EMPOWERING SCHOOLS TO SEARCH: THE EFFECT OF GROWING DRUG AND VIOLENCE CONCERNS ON AMERICAN SCHOOLS

J. BATES MCINTYRE

America's public schools are facing a crisis of violence and drug problems. In particular, several recent high-profile school shootings have provided a wake-up call to school administrators and state legislators across the country. Schools are responding to increased school violence and drug use with a variety of preemptive security measures designed to ensure that American schools remain a safe place for children.

This student note evaluates these school measures in the context of students' Fourth Amendment rights. Although many states have enacted statutes empowering school boards to search students, the constitutionality of such searches remains unclear. Student searches are typically justified as consistent with a lower expectation of privacy for students, valid under an implied consent rationale, or accepted as a standard automobile search. The author questions the applicability of these justifications to schools, suggesting that they not only give schools unnecessarily broad authority but also send a message of distrust and lack of individual rights to students.

The author proposes that differences among communities make it imperative that states give educators latitude to respond to their specific problems rather than create overbroad mandates. In this way, legislators and school administrators can create an atmosphere more conducive to learning and not teach the wrong lesson by depriving students of their constitutionally protected rights.

> The schoolroom is the first opportunity most citizens have to experience the power of government. Through it passes every citizen and public official, from schoolteachers to policemen and prison guards. The values they learn there, they take with them in life. One of the most cherished ideals is the one contained in the Fourth Amendment: that the government may not intrude on the personal privacy of its citizens without a warrant or compelling circumstances.[1]
>
> — Justice Stevens, dissenting in *New Jersey v. T.L.O.*

1. New Jersey v. T.L.O., 469 U.S. 325, 385–86 (1985) (Stevens, J., dissenting).

I. INTRODUCTION

Students returning to public schools in Champaign, Illinois, in 1998 were greeted by new signs in parking lots. The signs notified the students that, by choosing to park in the school lot, "the person driving any vehicle is deemed to consent to a complete search of the vehicle for any reason."[2]

Violence in public schools in Illinois and across the country prompted Champaign Community Unit School District Number Four to post the signs.[3] In 1993, the Illinois Department of Public Health reported that the leading cause of death for teenagers was homicide, and the number of teenagers arrested for murder nearly doubled from 1985 to 1995, a period without significant growth in the teen population.[4] A survey of students in grades nine to twelve in Illinois revealed that seven percent of students had brought a handgun to school in the month preceding the survey.[5] In addition, suspensions and expulsions for violence increased significantly from 1988 to 1994 in Illinois public schools.[6]

The Illinois problems reflect a national trend of increased violence in American schools.[7] Across the country, local school districts are responding to violence and drug problems.[8] Schools have employed security guards, installed metal detectors, and many have restricted access to school buildings.[9] Moreover, state legislatures have responded to public concern about violence with a variety of statutes.[10] Some are broad statutes vesting the authority to develop policies in local school boards, and

2. Melissa Merli, *Unit 4 Signs Warn of Car Searches*, NEWS-GAZETTE (Champaign-Urbana, Ill.), Sept. 4, 1998, at A-1. The sign was erected pursuant to Champaign, Ill. Community Unit School District No. 4, Policy No. 710.08 (July 13, 1998) [hereinafter Champaign Policy].

3. *See infra* notes 21–29 and accompanying text

4. *See* VIOLENCE SUMMIT, ILLINOIS BOARD OF EDUCATION, SAFE AT SCHOOL . . . A PUBLIC PROMISE 21 (1995) [hereinafter VIOLENCE SUMMIT].

5. *See id.* at 19.

6. *See id.* at 20. For example, 78 students were suspended for weapons violations in the 1988–89 school year; that figure increased to 341 students for the 1993–94 school year. *See id.* In the same period, the number of expulsions for the same offense rose from 17 to 55. *See id.* In the 1988–89 year, 1573 students were suspended for assault or battery; the number in 1993–94 was 5840. *See id.* Expulsions for the same offense in the same period increased from 12 to 85. *See id.* "Under the first year of a federal law requiring all kids carrying weapons to be expelled, 6,093 students were disciplined [nationwide] during the 1996–97 academic year for toting firearms, mostly guns . . . ." Ralph Frammolino, *Failing Grade for Safe Schools Plan*, L.A. TIMES, Sept. 6, 1998, at A26. Gang suspensions rose from 52 to 453, and calls to the police about gangs rose from 34 to 112. *See* VIOLENCE SUMMIT, *supra* note 4, at 20. Suspensions and expulsions for drug offenses rose from 1988 to 1994 but much less dramatically than for violent behavior. *See id.* Interestingly, however, a 1998 Illinois State Board of Education bulletin considered firearm incidents in Illinois public schools to be "rare," with only 18 incidents of students possessing firearms on school property in 1997. *See* Illinois Association of School Boards, *School Board News Bulletin: April 1998* (visited Sept. 26, 2000) <http://www.iasb.com/files/nb0498. htm>.

7. *See* VIOLENCE SUMMIT, *supra* note 4, at 18–20.

8. *See infra* notes 21–45 and accompanying text.

9. *See infra* note 37 and accompanying text.

10. *See infra* notes 86–89.

others set forth specific procedures and standards for student search policies.[11]

This note asserts that state solutions to the serious drug and violence problems in public schools often overreach and unnecessarily burden students' Fourth Amendment rights. In part II, this note explores the violence and drug problems to which administrators and legislators are reacting.[12] An overview of school search law in the U. S. Supreme Court[13] and in Illinois courts[14] provides background for an analysis of the school policies enacted pursuant to state statutes empowering school boards to search students and their belongings on school property.[15] In part III, this note addresses the justifications for searches of students: a lower expectation of privacy,[16] implied consent,[17] and automobile searches.[18] An analysis of the statutes reveals that, although states do not appear to exceed their authority under the Fourth Amendment, the power these statutes grant to schools is expansive. In part IV, this note proposes that the statutes are not only heavy-handed but also may actually have an unintended, chilling effect on the learning environment.[19] Control over school search policies should be left in the hands of local school administrators so that they can respond directly to local problems.[20]

II. BACKGROUND

A. The Problem: Violence and Drugs in American Schools

In 1997 and 1998, six high-profile shootings occurred in small-town public schools in Pearl, Mississippi;[21] West Paducah, Kentucky;[22] Jonesboro, Arkansas;[23] Edinboro, Pennsylvania;[24] Springfield, Oregon;[25]

11. *See infra* notes 86–89.
12. *See infra* Part II.A.
13. *See infra* Part II.B.1.
14. *See infra* Part II.B.2.
15. *See infra* Part II.C.
16. *See infra* Part III.A.
17. *See infra* Part III.B.
18. *See infra* Part III.C.
19. *See infra* Part IV.A.
20. *See infra* Part IV.B.
21. On October 1, 1997, 16-year-old Luke Woodham killed two people and wounded seven. *See* Gina Holland, *Student Kills 2, Wounds 7 at Miss. School*, TIMES-PICAYUNE (New Orleans), Oct. 2, 1997, at A-12.
22. On December 1, 1997, 14-year-old Michael Carneal killed three people and wounded five. *See* Jim Adams, *Three Students Killed, 5 Wounded in Shooting: Teen 'Fidgety,' Not Troublesome*, COURIER-J. (Louisville, Ky.), Dec. 2, 1997, at A1.
23. On March 24, 1998, 13-year-old Mitchell Johnson and 11-year-old Andrew Golden killed five people and wounded 10. *See* Jenny Price, *Teacher Gave Life to Shield Student from Sniper's Fire*, THE ARKANSAS DEMOCRAT-GAZETTE, Mar. 26, 1998, at B4.
24. On April 24, 1998, 14-year-old Andrew Wurst killed one person and wounded two. *See* Jonathan D. Silver, *Killing Stuns Edinboro*, PITTSBURGH POST-GAZETTE, Apr. 26, 1998, at A1.
25. On May 21, 1998, 15-year-old Kipland Kinkel killed two people and wounded 22. *See The Dead and Injured*, PORTLAND OREGONIAN, May 22, 1998, at A21.

Richmond, Virginia;[26] and most recently, Littleton, Colorado.[27] There were twenty-five deaths from school shootings in the 1996–97 school year and forty in the 1997–98 school year.[28] The massacre at Columbine High School in Littleton left fifteen dead in one day in 1999.[29] In his State of the Union address on January 19, 1999, President Clinton referred to school shootings with a plea for a reduction of gun violence in American schools.[30] School safety has, in fact, become a campaign issue and a political buzzword.[31] Yet some experts contend that American schools are "one of the safest places a child can be," based on out-of-school violence statistics.[32] American teenagers similarly perceive that the threat of violence in schools recently has declined.[33]

More specifically, the "disruption caused by violence in our nation's public . . . schools is a national concern. Crime in and around schools threatens the well-being of students, school staff, and communities. It also impedes learning and student achievement."[34] Many school administrators feel the need to respond to the much-publicized acts of violence; administrators, however, do not know how to approach the problem. Because research about school violence is in its early stages, school administrators are unsure which preventive methods will be most effective.[35] As one attorney for the Oklahoma State School Boards Association noted: "Administrators said in the 1940s the top things they had to contend with were chewing gum, dress code and running in the hall," whereas "[i]n the 1990s, administrators said drugs, alcohol, teen pregnancy, rape and as-

26. On June 15, 1998, 14-year-old Quinshawn Booker wounded two people. *See* Jim Mason & Wes Allison, *Teacher, Volunteer Shot at Armstrong*, RICHMOND TIMES-DISPATCH, June 16, 1998, at A1.

