PART II: FINE-TUNING THE EDUCATOR/SRO RELATIONSHIP

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Lately, federal and state courts have shied away from rigid rules about the rights of students, favoring a more flexible approach toward the authority of educators. The area of law most affected by this shift is student searches. The courts are following the lead of the U.S. Supreme Court that set the tone for this trend in the landmark Fourth Amendment decision of New Jersey v. TLO, (469 U.S. 325 (1985)). In TLO, the Court ruled in favor of a school administrator who turned over to the police drugs and drug materials confiscated from a student’s purse. 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. 339-340.

However, to what extent can a school official rely upon the SRO as a member of the safe schools team when a search needs to be conducted? Does the TLO "reasonable suspicion" standard change when the school resource officer (SRO) is involved in the search? Does the presence of the SRO on campus shift the legal analysis back to its original "probable cause" standard? Who is a "school official" for purposes of utilizing the lower Fourth Amendment standard? The SRO search cases provide an excellent context for fine-tuning this level of educator/SRO collaboration. Test your "Search and Seizure IQ" on the following scenarios:

1. A school staff member at a high school notifies the principal that he observed a student smoking in a car in the school parking lot. The principal went to the parking lot, encountered the student and took him to the administrative office. The principal directed the student to empty his pockets. The student refused. The principal asked a police officer assigned to the high school to search the student. Marijuana was found on the student. Can the educator use the SRO in this manner and stay under the TLO standard?

2. A high school principal receives reports from three students of the theft of clothing, wallets, a purse and money from their lockers. The principal asked the SRO to help her investigate the
thefts. During the investigation, suspicion fell on four students who were seen around the lockers at a time when they should have been in class. Together, the principal and the SRO searched one of the students, who was found possessing contraband from the theft. Does the more forgiving standard of TLO apply to this search?

3 An SRO walking the campus observes a student standing alone in the hallway displaying a red bandanna from the back pocket of his pants. Possession of a bandanna on campus is a violation of school rules because colored bandannas commonly indicate gang affiliation. The SRO approached the student and asked him to remove the bandanna. The SRO decided to take the student to the principal's office for the violation. Before doing so, the officer conducted a pat-down search for weapons. The SRO discovered a knife that the student said he used for self-protection. Again, assuming that the SRO did not have probable cause to conduct the search, then is this search valid?

4 An SRO encounters a student walking the halls of the school. The juvenile did not have the required identification card or a hall pass to be out of class. The SRO conducted a pat-down search of the student in the hall during which the student put something down his pants. The SRO handcuffed the juvenile and brought him to the police office on campus, where another officer searched him and found marijuana. Does the TLO standard apply to these searches?

The starting point for answering questions about student searches remains the U.S. Supreme Court ruling in TLO. There the justices decided 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. 325, at 341. The reasonableness test of TLO 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.

The Court in TLO provides a pragmatic guide for educators who wish to stay on the constitutional side of the privacy line. The first element is satisfied when “there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” 469 U.S. 325, at 341. The second requirement is fulfilled when “the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” 469 U.S. 325, at 342. In addition to the federal courts, all states have also adopted the TLO standard for purposes of applying state constitutional privacy provisions to these disputes.

TLO answers only the most basic question about the reasonable suspicion standard when educators collaborate with police. Its fact pattern approves of the type of cooperation that is still the most common in school safety incidents: a school official who, while enforcing the code of conduct, finds evidence of the violation of the juvenile code. Items seized during this activity may be turned over to police for use in adjudications despite the fact that police would not have been able to acquire the evidence on their own under the more rigorous probable cause standard. To avoid this confusion over this many state education codes expressly require that crimes discovered while enforcing school policies be reported to police. See for example Alabama Education Code, 16-1-24.1.

However, the lower federal courts and the state courts have fashioned additional rules that address more active involvement by law enforcement officials. It should come as no surprise that these rules remain faithful to the desire expressed in TLO that educators be allowed some leeway in maintaining safe schools. The courts have divided the student search rules into three scenarios:

(1) where school officials initiate the search or police involvement is minimal, the reasonableness standard is applied;

(2) where the search is conducted by the school resource officer on his or her own initiative to further educationally related goals, the reasonableness standard is applied; and

(3) where “outside” police officers initiate the search of a student for investigatory purposes, the probable cause and warrant requirements are applied.

These courts also provide a matter-of-fact guide for educators who work closely with SROs. Law enforcement officials who act in their capacity as SROs are considered “school officials” and their activities fall under TLO. In this sense, educators may bring SROs into the school community, effectively delegating to the SRO a more efficient set of tools for keeping schools safe. As the facts and outcome of TLO indicate, both the educational code of conduct and the state juvenile justice code may be enforced through this close teamwork. On the other hand, “outside” law enforcement officers who come onto campus without a collaborative relationship and act without the immediate involvement and supervision of school officials are subject to the stricter requirements of the Fourth Amendment.

Moreover, the TLO standard does not apply to law enforcement officers who come onto campus and effectively commandeer school officials into assisting with a search of a student or student property solely for police investigatory purposes.

Any ambiguity in this aspect of the educator/SRO relationship can be effectively eliminated by implementing a written interagency agreement. The memorandum of understanding (MOU) provides structure for the collaboration by spelling out the role of the SRO in maintaining a safe school. The MOU should address the range of misconduct that past campus incidents suggest are likely to occur and provide routines for resolving them. Although courts already assume that when properly supervised and trained SROs may act on their own to enforce the code of conduct or the law, the MOU should provide protection against challenges by spelling it out. The language should provide that,
"TLO answers only the most basic question about the reasonable suspicion standard when educators collaborate with police."

While the TLO Court adopted the less stringent reasonable grounds standard in part because of the need of teachers to maintain swift and informal disciplinary procedures, it could be hazardous to discourage school officials from requesting the assistance of available trained police resources.” See In re Angela D.B., 564 N.W.2d 682, 687 (Wis. 1997).

In the I.Q. test, the answer is “Yes” to each of the fact patterns. The TLO standard applies to each of the searches conducted by the SROs. In Question One the court held that the SRO had reasonable suspicion arising from what the principal had observed and the officer’s own observations. See Russell v. State, 74 S.W.3d 887 (Tex.App.Waco 2002). In Question Two, the court ruled that the police assistance given was marginal and in support of the educator. See Cason v. Cook, 810 F.2d 188 (8th Cir. Iowa 1987), cert. den., 482 U.S. 930 (1987). In Question Three, the court decided that an SRO assigned to a school was a school official for the purpose of assessing the legality of a search on school grounds. See In re William V., 4 Cal. Rptr. 3d 695 (2003), cert. den., 541 U.S. 1051 (2004). Similarly in Question Four, the court applied TLO to the search since the identification rule the SROs were seeking to enforce had as its purpose the safety of the campus. See D.L. v. State, 877 N.E.2d 500 (Ind. Ct. App. 2007).

So far, only one case has refused to apply the reasonable suspicion standard where police were involved in a campus search at the request of educators and it is a pre-TLO decision that is not. So far, only one case has refused to apply the reasonable suspicion standard where police were involved in a campus search at the request of educators and it is a pre-TLO decision that is not.

Professor James will be a keynote speaker at NASRO’s 18th Annual Conference in Phoenix, AZ.