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Search and Seizure: The Relationship and Responsibility

of School District Administrators and the Police

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ABSTRACT

Will school district administrators and the police be able to work together in the area of search and seizure? In today's society it is imperative that they do. Crime that is occurring in society today, mirrors itself on the school campuses. The police are called on a much more frequent basis to assist with problems occurring on campuses. A large number of school districts in Texas have formed their own police departments or have solicited the services of school resource officers from the local jurisdictions.

The research is essential to better understand and hopefully ease the conflict between school district administrators and police officers. The research will be useful in instructing administrators and police officers on each other's roles and how they can work together to enhance each other's authority. By doing this they can work as a team and become more effective in fighting crime on campuses.

The research consists mostly of case law, articles, manuals, internet, and personal knowledge, with eighteen years experience in law enforcement on school campuses. Case law is what establishes the authority of both and ultimately is used to decide whether school discipline or a criminal case is upheld or not based on a search. A limited survey was used to gain comments from administrators and officers based on their personal knowledge and experiences on working together.

The results that were obtained from the research were expected. There is a great need for more training in this area for both administrators and police officers. They need more training on what they can expect from each other based on each other's roles and perspectives. More training in how to communicate with each other is also needed. They want to work together sometimes they just don't know how.

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INTRODUCTION

The subject of the research is the relationship between school district administrators and the police regarding the issues of search and seizure and the powers and responsibilities administrators and the police have. It explores the adversarial relationship between administrators and the police. It also addresses how they can work together to enhance their relationship.

The problem addressed is the difference between school district administrator searches and police searches and the difference between reasonable suspicion and probable cause and which is needed to conduct a search by what entity, taking a look at ways for administrators and the police to work together and in turn enhance their authority by doing so, it can be shown why there is a necessity for sharing information. Recent trends in court decisions substantiate that necessity.

The purpose of this research is to clarify numerous misconceptions that administrators and the police have about each other and their authority. An explanation why both sides will benefit from working together can reduce the tension between administrators and the police. Clearing up some of these issues will make working conditions better and more effective for both sides. The Fourth and the Fourteenth amendments will also be examined and how they apply to student searches in public schools. The different types of searches will also be examined: personal searches, locker searches, searches for drugs, point of entry and exit inspections, video and audio surveillance, and K-9 searches.

Data was obtained from a variety of sources such as, case law, statutes, articles, the Internet and other research in this area. Case law such as New Jersey v. T.L.O., among others, were examined to see the effects it has on school searches.

The intended outcome of the research was that school district administrators and the police have more in common than they think. It is believed that the research will show that police officers can find out that by understanding the authority of the administrators, it will be beneficial to them. The research will show that recent trends have been very beneficial for police officers. It will show that in some cases a search can be conducted by police officers under the lesser standard of reasonable suspicion. It will show that regarding the issue of weapons; school district administrators and the police have far more latitude in searching on school grounds. The research will show that courts and society in general have begun to believe that the safety and security of the many out weigh the privacy expectations of the few and that searches made in good faith for the safety and security of a large number of people entrusted to one's care are good searches. This is especially true for school district police officers and school resource officers. (Law Advisory Group 1998)

Both school district administrators and police will benefit from the research. The research will strengthen cooperation between school district administrators and the police and in turn will improve the safety and security of students and faculty.

REVIEW OF LITERATURE

The school district administrator gets his authority from three different sources:

