State v. Meneese:

WARRANTS, SROs, AND THE MOU

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The summer of 2012 will be notable for the Washington State court decision of State v. Meneese [174 Wn.2d 937; 282 P.3d 83 (2012)]. The Washington Supreme Court ruled that a law enforcement officer serving as a school resource officer is not a "school official" for purposes of on-campus searches. It is a ruling that is out of step with the 30-year trend of court decisions on collaboration between school resource officers and educators. In the wake of this decision, the landmark case of New Jersey v. T.L.O., [469 U.S. 325 (1985)] and its school search exception to the warrant requirement will still be applied to school officials in Washington State, but not to their law enforcement partners.

What Meneese Says: The Facts and Issues

A school resource officer, conducting a routine check of the boys' restroom on campus, became an eyewitness to a student standing at a sink holding a bag of marijuana in one hand and a medicine vial in the other. After bringing the student to a school administrator, the SRO arrests and handcuffs the student. Before a squad car arrived to pick up the student, the SRO, suspicious of the contents of the student's backpack, searched it and discovered a BB gun. The student was convicted of (1) unlawfully carrying a dangerous weapon to school and (2) possession of marijuana. Arguing that his backpack was illegally searched, the student sought to suppress the discovery of the weapon during trial. However, both the trial Court and Court of Appeals held that SRO's search was legal.

The Washington Supreme Court agreed to hear the student's appeal to determine (1) whether Washington State would stay in rank with the 48 other states that apply the school search exception to the warrant requirement from New Jersey v. T.L.O. to both school officials and their law enforcement partners. The court also had before it two other important questions: (2) whether the Washington State Constitution provided a higher level of protection from unreasonable searches than the U.S. Constitution, and (3) whether the status of the school resource officer as created in the MOU between the school and the police department would allow such a search to occur in the first place.

The third issue was created entirely by the language of the MOU and the customs of the jurisdiction that shaped the relationship between the schools and the police department. The SRO in question — along with other officers assigned to schools — was a fully commissioned law enforcement officer. The officer was expected to serve on campus in uniform with the primary task of enforcing the law. The MOU contained a relic of the language that in varying forms was popular in the 1990s during the careful, national expansion of SRO programs in public schools:

"The SRO is at the school as a law enforcement presence and is not responsible for discipline at the school."

These provisions carefully controlled the scope of the activities of the SRO; the MOU limited the authority of the SRO to school safety through law enforcement only. Its language gave the SRO no authority to assist school officials in proactively maintaining a safe learning environment using the rules of the school.

What Meneese Says: About New Jersey v. T.L.O.

New Jersey v. T.L.O. and its school search exception to the warrant requirement has reshaped the terrain of education law for the benefit of children who are compelled to attend school as well as to give aid to educators who have a duty to keep kids safe. Its rationale is rarely questioned and its influence affects schools in all states except Georgia [See State v. Scott, 279 Ga.App. 52; 630 S.E.2d 563 (2006)].

In New Jersey v. T.L.O., the U.S. Supreme Court recognized the legitimate need of schools to maintain a safe environment. The Court ruled in favor of a school administrator who turned over to the police
drugs and drug materials that the educator confiscated from the purse of a student. The justices relaxed the application of the Fourth Amendment for on-campus searches under the following rationale:

"[W]e have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship." [469 U.S. at 339-340].

In addition, the Court in New Jersey v. T.L.O. reasoned that, "[t]he accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause... Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search." [469 U.S. at 341]. This reasonableness test has two elements: (1) whether the search was justified at its inception; and (2) whether the search was reasonably related in scope to the circumstances that triggered the concern in the first place. However, the Court in New Jersey v. T.L.O. did not consider the role of the SRO in its decision. The justices were unambiguous about this:

"We here consider only searches carried out by school authorities acting alone and on their own authority. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question." [469 U.S. at 342, footnote 7].

Since 1985, state and federal courts have extended the school search exception to the warrant requirement to include school resource officers. These lower courts have been less concerned about the issue of agency (whether collaboration makes the educator an agent of law enforcement), and instead have focused on whether the SRO is acting to further legitimate educational interests. Under this extension, we now considered a best practice among public schools, a police officer on assignment to the school as a resource officer is considered a "school official" when furthering legitimate educational interests at the request of educators or on the SRO's own initiative under a supporting MOU.

