AN ANALYSIS OF THE LAWS GOVERNING SEARCHES BY PUBLIC SCHOOL RESOURCE OFFICERS

by

JOSEPH H. GARNER

(Under the Direction of John Dayton)

ABSTRACT

To combat crime, police officers are being placed in public schools throughout the United States. Known as "School Resource Officers," (SROs) these sworn officers are placed in schools to perform multiple tasks, including law enforcement, classroom instruction, and counseling. While police officers must adhere to probable cause standards when searching individuals in schools, under *T.L.O.,* school administrators have the authority to search students on a lesser standard of reasonable suspicion.

While it is clear that the standard for police officers is probably cause, and the standard for school administrators is reasonable suspicion, the law concerning SROs is not well established. Although SROs are sworn police officers, when they are working in public schools SROs must perform tasks similar to those performed by school administrators. This study provides an historical review of search and seizure law, and provides an up-to-date perspective on school resource officers and their legal authority to search students in today's schools. Findings of the study include the following:

1) A strong argument can be made that the legal standard applicable to school resource officers working in conjunction with school officials is the *T.L.O.* standard.
2) Further, a persuasive argument can be made that the legal standard that is applicable to school resource officers working independent from school officials is the *T.L.O.* standard.
3) School resource officers must justify the search at its inception by the establishment of reasonable suspicion.
4) The school resource officer‘s search must be reasonably related to the objectives and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

INDEX WORDS: S.R.O., School resource officer, School liaison officer, School police, Student searches, Search and seizure, Fourth amendment

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DEDICATION

This dissertation is dedicated to my wife, Lisa R. Garner. Throughout our marriage of seventeen years, she has taught me that I can be successful both academically and personally. She has taught me the meaning of perseverance, dedication, hard work, and grace through her daily walk. Although it has not always been easy, her unshakeable confidence in me has kept me pushing forward. I am blessed to be her husband.

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CHAPTER I

OVERVIEW OF THE STUDY

PROBLEM STATEMENT

According to a 2009 timeline of school shootings worldwide, there were 44 such shootings in the United States from February 1996 - November 2008, resulting in 117 deaths. Unfortunately, our nation‘s war on drugs and violence is not limited to its streets and neighborhoods, but continues to infiltrate our children‘s schools at an alarming rate (Stefkovich, 1995).

To combat this crime, police officers are being placed in public schools throughout the United States. Known as ―School Resource Officers,‖ (SROs) these sworn officers are placed in schools to perform multiple tasks, including law enforcement, classroom instruction, and counseling (Bough, 1999). Interestingly, while police officers must adhere to probable cause standards when searching individuals in schools, school administrators have the authority to search students on a lesser standard of reasonable suspicion.

In essence, school resource officers, being sworn police officers working in public schools, must perform tasks similar to those performed by school administrators, but they are held to a different legal standard. Search and seizure laws offer little clear guidance governing a school resource officer‘s authority to search students.

Core protections of individual rights in the U.S. can be found in the U.S. Bill of Rights, which is made up of the first ten amendments in the U.S. Constitution. It was established

to provide protection, not from individuals, but against the abuse of government power by the individuals who held government power.

This ideology of protection against the government can be traced back to Magna Carta in 1215, which protected people‘s property and liberty from being taken away simply at the King‘s command. Section 30 of the Magna Carta states, ―No sheriff nor bailiff of ours, nor anyone else, shall take the horses or carts of any freeman for transport, unless by the will of that freeman.” Section 31 states: ―Neither we nor our bailiffs shall take another‘s wood for castles or for other private uses, unless by the will of him to whom the wood belongs.” The Magna Carta recognized the needs of individuals to be secure in their property and liberty, and those rights and expectations were placed above the whim of the king.

The Bill of Rights grants protection to the people, not the government. Among these amendments is the right of people to have security in their person, houses, papers, and effects. As with sections of the Magna Carta, the Fourth Amendment prevents government, or an agent of the government, from arbitrarily taking one‘s property and/or freedom without just cause and due process of law. The Fourth Amendment states:

> 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, and particularly describing the place to be searched, and the persons or things to be seized.

Based on these time-honored standards, individuals have come to expect that their privacy will not be unreasonably violated. The Fourth Amendment generally mandates that all searches and seizures be based on warrants supported by probable cause as sworn by oath or affirmation that describes the places to be searched, and persons or things to be seized. The presumption is that all searches and seizures conducted without a search or arrest warrant are in

violation of the Fourth Amendment. The burden of proof lies with the government, to show that not all searches and seizures conducted without a warrant violate an individual‘s rights.

Prior to *Terry v. Ohio* (1968), little latitude was given to governmental agents to search suspects in any manner other than that prescribed by the Fourth Amendment. Through this case, however, the United States Supreme Court stated that under certain circumstances, government agents could perform searches without first obtaining a warrant or establishing probable cause.

Through *Terry v. Ohio* (1968), it was determined that police officers must have probable cause to conduct an ―intrusive" search, which is any search other than a pat down. A pat down search is a search limited to the outer clothing, designed to find weapons that could be of harm to officers or others involved.

While the *Terry* case prescribed the standard for police officers, it did nothing to set the standard for school administrators, although school administrators are also government officials. In 1969, the Supreme Court issued an opinion in the case of *Tinker v. Des Moines Independent Community School District*, which recognized Constitutional rights for students who attend public schools.

While students have certain rights, in some instances, greater latitude has been given to school administrators to infringe upon those rights for the protection of the educational setting and in recognition of their status as children under adult supervision. *New Jersey v. T.L.O.* (1985) granted authority to school administrators to conduct searches of students and their belongings, if reasonable suspicion is established. And, based on the *Terry* decision, reasonable suspicion is a lesser standard than that of probable cause.

School resource officers have the definitive role of enforcing statutory laws and, in doing so, must abide by search standards based on probable cause. However, when placed in school

environments and challenged to perform school administrative functions, the question arises whether or not school resource officers can apply search procedures based on reasonable suspicion standards? The purpose of this study is to analyze historical and current law as it relates to school resource officers and their authority to search students.

RESEARCH QUESTIONS

This study investigated the following research questions:

1. What is the relevant legal history concerning school resource officers and their authority to search students?
2. What is the current law concerning school resource officers and their authority to search students?

PROCEDURES

This study used legal research methodology. This included an extensive search for relevant sources of law, including federal and state constitutional provisions, legislation, regulations, case law, scholarly commentary, and other relevant documents using "ERIC," "Lexis-Nexis," "Findlaw," and "Westlaw" databases. The resulting federal and state constitutional provisions, legislation, regulations, case law, scholarly commentary, and other relevant documents were reviewed, analyzed, and synthesized. This study provides an accurate historical perspective on the law as it relates to school resource officers and their legal authority to search students. In addition, it provides an up-to-date perspective on school resource officers and their legal authority to search students in today's schools.

The literature review is arranged in chronological order to provide the reader with a perspective on the historical development of the law concerning this issue. Included in the literature review are significant government documents, such as excerpts from the Magna Carta and the United States Constitution. Also included are U.S. Supreme Court, federal courts of appeals, district courts, and state courts‘ opinions regarding the law as it pertains to school resource officers‘ authority to search students.

Chapter Three includes an analysis of the current law as it pertains to the authority given law enforcement officials and school administrators to search individuals, and, specifically, the authority given school resource officers in these instances. Supreme Court and appellate court opinions and scholarly commentaries have been integrated to form a current composite perspective of the law governing a school resource officer‘s authority to search students. Chapter Four provides findings and conclusions for the school resource officer‘s application of case law governing the search of students.

CHAPTER 2

REVIEW OF THE LITERATURE

This Chapter reviews literature relevant to the law that governs a school resource officer‘s authority to search students, and examines similar laws as they relate to police officers and school administrators—and the legal authority they have to search students and other individuals. This document is intended to provide the reader with an informative and accurate historical perspective about the development of these laws and what they mean in educational settings across the United States, and is in no way intended as legal advice which can only be obtained from a qualified attorney licensed in your jurisdiction.

SECTION A

THE FOURTH AMENDMENT AND WARRANTLESS SEARCHES

In an attempt to squelch oppressive actions by the King of England in the Feudal society in 1215, Barons forced the King to sign into law a charter known as the Magna Carta (G.R.C. Davis, 1997). The Magna Carta gave individuals the rights they desperately needed against an oppressive government. This charter provided protection for the people, for the first time, against a governmental system that took advantage of them through abuses of power. As a result of this government oppression, the founding fathers of our government enacted the United States Constitution.

While the entire document of the Magna Carta provides rights to the English people, there are several sections of the 63-section document, such as 30, 31, and 39 that describe the rights of people to be secure in their property against government intrusion or seizure. After interpretation, Section 30 states: ―No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without the consent of the owner" (G.R.C. Davis, 1997), and Section 31 states: ―Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner" (G.R.C. Davis, 1997). Section 39 states: ―No freeman shall be arrested or imprisoned or deprived of his freehold or outlawed or banished or in any way ruined, nor will we take or order action against him, except by the lawful judgment of his equals and according to the law of the land" (G.R.C. Davis, 1997). These three provisions clearly state that government officials are not to take liberty or property that belongs to another without the consent of that individual or judgment by law.

Following in the footsteps of the Magna Carta, the *Semayne Case* (1603) recognized the importance of people to be secure in their homes by allowing the homeowner to defend his property against unlawful entry by the King's agents. This case also recognized the importance, when necessary, of allowing the King's agents to enter a dwelling without notice to seize persons or property, carry out an arrest, or execute the King's process.

Also in England, in the case of *Entick v. Carrington* (1705), the King's agents were sued after raids were conducted to obtain literature that attacked government policy and the King himself. The English court stated that the warrant was bad because it showed no probable cause. The United States Supreme Court has reflected on English case law when making its decisions. For example, in *Boyd v. U.S.* (1886), the U.S. Supreme Court noted the significance of the *Entick*

case, stating that it was a –great judgment" and a guide that lent understanding to what the founders meant when they wrote the Fourth Amendment.

Following the landmark decisions in England, representatives from America's states drew from their prior experience with the English government. In 1789, James Madison offered the first draft of what we now know as the Fourth Amendment, which prevents the government, or an agent of the government, from arbitrarily taking one's property without due process of law. It states:

> 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, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment makes up a portion of the Constitution known as the Bill of Rights. Rather than granting rights to the government and for the government, rights and protections are given to citizens of the United States through the Bill of Rights. The right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures is a standard which, when applied, places the responsibility upon the state to show that the search or seizure is reasonable. The courts' presumption is that all searches are unreasonable until proven reasonable. Based on the Fourth Amendment, searches are made reasonable by establishing probable cause.

Although the Fourth Amendment does not define probable cause, through interpretation of case law, a legal definition can be concluded. As early as 1813, in the case of *Locke v. United States*, the Court defined probable cause as *"*. . . less than evidence which would justify condemnation . . . It imports a seizure made under circumstances which warrant suspicion" (p. 348).

The case of *Dumbra v. United States* (1925) concluded that the main criteria in determining probable cause when obtaining a search warrant is whether the affiant had reasonable grounds at the time of the affidavit to believe that a law was being violated on the premises, person, and/or property to be searched. In addition to the reasonable grounds standard, the *Dumbra* case concluded that there must be another reasonableness standard applied. The affiant could meet this standard by showing that if ~~"t~~he apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of the warrant" (p. 645).

The issue of determining probable cause is not left completely to the law enforcement officer. The courts have recognized that the rights of individuals to be secure in their persons and property should not be left to the discretion of law enforcement officials. The determination of probable cause is one judged by a judicial officer or magistrate.

According to *Johnson v. United States* (1948), ~~"I~~ts protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime" (p. 14).

The requirements for being a judicial officer or magistrate vary from one location to another; however there is no judicial ruling that states that a magistrate or judicial officer must be an attorney. The Supreme Court has identified two requirements that must be met to ensure that the issuing officer has satisfied judicial expectations for validly qualifying to issue a warrant. ~~"~~[The magistrate] must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search" (*Shadwick v. City of Tampa*, 1972, p. 350).

According to *Coolidge v. New Hampshire* (1971), the first of the two requirements stating that the magistrate be neutral and detached can be met by showing that the issuing party is not engaged in law enforcement activities. Meeting the second requirement of determining if the magistrate is capable of discerning whether probable cause exists for an arrest or search, is an issue left to the courts.

The Court's opinion in *Shadwick v. City of Tampa* (1972), states that the burden of determining if the issuing official lacks the ability to determine probable cause lies with the defendant and his legal representation. *Aguilar v. Texas* (1964) concludes that the courts will uphold the determination of probable cause, as long as there is a substantial basis for the issuing officer to determine that there was probable cause.

The Fourth Amendment also states that warrants must specifically describe the place to be searched, and the person or things to be seized. This mandate prevents officers and other agents from carrying out general searches. It declares that an officer cannot obtain a search warrant without describing the items to be seized; items not listed on the warrant cannot be seized.

According to the decision in *Marron v. United States* (1927), discretion of law enforcement officers is void when completing and carrying out a search warrant. Also, the scope of the search is limited to specific locations where the items listed in the search warrant may be located. For example, one cannot look for a stolen refrigerator in a dresser drawer.

Property subject to seizure is defined in the case of *United States v. Lefkowitz* (1932), where the seizure of property is divided into three categories: contraband, fruits, and instrumentalities of crime. There are, however, some exceptions to the property that can be seized, and to the requirements of individual search warrants.

The first exception to having a search warrant gives officers the ability to conduct consent searches. In *Schneckloth v. Bustamonte* (1973), the Court defined a consent as a "waiver of a person's rights under the Fourth and Fourteenth Amendments" (p. 235). The Court added that when the subject is not in custody, the burden rests upon the state to show that the consent to search was voluntary. The Supreme Court concluded that the issue of a consent being given voluntarily is a matter of fact for the courts, and must be decided by viewing the totality of the circumstances.

It has been noted by the Court that a person who gives consent must also understand that he has the right to refuse such consent. The courts have battled back and forth regarding the intellectual ability of a person being able to give consent, but the conclusion in the *Schneckloth* case states that the prosecution does not have a burden of responsibility to demonstrate that a defendant possesses the intellectual ability to refuse a consensual search.

Although there seems to be much interpretation left to the courts regarding consensual searches, there is no confusion or lack of understanding on the courts' part regarding border searches. *United States v. Ramsey* (1977) states, "Searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border…" (p. 616).

As noted in The Georgetown Law Journal (2002, p. 1188), routine border stops and searches of persons, luggage, personal effects, and vehicles may be conducted without probable cause or even reasonable suspicion. Although the searches can be conducted without a warrant, any detention during the search must be limited to a short time. When individuals are detained

for lengthy amounts of time, and searches become intrusive, the reasonableness standard moves from none necessary to requiring established reasonable suspicion.

Federal courts have applied this standard not only to our external borders, but to internal borders, such as international airports and other functional equivalents of external borders. As defined through *U.S. v. Beras* (183 F.3d 22, 26 [1st Cir 1999]), a functional equivalent of a border is the first practical detention point after a border crossing, or the final port of entry.

Courts have differentiated between an intrusive border search and an inland intrusive search. *Almeida-Sanchez v. United States* (1973) notes that vehicles 20 miles from an international border are subject to search, but probable cause must exist. This case notes that the brief halting of a vehicle in order to determine the residential status of individuals within the vehicle, is acceptable without reasonable suspicion or probable cause.

In *Almeida-Sanchez*, the petitioner, a citizen of Mexico who held a valid United States' work permit, was stopped by the United States Border Patrol in his vehicle while traveling on California Highway 78. The Border Patrol acted within the guidelines of the Immigration and Nationality Act, which advises that a vehicle can be stopped and searched without a warrant to determine whether illegal aliens are being imported. The stop and search must be done within reasonable distance of an external boundary of the United States. As defined by the Attorney General, a reasonable distance is within 100 air miles of an external boundary. At the point the petitioner was stopped, he was 25 air miles north of the Mexican border.

Because Highway 78 never intersected with the Mexican border, the United States Border Patrol officer was not able to establish probable cause or reasonable suspicion in order to stop or search the petitioner's vehicle. While conducting a search of the vehicle, however, the

officer discovered a large amount of marijuana. The petitioner was charged and convicted for having knowingly received, concealed, and facilitated the transportation of marijuana.

On appeal, the Ninth Circuit Court of Appeals upheld the search and conviction of the petitioner, based on the Immigration and Nationality Act. However, the Appellate Court acknowledged that the search of the petitioner's automobile, made without probable cause or consent, violated the Fourth Amendment. The United States Supreme Court granted certiorari to consider the constitutionality of the search. Mr. Justice Stewart delivered the opinion of the Court, writing the following:

> Whatever the permissible scope of intrusiveness of a routine border search might be, searches of this kind may in certain circumstances take place not only at the border itself, but at its functional equivalents as well. For example, searches at an established station near the border, at a point marking the confluence of two or more roads that extend from the border, might be functional equivalents of border searches. For another example, a search of an airplane arriving at a St. Louis airport after a nonstop flight from Mexico City would clearly be the functional equivalent of a border search.
>
> But a search of the petitioner's automobile by a roving patrol, on a California road that lies at all points at least 20 miles north of the Mexican border, was of a wholly different sort. In the absence of probable cause or consent, that search violated the petitioner's Fourth Amendment right to be free of ~~"u~~nreasonable searches and seizures" (p. 275).

The judgment of the Court of Appeals is therefore reversed.

Another warrantless search is described in the case of *Hester v. United States* (1924). The Supreme Court noted that no warrant is necessary when conducting the search of an ~~"o~~pen field." Although this case does not specifically define open fields, it is implied that open fields include pastures, wooded areas, open water, and vacant lots. Because of the need to clarify whether or not owners have a reasonable expectation of privacy in open fields, as shown in *Katz v. United States* (1967), the Supreme Court granted certiorari for the case of *Oliver v. United States* (1984).

In the *Oliver* case, Kentucky State Police acted on reports that the petitioner was raising marijuana on his farm. Arriving at the farm, officers drove past his home to a locked gate where a ―No Trespassing" sign was posted. Finding a foot path around one side, the officers walked around the gate and along the road, finding a field of marijuana located one mile from the petitioner's home. The petitioner was arrested and indicted for manufacturing a controlled substance.

The District Court suppressed the evidence and determined that the petitioner had a reasonable expectation of privacy, because he had done all he could to assert that privacy by having a locked gate and ―No Trespassing" signs. In addition, the court found, ―the field itself is highly secluded: it is bounded on all sides by woods, fences, and embankments and cannot be seen from any point of public access" (p. 175). The District court found that the marijuana field was not one that invited casual intrusion. On state appeal to the Sixth Circuit Court of Appeals, the court reversed the lower court's decision by finding the following: ―the human relations that create the need for privacy do not ordinarily take place' in open fields, and that the property owner's common-law right to exclude trespassers is insufficiently linked to privacy to warrant the Fourth Amendment's protection" (p. 175).

The United States Supreme Court granted certiorari. The Court found that there was no reasonable expectation of privacy within open fields. In fact, even when posted with ―No Trespassing" signs, there could be no expectation of privacy by the owner. Mr. Justice Powell, in the Court's opinion, wrote: ―In this light, the rule of *Hester v. United States*, supra, that we reaffirm today, may be understood as providing that an individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home" (p. 179). Therefore, the Court concludes that no warrant is needed to

search open fields, but the Court did note that warrants must be obtained for search of areas surrounding the house or dwelling.

Mr. Justice Marshall, with Justice Brennan and Justice Stevens, joined in dissenting opinions of the Court‘s determination that there was no violation, since the land did not lie within the curtilage of the dwelling, and that an individual cannot legitimately demand an expectation of privacy for activities conducted outdoors in fields. In his dissent, Justice Marshall wrote:

> Privately owned woods and fields that are not exposed to public view regularly are employed in a variety of ways that society acknowledges deserve privacy. Many landowners like to take solitary walks on their property, confident that they will not be confronted in their rambles by strangers or policemen. Others conduct agricultural business on their property. Some landowners use their secluded spaces to meet lovers, others to gather together with fellow worshippers, still others to engage in sustained creative endeavor. Private land is sometimes used as a refuge for wildlife, where the flora and fauna are protected from human intervention of any kind. Our respect for the landowners to use their posted ―open fields‖ in ways such as these partially explains the seriousness with which the positive law regards deliberate invasions of such spaces and substantially reinforces the landowners‘ contention that their expectations of privacy are ―reasonable‖ (p. 193).

Justice Marshall also found that, ―The Court‘s contention that, because a field is not a house or effect, it is not covered by the Fourth Amendment is inconsistent with this line of cases and with the understanding of the nature of constitutional adjudication from which it derives‖ (p. 189).

Through *Oliver v. United States* (1967), the courts acknowledged that open fields are areas seen freely by individuals who walk by a property or even fly over it, and that open fields are intended for activities that should not encompass or justify a reasonable expectation of privacy.

This theme carries over in what is known as the ―plain view‖ doctrine, in which three important rules apply, as determined in the case of *Coolidge v. New Hampshire* (1971). The rules that apply to a warrantless seizure of property—which include seizure of persons—state

that the officer or agent must have a right to be at the location which they are searching. This point was argued again in the case of *Washington v. Chrisman* (1982), and was confirmed again through the Court's decision—that, when an officer or agent has the right to be at a location, he or she has the right to seize contraband at the location.

The facts leading to the arrest and conviction of the petitioner in the *Coolidge* case are as follows. On the evening of January 13, 1964, Pamela Mason, 14, was contacted by a man who said he needed a babysitter. Eight days later, after being murdered, her body was found on the side of a major highway several miles from her home. On January 28, law enforcement was notified that the petitioner, Edward Coolidge, had been away from his home on the evening of the murder. While being questioned at his residence, Coolidge was asked if he owned any guns, and then produced two shotguns and a rifle. At that time, Coolidge agreed to take a polygraph test on the following Sunday.

When that day came, Coolidge was contacted by law enforcement to meet at the police station and take the polygraph test at another location. That evening, two plain-clothed police officers from the first visit went to the Coolidge residence and met with Mrs. Coolidge, who was accompanied by her mother-in-law. The officers explained that Mr. Coolidge was in serious trouble and asked Mr. Coolidge's mother to leave the residence. The officers then questioned Mrs. Coolidge and, without knowing her husband had already turned in three firearms, she turned over four additional firearms to the officers. Also obtained were clothes Mrs. Coolidge suspected her husband of wearing the night Pamela Mason disappeared. Mr. Coolidge was held in jail that evening on unrelated charges and released the following day while the investigation continued.

