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ABSTRACT

Although the Federal courts have not yet decided any cases involving search and seizure of student's property, various State courts have ruled that the Fourth Amendment protects students from "unreasonable" searches by school officials. However, the courts have generally applied a less stringent standard in justifying searches by school officials than in justifying searches by police. When school officials conduct a search of school premises or ask police to conduct a search to determine if a school regulation or criminal statute has been violated, only "reasonable suspicion" is required. If, however, a search conducted jointly by school officials and police is initiated by the police for the primary purpose of seeking evidence of a crime, the more stringent search and seizure standards applicable to criminal cases may apply. whenever school officials conduct a search of a student's property, a witness and the student himself, if possible, should be present. Observance of these safeguards is important since a search that is ruled unlawful may result in the inadmissability of evidence in criminal or school proceedings and, possibly, a civil or criminal liability for school officials. (Author/JG)

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SEARCHES OF STUDENTS AND THE FOURTH AMENDMENT

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Until recently, the school's right to search a student's person or his locker has been little questioned.[1] The Fourth Amendment's prohibition against unreasonable searches and seizures, as applied to the states and their instrumentalities through the Fourteenth Amendment, has generally been thought to be inapplicable to school searches. The reason is that school officials have been considered private, not governmental, persons, and the Fourth Amendment's prohibition against unreasonable searches and seizures applied only to searches by governmental officials.[2] Courts have held that when a school official searches a student, the official is acting *in loco parentis* and therefore assumes the private role of the parent to the student.[3] Thus, the Fourth Amendment's exclusionary rule has been held inapplicable to evidence discovered and seized by school officials during school searches, and the evidence is admissible against the student in school disciplinary hearings and in criminal or juvenile court proceedings.

In recent years, however, courts have generally rejected the private-person distinction when the evidence seized in a school search is sought to be introduced in a criminal proceeding. Courts have begun to recognize that the Fourth Amendment's prohibition against unreasonable searches and seizures applies to searches by school officials. It has not been applied, however, in the same way that it is to police searches in a private home. This article will discuss how it has been applied and what actions school personnel should take before they search a student, or his locker, or other property.

The Fourth Amendment's prohibition against illegal searches has generally been construed to permit a search only when (1) a warrant has been issued authorizing it, or (2) there is probable cause and exigent circumstances are such that obtaining a warrant would frustrate the purpose of the search, or (3) a valid arrest has been made and the search is incident to the arrest. When a search is made that does not comply with these requirements, four consequences may result. One, there may be a criminal prosecution for violation of privacy. Two, there may be a civil suit for violation of privacy. Three, the evidence may be declared inadmissible in a school proceeding; or four, inadmissible in a criminal proceeding.

Of the four possible consequences, only the fourth – inadmissibility of the evidence in criminal proceedings – is usually in issue. For example, no case has been found in which school officials have been criminally prosecuted for violating a student's privacy because of a search. There have, however, been a few cases in which civil liability was found. Recently a federal district court in Pennsylvania ruled that a civil suit against school and police officials brought by nine high school students seeking damages for deprivation of their Fourth Amendment rights should proceed to trial.[4] In this case, school officials looking for a ring reported missing by another student requested police assistance after no student in the class in which the ring was first discovered missing came forward with the ring. The police made a strip search of the nine female students in the class but found no ring. The court held that though the search had been conducted by police, if it could be shown that school officials participated with the police in making statements and taking actions that coerced the students into submitting to the search, they could be held personally liable. The court overruled the defendant school officials' motion to dismiss for failure to state a cause of action and ordered the case brought to trial.

1. *See, e.g.*, Buss, *The Fourth Amendment And Searches of Students in Public Schools*, 59 IOWA L. REV. 739 (1974); Annot., 49 A.L.R.3d 978 (1973).

2. *See, e.g.*, Burdeau v. McDowell, 256 U.S. 465 (1920).

3. *See, e.g., In re* Donaldson, 269 Cal. App. 509, 75 Cal. Rptr. 220 (1969); People v. Stewart, 63 Misc. 2d 601, 313 N.Y.S.2d 253 (1970); and Mercer v. State, 450 S.W.2d 715 (Tex. Ct. App. 1970).

