Public School Searches and Seizures

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I. INTRODUCTION

Within the last decade, a new concept of juvenile law has evolved. Historically, juvenile delinquency proceedings were removed from the criminal courts and placed in an ostensibly protective setting.¹ Juveniles, therefore, were not afforded the full panoply of constitutional and procedural rights. However, in 1967, the landmark case of In re Gault² established that juveniles are entitled to due process of law and that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."³ But even Gault did not provide juveniles with a full array of constitutional rights, since the Supreme Court carefully based its decision on due process, and not equal protection. Gault does not flatly hold that all rights afforded the adult criminal are to be given to the juvenile.⁴ Subsequently, In re Winship⁵ dealt with the quantum of proof necessary in juvenile proceedings, holding that the commonly used preponderance of the evidence test was not sufficient, and that proof beyond a reasonable doubt was required. Again, the Court based its decision on due process, declining to bring full adult constitutional protections into juvenile cases. Finally, in McKeiver v. Pennsylvania,⁶ the Court held that due process did not entitle a juvenile to a jury trial.

This trilogy of cases has established a sphere of law in which the juvenile's constitutional rights are recognized, but are not applied as strictly as those of adults.⁷ This is due in large part to the remedial philosophy of the juvenile courts, and the inherently private and less formal nature of the proceedings. Thus, these proceedings are aimed at treatment, are only quasi-criminal, and do not necessitate the full procedural and substantive law applied to adults.

². 387 U.S. 1 (1967). Gault established that at a delinquency hearing a juvenile is entitled to notice of charges, advice that he has a right to counsel, confrontation and cross-examination of witnesses, and the privilege against self-incrimination. Id. at 31-57.
³. Id. at 13.
⁴. Id. The decision was limited to the adjudicatory hearing, and had no application to pre-judicial or dispositional processes.
⁷. See Buss, The Fourth Amendment and Searches of Students in Public Schools, 59 Iowa L. Rev. 739 (1974) for a discussion of school searches as related to general search and seizure law. For a general discussion of juvenile searches and seizures, including those occurring in school, see Young, Searches and Seizures in Juvenile Court Proceedings, 25 Juv. Justice 26 (1974); see generally, Donoghoe, Emerging First and Fourth Amendment Rights of the Student, 1 J. Law & Ed. 449, 450-55 (1972).
At the same time that these developments were occurring in the juvenile law, the Supreme Court was establishing the principles of *Miranda v. Arizona*, *Mapp v. Ohio*, and *Camara v. Municipal Court*. These cases dealt with adults and required notice of constitutional rights, an exclusionary rule for illegal searches and seizures, and a warrant for administrative searches, respectively.

The potentially conflicting principles of adult and juvenile law have met in the area of public school searches. The open-ended decisions of the *Gault-Winship-McKeiver* trilogy have subjected juveniles to searches and seizures in public schools without the rights provided for in *Miranda, Mapp*, and *Camara*. While entitled to basic due process, juveniles may still be treated differently from adults. Courts do not usually refer to *Gault* and its progeny, but instead resort to discussions of the school acting as a parent, and the general duty of the school to protect its students, in order to justify searches. Regardless of the reasoning, the result has been the application of a standard of less than probable cause to justify a school search.

There is a great deal of judicial confusion as to who is authorized to conduct a search and whether all constitutional rights and protections apply. Courts have traditionally upheld school searches on the grounds of *in loco parentis*, the role of the school official, and the nature of the school environment. This approach has led to a dissipation of students' fourth amendment rights. However, a new trend toward a stricter application of adult rights appears to be developing. This Note will discuss the existing law and the recent trend in scrutinizing public school searches.

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11. This attitude toward juvenile searches may be the result of general public concern about juvenile crime. Such concern is evidenced by recent bills which have been submitted to the New York State Legislature. These would subject fourteen and fifteen year-olds who commit certain violent felonies to the criminal justice system. See, e.g., S. 9375, N.Y. Legis., 199th Sess. (1976).
12. Beyond the scope of this Note are searches occurring in college dormitories. These have been treated as a separate category. Some cases have held that the evidence obtained in the search of a dormitory room, where police were involved, was not obtained as the result of an unreasonable search and seizure. People v. Kelly, 195 Cal. App. 2d 669, 16 Cal. Rptr. 177 (1961). Generally, searches of dormitory rooms by police officers in conjunction with the university officials are held to be violative of the fourth amendment. See, e.g., Piazzola v. Watkins, 316 F. Supp. 624 (M.D. Ala. 1970), aff’d, 442 F.2d 284 (5th Cir. 1971); People v. Cohen, 57 Misc. 2d 366, 292 N.Y.S.2d 706 (Dist. Ct. Nassau County 1968); Commonwealth v. McCloskey, 217 Pa. Super. 432, 272 A.2d 271 (1970). But cf. People v. Lanthier, 5 Cal. 3d 751, 488 P.2d 625, 97 Cal. Rptr. 297 (1971) (en banc), where a search of a university student’s library locker to ascertain the source of an odor was upheld, since it was part of the maintenance supervisor's job to periodically check lockers. If the search were not on campus, the court noted that in order to locate the offensive odor, the search would still be reasonable under the emergency exception to the warrant requirement. For a general discussion of college dormitory searches, see Delgado, College Searches and Seizures: Students, Privacy, and the Fourth Amendment, 26 Hastings L. J. 57 (1974).
II.Authority to Conduct a Search

In order to determine the source of the authority to conduct a school search, one must first understand the nature of the relationship between student and school.

Compulsory education laws require juveniles to attend school. While they are present in school, they are subject to the authority of school officials, including teachers, principals, and deans. The doctrine of in loco parentis gives the school official the power and responsibility of the child's parents while acting in their place. Under this doctrine, the school official possesses a fairly substantial amount of power over the student.

