SEARCH AND SEIZURE IN EDUCATION

by

Mary Jane Connelly

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APPROVED:

M. David Alexander,
Co-Chairman

Richard G. Salmon,
Co-Chairman

Jane Brandt

Thomas C. Hunt

David J. Parks

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DEDICATION

To My Mother and Father

To Them Belong the Honor and Glory

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CHAPTER I

INTRODUCTION

An Overview

The Fourth Amendment included in the Bill of Rights of the United States Constitution guarantees citizens the right to be free from unreasonable searches and seizures.

> The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable 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 searched, and the persons or things to be seized.[1]

The Supreme Court of the United States has repeatedly been called upon to clarify the dictates of the protections afforded citizens in the Fourth Amendment. Even earlier, the importance of these protections was expressed by Patrick Henry when he protested the passage of the Constitution without provision against arbitrary searches and seizures:

> . . . general warrants by which an officer may search suspected places, without evidence of the commission of a fact, or seize any person without evidence of his crime ought to be prohibited. As these are admitted, any man may be seized, any property may be taken in the most arbitrary manner, without evidence or reason. Everything the most sacred may be searched and ransacked by the strong hand of power. We have infinitely more reason to dread general warrants here than they have in England, because there, if a person be

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[1]United States Constitution, Fourth Amendment.

> confined, liberty may be quickly obtained by writ of habeas corpus. But here a man living many hundred miles from judges may get in prison before he can get that writ.[2]

Mr. Justice Brandeis, in a dissenting opinion in Olmstead v. United States, referred to the significance attached to Fourth Amendment protections by the framers of our Constitution: "The makers of our constitution conferred, as against the government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man."[3]

School officials are responsible to provide a safe and healthy environment for students in an atmosphere that is conducive to learning. Consequently, they are responsible to remove influences that disrupt the educative setting. Sometimes this includes searching students. The problem is complex since students do not shed their constitutional rights at the schoolhouse gate.[4] The courts have acknowledged that within the purview of education, fundamental rights do exist which are explicitly and implicitly guaranteed by the Constitution. When then is it legal to search students?

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[2] I Elliot's Debates, 588.

[3] Olmstead v. United States, 277 U.S. 438 at 478.

[4] Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969).

Since the historic Tinker decision, a number of school cases dealing with issues of search and seizure and the Fourth Amendment have been litigated. The courts have been asked to clarify such issues as:

1. What is considered to be a reasonable and unreasonable search?
2. What standard is to be used in search and seizure of students?
3. What responsibilities attach to administrators and teachers who act in loco parentis?
4. When must a warrant be obtained?
5. May evidence seized be used in an administrative hearing?
6. May evidence seized be used in a criminal proceeding?
7. What methods of search are legal? (personal searches, pocket searches, strip searches, electronic device searches, canine searches)
8. Where are searches legal? (desk searches, locker searches, automobile searches, dormitory searches)
9. When should administrators call in a law enforcement agency?
10. Must illegally seized contraband be returned?
11. May you stop and frisk students?

Purpose of the Study

From our earliest beginnings, illegal searches and seizures have been anathema to Americans. Consequently, the courts have spoken on a variety of issues in dealing with the complexities of the Fourth Amendment. Over time, a body of law governing search and seizure has emerged. Of necessity this has not culminated in hard rules and regulations. Rather, flexible guidelines have emerged to guide decisions made in courts.

What is needed for today's school administrator is a comprehensive and systematic study of decisions rendered by the United States Supreme Court, federal courts, and state courts to guide them in conducting proper searches and seizures. Hudgins and Vacca warn of the dangers inherent in illegal searches:

> It is possible, however, for a search to go beyond the limits which a court will accept as being reasonable. When that happens, an injured party may properly have recourse against the administrator. More specifically, he may sue under the Civil Rights Act of 1871, Section 1983. . .[5]

Alexander points out that:

> The issue of search and seizure in the public schools balances primarily on whether or not the court views the school teacher or administrator

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[5]H. C. Hudgins and Richard S. Vacca, Law and Education: Contemporary Issues and Court Decisions. Charlottesville, Va.: The Michie Company, 1979, p. 249.

> as a parent or policeman. To assume that the school administrator or teacher represents the state and seeks to obtain seized goods for purposes of criminal prosecution would obviously require a warrant.[6]
>
> For a state official to conduct a search without a warrant in the absence of the power of in loco parentis or other extenuating circumstances would, of course, offend the constitution.[7]
>
> A student's freedom from unreasonable search and seizure must be balanced against the need for school officials to maintain order and discipline and to protect the health and welfare of all the students.[8]

The need for a guide on search and seizure was signaled by the National Organization On Legal Problems of Education (NOLPE) in September of 1980.[9] At that time, they responded to the apparent need by publishing a document that listed many of the issues that have cropped up in school situations, together with a listing of applicable cases. This study responds to that same need by going a step further, by comprehensively examining the history of search and seizure in decisions of the Supreme Court, federal courts, and state courts.

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[6]Kern Alexander, School Law. St. Paul, Minn.: West Publishing Company, 1980, p. 407.

[7]Id at 408.

[8]Id at 409.

[9]Cases on Search and Seizure, National Organization on Legal Problems of Education, Topeka, Kan.: September, 1980.

The Procedure

In an attempt to locate cases pertaining to Fourth Amendment rights in search and seizure the following sources have been used:

1. The American Digest System. This source, published by the West Publishing Company, provides a series of cases dating from 1897 to the present and includes a Century Digest, covering cases up to the beginning of the system, and eight decennial digests. Those cases decided since the end of the last decennial are included in a General Digest. Cases are arranged under digest topics by subject matter, each of which is assigned a number called the key number. The system consists of short digests of each case.[10]
2. The National Reporter System. This source reports the significant points of all cases from all courts of record. The sources and the first date of publication included in this system are: The Supreme Court Reporter (1882), The Federal Reporter (1880), The Federal Supplement (1932), The Pacific Reporter (1883), The Northwestern Reporter (1879), The

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[10]Morris L. Cohen, General Editor, How To Find the Law, Seventh Edition. St. Paul, Minn.: West Publishing Company, 1976, pp. 53-61.

Southwestern Reporter (1886), The Northeastern Reporter (1885), The Atlantic Reporter (1885), The Southeastern Reporter (1887), The Southern Reporter (1887), The New York Supplement (1888), The California Reporter (1960), and The Federal Rules Decisions (1928).[11]

3. American Jurisprudence. Encyclopedic in style, this source contains leading court decisions by topic and provides references to American Law Reports annotations, yielding a more detailed analytical discussion.
4. Corpus Juris Secundum. An encyclopedia of national coverage, this source is a digest of case law principles. It is parallel to American Jurisprudence.[12]
5. American Law Reports. A major series of selected and annotated reports, American Law Reports is a compilation of annotations, each offering a detailed treatise on a point of law. It draws on and cites individual cases, law reviews, bar journals and other sources relevant to the issue.[13]

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[11] Id at 30-39.

[12] Id at 83, 263-264.

[13] Id at 39-40, 47.

6. Shepard's Citations. Citator which lists relevant decisions to a cited case. This source provides information on cases that have been disapproved, modified, or reversed in subsequent decisions.[14]

7. The Lexis System. A computerized system which reports cases in full text. Inquiry into the system may be made by subject or key words. The two files utilized were the Supreme Court and General Federal.[15]

Three guides used in the research were:

1. How To Find the Law, M. L. Cohen, General Editor.
2. Legal Research in a Nutshell, M. L. Cohen
3. Schoolman in the Law Library, A. A. Rezny

Design of the Study

The second chapter reviews selected Supreme Court cases on search and seizure. Over time, the Court has defined and elucidated concepts, doctrines, and principles of law governing searches and seizures. The purpose of such a review is to systematically present these points of law. Largely because precedence and continuity are so important, the cases are presented in chronological sequence.

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[14] Id at 84.

[15] Id at 462.

Significant concepts, doctrines, and principles of law are summarized and discussed at the conclusion of the chapter.

Chapter three reports the relevant federal and state court decisions controlling searches and seizures in elementary and secondary schools. Cases are presented in chronological order. The pertinent concepts, doctrines, and principles of law for elementary and secondary education are summarized and discussed in the chapter's conclusion.

Chapter four examines federal and state court decisions governing searches and seizures in colleges and universities. Again, cases are presented in chronological order and concepts, doctrines, and principles of law are summarized and discussed at the end of the chapter.

The fifth chapter compares the concepts, doctrines, and principles of law governing searches and seizures on the elementary/secondary level with higher education. A number of similarities and dissimilarities have emerged in the Supreme Court, federal and state court decisions. These are identified and discussed to discern the parameters of searches and seizures in schools.

Included in the Appendix is a Glossary of those concepts, doctrines and principles of law annunciated by the courts in delineating Fourth Amendment rights. Each item is defined and is followed by a list of specific cases

elucidating that point of law. Black's Law Dictionary and court cases were used to define these terms.

Limitations

The study is confined to Supreme Court decisions governing searches and seizures generally, and federal and state court decisions controlling school searches and seizures. It is directed to school officials on the elementary, secondary, college and university level. Conclusions drawn are necessarily based on these limitations.

CHAPTER II

A REVIEW OF RELEVANT SUPREME COURT CASES GOVERNING SEARCHES AND SEIZURES

Introduction

The second chapter reviews the relevant Supreme Court cases to determine the concepts, doctrines, and principles of law governing searches and seizures. Cases are presented in chronological sequence in order to trace the development of the body of law. In some instances, the Court spoke for the first time on new dimensions of Fourth Amendment protections. Other cases merely reaffirmed prior decisions rendered by the Court. Occasionally, the Court reversed itself. Significant concepts, doctrines, and principles of law are summarized at the conclusion of the chapter.

What emerges is a coherent body of law to guide the courts, school officials and law enforcement agents in search and seizure litigation. It defines the parameters of Fourth Amendment protections available to citizens and applicable to the schools. It gives breadth and meaning to that most sacred right, the right to be let alone.

Review of the Supreme Court Cases

As early as 1886, the United States Supreme Court held that "constitutional provisions for the security of person

and property should be liberally construed."[16] Justice Bradley delivered the opinion of the Court in Boyd v. United States.[17] The principal question the Court was called upon to resolve was:

> Is a search and seizure . . . a compulsory production of a man's private papers, to be used in evidence against him . . . an "unreasonable search and seizure" within the meaning of the fourth amendment of the constitution.[18]

Plaintiffs were required to produce private books and papers showing they had defrauded the government when they failed to pay the duties on twenty-nine cases of imported lead glass. The Court reversed the Circuit Court decision saying:

> We think that the notice to produce the invoice in this case, the order by virtue of which it was issued, and the law which authorized the order, were unconstitutional and void, and that the inspection by the district attorney of said invoice, when produced in obedience to said notice, and its admission in evidence by the court, were erroneous and unconstitutional proceedings.[19]

The Court reasoned that the lower court was extorting private books and papers from the plaintiff. In the words of the Court:

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[16] Boyd v. United States, 6 S. Ct. 524 at 535.

[17] Boyd v. United States, 116 U.S. 616, 29 L. Ed. 746, 6 S. Ct. 524 (1886).

[18] Boyd, Supra at 528.

[19] Id at 536-37.

> It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty, and private property, . . . any forcible and compulsory extortion of a man's own testimony, or of his private papers to be used as evidence to convict him of crime, or to forfeit his his goods . . . [20] [is repugnant.]

In 1897, the Supreme Court reversed and remanded a Massachusetts Circuit Court decision. In Bram v. United States,[21] a murder case on the high seas, counsel for the plaintiff objected to the admissibility of a confession obtained by a police detective in a foreign country while the plaintiff had been stripped. Justice White went to some lengths to set forth the principles underlying the Fifth Amendment in both English and American law. The Court reasoned the interrogation of the plaintiff while in a state of undress was coercive and his confession was not voluntary. Hence, the lower court erred in admitting the evidence.

The Supreme Court affirmed the New York Court of Appeals in Adams v. New York.[22] Plaintiff was convicted of having 3,500 lottery slips in his possession. Police

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[20] Id at 532.

[21] Bram v. United States, 168 U.S. 532, 42 L. Ed. 568, 18 S. Ct. 183 (1897).

[22] Adams v. New York, 192 U.S. 585, 48 L. Ed. 575, 24 S. Ct. 372 (1904).

officers armed with a search warrant also removed some other private papers for the purpose of identifying the handwriting and to show lottery slips were in plaintiff's custody. The Court reasoned:

> The security intended to be guaranteed by the 4th Amendment against wrongful search and seizures is designed to prevent violations of private security in person and property and unlawful invasion of the sanctity of the home of the citizen by officers of the law, acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted. But the English, and nearly all of the American cases, have declined to extend this doctrine to the extent of excluding testimony which has been obtained by such means, if it is otherwise competent.[23]

The Court was convinced the evidence was competent even though it may have been illegally obtained.

Again in 1914, the United States Supreme Court recognized the fundamental rights possessed by American citizens guaranteed in the Fourth Amendment. In Weeks v. United States,[24] a Missouri case involving the illegal use of lottery tickets, some private letters and papers had been removed from the home of the accused by a United States marshal without a warrant. The Court reversed the earlier District Court decision which had admitted certain

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[23] Adams v. New York, 24 S. Ct. 372 at 375. Ten years later, the Court announced the Weeks Doctrine which would exclude evidence illegally obtained by police.

[24] Weeks v. United States, 232 U.S. 383, 58 L. Ed. 652, 34 S. Ct. 341 (1914).

correspondence into evidence which was potentially damaging to the defendant. This ruling became known as the Weeks Doctrine[25] and henceforth evidence obtained illegally by federal officers was to be excluded from trial. A new trial was ordered.

The Supreme Court affirmed a District Court ruling in Pennsylvania in Schenck v. United States.[26] Evidence was obtained at Socialist Party headquarters incriminating plaintiffs. Socialist Party leaders were convicted of having printed and distributed circulars encouraging insubordination and obstruction to men called for military service. The Court reasoned that evidence so obtained was admissible even though the search warrant was issued against the party headquarters and not plaintiffs. ". . . no reasonable man could doubt that the defendant Schenck was largely instrumental in sending the circulars about."[27]

In 1920 the Supreme Court reversed a New York District Court in Silverthorne Lumber Co. v. United States.[28] The

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[25]Another name commonly used is the Exclusionary Rule.

[26]Schenck v. United States, 249 U.S. 47, 63 L. Ed. 470, 39 S. Ct. 247 (1919).

[27]Id at 248.

[28]Silverthorne Lumber Co. v. United States, 251 U.S. 385, 64 L. Ed. 319, 40 S. Ct. 182 (1920).

Court reasoned that the representatives of the Department of Justice and the United States marshal had conducted an unlawful search and seizure when plaintiffs were detained and their books, papers, and documents were removed for photographing and copying. Subsequently, subpoenas were issued for these same materials to prove the charges. Plaintiffs refused to comply with the subpoenas and were subsequently fined and held in contempt. The Court acknoledged that the government could use such information if it had been "acquired through the wrongful act of a stranger,"[29] but knowledge "gained by the government's own wrong cannot be used by it in the way proposed."[30]

In a 1921 case, Gouled v. United States,[31] plaintiff's office had been searched without a search warrant by a private in the army who was working for the Army Intelligence Department. The private was an acquaintance of the plaintiff and he pretended to be making a friendly call. In the plaintiff's absence, he seized papers belonging to

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[29] Silverthorne Lumber Co. v. United States, 40 S. Ct. 182.

[30] Id at 183.

[31] Gouled v. United States, 255 U.S. 298, 65 L. Ed. 647, 41 S. Ct. 261 (1921).

plaintiff. Plaintiff did not know of the missing papers until they were entered as evidence against plaintiff to prove he was conspiring to defraud the government. The Court determined that plaintiff's rights had been violated because papers had been obtained by stealth. The rule that courts will not pause to determine how evidence was obtained in criminal trials was inapplicable in the instant case because plaintiff did not know of the seized papers until the trial. Regarding the use of search warrants, the Court had this to say:

> Search warrants may not be used as the means of gaining access to a man's house or office and papers, solely to secure evidence to be used against him in a criminal or penal proceeding, but may be resorted to only when a primary right to such search and seizure may be found in the interest which the public or the complainant may have in the property to be seized, or when a valid exercise of the police power renders possession of the property by the accused unlawful.[32]

On the same day the Supreme Court also handed down a ruling in a companion case to Gouled. In Amos v. United States,[33] deputy collectors of the internal revenue demanded entrance to plaintiff's store and home in his absence. The plaintiff's wife admitted the officials and without a search warrant they removed evidence to be used against plaintiff.

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[32]Gouled v. United States, 41 S. Ct. 261 at 262.

[33]Amos v. United States, 255 U.S. 313, 65 L. Ed. 654, 41 S. Ct. 266 (1921).

After a jury was sworn, but before the introduction of the evidence, the accused petitioned the Court for the return of his property and the petition was denied. The Supreme Court reversed the trial court's decision because of "the unconstitutional character of the seizure. . . The petition should have been granted; but it having been denied, the motion should have been sustained."[34] The Supreme Court did not accept the government's claim that plaintiff's wife had waived his constitutional rights because "the search was permitted under implied coercion."[35]

The search and seizure of private papers by private individuals is not considered a violation of the Fourth Amendment. In Burdeau v. McDowell,[36] the Supreme Court acknowledged the right of petitioner to a redress of grievances against those individuals who had unlawfully stolen his property. The significant point in the majority opinion was that the Fourth Amendment pertained to federal governmental action against private individuals.

> Its origin and history clearly show that it was intended as a restraint upon the activities of sovereign authority, and was not intended to be

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[34] Amos v. United States, 41 S. Ct. 266 at 267.

[35] Id at 266.

[36] Burdeau v. McDowell, 256 U.S. 465, 65 L. Ed. 1048, 41 S. Ct. 574 (1921).

> a limitation upon other than governmental agencies.[37]

The government could use the evidence seized even though private individuals had unlawfully seized the materials.

In 1923 the Supreme Court affirmed a New York District Court ruling in Essgee Co. of China v. United States.[38] Two corporations were required to produce books and papers in response to a subpoena. The purpose of obtaining such evidence was to investigate charges of fraud in importations. The court distinguished the instant case from Silverthorne[39] because "demand was suitably made by duly constituted authority. . . confining its requirements to certain described documents and papers easily distinguished and clearly described."[40] The court further reasoned:

> . . . corporations do not enjoy the same immunities that individuals have, under the Fourth and Fifth Amendments, from being compelled by due and lawful process to produce them for examination by the state or Federal Government.[41]

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[37] Burdeau v. McDowell, 41 S. Ct. 547 at 576.

[38] Essgee Co. of China v. United States, 262 U.S. 151, 67 L. Ed. 917, 43 S. Ct. 514 (1923).

[39] Silverthorne, Supra.

[40] Esgee Co. of China v. United States, 43 S. Ct. 514 at 517.

[41] Id at 516.

> [And] . . . an officer of a corporation in whose custody are its books and papers is given no right to object to the production of the corporate records because they may disclose his guilt.[42]

A number of cases were litigated in response to the National Prohibition Act of 1919. The first was Hester v. United States[43] in which the Supreme Court upheld the judgment of a South Carolina District Court. Fourth Amendment protections include the persons, houses, papers and effects of private individuals but do not extend to the open fields. Plaintiff threw away a bottle of prohibited liquor in an open field. It was unnecessary to obtain a warrant for evidence seized in an open field.

In 1925, federal agents searched and seized contraband liquor in a motor vehicle without first obtaining a search warrant. The Supreme Court affirmed the Michigan District Court in Carroll v. United States.[44] The Fourth Amendment was not violated since it would be impractical to insist on a search warrant to stop an automobile.

> It is impossible to get a warrant to stop an automobile. Before a warrant could be secured the

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[42] Id at 517.

[43] Hester v. United States, 265 U.S. 57, 68 L. Ed. 898, 44 S. Ct. 445 (1924).

[44] Carroll v. United States, 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280 (1925).

> automobile would be beyond the reach of the officer with its load of illegal liquor disposed of.[45]

The Court was not persuaded by the well established common law rule that a police officer may arrest without warrant one suspected of committing a felony, while arresting for a misdemeanor, as in the present case, the offense must be committed in the officer's presence.[46] The officers were entitled to use their reasoning faculties upon all the facts of which they had previous knowledge.

> . . . the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched.[47]

The search was not considered to be unreasonable since officials had previous knowledge a crime was being committed and thus there was no violation of the Fourth Amendment.

Plaintiffs were indicted for conspiring to sell cocaine in violation of the Harrison Act in Agnello v. United States.[48] The Supreme Court affirmed in part and reversed

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[45] Carroll v. United States, 45 S. Ct. 280 at 283.

[46] Id at 286.

[47] Id at 288.

[48] Agnello v. United States, 269 U.S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925).

in part the Second Circuit Court of Appeals. Cocaine seized without warrant in the act of crime did not violate the Fourth Amendment.

> The right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits . . . is not to be doubted.[49]

However, the search of the home of one of the plaintiffs, several blocks distant and after the crime, was not sustained by the Supreme Court as an incident of the arrests.

> . . . it has always been assumed that one's house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest therein . . . The search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws.[50]

A place of business owned by the plaintiff was searched with a warrant for intoxicating liquors. Federal agents removed a large quantity of liquors and plaintiff sought vacation of search warrant on the grounds that the description in the search warrant was insufficient; there was no ground for probable cause; and part of the building was used for residential purposes. The Supreme Court affirmed the New

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[49] Agnello v. United States, 46 S. Ct. 4 at 5.

[50] Id at 6.

York District Court in Steele v. United States.[51] The Court reasoned the warrant was sufficient because it was specific in describing "cases of whisky" to be seized on the premises. Furthermore, the federal agent was familiar with such seizure and after seeing the cases stenciled "whisky" ascertained there was no legal permit for whisky on said premises. Therefore, the Court agreed the agent had probable cause. The building was primarily used for business purposes and the one room, in which no liquor was discovered, where an employee slept and cooked his meals was held not to be a "private dwelling."

In a corresponding judgment[52] the Supreme Court interpreted the term "civil officer of the United States" to be broadly construed to include prohibition agents and not the usual more limited constitutional meaning providing for appointment by the President and the Senate, the President alone, the courts, or department heads.[53]

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[51] Steele v. United States, 267 U.S. 498, 69 L. Ed. 757, 45 S. Ct. 414 (1925).

[52] Steele v. United States, 267 U.S. 505, 69 L. Ed. 761, 45 S. Ct. 417 (1925).

[53] In May of 1925, the Supreme Court affirmed a similar case which challenged the authority of the prohibition agent and the lack of probable cause for sufficiency of search warrant. See Dumbra v. United States, 268 U.S. 435, 69 L. Ed. 1032, 45 S. Ct. 546 (1925).

The Supreme Court reversed the findings of the Eighth Circuit Court in Byars v. United States.[54] State police had obtained a search warrant that was "bad if tested by the Fourth Amendment and the laws of the United States."[55] A federal prohibition agent was asked to join the search and he did so under color of his federal office. No intoxicating liquors were discovered, but stamps used on whisky bottled in bond were confiscated by the federal agent. No state law was violated. The search warrant was addressed to "any peace officer of Des Moines, Polk County, Iowa"[56] by a state municipal court judge and did not specifically describe the stamps found. The court reasoned the search warrant was insufficient and as such any evidence found under such circumstances could not be used in a federal prosecution. Quoting Boyd[57] and Gouled[58]:

> Constitutional provisions for the security of person and property are to be liberally construed, and "it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."[59]

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[54] Byars v. United States, 273 U.S. 28, 71 L. Ed. 520, 47 S. Ct. 248 (1927).

[55] Byars v. United States, 47 S. Ct. 248.

[56] Id.

[57] Boyd, Supra at 525

[58] Gouled, Supra at 263.

[59] Byars, Supra at 249.

The Court did reaffirm the right of the government to avail itself of improperly seized evidence by state officers operating on their own.

In McGuire v. United States[60] federal prohibition agents armed with a search warrant found several gallons of intoxicating liquor. Except for a quart of whisky and a quart of alcohol, officers destroyed the liquor without a a court order. The plaintiff proferred the principle of trespass ab initio which, if the Court accepted, would have made the samples admitted into evidence unlawful. The principle of tresspass ab initio means: ". . . where one enters the premises of another under authority of law, his subsequent misconduct while there taints the entry from the beginning with illegality."[61] The Court opinion pointed out the use of the principle in civil actions but held it to have no application in criminal actions. "A criminal prosecution is more than a game in which the government may be checkmated and the game lost merely because its officers have not played according to the rule."[62] Consequently, the admission in evidence of the samples was lawful.

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[60] McGuire v. United States, 273 U.S. 95, 71 L. Ed. 556, 47 S. Ct. 259 (1927).

[61] McGuire v. United States, 47 S. Ct. 259 at 260.

[62] Id.

In 1927, the Supreme Court reversed the First Circuit Court of Appeals in United States v. Lee.[63] Similar to the transportation of contraband liquor in Carroll,[64] the Court affirmed the right of Coast Guard officers to search and seize alcohol aboard a motorboat. A searchlight revealed "in plain view" alcohol on the deck. Even though the motorboat was twenty-four (24) miles from land, it was still legal to seize the boat and return it to port where a search was conducted.

The search of a private dwelling place, where unlawful sale of liquor was not alleged, was declared anathema to the National Prohibition Act of 1919 and an Act Supplemental to the National Prohibition Act of 1921. The Supreme Court reiterated the importance Congress attached to the sanctity of the home in United States v. Berkeness.[65] Even though Alaska had its own "Dry Law" the court agreed it must give way to the later general policy of Congress to protect the home against unlawful intrusion.

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[63] United States v. Lee, 274 U.S. 559, 71 L. Ed. 1202, 47 S. Ct. 746 (1927).

[64] Carroll, Supra.

[65] United States v. Berkeness, 275 U.S. 149, 72 L. Ed. 211, 48 S. Ct. 46 (1927).

Decided on the same day were Marron v. United States[66] and Segurola v. United States.[67] In Marron, the Court agreed with the plaintiff's contention that the Fourth Amendment requires search warrants particularly describe things to be seized and as such, the bills and ledger were seized lawfully as incident of arrest. Officers were authorized to arrest one in charge of premises where a business was conducted in violation of the National Prohibition Act.

In Segurola, the Supreme Court affirmed the finding of the First Circuit Court that plaintiffs did not raise the question of an illegal seizure and absence of probable cause until it was too late. Segurola and his companion were engaged in the transportation of whisky, gin, and brandy when arrested in violation of the National Prohibition Act. Plaintiffs should have moved to have the liquor returned to them as their property, not subject to seizure as evidence, or seasonably object to its production as evidence in court. The Court reaffirmed that courts will not permit a collateral issue to be raised as to the competency of evidence.

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[66] Marron v. United States, 275 U.S. 192, 72 L. Ed. 231, 48 S. Ct. 74 (1927).

[67] Segurola v. United States, 275 U.S. 106, 72 L. Ed. 186, 48 S. Ct. 77 (1927).

Three weeks later, in Gambino v. United States,[68] the Supreme Court reversed a Second Circuit Court decision. State troopers stationed near the Canadian border searched the plaintiff's automobile without a warrant. Timely objection was made for the suppression of liquor as evidence and plaintiffs moved for its return. The Court was of the opinion that, since no state crime was being committed, state troopers were acting unlawfully in conjunction with federal officials by aiding in the enforcement of the National Prohibition Act. Unlike Carroll v. United States[69] officers had no reason to believe a crime was being committed. Without warrant and probable cause, plaintiff's Fourth Amendment rights were wrongfully invaded.

In Olmstead v. United States,[70] a Washington case dealing with wiretapping in an illegal liquor operation, the Court again affirmed the common law rule: ". . . that the admissibility of evidence is not affected by the illegality of the means by which it was obtained."[71] It was true that

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[68] Gambino v. United States, 275 U.S. 310, 72 L. Ed. 293, 48 S. Ct. 137 (1927).

[69] Carroll, Supra.

[70] Olmstead v. United States, 277 U.S. 438, 72 L. Ed. 944, 48 S. Ct. 564 (1928).

[71] Id at 569.

the state of Washington had adopted a statute in 1909 that read: "Every person * * * who shall intercept, read or in any manner interrupt or delay the sending of a message over any telegraph or telephone line * * * shall be guilty of a misdemeanor."[72]

The statute did not declare that evidence obtained illegally would be inadmissible. Even if this were the case, Congress had not given the states the power to prescribe the rules of evidence in trials for offenses against the United States.

Chief Justice Taft relied on the language of the Fourth Amendment to claim that a telephone conversation is not within the scope of the Fourth Amendment.

In a dissenting opinion, Justice Brandeis criticized the majority for the narrow interpretation given the Fourth Amendment claiming the Constitution must be adaptable to a changing world. "The progress of science in furnishing the government with means of espionage is not likely to stop with wiretapping."[73] The minority saw no difference between the sealed letter and the private telephone message. Furthermore, Brandeis expressed the opinion that federal officers had broken the Washington statute and therefore had

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[72] Id.

[73] Id at 571.

obtained and presented evidence with "unclean hands." Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen."[74]

In Go-Bart Importing Co. v. United States[75] prohibition agents entered a place of business purporting to have a valid warrant to search the premises and seize articles to be used as evidence against plaintiffs. The agents used force to compel plaintiffs to open a desk and safe. The warrant did not specify any building, structure, location, or place, or set forth any particulars. Furthermore, plaintiffs were not engaged in any crime when arrested. The Supreme Court held the search to be unreasonable and enjoined the United States attorney and the special agent from using papers illegally taken as evidence and directed that such papers be returned to plaintiffs.[76]

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[74]Id at 575.

[75]Go-Bart Importing Co. v. United States, 282 U.S. 344, 75 L. Ed. 374, 51 S. Ct. 153 (1931).

[76]See also United States v. Lefkowitz 285 U.S. 452, 76 L. Ed. 877, 52 S. Ct. 420 (1932) and Taylor v. United States, 286 U.S. 1, 52 S. Ct. 466 (1932). In Go-Bart Importing Co. and Lefkowitz, federal agents conducted general exploratory searches with warrants for arrest to commit conspiracy. The court distinguished these cases from the earlier Marron decision where a bill and ledger used in the operation of a saloon were in plain view and therefore incident to arrest. In Taylor agents conducted a nighttime raid on a garage adjacent to plaintiff's dwelling with no search warrant. The Supreme Court held this to be unreasonable.

In Husty v. United States[77] the Supreme Court reaffirmed the right of federal prohibition agents to search an automobile without a warrant if the search is conducted with probable cause.[78] In the instant case the informant had been reliable in the past and was specific in naming the make of the car and its location. Eighteen cases of liquor were found in the search. However, the Court remanded the case to the district court believing the lower court had erroneously imposed heavy sentences exceeding the National Prohibition Act.

The National Prohibition Act, Section 25 of Title 2 specifically states: "No search warrant shall issue to search any private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, or boarding house."[79] In Grau v. United States[80] a federal agent observed plaintiff's house and concluded there was a still and

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[77]Husty v. United States, 282 U.S. 694, 75 L. Ed. 629, 51 S. Ct. 240 (1931).

[78]See Carroll, Supra.

[79]Grau v. United States, 53 S. Ct. 38 at 40.

[80]Grau v. United States, 287 U.S. 124, 77 L. Ed. 212, 53 S. Ct. 38 (1932).

whisky on the permises. Agents, armed with a warrant, seized a still and 350 gallons of whisky. In a 7-2 decision, the Supreme Court reversed the Sixth Circuit Court decision. The Court reasoned that the use of the private dwelling for business purposes alone was not sufficient evidence to believe actual sales were being made.

In Sgro v. United States,[81] the Supreme Court specifically addressed the time limitations in which to execute a search warrant. In keeping with the Court's belief that guarantees of the Fourth Amendment should be liberally construed, the Court reversed a finding of the Second Circuit Court, claiming pertinent facts germane to the charge should be heard by the commissioner issuing the warrant close to the date of issuance. In the case at bar, the commissioner reissued a warrant that had expired based on information taken from the affidavit sworn to for the original warrant. In a concurring opinion, Justice McReynolds pointed out statements older than ten days do not indicate existing conditions.

In Nathanson v. United States[82] a warrant was issued to search plaintiff's private dwelling based on mere affirmation

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[81] Sgro v. United States, 287 U.S. 206, 77 L. Ed. 269, 53 S. Ct. 138 (1932).

[82] Nathanson v. United States, 290 U.S. 41, 78 L. Ed. 159, 54 S. Ct. 11 (1933).

of suspicion or belief. Plaintiff was convicted of possessing intoxicating liquor in violation of the National Prohibition Act. The Supreme Court reversed the Third Circuit Court of Appeals. A term such as "cause to suspect and does believe"[83] invalidated the search warrant since there were no adequate supporting facts to verify such a belief. In the words of the Court:

> Under the Fourth Amendment, an officer may not properly issue a warrant to search a private dwelling unless he can find probable cause therefor from facts or circumstances presented to him under oath or affirmation. Mere affirmance of suspicion is not enough.[84]

In yet another National Prohibition Act violation, officers searched plaintiff's vehicle in Scher v. United States.[85] Counsel for plaintiff requested that the evidence be suppressed and returned to plaintiff since officers did not reveal the source of their information. The Supreme Court affirmed the Sixth Circuit Court because the search, although made without warrant, was limited to the automobile and public policy did not demand disclosure of the informer's identity since it was not essential to the defense.

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[83] Nathanson v. United States, 54 S. Ct. 11 at 13.

[84] Id at 13.

[85] Scher v. United States, 305 U.S. 251, 83 L. Ed. 151, 59 S. Ct. 174 (1938).

Plaintiff admitted guilt when arrested and officers conducted their search based upon what they saw and heard.

The Supreme Court reaffirmed their earlier findings in Olmstead[86] when they held that the use of a detectaphone by government agents did not violate the Fourth Amendment. In Goldman v. United States[87] plaintiffs were convicted for conspiracy to violate the Bankruptcy Act. Chief Justice Stone and Justice Frankfurter were willing to overturn the Olmstead decision and agreed with Justice Brandeis' dissenting view. Justice Jackson took no part in the case and Justice Murphy wrote a dissenting opinion taking note of the fact that science had created far more effective devices for the invasion of one's privacy. He wrote:

> It is a strange doctrine that keeps inviolate the most mundane observations entrusted to the permanence of paper but allows the revelation of thoughts uttered within the sanctity of private quarters, thoughts perhaps too intimate to be set down even in a secret diary, or indeed, utterances about which the common law drew the cloak of privilege—the most confidential revelations between husband and wife, client and lawyer, patient and physician, and penitent and spiritual adviser.[88]

The minority opinion warned of too literal a construction of Fourth Amendment protections.

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[86] Olmstead, Supra.

[87] Goldman v. United States, 316 U.S. 129, 86 L. Ed. 1322, 62 S. Ct. 993 (1942).

[88] Goldman v. United States, 62 S. Ct. 993 at 999.

In United States v. White[89] the Supreme Court was called upon to determine the scope of the constitutional privileges guaranteed by the Fourth and Fifth Amendments. In the present case, defendant White was convicted of contempt of court when he refused to produce certain books and papers in response to a subpoena duces tecum. Defendant claimed the labor union's records, Local No. 542, International Union of Operating Engineers, would incriminate him. The Court reasoned that the privilege against self-incrimination is a personal one and defendant was acting as a representative of a collective group. Federal and state governments have the right to compel production of papers that are not personal to enforce their laws.

Further clarification of the Fourth Amendment is to be found in Oklahoma Press Pub. Co. v. Walling.[90] The Fair Labor Standards Act gave the subpoena power to the Wage and Hour Administrator. The purpose of such power was to compel production of employer's relevant books, records and papers in the event that complaints of violation had been alleged and preliminary investigation was to be made. Application to the District Court to enforce a subpoena may be had if

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[89]United States v. White, 322 U.S. 694, 88 L. Ed. 1542, 64 S. Ct. 1248 (1944).

[90]Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 90 L. Ed. 614, 66 S. Ct. 494 (1946).

refused. The Supreme Court agreed with defendant that Congress had the authority to delegate such authority and it did not violate the Fourth Amendment. The Court reasoned that the Fourth Amendment guards against abuses such as the arbitrary actions of the Administrator or excesses of statutory authority. The Administrator's inquiry, however, was not limited by a forecast of the probable result of the investigation. It was not necessary that a specific charge be made. The investigation must be for a lawfully authorized purpose. Corporations are not entitled to the constitutional protections afforded private individuals. The documents sought were strictly corporate ones.

The Supreme Court upheld the findings of the Ninth Circuit Court in Zap v. United States.[91] Plaintiff entered into a contract for experimental work on airplane wings. A four thousand dollar check was deposited in Zap's account to pay a test pilot. The test pilot received only $2500 payment. The Government was cheated out of $1500. Petitioner was convicted of defrauding the government. Plaintiff Zap had knowingly entered into an agreement with the federal government and waived his right to privacy. His business papers and effects could be inspected by federal officials.

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[91] Zap v. United States, 328 U.S. 624, 90 L. Ed. 1477, 66 S. Ct. 1277 (1946).

The Court allowed the taking of a check because it would have been possible to obtain a warrant to secure the check or federal agents could have produced photostated copies of the check. There was no force, fraud or trickery involved.

In a 5-4 decision, the Supreme Court upheld the Tenth Circuit Court of Appeals in Harris v. United States.[92] Plaintiff was in his apartment when Federal Bureau of Investigation agents arrived armed with two warrants, one charging violation of the Mail Fraud Statute, the other charging violation of the National Stolen Property Act. After arresting the plaintiff in his living room, a five hour search was conducted, the purpose of which was to find two cancelled checks belonging to the Mudge Oil Company which had been used to effect a forgery. During the course of the search, agents found an envelope in plaintiff's bedroom which contained Notice of Classification cards and Registration Certificates. It was this evidence which convicted plaintiff, and he was sentenced to imprisonment for a term of five years on sixteen counts, the sentences to run concurrently. The two stolen checks were not found. Prior to the trial, plaintiff moved to have the evidence suppressed on the

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[92]Harris v. United States, 331 U.S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947).

ground that it had been obtained in an unreasonable search and seizure, violating his Fourth Amendment rights. The majority reasoned the agents had entered the private dwelling place armed with two valid search warrants aimed at uncovering the fruits of crime. Search and seizure incident to lawful arrest is permissible and may extend beyond the person to include the premises under one's control. It was reasonable to conclude agents would search the apartment to find evidence to be used against Harris for the crimes alleged in the search warrants. Therefore, it was permissible to admit draft cards into evidence even though the search warrants did not cover violations of the Selective Service Act. Agents had conducted a search in good faith and the discovery of another crime was incident to arrest.

