A TEACHER'S CONSTITUTIONAL RIGHT TO BE FREE FROM UNREASONABLE SEARCHES & SEIZURES IN THE SCHOOL WORKPLACE: WHAT STANDARD SHOULD BE APPLIED?

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In *Shaul v. Cherry Valley-Springfield Central School District*,[1] decided in August 2002, a teacher sued a New York school district and several school officials for violating his constitutional right to be free from unreasonable searches and seizures under the Fourth Amendment. School officials had suspended the teacher based on allegations of improprieties toward a female student. During the suspension, officials searched the teacher's classroom and a locked file cabinet; and they attempted to introduce some items that they found at the teacher's disciplinary hearing.

The teacher filed a federal lawsuit, claiming that the workplace search was unconstitutional, but a federal court dismissed his claim prior to trial. In the court's view, the search was reasonable and did not violate the teacher's constitutional rights.

Shaul should interest educators for two reasons. First, it is one of the few cases to examine the constitutional constraints on school administrators who conduct workplace searches related to teacher misconduct. Thus, the decision provides guidance to school officials across the country regarding the legality of such searches. Second, the facts of the case illustrate some of the practical problems that arise when school officials search a teacher's work area.

This article reviews the pre-*Shaul* jurisprudence and then analyzes *Shaul* in the context of federal jurisprudence on the constitutionality of workplace searches conducted by administrative

officials and not the police. Second, the article suggests some practical policies that educational institutions can implement to minimize the possibility that investigations into employee misconduct will trigger a constitutional violation.

The Right to be Free of Unreasonable Searches and Seizures: How is the Fourth Amendment Applied in Schools?

In *Tinker v. Des Moines School District*,[2] decided more than thirty years ago, the U.S. Supreme Court ruled that teachers and students have constitutional rights, which they do not shed at the schoolhouse gate. Since that time, state and federal courts have decided hundreds of cases involving constitutional claims of public school teachers and students; and the parameters of their constitutional rights while at school have been thoroughly mapped in most regards. In particular, the rights of teachers and students to freely engage in speech and their right to substantive and procedural due process have been comprehensively explored.

Teachers and students also enjoy a constitutional right to be free from unreasonable searches and seizure while at school. This right is guaranteed by the Fourth Amendment to the U.S. Constitution, which provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ."[3]

Although the constitutional right to be free from unreasonable searches and seizures undoubtedly applies to public school teachers, courts have articulated this right most comprehensively with regard to students. Indeed, in New *Jersey v. T.L.O.*,[4] the Supreme Court clearly explained how the Fourth Amendment should be applied when school authorities search students and their possessions.

First, the Court said, school officials are not bound by the same rules that apply to police searches. In most instances, the police must obtain a warrant, based on a judge's finding of probable cause, before they can lawfully conduct a search. School officials, however, are not

required to obtain a warrant before searching students or their possessions; nor must they justify their searches by the rigorous "probable cause" standard.

Instead, in *T.L.O.* the Supreme Court said, a school official's search of a student is constitutionally valid if it is reasonable at its inception and reasonable in scope. The Court went on to explain that school officials' searches are reasonable at the inception if officials have a reasonable suspicion that the search will turn up evidence of wrongdoing--either a school rule infraction or a law violation. In most cases, school authorities must have individualized suspicion before they search a student or the student's possessions. In other words, a generalized suspicion that an unidentified person may have committed an infraction is not sufficient to justify the search of a particular individual.

A search is reasonable in scope, the Supreme Court instructed, if it is not overly intrusive of a student's expectation of privacy in light of the nature of the infraction and the age and sex of the child. For example, as several courts have held, strip searching students in order to recover stolen property is unreasonable under the *T.L.O* standard.[5] The scope of such a search is unreasonably intrusive upon the privacy rights of children, given the relatively minor nature of the infraction.

Since *T.L.O.* was decided, courts have applied the Supreme Court's reasonableness standard to hundreds of cases involving school authorities' searches of student lockers, purses, backpacks and cars, as well as pat-down and strip searches of students themselves. In virtually all instances, courts have scrutinized these searches under *T.L.O.*'s two-part reasonableness test.

No Supreme Court decision has been issued regarding a teacher's Fourth Amendment rights while at school. And, as education law commentators have noted, very few lower courts have addressed this issue.[6] However, the Supreme Court has opined on the privacy rights of public

employees in governmental workplaces; and it is clear that governmental workplace searches are also governed by the reasonableness test.