On February 19, a meeting was held between the law enforcement investigators and the State Attorney General, who had personally overseen the investigation and would later become the prosecutor of the case. At the meeting, it was determined that there was probable cause to arrest Mr. Coolidge for the murder of Pamela Mason. There was also enough evidence to support the search of the residence and two vehicles there. Warrants were issued under oath by the Attorney General, who acted as justice of the peace.

Mr. Coolidge was arrested that evening. Mrs. Coolidge was advised to stay elsewhere and was denied her request to take one of the vehicles. The search warrant in question is one issued for the seizure and search of a 1951 Pontiac, which, along with the other vehicle, was parked in the Coolidge‘s driveway, where it remained visible from the street and residence. Both vehicles were seized. The vehicle in question was searched and vacuumed on February 21, two days after it was seized, and was again vacuumed one year later.

At the jury trial, clothes that had been seized and vacuum sweepings of the vehicle were presented to show a high probability that there had been contact with Pamela Mason. Also presented was a .22 caliber rifle which the prosecution claimed was used as the murder weapon. Pre-trial motions to suppress the evidence were referred to the New Hampshire Supreme Court by the trial judge. The evidence was ruled admissible. Mr. Coolidge was found guilty and sentenced to life in prison. The New Hampshire Supreme Court affirmed the conviction. The United States Supreme Court granted certiorari to consider the admission of evidence against Coolidge.

In the Court‘s opinion, by Mr. Justice Stewart, the Court first addressed the issue of the warrant being issued by an impartial judge. The Court found that the warrant had been issued by a judge who was not ~~“n~~eutral and detached.” The warrant was, in fact, issued by the chief

―government enforcement agent" of the state, who had been actively involved with the investigation of the crime.

The state contended that the automobile was legally seized through warrantless guidelines. The Court paid special attention to the claim that the arrest was based on probable cause, thus the vehicles in the driveway were in plain view, warranting seizure. The Court disagreed with the state's claim by stating:

> In light of what has been said, it is apparent that the ―plain view" exception cannot justify the police seizure of the Pontiac car in this case. The police had ample opportunity to obtain a valid warrant; they knew the automobile's exact description and location well in advance; they intended to seize it when they came upon Coolidge's property. And this is not a case involving contraband or stolen goods or objects dangerous in themselves. The seizure was therefore unconstitutional, and so was the subsequent search at the station house. Since evidence obtained in the course of the search was admitted at Coolidge's trial, the judgment must be reversed and the case remanded to the New Hampshire Supreme Court (p. 473).

Although the case was reversed, the outcome of the law enforcement application clarified the requirements of the ―plain view" doctrine.

The *Coolidge* Court took their findings one step further in stating that it is not enough for an officer to have a right to be present, but he must have a right to see the contraband that is present as well. It explained that an officer cannot move items to get a clear view of the perceived contraband, nor can he go into closets, dresser drawers, or other concealed areas or secured-from-plain-sight locations to locate contraband without first obtaining a warrant.

The final rule applied through *Coolidge* states that the perceived contraband must be immediately apparent to be contraband to the officer present. Application of the rule is explained by stating that an officer cannot look behind a television and retrieve a serial number to see if the television is stolen, without first obtaining a warrant. At the time an officer views

contraband, it must be apparent that the item or substance is contraband in order for the evidence to be seized without a warrant.

Through its landmark decision of *Terry v. Ohio* (1968), the U.S. Supreme Court recognized for the first time the need for law enforcement to be able to conduct the brief seizure of a person, and limited searches of their person and property, without first establishing probable cause. In this case, Officer McFadden, a plain-clothed police officer with the city of Cleveland, was assigned the special duty of walking a downtown beat to watch for shoplifters and pickpockets. Officer McFadden was a veteran police officer with more than 30 years of experience. While he was on routine foot patrol, two gentlemen aroused his suspicion as he watched them standing, talking together, and taking turns walking away and glancing into a store front window. At one point, another man joined them, the three had a short conversation, and the third walked away.

A short time later, McFadden observed the two men heading off in the same direction the third man had traveled. Officer McFadden testified that, based on his experience, he believed the men were getting ready to rob the store. He followed the two men until they joined the third man.

Officer McFadden testified that he patted down one of the men, known as Terry, and felt a pistol underneath his coat. He was unable to acquire the pistol while the men were outside the store, so he instructed the men to enter the store, where he took Terry‘s coat and obtained a .38 caliber pistol. He patted down one of the other men, known as Chilton, where he found another pistol. McFadden testified that he did not place his hands beneath the overcoats until he felt that the men had weapons. In justification of the limited search, McFadden also testified that he feared the men may have weapons in their possession prior to the pat down.

The Supreme Court cited the importance of people to feel secure and expect the privacy of their person by reviewing the 1891 case, *Union Pac R. Co. v. Botsford.* In it, the Court stated, "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from restraint or interference of others…" (p. 251). With regards to *Terry*, the Supreme Court examined the case to determine if his rights were violated via an unreasonable search and seizure.

What the Court found was that police officers could stop or seize a person on a standard that doesn't meet probable cause requirements. The Court in the *Terry* case applied a reasonableness standard, described as when, "a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot" (p. 31). This standard is known as reasonable suspicion.

When conducting a limited search, the reasonableness standard, according to the *Terry* case, is, "Whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger" (p. 27). Although the Supreme Court notes that individuals do not lose their Fourth Amendment protection against unreasonable searches and seizures, police officers—when applying reasonable suspicion—are allowed to temporarily seize individuals and question them to determine if criminal activity is occurring or is about to occur. The stop is limited to only being long enough to determine if criminal activity is taking place and probable cause does not apply. After the stop/seizure, police may conduct a limited search in the form of a pat down. The pat down is restricted to the outer clothing, and can only be carried out in an attempt to locate weapons for the safety of the officer and others.

While there are many police-to-citizen encounters, the Court identified three levels of contact between police officers and individuals during the *Terry* case. The first type of contact is

when a police officer simply speaks to a person. At any point, the individual or the police officer could walk away. No judicial or statutory limitation is placed on this type of encounter.

The second type of police-citizen encounter is based upon reasonable suspicion, which is measured based on a reasonableness standard. This measurement declares whether or not a reasonable person, when given the same set of circumstances and experience, believes criminal activity is occurring, has occurred, or is about to occur. Once reasonable suspicion has been established, an officer may briefly detain an individual in order to determine if criminal activity is afoot. During this brief detention, if the officer, based on reasonable suspicion, believes the individual is in possession of a weapon, the officer may conduct a pat down (frisk). The pat-down cannot be intrusive, upon the inner garments. It is limited to outer clothing in order to determine if the individual is in possession of weapons, and weapons only.

The third police-to-citizen encounter is based upon probable cause. Once probable cause has been established, the officer has the authority to invoke an arrest and search the individual and his property. The arrest/seizure is not limited to a necessary short amount of time, and the search is not limited to a pat down of the outer clothing. In this incident, the individual loses an expectation of the privacy and freedoms afforded by the Fourth and Fourteenth Amendments against unreasonable searches and seizures, because this type of search is based on probable cause, which is mandated by these Amendments.

The *Terry* decision and application is not without dissent. Mr. Justice Douglas wrote, ―The term _probable cause‘ rings a bell of certainty that is not sounded by phrases such as _reasonable suspicion‘‖ (p. 37). The relaxation of the Fourth Amendment requirement of probable cause to seize and search a person is one that Mr. Justice Douglas says was not the

intent of the Fourth Amendment and, thus, to protect citizens should not be lessened to a softened standard. Mr. Justice Douglas closes his dissent by writing:

> To give the police greater power than a magistrate is to take a long step down the totalitarian path. Perhaps such a step is desirable to cope with modern forms of lawlessness. But if it is taken, it should be the deliberate choice of the people through a constitutional amendment. Until the Fourth Amendment, which is closely allied with the Fifth, is rewritten, the person and the effects of the individual are beyond the reach of all government agencies until there are reasonable grounds to believe (probable cause) that a criminal venture has been launched or is about to be launched (p. 38).

To describe this decision's landmark impact, Mr. Justice Douglas states, "Yet if the individual is no longer to be sovereign, if the police can pick him up whenever they do not like the cut of his jib, if they can 'seize' and 'search' him in their discretion, we enter a new regime" (p. 39).

While search and seizure parameters were established as a result of the *Terry* case, guidelines were established in a different realm for police officers to search individuals and property after a valid arrest. In the case of *Chimel v. California* (1969), the defendant Chimel was arrested in his residence based on an arrest warrant for the crime of burglary. When the police arrived at Chimel's residence, he was not present, but his wife was, and she gave the officers permission to wait in the residence for Chimel's return. When Chimel arrived, he was arrested, and the police asked for permission to search the home. They had no search warrant. Chimel refused the officers' request. The officers searched the residence despite Chimel's refusal, justifying the search by stating that it was a search being done after a lawful arrest. The officers did obtain evidence of the crime of burglary.

The defense petitioned the court stating that the evidence should not be admissible because the officers conducted an illegal search of the residence. The Supreme Court held that an arresting officer may search the arrestee's person and the immediate area within the arrestee's control to remove weapons and evidence of a crime that could easily be destroyed. Furthermore,

the Court stated that a routine search of rooms other than those in which the arrest took place requires a search warrant. As stated in other cases, the courts determine the validity of searches incident to an arrest by reviewing the totality of circumstances, so there is no true hard-and-fast rule regarding the area of immediate control, other than the mandate that ensures that the courts will review each case individually.

Mr. Justice White and Mr. Justice Black joined in dissenting opinion, not in total disagreement with the Court's decision, but rather believing there was no reason to deviate from the previous Court's ruling regarding the search of a person and premises, incident to a valid arrest. It is stated in the following written dissent:

> Few areas of the law have been as subject to shifting constitutional standards over the last 50 years as that of the search "incident to an arrest." There has been a remarkable instability in this whole area, which has seen at least four major shifts in emphasis. Today's opinion makes an untimely fifth. In my view, the Court should not now abandon the old rule (p. 770).

The old rule was one established in the case of *United States v. Rabinowitz (1950).* In this case, at the time of an arrest, officers searched the desk, safe, and file cabinets in a one-room business office for evidence of the crime of forgery. Officers seized 573 stamps with forged overprints, which were admitted into evidence. The United States Supreme Court affirmed the conviction and rejected the contention that the warrantless search had been unlawful. The Court noted that "the search in its entirety fell within the principle giving law enforcement authorities '[t]he right to search the place where the arrest is made in order to find and seize things connected with the crime…'" (p. 61).

In 1990, the Supreme Court rendered a decision in the case of *Maryland v. Buie* (1990) that broadened the *Chimel* decision of limiting a search incident to an arrest within the areas of immediate control. In the case, an armed robbery took place in which two suspects fled the

scene. One of the suspects, known as Buie, was seen wearing a red running suit. An arrest warrant was served on him at his residence. One of the officers on the scene searched the basement in case there was someone else in the home and, observed a red running suit lying in plain view. The Supreme Court granted certiorari after the State Court of Appeals reversed the conviction.

The *Maryland* decision states: "The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that an area to be swept harbors an individual posing a danger to those on the arrest scene" (p. 325).

The U.S. Supreme Court has applied the standards of both the stop-and-frisk principle from the *Terry v. Ohio* decision, and the search incident-to-an-arrest principle from *Chimel v. Californi*a, which can be seen in action by the Supreme Court in the case of *Michigan v. Long* (1983). In this case, two police officers patrolling an area at night observed a vehicle being driven erratically. When the driver traveled off the road and into a ditch, the two officers went to the scene to investigate, and found the driver, Long, out of his vehicle and apparently under the influence of some substance.

Initially, Long was unable to comply with officers' requests. At one point, he walked toward the open door of his vehicle. One of the officers following Long observed a knife lying on the floor of his vehicle. The officer immediately stopped Long and conducted a pat down, but found no weapons. The other officer noticed something protruding from beneath the armrest within the car. He investigated and found a pouch containing what looked like marijuana. Long was placed under arrest and the rest of the vehicle was searched. More suspected marijuana was discovered in the trunk.

Although Long was convicted, the decision was overturned by the Michigan Supreme Court, stating, "…Terry [*Terry v. Ohio*] did not justify the passenger compartment search, and the mari[j]uana found in the trunk was the 'fruit' of the illegal search of the car's interior," *Michigan v. Long* (1983, p. 1032). The U.S. Supreme Court granted certiorari.

The Court found that the protective search of the passenger compartment was reasonable under the guidelines established in the *Terry* case. The Court states, "Roadside encounters between police and suspects are especially hazardous, and danger may arise from the possible presence of weapons in the area surrounding a suspect" (p. 1033). Like the *Chimel* decision, the searches of the passenger compartments of an automobile are limited to areas where a weapon may be hidden. Like in the *Terry* decision, the search must be based on the reasonable belief that the suspect will present a danger to the officer or others. If the officer is conducting a legitimate Terry search of the automobile's interior and comes across an object or substance that is contraband, the officer may seize the contraband.

Mr. Justice Brennan and Mr. Justice Marshall joined in dissent, noting that the facts in the case did not warrant an intrusion based on a lesser standard than probable cause. Mr. Justice Brennan wrote, "Even assuming that the facts in the case justified the officers' initial 'frisk' of respondent, they hardly provide adequate justification for a search of a suspect's car and the containers within it" (p. 1062). Citing the *Terry* case, the Court acknowledged that officers have a need to ensure personal safety; but in this case, the officers could have pursued a less intrusive means of insuring their safety.

Mr. Justice Brennan closed his dissent by writing, "The Court takes a long step today toward 'balancing' into oblivion the protections the Fourth Amendment affords" (p. 1065). He

also cited Justice Jackson in the *Brinegar v. United States* (1949) decision regarding Fourth Amendment protections:

> [Fourth Amendment Rights] are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government (p 1065).

Justice Jackson issued the dissenting opinion of the Court.

Government offices are also subject to searches without warrants, but there are some stipulations placed upon the search as determined in the case of *O'Connor v. Ortega* (1987). Dr. Ortega, a physician and psychiatrist at Napa State Hospital, where he also served as Chief of Professional Education, was suspected by hospital administrators of mis-management of the program. Administration also received complaints about sexual harassment and an inappropriate disciplinary action against a resident.

Ortega was placed on administrative leave while an investigation took place. It was not a criminal investigation, but an administrative investigation conducted by an accountant, a doctor, and a hospital security officer. After being on leave for seven weeks, Ortega was terminated. At one point during the investigation, Richard Friday, the hospital administrator, entered Ortega's office to secure state property. No formal inventory of the items in Ortega's office was done, but several items were seized, including a picture, a Valentine 's Day card, and a book of poetry sent to Dr. Ortega from a previous resident. Also seized was some Medicaid information belonging to a private patient of Ortega's. These items were later used against Ortega during his administrative hearing.

Ortega filed suit against the hospital administration in Federal District Court claiming that his Fourth Amendment rights had been violated under 42 U.S.C. 1983. The District Court

concluded that the search was valid because of the need for the state to gather its property. The Ninth Circuit Court of Appeals affirmed in part and reversed in part, finding that Dr. Ortega had a reasonable expectation of privacy in his office. Without explanation, the court found that the search violated Ortega's Fourth Amendment rights. In 1985, the U.S. Supreme Court granted certiorari.

The Supreme Court found that employees do have a reasonable expectation of privacy, but there are offices that have a lesser standard of privacy due to the nature of the position of the individual who takes residence in the office. Furthermore, the issue of an expectation of privacy must be examined on a case-by-case basis.

The guideline by which an employer can search the belongings of an employee, who has a reasonable expectation of privacy, is measured by the context in which the search occurs. The Court states that the search requires, "...balancing the employee's legitimate expectation of privacy against the government's need for supervision, control, and the efficient operation of the work place" (pp. 719-726) Furthermore, "Their [employer] intrusions on the constitutionally protected privacy interests of government employees for noninvestigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances" (*O'Connor v. Ortega*, 1987, pp 719-726).

Justice Scalia added that government searches to retrieve work-related materials and to investigate violations of work rules do not violate the Fourth Amendment. These types of searches are strictly related to employee and employer, and the boundaries are not stretched to include agents of the court and law enforcement for the purpose of criminal investigations.

Justice Blackmun, along with Justice Brennan, Justice Marshall, and Justice Stevens, joined in the following dissenting opinion:

> The facts of the case are simple and straightforward. Dr. Ortega had an expectation of privacy in his office, desk, and file cabinets, which were the target of a search by petitioners that can be characterized only as investigatory in nature. Because there was no "special need," to dispense with the probable cause requirements of the Fourth Amendment, I would evaluate the search by applying this traditional standard. Under that standard, this search clearly violated Dr. Ortega's Fourth Amendment rights (p. 733).

Justice Blackmun also described the need to weigh the expectation of privacy with the need to conduct the search. And because the workplace has become somewhat of an extension of the home, the standard to be applied is one of probable cause, unless there is special need for a warrantless search.

Providing that an agent of the court can justify the warrantless search, the fruits of the crime will be admissible in a court; but lacking justification, the evidence may be dismissed. The following section will show the main rules governing the dismissal of evidence due to an unjustified search that does not comply with case law, and the guidelines prescribed as a result of the Fourth Amendment.

SECTION B

THE EXCLUSIONARY RULE, "FRUIT OF THE POISONOUS TREE", AND THE EXCEPTIONS

As discussed earlier, the assumption of the court is that all searches conducted without a warrant are not valid, because of the lack of a warrant. There are exceptions, however, in which a search can be justified without a warrant, as discussed in Section A. Based on the

―Exclusionary Rule," evidence in non-valid searches has the potential to be thrown out and exempt from the court's consideration.

The first case in the United States to address and exclude evidence that was obtained illegally by an unreasonable search was *Weeks v. U.S.* (1914). In this case, the defendant, Weeks, was arrested without a warrant after police officers entered his residence using a key that had been hidden outside. Among the items seized were books, letters, money, stock certificates, bonds, and clothes, which were turned over to a United States Marshal. After their initial visit, police with the U.S. Marshal returned to Weeks' residence and gained entry by permission of a boarder officer at the residence, and additional papers and effects were seized without a warrant.

Weeks' attorney petitioned the court for the return of all items seized by the officers and the marshal. The petition cited that the district attorney held the evidence in violation of the Fourth Amendment. Although some property was returned, some of the property was retained for use as evidence in a criminal prosecution against Weeks, who was ultimately indicted, charged, convicted, and sentenced to imprisonment and a fine.

Weeks v. U.S. was argued before the Supreme Court on December 2nd and 3rd, 1913, and decided in February 1914. The decision of the Supreme Court was that the judgment of the lower court be reversed. The Court concluded:

> If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land (p. 393).

The Court's decision cited the ―Exclusionary Rule," that any evidence illegally obtained is not admissible in court. This landmark decision had an impact on law enforcement, federal

officials, and federal courts, but it did not affect state courts. Indeed, the Court in the *Weeks'* case did not concern itself with the fact that municipal police searched Weeks' residence and obtained his personal property without a warrant.

The Court stated: "As to the papers and property seized by the policemen, it does not appear that they acted under any claim of Federal authority" (p. 398), and, "What remedies the defendant may have against them we need not acquire, as the 4th Amendment is not directed to individual misconduct of such officials. Its limitations reach the Federal government and its agencies" (*Weeks v. U.S.,* 1914, p.398).

Following the Court's decision in the *Weeks'* case, little was done to regulate the use of evidence as admissible or inadmissible in a state court as a result of an unreasonable search, until 1960 and the case of *Elkins v. United States.*

The issue before the Court dealt with whether evidence seized by state law enforcement officers and turned over to federal officers should be admissible in a federal criminal trial. Before being tried in a U.S. District Court in Oregon, two Oregon courts ruled a search and seizure by state officers was unlawful, but the District Court found the evidence to be admissible, after looking to the *Weeks'* case and determining that federal officers had no prior knowledge of the search being conducted by state officers.

The U.S. Supreme Court, however, found the evidence non-admissible, drawing their conclusion by determining that if the search by state or federal officers was unlawful, the evidence seized was also unlawful.

The Court's finding in the *Elkin's* case relied upon the "silver platter" doctrine which was so coined in the case of *Lustig v. United States* (1949). In the *Lustig* case, municipal police officers searched a motel room without a warrant and seized evidence related to the crime of

counterfeiting. Prior to the conclusion of the search, a secret service agent was called into the room to identify fruits of the crime. The evidence was eventually turned over to the secret service for prosecution. Justice Frankfurter announced for the court in *Lustig*, "The crux of the doctrine is that a search is a search by a federal official if he had a hand in it; it is not a search by a federal officials if evidence secured by the state authorities is turned over to the authorities on a silver platter" (p.78).

The Court in the *Lustig* case acknowledged that the evidence was admissible, providing the federal official played no role in the search and seizure, even if the evidence was immediately turned over to federal officials; therefore, Lustig's conviction was upheld.

In the *Elkins'* case, after failed attempts by state officials to successfully use evidence in the state's prosecution, evidence was turned over to federal officials for their use. But the Court's decision contradicted the findings in the *Lustig* case. This decision determined that when evidence is illegally obtained and turned over to federal officials for prosecution, the evidence is inadmissible. It was not until one year after the *Elkins*' case that the U.S. Supreme Court rendered a decision upon the states regarding the inadmissibility of illegally obtained evidence.

In 1961, the U.S. Supreme Court's ruling of *Mapp v. Ohio* saw the "Exclusionary Rule" applied to the states for the first time, when a definitive rule excluded the use of illegally obtained evidence.

In the *Mapp* case, on May 23, 1957, three Cleveland police officers went to the residence of Mrs. Mapp after receiving a tip that an individual wanted for questioning was hiding out in the Mapp residence. During the officers' first attempt to enter the home, Mrs. Mapp refused and contacted her attorney, who advised her not to allow entrance to the officers unless they could

provide a search warrant. The officers advised headquarters and then secured the perimeter of the residence.

Approximately three hours later, four or more officers joined those previously there, and attempted to gain entry a second time. Again, Mapp refused to allow entrance by not answering the door, but officers forced their way in through another door. Meanwhile, Mapp's attorney arrived on the scene, but officers refused to allow him to enter. Mrs. Mapp asked to see a search warrant and when one officer produced a piece of paper, she grabbed it and placed it in her bosom. She was then arrested and handcuffed for being belligerent. The officers searched the residence, found various obscene materials, and charged Mrs. Mapp for having them in her possession.

An appeal was filed in the Ohio Supreme Court—and the state argued, "…even if the search was made without authority, or otherwise unreasonably, it is not prevented from using the unconstitutionally seized evidence at trial" (p. 645). The conviction was upheld, but the State Supreme Court acknowledged that there could be a reasonable argument that "…the conviction should be reversed 'because the methods employed to obtain the [evidence]…were such to 'offend a sense of justice'" (*Mapp v. Ohio,* 1961, p. 645).

