DOCUMENT RESUME

ED 108 362 EA 007 280

TITLE	Search and Seizure: Right to Privacy. A Legal Memorandum.
INSTITUTION	National Association of Secondary School Principals, Washington, D.C.
PUB DATE	Mar 73
NOTE	7p.
AVAILABLE FROM	National Association of Secondary School Principals, 1904 Association Drive, Reston, Virginia 22091 ($0.25, quantity discounts, payment must accompany orders of $10.00 or less)
EDRS PRICE	MF-$0.76 PLUS POSTAGE. HC Not Available from EDRS.
DESCRIPTORS	Civil Liberties; *Court Litigation; *School Law; *Search and Seizure; Secondary Education; *Student Rights
IDENTIFIERS	*Student Search

ABSTRACT

Although the law generally allows administrators to search lockers, this should not be viewed as a carte blanche right. Students do have some ownership rights, particularly with regard to other students. School officials are charged by the state with operating the schools and safeguarding the health, welfare, and safety of students and school personnel; therefore, when drugs, weapons, or other dangerous materials are suspected, the principal has not only the right but the duty to make a thorough investigation. Fishing expeditions as a matter of school policy are not advised. A general search of all lockers in reaction to a bomb threat or widespread drug abuse can be justified as a proper exercise of school authority. A search, of course, may be made by a police officer with a valid warrant or in connection with a valid arrest. If police are involved, however, parents should be notified and the principal or another school official should be present at the time of the search. In all instances, a complete report of the incident including names of witnesses and other pertinent information should be recorded immediately. One suggestion that can be drawn from these cases is that a school should publicize its locker policy. (Author)

A Legal T[illegible]andum

NATIONAL ASSOCIATION OF [illegible] VITY ADVISERS
[illegible] 17430 Washington, D.C. 20041

March 1973

Concerning

SEARCH AND SEIZURE: RIGHT TO PRIVACY

Until a few years ago, school authorities assumed that they could lawfully inspect and/or search students and their lockers under the doctrine of "in loco parentis." The U.S. Supreme Court, however, has modified that doctrine--notably in the cases: In re Gault, 387 U.S. 1 (1967) and Tinker v. Des Moines School District, 393 U.S. 503 (1969)--by recognizing that protections guaranteed by the U.S. Constitution also apply to young people with full force and effect.

The constraint against unreasonable search and seizure is based on constitutional guarantees* that directly relate to student possession of lethal weapons, illegal drugs, and other dangerous materials that present critical problems for the school principal. Therefore, a legal evaluation of this subject should prove useful to school officials.

Search of Student Lockers

Much litigation has involved student locker searches that yielded evidence later introduced in criminal proceedings against the student. One important case, recently denied a hearing by the U.S. Supreme Court, concerned an invalid search warrant presented by New York policemen to an assistant principal who agreed to open

*Constitutional rights and constraints of the law of search and seizure and the corresponding right to privacy have their basis in the Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable [emphasis added] searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be search, and the persons or things to be seized. (Ratified - 1791)

This guarantee is not absolute, however, since it does permit "reasonable" search and seizure; and, although reasonableness must be determined by the facts of each case, certain judicial standards are applied.

student lockers. Marijuana was discovered in a student's coat and was confiscated despite the fact that the student objected before, during, and after the search because he had not given his personal consent.

The New York Court of Appeals sustained the search on the theory that whether the search warrant was valid was irrelevant because the assistant principal had prior authority to inspect any locker suspected of containing illega. or harmful materials. The court also ruled that any contraband discovered as a result of the search could be turned over to the police for use in criminal prosecution.

In reaching its decision, the Court placed particular emphasis on the special relationship between students and school officials:

> Not only have the school authorities a right to inspect but this right becomes a duty when suspicion arises that something of an illegal nature may be secreted there. When the vice principal learned of the detective's suspicion, he was obligated to inspect the locker. This interest, together with the nonexclusive nature of the locker, empowered him to consent to the search by the officers. Overton v. New York, 20 N.Y. 2d 260, 229 N.E. 2d 283 N.Y. 2d 22 (1967) 39 U.S.L.W. 3322 (1971).

The Kansas Supreme Court in the famous Stein case sustained a conviction growing out of an incident involving police officers who requested a high school principal to open a student's locker. They found a key which led to burglarized goods in a bus station locker. Although originally agreeing to the search, the student charged that the evidence discovered could not be used against him because he had not been given the Miranda warning before the search. The court ruled that the Miranda warning* was not applicable to search and seizure generally, and to school student lockers specifically. It further ruled that the validity of a consent to the search of private premises does not depend on the owner's first having been given the warning delineated in the Miranda case. [See also Goldwyn v. Allen, 281 N.Y.S. 2d 889 (1967), and Buttny v. Smiley, 281 F. Supp. 280 (1968); both rejected the applicability of Miranda to expulsions in secondary and higher educations.]

