New Jersey v. T.L.O.: The Supreme Court Severely Limits Schoolchildren’s Fourth Amendment Rights When Being Searched By Public School Officials

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I. INTRODUCTION

A 1980 survey, sponsored by the United States government, questioned 15,900 high school seniors on their experiences with marijuana.1 As a result, 48.8% of the students admitted using marijuana within the past twelve months; 33.7% admitted using it within the past thirty days. It is estimated that 64% of all youth in America use some form of illegal drugs before finishing high school. A 1982 study showed that 29% of all youth were using marijuana.2 This figure was down from 37% in 1979.3 Although marijuana use among American youth seems to be slowly declining, it is still a serious problem, particularly in public schools.

A recent Supreme Court decision4 reflects the seriousness of the drug problem among America's youth and the attitude school authorities as well as the courts are taking to combat that problem in public schools.5 In New Jersey v. T.L.O., the Supreme Court originally granted certiorari6 to decide whether the exclusionary rule applies to searches conducted by public school officials in violation of the fourth amendment.7 The Court, instead, addressed two other issues: whether the fourth amendment applies to searches conducted by public school officials and the proper standard for determining the reasonableness of such searches. The Court ruled that the fourth

2. This later study was conducted by the University of Michigan School of Social Research. Id. at 88.
3. Id.
5. See Doe v. Renfrow, 475 F. Supp. 1012 (N.D. Ind. 1979), aff'd, 631 F.2d 91 (7th Cir. 1980), cert. denied, 451 U.S. 1022 (1981) (bringing marijuana sniffing dogs and their trainers into the classrooms of a junior and senior high school in order to aid officials in detecting drug abuse in the school was not considered a search for fourth amendment purposes).
7. See New Jersey v. T.L.O., 104 S. Ct. 3583 (1984) (the Supreme Court restored the case to the calendar for reargument on the question of whether the vice principal's search did in fact violate the fourth amendment).
amendment is applicable, but the standard for determining the reasonableness of searches by school officials requires only a reasonable suspicion to search rather than probable cause. The Court also held that searches by public school authorities are exempt from the warrant requirement.

At first glance, the apparent effect of this decision is to recognize the fourth amendment rights of public school students. However, the warrant exception and the Supreme Court's strict application of the reasonable suspicion standard severely limit, and possibly overwhelm, any fourth amendment rights held by students.

This Note will examine the legal history of the applicability of the fourth amendment to public school searches and the different approaches that the state and federal courts have taken regarding this issue. This Note will further analyze the reasoning of the Supreme Court in New Jersey v. TLO, the impact it will have on public school officials, as well as on students and parents, and the fourth amendment questions regarding public school searches left unanswered by the court.

II. THE LEGAL BACKGROUND OF PUBLIC SCHOOL SEARCHES

The fourth amendment provides that "[t]he 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 warrant shall issue, but upon probable cause . . . ." In order for a search to be deemed reasonable, it must be conducted pursuant to a warrant which is based upon probable cause and issued by a detached magistrate. Thus, a search conducted without a warrant is per se unreasonable, and the evidence seized therefrom will be inadmissible in federal and state courts. Nevertheless, the Supreme Court has recognized a few specific exceptions to the warrant requirement.

8. 105 S. Ct. at 739.
9. Id. at 743-44.
10. Id. at 743.
11. U.S. CONST. amend. IV.
12. Probable cause exists when "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing [that a crime] had [been] committed or was [being] committed." Beck v. Ohio, 379 U.S. 89, 91 (1964).
17. See Schneckloth v. Bustamonte, 412 U.S. 218 (1973) (a warrantless search conducted pursuant to "consent" was recognized as a valid search under the fourth amendment); Harris v. United States, 390 U.S. 234 (1968) (evidence seized in "plain view" without a warrant was admissible); Warden v. Hayden, 387 U.S. 294 (1967) (the "exigencies of the situation" permitted a warrantless search); United States v. Rabino-
and to the probable cause requirement.18

Until the decision in New Jersey v. T.L.O.,19 the Supreme Court had never addressed the question of whether the fourth amendment applies to student searches by public school officials.20 For this reason, the state and federal courts have different views and rationalizations regarding the applicability of the fourth amendment to searches by public school officials.21

In struggling to reach an acceptable balance between the interests
and protected rights of students and the duty of school officials to provide a safe learning environment, the courts have generally reached four different conclusions:

1) The fourth amendment does not apply to searches conducted by public school officials. Therefore, public school searches are not subject to fourth amendment restrictions.22

2) The fourth amendment applies to searches by public school officials, but the exclusionary rule does not.23

3) The fourth amendment and the exclusionary rule both apply to searches by public school officials, and such searches must be based upon probable cause.24

22. Courts reaching this conclusion recognize school officials as private parties acting in loco parentis. In loco parentis is defined as: "[i]n the place of a parent." BLACK'S LAW DICTIONARY 708 (5th ed. 1979). Thus, the students have no fourth amendment rights.

See R.C.M. v. State, 660 S.W.2d 552 (Tex. Ct. App. 1983) (a search of a student by the vice principal and a school security guard is not governmental action, rendering the seized evidence admissible); D.R.C. v. State, 646 P.2d 252 (Alaska Ct. App. 1982) (school officials are public employees, but not law enforcement officers, rendering the fourth amendment inapplicable); In re Donaldson, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969) (vice principal is not a governmental official within the context of the fourth amendment, but is an authority whose primary responsibility is to maintain discipline in the school setting, not to obtain convictions). The view taken by these courts emphasizes the importance of providing a safe environment, conducive to learning for students as well as teachers above and beyond recognizing the rights of students under the fourth amendment.

