Filed 6/13/12 In re Daniel A. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re DANIEL A., a Person Coming Under the Juvenile Court Law.	B232404 (Los Angeles County Super. Ct. No. YJ35278)
THE PEOPLE, Plaintiff and Respondent, v. DANIEL A., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Irma J. Brown, Judge. Affirmed.

Ronald L. Brown, Public Defender, Albert J. Menaster, Rourke Stacy, Deputy Public Defenders, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson and Noah P. Hill, Deputy Attorneys General, for Plaintiff and Respondent.

To maintain a campus free from weapons and drugs, Morningside High School in Inglewood established a policy of searching the contents of students' backpacks in randomly selected classrooms once each month. Daniel A., charged in a delinquency petition with possession of marijuana on school grounds, moved to suppress the marijuana discovered in his backpack during one of those monthly searches. After the juvenile court denied the motion, Daniel admitted the allegations in the petition; and the court placed him on probation without wardship. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 9, 2010 Eric Walker, a campus supervisor working with other campus personnel, searched the contents of students' backpacks in several randomly selected classrooms at Morningside High School. Walker found marijuana in 14-year-old Daniel's backpack.

The district attorney filed a delinquency petition pursuant to Welfare and Institutions Code section 602 alleging Daniel had possessed marijuana on school grounds in violation of Health and Safety Code section 11357, subdivision (e). Following denial of his motion to suppress evidence under Welfare and Institutions Code section 700.1, Daniel admitted the allegations in the petition. The juvenile court sustained the petition, found Daniel a person described by Welfare and Institutions Code section 602, determined the offense was a misdemeanor and, without declaring Daniel a ward of the court, placed him on probation for six months pursuant to Welfare and Institutions Code section 725, subdivision (a).

Daniel filed a timely notice of appeal. (See *In re Do Kyung K.* (2001) 88 Cal.App.4th 583, 590 [juvenile may appeal order placing him on probation without wardship pursuant to Welf. & Inst. Code, § 725, subd. (a)].)

CONTENTION

Daniel contends a suspicionless search of a student's personal property by school security officers pursuant to an established policy intended to maintain a campus safe

from weapons and drugs violates the Fourth Amendment to the United States Constitution in the absence of a well-founded and specific concern relating to the presence of those items on school grounds, particularly when any contraband that is discovered is reported to law enforcement authorities.[1]

DISCUSSION

1. *Administrative and Regulatory Searches*

Ordinarily a search or seizure in the absence of individualized suspicion of criminal activity is unreasonable and violates the Fourth Amendment. (*City of Indianapolis v. Edmond* (2000) 531 U.S. 32, 37 [121 S.Ct. 447, 148 L.Ed.2d 333] (*Edmond*); *In re Randy G.* (2001) 26 Cal.4th 556, 565 (*Randy G.*).) Nonetheless, individualized suspicion is not an "'irreducible' component" of the Fourth Amendment's requirement of reasonableness. (*Edmond*, at p. 37; *People v. Banks* (1993) 6 Cal.4th 926, 934 (*Banks*).) "[A] showing of individualized suspicion is not a constitutional floor, below which a search must be presumed unreasonable. [Citation.] In limited circumstances, where the privacy interests implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion." (*Skinner v. Railway Labor Executives' Assn.* (1989) 489 U.S. 602, 624 [109 S.Ct. 1402, 103 L.Ed.2d 639].)

Both the United States and California Supreme Courts have permitted appropriately limited searches without particularized suspicion of misconduct when conducted pursuant to a program designed to serve important governmental purposes other than general law enforcement or the investigation or interdiction of criminal conduct. In *Skinner v. Railway Labor Executives' Assn., supra,* 489 U.S. at pages 620-621, the United States Supreme Court upheld drug and alcohol testing of railway

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[1] Whether relevant evidence obtained by assertedly unlawful means must be excluded is determined exclusively by deciding whether its suppression is mandated by the federal Constitution. (Cal. Const., art. I, § 28, subd. (f)(2) [formerly subd. (d)]; *People v. Lenart* (2004) 32 Cal.4th 1107, 1118.)

employees who were involved in train accidents or who had violated particular safety rules, emphasizing that the Federal Railroad Administration had adopted regulations that "prescribed toxicological tests, not to assist in the prosecution of employees, but rather 'to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.'"