The U.S. Supreme Court granted certiorari, and the case was argued on March 29, 1961. Relying on previous rulings, the Court concluded that "the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments…" (p. 657). Justice Clark wrote that it made "very good sense" (p. 657) for the exclusionary rule to be applied to the states. Justice Clark also wrote, "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by the same authority, inadmissible in a state court" (p. 655).

Not all justices agreed with the majority opinion. In dissent, Mr. Justice Harlan wrote against the imposition of the Court's decision regarding the *Weeks'* application of the exclusionary rule to the states. He wrote, "In my view this court should continue to forbear from fettering the states with an adamant rule which may embarrass them in coping with their own peculiar problems in criminal law enforcement" (p. 681).

Another standard allowing the omission of evidence is known as the "fruit of the poisonous tree." This standard can be applied not only to physical evidence, but also to statements given. The "fruit of the poisonous tree" comes into application when an arrest is made illegally and evidence or statements are obtained following the arrest. Such evidence can be located on the arrestee or within areas surrounding the arrestee, as obtained by a search, incident to an arrest.

Again, "evidence" is not limited to physical evidence, but sometimes includes statements made following arrests, as occurred in the case of *Wong Sun Et Al. v. United States* (1963). In this case, after being under surveillance for six weeks, Hom Way was arrested by federal narcotics agents for possession of heroin.

Way had never worked for law enforcement as an informant, but told federal agents he had purchased the heroin from the proprietor of a laundry known to him as "Blackie Toy." Approximately seven agents went to the laundry. Owner James Wah Toy answered the door and told one officer to return when the laundry was open. The officer showed Toy his badge and told him he was a narcotics agent. Toy shut the door quickly and ran back toward the area of the laundry where he and his family lived. Agents broke through the door and arrested Toy in his bedroom. After the arrest, Toy denied selling drugs, but admitted he had smoked some heroin

with a man known as Johnny, who sold heroin. Toy did not know Johnny's last name, but described the man's residence.

Agents found the residence described by Toy, and the man, Johnny Yee, who surrendered less than one ounce of heroin after a brief conversation with the agents. Yee said he had received the heroin from Toy and another man known as "Sea Dog." After questioning Toy about the identity of "Sea Dog," Toy said the man in question was Wong Sun.

Agents arrested Sun at his residence, searched the home, but found no narcotics. All three men were arrested and released on their own recognizance. Several days later, they were interrogated at the Narcotics Bureau. All three gave statements, but the petitioners, Wong Sun and James Toy, refused to sign their statements, which were written in English from notes gathered by the narcotics agent who interrogated them.

After conviction, the petitioners appealed to the district court of appeals, which found the arrests were illegal, because they were not based on probable cause. The court also found that, "...the items of proof [evidence] were not the 'fruits' of the illegal arrests and that they were therefore properly admitted into evidence" (p. 478). The conviction was upheld, thus an appeal was made to the United States Supreme Court, which granted certiorari in 1961, and the case was argued several times beginning in March 1962 and ending in October 1962. The case was decided on January 14, 1963.

Justice Brennan, delivering the opinion of the Court, concluded that there were no reasonable grounds or probable cause to arrest James Toy, because the information that led to the arrest was vague and had been provided by an "untested source." The statements made by Toy at the time of his unlawful arrest were "fruits of the agents' unlawful action," thus the statements

should be removed as evidence. Narcotics taken from Yee were also fruits of the illegal arrest of Toy and, therefore, should not be allowed as evidence.

As a result of the exclusion of the evidence, Toy's conviction was set aside. The Court found that the statement given by Wong Sun was admissible, since it followed a lawful arraignment and was given voluntarily when he returned several days after release on his own recognizance. It was also determined that when the heroin was seized, no Fourth Amendment protections were invaded, so the heroin was admissible. Regarding Sun's confession, the Court stated, "Wong Sun is entitled to a new trial, because it is not clear from the record whether or not the trial court relied upon his codefendant's statement as a source of corroboration of Wong Sun's confession" (*Wong Sun Et Al v. United States,* 1963, p. 493).

In recognition of the difficulty that an officer may face when having to make a decision regarding probable cause to enact a warrantless arrest, Justice Clark penned the following dissenting opinion:

> The sole requirement heretofore has been that the knowledge in the hands of officers at the time of arrest must support a "man of reasonable caution in the belief" that the subject has committed narcotic offenses. That decision is faced initially not in the courtroom but at the scene of the arrest where the totality of the circumstances facing the officer is weighed against his split-second decision to make the arrest. This is an everyday occurrence facing law enforcement officers, and the unrealistic, enlarged standards announced here place an unnecessarily heavy hand upon them (p. 499).

Contrary to the Court's opinion, Justice Clark, based on the "totality of the circumstances," acknowledged that the information received from the informant was valid and reliable. Thus, the Court made an error in its decision.

Similar to the exclusionary rule potentially exempting evidence that is obtained illegally from being used in a criminal trial, the rule regarding the fruits of an illegal arrest can also lead to the exclusion of evidence, including statements, from a criminal trial. So, not only does the

search have to meet the guidelines set forth by case law and the Fourth Amendment, but the arrest that leads to the seizure of evidence must meet the same scrutiny.

As with the exemptions to the Fourth Amendment mandate to have a warrant prior to the search and/or detention of a person or property, there are exemptions to the exclusionary rule.

One exemption to the exclusionary rule is the "good faith" argument. Through the case of *United States v. Leon* (1984), the Supreme Court determined that the exclusionary rule does not apply when police obtain evidence through a warrant, if, at the time the warrant was issued, the police were acting under good faith that the warrant was valid, even if the warrant was found to lack probable cause. According to The Georgetown Law Journal (2002, p. 1267), "The good faith exception also applies when the police obtain evidence in reliance on a warrant later technically defective, on a statute authorizing warrantless searches that is later declared unconstitutional, or on an erroneous police record indicating the existence of an outstanding arrest warrant."

In the *Leon* case, officers from the Burbank, California, Police Department began a drug investigation of Leon based on information obtained from a confidential informant. The officers conducted surveillance of Leon's drug activities, and based on their observations, prepared an application for a search warrant. The warrant described three residences and a number of automobiles to be searched. After review by the District Attorney's Office, a state-court judge issued the warrant. The searches produced large quantities of drugs, as well as fruits of the crime of drug trafficking. The respondents were indicted on federal drug charges. As a result of the questionable warrant, a motion to suppress the evidence was filed and the District Court granted the motion, finding that the search warrant affidavit lacked probable cause.

The District Court did acknowledge that the officers acted in good faith, but the court rejected attempts by the state‘s Office to convince them that the exclusionary rule should not apply. The Court of Appeals affirmed the District Court‘s decision to suppress the evidence. The government petitioned for certiorari, stating that the only question that should be reviewed by the U.S. Supreme Court was whether or not the officers acted in good faith. Thus, should the exclusionary rule apply?

Justice White delivered the opinion for the Court, and ultimately it was decided that the officers acted under good faith; therefore, the evidence was admissible. The Court stated, ―The _Good Faith‘ exception to the exclusionary rule was proper because under such circumstances, suppression would not advance the exclusionary rule‘s goal of deterring official misconduct‖ (p. 906). The detached judge signed the warrant, acknowledging the validity of its content. Thus, the officers carrying out the warrant had no other belief than that the warrant was valid.

In a lengthy dissent, Justice Brennan described a system of judicial review in which the law enforcement community and the judicial system worked independently, without the same purpose of upholding Fourth Amendment protections. He also described a system in which there was no accountability to law enforcement or magistrate judges for a ―good faith‖ attempt to ensure that probable cause existed for the search and/or seizure of persons or property. Justice Brennan also pointed out that one purpose of the ―exclusionary rule‖ was to educate law enforcement regarding the consequences of invalid searches, which he referred to as an ―institutional incentive.‖ Justice Brennan wrote:

> After today‘s decision, however, that institutional incentive will be lost. Indeed, the Court‘s ―reasonable mistake‖ exception to the exclusionary rule will tend to put a premium on police ignorance of the law. Armed with the assurance provided by today‘s decisions that evidence will always be admissible whenever an officer has ―reasonably‖ relied upon a warrant, police departments will be encouraged to train officers that if a warrant has simply been signed, it is reasonable, without more, to rely on it. Since in

> close cases there will no longer be any incentive to err on the side of constitutional behavior, police would have every reason to adopt a ―let‘s-wait-until-it‘s-decided" approach in situations in which there is a question about the warrant‘s validity or the basis for its issuance (p. 955).

Also stated is Justice Brennan‘s opinion that, within this system, there would be no consequences for magistrates who made mistakes when determining probable cause criteria in the process of issuing warrants. If the magistrate‘s decision to issue a warrant was correct, the evidence would be admitted; but if the decision to issue a warrant was not correct, but was based on ―good faith," the evidence would still be admitted. For these reasons, Justice Brennan, along with Justice Marshall, collaborated in their dissention.

The Georgetown Law Journal (2002, p. 1268) states that the good faith exception does not apply when officers have no reasonable grounds to believe that a warrant was properly issued. The U.S. Supreme Court further identified four situations in which police reliance on a warrant not objectively reasonable. The first situation is when a magistrate issues a warrant based on a deliberately false affidavit. The second is when a magistrate fails to act in a neutral and detached manner. The third is when a warrant is based on an affidavit that is entirely unreasonable. And the fourth is when a warrant is so deficient that an officer cannot reasonably believe the validity of its contents.

The ―good faith" exception to the exclusionary rule not only applies to the seizure of evidence with an arrest warrant and the arrest without a warrant, but to messages received via police radios and computers as well. For example, when a query of an individual is done to determine if there are active arrest warrants out on that person, and an arrest warrant appears, the officer is limited to the information received over the computer terminal and/or via radio communication. An officer cannot vacate his or her jurisdiction and go to another location to determine if the arrest warrant is lawful, or even let a perpetrator go until the warrant can be

validated. Instead, the individual must be taken into custody and transferred to the court of jurisdiction.

The case of *Arizona v. Evans* (1995) tested the "good faith" exception regarding computer-generated reports. In the case, Evans was pulled over during a traffic stop and a computer-generated warrant check was done, as is common practice. When the report returned, it showed an outstanding warrant for Evans' arrest. He was taken into custody, his vehicle was searched, and a bag of marijuana was found. Evans was charged with possession of marijuana. At pretrial, Evans filed for a motion to suppress the evidence, claiming that the marijuana was found as the result of a search that stemmed from an unlawful arrest. The arrest had been based on the report from a valid warrant that the sheriff's office had mistakenly left on the computer.

The U.S. Supreme Court found the evidence to be admissible in court, because the officer was acting in good faith, and the warrant was lawful. The Court stated, "There was no evidence that the officer did not act in an objectively reasonable manner when he relied on the police computer record and that the policy objective of the exclusionary rule, deterrence of police misconduct, would not be served by suppressing the evidence" (*Arizona v. Evans,* 1995, p. 3).

Another exception to the exclusionary rule is the "Attenuation Exception." In the *Brown v. Illinois* (1975) case, the U.S. Supreme Court identified three factors to be considered when determining attenuation of the causal chain. The first was the amount of time elapsed between the unconstitutional government conduct and the acquisition of evidence. The second was the presence of intervening circumstances. And the third was the purpose and flagrancy of the police misconduct.

In the *Brown* case, the petitioner, Richard Brown, was arrested on the back stairs of his apartment for the murder of an acquaintance named Roger Corpus.

The officers, Lenz and Nolan, made the arrest after breaking into Brown‘s apartment and conducting a search without a warrant for a search or an arrest. Brown was taken into custody at gunpoint while attempting to enter the residence. When he was escorted in, the officers asked Brown if he was in fact Richard Brown, but he denied it. Brown was handcuffed, escorted to the police car, and taken to the police station. While en route, Brown again denied being Roger Brown. He was placed in an interrogation room at police headquarters, where he was left unattended for a short amount of time.

The officers entered the interrogation room and gave Brown hid Miranda warnings. Brown was reminded of an incident during which he fired a shot from a pistol into the ceiling at a pool hall. He was informed that the bullet was taken from the ceiling and compared to the bullet taken from Corpus‘ body. Brown was then asked if he would like to talk about Corpus‘ murder, and said he would. He then made a statement that he, Corpus, and a man named Jimmy Cloggett had been drinking and smoking pot the evening Corpus was murdered. Brown stated that Cloggett ordered him at gunpoint to tie up Corpus. He said Cloggett then shot Corpus three times using a revolver sold to Cloggett by Brown. Brown signed the statement as being true and accurate.

Later that evening, the officers and Brown drove around Chicago to try and find Cloggett. Eventually, Cloggett was located, taken into custody, and transported back to the police station. Brown was again taken into an interrogation room where he was left alone for approximately two hours. At that time, the Assistant State‘s Attorney, Crilly, entered the room and advised Brown of his Miranda rights. The Miranda warnings were given a third time after a court reporter arrived in the interrogation room. A second statement was taken, which Brown refused to sign.

Brown and Cloggett were jointly indicted for Corpus‘ murder. Prior to the trial, Brown petitioned the court to have the two statements excluded, citing that the arrest and detention had been made illegally; therefore, the statements were ―fruit of the poisonous tree,” and should be inadmissible. The motion was denied. Evidence from both statements was introduced at trial. Brown was found guilty of murder.

When Brown appealed the conviction to the State Supreme Court, his conviction was upheld. Although the court acknowledged the arrest lacked probable cause and was, thus, unlawful, it noted that the Miranda warnings broke the causal connection between the unlawful arrest and the statements given by Brown.

Justice Blackmun gave the opinion of the U.S. Supreme Court in a unanimous decision. He wrote, ―The Miranda warnings are an important factor, to be sure, in determining whether the confession is obtained by exploitation of an illegal arrest. But they are not the only factor to be considered” (p. 596). The Court also must consider the temporal proximity of the arrest and confession, intervening circumstances, and the purpose and flagrancy of the official misconduct.

When compared to findings in the *Wong Sun* case, Brown‘s first statement proved admissible because of the short amount of time between the arrest and statement; but because the second statement was deemed the fruit of the first statement, it became inadmissible. The Court also stated: ―We emphasize that our holding is a limited one. We decide only that the Illinois courts were in error in assuming that the Miranda warnings, by themselves, under Wong Sun always purge the taint of an illegal arrest” (p. 597). Ultimately, the case was reversed.

The ―Independent Source” is another exception to the exclusionary rule, and is explained by The Georgetown Law Journal (2002, p. 1274): ―Even if police engage in illegal investigatory activity, evidence will be admissible if it is discovered through a source independent of the

illegality." Further stated, "The independent source doctrine reflects the idea that although the government ought not to profit from its misconduct, it also should not be made worse off than it would have been had the misconduct not occurred." This exception is applied through the case of *Murray v. United States* (1988).

In the *Murray* case, federal agents were conducting surveillance of the petitioners, Murray and Carter, as they drove vehicles into and out of a warehouse that was housing a tractor-trailer bearing a long container. Murray and Carter turned their vehicles over to two individuals who were followed by police officers and arrested after a traffic stop. Marijuana was found in the two vehicles and agents were notified.

The agents then forced their way into the warehouse where they observed a large number of burlap-covered bales. The agents immediately vacated the interior of the warehouse and secured the perimeter. They filed an application for a search warrant, which was granted, but the warrant affidavit did not contain any information about entry into the warehouse or observations leading up to that entry. Carter and Murray were arrested and indicted on drug charges, but a pretrial motion was filed to suppress the evidence found in the warehouse, claiming the search warrant was tainted because agents did not disclose to the magistrate their unlawful entry into the warehouse.

The government argued that the warranted, lawful entry into the warehouse was based on information other than the observations made after the unlawful entry into the warehouse. Furthermore, they stated that the lawful search of the warehouse was solely independent from the first entry. The *Silverthorne Lumber Co. v. United States* (1920) decision states that the "independent source" doctrine allows the admissibility of evidence discovered as a result of an

unlawful search, but later obtained through a search conducted by lawful means based on information independent from the initial illegal search.

Justice Scalia issued the following opinion of the Court: ―The Fourth Amendment does not require the suppression of evidence initially discovered during police officer's illegal entry of private premises, if that evidence is also discovered during a later search pursuant to a valid warrant, which is wholly independent of the initial illegal entry" (Pp. 536-544). The Court has recognized that although there may be an illegal search that reveals fruits of a crime, the evidence is not automatically excluded from trial providing that the evidence is obtained as a result of a lawful search based on information independent and separate from the initial search.

In this case, the court again acknowledged that the exclusionary rule was designed to deter violators of the Fourth Amendment. However, in dissent, Justice Marshall wrote:

> The Court today holds that the ―independent source" exception to the exclusionary rule may justify admitting evidence discovered during an illegal warrantless search that is later ―rediscovered" by the same team of investigators during a search pursuant to a warrant obtained immediately after the illegal search. I believe the Court's decision, by failing to provide sufficient guarantees that the subsequent search was, in fact, independent of the illegal search, emasculates the Warrant Clause and undermines the deterrence function of the exclusionary rule (p. 544).

In addition, Justice Marshall noted that in review of the cases, when the same law enforcement officers who engaged in an illegal search and obtained evidence, turned around and obtained a valid search warrant and obtained the same evidence that was discovered during the initial search, the evidence should be excluded from consideration.

The final exception to the exclusionary rule is the ―inevitable discovery exception," which The Georgetown Law Journal (2002, p. 1275) explains is closely related to the independent source doctrine, in that a court may admit illegally obtained evidence, providing that the evidence would have inevitably been discovered through independent and lawful means.

The case shedding light on this doctrine is *Nix v. Williams* (1984), in which the Supreme Court found that, ―evidence concerning the location and condition of a murder victim‘s body was admissible even though the police obtained this information in violation of the defendant‘s Sixth Amendment right to counsel" (p. 435). The Court further held that the comprehensive search that had been underway would have inevitably resulted in the discovery of the victim‘s body.

Other situations allow for the admissibility of evidence that has been illegally obtained. This exception allows for the use of illegally obtained evidence in sentencing hearings, federal civil tax proceedings, grand jury proceedings, civil deportation hearings, and parole revocation proceedings, providing that the illegally obtained evidence is used outside of the context of the prosecutor‘s case-in-chief.

The adoption of the ―exclusionary rule" was not designed to assist government agents in fulfilling their duties, but was implemented to assist individuals from government agents who occasionally use their authority unlawfully. In its application, the exclusionary rule allows for evidence—obtained without a warrant and not falling within the guidelines of a warrantless search and seizure—to be thrown out and not used as evidence against an individual in a criminal trial in which loss of liberty is at stake.

Even if an officer obtains evidence illegally, it doesn‘t conclude that the officer acted in an unlawful manner, given the totality of the circumstances. In this case, the courts have allowed some latitude with the application of the exclusionary rule. The Court, recognizing that not all illegal searches and seizures are malicious, has adopted exceptions to the exclusionary rule. These exceptions can indicate that the behavior and/or actions of the officer were based on good faith; that the search or statement received was an attenuation exception; that the warrant was

issued based upon an independent source from the initial illegal search; or that the evidence would have been inevitably discovered through lawful means.

SECTION C

LAW ENFORCEMENT SEARCHES WITH A WARRANT

Since the inception of the Constitution and its Amendments, a government agent cannot conduct a search and have that search be considered valid at its inception, unless the agent follows the guidelines set forth within the Fourth Amendment. With this implication, agents must first be thoroughly familiar with the actions that constitute a valid search.

The case of *Oliver v. United States* (1984) defines the Court's interpretation of a search as a governmental invasion of an individual's privacy. The *Oliver* case tested the privacy issue with regards to search areas that are not located on a person or under the roof of a house, as well as property that is owned, but not dwelled in. In *Oliver*, the Court states, "The Amendment does not protect the merely subjective expectation of privacy, but only those expectations that society is prepared to recognize as reasonable'" (p.176).

In *Katz v. United States* (1967), The U.S. Supreme Court established a two-part test to determine if an individual has a legitimate expectation of privacy. In the case, the petitioner was convicted for transmitting wagering information by telephone across state lines. Federal officers had used an electronic recording device to record Katz's statements that would add evidentiary value to their case. In itself, the use of an electronic recording device is acceptable in the eyes of the court, providing that the use of that device has been established within a lawful search warrant, which requires the establishment of probable cause as well as affirmation by a neutral

and separate magistrate judge. Unfortunately, the electronic recording device was placed on the top of a telephone booth that was being used by the petitioner.

The petitioner, Katz, filed an appeal in the Ninth Circuit Court of Appeals arguing that he had an expectation of privacy in the phone booth, thus the placement of the electronic recording device was in violation of his Fourth Amendment protection. The Court of Appeals upheld the conviction based on the belief that there was no physical entrance into the area occupied by the petitioner. Certiorari was applied for and granted in order to answer two questions asked of the petitioner:

> Whether a public telephone booth is a constitutionally protected area so that evidence obtained by attaching an electronic listening device to the top of such a booth is obtained in violation to the right to privacy of the user of the booth and whether physical penetration of a constitutionally protected area is necessary before a search and seizure can be said to be violative of the Fourth Amendment of the United States Constitution (p. 349).

The Court responded by stating, "The Fourth Amendment cannot be translated into a general constitutional 'right to privacy.' That Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all" (p. 350). The Court continued by stating that the Fourth Amendment protects people, not places, and although the petitioner could be seen through the glass of the phone booth, his protections were not protections visibly, but were protections audibly.

In dissent, Mr. Justice Black concluded that the intent of the Fourth Amendment is to protect tangible items. By the language used, the Fourth Amendment is to protect persons, houses, papers, and effects against unreasonable searches. Mr. Justice Black wrote the following, referring to the first and second clauses to the Fourth Amendment:

> The first clause protects "persons, houses, papers, and effects against unreasonable searches and seizures…" These words connote the idea of tangible things with size, form, and weight, things capable of being searched, seized, or both. The second clause of the

> Amendment still further establishes its Framers' purpose to limit its protection to tangible things by providing that no warrants shall issue but those ~~p~~particularly describing the place to be searched, and the persons or things to be seized." A conversation overheard by eavesdropping, whether by plain snooping or wiretapping, is not tangible and, under the normally accepted meanings of the words, can neither be searched nor seized (p.365).

In addition, Justice Black elaborated that a search warrant describes something tangible to be seized, and if the items to be seized are not in existence yet to be described, how can a magistrate issue a warrant? The Court's decision in the *Katz* case established guidelines to protect individuals, not the places or tangible items as described by Justice Black.

Two standards resulted from the *Katz* decision to be applied when determining if an individual has a reasonable expectation of privacy. First, as noted in the Georgetown Law Journal (2002, p. 1117), "~~t~~he individual must have an actual subjective expectation of privacy." Second, "~~s~~ociety must be prepared to recognize that expectation as objectively reasonable." The U.S. Supreme Court overturned the decision of the Court of Appeals.