4. Potts v. Wright, 357 F. Supp. 215 (E.D. Pa. 1973). *See also*, Phillips v. Johns, 12 Tenn., App. 354 (1930). *But see*, Marlar v. Bill, 181 Tenn. 100, 178 S.W.2d 634 (1944).

No case has been found in which courts have held evidence inadmissible in a school disciplinary proceeding on the basis that the method of its procurement violates the Fourth Amendment. Almost all of the cases that involve searches by school officials have grown out of criminal cases in which the student tried to exclude evidence, primarily drugs, seized during a school search and sought to be introduced in a criminal proceeding.

It is clear that the Fourth amendment prohibits only "unreasonable" searches and seizures. The difficult question facing courts in school cases, which has been raised with only a few exceptions in a criminal action against the student, has been the standard that should apply to searches made by school officials. Is the entire law of search and seizure as it applies in the criminal law incorporated into the school system, or are school officials limited by less stringent standards? In answering this question, the courts have considered several factors. Did the school officials act alone, or was the search in concert with the police? Why was the search initiated? Was it to enforce school discipline or to discover evidence for criminal prosecution? What was the nature of the place searched?

Searches by School Officials Acting Alone

The "reasonableness" of searches by school officials acting alone has been raised as an issue by students seeking to exclude the fruits of these searches from admission in criminal proceedings. When searches have been conducted primarily by school officials in furtherance of school purposes, courts have found that the Fourth Amendment requires a less stringent standard to justify school searches of students and their property. School officials need not obtain a search warrant or even show "probable cause that a crime has been committed" to justify a search initiated for proper school purposes when it is conducted primarily by school personnel. Balancing the right of students to be free from unreasonable searches and seizures with the compelling interest of the state in maintaining discipline and order in the public school system, most courts now require that contraband seized by school officials without a search warrant may be introduced in a criminal trial only if the school official can show the existence of a "reasonable suspicion" at the time of the search that school regulations or state laws were being violated by students.

In developing the less stringent "reasonable suspicion" standard, the courts have placed great weight on the *in loco parentis* doctrine. In most states, either expressly or implicitly, school officials are deemed to stand to a limited extent *in loco parentis* to the children entrusted to their care. Out of this relationship rises the obligation to protect the students while in school from dangerous and harmful influences and the power to control and discipline students when it is necessary for school officials to perform their duties. Weighing the Fourth Amendment rights of students against the state's interest in the school official who stands *in loco parentis*, one court concluded: "The *in loco parentis* doctrine is so compelling in light of public necessity and as a social concept antedating the Fourth Amendment, that any action, including a search taken thereunder, upon reasonable suspicion should be accepted as necessary and reasonable."[5] The court found that school officials acting *in loco parentis* need greater flexibility in achieving the goals of public education than is allowed by the "probable cause" standard for reasonable searches by governmental officials in other situations.[6] Stressing that school systems are not "enclaves of totalitarianism," the court concluded that the "reasonable suspicion" standard protects the rights of students by requiring school officials to show at least "reasonable grounds for suspecting that something unlawful is being committed. . . before justifying a search of a student when the school official is acting *in loco parentis*."[7] The courts have not been explicit in setting out what facts would justify a "reasonable suspicion." However, they have indicated that the doctrine of *in loco parentis* imposes on school officials an affirmative duty to investigate any suspicion that conduct or materials dangerous or harmful to health and welfare of students is occurring or being harbored in the school. This affirmative obligation to investigate grows out of the reasonable expectations of parents that the school will protect their children from dangerous conditions such as the possession and sale of drugs on campus or the possession of dangerous weapons by other students. The fact situations discussed below on searches of students, their lockers, and their dormitory rooms shed light on the nature of the "reasonable suspicion" standard.

Thus, when a school search is conducted upon "reasonable suspicion" by school officials in furtherance of school purposes, the search is considered to be reasonable under the Fourth Amendment and evidence seized at the time of the search is admissible in criminal trial or juvenile court proceedings, as well as in school disciplinary proceedings.