In the same term the Supreme Court upheld as reasonable under the Fourth Amendment the suspicionless drug testing of Customs Service employees who sought transfer or promotion to new positions that required carrying a firearm or directly involved efforts to prevent importation of illegal drugs: "[W]here a Fourth Amendment intrusion serves special governmental needs, beyond the normal need for law enforcement, it is necessary to balance the individual's privacy expectations against the Government's interests to determine whether it is impractical to require a warrant or some level of individualized suspicion in the particular context." (*Treasury Employees v. Von Raab* (1989) 489 U.S. 656, 665-666 [109 S.Ct. 1384, 103 L.Ed.2d 685]; see *Ingersoll v. Palmer* (1987) 43 Cal.3d 1321, 1338 [reasonableness of a special needs or administrative search or seizure requires balancing the gravity of the governmental interest or public concern served and the degree to which the regulatory plan advances that concern against the intrusiveness of the interference with the individual's liberty and privacy interests]; see also *Banks, supra,* 6 Cal.4th at p. 936 ["'"The federal test for determining whether a detention or seizure is justified balances the public interest served by the seizure, the degree to which the seizure advances the public interest and the severity of the interference with individual liberty. [Citation.] In addition, federal constitutional principles require a showing *of either* the officer's reasonable suspicion that a crime has occurred or is occurring *or*, as an alternative, that the seizure is 'carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers.'"'"].)

Utilizing this balancing approach to suspicionless searches, the United States Supreme Court has upheld warrantless inspections of the physical premises of "closely regulated" businesses (*New York v. Burger* (1987) 482 U.S. 691, 702-704 [107 S.Ct.

2636, 96 L.Ed.2d 601], administrative inspections of fire-damaged property to determine the cause of the fire (*Michigan v. Tyler* (1978) 436 U.S. 499, 507-509, 511-512 [98 S.Ct. 1942, 56 L.Ed.2d 486]), inspections to ensure compliance with municipal housing codes (*Camara v. Municipal Court* (1967) 387 U.S. 523, 534-539 [87 S.Ct. 1727, 18 L.Ed.2d 930]), as well as sobriety checkpoints designed to remove drunk drivers from the road (*Michigan Dept. of State Police v. Sitz* (1990) 496 U.S. 444 [110 S.Ct. 2481, 110 L.Ed.2d 412]) and fixed Border Patrol checkpoints intended to intercept individuals attempting to enter the United States unlawfully (*United States v. Martinez-Fuerte* (1976) 428 U.S. 543 [96 S.Ct. 3074, 49 L.Ed.2d 1116]). The California Supreme Court has likewise upheld the operation of highway "sobriety checkpoints" (*Banks, supra,* 6 Cal.4th at p. 936; *Ingersoll v. Palmer*, *supra*, 43 Cal.3d at pp. 1325-1327) and airport security screening searches (*People v. Hyde* (1974) 12 Cal.3d 158, 165-166).

2. *Special Needs Searches at Public Schools*

The Fourth Amendment applies to searches of students attending public schools. (*Vernonia Sch. Dist. 47J v. Acton* (1995) 515 U.S. 646, 656 [115 S.Ct. 2386, 132 L.Ed.2d 564] (*Vernonia*); *Board of Educ. of Independent School Dist. No. 92 of Pottawatomie Cty. v. Earls* (2002) 536 U.S. 822, 829-830 [122 S.Ct. 2559, 153 L.Ed.2d 735] (*Earls*); *Randy G., supra*, 26 Cal.4th at p. 561.) The United States Supreme Court, however, has repeatedly held that "'special needs' inhere in the public school context." (*Earls*, at p. 829.) "[T]he accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search." (*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 341 [105 S.Ct. 733, 83 L.Ed.2d 720] (*T.L.O.*).) "Fourth Amendment rights . . . are different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children." (*Vernonia*, at p. 656 [upholding random drug testing of student athletes]; accord, *Earls*, at pp. 830-831

[upholding random drug testing of all students participating in extracurricular activities; "[s]ecuring order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults"].)