There are limitations to a person's expectation for privacy. For example, items left open to the public, abandoned property, and items or entrance obtained through consent have no expectation of privacy.

This section covers police searches with a warrant, which, according to the Fourth Amendment, must meet specific criteria before being issued. The Fourth Amendment states:

> 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, and particularly describing the place to be searched, and the persons or things to be seized.

One of these requirements is the establishment of probable cause. Many cases discuss probable cause and the factors that actually determine probable cause. One such discussion determined the establishment of a set standard of rules that all law enforcement officers can adhere to when determining if probable cause exists when making an arrest.

Two cases that have gone before the United States Supreme Court have helped define probable cause. In *Illinois v. Gates* (1983), officers at the Bloomingdale, Illinois, Police Department received an anonymous letter providing information about drug trafficking by the Gates' family. The letter specifically described the wife driving to Florida to receive some drugs on an exact date. It told of her husband, flying to Florida to drive the vehicle back with the drugs in the trunk of the vehicle. The letter stated that the Gateses had approximately $100,000 of drugs in the basement of their home.

Acting on the tip, an officer verified that Mr. Gates had flight plans to Florida. The Federal Drug Enforcement Administration was contacted to assist in the investigation. The surveillance indicated that Mr. Gates did take the flight to Florida and stayed overnight in a motel room with his wife, who had acquired the room. The Gateses left the following morning, traveling a route that would take them back to Bloomingdale.

A search warrant was obtained from an Illinois judge for the vehicle and the Gates' residence. The home and vehicle were searched when the Gateses returned home. Marijuana and other contraband were discovered.

At pretrial, a motion to suppress the evidence was filed and affirmed. The appeal was based on a lack of probable cause to issue a warrant based on a set of standards spelled out in *Aguilar v. Texas* (1964) and *Spinelli v. United States* (1969), which focused on whether an informant's tip establishes probable cause for a warrant. The Court acknowledged that under the test established by these cases, there was not enough evidence to establish probable cause, but the U.S. Supreme Court abandoned this rule for guidance based on a ~~"t~~totality of circumstances."

Justice Brennan and Justice Marshall joined in dissent, not based upon a legal interpretation of factual information, but on the abandonment of the rules established in the *Aguilar* and *Spinelli* cases.

The new rule applied through *Illinois v. Gates* was the application of a totality of circumstances application. Based on a totality of circumstances, the Court determined that the tip, along with the independent investigation by the law enforcement officer, was enough to establish probable cause. The Court also provided guidance to lower courts regarding the establishment of probable cause. In a combination ruling in the *Gates'* case as well as *Ornelas et al. v. United States* (1996), the Court states: "Articulating precisely what 'reasonable suspicion' and 'probable cause' mean is not possible. They are commonsense, nontechnical conceptions that deal with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act'" (Pp. 690-720).

The Court's discussion in the *Ornelas v. United States* (1996) case further helped define the requirements needed to establish probable cause. In this case, an officer with 20 years of experience who was assigned to work narcotics, observed a vehicle that was known to him as commonly driven by individuals engaged in drug trafficking. The vehicle, a 1981 two-door Oldsmobile, had California license plates. Because of the type of vehicle, and California's recognition as a drug state, the officer radioed dispatch to check the registration of the vehicle. The vehicle was registered to Miguel Ornelas. The officer checked a motel registry where the man was staying and learned that Miguel Ornelas and Ismael Ornelas were registered.

After learning this, the officer contacted his partner, who had 25 years of experience in law enforcement, to meet with him at the scene. When they met, they checked the names registered at the motel through the Narcotics and Dangerous Drugs Information System, a federal

database of known and suspected drug dealers. Miguel Orlenas‘ information showed that he was a known heroin dealer in California, and Ismael Orlenas‘ information showed that he was a known cocaine dealer from Arizona. The officers summoned for a K-9. After the unit arrived, they observed Miguel and Ismael exit the hotel and enter the vehicle. Detective Hurrle approached the vehicle, identified himself, and asked if they had any drugs or contraband in the vehicle. They responded, ―No.”

The detective asked if he could search the vehicle and consent was given. He testified that one of the petitioners was somewhat shaky, yet both seemed fairly calm. Deputy Luedke, with the K-9 unit, had extensive experience conducting vehicle searches, having conducted more than 2,000 in the past nine years. While searching the interior of the vehicle, Luedke observed that a door panel was loose. He disassembled the panel and found two kilograms of cocaine. Both Miguel and Ismael Orlenas were arrested and charged.

A motion to suppress the evidence was filed, stating that the evidence was obtained as a result of an illegal search of the area behind the door panel, without a warrant. After reviewing the evidence, the magistrate judge determined that the stop was investigatory, based on Fourth Amendment reasonable suspicion standards, but that the stop and search of the vehicle was not based on probable cause. However, the magistrate chose not to suppress the evidence, citing that it would have inevitably been discovered in a lawful search done by the drug-sniffing dog.

On appeal to the District Court, the case was reviewed with a different outcome. The District Court shared the belief that reasonable suspicion had been established, but differed on the establishment of probable cause. The District Court concluded that, given the totality of circumstances, the brief detention and initial search was valid. Reasonableness standards were satisfied, and met the criteria to identify the drug courier profile; however, once the deputy

discovered a loose door panel along with the knowledge of the petitioners, he did satisfy probable cause requirements. Therefore, the search of the area behind the door panel was deemed valid and legal.

The United States Supreme Court granted certiorari. The Court relied on a prior Court's definition and interpretation of probable cause and reasonable suspicion. The Court, in its opinion, cited *Illinois v. Gates* (1983) which stated, "Articulating precisely what 'reasonable suspicion' and 'probable cause' mean is not possible. They are commonsense, nontechnical conceptions that deal with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act'" (Pp. 690-720).

The Court had previously defined reasonable suspicion as "a particularized and objective basis' for suspecting the person stopped of criminal activity, and probable cause to search as existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found" (Pp. 690-720).

The *Ornelas v. U.S.* Court simplified previous definitions when they wrote:

> The principle components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or probable cause (Pp. 690-720).

The Court's guidelines within the Constitution provide general rules that govern searches and seizures. However, although these standards are in place, the courts generally recognize the need for police officers to conduct searches and seizures for the protection of individuals, and for the importance of preserving evidence. The standards established in the Fourth Amendment have not been erased, but have been relaxed to include searches without warrants, not without probable cause, but based on probable cause, established by a totality of circumstances, including the officer's experience.

Even though the courts have recognized the need to relax the specific guidelines described by the Fourth Amendment, there are protections afforded to law enforcement officers who follow the Fourth Amendment guidelines when obtaining a search warrant. According to *FindLaw*, a search warrant is defined as "a order signed by a judge that authorizes police officers to search for specific objects or materials at a definite location at a specific time" (Annotation 2, Pp. 1-6). Aside from the establishment of probable cause, there must also be a description of the specific location to be searched, and the items to be seized.

When an affidavit for a search warrant is made there is no latitude for vagueness. There must be specific information written in the search warrant application. The officer must affirm under oath the validity of the information provided in the affidavit. The warrant is then issued by a judge or magistrate once probable cause has been established and it is believed that criminal activity is occurring at a specific location, and evidence of that crime will be discovered there.

Certain information can be provided that is considered reliable and that will justify the issuance of a search warrant. Listed in a *FindLaw* publication (2005, Pp. 1-6), information is considered reliable when coming from the following sources:

- A confidential police informant whose past reliability has been established or who has firsthand knowledge of illegal goings-on
- An informant who implicates [himself] herself as well as the suspect
- An informant whose information appears to be correct after at least partial verification by the police
- A victim of a crime related to the search
- A witness to the crime related to the search, or
- Another police officer

Even when information provided by a police officer is incorrect, *FindLaw* states that in most cases the search will be upheld, if the police officer believes information provided in the

affidavit is correct and valid at the time of the affidavit—referred to as, acting in ―good faith" (Annotation 2, Pp. 1-6). The reasoning behind this:

- It makes no sense to condemn the results of a search when police officers have done everything reasonable to comply with Fourth Amendment requirement, and
- The purpose of the rule excluding the results of an invalid search as evidence is to curb the police, not a judge; and that if a judge makes a mistake, it should not be grounds to exclude evidence.

The search by police is limited to the location described in the warrant. The *FindLaw* publication about the Fourth Amendment notes that the Supreme Court unanimously limited the classes of property that can be searched, and the types of items that can be seized. These three categories of items include: contraband, the fruits, and instrumentalities of crime. The courts refuse to recognize the search for ―mere evidence." This description of types of evidence to be seized is a result of the criminal case, *Gouled v. United States* (1921).

Under federal law, there is a liability assumed if a violation of civil rights occurs. The ability for an individual to file civil suit against someone acting under the color of law falls within the federal statute *42 U.S.C. § 1983*. Lamorte (1996) states, ―A section of the Civil Rights Act of 1871 provides for liability if a ‗person' operating under color of the state violates another person's civil rights." *42 U.S.C. § 1983*: Civil action for deprivation of rights is stated in *Findlaw* as:

> Every person who, under any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

As described by McDonald (1999), two elements must be shown for violation of this statute to occur. He states, ―First, that the defendant acted under color of state law, and second, that the action complained of deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States." Government agents who violate an individual's civil liberties may be held liable for monetary relief, including nominal, compensatory, and punitive damages according to The Georgetown Law Journal (2002, p. 2046).

SECTION D

THE SCHOOL RESOURCE OFFICER (S.R.O.) AND SEARCHES

A 2009 article published by the Bureau of Justice Statistics states, ―In 2007, 10 percent of male students in grades 9-12 reported being threatened or injured with a weapon on school property in the past year, compared to [five] percent of female students." The idea of weapons being present on school property hinders the opportunity for students to focus on learning.

In *United States v. Lopez* (1995), a twelfth grade student was charged with carrying a firearm on school property. Acting on a tip, school administrators confronted Alfonzo Lopez, Jr., who admitted he was in possession of a .38 caliber handgun. The weapon was seized and Lopez was turned over to Texas law enforcement authorities.

One day after being charged under a state statute prohibiting the possession of a firearm on school property, Lopez's state charges were dismissed. Federal agents then filed charges against Lopez for the violation of the *Gun Free School Zones Act of 1990. 18 U.S.C. 922(q)(1)(A).* The conviction was overturned after an appeal by Lopez.

In an appeal to the United States Supreme Court, the Court recognized the importance of maintaining a safe learning environment. That is when Chief Justice Rehnquist cited Congress' reasoning for the creation of a federal weapons statute that prohibits the possession of weapons on school property. Within the title eighteen codes, Congress wrote in Section q Subsection F, "The occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country." And in Subsection G, "this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States."

Congress continued by writing in Subsection H: "States, localities, and school systems find it almost impossible to handle gun-related crime themselves—even states, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime and find their efforts unavailing due in part to the failure or inability of other states or localities to take strong measures." As a result, Congress stated in Subsection I, "the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection [weapons possession in a school safety zone]."

The importance of safe schools continues to be such an issue that in 2001, President George W. Bush committed $350 million toward training 3,200 new school resource officers.

Mike Kennedy (2001) refers to school resource officers as "teachers with a badge," as noted by the title of his article. Fueled by growing trends of violence in schools, school resource officer programs are one of the fastest-growing areas of law enforcement, according to Curt Lavarello, executive director of the National Association of school resource officers.

Kate Ellenberger (2001) writes: ―Littleton, Jonesboro, Springfield, West Paducah, and Pearl. The school tragedies in these communities brought the threat to school safety into the public conscience and moved school safety onto the U.S. public agenda."

Pickrell and Wheeler (2005) wrote:

> Police and other law enforcement officers have become frequent visitors and, in some cases, an established presence in public schools in recent years. Several factors account for this development. Since the Columbine tragedy, federal and state funding has made it possible for police departments to assign full-time police officers, known as school resource officers, to provide security services at public schools.

The issue of student safety has prompted agencies and school systems to actively pursue funds to place officers in public school settings, which has drawn a lot of attention, but it is not a new concept.

The history of school resource officers began in 1962 in Flint, Michigan, to combat juvenile delinquency, according to Kennedy (2001). Michigan's program was followed by school resource officer programs in Arizona and Florida. The growth of school resource officer programs is well documented. By the time the National Association of school resource officers' (N.A.S.R.O.) conference rolled around in Arizona in 2004, representatives from each of the 50 states were present, according to the 2004 National School-Based Law Enforcement Survey done by N.A.S.R.O.

The growth of school resource officers' programs can be attributed directly to school violence. Hence, one of the main functions of the school resource officer is to provide security at public educational institutions. Delving deeper, however, we find that the role of the school resource officer is not limited providing security through the presence of an armed police officer on a school campus.

Mulqueen (1999) states that the school resource officer has the following three main responsibilities: to serve as an armed police officer with arrest powers; to serve as a counselor of

law-related issues and to help guide children to appropriate community services; and to serve as a teacher of the law, either teaching his own class, or visiting classes to provide talks and presentations.

Along with the three-pronged responsibilities of the school resource officer, there are training requirements beat officers must fulfill in order to become certified school resource officers.

Each state has the autonomy to determine the type and extent of the training necessary to certify an officer as a school resource officer. The State of Georgia has a two-week certification course that includes, but is not limited to, working with adolescents, special needs students, and gangs, and reviewing search and seizure guidelines and instructional methods.

Even though each state can provide training, it is not mandated that each state be the sole provider of school resource training. The National Association of school resource officers has a one-week Basic S.R.O. training course, which offers instruction on the history of community policing, instructional techniques, lesson planning, counseling, detection of child abuse, special education, dealing with dysfunctional families, school safety, emergency management, school law, detection of substance abuse, and crime prevention/proactive techniques.

One can readily draw a correlation between the role and responsibility of a school resource officer and that of a school administrator. Some of the responsibilities listed in a Seattle Public Schools‘ job description for an assistant principal include: —ssists in maintaining a safe and orderly environment; takes quick and appropriate action when student or staff safety is at stake; maintains and monitors safety and order by being accessible and visible.”

CareerPlanner.com lists some of the assistant principal‘s responsibilities as: teaching courses, giving individual and group guidance for personal problems, supervising students, and monitoring safety and security.

Clearly, a school resource officer is a sworn police officer assigned to a school to perform the tasks of a police officer. As police officers, school resource officers are bound to follow the guidelines established by the Fourth Amendment and Supreme Court decisions when searching students. The Fourth Amendment states:

> 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, and particularly describing the place to be searched, and the persons or things to be seized. Based on this amendment, probable cause must be established to conduct a search.

In a combined ruling of the *Gates'* case and the *Ornelas'* case, the Supreme Court was unable to definitively define probable cause, but instead, noted that probable cause and reasonable suspicion are, ―common sense, nontechnical conceptions that deal with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act'" (p. 241).

With responsibilities that extend beyond basic law enforcement and into the realm of educators and school administrators, the courts have recognized the importance of maintaining a safe learning environment, and have applied a different standard to searches conducted by school resource officers. The lesser standard applied to school resource officers is the standard that is applied to school administrators through the case of *New Jersey v. T.L.O.* (1985).

In the *T.L.O.* case, a teacher at a New Jersey high school found two students in the restroom smoking, which violated school rules. The teacher escorted the two students to the assistant principal‘s office. When questioned, one of the students denied having smoked in the

restroom and denied that she smoked at all. The assistant principal demanded to see her purse. After opening her purse, he found a pack of cigarettes and a pack of cigarette rolling papers. Based on experience, the assistant principal recognized the cigarette rolling papers as an item commonly used to smoke marijuana and began to conduct a more thorough search of T.L.O.'s purse. The search revealed marijuana, a pipe, plastic bags, a substantial amount of money, an index card containing a list of students who owed the respondent money, and two letters that implicated T.L.O. in the distribution of marijuana.

The assistant principal, Mr. Choplick, called the respondent's mother and turned all evidence over to law enforcement. The state brought delinquency charges against T.L.O. in Juvenile Court. A motion to suppress the evidence was filed. The court denied the motion, stating that the Fourth Amendment did apply to searches by school officials, and that the search in question was a reasonable search. The Appellate Division of the New Jersey Superior Court affirmed the trial court's findings.

On appeal, the New Jersey Supreme Court reversed the decision and ordered that the evidence be suppressed as a result of an unreasonable search of the respondent's purse. The United States Supreme Court granted certiorari. The Court (Pp. 325-326) noted the following:

> 1. The Fourth Amendment's prohibition against unreasonable searches and seizures applies to public school officials and is not limited to law enforcement. School officials are not exempt from Fourth Amendment dictates as a result of the special nature over school children. The Court continues by stating that school officials act as representatives of the state, not merely as surrogates for the parents of students, thus school officials cannot claim parental immunity from Fourth Amendment requirements.
>
> 2. School children have a legitimate expectation of privacy and simply because they enter upon school property, there is no reason to believe that they have waived their expectation of privacy. Striking the balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to

> which searches by public authorities are ordinarily subject. Thus, school officials need not obtain a warrant before searching a student who is under their authority. Moreover, school officials need not be held subject to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather the legality of a search of a student should depend simply on the reasonableness, under all circumstances, of the search. Determining the reasonableness of any search involves a determination of whether the search was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Under ordinary circumstances the search of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. And such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and the nature of the infraction.
>
> 3. Under the above standard, the search in this case was not unreasonable for Fourth Amendment purposes. First, the initial search for cigarettes was reasonable. The report to the Assistant Vice Principal that respondent had been smoking warranted a reasonable suspicion that she had cigarettes in her purse, and thus the search was justified despite the fact that the cigarettes, if found, would constitute ~~"~~mere evidence" of a violation of the no-smoking rule. Second, the discovery of the rolling papers then gave rise to a reasonable suspicion that respondent was carrying mari[j]uana as well as cigarettes in her purse, and this suspicion justified the further exploration that turned up more evidence of drug-related activities.

Aside from finding for the state that the search of T.L.O.'s purse did not violate the Fourth Amendment, the Supreme Court established two rules that govern student searches by school officials. The first is that the search must be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating the law or the rules of the school. The second is that, ~~"~~a search will be permissible in its scope when the measures adopted are 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" (p. 342).

Justice Stevens provided the dissenting opinion, stating ~~"~~the Court has unnecessarily and inappropriately reached out to decide a constitutional question" (p. 375). The question for Justice Stevens drew great concern, for it allowed school administrators to infringe upon a

student‘s protections against unreasonable searches and seizures for the most minor of school violations. Justice Stevens added:

> The majority holds that ~~a~~ search of a student by a teacher or other school official will be _justified at its inception‘ when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” This standard will permit teachers and school administrators to search students when they suspect that the search will reveal evidence of even the most trivial school regulation or prefatory guideline for student behavior. The Court‘s standard for deciding whether a search is justified ~~at~~ its inception” treats all violations of the rules of the school as though they were fungible. 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 (p. 377).

Justice Stevens did not deny the fact that schools are teaching institutions, and that violent and unlawful conduct hinders that function.

The reasonable grounds standard is the same that applied in the *Terry v. Ohio* case. The Court stated that lower courts rely upon the *T.L.O.* findings when determining the validity of searches by school administrators.

One case that reexamined the *T.L.O.* findings was *The People v. Dilworth* (1996), in which the defendant was a 15-year-old student at Joliet Township Alternative School. The alternative school served students who had exhibited behavioral problems within the system‘s regular schools. The goal of the alternative school was to create an environment that would allow students to modify their behavior in a positive direction, a fact that was noted and admitted into evidence in the *Dilworth* case. The school served approximately 100 students at various times. As students‘ behavior improved, they were allowed to return to their regular schools. Also admitted into evidence was the school staff listing, consisting of 11 teachers, four paraprofessionals, one social worker, one psychologist, one counselor, and one school liaison officer.

The liaison officer, Detective Francis Ruettiger, was employed by the Joliet Police Department, but had been assigned full-time to the alternative school and was listed as a staff member whose primary purpose was to prevent criminal activity. Ruettiger had the authority to arrest students, and the authority to enforce school rules and issue consequences for violations of the rules. Like teachers employed by the school, Ruettiger could assign detentions, but could not suspend students from school.

On November 18, 1992, two teachers overheard a student talking about selling drugs, and stating that students would be bringing more drugs to school the following day. After hearing this, the two teachers approached Detective Ruettiger and asked him to search the student. The following day, Ruettiger searched the student, but found no drugs. Ruettiger then escorted the student to his locker, which was located next to the defendant's locker. Upon arrival at the locker, Ruettiger observed the student and the defendant talking to each other and looking in his direction, laughing, as though they had made him look foolish.

As Ruettiger observed the students, he noticed the defendant holding a flashlight, which he suspected contained drugs. Detective Ruettiger grabbed the flashlight, unscrewed the battery compartment, and found a plastic bag containing a white chunky substance, which later tested positive to be cocaine. The defendant ran, but was caught by Ruettiger, placed under arrest, and transported to the Joliet Police Department. While in custody, the defendant gave a statement admitting to selling cocaine, because he was tired of being poor.

Guidelines at the alternative school require each incoming student to review the school handbook. The defendant's teacher testified that she reviewed the handbook with the defendant. Entered into evidence, the handbook contained a page titled "Alternative School Search Procedures," a portion of which read, "To protect the security, safety, and rights of other students

and the staff at the Alternative School, we will search students." Also in the handbook was a rule prohibiting the possession of ~~a~~ny object that can be construed as a weapon" (p. 199). Ruettiger had seized the flashlight because he believed it violated the rule, and he was suspicious that it contained drugs.

The defendant filed a motion to suppress the evidence, citing that the search violated his Fourth and Fourteenth Amendment protections afforded by the United States Constitution. The motion was denied, but the circuit court found that Detective Ruettiger was acting as an agent of the Alternative School. Therefore, the evidence obtained was admissible, because Ruettiger conducted the search based on reasonable suspicion. The circuit court found the defendant guilty and sentenced him as an adult to a minimum four-year term in prison.

The appellate court reversed the conviction, citing that the motion to suppress the evidence should have been granted. Agreeing with the circuit court, the appellate court found that the reasonable suspicion standard applied; but it also found that Ruettiger failed to establish reasonable suspicion to search the flashlight. The court's opinion stated that Ruettiger only had a mere hunch that the flashlight contained drugs.

On appeal to the district court of appeals, the state contended that Ruettiger had seized the defendant's flashlight in accordance with school rules. Therefore, the state argued that the flashlight was contraband, being a blunt object, and was thus seized and searched in a proper manner. Ultimately, the state conceded the interpretation of the school's rules; a textbook could be seized and searched as a blunt object, able to be used as a weapon. As a result, the appellate court rejected the State's argument.

