



DECEMBER 21, 2009

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## COURTS CLARIFY PRIVACY RIGHTS IN THE CLASSROOM

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One recent school-related lawsuit has resulted in two opinions that fundamentally conflict. In *Plock v. Board of Education of Freeport School District No. 145*, at issue was whether school officials could lawfully implement a proposal to install security devices containing audio/video-recorders in a group of special education classrooms. The proposal was developed after it was reported that school employees were mistreating special education students.

Although the school district reached an agreement with one of the employee unions that would be affected by the proposal, which afforded comprehensive due process rights, the teachers' union refused to consent to the proposal. After impact bargaining reached impasse, four individual teachers filed suit against the school district in state court on two counts claiming: (1) that the audio visual recordings would violate their Fourth Amendment right to be free of unlawful search and seizure; and (2) that the audio recordings would violate the *Illinois Eavesdropping Act*. Scariano, Himes and Petrarca, Chtd., provided the defense for the Board of Education.

In response to the allegations of Fourth Amendment Constitutional deprivations under federal law, the case was removed to the federal court. There, the Fourth Amendment claim was dismissed on its merits, based on an analysis of the public nature of the classroom. The U.S. District Court (Northern District of Illinois) held that teachers do not hold a reasonable expectation of privacy in a public school classroom, and rejected their claim that the school district's proposal constituted an unreasonable "search." Importantly, the Court opined:

A classroom in a public school is not the private property of any teacher. A classroom is a public space in which government employees communicate with members of the public. There is nothing private about communications which take place in such a setting. Any expectations of privacy concerning communications taking place in special education classrooms such as those subject to the proposed audio monitoring in this case are inherently unreasonable and beyond the protection of the Fourth Amendment.

Having dismissed the Fourth Amendment claim, the U.S. District Court then remanded the case to state court for resolution of the teachers' allegations of eavesdropping violations.

The *Illinois Eavesdropping Act* is a criminal statute which provides that one commits an eavesdropping violation when knowingly and intentionally using a device for the purpose of hearing or recording all or any part of a conversation without consent of all the parties to the conversation. A "conversation" is defined as "any oral communication between two or more persons regardless of whether one or more of the parties intended their communication to be of a private nature under circumstances justifying that expectation." The teachers argued that because they failed to consent to the installation of the audio-recording devices in the classrooms, the school district would violate the law if the devices were activated. In response, the school district argued, among other things, that classroom instruction does not come within the definition of the term "conversation," as contemplated by the Illinois legislature. Moreover, the School District argued that even if the Act applied, teachers must be deemed to provide implied consent in that the proposal demonstrated a reasonable security measure to which the teachers must adhere as public servants. Further, the school district argued that because teachers do not possess a reasonable expectation of privacy in the classroom, a decision that supported a small group of teachers determined to thwart a well-formulated and reasonable security measure by withholding consent would offend public policy.

Both the circuit and appellate courts advanced opinions based on a strict construction of the statute. They found that classroom instruction came within the definition of "conversation" and determined that, absent consent of all parties to the conversation, a violation would occur if the school district activated the audio-recording devices. The appellate court noted that the legislature had

carved out exceptions for several forums which are exempted from the Act's reach, including school buses and public meetings pursuant to the *Open Meeting Act*. In the absence of an express exemption for the classroom, the court held that Act applied in the classroom setting.

The appellate court's decision makes clear that school officials may not audio-record conversations within classrooms without consent of all parties to the conversation. In light of the significant impact upon school districts, this ruling may be appealed to the Illinois Supreme Court. We will keep you apprised of all developments in this case. Please let us know if you have an interest in supporting an effort to seek a legislative amendment to the Act, which would exempt classrooms from audio recording restrictions.

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