27. On April 20, 1999, 18-year-old Eric Harris and 17-year-old Dylan Klebold killed 12 students and one teacher, wounded 22, and then killed themselves. *See* Mark Obmascik, *Healing Begins: Colorado, World Mourn Deaths at Columbine High*, DENVER POST, Apr. 22, 1999, at 1A.

28. *See* Scott Cooper, *Metal Detectors Urged for Every School in the State*, TULSA WORLD, Feb. 11, 1999, at 1.

29. *See supra* note 27.

30. William Jefferson Clinton, State of the Union 1999: Looking Towards the New Millennium (Jan. 19, 1999), *in* 65 VITAL SPEECHES 226, 231 (1999) ("Last year, every American was horrified and heartbroken by the tragic killings in Jonesboro, Paducah, Pearl, Edinboro, Springfield. We were deeply moved by the courageous parents now working to keep guns out of the hands of children and to make other efforts so that other parents don't have to live through their loss.").

31. *See, e.g.*, Jennie Tunkieicz, *Election 99: Challenger Attacks Abrahamson on Crime*, MILWAUKEE J. SENTINEL, Jan. 26, 1999, at B1.

32. Greg Toppo, *Wayne Thibeault Calls It "The V,"* YORK DAILY REC. (Pa.), Sept. 1, 1998, at A4.

33. *See* Carey Goldberg & Marjorie Connelly, *Fear and Violence Have Declined Among Teen-Agers, Poll Shows*, N.Y. TIMES, Oct. 20, 1999, at A1 (noting that teen fear of victimization in 1999 was 24%, down from 40% in 1994).

34. NATIONAL CTR. FOR EDUC. STAT., U.S. DEP'T OF EDUC., VIOLENCE AND DISCIPLINE PROBLEMS IN U.S. PUBLIC SCHOOLS: 1996–97, at 1 (1998) [hereinafter VIOLENCE AND DISCIPLINE PROBLEMS].

35. *See, e.g.*, Robert Landauer, *Must-Read Assignment: New Report Grades Schools' Anti-Violence Efforts; Lackluster Programs Far Outnumber Effective Ones*, PORTLAND OREGONIAN, June 27, 1998, at D11 ("[School violence r]esearch is in its infancy. Intuition tells us, though, that a Grand Canyon separates programs that do some good from those that, at best, do no harm.").

sault. Those are criminal behavior."[36] State legislatures and school districts have responded to this kind of criminal behavior with legislation and regulation.[37] Even in states that have not had problems with violence or shootings, schools are responding to the "wake-up call" of Paducah, Jonesboro, and Littleton and are taking preemptive safety measures.[38]

Drug use and distribution have also increased the amount of crime in American schools.[39] The percentage of eighth-grade students who have experimented with marijuana has more than doubled since the early 1990s, from about ten percent to twenty-three percent.[40] At public schools of over one thousand students, twenty-nine percent of principals reported that student drug use was a moderate or serious problem,[41] and eleven percent said that the sale of drugs by students on school grounds was a moderate or serious problem.[42] In fact, drugs have been described as "the biggest outside impediment to learning in the schools."[43] Although public schools are generally regulated at the state or local level,[44] national concerns about teenage drug use and the war on drugs have prompted federal legislation.[45]

Some students and parents think state governments and local school boards are going too far in answering the wake-up call. In Euclid, Ohio, for example, the local high school has implemented a policy requiring students to carry bar-coded picture identification cards,[46] and it has installed surveillance cameras in the school and around the grounds.[47]

36. Cooper, *supra* note 28, at 1; *see also* Claire Vitucci, *Answering School Violence*, L.A. TIMES, May 27, 1998, at B1 ("Years ago, we talked about fistfights, now we talk about gunfights . . . . First it was a big deal if we saw guns come to school. Now we're seeing automatic weapons.").

37. *See* Cooper, *supra* note 28 (noting closed campus policies, drug sweeps, metal detectors, and proposed state legislation making it a felony for a student to hit a teacher).

38. *See, e.g.*, *Police Extend Presence in Maine Schools*, BANGOR DAILY NEWS, Sept. 8, 1998, at B5 ("In rural states like Maine, more and more cops are spending their days at school. . . . Westbrook Police Chief Steven Roberts said the actions are a response to safety problems nationwide, not in Maine schools.").

39. *See, e.g.*, Scott A. Gartner, Note, *Strip Searches of Students: What Johnny Really Learned at School and How Local School Boards Can Help Solve the Problem*, 70 S. CAL. L. REV. 921, 974 (1997) (concluding that the proliferation of drug-related crime in schools has led to a tension between Fourth Amendment rights and enforcement policies).

40. *See* Frammolino, *supra* note 6.

41. *See* VIOLENCE AND DISCIPLINE PROBLEMS, *supra* note 34, at 73 tbl.14 (up from 19% in 1990–91).

42. *See id.* (up from four percent in 1990–91).

43. WILLIAM J. BENNETT, THE DEVALUING OF AMERICA 99 (1992).

44. *See, e.g.*, Milliken v. Bradley, 418 U.S. 717, 741–42 (1974) ("No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.").

45. *See* Drug Free School-Zones Act, 21 U.S.C. § 860 (1994); *see also* United States v. Hawkins, 104 F.3d 437, 440 (D.C. Cir. 1997) (upholding the constitutionality of the Act under the Commerce Clause).

46. *See* Tom Breckenridge, *Keeping Students Safe: Euclid High Is a Model of School Security, with Special IDs and Surveillance Cameras*, PLAIN DEALER (Cleveland), Jan. 5, 1998, at 1A.

47. *See id.*

These measures are reminiscent of Orwell's Big Brother,[48] and "[w]hile school officials praise the security upgrades, some students are panning them as overkill."[49] Organizations such as the American Civil Liberties Union (ACLU) agree and are concerned about the threat to students' Fourth Amendment rights.[50] One ACLU attorney warns that "schools . . . should be kept safe, but not by using Gestapo techniques that trample individual rights and destroy the dignity of innocent kids."[51] The challenge facing state legislatures and school administrators is how to effectively respond to school drug and violence problems without this "trampling" of individual rights.

B. School Searches

The Champaign policy is one of several local reactions to drug and violence problems in schools.[52] These attempted policy solutions must be

48. *See generally* GEORGE ORWELL, 1984 (1949) (coining the term "Big Brother" to refer to an omnipresent government power that controls every facet of life).

49. Breckenridge, *supra* note 46.

50. *See* ACLU, *Virginia School Sued over Strip-Searches* (last modified Dec. 16, 1999) <http://www.aclu.org/news/n011398a.html>.

51. *Id.*

52. The Oklahoma State School Boards Association issued a sample policy regarding "student vehicle use, parking, and searches" and invited school boards across the country to adopt it. *See* Kenneth Payne, *Student Car Searches*, MSMA POL'Y DEV. NEWSL. (Maine School Management Association) May 1992, at 3. The sample policy explains:

> The school board will permit student use and parking of motor vehicles on the high school campus only. Students driving a motor vehicle to the high school campus may park the vehicle in the parking lot designated for student parking. Students will not park vehicles in driveways, or on private property, or in the parking lot located in front of the school. The vehicle will not be used during the school day. . . .
>
> Students are permitted to park on school premises as a matter of privilege, not of right. School personnel will conduct routine patrols of student parking lots and inspections of student automobiles when on school property. The interior and exterior of a student automobile may be searched when a school authority has reason to believe that illegal or unauthorized drugs, weapons, or other contraband is within or upon the vehicle. Such searches may be conducted without notice, without consent, and without a search warrant.

Id.

The Randolph County (N.C.) School Board has adopted the following policy with regard to vehicle searches in Asheboro, N.C. schools:

> Automobile searches. Students are permitted to park on school property in designated areas as a matter of privilege, not a right. The school retains authority to conduct routine inspections of student parking lots. The interiors of the student vehicles may be inspected whenever a school authority has reasonable suspicion to believe that illegal or unauthorized materials are contained inside. Such inspections may be conducted without notice, without student consent, and without a search warrant.

Randolph County, N.C. Board of Education, Interrogations and Searches 3 (May 8, 1989) (amended July 9, 1992).

In July 1994, Elkhart, Indiana, schools issued the following proposed new administrative regulation:

> Building Administrators seeking to conduct a general non-discriminate search of automobiles must first obtain permission from the Superintendent or an assistant superintendent.
>
> . . . .
>
> This regulation shall not prevent a building administrator from conducting specific automobile search(es) where there exists a reasonable suspicion that any weapons, controlled and/or illegal substances, or other prohibited items are contained in the automobile to be searched.

Elkhart, Ind. School Board, Proposed New Administrative Regulation (proposed July 1994).

interpreted in the context of recent Fourth Amendment cases on the validity of school searches.

1. Supreme Court Cases

Two seminal Supreme Court cases have set guidelines for permissible searches of students and their belongings on school property. In general, the Supreme Court has recognized limitations on Fourth Amendment protections of students on school property,[53] although the Court has insisted that students *do* retain some expectation of privacy while in school.[54] Thus, "while children assuredly do not 'shed their constitutional rights . . . at the schoolhouse gate,' the nature of those rights is what is appropriate for children in school."[55]

In *New Jersey v. T.L.O.*,[56] the Supreme Court held that the Fourth Amendment applied to a warrantless search of a student's purse by a school official[57] but held that the search did not violate the student's Fourth Amendment rights.[58] The Court reasoned that the special disciplinary problems in public schools justified the need for teachers to search students without waiting to obtain a warrant.[59] Rather than applying the standard Fourth Amendment requirement that searches be based on probable cause,[60] the Court carved out an exception to the warrant requirement and held that the required level of suspicion for a school administrator to search a student without a warrant is reasonable

---

Keep Schools Safe, a project of the National Association of Attorneys General and the National School Boards Association, issued a sample policy for "school search and seizure" in 1995 that recommends the following language:

> Students are permitted to park on school premises as a matter of privilege, not of right. The school retains authority to conduct routine patrols of student parking lots and inspections of the exteriors of student automobile [sic] on school property. The interiors of student vehicles may be inspected whenever a school authority has reasonable suspicion to believe that illegal or unauthorized materials are contained inside. Such patrols and inspections may be conducted without notice, without student consent, and without a search warrant.