Specifically, in *O'Connor v. Garcia*,[7] the Supreme Court considered a case involving the search of a state hospital doctor's office by hospital officials. The Court ruled that the doctor had a reasonable expectation of privacy over his office desk and file cabinets, where he stored personal correspondence, mementos, personal financial records and case files of patients unaffiliated with the hospital. Nevertheless, the doctor's employer could search these areas without a warrant if hospital officials had a work-related reason or were conducting an investigation of employee malfeasance in the workplace. In addition, the Court said, the constitutionality of a public workplace search would be judged based on its reasonableness, not on the more onerous "probable cause" standard that applies to the police.

Regarding the warrant requirement, the Supreme Court had this to say:

> In our view, requiring an employer to obtain a warrant whenever the employer wished to enter an employee's office, desk, or file cabinets for a work-related purpose would seriously disrupt the routine conduct of business and would be unduly burdensome. Imposing unwieldy warrant procedures in such cases upon supervisors . . . is simply unreasonable.[8]

Likewise, the Court concluded, it was inappropriate to require public employers to justify searches under the "probable cause" standard. In contrast to law enforcement officials," the Court said, "public employers are not enforcers of the law." Rather,

> Public employers have a direct and overriding interest in ensuring that the work of the agency is conducted in a proper and efficient manner. In our view, therefore, a probable cause requirement for searches of the type at issue here would impose intolerable burdens on public employers.[9]

In summary, the Court concluded:

> We hold . . . that public employer intrusions on the constitutionally protected privacy of government employees for noninvestigatory, work-related searches as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances. Under this reasonableness standard, both the inception and the scope of the intrusion must be reasonable.[10]

In short, the Supreme Court's standard for work-related searches of public employees' workplaces is virtually identical to the Court's standard for searching students in the public schools. It is worth noting, however, that the Supreme Court expressly stated that its ruling did not apply to the seizure of a public employee's personal items.[11] And the Court expressed no opinion about what the constitutional standard should be for the search and seizure of an employee's personal items by a public employer. At least one commentary has said that such searches should not be conducted without a warrant and probable cause.[12]

Pre-*Shaul* Jurisprudential Guidance for School Officials

Two federal decisions have addressed the constitutionality of workplace searches in environments analogous to public education campuses. In *Thompson v. Johnson County Community College*,[13] a federal district court in Kansas addressed the issue of warrantless searches of areas with silent video surveillance under standards governing workplace searches. The plaintiffs in *Thompson* were security officers employed by Johnson County Community College ("College"). The College provided the security officers with a locker area in which to store their rain gear, radios and other personal items. In addition to using this area to store their personal belongings, it was occasionally used as a dressing and changing room. The storage room was not locked and the security officers were not the only College employees with access to the unlocked storage room.

The *Thompson* court first determined that domestic silent video surveillance was subject to Fourth Amendment prohibitions against unreasonable searches;[14] however, the prohibition is not

automatic. The court elaborated by stating the first focus should address whether the individual had a reasonable expectation of privacy in the area searched. One question the court suggested should be addressed is whether the items can be seen with the naked eye.[15]

To determine the reasonableness of a search in the workplace, *O'Connor* indicates the court must balance the invasion of the employee's legitimate expectation of privacy against the government's need for supervision, control and the efficient operation of the workplace.[16] The court provided further guidance by opining that work-related misconduct that prompts a search should be judged by the standard of reasonableness. Courts have found individuals can have a legitimate expectation of privacy in their workplace under certain conditions. For example, in *Schowengerdt v. General Dynamics Corp.*,[17]the court found a reasonable expectation of privacy in locked desk and credenza absent notice that items could be searched. In *United States v. DeWeese*,[18] the court ruled a crew member had legitimate expectation of privacy in areas such as footlocker which were accessible to only one individual. In *Gillard v. Schmidt*,[19] a school guidance counselor charged with maintaining sensitive student records was found to have a reasonable expectation of privacy in his school desk. Further, the court in *United States v. Speights*,[20] determined a police officer had reasonable expectation of privacy in his locker where no regulations or practices would have alerted him to expect unconsented searches and which he secured with a personal lock. Other courts have found no legitimate expectation of privacy when regulations or notices state lockers are subject to search.[21] Accordingly, *Thompson* illustrates that individuals may be able to assert a right to privacy in personal lockers or desks but not in the area surrounding or on top of lockers or desks.[22]

In *Leventhal v. Knapek*,[23] the federal Second Circuit addressed the issue of computer searches by government employers. The issue of computer searches arose when a state

transportation department employee's office computer was searched in an unannounced after-hours search conducted to look for personal files. The employee occupied a private office with a door and had exclusive use of the computer. The facts reveal the agency did not routinely search office computers nor did it have an adopted policy regarding storage of personal files as opposed to the use of personal files while on agency time. The court in *Leventhal* ruled the reasonableness of the department's search was to be determined in light of its need to investigate the allegations of misconduct as balanced against the modest intrusion caused by the search.

