

He Said, She Said:

The Problems with Information Sharing Between Law Enforcement and Schools

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In December of 2012, a major school shooting shocked the nation when twenty young students and six employees of Sandy Hook Elementary School in Newtown, Connecticut were killed. This tragedy re-ignited the conversation about the measures needed to ensure safety in American public schools. Many of the suggested measures reflected a desire to increase the presence of law enforcement in schools. For instance, the Obama administration offered a “Comprehensive School Safety” program that provided additional money for school administrators to hire school resource officers (SRO), among other new personnel.¹ The National School Shield Task Force, which is endorsed by the National Rifle Association (NRA), also put forth the "National School Shield" plan which advocates for an increase in armed guards in schools, training school officials to carry firearms, and expanding information sharing agreements between law enforcement and schools.² However, many civil rights advocates and community youth groups oppose the growing relationship between American public schools and local law enforcement. These groups argue that measures which increase law enforcement in schools do not actually make schools safer. Instead, students are more likely to interact with the juvenile justice system for minor infractions that traditionally would be handled within the

¹ Toppo, Greg, Students, Civil Rights Groups Say 'No' to School Cop, USA Today (2013), <http://www.usatoday.com/story/news/nation/2013/04/06/students-civil-rights-groups-cops-school-violence/2057343/%3E>.

² Hutchinson, Asa, The National School Shield, National School Shield Task Force (2013).

school system.³One source of this problem is the increased information sharing between law enforcement agencies and public school administrations which poses constitutional and educational problems for students.

I. Background

A school's relationship with law enforcement varies greatly. On one end of the spectrum there is the traditional way communities utilize police, which is calling in officers to respond to criminal activity that has occurred or is suspected to occur. Schools rarely utilize this method because it is a reactive response and the police officers delayed response time could postpone immediate action, which can have detrimental consequences in emergency situations. In the 1950's American schools began a new approach of building stronger relationships with law enforcement by stationing police officers inside schools on a regular basis.⁴ However, it was not until the 1990's, in response to various school shootings, that assigning police officers in schools rose to prominence.⁵ Referred to as school resource officers ("SRO"), these officers are fully sworn law-enforcement officers, employed by a local law enforcement agency, and assigned to work in public schools.⁶ SROs are police officers first and are distinct from other school administrators. An SRO may perform some functions of school personnel, such as mentoring or advising students and student interaction, but they also have the authority to arrest individuals

³ Elkholtz, Eric, With Police in Schools, More Children in Court, New York Times (2013), http://www.nytimes.com/2013/04/12/education/with-police-in-schools-more-children-in-court.html?pagewanted=all&_r=2&_

⁴ Cray, Martha and Spencer C. Weiler, Police at School: A Brief History and Current Status of School Resource Officers, Routledge: Taylor and Francis Group, p.160 (2011).

⁵ *Id.*

⁶ *Id.*

and are licensed to carry firearms and other weapons in schools.⁷ Today law enforcement officers can be found in 35 percent of American schools.⁸

On the opposite end of the spectrum is the approach advocated by NRA when it recommended arming school personnel with weapons to carry and use to protect students in schools. The NRA endorsed “National School Shield” plan suggests that designated school personnel that submit to appropriate background investigations and testing can undergo training programs that would qualify them to carry weapons in schools. This approach, particularly the idea of arming school officials to be agents of law enforcement, is seen as fairly extreme, although a few school systems throughout the nation do allow teachers to be armed.

Currently, schools are choosing to find a “balance” of utilizing law enforcement by increasing information sharing between the two institutions. Law enforcement institutions maintain records on youth that come in contact with juvenile justice system. Typically, juvenile criminal records are confidential and not available to the public. Similarly, school records of enrolled students are generally not accessible to the public. The Family Educational Rights and Privacy Act (FERPA) is the federal law that governs the privacy of students’ school records.⁹ But as the relationship between schools and law enforcement continues to develop, new methods increasing the information sharing are being formed. For instance, reciprocal reporting agreements, which are used to define how police and schools will exchange certain information that would otherwise be protected under rules of confidentiality.¹⁰ State law provides for, but

⁷ Education Under Arrest: The Case Against Police in Schools, Justice and Policy Institute, p.2 (2011).

