to prevent a dangerous occurrence and is aimed at a group or class of people, it does not require individualized suspicion.²²³ The *Dukes* court likened this kind of search to those using scanning devices in public buildings (e.g., airports and court houses) or highway checkpoints for drunken drivers.²²⁴ Citing the Supreme Court's

214. The lead case setting the standard for administrative searches in schools is *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995), which dealt with drug testing of student athletes. This article does not discuss the *Vernonia* case in detail because police were not involved in the search at issue in the case.

215. 580 N.Y.S.2d 850 (N.Y. Crim. Ct. 1992).

216. *See id.* at 851.

217. *See id.*

218. *See id.*

219. *See id.*

220. *See Dukes*, 580 N.Y.S.2d at 851.

221. *See id.*

222. *Id.*

223. *See id.* at 851-52.

224. *See id.* at 852.

opinion in *Michigan v. Sitz*,²²⁵ a case dealing with sobriety stops by police officers, the *Dukes* court explained the test for determining the reasonableness of such administrative searches in the following way:

An administrative search is upheld as reasonable when the intrusion involved in the search is no greater than necessary to satisfy the governmental interest underlying the need for the search. In other words, in determining whether the search is reasonable, the courts balance the degree of intrusion, including the discretion given to the person conducting the search, against the severity of the danger imposed.²²⁶

Upholding the search as reasonable, the *Dukes* court described the metal detector search as minimally intrusive.²²⁷ Moreover the security officer who conducted the search was required to follow "a very detailed script" based upon guidelines adopted by the public school system's chancellor.²²⁸ For example students are searched by officers of the same sex.²²⁹ Officers search all students unless lines become too long, then they search randomly (i.e., every second or third student).²³⁰ The officer is not permitted to select any particular student unless there is reasonable suspicion that the student has a weapon.²³¹ If the device sounded and the student refused to be searched further, the student would be handed over to a school administrator standing nearby.²³² In addition the court stated that its decision was made easier considering the compelling need for security in schools.²³³

Subsequent courts addressing metal detector searches in Chicago²³⁴ and Philadelphia have rendered opinions similar to

225. 496 U.S. 444 (1990).

226. *Dukes*, 580 N.Y.S.2d at 852.

227. *Id.*

228. *Id.*

229. *Id.* at 851.

230. *See id.*

231. *See Dukes*, 580 N.Y.S.2d at 851.

232. *See id.*

233. *See id.* at 853 (pointing out that over 2,000 weapons had been recovered in the New York City public schools during 1990-1991, and that there had been a fatal shooting in a Brooklyn high school only a few months before the *Dukes* search).

234. *See People v. Pruitt*, 662 N.E.2d 540 (Ill. App. Ct. 1996) (holding Chicago police officers to a reasonableness standard when assisting in random metal detector search at public high school).

that of *Dukes*.²³⁵ In these cases the searches were conducted by either police officers or school security guards and were found to be reasonable under the administrative search doctrine.²³⁶

In 1996, a Florida court went one step further in its interpretation of administrative searches.²³⁷ In this case, a high school with an open campus instituted a policy allowing random searches with hand-held metal detector wands of students in classrooms.²³⁸ An independent security team hired by the school district came into one room to search and observed students passing a jacket to the back of the room.²³⁹ The officers confiscated the jacket and found a gun.²⁴⁰ A Florida court of appeals ruled that the standard for the search was one of reasonableness and the search was administrative and not a police search requiring probable cause.²⁴¹

2. Blanket or Random Locker Searches

In the *T.L.O.* decision, the Supreme Court did not decide whether students had an expectation of privacy in their lockers.²⁴² After *T.L.O.* most lower courts have viewed lockers as school property and students as having at least a reduced expectation of privacy. Thus, even when police or school security guards are involved, courts have generally found blanket or random locker searches reasonable²⁴³ (assuming there had been some notice given to the students in advance that lockers are the property of the school and would be subject to such searches)²⁴⁴

235. See *In the Interest of S.S.*, 680 A.2d 1172 (Pa. Super. Ct. 1996) (holding that a metal detector scan and subsequent search of a coat pocket by a school security officer was an administrative search and justified).

236. See *Pruitt*, 662 N.E.2d at 547, 549, 551; *In the Interest of S.S.*, 680 A.2d at 1176. See also *People v. Latasha W.*, __ P.2d __ (Cal. Ct. App. 1988) (upholding Los Angeles school policy allowing daily, random metal detector searches, provided some neutral criteria was used in deciding what persons would be searched).