For a critique of the in loco parentis doctrine as a justification for public school officials' immunity from operation of the fourth amendment, see Trosch, Williams & DeVore, supra note 17, at 53-54. See also Comment, School Officials' Authority to Search Students Is Augmented by the "In Loco Parentis" Doctrine, 5 FLA. ST. U.L. REV. 526, 527-31 (1977); Buss, The Fourth Amendment and Searches of Students in Public Schools, 59 IOWA L. REV. 739, 765-68 (1974). These authors assert that the use of the common law doctrine of in loco parentis as a justification for public school officials' fourth amendment immunity is in "direct conflict with its underlying theory," to stand in place of the parent. Comment, supra, at 531. Very rarely would a parent search his or her child for drugs which would be used against the child in criminal proceedings.

23. The Georgia courts have adopted this view. The rationale is that the exclusionary rule's basic purpose, to deter law enforcement misconduct, would not be served. See, e.g., State v. Young, 234 Ga. 488, 216 S.E.2d 586 (1975) (Public school officials are state officers whose conduct is subject to fourth amendment restrictions, but not to the exclusionary rule. The fourth amendment applies to state action, whereas the exclusionary rule applies to state law enforcement action.)

24. See Gordon v. Santa Ana Unified School Dist., 162 Cal. App. 3d 530, 542, 208 Cal. Rptr. 657, 665, (1984) (the fourth amendment, including the probable cause standard, and the exclusionary rule are applicable to searches by public school officials in criminal and juvenile proceedings, but are not applicable in school disciplinary proceedings); State v. Mora, 307 So. 2d 317 (La. 1975) (a warrantless search of a student's wallet by a physical education teacher was held to be unreasonable because none of the well-delineated exceptions to the warrant requirement applied).

But see M.M. v. Anker, 607 F.2d 588, 589 (2d Cir. 1979) (Second Circuit recognized the lower standard of reasonableness for public school searches, but expressed "that as the intrusiveness of the search intensifies, the standard of Fourth Amendment 'reasonableness' approaches probable cause, even in the school context"); see M. v. Board of
4) The fourth amendment and the exclusionary rule both apply to searches by public school officials, but searches need only be based upon a reasonable suspicion rather than probable cause.\(^{25}\)

In *New Jersey v. T.L.O.*,\(^{26}\) the Supreme Court adopted a modified version of the fourth view,\(^{27}\) which was the majority view of the state and federal courts that have decided this issue. Searches by public school officials were held to create another exception to the warrant requirement.\(^{28}\) The Court never reached the question of whether the exclusionary rule applies to these searches.\(^{29}\) Therefore, evidence seized in a warrantless search by a public school official, which was based upon a reasonable suspicion, may be used against students both in school disciplinary proceedings and in criminal proceedings.

III. BACKGROUND OF THE CASE

A. Facts

In *New Jersey v. T.L.O.*, a vice principal found marijuana while searching a female student’s purse for cigarettes after the student

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25. See, e.g., *Horton v. Goose Creek Indep. School Dist.*, 690 F.2d 470, 481 (5th Cir. 1982) (the “reasonable cause” needed before a school official can invade a student’s privacy is less stringent than the standard to which law enforcement officials are held); *State ex rel. L.L.*, 90 Wis. 2d 585, 601, 280 N.W.2d 343, 351 (1979) (“a warrantless search by a teacher or school official is reasonable if it is based upon a reasonable suspicion that a student has a dangerous or illegal item or substance in his possession”); *State v. McKinnon*, 88 Wash. 2d 75, 81, 558 P.2d 781, 784 (1977) (vice principal should not be held to the same probable cause standard as law enforcement officials, but should be allowed to search a student if he has “reasonable grounds” on which to base search needed to maintain order and discipline).

Courts reaching this conclusion regard school officials as governmental officials, and therefore subject to the fourth amendment restrictions. They emphasize that a principal’s primary duty is to provide a safe and orderly learning environment, not to discover and prevent crime. In order to provide a safe learning environment, discipline must be maintained. This often requires the principal and other school officials to take immediate action which “cannot await the procurement of a search warrant based upon probable cause.” *McKinnon*, 88 Wash. 2d at 81, 558 P.2d at 784. The inherent need to maintain discipline in school so that the educational process can proceed justifies lowering the probable cause standard to a reasonable suspicion standard. This view considers both the students’ fourth amendment rights as well as the need for a safe educational environment and attempts to reach an acceptable balance between the two.

27. *See supra* note 25 and accompanying text.
28. 105 S. Ct. at 743. For a list of the other well-delineated exceptions to the warrant requirement, see *supra* note 17.
29. *Id.* at 739 n.3. *See also* note 62.
had denied an allegation of smoking cigarettes in the girls' restroom. On March 7, 1980, a Piscataway High School teacher observed fourteen year old T.L.O. [hereinafter Respondent] and another student smoking cigarettes in the girls' restroom in violation of a school rule. The teacher took the two students to the assistant vice principal's office where Respondent denied smoking in the restroom. In fact, she told the vice principal that she "did not smoke at all."

Thereafter, the vice principal requested to see Respondent's purse. While inspecting it the first item he found was a package of cigarettes. As removed the cigarettes, a package of cigarette rolling papers came into view. After finding the cigarette rolling papers, the vice principal proceeded to thoroughly search Respondent's purse. As a result, he found: a small amount of marijuana, a pipe, an index card listing students who owed Respondent money, and two letters implicating Respondent in marijuana dealing.

Upon finding marijuana and other paraphernalia, the vice principal reported the incident to the police. The Respondent's mother was also notified. Pursuant to police request, Respondent's mother took her daughter to police headquarters where Respondent confessed to selling marijuana at school.

The State of New Jersey brought delinquency charges against Respondent in the Juvenile and Domestic Relations Court of Middlesex County. The state charged Respondent with possession of marijuana with the intent to distribute. Respondent was also suspended from school for three days.

