CONSTITUTIONAL LAW—SEARCH AND SEIZURE—SCHOOL OFFICIALS MAY CONDUCT STUDENT SEARCHES UPON SATISFACTION OF REASONABLENESS TEST IN ORDER TO MAINTAIN EDUCATIONAL ENVIRONMENT—*In re T.L.O.*, 94 N.J. 331, 463 A.2d 934 (1983).

With increasing frequency, students have challenged the authority of school officials[1] to conduct searches of their persons, belongings, and lockers.[2] Throughout the years, such searches have been permitted upon a showing of less than probable cause, the standard which governs police-conducted searches.[3]

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[1] Court opinions interchangeably employ the words "school officials" and "school administrators" in discussing standards which govern student searches and to whom they apply. The terms refer generally to principals and assistant principals, but the same standards are applicable to all school employees. *See* Stern v. New Haven Community Schools, 529 F. Supp. 31 (E.D. Mich. 1981) (search conducted by school employee under direction of principal); Picha v. Wielgos, 410 F. Supp. 1214 (N.D. Ill. 1976) (search conducted by school nurse and school psychologist); *In re* G. C., 121 N.J. Super. 108, 296 A.2d 102 (Juv. & Dom. Rel. Ct. 1972) (search conducted by teacher upon direction of principal); People v. Jackson, 65 Misc. 2d 909, 319 N.Y.S.2d 731 (App. Term 1971) (search conducted by Coordinator of Discipline), *aff'd*, 30 N.Y.2d 734, 284 N.E.2d 153, 333 N.Y.S.2d 167 (1972).

[2] *See, e.g.*, Horton v. Goose Creek Indep. School Dist., 690 F.2d 470 (5th Cir. 1982) (sniffing by trained dogs for drugs and alcohol resulting in nonconsensual search of student's purse and emptying of pockets held violative of fourth amendment), *cert. denied*, 103 S. Ct. 3536 (1983); Doe v. Renfrow, 631 F.2d 91 (7th Cir. 1980) (nude search of 13-year-old student by school officials is deprivation of constitutional rights); Tarter v. Raybuck, 556 F. Supp. 625 (N.D. Ohio 1983) (court upheld constitutionality of surveillance by school officials of student smoking marijuana and exchanging plastic bag for money, and subsequent questioning which resulted in consensual production of evidence from pockets and boots); Stern v. New Haven Community Schools, 529 F. Supp. 31 (E.D. Mich. 1981) (two-way mirror observation of student purchasing marijuana complied with fourth amendment); Bellnier v. Lund, 438 F. Supp. 47 (N.D.N.Y. 1977) (group strip search of fifth grade pupils conducted or condoned by employees of school district held illegal under fourth amendment); M. v. Board of Educ. Ball-Chatham Community Unit School Dist. No. 5, 429 F. Supp. 288 (S.D. Ill. 1977) (student coerced to empty pockets by principal acting on information provided by classmate held constitutional); Picha v. Wielgos, 410 F. Supp. 1214 (N.D. Ill. 1976) (student searches conducted by school authorities in presence of police are subject to fourth amendment constraints); Moore v. Student Affairs Comm. of Troy State Univ., 284 F. Supp. 725 (M.D. Ala. 1968) (search of student's dormitory room by two state agents pursuant to valid university regulation held not in violation of fourth amendment); *In re* G. C., 121 N.J. Super. 108, 296 A.2d 102 (Juv. & Dom. Rel. Ct. 1972) (search requiring student to empty pockets and purse and to allow teacher to feel pockets complies with fourth amendment).

[3] In Horton v. Goose Creek Indep. School Dist., 690 F.2d 470 (5th Cir. 1982), *cert. denied*, 103 S. Ct. 3536 (1983), the court of appeals applied a "reasonable cause" standard to school officials, and held that "[a]lthough the standard is less stringent than that applicable to law enforcement officers, it requires more of the school official than good faith or minimal restraint." *Id.* at 481; *see also* Tarter v. Raybuck, 556 F. Supp. 625 (N.D. Ohio 1983) (applying *Horton* reasonable cause test); Bellnier v. Lund, 438 F. Supp. 47 (N.D.N.Y. 1977) (applying standard of "reasonable grounds" based on "articulable facts"); Moore v. Student Affairs Comm. of Troy State Univ., 284 F. Supp. 725 (M.D. Ala. 1968) (applying "reasonable cause to believe" standard).

In *In re T.L.O.* and *State v. Engerud*,[4] the Supreme Court of New Jersey held the fourth amendment of the United States Constitution[5] applicable to students searched by school officials, and simultaneously extended to them the benefits of the exclusionary rule.[6] The court, in substituting a reasonableness standard for probable cause when student searches are conducted by school administrators, balanced students' constitutional rights against the obligation of school officials to maintain order and to provide an environment conducive to education.[7]

In *T.L.O.* a Piscataway High School teacher alleged that she had observed T.L.O. and another student smoking cigarettes in the girls' lavatory.[8] Pursuant to school regulations which forbade cigarette smoking in restrooms, the students were brought before the assistant principal.[9] During questioning, T.L.O. denied smoking in the girls' room, and claimed that she did not smoke at all.[10] The assistant principal escorted T.L.O. to a private office and asked her to "turn over" her purse.[11] Upon opening the handbag, the assistant principal discovered a package of cigarettes and confiscated it.[12] While removing the cigarettes from the purse, he observed rolling papers in plain view, and upon further investigation, uncovered additional drug par-

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[4] 94 N.J. 331, 463 A.2d 934, *cert. granted*, 52 U.S.L.W. 3413 (U.S. Nov. 29, 1983). *T.L.O.* and *Engerud* were consolidated for review by the New Jersey Supreme Court. Because of the death of Engerud, only the case of *T.L.O.* has been granted certiorari.

[5] U.S. CONST. amend. IV reads:

> The right 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.

Id.

[6] To safeguard the guarantees of the fourth amendment, the exclusionary rule was adopted by the federal courts in Weeks v. United States, 232 U.S. 383 (1914). Pursuant to the rule, evidence obtained in violation of the fourth amendment is inadmissible in a criminal proceeding. *Id.* at 398. In 1961, the rule was held applicable to the states through the due process clause of the 14th amendment. Mapp v. Ohio, 367 U.S. 643 (1961).

[7] *T.L.O.*, 94 N.J. at 349, 463 A.2d at 943.

[8] *Id.* at 336, 463 A.2d at 936.

[9] *Id.*

[10] *Id.* T.L.O.'s companion admitted smoking and was assigned to a three-day smoking clinic. *Id.*

[11] *Id.* Since T.L.O. was not advised of her right to withhold consent, her compliance with the assistant principal's demand could not be interpreted as an implied consent to the search. *In re* T.L.O., 178 N.J. Super. 329, 335, 428 A.2d 1327, 1330 (Juv. & Dom. Rel. Ct. 1980), *vacated*, 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982), *rev'd*, 94 N.J. 331, 463 A.2d 934, *cert. granted*, 52 U.S.L.W. 3413 (U.S. Nov. 29, 1983).