237. See *Florida v. J.A.*, 679 So. 2d 316 (Fla. Dist. Ct. App. 1996).

238. See *id.* at 318.

239. See *id.*

240. See *id.*

241. See *id.* at 319, 320.

242. See *T.L.O.*, 469 U.S. at 337 n.5.

243. See *Commonwealth v. Cass*, 709 A.2d 350, 352 (Pa. 1998) (upholding principal-initiated, random "safety inspection" search for drugs of 2,000 lockers by two police officers).

244. See *People v. Overton*, 249 N.E.2d 366, 366-68 (N.Y. 1969) (finding warrant invalid but upholding the search on the grounds that school officials have an obligation to maintain discipline over students where three detectives obtained a warrant to

and permissible under the administrative search doctrine because the searches are relatively unobtrusive and are generally concerned with a threat to health and safety (i.e., aimed at removing rotting food or finding drugs or weapons).²⁴⁵

In at least some instances, these random locker searches have extended to items inside the lockers.²⁴⁶ For example, in the *Isiah B.* case, Madison High School in Milwaukee, Wisconsin, experienced a rash of gun-related complaints or incidents.²⁴⁷ Within a month, high school administrators investigated five to six incidents where guns were said to have been on school property and verified the existence of guns in two of these instances.²⁴⁸ After two incidents involving threats to the same student, this student transferred to another school.²⁴⁹ The school's principal decided to institute locker searches after students reported being fired at while leaving a Friday night game and hearing multiple shots after a Saturday-night school dance.²⁵⁰

A school security aide visually inspected the lockers, moving articles inside to facilitate the observation.²⁵¹ After the aide had searched some 75-100 lockers, and found nothing, he searched

search two students and their lockers, presented the warrant to the vice-principal, and searched the students as well as their lockers, discovering that Overton's locker contained four marijuana cigarettes).

245. A search of a specific student's locker for contraband, however, would still be subject to the reasonableness test set forth in *T.L.O.*, 469 U.S. at 341-42 (setting forth two-pronged test for reasonableness). See, e.g., *S.C. v. Mississippi*, 583 So. 2d 188 (Miss. 1991) (upholding a warrantless search of student's locker when there was a report that he planned to sell two handguns in his possession); *State v. Michael G.*, 748 P.2d 17 (N.M. Ct. App. 1987) (holding that locker search was reasonable based on student informant's report that the student had tried to sell him marijuana); *S.A. v. Indiana*, 654 N.E.2d 791 (Ind. App. 1995). See also Eugene C. Bjorklun, *School Locker Searches and the Fourth Amendment*, 92 ED. LAW REP. 1065 (1995) (distinguishing between searches of lockers with individualized suspicions and those without).

246. Compare *In the interest of Isiah B.*, 500 N.W. 2d 637 (Wis. 1993) (upholding random locker search which resulted in a gun and cocaine being found in the pocket of a coat that was in the locker) and *In the Interest of Dumas*, 515 A.2d 984, 985 (Pa. Super 1986) (concluding that students do not lose their expectation of privacy in purses and jackets by merely storing them in a locker).

247. *In the interest of Isiah B.*, 500 N.W. 2d 637, 638 (Wis. 1993).

248. See *id.*

249. See *id.*

250. See *id.* Evidence of a gun was found in at least one of these situations. Also, lockers were said to be searched on a random basis; however, testimony was vague as to what constituted "random."

251. See *id.* at 639.

Isiah B.'s locker, moving the student's coat, to one side.²⁵² As the aide moved the coat, he noticed that it seemed unusually heavy; he patted its exterior, and felt a hard object, which he believed to be a gun.²⁵³ The security aide immediately notified the principal. But before the principal came, the aide observed the handle of a gun after he had pulled open a pocket.²⁵⁴ Isiah B. was confronted with this evidence; he admitted that he also had cocaine in the same coat pocket.²⁵⁵

There had been no individualized suspicion for the locker search.²⁵⁶ Isiah B. had no history of prior weapons violations, nor was he suspected of such use before the search.²⁵⁷ Nonetheless Wisconsin's Supreme Court ruled that this search was legal because students have no reasonable expectation of privacy in their lockers.²⁵⁸