Keep Schools Safe, *Sample Policy, School Search and Seizure* (visited Sept. 26, 2000) <http://www.keepschoolssafe.org/sample.html>.

One rural Maine school has a policy that denies students access to their vehicles during the school day. *See* Hampden Academy, *Handbook* (visited Sept. 26, 2000) <http://www.ha.sad22.k12.me.us/handbook/VEHICLES.html>.

53. *See, e.g.*, New Jersey v. T.L.O., 469 U.S. 325, 341 (1985) (concluding that "the 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 to believe that the subject of the search has violated or is violating the law"); Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 653 (1995) (identifying a "special needs" exception to the warrant requirement).

54. *See, e.g.*, Acton, 515 U.S. at 655–56.

55. *Id.* (quoting Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969)).

56. 469 U.S. 325 (1985).

57. *See id.* at 333–36.

58. *See id.* at 343.

59. *See id.* at 339.

60. *See* WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 3.5(d), at 178 (2d ed. 1992).

suspicion.[61] The Court, quoting *Terry v. Ohio*,[62] set forth a two-pronged test for reasonableness: the search must be "justified at its inception"[63] and "reasonably related in scope to the circumstances which justified the interference in the first place."[64]

In *Vernonia School District 47J v. Acton*,[65] the Supreme Court approved an Oregon school district's drug testing plan for school athletes.[66] The Court concluded that compelled collection of urine for drug-testing was a search for purposes of Fourth Amendment analysis[67] and analyzed the reasonableness of the search by balancing four factors: 1) the nature of the privacy upon which the search intrudes;[68] 2) the character and scope of the search;[69] 3) the nature and immediacy of the government's interest;[70] and 4) the efficacy of the measures adopted to achieve that interest.[71] Weighing the third factor (the state interest in reducing school children's drug use) most heavily, the Court upheld the school district's policy.[72]

In *T.L.O.* and *Acton*, the Supreme Court recognized the power of school officials to combat drug problems by restricting Fourth Amendment protections for students. What began in *T.L.O.* as a modified *Terry* reasonableness analysis of searches of students[73] emerged in *Acton* as a determination that students enjoy a lower expectation of privacy while at school.[74] The *Acton* Court balanced interests and determined that the interests of schools in reducing drug use outweighed students' Fourth Amendment protections against unreasonable searches.[75] The balancing approach thus permitted the Court to consider the social context of the school search question. *Acton* signified judicial acceptance of drug problems in American schools as justifying a "special needs" exception to the preference for warrants.[76]

2. Illinois Cases

Illinois courts have incorporated the reasonableness test from *T.L.O.* and the balancing test from *Acton* into the law governing school

61. *See T.L.O.*, 469 U.S. at 332 n.2.
62. 392 U.S. 1 (1968).
63. *Id.* at 20.
64. *Id.* at 29.
65. 515 U.S. 646 (1995).
66. *See id.* at 664–65.
67. *See id.* at 652.
68. *See id.* at 654.
69. *See id.* at 658.
70. *See id.* at 660.
71. *See id.*
72. *See id.* at 662–63, 664–65.
73. *See* New Jersey v. T.L.O., 469 U.S. 325, 341 (1985).
74. *See Acton*, 515 U.S. at 656 (quoting *T.L.O.*, 469 U.S. at 348 (Powell, J., concurring)).
75. *See id.* at 660.
76. *Id.* at 653.

searches. Two Illinois cases illustrate the policies underlying the special needs of schools and the corresponding lower expectation of privacy of students while at school.

In *People v. Dilworth*,[77] the Supreme Court of Illinois applied the rules from *T.L.O.* and *Acton* to the search of a student's flashlight, which contained drugs.[78] The court held that, because the flashlight was "contraband *per se*," the school's security officer properly searched and seized it after observing the student's suspicious behavior.[79] Reasonable suspicion was the appropriate standard, according to the court, because of the nature and immediacy of the government's interest: the state's "compelling interest in maintain[ing] a proper educational environment for students . . . includes maintaining its schools free from the ravages of drugs."[80] The court did, however, recognize limits on the school's power to search students: "The State cannot compel attendance at public schools and then subject students to unreasonable searches of the legitimate, non-contraband items that they carry onto school grounds."[81]

In *People v. Pruitt*,[82] an Illinois appellate court, citing *Dilworth*, upheld the use of a metal detector to locate weapons as a reasonable search under the reasonable suspicion test.[83] Recognizing that schools have special needs that justify lower Fourth Amendment standards of reasonableness,[84] the court noted that it "mourn[ed] the loss of innocence" that led it to weigh "violence and the threat of violence . . . in the public schools" against students' personal privacy rights.[85]

Dilworth and *Pruitt* reflect Illinois courts' acceptance of a lower expectation of privacy for students as a necessary sacrifice to keep schools safe from drugs and guns. Although both cases incorporate the standards and priorities of *T.L.O.* and *Acton*, neither addresses the specific issues of automobiles and implied consent at the heart of the Champaign school policy.

C. State Empowerment

1. The Illinois Empowerment Statute

The Champaign policy was enacted pursuant to state empowerment statutes.[86] Some of the policy's language is imported directly from the statutes, which permit school authorities to:

77. 661 N.E.2d 310 (Ill. 1996).
78. *See id.* at 314–15.
79. *Id*. at 313, 316.
80. *Id.* at 318 (citing New Jersey v. T.L.O., 469 U.S. 325 (1985), and *Acton*, 515 U.S. 646).
81. *Id*. at 316.
82. 662 N.E.2d 540 (Ill. App. 1996).
83. *See id.* at 547.
84. *See id*. at 545.
85. *Id.* at 545–46.
86. *See* 105 ILL. COMP. STAT. ANN. 5/10-22.10a (West 1998) (empowering school boards with the

> inspect and search places and areas such as lockers, desks, parking lots, and other school property and equipment owned or controlled by the school, as well as personal effects left in those places and areas by students, without notice to or the consent of the student, and without a search warrant.[87]

The Illinois General Assembly found, as a matter of public policy, that students have no reasonable expectation of privacy in these places or in personal effects left in these places.[88] To date, no challenges have been brought under the statutes.

2. Other State Empowerment Statutes

Seventeen states have attempted to incorporate or change judge-made rules concerning school searches via "empowerment" statutes similar to those in Illinois.[89] Only the Tennessee statute mentions searches of automobiles,[90] and no statute refers to searches by implied consent. Ten states, however, explicitly require that students have notice of the school's search policy.[91] Thirteen states identify the level of suspi-

authority of the state legislature to search certain areas in schools); 105 ILL. COMP. STAT. ANN. 5/10-22.6(e) (West 1998) (providing for school searches and for the suspension of students).

87. 105 ILL. COMP. STAT. ANN 5/10-22.6(e) (West 1998).

88. *See id.*

89. *See* ALASKA STAT. § 14.03.105 (Michie 1962 & Supp. 1995) (authorizing school officials to search lockers and other containers provided by the school); ARK. CODE ANN. § 6-21-608 (Michie 1993 & Supp. 1999) (authorizing school officials to search school-owned property without a warrant upon receipt of information that contraband is therein); CONN. GEN. STAT. ANN. § 54-33n (West Supp. 1999) (authorizing the search of lockers and school property by school officials); FLA. STAT. ANN. § 232.256 (West 1998) (providing procedures for school administrators to search students' effects); IND. CODE ANN. § 20-8.1-5.1-25 (West Supp. 1999) (regulating locker searches); IOWA CODE ANN. § 808A.1(5) (West 1994) (defining a "student search rule" to be established by the school board); IOWA CODE ANN. § 808A.2 (West 1994) (authorizing school boards to search a student or "a protected student area" and setting limitations on reasonable searches); LA. REV. STAT. ANN. § 17:416.3 (West 1982 & Supp. 1999) (authorizing searches of student lockers, desks, and other areas); LA. REV. STAT. ANN. § 17:416.6 (West Supp. 1999) (authorizing searches by school administrators of non-student visitors on school premises); MD. CODE ANN., EDUC. § 7-308 (Michie 1999) (authorizing searches of students and schools); MINN. STAT. ANN. § 121A.72 (West Supp. 1999) (authorizing locker searches); N.J. STAT. ANN. § 18A:36-19.2 (West 1999) (authorizing searches of lockers and other storage facilities provided by the school); OKLA. STAT. ANN. tit. 70, § 24-102 (West 1998) (authorizing searches of students or any property in possession of students); R.I. GEN. LAWS § 16-21-21 (1996) (empowering school committees to make and enforce student discipline codes); S.C. CODE ANN. § 59-63-1150 (West Supp. 1998) (authorizing searches of students and "persons entering the school premises"); S.D. CODIFIED LAWS § 13-32-1 (Michie Supp. 1999) (granting school officials disciplinary authority over students); TENN. CODE ANN. §§ 49-6-4201 to -4216 (1996 & Supp. 1999) (authorizing searches of automobiles, lockers, persons, and containers brought into school); VA. CODE ANN. § 22.1-277.01:2 (Michie Supp. 1999) (authorizing searches of students and lockers); VA CODE ANN. § 22.1-278 (Michie 1997 & Supp. 1999) (detailing subjects that school board policies should address); WASH. REV. CODE ANN. § 28A.600.210, .220, .230, .240 (West 1997 & Supp. 2000) (authorizing searches of lockers, students, and students' possessions).