[12] *T.L.O.*, 94 N.J. at 336, 463 A.2d at 934. As he seized the cigarettes, the assistant principal was quoted as saying to T.L.O.: " 'You lied to me.' " *Id.*

aphernalia and notations which indicated drug dealing by T.L.O.[13] The assistant principal then telephoned T.L.O.'s mother and the police.[14]

At police headquarters, T.L.O. admitted selling marijuana to other students, and was charged with delinquency based on her possession of marijuana with intent to distribute.[15] T.L.O.'s motion to suppress the evidence, including her confession, was denied by the juvenile and domestic relations court.[16] The Appellate Division of the New Jersey Superior Court affirmed the denial of the suppression motion, but remanded the case for a determination of whether T.L.O. had knowingly waived her constitutional rights before confessing.[17] Judge Joelson dissented from the majority's use of a standard lower than probable cause to uphold school searches,[18] and T.L.O. appealed as of right on the basis of his dissent.[19]

In *State v. Engerud*,[20] a telephone call was received by a police detective from a man claiming to be the father of a student attending

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[13] *Id.* at 336-37, 463 A.2d at 936. The items discovered in the purse included a metal pipe, empty plastic bags, and a plastic bag containing a "tobacco-like substance," later proven to be marijuana. *Id.* at 336, 463 A.2d at 936. Also uncovered were an index card entitled " 'People who owe me money,' " $40.00 primarily in one dollar bills, and correspondence between T.L.O. and another student. *Id.*

[14] *Id.* at 337, 463 A.2d at 936.

[15] *Id.*, 463 A.2d at 936-37. T.L.O. was charged under N.J. STAT. ANN. §§ 2A:4-44; 24:21-20(A)(West Cum. Supp. 1983-1984). Pursuant to school procedure, T.L.O. was also suspended from school for 10 days. *In re* T.L.O., 178 N.J. Super. 329, 335, 428 A.2d 1327, 1330 (Juv. & Dom. Rel. Ct. 1980), *vacated*, 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982), *rev'd*, 94 N.J. 331, 463 A.2d 934, *cert. granted*, 52 U.S.L.W. 3413 (U.S. Nov. 29, 1983).

[16] *In re* T.L.O., 178 N.J. Super. 329, 428 A.2d 1327 (Juv. & Dom. Rel. Ct. 1980), *vacated*, 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982), *rev'd*, 94 N.J. 331, 463 A.2d 934, *cert. granted*, 52 U.S.L.W. 3413 (U.S. Nov. 29, 1983). T.L.O.'s suspension for possession of marijuana was previously quashed by the Superior Court, Chancery Division on the basis that the seizure of marijuana violated the fourth and 14th amendments. *Id.* at 334, 428 A.2d at 1329-30. The juvenile court, which refused to give *res judicata* or collateral estoppel effect to the chancery division's decision, noted that the "State's goal is substantially different from that of the board of education." *Id.* at 344, 428 A.2d at 1335.

[17] *In re* T.L.O., 185 N.J. Super. 279, 280-81, 448 A.2d 493, 493 (App. Div. 1982), *rev'd*, 94 N.J. 331, 463 A.2d 934, *cert. granted*, 52 U.S.L.W. 3413 (U.S. Nov. 29, 1983).

[18] *Id.* at 281, 448 A.2d at 493 (Joelson, J., dissenting). Judge Joelson stated that "[a]lthough the trial judge . . . gave lip service to the Fourth Amendment, he applied the diminished standard of reasonableness in such a way as to render the protection of the Fourth Amendment virtually unavailable to juveniles in public schools who are suspected of violations of school regulations." *Id.* at 282, 448 A.2d at 494 (Joelson, J., dissenting).

[19] *T.L.O.*, 94 N.J. at 338, 463 A.2d at 937. The appeal was brought pursuant to N.J. CT. R. 2:2-1(a)(2), which provides in part that an appeal to the supreme court from a final judgment may be made as of right "in cases where, and with regard to those issues as to which, there is a dissent in the Appellate Division." *Id.*

[20] 94 N.J. 331, 463 A.2d 934, *cert. granted*, 52 U.S.L.W. 3413 (U.S. Nov. 29, 1983).

Somerville High School.[21] The caller alleged that Engerud was selling drugs in the high school.[22] The detective conveyed this information to the vice-principal of the school, who promptly advised the principal and the assistant principal.[23] The principal disclosed to the other school officials that he had heard a rumor the previous year to the effect that the defendant was selling drugs in school.[24] Based on the anonymous telephone call and this rumor, the principal and the assistant principal opened the defendant's locker with a master key and conducted a complete search of the locker and its contents.[25] In the course of the search, rolling papers and packets of methamphetamine were discovered in the pocket of the defendant's coat.[26] The vice-principal telephoned the police and Engerud's parents. Engerud was removed from class and in compliance with the principal's request, he emptied his pockets.[27] This yielded a small amount of marijuana and forty-five dollars in cash.[28]

Engerud was charged with unlawful possession of a controlled dangerous substance in addition to unlawful possession of a controlled dangerous substance with intent to distribute.[29] His motion to suppress the evidence was denied, and he subsequently pled guilty to the latter charge.[30] The New Jersey Supreme Court certified Engerud's appeal directly, and his sentence was stayed pending that action.[31]

To determine the constitutionality of the *T.L.O.* and *Engerud* searches, the New Jersey Supreme Court reviewed the rights accorded juveniles, and specifically students, under the Federal Constitution.

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[21] *Id.* at 338, 463 A.2d at 937.

[22] *Id.* According to the facts as recited by the court, the caller threatened to take matters into his own hands if the police failed to stop the activity. *Id.*

[23] *Id.*

[24] *Id.* Upon review, this fact proved to be of considerable interest to the Supreme Court of New Jersey. *See infra* notes 101, 102 and accompanying text.

[25] *T.L.O.*, 94 N.J. at 338, 463 A.2d at 937. The lockers were equipped with combination locks, and there is no indication in the majority opinion that the defendant was aware of the existence of a passkey or that he had consented to inspections of his locker by school officials.

[26] *Id.* at 338-39, 463 A.2d at 937. The methamphetamine, or "speed," was found in two plastic bags which contained packets labelled by their weight content in fractions of a gram. *Id.* at 338, 463 A.2d at 937.

[27] *Id.* at 339, 463 A.2d at 938.

[28] *Id.*

[29] *Id.* The defendant was charged under N.J. STAT. ANN. §§ 24:21-20(a)(1), -19(a)(1) (West Cum. Supp. 1983-1984), respectively.

[30] *T.L.O.*, 94 N.J. at 339, 463 A.2d at 938. Engerud was sentenced to an indeterminate term at Yardville, a youth correction facility, which was not to exceed five years. *Id.*

[31] *Id.* The appeal was directly certified pursuant to N.J. CT. R. 2:12-1 which provides that "[t]he Supreme Court may on its own motion certify any action or class of actions for appeal."

Historically, children were not granted full constitutional protection.[32] Recently, however, courts have acknowledged that juveniles are entitled to at least minimum constitutional protection.[33] Consequently, school administrators have lost the almost plenary power they once possessed over students.