3. Canine Sniff Searches

Most mass searches of lockers involving police also involve canines. The United States Supreme Court responded to the legality of dog sniffing in *United States v. Place*.²⁵⁹ In *Place* the Court held that dog sniffs of personal property do not constitute a Fourth Amendment search because they are limited in the way information is obtained and in the contents of the information revealed.²⁶⁰ The Court also noted that the police may temporarily detain personal luggage for a canine sniff if there is a reasonable suspicion that the luggage contains narcotics.²⁶¹

To control the use and sale of drugs in public schools, school officials sometimes invite police and their dogs into the school to sniff out contraband.²⁶² In *Horton v. Goose Creek Independent School District*,²⁶³ the United States Court of Appeals for the

252. See *Isiah B.*, 500 N.W.2d at 639.

253. See *id.*

254. See *id.*

255. See *id.*

256. See *id.*

257. See *Isiah B.*, 500 N.W.2d at 639.

258. See *id.* at 641.

259. 462 U.S. 696 (1983).

260. See *id.* at 707.

261. See *id.* at 708-09.

262. See KERN ALEXANDER & DAVID ALEXANDER, *AMERICAN PUBLIC SCHOOL LAW* 341 (3d ed. 1992).

263. 690 F.2d 470 (5th Cir. 1982).

Fifth Circuit found that dog sniffing of lockers and cars was constitutional.²⁶⁴ The court reasoned that lockers and cars were inanimate objects located in a public place:²⁶⁵

Had the principal of the school wandered past the lockers and smelled the pungent aroma of marijuana wafting through the corridors, it would be difficult to contend that a search had occurred. . . . [T]he use of the dogs' [sic] nose to ferret out the scent from inanimate objects in public places is not treated any differently.²⁶⁶

It is important to note that the *Horton* court found dog sniffing of *students* as entirely different from dog sniffing of lockers or cars.²⁶⁷ Reasoning that the Fourth Amendment protects *people* and not places, the court stated that most persons in our society deliberately attempt not to expose the odors emanating from their person to the public.²⁶⁸ Further, the court said that the intensive sniffing of people, even if done by dogs, is indecent and demeaning and therefore is a search under the strictures of the Fourth Amendment.²⁶⁹

This latter finding was not, however, followed by the Seventh Circuit in the case of *Doe v. Renfrow*.²⁷⁰ In *Renfrow* the school, with the assistance of the police, used dogs for the general, exploratory sniffing of students.²⁷¹ The school in question was experiencing problems with drugs.²⁷² In cooperation with the police, the school secured the services of a private agency that used dogs to detect drugs.²⁷³ Students were asked to sit quietly at their seats while the dog handler led the dogs up and down the desk aisles.²⁷⁴ As a result of the "sniffing," a student was searched twice.²⁷⁵ The second search was a strip search,

264. See *id.* at 488.

265. See *id.* at 477.

266. *Id.* at 477.

267. See *id.* at 478.

268. See *Horton*, 690 F.2d at 478.

269. See *id.* See also ARVAL A. MORRIS, *Chapter 6: Constitutional Freedom and Government Controls over Students*, THE CONSTITUTION AND AMERICAN PUBLIC EDUCATION 292, 292 (1989).

270. 631 F.2d 91 (7th Cir. 1980).

271. See *id.* at 91-92.

272. See *Renfrow*, 475 F. Supp. at 1015.

273. See *id.* at 1016.

274. See *id.*

275. *Id.* at 1017.

over the student's protests that she did not have drugs and had never used them.²⁷⁶ No drugs were found.²⁷⁷

The court held that the sniff of a dog was not a search because "[t]he presence of the canine team for several minutes was a minimal intrusion at best and not so serious as to invoke the protections of the Fourth Amendment."²⁷⁸ At least one lower court, in *State v. Barrett*,²⁷⁹ has extended this logic to uphold searches where entire classes of students were requested to remove the contents of their pockets and have dogs sniff those items for contraband.²⁸⁰ While the *Barrett* court asserted that dog sniffs were not searches, it did concede that asking students to empty their pockets was a search.²⁸¹ Using the three-part test in *Vernonia*, the court upheld the search, maintaining that there is a decreased expectation of privacy in schools, the search was relatively unobtrusive, and there is a severe need to deter drug use.²⁸²

In all these cases, there was at least some police involvement and probable cause was not required. This same conclusion holds true with subsequent dog sniffing cases where police were actively involved in the canine sniffing of automobiles²⁸³ and lockers.²⁸⁴ In one of these cases, *Commonwealth v. Cass*,²⁸⁵ the Pennsylvania Supreme Court upheld random locker searches conducted by police officers at the request of school administrators.²⁸⁶

In *Cass*, administrators at Harborcreek High School, after observing numerous occurrences of what appeared to be suspicious student behavior including frequent phone calls, use of

276. *See id.*

277. *See Renfrow*, 475 F. Supp. at 1015. It was later discovered that the student had been playing with her dog that morning and that the dog was in heat.