Public schools enjoy a unique place in California law. All public school students and staff have a constitutional right to a safe school: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." (Cal. Const, art. I, § 28, subd. (c).) Consistent with this right the Legislature has required each school board to establish rules and regulations to govern student conduct and discipline (Ed. Code, § 35291) and has permitted each local district to establish a security department to enforce those rules (Ed. Code, § 38000). (See *Randy G., supra,* 26 Cal.4th at pp. 562-563.)

Against this backdrop, in order to protect school grounds from expanding violence or to prevent an increase in drug use among students, warrantless searches or detentions of students have been upheld under the general principles applicable to administrative or regulatory searches, provided appropriate safeguards are available "'to assure that the individual's reasonable expectation of privacy is not "subject to the discretion of the official in the field."'" (*T.L.O., supra,* 469 U.S. at p. 342, fn. 8; see *Vernonia, supra,* 515 U.S. at p. 653.) "The governmental interest at stake is of the highest order. '[E]ducation is perhaps the most important function of state and local governments.' [Citation.] 'Some modicum of discipline and order is essential if the educational function is to be performed.'" (*Randy G., supra,* 26 Cal.4th at p. 566 [detention of students on school grounds by campus security guards or other school staff without reasonable suspicion of criminal activity or violation of a school rule is constitutional provided officials do not act in "an arbitrary, capricious, or harassing manner"]; see *In re Latasha W.* (1998) 60 Cal.App.4th 1524, 1527 (*Latasha W.*) [upholding random metal-detector searches of high school students; "[t]he school cases just cited are part of a larger body of law holding that 'special needs' administrative searches, conducted without individualized suspicion, do not violate the Fourth Amendment where the government

need is great, the intrusion on the individual is limited, and a more rigorous standard of suspicion is unworkable"].)

3. *The Juvenile Court Properly Denied Daniel's Motion To Suppress*

Walker, the campus supervisor who discovered the marijuana among Daniel's possessions, was the only witness at the suppression hearing. He had been a campus supervisor for 16 years at several different schools. Walker had conducted hundreds of random searches at these schools.

Walker testified the November 9, 2010 search was one of the monthly random searches conducted at Morningside High School throughout the school year. The random searches were intended to ensure there were no drugs, drug paraphernalia or weapons on campus. The classrooms to be searched each month were selected at random. That is, Walker and his team did not decide in advance to focus on certain classrooms; instead, they selected the classroom building to visit immediately prior to conducting the search.

On the afternoon of November 9, 2010 Walker and his team decided to visit classes that were being taught by substitute teachers in V and W Buildings, anticipating the team's arrival would discourage students from "ditching class." To conduct the search, the team entered each classroom in the building, announced the search was to occur and requested all students stand and empty the contents of their backpacks onto their desks. Students were told to remain beside their desks while Walker or another member of his team walked down the rows of desks and examined the contents of each student's backpack. Daniel's desk was in one of Walker's rows. As Walker proceeded down the row, Daniel appeared to be nervous. After Daniel emptied the contents of his backpack onto his desk, Walker decided to examine the backpack itself, believing there was something still inside it that Daniel wanted to conceal. Walker searched the backpack and found one full bag and four "pinky bags" of marijuana.[2]

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[2] Walker did not explain the meaning of the term "pinky bags."