As early as 1943, the constraints of the fourteenth amendment were held applicable to boards of education when the Supreme Court stated that "[t]he Fourteenth Amendment . . . protects the citizen against the State itself and all of its creatures—Boards of Education not excepted."[34] More than two decades later, when faced with the issue of due process requirements in juvenile proceedings, the Supreme Court warned that children charged with violating the law may receive "neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[35] Although it questioned the wisdom of drawing strict distinctions between juveniles and adults, the Court was unwilling to accord full constitutional protection to juvenile court proceedings. The following year, in 1967, the Court in *In re Gault*[36] extended many of the fifth amendment's protections to juveniles charged with acts which, if committed by adults, would constitute crimes. In *Gault*, a fifteen year old was confined to the Arizona State Industrial School pursuant to a decision rendered in a juvenile delinquency proceeding. The Court found that the proceeding failed to satisfy the criteria of due process and asserted

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[32] In *In re* Gault, 387 U.S. 1 (1967), the Court discussed the "peculiar system for juveniles" which once existed, and stated:

> [A] child, unlike an adult, has a right "not to liberty but to custody." . . . [I]f the child is "delinquent"—the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the "custody" to which the child is entitled.

Id. at 17 (citation omitted).

[33] *Cf.* McKeiver v. Pennsylvania, 403 U.S. 528 (1971); United States v. Duboise, 604 F.2d 648 (10th Cir. 1979)(acknowledging previous decisions which recognize juvenile's right to fifth amendment and reasonable doubt protections but refusing to accord right to jury trial).

[34] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 637 (1943). In *Barnette*, a board of education requirement that students recite the pledge of allegiance while saluting the American flag was challenged on constitutional grounds. Under the board's rule, a violation was punishable by expulsion, after which a cause of action was maintainable against the student and his parents for his unlawful absence. The Supreme Court struck down the rule as an unconstitutional deprivation of students' first and 14th amendment rights. *Id.* at 642.

In both Durgin v. Brown, 37 N.J. 189, 180 A.2d 136 (1962), and Kaveny v. Board of Comm'rs, 69 N.J. Super. 94, 173 A.2d 536 (Law Div. 1961), *aff'd*, 71 N.J. Super. 244, 176 A.2d 802 (App. Div. 1962), boards of education were held to be instrumentalities of the state and governmental agencies.

[35] Kent v. United States, 383 U.S. 541, 556 (1966).

[36] 387 U.S. 1 (1967).

that when juvenile proceedings may lead to confinement, the " 'hearing must measure up to the essentials of due process and fair treatment.' "[37] The Court explicitly stated that the fourteenth amendment and the Bill of Rights were not intended to apply only to adults.[38]

In 1969, the Supreme Court expanded the ambit of constitutional protections to include students in *Tinker v. Des Moines Independent Community School District.*[39] In *Tinker*, the Court recognized that "[s]tudents in school . . . are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect. . . ."[40] The Court held that a school policy forbidding students from wearing black armbands to symbolize their protest of the Vietnam War violated students' first amendment rights because the purpose of the regulation was to restrict the communication of particular ideas. The Court found that because wearing armbands did not threaten actual or potential misconduct, and did not infringe upon the rights of other students, the school's policy was unconstitutional.[41] Justice Fortas, speaking for the Court, indicated that since approximately 1920, courts had recognized that students do not forfeit their constitutional rights when they enter school premises.[42]

The due process clause of the fourteenth amendment was specifically invoked to protect students in the 1975 case of *Goss v. Lopez.*[43] The *Goss* Court found that when granted by state statute, the right to an education is irrevocable unless preceded by "fundamentally fair procedures."[44] "Fundamentally fair procedures" were held to consist

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[37] *Id.* at 30 (quoting Kent v. United States, 383 U.S. 541, 562 (1966)). In his majority opinion, Justice Fortas asserted that due process is the "indispensable foundation of individual freedom . . . which defines the rights of the individual and delimits the powers which the state may exercise." *Id.* at 20.

[38] *Id.* at 13. The Court did not intend to extend the protection of the Bill of Rights and the 14th amendment to all juvenile-state confrontations, but rather limited the protection to juvenile delinquency proceedings. *Id.; see In re* Winship, 397 U.S. 358 (1970). Winship was adjudged to be a juvenile delinquent and ordered confined to a training school for 18 months, subject to yearly extensions which may have resulted in his confinement for up to six years. The Supreme Court reversed the order and held that the due process protections guaranteed to juveniles by *In re* Gault, 387 U.S. 1 (1967), require that each element of the crime charged must be proven beyond a reasonable doubt. *Winship*, 397 U.S. at 368.

[39] 393 U.S. 503 (1969).

[40] *Id.* at 511.

[41] *Id.* at 512.

[42] *Id.* at 506. In Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853 (1982), the Supreme Court reaffirmed its position in *Tinker* that school students are entitled to first amendment protection. *Island Trees* held that the removal of books from school libraries because school board members disapproved of ideas contained in the books violated students' first amendment rights. *Id.* at 872.

[43] 419 U.S. 565 (1975).

[44] *Id.* at 574.

of a minimum of notice to the student of charges against him, and of the opportunity to be heard.[45]

Despite the Court's extension of the first, fifth, and fourteenth amendment protections to students, the applicability to student searches of the fourth amendment and its counterpart, the exclusionary rule,[46] remains a highly controversial issue. The fourth amendment requires that government agents possess probable cause prior to conducting searches, in order to "safeguard the privacy and security of individuals against arbitrary invasions by governmental officials."[47] As applied to searches, probable cause is a "nontechnical"[48] standard of belief just short of certainty which, when possessed by reasonable persons, establishes that there exists sufficient justification to conduct a search.[49] This well-grounded standard strikes a balance between the frequently competing interests of protecting citizens from unreasonable invasions of privacy and allowing law enforcement officials to enforce laws and to protect the community in general.[50]

The fundamental nature of the privacy protected by the fourth amendment was recognized by the United States Supreme Court in *Wolf v. Colorado*.[51] In *Wolf*, Justice Frankfurter maintained that the privacy protected by the fourth amendment is "basic to a free society . . .[and] is therefore implicit in 'the concept of ordered liberty. . . .' "[52]

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[45] *Id.* at 579. The Court recognized that in the interest of justice, fairness, and truth seeking, both parties to a dispute must have the opportunity to present their positions. *Id.* at 580.

[46] The exclusionary rule has been recognized as an integral component of both the fourth and 14th amendments. In Weeks v. United States, 232 U.S. 383 (1914), the majority opinion unequivocally states that the fourth amendment "might as well be stricken from the Constitution" if illegally seized evidence is not excluded from criminal proceedings. *Id.* at 393. Similarly, in Mapp v. Ohio, 367 U.S. 643 (1961), the Court extended the protection of the exclusionary rule to the states through the due process clause of the 14th amendment, and held that without application of the exclusionary rule, the fourth amendment protection against unreasonable searches and seizures would be valueless. *Id.* at 655. *But see* Stone v. Powell, 428 U.S. 465 (1976); United States v. Calandra, 414 U.S. 338 (1974); State v. Young, 234 Ga. 488, 216 S.E.2d 586, *cert. denied*, 423 U.S. 1039 (1975), where the fourth amendment and the exclusionary rule were held not to be coextensive.

[47] *See* Camara v. Municipal Court, 387 U.S. 523, 528 (1967). In *Camara*, an ordinance permitting building inspectors to conduct routine inspections of homes and apartments without search warrants was struck down as violative of the fourth and 14th amendments. *Id.* at 540. The *Camara* Court held that fourth amendment protection extends to administrative searches and is not employed solely when an individual is suspected of criminal activity. *Id.* at 530.

