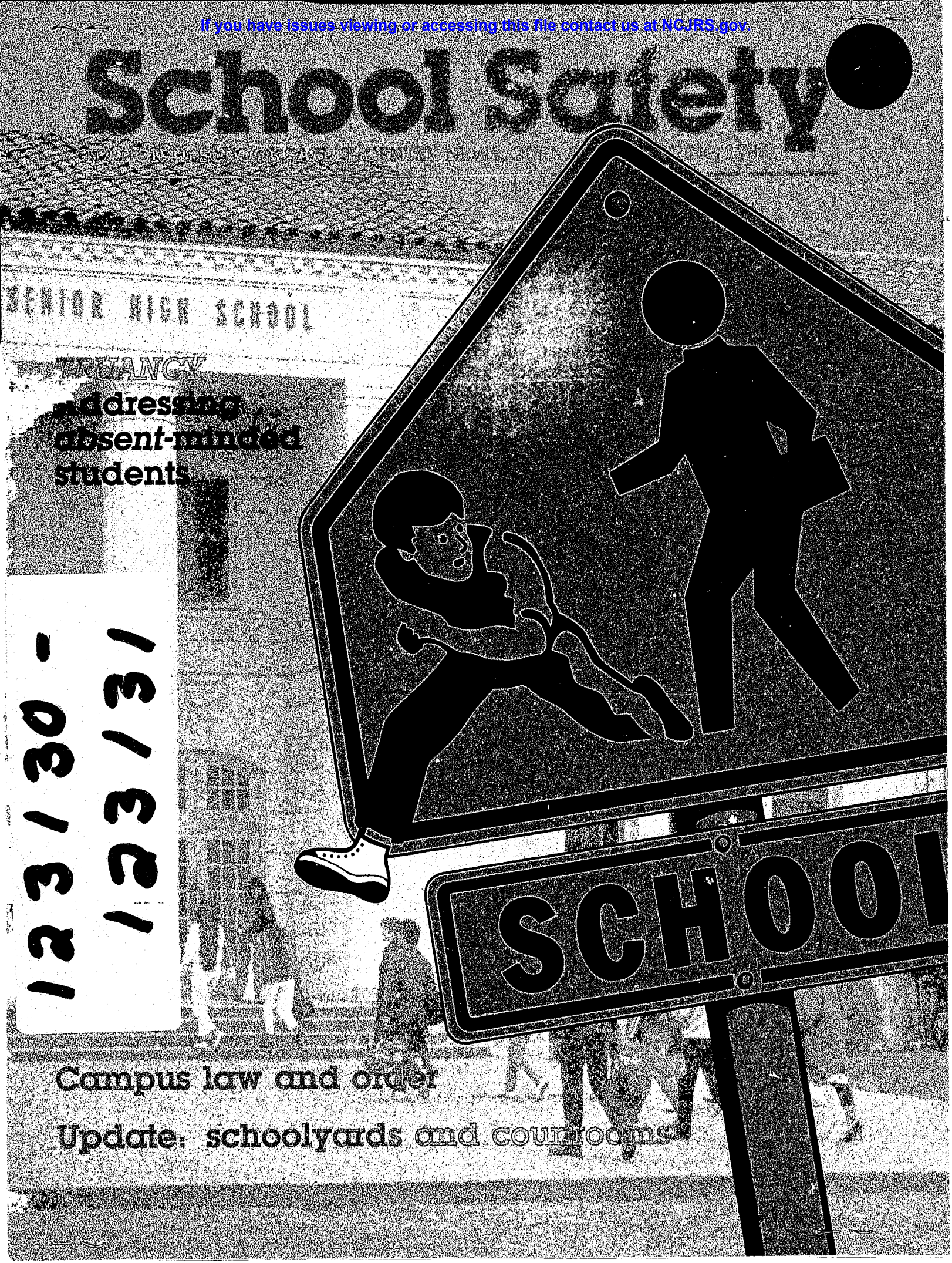
# School Safety






Campus law and order

Update: schoolyards and courtrooms

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The National School Safety Center is a partnership of the U.S. Department of Justice, U.S. Department of Education and Pepperdine University. NSSC's mission is to coalesce public, private and academic resources throughout America and provide a central headquarters to assist school boards, educators, law enforcers, lawyers and the public to restore our schools as safe, secure and tranquil places of learning.