1. *in loco parentis*

2. written regulations

3. constitutional empowerment

In the early days of public school, attendance was voluntary. Since the parents sent their children to school on a voluntary basis, the courts thought that the parents freely gave their authority over the children to the teacher. The phrase, *in loco parentis,* means " in place of the parent." In loco parentis assumes that children have no rights and are always under the control of an adult. It is also based on property law. Children are the property of their parents. In the mid to later 1900's, the courts began to pull away from these ideas. In 1967 the Supreme Court decision in *In re Gerald Gault, a Juvenile (1967) 387 U.S. 1,* the Court ruled that juveniles did have rights. It did not give them the full rights enjoyed by adults and still stated that the child's safety was more important than the child's rights. The Court revisited the matter in two other cases *Bethel v. Fraser (1986) 478 U.S. 675* and in *Vernonia v. Acton (1995) 115 S Ct 2386.* They said again that the safety of the child is the most important consideration and put the safety of the group over the rights of the individual. In the case of *Tinker v. Des Moines Independent Community School District (1969) 89 S Ct 733,* the Court began to treat the child as a person with rights. A parent generally could override these rights and the parent could assign their power to other agents such as teachers. (Law Advisory Group 1998, Borreca and Horner 1999)

The Court said that the school derives its authority from regulations. They also said that for regulations to be effective, they have to meet four standards:

1. Be written
2. Be Specific

3. Be Authorized
4. Be Published

In the case of constitution empowerment, the administrator derives most of his authority to search from the United States Supreme Court decision in *New Jersey vs. T.L.O.,469 U.S. 325 (1985).* In this case the Court decided that school district administrators are not totally covered under the fourth amendment. They are governed by the fourth amendment but are held to a lesser standard than are the police. The court decided that the school administrators could search if they reasonably believe the search will reveal something that would be a violation of a school rule or crime. They called this lesser standard " reasonable suspicion." The way a student is searched must be related to the reason a student is searched and what is being searched for. Additionally the administrator has to consider the well being of the student and protect him from undo embarrassment. In *New Jersey V. T.L.O. (1985) 105 S Ct 733* the Court said that the search must not be " excessively intrusive in light of the nature of the suspected infraction." A single phrase can be used to govern an administrators search " common sense." The Court also stated that the school district administrator does not have to inform the student of his constitutional rights but the student may invoke his right under the 5th Amendment against self-incrimination. A child does have the right to ask his parents for advice in a situation that involves discipline or legal proceedings. In *New Jersey v. T.L.O.,* the Court also established the balancing test. The Court said that the scope of the search should be limited to what is being searched for. The more intrusive the search, the higher degree of reasonable suspicion is required. This is especially

important in strip searches. (Law Advisory Group 1998, Borreca and Horner 1999, Texas Office of the Attorney General U.S. 1998)

"Rule: Reasonable suspicion is that degree of suspicion, which would lead the average trained person in any particular governmental role to assume that the degree of annoyance or embarrassment caused is justified. This intrusion, even when justified, must be no greater than the circumstances make necessary. This is known as the least intrusive method."(Law Advisory Group 1998)

New Jersey v. T.L.O. also recognized the special needs of the school to maintain order and discipline, so that it can provide an education. The school administrator should constantly ask himself about the necessity of the search at that time. The administrator should always be able to document his reasonable suspicion. (www.doj.wi.us)

Several courts have also addressed the question of "expectation of privacy," as it pertains to public schools. *Vernonia School District v. Acton, (1995) 115 S. Ct. 2386*, addressed the issue of drug testing for athletes. The Supreme Court stated said that the fourth amendment does not protect all subjective expectations of privacy but only those that society recognizes as legitimate. Justice Scalia said, " a proper educational environment requires close supervision of all children as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult." The courts have also visited the question of expectation of privacy as it pertains to surveillance cameras. They have upheld the use of the cameras in the schools as long as the question of embarrassment for the students is addressed such as, cameras in restrooms and dressing rooms. There are a couple of questions that the courts have established to

determine if a person had an expectation of privacy. (Raskin 2000, Borreca and Horner 1999)

1. Did the person expect some degree of privacy?
2. Is the expectation reasonable

The use of drug sniffing dogs in the schools was addressed in several court cases. In the case of *Horton v. Goose Creek Independent School District, 690 F.2d 475, 5th Cir. (1982)* the courts determined that the sniffing of cars and locker was similar to drug searches at the airport and was not a search due to the reduced expectation of privacy. This case was also revisited in *U.S. v. Place (1983) 103 S. Ct. 2637* and in *U.S. v. Lovell (1988) 5th Circuit 849 F2nd 910.* The courts have also stated that searching individual students with a dog is not permissible as in *Doe v. Renfrow, 632 F2d 91, 7th Cir. (1980).* (Law Advisory Group 1998)