[48] Brinegar v. United States, 338 U.S. 160, 176 (1949).

[49] *Id.* at 175-76; *see, e.g.*, Carroll v. United States, 267 U.S. 132, 162 (1925) (officers had probable cause to search when "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" the law has been or is being violated).

[50] Brinegar v. United States, 338 U.S. 160, 176 (1949).

[51] 338 U.S. 25 (1949).

[52] *Id.* at 27 (quoting Palko v. Connecticut, 302 U.S. 319, 325 (1937)).

Despite this laudatory acknowledgement, a substantial number of decisions either have refused to apply the constraints of the fourth amendment to student searches, or, if they have acknowledged that the fourth amendment is applicable to student searches, have employed a standard less stringent than probable cause.[53] The leading justifications for denying fourth amendment protection or for permitting a compromise of the probable cause standard are: first, that school administrators act in a private capacity and therefore are not bound by the fourth amendment;[54] second, that the *in loco parentis*[55] or *parens patriae*[56] relationship with purportedly exists between school officials and students justifies a relaxation or denial of fourth amendment protection; and third, that the uniqueness of the school environment is a sufficient basis for a modification of fourth amendment requirements.[57]

A school official's search of a student's locker was held to constitute private action which is not subject to the constraints of the fourth amendment by the California Court of Appeals in *In re Donaldson*.[58]

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[53] *See infra* notes 64-68 and accompanying text.

[54] *Cf.* Burdeau v. McDowell, 256 U.S. 465 (1921) (fourth amendment applicable only to governmental action, not to private action).

[55] As it relates to the school administrator-student relationship, the doctrine of *in loco parentis* has been described by William Blackstone as follows:

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

1 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *452-53 (footnote omitted).

More recently, *in loco parentis* has been defined as: "In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities." BLACK'S LAW DICTIONARY 708 (rev. 5th ed. 1979).

[56] The term *parens patriae* is occasionally substituted for *in loco parentis* and has been defined as follows: "literally 'parent of the country,' refers traditionally to role of state as sovereign and guardian of persons under legal disability . . . . It is a concept of standing utilized to protect those quasi-sovereign interests such as health, comfort and welfare of the people. . . ." BLACK'S LAW DICTIONARY 1003 (rev. 5th ed. 1979). Because the precise meaning of *parens patriae* and its significance with regard to the student-school administrator relationship are unclear, the term *in loco parentis*, rather than *parens patriae*, will be employed in this Note. *See Gault*, 387 U.S. at 16.

[57] It has been noted that the requirement of mandatory attendance, the resultant gathering together of many youngsters, and the concurrent duties of school administrators to educate, discipline, and protect the well-being of students combine to create a distinctive environment. *See* Buss, *The Fourth Amendment and Searches of Students in Public Schools*, 59 IOWA L. REV. 739, 769-70 (1974).

[58] 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (Ct. App. 1969). In *Donaldson*, a high school principal, acting on a tip, directed the defendant-student to empty his pockets, which yielded marijuana. The court upheld the search by concluding that schools stand *in loco parentis* with regard to students and therefore may employ moderate force to obtain obedience in school. *Id.* at 511, 75 Cal. Rptr. at 223.

The *Donaldson* court distinguished between a search conducted by a school administrator in order to secure evidence of student misconduct, and a search undertaken in order to obtain evidence which would support a criminal conviction.[59] In so doing, the court focused on the objective of the individual conducting the search rather than upon the actual violation of students' constitutional rights.[60] The reasons for which a search is undertaken, however, ostensibly are irrelevant to the applicability of the fourth amendment.[61]

The distinction between public and private action was reasserted by a Texas court of appeals in *Mercer v. State*.[62] In *Mercer*, it was concluded that a school official acted in a private capacity rather than as an agent of the government while conducting a student search. The rationale employed by the *Mercer* court, however, is distinguishable from that of the *Donaldson* court. In *Mercer*, the court did not focus upon the searcher's objective, but conclusively characterized the school official as acting *in loco parentis* rather than as a government agent.[63]

Other courts, inconsistent with the *Mercer* opinion, have employed the *in loco parentis* characterization to mitigate the probable cause standard when the fourth amendment has been applied to student searches conducted by school officials who are classified as government agents. In *People v. Jackson*,[64] the Appellate Term of the Supreme Court of New York determined that a School Coordinator of Discipline was a government agent, yet it upheld a search conducted by the official several blocks away from the school.[65] The court permitted the search upon reasonable suspicion and justified its holding on the basis of the *in loco parentis*

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[59] *Id.*, 75 Cal. Rptr. at 222. The court supported this distinction on the basis of the school's *in loco parentis* relationship with respect to students, and school officials' "obligation to maintain discipline in the interest of a proper and orderly school operation. . . ." *Id.*

[60] *Id.*; *cf.* People v. Stewart, 63 Misc. 2d 601, 313 N.Y.S.2d 253 (Crim. Ct. 1970). In *Stewart*, the court focused on a school official's lack of special law enforcement training to hold that the search of a student was private action to which the fourth amendment did not apply. *Id.* at 603-05, 314 N.Y.S.2d at 255-57.

[61] *See* Camara v. Municipal Court, 387 U.S. 523 (1967); *supra* notes 51-61 and accompanying text.

[62] 450 S.W.2d 715 (Tex. Civ. App. 1970).

[63] *Id.* at 717. The court apparently believed that the two characterizations are mutually exclusive.

[64] 65 Misc. 2d 909, 319 N.Y.S.2d 731 (App. Term 1971), *aff'd*, 30 N.Y.2d 734, 284 N.E.2d 153, 333 N.Y.S.2d 167 (1972).

[65] *Id.* at 914, 319 N.Y.S.2d at 736. The Coordinator had chased the student off school premises and had searched him in order to confirm a suspicion that the student possessed drugs. *Id.* at 910, 319 N.Y.S.2d at 732-33.

relationship which it recognized as existing between students and school officials.[66] The majority reasoned that in accordance with parental expectations, school administrators have a duty to protect students under their care.[67] Consequently, in *Jackson*, the *in loco parentis* doctrine operated to permit a school administrator to conduct a search away from school premises with *greater* freedom than that possessed by a law enforcement official.[68]

With regard to searches in which school administrators assist law enforcement officials, students have benefitted from judicial recognition of the need for full fourth amendment protection. In a leading case, *Picha v. Wielgos*,[69] school administrators acting on a suspicion that particular students possessed drugs conducted individual searches of three students after the arrival of police officers.[70] No drugs were found and the plaintiff subsequently brought a successful civil rights action against the school officials.[71] The court found that the school administrators' cooperation with the police raised the search to the level of at least a quasi-criminal investigation—bound by the fourth amendment standard of reasonableness based on probable cause.[72]

Although courts frequently have upheld the fourth amendment rights of students, at least to a limited degree, they have been less willing to apply the exclusionary rule to evidence seized in the course of student searches. In *State v. Young*,[73] the Supreme Court of Georgia analyzed the applicability of the exclusionary rule by differentiating between three classes of persons: first, private persons to whom neither the fourth amendment nor the exclusionary rule applies; sec-

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[66] *Id.*, 319 N.Y.S.2d at 733.

[67] *Id.* This duty was held to include the investigation of pupils suspected of possessing or using narcotics. *Id.*

[68] *Id.* at 915, 319 N.Y.S.2d at 737 (Markowitz, J., dissenting).