⁸ Cray, Martha and Spencer C. Weiler, Police at School: A Brief History and Current Status of School Resource Officers, Routledge: Taylor and Francise Group, p. 160 (2011).

⁹ Family Educational Rights and Privacy Act, United States Department of Education <http://www.ed.gov/policy/gen/guid/fpc/ferpa/index.html>.

¹⁰ “Inspection and copying of law enforcement records maintained by law enforcement agencies that relate to a minor who has been arrested or taken into custody... shall be restricted to the following: (1) The appropriate school official only if the agency or officer believes that there is an imminent threat of physical harm to students, school

does not require, the creation of these types of agreements. Whereas this access to information is desirable to those charged with protecting the safety of students, it must be balanced with individual interest of students and their families. The problem is that expanding information sharing practices casts too wide of a net and creates both constitutional and education concerns for students.

II. Constitutional Problem

The increased relationship between law enforcement and school officials raises constitutional problems that directly affect the diminishing privacy rights of students within a school system.¹¹ On January 1, 2013, the recent amendments to Illinois' School Code and the Juvenile Court Act containing Public Act 97-1104 became effective throughout Illinois.¹² These amendments attempt to permit increased sharing of certain information, pertaining to a student, between law enforcement and school officials pursuant to a reciprocal reporting agreement.¹³ If a school chooses to form a reciprocal reporting agreement, a parent-teacher advisory committee and the local school board, in cooperation with their local law enforcement agency, will develop policy guidelines to establish a reciprocal reporting system.¹⁴ This system will involve the school district and local law enforcement sharing information regarding criminal offenses committed by

personnel, or others who are present in the school or on school grounds; (A) Inspection and copying shall be limited to law enforcement records transmitted to the appropriate school official or officials whom the school has determined to have a legitimate educational or safety interest by a local law enforcement agency under a reciprocal reporting system established and maintained between the school district and the local law enforcement agency under Section 10-20.14 of the School Code concerning a minor enrolled in a school within the school district who has been arrested or taken into custody for any of the following offenses”, 705 Ill. Comp. Stat. 405/5-905.

11 This paper does not address the substantive due process issues that have been discussed in the School to Prison Pipeline. This article focuses on the privacy issues that come with increased law enforcement in schools.

12 Ill. Pub. Act 097-1104.

13 Mazza, Maria E. and Brian P. Crowley, Recent Changes in Law Impact Reciprocal Reporting Agreements, Franczek Radelet (2012) <http://www.jdsupra.com/legalnews/recent-changes-in-law-impact-reciprocal-74441/>.

14 Ill. Comp. Stat. 105 ILCS 5/10-20.14

students.¹⁵ The information within the policy that must be shared must relate to a student who is the subject of a current policy investigation related to school safety.¹⁶

In an attempt to limit who is able to obtain this information, the amendment states that the school officials attaining the student's information must have a legitimate educational or safety interest to aid in the proper rehabilitation of students and to protect the safety of students and employees in schools.¹⁷ As discussed earlier in this article, the school officials limited in this amendment also include School Resource Officers ("SRO") who serve a dual role of both a school official and an agent of law enforcement within the school system.

Even though the amendment discusses limitations on school officials who can obtain student's information, the amendment does not restrict school officials, including SROs, and local law enforcement from using their discretion in considering what is reportable conduct. An example of this use of discretionary power comes from a reciprocal reporting agreement from Waukegan Community Unit School District No. 60. The agreement states that in addition to reporting drug offense, weapons offenses, and offenses against persons, the school administrators have discretionary responsibility to determine if a given situation involves suspected criminal behavior warranting police referral.¹⁸ An example illustrated in the Waukegan agreement of a "suspected criminal behavior" that would require discretionary responsibility on the part of the administrator could be a malicious fight between teenagers.¹⁹ This example of a possible use of a school official's discretionary power exemplifies how a conduct that once was resolved within

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Reporting Suspected Criminal Conduct, WAUKEGAN COMMUNITY UNIT SCHOOL DISTRICT NO. 60 available at <http://www.wps60.org/policies/policy.php?id=256>.

¹⁹ *Id.*

the confines of a school is now being solicited to law enforcement and labeled as a “criminal” conduct.