The area of consent searches needs to be addressed. Consent searches are just that, consent to search is asked for and received prior to the search. The tricky part to a consent search is that consent should not be asked for unless there is a documentable reason for doing so. In other words, you just can't go up to someone and ask him or her for consent to search unless you could search otherwise. In order for consent to be valid, it must be voluntary and not coerced. The student must not be threatened with discipline or prosecution if he refuses. There are several conditions that will determine if the consent was voluntary. (The Law Advisory Group 1998, Borreca and Horner 1999)

1. Was the student told he could refuse to give consent?
2. The student's intelligence, physical, and mental status.
3. The student's age

4. Was the student under the influence of a foreign substance?
5. The student's previous history with law enforcement.
6. Culture
7. Whether or not a trusted adult was present.

Although oral consent will do, it is advisable to obtain some type of written consent if possible. The student can only give authorities the consent to search places and items that he/she has care, control or custody over. Students may also limit the scope of their consent. The student should be advised what is being searched for. This is not a requirement, but helps establish that the consent was voluntary. It should also be noted that a student's refusal to give consent cannot be held against them. (www.doj.state.wi.us)

There are several cases in case law that show school district administrators and the police can work together and be effective. In the case *Cason v. Cook, 810 F. 2d 188 (8th Circuit 1987)* a school official searched a student in conjunction with an S.R.O. The court upheld the search based on the reasonable suspicion standard set by *New Jersey v. T.L.O*. It stated that because the school official had not searched at the officer's request, but on independent information. The police did not become actively involved in the matter until the school official discovered a wallet that fit the description of the one reported stolen. In *Salazar v. Luty, 761 F. Supp. 45 (S.D. Texas1991)* an off duty city police officer was working an extra job as a school security officer, but maintained all of his enforcement powers. He was present during a search by a school official. The court said that because he was working as a school security officer, he was considered to be a security agent of the public school. In *State v. Slattery, 787 P.2d 932 (Wash. App. 1990)* an assistant

principal searched a student based on information he had received. He discovered the student had a large amount of money in small bills and a beeper number. The assistant principal then called school security officers. The officers searched the student's locker and car. In a briefcase in the car they found approx. 80 grams of marijuana. The court of appeals upheld the search. They gave the following reasons, (1) the search was incidental to arrest, (2) there were exigent circumstances, and (3) school officials need only reasonable suspicion. In *In re Boykin, a Juvenile 237 N.E. 2d 460 (1968)* an assistant principal received information that a student had a gun in his possession. He called police officers and they went to the classroom. The police officers frisked the student and found a handgun. The judge in this case said that this was just "common sense." He said that this search was dangerous and that educators did not have to take this risk. Several cases since *Boykin* have sought to weaken it's authority such as *Picha v. Wielgos 410 F. Supp. 1214 (1976) and A.J.M. v. Florida (1993)Fla. App. Case 18 Law Weekly D124. Boykin* was reaffirmed in, *In re Fred C., a Juvenile 102 Cal. Rptr. 682 (1982)*. It basically said that the schools solicit all types of professional help in the educational process, from bus drivers to psychiatrists. The fact that the professionals in this case were police officers did not make the reasonable suspicion unreasonable. There is also a case were the police have solicited help from the school administrators. In *New York v. Overton (1967) 20 N.Y. 2d 360*, the police asked a principal if they could search a student. They did not have probable cause. The principal stated in court that he had information and was planning to search the student anyway. The court said that since the principal was going to search the student anyway, law enforcement involvement did not invalidate the search.(Law Advisory Group 1998, Borreca and Horner 1999)

METHODOLGY

Will school district administrators and the police be able to work together in the area of search and seizure? The research will show that not only will they be able to work together but that it will greatly benefit both of them and their constituents. The research will show that by working together they will be able to use each other's authority to make their jobs easier and more effective. Most of the material that will be examined in this research will consist of case law. The Supreme Court has several rulings that pertain to this subject, along with numerous lower court rulings and statutes. There are also numerous journals and articles written regarding this subject. In an effort to gain a better understanding of how school district administrators and police officers perceive their working relationship, a very limited survey was performed. The survey contained eleven questions, and was sent to various administrators within the author's district. The survey was sent to the following administrators.