The courts have made it clear that this assistance from the SRO neither makes the school the agent of law enforcement, nor does it violate student rights of any kind. See Wilson v. Cahokia Sch. Dist. # 187 [470 F. Supp. 2d 897, 910 (S.D. Ill. 2007)] ("[T]he weight of authority holds... that a search of a student on school grounds by a school resource officer at the request of school officials should be deemed a search by a school employee."). See, State of Wisconsin v. Angela D.B., [211 Wis. 2d 140, 155; 564 N.W.2d 682, 688 (1997)] ("Were we to conclude otherwise, our decision might serve to encourage teachers and school officials, who generally are untrained in proper pat down procedures or in neutralizing dangerous weapons, to conduct a search of a student suspected of carrying a dangerous weapon on school grounds without the assistance of a school liaison officer or other law enforcement official."). See also, D.L. v. State [877 N.E.2d 500 (2007)]; In re William V., [111 Cal.App.4th 1464 (Cal. Ct. App. 2003)]; Russell v. State, [74 S.W.3d 887, 892-93 (Tex. App. 2002)]; New York v. Jameel Butler, [725 N.Y.S.2d 534 (2001)].
The case law of the U.S. Supreme Court is not totally controlling on state courts. Washington State is one of several states that recently have begun to ignore the U.S. Constitution in favor of its own in order to provide a greater level of protection for civil rights. The U.S. Supreme Court has repeatedly acknowledged that each state has the power to adopt civil liberties using its constitution. In New Jersey v. T.L.O., the Court notes that States "may insist on a more demanding standard under its own Constitution or statutes. In that case, its courts would not purport to be applying the Fourth Amendment when they invalidate a search." [469 U.S. at 344, footnote 10].

Article I, Section 7 was initially interpreted as a provision identical to the Fourth Amendment in its level of protection for privacy. See, Seattle v. See, [67 Wn.2d 475, 408 P.2d 262 (1965), rev'd on other grounds, 387 U.S. 541 (1967)].

However, more recently, the Washington courts have given its right to privacy sharper teeth. Before the ruling in Meneese, it was firmly established that the state law protection against invasions of privacy provided greater protection than the Fourth Amendment. See, State v. Simpson, [95 Wn.2d 170, 622 P.2d 1199 (1980)]. See also, City of Seattle v. Mesiani, [110 Wn.2d 454, 755 P.2d 775 (1988)]. Perhaps the strongest language explaining the rejection of the Fourth Amendment appears in State v. Young, [123 Wn.2d 173, 867 P.2d 593 (1994)]. In a ruling that suppressed evidence obtained by police through infrared surveillance of a citizen’s home, the Washington Supreme Court notes:

Examination of the constitutional history of this section reveals that the State Constitutional Convention rejected the language of the federal constitution’s Fourth Amendment; instead, the Convention adopted the language of this section to intentionally provide greater protection of individual rights, particularly placing a greater emphasis on the right to privacy. [Young 867 P.2d at 596].

Therefore, Article I, Section 7 heavily influenced the decision to suppress the evidence of the BB gun. The Meneese court implied it was an easy decision to make:

What Meneese Says: About Strict Construction of the MOU

The most important factor in the outcome of the Meneese decision is brought about by the MOU. The Washington Supreme Court gives a strict construction to the language of the agreement between the schools and the local police department. The lesson to be learned by this fact is straightforward: safe school teams should give serious and frequent attention to the language in the MOU to insure that it mirrors the uses to which the SRO is put daily in maintaining a safe campus.

The court reasoning is equally straightforward in three logical steps: (1) Law enforcement officers acting on their own are not entitled to the school search exception [Meneese, 282 P.3d at 86]; (2) The SRO who searched the student was a full-time law enforcement officer for the city [Meneese, 282 P.3d at 84]; (3) The MOU did not give the SRO the ability to discipline students [Meneese, 282 P.3d at 87].
"...will an MOU that makes an SRO an enforcer of both the school code of conduct and criminal law bring the SRO under the school search exception to the warrant requirement for searches that occur on campus? It is not clear the degree to which the Washington courts will honor such an MOU that explicitly includes the SRO in school discipline."