Yes, fights are a concern within schools and need to be regulated to maintain a proper learning environment, but these students’ immature and impulsive actions are now being documented, evaluated under a school official’s discretion, and then passed along to law enforcement to criminalize. The privacy of a child is lost within this agreement because any information, ranging from actual offenses stated in the Juvenile Court Act to minor offenses in the School Code, will be transferred between school officials, SRO, and law enforcement. Furthermore, even if the information was not authorized to be given, such as information under FERPA, that information could be disclosed to other school officials without the consent of the student. This disclosure is allowed under the provision that the information is necessary to protect the health and safety of the student or other students and that the school official has a “legitimate educational interest”.²⁰

The language used within the amendment and FERPA are clear on its limitations, but in actuality this language allows for a broader range of information to be transferred between school officials, SROs, and law enforcement because the distinction between these individuals have become blurred. Traditionally, school officials and law enforcement could be differentiated by the standards of law used to regulate their interactions with students. Students are considered to be in the custody of school officials once they enter an institution and school officials serve as

²⁰ Family Educational Rights and Privacy Act, United States Department of Education
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

temporary guardians during the school day. Because of this view the law gives school officials more freedoms when making decisions for the best interest of the student or student body.²¹

When these decisions cause a school official to question or search a child for possible misconduct, the law applies a reasonable suspicion standard to a school official's discretionary decisions. Such is described in, *New Jersey v. T.L.O.* (1985), which ruled that school officials only have to have a reasonable suspicion to show cause for searching a student and not the higher probable cause standard of proof which is traditionally applied to law enforcement.²² The reasonable suspicion standard is met if the school has evidence or information that leads school officials to believe that a school rule has been broken.²³ In contrast, for a police officer to find probable cause to search a person, he or she would have to have specific knowledge that a person has committed a crime, is about to commit a crime, or that evidence of a crime will be found in the search.²⁴ This distinction allows for a legal separation of how school officials and law enforcement can conduct themselves when it comes to the privacy of a student within a school. However, because of relationship between law enforcement and school officials, and the dual role of a SRO as a school official and police officer that legal distinction has become blurred. Law enforcement serving as SROs can circumvent the probable cause standard and obtain and utilize information under the reasonable suspicion standard given to school officials.

Such is the case in *People v. Dilworth* (1996), where the Illinois Supreme Court upheld the search of a student by a school liaison officer (SLO) that was based solely on reasonable suspicion.²⁵ The Illinois Supreme Court argued that the SLO was acting in the capacity of a

²¹ Bracy, Nicole L., Circumventing the Law: Students' Rights in Schools With Police, Journal of Contemporary Criminal Justice, p.307-8 (2010)

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

school official, based in part on the description of the SLO's duties in the school handbook.²⁶

This incident exemplifies how the increased relationship between school officials and law enforcement allows law enforcement the opportunity to obtain a lesser standard of proof. This lesser standard gives law enforcement the ability to conduct broader searches and investigations that would normally need to meet a probable cause standard. A student's expectation of some heightened protections of privacy from law enforcement would be nonexistent within a school system because law enforcement serving as SROs have the same freedom as school officials to question and search a student. It is particularly problematic that law enforcement officers also have the ability to criminalize students for their actions, inside or outside of school. This is a much harsher remedial measure than any at the school official's discretion. Increased information sharing between law enforcement helps to lower the standard for police investigation of a child. The effect of this lower standard forces children to be on guard or in fear that their privacy will be violated in the interest of safety of the school.

III. Educational Problem

The expansion of information sharing between law enforcement agencies and public school administrations creates an educational problem for students. The practice of information sharing between law enforcement and school officials de-constructs the positive and trusting relationship between students and school personnel. According to the American Psychological Association, "students who have close, positive and supportive relationships with their teachers will attain higher levels of achievement than those students with more conflictual relationships."²⁷ When

²⁶ Bracy, Nicole L., Circumventing the Law: Students' Rights in Schools With Police, Journal of Contemporary Criminal Justice, p.307-8 (2010)

²⁷ Improving Students' Relationships with Teachers to Provide Essential Supports for Learning, American Psychological Association <http://www.apa.org/education/k12/relationships.aspx?item=1>.

students feel they can trust their teachers they “show more engagement in the academic content presented, display better classroom behavior, and achieve at higher levels academically.”²⁸

Consequently, the way that schools handle conflicts involving students can impact the level of trust students are able to develop not only with their teachers, but with other personnel within the school.