Inextricably tied to the school's duty to educate, is a duty to protect the welfare of its students. It is often statutorily mandated for schools to exercise diligent care for the health and physical development of their students. There also exists a concomitant duty to maintain order and discipline in the school. As a consequence, under the doctrine of in loco parentis, school officials need not warn students of their constitutional rights for every disciplinary problem, even where "the problem of discipline occasions the knowledge of the commission of a crime."19


In Commonwealth v. Dingfelt, 227 Pa. Super. 380, 323 A.2d 145 (1974), for example, the court noted that by remaining in school beyond the age for compulsory education, the defendant had "placed himself in a position of being subject to the school's discipline." Id. at 383, 323 A.2d at 147.

14. The cases have referred to the individual conducting the search as a school official or as a school authority. The terminology is of no importance—both terms refer to the same individual and are not intended to cause confusion. The terms government agent, government official, public official and government officer have been used to refer to the "non-private" role of school personnel, and may also be used interchangeably.

15. The common law doctrine of in loco parentis has been explained by Blackstone:

"[A parent] may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then in loco parentis, and has such a portion of the power of the parent committed to his charge, viz., that of restraint and correction, as may be necessary to answer the purposes for which he is employed." 1 W. Blackstone, Commentaries *453.

16. E.E. Reutter, Jr., Legal Aspects of Control of Student Activities by Public School Authorities, Nolpe Monograph Series No. 1, at 3 (1970). See Baker v. Owen, 395 F. Supp. 294 (M.D.N.C.), aff'd mem., 423 U.S. 907 (1975), which held that corporal punishment in school did not necessarily violate the eighth amendment prohibition of cruel and unusual punishment. Recognizing the interest of the school in maintaining discipline and the competing concept of fourteenth amendment liberty, the court set up minimal procedures to be followed in carrying out such punishment. Id. at 302.


19. Commonwealth v. Dingfelt, 227 Pa. Super. 380, 383-84, 323 A.2d 145, 147 (1974). "It would be utterly ridiculous for a teacher who confronted a student for throwing a rubber band across the classroom to be under a duty to give Miranda warnings before telling the student to
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Because of the increased amount of drug abuse and other crimes in public schools, courts have stressed the duty of school officials to protect the well being of their students. This duty affords the school official the right to establish rules and regulations which require students to submit to his authority. Moreover, some states have enacted statutes encouraging teachers to report incidents of drug use to law enforcement authorities. Thus, a frequent occurrence is for the principal to call a student to his office and search him on the basis of a "tip" from a student informer. Such searches are permitted in the special context of the school environment, which produces a "distinct relationship" between school official and student. It is reasoned first, that the duties arising out of the school context justify a search when the school official is suspicious of a student's actions, and second, that the school's special nature may be a factor in determining the reasonableness of the search.

Several courts have pointed out the need to balance the doctrine of *in loco parentis* against the student's fourth amendment rights to determine whether those rights have been violated. These courts, however, have concluded that schools cannot adequately perform their duties *in loco parentis* under the strict probable cause standard. They have sought to preserve *in loco parentis*, as it antedates the fourth amendment and is still a compelling doctrine today. Thus, although the fourth amendment now modifies the empty his pockets." Id. at 384, 323 A.2d at 147. Doe v. State, 88 N.M. 347, 540 P.2d 827 (1975) held that the application of the traditional warrant requirement to school searches would result in requiring police assistance even for trivial searches, and therefore it should not be required. Id. at 352, 540 P.2d at 832. The court further held that Miranda warnings are not required for school disciplinary matters, as such a requirement would frustrate the school's role as counselor in resolving violations of school rules. Id. at 353, 540 P.2d at 833.

20. Between 1970 and 1973, school crimes increased dramatically. Drug related offenses increased by 37.5 percent, and there was a 54.4 percent increase in the number of weapons confiscated by school authorities. Id. at 352, 540 P.2d at 832, citing Preliminary Report of the Subcommittee to Investigate Juvenile Delinquency of the U.S. Senate Judiciary Committee (1975).


22. See Cal. Educ. Code § 10603 (West 1975), permitting the suspension of a student for the sale of drugs; N.Y. Educ. Law § 3028-a (McKinney Supp. 1975), immunizing a teacher from any civil liability resulting from reporting addiction or drug use to the appropriate school officials or to the parents.


original concept of *in loco parentis*, it has not totally abrogated that doctrine. However, the application of the fourth amendment is no less compelling, since school searches often lead to punishment outside the school system, resulting in the involvement of public law enforcement officials and the adjudicatory process. In testing the lawfulness of a search, the courts have applied a rule of reason. Reasonableness under the fourth amendment can be determined only after balancing the acts of school officials against their duties *in loco parentis*, taking into account the special responsibility of today's public schools.

This underlines the difficulty of reconciling the conflicting principles of *in loco parentis* and the fourth amendment. The elements of this dichotomy include the need to "protect the student from arbitrary searches and seizures and [to] give the school officials enough leeway to fulfill their duties." As a result, different jurisdictions have accepted, limited, expanded, and considered rejecting *in loco parentis*, within the context of school searches.

*In re Christopher W.*, a California case, concerned an assistant high school principal who was informed that a certain locker contained marijuana. He opened the locker with a master key and confirmed this. The student whose locker had been searched was then directed to open it in the presence of the principal. The student initially denied any knowledge of the marijuana, but the next day confessed it was his. The admission of the marijuana as evidence in his juvenile court adjudication was upheld. The court stated that under *in loco parentis* the school official has the powers and responsibilities of parents, but at the same time, the fourth amendment limits these powers. Consequently, school officials do not have unfettered freedom to search their pupils. The court limited the school officials' power with a two-pronged test.