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5. People v. Jackson, 65 Misc. 2d 909, 319 N.Y.S.2d 731, 736 (1971), *aff'd* 30 N.Y.2d 734, 333 N.Y.S.2d 167, 285 N.E.2d 153 (1972).
6. *Id* at 736.
7. *Id*

Joint Searches by School Officials and Law Enforcement Agents

When the search of a student or his property is conducted jointly by school officials and law enforcement agents, the Fourth Amendment standards applicable seem to depend on who initiated the search and the place searched. When school officials, seeking to maintain order and to determine if a school regulation or criminal statute has been violated, have requested police assistance in conducting a search, the lesser "reasonable suspicion" standard has been applied.[8] The courts have concluded that in these circumstances, the police may conduct the search based on the "reasonable suspicion" of school officials. It also should be noted that in the area of searches of student lockers, which is discussed below, the question of who initiated and conducted the search is not the crucial issue. Student lockers are considered to be property controlled jointly by the student and school officials, and therefore the cases have held that school officials have the authority to consent to a warrantless search by police of a student's locker.

When the search of a student or his property is initiated by the police and conducted jointly by school officials and law enforcement agents for the primary purpose of discovering evidence of a crime, a few courts have held that search and seizure standards applicable in criminal cases must be met. In *Piazzola v. Watkins*,[9] the court of appeals reversed the convictions of two Troy State University students for possession of marijuana. A warrantless search of the two students' dormitory rooms had been conducted by university officials and police narcotics agents. The law enforcement agents had informed the university that they had information that drugs were in the dormitory rooms of several students and requested permission to search the rooms. The university consented to the search, relying on a university regulation reserving the right of school officials to enter students' dormitory rooms for "inspection purposes." The drugs discovered during the searches were presented as evidence in the trials of the two students over their objections that the evidence was the inadmissible fruit of an "unreasonable" search. In upholding the students' contentions that the search violated the Fourth Amendment, the Fifth Circuit stated that "clearly the University had no authority to consent to or join in a police search for evidence of crime." The court found that the university retained broad supervisory powers that permit it to adopt such a regulation, but the regulation must be limited in application "to further the University's function as an educational institution." The university regulation could not be construed to authorize the school officials to consent to a search for evidence "for the primary purpose of a criminal prosecution." The court found no exigent circumstances that would justify a warrantless police search and therefore held that the drugs seized from the dorm room were inadmissible as evidence against the students in a criminal trial.[10]

In a recent New York case,[11] the court applied the "probable cause" standard required by the criminal law to a search of a high school student by a school security guard employed by the board of education. Although the school security officer was not classified as a law enforcement officer under state law, his primary duties were to maintain school safety and to control student crime and disturbances. The court found that the security guard had the status of a policeman and therefore concluded that he could not act on suspicion alone in investigating possible possession of drugs by a student. The security officer had stopped the student to question him about a stolen wristwatch when he noticed a slight bulge in the student's pocket and the top of a brown envelope protruding from the same pocket. At the security officer's request, the student emptied his pockets, and the officer found three brown envelopes containing marijuana. The court affirmed the exclusion of this evidence in the student's criminal trial for possession of drugs as the fruits of an unlawful search. Despite the security officer's claim that his experience had taught him that students carried drugs in similar envelopes, the court found that the brown envelope could have contained any number of noncontraband items and therefore the search had been conducted on the "skimpiest of hunches." These facts did not meet the "probable cause" standard the court required to justify a warrantless search by the school security officer. Moreover, the court indicated that even if the "reasonable suspicion" standard had been applicable, a search based on such a "hunch" did not meet the requirements of that standard.

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8. *See e.g., In re C.*, 26 Cal. App. 3d 320, 102 Cal. Rptr. 682 (1972), discussed on page 5 *infra*.

9. 442 F.2d 284 (5th Cir. 1971).

10. *See also, In re* Donaldson, 269 Cal. App. 2d 509, 75 Cal. Rptr. 200 (1969), in which the court noted the rule that a search that is clearly part of a joint operation by police and the private individual is tainted with state action and consequently violates the Fourth Amendment's prohibition. In this case, however, the court found that there was no joint operation by police and the school officials.

11. People v. Bowers, 72 Misc. 2d 800, 339 N.Y.S.2d 783 (1973).

The Nature of the Place Searched

In determining whether the Fourth Amendment is applicable to school searches and what standards should be applied, the courts have looked closely at the nature of the place to be searched. The cases have dealt primarily with three types of searches: searches of students' person; searches of student lockers; and searches of student dormitory rooms. It is helpful to look separately at each of these areas in order to determine what limitations the Fourth Amendment places on searches by school officials.

