THE "WORST OF BOTH WORLDS": SCHOOL SECURITY AND THE DISAPPEARING FOURTH AMENDMENT RIGHTS OF STUDENTS*

Randall R. Beger

This article examines two related themes: the increasingly restrictive security measures in public schools and the reluctance of the courts to protect the basic Fourth Amendment rights of students. Information from academic and journalistic sources is presented regarding the impact on students from greater police presence and restrictive school security measures, including the potential harm to the learning environment. Additionally, this article reviews recent state appellate court decisions empowering police to search students using the less protective guidelines of reasonable suspicion and the "special needs" doctrine. This article also evaluates the recent United States Supreme Court decision that permits schools to conduct suspicionless drug testing of students as a condition of participating in any extracurricular activities. The results of these disciplinary policies and search tactics can be described as the "worst of both worlds," with severe penalties for even minor student misconduct without the safeguards of the Fourth Amendment.

In the wake of several highly publicized campus shooting incidents, the nation’s schools have made the safety of students a top priority. A U.S. Department of Education survey found that 96 percent of public schools required visitors to sign in before entering the school building; 80 percent had a closed campus policy forbidding students to leave the campus for lunch; 53 percent controlled access to school buildings (National Center for Education Statistics, 1998).

In furtherance of the goal to improve safety, schools are adopting security measures that diminish the rights of school children. More than 80 percent of public schools have enacted zero tolerance policies that prescribe fixed penalties for a wide range of minor infractions (Brady, 2002). Students have been suspended or expelled under zero tolerance for dress code violations, profanity, excessive absenteeism, and shoving matches (Black, 1999; Insley, 2001). At schools that have no apparent drug problems, administrators have hired police officers to conduct random searches of students’ lockers and personal property using specially trained sniff dogs (Chiang, 1997; Simpson, 2001; Vanderpool, 1999). Several schools have posted signs in parking lots warning students who drive to school that they have consented to searches of their vehicles “with or without cause” by school officials.

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or police officers (Bates & Hollingsworth, 1999, p. 12; McIntyre, 2000). A high school in Michigan strip-searched an entire gym class because money was reported missing from the locker room (Hanson, 2002).

As safety has become a high priority on the education agenda, judicial concern about protecting the constitutional rights of students has become an issue (Lush, 2000; Minow, 1995). Courts are increasingly showing deference to school officials' power to regulate students' conduct in the name of security with less emphasis on students' privacy rights. Federal and state appellate courts, without individualized suspicion, allow schools to search students for drugs (Miller v. Wilkes, 1999; Todd v. Rush County Schools, 1998; Weber v. Oakridge School District, 2002).

In addition to supporting student drug searches in schools, a number of state appellate courts are allowing police to search students, using the less protective legal standard of reasonable suspicion. Additionally, courts are permitting police and security guards to search students under the rubric of noncriminal investigations or "special needs" (Vaughn & del Carmen, 1997).

The special needs doctrine emerged from the rationale in the U.S. Supreme Court's decision of New Jersey v. T.L.O. (1985). In his concurring opinion, Justice Blackmun reasoned that, because schools have a special need to maintain discipline in an environment conducive to learning, school officials are not required to show probable cause before conducting searches of students and their property. Blackmun acknowledged that children have legitimate privacy interests in the school, but against the child's interest in privacy must be set the "special need for an immediate response to behavior that threatens either the safety of schoolchildren and teachers or the educational process itself" (p. 353).

Within the school context, the special needs exception was limited to searches by teachers, not police officers. This is consistent with the rationale in T.L.O. that the mission of teachers is to educate, unlike that of police, who are trained to use the fruits of a search to bring a criminal prosecution. By allowing police to search students without probable cause, courts have placed school children into a position that is the "worst of both worlds," reducing Fourth Amendment protections in a setting of security and penalties for even minor misconduct.

This article is divided into three parts. First it examines misperceptions of the actual risk of violence in public schools and the current drive to improve student

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1"Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity and content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause" (People v. Avalos, 1996, p. 1579).

2The "worst of both worlds" is language from Kent v. United States, a case decided by the U.S. Supreme Court in 1966. Morris Kent, a juvenile, was waived to adult court without a full investigation and was subsequently convicted as an adult on six counts of housebreaking and robbery. The Supreme Court overturned the decision, ruling that before juveniles are transferred into the adult system they must be given fundamental due process protections, including a full waiver hearing before the juvenile court. Writing for the majority, Justice Fortas questioned the protective rhetoric of the juvenile justice system in these words: "There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds; that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children" (p. 556).
safety through such security measures as school-wide locker inspections, suspicionless drug screening, and searches by police. The article suggests that intrusive security may actually cause more harm by creating a social climate that interferes with the educational process. The article then briefly reviews two landmark U.S. Supreme Court cases that began the erosion of students’ Fourth Amendment rights while at school (New Jersey v. T.L.O., 1985; Vernonia School District 47J v. Acton, 1995) and then scrutinizes the most recent case in which the Supreme Court took up the issue of Fourth Amendment standards in public schools (Board of Education—Pottawatomie County v. Earls, 2002). Finally, the article evaluates recent state appellate court decisions that have empowered police to search students without probable cause under the legal doctrine of “special needs.”