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27. The New York Court of Appeals has recognized in one of the few cases suppressing evidence obtained in a school search that, while the principal purpose of such a search is to protect the school, most searches result in criminal conviction. People v. Scott D., 34 N.Y.2d 483, 315 N.E.2d 466, 358 N.Y.S.2d 403 (1974). The court did not specifically refer to in *loco parentis* as such. It did, however, note that school officials are somewhat like parents due to their responsibilities. However, since they do not possess all of the parental prerogatives, "random causeless searches" should not be permitted. 34 N.Y.2d at 487, 315 N.E.2d at 468, 358 N.Y.S.2d at 407.

28. The general practice is to call law enforcement authorities when drugs are discovered. Depending upon the age of the student and the jurisdiction of the court, there may be a delinquency adjudication, which, in essence, is not far removed from an actual criminal conviction.


32. Similarly, teachers and school administrators are not permitted to deprive students of their first amendment rights while in school. Tinker v. Des Moines School Dist., 393 U.S. 503 (1969) clearly established that students have first amendment rights while they are in school: "students [do not] shed their constitutional rights . . . at the schoolhouse gate." Id. at 506. More recently, the Supreme Court has held that public high school students do have substantive and
First, the search must be "within the scope of the school's duties," and secondly, the search must be "reasonable under the facts and circumstances of the case." In applying this test, the court found that "prevention of the use of marijuana is clearly within the duties of school personnel, and the action taken, the verification of the [informant's] report, was reasonable." In another case, the dissenting opinion pointed out that the doctrine of in loco parentis may have been extended to unconstitutional proportions. In Mercer v. State, the principal of a Texas high school received information that a student possessed marijuana. The student was brought to his office and told to empty his pockets, whereupon marijuana was recovered. The court held that in directing the student to empty his pockets and summoning the police, the principal acted in place of the youth's father. This was held not to violate the fourth amendment.

Justice Hughes dissented from the holding and criticized this use of in loco parentis, stating that the principal "succeeded to some of the authority of the parents . . . under the doctrine of in loco parentis, and but for his position he would have had no parental control over [the student]." Therefore, the search was valid for school purposes only. He noted that under Texas law, had the parents searched the student in private, they could have remained silent as to the result without incurring criminal liability as accessories. He submitted that such a right could not be transferred under the doctrine of in loco parentis. This presents the troubling question of whether any parents would knowingly transfer the right and privilege of deciding whether to suppress evidence against their child. In Mercer, the high school principal who conducted the search hardly exhibited a parental attitude. He had a number of student informers, maintained a list of suspected marijuana users, and was in weekly contact with the police, notifying them of students who might be using drugs.

In this context, Justice Hughes reasoned that schools clearly do not assume all parental responsibilities. For example, medical releases are generally required before the school will give a child medicine. Such releases require the permission of the parent, thus recognizing the still existing authority of the parents, even while the child is in school. This indicates that procedural rights while at school. Wood v. Strickland, 420 U.S. 308, 326 (1975). But the Supreme Court has also indicated that constitutional protections diminish where minors are involved. Prince v. Massachusetts, 321 U.S. 158 (1944); Ginsberg v. New York, 390 U.S. 629 (1968). In re Christopher W., 29 Cal. App. 3d 777, 782, 105 Cal. Rptr. 775, 778 (1st Dist. 1973).

33. Id.
34. Id.
36. 450 S.W.2d at 717.
37. Id. at 720.
38. Id. at 721.
39. Id. at 721 n.3.
40. Id. at 720. Similarly, many schools require written parental permission before the child is allowed to leave school early or attend a special class outing.
school authorities may use such powers of control, restraint and correction over pupils as may be reasonably necessary to enable them to perform their duties and to effect the general purposes of the educational system, and here their authority ends.\textsuperscript{41}

Thus, only to the extent that the search was for school purposes had the parents transferred their right to the school authorities.\textsuperscript{42} To characterize the principal's conduct, analogous to that of an undercover agent, as being within the school's purpose, would seem incorrect. To label it \textit{in loco parentis} strains credibility even more.

Yet the doctrine of \textit{in loco parentis} has been extended to encompass searches occurring outside school property. In \textit{People v. Jackson},\textsuperscript{43} a high school coordinator of discipline requested that the defendant accompany him to his office on the basis of an unidentified informant's report. He observed the student placing his hand in and out of his pocket, which had a bulge. As they reached the office, the defendant ran out of the school. The coordinator, accompanied by a policeman who had been standing near his office,\textsuperscript{44} pursued the defendant and caught him three blocks from school. The defendant's hand was pried open and drug paraphernalia were discovered.\textsuperscript{45} The New York Supreme Court held that \textit{in loco parentis} did not terminate when the student left school grounds.\textsuperscript{46} The duty arose on school premises, and the need to fulfill this duty extended beyond the confines of school property, particularly because the defendant had chosen to run away. The fact that the search occurred away from school was de minimis, since the coordinator acted "originally and independently, in fulfillment of a quasi-parental obligation."\textsuperscript{47}

There has also been some indication that \textit{in loco parentis} may actually mean an obligation to the accused student. The school official has two alternatives when police visit the school and request his assistance in the interrogation and search of a student. He may protect the individual student, or protect the general student body by assisting the police. According to one commentator, where the penalty would be expulsion or deprivation of the student's liberty, the official should choose the course of action most favorable to the accused student.\textsuperscript{48} This opinion is based on the impact of \textit{In re Gault'}s\textsuperscript{49} guarantee of due process, and expresses the fear that if due process is denied, the principal and his staff may be subject to "embarrassing complications" at a later date.\textsuperscript{50}

\textsuperscript{41} Id. at 721.
\textsuperscript{42} Id. at 720.
\textsuperscript{44} 65 Misc. 2d at 910, 319 N.Y.S.2d at 732.
\textsuperscript{45} Id. at 910, 319 N.Y.S.2d at 732-33.
\textsuperscript{46} Id. at 911, 319 N.Y.S.2d at 734. The authority of the school does terminate when the student reaches home. Dritt v. Snodgrass, 66 Mo. 286 (1877).
\textsuperscript{47} 65 Misc. 2d at 911, 319 N.Y.S.2d at 734 (emphasis in original).
\textsuperscript{49} 387 U.S. 1 (1967).
Another commentator has observed that school officials are in a dilemma. They may be under a "duty to each student to advise him of his rights and protect him against over zealous police investigation." But they are also in loco parentis to the other students and under a duty to protect them from a particularly dangerous individual. This dilemma indicates the ambivalent nature of the school official's duties.