Search of a Student's Locker. In a recent California decision, *In re W.*,[12] the California Court of Appeals applied a variation of the "reasonable suspicion" standard to a search of a student's locker by a high school vice-principal. The vice-principal had been told by four students that a particular locker contained a sack of marijuana. Using a master key, the vice-principal opened the locker and found a bag containing marijuana. The locker had been assigned to W. The marijuana was turned over to the police, and in a juvenile court proceeding W. was adjudicated a delinquent. The student argued that the vice-principal's search violated the Fourth Amendment and the evidence obtained from it was therefore inadmissible in the juvenile court hearing. The court ruled that while the Fourth Amendment did place limits on school officials, the doctrine of in *loco parentis* expands these officials' authority. Balancing the Fourth Amendment rights of students against the *in loco parentis* powers of the school, the court stated that the appropriate test for searches by high school officials is two-pronged: (1) the search must be within the scope of the school's duties, and (2) the search must be reasonable under the facts and circumstances. Although *in loco parentis* expands school officials' powers, the Fourth Amendment limits their power to act with these two requirements. The court found that preventing the use of marijuana was clearly a school responsibility and the search of the student's locker, based on specific information from four students, was reasonable.[13]

The balancing test employed by the California court is in contrast to the approach most often taken by the courts in cases involving school searches of student lockers. In *Overton v. New York*,[14] the United States Supreme Court ordered a new hearing of a narcotics prosecution in which the conviction of a student was based on the discovery of drugs in his locker by police who were without a valid warrant but had permission from the vice-principal to search the locker. The New York Court of Appeals had upheld the search on the theory that the vice-principal had not been coerced by the invalid warrant to consent to the search, but had acted under his independent duty to inspect a locker when suspicion arises as to its contents. A fact important to this decision is that the vice-principal had the combinations of all the locks and the students knew that they did not have exclusive possession of the lockers *vis-à-vis* the school authorities. On appeal, the Supreme Court remanded the case to the New York Court of Appeals for determination of whether the vice-principal had acted under duress. The Court of Appeals essentially restated its earlier decision, finding that the vice-principal had exercised an independent "duty" to search, a duty claimed by the vice-principal and tacitly approved by the court.

In another case, the Kansas Supreme Court upheld a burglary conviction based on the discovery of stolen goods in a bus station locker that was entered by a key removed from the defendant's school locker.[15] The defendant had consented to the principal's opening his school locker in the presence of the police. The court upheld the search on the basis of the defendant's uncoerced consent and the nature of the school locker. It said that although the student may control his school locker in reference to fellow students, his possession is not exclusive against the school and its officials. As in *Overton*, the fact that the principal had a master list of all lock combinations and a key that would open all school lockers was important to the court's decision. The court considered the right of inspection inherent in the authority vested in school administrators to manage schools and protect other students.

From these cases, it appears that police may introduce evidence in a criminal trial that has been seized by school officials from a student's locker without a warrant or the student's permission when the school official had reasonable grounds for the search. Also, the school may authorize the police to conduct a search when they have reasonable grounds to believe that a crime has been committed and that evidence in reference to the crime may be within the locker.

Search of a Student's Person. The "reasonable suspicion" standard has also been used to test the

12. 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973).

13. Although the court cited the earlier California decision, *In re* Donaldson, and the "private person" exception to the Fourth Amendment as a possible basis for its decision, it found that the Fourth Amendment was not totally inapplicable in the school situation and employed the balancing test.

14. 20 N.Y.2d 360, 283 N.Y.S.2d 22, 229 N.E.2d 596, *vacated and remanded*, 393 U.S. 85 (1968), *original judgment aff'd* at 24 N.Y.2d 522, 301 N.Y.S.2d 479, 249 N.E.2d 366 (1969).