SCHOOL VIOLENCE: THE GAP BETWEEN IMAGE AND EVIDENCE

Widely publicized incidents of juvenile violence in public schools have created the public misconception that such behavior is commonplace. In a November 1999 Washington Post poll, two thirds of adults listed school violence as something that is “worrying me the most these days” (Schiraldi, 1999, p. A25). A survey released in 2001 by the nonprofit institute Character Counts revealed that more than one in three students do not feel safe at school (Josephson Institute of Ethics, 2001). Seventy-five percent of children polled in a national Internet survey commissioned by Alfred (New York) University said that they were concerned about random violence erupting inside their school (Gaughan, Cerio, & Myers, 2001). The National Education Association (NEA) recently unveiled a new “unlawful homicide” insurance benefit for teachers slain at work (“Teachers Across the Nation,” 2001).

Contrary to popular belief, schools remain among the safest places for children. According to a joint report issued by the U.S. Departments of Justice and Education, the percentage of children who reported that they were victims of crime at school dropped from 10 percent to 8 percent between 1992 and 1999. Similarly, the percentage of students who said that they avoided some areas in school for reasons of personal safety declined from 9 percent to 5 percent between 1995 and 1999 (National Center for Education Statistics, 2001). Centers for Disease Control and Prevention data indicate that the number of high school students who self-reported carrying a gun to school fell 25 percent between 1991 and 1997 (Brener, Simon, Krug, & Lowry, 1999). Data gathered by the Justice Policy Institute reveal that the odds of a child being killed by gunfire at school during the 1999–2000 school year were about 1 in 3 million (Brooks, Schiraldi, & Ziedenberg, 2001). Nationwide, school-related deaths fell from a peak of 55 during the 1992–1993 school year to 14 in 2001 (Hancock, 2001).
Most school violence and serious injuries at school are rare events (Lawrence, 1998). Nevertheless, many schools have adopted new forms of security without fully appreciating the impact on students and the educational environment. According to the nation’s newspapers, school districts have introduced stricter dress codes (Santillanes, 1997), banned book bags and pagers (Hollingsworth, 1999), installed lockless lockers (Olivo, 2000), added computer-coded ID badges (Richey, 1998), instituted SWAT team rehearsals (Loyd, 2000), implemented “lock down” drills (Fitzgerald, 2000), and adopted student drug testing (Chaddock, 1999).

Many public schools have also hired school resource officers (SROs), also known as school liaison officers, to patrol campuses (Dunn, 1999; O’Leary, 2001). SROs are certified law enforcement officials whose duties include chaperoning school dances, breaking up fights, searching the person and property of students, and making sure that no outsiders are on campus (Gips, 2002; Johnson, 1999; Mulqueen, 1999). In 1997, there were 9,446 SROs in police departments who were assigned to public schools in the United States (Bureau of Justice Statistics, 2000). The numbers of SROs have increased as a result of additional funding at the federal level. According to one source, “school-based policing programs are now one of the, if not THE, fastest growing areas of law enforcement” (Lavarello, 2000, p. 6).

A number of social scientists claim that policies created to reduce violence in public schools have “criminalized” a broad range of student conduct that presents no real threat to school-wide safety (Ayers, 1997/1998; Giroux, 2001; Noguera, 1995). Dohrn asserts that, because of exaggerated safety concerns, schools have become more dependent on the police to intervene in a wide range of situations that used to be managed informally by teachers. “Decisions to call a shouting match, a no-harm tussle, or locker graffiti a crime, to arrest rather than see a teachable moment, to prosecute rather than resolve disputes—these practices are turning schools into policed territory” (Dohrn, 2001, p. 164). Similar to Dohrn’s account, a joint report released by the Justice Policy Institute and Children’s Law Center cites numerous examples of school children facing criminal charges for such minor infractions as pouring soapy water into a teacher’s cup, threatening students in a lunch line not to “eat all the potatoes,” and allegedly stealing two dollars from a classmate (Brooks et al., 2001). Equally worrisome to many educators is the overrepresentation of minority youth among the ranks of students suspended or expelled from school under zero tolerance initiatives (Peden, 2001; Reed & Strahan, 1995; Skiba & Peterson, 2000). A Harvard University Civil Rights Project reports that African-American children comprise only 17 percent of the students enrolled in public schools yet represent 33 percent of out-of-school suspensions for zero tolerance (Advancement Project/Civil Rights Project, 2000).
Little hard evidence evaluating school security measures exists. What data are available suggest that heavily layered security in public schools (e.g., unannounced locker inspections, police searches, surveillance cameras) may not be effective in reducing the risk of student disorder. For example, using a structural equation methodology, Mayer and Leone (1999) analyzed the relationship between school safety operations and rates of victimization and disorder reported by 9,000 students. They found that student disorder and victimization were higher in schools with restrictive physical security (metal detectors, locked doors) than in schools where physical security was not so pervasive. The authors of this study assert that a “cycle of disorder” may be operating in heavily secured schools: “Viewed in the context of a reciprocal relationship, the data suggest that disorder and restrictive management of the school premises go hand in hand and may feed off of each other” (p. 12). Mayer and Leone recommend that “less attention be paid to running schools in an overly restrictive manner and rather, schools should concentrate more on communicating individual responsibility to students” (p. 14).