278. *Id.* at 1020. On the other hand, the court found that the strip search had violated the student's Fourth Amendment rights. *See id.* at 1025.

279. 683 So. 2d 331 (La. App. 1996).

280. *See Barrett*, 683 So. 2d at 337 (La. App. 1996).

281. *See id.*

282. *See id.* at 338.

283. *See Jennings v. Joshua Indep. Sch. Dist.*, 877 F.2d 313, 318-19 (5th Cir. 1989). *But see Jones v. Latexo Indep. Sch. Dist.*, 499 F. Supp. 223, 334, 335 (E.D. Tex. 1980) (holding that the school did not have sufficient interest to search automobiles when students did not have access to them during the day and that canine sniff searches of students require individualized suspicion).

284. *See Zamora v. Pomeroy*, 639 F.2d 662, 670 (10th Cir. 1981).

285. 709 A.2d 350 (1998).

286. *See id.* at 352.

beepers, and the carrying of large amounts of money, requested the state police to conduct canine sniffs of student lockers.²⁸⁷ Drugs were found in only one of the 2,000 lockers searched where drug paraphernalia and a small amount of marijuana was seized. The student was sent to the principal's office and read his rights.²⁸⁸ In rendering its decision, the *Cass* court used the Fourth Amendment as well as state law to determine that the search was reasonable.

The majority opinion in *Cass* did not distinguish this case because police were involved. Justice Zappala, in a scathing dissent, expressed serious concerns about this involvement, concluding that this was a police search and should have required a warrant.²⁸⁹

To characterize the locker search in this case as a search by school officials is to engage in subterfuge. Appellee's school locker was searched by police officers and the contraband seized as a result thereof formed the basis of a criminal prosecution. . . . This case does not present the question of what degree of scrutiny is appropriate when reviewing a constitutional challenge to a search conducted by school officials on school property; rather it presents the question of what degree of scrutiny is appropriate when reviewing a constitutional challenge to an evidentiary search conducted by police officers on school property.²⁹⁰

VI. STANDARDS USED WHEN SCHOOL SECURITY GUARDS ARE INVOLVED IN SCHOOL SEARCHES

Security guards are often used by school districts to assist with school safety and discipline.²⁹¹ In determining the appropriate standard, (i.e., reasonable suspicion or probable cause) the key question is often whether security guards are acting as school officials or as law enforcement officers. The answer to this question generally hinges on whether the guards are employed by the school system and whether they are working in the capacity of a school official. Depending on the fact patterns of specific cases, courts have rendered differing opinions about the stan-

287. *See id.*

288. *See id.*

289. *Commonwealth v. Cass*, 709 A.2d 350, 373 (1998) (Zappala, J., dissenting).

290. *Id.* at 367.

291. *See Rossow, supra* note 30, at 30.

dard security guards must satisfy when they conduct student searches.

When school security guards are not employees of the school system, are not working in the capacity of school officials, have initiated the search, and have conducted the search for criminal evidence, the applicable standard is probable cause. This situation is well illustrated in *F.P. v. State*,²⁹² which involved Jackie Flint, a school resource officer, who was an employee of the sheriff's office but paid by the school board.²⁹³ Ms. Flint's job was to handle law enforcement in the school.²⁹⁴

In this case, Ms. Flint received information from an investigator for the Tallahassee Police Department that a crime had been committed by F.P., a student in the middle school.²⁹⁵ The investigator discovered this lead after interviewing a student in the school who implicated his classmate, F.P. The student stated that F.P. had stolen a car and the keys were in F.P.'s possession.²⁹⁶ Acting on the information, Ms. Flint brought F.P. to her office where she discovered F.P. had the keys.²⁹⁷ The trial court found the search reasonable, but the state appeals court reversed on the grounds that the school official exception to the probable cause requirement for a warrantless search did not apply.²⁹⁸ As the court pointed out, "even if Flint's apparently dual role as a school official and a law enforcement officer were not considered, the fact that she acted at the behest of a police officer requires . . . that there existed probable cause to believe [F.P.] had violated the law and had in his possession evidence of that violation."²⁹⁹

This issue of dual role as school official and law enforcement officer is the most problematic in determining the appropriate standard, and the courts are divided on it. In an earlier decision, *People v. Bowers*,³⁰⁰ a New York appeals court held that when a high school security officer requested a student to empty the contents of a manilla envelope protruding from the student's

292. 528 So. 2d 1253 (Fla. Dist. Ct. App. 1988).