The court then sustained the legality of the search based on two premises: (1) The student gave his consent prior to the search; (2) the student may "own" his locker as against other students but he does not have "ownership" exclusive against the school. The court's ruling substantially agreed with the Overton case and went a long way toward clearly defining the legal nature of a school locker:

> Although a student may have control of his school locker against his fellow students, his possession is not exclusive against the school and its officials. A school does not supply its students with lockers for illicit use in harboring pilfered property or harmful substances. We deem it a proper function of school

*The Miranda Warning

The United States Supreme Court case of Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966), set out clear requisites for policemen when making an arrest: The Miranda warning demands that an individual subject to arrest must be advised that he has the right to remain silent; that anything he says may be used against him in a court of law; and that, if he cannot afford an attorney, one will be appointed before any further questions are asked.

2/

authorities to inspect the lockers under their control and to prevent their use in illicit ways or for illegal purposes. We believe this right of inspection is inherent in the authority vested in school administration and that the same must be retained and exercised in the management of our schools if their educational functions are to be maintained and the welfare of the student body preserved. State v. Stein, 203 Kan. 638, 456 P. 2d 1 (1969), Cert. denied 90 S. Ct. 996 (1970).

In a California case, In re Donaldson, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969), a high school assistant principal, acting on information from a student, conducted a search of a student locker and seized marijuana. The search was conducted without a search warrant and without the student's consent. The student was convicted in juvenile court, but the decision was appealed on the basis that the marijuana was obtained by an unlawful search and seizure conducted by a school official who was a governmental official within the meaning of the Fourth Amendment.

The Court of Appeals found that:

> . . . the vice principal of the high school [was] not . . . a governmental official within the meaning of the Fourth Amendment so as to bring into play its prohibition against unreasonable searches and seizures . . . . that the school official's search was not to obtain conviction, but to secure evidence of student misconduct . . . [that] school officials . . . have a responsibility for maintaining order upon the school premises so that the education, teaching, and the training of the students may be accomplished in an atmosphere of law and order.

The court further stated, however, that if the principal and police had jointly searched the locker, the search would have been tainted with state action and, therefore, illegal. A similar holding in connection with a juvenile court proceeding is found in Mercer v. State, 450 S.W. 2d 715 (Tex. Civ. App.) (1970).

The Overton and Stein decisions appear to say that school officials may search a student's locker when there is reasonable grounds for such a search without a warrant or the student's permission. Additionally, it seems clear that police have a right to conduct a search when they have "reasonable grounds" to believe that a crime has been committed and that such action would aid in the resolution of the crime.

The Search of the Student

People v. Jackson, 319 N.Y.S. 2d 731 (1971), concerns a high school coordinator of discipline of a New York City High School who had been alerted to possible drug use. He had asked a student to go with him to his office, and on the way the student broke and ran out of the building. The coordinator pursued and, with the assistance of a nearby policeman, caught the student after a three-block chase. The coordinator confiscated an eyedropper, syringe, and other drug apparatus from the student and turned them over to the policeman. At trial, the court suppressed this "evidence" on the grounds that the coordinator was acting as a governmental official and searched the student without "probable cause."

The appellate court reversed this decision, stating that the high school stands "in loco parentis" to the student and that, although the evidence would have been inadmissible if the search had been made by the policeman, because of this "special relationship" the coordinator was not bound by the "probable cause" doctrine and had a duty to investigate suspicions of illegal narcotics use. The court ruled that this duty extended beyond the physical limitations of the school grounds.

A strong dissenting opinion held that no reason existed to grant a teacher greater rights outside the school than a policeman and, in any event, the policeman and the coordinator acted together in the arrest. Therefore, the dissent continued, the evidence was tainted in the same way it would have been had the policeman acted alone.

In a Delaware case, a high school assistant principal seized a student's coat "to compel him to return to class." Because the student was suspected of previous drug use, the school official made a search of the coat, narcotics were discovered, and the student was arrested.

An attempt was made to suppress the drugs on the grounds that the assistant principal, as an employee of the state education system, must have "probable cause" to make a search, that the search had been made without such cause and, therefore, the "fruits" of the search were inadmissible under the Fourth Amendment.

The Supreme Court of Delaware ruled the evidence was admissible, stating:

> " . . . [For] purposes of the Fourth Amendment . . . [a school principal's] actions are those of a state official and are subject to the Fourth Amendment. This does not mean, however, that the entire law of search and seizure as it applies in the criminal law is automatically incorporated into the school system of this state. The Fourth Amendment is the line which protects the privacy of the individuals including students but only after taking into account the interests of society. In Delaware a principal stands in loco parentis to pupils under his charge for disciplinary action, at least for purposes which are consistent with the need to maintain an effective educational atmosphere. . . [The] in loco parentis doctrine is so compelling in light of public necessity and as a social concept antedating the Fourth Amendment, that . . . a search, taken thereupon on reasonable suspicion should be accepted as necessary and reasonable. . . . This standard should adequately protect

Valid Search

Mapp v. Ohio, 367 U.S. 643 (1960), is an historic U.S. Supreme Court case originating in Cleveland. Police officers broke into an apartment without a valid search warrant after the occupant refused to admit them. The occupant was arrested and evidence seized. On appeal the United States Supreme Court ruled that the Fourth Amendment through the due process provision of the Fourteenth Amendment was violated and the evidence was inadmissible.