**School Safety**
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**About the cover:**
Truancy is one of the most critical problems affecting our nation's schools. With this cover and the related feature articles, we hope to encourage educated and continued awareness and involvement in this important subject. *Cover art and design by Mike Gold. Photography by Stuart Greenbaum.*

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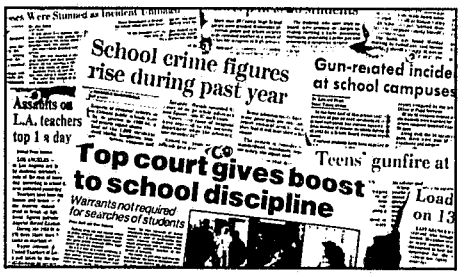
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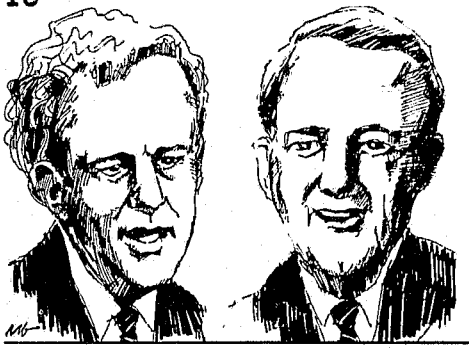

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# School safety and the law

**By Justice Stanley Mosk**

***School officials must be given appropriate authority over pupils on school grounds, during school hours, in order to maintain orderly, healthy, peaceful school environments in which to teach and learn.***

A number of years ago–more than I like to admit–I sat as a Superior Court judge and for a limited time heard juvenile cases. The proceedings were informal, almost casual. I as the judge, the juvenile, his parents, a probation officer, sometimes a teacher or pr' cipal, sometimes a minister, wc .ll sit around a conference table anc .iscuss the youngster's problems. There was a friendly, cooperative, non-combative attitude by everyone.

First the probation officer would relate the offense committed. Then I would ask Johnny for his version, which was not significantly different in most instances. Then I would ask the parents, the teacher and the minister for their views on what we should do with Johnny. And out of the discussion would generally come a proposed program, a consensus, to which the juve-

