**SOURCES OF EDUCATOR AUTHORITY**

1. IN LOCO PARENTIS

School officials were thought of as having quasi-parental status. The school official could act as if in the place of the parent. There was no expectation of privacy for kids in this situation. School officials could virtually search whenever they wanted.

1. IMPLIED AUTHORITY

In Re Gault (1967)

A black boy (Gault) and a white boy made a prank phone call. The police

were called. The white boy was a cop’s son, so he was released. Gault went to jail and was sentenced to Reform School until he was 21 years old. It was a six year sentence. It took only 5 ½ months for the USSC to hear the case. It called the trial court a Kangaroo Court. If an adult had done the same crime it was a $50 fine. USSC said rights were needed for juveniles. It gave juveniles the following rights: Due Process, Right to an Attorney, Miranda, Right to Confront Accuser, Right of family to be notified where the juvenile is, etc… The USSC gave juveniles many of the same rights as adults except the Right to Bond and Jury Trial. USSC said juveniles needed rights, but that juveniles would never have all of the same rights as adults.

1. WRITTEN REGULATIONS

Tinker v. Des Moines (1969)

A small group of students wore black arm bands to protest the Vietnam War. The principal banned the arm bands. The parents of the students sued. USSC ruled in favor of Tinker. Not because the students had the right to wear the arm bands, but because the school messed up. When asked why the principal banned the arm bands, the lawyers cited it was against the dress code. It was not. The Principal told the court it disrupted the learning environment. The USSC agreed, but the lawyers did not document it correctly.

1. CONSTITUTIONAL EMPOWERMENT

New Jersey v. TLO (1985)

Prior to TLO, the rules had changed due to the backlash following Watergate against any public authority. The rules were the requirement for administrators to have parent permission before talking to a child, Miranda was required for questioning, and the school must have PC, before searching. These rules stood until TLO.

A teacher followed TLO, a 14 year old freshman, into the girls’ restroom. She saw one student smoking and Terri had her hands cupped. Terri made a motion as if throwing something into the toilet. Terry denied smoking and became verbally abusive. She refused to come to the office and had to be lightly restrained to be brought to the office. Assistant Principal Ted Choplick told her to go back to class and he would get back with her regarding her suspension. She argued that she was innocent and protested the suspension. She said the school hated her. Choplick then said if she was innocent she would not have any cigarettes. He told her he would search her purse. She refused to allow the search of her purse, by stating, “Go fuck yourself.” Choplick called the SRO into the room and asked him to stand-by for his protection. He then took the purse from her and opened it. He saw a pack of cigarettes. Below that he found a pack of rolling papers. Below that was a a pipe, a packet of hashish, and documents showing she was dealing drugs. Terri said, “So what? So I deal drugs. Big fucking deal.” Terri was arrested. She later confessed to the officer in the presence of her grandmother.

The trial court held the search reasonable. New Jersey Supreme Court said her rights were violated by the search of her purse by a government official without consent or without probable cause. Terri’s confession to Choplick was also ruled inadmissible, because she was not read the Miranda Warning.

The USSC said there was no federal constitution right to an education, but each state constitution granted that right. Once the states granted the right, the 14th amendment attached. The right must now be applied equally and with due process of law. The Court also said no education could take place without an atmosphere conducive to education. The Court affirmed that school faculty members are Government Agents. The government agents have implied power to meet the education needs of the children. The power to educate also included the power to discipline. The Court established a Balancing Test in the Totality of Circumstances. The government official must weigh the relative rights of the student against the factors weighing in on the government’s side. One the government’s side is the need to search and discipline a student. On the student’s side is the need for privacy and to be free of unreasonable search and seizure.

Thus the two prong test was born.

1. Was search justified at inception?
2. Was the search reasonably related in scope to the circumstances that justified the interference in the first place?

* Current cases seem to focus more on whether search was reasonable rather than whether it was predicated on reasonable suspicion or probable cause

TLO also reiterated the Special Needs Doctrine. Where there is a special need (a safe learning environment) laws can be broadly interpreted to fulfill that need.