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30. Piscataway High School is located in Middlesex County, New Jersey.
31. The rules and regulations of Piscataway High School allowed students to possess cigarettes and smoke cigarettes in certain designated areas. However, the girls' restroom was an area where cigarette smoking was strictly forbidden. State ex rel. T.L.O., 94 N.J. 331, 347, 354, 463 A.2d 934, 942, 946 (1983).
32. Respondent's companion admitted to the vice principal that she had been smoking in the girls' restroom. She was then assigned to a smoking clinic. Id. at 336, 463 A.2d at 936.
34. Based upon the vice principal's experience with students, he knew that cigarette rolling papers were closely associated with the marijuana use. 94 N.J. at 336, 463 A.2d at 936.
35. The net weight of the marijuana found in Respondent's purse was 5.4 grams. State ex rel. T.L.O., 185 N.J. Super. 279, 283 n.1, 448 A.2d 493, 495 n.1 (1982).
36. The pipe found was a metal one, a type commonly used for smoking marijuana. 94 N.J. at 336, 463 A.2d at 936.
37. Respondent's purse contained forty dollars, most of which were in single dollar bills. Id. at 337, 463 A.2d at 936.
38. Id.
39. The marijuana and other evidence was eventually turned over to the police. 178 N.J. Super. at 335, 428 A.2d at 1330.
40. At police headquarters, Respondent admitted selling eighteen to twenty marijuana cigarettes for one dollar each the day of the incident. Id.
41. Id. at 329, 428 A.2d at 1327.
42. Respondent's original suspension was ten days: three days for smoking
B. Juvenile Court Proceedings

During the Juvenile and Domestic Relations Court proceedings, Respondent filed a motion to suppress the evidence seized by the vice principal, asserting that the search of her purse violated the fourth amendment. In considering Respondent's motion to suppress, the juvenile court held: that the fourth amendment is applicable to searches by public school officials; that the standard of reasonableness needed to conduct a search is lowered from probable cause to a reasonable suspicion; and that the vice principal's search of Respondent's purse was reasonable under the circumstances. Based upon these findings, the juvenile court denied Respondent's motion to suppress.

cigarettes in a no smoking area and seven days for possession of marijuana. However, the seven day suspension for possessing marijuana was set aside at a hearing by the Superior Court of New Jersey, Chancery Division. The Chancery Division held that the marijuana was evidence seized in a search violating the fourth amendment. T.L.O. v. Piscataway Bd. of Educ., No. C-2865-79 (N.J. Super. Ct. Ch. Div. Mar. 31, 1980). This decision was not appealed by the Board of Education. 105 S. Ct. at 737 n.1.

43. 178 N.J. Super. at 329, 428 A.2d at 1327.

44. Respondent also asserted that the motion to suppress the evidence be granted on the grounds of collateral estoppel and res judicata. This assertion was based upon the Chancery Division's holding that the search of Respondent's purse violated the fourth amendment. See supra note 42. However, the juvenile court denied Respondent's motion to suppress based on these doctrines because the school board, not the State of New Jersey, was named in the Chancery Division proceeding. 178 N.J. Super. at 329, 428 A.2d at 1335. See also Kugler v. Bannner Pontiac-Buick, Opel, Inc., 120 N.J. Super. 572, 295 A.2d 385 (1972) (Attorney General was not precluded from bringing suit on grounds of res judicata nor collateral estoppel even though defendant had previously been acquitted in a municipal court).

45. 178 N.J. Super. at 345, 428 A.2d at 1335-1340.

46. The standard for determining the reasonableness of a search, adopted by the juvenile court, was "a reasonable suspicion that a crime has been or is in the process of being committed, or reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies." Id. at 341, 428 A.2d at 1333 (emphasis in original).

47. The court acknowledged five factors to be considered as guidelines in determining whether searches by public school officials are reasonable under the lower "reasonable suspicion" standard:

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

Id. at 342, 428 A.2d at 1334. The court reasoned that the search of Respondent's purse was reasonable under the facts and circumstances present because a teacher had observed Respondent smoking in a prohibited area. Therefore, the vice principal's action to determine whether a violation had occurred was warranted. Id.
C. New Jersey Appellate Court Proceedings

Respondent appealed the juvenile court’s denial of the motion to the Superior Court of New Jersey, Appellate Division. The appellate court affirmed the denial of the motion to suppress the evidence based upon the opinion of the juvenile court. Respondent then appealed to the New Jersey Supreme Court.

The supreme court reversed the decisions of the lower courts and granted Respondent’s motion to suppress the evidence. The court agreed with the lower courts’ rulings on the applicability of the fourth amendment and exclusionary rule to public school searches as well as the lower court’s statement of the standard for determining the reasonableness of the search. In addition, the supreme court held even though the fourth amendment applies, public school officials need not secure a search warrant in order to search students. This reversal was based on the application of the lower standard of determining the reasonableness of the search of Respondent’s

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48. The juvenile court followed the majority rule regarding searches conducted by public school officials. See supra note 25 and accompanying text.
51. Id. at 341-42, 349-50, 463 A.2d at 939, 943-44 See supra note 64.
52. Id. at 346, 463 A.2d at 941-42. The supreme court defined the lower standard to exist “when a school official has reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order.” Id. at 346, 463 A.2d at 941. The supreme court also acknowledged the same five factors considered by the juvenile court in determining the reasonableness of a public school search. See note 47. This standard is very similar to the standard adopted by the juvenile court. See supra note 46.
53. 94 N.J. at 342, 343, 463 A.2d at 939, 940. The court’s reasoning for making searches by public school officials an exception to the warrant requirement was based upon the fact that the New Jersey Legislature had passed a number of statutes granting school authorities certain powers to maintain safety, order, and discipline within the schools. Id. See, e.g., N.J. STAT. ANN. § 18A:6-1 (West 1968) (school employees have been granted the power to “Apply such amounts of force as is reasonable and necessary to . . . obtain possession of weapons or other dangerous objects); N.J. STAT. ANN. § 18A:25-2 (West 1985) (“a teacher or other person in authority over such pupil shall hold every pupil accountable for disorderly conduct”); N.J. STAT. ANN. §18A:37-1 (West 1968) (students are required to “comply with the rules established in pursuance of law for the government of such schools . . . and submit to the authority of the teachers and others in authority”); N.J. STAT. ANN. §18A:37-2j (West Supp. 1985) (school officials have the power to punish and suspend any pupil who is guilty of “[k]nowing possession or knowing consumption . . . of alcoholic beverages or controlled dangerous substances on school premises, or being under the influence of intoxicating liquor or controlled dangerous substances on school premises”).