The search of the contents of Daniel's backpack pursuant to Morningside High School's established program of random searches to ensure student safety and a drug-free school environment did not violate his Fourth Amendment rights.[3] The government's interest in school safety and a violence- and drug-free learning environment "is of the highest order." (*Randy G.*, *supra*, 26 Cal.4th at pp. 562-563, 566; accord, *Latasha W.*, *supra*, 60 Cal.App.4th at p. 1527.) Balanced against this most compelling of governmental interests, the intrusion into Daniel's constitutionally protected privacy interest was minimal: Daniel was required only to empty the contents from his backpack for examination; no one touched him during the search, and he was not asked to disrobe. (See *Safford Unified School Dist. No. 1 v. Redding* (2009) 557 U.S. 364 [129 S.Ct. 2633, 2643, 174 L.Ed.2d 354] [there is a "quantum leap" between searches of a student's "outer clothes and backpacks" and those requiring "exposure of intimate parts"];[4] *In re Sean A.* (2010) 191 Cal.App.4th 182, 189 [search was minimally intrusive where it was "restricted to requiring the student to empty his pockets or open his backpack"]; *Latasha W.*, at p. 1527 [search that did not involve touching student was minimally intrusive].) Because *all* students in each of the randomly selected classrooms were searched,[5] Daniel's diminished expectation of privacy in the school environment was not

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[3] When reviewing the juvenile court's ruling on a motion to suppress, as in adult criminal cases, we defer to the court's factual findings, express or implied, if they are supported by substantial evidence. We exercise independent judgment to determine whether, on the facts found by the court, the search or seizure was reasonable under the Fourth Amendment. (*People v. Redd* (2010) 48 Cal.4th 691, 719; see *In re H.H.* (2009) 174 Cal.App.4th 653, 657.)

[4] The Supreme Court in *Safford Unified School Dist. No. 1 v. Redding*, *supra*, 557 U.S. at page ____, footnote 3 [129 S.Ct. at p. 2641, fn. 3] noted, "it is common ground that [the student] had a reasonable expectation of privacy covering the personal things she chose to carry in her backpack."

[5] Although the record does not contain detailed information about the school's weapon and drug search policy or the manner in which it was implemented, Daniel did not submit any evidence contradicting Walker's testimony the classrooms to be searched were selected at random using neutral criteria and the backpack contents of all students in

subject to the whim or unfettered discretion of the officials conducting the search. (See *T.L O.*, *supra*, 469 U.S. at p. 342, fn. 8.)

Relying primarily on a decision by the United States Court of Appeals for the Eighth Circuit, *Doe v. Little Rock Sch. Dist.* (8th Cir. 2004) 380 F.3d 349, Daniel challenges this analysis on two grounds. First, he contends a generalized concern about protecting students from exposure to weapons and drugs on a school campus is insufficient to justify special-needs administrative searches without individualized suspicion. Because there was no evidence that Morningside High School had experienced any specific problem involving drug abuse or weapons-related violence and, therefore, that there was an actual need for a program of suspicionless searches, Daniel insists the school's program of random searches is not based on a well-founded governmental concern. Second, he argues, because the school's policy allows search results to be disclosed to law enforcement officials, unlike the policies at issue in *Vernonia*, *supra*, 515 U.S. 646, and *Earls*, *supra*, 536 U.S. 822, its policy of searching backpacks is impermissibly intrusive. (See also *In re Sean A.*, *supra*, 191 Cal.App.4th at pp. 192-198 (dis. opn. of Irion, J.).)

Both of these concerns were rejected, at least implicitly, by this court in *Latasha W.*, *supra*, 60 Cal.App.4th 1524, in which we upheld the suspicionless search of a high school student pursuant to a school district policy of random weapons screenings with a handheld metal detector. We recognized "[t]he need of schools to keep weapons off campuses is substantial" (*id.* at p. 1527) and supported a special needs administrative search without any prior demonstration that a specific weapons problem existed at the student's campus or within the school district at large. (See *ibid*.)