1. 6 – High School Principals
2. 8 – Jr. High School Principals
3. 21 – Elementary School Principals
4. 32 – High School and Jr. High Assistant Principals
5. 27 – Elementary School Assistant Principals
6. 4 – Central Office Administrators that have direct contact with the schools and the police

The school district administrators returned approximately 44 surveys. It was clear by the results of the survey that more training in search and seizure and how the administrators and the police can work together is wanted and needed. The administrators

overwhelmingly see the police as a useful tool in performing their job and see their relationship with the police as beneficial. It is also clear by the results that they are not utilizing this tool effectively. The results showed that the administrators were not always familiar with the case law pertaining to search and seizure in the schools. Most of the administrators felt that just having the police available to call upon if needed enhanced their authority in the area of search and seizure. The majority of the administrators would automatically call the police in cases involving weapons although some said that it would depend on the weapon they were searching for. The administrators also said that they would call if they if they seized contraband during a search.

Approximately twenty surveys were returned by the police officers in this and one other school district. It is clear by the results of the survey that the police officers are much more skeptical of the administrators. This is probably due to the trust factor and some past experiences. The police officers felt that the administrators did not always contact the police when contraband was found. They felt that administrators involved the police when students refused to allow the administrator to search. They all felt that the administrators had much more authority to search on school grounds but they also felt that this could be used to their benefit. Some of the officers also felt that the administrators got in the way of them doing their job in some circumstances. The officers agreed that more training in the area of search and seizure, and the way police and school district administrators work together would be beneficial to everyone.

It should be noted that both districts that participated in the survey have school district police departments. This probably does account for the close working relationship that was reported.

FINDINGS

Will school district administrators and the police be able to work together in the area of search and seizure? Before they are able to work together, they must first understand each other's role in search and seizure. They must understand and appreciate that they have different interests and come from different perspectives. They also need to understand that different laws and procedures govern them. Once they understand each other's roles they will be able to formulate a plan of action that will be beneficial for both. It is imperative that school district administrators build a working relationship for the safety and welfare of faculty, staff, students and the police. Cooperation will insure a better line of communication and keep both informed of possible dangerous situations.

The Fourth Amendment to the U.S. Constitution protects citizens against unreasonable search and seizure. It says that, " The right of the 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 place to be searched, and the person or things to be seized." (art.1.06.CCp) Numerous court rulings since the Fourth Amendment have narrowed and in some cases broadened the rights given to all under this amendment. The Fourth Amendment is based on privacy although privacy is not a Constitutional right.

The school district administrator comes from an entirely different perspective than the police officer. The administrator is thinking about the district's discipline management plan, the availability of an alternative educational setting, and the student's parents. The last thing on the administrators mind is criminal prosecution and this is

understandable. The administrator has no education in law enforcement or rules of evidence. It is not that he doesn't care about the criminal prosecution of the offense; it's just that he is coming from a different perspective.