Secondly, the state contended that, based on the totality of circumstances, Ruettiger established reasonable suspicion to seize and search the flashlight. The defense argued that

Ruettiger had no reasonable suspicion and acted solely on a hunch. The defense also contended that, because Ruettiger was a sworn police officer employed by the Joliet Police Department, he should have been required to establish probable cause; and even if he did have reasonable suspicion, that should not have been enough for him to seize and search the flashlight.

In relying on the *T.L.O.* decision stating that the standard of reasonableness applies to the search of a student by a teacher or other school employee, the appellate court noted that Detective Ruettiger was a liaison officer on staff full-time at the alternative school. As part of his responsibilities, he was in charge of handling criminal activity as well as school discipline issues.

After being told by two teachers that they had overheard the defendant discussing the sale of drugs and that the following day the student was going to bring more drugs, Ruettiger conducted a search. Although the search of that student did not reveal drugs, he later observed the student and defendant talking, laughing, and acting as if they had fooled him. Seeing the defendant holding a flashlight, Ruettiger seized it, searched it, and found cocaine in it. The court held that, given these facts, the reasonable suspicion standard applied.

The court also addressed the constitutionality of the case. The court cited *T.L.O.* once more by noting, "[T]he requirement of reasonable suspicion is not a requirement of absolute certainty: sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment…" (p. 215). The court addressed the issue by looking at the two-part test identified in *T.L.O.* First, the action must be justified at its inception; and second, the search must be reasonable in scope to the circumstances that justified the interference in the first place.

The court addressed the first issue by reviewing the facts, and noted: "The totality of these circumstances would lead a reasonable person to suspect that the defendant was carrying

drugs in his flashlight. Indeed upon seeing the flashlight in the defendant's hand, Ruettiger testified that he immediately thought that it might contain drugs" (p.216).

The court also found that the search was permissible in its scope. Ruettiger had reasonable suspicion that the flashlight contained drugs. He seized and searched only the flashlight. The court stated, "This measure was reasonably related to the objectives of the search and was not excessively intrusive" (p. 216). The *Dilworth* court concluded, "Ruettiger's seizure and search of the defendant's flashlight was constitutional because it was reasonable under the totality of the circumstances. We therefore reverse the judgment of the appellate court and affirm the judgment of the circuit court" (p. 217).

Aside from *T.L.O.,* the *Dilworth* court relied upon the findings of another Supreme Court case, *Vernonia School District 47J v. Acton* (1995). In this case, the United States Supreme Court granted certiorari after the appellate court for the Ninth Circuit declared a drug-testing policy for student athletes was unconstitutional on the grounds that the policy violated the Fourth and Fourteenth Amendments.

After school officials began witnessing a drastic increase in discipline problems and drug use by the students and student athletes attending the public school system in Vernonia, Oregon, the system implemented programs, such as special drug classes, guest speakers, presentations, and drug dogs. The system's efforts did not deter the drug use. As shown in the district court, "…A large segment of the student body, particularly those involved in interscholastic athletics, was in a state of rebellion. Disciplinary actions had reached 'epidemic proportions'" (p. 647). The district court also found, "…athletes were the leaders of the drug culture" (p. 647). This caused system administrators a great deal of concern, because athletic injuries were on the rise.

The Supreme Court noted, ―Expert testimony at the trial confirmed the deleterious effects of drugs on motivation, memory, judgment, reaction, coordination, and performance" (p. 647).

The system ultimately implemented a drug-testing policy for student athletes, which required all student athletes and their parents to sign a consent form submitting the student-athlete to the drug test. Student athletes were tested prior to start of their athletic season. In addition, once a week, during the athletic season, 10 percent of the athletes were selected by lottery to be tested for drugs. The policy provided for the protection of each student's privacy while the urine specimen was given, and a number was assigned to each specimen to further protect the confidentiality of the athlete. Test results were provided only to the superintendant, principals, vice-principals, and athletic directors.

If an athlete failed the first test, he or she was given a second test. If an athlete passed the second test, no action was taken. If the athlete failed the second test, he or she was given an opportunity to participate in a six-week drug class, which included weekly drug-testing. Another offense resulted in an automatic suspension from athletics for the current season and the next season for which the athlete was eligible. A third offense resulted in suspension for the current season and the next two seasons for which the athlete was eligible.

In 1991, student James Acton was denied participation in student athletics after he and his parents refused to sign consent for the drug-testing. Suit was filed against the school system seeking relief from the enforcement of the system's policy, claiming the policy violated the Fourth and Fourteenth Amendments to the United States Constitution. The district court denied the claims on its merits and dismissed the action. The Ninth Circuit Court reversed the decision, which led to the Supreme Court's granting of certiorari. The Supreme Court upheld the drug-testing policy of the Vernonia School District.

Although this case lacked involvement of a school police officer, the *Dilworth* court justified its ruling by addressing three issues identified and addressed by the *Vernonia* Court, in addition to the two-part test of the *T.L.O.* Court. The three-part test included, ―(1) the nature of the privacy interest upon which the search intrudes, (2) the character of the search, and (3) the nature and immediacy of the governmental concern at issue, and the efficacy of the means for meeting it" (p. 209).

The court in the *Dilworth* case relied upon the majority opinion of *Vernonia* to address the first test. The majority stated, ―Fourth Amendment rights are different in public schools than elsewhere; the _reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children. For their own good and that of their classmates, public school children are routinely required [to do a variety of things]. _[S]tudents within the school environment have a lesser expectation of privacy than members of the population generally'" (p. 209).

The second test is the character of the search. The court stated, ―Of utmost significance, the liaison officer had an individualized suspicion that the defendant's flashlight contained drugs. He confirmed his suspicion by searching only that flashlight. Thus, we find this search as conducted to be minimally intrusive" (p. 209).

The final test, the nature and immediacy of the governmental concern at issue, and the efficacy of the means for meeting it, were addressed in two parts. First, the court stated, ―there is no doubt that the state has a compelling interest in providing a proper educational environment for students, which includes maintaining its schools free from the ravages of drugs" (p. 209).

In addressing the second part, the court described the relevance of the search taking place at the Alternative School. In addition, the court found, ―in order to maintain a proper educational

environment at this particular school, school officials found it necessary to have a full-time police liaison as a member of its staff. The liaison officer assisted teachers and school officials with the difficult job of preserving order in this school" (p. 210).

In sum, the court stated, "our consideration of the three *Vernonia* factors supports our application of the reasonable suspicion standard in the case at bar. The same concerns discussed above prompted the Supreme Court in *T.L.O.* and *Vernonia* to depart from the probable cause standard where school children were involved" (P. 210).

Justice Nichols, in dissent of the majority opinion in the *Dilworth* case, noted that he could not agree with the opinion of the court because the police officer, by his own admission, acknowledged that his primary responsibility was to investigate and prevent criminal activity.

Furthermore, Justice Nichols noted, "[The officer] may search a student on school grounds on a lesser Fourth Amendment standard than probable cause merely because the police officer is listed in the student handbook as a member of the school staff…opens the door for widespread abuse and erosion of students' Fourth Amendment rights…" (P. 217).

Also cited in the *Dilworth* decision was several cases that included student searches by school police, working in conjunction with school officials. In the case of *Cason v. Cook* (1987), Shy Cason, a student at North High School in Des Moines, Iowa, 1983, appealed from the district court, alleging that her constitutional rights to due process and to be free from unreasonable search and seizure, had been violated. Cason was removed from her classroom, questioned, and her person and possessions were searched by the assistant principal, Ms. Connie Cook, and school liaison officer, Wanda Jones.

On May 17, 1983, Ms. Cook received reports that three students had items taken from their lockers, located in the gym locker room, including two pair of sweatpants, a duffle bag, a

wallet, and a coin purse that contained $65 and several credit cards. The school liaison officer, Wanda Jones, was present when the reports were made.

After receiving the reports, Ms. Cook began the investigation and asked Officer Jones to accompany her. After interviewing several students, Ms. Cook received information that four students were seen around the locker room during the time of the thefts; one of the students named was Shy Cason. The four students seen in the area did not have permission to be there, nor did they have gym class prior to the thefts. Ms. Cook recalled seeing the four young ladies together in the lobby prior to receiving the theft reports.

Ms. Cook, along with Officer Jones, began interviewing the students and eventually escorted Shy Cason to a restroom where the door was locked. Ms. Cook informed Cason as to why she was being questioned and allowed her an opportunity to make a statement. Cason admitted to being in the locker room, but denied having any of the missing items. Ms. Cook then advised Cason that she was going to search her purse and emptied its contents onto the counter. Among the contents was a coin purse matching the description of the one that had been taken. Officer Jones then conducted a pat-down search of Cason.

Along with one of the other students, Cason was taken to the office. On the way, Ms. Cook conducted a search of Cason‘s locker. At the office, the two girls were placed in different offices. Ms. Cook continued questioning Cason while Officer Jones stayed with the other student. To that point, Officer Jones had not participated in any of the questioning.

During the questioning, Ms. Cook learned that Cason and another student, named Jerrie, had committed the thefts. From that point, Officer Jones assisted with the questioning of Cason and Jerrie, after they could not agree on what occurred in the locker room. Both students were issued juvenile appearance cards requiring them to appear in Officer Jones‘ office at the police

station in several days. Each of the girls was suspended, and no further action was taken beyond the meeting with Officer Jones.

In the discussion of the court, it was noted that, according to *Tinker v. Des Moines Independent Community School District* (1969), "[S]chool children do not shed their constitutional rights at the schoolhouse gates" (Section 14). In addition, the court cited *T.L.O.* by stating, "The Fourth Amendment right to be free from unreasonable search and seizure applies to a search by a school official" (Section 14). Furthermore, in determining the reasonableness of the search, the court relied upon the two-part test used by the Court in *T.L.O.* First, the action must be justified at its inception; and second, the scope of the search must be reasonably related to the circumstances which justified the interference in the first place.

The court asked itself "whether the reasonableness standard should apply when a school official acts in conjunction with a police liaison officer" (Section 17). The district court found that the reasonableness standard was the correct standard, and the court agreed that there was no violation of constitutional rights. The court found, "there is no evidence to support the proposition that the activities were at the behest of a law enforcement agency. The uncontradicted evidence showed that Ms. Cook, the school official, conducted the investigation of the thefts that had been reported to her" (Section 18).

The court went on to say that Officer Jones' involvement was limited to a pat-down, only after the coin purse matching the description of the one stolen was located in the possession of Cason. Then, a brief interview of Cason and Jerrie resulted in juvenile cards being presented to both students.

The court also noted, "The imposition of a probable cause warrant requirement based on the limited involvement of Ms. Jones would not serve the interest of preserving swift and

informal disciplinary procedures in schools" (Section 23). Once again, the court described the initiation of the investigation as being the result of Ms. Cook's actions.

The final finding of the court was, "[T]he appellant presented insufficient evidence to support a jury's verdict in her favor. We do not hold that a search of a student by a school official working in conjunction with the school resource officer could never rise to a constitutional violation, but only under the record as presented to the court, no such violation occurred here" (Section 26).

More current courts have had opportunities to examine school police/school resource officer/school liaison officer involvement with student searches and/or seizures. Addressing the issue of a school resource officer searching a student at the request of a school official is the case of *In the Interest of Angelia D.B., a Person Under the Age of 18: State of Wisconsin v. Angelia D.B.* (1997). In this case, Angelia D.B. was charged with carrying a concealed weapon after a school liaison officer found a knife hidden in the student's clothing. The knife, along with the statements obtained after its seizure, was suppressed by the circuit court judge after finding that the search violated D.B.'s constitutional rights to be free from unreasonable searches and seizures.

On appeal from the state, the Supreme Court of Wisconsin addressed two questions: "First, in determining the reasonableness of a search conducted in a public school by a police officer in conjunction with school authorities, is the proper Fourth Amendment standard the less stringent 'reasonable grounds' standard…, or the general standard of probable cause? Second, was the search conducted by the police school liaison officer in the instant case reasonable under the circumstances" (p. 684).

The facts of the case began on October 12, 1995, when the assistant principal of Neenah High School, Mr. Rouse, received a report from a student that he had observed a knife in another student‘s backpack earlier that day. The student also indicated that the student with the knife may also have access to a gun. Mr. Rouse called for Officer Dringoli, school liaison officer and a police officer with the City of Neenah.

Upon his arrival, Officer Dringoli interviewed the student who repeated the information that was provided to Mr. Rouse, and gave the name of the student, Angelia D.B. Officer Dringoli checked the computer, determined Angelia‘s last name, and ran it by the informant, who stated he believed her to be the person.

Officer Dringoli, accompanied by the dean of students, Mr. Duerwaechter, went to Angelia‘s classroom. Mr. Duerwaechter entered the classroom and escorted Angelia into the hallway where Officer Dringoli introduced himself and explained to Angelia that he had received information that she may be carrying a knife or gun. While in the hallway, Dringoli conducted a brief pat-down of Angelia‘s jacket and pants. Afterward, he had Angelia search her own backpack while he observed. No weapons were found. Officer Dringoli then had Angelia accompany him to his office where they met another officer, Corporal Radtke.

While in the office, Angelia denied being in possession of any weapons. Officer Dringoli advised her that he was going to check her further. Angelia removed her jacket, and Dringoli searched it more thoroughly, but found no weapons. Dringoli lifted Angelia‘s shirt to expose her waistband, and observed approximately two inches of a knife handle protruding from the waistband at her right hip. Officer Dringoli removed the nine-inch knife, which was locked in the open position, and placed Angelia under arrest, followed by the reading of her Miranda rights.

The state filed a juvenile delinquency petition charging Angelia with possession of a concealed weapon. Angelia D.B. filed a motion to suppress, claiming, "Officer Dringoli's search of her person, specifically the lifting of her shirt, was highly intrusive and required a showing of probably cause" (p. 684). Furthermore, Angelia sought suppression because the search was based simply on an informant's uncorroborated information, thus probable cause was not established.

The motion to suppress the knife and all derivative evidence was granted by the circuit court, finding that the search of Angelia's person was unreasonable under all circumstances. On appeal from the state, the Supreme Court of Wisconsin reviewed the case, and cited the *T.L.O.* Court's lack of interpretation of a school police officer searching a student, stating, the Court, however, limited its holding to searches carried out by school authorities, noting that "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" (p. 687).

The *Angelia D.B.* court identified three standards to searches conducted by police in schools. First, school officials initiate the search or police involvement is minimal. As in *Cason v. Cook*, courts have found that the reasonableness standard applies to the school resource officer search. The second standard is when a school police officer, a school resource officer, or a school liaison officer acts on his own authority to search a student. Relying on the *Dilworth* decision, the court cites that the reasonable suspicion guideline applies. The third standard is when outside police officers initiate a search or school officials act at the behest of law enforcement agencies. This standard requires that probable cause be present for a search and/or seizure to take place in compliance with Fourth Amendment requirements.

In consideration, this court examined how other courts analyzed both the *T.L.O.* two-part test and the *Acton* three-part test to determine the reasonableness of the intrusion, as weighed against the privacy interest of the student. After considering both, the court acknowledged that the *T.L.O.* two-part test was more applicable, due to both dealing with the search of a student on school grounds.

Angelia D.B. argued that, "[T]he T.L.O. reasonable grounds standard should not apply to school searches conducted by police officers, regardless of the involvement of school officials" (p. 688). This is based on her distinction between the differences of relationships between police officers and suspects, compared to the relationship between teachers or school officials and students. She contended that the relationship between police and suspects was an adversarial relationship, while the relationship between teachers and students was one based on common interest.

The court agreed there were differences between the roles of police and school officials. "But when school officials, who are responsible for the welfare and education of all the students within the campus, initiate an investigation and conduct it on school grounds in conjunction with police, the school has brought the police into the school-student relationship" (p. 688). Furthermore, the court stated, "a police investigation that includes the search of a public school student, when the search is initiated by police and conducted by police, usually lacks the 'commonality of interest' existing between teachers and students" (p. 688).

When considering the constitutional standard for searches within public schools, it is vital that a safe environment is maintained, "free of disruption and conducive to learning" (p. 689). In maintaining the importance of a safe environment, the court stated, "Angelia D.B. was suspected of possessing a dangerous weapon within a public high school. Unlike a dangerous weapon

located within a residence, a dangerous weapon within a school setting poses a significant and imminent threat of danger to school staff and to other students compelled to be there" (p. 689).

School attendance is mandated by law in Wisconsin, and the court states, "School officials not only educate students who are compelled to attend school, but they have a responsibility to protect those students and their teachers from behavior that threatens their safety and the integrity of the learning process" (p. 690). Recognizing the significance of keeping schools safe and productive, many have sought the assistance of school police to help enforce rules and maintain order.

The court recognized that Officer Dringoli was a liaison officer who had an office on the school premises; thus, one of his responsibilities was to assist school officials in maintaining a safe and proper educational environment. The court stated, "Because the report of a knife on school premises posed an imminent threat of danger to students and teachers, it is reasonable to conclude that Dringoli conducted the search of Angelia D.B.…in furtherance of the school's objective to maintain a safe and proper educational environment" (p. 690).

The court expressed concern for school officials and their lack of training regarding searches, and did not want to encourage school officials to be compelled to search for dangerous weapons. The court stated, "The proper standard for constitutional reasonableness of searches conducted on public school grounds by school officials, or by police working at the request of and in conjunction with school officials, should not promote unreasonable risk-taking" (p. 690).

The court also discussed that teachers are trained to educate, while police officers are trained to disarm individuals without placing themselves or others in danger. The court stated, "…school officials must be allowed 'a certain degree of flexibility' to seek the assistance of trained law enforcement officials without losing the protections afforded by the reasonable

grounds standard" (p. 690). In addition, the court stated, "We therefore find it permissible for school officials who have reasonable suspicion that a student may be in possession of a dangerous weapon on school grounds to request the assistance of a school liaison officer or other law enforcement officials in conducting a further investigation" (p. 690).

Regarding the *T.L.O.* Court not commenting on the school liaison officer working in conjunction with school officials to conduct a search, the court stated:

> Although T.L.O. did not address this question, we conclude that an application of the T.L.O. reasonable grounds standard, and not probable cause, to a search conducted by a school liaison officer at the request of and in conjunction with school officials of a student reasonably suspected of carrying a dangerous weapon on school grounds is consistent with both the special needs of public schools recognized in T.L.O. and with decisions by courts in other jurisdictions (Pp. 690-691).

The court recognized that there were two separate searches of Angelia D.B. The first was a brief pat-down of Angelia D.B.'s outer clothing in the hallway outside the classroom. Angelia D.B. conceded that this was a reasonable search.

In examining the second search for reasonableness, the court found this to be a more thorough search of Angelia D.B.'s coat and somewhat of an intrusive search of her waistband. The court stated that, "weighing the gravity of a knife within the school concealed on a student's person, and the state's substantial interest in maintaining a safe and proper educational environment against the student's legitimate expectation of privacy, we find the search here reasonable" (p. 691).

In justification of the court's decision, a reference was done with the *T.L.O.* two-prong test. The first part of the test requires that the search be reasonable at its inception. Officer Dringoli was notified by a student that he had seen Angelia D.B. in possession of a knife. Dringoli had reasonable grounds to suspect that Angelia D.B. was in possession of a knife. The court found that the search was justified at its inception.

The second part of the *T.L.O.* two-prong test requires that the search must be reasonably related in scope to the circumstances justifying the interference in the first instance. With regards to this, the court stated, "Dringoli limited his search only to the areas where Angelia D.B. could reasonably conceal a weapon. We, therefore, find that the measures employed by Dringoli were reasonably related to the objective of determining whether Angelia D.B. had a knife in her possession on school grounds" (p. 692). The court also found that the search was not excessively intrusive in light of her age and gender. The State Supreme Court of Wisconsin reversed the order of the circuit court and remanded the case for further proceedings.

In 1999, in the case of *In the Matter of Josue T., a Child* (1999), a New Mexico Court of Appeals answered the question, "Does the Fourth Amendment to the Federal Constitution require probable cause for a full-time, commissioned police officer assigned to a public high school as a school resource officer to lawfully search a student during school hours, when the search is conducted at the request of a school official" (Section 1).

The case began with the defendants riding to Goddard High School in Roswell, New Mexico, in a pick-up truck belonging to another student. At some point that morning, the driver was sent to the assistant principal, because the student smelled of marijuana. The assistant principal searched the student and the truck, but found no drugs. The assistant principal then went to the defendant's classroom and asked him to step into the hallway. The assistant principal said the student smelled of marijuana and "appeared evasive, which was not his usual manner" (Section 5). Based on the smell of marijuana, the assistant principal escorted the defendant to her office to be searched. The school resource officer, Officer Reese, joined them and accompanied them to the office. Although Officer Reese was employed full-time by the Roswell Police Department, he was assigned to full-time duty at the high school.

Both the school official and Officer Reese noticed the defendant kept both hands in his front pockets on the way to the office. They also observed that the defendant had a large object in the right front pocket of his pants. Based on the totality of circumstances, the school official became concerned about what the defendant may have in his pocket. Once in the office, the defendant was asked to empty the contents of his pockets onto the desk. The defendant emptied his left pocket, but refused to remove his hand from the right pocket. Despite repeated requests, the defendant refused to either empty his right pocket or remove his hand from it. This continued to raise the concern of the assistant principal and her concern became a safety issue.

Based on the circumstances, the school official asked Officer Reese to search the defendant. Officer Reese instructed the defendant to remove his hand from the pocket, which he refused to do. Officer Reese then removed the defendant‘s hand from the pocket and reached into the pocket himself retrieving a .38 caliber handgun.

The defendant was charged with Unlawful Carrying of a Deadly Weapon on School Premises. After a motion to suppress, the trial court concluded that the student was delinquent based on his admission of carrying a deadly weapon to school. The defendant appealed the judgment and denial of the motion to suppress on the grounds that the trial court erred in its denial of his motion to suppress, since Officer Reese‘s search was unreasonable under the Fourth Amendment. The defendant claimed the search was not based on probable cause or a warrant, and did not fall within any of the exceptions to these requirements. The defendant also claimed that the school search exception that allows school officials to search students based on reasonable grounds, did not apply to the search of a student by a school resource officer. In addition, the defendant claimed, if the exception did apply, the officer did not have reasonable grounds to support his search.

The state argued and the trial court agreed that the reasonableness standard established in *T.L.O.* did apply to student searches conducted by school resource officers at the request of school officials. The court did acknowledge that it must decide whether it was appropriate to adopt the lower standard of reasonableness established in *T.L.O.* and apply it to a school resource officer search of a student, at the request of a school official.