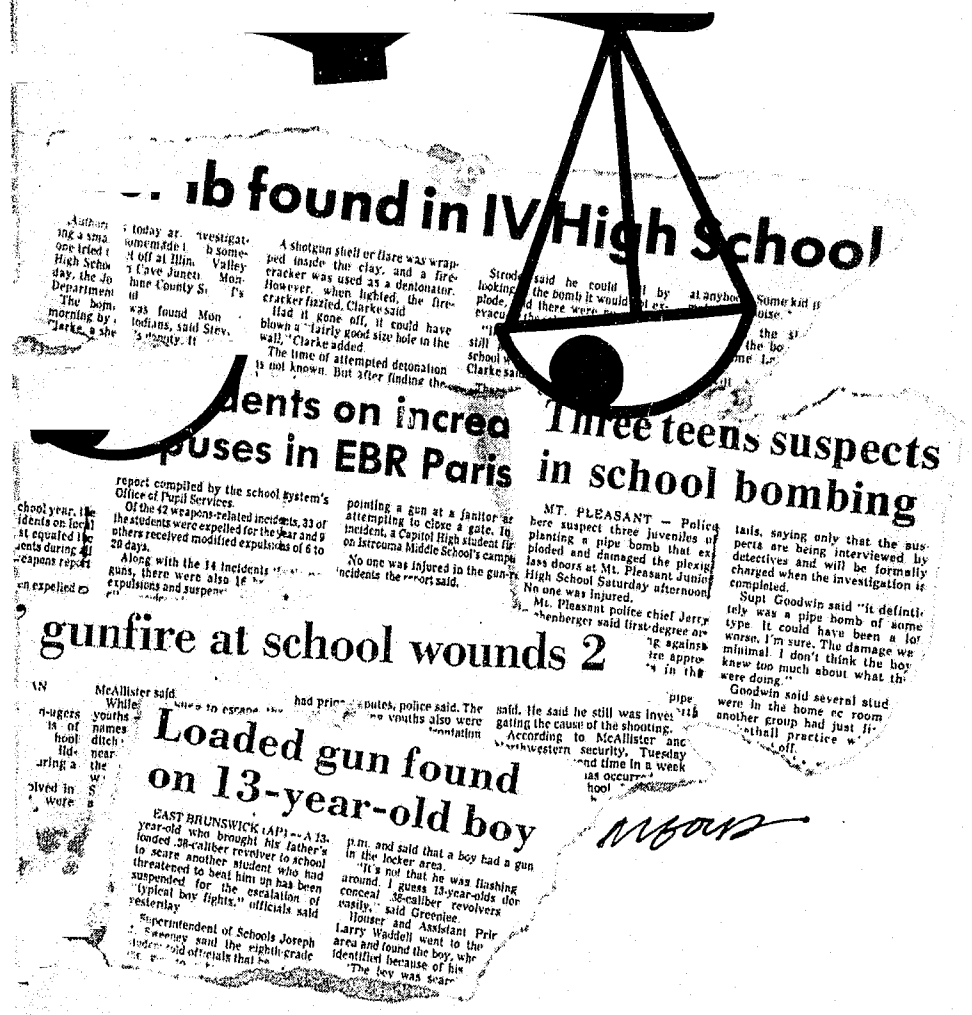

*Stanley Mosk is an associate justice of the California Supreme Court.*

*This article is the text of a presentation at the Ninth Annual Inservice Workshop on "Crime, Violence and Vandalism Affecting Schools," sponsored by the Los Angeles County Office of Education, February 19, 1985.*

nile would invariably agree. No court reporters, no attorneys, no examination and cross-examination, no appeals.

Then along came some cases out of the U.S. Supreme Court, starting with the seminal case of *In re Gault,* which declared that juveniles had many of the constitutional procedural protections given to adult criminal defendants. The fact that the Fourth Amendment was not originally used to constrain school officials does not preclude its use as a safeguard of the rights of students today. Any theory denying the protections of the Constitution conflicts with the Court's language in the 1969 case of *Tinker v. Des Moines Independent Community School District* (393 U.S. 503). The Court in *Tinker* invalidated a regulation prohibiting students from wearing armbands to protest the war in Vietnam on First Amendment grounds; the Court's holding, however, addresses the broader question of the applicability of the Constitution in schools. It rejected both the idea that schools may be operated as "enclaves of totalitarianism," and the premise that school officials have "absolute authority over their students." "Students in schools as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the state must respect..." The *Tinker* Court contended that the protection of constitutional freedoms is even more important in schools than elsewhere.

Now we have youngsters appearing in juvenile court with attorneys, who cross-examine the probation officer and witnesses, and who advise their youthful client to assert his constitutional right to remain silent. Today juvenile proceedings are only slightly different from full-blown criminal trials.




Perhaps I am being unrealistic in my fond recollection of those good old informal days. It may be that we must all come to grips with the difference in juveniles today from 25 years ago. It is only in more recent times this permissive society of ours has seen the proliferation of truly serious crimes by young people, many of whom are using drugs, knives and guns.

When I personally handle cases now that involve brutal killings, I realize we are living in hazardous times: a *Dillon* case, in which a group of high school boys arm themselves, invade a marijuana grower's farm with the intent to harvest his crop, and end up killing the farmer; a young girl who kills her stepfather and then cuts up his body; a high school girl, a regular church-goer, who stabs to death a classmate who was elected over her for the school cheerleading squad. Terrible cases, but in their background all related to schools and school safety.

In courts, most of the legal problems concerning juveniles involve searches of one kind or another. The issue usually is whether the Fourth Amendment of the Constitution applies and, if so, whether it has been violated.

To refresh the recollection of those of you who have not read the Constitution recently, the Fourth Amendment protects individuals against unreasonable searches by agents of the government that intrude upon a reasonable expectation of privacy. If you or I are walking down the street and violating no law, the police officer on the corner cannot detain us on a mere whim and rummage through our pockets. That would violate the Fourth Amendment. The violation occurs at the moment he illegally searches us, and it does not become any less a violation if he should find some incriminating evidence in our pockets. In other words, an illegal search does not become legal because of what it turns up.

All of the foregoing is elementary, although you would be surprised at how many writers of newspaper headlines report a court decision on an illegal search as being based on a mere technicality. We must always remember that constitutional rights, our fundamental law, must never be reduced in

concept to a mere technicality.

What I have said thus far clearly applies to adults. Does it apply to juveniles and, particularly for our purposes today, to juveniles on school grounds?