Three of the four dissenting justices wrote separate opinions. Justice Frankfurter thought the majority opinion circuituous. He acknowledged agents had a warrant to arrest Harris, but he disagreed that they had a warrant to search and seize and he could not distinguish how the present case was different from a general exploratory search which is forbidden by the Fourth Amendment. He asked:

> How can there be freedom of thought or freedom of speech or freedom of religion, if the police can, without warrant, search your house and mine from

> garret to cellar merely because they are executing a warrant of arrest.[93]

Justice Murphy commented:

> The mere fact that a man has been validly arrested does not give the arresting officers untrammeled freedom to search every cranny and nook for anything that might have some relation to the alleged crime or, indeed, to any crime whatsoever.[94]

He agreed with Justice Frankfurther that the search undertaken here was general and exploratory to find evidence of Harris' guilt in some crime. He predicted that the majority decision would encourage law enforcement agents "to forego securing a search warrant, which is limited in scope by the Fourth Amendment to those articles set forth with particularity in the warrant."[95]

Justice Jackson agreed with Justice Murphy that law enforcement agents would see the need for search warrants as a hindrance in the investigation of crime and in the apprehension of criminals. He was not concerned with the intensity of the search but concluded:

> . . . that a search, for which we can assign no practicable limits, or premises and, for things which no one described in advance, is such a search

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[93] Harris v. United States, 67 S. Ct. 1098 at 1107.

[94] Id at 1114-1115.

[95] Id at 1116.

> as the Constitution considered "unreasonable" and intended to prohibit.[96]

Plaintiff was convicted of violating the federal narcotic laws in Johnson v. United States.[97] A Seattle police officer accompanied by four federal narcotic agents demanded entrance to plaintiff's room located in a hotel in Seattle. The pungent odor of opium was identified by agents prior to demanding entrance; however, no effort was made to seek a search warrant. The Supreme Court reversed the Circuit Court findings. Entry to plaintiff's living quarters was gained by submission to authority and plaintiff did not waive her constitutional right to privacy. Agents did have evidence to secure a warrant. In the words of the Court:

> If the presence of odors is testified to before a magistrate and he finds the affiant qualified to know the odor, and it is one sufficiently distinctive to identify a forbidden substance, this Court has never held such a basis insufficient to justify issuance of a search warrant. Indeed it might very well be found to be evidence of most persuasive character.[98]

Again, the Court reaffirmed the reasoning for obtaining search warrants. Quoting United States v. Lefkowitz[99] the

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[96] Id at 1120.

[97] Johnson v. United States, 333 U.S. 10, 92 L. Ed. 436, 68 S. Ct. 367 (1948).

[98] Johnson v. United States, 68 S. Ct. 367 at 369.

[99] United States v. Lefkowitz, Supra.

Court said:

> Security against unlawful searches is more likely to be attained by resort to search warrants than by reliance upon the caution and sagacity of petty officers while acting under the excitement that attends the capture of persons accused of crime.[100]

The Court further reasoned plaintiff was not attempting to flee authority and the search was to be conducted on premises that were permanent.

In a 5-4 decision, the Supreme Court reversed the Third Circuit Court in Trupiano v. United States.[101] Plaintiffs operated an illicit distillery and agents of the Alcohol Tax Unit of the Bureau of Internal Revenue had been so informed by the proprietor of the farm from whom plaintiffs secured land to operate their business. An agent of the Alcohol Tax Unit obtained work at the distillery and reported to fellow agents concerning the operation. Approximately three weeks or more elapsed when these federal agents conducted a midnight raid without either a warrant for arrest or a search warrant. One of the plaintiffs was observed operating the distillery. He was placed under arrest and the Court sustained the arrest on the theory that plaintiff was committing a felony in an officer's presence. The seizure of

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[100] Johnson, Supra at 369.

[101] Trupiano v. United States, 334 U.S. 699, 92 L. Ed. 1663, 68 S. Ct. 1229 (1948).

contraband without benefit of a search warrant was not sustained by the majority on the theory that sufficient time was available to obtain such warrant from accessible magistrates and commissioners. "It is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants whenever reasonably practicable."[102] Furthermore, detailed information was known by federal officers to describe with particularity what was to be seized. The nature of the articles to be seized was such that there was no danger of their removal before a warrant could be obtained, especially with an agent on hand at all times. The Court acknowledged the property seized was contraband and the plaintiffs thus had no right to have it returned to them.

Chief Justice Vinson wrote the dissenting opinion. The minority believed the seized materials were subject to lawful seizure because they were instruments being used in the commission of crime and were in plain view. There was no general exploratory search and officers had gained entrance without the breaking of doors.

In a 6-3 decision, the United States Supreme Court affirmed the Colorado Supreme Court's decision in Wolf v.

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[102] Trupiano v. United States, 68 S. Ct. 1229 at 1232.

People of the State of Colorado.[103] Plaintiff was convicted of conspiring with others to commit abortions. The question at bar was:

> Does a conviction by a State court for a State offense deny the "due process of law" required by the Fourteenth Amendment, solely because evidence that was admitted at the trial was obtained under circumstances which would have rendered it inadmissible in a prosecution for violation of a federal law in a court of the United States because there deemed to be an infraction of the Fourth Amendment as applied in Weeks v. United States. . . [104]

The Court reasoned that the Weeks Doctrine regarding the inadmissibility of evidence procured by an illegal search and seizure was not binding upon the States because other remedies, including community outrage, could be effectively used to deter arbitrary police conduct.

The United States Supreme Court reversed the Second Circuit Court in United States v. Rabinowitz.[105] Rabinowitz was convicted of the possession and sale of postage stamps bearing forged overprints. The Court reasoned that if a valid arrest is made it is not unreasonable to search a

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[103] Wolf v. People of the State of Colorado, 338 U.S. 25, 93 L. Ed. 1782, 69 S. Ct. 1359 (1949).

[104] Wolf v. People of the State of Colorado, 69 S. Ct. 1359 at 1360.

[105] United States v. Rabinowitz, 339 U.S. 56, 94 L. Ed. 653, 70 S. Ct. 430 (1950).

person. Officers had a warrant for defendant's arrest and could search the defendant's person. The Court further determined that officers could search the defendant's desk, safe, and file cabinets in the one room office because of the longstanding practice of searching for other proofs of guilt within the control of the arrested. The search was not general or exploratory and there was probable cause to believe the arrested was conducting an illegal business. "The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable."[106]

Justice Frankfurter warned of the danger in allowing unlimited searches incident to lawful arrest. He expressed the opinion that necessity dictated whether a search could be conducted without a search warrant:

> . . . first—to deprive the prisoner of potential means of escape, . . . secondly, to avoid destruction of evidence by the arrested person.
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> Another exception . . . the search without a warrant of moving objects . . . on the ground that "it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.[107]

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[106] United States v. Rabinowitz, 70 S. Ct. 430 at 435.

[107] Id at 437-438.

Frankfurter denounced the majority opinion that lawful arrest included the right to search the entire place of arrest. He further pointed out sufficient time existed for officers to obtain a search warrant.

Just short of two years later, the United States Supreme Court affirmed the judgment of the Court of Appeals for the District of Columbia. In United States v. Jeffers[108] the Court held that contraband narcotics unlawfully seized without a search warrant on other's property should have been excluded from evidence. The purpose of a search warrant is to provide a judicial process to protect the Fourth Amendment rights of individuals. It does not place an oppressive weight on law enforcement agents. In the instant case there were no exceptional circumstances, such as the destruction or removal of the evidence, nor was the search incident to a valid arrest. The narcotics were contraband and therefore the defendant had no property interest in their return.

In Miller v. United States[109] the Supreme Court reversed the District Court for the District of Columbia. Plaintiffs were convicted for violations of the federal

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[108] United States v. Jeffers, 342 U.S. 48, 96 L. Ed. 59, 72 S. Ct. 93 (1951)

[109] Miller v. United States, 357 U.S. 301, 2 L. Ed. 2d 1332, 78 S. Ct. 1190 (1958).

narcotics laws. A plan was devised whereby officers would catch petitioners in the act of crime. An agent, using marked money, sought to purchase one hundred capsules of heroin. Officers followed the seller to the apartment house of petitioner and arrested him when he left with the heroin. They then returned to the apartment, without either a warrant for arrest or a search warrant, and gained entrance to plaintiff's apartment using forcible means. A quantity of heroin and the marked money were found in the apartment. The government argued that the arrest was lawful since plaintiff was in the act of committing a felony and seizure of the evidence was legal as incident to a lawful arrest. The Court majority disagreed because officers did not state their authority and purpose for demanding admission. Plaintiff had opened the door but had left the door chain attached. He then tried to close the door, whereupon officers broke the chain and gained admission. The Court reasoned, "the fact that petitioner attempted to close the door did not of itself prove that he knew their purpose to arrest him."[110] The arrest took place in the early hours of the morning and officers spoke in a low voice. Petitioner did not know about the arrest of the seller, nor did he know the money was marked. Therefore, the Court agreed with

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[110]Miller v. United States, 78 S. Ct. 1190 at 1196.

plaintiff that the arrest was unlawful and the evidence should have been suppressed.

In a 6-1 decision, the Supreme Court affirmed the Court of Appeals judgment in Draper v. United States.[111] Specifically, the Court held that the search for narcotic drugs, incident to lawful arrest, and which revealed the possession of heroin, could be admitted as competent evidence. The government agent had probable cause and reasonable grounds for suspecting that the plaintiff was engaged in violating the federal narcotics laws because an informer had proved to be reliable in the past. The Court agreed hearsay could not be admitted as legally competent evidence in a criminal trial but it could be considered in determining whether the agent had reasonable grounds and probable cause to arrest the petitioner without a warrant.

> Probable cause exists where "the facts and circumstances within their [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed.[112]

Douglas wrote a dissent denouncing the majority for accepting the word of an informer. He criticized the

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[111] Draper v. United States, 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329 (1959).

[112] Draper v. United States, 79 S. Ct. 329 at 333.

arresting officer for failing to find out the source of the informer's information. "No magistrate could issue a warrant on the mere word of an officer, without more."[113] Douglas took the time to review the early history of the Fourth Amendment. Two passages which he considered to be of particular interest were the Virginia Declaration of Rights adopted in June, 1776 and Patrick Henry's protest against the passage of the Constitution without a Bill of Rights.

> That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.[114]

> * * * general warrants, by which an officer may search suspected places, without evidence of the commission of a fact, or seize any person without evidence of the crime, ought to be prohibited. As these are admitted, any man may be seized, any property may be taken, in the most arbitrary manner, without any evidence or reason. Every thing the most sacred may be searched and ransacked by the strong hand of power. We have infinitely more reason to dread general warrants here than they have in England, because there, if a person be confined, liberty may be quickly obtained by writ of habeas corpus. But here a man living many hundred miles from the judges may get in prison before he can get that writ.[115]

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[113] Id at 339.

[114] Id at 336.

[115] Id.

In Jones v. United States[116] the Supreme Court reasoned that the plaintiff, as an invited guest in an apartment, had standing to move for suppression of evidence. Petitioner had obtained a key to the apartment "as a friend" and was using it in the occupant's absence. The Court decided that a warrant issued on hearsay was sufficient if there was a substantial basis for crediting the information. Since there was conflict in the testimony of the parties, the Court could not decide if the warrant had been executed in violation of 18 U.S.C.A. Section 3109. Consequently, the decision of the Court of Appeals was vacated and the case was remanded to the District Court for further proceedings.

In Elkins v. United States,[117] a 5-4 decision, the Supreme Court reversed itself by overruling the "silver platter" doctrine. Formerly, this doctrine held that the evidence obtained by state officers in an unreasonable search and seizure could be used in federal prosecution. Now, the Court reasoned such joint action between federal and state agents was prohibited by the Fourteenth Amendment. To admit such evidence would violate plaintiff's immunity from unreasonable searches and seizures under the Fourth Amendment.

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[116] Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960).

[117] Elkins v. United States, 364 U.S. 206, 4 L. Ed. 2d 1669, 80 S. Ct. 1437 (1960).

> . . . It would seem logically impossible to justify a policy that would bar from a federal trial what state officers had obtained in violation of a federal statute, yet would admit that which they had seized in violation of the Constitution itself.[118]

Plaintiffs had been convicted of violations of the Communications Act. The opinions of the lower courts were vacated and the case was remanded to the District Court of Oregon for further proceedings.

In 1961, the Supreme Court overruled the 1949 Wolf[119] Doctrine in Mapp v. Ohio.[120] Plaintiff had been the victim of an unreasonable search and she was convicted for possession and control of obscene material in violation of section 2905.34 of Ohio's Revised Code. The Wolf[121] Doctrine propounded the theory that the Weeks[122] Exclusionary Rule was not binding on the admission of evidence in state courts because other remedies were available to states to deter police from unreasonable and arbitrary searches. The Court noted that other remedies had not emerged to protect the

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[118] Elkins v. United States, 80 S. Ct. 1437 at 1443.

[119] Wolf, Supra.

[120] Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684 (1961).

[121] Wolf, Supra.

[122] Weeks, Supra.

right to privacy guaranteed by the Fourth Amendment and made applicable to the States through the Fourteenth Amendment. Now the Court wanted to effectively "close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right. . . "[123] In making the Exclusionary Rule binding on state courts it would, "compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it."[124] The Court reversed the Ohio Supreme Court judgment and remanded the case for further proceedings consistent with the Court's opinion.

In Marcus v. Search Warrants of Property, Etc.[125] the Supreme Court reversed the Supreme Court of Missouri. Petitioners were convicted of possessing allegedly obscene publications. The Court held that the Missouri procedure for warrants issued to seize obscene materials lacked sufficient safeguards to protect plaintiff's due process rights. The Court reasoned that the warrants were issued on assertions of a single police officer, without judicial determination of obscenity, and giving any peace officer

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[123] Mapp v. Ohio, 81 S. Ct. 1684 at 1691.

[124] Id at 1692.

[125] Marcus v. Search Warrants of Property, Etc., 367 U.S. 717, 6 L. Ed. 2d 1127, 81 S. Ct. 1708 (1961).

broad discretion in their execution. Two hundred and eighty publications were originally seized and of these, one hundred were determined to be obscene. Petitioners were deprived of their rights when these publications were held off the market for an indefinite period of time. The case was remanded for further proceedings.

In a 5-4 decision, the United States Supreme Court affirmed the California court's decision in Ker v. State of California.[126] The conviction of petitioners for possession of marijuana in violation of the California Health and Safety Code was upheld and the evidence seized without warrant and introduced at trial was admissible. Petitioners were lawfully arrested and the search was valid since it was incident to arrest. An exception to the California Statute, Section 844, was sanctioned; specifically, officers could obtain a passkey from the manager and enter the apartment quietly so evidence could not be disposed of or destroyed.

In a dissenting opinion, Justice Brennan objected to the majority opinion because of the unannounced police entry into the Ker apartment with a passkey obtained from the manager. A detailed history of the requirement to give notice of entry has been well documented. "Innocent citizens

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[126] Ker v. State of California, 374 U.S. 23, 10 L. Ed. 2d 726, 83 S. Ct. 1623 (1963).

should not suffer the shock, fright or embarrassment attendant upon an unannounced police intrusion."[127]

Justice Harlan concurred in the result but advocated that state searches and seizures should continue to be adjudicated using the concept of "fundamental fairness" in the Due Process Clause of the Fourteenth Amendment rather than the requirement of "reasonableness" contained in the Fourth Amendment to which federal searches and seizures have been subject.

The Supreme Court reaffirmed its earlier decisions involving searches of automobiles made without search warrants. Circumstances were different in Preston v. United States.[128] State officers arrested plaintiff and two others on a charge of vagrancy and took them to the police station and the car they occupied was towed to a garage. While petitioner and car were in police custody, a search was conducted without a search warrant and the fruits of what could have been used to rob a bank were found. The Court found this evidence to be inadmissible since it was "remote in time or place from the arrest."[129] Other exigent

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[127] Ker v. State of California, 83 S. Ct. 1623 at 1642.

[128] Preston v. United States, 376 U.S. 364, 11 L. Ed. 2d 777, 84 S. Ct. 881 (1964).

[129] Preston v. United States, 84 S. Ct. 881 at 883.

circumstances, such as the need to seize weapons used to assault an officer or effect an escape or to prevent the destruction of evidence, were not present to justify the warrantless search. The search violated the Fourth Amendment's test of reasonableness and the evidence should have been suppressed. The Court reversed the Sixth Circuit Court and remanded the case.

In 1964 the Supreme Court reaffirmed its belief that hearsay information may be used to obtain a search warrant. In Aguilar v. State of Texas[130] a search warrant was obtained based on hearsay information but the majority agreed that the magistrate issuing the warrant must be informed of some of the underlying circumstances to determine the credibility of the informant. Quoting United States v. Lefkowitz,[131] the Court stated: "Informed and deliberate determinations of magistrates empowered to issue search warrants are to be preferred over the hurried action of officers who may happen to make arrests."[132] The concern of the Court in requiring an "informed and deliberate" determination was that magistrates should be neutral and detached and

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[130]Aguilar v. State of Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964).

[131]United States v. Lefkowitz, Supra.

[132]Aguilar v. State of Texas, 84 S. Ct. 1509 at 1512.

not act as rubber stamps for police. Information is needed to establish probable cause. The affidavit in the instant case was insufficient for a finding of probable cause. Consequently, the evidence was inadmissible.

Justice Brennan delivered the opinion of the Court in Schmerber v. State of California.[133] In a 5-4 decision, the majority upheld the conviction of the plaintiff of driving an automobile while under the influence of intoxicating liquors. The Court reasoned that the circumstances justified the use of a blood sample to determine whether plaintiff was intoxicated. Although a search warrant was not obtained, the majority agreed that an emergency situation existed because the evidence would be destroyed over time. Furthermore, the blood analysis was conducted under proper medical conditions.

Disagreeing with the majority, Justice Black commented:

> It is a strange hierarchy of values that allows the State to extract a human being's blood to convict him of a crime because of the blood's content but proscribes compelled production of his lifeless papers.[134]

Justice Douglas joined Justice Black's dissent and added a further comment. "No clearer invasion of this right of

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[133] Schmerber v. State of California, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966).

[134] Schmerber v. State of California, 86 S. Ct. 1826 at 1838.

privacy can be imagined than forcible bloodletting of the kind involved here."[135]

In Warden, Maryland Penitentiary v. Hayden[136] the Supreme Court overruled the 1921 decision in Gouled v. United States.[137] In the present case, the defendant objected to the admissibility in evidence of clothing found in a washing machine as "mere evidence" that had only "evidential value." The Court reasoned that officers were in "hot pursuit" of a felon who had just committed armed robbery. The clothes matched the description of those worn by the robber and police could reasonably expect they would aid in the identification of the culprit.

In a 6-3 decision, the Supreme Court vacated the California court judgment in Camara v. Municipal Court.[138] Housing code inspectors demanded entrance to lessee's ground

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[135] Id at 1840.

[136] Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967).

[137] Gouled, Supra.

[138] Camara v. Municipal Court, 387 U.S. 523, 18 L. Ed. 2d 930, 87 S. Ct. 1727 (1967). This case overruled Frank v. State of Maryland, 359 U.S. 360, 3 L. Ed. 2d 877, 79 S. Ct. 804, in which the Court upheld, in a 5-4 decision, the conviction of a homeowner who refused to permit a health inspector to inspect his premises without a warrant. In Eaton v. Price, 364 U.S. 263, 4 L. Ed. 2d 1708, 80 S. Ct. 1463, a similar conviction was upheld by an equally divided Court.

floor apartment without a warrant and plaintiff refused. He was then convicted of violating San Francisco's city housing code. The Court reasoned that such a search was a significant intrusion upon plaintiff's Fourth Amendment rights.

> Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization.[139]

The Court agreed on the need for inspection codes but they did not think the public need was inconsistent with the requirement for a warrant to search a particular dwelling. An emergency situation did not exist in the instant case.[140]

In Katz v. United States[141] the Supreme Court was again faced with wiretapping a private conversation. Plaintiff

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[139] Camara v. Municipal Court, 87 S. Ct. 1727 at 1732.

[140] In a companion case, See v. City of Seattle, 387 U.S. 541, 18 L. Ed. 2d 943, 87 S. Ct. 1737 (1967), the Court reversed the Washington Supreme Court. Plaintiff could not be prosecuted for exercising his constitutional right to insist on a search warrant before a fire inspector could enter plaintiff's warehouse.

[141] Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967).

was observed telephoning from a public telephone booth for several minutes at approximately the same time each morning. Federal Bureau of Investigation agents correctly predicted that plaintiff's conversations concerned the placing of bets and wagering information in violation of federal statute 18 U.S.C. Section 1084. The Court held that electronically listening to and recording plaintiff's conversation violated the privacy of petitioner since there was no prior judicial sanction with attendant safeguards. The Court recognized that some situations do demand electronic surveillance of persons without their knowledge to prevent escape of the suspect or destruction of evidence. In these instances, an impartial magistrate could authorize, with appropriate safeguards, such electronic surveillance. In the present case, plaintiff correctly assumed his conversation was protected by the Fourth Amendment.

In Harris v. United States[142] the Supreme Court affirmed the conviction of plaintiff for robbery. Police had impounded petitioner's automobile. A registration card identifying the car as belonging to plaintiff was discovered by police and admitted in evidence. The Court upheld the admissibility of the evidence because it was found not as the result of a search, but as a measure taken by

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[142]Harris v. United States, 390 U.S. 234, 19 L. Ed. 2d 1067, 88 S. Ct. 992 (1968).

police to protect the car while it was in their custody.

> It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence.[143]

Plaintiff's conviction on charges of rape and felonious assault was reversed by the Supreme Court and a new trial was ordered in Bumper v. State of North Carolina.[144] The Court reasoned that plaintiff's grandmother did not waive his Fourth Amendment rights by consenting to a search of her home. Officers did not show or read a search warrant demonstrating they had the proper authority to conduct a search. The prosecution did not rest their case on the validity of a search warrant but on the consent of the owner of the home, who also owned the rifle admitted into evidence.

> When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion—albeit colorably lawful coercion. Where there is coercion there cannot be consent.[145]

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[143] Harris v. United States, 88 S. Ct. 992 at 993.

[144] Bumper v. State of North Carolina, 391 U.S. 542, 20 L. Ed. 2d 797, 88 S. Ct. 1788 (1968).

[145] Bumper v. State of North Carolina, 88 S. Ct. 1788 at 1792.

The Court held it was constitutional error to admit the rifle in evidence.

The Supreme Court upheld the "stop and frisk" of petitioner by a police detective in Terry v. Ohio.[146] The Court was persuaded that the detective had reason to believe plaintiff was acting suspiciously, based on his observations and years of experience in police work.

> . . . a reasonably prudent man would have been warranted in believing petitioner was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior.[147]

The policeman identifed himself as an officer when he approached plaintiff and limited his search to patting down plaintiff's outer clothes and removing only concealed weapons. The weapons, therefore, were admissible as evidence.

Sibron v. State of New York and Peters v. State of New York[148] were companion cases to Terry v. Ohio[149] and dealt

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[146] Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968).

[147] Terry v. Ohio, 88 S. Ct. 1868 at 1883.

[148] Sibron v. State of New York, 392 U.S. 40, 20 L.Ed. 2d 917, 88 S. Ct. 1889 (1968).

[149] Terry, Supra.

with New York's "stop and frisk" statute.[150] Sibron was convicted of unlawful possession of heroin. The Supreme Court reversed Sibron's conviction on the ground that the arresting officer lacked probable cause to search and seize. Plaintiff had been observed talking to known narcotics addicts over a period of eight hours. The content of the conversation was unknown to the officer and he didn't see anything change hands. The plaintiff made a move toward his left pocket when confronted by the officer. The officer testified he put his hand in the plaintiff's pocket with the expectation of finding narcotics. Several envelopes of heroin were discovered and were admitted into evidence over plaintiff's timely objections. The Court reasoned that the officer had conducted a search in violation of the Fourth Amendment because he had no articulable facts to suspect plaintiff was in possession of narcotics nor did he claim his search was for concealed weapons.

In contrast, the Court upheld the conviction of Peters for possession of burglar tools. A police officer was in his apartment when he heard suspicious noises at his door. Looking through the peephole, he observed the plaintiff acting furtively and the officer gave chase. When the plaintiff was apprehended, an envelope containing burglar

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[150]N.Y. Code Crim. Proc. Section 180-a.

tools was found on his person. The tools were admitted in evidence and the Supreme Court upheld their admissibility. The Court was persuaded that the officer had grounds to suspect the plaintiff was acting suspiciously and the subsequent search conducted after the apprehension of plaintiff was for the purpose of finding concealed weapons. The Court based its findings on the experience of the police officer in observing the movements of the plaintiff and the officer's knowledge of the apartment building. If plaintiff was intending to burglarize, then it was consistent to believe he might have a weapon on his person. The officer acted prudently in a split second situation and the discovery of burglar tools was incident to arrest.

Petitioner was convicted on a burglary charge in Chimel v. California.[151] The Supreme Court reversed the conviction because the warrantless search of Chimel's entire house was unreasonable. Plaintiff had been properly arrested and officers were authorized to search the arrestee's person and that area under his immediate control to prevent an attack on the officers, the destruction of evidence, or escape. The Court went to some lengths to define the scope of a search incident to arrest, reviewing a number of cases.

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[151] Chimel v. California, 395 U.S. 752, 23 L. Ed 2d 685, 89 S. Ct. 2034 (1969).

Harris v. United States (1947)[152] and United States v. Rabinowitz (1950)[153] involved the unlimited and warrantless searches of a four room apartment and a one room office sustained by the Court. Both decisions were criticized by the majority as extending beyond reason. The Court reiterated the importance of the function of a neutral and detached magistrate interposed between citizen and law enforcement officials. The warrantless search of the entire house was unreasonable and violated petitioner's Fourth and Fourteenth Amendment rights. The Court declared, "the petitioner's conviction cannot stand."[154]

In a habeas corpus proceeding, the Supreme Court affirmed the warrantless search of an automobile at the station house in Chambers v. Maroney.[155] Plaintiff and three others were arrested and subsequently convicted for armed robbery. A service station attendant described the two robbers who held him up and teenage observers corroborated the information and described the automobile used to flee the scene. Approximately an hour later, police found the

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[152] Harris, Supra.

[153] United States v. Rabinowitz, Supra.

[154] Chimel v. California, 89 S. Ct. 2034 at 2043.

[155] Chambers v. Maroney, 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970).

car and two of the occupants had clothing in their possession described by the witnesses. The Court reasoned that the officers had probable cause to believe the fruits of crime were in the automobile justifying the warrantless search. The occupants were arrested in a dark parking lot in the middle of the night. For the safety and convenience of all concerned, it was sensible to move the car to the station house before searching. The Court agreed the search could not be justified as incident to a lawful arrest.

In a 5-4 decision, the Supreme Court reversed the Supreme Court of New Hampshire in Coolidge v. New Hampshire.[156] Defendant was convicted of murder and kidnapping. The victim was a fourteen year old girl. Her body was discovered eight days after her disappearance. Within a week, police began to question the petitioner. A little over three weeks later, Coolidge was arrested in his home for the murder. A warrant to search petitioner's 1951 Pontiac was issued by the Attorney General of New Hampshire. The car was towed to the police station were it was subsequently searched three times during the next year. Evidence from vacuum sweepings was admitted into trial and petitioner was convicted. The Court reasoned that the warrant issued by

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[156] Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971).

the New Hampshire Attorney General was not that of a "neutral and detached magistrate"[157] since the Attorney General had taken charge of the investigation and would be the chief prosecutor at the trial. Two days elapsed before the car was searched; therefore, the search was not incidental to the arrest. No exigent circumstances existed to invoke the automobile exception since plaintiff was in police custody and there was no possibility of endangering lives or destroying evidence. The Court also rejected the warrantless seizure of the car based on the "plain view" doctrine because police knew well in advance that they intended to seize the car and had ample opportunity to secure a valid warrant particularizing its seizure. Evidence obtained before the arrest from plaintiff's spouse without coercion needed no warrant since the clothing and guns were offered to the police. The case was remanded for further proceedings.

In United States v. Robinson[158] the Supreme Court upheld the search of defendant which yielded heroin capsules. Robinson was arrested for operating a motor vehicle after revocation of his operator's license. Once in custody, the

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[157] Johnson v. United States, Supra.

[158] United States v. Robinson, 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467 (1973).

officer conducted a search without a search warrant and found a "crumpled up cigarette package."[159] Investigation of the package revealed fourteen gelatin capsules of heroin. The District Court admitted the capsules into evidence and defendant was convicted of possession and facilitation of concealment of heroin. The Court of Appeals reversed and certiorari was granted. The Supreme Court held that the police officer had probable cause to arrest defendant on the motor vehicle charge. Once defendant was in custody, it was customary to conduct a search in the field. Therefore, the discovery of heroin in the cigarette package was properly admitted into evidence and did not violate the Fourth Amendment. The key to the legitimacy of the search was that the officer had made a lawful custodial arrest. The fact that the officer experienced no subjective fear that defendant was armed and no further evidence of the particular crime would be found was immaterial and did not render the search unreasonable.

On the same day, Gustafson v. Florida[160] was decided. Plaintiff was stopped by a police officer who had observed

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[159] United States v. Robinson, 94 S. Ct. 467 at 471.

[160] Gustafson v. Florida, 414 U.S. 260, 38 L. Ed. 2d 456, 94 S. Ct. 488 (1973).

his car weave across the road. When petitioner could not produce a valid operator's license, he was taken into custody and a full scale body search revealed a Benson and Hedges cigarette box with what appeared to be marijuana cigarettes. Plaintiff was convicted for unlawful possession of marijuana and the Florida Supreme Court upheld the conviction. The Supreme Court affirmed. After taking the plaintiff into custody, the officer was entitled to make a search incident to the arrest even though the officer had no fear that plaintiff concealed a weapon. Since there was no violation of the Fourth and Fourteenth Amendments, the evidence was properly admitted as "fruits, instrumentalities, or contraband."[161]

The Supreme Court affirmed the First Circuit Court of Appeals in United States v. Chadwick.[112] Defendants were arrested at the Boston Amtrak station on a narcotics charge. A locked footlocker weighing about two hundred pounds was taken into police custody and, about an hour after the arrest, a search without warrant was conducted which revealed a large amount of marijuana. The Court reasoned the warrant clause of the Fourth Amendment is not limited to private

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[161] Gustafson v. Florida, 94 S. Ct. 488 at 492.

[162] United States v. Chadwick, 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476 (1977).

dwellings. Defendants had locked the footlocker with "an expectation that the contents would remain free from public examination."[163] No exigent circumstances existed to conduct a search without warrant. The footlocker was under the exclusive control of federal agents and the search was remote in time and place from the arrest. A detached, neutral magistrate could have issued a warrant because probable cause existed that the footlocker contained contraband. The Court agreed the evidence should be suppressed since no warrant was obtained.

The Supreme Court reversed the Pennsylvania Supreme Court in Pennsylvania v. Mimms.[164] Defendant Mimms was stopped for a motor vehicle violation, the expiration of his license tags. The officer ordered defendant out of his car, as was his custom, for safety reasons. A bulge in the defendant's jacket aroused the suspicions of the officer and he conducted a pat-down of defendant's clothes which revealed a concealed weapon, a .38-caliber revolver. Defendant was convicted of carrying a concealed weapon without a license. The Pennsylvania Supreme Court reversed the conviction and the Supreme Court granted certiorari. The

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[163] United States v. Chadwick, 97 S. Ct. 2476 at 2477.

[164] Pennsylvania v. Mimms, 434 U.S. 106, 54 L. Ed. 2d 331, 98 S. Ct. 330 (1977).

Court reasoned the car was legitimately stopped to issue a traffic summons. The order of the officer to the defendant to step out of his car was justified and it was reasonable to pat-down defendant's clothes for safety reasons when a bulge was observed in defendant's jacket. Quoting Terry v. Ohio,[165] the Court agreed "it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties."[166]

The Supreme Court addressed the issue of warrantless police intrusion into private homes, with force if necessary, to make a routine felony arrest in Payton v. New York.[167] According to New York law such arrests were permissible and upheld in the lower courts. In the first of these companion cases, Payton was convicted of murder. Police entered his home by force when no one was there and seized a 30-caliber shell casing that was admitted into evidence at his trial. In the second case, the plaintiff was convicted on narcotics charges. Police gained entrance to his apartment when his young son answered the door. Officers arrested plaintiff for armed robbery and a

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[165] Terry, Supra.

[166] Pennsylvania v. Mimms, 98 S. Ct. 330 at 333.

[167] Payton v. New York, 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980).

subsequent search revealed narcotics and related paraphernalia in a drawer. In both instances, police did not have a warrant for arrest. The majority reasoned that the sanctity of the home was a substantial right guaranteed by the Fourth Amendment made applicable to the States by the Fourteenth Amendment and as such, absent exigent circumstances, necessitated a warrant "be drawn by a neutral and detached magistrate."[168] The judgments were reversed and the cases remanded.[169]

In a dissenting opinion, Justice White fashioned a test that would sanction the arrest of a felon in his home. In the words of Justice White:

> These four restrictions on home arrests—felony, knock and announce, daytime, and stringent probable cause—constitute powerful and complementary protections for the privacy interests associated with the home.[170]

In a per curiam decision, the Supreme Court set aside the judgment of the Colorado Supreme Court in Colorado v. Bannister.[171] Defendant and another were observed speeding

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[168] Payton v. New York, 100 S. Ct. 1371 at 1372.

[169] In United States v. Watson, 423 U.S. 411, 46 L. Ed. 2d 598, 96 S. Ct. 820 (1976) the Supreme Court upheld a warrantless public arrest.

[170] Payton, Supra at 1395.

[171] Colorado v. Bannister, 449 U.S. 1, ___ L. Ed. 2d ___, 101 S. Ct. 42 (1980).

by an officer and, after losing sight of the car for a short time, the officer followed the car to a service station. Before approaching the car, the officer had heard a report by radio dispatch that a theft of motor vehicle parts had occurred in the area. When the officer approached the side of the car he observed, in plain view, items that matched the description of the stolen parts. The occupants also matched the description of the suspects. A search and seizure of the items was held to be permissible since the policeman had probable cause to believe the car contained evidence of a crime. The officer had a legitimate reason to stop the car, to issue the traffic citation and search and seizure occurred shortly thereafter. The case was remanded for further proceedings.

In New York v. Belton[172] the Supreme Court upheld a search by a New York State Trooper. Defendant and three others were in an automobile which the officer stopped for speeding. The officer observed the smell of burnt marijuana and asked the car's occupants to step outside. The search of the passenger compartment yielded marijuana found in an envelope on the floor and cocaine found in a zippered pocket of defendant's jacket. The Court reversed the Court of Appeals, upholding the admission of the seized

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[172] New York v. Belton, ___ U.S. ___, ____ L. Ed. 2d ____, 101 S. Ct. 2860 (1981).

cocaine in evidence as not violative of the Fourth and Fourteenth Amendments. The Court reasoned that exigent circumstances sometimes require an exemption from the warrant requirement. The officer had made a lawful custodial arrest and could therefore make a search incident of that arrest, including the passenger compartment, glove compartment, luggage, boxes, bags, and clothing.

Conclusions

A number of issues were litigated which occasioned the Supreme Court to delineate the scope of Fourth Amendment protections and interpret principles of law, concepts, and doctrines governing searches and seizures. Cases decided included a wide range of subjects: homicide, gambling, draft evasion, drugs, liquor, trespassing, wiretapping, forgery, bribery, fraud, kidnapping, abortion, obscenity, drunk driving, robbery, rape, concealed weapons, and burglar tools. Automobiles, boats, offices, homes, open fields, hotels, saloons, footlockers, washing machines, papers, clothing, personal effects, and persons were searched. Intrusions into the body itself, in a strip search and in the taking of a blood sample were adjudicated. What has emerged is a comprehensive body of law to govern searches and seizures.

The Court was consistent in its decisions and precedence was important. The Court seemed to reflect the customs and mores of a particular era. For instance, decisions were reversed by the Warren Court in the 1960's when the country was experiencing social upheaval. The Civil Rights movement, the War on Poverty, the Vietnam protests, and the unrest on college campuses exemplified the dissatisfaction many Americans felt at this time.

Three very important decisions handed down by the Warren Court were Elkins v. United States, Mapp v. Ohio, and Katz v. United States.[173] In Elkins, the Court's decision to reverse the Silver Platter Doctrine extended the Fourth Amendment's protections to state agents. Evidence obtained illegally by state agents would be barred in federal courts. The following year, the Court's Mapp decision reversed the Wolf Doctrine and extended the protection of the Exclusionary Rule. Evidence obtained illegally by state agents would be barred in state courts.

In 1967, the Court was again faced with wiretapping a private conversation. The Katz decision reversed the 1928 Olmstead decision and Justice Brandeis' position prevailed:

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[173]Elkins, Mapp, Katz, all Supra.

". . . every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment."[174]

Law and order are today's catchwords. The pendulum has swung back and recent court decisions reflect a more conservative viewpoint. A number of concepts, doctrines, and principles of law governing searches and seizures have remained constant in the Court's decisions. "Precedent is seen as a means of marshalling past experience, of providing a historical context for making the choice at hand."[175]

General exploratory searches are anathema to the Fourth Amendment. The language of the Fourth Amendment specifies that one must obtain a warrant "particularly describing the place to be searched, and the persons or things to be seized."[176] Nothing is to be left to the arbitrary discretion of officers.

If a person is put in jail he has the right to test the legality of his detention in Habeas Corpus ad Subjiciendum proceedings. This writ requires that the person be brought

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[174] Olmstead, Supra at 572.

[175] Alexander, Kern. School Law. St. Paul, Minn.: West Publishing Co., 1980, p. 10.

[176] United States Constitution, Fourth Amendment.

before a judge to ascertain the lawfulness of his detention, not his guilt or innocence.

Since the Boyd[177] decision in 1886, the Court has warned that the Fourth Amendment should be given a liberal construction. This means a fair and reasonable interpretation of the law within the spirit of reason will prevent abuses and "any stealthy encroachments thereon."[178]

In 1914, the Court announced the Weeks[179] Exclusionary Rule. Evidence obtained illegally, in violation of protections guaranteed by the Fourth Amendment, must be excluded at the trial. Originally, this rule applied only to federal officers. Evidence supplied by state officers or strangers was admissible in federal prosecutions. However, since Elkins v. United States[180] the Court has extended this Rule to include evidence obtained unlawfully by state agents. Commenting on the wisdom of this rule, Justice Brandeis said:

> Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example . . . If the

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[177] Boyd, Supra.

[178] Byars, Supra at 248.

[179] Weeks, Supra.

[180] Elkins, Supra.