[69] 410 F. Supp. 1214 (N.D. Ill. 1976).

[70] *Id.* at 1216. The searches, which involved disrobing to an uncertain extent, were conducted by the school nurse and the school psychologist. *Id.*

[71] *Id.* The action was brought under 42 U.S.C. § 1983 (Supp. V 1981).

[72] *Picha*, 410 F. Supp. at 1219. In establishing this standard, the court reasoned that "[w]here the police have significant participation, Fourth Amendment rights cannot leak out the hole of presumed consent to a search by an ordinarily non-governmental party." *Id.; see* Piazzola v. Watkins, 442 F.2d 284, 289 (5th Cir. 1971)(reasonable searches of dormitory rooms conducted by school officials to maintain educational environment are constitutional, but when searches are conducted in cooperation with police to obtain criminal evidence, they amount to "an unconstitutional attempt to require a student to waive his protection from unreasonable searches and seizures as a condition to his occupancy of a college dormitory room").

[73] 234 Ga. 488, 216 S.E.2d 586, *cert. denied*, 423 U.S. 1039 (1975).

ond, an intermediary class of governmental agents—including school officials—whose conduct constitutes state action for purposes of the fourth amendment, but to whom the exclusionary rule is inapplicable; and third, governmental law enforcement agents who are bound by both the fourth amendment and the exclusionary rule.[74] The latter two classifications were grounded in the court's belief that the exclusionary rule exists to deter police misconduct and, as such, is applicable only to state law enforcement agents.[75]

Less than four months before the *Young* decision was rendered, the Supreme Court of Louisiana, in *State v. Mora*,[76] held the exclusionary rule applicable to evidence seized during a student search. In *Mora*, the court extended constitutional protection to a student whose wallet was searched during a physical education class by the class instructor.[77] The court limited this protection, however, to instances where the fruits of the search are sought to be used as evidence in criminal proceedings.[78] Thus, as noted above, courts vary on the question of the exclusionary rule's applicability to student searches, and no clear trend has emerged from their decisions.

Finally, it has been suggested that the unique nature of the school environment justifies a modification of students' fourth amendment protection.[79] In *Horton v. Goose Creek Independent School District*,[80] the United States Court of Appeals for the Fifth Circuit held that student searches conducted by school officials may be permitted on the basis of a "reasonable cause" standard.[81] Although it found the

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[74] *Id.* at 493, 216 S.E.2d at 591.

[75] *Id.* at 491, 216 S.E.2d at 590. The court recognized that school officials are state officials, but not state law enforcement officials. *Id.* In his dissenting opinion, Justice Gunter examined the exclusionary rule, which he believed provides a "Constitutional Right to Suppression." *Id.* at 497, 216 S.E.2d at 595 (Gunter, J., dissenting); see *supra* note 46 and accompanying text for a discussion which is supportive of Justice Gunter's position.

[76] 307 So. 2d 317 (La. 1975), *vacated*, 423 U.S. 809 (1976).

[77] *Id.* at 321. The court noted that school principals and teachers are government officials with respect to the fourth amendment. *Id.* at 319.

[78] *Id.* at 320.

[79] *See* M. v. Board of Educ. Ball-Chatham Community Unit School Dist. No. 5, 419 F. Supp. 288 (S.D. Ill. 1977)(students' fourth amendment rights balanced against school administrators' need to maintain an educational environment); Bellnier v. Lund, 438 F. Supp. 47 (N.D.N.Y. 1977)(special responsibility of school officials to provide safe atmosphere taken into account in assessing reasonableness of search); *cf.* Moore v. Student Affairs Comm. of Troy State Univ., 284 F. Supp. 725 (M.D. Ala. 1968)(maintenance of university's "educational atmosphere" justified finding room inspection regulation facially valid).

[80] 690 F.2d 470 (5th Cir. 1982), *cert. denied*, 103 S. Ct. 3536 (1983).

[81] *Id.* at 481. The searches at issue involved exploratory sniffing of students, their lockers, and their automobiles by dogs trained to detect certain contraband. The court held that such searches

search in *Horton* to be be impermissibly intrusive, the court recognized that the fourth amendment's primary concern is "reasonableness," and that its requirement of probable cause may therefore be mitigated depending on the circumstances of the case.[82] The court of appeals noted that the unique nature of a school environment is created both by the school's duty to protect students, and by the circumstances resulting from a mandatory gathering of individuals "too young to be considered capable of mature restraint in their use of illegal substances or dangerous instrumentalities. . . ."[83] This situation, it reasoned, requires that school officials be granted "broad supervisory and disciplinary powers," which must be balanced against the students' constitutional rights.[84]

The New Jersey Supreme Court also applied the less stringent "reasonableness" standard when it reviewed the searches in *In re T.L.O.*[85] In determining whether school officials possess reasonable grounds to conduct a student search, the majority employed a totality of the circumstances test, and considered such aspects as " 'the child's age, history, and school record, the prevalence and seriousness of the problem in the school to which the search was directed, the exigency to make the search without delay, and the probative value and reliability of the information used as a justification for the search.' "[86] Justice O'Hern, writing for the court, maintained that his method of evaluation "represents the best way to vindicate each student's right to be free from unreasonable searches and to receive a thorough and efficient education."[87]

The majority noted that pursuant to New Jersey statutes,[88] school administrators are obligated to "maintain safety, order and discipline within the schools."[89] Accordingly, after balancing the students' constitutional rights against the school's duty to preserve an orderly environment, the court found it necessary to permit school officials to conduct "a narrow band of administrative [student] searches."[90] The

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of lockers and automobiles are permissible, but concluded that "the use of dogs in dragnet sniff-searches of the students" is unconstitutional. *Id.* at 488.

[82] *Id.* at 480.

[83] *Id.*

[84] *Id.* at 480-81.

[85] 94 N.J. 331, 463 A.2d 934, *cert. granted*, 52 U.S.L.W. 3413 (U.S. Nov. 29, 1983).

[86] *Id.* at 346, 463 A.2d at 942 (quoting State v. McKinnon, 88 Wash. 2d 75, 81, 558 P.2d 781, 784 (1977)).

[87] *Id.*

[88] *See generally* N.J. STAT. ANN. §§ 18A:37-1 to -5 (West 1968 & Cum. Supp. 1983-1984).

[89] *T.L.O.*, 94 N.J. at 343, 463 A.2d at 940.

[90] *Id.* at 344, 463 A.2d at 940.

rationale for this decision was that maintaining order often requires immediate action which cannot be postponed until a warrant is secured.[91]

Justice O'Hern analogized the school setting to a "pervasively regulated" business, one of the few narrowly drawn exceptions to the warrant requirement.[92] The court, recognizing the need to establish the standards which govern student searches, determined that all student searches initiated by police officers are bound by the probable cause standard.[93] With regard to searches conducted solely by school administrators, the majority, in light of the special obligations of school officials, established that the absence of police participation justifies a relaxation of the standard to one of "reasonable grounds."[94] The court reversed the convictions of both T.L.O. and Engerud because the searching officials in each case had failed to meet the reasonableness criterion established by the court.[95] The majority unequivocally stated that its objective was not to criticize the action of school officials, but to determine the constitutional rights of students faced with juvenile or criminal charges.[96]

Justice O'Hern noted that T.L.O.'s purse was searched by an assistant principal in order to obtain cigarettes, the mere possession of which did not constitute a violation of law or school policy.[97] Her

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[91] *Id.* at 345, 463 A.2d at 941 (citing State v. McKinnon, 88 Wash. 2d 75, 81, 553 P.2d 781, 784 (1977)).