A typical case raising the issue of constitutional rights in the schools might involve the following scenario. A high school student is summoned into the principal's office. Acting on the basis of an anonymous tip, the principal orders the student to empty his pockets–and he may use force if the student refuses to cooperate. A small amount of marijuana, or other contraband, is found and the student is prosecuted. The student will argue that the state obtained the contraband from a search which violated the Fourth Amendment and that the evidence should be excluded at trial.

The scenario has a number of possible variations. Elementary school, university and trade school students might also be searched. In addition to searches of the person, the search might involve a school locker, dormitory room or other property. The search might be conducted by a teacher, administrator, school guard or even a police officer. Drug detection dogs are sometimes used. Some incidents can be extreme. For example, one case in New York involved the strip search of an entire classroom of fifth-grade children in an unsuccessful attempt to locate three missing dollars. *(Bellnier v. Lund* (1977) 438 F.Supp. 47.)

Just as an aside, let me read excerpts from that New York case. On this particular morning, members of the fifth-grade class at Auburn's Lincoln Elementary School arrived at the classroom in their usual fashion. Each of the students entered the classroom and placed his outer garment in a coatroom located wholly within and accessible only from the classroom itself. The teacher of the class commenced a search of the class [for a missing $3] with the aid of fellow teachers and school officials.

The outer garments hanging in the coatroom were searched initially. The students were then asked to empty their pockets and remove their shoes. A search of those items failed to reveal the missing money. The class members were then taken to their respective restrooms, the girls to the girls' room and the boys to the boys' room. The students were there ordered to strip down to their undergarments, and their clothes were searched. When the strip searches proved futile, the students were returned to the classroom. There, a search was conducted of their desks, books and once again their coats.

The entire search lasted approximately two hours. The missing money was never located.

The New York court indicated that it was not unsympathetic with the teachers, but that this activity went beyond reason. In view of the age of the students and the extent of the search when drugs were not involved, the court said in good conscience it could not find the search reasonable. It cited the high court of New York State which declared *(People v. D.*, 34 N.Y.2d 490): "...although the necessities for a public school search may be greater than one for outside the school, the psychological damage that would be risked on sensitive children by random search insufficiently justified by the necessities is not tolerable."

The most recent word on this subject was contained in a U.S. Supreme Court opinion. Known as *New Jersey v. T.L.O.*, it was argued only last October and decided in January.

Very briefly, these were the facts in that case:

A teacher at Piscataway High School in Piscataway, N.J., observed Terry Lee Owens (the "T.L.O." of the case) and another student smoking cigarettes in the girls' restroom. Although smoking was permitted in designated areas of the school, it was prohibited in the restroom.

The students were taken before the assistant vice principal, but Owens denied that she had been smoking or that she smoked at all. The other student admitted she had been smoking in the restroom and was ordered to attend a smoking clinic for three days as punishment.

The vice principal asked Owens to speak to him in a private office. He then asked to look through her purse. Owens gave him the purse, and the school official immediately spotted a pack of cigarettes in the purse along with a package of cigarette rolling papers. He looked further into the purse and found a metal pipe, empty plastic bags, a plastic bag with marijuana in it, an index card reading "people who owe me money" followed by a list of names, and $40, primarily in one dollar bills. The school official called in the student's mother and the police.

After being taken to the police station, the girl admitted selling marijuana to other students and was charged with juvenile delinquency based on possession of marijuana with intent to distribute.

In the prosecution in the juvenile court of Middlesex County, N.J., the girl moved to suppress both the evidence seized from her purse and her statements to the police, claiming that the search was unconstitutional and that she had not knowingly waived her right to silence when she spoke to the police. The court denied the motion to suppress.

The juvenile was tried and adjudicated delinquent. The court imposed a year of probation, a term which she completed before the U.S. Supreme Court even heard arguments in the case.

The Appellate Division of the New Jersey Superior Court affirmed the ruling on the purse search, but ordered the case remanded on the question of whether the juvenile was denied her right to counsel before interrogation.

Before the criminal proceedings, she successfully challenged in the state Superior Court her suspension from school for the same incident. This court ruled that the search of her purse violated the Fourth Amendment.

The New Jersey Supreme Court agreed with the chancery division's conclusion and it reversed the Owens conviction in *State in Interest of T.L.O.*, 463 A.2d 934 (1983), by a 5-2 vote. The opinion held that the Fourth Amendment applies to searches by school officials. At that point, the case went all the way to the U.S. Supreme Court.