> government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.[181]

The concept of competent evidence further limits admissible evidence to that which is material and relevant to the issue at bar.

Another device used to challenge the admissibility of evidence is the motion to suppress. A suppression hearing, a pretrial proceeding, is held to determine if the evidence to be presented at trial has been seized legally. If it has not, then the judge may rule the evidence suppressed. This ruling prevails at the trial unless new evidence, unknown before the time of trial, is introduced. If the latter is the case, then the party may make a timely or seasonable objection to the introduction of such evidence as improper or illegally acquired. Courts, however, "will not pause in a criminal case to determine collateral issues as to how the evidence was obtained,[182] if the collateral issue could have been determined at a pretrial hearing. Regardless of whether the evidence is admissible, if the seized property is contraband it will not be returned to the owner.

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[181] Olmstead, Supra at 575.

[182] Agnello, Supra at 7.

Probable cause and reasonable cause are difficult and elusive concepts. Law enforcement agents and officers must act as reasonably prudent persons in believing an offense has been or is being committed, based on articulable facts. In the words of Justice Whitaker:

> In dealing with probable cause for making an arrest, courts deal with probabilities, and they are not technical, but are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.[183]

The key is that articulable facts and circumstances must be present. Mere suspicion is not enough.

Mere evidence items, such as clothing, can be seized since the Court's decision in Warden, Maryland Penitentiary v. Hayden[186] in 1967. There, clothes found in a washing machine were introduced at trial to identify the defendant.

Although the Court has upheld arrests and subsequent searches and seizures without warrants based on probable cause and reasonable suspicion, whenever practicable warrants were required. The function of the warrant is to interpose the neutral and detached judgment of a magistrate between law enforcement officers and private citizens. In United States v. Lefkowitz[185] Justice Butler observed:

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[183] Draper, Supra at 330.

[184] Warden, Maryland Penitentiary, Supra.

[185] United States v. Lefkowitz, Supra.

> . . . the informed and deliberate determinations of magistrates empowered to issue warrants as to what searches and seizures are permissible under the Constitution are to be preferred over the hurried action of officers and others who may happen to make arrests. Security against unlawful searches is more likely to be attained by resort to search warrants than by reliance upon the caution and sagacity of petty officers while acting under the excitement that attends the capture of persons accused of crime.[186]

Justice Jackson in Johnson v. United States,[187] explained:

> Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.[188]

Justice Clark commented:

> The prohibition against unreasonable searches and seizures by the Fourth Amendment does not place unduly oppressive weight on law enforcement officers, but merely interposes an orderly procedure under the aegis of judicial impartiality that is necessary to attain the beneficient purposes intended.[189]

The search warrant issued by a neutral and detached magistrate, is a written order directing an officer to search and seize evidence of a crime, contraband, or the

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[186] Id at 423.

[187] Johnson, Supra.

[188] Id at 369.

[189] United States v. Jeffers, Supra at 95.

fruits of crime. It may be obtained by a sworn affidavit or oral testimony articulating the facts and circumstances which would lead a prudent and cautious person to believe a crime has been or is being committed. Some situations may demand a search without warrant. If such exigent circumstances exist necessitating a search incident to arrest, officers should restrict the search to the person arrested and the area under his immediate control.

An arrest warrant authorizes the arrest of a person in order to bring him before a magistrate. Occasions may demand the arrest be made without warrant. The accepted rule in such circumstances is that an officer may arrest for a misdemeanor committed in his presence. If he has reasonable cause to believe a felony is being or has been committed he may arrest whether or not it is committed in his presence.

The Fourth Amendment demands that both search warrants and arrest warrants be adequate. The test for the sufficiency of a warrant is that the warrant be in written form adequately describing what is to be searched and seized. What are forbidden by the Fourth Amendment are blanket search warrants authorizing the search and seizure of everything without particularizing. The hated general warrants, called writs of assistance, were abhorrent to the colonists and prompted our forefathers to include the Fourth Amendment

in the Bill of Rights. Justice Bradley writing for the Court in Boyd v. United States[190] stated:

> The practice had obtained in the colonies of issuing writs of assitance to the revenue officers, empowering them, in this discretion, to search suspected places for smuggled goods, which James Otis pronounced "the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in an English law book," since they placed "the liberty of every man in the hands of every petty officer."[191]

The Fourth Amendment protections accorded the private individual do not extend to corporations. Consequently, papers belonging to corporate interests may be subpoenaed even though potentially incriminating to a particular person. The subpoenas of corporate papers belonging to a company, newspaper, and labor union were all upheld by the Court.

An individual may choose to waive his constitutional rights as was the case in both Zap v. United States[192] and Washington v. Chrisman.[193] In the first instance, plaintiff waived his rights when he voluntarily entered into a contractual agreement with the Navy and his private books and

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[190] Boyd, Supra.

[191] Id at 529.

[192] Zap, Supra.

[193] Washington v. Chrisman, ___U.S.___, ___L. Ed. 2d __, 102 S. Ct. 812 (1982). Discussed in Chapter IV.

papers were searched. In the latter case, the defendant waived his rights after first being informed of them by officers who conducted a search of his dormitory room. However, in Amos v. United States[194] a wife did not waive her husband's constitutional rights when she consented to a search in his absence. In Johnson v. United States[195] plaintiff admitted officers into her hotel room under color of their office without a search warrant and the Court agreed plaintiff did not waive her constitutional rights. The pungent odor of opium was persuasive documentation for a neutral and detached magistrate to issue a warrant.

Regarding officers of the law, the Court will look at the knowledge and experience of officers in determining cases of search and seizure. The conduct of such agents, whether they acted as reasonable and prudent persons, is considered. That means, absent exigent circumstances such as the danger of assault to officers and others, possible escape or destruction of evidence, police are expected to obtain warrants and to give a statement of authority and purpose before conducting a search and seizure.

Information voluntarily given to police officers by an informer may be used to obtain an arrest or search warrant,

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[194] Amos, Supra.

[195] Johnson, Supra.

and, in some instances, may be introduced into evidence. The integrity of such hearsay statements rests on the individual's credibility. The Court requires that a magistrate be apprised of some of the underlying circumstances of such information to avoid acting as a rubber stamp for indiscriminate police activities.

The protections of the Fourth Amendment extend to "persons, houses, papers and effects"[196] but not to the open fields. In Hester v. United States[197] a bottle of moonshine whisky discarded in an open field was admitted into evidence.

In two cases, officers were accused of trespass ab initio. In McGuire v. United States[198] officers did not become trespassers ab initio when they destroyed all confiscated liquors except that which was admitted into evidence. In Zap v. United States[199] agents did not become trespassers ab initio when they took a check from plaintiff's office to prove he had defrauded the government.

At one time, evidence that was inadmissible in federal prosecutions, when gathered illegally by federal agents, was

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[196] United States Constitution, Fourth Amendment.

[197] Hester, Supra.

[198] McGuire, Supra.

[199] Zap, Supra.

admissible if obtained by state officers using the same methods. This Silver Platter Doctrine was struck down by the Court in Elkins v. United States.[200] State officials are under the same mandates as federal officials since the Fourteenth Amendment makes applicable to the states the protections guaranteed by the Fourth Amendment.

The Plain View Doctrine was recently reaffirmed in Colorado v. Bannister.[201] Officers may seize evidence falling into plain view if the officer has the right to have that view.

In sum, then, searches and seizures may be conducted when proper safeguards are present to protect a citizen's Fourth Amendment rights. Absent exigent circumstances, a warrant based on probable cause, is required "describing the place to be searched and the persons or things to be seized."[202] The Supreme Court has determined the parameters of Fourth Amendment guarantees based on actual cases. Further litigation will continue to define the scope of protections guaranteed by the Fourth Amendment.

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[200] Elkins, Supra.

[201] Colorado, Supra.

[202] United States Constitution, Fourth Amendment.

CHAPTER III

CASES GOVERNING SEARCHES AND SEIZURES IN ELEMENTARY AND SECONDARY EDUCATION

Introduction

Between 1968 and 1981, decisions handed down by the courts would change the traditional relationship between school officials and students. The doctrine of in loco parentis would take on a new meaning. Administrators and teachers would still have authority but within the scope of their jobs. Cases governing searches and seizures in the elementary and secondary schools helped to define these parameters.

Children, under compulsory state law must attend school. The government has an interest in educating the youth of the state to prepare them as tomorrow's citizens. This does not, however, give the government the right to abrogate students' constitutional rights and this includes Fourth Amendment rights. "State-operated schools may not operate as enclaves of totalitarianism where students are searched at the caprice of school officials."[203]

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[203] Jones v. Latexo Independent School Dist., 499 F. Supp. 223 (Texas 1980).

School officials are faced with the need to remove dangerous substances and harmful influences from the school environment. Students have a right to expect discipline and order will be maintained for their health and safety. This means occasions will arise where school officials may have to search students. Crime and its prevention is a concern in today's schools.

This chapter presents the cases governing searches and seizures in the elementary and secondary schools in chronological sequence. Concepts, doctrines, and principles of law emerging from the study are discussed and summarized at the chapter's conclusion. What emerges is a body of law to guide elementary and secondary school officials in conducting searches and seizures. It delineates what is and what is not acceptable to courts.

Review of Elementary/Secondary Education Cases

A student was adjudged a juvenile delinquent In Re Boykin.[204] The assistant principal at a Chicago high school had received an anonymous tip that a student was carrying a concealed weapon and police officers assigned to the school were notified. The officers accompanied the school officials to the classroom and the student was brought out into the hall. After denying he had a gun, the officers removed

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[204] In Re Boykin, 237 N.E. 2d 460 (Illinois 1968).

a gun from his pants pocket. The evidence was admitted at plaintiff's trial and he was declared a juvenile delinquent and placed on probation. The Illinois Supreme Court affirmed the trial court's decision. The assistant principal, acting in loco parentis, was the appropriate person to ascertain the danger inherent in the situation since he was responsible to maintain discipline for the safety of pupils in the school. The potential danger of a gun warranted the officers' immediate action. There was no need for officers to delay their action to determine the credibility of the informant. The motion to suppress the evidence was properly denied.

A student's book locker was searched in In Re Donaldson.[205] The vice principal of a high school was informed by a student that defendant sold speed or methedrine pills. The vice principal told the student to make a purchase and the student identified defendant as the seller. The vice principal searched the book locker and marijuana was discovered. The trial court adjudged defendant a ward of the juvenile court and he appealed. The Court of Appeal reasoned that, since school officials had the combinations to all lockers and from time to time inspected the lockers, these officials stood in loco parentis for purposes of

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[205] In Re Donaldson, 75 Cal. Rptr. 220 (1969).

maintaining discipline and order. Acting as private citizens, they are not governmental officials restrained by the Fourth Amendment prohibitions against unreasonable searches and seizures.

> There are no state standards for "search and seizure" by a private citizen who is not acting as an agent of the state . . . the primary purpose of the school official's search was not to obtain convictions, but to secure evidence of student misconduct.[206]

There was no joint action with police. Officials acted properly for the safety and health of all their students. The motion to suppress the evidence was correctly denied and the judgment affirmed.

The Supreme Court of Kansas affirmed the trial court in State v. Stein.[207] A high school principal opened a student's locker upon the request of police officers and with the student's consent. Among the effects, a key was discovered at the bottom of a cigarette package. Police traced the key to a locker at a bus depot and obtained a search warrant to search this locker. Cash and currency and other identifiable effects taken from a music store were found in the locker. Defendant was convicted of second-degree burglary and grand larceny. The Court reasoned that

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[206] Id at 221-222.

[207] State v. Stein, 456 P. 2d 1 (Kansas 1969).

a high school locker "does not possess all the attributes of a dwelling, a motor vehicle, or a private locker."[208] The principal had all the locker combinations and a key to open all lockers. Furthermore:

> 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 authorities to inspect the lockers under their control and to prevent their use in illicit ways or for illegal purposes.[209]

Stein was not coerced to consent to the search and the school setting did not lend itself to "the aura of oppressiveness which oft pervades the precincts of a police station."[210] Clearly, the principal had a duty to open the school locker.

A high school dean of men received a "tip" that plaintiff was in possession of drugs in Mercer v. State.[211] This information was relayed to the principal who demanded plaintiff empty his pockets which revealed the contraband. The principal then called plaintiff's father and subsequently informed him that the police would have to be called. The Court of Civil Appeals affirmed the trial court

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[208] Id at 3.

[209] Id.

[210] Id.

[211] Mercer v. State, 450 S.W. 2d 715 (Texas 1970).

reasoning that no force was used other than the threat to call plaintiff's father. Plaintiff admitted his father would have required him to empty his pockets. The principal acted in the parent's place. Fourth Amendment prohibitions against unreasonable searches and seizures apply to government officials and the principal did not act as an arm of the government. Therefore, the juvenile's Fourth Amendment rights were not violated.

In Overton v. Rieger[212] the United States District Court for the Southern District of New York denied petitioner's writ of habeas corpus. Petitioner's school locker had been opened by the school's vice-principal. Police had produced a search warrant which later turned out to be invalid. In their search, marijuana was found in the student's locker. In subsequent litigation,[213] the juvenile was adjudged a youthful offender and was placed on indefinite probation for up to five years. He was discharged on an Appellate Term reversal but the Court viewed this as an interim order pending a final determination by the Court of Appeals, and the latter affirmed the conviction. In denying

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[212] Overton v. Rieger, 311 F. Supp. 1035 (New York 1970).

[213] See People v. Overton, 273 N.Y.S. 2d 143 (New York 1966); 283 N.Y.S. 2d 22 (1967); Overton v. New York, 393 U.S. 85, 21 L. Ed. 2d 218, 89 S. Ct. 252 (1968) vacated and remanded; People v. Overton, 301 N.Y.S. 2d 479 (1969).

petitioner's writ of habeas corpus, the United States District Court reaffirmed the right of school authorities to supervise children. Quoting from the earlier case findings, the Court agreed:

> . . . the power of the vice-principal to consent to the search follows from the affirmative obligations of school authorities to supervise the children entrusted to their care and the consequent control by them over the lockers . . . 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.[214]

Regarding the invalid search warrant, the Court agreed the search was lawful since the vice-principal would have allowed the search under the circumstances. Plaintiff's locker was not his private property. The vice-principal was not coerced but voluntarily opened the locker.

In People v. Stewart[215] a high school dean of boys received information, from what had proved in the past to be a credible informer, that defendants possessed narcotics. Within a half hour of each other, defendants were asked to empty their pockets and in both instances, envelopes containing narcotic drugs were found. The police were then summoned and both offenders were taken to the local precinct. The court denied defendants' motion to suppress

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[214] Overton v. Rieger, Supra at 1038.

[215] People v. Stewart, 313 N.Y.S. 2d 253 (1970).

the evidence on the ground that there was no joint venture between police and school authorities to uncover evidence of crime. The Fourth Amendment protections against unreasonable searches and seizures applies to governmental intrusions and is not applicable to private persons such as school authorities acting *in loco parentis*.

> It has long been held in various jurisdictions that a school official is in "loco parentis" with his students and in such a capacity can establish reasonable rules and regulations for their conduct and may require, in his supervisory capacity, a proper submission to his authority.[216]

Since defendants were not victims of an illegal search and seizure, the evidence was admissible at trial.

A new trial was ordered in *In Re G.*[217] A classmate of the defendant reported to the student dean that he had seen the defendant take a pill which intoxicated the student. The dean and school principal escorted the defendant to the dean's office where the principal requested that the student empty his pockets. A Kodak cannister was opened by the dean and amphetamine tablets were found. The police were called and juvenile proceedings were initiated. The Court of Appeal reversed the trial court's judgment because a "preponderance of evidence" standard was applied. The United

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[216] Id at 257.

[217] *In Re G.*, 90 Cal. Rptr. 361 (1970).

States Supreme Court had recently determined that proof beyond a reasonable doubt was required in state juvenile proceedings.[218] The Court of Appeal agreed with the trial court's finding that probable cause may be established by the information received from a citizen even though the informant's credibility had not been tested. The student dean was charged with the responsibility of maintaining discipline in the school and this included the ferreting out of dangerous drugs. The justices concurred that drugs were: "a problem not to be ignored, but rather to be coped with in a manner that does no violence to constitutional standards."[219] The school officials had conducted a search in a manner that:

> . . . insured that the adverse effect on the student's well-being, on his present and future emotional reaction to the event, as well as on the several societal interests concerned, would be kept at a minimum.[220]

The school may impose more stringent requirements on school children and the dean had acted reasonably. The case was remanded for new proceedings based on the new standard of proof beyond a reasonable doubt.

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[218] In Re Winship, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970).

[219] In Re G., Supra at 362.

[220] Id at 363.

In Ranninger v. State[221] a student was reported missing from class and the high school principal found the student in the cafeteria. The student was taken to the principal's office where a bulge in his pocket was noted. The principal demanded that the student empty his pocket and a quantity of Lysergic Acid Diethylamide (LSD) tablets was found. The court affirmed the trial court adjudging plaintiff to be a delinquent child. The principal was acting in the place of the parent. The evidence was properly admitted into evidence and there was no violation of the student's constitutional rights.

The New York Supreme Court reversed the Criminal Court of the City of New York and denied defendant's motion to suppress the evidence in People v. Jackson.[222] The coordinator of a high school received information that the defendant possessed contraband. While accompanying the student to his office, the student bolted and the coordinator gave chase. A police officer was standing nearby and also pursued the student. Three blocks away, the coordinator apprehended the defendant and forced him to open his hand revealing a set of "works, syringe, and eyedropper." This was turned over to the police officer. In denying defendant's

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[221]Ranniger v. State, 460 S.W. 2d, 181 (Texas 1970).

[222]People v. Jackson, 319 N.Y.S. 2d 731 (1971).

motion to suppress the evidence, the Court reasoned that the school official acted with a "high degree of suspicion, but short of probable cause."[223] The doctrine of in loco parentis creates a "distinct relationship" between school officials and students and the coordinator should not be held to the rigid probable cause standard.

> 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.[224]

Nor did the coordinator's responsibility end at the schoolhouse gate. The case was remanded to the trial court for further proceedings consonant with the Court's findings.

The Superior Court of Delaware denied defendant's motion to suppress the evidence in State v. Baccino.[225] A high school vice-principal escorted the defendant to class and to make sure he would go to class, he took the defendant's coat. A tug-or-war ensued which aroused the suspicions of the vice-principal. Knowing the defendant had experimented with drugs, the vice-principal searched the coat pockets and found ten packets of hashish. The Court held that the

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[223] Id at 733.

[224] Id at 736.

[225] State v. Baccino, 282 A. 2d 869 (Delaware 1971).

vice-principal was not acting as a private individual but as a state official subject to the Fourth Amendment. In Delaware a school official stands in loco parentis to students and as such this status must be balanced against the student's Fourth Amendment rights. The Court found the vice-principal had reasonable suspicion to believe the defendant's coat contained contraband. Therefore, the defendant's motion to suppress the evidence was denied.

In Caldwell v. Cannady[226] four high school students were expelled for possession of dangerous drugs including marijuana. The cases were combined. Plaintiffs sought declaratory judgment that the policy governing expulsion of students for possession of drugs be declared unconstitutional; a permanent injunction against school authorities to reinstate students at school; and a finding that evidence had been obtained illegally.

A little background on the cases is necessary to understand the ruling of the District Court for the Northern District of Texas. Two of the plaintiffs, Caldwell and Jones, were arrested in their automobile by police officers acting on information received a number of hours before their arrests. Caldwell was eighteen years of age and was indicted by a grand jury for possession of dangerous drugs. A week

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[226] Caldwell v. Cannady, 340 F. Supp. 835 (Texas 1972).

later, Caldwell was expelled by the school administration without the benefit of a hearing. The District Court granted a preliminary injunction to reinstate Caldwell and ordered Caldwell to request a hearing before the State Commissioner of Education. Jones was charged with delinquency since he was a minor and was expelled by the school board about two weeks later. He also was reinstated by the Court under a temporary injunction pending further disposition of the case.

The other two plaintiffs were brothers, Kenneth Dale and Steven Carl Barrow. Again, police officers were acting on an informant's tip that plaintiffs were traveling to a marijuana party, but here the officers acted immediately. Again, the Court granted a temporary injunction reinstating the plaintiffs in school pending further proceedings. However, Steven Carl Barrow was arrested a second time and charged with possession of marijuana when he drove his speeding car through the scene of a fatal accident. This time, the Court rescinded its temporary injunction with regard to Steven Carl Barrow.

The Court upheld the validity of the school board policy expelling students for possession of dangerous drugs including marijuana. However, the Court reasoned that the warrantless search of the Caldwell-Jones car was unreasonable since police officers had time to obtain a warrant from a

neutral and detached magistrate. The permanent injunction reinstating these students was granted.

In the case of Kenneth Dale Barrow, the Court upheld the school board's decision to expel him for the remainder of the semester. Here, officers acted immediately to prevent plaintiff's escape or destruction of evidence. His brother's expulsion was also upheld based on his second arrest. Police acted because of the immediacy of the situation. Although school people were not involved in the search, the school board could consider the marijuana discovered. The Court order did not rule on the admissibility of evidence in criminal proceedings in state courts against any of the plaintiffs.

The California Court of Appeal affirmed the trial court's decision declaring defendant a ward of the juvenile court in In Re C.[227] A student informer told a vice principal that the defendant had been selling dangerous drugs on campus that morning. The defendant had been expelled from his class on the morning in question and was required to spend the time in the outer office of another vice principal. Having been informed by the first vice principal that defendant possessed contraband, the second vice principal conducted an inquiry. The student willingly revealed the

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[227] In Re C., 102 Cal. Rptr. 682 (1972).

contents of a pouch attached to his belt which contained a rather large sum of money. The defendant refused to reveal the contents of his pockets and physically resisted the vice principal. At this juncture in time, police help was sought and the student told the policeman that he would find what he was looking for in the front left pocket. Dangerous drugs and marijuana were found. The Court upheld the search as reasonable because the vice principal was acting within the scope of his duties and was not required to meet the probable cause standard required of officers conducting a search of an adult. There was good cause to conduct the search because of the informant's personal knowledge, the large sum of money the student was carrying, the suspicious bulge in defendant's pocket, and the student's refusal to allow the search. The assistance of the police officer was for a school investigation and not for police purposes.

> The search was the sole product of the initiating action taken by the school authorities; was executed in their presence; was effected without any violence and with a minimum of force; and avoided a hostile, physical defiance of authority. The student as well as the vice principal benefited by the officer's presence and participation.[228]

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[228] Id at 685.

In In Re State in Interest of G.C.[229] a sixteen year old female juvenile was searched and amphetamine tablets were found in her purse. The public school principal had received an anonymous telephone call accusing the student of selling the tablets to eighth grade girls in the girl's room. The following day a student informed a teacher of the same facts and the teacher reported this to the principal. The principal had the student brought to his office. Although she denied the charges, she agreed to cooperate in a search. The principal requested that the student empty her pockets and a female teacher felt the pockets to make sure they were empty. When a pocket search failed to yield the contraband, the principal directed the student to empty her purse which yielded the amphetamine tablets. The Juvenile and Domestic Relations Court denied the motion to suppress the evidence holding that the principal had reasonable suspicion to believe the student had in her possession and was selling dangerous drugs. In New Jersey, school principals are governmental officers for Fourth Amendment purposes but under his in loco parentis authority the principal's search did not violate the student's constitutional rights.

> The privacy rights of public school students must give way to the overriding governmental interest

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[229] In Re State in Interest of G.C., 296 A. 2d 102 (New Jersey 1972).

> in investigating reasonable suspicions of illegal drug use by such students even though there is an admitted incursion onto constitutionally protected rights—rights that are no less precious because they are possessed by juveniles.[230]

Defendant was declared a ward of the court for possession of marijuana in In Re W.[231] Four students approached the assistant principal of a high school and reported that a certain locker contained a sack of marijuana. The assistant principal investigated the locker and reported his findings to the principal. After the assistant principal and principal checked the locker together, they sent for the defendant student who acted surprised when confronted with the evidence in his locker. The defendant denied any knowledge of the sack. He was sent home for the remainder of the day. On the following day, he again denied any knowledge and he was suspended. He then asked for the confidence of the principal and admitted to the purchase from a nonstudent in the school claiming he feared for his life if he revealed his source. The Court of Appeal affirmed the trial court's finding and reasoned that the Fourth Amendment did not require the same standard to be applied to school officials acting in loco parentis as to police officials acting as government officials. The Fourth Amendment prevents

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[230] Id at 106.

[231] In Re W., 105 Cal. Rptr. 775 (1973).

"searches at the whim of the officials" but sanctions those that fall "within the scope of the school's duties and responsibilities."[232] A two-pronged test will determine the reasonableness of a search; the search must be within the scope of the school's duties and the action taken must be reasonable under the facts and circumstances of the case.[233] The search in the instant case met both requirements and the evidence was properly admitted. The Court did modify the juvenile court's order prohibiting the defendant from driving since driving was not related to the offense and no statutory purpose would be served by the prohibition.

In People v. Bowers[234] the defendant was approached by a uniformed security guard in a public high school corridor because he was wearing a coat that matched the description of a coat worn by a person who stole a student's wristwatch. The guard took the defendant to the dean's office and asked to see his watch. The timepiece did not match the description of the stolen watch. While in the dean's office the guard observed a bulge in defendant's pocket and brown envelopes protruding from the same pocket. The guard asked the

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[232] Id at 778.

[233] Id.

[234] People v. Bowers, 339 N.Y.S. 2d 783 (1973).

student to empty his pockets and when two of the three envelopes yielded marijuana he called a police officer attached to the school and defendant was arrested. In a pre-trial hearing to suppress the evidence, the criminal court held that the uniformed guard was acting as a government officer and not in loco parentis. Defendant was entitled to Fourth Amendment protections against governmental intrusion. The officer was acting on "the skimpiest of hunches"[235] when he asked the student to empty his pocket. Therefore, the motion to suppress the evidence was granted.

Eight female junior high school students were strip searched in Potts v. Wright.[236] Plaintiffs brought a civil rights suit to recover for deprivation of Fourth Amendment rights against the county, city, school board, superintendent, chief of police, principal, assistant principal, and police officers. A student claimed her ring had been stolen and when a search of the classroom failed to produce the ring, school officials called in the police. Two policemen questioned the students and then had two policewomen conduct strip searches. The girls were required to strip to their bras and panties and still the ring was not found. The

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[235] Id at 787.

[236] Potts v. Wright, 357 F. Supp. 215 (Pennslyvania 1973).

court granted the motion to dismiss against the county, city and school board since under Monroe v. Pape[237] and for purposes of the Civil Rights Act of 1871, 42 U.S.C. Section 1982, these defendants were not considered persons. The Court did not grant the motion to dismiss against the superintendent, chief of police, principal, assistant principal and police officers; that would have to be decided at the trial. The District Court reasoned these defendants, although not all involved in the actual strip search, could be held liable if they had knowledge of subordinates' wrongdoing and failed to take action or were a direct or proximate cause of the deprivation of rights.

In Waters v. United States[238] a student was suspended for gambling in the school cafeteria. The vice-principal informed a police officer assigned to the school to arrest the plaintiff if he did not leave the premises. A short time later, this same officer observed the plaintiff stuffing money into an envelope and a known drug addict was approaching in plaintiff's direction. The officer asked what was in the envelope and when the plaintiff replied, "nothing," he reached for the envelope. Petitioner started

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[237] Monroe v. Pape, 365 U.S. 167, 5 L. Ed. 2d 492, 81 S. Ct., 473 (1961).

[238] Waters v. United States, 311 A. 2d 835 (District of Columbia 1973).

to run but the officer tore off a portion of the envelope and five tinfoil packets of heroin were found. A warrant for plaintiff's arrest was obtained. In a pre-trial hearing a motion to suppress the heroin into evidence was denied and petitioner was convicted of unlawful possession of narcotics. The District of Columbia Court of Appeals reversed the trial court. The police officer did not have probable cause to arrest defendant when the envelope was seized. The Court found the present case analogous to Sibron v. New York,[239] a 1968 Supreme Court decision. There, too, a police officer did not have probable cause to search a man observed talking to known narcotics users over a period of time and a sudden gesture of reaching into a pocket was not sufficient justification for a search. In that case, as in the instant case, the officers saw nothing change hands. The motion to suppress the evidence should have been granted.

The Superior Court of Pennsylvania reversed the Court of Common Pleas in Commonwealth v. Dingfelt.[240] The defendant was an eighteen year old senior charged with possession of a controlled substance. The assistant principal, acting

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[239] Sibron, Supra.

[240] Commonwealth v. Dingfelt, 323 A. 2d 145 (Pennsylvania 1974).

on information from a student that the defendant was selling capsules, directed the defendant to empty his pockets and take off his shoes. The search yielded a bottle of capsules which was turned over to the police. The lower court ruled that the evidence obtained from the search should be suppressed and the Commonwealth appealed. In reversing the trial court, the Pennsylvania Superior Court reasoned that the Fourth Amendment was directed against unreasonable searches conducted by sovereign authority. The search was made by school officials acting in loco parentis or as private citizens. After the search, the police were contacted. In the Court's own words:

> . . . the peddling or possession of drugs by a student within the confines of the school is not conducive to a secondary school environment. Therefore, it is the duty of school officials to enforce its discipline.[241]

The evidence could be admitted into trial and the lower court was ordered to proceed to judgment.

The Court of Appeals of New York reversed the lower court decision in People v. D.[242] Defendant, a seventeen year old high school student, had been under suspicion for drug dealing for a six month period of time based on confidential information. During that time, he had been seen

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[241] Id at 147.

[242] People v. D., 315 N.E. 2d 466 (New York 1974).

eating lunch with another student also under suspicion. On the day defendant was searched, the defendant and another student had made two short trips to the lavatory lasting a few seconds. This "unusual behavior"[243] was reported to the security co-ordinator who in turn informed the principal. The student was brought to the principal's office and there, before a boy's dean and the principal, the security co-ordinator searched the defendant. Thirteen glassine envelopes of a white powder were found in the student's wallet. He was then subjected to a strip search which revealed a vial containing nine pills. The Court held that the evidence had been obtained illegally and should have been suppressed. The primary purpose of school searches is to protect the school environment and not to seek criminal convictions. Random searches made without sufficient cause are forbidden. Although the Court allowed for a wider discretion of authority to combat drug abuse in schools, it did not rely on the in loco parentis doctrine. Teachers do not assume all parental prerogatives. In the present case, there was not sufficient reason to invade the student's privacy and subject him to the indignity of a strip search. ". . . the psychological damage that would be risked on sensitive

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[243]Id at 467.

children by random search insufficiently justified by the necessities is not tolerable."[244]

The Oregon Court of Appeals reversed and remanded a circuit court decision in State v. Walker.[245] A supplemental suppression hearing was ordered to determine whether the search of a student had met constitutional requirements. A high school assistant principal telephoned the police department after receiving a tip that the defendant had in his possession and was selling "hard drugs." The police told the assistant principal he had the right to conduct a search. The assistant principal brought the student to the school's office and a subsequent search of his trouser pockets and shirt pocket revealed $40 in cash and three bags of amphetamines. The student was convicted of criminal activity in drugs and he appealed. The Court of Appeals ruled that the Exclusionary Rule was applicable if the search was determined to be unreasonable since the assistant principal was not acting as a private citizen but as a state agent. However, the trial court had ruled the assistant principal was not a state officer and, therefore, the Fourth Amendment did not apply. Consequently, the reasonableness of the search was never developed. The case was

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[244] Id at 471.

[245] State v. Walker, 528 P. 2d 113 (Oregon 1974).

remanded to clarify the record and judgment was to be rendered on the basis that the assistant principal was a state agent subject to the Fourth Amendment's reasonableness requirement.

The Supreme Court of Georgia reached a different conclusion in State v. Young.[246] Defendant, a seventeen year old student, made a furtive gesture arousing the assistant principal's suspicions. The student was required to empty his pocket which produced marijuana. The Court held that the evidence was properly admitted into evidence. A new and novel standard was developed by the court in reaching this conclusion. Three classes of persons were identified by the Court, each having different responsibilities under the Fourth Amendment with resultant differences in the application of the Exclusionary Rule. Law enforcement agents were viewed as governmental agents under color of law and as such must have probable cause to search and seize. If an illegal search and seizure is conducted by such agents, then the Exclusionary Rule comes into play. A second class of persons is the private individual. There is no Fourth Amendment prohibition against private persons, thus the Exclusionary Rule is not applicable. A third class of persons identified by the Court are governmental agents but not law

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[246] State v. Young, 216 S.E. 2d 586 (Georgia 1975).

enforcement agents. Public school officials were included in this grouping. Fourth Amendment prohibitions are applicable to such government agents but the Exclusionary Rule applies only to law enforcement officers. If a student's Fourth Amendment rights are violated, other remedies, such as a civil rights suit or tort action, are available. Since the Exclusionary Rule remedy is unavailable, evidence seized would be admissible. The Court stated their belief that:

> . . . administrators must be allowed to search without hindrance or delay subject only to the most minimal restraints necessary to insure that students are not whimsically stripped of personal privacy and subjected to petty tyranny.[247]

The Court emphasized the actions of school administrators

> . . . will pass constitutional muster only if those officials are acting in their proper capacity and the search is free of involvement by law enforcement personnel.[248]

The Michigan Court of Appeals affirmed the judgment of the trial court in People v. Ward.[249] A high school principal was told by defendant's guidance counselor that defendant had been observed by a teacher selling pills on a number of occasions. The principal called the defendant to his

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[247] Id at 593.

[248] Id at 594.

[249] People v. Ward, 233 N.W. 2d 180 (Michigan 1975).

office and in the presence of other school officials, threatened to conduct a personal search if defendant refused to empty his pockets. The student complied with the principal's request and produced a bottle of pills containing twenty-eight LSD tablets. The defendant's motion to suppress the evidence as the product of an unlawful search was denied both prior to the trial and at the trial. The Court of Appeals reasoned that the principal was acting as a state agent and was thus subject to the requirements of the Fourth Amendment. However, the lesser standard of reasonable suspicion was applicable.

> . . . the public interest in maintaining an effective system of education and the more immediate interest of a school official in protecting the well-being of the students entrusted to his supervision against the omnipresent dangers of drug abuse must be considered. In striking a balance, we adopt a "reasonable suspicion" standard.[250]

The Court concluded the principal had reasonable suspicion to believe defendant had drugs on his person when he was required to empty his pockets. The motion to suppress the evidence was properly denied.

A dean in charge of security was approached by a student informer and told that the defendant possessed and was selling narcotics on the school premises in People v.

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[250] Id at 183.

Singletary.[251] The dean discovered thirteen glassine envelopes containing heroin in defendant's sock. Subsequently, the defendant was adjudged a youthful offender and he appealed. The New York Supreme Court affirmed and defendant again appealed. The Court of Appeals held that the dean acted on concrete, articulable facts supplied by a reliable source. The credibility of the informer was established because on five previous occasions the informer had correctly given information leading to the discovery of narcotics and subsequent convictions. The Court further ruled that the defendant was not entitled to know the identity of the informer since the defendant's rights could be amply protected had the defendant requested an in camera examination of the informant by the trial judge. The order was affirmed.

Three junior high school students were observed by a teacher smoking a pipe between classes in Doe v. State.[252] The teacher reported his observations to a vice-principal and together they took one of the defendants into an empty classroom and questioned him. After forty minutes, the student surrendered the pipe in question and admitted the pipe contained marijuana. The other two students admitted to smoking the pipe but denied any knowledge as to what the

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[251] People v. Singletary, 372 N.Y.S. 2d 68 (1975).

[252] Doe v. State, 540 P. 2d 827 (New Mexico 1975).

pipe contained. The New Mexico Court of Appeals affirmed the judgment and order of the Children's Court in regard to the defendant who owned and surrendered the pipe and reversed and dismissed the judgment and order of the two other defendants. The Court reasoned that the action of the school officials was "state action" making the Fourth Amendment applicable. The strict requirements demanded by the Fourth Amendment for law enforcement officials are not necessary or appropriate in school situations. The Court adopted a reasonable suspicion standard and determined the search was reasonable since the boy who owned and later surrendered the pipe had been seen smoking the pipe and stowing it away. The trial court correctly admitted the pipe into evidence. The expert testimony of a narcotics agent, familiar with testing techniques to identify narcotic substances, was also admissible. In reversing for the other two respondents, the Court reasoned that the state had the burden of showing that the defendants had knowledge of the substance they were smoking and the defendants' furtive actions were insufficient to infer that the students knew.

The Florida District Court of Appeals affirmed the findings of the trial court in Nelson v. State.[253] While searching for another student, school officials observed

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[253] Nelson v. State, 319 So. 2d 154 (Florida 1975).

two boys standing by a tractor shed and became suspicious. They asked the students what they were doing and the boys admitted they were smoking, a violation of the school rules. One of the school officials detected the odor of marijuana and the boys were taken to the dean's office. The boys were required to empty their pockets and a pack of marijuana and a pipe were among the articles. The trial court denied plaintiff's motion to suppress the evidence. The Court held that in the State of Florida school officials stand, to a limited degree, in loco parentis to students under their charge. The Court agreed with People v. Jackson[254] that the "in loco parentis doctrine is so compelling in light of public necessity . . . that any action . . . taken thereunder upon reasonable suspicion should be accepted as necessary and reasonable."[255] The Court affirmed the trial court's denial of the motion to suppress the evidence.

The principal had received a telephone call which led him to suspect the plaintiff possessed illegal drugs in Picha v. Wielgos.[256] On the advice of his superintendent, the principal summoned the police. Subsequently, the school

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[254]People v. Jackson, Supra.

[255]Id at 736.

[256]Picha v. Wielgos, 410 F. Supp. 1214 (Illinois 1976).

nurse and the school psychologist strip searched plaintiff, a thirteen year old girl, but no drugs were found. The petitioner brought a civil rights suit against the school officials and the police. In finding for the student, the United States District Court held that the invasion of a student's privacy must be justified by a legitimate school interest. Illinois law empowers school officials with in loco parentis authority for purposes of "maintaining the order, discipline, safety, supervision, and education of the students within the school."[257] However, since the police had been called in prior to the search, the search was a quest for contraband and therefore subject to the reasonableness requirement of the Fourth Amendment. A civil rights violation could be found by a jury if the police were the proximate cause of the strip search and there was no probable cause to believe plaintiff was breaking the law. In the words of the Court: "the in loco parentis authority of a school official cannot transcend constitutional rights."[258]

Defendant's wallet was seized in a warrantless search by a school principal and an instructor in State v. Mora.[259]

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[257] Id at 1221.

[258] Id at 1218.

[259] State v. Mora, 330 So. 2d 900 (Louisiana 1976).

