In Loco Parentis: The Contours of the Fourth Amendment in American Public Schools

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ABSTRACT
Parents, teachers, and students expect schools to be a safe environment, which correlates with learning, as acts of violence disrupt the learning process, not to mention having a profoundly negative emotional impact on those affected by experiencing or viewing violence. According to a recent report on crime and school safety, students age 12 through 18 are the victims of more than 2.7 million crimes on campus each year, with 28 percent of all public school students report being involved in criminal activities on school property (Neiman, 2011). The primary source of tension specifically related to public schools in contemporary society is the proliferation of criminal activities furthered fused by globalization, as illustrated by the emerging symbolic relationship between drugs, gangs, and guns in America's schools. In the new millennium, criminal organizations have expanded to increase their profit and control, having long-term longevity (embedded), facilitate criminal activities, use violence at every level of their trade, and engage in mass corruption, thereby, degrading the learning environment, the characteristics of pedagogy within schools, and contribute to the ethical and moral decline of children. This article, then, explores the concept of In Loco Parentis as a venue to preserve the sanctity of the educational process, while seeking to address Constitutional issues of the Fourth Amendment as they relate to the security of schools within a global society in the twenty-first century.

Key Words: *In Loco Parentis*, Fourth Amendment, Search and Seizure, Probable Cause, Reasonable Suspicion, School Violence, Drugs, Gangs, Guns, Globalization

INTRODUCTION

Imagine this! There are more than 52 million students and approximately three million teachers in public and private schools in the United States. From 2001 to 2011, in these public and private schools, 415 young people ages 5 to 19 were victims of homicides, an average of 42 per year. Six percent of students in grades nine through twelve reported carrying firearms on campus. Students have reported that they are more afraid of being attacked at school than off-campus. Twenty-five percent of students report that street gangs are an ever present danger on campus. Forty-seven percent of students in the ninth grade through the twelfth grade have had at least one drink of alcohol and five percent drank on campus. Another five percent reported using marijuana on school property. Equally disturbing is that 24 percent of students in grade nine through

twelve reported that someone had offered, sold, or given them an illegal drug while on school property (Neiman, 2011).

There is little doubt that a multitude of federal appellate court decisions provide school officials with the authority necessary to provide a safe learning environment for students in public schools. In the twenty-first century, however, the prevalence of drugs, gangs, and guns has broadened the importance of school search and seizure to include offenses which may subject the student to criminal prosecution. Invariably, such conditions have resulted on a series of federal court rulings, which attempt to *define* the role of school authorities and the constitutional rights of students. School authorities have both the moral and legal responsibility to maintain order and dignity in public schools and to protect students from harming themselves and others. This article, therefore, has been designed to provide its readers with a conceptual framework for understanding the legal applications and ramifications of the Fourth Amendment as applied to public school search and seizure in an effort to provide safe learning environments free from school violence.

VIOLENCE IN AMERICAN SCHOOLS

The citizenry of the United States want to know what is going on in the schools of this nation. Many experts are ready to render their opinions on school violence, which range from merely an aberration, to lack of impulse control in children today, to the breakdown of the family, to the abundance of guns in the hands of young people, and an overwhelming amount of violence on television. The shooting in Pearl, Mississippi (1997), was just one in many of a long list of shootings that have taken place on school campuses across the country. Shootings in Littleton, Colorado (1999), 14 students dead and 23 wounded, in Nickel Mines, Pennsylvania (2006), ten female Amish students dead, in Blackbury, Virginia (2007), 33 killed 15 wounded (the worst in U.S. history), and most recently in Newton, Connecticut (2012), 20 children and six adults killed, along with the massacre of many other innocent children and teachers throughout the country. In fact, since 1996, 39 states have experienced campus shootings in K-12 schools. On April 16, 2007, this violence transcended the high school campus to Virginia Tech, an institution of higher education, resulting in 32 deaths. Beyond school violence, on May 6, 2008, a news broadcast on CNN reported, ". . . 95 students arrested at San Diego State University for selling cocaine, ecstasy, marijuana, methamphetamine, and other assorted pills." The most disconcerting information gleaned from this broadcast was that several of these students were pursuing a master's degree in criminal justice. There is no doubt that such criminal activity is a growing phenomenon on the campuses of high schools, colleges, and universities throughout the U.S.

SEARCH AND SEIZURE IN U.S. SCHOOLS

Subsequently, the connection between drugs, guns, and violence have activated a defined focus on delinquency, the criminal psyche, gun control, campus violence, and, more importantly, what preventative actions are being implemented by teachers, administrators, and legislators to make public schools a safer learning environment. In the U.S., teachers and administrators have always found it necessary to search students and remove from their possession items that may be harmful to them or other people. Thirty years ago most searches were found to be necessary to remove such items as cigarettes and pocket knives from students, or to detect and retrieve items of minor theft. Such searches remained almost entirely an affair internal to the school and seldom, if ever, involved outside authorities. In the new millennium, however, the prevalence of drugs, gangs, and guns, has broadened the importance of school search and seizure to include offenses which may subject students to criminal prosecution. Such conditions have infused a series of court decisions, which attempt to *define or re-define* the role of school authorities and the constitutional rights of students.