293. *See id.* at 1254 n.1.

294. *See id.*

295. *See id.* at 1254.

296. *See id.*

297. *F.P.*, 528 So. 2d at 1254.

298. *See id.* at 1255.

299. *Id.*

300. 356 N.Y.S.2d 432 (N.Y. App. Div. 1974).

pocket and allegedly containing marijuana, the search was not legal in that it required probable cause.³⁰¹

The *Bowers* court maintained that a security guard's reason for being in school differed from that of a school official and that school officials have a relationship with students different from that of security guards hired to maintain school safety and handle disturbances and acts of crime.³⁰² The court went on to state that security guards serve no official educational function as do school officials.³⁰³ A security officer acting without the direction of school officials must satisfy the probable cause standard, or any evidence turned over to the police for use in a criminal prosecution cannot be used.³⁰⁴ At the time of the *Bowers* decision, New York City school security officers were appointed by the police commissioner pursuant to the Administrative Code of the City of New York and were paid by the Board of Education.³⁰⁵

On the other hand, in *State v. Serna*,³⁰⁶ an Arizona appeals court maintained that security guards, who are employed by the school system, work in the capacity of school officials and, thus, are only held subject to a standard of reasonableness.³⁰⁷ In rendering its decision for the school district, the *Serna* Court stated:

[P]ublic high school security guards employed by the school are agents of the high school principal . . . [and] a warrantless search of a student by a public high school security guard is subject to Fourth Amendment considerations and is measured by the standard of reasonableness under all of the surrounding circumstances.³⁰⁸

In the *Serna* case, Earl Starks, the chief of security at Carl Hayden High School received a radio communication from the principal's office to take his staff to an area where students were allegedly involved in a fight with sticks, rocks, and possibly weapons.³⁰⁹ When the guards reached the area, they saw a stu-

301. See *id.* at 436.

302. See *id.* at 435-36.

303. See *id.* at 435.

304. See *id.*

305. See *Bowers*, 356 N.Y.S.2d at 435.

306. 860 P.2d 1320 (Ariz. Ct. App. 1993).

307. See *id.* at 1322.

308. *Id.* at 1322. See also Pamela Manson, *Search Laws Ruled Binding on School Guards*, THE ARIZONA REPUBLIC, May 21, 1993, at B2.

309. See *id.*

dent take something from under the bushes and put it in his pocket.³¹⁰ They suspected the student possessed drugs after seeing a plastic baggie in his pocket.³¹¹ The student ultimately turned the baggie over to a police officer; the baggie was later determined to contain cocaine.³¹²

The student was found guilty of cocaine possession and placed on probation.³¹³ He later appealed the conviction on the grounds that the evidence found was the result of an unreasonable search.³¹⁴ The *Serna* court said the search was reasonable, noting that the school has a "substantial interest" in providing a safe environment where learning can take place, a task that has become more difficult because of an increase in drug use and violent crime.³¹⁵

In *S.A. v. State*³¹⁶ an Indiana court of appeals also viewed school security officers as school personnel and thus subject to the reasonableness standard.³¹⁷ In this case there was a rash of student locker break-ins at Howe High School in Indianapolis.³¹⁸ The lockers were not damaged and the guidance counselor noticed that her book containing the master lock combinations was missing from her office.³¹⁹ Based on a tip from one of the students, Officer Grooms of the Indianapolis Public School Police Department (IPSPD) searched several students' lockers, including S.A.'s, to no avail.³²⁰ The next day there was another break-in and the same student told Officer Grooms that S.A. had the missing book in his blue book bag.³²¹ Officer Grooms' assistant removed S.A. from his class, escorted him to his locker to get his book bag, and then took him to the principal's office where Grooms searched the bag and found the book.³²² After first deny-

310. *See id.*

311. *See Serna*, 860 P.2d at 1322.