The flawed MOU in Meneese is also not unique in school districts around the country. It is often the case that an MOU does not accurately state the intentions of the safe schools team, or has not kept up with the changing duties of the SRO after its original implementation. Both instances can create liability for the team or the individuals implementing the plan. Before Meneese, courts had previously ruled that an MOU that said, "the SRO is at the school as a law enforcement presence and is not responsible for discipline at the school," would prevent the SRO from being considered a "school official" and assisting educators under the lower standards of New Jersey v. T.L.O. See State v. R.D.S., [2009 Tenn. App. LEXIS 440 (Tenn. Ct. App. 2009)]. Courts had also held that silence in the MOU regarding the tasks performed by the SRO would not be treated as part of the agreement. See State v. Heitzler, [147 N.H. 344, 789 A.2d 634 (2001)]. And courts had previously rewarded well-written MOUs by giving judicial deference to school resource officers in the performance of day-to-day duties, even SRO decisions based on the initiative of the SRO without the real-time presence of educators. See, Hill v. Sharber, [544 F. Supp. 2d 670 (M.D. Tenn. 2008)].

Therefore, although the officer in Meneese was specifically assigned to the High

This conclusion is not unique among the state and federal courts. As judges become accustomed to resolving disputes over school discipline, the language of the MOU has become the best evidence of role of the SRO. Courts already assume that SROs are operating within the scope of their duties as a sworn law enforcement officer. Judges now look to the MOU to answer the following questions:

- Will the SRO assist in enforcing the school code of conduct?
- Will the SRO teach classes or supervise school-sponsored events?
- Will the SRO be an extension of the police department when assigned to the school, or consider an independent contractor?
- Is it clear when, if at all, the SRO will be acting at the direction of educators who are attempting to enforce a school policy?
School, the Washington Supreme Court held that he was acting in his capacity as a law enforcement officer at the time that he searched Meneese’s backpack, not as a school official. The court summarized the failure of the MOU to fully bring the SRO into the school community in this manner:

The principal was not a law enforcement officer. His job did not concern the discovery and prevention of crime. His primary duty was maintaining order and discipline in the school. [The SRO] is a law enforcement officer. [The SRO’s] job does concern the discovery and prevention of crime, and he has no authority to discipline students.

[The SRO] is a fully commissioned law enforcement officer employed by the Bellevue Police Department who has no ability to discipline students. At the time of the search, [he] was seeking to obtain evidence for criminal prosecution, not evidence for informal school discipline. [Meneese, 282 P.3d at 87 and 88].

What Meneese Says: Lessons Learned

Meneese is a case that will insist on being attended to by school safety teams everywhere.

The case is not reviewable by the U.S. Supreme Court because it is based on both federal and state law, with the state law controlling the result in the decision. See Colorado v. Nunez, 465 U.S. 324 (1984). Clearly, New Jersey v. TLO does not apply in Washington State, although the reasonable suspicion standard is alive and well waiting for clarification in future lawsuits as discussed briefly below.

Washington State SROs should receive specific training on the limitations of their authority, to the extent clear rules on going forward can be agreed upon by the court applying Meneese to future student rights disputes. Until such time, Washington school officials should take a more active role in searches under the protective watch of the SRO.

While its deepest effects will be felt in public schools in the State of Washington, all educators and SROs should view Meneese as a reminder that school safety law reform will continue to evolve across the country. Meneese sends an important signal about the suspicious attitude of a few judges and policymakers on the use of school resource officers as an integral part of school safety teams. The other significance of Meneese is its message that schools must fine-tune the working relationship with their school resource officers through an up-to-date memorandum of understanding (MOU). This is now a duty of the highest order. The MOU is designed to document the successes of public educators as they maintain a safe campus using the team approach. The MOU is also the best evidence of good faith and goodwill in the collaboration between the schools and the police officers.

Regrettably, after Meneese, all agencies in Washington State are less well off going forward with school safety planning. Several aspects of the Meneese decision will need to be hammered out in future litigation. The Meneese court leaves two important questions open. First, while it is clear that the Washington Constitution is used to override New Jersey v. TLO, the Meneese court does not explain it how it is to work going forward. Previous cases applying Article I, Section 7 to non-school law enforcement activity do apply a reasonable suspicion standard. See State v. Marcum, 149 Wn. App. 894, 205 P.3d 969 (2009). See State v. Doughty, 148 Wn. App. 585, 201 P.3d 342 (2009). See State v. Lee, 147 Wn. App. 912, 199 P.3d 445 (2008). See State v. Bloomfield, 2006 Wash. App. LEXIS 452 (Wash. Ct. App. 2006). Therefore, it is not clear when future SROs will have sufficient reasonable suspicion to search a student - before or after arrest - under their own authority as sworn officers.

Second, will an MOU that makes an SRO an enforcer of both the school code