The Special Needs Doctrine applies to searches made by school authorities without the involvement of police. School officials can conduct warrantless searches in regard to a special need if “divorced from the State’s general interest in law enforcement.” Just because a special need exists does not mean a search can take place. A balance must be sought between the intrusion and promotion of governmental interests. Regarding theft, the USSC feels that there is no special need. Students getting their money stolen learn a valuable lesson.

The USSC admitted the search was illegal, but allowed the evidence because the school acted in good faith. They said it did not violate the 4th Amendment. The considered the “competing interests” of order and discipline in the schools and a student’s rights.

Four Rules came out of TLO

Reasonable suspicion replaced probable cause

Search warrants in schools were eliminated

Miranda Rights did not extend to school discipline

Standard school operations are not subject to parental notification requirements

Note: There must be reasonable suspicion that a particular rule was violated and that a search will uncover evidence of the violation

Coronado v. State of Texas (1992) Tx Ct of Crim App

*This case applied TLO to Texas*

The school received information that a student (Coronado) was selling drugs. No reason to believe he had drugs on him that day. The principal had the suspect student empty his pockets. He had keys and $500 cash. Ten days later, he saw Coronado on the pay phone skipping class. The assistant principal requested the SRO to be present. Coronado said his grandfather had passed away and he was going to the funeral. The assistant principal called Coronado’s mother, who said that was not true. The assistant principal had Coronado empty his pockets. He had keys and $500 cash. Coronado had just denied that he drove a car to school. The assistant principal then searched Coronado’s locker, but nothing was found. Coronado’s car was parked on the street, so the principal asked the officer to search the vehicle. Drugs were found inside and Coronado was arrested. The Texas Court of Criminal Appeals there was reasonable suspicion to believe Coronado was skipping class and a pat down for safety was reasonable; however, the search of Coronado’s pockets, locker and car was not reasonably related in scope to the offense of skipping.

*SINCE TLO, THE USSC HAS BACKED OFF OF THE NOTION OF STUDENTS HAVING THE SAME FOURTH AMENDMENT RIGHTS*

Vernonia School District v. Acton (1995) 9th Circuit

Random drug testing. The Court held that student athletes have a less legitimate privacy expectation than regular students, for an element of communal undress is inherent in athletic participation, and athletes are subject to preseason physical exams and rules regulating their conduct. Less expectation of privacy since they are held to a higher standard.

Board of Education of ISD 92 of PottawatamoieCounty v. Earls (2002)

This case involved drug testing students. The Court said safety outweighs an individual’s civil rights. It allowed ANY student in extracurricular activities to be randomly drug tested and not just athletes. The USSC subtly supported the notion of administrative searches in school and also said that all schools in the current society have enough of a threat of a drug problem to constitute a special need. This opened the door for K9, drug testing, metal detectors, breathalyzers at prom, etc… Justice Thomas said, “A student’s privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety.

Tennessee v Garner (1985 )

A burglary in progress call came out on Halloween night. When officers arrived one officer went around back. He saw Garner (a 15 year old male that appeared to be older) walking out of the back carrying a stereo. He told Garner to stop, who ran away from him. The officer shot Garner in the back of the head and killed him. The officer had been trained on the Fleeing Felon Rule in Tennessee. The officer was found to be immune, but the Chief and city were held liable. The lesson here is that even if an action is within the letter of the law, if the end result produces an outcome that is obviously not within good common sense then don’t do it.

**CREATING AN AGENCY BETWEEN SCHOOL AND SRO**

Established a precedent for educators to utilize the services of a police officer when safety demanded it.

In Re Fred C (1972)

A police officer informed a principal in California that Fred had drugs on him. The police officer left. The principal, with reasonable suspicion established, asked Fred to submit to a search. Fred said he would defend himself from being molested indicating his private parts. The principal called the officer again and requested his presence. The principal asked the officer to search Fred for him. Marijuana was found. The California Appellate Court ruled that the school could rely on the service of a professional, even if the professional is a cop, to meet the needs of the school in maintaining safety.