As did the *Angelia D.B.* court, this court also discussed the three scenarios of officer involvement in the search of students. The court acknowledged that ―the *T.L.O.* standard has been applied in cases in which a school official initiates the search or in which the police involvement is minimal" (Section 18).

The second scenario specifically related to a school resource officer acting on his own authority. The court stated, ―[T]he ‗reasonable under the circumstances' standard established in *T.L.O.* also has been applied where a school resource officer, on his or her own initiative and authority, searches a student during school hours on school grounds, in furtherance of the school's education-related goals" (Section 18). The court cited *People v. Dilworth* in recognition of the second police search of a student. The third scenario was when an outside police officer initiated a search of a student on his own as a part of his investigation, or when a school official acted at the request of an outside officer. In this scenario, the courts have required that the probable cause or warrant requirement of the Fourth Amendment apply.

In the case in question, Officer Reese did not initiate the investigation and was simply present, until the school official asked him to assist. Prior to that, he was not involved in the search or interrogation of any student involved. As a result of the school official's request, the court stated that Officer Reese became ―the arm of the school official" (Section 20). The court concluded that Officer Reese acted in conjunction with the school official to maintain a safe and

proper educational environment. The court stated, "These factors lead us to conclude that the character of the search here suggests that the lower standard we have determined should apply here is appropriate" (Section 20).

The court then addressed whether reasonable grounds existed for the search at its inception. Both the school official and the officer suspected that the defendant may be in possession of marijuana. Such possession would not only be a violation of school rules, but a violation of the law. The court stated that, "For this suspicion to be reasonable, it had to be based on specific, reasonable inferences drawn from the facts and based on experience" (Section 23).

Both the officer and school official observed the student acting in an unusual and evasive manner, refusing to empty his pocket or remove his hand from the pocket. They both claimed the student's pocket was bulging with a heavy object. Based on the totality of circumstances, the court found, "Under the standard of review, we hold that the school official's and the officer's suspicions that a law or school policy was being violated were reasonable" (Section 24). The court also found that the information known to the school official regarding the driver of the vehicle smelling of marijuana prior to the search of the defendant was equally important information. In addition, the court stated, "[T]he search of student's pocket was highly likely to uncover evidence of a violation because the pocket was the very location student appeared to be hiding an unknown object. The search was therefore justified at its inception" (Section 26).

The second test of reasonableness dealt with whether the search was permissible in scope. The court cited *T.L.O.* in its description of 'permissible in scope,' by stating that "a search is permissible in scope when it is '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'" (Section 27).

The search of the defendant was limited to the pocket that the student was attempting to hide, and where the officer and school official noticed a bulge. The court stated, "The actual search, then, was neatly tailored to its objective—discovering what the student was trying to hide—as well as the nature of the suspected infraction" (Section 27). The court additionally stated that the search was not excessively intrusive in light of the student's age and sex. The court determined that the scope of the search was permissible.

The court affirmed the trial court's denial of the motion to suppress, and stated:

> We conclude that school resource officers may lawfully search a student on school grounds at the behest of a school official as long as the search is reasonable under the circumstances. We thus hold that probable cause to conduct the search was not required under the facts of this case. The search here was reasonable under the circumstances because it was justified at its inception, did not exceed the scope of its purpose, and was not overly intrusive in light of the student's age and sex (Section 28).

In September of 2000, the Court of Appeals of Indiana reviewed *In the Matter of: C.S. v. State of Indiana (2000)*, a case involving a school resource officer who was told directly by a student that another student at the school was in possession of a gun. This case began when a student, C.S., was adjudicated as a delinquent child and was placed on probation July 23, 1999. As a condition of his probation, C.S. was barred from possessing a gun. On August 9, 1999, while C.S. was attending summer school at an Indianapolis public school, an officer for the public school system, Sergeant Gaines, received information from another student that C.S. was in possession of a gun.

After receiving the information, Sergeant Gaines removed C.S. from his classroom and conducted a pat-down search for officer safety. While conducting the pat-down, Sergeant Gaines discovered a handgun in C.S.'s pants pocket. C.S. was charged with carrying a handgun

without a license, possession of a firearm on school property, and was notified of a probation violation. C.S. was sentenced to six months incarceration.

Ultimately, C.S. claimed that the trial court erred in admitting the handgun into evidence, contending that the pat-down search by Sergeant Gaines was unreasonable and violated his Fourth Amendment Constitutional protections. The court reviewed the *T.L.O.* two-part test as a measure to determine the reasonableness of the search. The court stated, "Under ordinary circumstances, a student search will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated either the law or a school rule" (p. 275). In regards to the second part of the test, the court states, "[T]he 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" (p. 275).

The court recognized that Sergeant Gaines received information from a student that C.S. was in possession of a gun, which caused her to remove C.S. from the classroom. Sergeant Gaines testified that she conducted a pat-down search for her safety. The court acknowledged that Sergeant Gaines was concerned for her safety; therefore, the search of C.S. was justified at its inception. The court also stated, "While Sergeant Gaines' actions may not have satisfied the warrant or probable cause requirements in some other environment, the protective search of C.S. just outside the classroom was permissible" (p. 276).

In regard to the second test, the court found "…the search was reasonably related to the objectives of the search inasmuch as Sergeant Gaines conducted only a minimally intrusive pat down of C.S.'s clothing to determine whether he possessed any contraband" (p. 276). In fact, once the gun was discovered, Sergeant Gaines stopped the search. The court stated, "As a result,

we conclude that under all circumstances present here, the search of C.S. was reasonable and the handgun was properly admitted" (p. 276).

In dissent of the court's opinion, Justice Sharpnack contended, "A search is justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student is or has violated either the law or school rule" (p. 278). Justice Sharpnack justified his dissent by arguing that the officer merely acted on information given to her by a student, and she could not establish a reasonable basis for suspecting that C.S. had or was violating a state law or school rule. In addition, Justice Sharpnack wrote, "Students have a diminished expectation of privacy in school, but school officials must provide some justification for searching a student. The evidence in this record does not reveal any justification at all" (p. 278).

In 2002, the Second District Court of Appeals in Florida reviewed *State of Florida v. N.G.B. (2002)*. N.G.B. was a middle school student assigned to the alternative behavior classroom. One of the students in the classroom reported that there appeared to be a small baggie of marijuana located on the floor between the desk of N.G.B. and another student. The teacher called for Ms. Andress, the assistant principal, who called for the school resource officer, Deputy Mantzanas, because she claimed she knew that she would need him. Both Ms. Andress and Deputy Mantzanas questioned and searched several students and their belongings. Ms. Andress discovered a note that implicated that N.G.B. smoked marijuana.

While speaking to the class, Deputy Mantzanas asked where the marijuana had come from. A student spontaneously stated that he thought it fell out of N.G.B.'s pocket. Deputy Mantzanas searched N.G.B. after he thought they had obtained consent to search. Deputy Mantzanas found a baggie containing marijuana residue and another baggie containing marijuana

in N.G.B.'s front left pocket. The baggie of marijuana appeared identical to the one that had been discovered on the floor.

The trial court, in the suppression order, recognized that Deputy Mantzanas had reasonable suspicion to search N.G.B., based on the student's statement regarding where the marijuana originated. There was also the note implicating N.G.B., the Deputy's knowledge that N.G.B. had associated with people known to smoke marijuana, and the baggie of marijuana that had been found close to N.G.B. The trial court noted that, although reasonable suspicion had been established, probable cause was not present for the search; for "Although Deputy Mantzanas was a school resource officer, the trial court concluded that because he was employed by a law enforcement agency, he is not a school official for purposes of the Exception set forth in *New Jersey v. T.L.O*" (p. 568).

In its decision, the appellate court stated: "We conclude that reasonable suspicion was the appropriate standard by which to assess the legality of the search by Deputy Mantzanas because the investigation was initiated by Ms. Andress, the assistant principal, and she enlisted Deputy Mantzanas's assistance" (p. 569). The appellate court reversed the suppression order and remanded the case for further proceedings.

In 2002, the United States Court of Appeals for the Eighth Circuit reviewed *Shade v. City of Farmington (2002)*, a case examining a school police officer's search for a student away from the traditional school grounds. In the case, Shade, a 17-year-old student of the Apple Valley Alternative Learning Center, located in Apple Valley, Minnesota, was transported along with seven other students by his teacher to Al's Autobody, a local business where the automotive shop class was meeting.

The teacher stopped the bus at a fast food restaurant to allow the students to purchase breakfast. After returning to the bus, Shade, asked the students around him if anyone had something with which he could open his container of orange juice. Shade took a knife from a student sitting nearby, opened it, and opened his orange juice with it. The driver of the bus observed Shade holding the knife, but did not see from where the knife came or where it went after Shade used it.

When the driver arrived at Al‘s Autobody, he notified a coordinator at the Apple Valley Learning Center, Ms. Gilmore, who contacted the principal for the alternative school, Dan Kaler. Mr. Kaler decided that the students should be searched prior to returning to the alternative school, because possession of a knife violated the school district‘s rule that prohibited weapons; and it presented an immediate safety concern. While the students were still at Al‘s, the principal contacted the school liaison officer, Michael Eliason, to assist with the search of the students. The bus driver was advised to keep the students at Al‘s until school officials arrived to investigate the matter.

Officer Eliason contacted fellow school liaison officer, Ted Dau, from Farmington High School, to aid in the search of the students. The two liaison officers along, with Ms. Gilmore, met at the bus as the students were boarding to return to the Apple Valley Learning Center. The bus driver informed Officer Dau that he had seen Shade with a medium sized knife. When asked if any other students possessed knives, the driver said he did not know.

Once the students had exited the bus, it was searched, but no knife was found. Officer Dau told the students they would be searched to locate the knife the driver had seen. Officer Dau asked the students if any of them had a knife to turn over, prior to the search. One student, not Shade, produced a knife and turned it over to Officer Eliason. Officer Dau then conducted a pat-

down search of the male students, while Ms. Gilmore conducted a search of the two female students.

When Officer Dau searched Shade, he found an item similar to an ASP tactical baton, but no knife. The item in Shade's possession measured nine and one-half inches when closed, but expanded to more than two inches when open. Shade was charged with possessing a dangerous weapon on school property. The school began expulsion proceedings against Shade on the basis that the possession of a knife and the expandable device violated the school's rule banning weapons.

Shade filed suit claiming that Officer Dau and the City of Farmington violated his civil rights by conducting an unreasonable search. The court cited three cases—*Board of Education v. Earls (2002), Vernonia School District 47J v. Acton (1995),* and *New Jersey v. T.L.O. (1985)*—in which the Supreme Court recognized that "special needs" exist in public schools permitting school officials to search without a warrant and without probable cause. The court stated:

> These three decisions teach that students retain a privacy interest while at school, but explain that the probable cause and warrant requirements are ill-suited in the school setting because the requirements would overbear school administrators' and teachers' ability to maintain order and insure an environment conducive to learning. The Fourth Amendment's reasonableness inquiry, therefore, must account for the schools' custodial and tutelary responsibility over the students entrusted to their care (Section 12).

The court stated that the *T.L.O.* two-part test was the appropriate standard for determining the reasonableness of the search of a student based on a rule violation. The court addressed the question of whether the *T.L.O.* standard applied to law enforcement officers involved in a student search that occurred away from traditional school grounds. The court stated, "As in *Cason*, school officials, not law enforcement officers, initiated the investigation and the search of Shade and the other students" (Section 15).

In the case, Ms. Gilmore and Principal Kaler made the decision to conduct a search based on information supplied by the teacher who had been driving the bus. Because the situation presented a safety issue, the school officials sought the assistance of trained police officers. The court noted, "The two school officials reasonably believed that a police officer was more capable and better trained to search for a weapon in a student's possession…" (Section 15). Also, school officials decided to detain the students at Al's Autobody to resolve the issue as quickly as possible. Furthermore, Ms. Gilmore was present at the scene to direct officers to conduct the search of the students.

The court also addressed the issue of the search having taken place away from the traditional campus:

> The fact that the search occurred away from what one would consider traditional school grounds similarly does not elevate the Fourth Amendment standard to one of probable cause. The nature of administrators' and teachers' responsibilities for the students entrusted to their care, not school boundary lines, renders the Fourth Amendment standard in the public-school context less onerous. Here, because of the unique and practical nature of their alternative-school education, the students were receiving training outside of a typical classroom away from the school. However, Mr. Schmitz [the bus driver], Ms. Gilmore, and Principal Kaler—the school decision makers—still had the same obligation to protect the alternative students from harm and insure a conducive learning environment despite the off-campus setting (Section 17).

In addition, the court recognized that the students were always in the control and custody of their teacher.

The court ultimately found that Officer Dau's search of Shade was reasonable under the Fourth Amendment. Furthermore, the court stated, "Having concluded the search was justified, we have little trouble deciding that it was also reasonable in scope" (Section 21). They cited *T.L.O.* when stating, "a search is reasonable in scope if the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and nature of the infraction'" (Section 21).

In 2006, the Court of Appeals of Tennessee reviewed *State of Tennessee v. R.D.S. (2006)*, a case involving a school resource officer‘s search of a vehicle parked in a school parking lot, and the statements received from the defendant after marijuana was discovered in the vehicle.

In the case, a student from Williamson County‘s Page High School showed up to one of his classes in what appeared to be a state of intoxication. The student was escorted to Assistant Principal Tim Brown‘s office, where Brown invited school resource officer, Deputy Sharon Lambert, to join them. After arriving at the office, Deputy Lambert observed the student, who appeared to be sleepy or groggy, and had bloodshot eyes. The deputy asked the student what he had been taking, and the student said he had drunk a quarter of a bottle of Robitussin before coming to school. Some teachers reported that the student had skipped some classes that morning. Deputy Lambert asked where he had been and the student said he had been in a truck in the parking lot belonging to student R.D.S.

Deputy Lambert and the school official located R.D.S. in the commons. The student did not appear to be intoxicated. Deputy Lambert told R.D.S. about the other student‘s condition and shared the statements the student had made. Deputy Lambert explained that, as a consequence, she would be searching R.D.S.‘s truck, and requested that R.D.S. accompany her, since it was his vehicle.

As Assistant Principal Brown, Deputy Lambert, and R.D.S. walked to the parking lot, Deputy Lambert asked R.D.S. if there was anything in the vehicle that should not be there and the student said no. The deputy asked if R.D.S. knew that he was responsible for anything that was in the vehicle and, once again, asked R.D.S. if there was anything in the vehicle that should not be there. R.D.S. answered no again and quoted a sign posted in the parking lot citing a Tennessee provision that any vehicle on school property was subject to search.

When they arrived at the vehicle, the door was unlocked and Deputy Lambert found a plastic bag containing marijuana in a side compartment of the driver's door. Deputy Lambert then held the baggie up and stated, "Oh, except for this marijuana" (p. 361). R.D.S. admitted it was his, saying something like, "Well, that's mine" (p. 361).

Deputy Lambert continued the search and found a glass pipe with a tarry residue in it. As they were walking back to the building, Deputy Lambert told R.D.S. that a teacher had reported him as skipping class that morning, and she asked where he had been. R.D.S. said he and the other student had left school about 9:30, smoked a bowl of marijuana, gone to the bank, and returned to school about an hour later. After a special education hearing, R.D.S. was taken to a juvenile detention center and was charged with simple possession of marijuana, and possession of drug paraphernalia.

The attorney for R.D.S. filed a motion to suppress the evidence seized from the truck, as well as the incriminating statement claiming that Deputy Lambert did not read R.D.S. his Miranda rights prior to the interrogation by her and the assistant principal. The juvenile court denied the motion and found R.D.S. delinquent.

R.D.S.'s attorney renewed the motion to suppress, which the Circuit Court heard on November 12, 2004. The Circuit Court found that "…the right to privacy is much less in the school setting than elsewhere, that the officer had the right to conduct the search without consent, that asking the defendant to walk outside while his vehicle was being searched did not amount to any kind of custodial arrest, and that the defendant's statement was not in response to any question, but was a voluntary statement" (p. 361). The motion was denied.

In analysis, the court found that an interrogation did take place. To clarify, the court stated, "They were direct questions or words or actions…that the [law enforcement officer]

should know are reasonably likely to elicit an incriminating response from the suspect (*State v. Sawyer*, 2005)'" (p. 363). The court determined that the issue was not whether an interrogation took place, but whether the interrogation took place while R.D.S. was in custody.

The Fourth Amendment to the Constitution not only protects against unreasonable searches, but also protects against unreasonable seizures of property or person. Regarding the custodial issue of R.D.S., the court stated, "I find that asking the young man to walk out while they searched his vehicle does not amount to any kind of custodial arrest" (p. 366). Furthermore, the court concluded, "A reasonable person in the same circumstances would not have considered his freedom limited to the degree of a formal arrest" (p. 368). Based on the court's findings, the denial of the motion to suppress the incriminating statements was affirmed.

The court then turned its sights on the truck that was searched and the evidence that was seized. R.D.S. claimed the marijuana and pipe should not have been allowed as evidence because it was found as a result of an unconstitutional search. The court analyzed the search based upon the two-prong test used by the *T.L.O.* court. First, the search must have been justified at its inception; second, the scope of the search must have been reasonable in light of circumstances justifying the privacy invasion in the first place.

The court stated that the standard was lesser because the search took place in a public school setting, and the probable cause requirement of searches was not required. Noted in the *T.L.O.* case, the standard was reasonable suspicion, and "reasonable suspicion is neither absolute certainty nor an inchoate and unparticularized suspicion or hunch'" (p. 370).

Deputy Lambert and the assistant principal made a decision to search R.D.S.'s truck based on the reasonable suspicion established by the student who was intoxicated, and the statement that he was in R.D.S.'s truck that morning, instead of being in class. The court stated,

—The incident gave rise to a reasonable suspicion that the substance causing the student's impaired condition was located in the truck. The truck was still on school property. Based on these facts, we conclude that the search was authorized…" (p. 370).

In another argument, R.D.S. stated that the reasonable suspicion standard should not be applied because the search was conducted by a law enforcement officer; as a result, the probable cause standard should apply. The court noted that other states had addressed this issue and had relied upon the finding of the *Dilworth* court, holding that the reasonable suspicion standard applied where a school resource officer acted on his own initiative.

Furthermore, the court noted that many lower courts had applied the reasonable suspicion standard to searches conducted by police officers when school officials initiated the search or police involvement was minimal, and when searches were conducted by school police or liaison officers acting on their own initiative.

Lower courts have also found that when outside police officers initiate the search of a student for investigative purposes, the probable cause and warrant requirements are applied. The *R.D.S.* court stated:

> We also find the reasoning and holding of the courts in the cases cited above persuasive. We hold that the reasonable suspicion standard applies to searches by law enforcement officers who are assigned to schools and act as part of the school administration, such as resource officers, as well as to searches conducted by school officials. In the case before us, the assistant principal and the school resource officer decided to search the truck and both participated in the search. Even if Deputy Lambert had acted on her own…it would still be reviewed for constitutional muster under the reasonable suspicion standard (p. 371).

The court found the judgment of the trial court was affirmed, and the case was remanded to the Circuit Court of Williamson County.

In 2007, the Court of Appeals of Indiana reviewed *T.S. v. State of Indiana (2007)*, a case involving an anonymous tip made to a school police officer, which resulted in the officer seizing

and searching a student on his own initiative. In the case, an Indiana Public Schools police officer, Sergeant Mark Driskell, received an anonymous tip phone call while he was in his office at Broad Ripple High School. The anonymous tipster was a female who stated that there was a student at Broad Ripple High School named [T.S.] who had marijuana in one of the front pockets of his pants.

After receiving the call, Sergeant Driskell went to T.S.'s gym class and told him to accompany him to the locker room. Sergeant Driskell acknowledged that the only reason he pulled T.S. out of class was because of the phone call. Sergeant Driskell's and T.S.'s statements differ as to what happened in the locker room. Sergeant Driskell said he had T.S. change out of his gym clothes and into his street clothes. After this, he asked T.S. if there was anything on him that he should not have. T.S. then pulled a small baggie containing marijuana from his front pant pocket. Sergeant Driskell then reached into the pocket and pulled out an additional baggie of marijuana.

T.S. stated that when he and Sergeant Driskell arrived at the locker room, Sergeant Driskell told him about the anonymous tip, put his hand on T.S.'s chest, and said that he knew T.S. had some marijuana, because his heart was beating quickly. T.S. testified that he reported to Sergeant Driskell that he had marijuana. Then he walked to his locker and opened it. Once the locker was open, T.S. stated that Sergeant Driskell grabbed the pants out of the locker, searched them, and pulled out two baggies of marijuana. Sergeant Driskell testified that he did not remember putting his hand on T.S.'s chest and that T.S. handed him the first baggie of marijuana.

T.S. filed a motion to suppress the evidence obtained during the encounter with Sergeant Driskell. The trial court did not rule on the motion prior to a delinquency hearing on T.S. On

objection, the trial court allowed the evidence. T.S. was found delinquent and ordered to continue probation.

On appeal the court acknowledged that *T.L.O.* left questions unanswered; thus, the court raised three questions that were undecided by *T.L.O.*: —1() the level of cause required for an IPSP officer who initiates an encounter with a student without the involvement of other school officials; (2) whether the encounter between Sergeant Driskell and T.S. constituted a seizure; and (3) the standard for determining the constitutionality of a seizure occurring in a school" (Pp. 367-368).

The court divides and reviews the State Supreme Court's division of police and student searches into three categories. The first division is when school officials initiate the search or police involvement is minimal; thus, the reasonable grounds standard applies. The second occurs when the search is conducted by the school resource officer on his or her own initiative in order to further education-related goals; thus, the reasonable grounds standard applies. The final division happens when outside police officers initiate the search of a student for investigative purposes; in this instance, the probable cause and warrant requirement is necessary.

This court took it upon itself to determine if Sergeant Driskell was an –outside" police officer or a school resource officer acting to further education-related goals. T.S. contended that the court should —…consider Officer Driskell an _outside' officer" (p. 369). T.S. also claimed Driskell acted on his own as part of a criminal investigation and not in conjunction with a school official, when he removed T.S. from class, questioned him with Miranda rights, and seized the marijuana from the student's pants. The state contended that Sergeant Driskell was not only acting as a law enforcement officer, but also as a school official attempting to maintain order at the high school. At some point, the state acknowledged that Sergeant Driskell was not a school

official. Contrary to the state's acknowledgment, the court found the following: "At the time of the incident, Sergeant Driskell was employed by the IPSP and was working in BRHS. He received the anonymous call in BRHS's IPSP office. We have previously held that employees of the IPSP who act in their capacity as security officers are considered school officials and that their conduct is therefore governed by *T.L.O.*" (p. 369).