Marijuana was recovered from the search. The trial court denied the motion to suppress the evidence and the defendant was convicted of possession of marijuana. The Louisiana Supreme Court reversed the trial court conviction on the ground that error had been committed in denying the motion to suppress the evidence. The Supreme Court of the United States granted certiorari and vacated the Louisiana Supreme Court decision. On remand, the Louisiana Supreme Court was to determine the basis, federal, state or both, for declaring the marijuana seized inadmissible. The Court decided that the grounds for excluding from evidence marijuana found in the student's wallet were both federal and state constitutional grounds, as well as state statutory law. The Court reasoned school officials acted in the capacity of governmental agents according to Louisiana statute and the warrantless search violated federal and state constitutional prohibitions against unreasonable searches and seizures. Consequently, the motion to suppress the evidence should have been granted.

The chief of police had received information to the effect that certain students were selling "speed" in school in State v. McKinnon.[260] He telephoned the high school principal and gave a detailed description of the culprits'

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[260] State v. McKinnon, 558 P. 2d 781 (Washington 1977).

clothing, noting even the pockets where the pills would be found. The principal and vice-principal took the students to their offices and each was requested to empty his pockets. In both instances, the principal had to reach into the the pockets described by the police chief to retrieve the drugs. The principal then telephoned the chief of police who came to the school to arrest the students. While driving to the police station, one of the defendants attempted to stow a bag of marijuana under the car seat. Both students signed statements regarding the drugs and these were admitted into trial. The Supreme Court of Washington affirmed both convictions reasoning that the Fourth Amendment forbids only unreasonable searches and seizures. In the instant case, the governmental intrusion was justified because the interest of the government in maintaining school discipline and order outweighed the interests of the individual. The principal is not a law enforcement officer, and therefore, should not be held to the same standard of probable cause in maintaining order and discipline. The principal had reasonable grounds to believe the search was necessary for the security of other students as well as to prevent the destruction of evidence. The Court further determined the collaboration between the police chief and the principal did not amount to joint action since the police chief never instructed the principal as to what action

should be taken. The chief relayed the information to the principal and he, in turn, acted independently in searching the students. The principal then had the duty to notify the authorities once the contraband was discovered. The statements were properly admitted into evidence and the judgments were affirmed.

A high school student sued for damages and injunctive relief when the Board of Education expelled him for the remainder of the year in M. v. Bd. of Ed. Ball-Chatham C.U.S.D. No. 5.[261] At the close of a school day, a student informed the assistant principal that plaintiff was passing what appeared to be drugs and had a large sum of money in his possession. Armed with this information, the assistant principal, over the plaintiff's objections, conducted a pocket search on the following morning. The search yielded a pipe and marijuana. Plaintiff's parents were contacted and apprised of the facts, verbally and in a letter dated the following day, and the student was immediately suspended for ten days. An expulsion hearing was had before the defendant board of education. Both plaintiff and his parents were at the hearing and were represented by counsel. The student was expelled for the remainder of the year. (The expulsion hearing was held on March 3, 1977.) In denying plaintiff

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[261] M. v. Bd. of Ed. Ball-Chatham C.U.S.D. No. 5, 429 F. Supp. 288 (Illinois 1977).

injunctive relief, the Court reasoned the student had not been denied his due process rights at the disciplinary proceedings. Based on another student's report, the assistant principal had reason to believe that plaintiff was in possession of drugs. Furthermore, school officials must be able to maintain order and discipline and the doctrine of in loco parentis commands school authorities to protect the health and welfare of their students.

Fifth grade students were subjected to a strip search in Bellnier v. Lund.[262] A student reported $3.00 missing from his coat pocket after arriving in the classroom. The children hung their coats in a coatroom, accessible only through the classroom, and no student left the classroom before the search took place. Initially, the pupils' coats were searched and then students were required to empty their pockets and take off their shoes. When the missing money failed to appear, students were taken to the restrooms and instructed to strip to their undergarments. A search of their clothing still failed to turn up the missing money. Once again in the classroom, students' desks, books, and coats were searched a second time. The missing three dollars was never found.

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[262] Bellnier v. Lund, 438 F. Supp. 47 (New York 1977).

Plaintiffs brought action under 42 U.S.C Section 1983 seeking damages, injunctive and declaratory relief. For purposes of such a suit, the Court found the search to be state action. "That New York State is inextricably entwined in its various municipal school systems is obvious from reading the various provisions of the New York Education Law."[263]

The Court agreed with the Georgia Supreme Court that there are three categories of searches:

1. Wholly private searches, with no Fourth Amendment applicability;
2. state action, but no involvement of law enforcement agents, so that the Fourth Amendment applies, but not the Exclusionary Rule; and
3. search by law enforcement agents, to which both the Fourth Amendment and the Exclusionary Rule apply in toto.[264]

The second category is appropriate in the instant case which suggests the proper remedy is a civil rights or tort action.

The Court examined the applicability of the Fourth Amendment and the Exclusionary Rule. After reviewing cases from various jurisdictions, the Court identified four

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[263]Id at 51.

[264]Id at 53.

theories:

1. The Fourth Amendment does not apply, as the school official acted in loco parentis (private search);
2. the Fourth Amendment applies, but the Exclusionary Rule does not;
3. the Fourth Amendment applies, but the doctrine of in loco parentis lowers the standard to be applied in determining the reasonableness of the search;
4. the Fourth Amendment applies in full, requiring a finding of probable cause in order for a search to be reasonable.[265]

The Court found the third theory to be the most persuasive. The standard to be adopted in applying the Fourth Amendment is the reasonableness of the particular search. The Court reasoned that, although there were reasonable grounds to believe someone had stolen the three dollars, there were no articulable facts officials used to particularize which students had committed the offense. Therefore, the search was invalid. In the words of the Court: "[given] the extent of the search, and the age of the students involved, this Court cannot in good conscience say that the search undertaken was reasonable."[266]

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[265] Id at 52.

[266] Id at 54.

The Court determined that, since the plaintiffs had failed to allege that defendants' actions were not taken in good faith, the defendants were immuned from liability under 42 U.S.C. Section 1983. Declaratory relief was granted plaintiffs since their constitutional rights had been violated. The Court denied injunctive relief since plaintiffs were no longer under defendants' authority, rendering the issue moot.

A fourteen year old boy was declared a juvenile delinquent when he brought a .32 caliber pistol to school in Matter of Ronald B.[267] A teacher was talking to the student in the hallway when another school official approached and informed the appellant he had been told he had a gun. The student denied the allegation and refused to allow a search of his person. The school official then asked appellant to take his hand out of his pocket and he ignored the request. When the student made a sudden gesture to take his hand out of his pocket, the school officials grabbed his arm. In appellant's hand was a gun. The police were called and a subsequent ballistics test revealed that the gun was operable. In affirming the trial court's judgment, the New York Supreme Court reasoned that only unreasonable searches are proscribed by the Fourth Amendment. School officials are

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[267] Matter of Ronald B., 401 N.Y.S. 2d 544 (1978).

agents of the state but should not be held to the same standard of probable cause applicable to law enforcement agents. A reasonable suspicion standard is sufficient when the school official believes a dangerous situation exists. Quoting from People v. D., the Court agreed:

> A school is a special kind of place in which serious and dangerous wrongdoing is intolerable. Youngsters in a school, for their own sake, as well as that of their age peers in the school, may not be treated with the same circumspection required outside the school or to which self-sufficient adults are entitled.[268]

School officials acting in loco parentis are permitted to exercise reasonable control to maintain the educational functions of a school. The gun and ballistics test were properly admitted into evidence and the order of the trial court was affirmed.

The Louisiana Court of Appeal affirmed the trial court's ruling in the companion cases of State In Interest of Feazell[269] and State In Interest of Clark.[270] Acting on information, a high school assistant principal, in the privacy

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[268] People v. D., Supra.

[269] State In Interest of Feazell, 360 So. 2d 907 (Louisiana 1978). The Court did not allude to the 1976 Louisiana Supreme Court decision State v. Mora which required school officials obtain a warrant to conduct a search.

[270] State In Interest of Clark, 360 So. 2d 909 (Louisiana 1978).

of his office, questioned Feazell about his possession of marijuana. Feazell denied the charge. The assistant principal told Feazell he would conduct a search of his person. Feazell asked the assistant principal if he had a search warrant. The school official told the student that if he did not agree to the search he would call the sheriff's department and deputies would conduct the search. The student then surrendered a bag of marijuana but claimed it was not his and implicated another student, Peter Clark. Both students were adjudged delinquents and they appealed. The Court reasoned that the brief detention in the assistant principal's office was not an arrest and no search of the student ever took place. The student, knowing his rights, could have demanded the assistant principal obtain a valid search warrant. Instead he waived his constitutional rights and voluntarily surrendered a bag of marijuana. There was no coercion since the school official neither touched nor threatened the student. The marijuana was properly admitted into evidence.

The First District Court of Appeal of Florida reversed the trial court's motion to suppress the evidence in State v. F.W.E.[271] The dean of boys overheard two students discussing the sale of drugs and noted that the defendant

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[271] State v. F.W.E., 360 So. 2d 148 (Florida 1978).

appeared to be intoxicated. The dean took the defendant to his office and conducted a search of his person. The student was first required to empty his pockets and when this revealed nothing, he removed his shoes and socks. A bag of marijuana was found in a sock. The defendant's mother and the police were called and the appellee was charged with being a delinquent child for possession of marijuana. The trial court judge granted the motion to suppress the evidence on the ground that probable cause did not exist. The appellate court reasoned that children are protected by the Fourth Amendment and Florida's Constitution but students are not immunized from searches and seizures that are reasonable. The Court did not address the school official's in loco parentis authority since the issue was not raised by either party but instead pointed to the special relationship between student and school officials and determined it was sufficient to relax the constitutional strictures governing searches and seizures. The Court agreed with the State's contention that the dean had reasonable suspicion to sustain his actions. The case was remanded for further proceedings and the evidence could be admitted at the trial.

A high school student enrolled in a school's Emotional Development program was searched by a teacher in Interest of

L.L.[272] The teacher had previously taken razor blades and a knife from the student. On this particular occasion the search led the teacher to believe the student might have something of a similar nature. In fact, the teacher found marijuana in the student's shirt pocket. The student was declared a delinquent by the juvenile court. The Wisconsin Court of Appeals affirmed the trial court. The Court reasoned that the Exclusionary Rule was applicable to students and evidence illegally obtained should be suppressed. The teacher was a state agent for purposes of the Fourth Amendment but the lesser standard of "reasonable cause to believe that the search is necessary in the aid of maintaining school discipline"[273] rendered the instant search permissible. The teacher's previous experience with this student provided a reasonable basis to believe the student had something which did not belong in the classroom. Therefore, the evidence was not illegally obtained and the juvenile court did not err in denying L.L.'s motion to suppress the evidence.

A class action suit on behalf of elementary school children was brought against officials and employees of an Oregon school district in Bilbrey v. Brown.[274] Plaintiffs

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[272]Interest of L.L., 280 N.W. 2d 343 (Wisconsin, 1979).

[273]Id at 350.

[274]Bilbrey v. Brown, 481 F. Supp. 26 (Oregon 1979).

challenged the constitutionality of the district's "Minimum Standards for Student Conduct and Discipline" which set forth search and seizure policies. The absence of a warrant requirement and the language were challenged as violative of students' right to privacy and to due process of law. Citing Tinker[275] and Goss[276] the United States District Court agreed that students "do not shed their constitutional rights upon reaching the schoolhouse doors." As a rule, warrants are required. In a school situation, however, special circumstances exist which require a balancing of the individual's interests against the government's interests. Elementary students have not yet achieved the maturity of adults. School officials are charged with the responsibility to control student behavior to protect the health and safety of students. "To require school officials to obtain a warrant before ever searching a student would unduly hamper their effectiveness in performing their duties."[227] The Oregon school district in the instant case imposed the higher standard of probable cause. The Court

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[275]Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969).

[276]Goss v. Lopez, 419 U.S. 565, 42 L. Ed. 2d 725, 95 S. Ct. 729 (1975).

[277]Bilbrey, Supra at 28.

did not discuss whether a lesser standard would meet constitutional requirements. In addition to the higher standard, the vagueness of language challenge was found to be without merit. The standards were "not so ambiguous as to deny due process."[278] What was prohibited was "readily determinable and easily understood."[279] Summary judgment in favor of the school district was granted.

A female student was strip searched in M.M. v. Anker [280] and the United States Circuit Court of Appeals affirmed the District Court's judgment in favor of the plaintiff. The Court agreed that some school searches are valid when based on less than probable cause. School officials have an affirmative obligation to maintain discipline in protecting the students entrusted to their care. Greater flexibility in applying the Fourth Amendment is justified. But the strip search conducted in the present case was based on the mere suspicion that plaintiff might have stolen something. The Court opined: "We are also of the view that as the intrusiveness of the search intensifies,the standard of

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[278] Id at 29.

[279] Id.

[280] M.M. v. Anker, 607 F. 2d 588 (2d Cir. 1979).

Fourth Amendment 'reasonableness' approaches probable cause. . ."[281] The trial court correctly held that defendants failed to show that probable cause existed.

In a per curiam decision, the United States Court of Appeals for the Seventh Circuit held that a nude search exceeded the bounds of reason in Doe v. Renfrow.[282] School officials, dog trainers, and police officers conducted a room to room search in an Indiana school. Some 2,780 students were required to remain at their desks in their first period classes while dogs sniffed every single student. Fifteen high school students were found to possess illicit materials. Four junior high school girls were stripped nude and interrogated. Not one of them was found to possess contraband.

Plaintiffs brought suit under 28 U.S.C. sections 1343 (3) and 1343(4) charging that the students were illegally searched by canines, pocket searched if the dogs alerted to them, and subjected to a visual strip search. The Court affirmed the trial court's findings which upheld the canine and pocket searches. With regard to the police chief and dog trainers, the Court dismissed the action because they did not participate in the strip search. The Court agreed

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[281] Id at 589.

[282] Doe v. Renfrow, 631 F. 2d 91 (7th Cir. 1980).

the nude search was made without reasonable cause and in violation of plaintiff's Fourth Amendment rights. Consequently, the Court remanded the case for further proceedings because the plaintiffs were entitled to seek damages.

> It does not require a constitutional scholar to conclude that a nude search of a thirteen-year-old child is an invasion of constitutional rights of some magnitude. More than that: it is a violation of any known principle of human decency. Apart from any constitutional readings and rulings, simple common sense would indicate that the conduct of school officials in permitting such a nude search was not only unlawful but outrageous under "settled indisputable principles of law."[283]

A school district hired the services of a private corporation to help combat the problem of drug abuse in Jones v. Latexo Independent School Dist.[284] A canine, trained to detect illicit odors, was employed in searching students and their property. Students had been warned of surprise visits and an assembly had been held to demonstrate the dog's ability to ferret out contraband. Plaintiffs were three siblings and their mother. The dog had

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[283] Id at 92-93. The United States Supreme Court denied certiorari in Doe v. Renfrow. Justice Brennan's dissent can be found at 49 U.S.L.W. 3880 (May 26, 1981). Brennan expressed his concern over the lack of particularized information, the use of the news media to publicize the search, the joint participation between police and school officials in planning and executing the search, and the lack of probable cause.

[284] Jones, Supra.

alerted to the two brothers in classroom inspections. A pocket search yielded a cigarette lighter on one brother and a burnt hair clip and a bottle of nasal spray on the other. The dog had also picked out the Jones' vehicle and a subsequent search revealed the ends of marijuana cigarettes and a case used to carry "joints." The boy's sister was summoned and a small piece of metal tubing and a hemostat were found in her purse. All three children were suspended from school for three days. The school had a policy deducting three grade points for each day missed due to suspension. The superintendent did reduce the suspensions to two days. One of the students had made a commitment to work for a neighbor and returned to school after three days, losing nine grade points. It became mathematically impossible for this student to pass American History, a required course, and graduate with his class.

The United States District Court for the Eastern District of Texas held that the use of canines was unconstitutional. The Court reasoned the dog replaced the perceptive abilities of school officials and compared the method used to sophisticated electronic devices. "Like an x-ray machine, his superhuman sense of smell invaded the students' outer garments and detected the presence of items they were

expecting to keep private."[285] The Court thought the intrusion was greater than an electronic gadget in that the dog was a large German Shepherd trained as an attack dog which could frighten and intimidate the students. There was no way for students to avoid the searches since they were compelled by law to attend school. The searches were "sweeping, undifferentiated, and indiscriminate."[286] There were no articulable facts to warrant the search of plaintiffs. The announcement of the impending searches did not justify the infringement of plaintiffs' Fourth Amendment rights. School officials exceeded the bounds of reasonableness in their use of a canine. Therefore, the evidence seized could not be used to punish the plaintiffs.

A fifteen year old girl was observed smoking in the lavatory in violation of school rules in State In Interest of T.L.O.[287] The girl was brought to the vice-principal's office. The vice-principal searched the girls' purse after she denied smoking, claiming "she didn't smoke at all." A package of cigarettes was plainly visible. The vice-principal also found marijuana, marijuana paraphernalia, a

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[285] Id at 233.

[286] Id at 234.

[287] State In Interest of T.L.O., 428 A. 2d 1327 (New Jersey 1980).

large sum of money, and a note in the girl's handwriting asking a friend to sell marijuana in school. The police were summoned and the student was charged with possession of marijuana with the intent to distribute. The Juvenile and Domestic Relations Court of Middlesex County, New Jersey, upheld the search and reasoned that although public school officials are governmental officers, the standard of reasonableness is lower than probable cause because of the in loco parentis doctrine. The vice-principal had reasonable cause to believe the search was necessary to enforce the school's policy regulating smoking. The Court defined a reasonable standard "as one designed to protect the health, safety and welfare of the child involved, as well as the student population."[288] The search was conducted for the limited purpose of determining whether the infraction of school rules in fact occurred. However, once the purse was opened, the school official was in a position to view all the contents of the purse under the "plain view" doctrine. The evidence could be properly admitted at trial.

Conclusions

In 1969, the United States Supreme Court handed down a decision that vitally changed the relationship between school

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[288] Id at 1333.

officials and students. In Tinker v. Des Moines Independent School District[289] the Court determined students did not shed their constitutional rights at the schoolhouse gate.

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.[290]

Recently, courts have been called upon to determine the scope of Fourth Amendment protections in the schools. They have had the task of safeguarding the privacy rights of students and, at the same time, providing enough leeway to allow school officials the room to do their job. Over the last two decades, four concepts have emerged to guide school officials and the courts in determining what is a reasonable search and seizure (see Table 3.1). The first of the concepts adopts the stance that school officials stand in loco parentis. The Fourth Amendment is inapplicable in the school situation because school officials act as private persons as do the parents of children. Between 1969 and 1974, six cases adopted this theory; two in California, two

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[289] Tinker, Supra.

[290] Id at 739.

in Texas, one each in New York and Pennsylvania. The theory was last adopted in 1974.

The second concept holds that the Fourth Amendment is applicable but the Exclusionary Rule does not apply. Evidence, even though obtained in an illegal search, is admissible at trial. Only two cases have adopted this theory: State v. Young,[291] a Georgia Supreme Court decision, and Doe v. Renfrow,[292] decided by the Seventh Circuit Court.

The third concept is the one adopted most consistently by the courts. Here the Fourth Amendment is applicable but the doctrine of in loco parentis lowers the standard to be applied to one of reasonable suspicion in determining the reasonableness of the search. Twenty-four cases adopted this theory including M.M. v. Anker,[293] a 1979 case decided by the Second Circuit Court.

The fourth concept adopts the theory that the Fourth Amendment applies to school officials in the same way it applies to police officials. This means a higher standard of probable cause must exist before a search may be conducted. Only one state, Louisiana, has forced this

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[291] State v. Young, Supra.

[292] Doe (1980), Supra.

[293] M.M. v. Anker, Supra.

requirement on school officials. Five courts did require a finding of probable cause where police action was involved.[294]

The doctrine of in loco parentis is embedded in common law. In People v. Jackson the Court said:

> 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.[295]

School officials have this distinct relationship with students in their charge. Not all parental prerogatives are assumed by teachers, but only those that are necessary to carry out the responsibilities inherent in their job.

> A school teacher stands in the place of a parent to pupils, and may exercise such powers of control, restraint, and correction as may be reasonably necessary to enable him to perform his duties as teacher and accomplish the purposes of education.[296]

But no amount of in loco parentis authority will allow school officials to disregard students' constitutional rights and the use of arbitrary power will not be tolerated by the courts. ". . . it is evident that the in loco

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[294] See Bellnier v. Lund and In Interest of T.L.O., Supra, for a development of these concepts.

[925] People v. Jackson, Supra at 736.

[296] 79 C.J.S. Schools and School Districts Section 493.

parentis authority of a school official cannot transcend constitutional rights."[297] "A school official may have a reasonable suspicion that a dangerous situation exists, and may act on that suspicion."[298] Prompt action becomes an affirmative obligation when a dangerous situation exists. Such a situation existed when a teacher became suspicious a student had brought a knife or razor blade to school in In Interest of L.L.[299] The teacher acted on the immediacy of the situation. Teachers acting under exigent circumstances are exempt from the warrant requirement.

> Because of the possibility of destruction or distribution of illegal items and substances, there will rarely be time to contact police and obtain a warrant once the school official has a reasonable basis to believe that a student has an illegal item or substance.[300]

> Maintaining discipline in schools oftentimes requires immediate action and cannot await the procurement of a search warrant based on probable cause. We hold that the search of a student's person is reasonable and does not violate his Fourth Amendment rights, if the school official has reasonable grounds to believe the search is necessary in the aid of maintaining school discipline and order.[301]

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[297] Picha, Supra at 1218.

[298] Matter of Ronald B., Supra at 545.

[299] In Interest of L.L., Supra.

[300] Id at 351.

[301] State v. McKinnon, Supra at 784.

The actual determination of what is reasonable must be adjudicated on the merits of each individual case. "There is no exact formula for the determination of reasonableness. Each case must be decided on its own facts and circumstances—and on the total atmosphere of the case."[302]

The purpose of the search must not be to obtain convictions but to maintain discipline and order for the health and safety of all the students so that they may learn. There must be a balance between the government's interest and that of the individual before any invasion of privacy takes place. The interest of the child is to learn. To accomplish this task, school officials have an obligation to provide an atmosphere conducive to learning. In turn, the student also has an obligation to comply with reasonable rules and regulations.

> In the school, as in the family, there exist on the part of the pupils the obligations of obedience to lawful commands, subordination, civil deportment, respect for the rights of other pupils and fidelity to duty.[303]

To maintain a safe environment, when reasonable rules and regulations are broken, school officials must take action.

> A school is a special kind of place in which serious and dangerous wrongdoing is intolerable.

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[302] In Re G., Supra at 362.

[303] Interest of L.L., Supra at 349.

> Youngsters in a school, for their own sake as well as that of their age peers in the school, may not be treated with the same circumspection required outside the school or to which self-sufficient adults are entitled.[304]

> Indeed, the rights of juveniles are not coextensive with the rights of adults, regardless of their student status.[305]

If a search becomes necessary, school officials must have concrete, articulable facts to substantiate the need for a search.

> . . . there must . . . be an articulable basis for the search. That basis must be related to removal of a dangerous or illegal item or substance and derived from reliable information or personal observations indicating that a student is in violation of school safety rules or the law.[306]

Particular information is often obtained through the citizen-informer. In seventeen of the cases, an informer "tipped off" school officials. The courts accepted these sources of information to provide a reasonable basis for a search. In one case, People v. Singletary,[307] the defendant challenged the source of information and demanded to know the informer's identity. The Court decided an in camara

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[304] People v. D., Supra at 468.

[305] State In Interest of T.L.O., Supra at 1332.

[306] Interest of L.L., Supra at 351

[307] People v. Singletary, Supra.

hearing in the Judge's chambers would sufficiently protect the interests of the defendant. The identity of the informer did not need to be revealed.

The search the courts forbade were those that were arbitrary and indiscriminate, exceeding the bounds of reason. In the words of the United States District Court for the Eastern District of Texas:

> The blanket search or dragnet is, except in the most unusual and compelling circumstances, anathema to the protection accorded citizens under the fourth amendment. The state may not constitutionally use its authority to fish for evidence of wrongdoing.[308]

Seven cases articulated specific factors to be considered by the school officials in determining the need for a search. They are:

> (1) the child's age, history and school record; (2) the prevalance and seriousness of the problem in the school to which the search was directed; (3) the exigency of the situation requiring an immediate warrantless search; (4) the probative value and reliability of the information used as a justification for the search; (5) the teacher's prior experience with the student.[309]

A discussion of those searches considered to be unreasonable and those considered to be reasonable will be useful to understand what the courts consider permissible.

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[308] Jones (1980), Supra at 234.

[309] State In Interest of T.L.O., Supra at 1334.

Cases Considered Unreasonable

Nine cases were determined to be unreasonable and two were declared unreasonable in part (see Table 3.5). In Caldwell v. Cannady,[310] a 1972 Texas case, the federal district court did not uphold the search of a car when law enforcement officers had time to obtain a warrant and neutral and detached magistrates were available to issue the requisite warrant. The search was conducted by police off campus and after school hours. Nevertheless, the sanctions imposed by the school board, expelling two students, were permissible.

In People v. Bowers[311] the Criminal Court of New York City reasoned a uniformed security guard was acting as a law enforcement agent and was subject to the probable cause requirement of the Fourth Amendment. The officer stopped a student on a hunch and discovered marijuana. The search was not sustained.

The appellate court for the District of Columbia granted plaintiff's motion to suppress the evidence in Waters v.

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[310] Caldwell, Supra. In this same case, the court did uphold the search of another vehicle when police acted immediately to prevent the escape of the culprits and destruction of the evidence.

[311] People v. Bowers, Supra.

United States.[312] A police officer tore a part of an envelope from a student's hand which yielded five packets of heroin. The Court reasoned that the police officer did not have probable cause to arrest the plaintiff. The officer never actually saw anything illicit change hands but was only suspicious the envelope contained contraband.

The Louisiana Supreme Court granted defendant's motion to suppress the evidence in State v. Mora.[313] A physical education teacher required students to put their valuables in small canvas bags and the bags were then put in a locked duffel bag for the duration of the gym class. Acting on a hunch because of defendant's furtive gestures, the teacher examined the defendant's wallet which revealed a green, leafy substance, marijuana. The Court determined that Louisiana school officials were subject to the standard of probable cause and a warrant was required to search the student's wallet.

A student reported her ring was missing and a search by school authorities proved fruitless in Potts v. Wright.[314] Police were summoned and eight female students were

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[312] Waters, Supra.

[313] State v. Mora, Supra.

[314] Potts, Supra.

required to strip to their bra and panties in front of two policewomen. The ring was never found. The federal district court refused to dismiss the Superintendent of Schools and the Chief of Police as defendants. The court reasoned these defendants could be held liable if they had actual knowledge that their subordinates were causing constitutional deprivations and then failed to take corrective action.

In People v. D.[315] the New York Court of Appeals suppressed drugs found in a strip search of a student. The defendant had been observed entering the washroom for short periods of time and having lunch with another student under suspicion. A security coordinator found countraband in the defendant's wallet and made the student strip. A vial containing nine pills was discovered. The Court reasoned the school official conducted the search without sufficient reason to believe the student possessed contraband. Nothing concrete or articulable to justify the search was offered by the plaintiffs at the trial. The Court compared the instant case to Sibron v. State of New York[316] decided by the United States Supreme Court. Here, too, the search was not upheld

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[315] People v. D., Supra.

[316] Sibron, Supra.

because agents never saw narcotics change hands. There were no concrete, articulable facts to justify the search.

A strip search of three girls was conducted by a school nurse and a school psychologist in Picha v. Wielgos.[317] Acting on the advice of his superintendent, the defendant principal contacted the police and the subsequent search followed. No drugs were found. The Court denied the school officials' motion for a directed verdict. The United States District Court for the Northern District of Illinois reasoned the defendants had no justification "in terms of the state interest of maintaining the order, discipline, safety, supervision, and education of the students within the school."[318] Police involvement required the higher standard of probable cause. Public officials have no immunity from civil rights liability if they proximately cause a deprivation of constitutional rights.

Bellnier v. Lund[319] was an elementary school case decided by a federal district court in New York in 1977. Desks, coats, books, pockets, shoes and socks were all searched to find a missing three dollars. When this proved

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[317] Picha, Supra.

[318] Id at 1221.

[319] Bellnier, Supra.

fruitless, fifth grade pupils were marched to the boys' and girls' restrooms and instructed to strip to their undergarments. The students' clothing was searched but the search failed to turn up a missing three dollars. The Court held the search was invalid but school officials were not held liable for damages since there was no showing the defendants acted in bad faith. The lesser standard of reasonable cause to believe was appropriate in the instant case since there was no police involvement.

School officials searched the plaintiff on mere suspicion in M.M. v. Anker.[320] The Second Circuit Court reasoned "that as the intrusiveness of the search intensifies, the standard of Fourth Amendment 'reasonableness,' approaches probable cause. . ."[321] The defendants conducted a search based on the premise that something might have been stolen. The Court did not uphold the search.

Although the canine search of students was upheld, the nude search of four junior high school girls was not upheld by the Seventh Circuit Court in Doe v. Renfrow.[322] The Court determined the nude search exceeded the bounds of

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[320] M.M. v. Anker, Supra.

[321] Id at 589.

[322] Doe (1980), Supra.

reason and remanded the case to the trial court for a determination of damages. The Seventh Circuit's Chief Judge and three Circuit Judges dissented reasoning the search was general and exploratory. Circuit Judge Swygert summed up the Minority's opinion when he said:

> Had a warrant properly been sought, I am convinced that none could have issued consistent with the Fourth Amendment. The police and school officials neither possessed nor attempted to gain specific information about any particular student. There was also no information as to any particular drug or contraband transaction or event. Thus, all 2,780 students were under suspicion, and there was no known crime.[323]

The United States Supreme Court denied certiorari thus affirming the Seventh Circuit decision.

In contrast, the United States District Court for the Eastern District of Texas reached a different conclusion. In Jones v. Latexo Independent School District[324] the Court enjoined the defendant school district from using canines to search the plaintiffs "in the absence of reasonable cause to believe that those particular individuals are in possession of contraband. . ."[325] The Court also determined the canine sniff-search of plaintiff's vehicle was unreasonable.

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[323] Id at 94.

[324] Jones (1980), Supra.

[325] Id at 241

> Under school regulations, students had no access to their vehicles while school was in session. Thus, the school's legitimate interest in what students had left in their vehicles was minimal at best. The search was conducted in a blanket, indiscriminate manner without individualized suspicion of any kind.[326]

Six of the eleven searches declared unreasonable involved law enforcement agents and five did not. If law enforcement officers were involved, the probable cause standard applied. If not, with the exception of Louisiana, the reasonable cause to believe standard was applied. The more intrusive the search, the higher the standard to be applied. With or without police, none of the strip searches were upheld. Here, the courts determined the searches exceeded the bounds of reason. Two cases involved canine searches. The Seventh Circuit Court upheld the canine search and the United States District Court for the Eastern District of Texas did not.

When acting on a hunch or mere suspicion, the courts did not uphold the search. The courts looked for concrete, articulable facts. School officials had to particularize what students were to be searched and what things were to be seized. Blanket, indiscriminate searches were not upheld. The Seventh Circuit Court held school officials could be liable in damages for deprivations of students' rights.

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[326] Id at 235.

Courts will sustain the actions of school officials when they are acting within the scope of their job to maintain order, discipline, safety, and supervision to provide an atmosphere conducive to education.

Cases Considered Reasonable

Twenty-nine cases were considered reasonable (see Table 3.5). Eighteen of these cases involved the search of pockets in clothing worn by students. Three of these cases involved the police.

In In Re Boykin[327] a search of a student's pocket by officers was upheld because the officers acted on the instructions of a school official who had been informed the student possessed a gun. In People v. Jackson[328] a school official chased a student for three blocks and seized narcotics and drug paraphernalia. When a policeman assigned to the school arrived on the scene, the school official turned over the contraband. The Court upheld the search because it was school initiated as opposed to police initiated. In In Re C.[329] police were summoned to conduct a search of a recalcitrant student. The Court reasoned: "The fact the

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[327] In Re Boykin, Supra.

[328] People v. Jackson, Supra.

[329] In Re C., Supra.

professional services solicited and used were those of a police officer, under the circumstances of this case, did not render unreasonable that which otherwise was reasonable."[330]

Two cases involved police before and after the searches were conducted. In State v. Walker[331] an assistant school principal was advised by police he had a right to search a student if he suspected the student had hard drugs in his possession. He then called the police and they took the student into custody. There was no police involvement during the actual search. A supplemental hearing was ordered to determine if the search was otherwise reasonable. In State v. McKinnon[332] a high school principal was informed by the chief of police that certain students possessed drugs. The principal's search was upheld as reasonable since the principal acted independently of police. After finding the contraband, the police were summoned.

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[330] Id at 685-686.

[331] State v. Walker, Supra.

[332] State v. McKinnon, Supra.

The remaining thirteen cases[333] involved the police and/or state action after the searches were conducted by school officials and all were upheld. Once the contraband was discovered, the school officials had the affirmative obligation to remove the influence from the school.

One case involved a coat search. In State v. Baccino,[334] decided by the Delaware Superior Court, a high school student's jacket was searched by a vice-principal because he believed the jacket contained contraband. The school official had previous knowledge that this student had experimented with drugs. The Court upheld the search because the search was directed toward a particular student and the school official had reason to believe the jacket contained contraband.

Locker searches were the subject of four cases. An early California Court of Appeal decision upheld the search of a book locker by a vice-principal in In Re Donaldson.[335] The student had been identified by another student as the

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[333] Mercer v. State, People v. Stewart, In Re G., Ranniger v. State, In Interest of G. C., Commonwealth v. Dingfelt, State v. Young, People v. Ward, Nelson v. State, M. v. Bd. of Ed. Ball-Chatham C.U.S.D. No. 5, Matter of Ronald B., State v. F.W.E., Interest of L.L., all Supra.

[334] State v. Baccino, Supra.

[335] In Re Donaldson, Supra.

seller of drugs. The Court upheld the search on the theory that the vice-principal stood in loco parentis and as a private citizen the Fourth Amendment proscriptions did not apply.

The Kansas Supreme Court upheld the search of a locker in State v. Stein.[336] Two police officers came to the school and informed the principal that the defendant was under suspicion for burglary. The principal, acting on his own initiative, opened the student's locker and brought its contents to his office and the police inspected the belongings. The Court reasoned:

> . . . the nature of a high school locker . . . Its status in the law is somewhat anomalous; it does not possess all the attributes of a dwelling, a motor vehicle, or a private locker . . . [a student's] possession is not exclusive against the school and its officials.[337]

The United States District Court for the Southern District of New York affirmed the opening of a student's locker for police by a vice-principal in Overton v. Rieger.[328] The Court agreed that:

> . . . the power of the vice-principal to consent to the search follows from the affirmative obligations of school authorities to supervise the

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[336] State v. Stein, Supra.

[337] Id at 3.

[338] Overton, Supra.

> children entrusted to their care and the consequent retention of control by them over their lockers.[339]

Another California Court of Appeal decision upheld the search of a student's locker in In Re W.[340] Unlike its sister court, in In Re Donaldson, the First District Court held the Fourth Amendment did apply but the standard to use was the lesser standard of reasonable suspicion. The search fell within the scope of the official's duties.

Two searches involved purses and both cases were decided by New Jersey Juvenile and Domestic Relations Courts. In In Re State In Interest of G.C.[341] the Court upheld the search of a young girl's purse which yielded amphetamine pills. In State in Interest of T.L.O.[342] the Court upheld the search of a purse under the Plain View Doctrine. The student denied smoking in the girls' lavatory and when the vice-principal opened her purse to see if she had cigarettes, he discovered marijuana.

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[339] Id at 1038.

[340] In Re W., Supra.

[341] In Re State In Interest of G.C., Supra.

[342] State in Interest of T.L.O., Supra.

Three cases dealt with searches of shoes and socks. In Commonwealth v. Dingfelt[343] an assistant principal observed the defendant insert something in his shoe or sock. He instructed the student to take off his shoes and a bottle of capsules was found. The Pennsylvania Superior Court upheld the search on the theory that the school official stood in loco parentis to the student.

In People v. Singletary[344] a dean in charge of security was informed the defendant possessed and was selling narcotics. The informant had proved to be credible in the past. Upon searching the student, the dean discovered heroin in one of the student's socks. The New York Court of Appeals agreed that the dean had concrete, articulable facts to reasonably believe the defendant possessed contraband. The evidence could be used at trial.

In State v. F.W.E.[345] a dean of boys overheard the defendant trying to purchase marijuana from another student. The defendant exhibited signs of being intoxicated and a subsequent search revealed marijuana in the student's socks. The Florida Appellate Court upheld the search on the theory

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[343] Commonwealth v. Dingfelt, Supra.

[344] People v. Singletary, Supra.

[345] State v. F.W.E., Supra.

that the dean had reasonable suspicion to believe the student had contraband.

The Louisiana Third Circuit Court of Appeals upheld the brief detention of a student in the companion cases of State In Interest of Feazell[346] and State In Interest of Clark.[347] The student voluntarily surrendered a bag of marijuana knowing he had the right to demand a warrant under a previous Louisiana Supreme Court ruling.[348]

The New Mexico Court of Appeals upheld the surrender of marijuana and a pipe in Doe v. State.[349] No actual search took place. The plaintiff's detention and questioning did not violate the Fourth Amendment. The action against two other students was dismissed since the State could not prove they had knowledge of the substance in the pipe.

Finally, a federal district court in Bilbrey v. Brown[350] upheld an Oregon school district's "Minimum Standards for Student Conduct and Discipline." The Court did not find the

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[346] State In Interest of Feazell, Supra.

[347] State In Interest of Clark, Supra.

[348] State v. Mora, Supra.

[349] Doe (1975), Supra.

[350] Bilbrey v. Brown, Supra.

language vague and granted the school district summary judgment. No search of students was at issue in the instant case.

Twenty-four searches were determined to be reasonable; three cases involved the voluntary surrender of contraband; one case was remanded for a determination of reasonableness; and one case upheld the reasonableness of a school district's policy governing student conduct and discipline.

Seven cases had active police involvement; three searches were upheld because the searches were school initiated; three were upheld because school officials acted on their own initiative; one was upheld because there was no police involvement during the actual search. Thirteen of the cases involved police and/or state action after the search was conducted. These were all upheld. The purpose of these searches was not to obtain convictions but to remove harmful influences from the school environment. In five of the cases, there was no police involvement.

Searches considered reasonable were upheld on different theories; between 1969 and 1974, six cases were upheld because school officials stood in loco parentis and assumed the same rights as private citizens; in 1975 the Georgia Supreme Court upheld a search based on the theory that the Fourth Amendment applied but not the Exclusionary Rule; between 1968 and 1980, seventeen searches were upheld under

the theory that the Fourth Amendment applied but under the lesser standard of reasonable cause to believe.

