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School Resource Officers

In light of the tragedy in Newtown, Connecticut, and other such school violence in recent years, many school districts have developed arrangements to employ school resource officers (SROs) as one of the measures designed to improve student safety. Although SROs, who have varying titles and employment arrangements, previously were more common at the high school level, the tragedy at Sandy Hook Elementary has contributed to the increasing frequency of these officers in elementary schools. In 2009-2010, almost 30 percent of elementary schools had such security personnel on at least a part-time basis, according to the National Center for Education Statistics. The following case and the accompanying question-and-answer discussion illustrate some of the inadvertent consequences of the rise in the prevalence of SROs.

The Case[1]

On Jan. 30, 2008, the vice principal of Shield Elementary School in Cape Henlopen, Delaware, arranged for SRO David Pritchett to discuss bullying with a small group of fifth graders who were on "in-school suspension." The next day, one of these fifth graders told the vice principal about another bullying incident. More specifically, he reported that fifth grader AB had sat behind a child with autism on the school bus and forcibly taken a dollar from him. The vice principal informed AB's mother, requesting and receiving her consent to have Pritchett talk with her son. The vice principal contacted Pritchett, telling him that he was quite confident that AB was the culprit but needed his assistance for clear confirmation.

On or about Feb. 1, the vice principal accompanied Pritchett to talk with AB. However, the vice principal was called away on a school emergency, leaving Pritchett alone with the student. Upon Pritchett's questioning, AB admitted that he had the money in question, but he claimed that another student on the school bus had taken it. When asked the student's name, AB claimed not to know it.

Although almost certain that AB was the perpetrator and without discussing the matter with the vice principal, Pritchett followed up by obtaining the bus seating chart from the school secretary to determine that third grader AH

sat next to the bullying victim. Pritchett then had the secretary summon AH from class and accompanied him to the reading lab, where AB was seated.

After entering the room, Pritchett closed the door and told the boys sternly and repeatedly that he had the authority to arrest them if they lied. He further explained that bad children are sent to the Stevenson House detention center, where the people are mean and treat children as criminals. When Pritchett added that AH's siblings would be upset and not able to see him if he were sent to Stevenson House, AH began to cry. Pritchett used AH's shaken condition against AB, succeeding in getting him to confess that he was the one who had taken the money. Pritchett congratulated AH for doing "a great job," commenting that "it takes a man to stand up to a bully like this." When Pritchett asked him if he wanted to call his parent, AH declined.

When AH arrived home after school, he told his mother about the incident. She withdrew him from school and filed a liability suit—based on both the Fourth Amendment seizure protection and common law torts—in state court against Pritchett, the vice principal, the state police, and the school district. Her claims against the district defendants were resolved prior to the trial court's decision, presumably via a settlement with the school district's insurer. Pritchett filed a motion for summary judgment, which the trial court granted. AH's mother filed an appeal with the state's highest court.

What do you think was the judicial outcome of the appeal in this case for each of the parent's claims?

The Fourth Amendment protection against unreasonable governmental seizures: In *Hunt v. Pritchett* (2013), the Delaware Supreme Court reversed the summary judgment ruling for the Fourth Amendment claim. Viewing the record in the light most favorable to the plaintiff-student, the court first concluded that a reasonable child would believe that he was not free to leave the room, thus meeting the legal standard for a governmental seizure under the Fourth Amendment. The relevant factors included AH's age (8); the closed door; and the SRO's uniform, handcuffs, and gun.

Next, the court concluded that a jury could find that the SRO's seizure was unreasonable. The contributing reasons included: the SRO was 99 per-

cent positive that AH was not involved in the incident; he inferably used AH as a younger, vulnerable child to shame AB into confessing; neither he nor any school official contacted AH's parent for permission to conduct the interrogation; the SRO had no training or particular experience with questioning elementary school children; and he had not consulted with the vice principal or the principal before engaging in this strategy.

Finally, the court concluded that the SRO was not protected by the qualified immunity for school officials. Based on precedents, AH had a clearly established Fourth Amendment right to be free from unreasonable seizures. In the court's words, "Pritchett should have known that it was unreasonable to seize [AH] and intentionally frighten him, in order to teach another student a lesson."

Intentional infliction of emotional distress: This tort requires that the conduct not only be intentional and result in severe emotional distress, but also extreme and outrageous conduct. The judge regarded the SRO's conduct as outrageous. However, viewing the allegations in Pritchett's favor, the court ruled that reasonable minds could differ as to whether his conduct was extreme and outrageous, thus preserving the issue for trial.

False imprisonment/false arrest: Explaining that the requisite elements are unlawful restraint against one's will via force, threat of force, or intimidation by assertion of legal authority, the court reversed the summary judgment for the SRO based on the same reasons as the Fourth Amendment ruling.

Battery: The court upheld the summary judgment for the SRO because of a lack of evidence of offensive physical contact.

If the vice principal or the principal had participated in or assented to the SRO's actions with AH, would these rulings have been the same for them?
Yes, because as the administrators in charge of the school, they would be responsible for the SRO's actions.

Does the court's partial reliance on the lack of parental consent mean that obtaining parental permission to interrogate students for disciplinary purposes is constitutionally required?
No. In *Wofford v. Evans* (2004), another elementary school case, the 4th Circuit rejected a constitutional parental right to receive notice prior to detaining or interrogating students for disciplinary purposes. If there is not a constitutional right to notification, it seems even clearer that there is no constitutional requirement for parental notification.

However, parental notice or, even better, parental consent, would appear to be not only prudent practice and possibly legally required as a matter of state law or local policy, but also—as the court's Fourth Amendment analysis illustrates—a factor that contributes to whether such a detention or interrogation is constitutionally reasonable.

Has the use of SROs resulted in other litigation in the disciplinary context?
Yes. First, my March/April 2010 column in *Principal* recounted various court decisions in which parents challenged the actions of SROs in addition to those in which they challenged public school use of police tactics or personnel more generally. More recent court cases include, for example, liability suits against school districts and their administrators in the wake of SROs' forcible use of handcuffs in detaining students, including those with disabilities. They also include cases where some courts have required Miranda warnings for student interrogations or a more rigorous standard for student searches when the SRO plays the leading or sole role.

Conclusion

Given the public's acute awareness of the disorienting repetition of major school tragedies, it is understandable that school leaders are increasingly employing various security measures, including SROs. In this attempt at protecting the safety of students, police techniques such as custodial interrogations and the use of handcuffs may result in emotional and physical harm to students and ensuing litigation by their parents. The outcomes vary according to the nature of the circumstances and claims, but—as the main case illustrates—the age of the students is a notable decisional factor.

For elementary school principals who are contemplating introducing or increasing the use of SROs, the considerations include not only the specific cost and nature of the employment arrangements for them. Whether it is an unintended or foreseeable consequence, litigation also looms large in the absence of customized training and close coordination and supervision of SROs. P

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1. Because the court's decision arose on the defendant SRO's motion for summary judgment, the "facts" are merely allegations construed in the plaintiff-student's favor.