After reviewing the state statutory scheme, the supreme court concluded that “these statutes yield the proposition that school officials, within the school setting, have the authority to conduct reasonable searches necessary to maintain safety, order, and discipline within the schools.” 94 N.J. at 343, 463 A.2d at 940. Thus, the warrant requirement is unsuited for the school environment.
purse. The supreme court found that the vice principal's search was not reasonable because Respondent had not violated a school rule that would seriously interfere with maintaining discipline or safety in the school and thus granted Respondent's motion to suppress.

After the supreme court's reversal of the lower court's denial of the motion to suppress, the state petitioned for a writ of certiorari to the United States Supreme Court. In its petition, the state asked the Supreme Court to decide whether the exclusionary rule applies to searches conducted by public school officials that violate the fourth amendment.

IV. ANALYSIS

A. Majority Opinion

The Supreme Court granted certiorari to decide the sole issue of whether the exclusionary rule applies to evidence seized in a search by a public school official which violates the fourth amendment. After hearing oral arguments on the exclusionary rule applicability issue, for which the Court originally granted certiorari, the Court requested reargument to decide the additional issue of whether the vice principal's search of Respondent's purse did in fact violate the fourth amendment. On re-argument, the Supreme Court held that the vice principal's search did not violate the fourth amendment.

54. The court reasoned that mere possession of cigarettes did not constitute criminal activity nor did it violate a school rule; therefore, the contents of Respondent's purse had no direct bearing on the infraction. 94 N.J. at 347, 463 A.2d at 942.

55. Id.


58. See supra note 56.


60. Before the Supreme Court had ruled on New Jersey v. T.L.O., Professor Yale Kamisar of the University of Michigan Law School speculated that the reasoning behind the request for reargument was to avoid deciding the exclusionary rule issue altogether. Kamisar speculated that the Court may not have had the five votes needed to hold the exclusionary rule inapplicable to public school searches. See Stewart, And in Her Purse the Principal Found Marijuana, 71 A.B.A. J. 50, 54 (1985). It should be noted that this article was drafted prior to the Supreme Court's ruling on New Jersey v. T.L.O., even though it was published in the journal after the decision.

61. 105 S. Ct. at 738, 739.

In holding that the search of [Respondent's] purse did not violate the Fourth Amendment, we do not implicitly determine that the exclusionary rule applies to the fruits of unlawful searches conducted by school authorities. Thus, our determination implies no particular resolution of the question of the applicability of the exclusionary rule. Id.
thereby avoiding the exclusionary rule issue completely.\textsuperscript{62}

1. Public School Officials Are Held to Be Government Officials Subject to Fourth Amendment Restrictions

The first issue addressed by the Court was whether the fourth amendment applies to searches by public school officials.\textsuperscript{63} In holding that the fourth amendment does apply, the Court based its decision on three grounds.

First, the fourth amendment has long been recognized by the Court as a protection of students' rights against invasions by public school authorities.\textsuperscript{64} Because the fourth amendment applies to the states through the fourteenth amendment,\textsuperscript{65} school officials are not immune from the fourth amendment when searching students.

Second, searches by public school officials were analogized by the Court to searches by other governmental officials who were not law enforcement officers.\textsuperscript{66} In reviewing its past decisions, the Court reiterated that not only had it held law enforcement officials to be bound by the restrictions of the fourth amendment, but other governmental officials were also bound, including: building inspectors;\textsuperscript{67} OSHA inspectors;\textsuperscript{68} and firefighters.\textsuperscript{69} The Court stated that the principal purpose of the fourth amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials,"\textsuperscript{70} not just law enforcement officials. The Supreme Court concluded that public school officials should be bound by the

\textsuperscript{62} Id.
\textsuperscript{63} 105 S. Ct. at 739.
\textsuperscript{64} As precedent for the assertion that students are entitled to fourteenth amendment protections, the Court stated:

The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures — Boards of Education not excepted. These have, of course, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they 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.

\textsuperscript{67} Id. at 739-40 (quoting West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 637 (1943) (emphasis added)).
\textsuperscript{69} Michigan v. Tyler, 436 U.S. 499 (1983) (firefighters entering premises to investigate the cause of a fire must first procure a search warrant).
\textsuperscript{70} Camara, 387 U.S. at 528 (emphasis added).
restrictions imposed by the fourth amendment as are other non-law
enforcement governmental officials.\textsuperscript{71}

Third, the minority rule, adopted by lower courts that consider
teachers as \textit{in loco parentis}\textsuperscript{72} and immune from fourth amendment
restrictions, was rejected. The Court reiterated the fact that it had
previously recognized students' first amendment\textsuperscript{73} and fourteenth
amendment rights.\textsuperscript{74} It reasoned that there is no justification for de-
nial of students' fourth amendment rights in the schoolhouse setting.
Another reason supporting the Court's rejection of the \textit{in loco paren-
tis} view, was that today, teachers are granted authority through state
statutes,\textsuperscript{75} not through parents. Hence, public school officials were
held to be governmental officials, subject to the restrictions of the
fourth amendment.\textsuperscript{76}

2. Searches Conducted by Public School Officials Held to Be
Another Exception to the Warrant Requirement and
Probable Cause Standard