Courts upheld searches when school officials acted within the scope of their job. School officials have an affirmative obligation to provide an atmosphere conducive to learning. When a search was related to the school's legitimate purpose in maintaining discipline and order for the health and safety of students, the courts sustained the actions of school officials.

Searches based on concrete, articulable facts were upheld. Searches conducted because illicit materials were in "plain view" were upheld. It was important for school officials to particularize which students were to be searched and what things were to be seized. The role of the student informer was sanctioned by the courts. The identity of these sources may remain confidential.

Random, causeless searches will not be upheld by the courts. The blatant disregard of settled, indisputable, constitutional rights will not be tolerated. Students do not shed their Fourth Amendment rights at the schoolhouse gate.

Table 3.1

Applicability of the Fourth Amendment and the Exclusionary Rule in Elementary/Secondary Education Cases

The rights of the people to be secure in their persons, houses, papers and effects, against unreasonable 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 searched, and the persons or things to be seized.

I. The Fourth Amendment does not apply because the school official acted *in loco parentis*.	II. The Fourth Amendment applies but the Exclusionary Rule does not.	III. The Fourth Amendment applies but the Doctrine of *in loco parentis* lowers the standard to be applied in determining the reasonableness of the search.	IV. The Fourth Amendment applies and requires a finding of probable cause in order for the search to be reasonable.	
			Police Initiated	School Initiated
		In Re Boykin (Ill. 1968)		
In Re Donaldson (Cal. 1969) *Mercer v. State* (Tex. 1969)		*State v. Stein* (Kan. 1969)		
People v. Stewart (N.Y. 1970) *In Re G.* (Cal. 1970) *Ranniger v. State* (Tex. 1970)		*Overton v. Rieger* (N.Y. 1970)		
		People v. Jackson (N.Y. 1971) *State v. Baccino* (De. 1971)		
		In Re C. (Cal. 1972) *In Re State in Interest of G. C.* (N.J. 1972)	*Caldwell v. Cannady* (Tex. 1972)	
		In Re W. (Cal. 1973)	*People v. Bowers* (N.Y. 1973) *Potts v. Wright* (Pa. 1973) *Waters v. United States* (D.C. 1973)	
Commonwealth v. Dingfelt (Pa. 1974)		*People v. D.* (N.Y. 1974) *State v. Walker* (Ore. 1974)		
	State v. Young (Ga. 1975)	*People v. Ward* (Mich. 1975) *People v. Singletary* (N.Y. 1975) *Doe v. State* (N.M. 1975) *Nelson v. Florida* (Fla. 1975)		
			Picha v. Wielgos (Il. 1976)	*State v. Mora* (La. 1976)
		State v. McKinnon (Wa. 1977) *M. v. Bd. of Ed. Ball-Chatham C.U.S.D. No. 5* (Ill. 1977) *Bellnier v. Lund* (N.Y. 1977)		
		Matter of Ronald B. (N.Y. 1978) *State v. F.W.E.* (Fla. 1978)		*State in Interest of Feazell* (La. 1978) *State in Interest of Clark* (La. 1978)
		Interest of L.L. (Wis. 1979) *Bilbrey v. Brown* (Ore. 1979) *M.M. v. Anker* (2d Cir. 1979)		
	Doe v. Renfrow (7th Cir. 1980)	*Jones v. Latexo Independent School Dist.* (Tex. 1980) *In Interest of T.L.O.* (N.J. 1980)		

Table 3.2

Searches Conducted in Elementary/Secondary Schools

Automobiles	Desks	Coats	Books	Lockers	Pockets	Purses and Wallets	Hands	Socks/Shoes	Canines	Strip
					In Re Boykin 237 N.E. 2d 460 (Il. 1968)					
				In Re Donaldson 75 Cal. Rptr. 220 (1969)						
				State v. Stein 456 P. 2d 1 (Kan. 1969)						
				Overton v. Rieger 311 F. Supp. 1035 (N.Y. 1970)	Mercer v. State 450 S.W. 715 (Tx. 1970)					
					People v. Stewart 313 N.Y. S. 2d 253 (1970)					
					In Re G. 90 Cal. Rptr. 361 (1970)					
					Ranniger v. State 460 S.W. 2d 181 (Tx. 1970)					
		State v. Baccino 282 A 2d 869 (Del. 1971)			People v. Jackson 319 N.Y. S. 2d 281 (1971)		People v. Jackson 319 N.Y. S. 2d 781 (1971)			
Caldwell v. Cannady, 340 F. Supp. 835 (Tn. 1972)					In Re C. 102 Cal. Rptr. 682 (1972)					
					In Re State in Interest of G.C. 296 A 2d 102 (N.J. 1972)	In Re State in Interest of G.C. 296 A 2d 102 (N.J. 1972)				
				In Re W. 105 Cal. Rptr. 775 (1973)	People v. Bowers 234 N.Y. S. 2d 783 (1973)		Waters v. United States, 311 A 2d 835 (D.C. (1973)			Potts v. Wright 357 F. Supp. 215 (Pa. 1973)
					Commonwealth v. Dingfelt 323 A 2d 145 (Pa. 1974)	People v. D. 315 N.E. 2d 466 (N.Y. 1974)		Commonwealth v. Dingfelt, 232 A 2d 145 (Pa. 1974)		People v. D. 315 N.E. 2d 466 (N.Y. 1974)
					State v. Walker 259 P. 2d 113 (Or. 1974)					
					State v. Young 216 S.E. 2d 586 (Ga. 1975)			People v. Singletary 372 N.Y.S. 2d 68 (1975)		

Table 3.2 (Cont'd.)

Automobiles	Desks	Coats	Books	Lockers	Pockets	Purses and Wallets	Hands	Socks/Shoes	Canines	Strip
					People v. Ward 233 N.W. 2d 180 (Mich. 1975)					
					Nelson v. State 319 So. 2d 154 (Fla. 1975)					
						State v. Mora 330 So. 2d 900 (La. 1976)				
					State v. McKinnon 588 P. 2d 781 (Wash. 1977)					Picha v. Wielgos 410 F. Supp. 1214 (Il. 1976)
					M. v. Bd. of Ed. Ball-Chatham C.U.S.D. No. 5 429 F. Supp. 288 (Il. 1977)					
	Bellnier v. Lund 438 F. Supp. 47 (N.Y. 1977)	Bellnier v. Lund 438 F. Supp. 47 (N.Y. 1977)	Bellnier v. Lund 438 F. Supp. 47 (N.Y. 1977)		Bellnier v. Lund 438 F. Supp. 47 (N.Y. 1977)			Bellnier v. Lund 438 F. Supp. 47 (N.Y. 1977)		Bellnier v. Lund 438 F. Supp. 47 (N.Y. 1977)
					Matter of Ronald B. 401 N.Y.S. 2d 544 (1978)					
					State v. F.W.E. 360 So. 2d 148 (Fla. 1978)			State v. F.W.E. 360 So. 2d 148 (Fla. 1978)		
					Interest of L.L. 280 N.W. 2d 343 (Wis. 1979)					M.M. v. Anker 607 F. 2d 588 (2d Cir. 1979)
					Doe v. Renfrow 631 F. 2d 91 (7th Cir. 1980)	Doe v. Renfrow 631 F. 2d 91 (7th Cir. 1980)			Doe v. Renfrow 631 F. 2d 91 (7th Cir. 1980)	Doe v. Renfrow 631 F. 2d 91 (7th Cir. 1980)
Jones v. Latexo I.S.D., 499 F. Supp. 233 (Tx. 1980)					Jones v. Ind. Sch. Dist., 499 F. Supp. 233 (Tx. 1980)	Jones v. Latexo I.S.D., 499F. Supp. 233 (Tx. 1980)			Jones v. Latexo I.S.D., 499 F. Supp. 233 (Tx. 1980)	
						State in Interest of T.L.O., 428A A 2d 1327 (N.J. 1980)				

Table 3.3

Purpose of Searches in Elementary/Secondary Education Cases

Stealing	Marijuana	Dangerous Drugs and Drug Paraphernalia	Lysergic Acid Diethylamide (LSD) Heroin and Hashish	Weapons
				In Re Boykin 237 N.E. 2d 460 (Il. 1968)
State v. Stein 456 P. 2d 1 (Kan. 1969)	In Re Donaldson 75 Cal. Rptr. 220 (1969)	In Re Donaldson 75 Cal. Rptr. 220 (1969)		
	Mercer v. State 450 S.W. 2d 715 (Tx. 1970)	People v. Stewart 313 N.Y. S. 2d 253 (1970)	Ranniger v. State 460 S.W. 2d 181 (Tx. 1970)	
	Overton v. Rieger 311 F. Supp. 1035 (N.Y. 1970)	In Re G. 90 Cal. Rptr. 361 (1970)		
		People v. Jackson 319 N.Y.S. 2d 731 (1971)	State v. Baccino 282 A 2d 869 (Del. 1971)	
	Caldwell v. Cannady 340 F. Supp. 835 (Tx. 1972)	In Re C. 102 Cal. Rptr. 682 (1972)		
	In Re C. 102 Cal. Rptr. 682 (1972)	State in Interest of G.C. 296 A. 2d 102 (N.J. 1972)		
Potts v. Wright 357 F. Supp. 215 (Pa. 1973)	In Re W. 105 Ca. Rptr. 775 (1973)		Waters v. United States 311 A 2d 835 (D.C. 1973)	
	People v. Bowers 339 N.Y. S. 2d 738 (1973)	Commonwealth v. Dingfelt 323 A. 2d 145 (Pa. 1974)		
		People v. D. 315 N.E. 2d 466 (N.Y. 1974)		
		State v. Walker 528 P. 2d 113 (Or. 1974)		
	State v. Young 216 S.E. 2d 586 (Ga. 1975)		People v. Ward 233 N.W. 2d 180 (Mich. 1975)	
	Doe v. State 540 P 2d 827 (N.M. 1975)		People v. Singletary 372 N.Y.S. 2d 68 (1975)	
	Nelson v. State 319 So. 2d 154 (Fla. 1975)			
	State v. Mora 307 So. 2d 317 (La. 1975)			
Bellnier v. Lund 438 F. Supp. 477 (N.Y. 1977)	State v. McKinnon 558 P. 2d 371 (Wa. 1977)	State v. McKinnon 558 P. 2d 781 (Wa. 1977)		
	M. v. Bd. of Ed. Ball-Chatham C.U.S.D. No. 5 429 F. Supp. 288 (Il. 1977)			
	State in Interest of Feazell 360 So. 2d 907 (La. 1978)			Matter of Ronald B. 401 N.Y.S. 2d 544 (1978)
	State in Interest of Clark 360 So. 2d 909 (La. 1978)			
	State v. F.W.E. 360 So. 2d 148 (Fla. 1978)			
	Matter of Ronald B. 401 N.Y. S. 2d 544 (1978)			
M.M. v. Anker 607 F. 2d 588 (2d Cir. 1979)	Interest of L.L. 280 N.W. 2d 343 (Wis. 1979)			
	State in Interest of T.L.O. 428 A 2d 1327 (N.J. 1980)	Doe v. Renfrow 457 F. Supp. 1012 (7th Cir. 1980)		
		Jones v. Latexo Independent School Dist. 499 F. Supp. 223 (Tx. 1980)		
		State in Interest of T.L.O. 428 A 2d 1327 (N.J. 1980)		

Table 3.4

Courts of Jurisdiction in

Elementary/Secondary Education Cases

U.S. Circuit Court	U.S. District Court	State Court of Highest Jurisdiction	State Appellate Court	Criminal Court	Juvenile/Domestic Relations Court
		In Re Boykin (Il. 1968)			
			In Re Donaldson (Cal. 1969)		
	Overton v. Rieger (S.D. N.Y. 1970)	State v. Stein (Kan. 1970)	Mercer v. State (Tx. 1970)	People v. Stewart (N.Y. 1970)	
			In Re G. (Cal. 1970)		
			Ranniger v. State (Tx. 1970)		
			People v. Jackson (N.Y. 1971)		
			State v. Baccino (Del. 1971)		
	Caldwell v. Cannady (N.D. Tx. 1972)		In Re C. (Cal. 1972)		State in Interest of G.C. (N.J. 1972)
	Potts v. Wright (E.D. Pa. 1973)		In Re W. (Cal. 1973)	People v. Bowers (N.Y. 1973)	
			Waters v. United States (D.C. 1973)		
		People v. D. (N.Y. 1974)	Commonwealth v. Dingfelt (Pa. 1974)		
			State v. Walker (Ore. 1974)		
		State v. Young (Ga. 1975)	People v. Ward (Mich. 1975)		
		People v. Singletary (N.Y. 1975)	Nelson v. State (Fla. 1975)		
			Doe v. State (N.M. 1975)		
	Picha v. Wielgos (N.D. Il., E.D. 1976)	State v. Mora (La. 1976)			
		State v. McKinnon (Wash. 1977)			
	M. v. Bd. of Ed. Ball-Chatham C.U.S.D No. 5 (S.D. Il., S.D. 1977)				
	Bellnier v. Lund (N.D. N.Y 1977)				
			Matter of Ronald B. (N.Y. 1978)		
			State in Interest of Feazell (La. 1978)		
			State v. F.W.E. (Fla. 1978)		
M.M. v. Anker (2d Cir. 1979)	Bilbrey v. Brown (Ore. 1979)		Interest of L.L. (Wis. 1979)		
Doe v. Renfrow (7th Cir. 1980)	Jones v. Latexo I.S.D. (E.D. Tx. 1980)				State in Interest of T.L.O. (N.J. 1980)

Table 3.5

Searches Held Reasonable and Unreasonable in Elementary/Secondary Education

Searches Held Reasonable	Searches Held Unreasonable	Searches Held Reasonable In Part and Unreasonable In Part
In Re Boykin, 237 N.E. 2d 460 (Il. 1968)		
In Re Donaldson, 75 Cal. Rptr. 220 (1969)		
State v. Stein, 456 P. 2d 1 (Kan. 1969)		
Mercer v. State, 450 S.W. 2d 715 (Tx. 1970)		
Overton v. Rieger, 311 F. Supp. 1035 (N.Y. 1970)		
People v. Stewart, 313 N.Y.S. 2d 253 (1970)		
In Re G., 90 Cal. Rptr. 361 (1970)		
Ranniger v. State, 460 S.W. 2d 181 (Tx. 1970)		
People v. Jackson, 319 N.Y.S. 2d 731 (1971)		
State v. Baccino, 282 A. 2d 869 (Del. 1971)		
In Re C., 102 Cal. Rptr. 682 (1972)		Caldwell v. Cannady, 340 F. Supp. 835 (Tx. 1982)
In Re State in Interest of G.C., 296 A. 2d 102 (N.J. 1972)		
In Re W., 105 Cal. Rptr. 775 (1973)	People v. Bowers, 339 N.Y.S. 2d 783 (1973)	
	Potts v. Wright, 357 F. Supp 215 (Pa. 1973)	
	Waters v. United States, 311 A. 2d 835 (D.C. 1973)	
Commonwealth v. Dingfelt 323 A. 2d 145 (Pa. 1974)	People v. D., 315 N.E. 2d 466 (N.Y. 1974)	
State v. Walker, 528 P. 2d 113 (Ore. 1974)		
State v. Young, 216 S. E. 2d 586 (Ga. 1975)		
People v. Ward, 233 N.W. 2d 180 (Mich. 1975)		
People v. Singletary, 372 N.Y.S. 2d 68 (1975)		
Nelson v. State, 219 So. 2d 154 (Fla. 1975)		
Doe v. State, 540 P. 2d 827 (N.M. 1975)		
	Picha v. Wielgos, 410 F. Supp. 1214 (Il. 1976)	
	State v. Mora, 330 So. 2d 900 (La. 1976)	
State v. McKinnon, 558 P. 2d 781 (Wash. 1977)	Bellnier v. Lund, 438 F. Supp. 47 (N.Y. 1977)	
M. v. Bd. of Ed. Ball-Chatham C.U.S.D. No. 5, 429 F. Supp. 288 (Il. 1977)		
Matter of Ronald B., 401 N.Y.S. 2d 544 (1978)		
State in Interest of Feazell, 360 So. 2d 907 (La. 1978)		
State in Interest of Clark, 360 So. 2d 909 (La. 1978)		
State v. F.W.E., 360 So. 2d 148 (Fla. 1978)		
Interest of L.L., 280 N.W. 2d 343 (Wis. 1979)	M.M. v. Anker, 607 F. 2d 588 (2d Cir. 1979)	
Bilbrey v. Brown, 481 F. Supp. 26 (Ore. 1979)		
State in Interest of T.L.O., 428 A. 2d 1327 (N.J. 1980)	Jones v. Latexo Independent School District, 499 F. Supp. 223 (1980)	Doe v. Renfrow, 631 F. 2d 91 (7th Cir. 1980)

CHAPTER IV

CASES GOVERNING SEARCHES AND SEIZURES IN HIGHER EDUCATION

Introduction

Over the last two decades, from 1961 to the present, the relationship between college and university officials and students has significantly changed. The mission of higher education has not changed, but the methods employed to accomplish the mission have. The United States District Court for the Western District of Missouri, sitting en banc, addressed the subject of student discipline in tax supported institutions of higher education. The Court included a list of these lawful missions:

1. To maintain, support, critically examine, and to improve the existing social and political system;

2. To train students and faculty for leadership and superior service in public service, science, agriculture, commerce and industry;

3. To develop students to well rounded maturity, physically, socially, emotionally, spiritually, intellectually and vocationally;

4. To develop, refine and teach ethical and cultural values;

5. To provide fullest possible realization of democracy in every phase of living;

6. To teach principles of patriotism, civil obligation and respect for the law;

7. To teach the practice of excellence in thought, behavior and performance;

8. To develop, cultivate, and stimulate the use of imagination;

9. To stimulate reasoning and critical faculties of students and to encourage their use in improvement of the existing political and social order;

10. To develop and teach lawful methods of change and improvement in the existing political and social order;

11. To provide by study and research for increase of knowledge;

12. To provide by study and research for development and improvement of technology, production, and distribution for increased national production of goods and services desirable for national civilian consumption, for export, for exploration, and for national military purposes;

13. To teach methods of experiment in meeting the problems of a changing environment;

14. To promote directly and explicitly international understanding and cooperation;

15. To provide the knowledge, personnel, and policy for planning and managing the destiny of our society with a maximum of individual freedom; and

16. To transfer the wealth of knowledge and tradition from one generation to another.[351]

To accomplish these missions the college and university official must maintain discipline and order to further

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[351]Memorandum of the United States District Court for the Western District of Missouri, en banc, 45 F. R. D. 133 (1968).

the educational function. It is the responsibility of these officials to promulgate reasonable rules and regulations to fulfill this obligation. Occasions will and do arise when it becomes imperative for the university and college official to search students. Crime and its prevention is a campus concern at today's institutions of higher learning. Most people would agree that the college and university student comes to the institution by choice and is more mature and responsible. Correspondingly, rules and regulations developed by institutions of higher education are usually less restrictive than rules and regulations of elementary and secondary institutions.

This chapter reports and reviews cases governing searches and seizures in higher education. Cases are presented in chronological sequence. Concepts, doctrines, and principles of law are summarized and discussed at the conclusion of the chapter.

Review of Higher Education Cases

As early as 1961, the California District Court of Appeal upheld the search of a college dormitory room in People v. Kelly.[352] The defendant was a student at the California Institute of Technology and resided in one of the student houses. Police received a call from an anonymous

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[352] People v. Kelly, 16 Cal. Rptr. 177 (1961).

informant regarding articles that had been stolen from a construction company and a life insurance company. The informant named the defendant and a police check revealed the defendant had purchased several guns and listed his address at the dormitory. The police went to the dean's office and the Master of Blacker House (the defendant's dormitory) was summoned. The officers told the master that the defendant was under suspicion for burglary and asked what rights the master had to examine the student's room. He told the officers that, under the Student House Rules, he had the authority to enter the student's room in case of emergency. The officers admitted they had no warrant to search the room. Under the theory that a "felony investigation is an emergency,"[353] the police, accompanied by the master, investigated the dorm room and removed the stolen items. The following day, the defendant was arrested. He was subsequently convicted of burglary. The Court reasoned that before entering the student's room, officers had reasonable cause to believe the defendant was involved in the burglaries. The evidence seized was sufficient to support a finding of probable cause to arrest the defendant. The officers believed in good faith that the master had the authority to permit their entry. Under the Student House

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[353] Id at 180.

Rules, the defendant knew the master could enter his room. The trial court's judgment was affirmed.

Plaintiff's dormitory room was searched by a school official and two state narcotics agents in Moore v. Student Affairs Committee of Troy State University.[354] Marijuana was found and the student was indefinitely suspended. Plaintiff brought action in the United States District Court seeking reinstatement as a student in good standing and declaratory judgment suppressing the evidence seized in any criminal proceedings. In dismissing the cause for action, the Court said:

> The student is subject only to reasonable rules and regulations, but his rights must yield to the extent that they would interfere with the institution's fundamental duty to operate the school as an educational institution.[355]

The Court adopted the standard of "reasonable cause to believe," a standard "lower than the constitutionally protected criminal law standard of 'probable cause.'"[356] The search was within the scope of the school official's duty to maintain discipline and order on the campus. Furthermore, the student knew the University reserved the right

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[354] Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (Alabama 1968).

[355] Id at 730.

[356] Id.

to inspect dormitory rooms. The Troy State College bulletin, the student handbook, and a leaflet on "Residence Hall Policies" all promulgated the following regulation:

> 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 material which is sealed.[357]

Police obtained a warrant to search a student's dormitory room in State v. Bradbury.[358] The officers went to the room designated on the warrant where they found the defendant and frisked him. The defendant was a visitor in the room and he was not named in the warrant. Marijuana was found in the defendant's pocket and he was arrested. Prior to the trial, the defendant moved to suppress the evidence. The prosecution and the defense submitted an agreed statement of facts and the trial court transferred the case to the New Hampshire Supreme Court. The Court held that a valid search warrant to search designated premises did not extend to include the search of any person on the premises. The motion to suppress the evidence should be granted.

A peculiar odor emanating from a dormitory room at Hofstra University aroused the suspicion of police and

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[357] Id at 728.

[358] State v. Bradbury, 243 A. 2d 302 (New Hampshire 1968).

university officials in People v. Cohen.[359] A warrantless search of the room was conducted without announcing the purpose of the search and marijuana was found. The New York District Court of Nassau County granted the motion to suppress the evidence on the ground that the fruits of the search were obtained in an unlawful search. The Court reasoned that suspicion did not constitute probable cause. There was no immediate danger that the evidence would be removed or destroyed, and there was sufficient time to obtain a warrant. No consent had been given officials to search the room and the search was not an incident to a lawful arrest. "This was, in essence, a fishing expedition calculated to discover narcotics."[360] The Court held:

> University students are adults. The dorm is a home and it must be inviolate against unlawful search and seizure. To suggest that a student who lives off campus in a boarding house is protected but that one who occupies a dormitory room waives his constitutional liberties is at war with reason, logic and law.[361]

The United States District Court for the Northern District of Maine upheld the search of a suitcase in United States v. Coles.[362] The defendant was a job corps student at

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[359] People v. Cohen, 292 N.Y.S. 2d 706 (1968).

[360] Id at 709.

[361] Id at 713.

[362] United States v. Coles, 302 F. Supp. 99 (Maine 1969).

the Acadia Civilian Conservation Center and was returning late from a leave. A search by the Administrative Officer yielded one-half pound of marijuana. The Park Ranger was summoned after the discovery of the contraband. While waiting for the arrival of the Park Ranger to take defendant into custody, the Administrative Officer conducted a personal search of the defendant, which proved fruitless. The Court reasoned that the search "was a constitutional exercise of Anderson's authority, as the Administrative Officer of the Acadia Center, to maintain proper standards of conduct and discipline at the Center."[363] The search was conducted without law enforcement involvement nor was the purpose of the search to procure evidence of a crime. The fact that no search warrant or arrest warrant had been obtained was immaterial to the case since: "the search of defendant's suitcase was a reasonable exercise of Anderson's supervisory power as the Administrative Officer of the Acadia Center, and therefore did not infringe defendant's Fourth Amendment Rights."[364]

A student at the Maine Maritime Academy was dismissed two weeks prior to graduation in Keene v. Rodgers.[365] The

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[363] Id at 101.

[364] Id at 103.

[365] Keene v. Rodgers, 316 F. Supp. 217 (Maine 1970).

plaintiff's Volkswagen camper bus' windows were covered with two large and several small American flags. Suspecting a possible desecration of the American flag, the Commandant of Midshipman ordered the Assistant Commandant of Midshipman and the Academy Security Officer to search the vehicle. The search revealed a bag of marijuana and a can of beer, both Class I offenses punishable with from fifty demerits to dismissal. The plaintiff was suspended the following day and dismissed six days later after a "Superintendent's Mast." Plaintiff appealed his dismissal to the Board of Trustees. Three days later, at its regular monthly meeting, the Board of Trustees adopted a formal procedure to safeguard the plaintiff's rights. A hearing was held three days later and the Board strictly adhered to the rules adopted. Plaintiff was found guilty of possession of narcotics and beer on Academy property and desecration of the American flag. The Board voted unanimously to dismiss plaintiff from the Academy. The United States District Court for the Northern District of Maine found the search was reasonable. The purpose of the search was to enforce rules and regulations to insure proper conduct and discipline. There was no federal or state law enforcement participation. Plaintiff's Fourth Amendment rights were not infringed.

The United States District Court for the Southern District of Mississippi upheld the search of a student's

micro-bus in Speake v. Grantham.[366] Plaintiffs were four students at the University of Southern Mississippi. A leaflet containing false information was distributed in three of the men's dormitories. The leaflet claimed that University officials had cancelled classes for the two days preceding final examinations in the Spring semester due to the recent disturbance on a nearby campus, namely the killing of some black students on the Jackson State campus. Plaintiffs' vehicle was stopped by university officials when it failed to stop at a stop sign. The arresting officer saw a stack of the illicit leaflets protruding from under the front seat and searched the micro-bus. The Court reasoned that the arrest was lawful since the plaintiff driving the vehicle had violated a traffic regulation and the contemporaneous search was incident to a lawful arrest. The Court upheld the search under the "plain view" doctrine. Citing Harris v. United States[367] the Court agreed: "It has long been settled that objects falling in the plain view of an officer who has a right to be in a position to have that view are subject to seizure and may be

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[366] Speake v. Grantham, 317 F. Supp. 1253 (Mississippi 1970).

[367] Harris (1968), Supra.

introduced in evidence."[368] The Board of Trustees properly admitted the evidence at the disciplinary hearing which resulted in the one year suspension of all four plaintiffs. The Court acknowledged the right of university officials to promulgate reasonable rules and regulations to insure that discipline and order are maintained. The possible disruption the leaflets would have caused justified the university officials' prompt action.

> It is not required that college authorities delay action against those who would disrupt the academic process or interfere with the orderly conduct thereof or the rights of other students until after the action has been taken and the damage inflicted.[369]

The plaintiffs' Fourth Amendment rights were not violated and the Court "adopted, approved, and affirmed"[370] the Findings, Conclusions, and Order of the Board of Trustees.

University officials accompanied a narcotics agent and a state trooper to defendant's dormitory room at Bucknell University in Commonwealth v. McCloskey.[371] The head resident gained entry by using his passkey. The student was

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[368] Speake, Supra at 1269.

[369] Id at 1278.

[370] Id at 1285.

[371] Commonwealth v. McCloskey, 272 A. 2d 271 (Pennsylvania 1970).

just awakening when he was informed the agents had a search warrant to search the room. The search yielded a bag and an envelope of marijuana, some unused marijuana cigarettes. and the "tag" ends of several marijuana cigarettes. Defendent was subsequently convicted of possession of marijuana. On appeal, the Pennsylvania Superior Court reversed the defendant's conviction. The Court reasoned that the officers were required to identify who they were and announce their purpose. The dormitory room was located on the third floor and there was no way the defendant could escape since the only exit in the hallway was guarded. There was no way the defendant could have disposed of the volume of marijuana discovered. The Court likened the dormitory room to an apartment or hotel room "in which there was a reasonable expectation of freedom from governmental intrusion."[372] The University had the right to inspect the room but this did not give the University the right to waive defendant's constitutional rights by consenting to a government search. The Court distinguished the instant search from Moore v. Student Affairs Committee of Troy State University[373] because the search in Moore involved disciplinary proceedings at the

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[372] Id at 273.

[373] Moore, Supra.

University and not criminal prosecution. The search was held improper and the defendant's sentence was vacated.

University officials, working in conjunction with police officials and student informers, authorized the search of several dormitory rooms in Piazzola v. Watkins.[374] No search warrants were obtained and the searches were conducted by police without consent. Subsequently, two Troy State University students were convicted of possession of marijuana and sentenced to five years imprisonment. After exhausting their state remedies, plaintiffs' petitions for federal habeas corpus were granted by the United States District Court for the Middle District of Alabama and the government appealed. The United States Fifth Circuit Court of Appeals affirmed the District Court. The Court held that the University regulation authorizing the search of a dormitory room was reasonable if it was for the furtherance of a University purpose. However, the regulation could not be construed to require students to waive their constitutional right to be free from unreasonable searches and seizures. Quoting Judge Burstein In People v. Cohen[375] the Court agreed the present search "was, in essence, a fishing

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[374]Piazzola v. Watkins, 442 F. 2d 284 (5th Cir., 1971).

[375]People v. Cohen, Supra.

expedition calculated to discover narcotics."[376] The Court further agreed with Judge Cercone speaking for the Court in Commonwealth v. McCloskey,[377] "A dormitory room is analogous to an apartment or hotel room."[378] The occupants had a reasonable expectation to be free from government intrusion. The Court concluded the searches of plaintiffs' rooms were an unconstitutional invasion of their privacy and the warrantless searches were unjustified. The judgment of the United States District Court, granting plaintiffs' petitions for federal habeas corpus, was affirmed.

A noxious odor, emanating from a Stanford University library locker, prompted the supervisor of maintenance services and security guards to investigate in People v. Lanthier. The supervisor opened all the lockers and the last one contained a briefcase with a very pungent odor. Suspecting it was rotten food, the supervisor opened the briefcase and transparent bags of marijuana were in plain sight. Suspicious it was marijuana, the Santa Clara Sheriff's Department was contacted and a deputy identified the

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[376] Piazzola, Supra at 287.

[377] Commonwealth v. McCloskey, Supra.

[378] Piazzola, Supra at 288.

[379] People v. Lanthier, 488 P. 2d 625 (California 1971).

substance as marijuana. Subsequently, the student was arrested. Defendant's motion to suppress the evidence was denied and he pleaded guilty. He was placed on probation for three years and sentenced to sixty days in the county jail and he appealed. The California Supreme Court held the warrantless search of the defendant's libary locker was justified under the emergency doctrine. Once university officials had located the source of the offensive odor it was reasonable for them to identify the substance "to permit a proper disposition of the offending object."[380] They could solicit the aid of campus and local police officials. The Court concluded the contraband was not the product of an illegal search and seizure and the trial court's judgment was affirmed.

The Ohio Court of Appeals affirmed the trial court's judgment in convicting the defendant of possession of marijuana in State v. Wingerd.[381] Residence hall officials at Ohio University gained entrance to the defendant's dormitory room by knocking on the door and asking permission. The defendant voluntarily surrendered a shoebox containing marijuana and four capsules from his pocket. The Court held

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[380]Id at 629.

[381]State v. Wingerd, 318 N.E. 2d 866 (Ohio 1974).

the defendant waived his constitutional rights because he freely gave the contraband to residence hall personnel.

> We think it clear from the record that defendant agreed to the search without a word of complaint or objection and in a setting which is not to be equated with the aura of oppressiveness which oft pervades the precincts of a police station.[382]

There was no law enforcement involvement bringing into play Fourth Amendment proscriptions. The Court upheld the search under the theory that residence hall personnel were acting as private citizens. The evidence was properly admitted at defendant's trial.

Defendant was convicted of possession of an hallucinogen in City of Athens v. Wolf[383] and he appealed. Defendant, a student at Ohio University, resided in a dormitory and was in his room when police officials conducted a narcotics raid on an adjoining room. The two rooms were connected by a common bathroom and a police officer entered the bathroom to make sure no student was there and no drugs were being destroyed. The officer then entered the defendant's room through the bathroom and, when he saw the student try to conceal something behind his back, he told the student to drop it on the bed. The concealed object was a pipe which contained hashish. The Supreme Court of Ohio

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[382] Id at 868.

[383] City of Athens v. Wolf, 313 N.E. 2d 405 (Ohio 1974).

reversed the trial court's ruling. The Court reasoned that the Fourth Amendment's protections extended to students in dormitory rooms.

> Athough few people who have ever resided in a college dormitory would favorably compare those living quarters to the comfort of a private home, a dormitory room is "home" to large numbers of students who attend universities in this state. Because of the very nature of dormitory life, privacy is a commodity hard to come by, however much desired.[384]

The warrant to search the adjoining room did not extend to include the search of the defendant's room. The Court rejected the theory that the officer saw the contraband in "plain view" since nothing was visible until the officer actually entered the defendant's room and told the defendant to drop the object concealed behind his back. The Court further rejected the argument that the search fell within one of the defined exceptions to the warrant requirement. Specifically, the officer had no reason to believe a crime was being committed in his presence. Nor could the Court agree the officer's motivation for entering the room "was reasonably related to protection of himself or others from an objectively recognizable threat of imminent harm."[385] The trial court's judgment was reversed.

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[384] Id at 407.

[385] Id at 409.

A dormitory room at a private college was searched in People v. Haskins.[386] A college official, acting on a rumor from a confidential source, went to search the defendant's room. When nobody answered the door, he used his passkey to open the suite where defendant lived. Once in the suite, he saw the student leave an unoccupied room, and he went to investigate. Marijuana was lying openly on the floor. The student was brought to the official's office and the police were called. The trial court granted the student's motion to suppress the evidence on the ground that the student did not consent to the search. The New York Appellate Court reversed and denied the defendant's motion to suppress the evidence. The court reasoned that the evidence was obtained without any police involvement. The court found that:

> . . . the same standards should apply to evidence seized by school officials, whether they be employed by Elmira College, or any other private college or school, by the State University of New York, or by a public high school.[387]
>
> To hold that evidence seized as the result of identical searches conducted by school officials should in one case be inadmissible because the search was conducted on a campus of the State

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[386] People v. Haskins, 369 N.Y.S. 2d 869 (1975).

[387] Id at 871.

> University of New York and in another case be admissible because the search was conducted on the campus of a private school such as Elmira College would be completely unjust.[388]

The court compared the instant search with the search in Overton.[389] The locker search was upheld because the student had no expectation to privacy in a locker over which school authorities retained control. Here, the defendant had no expectation to privacy in an unoccupied dormitory room. The marijuana could be properly admitted into evidence.

Students at a Michigan state college brought suit under 42 U.S.C. Section 1983 seeking declaratory and injunctive relief in Smyth v. Lubbers.[390] Students claimed their dormitory rooms were illegally searched and the evidence should be suppressed at the college disciplinary proceedings. The United States District Court for the Western District of Michigan held adult students had the same reasonable expectation to privacy as any other adult. Even though the plaintiffs had signed a contractual agreement in renting a dormitory room which permitted inspection of rooms, they did not waive their Fourth Amendment rights. College officials, working with security officers who were

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[388] Id at 872.

[389] Overton, Supra.

[390] Smyth v. Lubbers, 398 F. Supp. 777 (Michigan, 1975).

also deputy sheriffs, could not search without probable cause, absent exigent circumstances. The dormitory room possessed the attributes of a private dwelling and college officials were required to seek a warrant issued by a neutral and detached magistrate. The Exclusionary Rule was applicable and would have the same deterrent effect on college officials as it has on the excesses of law enforcement officials. The Court was not persuaded by the College's claim to extraordinary powers. In the words of the Court: "the college has not established that obedience to the drug laws and regulations is so crucial to the performance of its educational function that extraordinary means of enforcement must be allowed."[391] The searches were conducted at 12:45 A.M., without warrants, and without consent. The plaintiffs were found guilty of possession of marijuana and were suspended. The Court agreed that the punishments were harsher than either a state or federal court would impose and held that the evidence was inadmissible in the disciplinary proceedings.

A student was convicted of possession of marijuana and she appealed in State v. Kappes.[392] The plaintiff was a student at Northern Arizona University and she was the sole

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[391] Id at 790.

[392] State v. Kappes, 550 P. 2d 121 (Arizona, 1976).

occupant of a dormitory room located on the campus. The student had signed a "housing agreement," and agreed to abide by university regulations. One of these regulations stipulated that university personnel could enter a student's room to "inspect for cleanliness, safety or the need for repairs and maintenance."[393] It was the policy of residence hall advisors to inspect the rooms once a month after posting a notice twenty-four hours beforehand. In the instant case, the plaintiff had left marijuana and a pipe in plain view. The advisors notified the campus security office and two campus security officers and a police officer responded to the summons. Upon seeing the contraband, the security officers went to the office of the Dean of Students to obtain a "search authorization." This document authorized the search of a room "when there is reason to believe it contains drugs or narcotics."[394] The evidence seized was to be used only at school disciplinary proceedings. The plaintiff returned to her room before the security officers returned and was arrested by the police officer. The student voluntarily surrendered a bag of marijuana. When the security officers returned, more contraband was found. The trial court admitted into evidence only that which was

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[393] Id at 122.

[394] Id at 123.

originally seen in plain view by residence hall personnel. The Arizona Court of Appeals affirmed the lower court. The Court reasoned that the search was school initiated since the student advisors were making a routine inspection for "the health, welfare and safety of its students, many of whom are experiencing life away from home for the first time."[395] The advisors were acting as private citizens and hence, did not violate the student's Fourth Amendment rights when they summoned law enforcement officials. The motion to suppress the evidence was properly denied.

In Ekelund v. Secretary of Commerce[396] the United States District Court for the Eastern District of New York upheld the search of a midshipman's dormitory room. Acting on reliable information, police searched the plaintiff's room for marijuana and dangerous drugs with the cooperation of officials at the United States Merchant Marine Academy. No search warrant had been issued. The midshipman was dismissed from the Academy for possession of marijuana after the executive board held a disciplinary hearing. The District Court denied plaintiff a preliminary injunction restraining the Academy from imposing penalties. The Court

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[395] Id at 124.