Other studies demonstrate that aggressive security measures produce alienation and mistrust among students (Anderson, 1998; Easterbrook, 1999; Noguera, 1995). Hyman and Perone (1998) surveyed evidence from multiple sources and found that intrusive forms of security increase rather than inhibit student misbehavior. They note that “get tough” security practices such as school-wide locker searches and police searches have “negative effects on student morale [including] the development of, or increase in, oppositional behavior” (p. 13).

Strict security measures can disrupt the learning environment and create an adversarial relationship between school officials and students. Indeed, the nation’s newspapers have published stories about students organizing petition drives and boycotting classes to protest unannounced locker inspections, police searches, and other forms of intrusive security (Chiang, 1997; Gendar, 1999; Smith, 1999). Some civil libertarians and academics worry that metal detector screening in public schools may deprive students of valuable learning time (Imbriani, 1995; Watkins & Hooks, 2000). One example of this, published in the CQ Researcher, can be found in a high school in Brooklyn, New York, where it takes almost three hours to “funnel all 3,000 students into the gym, where they are frisked with hand-held metal detectors and their book bags are probed” (Glazer, 1992, p. 790). Zirkel (2000) points out that installing metal detectors in schools that are relatively free of trouble could increase fear and insecurity rather than help students feel safe.

At a deeper level, the overarching presence of police and security hardware in public schools may actually interfere with student learning. Devine (1996) encountered this in his fieldwork on “lower tier” public schools in New York City. Devine interviewed teachers who complained of not being able to teach “because of loud noises coming from the walkie-talkies in the corridors” patrolled by security
guards (p. 89). A school principal whom Devine interviewed admitted, “I have no control over security guards, they don’t report to me” (p. 77). Devine acknowledges that nonfatal violence among students is a serious problem in large, inner-city public schools (see also Howell, 1997). However, he concludes that fortress-like security is bad for students, for teachers, and for the educational process.3

Although Devine studied schools that serve New York City’s poorest and most violent communities, his observations about the destructive impact of repressive security have wider application. Education research affirms that the most important ingredient that schools need in order to build and maintain a safe and supportive learning environment is interpersonal trust (Cook-Sather, 2002; Kaplan & Owings, 2000). On this point, Silva and Macklin (2002, p. 29) assert, “Children learn to think best, to use their mind well, to express themselves in a learning environment where they feel trusted, respected, and encouraged.” Other research indicates that schools with committed and caring teachers who work with students to set clear, fair, and consistently enforced rules are less likely to experience violence and disorder (Anderson, 1998; Gottfredson, 1986; Gottfredson, Gottfredson, & Hybl, 1993). A climate of heightened security seems to work against a cooperative learning environment by producing hostility and fear (Edwards, 2001).

THE APPLICATION OF THE FOURTH AMENDMENT TO SCHOOLS

In 1985, the United States Supreme Court granted school children basic Fourth Amendment protections in New Jersey v. T.L.O. Prior to T.L.O., the standard that many courts followed to evaluate the legality of school-based searches was the in loco parentis doctrine (Commonwealth v. Dingfelt, 1974; D.R.C. v. State, 1982; In Re Thomas G., 1970; Mercer v. State, 1970; R.C.M v. State, 1983). Under this doctrine, school officials who conducted searches were said to be acting in a private capacity on behalf of students’ parents, and not as state agents acting under governmental authority. For example, school searches conducted under in loco parentis are not done to obtain evidence of criminal wrongdoing but to remove contraband that threatens the welfare and safety of students (In Re Donaldson, 1969). When school officials search under in loco parentis they perform duties that are in the students’ best interests, as would the students’ parents.

In T.L.O., the U.S. Supreme Court ruled that school children do not waive their Fourth Amendment rights by bringing purses, books, and items necessary for personal grooming and hygiene to school. However, a certain degree of “flexibility” in school disciplinary procedures, including limited searches, was deemed necessary, making the warrant and probable cause requirements “impractical.” The Court adopted a reasonable suspicion standard to evaluate the

3Devine argues (1995, p. 179) that the heavy use of police and security hardware in inner-city schools results in “a climate of fear that indoctrinates youth into a culture of violence and dictates that only those exhibiting a ‘tough’ demeanor will survive.”
legality of searches by school officials. This standard "balances the need to search against the invasion which the search entails" (Camara v. Municipal Court, 1967, cited in New Jersey v. T.L.O., p. 337). The balance is determined by applying a two-pronged test. First, a school search will be "justified at its inception" when it is reasonably apparent that it will uncover evidence that a student has violated or is violating a law or school rules. Second, the scope of the search must not be "excessively intrusive" in light of the age and sex of the student and the nature of the infraction.