School authorities have the moral and legal responsibility to maintain order and dignity in the schools and to protect students from harming themselves and others. At the same time, students have constitutional protections that cannot be unreasonably denied. However, when children enter the school they are required to attend, they do not enjoy the same reasonable expectation of privacy that they would possess in their home. Even thought it is important to note that school officials are state agents, their position *In Loco Parentis*, "in the eyes of the minor student," places them in a position of authority similar to parents. In school, the security of students depends on a certain level of restraints placed on student activities. Whether for security or disciplinary purposes, restraints are assumed and expected of all students. Faced with such authority in settings requiring control of their behavior, children cannot reasonably expect to have the level of privacy as they would outside the school (*Interest of L.L. v. Washington County*, 1979).

FOURTH AMENDMENT: SEARCH AND SEIZURE IN PUBLIC SCHOOLS

The balance between school prerogatives and student rights with regard to search and seizure is found in the interpretation of the Fourth Amendment of the United States Constitution, stating: "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 be issued, but upon probable cause." The Fourth Amendment imposes the judgement of a magistrate or judge between the citizen and the police. Police may not search unless they present evidence to a judge that something illegal is secreted in a specific place. The judge will determine if in fact the evidence presented constitutes *probable cause* for a search, and if so, a warrant will be issued. Therefore, police must have *probable cause* to justify a search. School authorities are not, however, required to have *probable cause* before they can conduct a search, but instead are held to a less restrictive standard of *reasonable suspicion*. School teachers and administrators when engaged in school disciplinary matters, such as searching students, do so to maintain order and dignity of the school and to protect the health and safety of the students. Their duties are not to enforce criminal statutes, as required of police officers (*D.R.C. v. State of Alaska*, 1982).

Situating the 4th Amendment and *In Loco Parentis*

Forty-three years ago, in *Tinker v. Des Moines Independent Community School District* (1969), the U.S. Supreme Court held that the Constitution does not stop at the schoolhouse gate, as students are considered citizens under the Constitution, whether they are in public areas or in schools. However, having protected Constitutional rights does not mean that student rights are absolute. School teachers and administrators have a responsibility to educate students, even though such responsibility demands wide latitude to accomplish the *educational and safety mission*, which has become a constant challenge with the advent of the *war on drugs* and, most recently, the *war on terrorism*.

U.S. courts, being aware that the educational process would be greatly impaired if school teachers and administrators were held to the same strict standards as law enforcement officers, have held that student rights are not wide ranging in scope or application as with "ordinary" individuals in society. Subsequently, courts do not require warrants for student searches by school authorities. It is assumed that searches in schools are calculated to maintain school discipline, and not initiated to provide evidence for criminal prosecution. School authorities, therefore, are held to a lesser standard, *reasonable suspicion*, when justifying student searches. The "lesser" standard is justified by the courts on the principle of *In Loco Parentis*, in which the school stands in place of the parents. However, the *In Loco Parentis* authority is not unlimited and must be weighted against the student's right to privacy. School authorities must have *reasonable suspicion* to invoke their search privilege, without relying on a whim, fancy, or in an arbitrary manner, as declared by a New York court,

The *in loco parentis* doctrine is so compelling in light of public necessity and as a social concept that preceded the Fourth Amendment, that any action, including a search, taken by school officials upon reasonable suspicion should be accepted as necessary and reasonable (*State v. Baccino*, 1971).

Two conditions are required for a search by school authorities: (1) the search must be conducted within the scope of the school's educational function, and (2) the search must be reasonable under the particular facts of the case. Defining the legal parameters, a Florida court held that a teacher did not have reasonable suspicion merely because a group of boys looked suspicious, and they *appeared to look away from her* when she passed by the boys in the school hall. The Florida court, however, reasoned that school officials are not required to have reasonable suspicion to merely detain students. Therefore, a subsequent search after a student has been detained can be undertaken premised on reasonable suspicion which may be established by the students' actions after detention. In effect, the court ruled that ". . . the validity of any subsequent search must be determined on the basis of conditions then existing" (*W.J.S. v. State of Florida*, 1982). Evidently, while flexible, reasonable suspicion must be reasonably specific. A sweeping and indiscriminate search of all students cannot be rationalized on the grounds of reasonable suspicion. The blanket search or dragnet is, except in the most unusual and compelling circumstances, a denunciation to the protections afforded citizens under the Fourth Amendment. The state may not constitutionally use its authority to *fish for evidence* of wrongdoing (*Jones v. Laxtexo Independent School District*, 1990).

When school officials ignore the need to determine individualized suspicion prior to a search, the intrusion cannot be justified on grounds of reasonable suspicion. For instance, to require all students to empty their pockets, to remove clothing, or to search all vehicles in the school parking lot would likely fall under the classification of an invalid dragnet. School officials may, however, patrol the school parking lot, and if anything suspicious is in *plain view* when they look in a vehicle, a legal search may then be launched. Consider, for example, the following case, where a one-way mirror in a boy's restroom in a high school was used to observe students engaged in the purchase of marijuana, which did not violate the students' right to privacy (*Stern v. New Haven Community Schools*, 1981). The court reasoned that the community had a significant interest in school discipline and the protection of students from drugs. Accordingly, the court declared that the school's *In Loco Parentis* responsibility obligated school officials to maintain the health and safety of all students. The test, according to the court, is one of balancing the school interests in the surveillance against the plaintiff's interest in privacy. Notably, in this case the balance was in favor of the school. In another case, where a teacher's aide in supervising the school parking lot observed paraphernalia (*water pipe*) in a student's vehicle and a search revealed marijuana, the court held the search to be legal. In this situation, when a suspicious object (drug paraphernalia) was in *plain or open view*, school officials were justified in opening the vehicle to retrieve the contraband (*State of Florida v. D.T.W.*, 1983).