While in loco parentis is an ancient doctrine, it now appears to be used by the courts as a tool to uphold school searches. Utilization of this doctrine has served as an open sesame, justifying actions by school officials purportedly on behalf of the parents, but which are rarely parental in nature. Moreover, as seen in People v. Jackson, the doctrine has been applied to searches occurring outside school premises, even in the presence of a police officer. This application of in loco parentis has resulted in a dissipation of students' fourth amendment rights.

III. CLASSIFICATION OF THE SCHOOL OFFICIAL

The subject of school searches is further clouded by a split of authority on the issue of whether the school official acts as a private individual or as a public official when conducting a search. Such determination is invariably used in analyzing the reasonableness of a school search. If the school official is a private individual, fourth amendment proscriptions do not apply. If, however, the school official is held to be a public official, courts must consider the requirements of the fourth amendment, and the extent to which such requirements should be applied. The same individual, performing the same school functions, has been labeled private and public, depending on the jurisdiction in question.

In re Donaldson is the leading case holding that school officials act as private individuals, and has been cited with approval in subsequent cases, both in California and in other jurisdictions. In Donaldson, a student informed the vice principal that pills were being sold in school. At his request, the student made a purchase. The seller was identified as a student, and his locker was searched by the vice principal without the student's consent. Marijuana was recovered, and the search was upheld.

The court determined that the vice principal was not a government official, although he did have a duty and an interest in maintaining discipline. The primary purpose of the search was not to obtain convictions, but to perform

52. Id.
this duty. Therefore, the resultant discovery of evidence and criminal prosecution did not make the search and seizure unreasonable.\textsuperscript{57}

\textit{Commonwealth v. Dingfelt}\textsuperscript{58} also focused on the issue of whether a Pennsylvania high school principal was an agent of the government. Relying upon information from a student that another student was selling capsules, the assistant principal directed the defendant to his office. The defendant was told to empty his pockets and take off his shoes, at which time he was observed trying to put something in his sock. A subsequent search uncovered a bottle of capsules and the police were called.\textsuperscript{59}

The court held that school officials were not law enforcement officers and the evidence acquired in their capacity as private citizens was admissible. The case was decided on two grounds. First, that the search was not unreasonable and therefore not violative of the fourth amendment. Second, the evidence was admissible because it was obtained by a private citizen.\textsuperscript{60} Although the court indicated both reasons as the basis for its decision, it appears to have been decided on alternative grounds. If the school official is a private citizen, the court need not have considered the reasonableness of the search. Justice Spaeth, in a concurring opinion, took a narrower approach: since the search was reasonable, he saw no need to determine whether the assistant principal acted as an officer of the government.\textsuperscript{61}

While the school official's duties have been used to characterize his function as a private individual, they have also been the basis for a finding of governmental involvement. As discussed earlier, some of the school officials' powers are based on their \textit{in loco parentis} authority.\textsuperscript{62} Some courts, in acknowledging that the official acted \textit{in loco parentis}, have found that as a result he was not acting for the government.\textsuperscript{63} This approach has been criticized in that the school official's position, bestowed on him by the state, is the very source of his power. Therefore, as a direct consequence of his position, the school official is an agent of the government.\textsuperscript{64}

An interpretation of state and federal statutes has been used to support the position that the school official acts as a governmental agent. In \textit{State v. Baccino},\textsuperscript{65} two students were brought to the vice principal's office for being out of class illegally. The defendant was carrying his coat, which the vice principal took from him to assure that the defendant went to class. The vice principal then searched the coat and found hashish. State police were called, and the defendant was arrested. Two statutes formed the basis of a determination that the vice principal acted as a government agent. First, a school

\textsuperscript{57} 269 Cal. App. 2d at 513, 75 Cal. Rptr. at 222.


\textsuperscript{59} Id. at 381, 323 A.2d at 146.

\textsuperscript{60} Id. at 384, 323 A.2d at 147.

\textsuperscript{61} Id. at 384, 323 A.2d at 147-48 (Spaeth, J., concurring).

\textsuperscript{62} See notes 13-52 supra, and accompanying text.


\textsuperscript{64} 450 S.W.2d at 720 (Hughes, J., dissenting).

\textsuperscript{65} 282 A.2d 869 (Del. Super. Ct. 1971).
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official is a state employee under Delaware law. In addition, a principal's action has been found to be state action for purposes of sustaining a civil rights suit in federal court. The court recognized that it would be inconsistent to treat a principal as a public official for a civil rights action and a private individual for fourth amendment purposes, concluding that a high school principal must be classified as a state official.

Although finding that the search in Baccino had been conducted by a state official, the court was reluctant to incorporate the entire adult search and seizure law into the school system. Instead, it stated that "[t]he Fourth Amendment is the line which protects the privacy of individuals including students but only after taking into account the interests of society." It was then only a small step to uphold the search as reasonable.

The school official's responsibilities and powers have been held to be derived from state law. In People v. Scott D., the New York Court of Appeals cited a number of statutes referring to the school official's powers to protect and control students. The court concluded that "[i]n exercising their authority and performing their duties, public school teachers act not as private individuals but perforce as agents of the State . . . ."

The school official may be indirectly characterized as a governmental agent by a consideration of the school district. This reasoning was adopted by Oregon in State v. Walker.