The second issue addressed by the Court was twofold: (1) whether
public school officials needed to obtain a warrant before searching
students, and (2) the degree of suspicion needed to conduct such
searches. In holding that public school officials need not obtain a
warrant\textsuperscript{77} nor have probable cause to search a student,\textsuperscript{78} the
Supreme Court applied a “balancing test” between the students’ ex-
ppectation of privacy in the school setting and the teachers’ need to
maintain order so that the educational process can proceed.\textsuperscript{79}

\begin{itemize}
  \item \textsuperscript{71} 105 S. Ct. at 741.
  \item \textsuperscript{72} See supra note 22.
  \item \textsuperscript{73} See \textit{Tinker} v. Des Moines Indep. Community School Dist., 393 U.S. 503 (1969)
                   (schoolchildren do not shed their first amendment free speech rights upon entering
                   the schoolhouse gates). The Court, in \textit{Tinker}, did limit students’ first amendment
                   rights. When a student’s behavior “materially disrupts classwork or involves substan-
                   tial disorder or invasion of the rights of others,” free speech immunity will not be rec-
                   ognized. \textit{Id}, at 513.
  \item \textsuperscript{74} See \textit{Goss} v. Lopez, 419 U.S. 565 (1975) (students who have been suspended or
                   expelled from school are entitled to procedural due process).
  \item \textsuperscript{75} The State of New Jersey has adopted such a statutory scheme. See supra note
                   53 and accompanying text.
  \item \textsuperscript{76} 105 S. Ct. at 741.
  \item \textsuperscript{77} \textit{Id}. at 743.
  \item \textsuperscript{78} \textit{Id}.
  \item \textsuperscript{79} The majority claimed that “[t]he determination of the standard of reasonableness
governing any specific class of searches requires ‘balancing the need to search
against the invasion which the search entails.’” \textit{Id}. at 741 (quoting \textit{Camara}, 387 U.S. at
536-537). “On one side of the balance are arrayed the individual’s legitimate expecta-

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The Court recognized a student’s legitimate expectation of privacy in their person and in their personal effects. However, a student’s expectation of privacy in the school setting must give way to the teacher’s need to maintain order in the classroom. It is imperative that teachers be delegated the authority and means to maintain discipline so that a safe learning environment is provided and the educational process is performed uninterrupted because “[e]vents calling for discipline are frequent occurrences and sometimes require immediate, effective action.”

Moreover, to require a teacher to obtain a search warrant before searching a student suspected of violating a law or school rule would seriously interfere with disciplinary proceedings as well as the educational process itself. The warrant requirement is thus not appropriate in the unique setting of the schoolhouse, and one need not be obtained in order for a public school official to search a student.

The same balancing test analysis, used to justify the warrant exception, was used to justify lowering the standard to determine the reasonableness of a student search by a public school official from probable cause to a reasonable suspicion. In certain limited circumstances, where the public interest is best served by applying a reasonableness test rather than the probable cause standard, the Court has not hesitated in adopting the lower reasonable suspicion standard.

To determine the reasonableness of a student search the Court formulated a two prong test. “[F]irst, one must consider ‘whether the

tions of privacy and personal security; on the other, the government’s need for effective methods to deal with breaches of public order.” Id.

In applying the “balancing test,” the majority expressed that it was the rule to determine the reasonableness of any class of searches. However, probable cause is the rule, and the “balancing test” is the exception. See supra notes 11-18 and accompanying text. See also infra note 109 for a discussion and criticism of the majority’s application of the “balancing test” as the rule.

80. On reargument, the state asserted that schoolchildren have essentially no legitimate expectation of privacy in their articles “unnecessarily” brought into the schoolhouse. The Court rejected this argument. 105 S. Ct. at 742.

81. Id. at 742. (quoting Goss v. Lopez, 419 U.S. 565, 580 (1975)).

82. 105 S. Ct. at 743. Interestingly, however, the Court ignores the fact that the principal had the purse, the student, and the time to obtain the warrant in this case. Of course, no warrant could be issued if the purse were to remain unopened in the principal’s office because the principal had no reasonable suspicion that the student possessed marijuana. This issue, which remained undecided by the Court, goes to the heart of the intrusion that the student alleged was the violation of her constitutional rights. In declining to issue an opinion on the exclusionary rule’s applicability to this case, the Court is left with the prospect of facing it later. (See notes 129-138 and accompanying text, Stevens, J. dissenting).

83. See supra note 79 and accompanying text.

84. 105 S. Ct. at 743. The Supreme Court thereby followed the majority of the state courts that had ruled upon this issue. See supra note 25.

85. See supra note 18 for a discussion of cases in which it was held that, under the circumstances, a reasonable suspicion standard was more appropriate than the probable cause standard.
... action was justified at its inception'... second, one must determine whether the search as actually conducted 'was reasonably related in scope to the circumstances which justified the interference in the first place.' In adopting this lower standard, the Court struck a balance between the students' expectation of privacy and the school officials' and public's interest in maintaining order in the classroom.

3. The Vice Principal's Full-Scale Search of Respondent's Purse was Reasonable

After applying the two-prong test adopted for determining the reasonableness of public school searches, the Court held the vice principal's search of Respondent's purse to be reasonable, thereby overruling the holding of the New Jersey Supreme Court. The rationale supporting the Court's finding that the search was reasonable, and therefore legal, was two-fold.

First, the Court rejected the New Jersey Supreme Court's assumption that because possession of cigarettes was not a violation of school rules, the contents of Respondent's purse would have "no direct bearing on the infraction." In fact, the Supreme Court asserted the contrary, that possession of cigarettes would be evidence relevant to the circumstances because it would both confirm the teacher's allegation that Respondent was smoking in the restroom as well as undermine

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86. 105 S. Ct. at 744 (quoting Terry v. Ohio, 392 U.S. 1, 20 (1968)). In Terry, the two prong "stop and frisk" test was established. For the first time, the Court determined a search to be reasonable based upon a suspicion less than probable cause.