In addition, from the context of the decision in *Latasha W.*—affirmance of a juvenile court's order sustaining a delinquency petition charging the student with

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each of the designated classrooms were searched. At oral argument Daniel's counsel conceded the search in this case was "random." That the search was of all students in randomly selected classrooms eliminates any concern it was improperly "predicated on mere curiosity, rumor, or hunch." (*In re William G.* (1985) 40 Cal.3d 550, 564.)

bringing a knife with a blade longer than 2.5 inches onto a school campus—police officials were informed of the results of the search at issue. Nonetheless, we concluded the search was minimally intrusive, emphasizing that no student had been touched during the search. (See *Latasha W.*, *supra*, 60 Cal.App.4th at p. 1527.) That contraband discovered during a search to maintain school safety was thereafter reported to law enforcement officials did not vitiate the school's "custodial and tutelary responsibility for the children."

A similar result was reached by our colleagues from Division One of the Fourth Appellate District in *In re Sean A., supra,* 191 Cal.App.4th 182, who cited *Latasha* with approval and upheld (albeit in a two-to-one decision) a suspicionless search pursuant to a written school policy that required any student leaving and returning to campus during the school day to empty the contents of his pockets in front of a school administrator. Nothing in *Doe v. Little Rock Sch. Dist., supra,* 380 F.3d 349, which, of course, is not binding on us in any way, persuades us the analysis or conclusion in *Latasha W.* or *Sean A.* is incorrect.

Daniel also contends, even if some type of random suspicionless search for contraband may be proper in the public school setting without a demonstrated, particularized need, what occurred in this case was significantly more intrusive than the over-the-clothing scan by a hand-held metal detector found to be constitutional by this court in *Latasha W.*, *supra*, 60 Cal.App.4th 1524. In this regard, Daniel asserts "[h]is studies were interrupted, he had to empty his personal belongings onto a desk, and then stand by his desk and watch a school security officer rummage through his belongings and the belongings of classmates."

Simply because the search here might have been more intrusive than a metal-detector search, however, does not make it unreasonable.[6] The Supreme Court has

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[6] Generally with a metal detector search, the person searched empties his or her pockets. (See, e.g., *In re F.B.* (Pa. 1999) 726 A.2d 361, 363 [before being scanned by metal detector, students entering public high school were required to empty their pockets]; *State v. J.A.* (Fla.Ct.App. 1996) 679 So.2d 316, 318 [before being scanned by

"refused to declare that only the 'least intrusive' search practicable can be reasonable under the Fourth Amendment." (*Vernonia*, *supra*, 515 U.S. at p. 663.) The search in this case was reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the purpose of ensuring weapons and drugs were not brought on campus. (See *T.L.O.*, *supra*, 469 U.S. at p. 342; *Earls*, *supra*, 536 U.S. at pp. 830-831 ["*a student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health and safety*"]; cf. *Safford Unified School Dist. No. 1 v. Redding*, *supra*, 557 U.S. at p. ___ [129 S.Ct. 2641, 2642-2643] [search of middle school student's underwear for banned pills was constitutionally unreasonable].) The juvenile court properly denied the suppression motion.

DISPOSITION

The order is affirmed.

PERLUSS, P. J.

I concur:

WOODS, J.

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wand, "[t]he students are segregated by gender and asked to remove all metal objects from their persons"].)

ZELON, J., Dissenting

Our public schools enjoy a unique place in society, and the students who attend them retain their Fourth Amendment rights subject to the special needs inherent in providing a safe, peaceful environment in which they can study. As a result, warrantless searches that would otherwise be constitutionally suspect have been upheld by courts in carefully circumscribed circumstances. Although the majority has concluded that the record in this case demonstrates that the constitutional requirements for such searches have been satisfied, I disagree and respectfully dissent.