School districts act as governmental agencies when performing duties imposed by statute. They are set up pursuant to statute, regulate the public schools, and may promulgate rules and regulations which students must follow. Public school teachers and principals are employed by and are

66. Id. at 871.
69. 282 A.2d at 871.
70. Id. at 872.
72. See, e.g., N.Y. Educ. Law § 912-a (McKinney Supp. 1975-76) (authorizing school authorities to conduct examinations to ascertain the use of drugs on the request or consent of the parents); N.Y. Educ. Law §§ 1604(9) (McKinney 1969) (giving the school district the power to "establish rules for the government and discipline of the schools of the district") and 1709(2) (giving boards of education the power to establish rules and regulations regarding school discipline).
73. 34 N.Y.2d at 486, 315 N.E.2d at 468, 358 N.Y.S.2d at 406.
75. Id. at 115. See West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 637 (1943) (boards of education are creatures of the state).
accountable to their respective school districts. When conducting a search, the
school official acts pursuant to authority bestowed upon him by virtue of his
position in the school system. It would, therefore, be inconsistent to conclude
that he acted as a private individual when searching a student on school
property during school hours.\footnote{77}

What emerges from these cases is a realization that it makes little difference
whether the school official conducting the search is labelled public or private.
In both lines of cases, the validity of the search has been upheld. Where the
school official is tagged “private,” there is no need to determine the rea-
sonableness of the search. Where the official is “public,” courts adapt their
reasoning to uphold the search. The fact that the courts are in disagreement
as to the designation of the school official evidences the confusion that is
present. Tortuous categorization has served no purpose, as searches con-
ducted on the same basic facts have been upheld in both public and private
contexts. Designation of a school official as a “public” official has had little
practical effect, since strict application of fourth amendment rights has been
rare.

Additionally, determination of the public or private function may turn on
the specific position the official holds in the school. People v. Bowers\footnote{78}
involved a search of a student by a New York school security officer. The
student was taken to the dean’s office under suspicion for stealing a watch.
The security officer noticed a manila envelope in his pocket, and requested
that the student empty it. The envelope contained marijuana. This evidence
was excluded by the trial court. The court pointed out a distinction between
the nature of searches conducted by teachers and those conducted by school
security officers. School security officers are not considered peace officers
under New York law.\footnote{79} Although they are paid by the Board of Education,
they are appointed by the Police Commissioner and are subject to the rules
and regulations of the police department.\footnote{80} Thus, the security officer is a
governmental agent, similar to a law enforcement officer. He serves solely a
security and not an educational function. While a faculty member can
conduct a search on reasonable suspicion, a security officer must have
probable cause.\footnote{81}

In re G.C.\footnote{82} affirmed New Jersey’s position that public school authorities
are government officers.\footnote{83} Upon being informed that G.C. was selling pills in
school, the principal had her brought to his office and informed her of his duty to investigate these charges. She consented to the search, amphetamines were found in her purse, and the police were summoned.

In framing the main issue, the court described the search as "administrative." Such a label is not an invitation to conduct a baseless search as the Supreme Court has ruled that administrative searches are subject to search and seizure law. Consequently, when a school search is conducted by public school officials, who are not subject to the same standards as law enforcement officials, some conformance with fourth amendment requirements is nevertheless mandated.

The G.C. court found that the search was reasonable and not in violation of the fourth amendment as it was "carried out with the utmost fairness and consideration, without force or other improper influence, mental or physical, and in accordance with the highest standards of due process." Finding that the principal had not acted capriciously, the court stated that:

In light of the reasonable suspicion that G.C. was illegally in possession of and selling dangerous drugs and in view of the overall fairness of the investigation and search . . . the public school principal, acting as a governmental officer and under the in loco parentis authority, made a reasonable search and seizure which was not violative of the Fourth Amendment.

The individual role of the school official has been extended to encompass searches conducted with the aid of the police. In re Fred C. did not specifically classify school vice principals as public or private; however, in light of In re Donaldson and from the language of the court, it appears they were private individuals discharging their "duties."

In re Fred C. concerned a student who was summoned to the vice principal's office. The vice principal intended to search and interrogate him as part of an investigation based upon information that he was selling dangerous drugs at school. When the student resisted, a police officer was called in to assist. The officer later testified that he conducted the search not as a law enforcement officer, but as an agent for the vice principal. The court apparently agreed with this argument. It held that since the search was the "sole product of the initiating action taken by the school authorities [and] was executed in their presence," and since both student and vice principal

84. "Is the danger of illegal drug possession and sale by a student sufficient to justify an administrative search upon grounds of reasonable suspicion . . . ?" Id.
86. 121 N.J. Super. at 115, 296 A.2d at 106.
87. 121 N.J. Super. at 117, 296 A.2d at 107.
89. See notes 55-57 supra, and accompanying text.
90. "School officials, in the discharge of their duties, have the authority to use moderate force to obtain obedience by minor students under their supervision; in the exercise thereof, for good cause, may detain and search a student; and in doing so, are not governed by the rules applicable to searches by law enforcement authorities . . . ." Id. at 324, 102 Cal. Rptr. at 684.
91. Id. at 325, 102 Cal. Rptr. at 685.
92. Id.
"benefited"93 by the police officer's assistance, it was reasonable for the policeman to conduct the search.94

The classification of a school official as a private individual is questionable. Where, as here, a court rules that a law enforcement officer is a mere "professional assistant"95 of a private individual, it carries the "private" shield too far. It is submitted that here the search was by a law enforcement officer, and as such, was subject to the fourth amendment proscriptions against unreasonable searches and seizures. If school officials can call in police officers to conduct searches96 for them, and still have the searched tagged "private," and thereby reasonable under almost any circumstances, a total abrogation of students' fourth amendment rights would result.

_People v. Overton_97 stated the proposition that school officials have a right to inspect students' lockers, and further, that such a right becomes a duty when they suspect that the locker contains illegal items.98 In _Overton_, New York police detectives obtained a warrant to search several students and their lockers. They presented the warrant to the vice principal, and the students were summoned to his office and searched. The search uncovered nothing, but a search of one student's locker, opened by the vice principal with his master key, uncovered marijuana. It was subsequently held that the warrant was invalid, and the court was presented with the issue of whether the search could be sustained without a warrant.