[396] Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (New York, 1976).

reasoned that the executive board could admit the police records and seized evidence at the disciplinary hearing because the police had probable cause, based on credible information, to search the plaintiff's room. The rooms of midshipman were subject to regular inspections. Consequently, the plaintiff had no reasonable expectation to privacy. Furthermore, the police did not have to secure a warrant because exigent circumstances existed since the evidence could have been removed or destroyed. The search resulted in the initiation of civil proceedings and although the consequences were grave, they were not "punitive or vindictive."[397] The Court agreed that "the critical issue was whether or not he [the midshipman] was consciously in possession of marijuana in his quarters."[398]

In Morale v. Grigel[399] a student's dormitory room was searched because a stereo was missing. The plaintiff was a student at the New Hampshire Technical Institute. The first search occurred on a Saturday night and it was conducted by the Head Resident and a student Assistant Resident. The room to room search and a search of dormitory residents'

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[397] Id at 106.

[398] Id.

[399] Morale v. Grigel, 422 F. Supp. 988 (New Hampshire, 1976).

cars failed to turn up the missing stereo. The Head Resident then reported the theft to the Concord police. Acting on his own, the student Assistant Resident returned to the plaintiff's room because a tile in the ceiling has been dislocated and a stereo could have been hidden above the suspended ceiling. The plaintiff was not in his room at this time, so the Assistant Resident attempted to use a plastic card to open the door. When this failed, the Assistant Resident sent another student to get the passkey from the Head Resident, using a phony story. The second search was conducted by the Assistant Resident and two other students without authority and without the Head Resident.

The next morning, another search of Morales' room by five students, including the Assistant Resident, acting under no authority, again failed to find the stereo or any other items recently stolen. A cannister with marijuana seeds was found at this time, but the students left it in the room. The plaintiff sought out the Head Resident and informed her of the searches. She, in turn, told the students harassing the plaintiff to leave him alone. The Assistant Resident told the Head Resident of the marijuana and again the plaintiff's room was opened with the Head Resident's passkey and the cannister with marijuana and a pipe were taken from plaintiff's room. The plaintiff admitted these items were his.

On Monday morning, these items were turned over to campus security and the Head Resident signed the incident report. The material in the cannister and the pipe was never analyzed. Subsequently, a college disciplinary hearing was held and the plaintiff was suspended for one semester. The student appealed the decision and after a second hearing, the Institute's Director affirmed the decision of the Judicial Committee.

The United States District Court for New Hampshire agreed that the searches of the plaintiff's room were unreasonable. However, the court further reasoned that the Exclusionary Rule did not apply to college disciplinary proceedings since there was no police involvement. The proceedings were civil and the United States Supreme Court had applied the Exclusionary Rule only in criminal cases. ". . . the Supreme Court has intentionally left students basically remediless in the federal courts for violation of their Fourth Amendment rights."[400] The Court further determined that the plaintiff's procedural due process rights had not been violated. The Court summed up its decision in these words:

> However, as the Supreme Court noted, federal courts do not sit in judgment of the wisdom of school

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[400]Id at 1001.

> administrators, students or even attorneys. There was ample evidence supporting the charge against Morale, and I find no constitutional basis upon which a federal court can correct the errors of judgment by all so starkly apparent in the record.[401]

The Court awarded judgment for the defendants and the case was dismissed.

In a 5-3 decision, the United States Supreme Court upheld a search of the premises of a university student newspaper in Zurcher v. Stanford Daily.[402] The administrative offices of the Stanford University Hospital had been taken over by a large group of student demonstrators and the director of the hospital solicited the help of the Palo Alto Police Department and the Santa Clara County Sheriff's Department. After several unsuccessful attempts to persuade the demonstrators to leave peacefully, police forced their way into the administrative offices and were attacked by the demonstrators. All nine police officers were injured. Two days later, the student newspaper, the Stanford Daily, published pictures of the clash between demonstrators and police. The following day, the Santa Clara District Attorney's Office secured a warrant to search the newspaper's offices for negatives, film, and pictures documenting the hospital

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[401] Id at 1004-1005.

[402] Zurcher v. Stanford Daily, 436 U.S. 547, 56 L. Ed. 2d 525, 98 S. Ct. 1970 (1978).

demonstration. A month later, the student newspaper and various staff members brought suit seeking declaratory and injunctive relief under 42 U.S.C. Section 1983 against the police officers, the chief of police, the district attorney and one of his deputies, and the judges who issued the warrant.

The United States District Court for the Northern District of California granted declaratory relief and the Ninth Circuit Court of Appeals affirmed. The Court held that the Fourth Amendment forbade the issuance of a warrant to search one not suspected of crime unless there was probable cause to believe that a subpoena duces tecum would be impracticable.

In reversing, the Supreme Court held:

> Under existing law, valid warrants may be issued to search any property, whether or not occupied by a third party, at which there is probable cause to believe that fruits, instrumentalities, or evidence of a crime will be found.[403]

The Court acknowledged that "Where the materials sought to be seized may be protected by the First Amendment, the requirements of the Fourth Amendment must be applied with 'scrupulous exactitude.'"[404] Nothing should be left to the discretion or whim of the officer in the field. The Court

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[403] Id at 1975.

[404] Id at 1981.

opined:

> Properly administered, the preconditions for a warrant—probable cause, specificity with respect to the place to be searched and the things to be seized, an overall reasonableness—should afford sufficient protection against the harms that are assertedly threatened by warrants for searching newspaper offices.[405]

The Supreme Court upheld the instant search.

Officers of the Bakersfield Police Department and the Federal Drug Enforcement Administration learned from a reliable informant that a black chemistry professor at California State University was manufacturing and selling phencyclidine (PCP) in People v. Dickson.[406] The information sufficiently identified the defendant as the only person fitting that description. Subsequently, the defendant was convicted of manufacturing PCP. The Court of Appeal affirmed the trial court's judgment reasoning that defendant had no reasonable expectation to privacy since science professors, lab technicians, janitors and the campus police had keys to the lab. Safety officers and fire marshals also entered the lab to conduct safety inspections.

> In the present case, we have a highly educated college professor using a school laboratory with explicit knowledge that the police as well as many other persons had ready access to the lab

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[405] Id at 1981-1982.

[406] People v. Dickson, 154 Cal. Rptr. 116 (1979).

> at all hours of the day or night. Manifestly, he could not reasonably expect any degree of Fourth Amendment privacy in the laboratory under these circumstances.[407]

The PCP was in plain sight of any who entered the laboratory. "Seizure of evidence in plain sight by an officer in a place where he has a right to be is permissible."[408] The search and seizure was upheld.

A mass communications professor at the University of West Florida showed the film "Deep Throat" in Roberts v. State.[409] The plaintiff wanted his class to have a "common frame of reference for debate—in deliberating upon the obscenity of a particular work."[410] The state attorney's office conducted an investigation and the plaintiff voluntarily surrendered the film. Later, the plaintiff withdrew his consent and the state petitioned the county court to destroy the film. The petition was granted and the professor appealed. The Florida Supreme Court held that before the destruction of the film could take place, it must be brought before a judge for his adjudication. The film was never even brought before a neutral magistrate for a

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[407] Id at 119.

[408] Id.

[409] Roberts v. State, 373 So. 2d 672 (Florida, 1979).

[410] Id at 674.

preliminary determination as to the film's obscenity. The state's attorney improperly attempted to use subsection 847.011 (7) of the Florida Code before judicial determination of criminal conduct. In the words of the Court: "The seizure of any material arguably protected by the first amendment must sustain a particularly 'high hurdle in the evaluation of reasonableness' under the fourth amendment."[411]

Finally, the Supreme Court reversed the Washington Supreme Court in Washington v. Chrisman.[412] A student was observed carrying a bottle of gin on the Washington State University campus in violation of university regulations. The arresting officer stopped the student and requested his identification. The student had to return to his dormitory room for his identification. The officer accompanied the student and while standing in the doorway he observed what he thought to be marijuana and a seashell pipe. Upon entering the room, he confirmed his suspicions and called for a second officer. Both students occupying the room were then apprised of their rights and agreed to waive such rights both orally and in writing. The search yielded more marijuana and lysergic acid diethylamide (LSD). The trial

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[411] Id.

[412] Washington v. Chrisman, ___U.S.___, ___ L. Ed. 2d ___, 102 S. Ct. 812 (1982).

court affirmed the convictions but the Washington Supreme Court reversed on the grounds that no exigent circumstances existed to justify the warrantless search. The United States Supreme Court again reversed and remanded the case for further proceedings. The Court, in a 6-3 decision, reasoned it was not unreasonable for an officer to monitor the movements of an arrested person and in doing so, seize contraband in plain view. Furthermore, the students knew their rights and voluntarily consented to the search. Therefore, the evidence seized was properly admitted into evidence.

Conclusions

Over the last two decades, the courts have been called upon to determine the scope of Fourth Amendment protections in colleges and universities. Students at higher education institutions do not shed their rights at the schoolhouse gate. "It is established beyond cavil that one does not lose his constitutional rights by matriculation at a college. Those rights follow the student through the classroom door."[413]

Six cases involved school disciplinary hearings.[414] Courts responded favorably when there was no police

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[413] Speake, Supra at 1266.

[414] Moore, Keene, Speake, Smyth, Ekelund and Morale, all Supra.

involvement and the searches were for a legitimate purpose. However, in Smyth v. Lubbers[415] and Morale v. Grigel[416] the searches were not lawful. In Smyth the campus security police were also law enforcement agents and subject to the Exclusionary Rule and in Morale the searches were indiscriminate.

Searches have been upheld when there was reasonable cause to believe the circumstances warranted a search.[417] In Moore v. Student Affairs Committee of Troy State University[418] the United States District Court for the Middle District of Alabama upheld a search on this theory because "college disciplinary proceedings are not criminal proceedings." In contrast, seven years later, in Smyth v. Lubbers[419] the United States District Court for the Western District of Michigan determined this standard was insufficient to justify the search of a dormitory room. Citing Moore the Court said:

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[415] Smyth, Supra.

[416] Morale, Supra. The court upheld the college's disciplinary actions.

[417] People v. Kelly, State v. Wingerd, Ekelund, Zurcher People v. Dickson, all Supra.

[418] Moore, Supra at 730.

[419] Smyth, Supra at 790-791.

> This court rejects the theory that College officials acting pursuant to regulations may infringe on the outer limits of an adult's constitutional rights. Burnside and Moore, upon which the College relies, were decided before Tinker, supra, which rejected the proposition that students "shed their constitutional rights . . . at the schoolhouse gate." [Citations omitted] The Fourth Amendment is flexible enough to meet a variety of public needs, but it will not admit of slight infringements.[420]

Several searches were justified because probable cause existed.[421] In State v. Bradbury[422] and Smyth v. Lubbers[423] the searches of students' dormitory rooms were not upheld because university and police officials did not have probable cause to search.

Searches conducted by law enforcement officials were upheld in five cases. In People v. Kelly[424] the California Appellate Court upheld the search of a student's dormitory room under the theory that the commission of a felony was an emergency. In Moore v. Student Affairs Committee of Troy

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[420] Id at 789.

[421] People v. Kelly, Moore, Speake, Zurcher, all Supra.

[422] State v. Bradbury, Supra.

[423] Smyth, Supra.

[424] People v. Kelly, Supra. Decided prior to Tinker.

State University[425] the United States District Court upheld the police search because there was no criminal prosecution. In State v. Kappes[426] the Arizona Appellate Court upheld the search by residence hall personnel. Police were called after marijuana and a pipe were discovered in plain view while on a monthly, routine room inspection. In Ekelund v. Secretary of Commerce[427] the Court upheld the police search of a midshipman's room because the cadet had no expectation to privacy in a room subject to regular inspection. In People v. Dickson[428] the California Appellate Court affirmed the police search of a chemistry laboratory because the professor had no reasonable expectation to privacy.

Police were called in after the search in three of the cases and all were upheld. In United States v. Coles[429] a park ranger was summoned after an administrative officer searched the suitcase of a job corps student. In People v. Lanthier[430] police were called in to identify a substance

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[425] Moore, Supra.

[426] State v. Kappes, Supra.

[427] Ekelund, Supra.

[428] People v. Dickson, Supra.

[429] United States v. Coles, Supra.

[430] People v. Lanthier, Supra.

found in a book locker at a university library. In People v. Haskins[431] police were called after a college official discovered contraband in an unoccupied dormitory room the defendant had just vacated.

Six searches conducted by police were not upheld. In State v. Bradbury[432] the frisking of a student visiting a room police had a warrant to search was not upheld. In People v. Cohen[433] a New York district court did not uphold the warrantless search by police of a student's dormitory room. The court determined the search was a fishing expedition to discover evidence of a crime. In Commonwealth v. McCloskey[434] the Pennsylvania Superior Court did not uphold the search of a student's dormitory room when officers did not state their purpose and identity. In Piazzola v.

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[431] People v. Haskins, Supra.

[432] State v. Bradbury, Supra.

[433] People v. Cohen, Supra.

[434] Commonwealth v. McCloskey, Supra.

Watkins[435] the United States Fifth Circuit Court did not uphold the search of students' dormitory rooms when the searches were fishing expeditions for criminal evidence. In City of Athens v. Wolf[436] the search of a dormitory room by police was not upheld when the officer searched a room not specifically named in a search warrant. In Smyth v. Lubbers[437] the United States District Court did not uphold the warrantless search by police of students' dormitory rooms when there was no consent to search and the penalties imposed by a college disciplinary committee were severe.

Five courts upheld searches without warrants. In People v.Kelly[438] the Court upheld the search of a student's dormitory room because police had reasonable cause to believe the defendant had stolen property. In Moore v.

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[435] Piazzola, Supra. the searches in this case and in Moore, Supra, occurred at the same time and place, on February 28, 1968, at Troy State University. Moore was upheld by the United States District Court because there was no police search and no criminal conviction resulted. In Piazzola, the plaintiffs were convicted and sentenced to five years imprisonment. Here, police did search the room. The Fifth Circuit Court reached a different conclusion and declared the warrantless searches unconstitutional.

[436] City of Athens, Supra.

[437] Smyth, Supra.

[438] People v. Kelly, Supra.

Student Affairs Committee of Troy State University[439] the District Court upheld the warrantless search of a dormitory room. There were no criminal charges and the University handled the infraction of residence hall regulations through a disciplinary hearing. In United States v. Coles[440] the District Court upheld the warrantless search of a suitcase because it was the duty of the administrative officer to remove harmful influences at the job corps center. In People v. Lanthier[441] the warrantless search of a library locker was upheld. The university official was not looking for evidence of crime. His concern was to remove the noxious odor emanating from one of the carrels. In Ekelund v. Secretary of Commerce[442] the warrantless search of a midshipman's room was upheld because police acted before the evidence could be removed or destroyed.

Five courts did not uphold warrantless searches. In People v. Cohen[443] the New York Appellate Court granted defendant's motion to suppress the evidence because there

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[439] Moore, Supra.

[440] United States v. Coles, Supra.

[441] People v. Lanthier, Supra.

[442] Ekelund, Supra

[443] People v. Cohen, Supra

was sufficient time to obtain a warrant. In Piazzola v. Watkins[444] the Fifth Circuit Court did not uphold the warrantless searches of students' dormitory rooms which resulted in criminal prosecution and prison terms. In Smyth v. Lubbers[445] the District Court determined the warrantless searches of students' dormitory rooms were unreasonable. The Court went on to review the purposes of the search warrant: "A prior affidavit and warrant build a record, establish the presumptive validity of the search, and minimize the burden of justification in post-search hearings.[446] In Morale v. Grigel[447] the District Court found the searches of a student's room illegal but did not provide a remedy for the student's civil rights suit. In Roberts v. State[448] the Florida Supreme Court decided the destruction of an obscene film was unreasonable where no warrant was issued to obtain the film. The film had never been brought before a judge for a determination of obscenity and criminal intent.

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[444] Piazzola, Supra.

[445] Smyth, Supra.

[446] Id at 793.

[447] Morale, Supra.

[448] Roberts, Supra.

Three courts declared searches unreasonable even though search warrants had been issued. In State v. Bradbury[449] the New Hampshire Supreme Court did not uphold the frisking of a student visiting a dormitory room. The police had a warrant to search the dormitory room and by some coincidence the defendant just happened to be there. In Commonwealth v. McCloskey[450] police had a warrant to search a student's dorm room. However, the Pennsylvania Superior Court did not uphold the search when officers failed to state their identity and purpose. In City of Athens v. Wolf[451] a warrant had been issued to search a dormitory room other than the defendant's. The defendant's room was not named in the warrant and there was no other justification for entering the defendant's room.

Only two courts upheld searches with warrants. In State v. Wingerd[452] the Ohio Appellate Court upheld the validity of a warrant issued by an administrator. In Zurcher v. Stanford Daily[453] the United States Supreme Court

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[449] State v. Bradbury, Supra.

[450] Commonwealth v. McCloskey, Supra.

[451] City of Athens, Supra.

[452] State v. Wingerd, Supra.

[453] Zurcher, Supra.

upheld the search of a student newspaper. The defendants argued a subpoena duces tecum was the appropriate process to use in obtaining materials protected by the First Amendment. The Court did not agree and pointed out that search warrants were more difficult to obtain. Furthermore, a subpoena could be challenged in court before execution and the delay could result in the destruction or loss of evidence.

The courts upheld four searches when exigent circumstances existed. In People v. Kelly[454] the court upheld the police search under the theory that a felony is an emergency. In People v. Lanthier[455] an emergency existed when a noxious odor emanated from a book locker and university personnel could not locate the source of the offensive odor. In Ekelund v. Secretary of Commerce[456] the search was upheld because a midshipman could have removed or destroyed evidence if police did not act immediately. In Zurcher v. Stanford Daily[457] exigent circumstances justified the immediate search of a student newspaper. The possibility of

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[454] People v. Kelly, Supra.

[455] People v. Lanthier, Supra.

[456] Ekelund, Supra.

[457] Zurcher, Supra.

losing, misplacing or destorying photographs warranted the search.

In People v. Cohen[458] the New York Appellate Court determined no exigent circumstances existed to justify the warrantless search. There was no immediate danger the evidence would be removed or destroyed. In Commonwealth v. McCloskey[459] the Pennsylvania Superior Court reached the same conclusion. In City of Athens v. Wolf[460] the Ohio Supreme Court was not persuaded by the government's argument that exigent circumstances existed when police searched a room with a warrant issued to search an adjoining room. In Washington v. Chrisman[461] the United States Supreme Court ruled the defendant was under lawful arrest and there was no need for exigent circumstances to justify the search of a dorm room.

Four searches were upheld because consent was given. In United States v. Coles[462] the jobs corps student voluntarily allowed an administrative officer to search his

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[458] People v. Cohen, Supra.

[459] Commonwealth v. McCloskey, Supra.

[460] City of Athens, Supra.

[461] Washington, Supra.

[462] United States v. Coles, Supra.

suitcase. In Keene v. Rodgers[463] a student at a quasi-military academy allowed officials to search his vehicle. In State v. Wingerd[464] a university student voluntarily surrendered contraband to residence hall personnel. In Washington v. Chrisman[465] two students consented voluntarily to a search of their dormitory room. The students were informed of their rights and, both orally and in written form, agreed to the search.

Four courts did not uphold the searches of dormitory rooms when no consent was given. In People v. Cohen, Commonwealth v. McCloskey, Piazzola v. Watkins, and Smyth v. Lubbers[466] no consent was given. No consent was given in Moore v. Student Affairs Committee of Troy State University[467] but the United States District Court upheld the dorm search when no criminal prosecution resulted. In Roberts v. State[468] a mass communications professor voluntarily

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[463] Keene, Supra.

[464] State v. Wingerd, Supra.

[465] Washington, Supra.

[466] People v. Cohen, Commonwealth v. McCloskey, Piazzola and Smyth, all Supra.

[467] Moore, Supra.

[468] Roberts, Supra.

surrendered a film to the state attorney's office and later withdrew his consent.

Seven courts addressed the Exclusionary Rule. In People v. Haskins[469] the New York Appellate Court determined college officials at a private college should be held to the same standard as officials in state colleges and universities. The evidence was admissible at trial. In United States v. Coles[470] marijuana found in a suitcase was admissible. In Speake v. Grantham[471] leaflets found in a microbus were held to be admissible as evidence. In State v. Kappes[472] the Arizona Appellate Court held evidence found in a routine room inspection was not "tainted with that degree of governmental authority which will evoke the fourth amendment." In Ekelund v. Secretary of Commerce[473] evidence found in a mdishipman's room and police reports were admissible in civil proceedings conducted at the Merchant Marine Academy because there was no criminal prosecution. In

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[469] People v. Haskins, Supra.

[470] United States v. Coles, Supra.

[471] Speake, Supra.

[472] State v. Kappes, Supra at 124.

[473] Ekelund, Supra.

Morale v. Grigel[474] the Court determined the search was illegal but the Exclusionary Rule applied only to criminal proceedings and there were no such proceedings in the instant case.

A contrary decision was reached in Smyth v. Lubbers.[475] Here, the evidence discovered in the searches of plaintiff's dorm room was declared inadmissible at college disciplinary hearings.

> If there were no exclusionary rule in this case, the College authorities would have no incentive to respect the privacy of its students . . . the exclusionary rule remains the only possible deterrent, the only effective way to positively encourage respect for the constitutional guarantee.[476]

Two searches were conducted as an incident to arrest. In Speake v. Grantham[477] a micro-bus was stopped for a traffic violation. The officer saw in plain view leaflets purporting to cancel classes at the university. The seizure of the evidence was upheld. In Washington v. Chrisman[478] the

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[474] Morale, Supra.

[475] Smyth, Supra.

[476] Id at 794.

[477] Speake, Supra.

[478] Washington, Supra.

court upheld the seizure of contraband by a Washington State University guard because defendant was under lawful arrest. The reverse was true in People v. Cohen.[479] Here, officers went on a fishing expedition and then arrested the defendant.

In two of the above cases, Speake v. Grantham[480] and Washington v. Chrisman,[481] the searches were also justified because officers saw in plain view illicit material. Three other court decisions sustained searches on the Plain View Doctrine. In People v. Lanthier[482] a university official opened a briefcase found in a library book locker. The supervisor suspected the noxious odor permeating the library was rotting food. Once the briefcase was opened, the contraband was in plain view. In State v. Kappes,[483] the Arizona Appellate Court affirmed the conviction of a student for possession of marijuana when student advisors found the contraband in plain view on a routine room inspection. In People v. Dickson[484] the phencyclidine (PCP), produced in

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[479] People v. Cohen, Supra.

[480] Speake, Supra.

[481] Washington, Supra.

[482] People v. Lanthier, Supra,

[483] State v. Kappes, Supra.

[484] People v. Dickson, Supra.

the defendant's laboratory on the university campus, was in plain view to all who had access to the lab.

In eight cases informants were used. Five were held to be reasonable[485] and three were held to be unreasonable.[486] Apparently the role of the informer was accepted. The only case where the court alluded to the identity of the informers was in Piazzola v. Watkins.[487] "The informers, whose identities have not yet been disclosed, provided the police officers with names of students whose rooms were to be searched."[488] The Court did not say the names had to be revealed.

A number of cases spoke of the right of college and university officials to promulgate rules and regulations to maintain order and discipline in order to fulfill their educational mission.

> Certainly, universities have inherent authority to maintain order and to discipline students and should have latitude and discretion in the formulation of their rules and regulations and of general standards of conduct . . . unless university

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[485] People v. Kelly, Moore, People v. Haskins, Ekelund, People v. Dickson, All Supra.

[486] State v. Bradbury, People v. Cohen, Piazzola, all Supra.

[487] Piazzola, Supra.

[488] Id at 286.

> and college officials have authority to keep order, they have no power to guarantee education.[489]

These rules and regulations must strike a balance between the institution's interest and that of the individual. The college student's dormitory room was compared to an apartment or hotel room where the occupant has a reasonable expectation to privacy and freedom from unwarranted governmental intrusion. The student is an adult.

> The plaintiff's dormitory room is his house and home for all practical purposes, and he has the same interest in the privacy of his room as any adult has in the privacy of his home, dwelling, or lodging.[490]

The University cannot compel a student to waive his constitutional rights "as a condition to his occupancy of a college dormitory room."[491]

> A student naturally has the right to be free of unreasonable searches and seizures, and a tax-supported public college may not compel a "waiver" of that right as a condition precedent to admission.[492]
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> Furthermore, a blanket authorization in an adhesion contract that the College may search the room for violation of whatever substantive regulations the College chooses to adopt and pursuant

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[489] Speake, Supra at 1272.

[490] Smyth, Supra at 786.

[491] Piazzola, Supra at 289.

[492] Moore, Supra at 729

> to whatever search regulation the College chooses to adopt is not the type of focused, deliberate, and immediate consent contemplated by the Constitution.[493]

In two cases the students did waive their rights and the courts upheld the searches. In State v. Wingerd[494] the Ohio Appellate Court agreed the defendant waived his constitutional rights:

> . . . without a word of complaint or objection and in a setting which is not to be equated with the aura of oppressiveness which oft pervades the precincts of a police station. The trial court held the physical evidence to be admissible, and we cannot say it erred in so doing.[495]

In Washington v. Chrisman[496] the United States Supreme Court upheld the search of a dorm room because the students consented both orally and in writing. ". . . each acknowledged that he understood his rights and indicated that he was willing to waive them."[497]

A discussion of searches held to be unreasonable and reasonable will be useful to college and university

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[493] Smyth, Supra at 788.

[494] State v. Wingerd, Supra.

[495] Id at 868.

[496] Washington, Supra.

[497] Id at 2.

officials in order to understand the parameters courts have delineated (see Table 4.4).

Searches Considered Unreasonable

Seven of the twenty searches were considered to be unreasonable.[498] All seven were searches of dormitory rooms and all but one[499] involved police action. In State v. Bradbury[500] police had a warrant to search a room but the New Hampshire Supreme Court determined this did not extend to include the frisking of a student visiting the room at the time. In People v. Cohen[501] a New York appellate court did not uphold the search of a dorm room when the purpose of the search was to find evidence of a crime. In Commonwealth v. McCloskey[502] a Pennsylvania appellate court reversed a trial court decision when police did not state their purpose or identity and no exigent circumstances existed to justify a search. In Piazzola v. Watkins[503] the Fifth Circuit Court

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[498]In Roberts v. State no search was conducted. The seizure of a film was considered to be unreasonable.

[499]Morale, Supra. There was no police involvement.

[500]State v. Bradbury, Supra.

[501]People v. Cohen, Supra.

[502]Commonwealth v. McCloskey, Supra.

[503]Piazzola, Supra.

did not uphold the second search of a student's dorm room because it was conducted by police, without a warrant, and for the purpose of finding incriminating evidence. In City of Athens v. Wolf[504] the Ohio Supreme Court did not uphold the search of defendant's room when the warrant to search did not specifically name the defendant's room. In Smyth v. Lubbers[505] the United States District Court did not uphold the search of a dorm room when the purpose of the search was to find incriminating evidence.

> This case clearly involves a full search which focused upon the room of a specific individual who was suspected of criminal activity and which aimed at discovering specific evidence. The search was not "administrative" in the sense of a generalized or routine inspection for violations of housing, health, or other regulatory code.[506]

In Morale v. Grigel[507] the District Court held the search to be illegal but could find no remedy to right the injustice the student suffered.

Searches Considered Reasonable

Thirteen of the twenty searches were held to be reasonable. Seven of these were dormitory searches. In People v.

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[504] City of Athens, Supra.

[505] Smyth, Supra.

[506] Id at 786.

[507] Morale, Supra. The college disciplinary proceedings were upheld.

Kelly[508] a California appellate court upheld the search of a dorm room under the emergency doctrine. Police had reasonable cause to believe the defendant had stolen property in his room. In Moore v. Student Affairs Committee of Troy State University[509] the United States District Court upheld the search of a student's dormitory room by police when no criminal prosecution resulted and the matter was handled through a college disciplinary hearing. In State v. Wingerd[510] an Ohio appellate court upheld the search of a dorm room by college personnel when the defendant freely and intelligently consented to the search. In People v. Haskins,[511] a New York appellate court affirmed the search of an unoccupied dorm room by a college official at a private college. The student had no expectation to privacy in any room but his own. In State v. Kappes[512] an Arizona appellate court upheld the search of a student's room when it was a school initiated search conducted for health and safety reasons and not to find evidence of crime. In Ekelund v.

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[508] People v. Kelly, Supra.

[509] Moore, Supra.

[510] State v. Wingerd, Supra.

[511] People v. Haskins, Supra.

[512] State v. Kappes, Supra.

Secretary of Commerce[513] the United States District Court upheld the search of a midshipman's room because the student had no expectation to privacy in a room subject to regular inspections and the disciplinary hearing was a civil proceeding. The United States Supreme Court upheld the search of a dormitory room by security guards in Washington v. Chrisman.[514] Defendants had been apprised of their rights and voluntarily waived them both orally and in writing.

Two searches were automobile searches. In Keene v. Rodgers[515] officers at a quasi-military academy suspected a desecration of the national ensign and conducted a search. Contraband and liquor were found. A college disciplinary hearing resulted in dismissal of the student. The United States District Court upheld the search because the student's rights were amply protected by the procedures adopted for the hearing. A military institution could adopt stricter rules governing the conduct of students. In Speake v. Grantham[516] the United States District Court upheld the search of a micro-bus. Plaintiffs' vehicle had been stopped

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[513] Ekelund, Supra.

[514] Washington, Supra.

[515] Keene, Supra.

[516] Speake, Supra.

for a traffic violation and leaflets, falsely announcing the closing of university classes, were confiscated. The search was incident to a lawful arrest. University officials had an interest in maintaining order and discipline to fulfill its educational mission.

In United States v. Coles[517] the United States District Court upheld the search of a job corps student's suitcase by an administrative officer. The officer had an affirmative duty mandated by statute to maintain order and discipline at the jobs corps center. The removal of contraband was justified.

In People v. Lanthier[518] a university supervisor's search was upheld by the California Supreme Court. A briefcase found in a library book locker was emanating a noxious odor. Suspecting rotting food, the supervisor opened the briefcase and discovered marijuana. The Court affirmed on the theory that the supervisor was not searching for illicit materials and once the briefcase was opened, the contraband was in plain view.

The United States Supreme Court upheld the issuance of a search warrant to search the premises of a university

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[517] United States v. Coles, Supra.

[518] People v. Lanthier, Supra.

student newspaper in Zurcher v. Stanford Daily.[519] Police and demonstrators clashed at the University hospital when the officers attempted to evict the demonstrators from the hospital's administrative offices. Pictures of the event appeared in the student newspaper. Police wanted to search the newspaper's offices for information leading to the apprehension of the demonstrators.

A California appellate court upheld the search of a professor's laboratory in People v. Dickson.[520] The court hypothesized the professor had no reasonable expectation to privacy since a number of people had access to the laboratory. The phencyclidine (PCP) was in plain view.

Blanket, general searches will not be upheld by the courts. College and university students are adult students. They have a reasonable expectation to privacy and freedom from unwarranted governmental intrusion. College and university officials have an affirmative obligation to maintain order and discipline to fulfill their educational mission. Reasonable rules and regulations that balance these competing interests have a better chance of being sustained by courts. Fishing expeditions conducted to find evidence of crime will not be sustained. College and university

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[520] People v. Dickson, Supra.

students do not shed their Fourth Amendment rights by matriculation at an institution of higher learning.

Table 4.1

Searches Conducted in Higher Education

Student Newspaper Office	Book Locker	Automobiles	Suitcase	Professor's Lab	Dormitory Rooms
					People v. Kelly, 16 Cal. Rptr. 177 (1961)
					Moore v. Student Affairs Comm. of Troy St. Univ. 234 F. Supp. 725 (Ala. 1968)
					State v. Bradbury, 243 A. 2d 302 (N.H. 1968)
			U.S. v. Coles, 302 F. Supp. 99 (M3. 1969)		People v. Cohen, 292 N.Y. S. 2d 706 (1968)
		Keene v. Rodgers, 361 F. Supp. 217 (Me. 1970)			Commonwealth v. McCloskey 272 A. 2d 271 (Pa. 1970)
		Speake v. Grantham, 317 F. Supp 1253 (Miss. 1970)			
	People v. Lanthier, 488 P. 2d 625 (Cal. 1971)				Piazzola v. Watkins, 422 F. 2d 284 (5th Cir. 1971)
					State v. Wingerd, 318 318 N.E. 2d 866 (Ohio 1974)
					City of Athens v. Wolf 313 N.E. 2d 405 (Ohio 1974)
					People v. Haskins, 369 N.Y.S. 2d 869 (1975)
					Smyth v. Lubbers, 398 F. Supp. 777 (Mich. 1975)
					Morale v. Grigel, 422 F. Supp. 988 (N.H. 1976)
					St. v. Kappes, 550 P. 2d 121 (Ariz. 1976)
					Ekelund v. Secretary of Commerce, 418 F. Supp. 112 (N.Y. 1976)
Zurcher v. Stanford Daily 79 S. Ct. 1970 (1978)					
				People v. Dickson, 154 156 Cal. Rptr. 116 (1979)	
					Washington v. Chrisman, No. 80-1349 (Slip Opinion) January 13, 1982)

Table 4.2

Purpose of Searches in Higher Education Cases

Stealing	Marijuana	Dangerous Drugs	Liquor	Obscene Materials	Photographs	Illicit Materials
People v. Kelly, 16 Cal. Rptr. 177 (1961)						
	Moore v. Student Affairs Comm. of Troy St. Univ. 284 F. Supp. 725 (Ala. 1968					
	State v. Bradbury, 243 A. 2d 302 (N.H. 1968)					
	People v. Cohen, 292 Y.S. 2d 706 (1968)					
	United States v. Coles 302 F. Supp. (Me. 1969)					
	Keene v. Rodgers, 316 F. Supp. 217 (Me. 1970)		Keene v. Rodgers, 316 F. Supp. 217 (Me. 1970)			Speake v. Grantham, 317 F. Supp. 1253 (Miss. 1970
	Commonwealth v. McCloskey 272 A. 2d 271 (Pa. 1970)					
	Piazzola v. Watkins, 424 F. 2d 284 (5th Cir. 1971)					
	People v. Lanthier, 488 488 P. 2d 625 (Cal. 1971)					
	State v. Wingerd, 318 N.E. 2d 866 (Ohio)					
	City of Athens v. Wolf, 313 N.E. 2d 405 (Ohio 1974)					
	People v. Haskins, 369 NY.YS. 2d 896 (1975)					
	Smyth v. Lubbers, 398 F. Supp. 777 (Mich. 1975)					
	State v. Kappes, 550 P. 2d 121 (Ariz. 1976)					
	Ekelund v. Secty. of Commerce, 418 F. Supp. 102 (N.Y. 1976)	Ekelund v. Secty. of Commerce, 418 F. Supp. 102 (N.Y. 1976)				
	Morale v. Grigel, 422 F. Supp. 988 (N.H. 1976)				Zurcher v. Stanford Daily 98 S. Ct. 1970 (1978)	
		People v. Dickson, 154 Cal. Rptr. 116 (1979)		Roberts v. State, 373 373 So. 2d 672 (Fla. 1979)		
	Washington v. Chrisman (No. 80-1349 (Slip Opinion) January 13, 1982	Washington v. Chrisman (No. 80-1349 (Slip Opinion) Januar 13, 1982	Washington v. Chrisman (No. 80-1349 (Slip Opinion) January 13, 1982			

Table 4.3

Courts of Jursidiction in Higher Education Cases

United States Supreme Court	Federal Circuit Court	Federal District Court	State Court of Highest Jurisdiction	State Appellate Courts
				People v. Kelly (Cal. 1961)
		Moore v. Student Affairs Comm. of Troy St. Univ. (Ala. 1968)	State v. Bradbury (N.H. 1968)	People v. Cohen (N.Y. 1968)
		United States v. Coles (Me. 1969)		
		Keene v. Rodgers (Me. 1970)		Commonwealth v. McCloskey (Pa. 1970)
		Speake v. Grantham (Miss. 1970)		
	Piazzola v. Watkins (5th Cir. 1971)		People v. Lanthier (Cal. 1971)	
		Morale v. Grigel (N.H. 1974)	City of Athens v. Wolf (Ohio 1974)	State v. Wingerd (Ohio 1974)
		Smyth v. Lubbers (Mich. 1975)		People v. Haskins (N.Y. 1975)
		Ekelund v. Secretary of Commerce (N.Y. 1976)	State v. Kappes (Ariz. 1976)	
Zurcher v. Stanford Daily (1978) Washington v. Chrisman (1982)				
			Roberts v. State (Fla. 1979)	People v. Dickson (Cal. 1979)

Table 4.4

Searches Held Reasonable and Unreasonable in Higher Education

Searches Held Reasonable	Searches Held Unreasonable
•People v. Kelly, 16 Cal. Rptr. 177 (1961)	
•Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (Ala. 1968)	•State v. Bradbury, 243 A. 2d 302 (N.H. 1968)
•United States v. Coles, 302 F. Supp 99 (Me. 1969)	•People v. Cohen, 292 N.Y.S. 2d 706 (1968)
•Keene v. Rodgers, 316 F. Supp 217 (Me. 1970)	•Commonwealth v. McCloskey, 272 A 2d 271 (Pa. 1970)
•Speake v. Grantham, 317 F. Supp 1253 (Miss. 1970)	
•People v. Lanthier, 488 P. 2d 625 (Cal. 1971)	•Piazzola v. Watkins, 422 F. 2d 284 (5th Cir. 1971)
•State v. Wingerd, 318 N.E. 2d 866 (Ohio 1974)	•City of Athens v. Wolf, 313 N.E. 2d 405 (Ohio 1974)
•People v. Haskins, 369 N.Y.S. 2d 869 (1975)	•Smyth v. Lubbers, 398 F. Supp. 777 (Mich. 1975)
•State v. Kappes, 550 P. 2d 121 (Ariz. 1976)	
•Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (N.Y. 1976)	
•Morale v. Grigel, 422 F. Supp. 988 (N.H. 1976)	•Zurcher v. Stanford Daily, 436 U.S. 547, 56 L. Ed. 2d 525, 98 S. Ct. 1970 (1978)
•Washington v. Chrisman, 102 S. Ct. 812 (1982)	•People v. Dickson, 154 Cal. Rptr. 116 (1979)

CHAPTER V

CONCEPTS, DOCTRINES, AND PRINCIPLES OF LAW GOVERNING SEARCHES AND SEIZURES: A COMPARISON BETWEEN ELEMENTARY/SECONDARY AND HIGHER EDUCATION

Students, no matter what their age or status, possess fundamental Fourth Amendment rights when they go to school. The landmark Tinker[521] decision affirmed that students do not shed their constitutional rights while attending school. Over the last two decades, various courts have been called upon to decide what are the boundaries of Fourth Amendment rights guaranteed students. A number of concepts, doctrines, and principles of law have emerged to form a body of law to guide school officials in conducting searches. A comparison of the similarities and dissimilarities reveals that many of these are applicable to students at all levels. Some pertain only to students in elementary and secondary schools. Others are pertinent for college and university students.