It is rather difficult to get a handle

on the High Court's ultimate decision on *T.L.O.* On the one hand, the court did say that the Fourth Amendment does apply to school students. That means, in the abstract, that students are protected from unreasonable searches and seizures.

But, on the other hand, the court held that a search is justified, according to Justice Byron White, when there are "reasonable grounds" to suspect that it "will turn up evidence that the student has violated either the law or the rules of the school." He added that the search must not be "excessively intrusive in light of the age and sex of the student and the nature of the infraction."

The Supreme Court reversed the New Jersey decision, calling the latter's view of reasonableness to be "crabbed," but unfortunately we have been given few clues as to what set of facts and what searches the High Court justices would consider reasonable.

Justice Stevens wrote an ascerbic dissent, in which he declared: "For the Court, a search for curlers and sunglasses in order to enforce the school dress code is apparently just as important as a search for evidence of heroin addiction or violent gang activity..."

I do not think the court said anything like that, but this has led to some skepticism among critics. Professor Yale Kamisar of the University of Michigan was quoted as saying: "The Court is telling school authorities 'We're sympathetic with your problems; take the ball and run with it,' and it's unclear how far they really can run...I don't know how anyone can figure out what this opinion says."

I might add that I do not consider the Stevens dissent to be fair comment on the majority opinion. However, extremism in dissenting opinions is nothing new. Indeed, it is par for the course, as I well know–being a frequent dissenter myself.

All of our discussion must not center on the rights of students who are suspected of criminal activity or violation of school rules. That is a more dramatic aspect. But we must realize that innocent, law-abiding students have a right to protection from crime and criminals.

Consider the case of Madelyn Miller, a 19-year-old junior at the State University of New York. She was confronted in the laundry room of her dormitory at approximately 6:00 a.m. by a man wielding a large butcher knife. She was blindfolded and prodded out of the room, through an unlocked outer door from the basement, back in another unlocked entrance to the dormitory, up some stairs to the third floor and into a dormitory room, where she was raped twice at knifepoint and threatened with mutilation or death if she made any noise. Finally, her assailant led her out to the parking lot, where he abandoned her. The assailant was never identified, and the trial court found that he was an intruder in the dormitory with no right or privilege to be present there.

Strangers were not uncommon in the hallways, and there had been reports to campus security of men being present in the women's bathroom, and of nonresidents loitering in the dormitory lounges and hallways when they were not accompanied by resident students. The school newspaper had published accounts of numerous crimes in the dormitories such as armed robbery, burglary, criminal trespass and a rape by a nonstudent. Notwithstanding these reports, the doors at all of the approximately 10 entrances to the dormitory building were concededly kept unlocked at all hours, although the doors each contained a locking mechanism.

***All of our discussion must not center on the rights of students who are suspected of criminal activity or violation of school rules. That is a more dramatic aspect. But we must realize that innocent, law-abiding students have a right to protection from crime and criminals.***

Miss Miller sued the State of New York for her damages. The Court found that by failing to lock the outer doors of the dormitory, the State had breached its duty to protect its tenants from reasonably foreseeable criminal assaults by outsiders. In particular, the failure to lock the outer doors was found to be a proximate cause of the rape. Miss Miller was awarded $25,000 in damages.

The highest court of New York State (in *Miller v. State,* 62 N.Y.2d 506) held that while public entities enjoy a certain immunity from suit, this does not apply when there is a special relationship. And a student in a college dormitory would appear to have such a special relationship that entitles her to the same protection that would be required of any private landlord toward a tenant.

Where does all this lead us? How can the public schools be protected from marauding students wielding guns and knives and selling or using dope? More than protecting the schools and the education process itself, how can we make certain that the innocent students are protected in their desire to peacefully obtain an education that will equip them for their lifetime duties?

There appear to be two conflicting philosophies. There is a clear distinction, in both the law and underlying philosophy, between those who believe school children have all the rights and protections of the Constitution that belong to adult citizens, and those who believe that juveniles are not to be abused and do have rights, but are subject to supervision, direction and controls in the schools and on school grounds. I have given this much thought and find myself firmly in the latter camp.