15. State v. Stein, 203 Kan. 638, 456 P.2d 1 (1969), *cert. denied*, 397 U.S. 947 (1970).

legality of a search of the student's person. It has been accepted as the standard even when the evidence seized is turned over to the police and introduced in a criminal or juvenile court proceeding. In a 1970 California decision, *In re G.*,[16] the court explained why a less stringent Fourth Amendment standard applied to school searches of a student's person. In this case a student had informed the dean of students that G. had taken a pill and was intoxicated. G. was brought to the principal's office and requested to empty his pockets. One of the items in his pockets was a film canister containing amphetamines. The court found the principal's action to have been proper, explaining that it would have been improper for the principal to ignore the information that G. had dangerous drugs in his possession. The court said that it was in the best interest of the student and the school system that such situations be handled in an informal manner among persons with whom the student was familiar, rather than to subject the student to the adverse emotional impact of a search warrant and a hearing before a magistrate. The court pointed out that the principal's action required no intervention by law enforcement officers and little or no disruption of the school. Finding that "even in the areas of protected freedoms, the power of the state to control conduct of children reaches beyond the scope of its authority over adults," the court held that the principal's action was reasonable and not in violation of the Fourth Amendment

In another California decision, *In re C.*,[17] the court upheld as reasonable a search of a high school student's person conducted by school officials with the assistance of a police officer. In that case, school officials, after receiving a tip that C. was selling drugs, brought the student to the vice-principal's office for questioning. When the student resisted a search of his bulging pants pocket, the school officials requested the aid of a police officer, who removed drugs from the student's pocket. The court, in upholding the admissibility of this evidence in a juvenile court proceeding, adjudicated C. a delinquent and noted that school officials have a duty to protect students from drugs being sold on campus. The court found that the school officials had "good cause" to search C. based on the tip they had received, the bulge in C.'s pockets, C.'s possession of $20.00 (in the court's view a large sum for a student), and C.'s refusal to allow a search of his pockets. When the purpose of the school official's search is within the scope of his official duties, the court said, the justification for the search will not be measured by the rules authorizing a police search of an adult. The court found that there was no joint search by the school officials and the police, concluding that "the constitutional guarantee against unreasonable searches does not proscribe solicitation and use of professional assistance by school authorities in conducting an authorized search of a student for good cause." The mere fact that the professional assistance was from a policeman "did not render unreasonable that which was otherwise reasonable."

In a recent New Jersey case, *In re G.C.*,[18] the court also upheld the admissibility of evidence in a juvenile court hearing of evidence that was obtained in a school search of a female student's person. The school officials, acting on information that the student had been selling pills on campus that same morning, brought the girl to the principal's office. After she consented to a search of her person by a female school official, a bottle of amphetamines was found in the student's purse. Noting that there was insufficient evidence to determine whether the student's consent to the search was voluntary, the court considered whether school officials could constitutionally conduct such a search of a student without a consent. It concluded that: "The privacy rights of public school children must give way to the overriding governmental interest in investigating reasonable suspicions of illegal drug use by such students even though there is an admitted incursion of constitutionally protected rights – rights no less precious because they are possessed by juveniles."[19] Finding that the school officials were "duty bound to investigate reasonable suspicions of student criminality," the court held that the school officials had acted responsibly and diligently under the circumstances and would have been "derelict" to have acted otherwise.

In three other school cases involving search of a student's person, state courts in Delaware,[20] Illinois,[21] and New York,[22] have upheld the search.

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16. 11 Cal. App. 3d 1193, 90 Cal. Rptr. 360 (1970).
17. 26 Cal. App. 3d 320, 120 Cal. Rptr. 682 (1972).
18. 121 N.J. Super. 108, 296 A. 2d 102 (1972).
19. *Id.* at 106.
20. State v. Baccino, 282 A. 2d 869 (Del. Super. 1971). The case involved the search of a student's coat after a tug-of-war over the coat between the student and a school official who was taking the jacket to ensure that the student stayed in class. Drugs were found in the jacket pockets.
21. *In re* Boykin, 39 Ill.2d 617, 237 N.E.2d 460 (1968). Here, the search, made by police officers at the school officials' request, resulted in discovery of a gun on a student's person.
22. People v. Jackson 65 Misc. 2d 909, 319 N.Y.S.2d 731, *aff'd* 3 N.Y.2d 734, 333 N.Y.S.2d 167, 284 N.E.2d 153 (1971). The search of a student chased down by school coordinator of discipline three blocks from the school was upheld by the court. The student, suspected by the school official of possessing drugs, had run out of the school while

