

Lawsuit challenges use of pepper spray in Birmingham, Alabama schools

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A federal trial began on January 20 in Birmingham, Alabama over the widespread use of pepper spray in Birmingham City Schools by the Birmingham Police Department's School Resource Officers (SROs).

The plaintiffs, represented by Southern Poverty Law Center's attorney Ebony Howard, assert that they were sprayed with pepper spray, and in some cases tear gas, as a means of controlling behavior that could have been handled otherwise. The SPLC contends that the SROs are essentially untrained police officers within the schools and that their practices amount to excessive force against students.

Within a five-year period between 2006 and 2011, SROs used pepper spray or tear gas against Birmingham City Schools students some 300 times. While sobering, that number is even more staggering when contrasted with a single recorded use of the spray in a suburban school district in that same five-year span.

The SPLC has identified several, varied instances of pepper spray being used against students who posed no threat to themselves or others. One of the pupils, identified as K.B. in the suit, was pregnant when she was sprayed. According to the SPLC's Motion for Class Certification, K.B. was handcuffed after being sprayed; she was then transported to Cooper Green Hospital (which serves indigent county residents) by the SRO who had sprayed her and was made to sign medical release forms despite being unable to read them due to the pepper spray's effects on her vision.

Others had already been restrained by teachers when the SROs sprayed them. In addition, two students in the complaint were mere bystanders when they were sprayed. At least one of the plaintiffs dropped out of school after the spraying incident.

The SPLC initially brought the suit in 2010. In

August of 2012, the case gained significant impetus when federal Judge Abul Kallon declared that it could be filed as a class action lawsuit, as the Birmingham Police Department's policies and training for SROs affected all Birmingham City School students.

As noted in the Memorandum Opinion and Order filed by the SPLC in 2012, the Birmingham Police Department has "no specific policy regarding SRO's use of chemical spray." The guidelines that they are given are general, without consideration given to the nature of an educational institution serving minors. The only policy put forth by the BPD is its general policy on "Chemical Spray Subject Restraint," which addresses the uses of pepper spray within crowds or against suspects. The SPLC contends that this policy is "constitutionally defective" in a school setting.

For its part, the BPD defends its use of the spray in the schools, and upholds the presence of SROs as necessary to the safety of students and staff. A.C. Roper, chief of the Birmingham Police Department, has stated that, contrary to the SPLC's contentions, the SROs are trained daily on the use of pepper spray and other weapons during roll-call. He also contends that the spray was only used a handful of times during the timeframe given in the case, though he has not publicly given a figure.

Roper states that his department has a force continuum within its policies, which gives officers a guideline for escalating through a number of suspect or crowd controlling methods, including the use of chemical spray. Importantly, he states that the use of any of the methods on the continuum is at the discretion of the officer.

Roper's arguments hinge upon the fact that the use of pepper spray has not been deemed unconstitutional anywhere else in the country, though the use of pepper

spray against students within a school has not been reported elsewhere in the country.

The alarming use of pepper spray against students does not take place within a vacuum. This case is set against a backdrop of increasing poverty, joblessness and lack of economic growth within Birmingham. In 2011, within the timeframe of the suit, Birmingham City Schools could only boast a graduation rate of 55 percent, with some of its schools mustering only 47 percent. Woodlawn High School, attended by one of the plaintiffs, is flanked by housing projects.

Birmingham City Schools serve primarily black, impoverished students, many living in housing projects or slums. Both Birmingham Mayor William Bell and Police Chief Roper are African American. Yet Bell has made no statements to the media regarding these events, while Chief Roper has offered nothing but unwavering support for the SROs and their use of chemical weapons against students.

In the wake of the deaths of Michael Brown and Eric Garner at the hands of police officers, Bell's silence and Roper's intransigence illustrate the point that these black, middle class leaders are the class enemies of working class youth and their communities.



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