In Re Boykin (1976)

The principal received an anonymous tip that Boykin had a gun in class. He called the police officer, who “suggested” that they go to the class to speak to the student. The student was called to the door of the classroom where the officer, at the principal’s request, frisked Boykin and found the gun.

The lawyers agreed the student was under arrest when frisked by the officer. The judge ruled he was not under arrest and that the police officer would have known that even if the prosecutor did not.

Referring to no legal precedent, the judge said this was just good common sense. He ruled the frisk was inherently dangerous and the educators did not have to take physical risks. He also said the school could not ignore the danger. By process of elimination, the law must have intended for the officer, wanting to protect the school, must be an agent of the school in the situation.

Ruling: An officer could become an agent of the school for purposes of a search when: 1) it was clear that the search was the school official’s idea and 2) the search could not be carried out in safety without police assistance.

Picha v. Wielgos (1976)

Due to Watergate, there was a backlash against authority. The court in this case decided that a police officer’s presence was so intimidating that it changed the nature of a search into something that a parent would never allow. The Picha Rule said that if a cop instigates, performs, or acquiesces in the search, it is done for law enforcement purposes. This rule is now ignored.

**TYPES OF SEARCHES**

***CONSENT SEARCHES***

Can search based on consent, even when there is no probable cause or reasonable suspicion

Swink v. State (Texas) 1981

Swink argued that because he was a juvenile at the time, his consent to a search was invalid. He cited that section 51.09 of the Family Code required the waiver of rights be made by he and his attorney in open court. The Court of Criminal Appeals rejected this argument. They cited that 51.09 only refers to proceedings under Title 3 of the Family Code.

Scneckloth v. Bustamonte (1973)

To be valid, consent must be freely and voluntarily offered. Voluntariness is a question of fact to be decided on the basis of the totality of the circumstances. Coercion, expressed or implied, negates apparent consent.

Consent was not found to be voluntary in another case when a juvenile was stopped on routine traffic. The juvenile refused consent, but later granted consent when he was told that a K9 would be called out and if the K9 alerted the officers would have probable cause for a search warrant.

A child can be too young to consent. In one case two fifth graders were considered to young to consent.

Jones v. Latexo (1980)

“The targets of the search were (high school) children with limited experience in a threatening situation. Insubordination is a disciplinary offense under school rules. Accustomed to receiving orders and obeying instructions from school officials, they were incapable of exercising unconstrained free will when asked to open their pockets and open their vehicles to be searched. Moreover, plaintiffs were told repeatedly that if they failed to cooperate with the search, their mother would be called and warrant procured from the police if necessary. These threats aggravated the coercive atmosphere in which the searches were conducted.

Schools can create a coercive atmosphere in which a voluntary consent cannot be given. Children are accustomed to following orders and can even be disciplined for not doing so.

In the Matter of D.G. (2002) Austin Court of Appeals

A school district police officer received information that D.G. was selling crack cocaine, which he concealed in the hood of his sweatshirt. The officer located D.G. after school at a gas station near the school. The officer approached the suspect and asked if he had anything he was not supposed to have. D.G. said he did not and the officer asked if he could search him. D.G. said sure and assumed the position. The officer found cocaine in the hood of the sweatshirt. The Austin Court of Appeals said the encounter was voluntary, that D.G. could have left at any time, and the consent was freely given.

In the Matter of L.C. (2003) Austin Court of Appeals

A police officer stopped L.C. for an apparent daytime curfew violation. The officer asked for consent to search. L.C. answered that he did not have anything and produced personal items from his pockets. The officer asked again and got the same response. The officer asked a third time and L.C. said, “ok” and held his arms out. Cocaine was found in his pocket. The Court of Appeals upheld the search.

Third Party Consent

Jacobs v. State (1984) Texas Court of Criminal Appeals

Law enforcement went to Jacobs’ home and asked his mother for consent to search son’s room for a weapon. She was informed that she did not have to consent. She signed a consent to search form. Jacobs was present during the search, which uncovered marijuana and evidence from a murder. Jacobs appealed citing that his mother could not consent to a search of his room. The Texas Court of Criminal Appeals found he had no reasonable expectation of privacy in his bedroom and that his mother had a right to be there. Thus, she could consent.