Applying this new standard, the Court held that the assistant principal's search of T.L.O.'s purse was reasonable both at its inception and in scope. The Court stated that, when the primary purpose of the search is to maintain a safe and friendly environment conducive to learning, it falls within the category of the "special needs" exception to the warrant and probable cause requirements. The special needs doctrine applies to search situations where a court determines that individualized suspicion and probable cause are impractical and the purpose of the search is to advance a governmental interest beyond the normal need for law enforcement. Courts evaluate three factors in special needs cases: the importance of the governmental need, the effectiveness of the governmental intrusion in furthering the governmental need, and the degree of intrusion upon an individual's privacy interests. Since T.L.O., courts have expanded the special needs doctrine to areas beyond those embodied in the original concept, including searches conducted by law enforcement officials (Vaughn & del Carmen, 1997).

The T.L.O. decision widened the door for school officials to search students under a far less stringent standard than the traditional probable cause test.¹ Left undefined in T.L.O. was the specific standard that should govern searches by law enforcement officers assigned to schools. Individualized suspicion as a search prerequisite was also left unanswered by the Court. Individualized suspicion within the school context would mean a set of articulable facts showing that a particular student has engaged in misconduct. Non-individualized suspicion includes situations where suspicion is directed at a select group of students or where a school decides to search the entire student population to prevent misconduct (Jacobs, 2000).

¹Writing in dissent, Justices Brennan, Marshall, and Stevens warned that the T.L.O. reasonableness test "is so open-ended that it may make the Fourth Amendment virtually meaningless in the school context" (p. 363). Years after T.L.O., it appears that the concerns of the dissenting justices were well founded. Sanchez (1992) reviewed 18 state appellate court decisions on the legality of school searches issued after T.L.O. and found that school districts prevailed in all but three. Schreck's (1993) analysis of appellate court cases also revealed a majority of rulings against students' Fourth Amendment rights: "Of twenty-three post-TLO cases that addressed the issue of 'reasonable suspicion,' only three cases held that the school lacked reasonable suspicion to search a particular location" (p. 122). The ease with which courts find almost any student search to be reasonable is illustrated by Sanchez (1992, p. 412): "State courts have accepted anonymous phone calls, overheard conversations, or mere off-hand student comments as legitimate reasons for initiating searches of students, lockers, and cars. An assortment of what could be innocent activity (two students exchanging money; a student found in a rest room; a student missing class) has also been adopted as proper foundation for harboring the reasonable suspicion which will trigger a search."

²General searches to prevent student misconduct fall into the category of administrative searches. An
A decade after the *T.L.O.* decision, the U.S. Supreme Court revisited the issue of Fourth Amendment standards in public schools when it decided *Vernonia School District 47J v. Acton* (1995). In the *Acton* case, a student challenged a school drug screening program for student athletes. The Vernonia School District had instituted a policy of randomly testing student athletes for potential drug use after school officials noticed a sharp increase in disciplinary problems among the students. Student athletes were said to be the leaders of an emerging “drug culture.” Litigation over the testing program resulted when seventh-grade student James Acton and his parents refused to sign a consent form for testing and, as a result, James was suspended from the school’s football team.

In *Acton*, the Court began its analysis by first noting that state-compelled urinalysis testing constitutes a search under the Fourth Amendment. Next, applying *T.L.O.*, the Court determined that the state’s custodial relationship with students created a “special need” justifying the application of the balancing test to evaluate the search. The Court formulated a three-part test to determine whether the school’s drug screening policy met the requirements of the Fourth Amendment.

The Court first addressed the privacy expectations of public school children and concluded that their expectations were diminished by the school’s custodial and tutelary responsibility for students. Additionally, the Court noted that student athletes have a lesser expectation of privacy because they routinely undress in communal locker rooms, shower together, and undergo physical examinations that afford them little privacy.

The second factor that the Court considered was the nature of the intrusion created by the random urinalysis testing requirement for participation in school sports. Here the Court determined that the students’ privacy interests were negligible because the conditions under which the urine samples were taken were nearly identical to those “typically encountered in public restrooms which . . . schoolchildren use daily” (p. 658).

The third factor that the Court considered was the nature and immediacy of the governmental concern and the efficacy of suspicionless urinalysis testing in meeting it. The majority characterized the governmental concern with deterring drug use by school children to be “important” and “compelling” (p. 661), highlighting the dangers of illegal drugs, particularly when used by students. As to the efficacy of the means for addressing the problem, the majority opinion stated, “It seems to us self-evident that a drug problem largely fueled by the ‘role model’ effect of athletes’ drug use . . . is effectively addressed by making sure that athletes do not use drugs” (p. 663).

administrative search is defined as a “search of public or commercial premises carried out by a regulatory authority for the purpose of enforcing compliance with health, safety, or security regulations” (Garner, 1999, p. 1351). Examples of administrative searches in schools include school-wide locker inspections and metal detector screening of all students. Administrative searches only require reasonable suspicion because the privacy intrusion in such searches is said to be “minimal” and counterbalanced by governmental interests other than law enforcement, such as public health and safety (Addington, 1999).
The most recent case in which the U.S. Supreme Court has examined a random drug testing policy in a public school involved the school district of Tecumseh, Oklahoma, where a Student Activities Drug Testing Policy was adopted for middle school and high school students engaged in a wide array of extracurricular activities. Under the policy, students could be suspended from participating in extracurricular activities only if they tested positive for drugs a third time.