[92] *Id.* at 342, 463 A.2d at 939-40. The court looked specifically to United States v. Biswell, 406 U.S. 311 (1972) and State v. Dolce, 178 N.J. Super. 275, 428 A.2d 1327 (App. Div. 1981) to support its position. In *Biswell*, the United States Supreme Court upheld § 923(g) of the Gun Control Act of 1968, which authorizes a treasury agent, during business hours, to search the premises of a firearms dealer and to examine the records or documents required to be kept. The Court noted that the searches are limited in time, place, and scope, and it concluded that when "regulatory inspections further urgent federal interest, and the possibilities of abuse and the threat to privacy are not of impressive dimension, the inspection may proceed without a warrant where specifically authorized by statute." *Biswell*, 406 U.S. at 317. In *Dolce*, horse racing was recognized as an industry which has long been subject to pervasive governmental regulation. Consequently, the Superior Court of New Jersey upheld as constitutional a warrantless administrative search when drugs, in violation of N.J. ADMIN. CODE tit. 13 § 70-14.17 (1970)(current version at N.J. ADMIN. CODE tit. 13 § 70-14A.1 (Supp. 1982)) were found in the blood of a racehorse at Monmouth Park Racetrack. The scope of the search was held to include anything within the stable area which was used by the defendant in connection with horse racing, including stalls, barns, sheds, horse trailers, and other equipment, such as a pick-up truck and box contained therein.

[93] *T.L.O.*, 94 N.J. at 345, 463 A.2d at 941.

[94] *Id.* at 346, 463 A.2d at 941-42.

[95] *Id.* at 347, 463 A.2d at 942.

[96] *Id.* at 349, 463 A.2d at 943.

[97] *Id.* at 347, 463 A.2d at 942.

possession of cigarettes, moreover, was not dispositive of the charge that she had been smoking cigarettes in the girls' lavatory.[98] Additionally, the majority concluded that students have legitimate expectations of privacy in the contents of their purses.[99] The court determined that the vice-principal had acted on nothing more than a hunch, and noted that although there is "[n]o doubt good hunches would unearth much more evidence of crime[,]. . . more is required to sustain a search."[100]

In *Engerud*, school officials engaged in a search of the defendant's locker on the basis of an anonymous tip and a rumor. The court noted that tips which are neither provided by a reliable source nor corroborated by police efforts cannot act to satisfy the standard—whether probable cause or reasonableness—necessary to justify conducting a search.[101] Consistent with its finding in *T.L.O.*, the majority concluded that Engerud had a legitimate expectation of privacy in the contents of his locker.[102]

In his dissenting opinion, Justice Schreiber criticized the majority for applying an excessively stringent reasonableness standard which denied school officials the flexibility necessary to maintain order in schools.[103] By balancing individual students' fourth amendment rights against school administrators' obligation to provide all students with a quality education, the dissent concluded that often school officials have a duty to override students' rights in order to enforce school

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[98] *Id.*, 463 A.2d at 943. The assistant principal claimed that he searched the purse for cigarettes solely in order to impeach T.L.O.'s credibility. The court declined to find sufficient justification for the intrusion on this basis. *Id.*, 463 A.2d at 942.

[99] *Id.*

[100] *Id.*, 463 A.2d at 942-43.

[101] *See* Illinois v. Gates, 103 S. Ct. 2317 (1983). The Court, in determining whether an informant's tip was sufficient to establish probable cause, applied a totality of the circumstances test, which involves a "balanced assessment of the relative weights of all the various indicia of reliability . . . attending an informant's tip . . . ." *Id.* at 2330.

[102] *T.L.O.*, 94 N.J. at 348, 463 A.2d at 943. Despite the existence of a master key which opened all of the lockers in the school, Justice O'Hern determined that so long as the school did not have a policy of regularly inspecting lockers, students could assume that passkeys would be used solely upon their own request or convenience. *Id.* at 348-49, 463 A.2d at 943. *But see* People v. Overton, 20 N.Y.2d 360, 229 N.E.2d 596, 283 N.Y.S.2d 22 (1967) (students may have exclusive possession over their lockers with regard to other students, but not as to school officials when students know school authorities retain combinations of each locker).

[103] *T.L.O.*, 94 N.J. at 353, 463 A.2d at 946 (Schreiber, J., dissenting). Justice Schreiber intensified his dissent by directly confronting the majority's reasoning. He concluded that "[a]fter paying lip service to the principle that school officials have the authority to conduct reasonable searches necessary to maintain safety, order and discipline within the schools, [citation omitted] the majority evaluates the conduct of the school official as if he were a policeman." *Id.*

regulations.[104] Justice Schreiber felt that "a well-grounded suspicion"[105] was the appropriate standard to apply to searches conducted by school officials. He justified the application of this reduced probable cause standard by noting the uniqueness of the school environment and by distinguishing the searches at issue from those conducted by police officers. In support of his position, Justice Schreiber observed that even police are not always required to satisfy the probable cause criteria prior to conducting a search.[106]

According to Justice Schreiber, the searches at issue were minimal invasions of privacy. With regard to *T.L.O.*, he asserted that the search for cigarettes was permissible once T.L.O. had jeopardized her credibility by stating that she did not smoke at all.[107] He believed that the drugs, which were in plain view, were justifiably seized, and that the discovery of drugs permitted the continuation of the search.[108] As to *Engerud*, Justice Schreiber believed that the students' knowledge of the existence of a passkey diminished their expectations of privacy in their lockers.[109]

The reasonableness standard adopted by the *T.L.O.* court is an unreasonable resolution of the conflict which exists between school administrators' obligation to provide an environment conducive to education, and students' interest in preserving their fourth amendment rights. Although the *T.L.O.* court purported to weigh the inconsistent interests of school administrators and students when it reduced the probable cause standard,[110] it focused primarily upon school administrators' obligations. In so doing, it failed to consider the negative effects of denying students full fourth amendment protection.[111] The psychological effect of undergoing a search may well be traumatic and long-lasting for a juvenile.[112] In order to minimize these deleteri-

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[104] *Id.* at 350, 463 A.2d at 944 (Schreiber, J., dissenting). Essentially, Justice Schreiber undertook a quantitative analysis whereby he balanced school administrators' obligation to all pupils against the invasion of an individual student's constitutional rights.

[105] *Id.* at 351, 463 A.2d at 945 (Schreiber, J., dissenting).

[106] *Id.* at 350, 463 A.2d at 944 (Schreiber, J., dissenting).

[107] *Id.* at 354, 463 A.2d at 964 (Schreiber, J., dissenting). Justice Schreiber noted that the school official might have been "derelict" had he not searched T.L.O.'s purse, given the broad supervisory power possessed by school administrators and the threat to health and safety posed by cigarette smoking in prohibited areas. *Id.* at 355, 463 A.2d at 946 (Schreiber, J., dissenting).

[108] *Id.*

[109] *Id. But see supra* note 102 and accompanying text.

