






**SEARCH & SEIZURE
IN SCHOOLS**





Search & Seizure in Schools

© What is a reasonable search of a student's

-  **LOCKER**
-  **BACKPACK**
-  **PURSE**
-  **PAT DOWN**
-  **STRIP SEARCH**

Search & Seizure in Schools

© Can schools use

-  **BREATHALYZERS**
-  **METAL DETECTORS**
-  **RANDOM DRUG TESTING**
-  **SNIFFER DOGS**

Search & Seizure in Schools

- ⊙ Who is concerned?
 - School Administrators
 - School Board Members
 - Campus Resource Officers/Campus Police
 - Parents
 - Students
- ⊙ Why do Municipal Judges need to know S&S?
 - Motions to Suppress
 - Juvenile Docket – Questions from campus police, principals, students, parents
 - We have/are/know parents too!

School's Point of View

(Josephine Institute for Ethics in Los Angeles, 2006)

- ⊙ 60% of the 36,000 students surveyed said they used their cell phone to cheat during a test at school within the previous 12 months
- ⊙ 35% said they had done so two or more times (Sussman, 2007).

What We Will Cover

- ⊙ Take a self-assessment
- ⊙ Examine reasonable suspicion standard
- ⊙ Analyze seminal cases
- ⊙ Group Work – Hypos
- ⊙ Provide responses to self-assessment

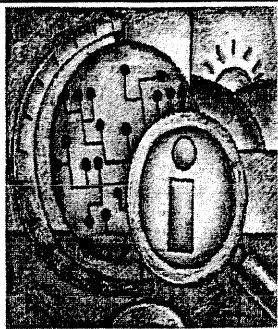
SEMINAL CASE

- *New Jersey v. T.L.O.* (U.S. 1985)
- **HOLDING:** The 4th and 14th Amendments, protecting persons from unreasonable searches and seizures, APPLY TO PUBLIC SCHOOL STUDENTS.

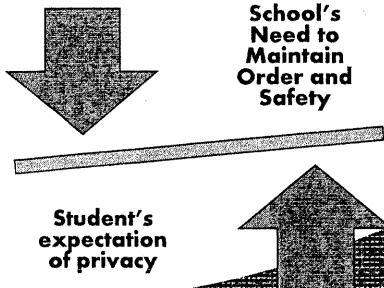
SEARCH & SEIZURE IN SCHOOLS

•INTENSELY FACTUAL DETERMINATIONS

•BASED ON THE TOTALITY OF CIRCUMSTANCES



Balance of Competing Interests



REASONABLE SUSPICION

- POLICE SEARCH
 - WARRANT
 - PROBABLE CAUSE
- POLICE PAT DOWN
 - REASONABLE SUSPICION
 - EXIGENT CIRCUMSTANCES

- PRINCIPAL SEARCH
 - REASONABLE SUSPICION

REASONABLE SUSPICION IS LESS THAN PROBABLE CAUSE BUT MORE THAN A HUNCH!

Searching a truant student who is seen hanging around the school bleachers where illicit activity occasionally takes place. (Matter of Pima County Juvenile Action, 1987)

Searching a student who tries to hide a calculator on his person. (In re William G., 1985)

HUNCHES

Texas Cases


● Reasonable Suspicion" means there are articulable grounds to conduct the search.

In re A.T.H. 2003 In re K.C.B. 2004


- 1) Anonymous tip
- 2) No corroborating evidence

In the Matter of E.F.P. 2007

- 1) Informant was known
- 2) Provided information directly to the assistant principal
- 3) The tip was specific as to the suspect, location, and time of day
- 4) The accused behaved suspiciously



5th Circuit case



Porter v. Ascension Parish School Board, 2004

- 5th Circuit UPHELD SEARCH OF STUDENT'S BOOK BAG AND PERSON
- FOUND REASONABLE SUSPICION TO SEARCH
 - Younger brother brought to school a controversial picture that the older boy had drawn
 - Older boy admitted drawing the picture
 - Picture depicted violence against school employees and students and contained obscenities and racial epithets.
 - Search revealed a box cutter, notebooks containing references to death, drugs, sex, and gang symbols, and a fake ID.
 - He was arrested, spent 4 nights in jail, enrolled in alternative school, dropped out of school.