Two Tecumseh High School students challenged the policy as an unwarranted invasion of their privacy rights. In a 5-4 ruling, the United States Supreme Court, in *Board of Education v. Earls*, upheld the right of public schools to make drug tests a condition of participating in extracurricular activities. Relying on its prior decision in *Acton*, the Court first asserted that students have a lesser expectation of privacy than members of the general population because of the school's custodial and tutelary responsibility for children. Furthermore, like students who participate in athletic activities, students who participate in other extracurricular activities have a reduced expectation of privacy because they voluntarily subject themselves to rules and regulations that do not apply to the student body as a whole.

In assessing the character of the intrusion, the Court noted that the testing procedures did not differ significantly from the drug testing program in *Acton*. The majority also noted that information collected during the testing was shared only with selected school officials on a "need-to-know" basis and was not turned over to police or used in any disciplinary action against students who tested positive.

Finally, the Court turned to "the nature and immediacy of the government's concerns and the efficacy of the Policy in meeting them" (citing *Acton*, p. 660). As to the immediacy of the concern, the Court stated, "The nationwide drug epidemic makes the war against drugs a pressing concern in every school" (p. 834). Additionally, the Court noted that, although the drug problem at Tecumseh schools did not rise to the level in *Vernonia*, "[a] demonstrated problem of drug abuse . . . [is] not in all cases necessary to a testing regime" (citing *Chandler v. Miller*, 1997, p. 311).

The Court's decision in *Board of Education v. Earls* lessens privacy for students engaged in extracurricular activities. On a personal level, the testing is intrusive because it requires school children to urinate in the presence of a monitor and reduces their privacy only on the basis of their student status. From a deterrence angle, there is no evidence that suspicionless testing in public schools discourages students from using drugs. In a recent nationwide study of 76,000 public school children, researchers from the University of Michigan found virtually no difference in drug use in schools with or without testing programs (Winter, 2003).

The Supreme Court's decision in *Earls* is problematic for another reason as well. The majority assumed that information obtained through drug testing was disclosed only to school personnel having a "need to know" and not to law enforcement officials. However, the evidence in this case indicates that test information was handled carelessly, with little regard for confidentiality. School file cabinets
containing test data were left open, and test results were made available to all school activity sponsors, regardless of their "need to know" (p. 848). Such information could easily become available to school safety police for use in a criminal investigation. The nationwide push to hire more police and security guards to maintain order and safety in public schools increases the odds of this occurring. Furthermore, state lawmakers have enacted legislation that mandates information sharing between law enforcement officials and schools, including personal information gathered by school therapists and counselors (Martinez, 2000; Peterson, 2001; Vail, 1997). Forty-one states now require school authorities to report students who violate certain disciplinary rules to law enforcement agencies (Advancement Project/Civil Rights Project, 2000). Bailey (2001) reports that school sharing of information with law enforcement agencies can occur under the federal law known as FERPA (Family Educational and Privacy Rights Act). Courts are split on whether students' disciplinary files are protected under FERPA (Rosenzweig, 2002). In reality, the Earls decision offers students little assurance that drug testing in schools will remain confidential.

STATE APPELLATE COURT DECISIONS EXPANDING POLICE SEARCH POWER IN SCHOOLS

As mentioned previously, the U.S. Supreme Court decision in T.L.O. did not decide the issue of whether the probable cause or the reasonable suspicion standard would apply to police searches conducted in public schools. In the absence of a general framework for evaluating school searches by police, state appellate courts have eroded the Fourth Amendment rights of school children by relying on less than probable cause.

Police Searches in Public Schools Without Probable Cause

Table 1 displays appellate court decisions that upheld police searches in public schools without probable cause.

In People v. Dilworth (1996), a 15-year-old high school student, Kevin Dilworth, was prosecuted in adult court on drug charges after a police detective discovered cocaine in his possession. The detective, Francis Ruettiger, served as liaison police officer at the school that Dilworth attended but was employed by the Joliet police department. Ruettiger observed a student, whom he had searched earlier, with Dilworth at their lockers talking and laughing as if, in the detective's words, they had "put one over on [me]" (p. 313). Ruettiger noticed that Dilworth had a flashlight in his possession and surmised that it might contain drugs. He seized the flashlight, unscrewed the top, and found cocaine.
Randall R. Beger

Table 1

State Appellate Court Cases Upholding Police Searches in Public Schools Without Probable Cause

School resource officer discovered marijuana in student’s pant cuff after he observed student staggering with his eyes closed in school hallway. Holding that reasonable suspicion standard applies where school officials, including resource officers, conduct searches to assist school in maintaining a safe learning environment.

Search of student’s book bag by school security guard recovered knife. Holding that reasonable suspicion standard applies because guard was acting in conjunction with school officials in furtherance of students’ safety.