90. *See* TENN. CODE ANN. § 49-6-4204 (1996) (allowing the search of "vehicles parked on school property by students or visitors").

91. *See* ALASKA STAT. § 14.03.105 (Michie 1962 & Supp. 1995) ("Notices . . . stating the right and the intention of . . . school district officers to permit searches and examinations . . . shall be posted in prominent locations throughout a school."); FLA. STAT. ANN. § 232.256(3) (West 1999) ("The school board shall [post] in each public school, in a place readily seen by students, a notice stating that

cion required for a school official to conduct a search of a student on school grounds, generally reasonable suspicion or reasonable belief.[92] One state explicitly refers to the *T.L.O.* reasonableness standard.[93] Five state legislatures made findings of fact or policy that students have no privacy interest in certain areas within or around schools.[94]

a student's locker or other storage area is subject to search, upon reasonable suspicion, for prohibited or illegally possessed substances or objects."); IND. CODE ANN. § 20-8.1-5.1-25(a) (West Supp. 1999) (requiring that the school provide a copy of its locker search policy to students and parents); IOWA CODE ANN. § 808A.2(2) (West Supp. 1999) (requiring annual written notice to parents and students of the school's authority to search "school lockers, desks, and other facilities or spaces owned by the school" without notice); MD. CODE ANN., EDUC. § 7-308(b)(2) (Michie 1999) ("The right of the school official to search the locker shall be announced or published previously in the school."); MINN. STAT. ANN. § 121A.72(2) (West Supp. 1999) (requiring that the school provide a copy of its locker search policy to students when the students are first given use of their lockers); N.J. STAT. ANN. § 18A:36-19.2 (West 1999) (authorizing school officials to search lockers only "so long as students are informed in writing at the beginning of each school year that inspections may occur"); OKLA. STAT. ANN. tit. 70, § 24-102 (West 1998) (requiring that the discipline code inform students that they have no privacy expectations in lockers); TENN. CODE ANN. § 49-6-4216(c) (1996 & Supp. 1999) (providing for annual notice of search policies to parents and students); WASH. REV. CODE ANN. § 28A.600.240(1) (West 1997) (holding that school officials may search without prior notice).

92. *See* ARK. CODE ANN. § 6-21-608 (Michie Supp. 1999) ("upon receipt of information that guns, drugs, or other contraband items are concealed in school-owned property"); CONN. GEN. STAT. ANN. § 54-33n (West Supp. 1999) ("reasonable grounds for suspecting that the search will turn up evidence" of a violation of "either the law or the rules of the school"); FLA. STAT. ANN. § 232.256(2) (West 1998) ("reasonable suspicion that a prohibited or illegally possessed substance or object is contained within a student's locker or other storage area"); IOWA CODE ANN. § 808A.2 (West Supp. 1999) ("reasonable grounds for suspecting that the search will produce evidence" of a violation of "either the law or a school rule or regulation"); LA. REV. STAT. ANN. § 17:416.3 (West Supp. 1999) ("reasonable grounds to suspect that the search will reveal evidence that the student has violated the law, a school rule, or a school board policy"); LA. REV. STAT. ANN. § 17:416.6 (West Supp. 1999) ("reasonable suspicion that the person had weapons, illegal drugs, alcohol, stolen goods, or other materials or objects the possession of which is a violation of the parish or city school board's policy"); MD. CODE ANN., EDUC. § 7-308 (Michie 1999) ("reasonable belief that the student has in his possession an item, the possession of which is a criminal offense under the laws of this state or a violation of any other State law or a rule or regulation of the county board"); MINN. STAT. ANN. § 121A.72 (West Supp. 1999) (authorizing school authorities to search lockers "for any reason at any time"); OKLA. STAT. ANN. tit. 70, § 24-102 (West 1998) ("upon reasonable suspicion"); R.I. GEN. LAWS § 16-12-10 (1996) (granting immunity for searches pursuant to "reasonable cause to suspect that . . . [a] student is abusing a controlled substance or alcohol, or is under the influence of a dangerous drug or alcohol, . . . or has in his or her possession a controlled substance or alcohol"); S.C. CODE ANN. § 59-63-1150 (West Supp. 1998) (incorporating the "'reasonableness standard' set forth in *New Jersey v. T.L.O.*"); TENN. CODE ANN. § 49-6-4204 (1996) ("when individual circumstances in a school dictate it," including but not limited to misconduct or "reasonable suspicion that [students possess] dangerous weapons, drugs, or drug paraphernalia"); TENN. CODE ANN. § 49-6-4205 (1996) (setting forth a five-part reasonableness test); WASH. REV. CODE ANN. § 28A.600.230(1) (West 1997 & Supp. 2000) ("reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules"); WASH. REV. CODE ANN. § 28A.600.240(1) (West 1997) ("[T]he school . . . may search all student lockers at any time without prior notice and without a reasonable suspicion that the search will yield evidence of any particular student's violation of the law or school rule.").

93. *See, e.g.*, S.C. CODE ANN. § 59-63-1150 (West Supp. 1998).

94. *See* FLA. STAT. ANN. § 232.256(1) (West 1998) ("The Legislature finds that the case law of this state provides that relaxed standards of search and seizure apply under the State Constitution to searches of students' effects by school officials, owing to the special relationship between students and school officials and, to a limited degree, the school officials' standing in loco parentis to students."); IND. CODE ANN. § 20-8.1-5.1-25(b) (West Supp. 1999) ("A student who uses a locker that is the property of a school . . . is presumed to have no expectation of privacy in that locker or the locker's contents."); MINN. STAT. ANN. § 121A.72 (West Supp. 1999) ("It is the policy of the state of Minnesota

D. One Proposed Solution— The Champaign Policy

The Champaign policy, approved on July 13, 1998,[95] "recognizes the need to maintain a safe and healthy environment while protecting the individual constitutional rights of its students."[96] As enacted, the policy is a modification of a previous policy; the addition of signs in school parking lots was the only substantive change.[97] After consulting with a liaison officer at the Champaign Police Department, the school district posted signs in parking lots as a response to quantities of drugs (in particular, marijuana) circulating in the schools.[98] Prior to the policy's enactment, if security officers had reason to suspect[99] that students were violating school alcohol or drug policies, the officers would identify the owner of the car, ask the owner to open the car, and a school official would conduct a search of the vehicle.[100] Although the previous policy permitted searches of vehicles upon reasonable suspicion, the district believed that signs in the parking lot would provide an added "deterrent effect" and put students on "notice" of the school's intent to search.[101] Searches prior to the policy were conducted infrequently, and no searches have been conducted since the policy was enacted.[102]

---

that . . . [a]t no time does the school district relinquish its exclusive control of lockers provided for the convenience of the students."); OKLA. STAT. ANN. tit. 70, § 24-102 (West Supp. 2000) ("Pupils shall not have any reasonable expectation of privacy towards school administrators or teachers in the context of a school locker, desk, or other school property."); WASH. REV. CODE ANN. § 28A.600.220 (West 1997) ("No right or expectation of privacy exists for any student as to the use of any locker issued or assigned to a student by a school . . . ."). *But see* New Jersey v. T.L.O., 469 U.S. 325, 338 (1985) ("Although this Court may take notice of the difficulty of maintaining discipline in the public schools today, the situation is not so dire that students in school may claim no legitimate expectations of privacy.")

95. Champaign Policy, *supra* note 2. The policy, in pertinent part, states:

> The Champaign school district recognizes the need to maintain a safe and healthy environment while protecting the individual constitutional rights of its students. To maintain order and security in the schools, school authorities may inspect and search desks, lockers, parking lots or other property owned or controlled by the school and personal effects left in these areas without notice to or the consent of the student, and without a search warrant. In addition, school authorities may request the assistance of law enforcement officials, and their specially trained dogs for the purpose of conducting searches of these areas for illegal drugs, weapons, or other illegal or dangerous substances or materials.

Id.

96. *Id.*

97. *See* Telephone Interview with Arlene Blank, Assistant Superintendent for Support Services, Champaign Community Unit School District No. 4 (Nov. 19, 1998).

98. *See id.* An officer in the Champaign Police Department, not a school administrator or lawyer, suggested the language of the signs. *See id.*

99. For example, if an officer notices a group of students congregated around a vehicle or notices students coming and going from a particular vehicle, he might have reasonable suspicion to believe that the school's alcohol or drug policies are being violated. *See id.*

100. *See id.* School officials conduct the searches because the officials have broader authority than private security officers under the state empowerment statutes. *See, e.g.*, 105 ILL. COMP. STAT. ANN. 5/10-22.10a (West 1998); *supra* notes 86–88 and accompanying text.

101. Telephone Interview with Arlene Blank, *supra* note 97.

102. *See id.*

Other schools across the country have adopted similar vehicle search policies.[103] Several of the policies declare that student parking on school grounds is a privilege, not a right.[104] Although the privilege of parking at school may not be constitutionally protected, the right of students to be free from unreasonable searches of their persons and belongings is guaranteed by the Fourth Amendment and cannot be abridged by a school policy.