Based on an anonymous letter complaining of abuses in the Accounting Bureau, the Department of Transportation investigated Leventhal because the letter referred to a grade 27 employee and Leventhal was the only grade 27 employee in the office. Accordingly, the department only searched employee computers that could be identified in the anonymous complaint letter. The *Leventhal* court in following *O'Conner*, ruled "The 'special needs' of public employers may allow them to dispense with the probable cause and warrant requirements when conducting workplace searches related to investigations or work-related misconduct."[24] The court, while noting that the Fourth Amendment protects individuals from unreasonable searches conducted by the government even when the government is the employer, found the agency had sufficient individualized suspicion of misconduct to justify an investigatory search of Levethal's office computer. The court following *O'Connor*, ruled the public employer's search of the area in which its employee had a reasonable expectation of privacy is reasonable when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of its purpose. However, the court clarified its opinion by stating that without a reasonable expectation of privacy, a workplace search by a public employer will not violate the Fourth Amendment, regardless of the search's nature and scope. Furthermore, the workplace conditions can be such

that an employee's expectation of privacy in a certain area is diminished. For example, if an office is continually entered and visited by others or if the computer is accessible to more than one employee.

In all cases, courts should look to the context of the employment relationship after review of the access available to others (in a school context this would include students, substitutes, coaches, administrators, other teachers and custodians) of the item or area. Another issue the court will examine involves whether the employer (school district) put the employee on notice that he or she should not have an expectation of privacy. The notice could be verbal or contained within a policy provided to all employees.

The court in *Leventhal* concluded that even though Leventhal had some expectation of privacy in the contents of his office computer (because no policy put him on notice), the investigatory searches by the Department of Transportation did not violate his Fourth Amendment rights.[25] The court referenced *T.L.O.*[26] in holding an investigtory search for evidence of suspected work-related employee misfeasance is constitutionally "reasonable" if it is "justified at its inception" and of appropriate scope. Finally, the measures adopted must be reasonably related to the objectives of the search and not excessively intrusive in light of the nature of the misconduct.

The State Courts Weigh In

The issue of workplace searches conducted by government employers (school districts), has been somewhat addressed by several state courts. In 1999, the Supreme Court of New Hampshire in *State V. McLellan*,[27] addressed the issue of whether a custodian, who did not have possessory interest in a classroom or desk could have a reasonable expectation of privacy to have standing to challenge a video surveillance allegedly showing him stealing money from a teacher's desk. The court in reviewing the challenge under its state constitution[28] indicated a defendant, similar to the

federal standard, must show an expectation of privacy in the place searched and that the expectation is reasonable. The court while noting that a case by case analysis was required, also provided guidance on the issue by stating the less private a work area, and the less control an employee has over that work area, the less likely standing to challenge the search will be found.[29] The court further addressed the issue under the Fourth Amendment to the United States Constitution and quoting *Minnesota v. Carter*,[30] ruled "[I]n order to claim protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; i.e., one which has a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society."

The employee's expectation of privacy must be assessed in the context of the employment relationship.[31] A reasonable expectation of privacy exists in an area given over to an employee's exclusive use. The issue in *McLellan* focused on whether this employee had an expectation of privacy in this classroom so as to be safe from surveillance. In order to claim the protection of the Fourth Amendment the court opined a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable. A classroom may or may not be an area over which a person has the exclusive use. Traditionally, classrooms are open to students and staff on a regular basis. File cabinets, desks and computers on the other hand are not as open as the classroom itself, but may occasionally be utilized by administrators and substitute teachers. Given the great variety of work environments, the court once again ruled the essential question of whether an employee has a reasonable expectation of privacy must be addressed on a case by case basis.[32]