Factors Considered in Child Consent

Age

Education level

Intelligence

Constitutional advice given

Length of the detention (consent not void if being detained)

Repetitiveness of the questioning

Use of physical force

Failure to inform the child that consent can be refused

***FRISK/PAT DOWN***

An officer or administrator who detain a student on reasonable suspicion may frisk for weapons for self-protection during the temporary period of detention

D.L. v. Indiana (2007) Indiana Court of Appeals

A public school office stopped three boys in the hallway who were skipping. They said they had no identification cards. When the officer patted down DL for his ID, he stuffed something down his pants. The female officer handcuffed him and took him to a male officer. The male officer shook the pants legs and a baggie of marijuana came out. The court ruled it reasonable.

***SEARCH INCIDENT TO ARREST***

Arizona v. Gant (2009)

Two officers, relying on an anonymous tip about a drug house, visited the residence. Gant answered and said the owners would return later. The police left. They ran him and found his license was suspended and he had a warrant for his arrest. The two officers that night returned to find a man and woman. Both were arrested and placed into a police car when Gant drove up. Gant met the officers outside his car 10-12 feet from the car. He was arrested and placed into another car. The officers searched his car and found gun and cocaine. The search was not upheld. The arrestee must have access to the vehicle at the time of the search or that the vehicle contains evidence of the offense for which he was arrested.

***STRIP SEARCHES***

The body of the student includes the layer of clothing which normally covers the layer of clothing covering the pubic area and the buttocks and female breasts.

TLO court said: “One thing is clear under any standard..the shocking strip searches that are described in some cases have no place in the school house…To the extent that deeply intrusive searches are ever reasonable outside the custodial context, it surely must only be to prevent imminent, and serious harm.

In the Matter of A.H.A (2008) Austin Court of Appeals

Upheld the search of a male student by lifting the shirt to expose the waistband and placing thumbs in the waistband (between gym shorts and pants) and moving the hands outward in search of marijuana was reasonable. Said it was not a strip search.

Oliver by Hines et al. v. McClung (1995)

Indianan Federal District Court held that the strip search of seventh grade girls for $4.50 allegedly stolen was unreasonable.

Widener v. Frye (1992)

Strip search of high school students was held reasonable where the school official detected what he believed was the odor of marijuana on the child and the child was acting in a “sluggish, lethargic” manner. The child was removed from class and no students were present. He removed his jeans only, not his underwear, in the presence of two male security guards. The search was considered reasonable in scope in light of the age and sex of the child, and the nature of the infraction.

Safford v. Redding (2009)

The search of a 13 year old student’s bra and panties for ibuprofen was not reasonable. The USSC said, “the indignity of the search does not of course outlaw it.” A strip search will be valid when:

1. There is an indication of danger to the students from the item of concern
2. There is a reason to suppose that the suspected student is carrying the thing in his/her underwear. Past incidents involving students carrying contraband in their underwear will suffice. Likewise, a believable report from someone will suffice. Actual knowledge by a school official who observes a student placing contraband in his/her underwear suffices as well.

***VEHICLES***

Carroll Doctrine

***GROUP SEARCHES***

Not allowed normally.

Gang members are considered as one person. If there is individualized suspicion that one gang member has contraband, all near him can be searched.

Weapons: when searching for weapons, you can search an entire class

DesRoches v. Caprio (1998) 4th Circuit

A teacher and principal decided to search a classroom of students who had been in a classroom when a student’s shoes had disappeared. Each student consented, except for DesRoches. All of the students were searched, except DesRoches, who still refused. DesRoches was suspended for his refusal. The court said the search of DesRoches was reasonable, because it had begun after all the other students had been searched and nothing had been found.

***LOCKERS***

Structure Code of Conduct on lockers such that students know there is no expectation of privacy.