In effect, another U.S. court affirmed that students do in fact have a right to privacy, protected by the Fourth Amendment, which cannot be invaded unless the intrusion can be justified in terms of the school's legitimate interests (*New Jersey v. T.L.O.*, 1985). The right to privacy, as in previous court decisions, was not deemed absolute, but subject to reasonable school regulation within the bounds of reasonable suspicion. Actually, the right to privacy, itself, is predicated on two factors being present: (1) whether the person in question exhibited an *actual expectation of privacy*, and (2) whether the expectation of privacy is one that society is prepared to recognize as *reasonable*. Almost two decades earlier, the U.S. Supreme Court had ruled that the Fourth Amendment protects people, not places, declaring that what people knowingly expose to the public, even in their home or office, is not a subject of Fourth Amendment protection, but what they seek to preserve as private, even in an area accessible to the public, may be constitutionally protected (*Katz v. United States*, 1967).

Establishing Criteria for Reasonable Suspicion

From a legal context, whether a search is reasonable, or not, it must be decided on the conditions of each case. School authorities must have verifiable evidence implying that something harmful is hidden by a student. To determine reasonableness, the court weighs the danger of items for which the search is conducted against the students' rights to privacy, while recognizing that school officials have a duty and responsibility to provide a safe environment in which students can learn and develop. Ultimately, reasonableness of a search will be determined by also equating other factors, like the student's age, record of past conduct, and the seriousness of the problem that school officials are trying to solve. If school officials have obtained valid information that illegal items, like drugs, are hidden in the school or evidence indicating that previous incidents suggest that drugs may be hidden at the school, then a search may be adjudged to have been undertaken on reasonable grounds. As a guiding principle, court decisions in several states have established criteria for determining reasonable grounds for a search by school officials:

- The child's age, history, and school record.
- The prevalence and seriousness of the problem in the school to which the search was directed.
- The exigency requiring the search without delay.
- The probative value and reliability of the information used as a justification for the search.
- The teacher's prior experience with student. The teacher's training and prior knowledge of the student's behavior may further provide a reasonable basis for an immediate search.

Beyond Search and Seizure: The *Exclusionary Rule* in the School System

Even though schools do not undertake a search to discover unlawful items, with the intent to prosecute, the evidence obtained may be used against students in a criminal prosecution. However, if school officials act beyond their authority or participate in an illegal search with police, the *exclusionary rule* will apply if the state attempts to use the *fruits* of the search to prosecute, as indicated by the U.S. Supreme Court in *Weeks v. United States* (1914) and *Mapp v. Ohio* (1961). Being cognizant of the exclusionary rule and, similarly, being aware that school officials do not need to obtain search warrants in order to conduct a search, law enforcement officials will sometimes prevail upon school officials to conduct a search for them. Though, given the limits of authority, it's sometimes difficult to determine whether the police were assisting school officials in conducting a search, or whether the police were the primary agents instigating the search to obtain evidence for a criminal prosecution. When it happens, the court must decide whether school authorities were, in fact, conducting the search based on their own initiative, or whether the search was in actuality conducted for the police. In effect, given such fine line as to which party is the primary searcher, a Florida court resolved the question by holding that police officers must have a warrant to conduct a valid search of students in active conjunction with school officials, declaring,

. . . where a law enforcement officer directs, participates or assists in a search conducted by school officials, the officer must have *probable cause* for that search, even though school officials acting alone are treated as state officials subject to a lesser constitutional standard for conducting searches in light the *in loco parentis* doctrine (*M.J. v. State of Florida*, 1981).

When a search is conducted with the cooperation and participation of the police, school officials may be seeking items that violate school rules, but police officers are normally in quest of illegal contraband which can be used as evidence in a criminal prosecution. Under these circumstances, a police search cannot dwell under the banner of *In Loco Parentis* (*Picha v. Wieglos*, 1976).

As for police authority and accountability, while, pragmatically, their mission is slightly different, the *probable cause* mandate of the Fourth Amendment for search and seizure applies to both Independent School District Police (ISDP) and to School Resource Officers (SRO). Notably, where as ISDP Officers work for and are paid by the school district and vested with the authority of the law, SROs are career law enforcement officers deployed in community-oriented policing who work in collaboration with school districts having sworn authority of law. In fact, SROs originated in Flint, Michigan in the 1950s, waned in the 1970s and 1980s, and revived in the late 1990s as a result of outbreaks of school violence (del Carmen and Trulson, 2006). Fourth Amendment *probable cause* requisites apply to both ISDP and SRO officers due to procedural and legal aspects, in that school administrators and teachers may only suspend or expel students for a breach of school policy or delinquent behavior, whereas, law enforcement intervention may lead to prosecution for criminal acts, like drugs, weapons, or violence.