The court also recognized that a Florida appellate court's decision in *State v. D.S. (1996)* found that, "all school searches conducted by school police officers are governed by the reasonableness standard, regardless of the involvement of other school administrators or the purpose of the search" (p. 370).

The court acknowledged that other courts have found that searches conducted by school police officers were governed by the reasonableness standard based on the rationale that the officer was working to further educational goals. The court stated, "Sergeant Driskell acted not only to ferret out criminal activity, but also to preserve an environment conducive to education" (p. 371). The court contended, "On the facts of the case, Officer Driskell was acting to further such [educationally related] goals, and we therefore will analyze his actions under the principles of *T.L.O.*" (p. 371).

The court reviewed whether the anonymous tip provided the reasonable suspicion to warrant Sergeant Driskell's seizure of T.S. and found:

> After considering the reduced expectation of privacy that students enjoy in public schools, we hold that Sergeant Driskell acted reasonably in investigating the tip. Removing T.S. from class, although certainly an intrusion on his privacy, was not an invasive intrusion. Indeed school officials routinely remove students from class for a variety of reasons. Although, as T.S. points out, it may cause more embarrassment for a student to be removed by a police officer, the officers to which this holding applies are also people whom students routinely see in the hallways, and are in schools not only to enforce laws, but also to maintain a safe environment conducive to learning….the presence of drugs in schools is a serious problem that jeopardizes the learning environment. We think it reasonable that an officer charged with maintaining this

> environment investigate a tip indicating that a student has drugs on school property by removing the student from class for questioning with the intent of taking the student to the dean‘s office. Therefore, the seizure of T.S. did not violate his Fourth Amendment rights (p. 377).

In conclusion, the court determined that Sergeant Driskell, a school resource officer, acted to further the education-related goals of the public school system. Therefore, the reasonable grounds standard applied to the seizure of T.S. And, ~~–~~Because the procedure through which the state obtained evidence against T.S. complied with both the United States and Indiana constitutions, the trial court properly admitted the evidence” (p. 378).

In other cases, courts have found that law enforcement must have probable cause to conduct searches of students, even at the request of law enforcement. One such case was ***M. J., a child, v. State of Florida, First District Court of Appeal of Florida (1981).*** Here, the appellant, M. J., was arrested and charged with possession of more than five grams of marijuana, and was later determined to be delinquent of the charges.

In October of 1981, three students at Quincy High School reported to the assistant principal, Mr. Black, that the appellant was in possession of marijuana. They went so far as to tell that the marijuana was hidden in M. J.‘s underwear. Mr. Black contacted the police department, and Officer York, who is not a school resource officer, reported to the school.

Mr. Black then called the appellant to the office and asked the student several times about his possession of marijuana. Each time, M. J. denied having marijuana. Mr. Black and Officer York continued questioning for approximately 10 minutes, demanding the appellant to turn over any marijuana he possessed. At one point, the appellant was told by Mr. Black and Officer York that he was going to be taken downtown and arrested, and that his uncle, a police officer, would be called.

M. J. said he did not want his uncle to be called, and ultimately consented to a search of his person. He then produced a marijuana cigarette from his coat pocket, but Mr. Black continued to accuse the appellant of having additional marijuana in his possession. Officer York once again advised that he would call the appellant's uncle, and that a search would be conducted. M. J. protested, but when Mr. Black requested that the student pull down his pants, M.J. did as he was requested. The appellant then produced a bag of marijuana from his underwear.

Prior to trial, a motion to suppress the marijuana was filed in the trial court. The motion was denied, based on the finding that the appellant "intelligently and voluntarily" consented to producing the marijuana cigarette. In addition, the trial court found that, even if there had been no consent, reasonable suspicion existed to justify a warrantless search. Therefore, the evidence was admissible.

On appeal to the State District Court, the state contended, "[The court] has adopted a reasonable suspicion exception for warrantless searches of students by school officials" (p. 8). But the court raised a question regarding the legality of the search by stating, "The issue here is how the reasonable suspicion exception for warrantless searches by school officials is affected by the presence of a police officer and his active participation in the search" (p. 8).

The court found that Officer York conducted a search by actively demanding that the appellant turn over any marijuana he possessed; and as a result, probable cause was required for Officer York to have conducted the search. The court wrote:

> In the case at bar, probable cause was required for Officer York's search of the appellant. Such cause was lacking…The only information relayed by Mr. Black to Officer York was that a student had "some marijuana on his person." This statement, without elaboration, cannot be the basis for probable cause on the part of Officer York. [Therefore,] there was no probable cause for the police search which produced the cannabis cigarette. That search was unlawful, and the bag of cannabis was procured as a

> direct result of the search. Thus, both items of cannabis should have been suppressed (p. 12).

The District Court found for the appellant and reversed the trial court's adjudication of delinquency.

In relying on the M. J. finding, the First District Court of Appeals in Florida once again reviewed the case, *In the Interest of A.J.M., a child v. State of Florida (1993)*, where a school resource officer was involved in the search of a student. In the case, Officer Massey, a school resource officer, after being spotted walking outside of the principal's office, was instructed by the principal, Pink Hightower, to search several students who were in his office, since he had received information that the students were involved in drugs.

After hearing this, the appellant, A.J.M., attempted to leave the building, but was caught and returned by Officer Massey. While in the office, Officer Massey conducted a pat-down search of the appellant and found cocaine in his pocket. Officer Massey did not have any independent information to justify his search and acted solely upon the principal's request.

The District Court initially reviewed the finding of the *T.L.O.*, and noted:

> In fashioning this school exemption to the probable cause requirement, the Supreme Court specifically noted that it was considering only those searches carried out by school officials acting alone and on their own authority, and it was not addressing the question of what standard would apply when a search is conducted by school officials in conjunction with or at the behest of police (p. 1138).

The court then relied upon the *M.J.* case for legal direction. The court wrote:

> …we cannot ignore the legal test adopted by the court in M.J., which is whether the officer directed, participated in or acquiesced in the search. In the instant case, the officer actually conducted the search in question. Under the dictates of M.J. supra, the appropriate test in determining the validity of the search was whether probable cause existed for the search (p. 1138).

The search in question lacked probable cause, but the court said that the principal neglected to testify about the details of the information that he received, or about any background regarding

problems of drugs at school or the students‘ involvement with drugs. Lacking this information, the court was unable to determine whether probable cause or reasonable suspicion existed. In addition, the court noted that the state had neglected to argue that the school resource officer was not a police officer, but was a member of the school staff for the purpose of reasonable suspicion, versus probable cause.

The decisions in more recent cases continue to muddy the waters regarding law enforcement participation in searches. The case of *In re S.W.* (2005) tests other court rulings regarding the standards school resource officers are expected to stick to when searching a student. In the *S.W.* case, on December 02, 2003, Deputy Carpenter, a school resource officer at Riverside High School in North Carolina, detected the smell of marijuana emanating from S.W., a student at the high school.

Deputy Carpenter asked S.W. and another student to step into the hallway. Upon doing so, Deputy Carpenter located two assistant principals, Mr. Taylor and Mr. Davis, and the three men and two students walked to the school‘s weight room. Without assistance from the two school administrators, Deputy Carpenter initiated a search of S.W. by asking the student if he was in possession of any contraband. S.W. said he had none. Deputy Carpenter then said, ―Do you mind if I search?‖ and the appellant responded, ―No.‖ Deputy Carpenter asked S.W. to empty his pockets and, when he did, S.W. produced a plastic baggie containing 10 smaller bags of marijuana.

On December 17, 2003, S.W. was charged with possession with the intent to sell a schedule VI substance. The petition was adjudicated, and S.W. was found to be delinquent and placed on six months probation. The juvenile‘s appeal of the findings, based upon the motion to

suppress the illegally obtained evidence due to an unlawful search, was denied. S.W. also argued that he was not provided accurate and reliable transcripts of his hearing.

The appellate court of North Carolina disagreed with the grounds of the appeal and applied the standard identified by the *T.L.O.* Court by stating, "Applying the *T.L.O.* standard, this court found it permissible to conduct a search of a student based upon a school's investigation or at the direction of a school official, in the furtherance of well established educational and safety goals" (p. 426). The court continued to draw a parallel between its case and the *T.L.O.,* but noted:

> While the holding in *T.L.O.* was limited to searches by school administrators and officials; our Court has recently adopted an extension of this reasonableness standard to searches conducted by law enforcement officials. We have since held that the *T.L.O.* standard governs searches conducted by resource officers working "in conjunction with' school officials," where these officers are primarily responsible to the school district rather than the local police department (p. 426).

The *S.W.* court recognized that although Deputy Carpenter was an employee with the Durham County Sheriff's Department, he was assigned full-time to Riverside High School as the school resource officer and was charged exclusively with making the school's environment safe. The court also noted that Deputy Carpenter was not an outside officer conducting an investigation or acting at the request of an outside officer to conduct an investigation or search. As a result, Deputy Carpenter acted correctly when applying the reasonable suspicion standard to conduct the search of S.W. Therefore, the search was valid and the evidence was admissible, and the finding of the lower court stood.

This chapter reviewed literature relevant to the case law governing a school resource officer's authority to search students. It was arranged in grouping order to give the reader an organized presentation of the literature relevant and pertinent to police officers, school resource officers, and school administrators—and the laws governing their authority to search students

and individuals. Its content was also intended to provide the reader with an accurate historical perspective on the development of case law concerning school resource officers‘ authority to search students. The next chapter will provide an in-depth analysis of court findings that pertain to the search of students by school resource officers.

CHAPTER 3

LEGAL ANALYSIS

This chapter presents an analysis of current Fourth Amendment law, specifically as it relates to the constitutional validity of school resource officers‘ authority to search students, including the Fourth Amendment, the exclusionary rule, exceptions to a warranted search, probable cause, reasonable suspicion, school administrative searches, school resource officer searches, and 42 USC § 1983.

INTRODUCTION

Our Nation‘s war on drugs and violence is not limited to its streets and neighborhoods, but continues to infiltrate our children‘s schools at an alarming rate (Stefkovich, 1995). According to a 2009 timeline of school shootings worldwide, there were 44 such shootings in the United States from February 1996 – November 2008, resulting in 117 deaths.

To combat such crime, police officers are being placed in public schools throughout the United States. Known as school resource officers, these sworn police officers are placed in schools to perform multiple tasks, including: law enforcement, classroom instruction, and counseling (Bough, 1999).

In essence, school resource officers, being sworn police officers working in public schools, must perform tasks similar to those performed by school administrators, but they are

held to a different standard. Search and seizure laws offer little or no guidance governing school resource officer‘s authority to search students.

THE UNITED STATES CONSTITUTION

The Fourth Amendment to the United States Constitution guarantees:

> 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, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment protections are afforded to people, not to protect them from other individuals, but to protect them from government error and misconduct.

THE STATE OF GEORGIA CONSTITUTION

Paragraph XIII of the Georgia Constitution addresses searches, seizures, and warrants. 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 warrant shall issue except upon probable cause supported by oath or affirmation particularly describing the place or places to be searched and the persons or things to be seized.

Through the years, the courts have recognized that the right for people to be secure in their persons and property should not be left to the individual subjective discretion of law enforcement officials.

GENERAL STANDARD OF LAW

PROBABLE CAUSE

According to the Fourth Amendment, searches are made reasonable by establishing probable cause. *Locke v. United States* (1813) defines probable cause as ―less than evidence which would justify condemnation…It imports a seizure being made under circumstances which warrant suspicion" (p. 348).

Other courts have defined probable cause, for instance, in the case of *Dumbra v. United States* (1925), probable cause is defined by utilizing a reasonableness standard. About determining probably cause, the *Dumbra* Court stated, ―The apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged…" (p. 645). The seizure noted in the Fourth Amendment is not isolated to the seizure of a person, also included is the seizure of property, such as evidence from a crime.

OATH OR AFFIRMATION

The determination of probable cause is one judged by a judicial officer or magistrate. According to *Johnson v. United States* (1948), ―Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime" (p. 14). The Court in *Shadwick v.City of Tampa* (1972) stated that two requirements must be met: ―[The magistrate]

must be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search" (p. 350).

PLACE TO BE SEARCHED OR THINGS TO BE SEIZED

The Fourth Amendment also states that warrants must particularly describe the place to be searched, and the person or things to be seized. The Court in *United States v. Lefkowitz* (1932) identified three categories of seized property: contraband, fruits, and instrumentalities of a crime. According to the *Marron v. United States* (1927) Court, the decision and discretion of law enforcement is void when completing and carrying out a search warrant. The scope of the search is also limited to the location where the items listed in the search warrant may be located.

EXCEPTIONS TO WARRANT SEARCHES

CONSENT SEARCH

Although the Fourth Amendment dictates the requirements in searches and seizures, the courts have identified some exceptions. The first allows for officers to conduct consent searches. The Court in *Schneckloth v. Bustamonte* (1973) defined consent as a "waiver of a person's rights under the Fourth and Fourteenth Amendments" (p. 235). For consent to be voluntary, the person must understand that he has the right to refuse consent. The burden of proof that the consent was voluntary rests with the state, and courts determine consent by viewing a totality of circumstances.

BORDER SEARCHES

In addition to consent searches, border searches are an exception to the warrant mandate. *United States v. Ramsey* (1977) states, ―The searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonably simple by virtue of the fact that they occur at the border…" (p. 616).

Also, as noted by USE THE AUTHOR'S NAME AND DELETE THE NAME OF THE JOURNAL; DO THROUGHOUT AS NEEDED *The Georgetown Law Journal* (2002, p. 1188), ―routine stops and border searches of persons, luggage, personal effects, and vehicles may be conducted without probable cause or even reasonable suspicion." The stop must be for a brief amount of time, and may not be limited to external borders. International airports, for example, are considered borders in the eyes of the court. *U.S. v. Beras* (1999) defines a functional equivalent of a border as the first practical detention point after a border crossing or the final port of entry.

OPEN FIELD SEARCH

Potential for an additional warrantless search occurs in the ―open field" exception. The Court in *Hester v. United States* (1924) determined that no warrant was necessary to search open fields. In *Oliver v. United States* (1984) the Court stated, ―In this light, the rule of *Hester v. United States,* supra, that we reaffirm today, may be understood as providing that an individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the

area immediately surrounding the home" (p. 179). The Court concluded that no warrant was needed to search open fields, but was necessary to search the area immediately surrounding the house.

PLAIN VIEW SEARCH

Additionally, the "plain view" doctrine allows police officers to conduct warrantless searches by concluding that, when this doctrine is applied, individuals no longer have a reasonable expectation for privacy. In *Coolidge v. New Hampshire* (1971), the Court noted that a warrantless search within the "plain view" doctrine required that an officer have the right to be present at the location and have the right to see what was there. Confirmed by the Court through *Washington v. Chrisman* (1982), when an officer or agent has the right to be at a location, and to see what is there, he has the right to seize the contraband at that location.

REASONABLE SUSPICION SEARCH

For the first time, the Court identified another standard by which officers may conduct a limited search—based on "reasonable suspicion." The Court in *Terry v. Ohio* (1968) recognized the need for law enforcement to conduct a brief seizure of a person, and limited searches of their person and property, without first establishing probable cause. The Court defined a reasonableness standard as when, "a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot" (p. 31). In addition to the stop, a limited search, known as a "frisk or pat-down," can be conducted, based on the reasonableness standard described by the *Terry* Court: "Whether a reasonably prudent

man in the circumstances would be warranted in the belief that his safety or that of others was in danger" (p. 27).

As noted by the Court, the frisk or pat-down is limited to outer clothing for a search of weapons, for the safety of the officer and others. While conducting the pat-down, if an officer recognizes that the individual is in possession of a weapon and weapon only, a more intrusive search can be conducted.

SEARCH INCIDENT TO A VALID ARREST

While additional search and seizure parameters were established as a result of the *Terry* case, *Chimel v. California* (1969) identified a "search incident to a valid arrest," which is another search that can occur without a warrant. The Court in the case noted that an arresting officer can search an arrestee, and the immediate area within the arrestee's control, to remove weapons and evidence of a crime that may otherwise easily be destroyed. Furthermore, the Court stated that a routine search of rooms, other than those in which the arrest took place, does require a search warrant.

The *Chimel* case was broadened through the Court's decision in *Maryland v. Buie* (1990), when it noted, "The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that an area to be swept harbors an individual posing a danger to those on the arrest scene" (p. 325).

ADMINISTRATIVE SEARCH

Administrative searches are also exempt from the Fourth Amendment warrant requirement. In the case of *O'Connor v Ortega* (1987), the Court stated that the search required, "Balancing the employee's legitimate expectation of privacy against the government's need for supervision, control, and the efficient operation of the work place" (Pp. 719-726). In addition, Justice Scalia added that government searches to retrieve work-related materials and to investigate violations of work rules did not violate the Fourth Amendment. Such searches are strictly related to employee and employer, and the boundaries are not stretched to include agents of the court and law enforcement for the purpose of criminal investigations.

EXCLUSIONARY RULE

FEDERAL APPLICATION

As noted, the assumption of the court is that all searches conducted without a warrant are invalid. The Court provides more lenient application of Fourth Amendment exceptions in warranted searches. Potential exists with non-valid searches to have the evidence thrown out and to be exempt from the court's consideration, based on the "Exclusionary Rule." The *Weeks v. U.S.* (1914) case was the first to apply and exclusionary rule, when the Court concluded:

> If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such seizures is of no value, and, so far as thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land (p. 393).

STATE APPLICATION

The Court‘s decision cited that any evidence illegally obtained would not be admissible in court, which resulted in the ―Exclusionary Rule.‖ At the time, the decision only impacted Federal officials. But the ―Exclusionary Rule‖ was later made applicable to the states through the *Mapp v. Ohio* (1961) decision. The Court confirmed the ―Exclusionary Rule‖ application by stating, ―[T]he exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments…‖ (p. 657). Justice Clarke added, ―We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by the same authority, inadmissible in state court‖ (p. 655).

FRUIT OF THE POISONOUS TREE

Another standard allowing the omission of evidence is known as the ―fruit of the poisonous tree.‖ Delivering the opinion for the Court in *Wong Sun Et Al. v. United States* (1963), Justice Brennan noted that there were no reasonable grounds to make an arrest based on probable cause, because the information that led to the arrest was too vague and was provided by an ―untested source.‖ Statements made by the defendant at the time of his unlawful arrest were deemed ―fruits of the agents‘ unlawful action,‖ thus, they were removed as evidence.

EXCEPTIONS TO THE "FRUIT OF THE POISONOUS TREE" DOCTRINE

GOOD FAITH EXCEPTION

As with the warrant requirement, there are exceptions to the "fruit of the poisonous tree" doctrine. One is the "good faith" argument. In the case of *United States v. Leon* (1984), the Supreme Court determined that the exclusionary rule did not apply when police obtained evidence through a warrant, when at the time of its issuance, the police were acting under good faith that the warrant was valid, even if the warrant, after its issuance, was found to lack probable cause.

The Georgetown Law Journal (2002, p. 1267) stated, "The good faith exception also applies when the police obtain evidence in reliance on a warrant later technically defective, on a statute authorizing warrantless searches that is later declared unconstitutional, or on an erroneous police record indicating the existence of an outstanding arrest warrant." In addition, the *Journal* noted that the good faith exception did not apply when officers had no reasonable grounds to believe that the warrant was properly issued.

ATTENUATION EXCEPTION

The second exception to the exclusionary rule is known as the "Attenuation Exception." The guidelines to consider within this exception are provided by the Court in *Brown v. Illinois* (1975). The first factor to consider is the amount of time elapsed between the unconstitutional government conduct and the acquisition of evidence. Second is the presence of intervening circumstances. Third is the purpose and flagrancy of the police misconduct.

INDEPENDENT SOURCE EXCEPTION

Another exception to the exclusionary rule is the "Independent Source" doctrine, which The Georgetown Law Journal (2002, p. 1274) explains: "Even if police engage in illegal investigatory activity, evidence will be admissible if through a source independent of the illegality." In the opinion of the Court, Justice Scalia wrote, "The Fourth Amendment does not require the suppression of evidence initially discovered during police officers' illegal entry of private premises, if that evidence is also discovered during a later search pursuant to a valid warrant, that is wholly independent of the initial illegal entry."

INEVITABLE DISCOVERY

The final exception to the exclusionary rule is the "Inevitable Discovery" doctrine. The Georgetown Law Journal (2002, p. 1275) explains it as closely related to the "independent source" doctrine, in that a court may admit illegally obtained evidence, providing the evidence would have inevitably been discovered through independent, lawful means.

42 U.S.C. § 1983 LIABILITY

Under federal law, there may be liability if a violation of civil rights occurs. The ability for an individual to file civil suit against someone acting under the color of law falls within the federal statute *42 U.S.C. § 1983*. Under *42 U.S.C. § 1983*: Civil action for deprivation of rights is stated as:

> Every person who, under any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

As described by McDonald (1999), two elements must be shown for violation of this statute to occur. He stated, "First, that the defendant acted under color of state law, and second, that the action complained of, deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States." Government agents who violate an individual's civil liberties may be held liable for monetary relief, including nominal, compensatory, and punitive damages, according to The Georgetown Law Journal (2002, p. 2046).

SCHOOL OFFICIAL SEARCHES THE *T.L.O.* GUIDELINES

The standard of searches applied to school officials was outlined in the landmark decision of *New Jersey v. T.L.O.* (1985). The *T.L.O.* Court (Pp. 325-326) wrote the following standards:

> 1. The Fourth Amendment's prohibition against unreasonable searches and seizures applies to public school officials and is not limited to law enforcement. School officials are not exempt from Fourth Amendment dictates as a result of the special nature over school children. The Court continues by stating that school officials act as representatives of the state, not merely as surrogates for the parents of students, thus school officials cannot claim parental immunity from Fourth Amendment requirements.
> 2. School children have a legitimate expectation of privacy and simply because they enter upon school property, there is no reason to believe that they have waived their expectation of privacy. Striking the balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject. Thus, school officials need not obtain a warrant before searching a student who is under their authority. Moreover,

> school officials need not be held subject to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather the legality of a search of a student should depend simply on the reasonableness, under all circumstances, of the search. Determining the reasonableness of any search involves a determination of whether the search was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Under ordinary circumstances the search of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. And such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and the nature of the infraction.

Through the Court's decision, two rules emerged to govern student searches by school officials. The first: each search must be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating the law or rules of the school. Second: "a search will be permissible in its scope when the measures adopted are 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" (p. 342).