In doing so, I do not dispute the care taken by schools to ensure that violence and drug use on campus does not expand. However, as discussed in the dissent in *In re Sean A.* (2010) 191 Cal.App.4th 182, 191, in the absence of any demonstrated problem in a school (*Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646); or other factors demonstrating a fit between the scope of the searches and the problem to be deterred (*Board of Ed. of Independent School Dist. No. 92 of Pottawatomie Cty. v. Earls* (2002) 536 U.S. 822) the presence of nothing more than a generalized concern about weapons or drugs makes suspicionless searches of the general population of students impermissible. Without more, such a search does not meet the test of "reasonableness" that our Constitution requires. (*Id.* at pp. 829-830 [testing of students participating in extracurricular activities in a school district with specific evidence of drug use upheld given that: such students have a limited expectation of privacy; the manner in which the tests were conducted constitute a negligible intrusion of privacy; results were confidential and not provided to law enforcement].)

In *Safford Unified School Dist. No. 1 v. Redding* (2009) 557 U.S. 364 [129 S. Ct. 2633], the Supreme Court again looked at search standards for our schools. Affirming the reasonableness requirement, the court found a search of a student's underwear for drugs conducted with reasonable suspicion nonetheless went too far in its reach. However, the court also acknowledged that a student has a reasonable expectation of privacy concerning those items carried in a backpack, but found the facts supported a

suspicion sufficient to justify that portion of the search.[1] (*Id.* at p. 2641.) Here, the search of Daniel's backpack was conducted without any facts demonstrating reasonable suspicion.

California cases, discussed by my colleagues, do not lead to a different conclusion here. In *In re Randy G.* (2001) 26 Cal.4th 556, our Supreme Court addressed student rights and re-affirmed the reasonableness standard. That case, however, involved a challenged detention, not a search. The court noted that students' freedom of movement was substantially limited while at school (*id.* at p. 564) and the intrusion was therefore "trivial." (*Id.* at p. 566.) The court declined to apply the reasonable suspicion standard established by *New Jersey v. T.L.O.* (1985) 469 U.S. 325, because "[d]ifferent interests are implicated by a search than by a seizure." (*In re Randy G., supra,* at p. 566.)

The California Supreme Court, and the U.S. Supreme Court stand in concert on this issue: there must be reasonable grounds for a search in school. Other cases conform to this standard. *In re Sean A.*, in expanding the ability to search beyond that recognized by the U.S. Supreme Court, involved searches limited to students who had demonstrably violated the school's rules: the searches were conducted only of students who had left and returned to campus. As the majority described the rule, "Given the general application of the policy to all students engaged in a form of rule violation that can easily lend itself to the introduction of drugs or weapons into the school environment, we conclude that further individualized suspicion was not required." (*In re Sean A.* 191 Cal.App.4th 182, 190.) In essence, the court permitted the showing of an actual violation of school rules to fulfill the requirement of a demonstrated fit between the scope of the search and the identified problem requiring additional measures to be taken to ensure students' safety.

In re Latasha W. (1998) 60 Cal.App.4th 1524 also strictly limited searches of the general population. There, a metal detector was used, a non-invasive search. Students

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[1] The student had been requested to, and did consent, to the search of her backpack, unlike Daniel.

were required to open a pocket or jacket only if the detector had been triggered. The more intrusive search of a student's personal belongings – the activity that the school began the process with in this case – was undertaken only when there was a demonstrated reason to do so: where there were "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." (*New Jersey v. T.L.O., supra,* 469 U.S. 325 at p. 342.)

In this case, in contrast, prior to the search of the contents of the students' backpacks, there was no allegation and no evidence that there was a demonstrable drug or weapon problem in the school; there was no evidence that the search was based on a showing or even a belief that Daniel, or any of his fellow students, had violated any rule; there were no grounds, before the initial intrusive general search, to believe it would reveal evidence of any violation; and there was no showing that Daniel or the others in the classroom engaged in school activities that limited their reasonable expectation of privacy. Daniel was simply present in a classroom in which a substitute teacher was leading the class.

The record in this case does not demonstrate reasonable grounds for the broad and suspicionless search that occurred. The evidence, accordingly, should have been suppressed.

ZELON, J.