Drug Dogs on School Patrol: The Court Challenge

With the advent of a national and international war on drugs in the later part of the twentieth century, schools, like law enforcement agencies, have opted for the use of "drug dogs." U.S. courts, however, disagree on the issue of using dogs to establish reasonable suspicion for *school officials* to conduct searches; questioning, primarily, whether dogs can in fact be used to establish reasonable suspicion by *blank sniffing* every child in a classroom. A Texas court, for instance, ruled that strategy violates students' privacy because such indiscriminate searching ignores the need to individualize suspicion prior to the intrusion, stating, ". . . to use dogs in this manner is tantamount to fishing for cause to establish reasonable suspicion; using a search to establish rationale for a search is to violate the Fourth Amendment" (*Jones v. Latexo Independent School District*, 1980). The Texas court held that drug dogs perceive odors undetectable to human beings much the same way that electronic listening devices pick up sounds not audible to the human ear. Therefore, according to this court, such devices cannot be used by the police or school officials to *fish* for evidence to establish probable cause or reasonable suspicion. At same year, however, the U.S. Court of Appeals for the Seventh Circuit affirmed a lower court's ruling that upheld the use of drug dogs to establish reasonable suspicion. The Seventh Circuit Court of Appeals ruled that dogs could be used to detect drugs even though school officials had no information indicating that drugs were in the possession of any specific students. For the Seventh Circuit Court of Appeals, the responsibility of school officials for the health and welfare of the students was of essential significance that the use of canines was justified (*Doe v. Renfrow*, 1980). Similarly, the Tenth Circuit Court of Appeals upheld the use of drug-sniffing dogs for exploratory locker sniffs, and determined that such practice was needed for school officials to maintain a drug-free school environment (*Zamora v. Pomeroy*, 1981). The following year, the U.S. Court of Appeals for the Fifth Circuit also ruled that dogs may be used to establish reasonable suspicion. A high level of accuracy by a dog in detecting drugs may be used to develop a record of reliability which can be used as evidence to justify reasonable suspicion. Accordingly, each court must examine the record of reliability of the particular dog (*Horton v. Goose Creek Independent school District*, 1982). The Fifth Circuit Court of Appeals, though, held that the use of drug dogs constitute a search protected by the Fourth Amendment when getting sniffed as an individual, where its intrusive nature requires more than a generalized suspicion to be reasonable. Still, in spite of these cases, the courts have been split on the issue of sniffer dogs, with some critics still questioning the legality of drug dogs in school settings.

The Legal Limits of School Searches

Considering the significance of school searches for students, school officials, and parents, but also the *sensitivity* of intrusive searches and possible *stigma* for school children, various other questions of essential importance arise. For instance, what are the consequences of an illegal search of students by teachers or school administrators? What redress is available for students? If the search is illegal, will its fruits be excluded from criminal prosecution? Should a criminal trial ensue, what constitutional protections will students be afforded? To begin, students may file an action lawsuit under the Civil Rights Section Title 42 USC 1983, and students may seek damages if school officials maliciously deny their constitutional rights. However, according to the courts, if school officials deny students their constitutional rights, but do so in good faith fulfillment of their responsibilities and not in ignorance and disregard for established indisputable principles of law, then "illegal" liability will not withstand. This immunity, though, is accorded only within bounds of *reason*. The U.S. Court of Appeals for the Seventh Circuit, for instance, held that simple *common sense* would indicate that a 13-year-old girl's constitutional rights were invaded by a nude search required by school officials in seeking to discover hidden drugs, with the court declaring:

We suggest as strongly as possible that the conduct herein described exceeded the bounds of reason by two and a half country miles. It not enough for us to declare that the little girl involved was indeed deprived of her constitutional and basic human rights, we must also permit her to seek damages from those who caused this humiliation (*Doe v. Renfrow*, 1980).

Invariably, while school authorities, by virtue of their *In Loco Parentis* relationship with students and the flexible school doctrine of reasonable suspicion, may conduct campus searches without student consent, if law enforcement officials participate in the search, they must have a warrant or students' consent, waiving their Fourth Amendment rights. Student consent, however, must be given freely and willingly with undue coercion. Accordingly, the police cannot ask school officials to influence the student's decision to permit a search, principally because students are under the control of the school, and they will in most institutions respond according to what school authorities demand.

Under the limits of *In Loco Parentis*, there is also the issue of student compliance. Again, school officials acting with *reasonable* suspicion can, for example, demand that students empty their pockets, to include billfold or purse, for inspection (*Tarter v. Raybuck*, 1983). If students refuse to comply with school officials, the school has the authority to take necessary steps to ensure compliance. Consider, for instance, the following situation where a vice-principle and a student had a "tug-of-war" over the student's coat and the student lost, the court declared that the used force by school officials was within their *In Loco Parentis* authority (*State v. Baccino*, 1971). The use of force in searching students has been upheld even when the search was conducted off school grounds. In one situation, the discipline coordinator in a school noticed a bulge in a student's pocket, and observed the student nervously putting his hand in and out of his pocket. When confronted, the student ran out the door and off the school grounds. The coordinator, though, chased and caught the student, finding narcotics, drug paraphernalia, and a weapon. When the student sought to exclude this evidence in a criminal prosecution, the court held the evidence to be admissible at trial. The court reasoned that the *In Loco Parentis* authority allowed school official to search the student on school grounds and that, under the circumstances, school authority did not end abruptly at the school door (*People v. Jackson*, 1971).

The Legality of Metal Detectors in American Schools

For years, the use of metal detectors in public facilities has been debated, especially in airports with the advent of terrorism, but it was not until recently, though, that U.S. courts were asked to address the

legality of metal detectors in the school system. In the first case examining metal detectors, *People v. Dukes* (1992), a New York court ruled that the use of metal detectors was based on a legitimate governmental interest in that such searches prevented dangerous weapons from being brought into school. Three years later, in the case of *In re F.B.* (1995), a Pennsylvania superior court reached a similar conclusion, noting that no individual suspicion is needed to conduct a metal detector search. The following year, an Illinois appellate court declared in *People v. Pruitt* (1996) that metal detector screening was a reasonable practice related to school searches for the possible presence of firearms and other weapons. In general, most courts have held that the use of metal detectors does not constitute a "search" in terms of the application of the Fourth Amendment (del Carmen and Trulson, 2006).