The court of appeals noted that the locker was not the defendant's private property but rather, school property. This, along with the theory of the duty to inspect, led the court to conclude that the vice principal was empowered to consent99 to a police search of a student's locker and to open the locker with a master key. Virtually overlooking direct police involvement in the search,100 the court felt that the vice principal's actions fulfilled "the trust and responsi-

93. Id. Considering the juvenile's subsequent adjudication, it is not clear how this student benefited by the police officer's presence.
94. Id. at 325-26, 102 Cal. Rptr. at 685-86.
95. Id. at 325, 102 Cal. Rptr. at 685. "We conclude 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." Id.
98. Id. at 524-26, 249 N.E.2d at 367-68, 301 N.Y.S.2d at 480-82.
99. In its initial determination, the court of appeals held that the vice principal had the power to consent to the search, and that such consent was binding on the student. 20 N.Y.2d 360, 363, 229 N.E.2d 596, 598, 283 N.Y.S.2d 22, 25 (1967), vacated and remanded, 393 U.S. 85 (1968). The case was remanded for reconsideration in light of _Bumper v. North Carolina_, 391 U.S. 543 (1968), on the issue of consent. On rehearing, the court of appeals reaffirmed its original position and sustained the search. 24 N.Y.2d at 526, 249 N.E.2d at 368, 301 N.Y.S.2d at 482.
100. Because an invalid search warrant was involved, the issue was whether the vice principal had the authority to consent to the search.
bility given him by the city residents as an agent of the Board of Education. Thus, instead of scrutinizing a warrantless police search, the court focused on the role of the vice principal, notwithstanding direct police involvement.

Generally, application of fourth amendment protections to items contained in lockers is contingent on the student's reasonable expectation of privacy. Most school principals, or other individuals within the school, have access to student lockers through use of a list of combinations or a master key. Thus, while a student may have exclusive possession of his locker as against his peers, this privacy does not extend to protection from access by school officials. Such access and regular inspections have been held to be a proper function of school officials in order to prevent the use of lockers for illegal purposes.

This assemblage of conflicting opinions, yet consistent holdings, reveals a distinct judicial reluctance to interfere with the searches being conducted in public schools. The specific facts of these cases matter little. Whether the individual conducting the search is considered a public official or private individual, a school security officer, or a police officer, the consistent result has been validation of the searches. In the final analysis, the attempt to reach a "public" or "private" designation is a confusing and futile endeavor of the courts to reconcile the fourth amendment with the concept of juvenile justice.

Therefore, the results reached can be seen not as a function of the label attached to the individual searcher, but rather as a general policy in favor of school searches. A better understanding of how these holdings have been reached may be obtained from a consideration of the standards established for conducting these searches.

IV. STANDARDS FOR SCHOOL SEARCHES

A judicial standard by which to measure the validity of a school search is sorely needed. In its place, courts have overemphasized the concept of in loco parentis, and the "public/private" distinction in their attempts to find an uncomplicated method of sustaining searches. Defining and applying the standard of probable cause in adult cases is a difficult task. Reaching for a standard in the context of a school search is an even more difficult one.

Courts which have discussed this issue have generally held that something less than probable cause is required for a school search and seizure. The "something less" has most often been referred to as a standard of reasonable suspicion. This standard, among others, will be discussed in this section.

The standard of reasonable suspicion for school searches was enunciated in People v. Jackson, where a high school coordinator of discipline acted

101. 24 N.Y.2d at 526, 249 N.E.2d at 368, 301 N.Y.S.2d at 482.
102. The reasonable expectation of privacy concept was set forth in Katz v. United States, 389 U.S. 347, 351-52 (1967): "[W]hat [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."
"with a high degree of suspicion, but short of probable cause" in conducting a search.

The standard of reasonable suspicion had been previously used in "stop and frisk" cases. This lower standard was found appropriate since it entailed a lesser invasion which did "not produce unreasonable searches and seizures." Application of this standard in school search cases developed from the concept of in loco parentis. If the rigid probable cause requirement were used, the court felt that the school official could not properly perform his obligations. It was also recognized that there should be some limitation on the degree of control exercised over students in order to prevent "authoritarian behavior [or the] trammelling [of] rights of the students entrusted to the schools. Consequently, when the school official acts in loco parentis, reasonable grounds for suspicion are required to justify a search, and it "must be deemed a reasonable search and seizure within the intendment of the Fourth Amendment as applied to the 'distinct relationship' of the high school official to his student."

As noted, courts that deem a school official to be a government official reject the full application of the fourth amendment to school searches. State v. Baccino, the case discussed earlier which involved the search of a coat, adopted the Jackson reasonable suspicion rule. The basis for reasonable suspicion was the truant student's reluctance to give up possession of his coat and the vice principal's belief that the student had used drugs. The court applied the reasonable suspicion standard in order to protect the student from arbitrary searches and seizures while allowing school officials to fulfill the obligations stemming from their special role in the school.

In re G.C. adopted the reasonable suspicion standard, recognizing that students' rights to privacy must yield to the competing governmental interest in investigating crime, particularly drug use. The court admitted that the reasonable suspicion standard was an "incursion onto constitutionally pro-

105. 65 Misc. 2d at 910, 319 N.Y.S.2d at 733.
106. See Terry v. Ohio, 392 U.S. 1, 30-31 (1967).
108. "A school official, standing in loco parentis to the children entrusted to his care, has, inter alia, the long-honored obligation to protect them while in his charge, so far as possible, from harmful and dangerous influences . . . ." 65 Misc. 2d at 910, 319 N.Y.S.2d at 733.
110. 65 Misc. 2d at 914, 319 N.Y.S.2d at 736.
111. Id.
113. Id. at 872.
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tected rights,” but said that school officials would be negligent for not investigating. In re Fred C. measured the basis for a school search against the rules governing adult criminal conduct. The first requirement was that the search be within the scope of the school authority's duties. The degree of cause justifying a school search was held to be “commensurate with the cause justifying a police officer to investigate criminal conduct . . . .” The sufficiency of the information furnishing the cause of a school search should have been the same as that required for an adult criminal investigation. However, the court stated that the information supplied by the informant was not subject to a reliability test, which is normally required for police informants. Therefore, the justification for the search is questionable.

