DPS TRAINING BULLETIN

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SEARCH OF GOVERNMENT EMPLOYEE'S DESK BY SUPERVISOR

Reference: Dennis H. O'Connor, et al
v.
Magno J. Ortega

U. S. Supreme Court
55 USLW 4405 (No. 85-530)
March 31, 1987

FACTS:

Ortega, a physician and psychiatrist, had been employed at a state of California hospital for seventeen years. Hospital officials, including Dr. O'Connor, became concerned about possible improprieties in Ortega's training program of young physicians. Additionally, officials were concerned with charges that Ortega had sexually harrassed two female hospital employees and taken inappropriate disciplinary action against a resident. O'Connor, Executive Director of the hospital, also felt Ortega had acquired a computer which had been financed by the possibly coerced contributions of residents.

O'Connor requested that Ortega take paid administrative leave during an investigation of these charges. Ortega, however, requested to take two weeks of vacation instead and his request was granted. After the two-week period, Ortega was placed on administrative leave and subsequently terminated.

While Ortega remained off hospital grounds during the investigation, the investigative team made the decision to enter Ortega's office. They entered the office a number of times and seized several items. The investigators did not otherwise separate Ortega's property from State property because, as one investigator testified, "Trying to sort State from non-State, it was too much to do, so I gave it up and boxed it up." No formal inventory of the property in the office was ever made and there was no policy of inventorying offices of employees on administrative leave. Items seized by the investigative team from Ortega's desk and office were used against him at subsequent hearings surrounding his discharge.

Ortega brought a civil suit in Federal District Court under 42 U.S.C. 1983. The Supreme Court decided two Fourth Amendment issues and remanded the case to the District Court to determine justification for the search and seizure.

ISSUE NO. 1:

Does a public employee have reasonable expectation of privacy in his office, desk and file cabinets at his place of employment?

HELD: Yes.

ISSUE NO. 2:

Is a government employer required to have a search warrant or probable cause to enter an employee's office, desk or file cabinets for a work-related purpose or investigation of work-related misconduct?

HELD: No--provided that a "standard of reasonableness" is met.

REASONING:

1. Individuals do not lose Fourth Amendment rights merely because they work for the government instead of a private employer. (emphasis added)

2. The operational realities of the workplace may make some public employees' expectations of privacy unreasonable when an intrusion is by a supervisor rather than a law-enforcement officer.

3. Requiring an employer to obtain a warrant whenever there is a need to enter an employee's office, desk or file cabinets for work-related purposes would seriously disrupt and hamper the routine conduct of business and would be unduly burdensome.

4. In contrast to law-enforcement officials, public employers are not enforcers of the criminal law; instead, public employers have a direct and overriding interest in ensuring that the work of the agency is conducted in a proper and efficient manner.

5. Public employer intrusions on the constitutionally protected privacy interests of government employees for noninvestigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reaonableness under all circumstances. (emphasis added)

NOTES:

This search and subsequent seizure was conducted by government officials not involved in law enforcement pursuant to employee misconduct. Law enforcement could become involved in the seizure of evidence during such a search if contacted by the supervisor, who may have inadvertently discovered evidence of a criminal nature. Even though such evidence may be in "plain view", it is wise to obtain a search warrant prior to seizure. Facts surrounding the search can be included in an affadavit as the basis of the warrant.

This search is that of a government office by a government employer/supervisor, not that of a private company by a private person where the Fourth Amendment does not apply.

The following cases, which, amongst others, the United States Supreme Court has cited in this opinion, should be reviewed:

D.R.C. v. State of Alaska, Legal Bulletin No. 58--search of juvenile conducted by a government-employed teacher.

United States v. Raymond J. Place, Legal Bulletin No. 75--investigative detention of luggage on less than probable cause.

Ray E. Oliver v. United States, Legal Bulletin No. 82--societal expectation of privacy.

New Jersey v. T.L.O., Legal Bulletin No. 90--warrant requirement not suitable to school environment.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Sections I on page 6, K on page 8 and N on page 10 of your "Contents" and to I-6, K-4 and N-3 of "Text". File Legal Bulletin No. 111 numerically under Section R of the manual.