School Lockers: The Question of Ownership?

While of fundamental significance to students, unlike private homes and vehicles, school lockers are not considered to have the defined attributes of privacy. To begin, school lockers, like school desks, are not property of students nor designed to function as personal hideaways for students, to the exclusion of searches by school officials. In fact, school lockers are not in the nature of a dwelling, vehicle, or private lock boxes rented on private premises. Subsequently, most courts tend to view school lockers and desks as having co-owners, the student and the school, in that although students may have control of their locker, against fellow students, the possession cannot be viewed as absolute against the school. Combined with school safety, legal liability issues, and accountability concerns, courts appear in favor of locker inspections by school authorities under the rationality of exercising proper management and control of the school system.

Since lockers and desks are under the control of the school, normally assigned to students with predetermined conditions, like not using them to hide illegal items, it is well established that school authorities can legally give law enforcement officials consent to search lockers and desks. This process, while under the same legal reasoning, is different from school searches in which authorities (i.e., police) ask that students themselves consent the search so that police officers can validly search without a warrant. One constitutional theory is that when two people are in possession and in control of property, either one can give consent to search, and if anything illegal is found by police officers, it can be used to prosecute either person, or both parties. Therefore, under this rationale, school officials who have control of school property, lockers and desks, can give police permission to search and any illegal substance found therein may be admissible evidence in a criminal prosecution, as declared by a New York court:

Indeed, it is doubtful if a school would be properly discharging its duty of supervision over students, if it failed to retain control over the lockers. Not only have the school authorities a right to inspect but this right becomes a duty when suspicion arises that something of an illegal nature may be secreted there (*People v. Overton*, 1969).

Student Vehicles: The Legal Parameters of School Grounds

Even though vehicles have always been a major source of student transportation, currently, the legality governing searches of student vehicles on campus has been addressed by a few selected cases. Notably, as in locker or desk searches, the school system owns the school parking lots, and therefore has the authority to conduct routine patrols of parking lots, inspecting vehicle *exteriors*, as deemed necessary. Though, court cases indicate that only when reasonable suspicion exists are school officials authorized to inspect the *interior* of students' vehicle. Evidently, since legal precedents suggest that there is no difference in the school officials' prerogative in searching vehicles or in conducting body searches, reasonable suspicion is in fact required before searching vehicles on school grounds.

The following case, which stemmed from a vehicle search conducted on a private school, provides insight into the legal parameters governing student vehicles. In this particular situation, where the vehicle search found marijuana and beer, the court claimed that the *In Loco Parentis* authority of the school made vehicle searches permissible (*Keene v. Rodgers*, 1970). Legally, however, while the case supports the *In Loco Parentis* doctrine, its application is confined in that private schools are not legally restrained by the Fourth Amendment. Constitutionally, guarantees of privacy do not extend to the protection of "private" citizens from being searched by another person or a private institution. Presumably, since "body and vehicles" have been viewed under the same legal lens, the privacy protection of a vehicle is no greater than the privacy of a person. For instance, in a Texas case, *Jones v. Latexo Independent School District* (1980), a dragnet searching of students and vehicles by a drug dog was declared unconstitutional, not because of the students and vehicles that were searched, but because school officials did not have verifiable grounds to support *reasonable suspicion* that students were in possession of something illegal. Clearly, U.S. courts have treated body searches and vehicle searches similarly, allowing school officials to search if they have reasonable cause to believe that something is hidden in a vehicle which might harm the welfare of students or will constitute a detriment to the safety of the school.

The Legal Boundaries of Strip-Searching in the U.S. School System

Although U.S. courts have authorized school officials to search students, the general rule has been that school officials need absolute reasonable grounds to *justify* strip searches. In a Sixth Circuit Court of Appeals case, *William v. Ellington* (1991), a strip search (removing shirt, shoes, socks, and pants) was deemed valid, as school officials had reason to believe the student was using drugs. Similarly, two years later, in *Cornfield v. Consolidated High School District* (1993), the Seventh Circuit Court of Appeals held that a strip search (removal of pants) was valid after school officials had reason to believe the student was hiding drugs in the crotch of his pants. However, a few years later, in *Jenkins v. Talladega City Board of education* (1997), the Eleventh Circuit Court of Appeals ruled that strip searches are of such an intrusive nature that a higher standard, like *probable cause*, instead of *reasonable suspicion*, must be established by school officials. More recently, the U.S. Supreme Court in *Safford Unified School District v. April Redding* (2009) ruled that ". . . a search of a 13-year-old student's bra and underpants by school officials violated the Fourth Amendment." The Supreme Court reasoned that school searches "will be permissible" when the measures adopted are reasonably related to the objective of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. In this case, the student had brought forbidden prescription and over-the-counter drugs to school. The Court held that there was no reason to suspect that the drugs presented a danger or were in fact concealed in her underwear. The search was ruled to be overly invasive and thus unconstitutional. In effect, unanimously, appellate courts have determined strip searches to be a defined invasion of privacy, and therefore in violation of the Fourth Amendment, in the same way that cavity searches and nude searches in schools have been ruled unconstitutional (*Doe v. Renfrow*, 1980).