When SROs are present within the school students may not fully understand the SROs role and their authority within the school setting. It becomes difficult, particularly for younger children, to understand that an SRO is actually a law enforcement official and has access to private and confidential information in both the educational and law enforcement spheres. Additionally, it would be difficult to understand how a SRO could influence disciplinary measures towards the student in both systems. The following is an account recorded by the Justice Policy Institute, a community-based education advocacy organization, which illustrates the harm that this type of misunderstanding could have on students and their families:

A parent, Ms. E., in a small city in the northwest of the U.S. and her 16-year-old daughter, Jessica, had an experience reflective of this issue. In the middle of a school day, Ms. E. received a call from the school resource officer saying that Jessica had been in some trouble and she (officer) was planning to question her about the incident. The SRO said that Ms. E. did not need to be there, but could be if she wanted to, which Ms. E. chose to do. Ms. E. would find out later that the school had a policy that if an incident occurred involving a student who was 16 or older, they had to attempt to contact a parent, but could question the student if the parent could not be reached or was not able to attend.

At the meeting, the SRO said that she knew Jessica was part of a group of girls who had written on another student’s car with washable chalk, which the students typically use to write on sports team buses to cheer the team. The SRO had digital photographs of the vehicle showing inappropriate words written on the car. The car was not located on school property, but in a nearby shopping center lot that the school leased for student parking.

With Ms. E. present, the SRO asked Jessica to sign a paper waiving the right to have an attorney present. When Ms. E. told her daughter not to, the SRO presented another form

²⁸ Improving Students' Relationships with Teachers to Provide Essential Supports for Learning, American Psychological Association <http://www.apa.org/education/k12/relationships.aspx?item=1>.

that would serve as an admission of guilt for criminal mischief. The SRO said that by admitting guilt, everything would be much easier and Jessica would probably just have to do community service. Ms. E. told her daughter not to sign the admission of guilt either. Said Ms. E.: "with the show of the photos and the officer's 'I have your best interest in mind' tone, I know Jessica would have signed the paper if I hadn't been there."

"I would have been fine if the principal had lectured the girls and told them to wash the car," said Ms. E. "But to purposely try to funnel these girls into the juvenile justice system for what was relatively harmless teenage behavior made me angry. It made me question why the school had police there in the first place."²⁹

The perception that schools and law enforcement are working together against the student violates the fragile relationships between students and school personnel. In this example, Ms. E's perception that the school, in connection with the SRO, was working against her child caused Ms. E to call into question the school's reasons for having the officer involved.

When a student is interrogated or arrested within the school a relationship shift occurs between the student and school system. Rather than a trusting and growing relationship, the student becomes part of an adversarial relationship with the school. It becomes the school systems interests over the student's interest. This can be a traumatic experience for the student because the negative consequences of these incidents and interactions can range from stigmatization, humiliation to exclusionary punishment (e.g., suspension and expulsion), and arrest.³⁰ Some students may even require counseling to recover from these specific encounters with law enforcement.³¹ As a result, a student who has experienced such an incident will likely find it extremely difficult to rebuild relationships with teachers and school officials. Not only is

²⁹ Education Under Arrest: The Case Against Police in Schools, Justice and Policy Institute, p.4 (2011).

³⁰ Bracy, Nicole L., Circumventing the Law: Students' Rights in Schools With Police, Journal of Contemporary Criminal Justice, p.608 (2010).

³¹ "In one 2011 case, police pulled 15-year-old Malcolm Calvert off a Hallandale Beach, Fla., school bus, handcuffed him, arrested him and charged him with battery for throwing a lollipop at a friend. Malcolm spent several hours locked up at a juvenile detention center before police let his father take him home. Malcolm's friend declined to press charges, said Shannan Holder, a public defender in Broward County, Fla. Prosecutors dropped the case, but the arrest threw Malcolm into a depression that required counseling." --Toppo, Greg, Students, Civil Rights Groups Say 'No' to School Cop, USA Today (2013), <http://www.usatoday.com/story/news/nation/2013/04/06/students-civil-rights-groups-cops-school-violence/2057343/%3E>.

the individual teacher-student relationship impacted, but individual incidents have the potential to impact the entire school climate. The increased punitive measures by school officials, such as suspensions, expulsions, and arrest aggravate distrust between students and adults.³² Ultimately, these ineffective measures deconstructs the fragile bonds that a student and parent have with the school system and leave them questioning if the school system is trying to educate or criminalize that student.