SCHOOL RESOURCE OFFICER SEARCHES

As noted by the title of his article, Mike Kennedy (2001) refers to school resource officers as "teachers with a badge." Fueled by growing trends of violence in schools, school resource officer programs are one of the fastest-growing areas of law enforcement, according to Curt Lavarello, executive director of the National Association of school resource officers. Kate Ellenberger (2001) wrote: "Littleton, Jonesboro, Springfield, West Paducah, and Pearl. The school tragedies in these communities brought the threat to school safety into the public

conscience and moved school safety onto the U.S. public agenda." Pickrell and Wheeler (2005) wrote:

> Police and other law enforcement officers have become frequent visitors and, in some cases, an established presence in public schools in recent years. Several factors account for this development. Since the Columbine tragedy, federal and state funding has made it possible for police departments to assign full-time police officers, known as school resource officers, to provide security services at public schools.

The role of the school resource officer is a three-pronged responsibility, not limited to providing security through the presence of an armed police officer on a school campus. Mulqueen (1999), stated that the school resource officer has three main functions: to serve as an armed police officer with arrest powers; to serve as a counselor of law-related issues, and help guide children to appropriate community services; and to serve as a teacher of the law, either teaching his own class or visiting classes to provide talks and presentations.

As police officers, school resource officers are bound to follow the guidelines established by the Fourth Amendment and Supreme Court decisions when searching students. The responsibilities of school resource officers extend beyond basic law enforcement into the realm of educators and school administrators. While the courts have recognized the importance of maintaining a safe learning environment, at the same time, they have applied a different standard for searches conducted by school resource officers. The lesser standard applied to school resource officers is the standard that is applied to school administrators through the case of *New Jersey v. T.L.O.* (1985).

Through the Court's decision, two rules emerged to govern student searches by school officials. The first: each search must be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating the law or rules of the school. Second: ~~a~~ search will be permissible in its scope when

the measures adopted are 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" (p. 342).

A lower court's decision in *The People v. Dilworth* (1996) reexamined the *T.L.O.* finding as it applied to school resource officers. The 2nd District Appellate Court, in relying on the *T.L.O.* decision, stated that the standard of reasonableness applied to the search of a student by a teacher or other school employee. The Appellate court noted that the school resource officer is on the staff of the school full-time. Part of the school resource officer's responsibilities at the school includes handling criminal activity and school discipline issues. The school resource officer was told by two teachers that they had overheard the student discussing the sale of drugs, as well as his plan to bring drugs to the school the following day.

Based on the information provided, the school resource officer conducted a search of the student, but found no drugs. Afterward, the school resource officer observed the student, along with another student, laughing, talking, and acting like they had made him look foolish. The school resource officer observed one of the students holding a flashlight, which was seized and searched; cocaine was found. The court found that the totality of circumstances warranted that the application of the reasonable suspicion standard be applied to the school resource officer's search and seizure.

The court noted: —The totality of these circumstances would lead a reasonable person to suspect that the defendant was carrying drugs in his flashlight. Indeed, upon seeing the flashlight in the defendant's hand, Ruettiger [the school resource officer] testified that he immediately thought that it might contain drugs" (p. 216). The court also found that the search was permissible in its scope.

Ruettiger had reasonable suspicion that the flashlight contained drugs, so he seized the flashlight and searched it, only. The court stated, ―This measure was reasonably related to the objectives of the search and was not excessively intrusive" (p. 216). The *Dilworth* court concluded, ―Ruettiger's seizure and search of the defendant's flashlight was constitutional because it was reasonable under the totality of the circumstances. We therefore reverse the judgment of the appellate court and affirm the judgment of the circuit court" (p. 217).

Cited in the *Dilworth* case was a decision issued in *Cason v. Cook* (1987), in which the court asked itself ―whether the reasonableness standard should apply when a school official acts in conjunction with a police liaison officer" (Section 17). The district court found that the reasonableness standard was the correct standard, and the court agreed that there was no violation of constitutional rights.

The court found, ―there is no evidence to support the proposition that the activities were at the behest of a law enforcement agency. The uncontradicted evidence showed that Ms. Cook, the school official, conducted the investigation of the thefts that had been reported to her" (Section 18). The court went on to describe that the school resource officer's involvement was limited to a pat-down only after the coin purse that matched the description of the one stolen was located in the possession of Shy. A brief interview of the students resulted in juvenile cards being presented to the two students.

The court also noted, ―The imposition of a probable cause warrant requirement based on the limited involvement of Ms. Jones would not serve the interest of preserving swift and informal disciplinary procedures in schools" (Section 23). In addition, the court once again described the initiation of the investigation as being a result of a school official's actions. The final finding of the court was that, ―[]he appellant presented insufficient evidence to support a

jury‘s verdict in her favor. We do not hold that a search of a student by a school official working in conjunction with the school resource officer could never rise to a constitutional violation, but only under the record as presented to the court, no such violation occurred here” (Section 26).

The case of *In the Interest of Angelia D.B., a Person Under the Age of 18: State of Wisconsin v. Angelia D.B.* (1997) issued a decision regarding the involvement of a school resource officer working in conjunction with a school official. The *Angelia D.B.* court identified three standards to searches conducted by police in schools. First, school officials initiate the search or police involvement is minimal. As in *Cason v. Cook*, courts have found that the reasonableness standard applies to the search by the school resource officer.

The second standard is when a school police officer, a school resource officer, or a school liaison officer acts on his own authority to search a student. Relying on the *Dilworth* decision, this court cited that the reasonable suspicion guideline does apply. The third standard occurs when outside police officers initiate a search, or school officials act at the behest of law enforcement agencies. This standard requires that probable cause be present for a search and/or seizure to take place, in compliance with Fourth Amendment requirements.

The court recognized that Officer Dringoli was a liaison officer who had an office on the school premises; thus, one of his responsibilities was to assist school officials in maintaining a safe and proper educational environment. The court stated, ―Because the report of a knife on school premises posed an imminent threat of danger to students and teachers, it is reasonable to conclude that Dringoli conducted the search of Angelia D.B.…in furtherance of the school‘s objective to maintain a safe and proper educational environment” (p. 690).

The court expressed concern for school officials and their lack of training regarding searches, and emphasized that they did not want to encourage school officials to be compelled to

search for dangerous weapons. The court stated, "The proper standard for constitutional reasonableness of searches conducted on public school grounds by school officials, or by police working at the request of and in conjunction with school officials, should not promote unreasonable risk-taking" (p. 690).

The court also declared that teachers are trained to educate, and police officers are trained to disarm individuals without placing themselves and others in danger. The court stated, "...school officials must be allowed 'a certain degree of flexibility' to seek the assistance of trained law enforcement officials without losing the protections afforded by the reasonable grounds standard" (p. 690). In addition, "We therefore find it permissible for school officials who have reasonable suspicion that a student may be in possession of a dangerous weapon on school grounds to request the assistance of a school liaison officer or other law enforcement officials in conducting a further investigation" (p. 690).

The court addressed the issue raised earlier regarding the fact that the *T.L.O.* court did not comment on the school liaison officer working in conjunction with school officials to conduct a search. The court stated:

> Although T.L.O. did not address this question, we conclude that an application of the T.L.O. reasonable grounds standard, and not probable cause, to a search conducted by a school liaison officer at the request of and in conjunction with school officials of a student reasonably suspected of carrying a dangerous weapon on school grounds is consistent with both the special needs of public schools recognized in T.L.O. and with decisions by courts in other jurisdictions (Pp. 690-691).

In the case of *In the Matter of Josue T., a Child* (1999), a New Mexico Court of Appeals addressed the question, "Does the Fourth Amendment to the Federal Constitution require probable cause for a full-time, commissioned police officer assigned to a public high school as a school resource officer to lawfully search a student during school hours, when the search is conducted at the request of a school official" (Section 1)?

The court answered:

> We conclude that school resource officers may lawfully search a student on school grounds at the behest of a school official as long as the search is reasonable under the circumstances. We thus hold that probable cause to conduct the search was not required under the facts of this case. The search here was reasonable under the circumstances because it was justified at its inception, did not exceed the scope of its purpose, and was not overly intrusive in light of the student's age and sex (Section 28).

In September of 2000, the Court of Appeals of Indiana reviewed *In the Matter of: C.S. v. State of Indiana (2000)*, a case involving a school police officer who searched a student after receiving information about the defendant possessing a gun directly from another student.

The court recognized that the school resource officer received information from a student about the defendant possessing a gun, which caused her to remove C.S. from the classroom. The school resource officer testified that she conducted a pat-down search for her own safety. The court acknowledged that the school resource officer was concerned for her safety and, therefore, the search of the defendant was justified at its inception. The court also stated, "While Sergeant Gaines' [the school resource officer] actions may not have satisfied the warrant or probable cause requirements in some other environment, the protective search of defendant just outside the classroom was permissible" (p. 276).

The court also found that "….the search was reasonably related to the objectives of the search inasmuch as Sergeant Gaines conducted only a minimally intrusive pat down of C.S.'s clothing to determine whether he possessed any contraband" (p. 276). In fact, once the gun was discovered, the school resource officer stopped the search. In conclusion, the court stated, "As a result, we conclude that under all circumstances present here, the search of C.S. was reasonable and the handgun was properly admitted" (p. 276).

The Second District Court of Appeals reviewed *State of Florida v. N.G.B. (2002)*, when the appellate court decided: "We conclude that reasonable suspicion was the appropriate standard

by which to assess the legality of the search by Deputy Mantzanas [the school resource officer] because the investigation was initiated by Ms. Andress, the assistant principal, and she enlisted Deputy Mantzanas's assistance" (Pp. 568-569).

The United States Court of Appeals for the Eighth Circuit reviewed *Shade v. City of Farmington (2002)*, in which a school police officer searched a student away from traditional school grounds, based on information provided by a school official. The court cited three cases—*Board of Education v. Earls (2002), Vernonia School District 47J v. Acton (1995),* and *New Jersey v. T.L.O. (1985)*—in which the Supreme Court recognized that "special needs" existed in public schools permitting school officials to search without a warrant and without probable cause. The court stated:

> These three decisions teach that students retain a privacy interest while at school, but explain that the probable cause and warrant requirements are ill-suited in the school setting because the requirements would overbear school administrators' and teachers' ability to maintain order and insure an environment conducive to learning. The Fourth Amendment's reasonableness inquiry, therefore, must account for the schools' custodial and tutelary responsibility over the students entrusted to their care (Section 12).

The court stated that the *T.L.O.* two-part test was the appropriate standard for determining the reasonableness of the search of a student, based on a rule violation. The court addressed the question of whether the *T.L.O.* standard applied to law enforcement officers who were involved in student searches that occurred away from traditional school grounds. The court stated, "As in *Cason*, school officials, not law enforcement officers, initiated the investigation and the search of Shade and the other students" (Section 15). In the case, Ms. Gilmore and Principal Kaler made the decision to conduct a search based on information given to them directly from a teacher who had observed suspicious activity. Because the situation presented a safety issue, school officials sought the assistance of the trained police officers. The court noted, "The two school officials reasonably believed that a police officer was more capable and better trained to search for a

weapon in a student‘s possession…” (Section 15). Furthermore, Ms. Gilmore made herself present at the scene to direct the officers who would be conducting the search of the students.

The court also addressed the fact that the search took place away from campus:

> The fact that the search occurred away from what one would consider traditional school grounds similarly does not elevate the Fourth Amendment standard to one of probable cause. The nature of administrators‘ and teachers‘ responsibilities for the students entrusted to their care, not school boundary lines, renders the Fourth Amendment standard in the public-school context less onerous. Here, because of the unique and practical nature of their alternative-school education, the students were receiving training outside of a typical classroom away from the school. However, Mr. Schmitz [the bus driver], Ms. Gilmore, and Principal Kaler—the school decision makers—still had the same obligation to protect the alternative students from harm and insure a conducive learning environment despite the off-campus setting (Section 17).

In addition, the court recognized that the students were in the control and custody of their teacher at all times.

The court ultimately found that the school resource officer‘s search of the defendant was reasonable under the Fourth Amendment. Furthermore, the court stated, ―Having concluded the search was justified, we have little trouble deciding that it was also reasonable in scope” (Section 21). They cited *T.L.O.* when stating, ―A search is reasonable in scope if the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and nature of the infraction‘” (Section 21).

In the case of *State of Tennessee v. R.D.S. (2006)*, the Court of Appeals of Tennessee examined a school resource officer‘s search of a vehicle parked in a school parking lot, and statements received from the defendant after marijuana was discovered in his vehicle. About the case, the *R.D.S.* court stated:

> We hold that the reasonable suspicion standard applies to searches by law enforcement officers who are assigned to schools and act as part of the school administration, such as resource officers, as well as to searches conducted by school officials. In the case before us, the assistant principal and the school resource officer decided to search the truck and both participated in the search. Even if Deputy Lambert [the school resource officer] had

> acted on her own…it would still be reviewed for constitutional muster under the reasonable suspicion standard (p. 371).

In *T.S. v. State of Indiana* (2007), the Court of Appeals of Indiana studied an anonymous tip that was made to a school police officer while he was in his school office, regarding a student in possession of marijuana. The court found that Sergeant Driskell, the school resource officer, acted to further the education-related goals of the public school system and, therefore, the reasonable grounds standard applied in the seizure of T.S. The court noted, "Because the procedure through which the state obtained evidence against T.S. complied with both the United States and Indiana constitutions, the trial court properly admitted the evidence" (p. 378).

The case of *In re S.W.* (2005) tested other court rulings regarding the standard to which school resource officers are to adhere when searching a student. The court wrote:

> While the holding in T.L.O. was limited to searches by school administrators and officials; our Court has recently adopted an extension of this reasonableness standard to searches conducted by law enforcement officials. We have since held that the T.L.O. standard governs searches conducted by resource officers working "in conjunction with' school officials," where these officers are primarily responsible to the school district rather than the local police department (p. 426).

The *S.W.* court determined that the school resource officer was an employee at the Durham County Sheriff's Department, assigned full-time to the high school as the school resource officer. The officer was exclusively a school resource officer, charged with keeping the school environment safe.

The court was careful to note that the school resource officer was not an outside officer conducting an investigation or acting at the request of an outside officer to conduct an investigation or search. As a result, the school resource officer acted correctly when applying the reasonable suspicion standard to conduct the search of the defendant.

In other cases, courts have found that law enforcement must have probable cause to perform student searches, even if it is law enforcement who is requesting the search. One such

case was that of *M. J., a child, v. State of Florida, First District Court of Appeal of Florida (1981)* DATES SHOULD NOT BE IN ITALICS; CHANGE THROUGHOUT. Here, the court found that the school resource officer conducted a search by actively demanding that the appellant turn over any marijuana that he possessed. As a result, probable cause was required for the school resource officer to conduct the search. The court found:

> In the case at bar, probable cause was required for Officer York's search of the appellant. Such cause was lacking…The only information relayed by Mr. Black to Officer York was that a student had ~~a~~some marijuana on his person." This statement, without elaboration, cannot be the basis for probable cause on the part of Officer York. [Therefore,] there was no probable cause for the police search which produced the cannabis cigarette. That search was unlawful, and the bag of cannabis was procured as a direct result of the search. Thus, both items of cannabis should have been suppressed (p. 12).

The First District Court of Appeals in Florida once again reviewed the case, *In the Interest of A.J.M., a child v. State of Florida (1993)*, in which a school resource officer was asked by the principal to search several students who were suspected of having drugs. The District Court initially reviewed the finding of the *T.L.O.*, and noted:

> In fashioning this school exemption to the probable cause requirement, the Supreme Court specifically noted that it was considering only those searches carried out by school officials acting alone and on their own authority, and it was not addressing the question of what standard would apply when a search is conducted by school officials in conjunction with or at the behest of police (p138).

The court then relied upon the *M.J.* case for legal direction, and ended up writing:

> …we cannot ignore the legal test adopted by the court in M.J., which is whether the officer directed, participated in or acquiesced in the search. In the instant case, the officer actually conducted the search in question. Under the dictates of M.J. supra, the appropriate test in determining the validity of the search was whether probable cause existed for the search (p. 138).

The search in question lacked probable cause.

This chapter was designed to present a thorough legal analysis of the constitutional law, specifically as it relates to the authority school resource officers have to search students. An

examination was done of the Fourth Amendment, the exclusionary rule, exceptions to a warranted search, probable cause, reasonable suspicion, school administrative searches, school resource officer searches, and 42 USC § 1983. The information provided through this analysis should give the reader an improved understanding of the current status of student searches conducted by school resource officers, and the laws that govern them.

CHAPTER IV

FINDINGS

This chapter presents a summary of the findings and conclusions of this study.

This study found:

1) The Fourth Amendment sets limits on the authority of all government agents in conducting searches.
2) Warrant requirements mandate that probable cause be established as determined by a neutral and detached magistrate and particularly describing the place to be searched and the person or items to be seized.
3) Probable cause is the establishment of facts and circumstances that would lead a reasonable prudent person to believe that a crime has been committed.
4) Exceptions to the warrant requirement are: searches by consent, border searches, open field searches, plain view searches, ADD EMERGENCY SEARCHES?, reasonable suspicion searches, and a search incident to a valid arrest. These exceptions, when applied properly, allow for a lawful search without a warrant.
5) Consent searches must be voluntary with an understanding that a refusal to the consent can be given.
6) Plain view searches require that an officer must have a right to be present at the location and have a right to see the contraband at the location.

7) Reasonable suspicion searches must be based on a reasonableness standard based on a totality of circumstances when a police officer observes unusual conduct which leads the officer to conclude that criminal activity is about to occur or has occurred.

8) A search incident to a valid arrest allows for an intrusive search of the individual who was arrested based upon probable cause. In addition, a search can be conducted within the area which the arrestee has immediate control for the safety of the officer and to prevent the destruction of evidence.

9) Evidence illegally obtained is subject to omission based upon the exclusionary rule and the ―fruit of the poisonous tree" doctrine.

10) Exceptions to the exclusionary rule include the good faith exception, attenuation exception, independent source exception, and the inevitable discovery exception.

11) Police officers who violate an individual's Fourth Amendment rights are subject to civil suit and liability within 42 U.S.C. § 1983.

12) In *New Jersey v. T.L.O.*, the United States Supreme Court held that the Fourth Amendment applies to school officials, but that school officials were subject to the lower standard of reasonable suspicion.

13) *T.L.O.* requirements mandate that a search must be justified at its inception based upon reasonable suspicion and the search must be reasonably related to the objectives and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

14) School Resource Officers perform three main functions: to serve as an armed police officer with arrest powers; to serve as a counselor of law related issues and

to help guide children to appropriate community services; and to serve as a teacher of the law, either teaching his own class, or visiting classes to provide talks and presentations.

15) In *Dilworth*, the school resource officer was assigned full-time to the school. He had the responsibility of handling criminal activity and school discipline. The *T.L.O.* standard was applied to the seizure and search of a student's flashlight.

16) In *Cason*, the school resource officer acted in conjunction with a school official. The officer conducted a pat-down after the school official located a coin purse that had been taken from another student. The *T.L.O.* standard was applied and the search was justified.

17) Three standards for searches by police officers in schools were identified by the *Angelia D.B.* court. First, when school officials initiate the search or school resource officer involvement is minimal, the reasonableness standard applies. Second, when a school resource officer acts on his own authority to search students, the reasonableness standard applies. Third, when an outside police officer initiates a search or when a school official acts at the behest of an outside officer, the probable cause standard applies.

18) In the *Angelia D.B.* case, the school resource officer had an office on campus, and one of his responsibilities is to assist school officials in maintaining a safe and proper educational environment. The officer was asked to work in conjunction with school official as a result of the potential for a dangerous weapon to be involved. The *T.L.O.* reasonableness standard was applied.

19) In the *Josue T.* case, the school resource officer was present in the school official‘s office. The defendant refused to comply with the school official‘s request to remove his hand from his pocket. The School resource officer was requested to assist in the search. The officer removed the defendant‘s hand from his pocket and located a handgun. The *T.L.O.* standard was applied and the search was reasonable.

20) In the *C.S.* case, the school resource officer received information from a student that the defendant was in possession of a gun. The officer removed the defendant, and conducted a pat-down search for his safety and located a handgun. The *T.L.O.* standard was applied, and the search was reasonable.

21) In the *N.G.B.* case, the school resource officer was asked by a school official to assist with the investigation of students being in possession of marijuana. The school resource officer conducted a search of the defendant and located a baggie of marijuana. The *T.L.O.* standard was applied, and the search was reasonable.

22) In the *Shade* case, the school resource officer was asked by a school official to assist with the search of a student for a knife off of campus but at a school sponsored function. The *T.L.O.* standard was applied, and the search was reasonable.

23) In the *R.D.S.* case, the school resource officer conducted a search of a student‘s vehicle in the school parking lot after the student arrived on campus and appeared to be intoxicated. The court applied the *T.L.O.* standard, and the search was reasonable.

24) In the *T.S.* case, the school resource officer received an anonymous tip by phone that a student had marijuana in his front pant pocket. The officer asked the student if he was in possession of anything that he shouldn‘t have, and the defendant produced a baggie of marijuana. The court applied the *T.L.O.* standard, and the search was reasonable.

25) In the *M.J.* case, an outside officer was contacted by the school official to assist with the investigation of a student being in possession of marijuana. Marijuana was obtained from the defendant. The court applied the probable cause standard, and the exclusionary rule was enforced.

26) In the *A.J.M.* case, the school resource officer conducted a search of a student for the purpose of locating marijuana. The officer lacked information and only acted at the request of the school official. The probable cause standard was applies, and the exclusionary rule was enforced.

27) In the *S.W.* case, the school resource officer detected an odor of marijuana emanating from a student. He asked for assistance from school officials but acted on his own authority and asked the defendant if he could search him, and the defendant consented to the search and emptied his pockets which contained marijuana. The court applied the *T.L.O.* standard, and the search was reasonable.

This study concluded:

1) The legal standard that is applicable to school resource officers working in conjunction with school officials is likely the *T.L.O.* standard.

2) The legal standard that is applicable to school resource officers working independently from school officials is likely the *T.L.O.* standard.

3) School resource officers must justify the search at its inception by the establishment of reasonable suspicion.

4) The school resource officer‘s search must be reasonably related to the objectives and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

COMMENTS

While one can make a persuasive argument that school resource officers are subject to the less rigorous *T.L.O.,* standard, to ensure the validity of a search conducted by a school resource officer, it may be preferable that the probable cause requirement be met when possible. However, under real world circumstances this higher standard sometimes does not allow a school resource officer to act quickly enough when the safety of staff and students is at stake. Additionally, school administrators lack adequate training to properly conduct searches and seizures for weapons and dangerous drugs. School resource officers must be fully knowledgeable in laws of arrest, laws of search and seizure, and school law. This knowledge will allow them to perform their responsibilities to their fullest capacities while operating within the guidelines of the law.

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