[110] *See supra* notes 101-02 and accompanying text.

[111] *T.L.O.*, 94 N.J. at 349, 463 A.2d at 943-44.

[112] It is interesting to note that cases which purport to balance the interests of school administrators against those of students fail to consider the psychological effects of searches on students. *But see* People v. D., 34 N.Y.2d 483, 490, 315 N.E.2d 466, 471, 358 N.Y.S.2d 403, 410 (1974),

ous effects and to guard against random or mistaken searches, the probable cause standard of the fourth amendment must not be compromised.[113]

Respect for the law is a fundamental concept which must be imparted to youngsters. It is counterproductive to this goal to require students to attend school and to abide by school regulations and yet to afford them a lesser standard of constitutional protection than other citizens enjoy. Further, the disparity which exists between the constitutional protection afforded students and nonstudents is confusing to pupils, since they are entitled full fourth amendment protection when they leave school premises. Students are less likely to respect the constitutional rights of others, or to obey legal rules and school regulations, when their own rights are not guaranteed the same protection as are the rights of nonstudents. Because schools function to educate juveniles socially and civically as well as academically,[114] school administrators who serve as role models for students should be compelled to uphold pupils' constitutional rights.

The substitution of a reasonableness standard for a probable cause standard creates a tremendous potential for abuse[115] by creating a dual standard with regard to juveniles' constitutional protection. Youngsters searched by government officials other than school administrators are afforded full constitutional protection, while those searched by school officials are guaranteed little or no protection. Once a relaxation of the probable cause standard is permitted, how-

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where the court briefly discussed the issue, and stated that "although the necessities for a public school search may be greater than for one outside the school, the psychological damage that would be risked on sensitive children by random search insufficiently justified by the necessities is not tolerable." *Id.* at 490, 315 N.E.2d at 471, 358 N.Y.S.2d at 410; *see also* Bellnier v. Lund, 438 F. Supp. 47 (1977)(acknowledging detrimental psychological effect of searches on juveniles).

[113] In Brinegar v. United States, 338 U.S. 160 (1949), Justice Rutledge noted the reasonableness of probable cause and stated: "[r]equiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice." *Id.* at 176.

[114] In *Tinker*, 393 U.S. at 503, Justice Fortas maintained, " '[t]hat [boards of education] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.' " *Id.* at 507 (quoting West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943)).

[115] Departures from probable cause allow teachers to more easily conduct arbitrary searches. *See Gault*, 387 U.S. at 1. In the words of Justice Fortas: "Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness." *Id.* at 18-19; *see, e.g, In re* Fred C., 26 Cal. App. 3d 320, 102 Cal. Rptr. 682 (Ct. App. 1972) (police officer deemed to be acting as agent of school official, therefore bound by reasonableness rather than probable cause standard when conducting student search).

ever, school officials may attempt to fit questionable factual scenarios into the realm of "reasonableness."

School administrators should be bound by the same probable cause standard which governs police officials. Frequently, school officials cooperate with police in conducting student searches.[116] In fact, in some areas, police officers instruct teachers in methods of detecting and identifying marijuana.[117] Under the dual standard which now exists, school officials may legally conduct searches which would be illegal if undertaken by police officials,[118] and the evidence obtained may be utilized in a criminal or juvenile delinquency proceeding. Thus, the disparity between the standards which govern police-conducted searches and those which apply to searches undertaken by school administrators may encourage tacit agreements regarding cooperation between school administrators and police.

The perpetuation of this dual standard has been erroneously justified on the grounds that school officials conduct searches in order to maintain an educational environment rather than to obtain criminal evidence.[119] The alleged objective of the searcher, however, is irrelevant to the applicability of the fourth amendment. The fourth amendment provides protection for "the people"—students and non-students alike—"against unreasonable searches and seizures."[120] Distinctions made between the alleged purpose of searches undertaken by

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[116] *See supra* notes 69-72 and accompanying text. School administrators cooperate with and facilitate police investigations whenever they turn over to police evidence of a crime confiscated in the course of a student search, and when they conduct searches pursuant to police tips. In *Engerud*, for example, police received a tip which they could not act upon because probable cause had not been established. Although a formal agreement regarding student searches did not exist between police and school officials, by relaying the tip to school administrators, a search was conducted and evidence was seized.

[117] Note, *Search and Seizure in the Public Schools*, 36 LA. L. REV. 1067, 1071 (1976); *see also* Buss, *supra* note 57, at 739.

[118] Agreements between school and law enforcement officials are analogous to those which existed under the now abandoned "silver platter doctrine." The doctrine arose as a result of the disparity created by the application of the exclusionary rule to evidence seized illegally by federal, but not by state officials. State agents were able to conduct a search and introduce evidence as if on a "silver platter," when the same search, if undertaken by federal agents, would have rendered the evidence seized inadmissible in a criminal proceeding. The silver platter doctrine was held unconstitutional by the United State Supreme Court in Elkins v. United States, 364 U.S. 206 (1960), which determined that a rule may not encourage state officials to act in "disregard of constitutionally protected freedom." *Id.* at 221-22.

[119] But see *Donaldson*, where the court stated that "the primary purpose of the school official's search was not to obtain convictions, but to secure evidence of student misconduct. That evidence of crime is uncovered and prosecution results therefrom should not of itself make the search and seizure unreasonable." *Donaldson*, 269 Cal. App. 2d at 511-12, 75 Cal. Rptr. at 222.

[120] *See supra* note 5.

police officers and those conducted by school administrators are illusory. In either instance, the scope of the search, the consequent privacy invasion, and the possibility that the evidence obtained will result in a criminal conviction are the same.[121] The emphasis, in determining the applicability of the fourth amendment to student searches, should therefore be upon the violation of the rights of the person searched, rather than upon the intent of the searcher. It was just such violations that the fourth amendment was designed to eliminate.[122]

Dilution of the probable cause standard has also been justified by the belief that in schools which are unsafe, or where antisocial conduct occurs, increased flexibility to conduct searches is needed in order to maintain an educational environment. School administrators are charged with a duty to protect pupils who, by virtue of their age and inexperience, are exceptionally vulnerable to external influence, especially peer pressure.[123] The protection of students who may be vulnerable and immature, however, does not justify a negation of their constitutional rights.[124] A reduction of the probable cause standard based on the goal of maintaining an educational environment is inconsistent with other developments in the law regarding student searches. If the maintenance of such an atmosphere alone is sufficient justification for infringing upon students' fourth amendment rights, anyone, including police officers, who conducts school searches which further the maintenance of such an atmosphere, should also be held to a relaxed probable cause standard. Yet courts have repeatedly held that when police officers participate in school searches, they are bound by the probable cause standard.[125]

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[121] Buss, *supra* note 57, at 755.

[122] *See generally* N. LASSON, THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION 51-78 (1970).

[123] *See* People v. Overton, 20 N.Y.2d 360, 362, 229 N.E.2d 596, 597, 283 N.Y.S.2d 22, 24 (1967) ("when large numbers of teenagers are gathered together in [the school] environment, their inexperience and lack of mature judgment can often create hazards to each other").