In Re D.D., 554 S.E.2d 346 (N.C. App. 2001)
Principal and school resource officer recovered knife from search of student’s purse. Applying reasonable suspicion standard because resource officer was acting in conjunction with principal and was not an “outside” police officer searching on his own.

In Re F.B., 726 A.2d 361 (Pa. Super. 1999)
City police officers recovered knife from student while doing random metal detector searches for weapons at school entry. Holding that random metal detector screening to disarm students is an administrative search, not a police search requiring probable cause standard.

J.A.R. v. State, 689 So.2d 1242 (Fla. App. 2 Dist. 1997)
Handgun was removed from student’s pocket by deputy sheriff during search initiated by school principal. Holding that principal had reasonable suspicion to believe that student might be armed and that asking deputy to assist in search did not increase level of suspicion that deputy needed to perform pat-down of student.

K.K. v. State, 717 So.2d 629 (Fla. App. 5 Dist. 1998)
School official entered restroom to find students smoking marijuana and then searched students in the presence of resource officer who was standing in doorway. Holding that reasonable suspicion standard applies because resource officer was minimally involved in search.

People v. Dilworth, 661 N.E.2d 310 (Ill. 1996)
Search of student’s flashlight by police detective serving as school liaison officer uncovered drugs. Holding that reasonable suspicion standard applies where school liaison officer conducts search on his own initiative in furtherance of school’s attempt to maintain a proper educational environment.

State v. Angelia D.B., 564 N.W.2d 682 (Wis. 1997)
School resource officer searched student’s backpack and jacket and found knife tucked in student’s waistband. Holding that reasonable suspicion standard applies because resource officer was acting at the request of, and in conjunction with, school authorities.

State v. D.S., 685 So.2d 41 (Fla. App. 3 Dist. 1996)
Assistant principal escorted student to her office and ordered student to empty his pockets on table. A school resource officer was sitting at the assistant principal’s desk doing paperwork. Student placed a plastic bag with marijuana on table and resource officer arrested him. Holding that reasonable suspicion standard applies where school board police officers participate in searches initiated by school officials or act on their own authority in search situations.

State v. J.A., 679 So.2d 316 (Fla. App. 3 Dist. 1996)
Security officers discovered gun in student’s jacket during metal detector search at school entry. Holding that metal detector screening to disarm students is an administrative search, not a police search subject to the probable cause standard.

State v. N.G.B., 806 So.2d 567 (Fla. App. 2 Dist. 2002)
Search of student by school resource officer uncovered marijuana. Holding that reasonable suspicion standard applies because resource officer acted in conjunction with assistant principal in conducting search.

School security officer found drugs on student as a result of warrantless search. Holding that reasonable suspicion standard applies because officer was acting as school district employee when he searched student.

Note. The LEXIS database was searched for state appellate court decisions on searches conducted in public schools by police, security guards, and school resource officers. The search covered the years 1993–2002.
The Illinois appellate court held that Ruettiger's seizure and search of the flashlight was based on an unperticularized suspicion or "hunch," which made it unreasonable. Ruettiger testified that a flashlight was not a prohibited item at the school. Nevertheless, in a 4-3 decision, the Illinois Supreme Court affirmed Ruettiger's search as both reasonable and proper under the Fourth Amendment. The majority held that lower expectations of privacy within the school setting, discussed in *T.L.O.* and *Acton*, supported a departure from the probable cause standard even though detective Ruettiger was employed by the Joliet police department and performed duties at the school that were more in line with those of a regular law enforcement officer than a school official. Ultimately, the Illinois Supreme Court held that the search by Ruettiger was "incidental" to maintaining a safe educational environment for students.

In another decision involving a school liaison officer, the Wisconsin Supreme Court held that reasonable suspicion and not probable cause should apply in the school context. In *State v. Angelia D.B.* (1997), an unidentified student informant notified the assistant principal that Angelia D.B. might be carrying a knife or gun in her backpack. The assistant principal contacted Officer Dringoli, a city police officer and school resource officer, who, with the Dean of Students, went to D.B.'s classroom and escorted her to the hallway outside. Dringoli informed the defendant that he had received information indicating that she might be carrying a weapon and performed a pat-down of her person. When no weapons were found, Officer Dringoli instructed Angelia D.B. to remove her jacket so he could check her further. Finding nothing in her jacket, Dringoli lifted up her blouse and discovered a nine-inch knife tucked against her waistband. He removed the knife and informed Angelia D.B. that she was under arrest.

Seeking to suppress the knife as evidence, Angelia D.B. argued that officer Dringoli's search of her person, specifically his lifting of her blouse, was highly intrusive and required a showing of probable cause. The circuit court agreed. The Wisconsin Supreme Court, however, held that the reasonable suspicion standard, and not probable cause, was sufficient for the search and, therefore, that the knife was admissible (p. 687). The court reasoned that, in situations where school officials have requested the assistance of a school resource officer to conduct an investigation, the reasonable suspicion standard is sufficient because "the school has brought the police into the school-student relationship" (p. 688).