The first prong of the two prong test relates to the "stop" element. The T.L.O. Court held that a search satisfies this first prong, "when there are 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." 105 S. Ct. at 744. This standard is very similar to the standards applied by both the juvenile court and the New Jersey Supreme Court. See supra notes 46 & 52.

87. 105 S. Ct. at 744 (quoting Terry, 392 U.S. at 20). The second prong of the Terry test, relating to the scope of the search, is met "when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." (footnote omitted). Id.

88. The reasonableness standard adopted here will enable teachers to regulate their conduct based upon common sense rather than some interpretation of the probable cause standard. Application of reasonableness standard should invade a student's privacy only to the extent needed to maintain order in the classroom. Id.

89. See supra notes 86, 87 and accompanying text.

90. 105 S. Ct. at 746.

91. Id. at 745. See supra note 54.
Respondent's denial of "not smoking at all." Even though the possession of cigarettes was not a violation of a school rule, it would produce evidence of a school rule violation. Hence, the finding of cigarettes would supply "the necessary 'nexus' between the item searched for and the infraction under investigation." Secondly, and also rejected, was the New Jersey Supreme Court's conclusion that the vice principal did not have a reasonable suspicion that Respondent's purse would, in fact, contain cigarettes. The Court was troubled by the lower court's finding that, at best, the vice principal had only a "hunch" that Respondent's purse contained cigarettes.

Immediately prior to the search, a teacher had witnessed Respondent smoking cigarettes in the girls' restroom. It was reasonable to assume that cigarettes were present somewhere, and the most obvious place was in Respondent's purse. The vice principal had, therefore, more than a "hunch;" he had come to a "common sense conclusion" that Respondent's purse did, in fact, contain cigarettes. As a result, the vice principal did have a reasonable suspicion that Respondent possessed cigarettes in her purse, and it was therefore reasonable for him to search the purse.

92. Id. This confirmation would not be absolute upon the finding of cigarettes in Respondent's purse. However, relevant evidence need not be conclusive, but only have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Id. at 746 (quoting FED. R. EVID. 401).
93. 105 S.Ct. at 746. Cf. Warden v. Hayden, 387 U.S. 294 (1967). In Warden, it was held permissible to:
conduct . . . searches for the purpose of obtaining evidence which would aid in apprehending and convicting criminals. The requirements of the Fourth Amendment can secure the same protection of privacy whether the search is for "mere evidence" or for fruits, instrumentalities or contraband. There must, of course, be a nexus . . . between the item to be seized and criminal behavior. Thus in the case of "mere evidence," probable cause must be examined in terms of cause to believe that the evidence sought will aid in a particular apprehension or conviction.
387 U.S. at 306-07 (emphasis added).
94. 105 S.Ct. at 746.
95. 94 N.J. at 347, 463 A.2d at 942. The New Jersey Supreme Court held that the vice principal had no reasonable grounds to believe that the Respondent's purse contained cigarettes because no one had reported to him that the purse had cigarettes in it. Therefore, his search of the purse was unreasonable.
96. 105 S. Ct. at 746. The Terry Court held that in determining the reasonableness of a stop and frisk search "due weight must be given, not to [the officer's] inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences . . . [drawn] from the facts in light of his experience." Terry, 392 U.S. at 27.
98. 105 S. Ct. at 746. The Court emphasized that a reasonable suspicion need not be an absolute certainty, but pointed out that "sufficient probability, not certainty is the touchstone of reasonableness under the Fourth Amendment." Id. (quoting Hill v. California, 401 U.S. 797, 804 (1971)).
The fact that the vice principal found cigarette rolling papers in Respondent's purse while searching for cigarettes gave him "reason to suspect" marijuana was also present. Thus, the full-scale search of Respondent's purse was reasonable, and the evidence seized therefrom was held to be admissible in criminal proceedings brought by the state.

The effect of the Supreme Court's holding in New Jersey v. T.L.O. was recognition of schoolchildren's fourth amendment rights. However, classifying searches of students by public school officials as another well-delineated exception to the warrant requirement, as well as to the probable cause standard, severely limits these recognized rights.

B. Concurring Opinions

1. The Uniqueness of the School Setting Justifies A Limitation on Students' Fourth Amendment Rights

Justice Powell joined the majority opinion in New Jersey v. T.L.O., and also filed a concurring opinion, stressing the special characteristics of the school setting and the teacher-student relationship as primary justifications for limiting the fourth amendment rights of students. First, according to Justice Powell, students do have a somewhat diminished expectation of privacy while in the classroom because of their close association with teachers and other students. For hours each school day, students are constantly supervised by school officials who know them quite well. Thus, it is not realistic to think that students have the same expectation of privacy at school as they do in everyday society.

Second, the special relationship between teachers and students provided justification for the Court's limitation of schoolchildrens' fourth amendment rights. The teacher-student relationship is not like the law enforcer-criminal relationship. The latter is an adversary relationship, while the former is one with a "commonality of in-
terests." Not only does the teacher have a responsibility to educate the student, but he or she is also responsible for the student's safety and welfare.

Justice Powell concluded by accentuating the establishment of discipline and maintenance of order as prerequisites to fulfillment of school officials' primary duty, namely to educate and train young people. It was, therefore, completely proper to limit schoolchildren's fourth amendment rights, but more emphasis should have been placed on the special characteristics of the schoolhouse setting.