312. *See id.*

313. *See id.* at 1321

314. *See id.* at 1323.

315. *Id.* at 1323-24.

316. 654 N.E.2d 791 (Ind. App. 1995).

317. *See id.* at 795,

318. *See id.* at 794.

319. *See id.*

320. *See id.*

321. *See S.A.*, 654 N.E.2d at 794.

322. *See id.*

ing it, S.A. later admitted to taking the book as well as jackets from some student lockers.³²³

S.A. was charged with two counts of theft, which, if he had been an adult would have amounted to Class D felonies.³²⁴ He was adjudicated a delinquent and sentenced to probation.³²⁵ Both the juvenile court and the Indiana appeals court denied S.A.'s motion to suppress the evidence.³²⁶ Ruling that S.A.'s rights had not been violated,³²⁷ the appeals court applied this logic:

S.A. argues that *T.L.O.* is inapplicable to his situation, because his search was conducted by a police officer rather than a school official. We disagree. While Officer Grooms is a trained police officer, he was acting in his capacity as security officer for the IPS schools. Grooms is employed by the IPS PD and as such, his conduct regarding student searches on school premises is governed by the test announced in *T.L.O.*³²⁸

VII. CONCLUSION

This section summarizes the legal issues and problems arising from police involvement in schools and proposes that students be subject to the same legal standards as adults when police and security guards are involved in school searches.

A. *Legal Issues Related to Police Involvement in Public Schools*

The law regarding police involvement in student searches is clear in several respects. For example, if police initiate a search of students in public schools and if that search is for evidence of a criminal offense rather than violation of a school rule, then the probable cause standard clearly applies. If police are involved in the search, but the search is at the behest of the school administrator, then the reasonable suspicion standard applies and the test for reasonableness, as articulated in *New Jersey v. T.L.O.*, would be used.

If the search is administrative, such as random locker or metal detector searches, then reasonable suspicion is the appro-

323. See *id.*

324. See *id.*

325. See *id.*

326. See *S.A.*, 654 N.E.2d at 794-95.

327. See *id.* at 795.

328. *Id.*

ropriate standard and the three-part test articulated in *Vernonia v. Acton* (need, expectation of privacy, obtrusiveness of the search) would most likely be used. Here, the individual's expectation of privacy would be balanced against the governmental interest (e.g., school safety).

As for school security guards, if these individuals are acting in the capacity of police officers, or at the behest of the police, then they are subject to the probable cause standard. If they are acting as school officials or at the behest of school officials, or if the search is administrative in nature, then the reasonable suspicion standard applies.

B. Legal Problems Arising from Police Involvement in Public Schools

When a police search does not fall into one of the categories already mentioned, it is not clear which legal standard applies. Examples of this include police involvement in a school search when school officials work in conjunction with the police, but neither the police nor the school officials are completely directing the search; or when school officials work so closely with each other that it is impossible to decide who actually directed the search.

A similar problem occurs when school security guards take on a role that is more like that of police officers than of school officials. This may occur either because of past professional experiences as law enforcement officers; current responsibilities that include assisting with school discipline, safety, and law enforcement issues; or personal/professional relationships with the police. When this happens, an agency relationship occurs between school officials and the police. Because the test relies on the subjective state of mind of both the school official and the police, determining whether an agency relationship exists is difficult.³²⁹ As one commentator has noted, "While motive and intent of each participant in the search may be determined by circumstantially relevant objective facts, the test relies too heavily on factors prone to ambiguity and fabrication."³³⁰

Probably the most significant issue from a public policy point of view is what is done with the evidence obtained in the search.

329. See *Perrin*, *supra* note 95, at 172.

330. *Id.*

Even though the "silver platter" doctrine prohibits school administrators from working at the behest of the police, it could be argued that the outcome is the same when state laws require administrators to report criminal conduct to the police. In the latter situation, school personnel are able to collect information and evidence without a warrant or probable cause, and this information and evidence can then be used to prosecute students criminally. Also, police presence during the search, even though the search is conducted by a school official, can be an invasion of students' rights. If the search uncovers evidence of a crime, and the school official hands over the evidence to the police, the evidence can be used against the student.³³¹

This problem becomes even more complex in light of current trends toward treating juveniles as adults for certain criminal offenses. If juveniles are tried as adults, then they should be afforded the same protection as adults.