Other courts have looked to *Dilworth* and *Angelia D.B.* for guidance in defining the standard to apply to searches conducted by school resource officers. For example, prior to the *Dilworth* decision, courts in Florida adopted the First District Court of Appeals decision in *M.J. v. State* (1981), which said that when a law enforcement officer "directs, participates or acquiesces in a search conducted by school officials" (p. 997) the search must comport with the usual probable cause requirements. However, in a 1996 case, *State v. D.S.*, the Third District Court of Appeals of Florida rejected the rule outlined in *M.J.* and adopted the *Dilworth* holding that "school board police officers, who participate in searches initiated by
school officials or who act on their own authority, need only reasonable suspicion to justify a search” (p. 43). Other courts have found support in *Angelia D.B.* for lowering the standard for searches done by school resource officers (*In the Matter of Ana E.*, 2002; *In the Matter of Josue T.*, 1999; *In Re D.D.*, 2001).6

**RECASTING POLICE SEARCHES AS CONGRUENT WITH SPECIAL NEEDS**

Table 2 highlights state appellate court decisions that applied the “special needs” exception to student searches involving police officers.

Table 2

<table>
<thead>
<tr>
<th>State Appellate Court Cases Applying the “Special Needs” Doctrine to Student Searches Involving Police Officials</th>
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<tbody>
<tr>
<td>Random locker search for contraband by outside police officers with sniff dog was proper because of students’ limited privacy interest in school lockers and school’s special need to maintain a drug-free environment.</td>
</tr>
<tr>
<td>Search of student’s book bag by security officer absent reasonable suspicion was proper because the search was minimally intrusive and justified by school’s special need to maintain order and student safety.</td>
</tr>
<tr>
<td>Search of student by school resource officer that recovered drugs was proper because of special need for flexibility and swiftness in responding to discipline problems in schools.</td>
</tr>
<tr>
<td>Suspicionless metal detector search that uncovered gun was proper in the context of school’s special need to maintain student safety.</td>
</tr>
<tr>
<td><strong>State v. Barrett</strong>, 683 So.2d 331 (La. App. 1 Cir. 1996)</td>
</tr>
<tr>
<td>Request by police drug detection team that students empty their pockets was an insignificant invasion of students’ privacy outweighed by school’s special need to maintain a drug-free educational environment.</td>
</tr>
</tbody>
</table>

*Note.* The LEXIS database was searched for state appellate court decisions on searches conducted in public schools by police, security guards, and school resource officers. The search covered the years 1993–2002.

A New York appellate case, *In the Matter of Gregory M.* (1993), illustrates how reviewing courts are using the “special needs” doctrine to support student searches by law enforcement officials. In *Gregory M.*, a student arrived at school without a proper identification card and was ordered to the dean’s office. When the student

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6Some reviewing courts have insisted on a showing of probable cause if police initiate a search on school property. For example, in *State v. Tywayne H.* (1997), a New Mexico court held that the search of a student by two outside police officers who had been hired by the organizers of a school dance required a showing of probable cause because the officers were not employed by the school and were acting on their own initiative in searching the student. In *A.J.M. v. State* (1993), a Florida appellate court ruled that a school resource officer who searched a student for drugs required probable cause because the officer acted alone and on his own authority. In *In the Interest of Thomas B.D.* (1997), a South Carolina appellate court held that a police officer who recovered drugs from a student’s shirt pocket required a showing of probable cause because the officer acted on his own authority in furtherance of a criminal investigation.
tossed his book bag onto a metal shelf in the school lobby before reporting to the dean, a security officer heard a metallic thud, which he characterized as "unusual." The security officer ran his fingers over the outer surface of the bottom of the bag and felt the outline of a gun. A subsequent search of the bag's contents recovered a handgun. Gregory M. was arrested and charged with criminal possession of a dangerous weapon on school property.

On appeal, the New York State Supreme Court denied the minor's motion to suppress the gun as the fruits of an illegal search. The majority concluded that the "investigative touching" of the book bag was appropriate despite the absence of reasonable suspicion. The court reasoned that the school's interest in interdicting weapons outweighed the minor's "minimal" expectation of privacy regarding any touching of his book bag. The court also insisted that the investigative touching was conducted in furtherance of the school's "special need" to protect students from handguns and other lethal weapons and "not for a criminal investigative purpose" (p. 503).

In Commonwealth v. Cass (1998), students at a high school in Erie County, Pennsylvania, were told by the assistant principal that a safety inspection would be conducted. The inspection turned out to be a blanket police search of 2,000 student lockers by a drug-detecting dog. To expedite the search process, the school principal enlisted the aid of several teachers, two police officers, and a trained police dog. Eighteen lockers were opened and searched. Cass' locker was the only one found to have contraband. He was suspended, and drug charges were brought against him in adult criminal court. Cass moved to suppress items seized from his locker on grounds that the search and seizure violated the Fourth Amendment.

The Pennsylvania Supreme Court ruled that the initial dog sniff was not a search under the United States Constitution but that the subsequent inspection of the locker and its contents was a search. The court upheld this subsequent search as reasonable by relying on the Acton test. The court found the search to be minimally intrusive, justified by a growing drug problem in the school, and initiated solely to promote the "special needs" of eliminating drug use in public schools.