Police officers operate under a different set of rules and with a different perspective. The police officer, in most cases, has to have probable cause to conduct a search. Probable cause is a much higher standard than reasonable suspicion. The police officer has to consider the individual's rights as well as the rules of evidence. The police officer's entire cases could rest on whether or not the search was done correctly. If it is not done correctly the evidence may be thrown out in court. This is called the exclusionary rule or fruits from the poisonous tree. The fact that a police officer is conducting an investigation does constitute a search. There are several situations where the police can conduct a search without a warrant. They are with consent, inventory searches, immanent danger searches, searches that would prevent the destruction of evidence, and "hot pursuit" searches. Naturally with consent the officer is free to search, as long as the consent is given freely and not coerced. Inventory searches are normally done incidental to an arrest to document the person's belongings. This is also done on vehicles. Immanent danger searches are performed when the officer feels that his safety or the safety of others may be threatened. This occurs mostly when an officer observes a weapon on a person or in a vehicle. Searches are also performed without a warrant when an officer feels that evidence will be destroyed or discarded if the search is prolonged. Hot pursuit searches are simply that, when in pursuit an officer may enter a residence to search for and apprehend a suspect. (www.nolo.com/lawcenter) Also, police have the

authority to execute search warrants issued by magistrates. The officers must show "probable cause" in a sworn affidavit.

Case law clearly shows that school district administrators and the police should be able to share information and work together in the area of search and seizure. They need to understand each other's authority and the perspective that each other have as they approach the situation. It is also extremely important that each of them want to work together and not let egos get in their way. Case law clearly shows they by working together they enhance each other's authority and ability to get the job done. In every case that a search is performed it is imperative that the school administrators and the police maintain good documentation.

During the research, the author discovered that the main problem school administrators and the police have working together is the failure to communicate. For some reason the administrators and the police officers feel that by communicating with each other it diminishes their authority. It appears that administrators and the police feel that by communicating and working together it reflects that they were not able to handle the situation alone. Some of the administrators and the police forget that fighting crime and keeping schools safe and secure is a team effort.

It is the author's suggestion that more training in this area is needed for both administrators and police officers. The survey showed that school administrators and police officer are not completely comfortable with their knowledge of their own authority much less the others'.

DISCUSSION/CONCLUSIONS

Will school district administrators and the police be able to work together in the area of search and seizure? It is clear that the courts have said that it is possible, now it is up to the administrators and the police to make it happen. They will have to try and understand each others position, motives, and expected outcome before they are able to fully cooperate with each other and able to work together. They must understand what each needs to accomplish their intended outcome. It is apparent that both administrator and police officers want the relationship to work. More training in this area for both could give them a better insight into each others needs and expectations. One of the most important decisions an administrator can make is whether or not to call law enforcement. Once the Supreme Court established the three sources of authority school administrators were able to change how they deal with law enforcement. Law enforcement is charged with protecting society as a whole, school districts and individual schools are part of that society. Schools districts and the police must work together to protect the citizens in their charge. As previously stated in *In re Boykin, a Juvenile (1968) 237 N.E. 2d 460,* the court ruled that a frisk for weapons was dangerous and school administrators did not have to take that risk. A school administrator cannot ignore an unsafe condition and the court said that the involvement of law enforcement is the only viable alternative. The court ruled that a police officer could be an agent of the school when it was clear that the search was the administrator's idea and the administrator could not safely do the search. The trend in the courts today echoes *Boykin*. In the case *In re Fred C., a Juvenile (1982) 102 Cal. Rptr. 682*, the court said that if the police are called in to assist to late, they do not have a chance to minimize or ward off the danger. The nature of education is to rely on other professionals to assist them in providing a safe environment for the educational process.

It relies on doctors, psychologists, social workers, volunteers, parents and counselors. Because it relied on the police, did not render what was done unreasonable. Police officers should be summoned or should act on their own when there could be danger or violations of the law. Officers should not be involved in normal school discipline.

Considering the crime in society today, some administrators feel in danger in almost every search situation, therefore administrators have a lot of freedom involving the police. The following circumstances are examples.

1. The administrator feels in danger of assault.
2. The student may flee and endanger themselves or others.
3. The student is believed to posses a weapon.
4. The student is believed to posses drugs.
5. The contraband that is being searched for is dangerous.

When the item being search for is a weapon the search is not only urgent but could be dangerous. There is no question in these circumstances. The safety of the student and the safety of all others takes precedence. (Law Advisory Group 1998, Borreca and Horner 1999, www.doj.wi.us)

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