Concepts, Doctrines, and Principles of Law Applicable to All Levels of Education

Students have a right to privacy. When that right is invaded, the school official has the burden of showing it

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[521] Tinker, Supra.

was reasonably related to a legitimate school purpose.

The Courts sustained the actions of school officials when the purpose of the search was to fulfill the school's educational mission. School officials, acting within the scope of their job, have the affirmative obligation to maintain order and discipline for the health, safety, welfare, supervision and education of students. Reasonable rules and regulations, promulgated for these purposes, will be upheld. Blanket, general, exploratory, and indiscriminate searches will not be upheld. Fishing for evidence of crime or wrongdoing offends the student's Fourth Amendment rights. Searches conducted beyond the authority of school officials to obtain convictions were not sustained. Searches conducted to remove harmful objects or influences were sustained.

The interests of the individual must be balanced against those of the school. It may be in the interest of other students for administrators to search for guns, knives, razor blades, marijuana and dangerous drugs. However, the courts required searches be based on concrete, articulable facts. Mere suspicion was not acceptable. The facts and circumstances of each case determined the reasonableness of the search.

Law enforcement officials are subject to the higher standard of probable cause to believe before they may conduct a search. School officials are subject to this higher

standard if they are acting jointly with police. The Second Circuit Court agreed that the more intrusive the search, the higher the standard to be applied.[522] School authorities, acting independently on their own initiative, were generally subjected to the lesser standard of reasonable cause to believe. Courts looked to the purpose of the search, the manner in which it was conducted, and the likely consequences in determining the standard to be applied.

Some of the searches were subject to the warrant requirement. In Louisiana, all school officials are subject to the warrant requirement.[523] A number of courts compared a college student's dormitory room to a home and required administrators to obtain valid search warrants before initiating a search. The object of a warrant is to prevent law enforcement officials and school authorities from acting beyond the bounds of reason.

The warrant must be issued by a magistrate. The neutral and detached magistrate is better able to determine whether there is sufficient justification for a search than the person in the field engaged in the competitive business of ferreting out crime.[524]

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[522] M.M. v. Anker, Supra.

[523] State v. Mora, Supra.

[524] Johnson, Supra at 369.

If exigent circumstances existed, such as the escape of an offender, the removal or destruction of evidence, or physical harm to another, warrants were not required. Another exception to the warrant requirement courts have sustained is the search of a student under lawful arrest.[525] In cases where students consented to the search, without the use of coercion, warrants were not required. Contraband seen in plain view by a person who has the right to have that view, could also be seized without a warrant.

In many instances, students took advantage of the Exclusionary Rule if they were the victims of an illegal search and seizure. Evidence illegally obtained may be excluded at the trial. A motion to suppress the evidence was granted students when school officials exceeded their authority and conducted unreasonable searches.

Searches considered unreasonable in elementary and secondary schools were those that involved the police or were highly intrusive strip searches. Searches considered unreasonable in colleges and universities were those that involved the police in dormitory searches.

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[525] Washington, Supra.

Concepts, Doctrines, and Principles of Law Applicable to College and University Students

College and university students attend school by choice and are considered adults by the courts. Correspondingly, they are assigned the rights and privileges of other adult persons in society.

> A college cannot, in this day and age, protect students under the aegis of in loco parentis authority from the rigors of society's rules and laws, just as it cannot, under the same aegis, deprive students of their constitutional rights.[526]

Colleges and universities cannot condition attendance upon a waiver of a student's constitutional rights. The dormitory room is the home of these adult students and there is a reasonable expectation to privacy once the door is closed.

Courts have sanctioned searches which have been conducted by administrators for purposes of health and safety. However, courts may impose the more stringent requirement of probable cause for searches conducted by administrators for evidence of crime, particularly if the evidence is to be used in criminal proceedings. In cases of searches conducted jointly by administrators and police, courts looked to the purpose of the search. Courts sustained school initiated searches conducted for the purpose of removing

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[526] Morale, Supra at 997.

harmful influences. If, however, the search was initiated by police to find evidence of crime the standard of probable cause was applied and a warrant was required. Searches conducted solely by law enforcement agents were held to the probable cause standard and the warrant requirement was applicable.

In sum then, university officials may not arbitrarily search dorm rooms ostensibly to maintain order and discipline. As the Court said in Smyth v. Lubbers: "Since nearly all college students in Michigan are adults, the College cannot have such a high interest in maintaining strict discipline as elementary and secondary schools."[527]

Concepts, Doctrines, and Principles of Law Applicable to Elementary and Secondary Students

In contrast to students of higher education, compulsory attendance laws mandate attendance for elementary and secondary students. The doctrine of in loco parentis, long embedded in common law, creates a distinct relationship between school officials and students.

> The school authorities have an obligation to maintain discipline over the students. It is recognized that, when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgment can often

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[527] Smyth, Supra at 789.

> create hazards to each other. Parents, who surrender their children to this type of environment in order that they may continue developing both intellectually and socially, have a right to expect certain safeguards.[528]

The rights of elementary and secondary students are not coextensive with those of adults. Courts upheld school officials when they had reasonable cause to believe a dangerous situation existed and the search was conducted prudently.

Doubtless, the courts will be called upon to further delineate the scope of Fourth Amendment protections governing searches and seizures in schools. School officials will need to keep abreast of current developments in the courts. Authorities should pay particular attention to decisions rendered by courts in whose jurisdiction they reside, as well as state statutes and local school district policies. It is well established that students have the right to be free from unreasonable searches and seizures.

Searches Conducted by College and University Officials

The rights of college and university students are more akin to those of adults. Students generally attend institutions of higher education by choice. These students have a right to expect that college and university officials will do all in their power to remove harmful and dangerous influences from the environment. This means occasions will arise when college and university authorities have an affirmative

obligation to conduct a search. The courts will look to the facts and circumstances surrounding each case in determining the reasonableness of a search. However, since higher education students are more mature and responsible, officials may be held to a higher standard in conducting searches at institutions of higher learning, particularly when evidence is used in criminal proceedings.

The courts will consider the manner in which a search is conducted. College and university officials should be able to articulate the facts that lead to a search. Authorities may act on information supplied by students, particularly if an informer has been credible in the past. Searches should be directed to particular persons and things and must be reasonably related to the school's legitimate purpose in maintaining order and discipline for the safety, health and education of students.

The courts will look to the purpose of the search. School initiated searches conducted for the purpose of removing dangerous influences are likely to be sustained, especially when no criminal proceedings ensue and the evidence is to be used solely for college disciplinary hearings. Searches conducted jointly with police, but in the school's interest, may also be sustained. Law enforcement agents, acting on their own initiative, are held to the higher

standard of probable cause and, absent exigent circumstances, these officials are subject to the warrant requirement.

The methods employed in conducting a search will also be considered by the courts. If exigent circumstances exist, such as the threat of personal harm to another, college and university officials need not wait but should act on the immediacy of the situation. Whenever possible, authorities should avoid acting on the spur of the moment. The careful deliberations of officials is to be preferred over the hurried actions of authorities fishing for wrongdoing.

In summary then, there may be times when it is legitimate for college and university officials to conduct a search. But general, exploratory, blanket and indiscriminate searches will not be sustained by the courts.

Searches Conducted by Elementary and Secondary School Officials

The rights of elementary and secondary students are not coextensive with those of adults. Parents send their children to school under compulsory state law and have a right to expect school officials will remove harmful influences from the environment. This means occasions will arise when school officials have an affirmative obligation to search students. The courts will look to the facts and circumstances surrounding each case in determining the reasonableness of a search. Generally and traditionally, elementary

and secondary school officials, acting in loco parentis, are held to the lesser standard of reasonable cause to believe. However, the more intrusive a search, the higher the standard to be applied.

The courts will consider the manner in which a search is conducted. School officials should be able to articulate the concrete facts that led to a search. Authoities may act on information supplied by students and citizens. Searches should be directed to particular students and must be reasonably related to the school's legitimate purpose in maintaining order and discipline for the safety, health, supervision and education of students.

The courts will look to the purpose of the search and will usually sustain school initiated searches conducted for the purpose of removing dangerous or harmful influences from the environment. However, school officials should not conduct searches for the purpose of obtaining convictions. Searches conducted jointly with police, but in the school's interest, may also be sustained. Law enforcement agents, acting on their own initiative, are held to the higher standard of probable cause.

The methods employed in conducting a search will also be considered by the courts. The threat of imminent danger warrants an immediate search by school officials. In cases were exigent circumstances exist, such as the removal or

destruction of evidence, the threat of personal harm to another, or the escape of an offender, school officials need not and should not wait. Whenever possible, school officials should avoid acting on the spur of the moment. The courts will not sustain the unreasonable and excessive actions of school officials such as wholesale searches which have been referred to as fishing expeditions.

In summary, then, there may be times when it is legitimate for school officials to conduct a search. But random, causeless, and indiscriminate searches will not be upheld by the courts.

BIBLIOGRAPHY

Legal Research Aids

American Digest System. St. Paul, Minn.: West Publishing Company

Century Digest 1903. Digest of all reported cases from 1658 to 1896.

First Decennial Digest 1910. Digest of all reported cases from 1897 to 1906.

Second Decennial Digest 1922. Digest of all reported cases from 1906 to 1916.

Third Decennial Digest 1929. Digest of all reported cases from 1916 to 1926.

Fourth Decennial Digest 1936. Digest of all reported cases from 1926 to 1936.

Fifth Decennial Digest 1949. Digest of all reported cases from 1936 to 1946.

Sixth Decennial Digest 1958. Digest of all reported cases from 1946 to 1956.

Seventh Decennial Digest 1967. Digest of all reported cases from 1956 to 1966.

Eighth Decennial Digest 1979. Digest of all reported cases from 1966 to 1976.

West's General Digest, Fifth Series. Volumes 1 to 33. Digest of all reported cases from 1976 to 1981.

West's General Digest, Sixth Series. Volumes 1 to 4. Digest of all reported cases from 1981 to 1982.

American Jurisprudence. Rochester, New York: The Lawyer's Co-operative Publishing Company.

American Law Reports. Rochester, New York: The Lawyer's Co-operative Publishing Company.

Black's Law Dictionary. (Revised 5th ed.) Edited by Joseph R. Nolan and M. J. Connolly, St. Paul, Minnesota: West Publishing Company, 1979.

Corpus Juris Secundum. New York: The American Law Book Company.

National Reporter System. St. Paul, Minnesota: West Publishing Company. 1879 to the present:

The Atlantic Reporter. Reports decisions of the courts of last resort of Connecticut, Delaware, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont from 1885 to the present.

The California Reporter. Reports decisions by the California Supreme Court and lower courts of record for California from 1960 to the present.

The Federal Reporter. Reports decisions by the United States District Courts and the United States Circuit Courts and other federal courts from 1880 to the present.

The Federal Supplement. Reports decisions by the United States District Courts since 1932, Court of Claims from 1932 to 1960, and the United States Customs Court since 1949.

Federal Rules Decisions. Reports Federal Rules of Civil Procedure since 1938 and Federal Rules of Criminal Procedure since 1946.

The New York Supplement. Reports decisions by the New York Court of Appeals and lower courts of record in New York from 1888 to the present.

The North Eastern Reporter. Reports decisions of the courts of last resort of Illinois, Indiana, Massachusetts, New York and Ohio from 1885 to the present

The Northwestern Reporter. Reports decisions of the courts of last resort of Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin from 1879 to the present.

The Pacific Reporter. Reports decisions of the courts of last resort of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington and Wyoming from 1883 to present.

The South Eastern Reporter. Reports decisions of the courts of last resort of Georgia, North Carolina, South Carolina, Virginia and West Virginia from 1887 to the present.

The Southern Reporter. Reports decisions of the courts of last resort of Alabama, Florida, Louisiana and Mississippi from 1887 to the present.

The South Western Reporter. Reports decisions of the courts of last resort of Arkansas, Kentucky, Missouri, Tennessee and Texas from 1886 to the present.

Shepard's Reporter Citations. Colorado Springs, Colorado: Shepard's Citations, Inc.

Published Sources

Alexander, Kern. School Law. St. Paul, Minn.: West Publishing Company, 1980.

_____ and Erwin S. Solomon. College and University Law. Charlottesville, Va.: The Michie Company, 1972.

Cohen, Morris L. How to Find the Law (7th ed.). St. Paul, Minn.: West Publishing Company, 1976.

_____. Legal Research in a Nutshell. St. Paul, Minn.: West Publishing Company, 1971.

Hudgins, H. C. and Richard S. Vacca. Law and Education: Contemporary Issues and Court Decisions. Charlottesville, Va.: The Michie Company, 1979.

McGhehey, M. A. School Law for a New Decade. Topeka, Kan.: National Organization on Legal Problems of Education, 1981.

National Organization on Legal Problems of Education. Cases on Search and Seizure. Topeka, Kan.: National Organization on Legal Problems of Education, 1980.

Rezny, A. A. A Schoolman in the Law Library (2nd ed.). Danville, Ill.: The Interstate Printers and Publishers, Inc., 1968.

Cases Cited

Adams v. New York, 192 U.S. 585, 48 L. Ed. 575, 24 S. Ct. 372 (1904).

Agnello v. United States, 269 U.S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925)

Aguilar v. State of Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964)

Amos v. United States, 255 U.S. 313, 65 L. Ed. 654, 41 S. Ct. 266 (1921)

Bellnier v. Lund, 438 F. Supp. 47 (New York 1977)

Bilbrey v. Brown, 481 F. Supp. 26 (Oregon 1979)

Boyd v. United States, 116 U.S. 616, 29 L. Ed. 746, 6 S. Ct. 524 (1886)

Bram v. United States, 168 U.S. 532, 42 L. Ed. 568, 18 S. Ct. 183 (1897)

Bumper v. State of North Carolina, 391 U.S. 542 20 L. Ed. 2d 797, 88 S. Ct. 1788 (1968)

Burdeau v. McDowell, 256 U.S. 465, 65 L. Ed. 1048, 41 S. Ct. 574 (1921)

Byars v. United States, 273 U.S. 28, 71 L. Ed. 520, 47 S. Ct. 248 (1927)

Caldwell v. Cannady, 340 F. Supp. 835 (Texas 1972)

Camara v. Municipal Court, 387 U.S. 523, 18 L. Ed. 2d 930, 87 S. Ct. 1727 (1967)

Carroll v. United States, 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280 (1925)

Chambers v. Maroney, 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970)

Chimel v. California, 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969)

City of Athens v. Wolf, 313 N.E. 2d 405 (Ohio 1974)

Colorado v. Bannister, 449 U.S. 1, ___ L. Ed. 2d ___, 101 S. Ct. 42 (1980)

Commonwealth v. Dingfelt, 323 A. 2d 145 (Pennsylvania 1974)

Commonwealth v. McCloskey, 272 A. 2d 271 (Pennsylvania 1970)

Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)

Doe v. Renfrow, 475 F. Supp. 1012 (Indiana 1979); 631 F. 2d 91 (7th Cir. 1980); 49 U.S.L.W. 3880 (May 26, 1981)

Doe v. State, 540 P. 2d 827 (New Mexico 1975)

Draper v. United States, 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329 (1959)

Dumbra v. United States, 268 U.S. 435, 69 L. Ed. 1032, 45 S. Ct. 546 (1925)

Eaton v. Price, 364 U.S. 263, 4 L. Ed. 2d 1708, 80 S. Ct. 1463 (1960)

Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (New York 1976)

Elkins v. United States, 364 U.S. 206, 4 L. Ed. 2d 1669, 80 S. Ct. 1437 (1960)

Essgee Co. of China v. United States, 262 U.S. 151, 67 L. Ed. 917, 43 S. Ct. 514 (1923)

Frank v. State of Maryland, 359 U.S. 360, 3 L. Ed. 2d 877, 79 S. Ct. 804 (1959)

Gambino v. United States, 275 U.S. 310, 72 L. Ed. 293, 48 S. Ct. 137 (1927)

Go-Bart Importing Co. v. United States, 282 U.S. 344, 75 L. Ed. 374, 51 S. Ct. 153 (1931)

Goldman v. United States, 316 U.S. 129, 86 L. Ed. 1322, 62 S. Ct. 993 (1942)

Goss v. Lopez, 419 U.S. 565, 42 L. Ed. 2d 725, 95 S. Ct. 729 (1975)

Gouled v. United States, 255 U.S. 298, 65 L. Ed. 647, 41 S. Ct. 261 (1921)

Grau v. United States, 287 U.S. 124, 77 L. Ed. 212, 53 S. Ct. 38 (1932)

Gustafson v. Florida, 414 U.S. 260, 38 L. Ed. 2d 456, 94 S. Ct. 488 (1973)

Harris v. United States, 331 U.S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947)

Harris v. United States, 390 U.S. 234, 19 L. Ed. 2d 1067, 88 S. Ct. 992 (1968)

Hester v. United States, 265 U.S. 57, 68 L. Ed. 898, 44 S. Ct. 445 (1924)

Husty v. United States, 282 U.S. 694, 75 L. Ed. 629, 51 St. Ct. 240 (1931)

In Re Boykin, 237 N.E. 2d 460 (Illinois 1968)

In Re C., 102 Cal. Rptr. 682 (1972)

In Re Donaldson, 75 Cal. Rptr 220 (1969)

In Re G., 90 Cal. Rptr. 361 (1970)

In Re State In Interest of G. C., 296 A. 2d 102 (New Jersey 1972)

In Re W., 105 Cal. Rptr. 775 (1973)

In Re Winship, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970)

Interest of L.L., 280 N.W. 2d 343 (Wisconsin 1979)

Johnson v. United States, 333 U.S. 10, 92 L. Ed. 436, 68 S. Ct. 367 (1948)

Jones v. Latexo Independent School District, 499 F. Supp. 223 (Texas 1980)

Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960)

Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967)

Keene v. Rodgers, 316 F. Supp. 217 (Maine 1970)

Ker v. State of California, 374 U.S. 23, 10 L. Ed. 2d 726 83 S. Ct. 1623 (1963)

M. v. Bd. of Ed. Ball-Chatham C.U.S.D. No. 5, 429 F. Supp. 288 (Illinois 1977)

Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684 (1961)

Marcus v. Search Warrants of Property, etc., 367 U.S. 717, 6 L. Ed. 2d 1127, 81 S. Ct. 1708 (1961)

Marron v. United States, 275 U.S. 192, 72 L. Ed. 231, 48 S. Ct. 74 (1927)

Matter of Ronald B., 401 N.Y.S. 2d 544 (1978)

Mercer v. State, 450 S.W. 2d 715 (Texas 1970)

Miller v. United States, 357 U.S. 301 2 L. Ed. 2d 1332, 78 S. Ct. 1190 (1958)

M.M. v. Anker, 607 F. 2d 588 (2d Cir. 1979)

Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (Alabama 1968)

Monroe v. Pape, 365 U.S. 167, 5 L. Ed. 2d 492, 81 S. Ct. 473 (1961)

Morale v. Grigel, 422 F. Supp. 988 (New Hampshire 1976)

McGuire v. United States, 273 U.S. 95, 71 L. Ed. 556, 47 S. Ct. 259 (1927)

Nathanson v. United States, 290 U.S. 41, 78 L. Ed. 159, 54 S. Ct. 11 (1933)

Nelson v. State, 319 So. 2d 154 (Florida 1975)

New York v. Belton, ___ U.S. ___, ___ L. Ed. 2d ___, 101 S. Ct. 2860 (1981)

Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 90 L. Ed. 614, 66 S. Ct. 494 (1946)

Olmstead v. United States, 277 U.S. 438, 72 L. Ed. 944, 48 S. Ct. 564 (1928)

Overton v. New York, 393 U.S. 85, 21 L. Ed. 2d 218, 89 S. Ct. 252 (1968)

Overton v. Rieger, 311 F. Supp. 1035 (New York 1970)

Payton v. New York, 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980)

Pennsylvania v. Mimms, 434 U.S. 106, 54 L. Ed. 2d 331, 98 S. Ct. 330 (1977)

People v. Bowers, 339 N.Y.S. 2d 783 (1973)

People v. Cohen, 292 N.Y.S. 2d 706 (1968)

People v. D., 315 N.E. 2d 466 (New York 1974)

People v. Dickson, 154 Cal. Rptr. 116 (1979)

People v. Haskins, 369 N.Y.S. 2d 869 (1975)

People v. Jackson, 319 N.Y.S. 2d 731 (1971)

People v. Kelly, 16 Cal. Rptr. 177 (1961)

People v. Lanthier, 488 P. 2d 625 (California 1971)

People v. Overton, 273 N.Y.S. 2d 143 (1966); 229 N.E. 2d 596 (1967); 283 N.Y.S. 2d 22 (1967); 301 N.Y.S. 2d 479 (1969)

People v. Singletary, 372 N.Y.S. 2d 68 (1975)

People v. Stewart, 313 N.Y.S. 2d 253 (1970)

People v. Ward, 233 N.W. 2d 180 (Michigan 1975)

Peters v. New York, 392 U.S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968)

Piazzola v. Watkins, 442 F. 2d 284 (5th Cir. 1971)

Picha v. Wielgos, 410 F. Supp. 1214 (Illinois 1976)

Potts v. Wright, 357 F. Supp. 215 (Pennsylvania 1973)

Preston v. United States, 376 U.S. 364, 11 L. Ed. 2d 777, 84 S. Ct. 881 (1964)

Ranniger v. State, 460 S.W. 2d 181 (Texas 1970)

Rios v. United States, 364 U.S. 253, 4 L. Ed. 2d 1688, 80 S. Ct. 1431 (1960)

Roberts v. State, 373 So. 2d 672 (Florida 1979)

Schenck v. United States, 249 U.S. 47, 63 L. Ed. 470, 39 S. Ct. 247 (1919)

Scher v. United States, 305 U.S. 251, 83 L. Ed. 151, 59 S. Ct. 174 (1938)

Schmerber v. State of California, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966)

See v. City of Seattle, 387 U.S. 541, 18 L. Ed. 2d 943, 87 S. Ct. 1737 (1967)

Segurola v. United States, 275 U.S. 106, 72 L. Ed. 186, 48 S. Ct. 77 (1927)

Sgro v. United States, 287 U.S. 206, 77 L. Ed. 269, 53 S. Ct. 138 (1932)

Sibron v. State of New York, 392 U.S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968)

Silverthorne Lumber Co. v. United States, 251 U.S. 385, 64 L. Ed. 319, 40 S. Ct. 182 (1920)

Smyth v. Lubbers, 398 F. Supp. 777 (Michigan 1975)

Speake v. Grantham, 317 F. Supp. 1253 (Mississippi 1970)

State v. Baccino, 282 A. 2d 869 (Delaware 1971)

State v. Bradbury, 243 A. 2d 302 (New Hampshire 1968)

State v. F.W.E., 360 So. 2d 148 (Florida 1978)

State v. Kappes, 550 P. 2d 121 (Arizona 1976)

State v. McKinnon, 558 P. 2d 781 (Washington 1977)

State v. Mora, 330 So. 2d 900 (Louisiana 1976)

State v. Stein, 456 P. 2d 1 (Kansas 1969)

State v. Walker, 528 P. 2d 113 (Oregon 1974)

State v. Wingerd, 318 N.E. 2d 866 (Ohio 1974)

State v. Young, 216 S.E. 2d 586 (Georgia 1975)

State In Interest of Clark, 360 So. 2d 909 (Louisiana 1978)

State In Interest of Feazell, 360 So. 2d 907 (Louisiana 1978)

State In Interest of T.L.O., 428 A. 2d 1327 (New Jersey 1980)

Steele v. United States, 267 U.S. 498, 69 L. Ed. 757, 45 S. Ct. 414 (1925)

Steele v. United States, 267 U.S. 505, 69 L. Ed. 761, 45 S. Ct. 417 (1925)

Taylor v. United States, 286 U.S. 1, 76 L. Ed. 951, 52 S. Ct. 466 (1932)

Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)

Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969)

Trupiano v. United States, 334 U.S. 699, 92 L. Ed. 1663, 68 S. Ct. 1229 (1948)

United States v. Berkeness, 275 U.S. 149, 72 L. Ed. 211, 48 S. Ct. 46 (1927)

United States v. Chadwick, 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476 (1977)

United States v. Coles, 302 F. Supp. 99 (Maine 1969)

United States v. Jeffers, 342 U.S. 48, 96 L. Ed. 59, 72 S. Ct. 93 (1951)

United States v. Lee, 274 U.S. 559, 71 L. Ed. 1202, 47 S. Ct. 746 (1927)

United States v. Lefkowitz, 285 U.S. 452, 76 L. Ed. 877, 52 S. Ct. 420 (1932)

United States v. Rabinowitz, 339 U.S. 56, 94 L. Ed. 653, 70 S. Ct. 430 (1950)

United States v. Robinson, 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467 (1973)

United States v. Watson, 423 U.S. 411, 46 L. Ed. 2d 598, 96 S. Ct. 820 (1976)

United States v. White, 322 U.S. 694, 88 L. Ed. 1542, 64 S. Ct. 1248 (1944)

Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)

Washington v. Chrisman, ___ U.S. ___, ___ L. Ed. 2d ___, 102 S. Ct. 812 (1982)

Waters v. United States, 311 A. 2d 835 (D.C. 1973)

Weeks v. United States, 232 U.S. 383, 58 L. Ed. 652, 34 S. Ct. 341 (1914)

Wolf v. People of the State of Colorado, 338 U.S. 25, 93 L. Ed. 1782, 69 S. Ct. 1359 (1949)

Zap v. United States, 328 U.S. 624, 90 L. Ed. 1477, 66 S. Ct. 1277 (1946)

Zurcher v. Stanford Daily, 436 U.S. 547, 56 L. Ed. 2d 525, 98 S. Ct. 1970 (1978)

APPENDIX

Glossary

The terms included in the glossary define the concepts, doctrines, and principles of law governing searches and seizures and are given only as a guide to aid the reader. Terms based on Black's Law Dictionary are signified by an asterisk. Pertinent cases are listed under each term.

Adult*

One who has attained the legal age of majority; generally 18 years. The age at which a person may enter into binding contracts or commit other legal acts. The age at which, by law, a person is entitled to the management of his own affairs and to the enjoyment of civic rights.

Higher Education Cases

People v. Cohen, 292 N.Y.S. 2d 706 (1968)
Smyth v. Lubbers, 398 F. Supp. 777 (Michigan 1975)

Arrest Warrant*

A written order which is made on behalf of the state and is based upon a complaint issued pursuant to statute and/or court rule which commands an officer to arrest a person and bring him before a magistrate.

Supreme Court Cases

Harris v. United States, 331 U.S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947)
United States v. Rabinowitz, 339 U.S. 56, 94 L. Ed., 653, 70 S. Ct. 430 (1950)
Chimel v. California, 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969)

Arrest Without Warrant*

An officer may arrest without warrant if a misdemeanor is committed in an officer's presence. An officer may arrest without warrant if he has reasonable cause to believe a felony is being or has been committed whether or not it is committed in his presence.

Supreme Court Cases

Carroll v. United States, 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280 (1925)
Johnson v. United States, 333 U.S. 10, 92 L. Ed. 436, 68 S. Ct. 367 (1948)
United States v. Rabinowitz, 339 U.S. 56, 94 L. Ed. 653, 70 S. Ct. 653 (1950).

Miller v. United States, 357 U.S. 301, 2 L. Ed. 2d 1332, 78 S. Ct. 1190 (1958)

Balancing Test*

A constitutional doctrine in which the court weighs the right of an individual to certain rights guaranteed by the Constitution with the rights of a state to protect its citizens from the invasion of their rights.

Elementary/Secondary Education Cases

In Re State In Interest of G.C., 296 A. 2d 102 (New Jersey 1972)
State v. Young, 216 S.E. 2d 586 (Georgia 1975)
People v. Ward, 233 N.W. 2d 180 (Michigan 1975)
Doe v. State, 540 P. 2d 827 (New Mexico 1975)
Picha v. Wielgos, 410 F. Supp. 1214 (Illinois 1976)
State v. McKinnon, 558 P. 2d 781 (Washington 1977)
Matter of Ronald B., 401 N.Y.S. 2d 544 (1978)
Interest of L.L., 280 N.W. 2d 343 (Wisconsin 1979)
Bilbrey v. Brown, 481 F. Supp. 26 (Oregon 1979)
Jones v. Latexo Independent School District, 499 F. Supp. 223 (Texas 1980)
State In Interest of T.L.O., 428 A 2d 1327 (New Jersey 1980)

Higher Education Cases

Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (Alabama 1968)
Smyth v. Lubbers, 398 F. Supp. 777 (Michigan 1975)
Zurcher v. Stanford Daily, 436 U.S. 547, 56 L. Ed. 2d 525, 98 S. Ct. 1970 (1978)

Blanket Search Warrant*

A single warrant authorizing the search and seizure of everything found at a given location without specific authorization.

General Warrant*

A process which formerly issued from the state secretary's office in England to take up (without naming any persons) the author, printer, and publisher of such obscene and seditious libels as were specified in it. It was

declared illegal and void for uncertainty by a vote of the House of Commons on 22nd April, 1766.

Supreme Court Cases

Marron v. United States, 275 U.S. 192, 72 L. Ed. 231, 48 S. Ct. 74 (1927)
United States v. Lefkowitz, 285 U.S. 452, 76 L. Ed. 877, 52 S. Ct. 420 (1932)
Harris v. United States, 331 U.S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947)
United States v. Rabinowitz, 339 U.S. 56, 94 L. Ed. 653, 70 S. Ct. 430 (1950)
Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)
Chimel v. California, 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969)
Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)

Collateral Issues*

Questions or issues which are not directly involved in the matter.

Supreme Court Cases

Gouled v. United States, 255 U.S. 298, 65 L. Ed. 647, 41 S. Ct. 261 (1921)
Agnello v. United States, 269 U.S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925)
Segurola v. United States, 275 U.S. 106, 72 L. Ed. 186, 48 S. Ct. 77 (1927)

Competent Evidence*

Evidence that is generally admissible because it is material and relevant to the issue at bar.

Supreme Court Cases

Bram v. United States, 168 U.S. 532, 42 L. Ed. 568, 18 S. Ct. 183 (1897)
Adams v. New York, 192 U.S. 585, 48 L. Ed. 575, 24 S. Ct. 372 (1904)
Schenck v. United States, 249 U.S. 47, 63 L. Ed. 470, 39 S. Ct. 247 (1919)

Carroll v. United States, 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280 (1925)
Olmstead v. United States, 277 U.S. 438, 72 L. Ed. 944, 48 S. Ct. 564 (1928)
Grau v. United States, 287 U.S. 124, 77 L. Ed. 212, 53 S. Ct. 38 (1932)
Goldman v. United States, 316 U.S. 129, 86 L. Ed. 1322, 62 S. Ct. 993 (1942)
Zap v. United States, 328 U.S. 624, 90 L. Ed. 1477, 66 S. Ct. 1277 (1946)
Draper v. United States, 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329 (1959)
Aguilar v. State of Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964)
Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967)

Elementary/Secondary Education Cases

State v. Stein, 456 P. 2d 1 (Kansas 1969)

Compulsory Attendance*

Refers to legal obligation to attend; e.g., school attendance is compulsory up to a certain age.

Elementary/Secondary Education Cases

State v. Young, 216 S. E. 2d 586 (Georgia 1975)
Interest of L. L., 280 N.W. 2d 343 (Wisconsin 1979)
Jones v. Latexo Independent School Dist., 499 F. Supp. 223 (Texas 1980)

Higher Education Cases

Speake v. Grantham, 317 F. Supp. 1253 (Mississippi 1970)

Exclusionary Rule*

This rule commands that where evidence has been obtained in violation of the privileges guaranteed by the United States Constitution, the evidence must be excluded from the trial.

Supreme Court Cases

Weeks v. United States, 232 U.S. 383, 58 L. Ed. 652, 34 S. Ct. 341 (1914)
Silverthorne Lumber Co., v. United States, 251 U.S. 385, 64 L. Ed. 319, 40 S. Ct. 182 (1920)
Burdeau v. McDowell, 256 U.S. 465, 65 L. Ed. 1048, 41 S. Ct. 574 (1921)
Byars v. United States, 273 U.S. 28, 71 L. Ed. 520, 47 S. Ct. 248 (1927)
McGuire v. United States, 273 U.S. 95, 71 L. Ed. 556, 47 S. Ct. 259 (1927)
Gambino v. United States, 275 U.S. 310, 72 L. Ed. 293, 48 S. Ct. 137 (1927)
Olmstead v. United States, 277 U.S. 438, 72 L. Ed. 944, 48 S. Ct. 564 (1928)
Goldman v. United States, 316 U.S. 129, 86 L. Ed. 1322, 62 S. Ct. 993 (1942)
Wolf v. People of the State of Colorado, 338 U.S. 25, 93 L. Ed. 1782, 69 S. Ct. 1359 (1949)
United States v. Jeffers, 342 U.S. 48, 96 L. Ed. 59, 72 S. Ct. 93 (1951)
Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960)
Elkins v. United States, 364 U.S. 206, 4 L. Ed. 2d 1669, 80 S. Ct. 1437 (1960)
Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684 (1961)
Ker v. California, 374 U.S. 23, 10 L. Ed. 2d 726, 83 S. Ct. 1623 (1963)
Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)
Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)

Elementary/Secondary Education Cases

In Re Donaldson, 75 Cal. Rptr. 220 (1969)
People v. Stewart, 313 N.Y.S. 2d 253 (1970)
People v. D., 315 N.E. 2d 466 (New York 1974)
State v. Walker, 528 P. 2d 113 (Oregon 1974)
State v. Young, 216 S.E. 2d 586 (Georgia 1975)
State v. Mora, 330 So. 2d 900 (Louisiana 1976)
Interest of L. L., 280 N.W. 2d 343 (Wisconsin 1979)
Jones v. Latexo Independent School Dist., 499 F. Supp. 223 (Texas 1980)

Higher Education Cases

United States v. Coles, 302 F. Supp. 99 (Maine 1969)

Speake v. Grantham, 317 F. Supp. 1253 (Mississippi 1970)
People v. Haskins, 369 N.Y.S. 2d 869 (1975)
Smyth v. Lubbers, 398 F. Supp. 777 (Michigan 1975)
State v. Kappes, 550 P. 2d 121 (Arizona 1976)
Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (New York 1976)
Morale v. Grigel, 422 F. Supp 988 (New Hampshire 1976)

Exigent Circumstances*

An Exception to the rule which requires a search warant is the presence of exigent or emergency-like circumstances.

Supreme Court Cases

Husty v. United States, 282 U.S. 694, 75 L. Ed. 629, 51 S. Ct. 240 (1931)
United States v. Jeffers, 342 U.S. 48, 96 L. Ed. 59, 72 S. Ct. 93 (1951)
Ker v. California, 374 U.S. 23, 10 L. Ed. 2d 726, 83 S. Ct. 1623 (1963)
Schmerber v. California, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966)
Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)
Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967)
Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)
Sibron v. New York, 392 U.S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968)
Peters v. New York, 392 U.S. 40, 20 L. Ed. 917, 88 S. Ct. 1889 (1968)
Chimel v. California, 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969)
Chamber v. Maroney, 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970)
Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)
United States v. Robinson, 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467 (1973)
Gustafson v. Florida, 414 U.S. 260, 38 L. Ed. 2d 456, 94 S. Ct. 488 (1973)
United States v. Chadwick, 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476 (1977)
Pennsylvania v. Mimms, 434 U.S. 106, 54 L. Ed. 2d 331, 98 S. Ct. 330 (1977)
Payton v. New York, 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980)

Colorado v. Bannister, 449 U.S. 1, ____ L. Ed. 2d ___, 101 S. Ct. 42 (1980)
New York v. Belton, ____ U.S. ____, ____ L. Ed. 2d ___, 101 S. Ct. 2860 (1981)

Higher Education Cases

People v. Kelly, 16 Cal. Rptr. 177 (1961)
People v. Cohen, 292 N.Y.S. 2d 706 (1968)
Commonwealth v. McCloskey, 272 A. 2d 271 (Pennsylvania 1970)
People v. Lanthier, 488 P. 2d 625 (California 1971)
City of Athens v. Wolf, 313 N.E. 2d 405 (Ohio 1974)
Smyth v. Lubbers, 398 F. Supp. 777 (Michigan 1975)
State v. Kappes, 550 P. 2d 121 (Arizona 1976)
Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (New York 1976)
Morale v. Grigel, 422 F. Supp. 988 (New Hampshire 1976)
Zurcher v. Stanford Daily, 436 U.S. 547, 56 L. Ed. 525, 98 S. Ct. 1970 (1978)
Washington v. Chrisman, ___ U.S. ___, ___ L. Ed. 2d ___, 102 S. Ct. 812 (1982)

Experience of Officers*

An officer's skill, facility, or practical wisdom gained by personal knowledge, feeling, and action may be considered by the court in cases of search and seizure.

Supreme Court Cases
Steele v. United States, 267 U.S. 498, 69 L. Ed. 757, 45 S. Ct. 414 (1925)
Johnson v. United States, 333 U.S. 10, 92 L. Ed. 436, 68 S. Ct. 367 (1948)
Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)

Fishing Expedition*

Discovery sought on general, loose, and vague allegations, or on suspicion, surmise, or vague guesses.

Higher Education Cases

People v. Cohen, 292 N.Y.S. 2d 706 (1968)
Piazzola v. Watkins, 442 F. 2d 284 (5th Cir. 1971)

Fruits of Crime*

In the law of evidence, material objects acquired by means and in consequence of the commission of crime, and sometimes constituting the subject-matter of the crime.

Supreme Court Cases

Agnello v. United States, 269 U.S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925)
Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960)
Preston v. United States, 376 U.S. 364, 11 L. Ed. 2d 777, 84 S. Ct. 881 (1964)
Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)
Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967)
Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)
Chambers v. Maroney, 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970)
Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)
United States v. Robinson, 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467 (1973)

General Exploratory Searches

Authorization to search everything without particularizing the persons or things to be searched and seized.

Supreme Court Cases

Marron v. United States, 275 U.S. 192, 72 L. Ed. 231, 48 S. Ct. 74 (1927)
United States v. Lefkowitz, 285 U.S. 452, 76 L. Ed. 877, 52 S. Ct. 420 (1932)
United States v. Rabinowitz, 339 U.S. 56, 94 L. Ed. 653, 70 S. Ct. 430 (1950)
Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)
Chimel v. California, 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969)
Cooldige v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)
Payton v. New York, 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980)

Elementary/Secondary Education Cases

Bellnier v. Lund, 438 F. Supp. 47 (New York 1977)
Jones v. Latexo Independent School Dist., 499 F. Supp. 223 (Texas 1980)

Higher Education Cases

People v. Cohen, 292 N.Y.S. 2d 706 (1968)
Piazzola v. Watkins, 442 F. 2d 284 (5th Cir. 1971)

Governmental Agents*

Those performing services and duties of a public character for the benefit of all citizens of the community.