2. Searches by Public School Authorities Create Exceptional Circumstances Justifying Another Exception to the Probable Cause Standard and Warrant Requirement; However, the Balancing Test Is Not the Rule

Justice Blackmun filed a separate concurring opinion in which he agreed with the majority's classification of student searches as an exception to the warrant requirement and probable cause standard, but disagreed with the rule employed. He reasoned that teachers must discipline students frequently and immediately, to not only maintain order in the classroom so that the educational process progresses uninterrupted, but to protect the very safety of the students and school personnel as well. The overpowering need for immediate action makes the warrant requirement completely inappropriate in the school setting. Furthermore, teachers do not have the knowledge and training of the details of probable cause that law enforcement officials possess. To burden teachers with the task of becoming knowledgeable on the probable cause standard would take away from their and the school system's primary function: to educate and train young people.

Justice Blackmun was troubled by the majority's implication that the rule for determining the reasonableness of a search was the "balancing test." He did not join the majority opinion on this point, and filed a separate opinion in order to reiterate the fact that probable cause is the standard to be applied for determining the reasonableness of a search. He believed the majority needlessly employed

104. Id. at 748.
105. Id. at 747.
106. Id. at 748 (Blackmun, J., concurring).
107. Id. at 749-50.
108. Id. at 750.
109. The majority stated that "[t]he determination of the standard of reasonableness governing any specific class of searches requires balancing the need to search against the invasion which the search entails." Id. at 741. Justice Blackmun stressed that the "balancing test" is not the rule as the majority expressed. See supra note 79 and accompanying text. The rule regarding the determination of the reasonableness of a search is contained within the warrant and probable cause requirements. "Only in
the "balancing test" rather than correctly expressing it as an exception to the rule.\textsuperscript{110}

C. Dissenting Opinions

1. Probable Cause Has Always Been the Standard Used to Determine the Reasonableness of a Full-Scale Search

Justice Brennan agreed with the majority's conclusion that the fourth amendment was applicable to public school officials while searching students. However, he disagreed with the majority's use of the reasonableness\textsuperscript{111} standard. After reviewing several past Court decisions,\textsuperscript{112} the dissent stressed that it had never held a full-scale search based upon a suspicion lower than probable cause to be reasonable under the fourth amendment. In his dissenting opinion, Justice Brennan accused the majority of adopting a broad exception to fourth amendment requirements that is "unclear, unprecedented, and unnecessary."\textsuperscript{113}

Justice Brennan did agree with the majority that a warrant exception was appropriate for searches conducted by public school officials. He sharply disagreed, however, with the majority's use of the "balancing test" to justify the warrant exception.\textsuperscript{114} An exception to the warrant requirement requires more than just the governmental interest in law enforcement; it requires a "special governmental interest beyond the need merely to apprehend lawbreakers."\textsuperscript{115} The school setting is the subject of a special governmental interest, and therefore, classification of searches by public school officials as an ex-

\begin{itemize}
    \item[110.] 105 S. Ct. at 749 (Blackmun, J., concurring).
    \item[111.] Id. at 750 (Brennan, J., dissenting).
    \item[112.] Id. at 750-51, Justice Brennan pointed out three well-settled precedents: first, warrantless searches are per se unreasonable, Katz v. United States, 389 U.S. 347, 357 (1967); second, full-scale searches, whether pursuant to a warrant or a warrant exception situation, must be based upon probable cause, Beck v. Ohio, 379 U.S. 89, 91 (1964); and third, a search that is not full-scale, but is somewhat less intrusive, may be based on a suspicion less than probable cause, Terry v. Ohio, 391 U.S. 1, 20 (1968).
    \item[113.] 105 S. Ct. at 750 (Brennan, J., dissenting).
    \item[114.] Id. at 751. See supra note 79 and accompanying text.
    \item[115.] Id. at 751 (emphasis in original).
\end{itemize}
ception to the warrant requirement is entirely appropriate.\textsuperscript{116}

Justice Brennan was deeply troubled with the majority's use of the "balancing test" to determine the reasonableness of the full-scale search of Respondent's purse.\textsuperscript{117} The Court first introduced the "balancing test" in Terry v. Ohio,\textsuperscript{118} and its application has been limited since then to specific situations in which the invasion of privacy was minimal.\textsuperscript{119} Justice Brennan emphasized that the balancing test was not a proper measure of the propriety of the full-scale search of Respondent's purse, but that probable cause has always been required for such a search to be reasonable.\textsuperscript{120}

Justice Brennan remarked that even assuming the "balancing test" was proper under the circumstances, the test applied by the majority was incorrect.\textsuperscript{121} The government's interest, as part of the balance, is not "the need for effective methods to deal with breaches of public order," as the majority stated.\textsuperscript{122} The correct balance would be between "the costs of applying traditional Fourth Amendment standards"\textsuperscript{123} and "the serious privacy interest of the student."\textsuperscript{124}

Applying the probable cause standard that he believed to be proper, Justice Brennan concluded that the search of Respondent's purse violated the fourth amendment.\textsuperscript{125} Once the vice principal spotted the cigarettes in Respondent's purse, the search was completed. Thereafter, the sight of cigarette rolling papers did not give the vice principal probable cause to believe marijuana was present. A police officer could not obtain a search warrant to search a house based upon his knowledge that cigarette rolling papers were pres-

\textsuperscript{116} Id. at 752. "A teacher or principal could neither carry out essential teaching functions nor adequately protect student's safety if required to wait for a warrant before conducting a necessary search." Id.

\textsuperscript{117} Id.

\textsuperscript{118} Id.

\textsuperscript{119} Id.

\textsuperscript{120} Id.

\textsuperscript{121} Id.

\textsuperscript{122} Id.

\textsuperscript{123} Id.

\textsuperscript{124} Id.

\textsuperscript{125} Id.
Since probable cause did not exist to continue the search, the vice principal violated the fourth amendment. Under this line of analysis the search was unreasonable.\endnote{127}

Justice Brennan generally agreed with the majority’s findings that the fourth amendment applied to searches by public school officials and that such searches were exempt from the warrant requirement. His diversion was to the degree of suspicion needed to conduct a reasonable search. Brennan insisted that the probable cause standard should have been applied since the search of Respondent’s purse was more than a minimal intrusion; it was, in fact, a full-scale search.