C. Proposed Solutions to the Legal Dilemma

Considering the ambiguity involved in the relationships between school officials and the police, the resultant ambiguity in the law, and the fact that students involved in criminal offenses in the schools often are turned over to the police, the solution to this problem seems to lie in crafting uniform standards. In other words, if police are involved in school searches, then they should be subject to the same standards that police normally use. Also, depending upon their backgrounds and familiarity with law enforcement, school security guards should be subject to the same standards as police officers.

Hence, the standard for administrative searches such as metal detector searches, blanket locker searches, and drug testing should be the reasonable suspicion standard. On the other hand, when the search is an individual search that involves police, the standard should be probable cause. Granted, it is important that the special environment and unique circumstances of schools be considered. Thus, no warrant would be necessary. But the stricter standard should still apply. As noted

331. See, e.g., *State v. S.A.*, 654 N.E. 2d 791, 794-795 (Ind. App. 1995) (denying student's motion to suppress evidence found in a locker search conducted by school police officers); *Commonwealth v. Snyder*, 597 N.E.2d 1363 (Mass. 1992) (denying motion to suppress when school authorities turned over the evidence to police). See also *supra* note 13.

earlier in this article, Justice Stevens observed in his concurring opinion in *New Jersey v. T.L.O.* that the reasonable suspicion standard would spare school officials "the necessity of schooling themselves in the niceties of probable cause."³³² However, if school authorities are working in conjunction with the police, this relationship would also spare school authorities the need to understand the intricacies of probable cause, because education in the "niceties of probable cause" is part and parcel of both the training and every day work of law enforcement officers.³³³

In addition, if police are involved in the search, and the search is for contraband that would eventually be turned over to law enforcement authorities, then the police, by the very nature of their involvement, are the agents of the search. They, not school officials, are the state authorities who will be involved in the ultimate proceedings and will benefit from the fruits of a legal search.

It is true that school safety is of vital importance, especially in today's society, and courts have always been concerned that school officials be provided considerable leeway in administering schools.³³⁴ This plan would still allow for ample administrative discretion. It would make no changes in any searches conducted by school administrators without the police. The standard for administrative searches, even those involving police and security guards, would remain as reasonable suspicion.

The only changes would be in searches that are not regulatory but involve the police or school security personnel acting in the capacity of police, who are searching for evidence to use in criminal proceedings. In this type of search the standard should be probable cause, a standard that, as Justice Brennan has pointed out, would likely be met anyway.³³⁵ Considerable discretion would still exist under this standard because exceptions to the warrant requirement would still apply.³³⁶ For example, in

332. *New Jersey v. T.L.O.*, 469 U.S. 325, 343 (1985).

333. *Id.*

334. *See, e.g.*, Board of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 885 (1982) (maintaining that courts cannot become a "super censor" of the school board); *T.L.O.*, 469 U.S. at 340 (recognizing that school officials must have the freedom to maintain order); *Williams v. Ellington*, 936 F.2d 881, 886 (6th Cir. 1991) (asserting that school authorities need discretionary authority "to function with great efficiency and speed in certain situations").

335. *See T.L.O.* at 364-65 (Brennan, J., dissenting).

336. *See id.* at 367.

cases of great danger and those calling for immediacy, the emergency exception would still allow school officials and police to search without a warrant.³³⁷ Such a plan would end the confusion as to when to apply reasonable suspicion and probable cause in police-related school searches. Moreover, it would restore the balance between students' Fourth Amendment rights and school administrators' responsibilities to maintain order and discipline in the schools, a balance that was proposed in *T.L.O.* but, in recent years, as many commentators have pointed out, has gradually eroded the privacy rights of students.³³⁸

If we are to teach students about constitutional guarantees, then it is only fair that we also ensure these same students that such guarantees apply to them. Affording students these protections in relation to police searches in schools would go far in teaching students and ourselves, as educators and scholars, a most valuable lesson about the importance of both rights and responsibilities in a democracy.

337. *See id.*

338. *See, e.g.,* Joan E. Imbriani, *Metal Detectors in Public Schools: A Subtle Sacrifice of Privacy Interests*, 6 SETON HALL CONST. L.J. 198 (1995); Sunil H. Mansukhani, *School Searches after New Jersey v. T.L.O. : Are there any Limits?*, 34 U. LOUISVILLE J. FAM. L. 345 (1995-1996); Thomas C. Fischer, *From Tinker to T.L.O.; Are Civil Rights for Students Flunking in School?* 22 J.L. & EDUC. 409 (1993).