NOTE: The Court ruled in favor of the student on 1st Amendment grounds.

SCOPE OF SEARCH (Intrusiveness)


- Students in off-limits area of campus.
- Nervous, grabbing his waistband.
- Marijuana smell on his breath & hands.
- Asst. Principal asked the boy to raise his shirt and put his thumbs between waistband of boy's baggy pants and the gym shorts he was wearing underneath.
- Asst. Principal felt an "awkward ball" (bag of marijuana)
- Court upheld the search.

- H.S. student said he was leaving campus to attend grandfather's funeral
- Later was seen at a pay phone outside the building.
- After learning his grandfather had not died, the assistant principal "patted down" Coronado and found only car keys
- Then, had the student remove his socks and shoes and pull down his pants. Nothing was found.
- Following a fruitless locker search, the assistant principal, deputy sheriff, and campus security guard searched Coronado's car and found drugs and drug paraphernalia.
- Reasonable suspicion student was attempting to skip school justified pat down for safety reasons.
- Searches of the student's clothing, person, locker, and car were excessively intrusive as they were not related to suspicion about skipping school and no evidence was found to justify expanding the search.

Intr. Air A., 2019



Coronado v. State, Tex. Crim. App., 1992



REVIEW OF THE STANDARD

- After *Safford*, the standard looks like this:
 - To search a student, a school official must
 - 1) have reasonable suspicion (not probable cause) for believing that the student is violating or has violated a student rule or a law, and
 - 2) make sure that the search conducted is reasonable in scope in light of the age and sex of the student and the nature of the offense.
 - 3) The administrator must be able to articulate reasonable suspicion to search that particular area of the student's person.

Locker Searches

⊙ Permissible if –

- Reasonable suspicion to believe there are illegal items in the locker
- Custodial search
 - To find books and clean
 - Policy should allow locker searches
 - Student code of conduct puts students on notice
 - That their lockers may be searched
 - Disciplinary actions may be taken
 - *Shoemaker v. State* (1998, Tex)

Sniffer Dogs

⊙ *In the Matter of D.H.*, __ S.W.3d __, 2010 WL 744117 (Tex. App. – Austin, 2010).

- Austin ISD policy upheld
 - Students leave their backpacks and go into hall
 - Dogs sniff backpacks and jackets

Technology-Based Searches

⊙ Cell Phones

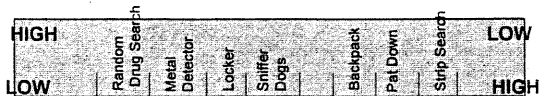
⊙ Must have reasonable suspicion and the search must be justified at its inception and be reasonable in scope.

- FACTS: Pennsylvania federal case held that school officials were not justified in calling 9 other students listed in the directory of a phone that had been confiscated to determine if those students, too, were violating school's cell phone use policy (*Klump v. Nazareth Area School District*, 2006).

GROUP WORK INSTRUCTIONS

In your groups, fill in the facts on the sticky notes
Place the sticky notes in the proper place on the ruler
Decide whether the search in the hypo is reasonable.

DANGER LEVEL/SAFETY & ORDER



LEVEL OF INTRUSIVENESS OF SEARCH/
EXPECTATIONS OF PRIVACY

Important
Factors

SEARCH OF STUDENT
• FACTS:

AREA SEARCHED
• FACTS:

DANGER LEVEL
• FACTS:

CONCLUSION

- The 4th Amendment to the U.S. Constitution has provided some degree of protection for students in the context of searches and seizures
 - Courts have found a personal right of privacy for students in the word "liberty" of the 14th Amendment
 - These rights are limited
 - Courts in recent years have recognized the responsibility of school officials to maintain an ordered and safe educational environment and have NOT been sympathetic to student claims of invasion of personal privacy in the context of locker searches, interscholastic sports drug testing, and use of metal detectors. However, the Court has established a bright line for the most intrusive search—the strip search.