Search of College Dormitory Room. The leading case in the area of searches of college dormitory rooms is *Piazzola v. Watkins*,[23] which was discussed above. In that case, the Fifth Circuit held that the college students occupying a college dormitory room enjoyed the protections of the Fourth Amendment and that the school officials of Troy State University had no right to consent to or join a police search for the primary purpose of obtaining evidence for criminal prosecutions. The court found that the search, instigated and in the main executed by law enforcement agents, was subject to the full criminal law requirements of the Fourth Amendment. Inasmuch as there was no warrant, no probable cause for searching without a warrant, and no waiver or consent, the court concluded that the search violated the Fourth Amendment's prohibition of unreasonable searches.[24]

In *Piazzola*, the Fifth Circuit made it clear that although the university could not require as a condition of admission that students waive their Fourth Amendment right to be free from unreasonable searches and seizures, a university regulation that reserved the right to inspect student rooms was not *per se* unconstitutional.[25] If the regulation is construed and limited in application to furtherance of the university as an educational institution, it is within university power.

In a federal district court decision arising from the same drug raid involved in *Piazzola*, the court upheld the expulsion of a Troy State student for possession of marijuana in a college dormitory. In *Moore v. Student Affairs Committee of Troy State University*,[26] the same district court judge who had originally reversed the *Piazzola* convictions upheld in a university disciplinary proceeding the admissibility of evidence seized in a joint school and police search. Stressing that the university has an affirmative obligation to promulgate and enforce reasonable regulations designed to protect campus order and discipline, the court pointed out that "the constitutional boundary line between the right of the school authorities to search and the right of a dormitory student to privacy must be based on a reasonable belief. . . that a student is using a dormitory room for a purpose which is illegal or which would otherwise seriously interfere with campus discipline." This standard of "reasonable cause to believe" was found to be lower than the traditional probable-cause standard because of the "special disciplinary proceedings are not criminal proceedings in the constitutional sense."

Searching Other Places. Searches conducted by school officials to discover student violations of school regulations have been upheld in other situations. In *People v. Lanthies*,[27] officials of a college searched a student's briefcase when their efforts to find an offensive odor permeating the entire library study hall led to the student's carrel. The odor came from packaged drugs discovered in the briefcase. In upholding the admissibility of the evidence in the student's criminal trial, the court noted that school officials periodically checked student carrels for overdue books, rotten food, and similar matters. In this case the discovery of drugs resulted from such a search based on complaints by students of an odor thought to come from rotting food. These facts, in the court's opinion, brought the search within the "emergency exception" to the warrant requirements of the Fourth Amendment.

In one case a federal district court has upheld the warrantless search by school officials of a student's car parked on the school campus.[28] The student, a cadet at the Marine Maritime Academy, was dismissed after a search of his automobile revealed drugs and alcohol in violation of the Academy regulations forbidding possession of such items on campus. Seeking readmission to the Academy, the student challenged the admissibility of this evidence in his expulsion hearing. The federal district court held that the school officials had reasonable cause to believe that school regulations were being violated and that the search of the car was a reasonable exercise of the Academy's authority to maintain order and discipline on the campus. It should be noted that the Academy is a quasi-military institution, the automobile was parked on campus in spaces provided by the school, and the contraband found was admitted in a school disciplinary hearing, not a criminal proceeding. It may be that under other circumstances a search of a student's car by school officials would be subject to a higher standard.

Conclusion

Neither the Supreme Court nor the federal courts of appeal have decided any cases directly governing

he was being taken to the principal's office for questioning. The court held that the *in loco parentis* powers of the school official did not in this case end at the school door.

23. 442 F.2d 284 (5th Cir. 1971).

24. *Accord*, People v. Cohen, 57 Misc. 366, 292 N.Y.S.2d 706 (1968); Commonwealth v. McCloskey, 217 Pa. Super. 432, 272 A.2d 271 (1970) (holding that for purposes of police searches, a dormitory room is analogous to an apartment or hotelroom).

25. The Troy State University rule stated: "The college reserves the right to enter rooms for inspection purposes. If the administration deems it necessary, the room may be searched and the occupant required to open his personal baggage and any other personal materials which is sealed."

26. 284 F. Supp. 725 (1968).