I base this not only on the recently enacted initiative in which "safe schools" was a part, but in my belief that school principals and teachers stand *in loco parentis.* That is an old Latin expression that means they stand in the shoes of the parents during school hours and on school grounds. This doctrine of *in loco parentis,* which originated in *Blackstone Commentaries,* is based on the theory that a parent may delegate parental authority to the school master, who is then *in loco parentis,* and has such a portion of the power of the parent...as may be necessary to answer the purposes for which he is employed. Since parents unques-

tionably have the right to control their children's activities and conduct, and to discipline them for infractions of reasonably expected behavior, school officials inherit that right during the hours of the day when the children's custody passes from the parents to them.

In my view, a most persuasive case on this subject was rendered by the California Court of Appeal in *In re Donaldson* (269 Cal.App.2d 509). The vice principal searched a locker for narcotics and found them. The student, in trial, asserted that the school official was acting as a police agent, and therefore the seizure should be suppressed under the Fourth Amendment prohibition against unreasonable searches and seizures.

This is what the court said:

"We find the vice principal of the high school not to be a governmental official within the meaning of the Fourth Amendment so as to bring into play its prohibition against unreasonable searches and seizures. Such school official is one of the school authorities with an obligation to maintain discipline in the interest of a proper and orderly school operation, and 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...

"The school officials, as a body and individually, have a responsibility for maintaining order upon the school premises so that the education, teaching and training of the students may be accomplished in an atmosphere of law and order. It was mandatory for the appellant to attend a full-time day school and for the full time for which the school was in session as provided under section 12101 of the Education Code. It is made mandatory upon the governing board of any school district that diligent care shall be given to the health and physical development of the pupils. (Ed. Code, § 11701.)... [U]nder the provisions of the California Administrative Code, title 5, sections 24 and 62, principals and teachers are directed to exercise careful supervision over the moral conditions in their respective schools, the use of narcotics is not to be tolerated, and students are required to comply with the regulations and submit to the authority of the teachers.

"The school stands *in loco parentis* and shares, in matters of school discipline, the parent's right to use moderate force to obtain obedience... and that right extends to the search of the appellant's locker..."

I remain convinced that the only practical rule is to deem school officials to have all the authority over pupils on school grounds, before, during and after classes that their parents have in the home. This doctrine of *in loco parentis* is deemed to be anachronistic by some, unworkable by others and out of step with these modern times by still others. Yet, to me the rule makes good sense, and it results in giving school officials the control they need to maintain order and a healthy, peaceful environment for the purpose of schooling–to teach and to learn.

***I remain convinced that the only practical rule is to deem school officials to have all the authority over pupils on school grounds, before, during and after classes that their parents have in the home.***

My views are not alone on this subject. The state Legislature has specifically authorized teachers, vice principals and other certificated employees of a school district to exercise "the same degree of physical control over a pupil that a parent would be legally privileged to exercise but which in no event shall exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning." (Ed. Code, § 44807.) In the same code section, the Legislature has required that "Every teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess."

The rule consistent with the majority of cases on this issue is that the fruits of all searches undertaken on reasonable suspicion by school officials are admissible as evidence unless the school official was working at the direction of, in cooperation with, or under the authority of law enforcement officers. Such an approach conforms to the general rule that "The exclusionary rule will...be applied if the private citizen acted as an agent of the police or participated in a joint operation with law enforcement authorities who either requested the illegal search or knowingly allowed it to take place without protecting the third party's rights." *(Dyas v. Superior Court* (1974) 11 Cal.3d 628, 633, fn. 2; see also *People v. North* (1981) 29 Cal.3d 509, 515-516.) School authorities should not be bound to the highest standard applied to law enforcement officials unless they are acting in concert with or as agents of such officials. To hold otherwise deprives school officials of an essential tool they need to perform their statutorily mandated duty to protect the interests of school children; and weakens their authority to search on "reasonable suspicion."

The foregoing widely recognized rule is relatively simple for school officials to apply and for courts to follow, for it does not require assessment of the subjective intent of school authorities in undertaking a search of a student.

To conclude, I am not sanguine about the future. We live in troublesome, indeed hazardous times. If we are not to have untold future generations of adult criminals, we must make as certain as possible that we do not permit criminality to begin with juveniles in our schools. We do not have police officers in our classrooms. We do not have parents in our classrooms. Therefore, we must give to teachers and principals all the tools they need to preserve order in our classrooms and school grounds.

Most importantly, we must make the general public aware of the need for school safety. I commend the National School Safety Center, Pepperdine University and George Nicholson for helping to perform this useful public service. □