[124] *See In re* Winship, 397 U.S. 358 (1970). Regarding attempts to justify a relaxation of children's constitutional rights on a protection theory, Justice Brennan determined that:

> [i]t is true, of course, that the juvenile may be engaging in a general course of conduct inimical to his welfare that calls for judicial intervention. But that intervention cannot take the form of subjecting the child to the stigma of a finding that he violated a criminal law and to the possibility of institutional confinement on proof insufficient to convict him were he an adult.

Id. at 367 (footnote omitted).

[125] *See Picha*, 410 F. Supp. at 1214 (police held to probable cause standard when called in by school administrators to conduct student search which amounted at least partially to quest for illegal items); Piazzola v. Watkins, 316 F. Supp. 624 (M.D. Ala. 1970) (police officer permitted

Justifying a relaxation of the probable cause standard on the grounds that school officials stand *in loco parentis* with respect to students is equally inappropriate. In the days of the one-room schoolhouse, school attendance was optional, classes were small, and teachers and pupils spent the entire day together in the same classroom. Teachers often had the opportunity to know their students and the students' families on a personal level. Under those circumstances, application of a parental analogy to school administrators may have been appropriate. Today, however, teachers specialize in particular areas, mandatory school attendance[126] has led to larger classes, and students may spend only a few hours per week with each teacher. Consequently, the school has become an impersonal environment wherein teachers rarely become acquainted with students on an individual basis. In fact, it is likely that school administrators will only know those students who repeatedly have disciplinary problems or who are so exceptional as to distinguish themselves from their classmates.[127] It is therefore illogical to expect school officials to treat students with the same understanding and concern as would the youngsters' parents. Use of the *in loco parentis* doctrine in order to allow government officials greater freedom to invade the rights of juveniles is a gross misapplication of a concept generally employed to *protect* the rights of juveniles. Therefore, a parental authority analogy as applied to school officials is now obsolete.[128] Nonetheless, because it can effectively reduce or negate the fourth amendment protection otherwise afforded students, *in loco parentis* continues to be employed as a convenient and conclusive means of justifying school searches.[129]

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to search student's dormitory room by school official held to probable cause standard even though college reserved right to inspect dormitory rooms), *aff'd*, 442 F.2d 284 (5th Cir. 1971). *But see In re* Fred C., 26 Cal. App. 3d 320, 102 Cal. Rptr. 682 (Ct. App. 1972) (police officer called in by vice-principal to search student held to reasonableness standard).

[126] *See* Buss, *supra* note 57, at 743. The author noted that "the constraints on a student's liberty that result from compulsory attendance and in-school regulation would evoke a deep judicial concern for the student's right to privacy as protected by the fourth amendment." *Id.*

[127] In *Engerud*, for example, the principal claimed he had heard rumors regarding Engerud's alleged involvement with drugs, and these rumors were given considerable weight by school officials in their decision to search Engerud's locker.

[128] *See generally* Buss, *supra* note 57, at 765-68 and *infra* note 129. *But see* People v. Jackson, 65 Misc. 2d 909, 913, 319 N.Y.S.2d 731, 736 (App. Term 1971) (state and public interest in objectives of school administrators so great that *in loco parentis* is public necessity), *aff'd*, 30 N.Y.2d 734, 285 N.E.2d 153, 333 N.Y.S.2d 167 (1972).

[129] *See* Knowles, *Crime Investigation in the School: Its Constitutional Dimensions*, 4 J. FAM. L. 151 (1964). As noted by Professor Knowles:

> [T]he phrase *in loco parentis* expresses nothing save that the school has certain rights and duties to children in its care. When a court rules that a certain act by a school

Because the relationships which parents and school administrators have with the children under their care are manifestly different, administrators should not be granted the same privileges parents have with regard to their own children. Parents possess certain privileges with regard to the treatment of their children, under the assumption that they will act with the love, emotional concern, and special interest implicit in the parent-child relationship. In so acting, parents engage in activities which further their children's welfare, not the least of which is an attempt to shelter their children from harm. This protective quality which is inherent in an *in loco parentis* relationship, however, is nonexistent in the school environment.[130] School administrators are not employed to serve the interest of *individual* children. Rather, their objective is the fulfillment of a duty to coordinate school operations and to maintain an educational environment[131]—in short, to promote the welfare of *all* students. Apart from this duty, school officials may be obligated to report illegal activities and to turn over to law enforcement officials any contraband they confiscate.[132] On the other hand, parents may and often do deal with such matters in a manner they personally deem appropriate. This may entail a telephone call to the police, consultation with the leader of a civic or spiritual organization, or a complete avoidance of outside involvement. In any event, the decisions parents make with regard to their children are plainly different from those made by school officials. Any

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> official is performed *in loco parentis* the court is actually concluding that the act was permissible . . . . Most simply, the phrase *in loco parentis* is no guide to action, but solely a conclusionary label attached to permissable school controls.

Id. at 152 n.1.

[130] *See* Buss, *supra* note 57, at 768. The article criticized the characterization of student searches conducted by school administrators as *in loco parentis* actions. It noted that the focus of the characterization is "on protection of the other students and on coercive power over the searched student[,]" rather than upon protection of the rights of the searched student. *Id.*

[131] *See Horton*, 690 F.2d at 480 n.18.

[132] Assuming, arguendo, that it could be proven that school administrators act *in loco parentis* in the fulfillment of their duty to educate and to protect students, the parental authority analogy could not be extended to the actions of school officials in conducting student searches. When school administrators engage in student searches, the same conflict of interest between the individual being searched and the searching official, and the same potential for abuse which warrants application of the probable cause standard to police-conducted searches, are present. In *Mora*, 307 So. 2d at 317, the court maintained that:

> Because of the function of these school officials and their strict accountability to the State, we must conclude that these school officials, insofar as they are discharging their duties by enforcing State policies and regulations, are within the purview of the Fourth Amendment's prohibition; therefore, their students must be accorded their constitutional right to be free from warrantless searches and seizures.

Id. at 319.

similarity in their roles should not give rise to judicial recognition of a school official-parent analogy.

A student's fourth amendment rights are presumably violated any time an area or articles which the student reasonably expected to keep private have been entered or seized by government officials in the absence of probable cause.[133] Regardless of whether school officials are bound by probable cause or a less stringent standard, evidence seized during a search which was initiated on less than probable cause should be excluded from criminal and juvenile delinquency proceedings.[134]

The Supreme Court of New Jersey in *T.L.O.* reduced the constitutional probable cause standard to one of reasonableness, and thereby unjustifiably compromised the constitutional protection afforded all public school students in New Jersey. While application of this relaxed standard allows school administrators greater flexibility to fulfill their obligations, more importantly, it unwisely diminishes the constitutional protection afforded students. Courts should be wary of striking a balance which may appear to be justified today, but which opens the door to greater constitutional compromises tomorrow.

Deborah A. Reperowitz

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[133] In Katz v. United States, 389 U.S. 347 (1967), the United States Supreme Court acknowledged that "the Fourth Amendment protects people not places. What a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection [citation omitted]. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Id.* at 351-52. The critical element in establishing that a reasonable expectation of privacy exists in students' purses and lockers is that both are known to be used for the storage of personal effects which are not intended by their owners to be publicly exposed.

[134] The applicability of the exclusionary rule to evidence seized by public officials in violation of citizen's constitutional rights was unquestioned by the *T.L.O.* court. *T.L.O.*, 94 N.J. at 341-42, 463 A.2d at 938.