27. 5 Cal. 751, 97 Cal. Rptr. 297, 488 P.2d 625 (1971).

28. Keene v. Rodgers, 316 F. Supp. 217 (D. Me. 1970).

the Fourth Amendment rights of public school students.[29] Almost all the cases reviewed in this article come from state courts and have no value as precedents in other jurisdictions. The law as it relates to the balancing of students' constitutional rights and the state's interest in maintaining order and discipline in the public school is very fluid and has changed rapidly in recent years. The courts now recognize that the Fourth Amendment does protect students from "unreasonable" searches by school officials, but in defining "reasonableness" the courts have usually struck the balance in favor of order and discipline in the schools. Still, it is clear that students do not shed their constitutional rights at the schoolhouse gate. In developing regulations governing searches of students and their property, school officials should attempt to protect the students' right to privacy. Where the regulations govern searches of jointly controlled property, such as lockers or carrels, students should be made aware that the property is subject to periodic administrative searches for contraband and that school officials reserve the authority to consent to a search of such property by law enforcement officers. When possible, the student's consent to search should be obtained and he should be present when his property is searched. If the police seek permission from school authorities to search a student or his property for the purpose of obtaining evidence for a criminal prosecution, the school officials should require the police to obtain a search warrant unless the search comes within one of the exceptions to the Fourth Amendment's search warrant requirements. Whenever school officials conduct a search, a witness should be present.

Only in exceptional cases would the observance of these safeguards interfere with the school officials' affirmative duty to maintain order and discipline in the schools and protect the health, safety, and welfare of students in their charge. Because the consequences of an unlawful search may result in the inadmissibility of evidence in criminal or school proceedings and, possibly, civil or criminal liability for school officials, the incorporation of these safeguards in school policies would seem wise. Moreover, the consequences for students of school searches may be very severe (criminal penalties, expulsion, or long-term suspension). In the other areas of student rights, courts have increasingly required that schools carefully observe procedural safeguards mandated by federal and state constitutions before subjecting students to such severe penalties. In the area of search and seizure, it is not unlikely that the federal courts will subject school policies to similar scrutiny at some future time. By building these safeguards into school regulations, school officials can both teach students the values of our fundamental freedoms and avoid future conflicts in the courts.

29. The Fifth Circuit decision in Piazzola v. Watkins, 442 F.2d 284 (5th Cir. 1971), involved college students and a dormitory search.

RECENT COURT CASES

The Nearenewal of Probationary Teacher's Contract: Right to Statement of Reasons and Hearing. *Sigmon v. Poe*, 381 F. Supp. 387 (W.D.N.C. 1974).

Facts. Mrs. Sigmon, a nontenured teacher in the Charlotte-Mecklenburg school system, brought this action challenging the nonrenewal of her teaching contract and seeking reinstatement, damages, and other equitable relief. She alleged that the nonrenewal of her contract, which was without notice or a hearing, amounted to a denial of liberty and property without due process and thus was in violation of the Fourteenth Amendment to the United States Constitution.

Before her contract ended, the plaintiff had taught in the North Carolina public schools for nine years, the last four in the same elementary school in Charlotte. At the end of the 1972-73 school year, the principal of the school in which the plaintiff taught gave her a copy of his evaluation of her work. On a scale of satisfactory, marginal, and unsatisfactory, the plaintiff received a rating of marginal in one area and ratings of satisfactory in the other twenty-nine areas. Unknown to the plaintiff, a blind copy of this evaluation was placed in her personnel file, but the copy rated her performance marginal in three areas. In August 1973, the principal had a conference with the plaintiff and criticized her use of corporal punishment and her teaching methods. The plaintiff was not given a written statement of this criticism. In October 1973, the Assistant Superintendent for Personnel issued a directive to principals requesting a report on the "most serious employment problems in your school." This directive cautioned the principals to "be sure that each employee in your school . . . is aware that he or she may make a written response to complaints commendations, and suggestions . . ." The plaintiff's principal responded immediately to this directive, reporting that the plaintiff's work was unsatisfactory in several areas. No copy of this report was put in her personnel file, and she did not learn of it until after the decision not to renew her contract.