Beyond the impact on student-teacher relationships, increased information sharing between schools and law enforcement leads to harsher and more retributive responses to student misconduct. In general, the discussion surrounding the increased relationships between law enforcement and schools has been focused on protecting students from harm. However, police presence in schools also contributes to increased risks of students, predominantly students of color, being criminalized for minor school offenses. Specifically in under-resourced schools, teachers will rely on available SROs to resolve ordinary classroom disputes.³³ This can, and does, cause minor incidents to escalate to criminal arrests on charges such as disorderly conduct.³⁴ However, if that teacher had other non-law enforcement resources at her disposal it becomes unlikely that such incidents would ever come under the purview of law enforcement.

The National School Shield Task Force (NSSTF) in its "National School Shield" plan also leads to harsh actions imposed on students. NSSTF's plan contends that for "most violent attacks at a school, there are multiple early warning signs, called pre-incident indicators, of a student or outside person who exhibits threatening behavior and poses a risk to the school...schools must

³² Steinberg, Matthew P., Elaine Allensworth, David W. Johnson, Student and Teacher Safety in Chicago Public Schools: The Roles of Community Context and School Social Organization, Consortium on Chicago School Research, p.47 (2011)

³³ Goodyear, Sarah, Are Armed Guards in Schools a Civil Rights Violation?, The Atlantic Cities (2013) <http://www.theatlanticcities.com/politics/2013/04/armed-guards-schools-civil-rights-violation/5171/>

³⁴ *Id.*

develop a culture of awareness and willingness to share this information with the proper individuals.”³⁵ The plan advocates for threat assessment teams to evaluate perceived threats, conduct investigations, and determine the seriousness of the threat.³⁶ The team would then have the ability to use the information uncovered in the school to “refer the student to a school psychologist for a mental health assessment and, if necessary, to the school resource officer for a law-enforcement investigation.”³⁷ This plan is troublesome because it essentially advocates for a system of detecting pre-crime within the school. Additionally, it would allow for sharing information that promotes stigmatizing and exclusionary measures.

It is problematic that the only referrals the assessment would offer are to mental health and juvenile justice systems. This plan does not provide solutions that address the wide array of factors that contribute to a student’s misconduct such as broken familial relationships, individual trauma, depression, poverty, gang-involvement, and bullying (to name a few). If schools must focus on any pre-crime indicators, it should be with the purpose of offering rehabilitative services such as individual and family counseling, peer counseling, student relationship-building programs, mentoring programs, and assistance for students in conditions of poverty. Furthermore, if the NSSTF’s plan was targeted to citizens outside the school system constitutional safeguards that law enforcement and other state actors traditionally work under, would substantially limit access to their information. Unfortunately, the NSSTF’s plan serves to further diminish students’ limited privacy rights within a school. This plan would effectively do more harm than good as students’ personal information would be used to stigmatize and exclude them prior to any actual misconduct.

³⁵ Hutchinson, Asa, The National School Shield, National School Shield Task Force, p. 17-8 (2013).

³⁶ *Id.*

³⁷ *Id.*

III. Conclusion

Public school students are facing both constitutional and educational problems because of increased information sharing between law enforcement and school administrations. Because of recent events in American public schools parents, teachers, and law enforcement are looking for solutions to better keep students and school officials safe. Unfortunately, the solutions being discussed are not long term methods that will maintain the limited privacy rights that students have within a school system. If school resource officers must be used in schools, policy makers must be mindful that school resource officers are police first and school personnel second. When this dual role conflicts, there must be safeguards to ensure that officers and school officials do not overstep their authority. Additionally, policy makers should consider alternatives to infusing schools with law enforcement. Truly safe schools are places where students and teachers have positive and trusting relationships. The measures that we use to address school safety should be aimed at increasing understanding and building trust among all members of the school environment. Safety is important, but so are individual rights and the best solutions to the problem of American school safety will be the ones that can meaningfully address both.