III. ANALYSIS—JUSTIFICATIONS FOR EMPOWERING SCHOOL OFFICIALS TO SEARCH

There are three conceivable justifications for a search under the Champaign and similar policies. Because schools are a highly regulated environment and because of serious safety concerns, students have been found to have a lower expectation of privacy in their property and their persons on school grounds. Although consent to a search must be given voluntarily,[105] consent may be inferred where there is notice that a search will occur and a serious safety concern exists. Consent may also be inferred under a contract theory, where the subject of the search has agreed in advance to be subject to search. Finally, search of an automobile may be justified under the automobile exception. Automobiles may be subject to less stringent Fourth Amendment standards because they are already highly regulated, and correspondingly, owners enjoy a lower expectation of privacy in their contents. In addition, because automobiles are inherently mobile, it is difficult to obtain a sufficiently specific warrant. Any of these justifications might apply to the search of a student's vehicle under a school policy or state statute.

A. Lower Expectation of Privacy in the School Environment

The rationale for a lower expectation of privacy for public school students is twofold. First, public schools are a highly regulated environment.[106] "Students are subject to a myriad of rules and regulations regarding their attire, their personal hygiene, restrictions on the nature and character of personal items they are permitted to bring onto school property, and of course, their personal liberty while in school."[107] Even if students have a subjective privacy interest in their bodies and personal effects, some courts have suggested that it is not an objectively reason-

103. *See supra* note 52.
104. *See supra* note 52.
105. *See* Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973).
106. *See* New Jersey v. T.L.O., 469 U.S. 320, 339 (1985) ("Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment require[] close supervision of schoolchildren.").
107. Commonwealth v. Cass, 709 A.2d 350, 359 (Pa. 1998).

able privacy interest that society is prepared to accept.[108] It follows, therefore, that students have an even lower expectation of privacy in school-owned property, such as lockers or desks, because the school directly controls and maintains the property.[109]

Second, schools have an obligation and a goal to provide a safe environment that is conducive to learning.[110] Although the nature of the school's interest in conducting a search ultimately goes to the question of the search's reasonableness,[111] it also defines a limit on a student's reasonable expectation of privacy.[112] Thus, the Supreme Court in *T.L.O.* recognized that "the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult."[113]

The rise of violence in public schools[114] has greatly exacerbated concerns about student safety. The *Acton* Court noted that the drug problem in Vernonia, Oregon, schools had created disciplinary problems of "epidemic proportions"[115] and held that a student's right to be free from unreasonable searches was circumscribed by the pressing nature of the school's interest.[116] The court in *Commonwealth v. Cass* defined the school's interest as "[t]he need to protect all the students, to ensure school discipline, and protect school property" and held that the school's interest "limits the student's expectation of privacy while in the school environment."[117]

Both the high level of regulation in schools and the need to foster an environment conducive to learning appear to support the lower ex-

108. This was the position of the New Jersey Supreme Court in *T.L.O.*, but the U.S. Supreme Court rejected this extreme view. *See T.L.O.*, 469 U.S. at 338 & n.5.

109. *See Cass*, 709 A.2d at 357 (holding that students' expectations of privacy in lockers is low because lockers are owned by the school and because the school possesses a master key that opens all lockers); *see also* Zamora v. Pomeroy, 639 F.2d 662, 670–71 (10th Cir. 1981) (holding that a school has a "duty to operate the school as an educational institution and that a reasonable right to inspect is necessary in the performance of the duties, even though it may infringe . . . on a student's Fourth Amendment rights"); Stern v. New Haven Community Schs., 529 F. Supp. 31, 36 (E.D. Mich. 1981) ("Society is prepared to recognize a lesser expectation of Fourth Amendment privacy rights for students.").

110. *See* Vernonia Sch. Dist. v. Acton, 515 U.S. 646, 655–56 (1995) (finding that schools, to some degree, act in loco parentis "with the power and indeed the duty to 'inculcate the habits and manners of civility'" and justifying the reasonableness of a search based on a variety of intrusions to which students must submit "[f]or their own good and that of their classmates"); *see also* 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 10.11(b), at 809 (3d ed. 1996) ("[S]chool searches, as a class, are directed to a rather special public concern—the maintenance of a proper educational environment—which is deserving of a high level of protection.").

111. *See Acton*, 515 U.S. at 652.

112. *See Cass*, 709 A.2d at 360 ("The limits of that expectation of privacy must be ascertained by considering the reasonable needs of the school to, first and foremost, protect the safety and welfare of all the students . . . .").

113. *T.L.O.*, 469 U.S. at 339.

114. *See supra* Part II.A.

115. *Acton*, 515 U.S. at 649.

116. *See id.* at 665.

117. *Cass*, 709 A.2d at 360.

pectation of privacy students enjoy while at school. The Supreme Court, however, has indicated that a low expectation of privacy does not mean *no* expectation of privacy.[118] In *Acton*, the Supreme Court cited *Tinker v. Des Moines Independent Community School District*[119] for the proposition that students retain constitutional freedoms and protections in school.[120] In *Tinker*, a First Amendment case, the Supreme Court declared that:

> state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.[121]

The *Tinker* Court held that a school's authority over students is not absolute and that the school district could not limit students' freedom of expression by prohibiting them from wearing armbands to protest the Vietnam War.[122]

The administrative procedure regulations attached to the Champaign policy explicitly find that "[s]tudents have *no reasonable expectation of privacy* in their desks, lockers, parking lots, or other property owned or controlled by the school or their personal effects left in those areas."[123] This language suggests a departure from the balancing approach used in *Acton* to determine a student's reasonable expectation of privacy. It is also at odds with Justice Fortas's declaration in *Tinker* that students do not "shed their constitutional rights . . . at the schoolhouse gate."[124]

B. Implied Consent

A search conducted pursuant to consent is presumptively legitimate,[125] but an individual must consent to the search voluntarily.[126] Vol-

118. *See T.L.O.*, 469 U.S. at 339 ("[T]here is no reason to conclude that [students] have necessarily waived all rights to privacy in [noncontraband] items merely by bringing them onto school grounds.").

119. 393 U.S. 503 (1969).

120. *See Acton*, 515 U.S. at 655–66.

121. *Tinker*, 393 U.S. at 511.

122. *See id*. at 514.

123. Champaign, Ill. Community Unit School District No. 4, Policy No. 710.08R (July 13, 1998) (emphasis added) [hereinafter Policy Regulation].

124. *Tinker*, 393 U.S. at 506.

125. *See* Schneckloth v. Bustamonte, 412 U.S. 218, 228 (1973).

126. *See id.* One court has remarked that notice and voluntary conduct are "necessary but not sufficient conditions" in a lawful search pursuant to consent. McGann v. Northeast Ill. Reg'l Commuter R.R., 8 F.3d 1174, 1181 (7th Cir. 1993). The court also recognized that "there is a view that the doctrine of implied consent really 'has little to do with "consent"' as that term is generally understood, but is in reality a separate exception to the warrant requirement comparable to the exception for regulatory searches undertaken for an administrative purpose." *Id.* (citations omitted).

untariness is determined according to the totality of the circumstances,[127] and courts generally are loathe to infer consent where the subject of the search has not given it explicitly:[128] "Voluntary consent must be proven by clear and positive evidence, and the state has the burden of proof. . . . Every reasonable presumption is against one's waiver of his constitutional rights."[129] The signs posted pursuant to the Champaign policy, however, warn that "the person driving the vehicle is deemed to consent to a complete search of the vehicle for any reason."[130]

1. Notice and Safety

Two recurring factors exist in cases where courts have found implied consent to a search: notice[131] and serious safety concerns.[132] Courts are divided on the question of whether a sign posted where the subject of a search can see it provides sufficient notice to infer consent. Some courts have held that, although "signs may bear on the overall reasonableness of the Fourth Amendment intrusion at issue[, it is doubtful that] their presence is sufficient to support a conclusion that [the subject] consented, impliedly or otherwise."[133] Implied consent by means of a sign appears to be strongest at checkpoints. Most courts have held that "persons presenting themselves at security checkpoints . . . knowing by way of a sign or other notice that doing so would subject their persons to search, have impliedly consented to the search performed."[134]

127. *See Bustamonte*, 412 U.S. at 227 (noting the competing concerns of the need for consent searches and assuring the absence of coercion in assessing the totality of the circumstances).

128. *See* Commonwealth v. McCloskey, 272 A.2d 271, 273 n.2 (Pa. Super. Ct. 1970); *see also McGann*, 8 F.3d at 1180–81 ("Courts confronted with claims of implied consent have been reluctant to uphold warrantless searches based simply on actions taken in light of a posted notice."). *But see* United States v. Haynie, 637 F.2d 227, 230 (4th Cir. 1980) (inferring consent from a posted sign and the desire to proceed from a security checkpoint to the boarding area).

129. *McCloskey*, 272 A.2d at 273 n.2 (citations omitted). *But see* United States v. Price, 925 F.2d 1268, 1270–71 (10th Cir. 1991) (holding that the *Bustamonte* totality-of-the-circumstances test rendered a presumption against waivers inapplicable to consent searches). One scholar opines that "the circumstances surrounding the typical student-school official confrontation are not conducive to a finding of voluntariness." 4 LAFAVE, *supra* note 110, § 10.11(e), at 841 (citing the lack of maturity or sophistication of students and the disparity of power between students and administrators as factors militating against a finding of voluntariness).

130. Champaign Policy, *supra* note 2.

131. *See McGann*, 8 F.3d at 1181.

132. *See* LAFAVE & ISRAEL, *supra* note 60, § 3.9(h), at 228.