In State v. Barrett (1996), several classrooms at a high school in Louisiana were searched by a team of police officers with specially trained sniff dogs. Prior to the sniff dogs entering the classroom, students were told to stand at their desks and empty their pockets. A drug dog alerted on a wallet belonging to Barrett that contained $400. Barrett's book bag also was searched in the classroom and a beeper was found inside. The police officers decided to search Barrett's car and found a marijuana roach in the ashtray. Barrett was arrested and charged with criminal possession of marijuana.

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7Writing in dissent, Justice Titone opined, "What the majority seems to overlook is the fact that there was no way of knowing until after appellant's bag was palpated and searched that it contained a dangerous weapon rather than a video game or some other harmless device commonly carried by high school students" (In the Matter of Gregory M., 1993, p. 507).
On appeal, Barrett argued that requiring students to empty the contents of their pockets in the presence of police officers with sniff dogs was improper because there was no probable cause or reasonable suspicion to justify the search. The Louisiana appellate court disagreed. The majority reasoned that the “action of a drug dog sniffing [students’ possessions] is not the equivalent of a search [but] requiring a student to empty his pockets is a search” (p. 338). The court affirmed the search based on students’ decreased expectation of privacy in schools, the relative “unobtrusiveness” of the search, and the “special need” for a drug-free educational environment.

In all these cases, the courts redefined searches conducted by police officials as “minor” or “incidental” in order to justify application of the special needs doctrine. Critics have attacked the application of the special needs doctrine to the school environment by insisting that the balancing test invariably tilts in favor of the government and can be used to fit virtually any circumstances (Buffaloe, 1997; Dodson, 2000; Lewis, 1999; Rosenberg, 2000).

CONCLUSION

The U.S. Supreme Court has ruled that children in public schools are entitled to protection under the Fourth Amendment and do not “shed their constitutional rights at the schoolhouse gate” (Tinker v. Des Moines Independent Community School District, 1969, p. 506). The cases reported in this article show that support for students’ Fourth Amendment rights among the nation’s courts has withered under the weight of public anxiety over drugs and violence in the educational setting. As a result, few Fourth Amendment protections remain to shield students from police searches and suspicionless drug testing in schools.

Instead of holding police to the probable cause standard, courts have lowered the search threshold for police and school resource officers and expanded the authority of school officials to test students for drugs. Although the U.S. Supreme Court in T.L.O. rejected the idea that school officials stand in loco parentis to their students, the Acton and Earls decisions on school drug testing suggest a return to that doctrine. In Acton, Justice Scalia wrote that school children are under “the temporary custody of the State as Schoolmaster,” which “for many purposes act[s] in loco parentis” (pp. 652–653). Likewise, in Earls, the Court stressed the custodial and tutelary responsibilities of schools.

In response to concerns about violence and disorder in public schools, state appellate courts have adopted a new, “get tough” version of in loco parentis that empowers police to search students without probable cause under the “special

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8The idea that special needs searches in public schools are distinct from the state’s general interest in law enforcement is contradicted by the willingness of courts to allow evidence from these searches to be used against students in criminal prosecutions and delinquency petitions (see, e.g., People v. Pruitt, 1996—criminal charges for unlawful possession of a deadly weapon on school property following a metal detector search conducted by police—and State v. J.A., 1996—delinquency petition for carrying a concealed weapon following a metal detector search in school).
needs" rationale. In *Dilworth* the court upheld a search based only on an unparticularized "hunch" involving a police detective acting on his own authority. In *Angelia D.B.* the court relaxed the standard that police officers are required to meet to conduct a personally invasive search where expectations for privacy are greatest. In *Cass* and in *Barrett* state appellate courts recast evidentiary searches for drugs by outside police officers into non-law enforcement searches congruent with the "special needs" doctrine. In *Gregory M.* a search premised on no more than a metallic thud characterized as "unusual" resulted in the criminal prosecution of a student. These decisions represent a line of cases after *T.L.O.* that have used school safety and student welfare as a means to dilute the Fourth Amendment rights of school children.

Increasingly, the school setting, like prison, is becoming a constitutional "free zone" where the language of the Fourth Amendment "technically applies, but the reality is that virtually any search and seizure . . . will be upheld as reasonable and therefore constitutional" (Mello, 2002, p. 377). At the same time, many forms of student misconduct that teachers and school administrators once handled informally now result in automatic suspension or expulsion from school or in arrest and court referral. The result for students is the "worst of both worlds," where harsh penalties occur for even minor misbehavior without adequate Fourth Amendment protection.

In the future, research should determine how often and in what context law enforcement officials who are assigned to public schools actually search students. It would also be meaningful to find out whether certain groups of students are targeted by school police for searches because of their race, social class, appearance, or demeanor. More evidence-based research is also needed to evaluate the costs and effectiveness of school security measures. The concern for student safety is certainly legitimate, but schools need to develop strategies to improve security without sacrificing Fourth Amendment protections for students.

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