Brannen v. Kings Local School District[33] is a second state case that is aligned with the federal jurisprudence. In *Brannen*, custodians claimed hidden video cameras in their break room violated their right to be free from unlawful searches guaranteed by the Fourth Amendment. The break room was open to fellow employees; thus, the issue revolved around the custodians' expectations of privacy in the break room. The court in addressing the custodians' expectations stated that government employees' Fourth Amendment rights are implicated only when the conduct of the government employers or supervisors infringes upon an expectation of privacy in the workplace that society is prepared to consider reasonable and the workplace includes those areas that are related to work and are generally within the employer's control including hallways, offices, locker rooms, break rooms, cafeterias, desks and file cabinets. The court further clarified the issue by noting a public employee's expectation of privacy in the workplace, for Fourth Amendment purposes, may be reduced by virtue of actual office practices, work procedures or regulations and some government offices may be so open to fellow employees or the public that no expectation of privacy may be reasonable. Interestingly, the court reverted back to the two-prong test of *T.L.O.*[34] to determine if the school site search was constitutional. First, the court asked was the search justified at its inception; that is, was there reasonable grounds for suspecting that the search would reveal evidence of work-related misconduct. Second, the court reviewed the scope of the search to determine if the measures adopted were reasonably related to the objectives of the search and not excessively intrusive in relationship to the nature of the suspected work-related misconduct. In following *O'Conner* the court confirmed that government employees' Fourth Amendment rights are implicated only when the conduct of government employers or supervisors infringes upon an expectation of privacy in the workplace that society, not the employee, is prepared to consider reasonable. Thus, the state courts are in concurrence that workplace searches of school employees

must be reviewed on a case by case basis to determine if the same two-part *T.L.O.* test utilized for student searches has been achieved.

Finally, in *State Forester v. Umpqua river Navigation Co.*,[35] a little known, but interesting case from Ohio, a state court held that illegally seized evidence should only be excluded in a criminal or quasi-criminal proceeding but not necessarily excluded in civil proceedings. *State Forester* is set in the aftermath of a forest fire when non-law enforcement officials inspected and tested an owner's roller without the owner's permission to determine if the roller caused the fire. The civil court applied *Ohio v. Mapp*,[36] in finding the exclusionary rule regarding evidence seized without a warrant only applied to law enforcement officials and was adopted as an effective deterrent to lawless police action.[37] In *State Forester* the state employees who conducted the alleged illegal search and seizure were not police officers investigating alleged criminal conduct but instead was instituted by an assistant forester with the purpose of determining the cause of the forest fire. Accordingly, the court allowed the evidence of the search in the civil case for damages because the investigation was not criminal in nature and would not be used in a criminal action. The ruling in *State Forester* implies that searches conducted by non-law enforcement officials at school, while perhaps not admissible in a criminal proceeding, could be used in a discipline hearing for a school employee.

***Shaul v. Cherry Valley-Springfield Central School District*: Implications for School Officials Who Investigating a Teacher's Misconduct**

As stated above, few court cases have treated the constitutionality of workplace searches in the public education environment. Indeed, the standard sketched out in *O'Connor v. Ortega* has

been applied in only a handful of federal and state court decisions involving work-related searches at schools. *Shaul v. Valley-Springfield Central School District* is the most recent of these cases.

In *Shaul*, school officials investigated William Shaul, a tenured teacher, accusing Shaul of having an inappropriate relationship with a female student (The court did not describe the specific allegations). In November 1998, he was suspended with pay from January 15, 1999 until March 10, 2000; and he was ordered to stay off school property during the suspension. On the day this suspension was scheduled to end, Shaul was again found guilty of indiscretion and was placed on unpaid suspension from March 10, 2000 until June 30, 2000 (According to the court's opinion, this was Shaul's second administrative hearing based on charges of an inappropriate relationship with a female student. He had been found guilty of this type of misconduct in a 1990 administrative hearing).

When Shaul was suspended in 1999, the school superintendent wrote him a letter, instructing Shaul to meet the superintendent on January 19 in order for Shaul to remove his personal property from his classroom. Shaul did not attend this meeting because he wanted his union representative to accompany him. However, Shaul did hand over his keys and school materials in his possession to a colleague, who returned those items to the school.[38]

Later in January 1999, Shaul, a school principal, and Shaul's union representative entered Shaul's classroom, where Shaul was given about one and one half hours to collect his personal effects. According to the court's rendition of the facts, Shaul's classroom was extremely cluttered, with Shaul's personal effects and school property mixed in numerous boxes, a desk, and three file cabinets. One of the file cabinets was locked, and Shaul was unable to retrieve all of his personal property in the time allotted. [39]

On the following day, the school superintendent directed two principals to return to Shaul's classroom, clean it, and prepare the room for instructional use. The two men sorted out items into categories: Shaul, the school, students, former students, parents, and things to be thrown away.