The “suspicious circumstances” underlying the search of Fred C. were his bulging pockets, possession of a large sum of money, and a refusal to submit to the search. This refusal was held to be indicative of guilt because it “could not be based on constitutional grounds in light of the fact the vice principals of his school were authorized to search him in the discharge of their duties.” Thus, the court's analogy to adult searches and seizures would seem illusory since the informant's reliability could not be questioned, and the student's refusal to be searched was a basis for reasonable suspicion.

Another standard, founded in reasonable suspicion, was discussed in People v. Scott D. The defendant had been under suspicion for possible drug dealing for six months. During this period of observation, he had once been seen having lunch with another student, also under suspicion. He had also been observed entering the toilet room with another student twice within an hour, remaining only five to ten seconds. The teacher observing this “unusual behavior” reported to the security coordinator who, in turn, reported it to the principal. Scott D. was searched, and thirteen glassine envelopes containing a white powder and a vial of pills were recovered. The New York Court of Appeals held that a “minimal” basis of suspicion was required. The court

115. Id. at 115, 296 A.2d at 106.
116. Id. at 117, 296 A.2d at 107. Here, in weighing the balance, the need to investigate came out ahead of the student's right to fourth amendment protections. “[T]he gravity of the evil is sufficiently great, both to the suspected individual and to those who might be victimized by drugs that the suspect makes available.” Id. at 115, 296 A.2d at 106.
118. One such duty is to “protect students from the misconduct of another student engaged in selling dangerous drugs on school premises . . . .” But a search for drugs without provocation is not within the scope of this duty. Id. at 324, 102 Cal. Rptr. at 684. Here, the “provocation” was based on third-hand information that the defendant had been selling drugs. Id. at 323, 102 Cal. Rptr. at 683.
119. Id. at 324, 102 Cal. Rptr. at 684.
120. Id. at 324, 102 Cal. Rptr. at 684-85.
121. Id.
122. Id.
listed a number of factors that should be considered in determining whether there was sufficient cause to justify the search, including "the child's age, history and record in the school, the prevalence and seriousness of the problem in the school to which the search was directed, and . . . the exigency to make the search without delay." The court held that the search did not come up to the required standard, and refused to lower the standard in order to uphold the search. The only basis for suspicion was two trips to the toilet in a short time interval and lunch with a fellow student, also under suspicion. Moreover, the confidential source who provided the information which led to the observation was of unknown reliability. The "slender basis" of this search was insufficient—the trips to the bathroom "could be more likely explained by . . . innocent activities," and a single lunch is inconclusive and practically meaningless compared to a constant association with those suspected or known to be involved with drugs. The fact that the teachers were proven "right" in their suspicions was not sufficient. The unique school setting and the concern about drug abuse induced the court to apply the lower standard of reasonableness. But here the court held this standard was not met, indicating that reasonable suspicion or minimal basis is more than a mere platitude.

A related but rarely discussed issue was dealt with in People v. Scott D.—the scope of the search itself. If a sufficient basis for the search existed, and contraband were found, a strip search was also warranted to assure that all drugs had been recovered. The court recognized the risks of psychological injury, varying according to the student's maturity, which might result from random searches. It is implicit in the considerations delineated that a much higher degree of suspicion will be required for a search of a very young child to avoid unnecessary psychological harm. Here, it appears that the balance is shifting in favor of the student, possibly signifying a new, more restrictive trend in scrutinizing school searches.

Even those courts which do not exclude the evidence obtained are indicating a tendency to apply stricter standards to school searches. In People v.
Singletary, the dean in charge of security in a Manhattan high school was given information by a reliable student-informant. The dean conducted a search of the defendant based upon that information and discovered thirteen glassine envelopes of heroin in one of the defendant's socks. The defendant argued on the basis of *People v. Scott D.* that his youthful offender status should be overturned. The New York Court of Appeals explained that while in *People v. Scott D.* there was no reliable basis for the search, here the reliability of the informant had previously been established. Moreover, the court found that there existed "concrete articulable facts" supplied by a reliable informant. The "articulable facts" requirement was established by the Supreme Court in *Terry v. Ohio* as a standard for a "stop and frisk" search without a warrant based on less than probable cause. Although the court of appeals did not refer to *Terry*, its use of similar language may be interpreted as an implicit adoption of that standard. Additionally, New York law regarding the identity of informants was discussed, again suggesting that an adult criminal standard was applied.

The application of an adult standard was also discussed in *State v. Walker*. The Oregon Court of Appeals held that a high school principal was acting as a public official and that fourth amendment restrictions applied. In so doing, it suggested that the normal probable cause standard might be applicable to the school search. The trial court had held the vice principal a private individual, and therefore had felt it unnecessary to discuss the circumstances of the search. Therefore, the court of appeals was unable to determine the reasonableness of the search and remanded it for such determination. It is unclear whether the probable cause standard was to be applied, but significantly, the court did not automatically refer to a lower standard merely because the search occurred in school.

The most complete move toward adult criminal standards was achieved in *State v. Mora*. It was the customary practice during physical education for the students to put their valuables in small canvas bags which were locked in the instructor's office. The instructor had noticed that the defendant acted furtively and experienced difficulty in placing his bulky wallet in the bag. The instructor inspected the wallet and found that it contained marijuana.