133. Gadson v. State, 668 A.2d 22, 31 n.9 (Md. Ct. Spec. App. 1995) (holding that a sign is insufficient to infer consent to search upon entry to prison); *see also McGann*, 8 F.3d at 1180–81 (holding that notice and voluntary conduct alone are not enough to infer consent in a search at a commuter rail parking lot); Gaioni v. Folmar, 460 F. Supp. 10, 15 n.14 (M.D. Ala. 1978) ("Voluntary consent cannot be implied solely from the presence of such signs, especially since many patrons [of the concert venue] never saw them.").

134. *McGann*, 8 F.3d at 1179; *see also* United States v. Lopez-Pages, 767 F.2d 776, 779 n.2 (11th Cir. 1985) (finding implied consent to search based on a sign in an airport); State v. Rexroat, 966 P.2d 666, 670 (Kan. 1998) (same based on a security checkpoint in a courthouse); State v. Ascencio, 607 A.2d 1381, 1383 (N.J. Super. Ct. Law Div. 1992) (same based on a sign in an airport).

Implied consent is also often inferred in circumstances giving rise to great safety or security concerns, such as in airports and courthouses, the archetypical examples of situations where safety concerns outweigh minimal Fourth Amendment intrusions.[135] Most airports and courthouses not only have a security checkpoint with metal detectors and x-ray machines[136] but also have increased other security measures in response to various terrorist threats.[137]

In many respects, schools share attributes of airports or courthouses. Security concerns in schools may not have the same potential effect on national or international affairs as in airports or courthouses, but school safety has become an issue of great national concern.[138] The security considerations of implied consent apply with equal force to school environments as to courthouses and airports. Structural similarities between schools and airports or courthouses support the analogy; many schools are instituting closed perimeters or lock-ins or have established security checkpoints with metal detectors and guards at school entrances.[139] Many schools also post notices to students that certain areas are subject to search.[140] To the extent that the implied consent doctrine has been accepted in the context of airports and courthouses, therefore, it seems reasonable, by analogy, to apply the doctrine to some school situations. One scholar, however, suggests that:

> [t]he fiction of implied consent is inconsistent with the established rule that even privileges may not be conditioned upon the surrender of constitutional rights . . . . It has no place in the analysis of searches directed at students, for it diverts attention from the fundamental inquiry into the reasonableness of the particular search procedures at issue.[141]

The analogy is obviously not perfect. In airports, a sign is deemed to provide sufficient notice to infer consent to a search where the sign is clearly posted in a controlled security checkpoint and the individual voluntarily proceeds through the checkpoint.[142] In schools with similar security checkpoints, it would be reasonable to infer consent to a search if a

135. *See, e.g.*, *Rexroat*, 966 P.2d at 670 (finding implied consent to search based on a security checkpoint in a courthouse); *Ascencio*, 607 A.2d at 1384 (finding implied consent to search based on a sign in an airport). *But see* Tin Man Lee v. State, 773 S.W.2d 47, 48 (Tex. Ct. App. 1989) (finding implied consent to search based on a sign in a night club).

136. *See* Jason Lazarus, Note, *Vision Impossible? Imaging Devices—The New Police Technology and the Fourth Amendment*, 48 FLA. L. REV. 299, 318 n.137 (1996).

137. *See id.*

138. *See supra* notes 21–45 and accompanying text.

139. *See, e.g.*, Breckenridge, *supra* note 46 (describing security cameras, metal detectors, and coded identification cards in a Cleveland, Ohio, area high school); Dave DeValois, *Safety Still a Priority*, DES MOINES REG., Aug. 12, 1998, at 1S (describing a lock-in, security desk, and security cameras in Ankeny, Iowa, schools); *see also* Cooper, *supra* note 28 (recommending metal detectors and closed campuses for all Oklahoma schools).

140. *See* statutes cited *supra* note 91.

141. 4 LAFAVE, *supra* note 110, § 10.11(e), at 842. Professor LaFave also notes that the Supreme Court rejected the school's implied consent argument in *T.L.O*. *See id.*

142. *See* United States v. Lopez-Pages, 767 F.2d 776, 779 n.2 (11th Cir. 1985).

sign were posted and students proceeded voluntarily through a checkpoint. One court has upheld an implied consent search outside the context of an airport or courthouse when the subject passed through a checkpoint with a clearly posted sign at a night club.[143] But what about schools without security checkpoints or parking lots where signs are posted, but there is no gate or checkpoint?[144] Another court held that a sign in a parking lot at a commuter train facility was relevant, but not determinative, to a finding of implied consent.[145] The court noted that the parking lot was:

> not burdened with unique security concerns in the same sense as airports, prisons and courthouses. . . . Indeed, the search [of a car as it exits the parking lot] is markedly different from the searches upheld in those contexts. In the case of airports, prisons and courthouses, the searches are performed routinely and indiscriminately on persons as they enter the restricted area. This practice of searching every person circumscribes the discretion of the searching officers.[146]

A school parking lot seems to fall somewhere between airports, prisons, and courthouses, on the one hand; and a commuter rail parking lot, on the other. The analogy of schools to airports, prisons, and courthouses is strongest where schools have a closed campus or perimeter, some controlled entrance through which every student, teacher, and visitor passes, and where a sign and common practice provide notice that a search is not only possible but likely. But a school parking lot often lacks the checkpoint or controlled entry characteristics of airports, prisons, and courthouses.

School parking lots present more of a security concern than a commuter rail parking lot, however. School administrators are concerned not just with the presence of weapons on school property but also with drug dealing and drug use by students, on and off school property.[147] Even if a student does not bring drugs or a weapon with him into the school building, the presence of contraband on school property is a valid concern for administrators, particularly where students may be permitted access to the parking lot during school hours.

The Champaign policy addresses both the notice and safety concerns. Schools in the district have posted signs notifying students that, by

143. *See* Tin Man Lee v. State, 773 S.W.2d 47, 48 (Tex. Ct. App. 1989).

144. At Champaign Central High School, for example, the sign described *supra* note 2 and accompanying text is posted facing the street, so that students, faculty, and visitors can only see it if they approach the school from the south or west and cannot see it as they exit their cars and proceed toward the school.

145. *See* McGann v. Northeast Ill. Reg'l Commuter R.R., 8 F.3d 1174, 1182 (7th Cir. 1993) ("At least when there are plausible alternatives to subjecting oneself to a search, a reasonable person who freely assumes the risk of a search would obviously not maintain the same expectations of privacy as one who chose to avoid the risk.").

146. *Id.* at 1183.

147. *See supra* notes 21–45.

parking in a school-owned lot, they are deemed to have consented to a search of their automobiles. The administrative procedure regulations appended to the policy are somewhat contradictory; they explain that "school authorities may inspect and search desks, lockers, parking lots, or other [school] property and . . . personal effects left in these areas without notice to or the consent of the student,"[148] but they also require that "[p]arking lots shall have appropriate signs in place indicating that student vehicles are subject to random searches by specially trained dogs."[149] As of publication, there have not been any searches conducted under the Champaign policy,[150] so one cannot say that students expect that their automobiles actually *will* be searched if they park in a school lot, the language on the signs[151] notwithstanding. Although the sign warns that drivers are deemed to consent[152] to a search of their vehicles, it is possible that a court would find that the sign and circumstances provided insufficient notice for a finding of voluntary consent.

2. Unconstitutional Conditions

The voluntariness of a student's actions giving rise to consent may be questionable. In *Tinker v. Des Moines Independent Community School District*,[153] the Supreme Court held that students could not be deemed to have waived all constitutional rights merely by entering a school.[154] The question arises whether the Champaign policy (or other statutes or policies that infer consent to a search from a student's act of entering the school grounds) imposes an unconstitutional condition on students. Many states have compulsory school attendance laws for students under sixteen years of age.[155] Thus, a student who is compelled by law to attend school and assumed to have waived constitutional protections against unreasonable searches by virtue of attending school cannot be deemed to have consented *voluntarily* to a search.

There is a wrinkle in this argument as applied to school parking lots, however— most children under the statutory age for compulsory attendance are too young to drive automobiles. In Illinois, for example, students are compelled to attend school from the ages of seven to sixteen,[156] but children under the age of sixteen are not permitted to operate moving vehicles.[157] A student who is licensed to drive in Illinois is by defini-

148. Policy Regulation, *supra* note 123.
149. *Id.*
150. *See* Telephone Interview with Arlene Blank, *supra* note 97.
151. *See supra* text accompanying note 2.
152. *See supra* note 2.
153. 393 U.S. 503 (1969).
154. *See id.* at 506.
155. *See, e.g.*, 105 ILL. COMP. STAT. ANN. 5/26-2 (West 1998).
156. *See id.*
157. *See* 625 ILL. COMP. STAT. ANN. 5/6-103, -107 (West 1998) (providing for graduated licenses for minors ages 16 and 17).

tion too old to be compelled to attend public school. Furthermore, students are compelled neither to park in school parking lots nor to drive to school at all.

Moreover, it is questionable whether the unconstitutional conditions doctrine would be applied even in the context of schools generally, let alone school parking lots specifically. Attorneys and criminal defendants (or anyone subject to a subpoena) can be compelled to appear in court,[158] and they are almost always subject to a checkpoint search by a metal detector or other device.[159] Even though students under the age of sixteen are compelled to attend school, as attorneys and parties are compelled to appear in court, courts are tolerant of metal detectors at school entrances.[160] Thus, unconstitutional conditions are an unlikely bar to obtaining voluntary consent from students in situations that might arise under the Champaign policy.