THE GLOBAL NATURE OF *IN LOCO PARENTIS* IN THE NEW MILLENNIUM

As recently documented in Martin Guevara Urbina in "The Dynamics of Education and Globalization in the New Millennium" (2012), with the advent of globalization, the scope and nature of crime and law must be analyzed within a global context, as illustrated by the globalization of the *war on drugs*, the globalization of the *national security* propaganda, and the globalization of *knowledge*, which, by extension, "overflow" into the school system (Urbina, 2012). Consider, for instance, the following figures:

- Guns are being exported and imported by organized crime groups and gangs throughout America and sold to students on high school and college campuses in all 50 states and territories.

- High schools are now a major market for the distribution of illegal paraphernalia and contraband in the United States and teenagers serve as a beneficial entrepreneurial source for profitable returns.

- High schools serve as fertile recruiting grounds for the next generation of criminal offenders for drug cartels, gangs, and organized crime groups (Gordon, 2000).

Revealing a *new face* of crime, these examples illustrate the extent of illegal activity across the United States in the wake of globalization (Muncie and Goldson, 2006). In effect, for the first time in U.S. history, we are beginning to see the global connection between certain types of *transnational* crime, like terrorism, drug trafficking, and contraband smuggling, often involving brutal physical violence and emotional and psychological harm (Espinoza, 2012). Further, in addition to illegal behavior like fraud, extortion, money laundering, bribery, economic espionage, intellectual property theft, and counterfeiting, the spread of information technology has created new categories of cybercrime, with some of these criminal activities already taking place on school grounds or potentially make their way into the educational system in the near future.

With technological innovations enhancing rapid mobility across the U.S. and around the globe, transnational crime is not only becoming a pressing issue but a highly complicated situation for government officials, school officials, and society (Duffy and Gilligi, 2004). With the smuggling of drugs, firearms, and other contraband already occurring on a wide-scale across America and abroad, the consequences are likely to escalate, creating a chaotic school environment, including the loss of life, drugs and guns on campus, gang violence, inadequate security, fear and anxiety, a lack of learning and educational productivity, years of counseling (PTSD), and endless litigation in lawsuits for American schools (White and Wyn, 2004).

The emerging global threat of school crime requires not only meeting basic needs, such as law enforcement education, training and equipment, but also the legal cooperation that will allow police, prosecutors, and school administrators to collaborate in the application of the *In Loco Parentis* doctrine in "real time" (Krisberg, 2005). In effect, in support of new social control strategies, the criminal justice arena and public schools are becoming more engaged in a wide range of national and international collaborations to promote safe learning and community environments. Invariably, the United States, with the world's largest economy and one of the most populous and multicultural country in the world, has a *high stake* in building a national and international consensus for positive action against globalized crime for the safety and stability of communities, school grounds, the country as a whole, and the international community (Urbina, 2014). As new dangers emerge and as strategies are developed and implemented, however, we must be dynamic and flexible in our approach, as safety must be governed within the parameters of legality, ethnics, legitimacy, equality, and justice. Ultimately, only through determined, sustained, and united action can we succeed in strengthening the resolve for safe educational institutions and communities across America and abroad.

PREDICTIONS AND POLICY RECOMMENDATIONS OF *IN LOCO PARENTIS*: THE CHALLENGE OF THE 21st CENTURY

Logically, students learn best and achieve their full potential when they are physically, socially, emotionally, and academically in a safe environment (Solutions that Work, 2011). In the highly multicultural American society, though, school climate reflects multiple aspects of people's experience of

school life, including norms, goals, values, and interpersonal relationships, as documented by Urbina in *Beyond Post-Racial America: 21st Century Dynamics of Multiculturalism* (2014). With significant demographic changes across America, public schools are now pressed to support comprehensive, evidence-based efforts to increase student achievement by establishing a positive school climate as reflected in the character and quality of school life (Urbina, 2012). Notably, considering the social transformation of society, government and school officials must have in place mechanisms to develop and implement strategic reforms. As such, the following recommendations by the Pennsylvania State Education Association are intended to be carefully considered and strategically implemented when adopted to avoid chaos, ruptures, or discontinuities.

PSEA Recommendations for School Safety

- Build a system of standards and accountability that takes account of school climate measures. This includes adopting statewide, evidence-based standards for school climate, developing tools to help measure school climate, creating accountability expectations that extend beyond academics to account for all the needs of children, and provide resources and technical assistance to help all schools achieve the school climate standards. Within this structure of standards and accountability, schools should be required to ensure that professionals also are safe. Staff should have a constant communications device while teaching, a system to locate students who are in the school building but not attending class, security cameras, and other appropriate safety equipment where necessary.

- Support and disseminate evidence-based models of school practice. Schools need to ensure every student will have a supportive relationship with at least one adult in school; design academic and extracurricular programs with the specific goal of providing adult role-models; provide students with the tools and resources to know how to communicate with adults about rumors, threats, or abusive behavior; and ensure that all students and staff know how to identify and respond to potentially violent students. Schools also need successful models to create pro-active partnerships with law-enforcement and social service agencies, including deliberate strategies to prevent bullying, gang activity, and other issues that put students at risk.