In order to open the locked file cabinet, the principals drilled the lock open. While sorting through the items in the cabinet, the principals found a photo of the schoolgirl who was the subject of Shaul's 1990 administrative hearing. They also found a car phone, personal correspondence, and a notebook. The court did not describe the contents of the notebook, saying only that the school district attempted to have it entered into evidence at Shaul's disciplinary hearing and that the hearing officer refused to accept it.

Not long after the principals cleaned out Shaul's classroom, he returned to the school and picked up a box of his personal effects, apparently items gathered by the two principals when they cleaned out Shaul's classroom. Shaul claimed that he never received some of the items that belonged to him, including athletic memorabilia, personal letters, two laser pointers, and some various books and educational material.

In May 2000, after his administrative hearing was over, Shaul sued the school district, the school superintendent, and the two principals who had cleaned out his office. Shaul accused the principals of conducting an illegal search and seizure in violation of his Fourth Amendment rights. Shaul sought punitive damages against the superintendent and the principals; and he charged the school district with showing deliberate indifference to his constitutional rights by trying to introduce some of the items that the principals had found at Shaul's administrative hearing. In effect, Shaul argued, the school district had condoned the principals' unconstitutional search by attempting to introduce some of the fruits of the search in the administrative hearing.

School officials defended their action on several grounds. First they said that Shaul had no reasonable expectation of privacy over his classroom, and therefore no unconstitutional search had occurred. They also claimed that Shaul had abandoned his property, not having retrieved it during the time that had been allotted to him for recovering his personal property. The school district defendants also argued that the educational materials in Shaul's classroom belonged to the school district under the work for hire doctrine of federal copyright law. Based on these arguments, the defendants asked the federal court to dismiss Shaul's lawsuit on a summary judgment motion.

In analyzing Shaul's claim, the federal court began by stating that the Fourth Amendment is only applicable if the complaining party has a reasonable expectation of privacy over the place that is searched. In the court's view, Shaul's former desk and cabinets were located in a public school classroom that was "open to students, colleagues, custodians, administrators, parents, and substitute teachers."[40]

Moreover, the court pointed out, Shaul had been given an opportunity to remove his personal property from the classroom on January 19, 1999; but Shaul did not retrieve his personal property until January 29, when he spent one and one half hours in his former classroom. "If [Shaul] expected the items stored in the classroom to be private and inaccessible to others, he should have retrieved those items on January 19 or certainly on January 29, 1999."[41] Based on the facts of the case, the court concluded, Shaul had no reasonable expectation of privacy over his former desk or the file cabinets.

As for Shaul's illegal seizure claim, the court rejected it on two grounds. First, the court said that educational materials prepared by Shaul during the course of his employment belonged to the school district, not Shaul. Therefore, he had no possessory interest in the property and no Fourth Amendment claim regarding its seizure. As for Shaul's personal items—the laser pens,

coaching memorabilia and other personal items—the court concluded that Shaul had given up his possessory interest and his privacy rights over the items by failing to retrieve them when he was given the opportunity to do so.

In short, the court ruled that Shaul's constitutional cause of action failed as a matter of law; and the court dismissed all Shaul's claims against the school district and its administrators.

What is *Shaul's* Significance?

Although school officials won the *Shaul* case, the court's decision remains as a cautionary tale regarding the search of employees' work areas by school officials. The federal court acknowledged that at least some public employees have constitutionally-protected privacy interests over their work areas as outlined in *O'Connor v. Ortega*.[42] Based on the particular facts before it, the court dismissed Shaul's claims; but that dismissal should not be read as a blanket judicial approval of all workplace searches by school officials or other public employers.

What can school officials do to minimize their risk of violating a school employee's Fourth Amendment rights? First of all, searches that are conducted in connection with criminal investigations must adhere to the Fourth Amendment constraints that apply to law enforcement officials. Normally, such searches must be based on probable cause and must not be pursued without a warrant. When school officials act as agents of the police, they are bound by the same constitutional constraints.

Second, in *Shaul*, school officials prevailed in part because the court concluded that Shaul had no reasonable expectation of privacy over his desk and file cabinets, that his educational materials belonged to the school district, and that he had given up his possessory interest in personal items by not retrieving them when he was given an opportunity to do so. Thus, school

districts can protect themselves against litigation by giving an employee the opportunity to retrieve personal belongings before school employees search or inspect teachers' desks or file cabinets.