The Supreme Court of Louisiana discussed the case in terms of adult

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130. Similar information was furnished by this student on five prior occasions, all resulting in arrest and conviction. Id. at 311, 333 N.E.2d at 370, 372 N.Y.S.2d at 69. Cf. In re Boykin, 39 Ill. 2d 617, 237 N.E.2d 460 (1968), where police officers conducted a school search after the assistant principal advised them that he had received anonymous information that the student had a gun. The police officers were not required to delay until they ascertained whether the assistant principal was concealing the identity of the informant, or whether the informant was anonymous.
131. 37 N.Y.2d at 311, 333 N.E.2d at 370, 372 N.Y.S.2d at 70.
133. 392 U.S. at 21-22 & n.18.
They noted that a search without a warrant is per se unconstitutional, unless "it falls within one of those categories recognized as 'specifically established and well-delineated exceptions' to the warrant requirement." 136 A school search based on suspicion of possession of an unlawful substance does not constitute such an exception to the warrant requirement. Therefore, the evidence so obtained must be excluded.

The Supreme Court of the United States, without opinion, vacated the judgment and remanded for a decision as to whether the case was decided on federal or state constitutional grounds. 137 Of course, it is not yet clear whether the standard set by Mora will be followed.

The foregoing cases attempt to integrate the concept of a school search into existing rules of law. The result has been a constant juggling of the concepts of in loco parentis, the public/private distinction, probable cause, and reasonable suspicion. A better approach would be to recognize that the school search cases are sui generis, and do not fit into established categories. A step in this direction was taken by the Georgia Supreme Court in State v. Young. 138 In Young, the defendant was with several other students on school premises. As the principal approached them, one of the students "jumped up and put something down, ran his hand in his pants." 139 The students were directed to empty their pockets and Young was found to be in possession of marijuana.

The court considered the application of the exclusionary rule to school searches. Whereas most courts only recognize the public-private distinction, the court theorized that there were actually three categories of individuals, with three concomitant exclusionary rules. First, there is the private person, to whom no exclusionary rules apply. Second is the government law enforcement agent who is bound by the exclusionary rule. Finally, there exists an intermediate group—the school officials—whose conduct constitutes state action which must be examined under the fourth amendment. 140

However, the exclusionary rule is not available if school officials violate the fourth amendment, since "the exclusionary rule does not reach so far as does the Fourth Amendment and the rule has not been applied save to action taken by law enforcement personnel." 141 Instead, the victims of the illegal search would have to proceed against the school official in a civil rights or tort action.

Because school officials are not strictly classified as law enforcement officers under this theory, there is no absolute requirement to exclude this evidence. It is submitted, however, that here the rights of students are being violated. Due to the inherent nature of the teacher-student or principal-student relationship, it is likely that a student will feel compelled to submit to a search. As the student perceives it, there may be little difference between a search by a

136. Id. at 320, citing Katz v. United States, 389 U.S. 347, 357 (1967).
137. 423 U.S. 809 (1975).
139. Id. at 488, 216 S.E.2d at 588.
140. Id. at 493-94, 216 S.E.2d at 591.
141. Id. at 494, 216 S.E.2d at 591.
police officer and a search by school personnel. Should the student fail to exercise whatever rights he possesses in refusing to submit to the search, the fruits of that search are then used against him. In essence, school personnel conduct searches under a cloak of some type of law enforcement authority to which the student believes he is compelled to submit; yet the protection of the exclusionary rule, designed to prevent groundless, unreasonable searches, is absent.\textsuperscript{142}

V. Conclusion

The law governing public school searches and seizures is evidently in a state of great conflict and confusion. The concern of the courts in their attempt to sustain these searches is understandable. However, a unified, well-reasoned approach which would reflect the fourth amendment rights of students is needed. Permitting searches merely on the basis of \textit{in loco parentis} is unsatisfactory. Attempts to categorize the school official as either public or private have served only to highlight the lack of a consistent, logical standard.

It is admittedly difficult to arrive at a standard which would reflect the need to have a certain amount of discipline and control over students, and at the same time retain their constitutional rights. Perhaps a combination of approaches taken by several courts would result in such a standard.

The reasonable suspicion standard appears to be fair and necessary, as a probable cause requirement would leave the school practically powerless to act. However, such a standard should be adopted with the caveat that it must be rigorously applied. It should be recognized, as it was in \textit{People v. Scott D.},\textsuperscript{143} that all searches may not be permitted simply by stating that a lower standard is being used. Whether the circumstances of the search constitute reasonable suspicion should be left to judicial determination, but the school official should at least be able to point to some facts which form the basis of his suspicion.

The approach of the court in \textit{State v. Young},\textsuperscript{144} recognizing that school officials are not easily categorized as public or private, commendably rejects any attempts at such useless classification; rather, it classifies the acts of these individuals as state action. However, the decision of the court not to utilize the exclusionary rule is troublesome. The suggested remedies of a tort or civil rights claim will serve only to attack the school official who was performing what he considered to be a necessary function of his job. This will place the great burden of ascertaining whether the search meets a required standard on individuals who have no knowledge of the subtle area of search and seizure law, and would serve only to hamper all searches.

Thus, a suggested approach to this area is first, to recognize that the area itself is sui generis. Second, the acts of school officials constitute state action, and the fourth amendment is applicable. Third, in scrutinizing the search, a

\textsuperscript{142} In re G.C., 121 N.J. Super. 108, 296 A.2d 102 (1972) has also found that the exclusionary rule is absent in principal-student confrontations.

\textsuperscript{143} 34 N.Y.2d 483, 315 N.E.2d 466, 358 N.Y.S.2d 403 (1974).

standard of reasonable suspicion for the basis of the search should be applied
and adhered to. Finally, ultimate determination of whether the search is
reasonable should be left to the courts, and thus, illegally obtained evidence
should be excluded. Such an approach would place school officials on notice
that they must have some basis for conducting the searches necessary to
protect the general student population. Excluding such evidence as the court,
in applying the reasonable suspicion standard, finds to have been illegally
obtained, will protect the fourth amendment rights of the individual student.

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