- Provide funding to ensure adequate staffing. Ensure that all schools have a sufficient number of clearly identified security guards and that security staff receive adequate training and supervision from trained professionals. Schools also require resources to expand access to counseling, anger management, and peer mediation services.

- Require that schools plan for a safe, positive school climate. Require that each public school establish a Safety Committee to bring staff, students, administrators, and parents together in a cooperative effort to maximize safety in each school building. Ensure that schools engage in planning and professional development and have adequate resources to address safe school issues.

- Enact a legislative package that addresses gaps in current statute, such as: establishing a Safe Schools Advocate for urban school districts which traditionally have a higher number of violent incidents; provide civil and criminal immunity to school employees when they exercise in loco parentis ("in the place of parents") authority in disciplining students; and requiring every school vehicle and school bus to be outfitted with backup warning devices to provide additional safety protections for students and staff on and around school property.

- Establish policies, such as placement in an alternative school, for students who place other students or staff at risk for serious bodily injury or who are habitually disruptive. Require that all districts establish alternative schools and provide training to teachers assigned to those schools (alternative schools are often best suited to meet the needs of students who are violent or disruptive because they are designed to address behavioral and mental health issues).

Lastly, studies show that safe school climate indicators are directly or indirectly linked to student academic performance and potential, as a positive and encouraging school climate is essential for fostering healthy child development and high-level learning and analytical thought (Freiberg, 1999). In fact, a positive school climate is also associated with fewer behavioral problems and emotional issues among school children (Kuperminc, Leadbeater, Emmons, and Blatt, 1997). Further, research examining the impact of school climate in high-risk urban environments finds that a safe and supportive school climate tends to have a strong impact on the academic success of urban students (Haynes and Comer, 1993). Finally, a positive school climate is also associated with a positive and greater job satisfaction among school employees, and, by extension, higher rates of staff retention (National School Climate Council, 2007; Taylor and Tashakkori, 1995). To support, encourage, and promote safe and productive learning environments, schools can engage in several evidence-based, targeted strategies to improve school climate across the United States and abroad. As recommended by the Pennsylvania State Education Association, strategic efforts may include:

- **Relationship-focused**: Connect every student to at least one caring adult.

- **Curricular-based**: Ensure that curriculum promotes social, emotional, and civic competencies along with content-area competencies.

- **School-wide focus**: Adopt community-wide practices to build character and support appropriate student behavior.

- **Emphasize resiliency**: Help at-risk students use school and community-based supports to build upon their unique strengths.

- **Response to intervention model**: Use diverse and increasingly intensive approaches to support students academically.

- **Data-driven**: Track and analyze school data that goes beyond test scores and includes perceptions of key school climate indicators.

- **Coordinated**: Build systems to link educators, students, parents and caregivers, and the community to create schools that are safe and caring.

In sum, the *first line of defense* of school administrators is to implement more policing measures, such as car searches, metal detectors, urinalyses, and drug-sniffing dogs, combined with targeted school violence prevention strategies, while being receptive to new innovated approaches and alternatives. Law-related education is also an effective approach for reducing the causes of school violence early and continually throughout a student's education. While generic, a promising interdisciplinary study in

education that combines particular kinds of law-related content (rules, laws, and legal systems) with interactive instruction can effectively maintain social order in the school system (McBee, 1995). Student conflict resolution and mediation training, including student courts, can be used as supplemental alternatives. Peer counseling can also be effective in breaking the impasse between violent students and the school system (Sachnoff, 1988). Using trained students as helpers, friends, counselors, mediators, and educators to ease school tension and conflict that result in violence serves as an educational first line of defense against school crime. Further, the use of dress codes and uniforms to change a school's violent culture has reduced crime and violence in some school districts. Lastly, parental and other adult participation not only bolsters school anti-violence programs, but it also aerates the school system, while demonstrating the community's concern with students' education, achievement, and community integration. If properly designed and implemented, these initiatives provide students a positive educational experience in a nonviolent environment in the school system across America—a pressing challenge in the twenty-first century, especially with the advent of the globalization movement.

CONCLUSION

As noted herein, the *In Loco Parentis* doctrine and the various appellate court decisions provide school officials the flexibility and authority necessary to establish mechanisms for making public schools a safe learning environment. Regarding students' rights in school, the current *direction* of Fourth Amendment laws reflects society's fear of crime and community concern for school safety as well as the scarcity of alternatives for well-designed police-type enforcement measures that are in use or under consideration in schools across the United States. However, the current dynamics of the Fourth Amendment, as applied to the educational system, indicate that school authorities are no longer required, in absolute, to grant students the civil rights considered inalienable by the rest of the nation's citizens, a situation that is likely to result in legal challenges in the future.

More globally, reliance on restricted prevention programs, though, is not only an issue of safety, efficacy, and moral responsibility, but also a matter of *international law*. Regardless of their behavior or school setting, children have human rights, and therefore procedural rights of children sets forth standards for juvenile justice procedures, children's access to education, their rights to bodily integrity and mental health, and the provision of other resources to enable children to maintain a healthy life, while becoming productive adult citizens. In effect, one of the basic tenets of the Constitution is that human rights are rest on the premise of the right to be heard, to be listened, and to participate in decisions and environments that affect their lives. Certainly, violence prevention training, as opposed to criminal enforcement techniques, is the course most consistent with the recognition of children's human rights in the United States and abroad. For now, in the U.S., the Fourth Amendment serves as the bedrock for the *In Loco Parentis doctrine* in public schools across the country, while setting modern mechanisms to curtail school violence in the twenty-first century.