Searches and seizures valid under the Fourth Amendment must comply with one of three prerequisites: a valid search warrant, grant of permission to search, or a search incident to a legal arrest.

the student from arbitrary searches and give the school officials enough leeway to fulfill their duties." State of Delaware v. Baccino 282 A. 2d 869 (1971).

Conclusion

The guarantees of the Fourth Amendment apply more stringently to a search of the student's person than to a search of the student's property. Therefore, in any contemplated search of a student's person, particularly when this search may lead to criminal charges, a school official should have "probable cause," or justification for immediate search, i.e., to prevent injury or loss of evidence.

Dormitory Searches and Higher Education

Cases dealing with search and seizure of college students are frequently used by courts as guidelines in resolving search and seizure issues arising at the secondary school level. Many of these cases have grown out of challenges to dormitory searches. For example, In Piazzola & Marinshaw v. Watkins, USCA 5th Circuit, #30332 (April 27, 1971), police searched several rooms without search warrants under the authority of college regulations giving college officers the right to inspect student rooms. Two students found to possess marijuana were sentenced to five years in prison by a lower court.

However, in reversing this decision and finding the searches and seizures unreasonable, the appellate court quoted from People v. Cohen, 306 NYS 2d 788 (1968): "Certainly, there can be no rational claim that a student will self-consciously waive his Constitutional rights to a lawful search and seizure;" and from Commonwealth v. McCloskey (Pennsylvania Superior Court, Number 1128, dated December 10, 1970) in which the court reversed a student's marijuana conviction because policemen who entered his dormitory to execute a search did not knock or announce their presence and purpose before entering. See also Dixon v. Alabama St. Bd. of Educ., 294 F. 2d 150 (1961); Camare v. Municipal Court, 387 U.S. 523 (1967) and Griswold v. Connecticut, 381 U.S. 479 (1965).

A contrary view was expressed in Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (1968) where the right of college authorities to search college dormitories was sustained; the Court stated:

> "The validity of the regulation authorizing search of dormitories thus does not depend on whether a student 'waives' his right to Fourth Amendment protection or on whether he has 'contracted' it away; rather, its validity is determined by whether the regulation is a reasonable exercise of the college's supervisory duty. In other words, if the regulation--or, in the absence of a regulation, the action of the college authorities--is necessary in aid of the basic responsibility of the institution regarding discipline and the maintenance of an 'educational atmosphere,' then it will be presumed . . .' reasonable despite the fact that it may infringe to some extent on the outer bounds of the Fourth Amendment rights of students."

The question of whether evidence discovered as the result of a search that violates Fourth Amendment requirements and, therefore, inadmissible in a criminal proceeding, can be used in an in-school suspension or expulsion proceeding is not entirely clear. At the present time, however, the courts have not specifically disallowed its use, although there is much commentary to the contrary.

Although the law generally allows administrators to search lockers, this should not be viewed as a carte blanche right. As we have seen, students do have some ownership rights, particularly with regard to other students. School officials are charged by the state with operating the schools and safeguarding the health, welfare, and safety of students and school personnel; therefore, when drugs, weapons, or other dangerous materials are suspected, the principal not only has the right but duty to make a thorough investigation. Fishing expeditions as a matter of school policy are not advised. A general search of all lockers in reaction to a bomb threat or widespread drug abuse can be justified as a proper exercise of school authority.

A search of course may be made by a police officer with a valid warrant or in connection with a valid arrest. If police are involved, however, parents should be notified and the principal or other school official should be present at the time of the search. In all instances a complete report of the incident together with witnesses and other pertinent information should be immediately recorded.

One suggestion that can be drawn from these cases is that a school should publicize its locker policy. A reservation of right to search a student's locker should be published, stating that a student cannot expect his locker to be free from inspection if the administration considers a search necessary to maintain the integrity of the school environment and to protect other students.

In the spirit of due process the following general guidelines might well be taken into account when personally making a search of the student and/or his property:

- The student should be present when his property is searched.
- The presence of a third party as witness could well prevent many kinds of countercharges.
- Although not legally required in a strict sense, an attempt to secure prior student consent would promote student-administrative relationships.

A Legal Memorandum is published periodically by the National Association of Secondary School Principals, 1201 16th St., N.W., Washington, D.C. 20036 Annual subscription is included in NASSP dues. Single copy price, 25 cents. five or more copies, 15 cents each. Payment must accompany orders of $5 or less.

NASSP President: Edwin B. Kelm **President-Elect:** Carey M. Pace, Jr. **Executive Secretary:** Owen B. Kiernan
Legal Counsel: Thomas W. George **Editorial Director:** Thomas F. Koerner **Assistant Editor:** Martha Crawford