3. Contract Rationale

Another context in which courts have inferred consent is from a contract in which a party has expressly or impliedly consented to a search by another party. In cases involving searches of university students' dormitory rooms, some state courts have inferred consent from the contractual agreement between the student and the university; the housing contract contained an express agreement either to be searched or to abide by university policies.[161] Some schools have adopted policies that "allow students to park their cars on school property by permit only. In applying for the parking permit, students are advised that their vehicles are subject to inspection and search by school personnel."[162] The permit agreement then provides the necessary showing of informed and voluntary consent to a vehicle search. The contract line of reasoning does not apply to the Champaign policy, however, because students do not sign a contract or agreement to park their cars on school property.[163]

158. *See, e.g.*, FED. R. CRIM. P. 17(a) (detailing the form and issuance of subpoenas); *id*. 17(g) ("Failure . . . without adequate excuse to obey a subpoena . . . may be deemed a contempt of court."); FED. R. CIV. P. 4(a) (describing the issuance of summons).

159. *See supra* note 136 and accompanying text.

160. *See, e.g.*, People v. Pruitt, 662 N.E.2d 540, 547 (Ill. App. Ct. 1996). The court classified metal detectors at schools as a permissible administrative search. The court noted that "[e]ach of the suspicionless, administrative searches upheld by the Supreme Court was conducted as part of a general regulatory scheme to ensure public safety, not as a criminal investigation to secure evidence of crime. The analogy to the metal detector screening in this case is apt." *Id.*

161. *See*, *e.g.*, State v. Kappes, 550 P.2d 121, 124 (Ariz. 1976) (holding that the search of a dormitory room conducted pursuant to the housing agreement did not violate the Fourth Amendment); People v. Kelly, 16 Cal. Rptr. 177, 184 (Ct. App. 1961) (holding that when a student consented to live by dormitory rules permitting university officials to enter his room, a search was not unlawful); State v. Hunter, 831 P.2d 1033, 1036 (Utah Ct. App. 1992) (holding that when a housing contract reserved the right of university officials to enter rooms, the search of a dormitory was reasonable).

162. Payne, *supra* note 52.

163. *See* Telephone Interview with Arlene Blank, *supra* note 97.

C. Automobile Searches

Another possible justification for warrantless searches in the school context is the automobile exception. The Champaign policy and the Tennessee statute, for example, expressly mention searches of automobiles.[164] The Supreme Court first recognized an "automobile exception" to the warrant requirement in 1925 in *Carroll v. United States*.[165] The original justification for exempting automobiles from the warrant requirement was their mobility.[166] Warrants must specify the location of the structure to be searched,[167] and, unlike a stationary structure, an automobile can be "quickly moved" from its location before a magistrate can issue a warrant that specifies the original location.[168] Sixty years after *Carroll*, the Court clarified the rationale for the automobile exception in *California v. Carney*.[169] There, the Court held that the exception arises not merely from mobility[170] but also from the fact that individuals enjoy a much lower expectation of privacy in automobiles because they are highly regulated by the government.[171]

Recently, the Supreme Court clarified the rules relating to searches of containers within an automobile. In *Wyoming v. Houghton*,[172] the Court held that probable cause to search a vehicle does not run to ownership of the vehicle or to the containers in the vehicle but to the vehicle itself and all containers within which there is probable cause to believe there is contraband.[173] The passenger's and driver's containers may be searched equally if there is probable cause to believe there is contraband anywhere in the vehicle. The Court noted the historical reasonableness of searching containers found within automobiles.[174] Applying the *Acton* balance of privacy interests against governmental interests to searches of passenger containers, the Court cataloged the reasons why a reduced expectation of privacy in vehicles exists:

> Passengers, no less than drivers, possess a reduced expectation of privacy with regard to the property that they transport in cars, which "trave[l] public thoroughfares," . . . "seldom serv[e] as . . . the repository of personal effects," are subjected to police stop and ex-

164. *See supra* text accompanying note 2; *see also supra* note 90.

165. 267 U.S. 132, 153 (1925).

166. *See id.* at 153; *see also* Maryland v. Dyson, 527 U.S. 465, 466–67 (1999) (per curiam) (holding that there is "no separate exigency requirement" in the automobile exception). Because of the inherent mobility of automobiles, law enforcement officers apparently may presume exigency to justify searching without a warrant. *See id.*

167. *See generally* Maryland v. Garrison, 480 U.S. 79 (1987); Steele v. U.S., 267 U.S. 505 (1925).

168. *Steele*, 267 U.S. at 153.

169. 471 U.S. 386 (1985).

170. In *Carney*, the Court upheld the search of a motor home under the automobile exception. *See id.* at 394–95.

171. *See id.* at 391.

172. 526 U.S. 295 (1999).

173. *See id.* at 302.

174. *See id.* at 300.

> amination to enforce "pervasive" governmental controls "[a]s an everyday occurrence," . . . and, finally, are exposed to traffic accidents that may render all their contents open to public scrutiny.[175]

The Court noted that, in addition to the reduced expectation of privacy, there are substantial governmental interests in permitting the search of all containers without regard to ownership. Ready mobility of cars, high odds of common enterprise between a driver and passengers, and the administrative nightmare of singling out containers according to ownership all dictate a rule permitting police to search containers without regard to whether the driver or the passenger owns them.[176] The rule resulting from *Houghton* is that probable cause to search a vehicle for contraband extends to *all* containers in the car, without regard to ownership of the containers.

In the context of a school parking lot, both the mobility and the highly regulated rationales, together with the plain view doctrine[177] and the lower expectation of privacy enjoyed by students in their personal effects, suggest that students enjoy a very low expectation of privacy in their automobiles. This would be especially true if a school required students to sign a parking agreement or contract in which the student agreed to abide by school rules and policies.[178] A permit contract would provide the same highly regulated rationale as state automobile registration.

The mere fact that a student's expectation of privacy in her automobile is low, however, does not mean that the automobile can be searched for any reason without any suspicion. The rule that emerged from *Carney* is that "the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate *so long as the overriding standard of probable cause is met*."[179] Because the Supreme Court has required probable cause to search an automobile without a warrant[180] and reasonable suspicion to search a student without a warrant,[181] it seems unlikely that the search of a student's automobile, if not based on consent, could be deemed reasonable without at least some articulable level of suspicion. Language suggesting that school administrators need no reason to justify the search[182] of an automobile on school grounds thus flies in the face of Fourth Amendment principles.

175. *Id.* at 303 (citations omitted).
176. *See id.* at 305.
177. *See, e.g.*, Harris v. United States, 390 U.S. 234, 236 (1968).
178. The analogy is even stronger if the school issues some kind of numbered permit, analogous to a vehicle identification number or license plate.
179. California v. Carney, 471 U.S. 386, 392 (1985) (emphasis added).
180. *See id.*
181. *See* New Jersey v. T.L.O., 469 U.S. 320, 341–42 (1985).
182. *See supra* text accompanying note 2.

One can certainly imagine a situation when a search might be justified by reasonable suspicion (e.g., an administrator in fact had sufficient suspicion of a rule violation) or consent (e.g., the student had signed a consent waiver, or the student had to pass through a gated security area to park the car). However, a policy that predetermines the reasonableness of a search without regard to actual voluntary consent or reasonable suspicion is overbroad.

IV. RESOLUTION

A. Problems with the Legislative Solutions

The Champaign policy and the Illinois empowerment statute, as well as similar state statutes and local policies, have attempted to incorporate legal rules and Fourth Amendment doctrines to permit broad searches of students on school grounds. Although many statutes incorporate language from judicial interpretations of the Fourth Amendment in their articulations of the scope of school search authority, there are many respects in which the statutes permit too broad a sweep. The primary problems with an overbroad statute or policy are the potential to infringe on the Fourth Amendment rights of non-students on school property and the possible negative effects on the educational environment.

1. Impact on Non-Students

One of the main reasons courts accept a looser reasonableness standard for Fourth Amendment searches of students—the special position of students as subject to the supervision and authority of school officials—is absent where non-students (teachers, school employees, and visitors) are concerned.[183] Although non-students also may have a lower expectation of privacy in the school environment because of safety concerns and pervasive regulation, adult non-students enjoy a greater expectation of privacy than students.[184] The administrative procedure regulations appended to the Champaign policy require the parking lot signs to indicate that "*student* vehicles are subject to random searches by specially trained dogs."[185] The policy also refers only to searches of students, without specific reference to automobiles.[186] The signs posted in the parking lot, however, specify "the person driving the vehicle,"[187] which could include teachers, administrators, or visitors.

183. *See* FLA. STAT. ANN. § 232.256(1) (West 1998) (finding "relaxed standards of search and seizure" for students "owing to the special relationship between students and school officials and, to a limited degree, the school officials' standing in loco parentis to students").

184. *See, e.g.*, *T.L.O.*, 469 U.S. at 348 (Powell, J., concurring) ("Students within the school environment have a lesser expectation of privacy than members of the population generally.").

185. Champaign Policy, *supra* note 2 (emphasis added); *see also supra* note 95.

186. *See supra* note 2.

187. Merli, *supra* note 2.

Thus this policy has significant potential to affect non-students. If students do not register their vehicles with the school or sign a permit contract to identify their automobiles[188] and if administrators can search without the consent of or notice to the owner,[189] administrators instigating a search will have no means of knowing whether an automobile belongs to a student. Under the policy, it appears that administrators could conduct warrantless searches of vehicles owned by non-students.

Yet the justifications for searching students are not necessarily present for non-students. Certainly, safety concerns exist regardless of whether contraband comes on to school property through the hands of a student or a non-student. To the extent that the lowered expectation of privacy is derived from students' submission to the authority of school administrators, however, non-students would probably enjoy a higher expectation of privacy than students.