2. The Majority Should Have Addressed the Exclusionary Rule Issue

Justice Stevens also filed a dissenting opinion,\endnote{128} in which he accused the majority of “unnecessarily and inappropriately reach[ing] out to decide a constitutional question.”\endnote{129} The Court should have resolved the issue of whether or not the exclusionary rule applies to exclude evidence illegally seized by a public school official.\endnote{130}

Addressing the exclusionary rule issue, Justice Stevens agreed with the New Jersey Supreme Court’s holding that evidence seized in an illegal search by a public school official should be excluded in criminal proceedings.\endnote{131} It was emphasized that the evidence found in Respondent’s purse was being used in criminal proceedings, not school disciplinary proceedings; therefore, Respondent’s fourth amendment constitutional rights should be protected.\endnote{132}

Justice Stevens agreed with the majority’s classification of a search by public school officials as an exception to the warrant requirement, but did not agree with the reasonableness standard adopted. A warrantless search by school officials is completely proper if it pertains to “violent, unlawful, or seriously disruptive conduct.”\endnote{133} However,
the reasonableness test adopted by the Court\textsuperscript{134} would permit teachers to search students for the most trivial violations of school rules.\textsuperscript{135} A better standard “would permit teachers and school administrators to search a student when they have reason to believe that the search will uncover evidence that the student is violating the law or engaging in conduct that is seriously disruptive of school order, or the educational process.”\textsuperscript{136}

Applying the “better” standard, Justice Stevens found the search of Respondent's purse to be unreasonable because smoking cigarettes in a non-smoking area was “neither unlawful nor significantly disruptive of school order or the educational process . . . .”\textsuperscript{137} Justice Stevens disagreed with the standard adopted by the majority because it “is so open-ended that it may make the Fourth Amendment virtually meaningless in the school context.”\textsuperscript{138}

V. IMPACT

The Supreme Court's holding in \textit{New Jersey v. T.L.O.} significantly impacted education as well as schoolchildren's fourth amendment rights. Its effect was to carve out another well-delineated exception to the warrant requirement. More importantly, however, the Court held for the first time that a full-scale search based upon a reasonable suspicion is constitutional. Thus, a broader exception to the probable cause standard was established.

With respect to public school officials, the effect of this decision was to reaffirm their broad authority\textsuperscript{139} to conduct warrantless searches of students who are “reasonably believed” to have violated the law or a school rule. This authority is not, however, so broad as to allow school officials to conduct strip searches\textsuperscript{140} or other searches that excessively intrude upon students' privacy. The Court expressly limited public school officials' authority to search so that such

\textsuperscript{134} See supra notes 86, 87.
\textsuperscript{135} 105 S. Ct. at 763 (Stevens, J., dissenting).
\textsuperscript{136} Id. (emphasis in original). This suggested “better” standard, asserted by Justice Stevens, would be more consistent with the Court's precedent because the degree of the intrusion of the search allowed would depend upon the seriousness of the school rule violated. Cf. Welsh v. Wisconsin, 104 S. Ct. 2091, 2099 (1984) (a warrantless arrest of a noncriminal traffic offender was unconstitutional because “the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense . . . has been committed”).
\textsuperscript{137} 105 S. Ct. at 766-67 (Stevens, J., dissenting).
\textsuperscript{138} Id. at 767.
\textsuperscript{139} Even though New Jersey v. T.L.O. was the first case in which the Supreme Court decided the public school search issue, the case's real effect is merely an affirmance of the previous rule, adopted by the majority of state and federal courts. See, e.g., supra note 25.
\textsuperscript{140} “One thing is clear under \textit{any} standard — the shocking strip searches . . . have no place in the school house.” 105 S. Ct. at 765 n.25 (Stevens, J., dissenting) (emphasis added).
searches "are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction."141

The impact of New Jersey v. T.L.O. upon students is also significant. It was reaffirmed that evidence seized by public school officials from warrantless searches based upon a reasonable suspicion can be used against students not only in school disciplinary proceedings, but in criminal proceedings as well. The reaffirmation of such broad authority on the part of school officials, communicates to students and parents the message that public school districts are serious about combating drugs and violence in public schools and that they have the support of the Supreme Court.

However, the Court did leave several questions regarding public school searches unanswered. First, the question whether the exclusionary rule applies to exclude evidence illegally seized by a public school official while searching a student;142 second, the question whether the warrant exception and reasonable suspicion standard apply to searches of lockers and desks;143 and third, the standard of reasonableness needed when police accompany school officials while searching students.144 By choosing to leave important fourth amendment questions unanswered, the Court has refrained from deciding serious issues which will undoubtedly recur in the future.

VI. CONCLUSION

"[E]ducation is perhaps the most important function of state and local governments,"145 and the "government has a heightened obligation to safeguard students whom it compels to attend school."146 Not only are public school officials held to their primary duty, to educate and train young people, but they also are held responsible for the safety and welfare of students. In order to educate, as well as provide for the safety and welfare of students, public school officials must be granted the authority needed to maintain a safe learning environment. This authority places limitations on schoolchildren's fourth amendment rights. However, the majority clearly states that to require a teacher to procure a search warrant based upon probable

141. Id. at 744 (footnote omitted).
142. Id. at 739 n.3.
143. Id. at 741 n.5.
144. Id. at 741 n.5, 744 n.7.
146. 105 S. Ct. at 750 (Blackmun, J., concurring).
cause would seriously interfere with the educational process. It is this delicate balance that was at issue in New Jersey v. T.L.O. The court decided that a limitation on students' fourth amendment rights for the purpose of providing a safe learning environment, was the most appropriate course of action.

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