Elementary/Secondary Education Cases

State v. Baccino, 282 A. 2d 869 (Delaware 1971)
In Re State In Interest of G. C., 296 A. 2d 102 (New Jersey 1972)
People v. Bowers, 339 N.Y.S. 2d 783 (1973)
People v. D., 315 N.E. 2d 466 (New York 1974)
State v. Walker, 528 P. 2d 113 (Oregon 1974)
State v. Young, 216 S. E. 2d 586 (Georgia 1975)
People v. Ward, 233 N.W. 2d 180 (Michigan 1975)
Doe v. State, 540 P. 2d 827 (New Mexico 1975)
Picha v. Wielgos, 410 F. Supp. 1214 (Illinois 1976)
State v. Mora, 330 So. 2d 900 (Louisiana 1976)
Bellnier v. Lund, 438 F. Supp. 47 (New York 1977)
Interest of L. L., 280 N.W. 2d 343 (Wisconsin 1979)
Jones v. Latexo Independent School Dist., 499 F. Supp. 223 (Texas 1980)

Habeas Corpus ad Subjiciendum*

A writ directed to the person detaining another, and commanding him to produce the body of the prisoner, or person detained. The purpose of the writ is to test the legality of the detention or imprisonment; not whether a person is guilty or innocent.

Supreme Court Cases

Essgee Co. of China v. United States, 262 U.S. 151, 67 L. Ed. 917, 43 S. Ct. 514 (1923)
Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)

Chambers v. Maroney, 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970)

Elementary/Secondary Education Cases

Overton v. Riegir, 311 F. Supp. 1035 (New York 1970)

Higher Education Cases

Piazzola v. Watkins, 442 F. 2d 284 (5th Cir. 1971)

Informer*

An undisclosed person who confidentially volunteers material information of a law violation to officers.

Hearsay*

A statement made by one other than a witness and offered in evidence to prove the truth of the matter alleged. Its value rests on the credibility of the person offering the information and in some cases it may be admitted into evidence.

Supreme Court Cases

Segurola v. United States, 275 U.S. 106, 72 L. Ed. 186, 48 S. Ct. 77 (1927)
Husty v. United States, 282 U.S. 694, 75 L. Ed. 629, 51 S. Ct. 240 (1931)
Scher v. United States, 305 U.S. 251, 83 L. Ed. 151, 59 S. Ct. 174 (1938)
Draper v. United States, 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329 (1959)
Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960)
Aguilar v. State of Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964)
Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)

Elementary Secondary Education Cases

In Re Boykin, 237 N.E. 2d 460 (Illinois 1968)
Mercer v. State, 450 S. W. 2d 715 (Texas 1970)
People v. Stewart, 313 N.Y.S. 2d 253 (1970)
In Re G., 90 Cal. Rptr. 361 (1970)
People v. Jackson, 319 N.Y.S. 2d 731 (1971)

Caldwell v. Cannady, 340 F. Supp. 835 (Texas 1972)
In Re C., 102 Cal. Rptr. 682 (1972)
In Re State In Interest of G.C., 296 A. 2d 102 (New Jersey 1972)
In Re W., 105 Cal. Rptr. 775 (1973)
Commonwealth v. Dingfelt, 323 A. 2d 145 (Pennsylvania 1974)
People v. D., 315 N.E. 2d 466 (New York 1974)
State v. Walker, 528 P. 2d 113 (Oregon 1974)
People v. Ward, 233 N.W. 2d 180 (Michigan 1975)
People v. Singletary, 372 N.Y.S. 2d 68 (1975)
State v. McKinnon, 558 P. 2d 781 (Washington 1977)
M. v. Bd. of Ed. Ball-Chatham C.U.S.D. No. 5, 429 F. Supp. 288 (Illinois 1977)
State In Interest of Feazell, 360 So. 2d 907 (Louisiana 1978)

Higher Education Cases

People v. Kelly, 16 Cal. Rptr. 177 (1961)
Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (Alabama 1968)
State v. Bradbury, 243 A. 2d 302 (New Hampshire 1968)
People v. Cohen, 292 N.Y.S. 2d 706 (1968)
Piazzola v. Watkins, 442 F. 2d 284 (5th Cir. 1971)
People v. Haskins, 369 N.Y.S. 2d 869 (1975)
Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (New York 1976)
People v. Dickson, 154 Cal. Rptr. 116 (1979)

In loco parentis*

In the place of a parent; instead of a parent; charged, factitiously with a parent's rights, duties, and responsibilities.

Elementary/Secondary Education Cases

In Re Donaldson, 75 Cal. Rptr. 220 (1969)
Mercer v. State, 450 S. W. 2d 715 (Texas 1970)
People v. Stewart, 313 N.Y.S. 2d 253 (1970)
In Re G., 90 Cal. Rptr. 361 (1970)
Ranninger v. State, 460 S.W. 2d 181 (Texas 1970)
People v. Jackson, 319 N.Y.S. 2d 731 (1971)
State v. Baccino, 282 A. 2d 869 (Delaware 1971)
In Re State In Interest of G. C., 296 A. 2d 102 (New Jersey 1972)
In Re W., 105 Cal. Rptr. 775 (1973)

Commonwealth v. Dingfelt, 323 A. 2d 145 (Pennsylvania 1974)
People v. D., 315 N.E. 2d 466 (New York 1974)
People v. Ward, 233 N.W. 2d 180 (Michigan 1975)
Nelson v. State, 319 So. 2d 154 (Florida 1975)
Picha v. Wielgos, 410 F. Supp. 1214 (Illinois 1976)
M. v. Bd. of Ed. Ball-Chatham C.U.S.D. No. 5, 429 F. Supp. 288 (Illinois 1977)
Bellnier v. Lund, 438 F. Supp. 47 (New York 1977)
Matter of Ronald B., 401 N.Y.S. 2d 544 (1978)
Interest of L. L., 280 N.W. 2d 343 (Wisconsin 1979)
Bilbrey v. Brown, 481 F. Supp. 26 (Oregon 1979)
Jones v. Latexo Independent School Dist., 499 F. Supp 223 (Texas 1980)
State In Interest of T.L.O., 428 A. 2d 1327 (New Jersey 1980)

Higher Education Cases

Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (Alabama 1968)
Morale v. Grigel, 422 F. Supp. 988 (New Hampshire 1976)

Liberal Construction*

Court interpretations should be clearly within the spirit or reason of the law; words of a statute should receive a fair and reasonable interpretation.

Supreme Court Cases

Boyd v. United States, 116 U.S. 616, 29 L. Ed. 746, 6 S. Ct. 524 (1886)
Gouled v. United States, 255 U.S. 298, 65 L. Ed. 647, 41 S. Ct. 261 (1921)
Byars v. United States, 273 U.S. 28, 71 L. Ed. 520, 47 S. Ct. 248 (1927)
Go-Bart Importing Co. v. United States, 282 U.S. 344, 75 L. Ed. 374, 51 S. Ct. 153 (1931)
United States v. Lefkowitz, 285 U.S. 452, 76 L. Ed. 877, 52 S. Ct. 420 (1932)
Grau v. United States, 287 U.S. 124, 77 L. Ed. 212, 53 S. Ct. 38 (1932)
Sgro v. United States, 287 U.S. 206, 77 L. Ed. 269, 53 S. Ct. 138 (1932)
Ker v. California, 374 U.S. 23, 10 L. Ed. 2d 726, 83 S. Ct. 1623 (1963)
Coolidge v. New Hampshire, 403 U.S. 443, 24 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)

Mere Evidence*

In search and seizure, it was the rule that in a lawful search the officer had a right to seize instrumentalities and fruits of the crime but no right to seize other items which were mere evidence. This rule no longer prevails.

Supreme Court Cases

Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)
Payton v. New York, 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980)

Mere Suspicion*

The apprehension of something without proof or upon slight evidence. Suspicion implies a belief or opinion based upon facts or circumstances which do not amount to proof.

Supreme Court Cases

Nathanson v. United States, 290 U.S. 41, 78 L. Ed. 159, 54 S. Ct. 11 (1933)
Aguilar v. State of Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964)

Elementary/Secondary Education Cases

People v. Bowers, 339 N.Y.S. 2d 783 (1972)
People v. D., 315 N.E. 2d 466 (New York 1974)
M.M. v. Anker, 607 F. 2d 588 (2d Cir. 1973)

Motion to Suppress*

A device used to eliminate from the trial of a criminal case evidence which has been secured illegally, in violation of the Fourth Amendment.

Suppression of Evidence*

The ruling of a trial judge to the effect that evidence sought to be admitted should be excluded because it was illegally acquired.

Suppression Hearing*

A pretrial proceeding in criminal cases in which a defendant seeks to prevent the introduction of evidence

alleged to have been seized illegally. The ruling of the court then prevails at the trial.

Supreme Court Cases

Boyd v. United States, 116 U.S. 616, 29 L. Ed. 746, 6 S. Ct. 524 (1886)
Bram v. United States, 168 U.S. 532, 42 L. Ed. 568, 18 S. Ct. 183 (1897)
Weeks v. United States, 232 U.S. 383, 58 L. Ed. 652, 34 S. Ct. 341 (1914)
Gouled v. United States, 255 U.S. 298, 65 L. Ed. 647, 41 S. Ct. 261 (1921)
Amos v. United States, 255 U.S. 313, 65 L. Ed. 654, 41 S. Ct. 266 (1921)
Agnello v. United States, 269 U.S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925)
Go-Bart Importing Co. v. United States, 282 U.S. 344, 75 L. Ed. 374, 51 S. Ct. 153 (1931)
Trupiano v. United States, 334 U.S. 699, 92 L. Ed. 1663, 68 S. Ct. 1229 (1948)
United States v. Jeffers, 342 U.S. 48, 96 L. Ed. 59, 72 S. Ct. 93 (1951)
Miller v. United States, 357 U.S. 301, 2 L. Ed. 2d 1332, 78 S. Ct. 1190 (1958)
Draper v. United States, 358 U.S. 307, 3 L. Ed 2d 327, 79 S. Ct. 329 (1959)
Jones v. United States, 362 U. S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960)
Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684 (1961)
Preston v. United States, 376 U.S. 364, 11 L. Ed. 2d 777, 84 S. Ct. 881 (1964)
Aguilar v. State of Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964)
Bumper v. North Carolina, 391 U.S. 543, 20 L. Ed. 2d 797, 88 S. Ct. 1788 (1968)
Sibron v. New York, 392 U.S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968)

Elementary/Secondary Education Cases

People v. Bowers, 339 N.Y.S. 2d 783 (1972)
Waters v. United States, 311 A. 2d 835 (District of Columbia 1973)
People v. D., 315 N.E. 2d 466 (New York 1974)
State v. Mora, 330 So. 2d 900 (Louisiana 1976)
Jones v. Latexo Independent School Dist., 499 F. Supp. 223 (Texas 1980)

Higher Education Cases

State v. Bradbury, 243 A. 2d 302 (New Hampshire 1968)
People v. Cohen, 292 N.Y.S. 2d 706 (1968)
Commonwealth v. McCloskey, 272 A. 2d 271 (Pennsylvania 1970)
City of Athens v. Wolf, 313 N.E. 2d 405 (Ohio 1974)
Smyth v. Lubbers, 398 F. Supp. 777 (Michigan 1975)
State v. Kappes, 550 P. 2d 121 (Arizona 1976)

Neutral Magistrate*

An impartial public officer, possessing such judicial power as granted him by a governing body. In the federal circuit courts magistrates may conduct pre-trial proceedings. United States Magistrates have taken over the duties formerly performed by United States Commissioners.

Supreme Court Cases

Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 90 L. Ed. 614, 66 S. Ct. 494 (1946)
Johnson v. United States, 333 U.S. 10, 92 L. Ed. 436, 68 S. Ct. 367 (1948)
United States v. Jeffers, 342 U.S. 48, 96 L. Ed. 59, 72 S. Ct. 93 (1951)
Marcus v. Search Warrants, etc., 367 U.S. 717, 6 L. Ed. 2d 1127, 81 S. Ct. 1708 (1961)
Aguilar v. State of Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964)
Schmerber v. California, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966)
Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)
Camara v. Municipal Court, 387 U.S. 523, 18 L. Ed. 2d 930, 87 S. Ct. 1727 (1967)
Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967)
Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)
Sibron v. New York, 392 U.S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968)
Chimel v. California, 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969)
Chambers v. Maroney, 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970)
Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)

United States v. Chadwick, 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476 (1977)
Payton v. New York, 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980)
Colorado v. Bannister, 449 U.S. 1, ____ L. Ed. 2d ___, 101 S. Ct. 42 (1980)
New York v. Belton, ___ U.S. ___, ____ L. Ed. 2d ___, 101 S. Ct. 2860 (1981)

Elementary/Secondary Education Cases

Caldwell v. Cannady, 340 F. Supp. 835 (Texas 1972)

Higher Education Cases

Roberts v. State, 373 So. 2d 672 (Florida 1979)

Open Fields Doctrine

The protection of the Fourth Amendment, as to "persons, houses, papers and effects," does not extend to open fields.

Supreme Court Case

Hester v. United States, 265 U.S. 57, 68 L. Ed. 898, 44 S. Ct. 445 (1924)

Plain View Doctrine*

Objects falling in the plain view of an officer who has the right to be in the position to have that view are subject to seizure without warrant and may be introduced in evidence.

Supreme Court Cases

Ker v. California, 374 U.S. 23, 10 L. Ed. 2d 726, 83 S. Ct. 1623 (1963)
Harris v. United States, 390 U.S. 234, 19 L. Ed. 2d 1067, 88 S. Ct. 992 (1968)
Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)
Payton v. New York, 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980)
Colorado v. Bannister, 449 U.S. 1, ___ L. Ed. 2d ___, 101 S. Ct. 42 (1980)

Washington v. Chrisman, ___ U.S. ___, ___ L. Ed. 2d ___, 102 S. Ct. 812 (1982)

Elementary/Secondary Education Cases

Jones v. Latexo Independent School Dist., 499 F. Supp. 223 (Texas 1980)
State In Interest of T.L.O., 428 A. 2d 1327 (New Jersey 1980)

Higher Education Cases

Speake v. Grantham, 317 F. Supp. 1253 (Mississippi 1970)
People v. Lanthier, 488 P. 2d 625 (California 1971)
City of Athens v. Wolf, 313 N.E. 2d 405 (Ohio 1974)
State v. Kappes, 550 P. 2d 121 (Arizona 1976)
People v. Dickson, 154 Cal. Rptr. 116 (1979)
Washington v. Chrisman, ___ U.S. ___, ___ L. Ed. 2d ___, 102 S. Ct. 812 (1982)

Private Person*

Term sometimes used to refer to persons other than those holding public office or in military service.

Elementary/Secondary Cases

In Re Donaldson, 75 Cal. Rptr. 220 (1969)
People v. Stewart, 313 N.Y.S. 2d 253 (1970)
Commonwealth v. Dingfelt, 323 A. 2d 145 (Pennsylvania 1974)

Higher Education Cases

United States v. Coles, 302 F. Supp. 99 (Maine 1969)
State v. Wingerd, 318 N.E. 2d 866 (Ohio 1974)

Probable Cause/Resaonable Cause*

Probable cause exists when facts and circumstances within one's knowledge and of which one has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in believing that an offense has been or is being committed. Probable cause for search and seizure with or without a search warrant involves probabilities which are not technical but factual and practical

considerations of every day life upon which reasonable and prudent persons act.

Cases Held to Have Probable Cause:

Supreme Court Cases

Carroll v. United States, 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280 (1925)
Steele v. United States, 267 U.S. 498, 69 L. Ed. 757, 45 S. Ct. 414 (1925)
Agnello v. United States, 269 U.S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925)
United States v. Lee, 274 U.S. 559, 71 L. Ed. 1202, 47 S. Ct. 746 (1927)
Husty v. United States, 282 U.S. 694, 75 L. Ed. 629, 51 S. Ct. 240 (1931)
Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 90 L. Ed. 614, 66 S. Ct. 494 (1946)
Harris v. United States, 331 U.S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947)
United States v. Rabinowitz, 339 U.S. 56, 94 L. Ed. 653, 70 S. Ct. 430 (1950)
Miller v. United States, 357 U.S. 301, 2 L. Ed. 2d 1332, 78 S. Ct. 1190 (1958)
Draper v. United States, 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329 (1959)
Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960)
Ker v. California, 374 U.S. 23, 10 L. Ed. 2d 726, 83 S. Ct. 1623 (1963)
Schmerber v. California, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966)
Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)
Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)
Peters v. New York, 392 U.S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968)
Chambers v. Maroney, 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970)
United States v. Robinson, 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467 (1973)
Gustafson v. Florida, 414 U.S. 260, 38 L. Ed. 2d 456, 94 S. Ct. 488 (1973)
United States v. Chadwick, 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476 (1977)
Pennsylvania v. Mimms, 434 U.S. 106, 54 L. Ed. 2d 331, 98 S. Ct. 330 (1977)

Colorado v. Bannister, 449 U.S. 1, ____ L. Ed. 2d ___, 101 S. Ct. 42 (1980)

Elementary/Secondary Education Cases

In Re G., 90 Cal. Rptr. 361 (1970)
Bilbrey v. Brown, 481 F. Supp. 26 (Oregon 1979)

Higher Education Cases

People v. Kelly, 16 Cal. Rptr. 177 (1961)
Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (Alabama 1968)
Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (New York 1976)
Zurcher v. Stanford Daily, 436 U.S. 547, 56 L. Ed. 2d 525, 98 S. Ct. 1970 (1978)
People v. Dickson, 154 Cal. Rptr. 116 (1979)

Cases Held Not to Have Probable Cause:

Supreme Court Cases

Gambino v. United States, 275 U.S. 310, 72 L. Ed. 293, 48 S. Ct. 137 (1927)
Grau v. United States, 287 U.S. 124, 77 L. Ed. 212, 53 S. Ct. 38 (1932)
Sgro v. United States, 287 U.S. 206, 77 L. Ed. 269, 53 S. Ct. 138 (1932)
Scher v. United States, 305 U.S. 251, 83 L. Ed. 151, 59 S. Ct. 174 (1938)
Aguilar v. State of Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964)
Camara v. Municipal Court, 387 U.S. 523, 18 L. Ed. 2d 930, 87 S. Ct. 1727 (1967)
Sibron v. New York, 392 U.S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968)
Chimel v. California, 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969)
Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)

Elementary/Secondary Education Cases

Waters v. United States, 311 A. 2d 835 (District of Columbia 1973)
State v. Young, 216 S.E. 2d 586 (Georgia 1975)
Picha v. Wielgos, 410 F. Supp. 1214 (Illinois 1976)
M.M. v. Anker, 607 F. 2d 588 (2d Cir. 1979)

Higher Education Cases

State v. Bradbury, 243 A. 2d 302 (New Hampshire 1968)
Smyth v. Lubbers, 398 F. Supp. 777 (Michigan 1975)

Return of Contraband*

In general, any property which is unlawful to produce or possess need not be restored to the owner.

Supreme Court Cases

Carroll v. United States, 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280 (1925)
Trupiano v. United States, 334 U.S. 699, 92 L. Ed. 1663, 68 S. Ct. 1229 (1948)
United States v. Jeffers, 342 U.S. 48, 96 L. Ed. 59, 72 S. Ct. 93 (1951)
Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)

Right of Privacy*

The right to be let alone; the right of a person to be free from unwarranted governmental intrusion.

Supreme Court Cases

United States v. Lefkowitz, 285 U.S. 452, 76 L. Ed. 877, 52 S. Ct. 420 (1932)
United States v. White, 322 U.S. 694, 88 L. Ed. 1542, 64 S. Ct., 1248 (1944)
Zap v. United States, 328 U.S. 624, 90 L. Ed. 1477, 66 S. Ct. 1277 (1946)
Harris v. United States, 331 U.S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947)
Johnson v. United States, 333 U.S. 10, 92 L. Ed. 436, 68 S. Ct. 367 (1948)
Trupiano v. United States, 334 U.S. 699, 92 L. Ed. 1663, 68 S. Ct. 1229 (1948)
Wolf v. People of the State of Colorado, 338 U.S. 25, 93 L. Ed. 1782, 69 S. Ct. 1359 (1949)
Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960)
Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684 (1961)
Schmerber v. California, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966)

Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)
Camara v. Municipal Court, 387 U.S. 523, 18 L. Ed. 2d 930, 87 S. Ct. 1727 (1967)
Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967)
United States v. Chadwick, 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476 (1977)
Payton v. New York, 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980)

Elementary/Secondary Education Cases

In Re G., 90 Cal. Rptr. 361 (1970)
In Re State In Interest of G. C., 296 A. 2d 102 (New Jersey 1972)
People v. Bowers, 339 N.Y.S. 2d 783 (1972)
People v. D., 315 N.E. 2d 466 (New York 1974)
State v. Young, 216 S. E. 2d 586 (Georgia 1975)
Picha v. Wielgos, 410 F. Supp. 1214 (Illinois 1976)
Bellnier v. Lund, 438 F. Supp. 47 (New York 1977)
Interest of L. L., 280 N.W. 2d 343 (Wisconsin 1979)
Jones v. Latexo Independent School Dist., 499 F. Supp 223 (Texas 1980)
State In Interest of T.L.O., 428 A. 2d 1327 (New Jersey 1980)

Higher Education Cases

Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (Alabama 1968)
Commonwealth v. McCloskey, 272 A. 2d 271 (Pennsylvania 1970)
City of Athens v. Wolf, 313 N.E. 2d 405 (Ohio 1974)
People v. Haskins, 369 N.Y.S. 2d 869 (1975)
Smyth v. Lubbers, 398 F. Supp. 777 (Michigan 1975)
State v. Kappes, 550 P. 2d 121 (Arizona 1976)
Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (New York 1976)
Morale v. Grigel, 422 F. Supp. 988 (New Hampshire 1976)
People v. Dickson, 154 Cal. Rptr. 116 (1979)
Washington v. Chrisman, ___ U.S. ___, ___ L. Ed. 2d ___, 102 S. Ct. 812 (1982)

Search Incident to Arrest*

Authorizes an officer to arrest a person, either with or without a warrant, and to search his person and the immediate area of the arrest.

Supreme Court Cases

Carroll v. United States, 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280 (1925)
Agnello v. United States, 269 U.S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925)
United States v. Lee, 274 U.S. 559, 71 L. Ed. 1202, 47 S. Ct. 746 (1927)
Marron v. United States, 275 U.S. 192, 72 L. Ed. 231, 48 S. Ct. 74 (1927)
Harris v. United States, 331 U.S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947)
Johnson v. United States, 333 U.S. 10, 92 L. Ed. 436, 68 S. Ct. 367 (1948)
Trupiano v. United States, 334 U.S. 699, 92 L. Ed. 1663, 68 S. Ct. 1229 (1948)
United States v. Rabinowitz, 339 U.S. 56, 94 L. Ed. 653, 70 S. Ct. 430 (1950)
United States v. Jeffers, 342 U.S. 48, 96 L. Ed. 59, 72 S. Ct. 93 (1951)
Draper v. United States, 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329 (1959)
Ker v. California, 374 U.S. 23, 10 L. Ed. 2d 726, 83 S. Ct. 1623 (1963)
Preston v. United States, 376 U.S. 364, 11 L. Ed. 2d 777, 84 S. Ct. 881 (1964)
Schmerber v. California, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966)
Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967)
Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct., 1868 (1968)
Sibron v. New York, 392 U.S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968)
Chimel v. California, 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969)
Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)
United States v. Robinson, 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467 (1973)
Gustafson v. Florida, 414 U.S. 260, 38 L. Ed. 2d 456, 94 S. Ct. 488 (1973)
United States v. Chadwick, 433 U.S. 1., 53 L. Ed. 2d 538, 97 S. Ct. 2476 (1977)

New York v. Belton, ___U.S. ___, ___ L. Ed. 2d ___, 101 S. Ct. 2860 (1981)

Higher Education Cases

People v. Cohen, 292 N.Y.S. 2d 706 (1968)
Speake v. Grantham, 317 F. Supp. 1253 (Mississippi 1970)
Washington v. Chrisman, ___ U.S. ___, ___ L. Ed. 2d ___, 102 S. Ct. 812 (1982)

Search Warrant*

An order in writing, issued by a justice or magistrate, directed to an officer, authorizing a search and seizure of property that constitutes evidence of a crime, contraband, the fruits of crime, or things criminally possessed. A warrant may be issued upon an affidavit or sworn oral testimony.

Cases with Valid Search Warrant:

Supreme Court Cases

Adams v. New York, 192 U.S. 585, 48 L. Ed. 575, 24 S. Ct. 372 (1904)
Schenck v. United States, 249 U.S. 47, 63 L. Ed. 470, 39 S. Ct. 247 (1919)
Steele v. United States, 267 U.S. 498, 69 L. Ed. 757, 45 S. Ct. 414 (1925)
United States v. Lefkowitz, 285 U.S. 452, 76 L. Ed. 877, 52 S. Ct. 420 (1932)
Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960)

Elementary/Secondary Education Cases

State v. Stein, 456 P. 2d 1 (Kansas 1969)

Higher Education Case

Zurcher v. Stanford Daily, 436 U.S. 547, 56 L. Ed. 2d 525, 98 S. Ct. 1970 (1978)

Cases with Invalid Search Warrant:

Supreme Court Cases

Byars v. United States, 273 U.S. 28, 71 L. Ed. 520, 47 S. Ct. 248 (1927)
Go-Bart Importing Co. v. United States, 282 U.S. 344, 75 L. Ed. 374, 51 S. Ct. 153 (1931)
Sgro v. United States, 287 U.S. 206, 77 L. Ed. 269, 53 S. Ct. 138 (1932)
Bumper v. North Carolina, 391 U.S. 542, 20 L. Ed. 2d 797, 88 S. Ct. 1788 (1968)
Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971)

Elementary/Secondary Education Cases

Overton v. Rieger, 311 F. Supp. 1035 (New York 1970)

Higher Education Cases

State v. Bradbury, 243 A. 2d 302 (New Hampshire 1968)
City of Athens v. Wolf, 313 N.E. 2d 405 (Ohio 1974)
State v. Kappes, 550 P. 2d 121 (Arizona 1976)

Search Without Warrant*

A search without a warrant but incidental to an arrest is permitted if it does not extend beyond the person of the accused and the area into which the accused might reach in order to grab a weapon or other evidentiary items.

Search Without Warrant Held Lawful:

Supreme Court Cases

Hester v. United States, 265 U.S. 57, 68 L. Ed. 898, 44 S. Ct. 445 (1924)
Carroll v. United States, 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280 (1925)
Marron v. United States, 275 U.S. 192, 72 L. Ed. 231, 48 S. Ct. 74 (1927)
Olmstead v. United States, 277 U.S. 438, 72 L. Ed. 944, 48 S. Ct. 564 (1928)
Husty v. United States, 282 U.S. 694, 75 L. Ed. 629, 51 S. Ct. 240 (1931)
Scher v. United States, 305 U.S. 251, 83 L. Ed. 151, 59 S. Ct. 174 (1938)

Draper v. United States, 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329 (1959)
Ker v. California, 374 U.S. 23, 10 L. Ed. 2d 726, 83 S. Ct. 1623 (1963)
Schmerber v. California, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966)
Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 18 L. Ed. 2d 782, 87 S. Ct. 1642 (1967)
Harris v. United States, 390 U.S. 234, 19 L. Ed. 2d 1067, 88 S. Ct. 992 (1968)
Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)
Peters v. New York, 392 U.S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968)
Chambers v. Maroney, 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975 (1970)
United States v. Robinson, 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467 (1973)
Gustafson v. Florida, 414 U.S. 260, 38 L. Ed. 2d 456, 94 S. Ct. 488 (1973)
Colorado v. Bannister, 449 U.S. 1, ___ L. Ed. 2d ___, 101 S. Ct. 42 (1980)
New York v. Belton, ___ U.S. ___, ___ L. Ed. 2d ___, 101 S. Ct. 2860 (1981)
Washington v. Chrisman, ___ U.S. ___, ___ L. Ed. 2d ___, 102 S. Ct. 812 (1982)

Elementary/Secondary Education Cases

State In Interest of Feazell, 360 So. 2d 907 (Louisiana 1976)
Bilbrey v. Brown, 481 F. Supp. 26 (Oregon 1979)

Higher Education Cases

Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (New York 1976)

Search Without Warrant Held Unlawful:

Supreme Court Cases

Weeks v. United States, 232 U.S. 383, 58 L. Ed. 652, 34 S. Ct. 341 (1914)
Gouled v. United States, 255 U.S. 298, 65 L. Ed. 647, 41 S. Ct. 261 (1921)
Amos v. United States, 255 U.S. 313, 65 L. Ed. 654, 41 S. Ct. 266 (1921)

Agnello v. United States, 269 U.S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925)
Gambino v. United States, 275 U.S. 310, 72 L. Ed. 293, 48 S. Ct. 137 (1927)
Taylor v. United States, 286 U.S. 1, 76 L. Ed. 951, 52 S. Ct. 466 (1932)
Grau v. United States, 287 U.S. 124, 77 L. Ed. 212, 53 S. Ct. 38 (1932)
Johnson v. United States, 333 U.S. 10, 92 L. Ed. 436, 68 S. Ct. 367 (1948)
Trupiano v. United States, 334 U.S. 699, 92 L. Ed. 1663, 68 S. Ct. 1229 (1948)
United States v. Jeffers, 342 U.S. 48, 96 L. Ed. 59, 72 S. Ct. 93 (1951)
Miller v. United States, 357 U.S. 301, 2 L. Ed. 2d 1332, 78 S. Ct. 1190 (1958)
Marcus v. Search Warrants, etc., 367 U.S. 717, 6 L. Ed. 2d 1127, 81 S. Ct. 1708 (1961)
Preston v. United States, 376 U.S. 364, 11 L. Ed. 2d 777, 84 S. Ct. 881 (1964)
Camara v. Municipal Court, 387 U.S. 523, 18 L. Ed. 2d 930, 87 S. Ct. 1727 (1967)
Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967)
Sibron v. New York, 392 U.S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889 (1968)
United States v. Chadwick, 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476 (1977)
Payton v. New York, 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980)

Elementary/Secondary Education Cases

Caldwell v. Cannady, 340 F. Supp. 835 (Texas 1972)
State v. Mora, 330 So. 2d 900 (Louisiana 1976)

Higher Education Cases

People v. Cohen, 292 N.Y.S. 2d 706 (1968)
Smyth v. Lubbers, 398 F. Supp. 777 (Michigan 1975)
Morale v. Grigel, 422 F. Supp. 988 (New Hampshire 1976)

Seasonable Objection*

The timely act of a party who opposes some matter or proceeding in the course of a trial because it is improper or illegal. This is evoked to call the court's attention to improper evidence or procedure. Such objections are important for purposes of appeal.

Supreme Court Cases

Bram v. United States, 168 U.S. 532, 42 L. Ed. 568, 18 S. Ct. 183 (1897)
Weeks v. United States, 232 U.S. 383, 58 L. Ed. 652, 34 S. Ct. 341 (1914)
Gouled v. United States, 255 U.S. 298, 65 L. Ed. 647, 41 S. Ct. 261 (1921)
Amos v. United States, 255 U.S. 313, 65 L. Ed. 654, 41 S. Ct. 266 (1921)
Carroll v. United States, 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280 (1925)
Agnello v. United States, 269 U.S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925)
Segurola v. United States, 275 U.S. 106, 72 L. Ed. 186, 48 S. Ct. 77 (1927)
Gambino v. United States, 275 U.S. 310, 72 L. Ed. 293, 48 S. Ct. 137 (1927)
Scher v. United States, 305 U.S. 251, 83 L. Ed. 151, 59 S. Ct. 174 (1938)
Elkins v. United States, 364 U.S. 206, 4 L. Ed. 2d 1669, 80 S. Ct. 1437 (1960)

Higher Education Cases

Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (New York 1976)

Silver Platter Doctrine*

Evidence obtained illegally by state officials was admissible in federal prosecutions because no federal official had participated in the violation of a citizen's rights. This no longer applies.

Supreme Court Cases

Byars v. United States, 273 U.S. 28, 71 L. Ed. 520, 47 S. Ct. 248 (1927)
McGuire v. United States, 273 U.S. 95, 71 L. Ed. 556, 47 S. Ct. 259 (1927)
Elkins v. United States, 364 U.S. 206, 4 L. Ed. 2 1669, 80 S. Ct. 1437 (1960)

Statement of Authority and Purpose

Officers must state by whose permission and for what end or intention entrance is demanded unless exigent circumstances exist such as the destruction of evidence, escape, or bodily harm to officer and others.

Supreme Court Cases

Miller v. United States, 357 U.S. 301, 2 L. Ed. 2d 1332, 78 S. Ct. 1190 (1958)
Aguilar v. State of Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964)
Katz v. United States, 389 U.S. 347, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967)
Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)

Higher Education Cases

People v. Cohen, 292 N.Y.S. 2d 706 (1968)
Commonwealth v. McCloskey, 272 A. 2d 271 (Pennsylvania 1970)

Subpoena Duces Tecum*

A process by which the court commands a witness who has in his possession or control some document or paper that is pertinent to the issues of a pending controversy, to produce it at the trial.

Supreme Court Cases

Essgee Co. of China v. United States, 262 U.S. 151, 67 L. Ed. 917, 43 S. Ct. 514 (1923)
United States v. White, 322 U.S. 694, 88 L. Ed. 1542, 64 S. Ct. 1248 (1944)
Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 90 L. Ed. 614, 66 S. Ct. 494 (1946)

Higher Education Cases

Zurcher v. Stanford Daily, 436 U.S. 547, 56 L. Ed. 2d 525, 98 S. Ct. 1970 (1978)

Sufficiency of Warrant*

Adequacy of a written order to search for and seize property that constitutes evidence of a crime, contraband, the fruits of crime, or things criminally possessed.

Supreme Court Cases

Steele v. United States, 267 U.S. 498, 69 L. Ed. 757, 45 S. Ct. 414 (1925)
Dumbra v. United States, 268 U.S. 435, 69 L. Ed. 1032, 45 S. Ct. 546 (1925)
Byars v. United States, 273 U.S. 28, 71 L. Ed. 520, 47 S. Ct. 248 (1927)
United States v. Lefkowitz, 285 U.S. 452, 76 L. Ed. 877, 52 S. Ct. 420 (1932)
Grau v. United States, 287 U.S. 124, 77 L. Ed. 212, 53 S. Ct. 38 (1932)
Nathanson v. United States, 290 U.S. 41, 78 L. Ed. 159, 54 S. Ct. 11 (1933)
United States v. Rabinowitz, 339 U.S. 56, 94 L. Ed. 653, 70 S. Ct. 430 (1950)
Jones v. United States, 362 U.S. 257, 4 L. Ed. 2d 697, 80 S. Ct. 725 (1960)

Tresspass ab Initio*

One who innocently or with a privilege enters upon land may become a tresspasser "from the beginning" if his subsequent conduct constitutes tresspass by an abuse of such privilege.

Supreme Court Cases

McGuire v. United States, 273 U.S. 95, 71 L. Ed. 556, 47 S. Ct. 259 (1927)
Zap v. United States, 328 U.S. 624, 90 L. Ed. 1477, 66 S. Ct. 1277 (1946)

Waiver of Constitutional Rights*

The intentional or voluntary relinquishment of a known constitutional right. The renunciation, repudiation, abandonment, or surrender of a constitutional right.

Supreme Court Cases

Amos v. United States, 255 U.S. 313, 65 L. Ed. 654, 41 S. Ct. 266 (1921)
Zap v. United States, 328 U.S. 624, 90 L. Ed. 1477, 66 S. Ct. 1277 (1946)
Johnson v. United States, 333 U.S. 10, 92 L. Ed. 436, 68 S. Ct. 367 (1948)
Washington v. Chrisman, ___ U.S. ___, ___ L. Ed. 2d ___, 102 S. Ct. 812 (1982)

Elementary/Secondary Education Cases

State v. Stein, 456 P. 2d 1 (Kansas 1969)
Overton v. Rieger, 311 F. Supp. 1035 (New York 1970)
In Re State In Interest of G.C., 296 A. 2d 102 (New Jersey 1972)
State In Interest of Feazell, 360 So. 2d 907 (Louisiana 1978)

Higher Education Cases

Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (Alabama 1968)
People v. Cohen, 292 N.Y.S. 2d 706 (1968)
United States v. Coles, 302 F. Supp. 99 (Maine 1969)
Keene v. Rodgers, 316 F. Supp. 217 (Maine 1970)
Commonwealth v. McCloskey, 272 A. 2d 271 (Pennsylvania 1970)
Piazzola v. Watkins, 442 F. 2d 284 (5th Cir. 1971)
State v. Wingerd, 318 N.E. 2d 866 (Ohio 1974)
Smyth v. Lubbers, 398 F. Supp. 777 (Michigan 1975)
Morale v. Grigel, 422 F. Supp. 988 (New Hampshire 1976)
Roberts v. State, 373 So. 2d 672 (Florida 1979)
Washington v. Chrisman, ___ U.S. ___, ___ L. Ed. 2d ___, 102 S. Ct. 812 (1982)

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SEARCH AND SEIZURE IN EDUCATION

by

Mary Jane Connelly

(ABSTRACT)

This legal research study identified Supreme Court cases relating to search and seizure generally, and Supreme Court, federal and state court cases relating specifically to search and seizure in education. The purpose of this study was to identify those concepts, doctrines and principles of law governing searches and seizures in order to inform administrators of their legal responsibilities.

Concepts, doctrines and principles of law governing searches and seizures are summarized in the following statements: (1) Students have a right to privacy, but this right must be balanced against the school's interests and the rights of others. (2) Searches must be reasonably related to a legitimate school purpose. General, exploratory, blanket and indiscriminate searches will not be sustained by courts. (3) School officials have an affirmative obligation to maintain order and discipline for the health and safety of students. (4) Searches must be based on concrete, articulable facts. Mere suspicion is not acceptable to the courts. (5) Elementary and secondary school officials, acting in loco parentis, are generally held to the lesser

standard of reasonable cause to believe. However, the more intrusive the search, the higher the standard to be applied. (6) Colleges and universities cannot condition attendance upon a waiver of a student's constitutional rights. (7) Police initiated searches are subject to the higher standard of probable cause. (8) In cases where exigent circumstances existed, such as the destruction of evidence or harm to another, administrative officials have an affirmative obligation to act immediately and they are not subject to the warrant requirement. (9) Contraband seen in plain view is subject to seizure without a warrant.