In addition, districts should adopt a formal policy that puts teachers on notice that desks, computers, file cabinets and storage areas belong to the school district and that the district reserves the right to inspect these areas for a work-related reasons. Such a policy would serve as evidence that teachers have no reasonable expectation of privacy over these areas and thus a search of them would not violate any constitutional right to privacy. For example, at least one court has held that public school students have no privacy expectations over their lockers when a school district retains ownership of the lockers and has a formal locker policy in place that notifies students of this fact.[43]

So far, courts have given almost no guidance about the legality of work-related searches of teachers' purses, wallets, briefcases and other obviously personal items. Absent unusual circumstances, school administrators should not search such items without a warrant based on probable cause. In other words, the intrusiveness of such searches is significant; and law enforcement officials and not school administrators should conduct them. Certainly, school authorities should consult with competent legal counsel before engaging in a search of teachers' personal items over which they might well have reasonable expectations of privacy.

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[1] Shaul v. Cherry Valley-Springfield School District, 218 F. Supp. 266 (N.D. N.Y. (2002).

[2] Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

[3] U.S. Const. Amend. IV.

[4] New Jersey v. T.L.O., 469 U.S. 325 (1985).

[5] See Kennedy v. Dexter Consolidated Schools, 10 P.3d 115 (N.M. 2000) and Konop ex rel. Konop v. Northwestern School District, 26 F. Supp. 2d 1189 (S.S.D. 1988).

[6] K. ALEXANDER., & D. M. ALEXANDER, AMERICAN PUBLIC SCHOOL LAW (2001).

[7] O'Connor v. Ortega, 480 U.S. 714 (1987).

[8] O'Connor, at 726.

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[9] *Id*. at 724.

[10] *Id*. at 725-26.

[11] *Id*. at 730.

[12] K. ALEXANDER & D. M. ALEXANDER, AMERICAN PUBLIC SCHOOL LAW (2001).

[13] Thompson v. Johnson County Community College, 930 F. Supp. 501 (D. Kansas 1996).

[14] United States v. Falls, 34 F. 3d 674 (8th Cir. 1994).

[15] Thompson at 507.

[16] O'Connor v. Ortega, 480 U.S. 714 (1987).

[17] Schowengerdt v. General Dynamics Corp., 823 F.2d 1328 (9th Cir. 1987).

[18] United States v. DeWeese, 632 F.2d 1267 (5th Cir. 1980).

[19] Gillard v. Schmidt, 579 F.2d 825 (3d Cir. 1978).

[20] United States v. Speights, 557 F.2d 362 (3d Cir. 1977).

[21] See United States v. Reyes, 908 F.2d 281 (8th Cir. 1990) (no expectation of privacy in rental locker after rental term had expired and renter had prior notice that contents of locker could be removed after rental period expired) and United States v. Bunkers, 521 F. 2d 1217 (9th Cir. 1975) (postal employee had no expectation of privacy in locker where USPS regulations and collective bargaining agreement stated that lockers were subject to search).

[22] Thompson at 507.

[23] Leventhal v. Knapek, 266 F. 3d 64 (2d Cir. 2001).

[24] See O'Connor v. Ortega, 480 U.S. 709, 719 (1987).

[25] Leventhal at 706.

[26] New Jersey v. T.L.O., 469 U.S. 325 (1985).

[27] State v. McLellan, 744 A. 2d 611 (N.H. 1999).

[28] N. H. Const. Pt. 1, Art.19.

[29] United States v. Hamdan, 891 F. Supp. 88 (E.D.N.Y. 1995), aff'd, 101 F.3d 686 (2d Cir. 1996).

[30] Minnesota v. Carter, 525 U.S. 83, 119 S.Ct. 469 (1998).

[31] O'Connor v. Ortega, 480 U.S. 714 (1987).

[32] McLellan at 605.

[33] Brannen v. Kings Local School District, 761 N.E. 2d 84 (Ohio App. 3d 2001).

[34] New Jersey v. T.L.O., 469 U.S. 325 (1985).

[35] State Forester v. Umpqa River Navigation Co., 478 P. 2d 631 (Or. 1970).

[36] Mapp v. Ohio, 367 U.S. 643 (1961).

[37] State Forester at 632.

[38] Shaul at 268.

[39] *Id*. at 268.

[40] *Id*. at 270.

[41] Shaul at 270.

[42] O'Connor v. Ortega, 480 U.S. 714 (1987).

[43] In re Isaiah B., 500 N.W. 2d 637 (Wis. 1993).