Case Notes

COURT ALLOWS PREVENTIVE DETENTION TO AVERT SCHOOL VIOLENCE

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On a typical school day probably hundreds, if not thousands, of public school students are detained by teachers, school administrators, or school security. Usually very brief, some detentions last longer. Students may be detained for a variety of reasons: A teacher may offer a word of encouragement; a coach may check on a player's health; a school security officer may question a student about an alleged violation of school rules. However, detention rarely is used to prevent violence on school grounds. Reluctance to use preventive detention stems from the Fourth Amendment prohibition of unreasonable searches and seizures.

USE OF DETENTION TO PREVENT SCHOOL VIOLENCE

A recent decision highlights the issues that may arise when school and police officials decide to use preventive detention. *Stockton v. City of Freeport, Texas,* 147 F.Supp.2d 642 (S.D. Tex. 2001), involves a group of students accosted by police and transported to a courtroom where they were held for several hours. They were never charged with or questioned about a crime. However, the students were verbally threatened by police officers with incarceration and maltreatment by inmates. The district court in *Stockton* concluded that the conduct by the school officials and police officers may still be considered reasonable within the meaning of the Fourth Amendment if the threat they are reacting to is a serious threat to carry out violence on school grounds.

On April 27, 1999, fourteen students at Brazosport High School in Freeport, Texas were taken into custody at the school by police officers. The students were frisked, cuffed, and then transported in police vehicles to a municipal courtroom. Neither the police nor school officials told the students the reason for the detention. Police officers threatened to place them in jail where they would be at the mercy of the inmate population. While no student was jailed, the police ordered the students to remain in the courtroom under the threat of receiving five-year prison terms if they left. Approximately an hour later, the students were told to summon their parents to the courtroom. When the parents arrived, Brazosport's principal, Mr. Boone, lectured the students and parents. The students were then released to the parents.

The detention of the students resulted from the discovery on school property of a threatening letter. Although school officials had a particular suspect, they had no concrete evidence. However, they believed all the students they detained were socially connected to the suspected letter writer. The

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students filed suit in federal district court against the school district. They alleged violation of their Fourth Amendment search and seizure rights. The court dismissed the suit, holding that while the detention of the students might have been an overreaction, it was not unreasonable given the school's compelling interest in maintaining a safe learning environment.

LOOSENING OF FOURTH AMENDMENT STANDARDS FOR DETAINING STUDENTS

The *Stockton* court, relying in large part on the reasoning in *Milligan v. City of Slidell*, 226 F.3d 653 (5th Cir. 2000), focused on two issues: (1) the nature and immediacy of the government concern; and (2) the efficacy of the means used to address the concern. Regarding the first inquiry, it conceded that the urgency needed to justify such a seizure was lacking. Nonetheless, it concluded that even with a "nominal level of immediacy," the "nature alone of a violent threat advanced against a school provides an ample government interest to support" a forceful response to prevent potentially violent conduct. While the court cautioned that preventive detention should not become a common occurrence, it stated that the "effectiveness of the [s]chool's and the police department's actions also cannot be questioned." Acknowledging that there were less intrusive methods for assembling the students, the court stated that the Fourth Amendment does not require that a search or seizure be conducted by the least restrictive means but only that it "be reasonable under all the circumstances."

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The decision in *Stockton* reflects a loosening of the standard that courts have recently been applying to detentions carried out in schools by school officials, school security officers, and police officers. While the *Stockton* court begins by referring to the T.L.O. reasonable suspicion standard as cited in *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), it does not analyze whether the school officials or police officers had a reasonable suspicion to justify their actions. Instead it focuses only on the nature of the threat to determine the reasonableness of the seizure. It even discounts the importance of the lack of an immediate threat. Instead it declares that the school's "dramatically compelling interests in maintaining a safe place of learning" outweigh any privacy rights asserted by the students under the Fourth Amendment.

The *Stockton* court's approach goes further than other courts that have held that school officials do not need individualized suspicion in order to detain students on school grounds. *See In re Randy G.*, 2001 WL 902134 (Cal.) and *In re D.E.M.*, 727 A.2d 570 (Pa. Super. 1999). In both cases, the courts pointed out school officials were not acting as agents of the police when they detained the students. In a footnote, the *Stockton* court suggests that who takes the action is of no constitutional consequence: "To the extent that a governmental interest exists and the actions are reasonable, it is of no import what state actor took the actions." In *Randy G.* the California Supreme Court concluded that the student's detention by school security in a school hallway did not violate the Fourth Amendment because it was not for the "purpose of harassment," but for investigative questioning based on the officer's observation of suspicious behavior. In *Stockton*, the detention was carried out in a manner and culminated in a place normally associated with law enforcement activities. In *D.E.M.*, a Pennsylvania Superior Court ruled that school officials did not need reasonable suspicion to detain a student given the immediacy of their concern that the student had a gun on school grounds. In *Stockton* the district court readily conceded that the immediacy of the threat at Brazosport High School was less than clear.

CONCLUSION: USE WITH CAUTION

Everyone can understand why school officials and police would want to act quickly on information that students are plotting violent acts. The problem for school officials and police is determining whether the information they have constitutes a credible threat. The *Stockton* court recognized these difficulties and emphasized that the school's interest in maintaining a safe learning environment was paramount in its decision to uphold the action by the police officers and school officials. But it also noted that it only "reluctantly approved" of the methods used in this case and admonished the school and the police that "a less intrusive means could and. . . should, have been used to assemble the . . . students."

A comparison of the actions at issue in *Milligan* and *Stockton* help illustrate important differences in how school officials might avert potentially violent incidents. First, in *Milligan* police and school officials had information from a parent who was himself a police officer, for suspecting the students they ultimately detained. Conversely, the police and school officials in *Stockton* based their suspicion of the detained students solely on the fact they congregated near the suspected letter writer during lunch breaks. Second, in *Milligan* the vice principal called the suspected students to his office where the police questioned them. In *Stockton* the police entered the school, handcuffed and arrested the students in full view of the general school population. Third, the detention in *Milligan* lasted 15 minutes in the vice principal's office, while the detention in *Stockton* stretched over several hours in a courtroom. Fourth, while the police officers in *Milligan* warned the students of consequences of their planned fight, the officers in *Stockton* threatened the students with incarceration and physical harm from the inmate population. Fifth, the officers in *Milligan* informed the students why they were being questioned, while the officers in *Stockton* never informed the students why they were arrested and transported to the courtroom. In addition, in *Stockton* the police officers threatened the students with five-year prison terms if they attempted to leave.

While courts appear to be giving schools some leeway to promote school safety, school officials must still carefully consider the circumstances in each case before deciding to detain students. If the circumstances warrant detaining a student, school officials must be careful that their own actions do not cross the constitutional line and that they do not initiate or participate in inappropriate activities by law enforcement personnel. I&A