In March, all principals were requested to submit to the superintendent's office by March 19, an "Eval-

uation of Teaching Competency" for all teachers whose dismissal they recommended. On March 18, the principal sent the plaintiff a letter of "constructive criticism". On April 22, the principal sent plaintiff a letter informing her that he intended to recommend that her contract not be renewed. The plaintiff then sent a registered letter to the assistant superintendent requesting a hearing, but the letter, which was properly addressed, was returned "unclaimed." On April 24, the principal presented the plaintiff with his evaluation that her performance was unsatisfactory. The plaintiff refused to sign the form because she was not given an evaluation conference. On April 30, the Board of Education met in executive session and voted not to renew the contract. The plaintiff was notified of this decision on the same date.

The plaintiff again requested a hearing and the superintendent scheduled one before the Board of Education. Her attorney then wrote the superintendent requesting the reasons for nonrenewal and questioned the Board's ability to serve as a fair and impartial tribunal because of its previous decision not to renew the contract. The school attorney, after learning of this complaint, consulted the school board chairman and canceled the hearing "permanently." Plaintiff then brought this suit.

Decision. The federal district court first sought to determine whether the plaintiff had been deprived of "liberty" or "property" entitling her to the constitutional protection of due process. On the issue of "liberty," the court stated:

> I do not rule out the very live possibility that it is a genuine deprivation of liberty to discharge a professional teacher of substantial longevity without any notice or opportunity to be heard. Such a discharge at a time of year crucial to educational employment no doubt does create a stigma in the eyes of the public and a difficulty in procuring other employment.

The court concluded, however, that the plaintiff's strongest right to due process rested on the loss of property. The court found two property" interests sufficient to require due process safeguards.

The first property interest was based on the school system's procedure (a restatement of a statutory requirement) that principals "be sure that each employee in your school . . . is aware that he or she may make a written response to complaints, commendations, and suggestions." The court found that the plaintiff, because of this procedure, had an interest in knowing of the secret report her principal made. The principal's failure to notify the plaintiff of his negative report was a violation of a property right entitling the plaintiff "to a due process hearing."

The second property interest the court found to be sufficient to require a due process hearing before a decision not to renew a teacher's contract is the North Carolina statute governing tenure and removal of "career" and "probationary" teachers. Although the statute makes no provision for notice and a hearing before nonrenewal of a probationary teacher's contract, G.S. 115-142 (m) (2) does require that the decision for nonrenewal not be "arbitrary, capricious, discriminatory or for personal or political reasons."

The court concluded that this statute created a right in probationary teachers to have the grounds for termination of their contracts measured by the standard set out. Although neither the legislature nor the local school system had adopted procedures for applying this standard, the district court found that whatever procedures adopted it must meet the minimum requirements of fairness of the Fourteenth Amendment. This would, the court said, require "full notice of the alleged grounds for nonrenewal, and an opportunity to be heard on the question of whether the alleged cause for removal is "arbitrary, capricious, discriminatory or for personal or political reasons."

The court therefor ordered the school system to reinstate the plaintiff immediarely, with full salary and other compensation as if her contract had been renewed. The defendants were enjoined from dismissing the plaintiff unless they conduct a full hearing as to whether the Board's decision not to renew her contract was "arbitrary and capricious." The plaintiff must be given ample notice and adequate opportunity to appear with counsel to present her evidence and to challenge and examine opposing witnesses at the hearing. The court did not agree, however, with the plaintiff's contention that the Board members were incapable of conducting a fair hearing because of their earlier decision. Furthermore, the court pointed out that its reinstatement of the plaintiff did not give the plaintiff tenure. Tenure would come only with the decision by the Board to re-employ her.

ANNOUNCEMENTS

School Attorneys' Conference. February 7 and 8 at the Institute of Government. This annual conference will begin with a review of the legal problems of student suspensions and expulsions. It will be highlighted by a banquet presentation by NOLPE'S President-elect, Irving Evers, a school attorney from New Jersey who will speak on what North Carolina School boards should do to prepare for the likely prospect of collective bargaining. Other presentations will consider such topics as: Searches of Students and the Fourth Amendment; Student Records: The Family Educational Rights and Privacy Act of 1974; Sex Discrimination; Recent Attorney General Opinions; The Handicapped Student: Litigation and Legislation Affecting His Right to School.