***ANONYMOUS TIPS***

In the Matter of K.C.B. (2004) Austin Court of Appeals

An anonymous tip was received that a student had marijuana hidden in his underwear. The juvenile was escorted to the assistant principal’s office where the high school hall monitor told the juvenile about the tip. The monitor asked the juvenile to lift his shirt, at which time the assistant principal approached the juvenile and extended the elastic on the juvenile’s shorts. Observing a plastic bag in the waistline, the assistant principal remove it and the juvenile was later arrested for possession of marijuana. The court held that the search was unreasonable. The court did comment that if the anonymous tip had been about a weapon in school the search would have been justified.

***WEAPONS***

Safety overrides civil rights. Can search a whole class for a weapon.

***SNIFFER DOGS***

Horton vs. Goose Creek ISD (1982)

The court reasoned that the smelling of people, even if done by dogs, was indecent and demeaning. Sniffs of property is not a search. Sniff of persons is a search

***CELLULAR PHONES***

United States V. Finley (2007) Fifth Circuit Court of Appeals

Midland officers and DEA arrested a drug dealer after the dealer delivered meth to a police informant. After taking him from his car and arresting him, they removed his cell phone from his pocket. They questioned him at another location and began searching the cell phone. There were incriminating messages and numbers. The search was upheld based on search incident to arrest. It also did not matter that the search took place later than the actual arrest. “In general, as long as the administrative process incident to the arrest and custody have not been completed, a search of effects seized from the defendant’s person is still incident to the defendant’s arrest.”

Cell phones in a school setting:

(1) The school's cell phone policy says that if it is seized it will be searched.  This is a lot like inventory of any seized property.  It can also be justified on the basis of not wanting to return to the juvenile any material that would be harmful or criminal.

(2) The school has reasonable suspicion that the phone contains information about violation of a school rule or violation of a criminal statute.  This is no different from searching a wallet, purse, etc.

(3) Exigent circumstances indicate danger to the student or to the student body.  This calls into play the "special needs" doctrine set forth by the U.S. Supreme Court originally in a prison hostage case known as Whitley v. Albers and carried over to schools in New Jersey v. T.L.O.

***ADMINISTRATIVE SEARCHES***

Searches that are conducted:

1. Because it is necessary to efficient operation of the institution
2. Is carried on in a provable random or universal fashion
3. Is not unreasonably intrusive

K9, drug testing, metal detectors, breathalyzers at prom, etc…

In the Matter of P.P. (2009) San Antonio Court of Appeals

AEP students required to remove shoes, socks, belt, and submit to a pat down to enter the building. Marijuana was found and the search was upheld.

In the Matter of O.E.

An officer found marijuana in the suspect’s shoe during a search performed under a uniform security policy at an alternative campus. The court upheld the search procedure.

**COMMUNITY CARETAKING FUNCTION**

Gibson v. Texas (2007) Court of Appeals

In October of 2004 around 11:15 pm, Rose Waitman called the Brownfield Police Department concerned that he daughter, CW, who was 15, had not come home after a football game. An officer responded. She told the officer her daughter might be in a particular vehicle with Charles Ray Gibson. She asked the officer to find her daughter and bring her home. At 11:45 pm, the officer spotted the vehicle and stopped it two houses over from the home. CW was removed from the vehicle. The driver had no license, so he was arrested. A search incident to arrest located cocaine and marijuana. The Court of Appeals examined the community caretaking reason for the stop. Prior courts ruled that stopping a vehicle was a seizure. They also ruled even without reasonable suspicion or probable cause that an offense has been committed; that a police officer may reasonable seize an individual through the community caretaking function. It must be motivated by a reasonable belief of a need to assist.

Wright Factors:

1. The nature and level of the distress exhibited by the individual
2. The location of the individual
3. Whether the individual was alone and/or had access to assistance other than that offered by the officer
4. To what extent the individual, if not assisted, presented a danger to himself and others

**Liability**

Special Relationship: Example: kid being bullied by a gang member. A/P says he will have the SRO take care of it. SRO says no problem, we will take care of it. Talked to gang member and kid got beat up.

Deliberate indifference: Failing to recognize danger and do something about it