References

Civil Rights Section, Title 42 USCA 1983.

Cornfield v. Consolidated High School District No. 230, 991 F.2d 1316, 7th Cir. (1993).

D.R.C. v. State of Alaska, 646 F. 2d 252, Alaska (1982).

Del Carmen, R. and Trulson, C. (2006). *Juvenile justice: The system, process, and law*. Belmont, CA: Thomson/Wadsworth Publishing.

Doe v. Renfrow, 635 F 2d 582, 7th Cir. (1980).

Duffy, M. and Gillig, S. (2004). *Teen gangs: A global view*. Westport, CT. Greenwood Press.

Espinosa, S. (2012). Latinas and Latinos in the U.S.: The road to prison. In M.G. Urbina (Ed.), *Hispanics in the U.S. criminal justice system: The new American demography*. Springfield, IL: Charles C Thomas, Publisher, Ltd.

Freiberg, H. (Ed.), (1999). *School climate: Measuring, improving and sustaining healthy learning Environments*. Philadelphia, PA: Falmer Press.

Gordon, R. (2000). Criminal business organizations, street gangs and wanna-be groups. *Canadian Journal of Criminology*, 42: 39-60.

Haynes, N. and Comer, J. (1993). The Yale School Development Program: Process, outcomes, and policy implications. *Urban Education*, 28: 166-199.

Horton v. Goose Creek Independent School District, 693 F. 2d 524, 5th Cir. (1982).

In re F. B., 658 A.2d 1378 (Pa. Super. 1995).

Interest of L.L. v. Washington County, 90 Wis. 2d 585, 280 N.W. 2d 343, App. (1979).

Jenkins v. Talladega City Board of Education, 115 F.3d 821, 11th Cir. (1997).

Jones v. Laxtexo Independent School District, 499 F. Supp. 223, E.D. Tex. (1980).

Katz v. U.S., 389 US 347 (1967).

Keene v. Rodgers, 316 F. Supp. 217, D.C. Me. (1970).

Krisberg, B. (2005). *Juvenile Justice: Redeeming our children*. Thousand Oaks, CA: Sage.

Kuperminc, G., Leadbeater, B., Emmons, C. and Blatt, S. (1997). Perceived school climate and difficulties in the social adjustment of middle school students. *Applied Developmental Science*, 1: 76-88.

M.J. v. State of Florida, 1st Dist. Case No. 55-120, May 18 (1981).

Mapp v. Ohio, 367 US 643 (1961).
McBee, R. (1995). Law-related education and violence prevention. *School Safety Journal*, Spring: 24-28.

Muncie, J. and Goldson, B. (2006). *Comparative youth justice*. London: Sage.

National School Climate Council (2007). *The school climate challenge: Narrowing the gap between school climate research and school climate policy, practice guidelines and teacher education policy*. New York: Center for Social and Emotional Education.

Neiman, S. (2011). National Center for Educational Statistics. Available at: http://nces.ed.gov.

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

Pennsylvania State Education Association. Available at: http://www.psea.org/uploadedFiles/LegislationAndPolitics/Vision/Vision_TeachingAndLearning_fullsection.pdf.

People v. Dukes, 580 N.Y. 2d 850 (1995).

People v. Jackson, 65 Misc. 2d 909, 319 N.Y. S. 2d 731 (1971).

People v. Overton, 24 N.Y. 2d 522, 301 N.Y. S 2d 479, 249 N.E. 2d 366 (1969).

People v. Pruitt, 662 N.E. 2d 540, 544-546 (Ill. App. 1996).

Picha v. Wieglos, 410 F. Supp. 1214, N.D. Ill. (1976).

Sachnoff, I. (1988). Peer counseling for troubled youth. *School Safety Journal*, Winter: 26-27.

Safford Unified School District #1 ET AL. v. April Redding, 557 U.S. _____ (2009).

Solutions that Work (2011). Available at: http://www.nea.org/tools/16364.htm.

State of Florida v. D.T.W., 4215 So.2d 1383, Fla. App. (1983).

State v. Baccino, 282 A. 2d 869, Del. (1971).

Stern v. New Haven Community Schools, 529 F. Supp. 31, E.D. Mich. (1981).

Tarter v. Raybuck, 556 F. Supp. 625, N.D. Ohio (1983).

Taylor, D. and Tashakkori, A. (1995). Decision participation and school climate as predictors of job satisfaction and teacher's sense of efficacy. *Journal of Experimental Education*, 63: 217-227.

Tinker v. Des Moines Independent Community School District, 309 U.S. 506 (1969).

Urbina, M.G. (Ed.), (2014). *Beyond post-racial America: 21st century dynamics of multiculturalism*. Springfield, IL: Charles C Thomas, Publisher.

Urbina, M.G. (2012). The dynamics of education and globalization in the new millennium: The unspoken realities. In M.G. Urbina (Ed.), *Hispanics in the U.S. criminal justice system: The new American demography*. Springfield, IL: Charles C Thomas, Publisher, Ltd.
W.J. S. v. State of Florida, 409 So.2d 1209, Fla. App., 1982.
Weeks v. U.S., 232 US 383, 1914.
William v. Ellington (1991).
White, R. and Wyn, R. (2004). *Youth and society: Exploring the social dynamics of youth experiences*. New York: Oxford University Press.
Zamora v. Pomeroy, 639 F.2d 662 (10th Cir. 1981).

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