If consent is inferred from notice given to students in the form of a handbook or letter, a visitor who never received such materials could not have knowingly consented to a search. And although there are signs posted near the parking lots, it is not clear that drivers could see them approaching the lot from all directions.[190] Further, there is no controlled checkpoint-style entry to the parking lot to provide notice of the possibility of a search. It is certainly possible to imagine a scenario where a non-student approaches the lot from a direction that prevents her from seeing the sign and parks in the lot without knowledge that she may be subject to search. The constitutionality of a vehicle search under these circumstances is questionable.

2. Chilling Effect on the Learning Environment

Most states enacted school search statutes with the express purpose of fostering an environment more conducive to learning.[191] But the lessons students take away from their encounter with authority figures may run counter to the states' intentions:

> The schoolroom is the first opportunity most citizens have to experience the power of government. Through it passes every citizen and public official, from schoolteachers to policemen and prison guards. The values they learn there, they take with them in life. One of the most cherished ideals is the one contained in the Fourth Amendment: that the government may not intrude on the personal

188. *See* Telephone Interview with Arlene Blank, *supra* note 97.

189. *See* Merli, *supra* note 2.

190. *See supra* note 144.

191. *See, e.g.*, ALASKA STAT. § 14.03.015 (Michie 1962 & Supp. 1998) (establishing that the educational policy of the state is to "help ensure that all students will succeed in their education and work"); R.I. GEN. LAWS § 16-21-21 (1996) ("The purpose of the code is to foster a positive environment which promotes learning."); TENN. CODE ANN. § 49-6-4203(a) (1996 & Supp. 1999) ("It is the intent of the general assembly in enacting this part to secure a safe environment in which the education of the students of Tennessee may occur.").

> privacy of its citizens without a warrant or compelling circumstance. The Court's decision today is a curious moral for the Nation's youth.[192]

Heavy-handed school search policies foster distrust between students and administrators.[193] An encounter pursuant to an expansive school search policy or statute is likely to impress upon a student that he or she is inherently untrustworthy or that people who have authority may wield it without regard to individual liberties.[194] Despite the insistence by state legislatures and courts that students do not completely shed their Fourth Amendment rights at the schoolhouse gate,[195] the authority of schools to search students reaches so broadly that it effectively strips students of constitutional protection.[196] The statutes attempt to create drug- and violence-free environments in which students can learn. But by couching school search policies in terms like "no reasonable expectation of privacy"[197] and "for any reason at any time,"[198] state legislators and school administrators are exacerbating the "conflict between establishing an environment for the transmission of democratic values and the mixed message sent to the nation's youth that order and discipline are given more emphasis than their individual rights."[199]

B. Another Solution

The aftermath of the Littleton, Colorado, massacre is disheartening. What could school administrators possibly have done to prevent it? Searches of student vehicles and lockers, controlled entry to and exit from the school building, or even metal detectors and armed guards at the door would not have prevented the two students from ambushing the school. Nevertheless, the apparent futility of safety measures has not stopped school administrators, parents, politicians, and the media from speculating about the most effective ways to improve school security.

In general, schools are a local concern and should be governed locally. There should be a preference for state statutes that grant broader

192. New Jersey v. T.L.O., 469 U.S. 320, 385–86 (1985) (Stevens, J., dissenting).

193. *See, e.g.*, Robert Trager & Joseph A. Russomanno, *Free Speech for Public School Students: A "Basic Educational Mission,"* 17 HAMLINE L. REV. 275, 299 (1993) (suggesting that in the free speech context, students' dignity suffers as a result of restrictive policies).

194. *See* Traci B. Edwards, Note, *Shedding Their Rights at the Schoolhouse Gate: Recent Supreme Court Cases Have Severely Restricted the Constitutional Rights Available to Public School Children*, 14 OKLA. CITY U. L. REV. 97, 98–99 (1989) ("The goal of public education is to instill democratic values while maintaining order and discipline. But in protecting that goal, courts send undemocratic signals to school students when they limit the constitutional protections available to them.").

195. *See* Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969).

196. *See* Edwards, *supra* note 194, at 114 (noting that the Supreme Court in *T.L.O.* "removed the obstacles preventing school authorities from encroaching upon a student's legitimate expectation of privacy").

197. *See supra* note 94 and accompanying text.

198. *See supra* note 92.

199. Edwards, *supra* note 194, at 99.

authority to school administrators at the local level[200] rather than specific statutes leaving little discretion for local school districts.[201] It follows that policies at the local level should respond to local problems. Overbroad statutes and policies that invade students' constitutional rights to be free from unreasonable intrusions are the result of policymaking in a void. Although it is virtually undisputed that American public schools are battling a crisis of drug and violence problems, the nationwide responses to highly publicized school shootings may be out of proportion to other problems of violence facing America's youth. For example, "[a]ccording to the National Center for Health Statistics, 40 students were killed with guns in school during the 1997–98 school year. During that time, guns killed about 3,000 children outside of school."[202] The deaths of ten students and two teachers from five of the more highly publicized school shootings in 1997 to 1998 are shocking, but "[t]hat's about the same number of children who die every two days from abuse or neglect at the hands of parents or guardians, according to the U.S. Department of Health and Human Services."[203] Critics of sweeping legislation like the Safe and Drug Free Schools and Communities Act allege that media coverage of the school shootings in 1997 and 1998 was out of proportion to the problem, since the "number of school homicides has actually dropped over the last five years, from 55 annually to 45."[204] The April 1999 massacre of twelve students and one teacher in Littleton, however, focused national attention on school violence, and there is little doubt that school safety has become a bona fide national concern.

The national proportions of the school safety problem notwithstanding, it is imperative that local educators and administrators possess the latitude to respond to local problems. A "Violence Summit" of the Illinois State Board of Education called for action at the local level:

> State and federal efforts can set the stage and provide support to violence prevention and intervention strategies. However, the infinite differences among Illinois communities make it imperative that the primary focus of action be at the local level. Participants in the work toward violence-free schools and communities must be able to respond to the uniqueness of their own circumstances.[205]

If school administrators should be responding to immediate and local problems, a state statute that acts without regard to local circumstances can only jeopardize the efficacy of drug and violence reduction at the local level.

200. *See, e.g.*, 105 ILL. COMP. STAT. ANN. 5/10-22.10a (West 1998); IOWA CODE ANN. § 808A.1, .2 (West Supp. 1999); VA. CODE ANN. §§ 22-277.01, 22.1-278 (Michie Supp. 1999).

201. *See, e.g.*, MINN. STAT. ANN. § 121A.72 (West Supp. 1999); OKLA. STAT. ANN. tit. 70, § 24-102 (West 1998); TENN. CODE ANN. §§ 49-6-4201 to -4216 (1996 & Supp. 1999).

202. Toppo, *supra* note 32.

203. *Id.*

204. Frammolino, *supra* note 6.

205. VIOLENCE SUMMIT, *supra* note 4.

Broad legislation intended to "send a message" or "sound a wake-up call" sends the message to local schools that they should be taking drastic action, regardless of local circumstances. For example, after a canine sniff search of lockers and cars in a Seattle-area high school, the principal admitted that the decision to conduct the search "wasn't prompted by a drug problem. . . . 'We have students who use and abuse drugs, but we didn't base this program on any type of emergency.'"[206] The search was intended to scare students and deter them from bringing drugs to school.[207] The Champaign policy, under which no searches have yet been conducted,[208] appears to be a similar type of scare tactic. In *Acton*, however, one of the exigencies behind the significant governmental interest that justified the search was the fact that drug problems had reached "epidemic proportions."[209] The dynamic has thus changed from a response to an existing problem to an attempt to crack down on problems that have not yet developed. Everyone knows the adage that an ounce of prevention is worth a pound of cure, but it is possible that school administrators' time and efforts would be better spent maintaining their successful educational efforts to discourage drug use, rather than shadowboxing against problems that may not exist.

What message can students glean from searches when school administrators confess they are trying to scare students? Certainly they learn that it is a bad idea to bring drugs or weapons to school, but by using scare tactics and intimidating students with search dogs, administrators may be creating a hostile environment of a different variety. After the search mentioned in the preceding paragraph, a spokesperson for the Washington ACLU said that canine "searches of school property probably are constitutional . . . [but] not a good civics lesson. 'It's giving students the message that all students are suspects regardless of whether they've done anything wrong.'"[210] If all students are perceived as suspects regardless of their actions, judicial tolerance of school searches under *Acton* has departed completely from the requirement of individualized suspicion set forth in *Terry* and subsequently adopted in *T.L.O.*

V. CONCLUSION

American schools have been overwhelmed by drug and violence problems, and state legislatures and local school boards have responded by drafting statutes and policies proscribing the Fourth Amendment rights of students. Yet Fourth Amendment searches in the context of public schools present a variety of constitutional questions. Courts have

206. Naomi Dillon, *Who's Nosing Around Interlake's Lockers?*, SEATTLE TIMES, Feb. 5, 1999, at B1.

207. *See id.*

208. *See supra* text accompanying note 102.

209. Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 663 (1995).

210. Dillon, *supra* note 206.

routinely held that students have a lower expectation of privacy than average individuals. The doctrines of implied consent, plain view, and the automobile exception also broaden the authority of school officials to search in certain circumstances. The drawback to a broad approach, however, is that such policies and statues appear to sanction searches that would not be authorized under Fourth Amendment case law. Statutes and policies that grant too much authority to search run the risk of adversely affecting not only the rights of students but also the rights of non-students in the school environment. Although legislators and school administrators are striving to create an environment conducive to learning, burdensome and broad policies may teach students the wrong lessons. As Justice Jackson warned in *Board of Education v. Barnette*,[211] the fact that school boards "are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."[212]

211. 319 U.S. 624 (1943).
212. *Id.* at 637.