10-1984

New Jersey v. T.L.O.

Lewis F. Powell Jr.

We have 3 E/R cases pending on "good faith" issue but this conflict here in on school point

NJ S/Ct held that Exclusionary Rule applies to a search of a student's purse (marijuana found) by Asst. Principal of the School. There was probable cause but no warrant.

There is a conflict among state courts as to whether the E/R applies at all when a school official is acting to enforce School Regulations for the order & good conduct of the School.

I would not extend the E/R to school officials, but I doubt merit of Grauberg

PRELIMINARY MEMORANDUM

November 23, 1983 Conference
List 3, Sheet 4

No. 83-712-CSY	Cert to Supreme Court of New Jersey (Wilentz, Clifford, Handler, Pollock, O'Hern, Schreiber (dissenting), Garibaldi (joining dissent))
New Jersey	
v.	
T.L.O., a Juvenile	State/Criminal Timely

Grant (Hesitantly) - On further reflection, my recommendation has become more tentative. There are several reasons ~~to~~ not to grant. ① The Court already has committed itself to hear 3 cases on the exclusionary rule (good faith exceptions) ② ~~Only~~ Petr cites only one other case that has applied the exclusionary rule in this context

1. SUMMARY: The State contests the exclusion of evidence seized by a public school official from a pupil during school hours and on school property.

2. FACTS AND DECISION BELOW: In March 1980, a teacher at Piscataway High School in New Jersey saw 14 year old T.L.O. (Resp) and some other girls smoking in the girls' restroom in violation of school rules. She demanded that the girls accompany her to the principal's office. There, the assistant principal asked the girls if they had been smoking in the restroom. All admitted that they had except for T.L.O., who said that she had not been smoking and that she did not smoke at all. The assistant principal then asked T.L.O. to accompany him to his private office. There he asked to see her purse. She gave it to him, he opened it and saw a package of Marlboro cigarettes on top. When he took them out of the purse to confront T.L.O. with the evidence, he saw rolling papers in the purse and began to search for other evidence of illegal drugs. He found some marijuana, 40 single dollar bills, and some index cards that indicated that T.L.O. had been selling marijuana to other students.

The assistant principal called T.L.O.'s mother and the police. T.L.O., accompanied by her mother, was taken to the police station where she was read her Miranda rights. She then allegedly confessed to selling marijuana to other students.[1] In

[1] T.L.O. later denied that she ever confessed to selling marijuana. Her mother also denied that T.L.O. made any sort of

Footnote continued on next page.

Juvenile Court, T.L.O. moved to suppress the evidence seized from her purse and her confession. The Juvenile Court denied the motion to suppress. It found the Fourth Amendment exclusionary rule applicable to school searches, but found the standard applicable to such a search to be "reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies." 178 N.J. Super. at 341 It concluded that the assistant principal was justified in opening the purse because he had reason to believe that smoking, a violation of school policy, had occurred. Once he had opened the purse, the other contents of the purse were in "plain view." The Juvenile Court adjudicated T.L.O. a delinquent.

On appeal, the Appellate Division affirmed the denial of the suppression motion. However, it vacated the adjudication of delinquency and remanded for further proceedings to determine whether the juvenile had knowingly waived her constitutional rights before making the confession. T.L.O. appealed the denial of her motion to suppress to the N.J. Supreme Court. That court reversed the evidentiary ruling of the Juvenile Court. It held first that public school students retained Fourth Amendments rights while at school and that public school officials were state officials subject to the Fourth Amendment ban against unreasonable government intrusions. It then held that pursuant to duties under state law, public school officials may conduct rea-

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confession.

sonable warrantless searches. Finally it held that if the search is not reasonable under the Fourth Amendment, the evidence is subject to the exclusionary rule and may not be used in any criminal proceeding against the pupil. On the facts of this case, the state supreme court found that the search of T.L.O.'s purse was not reasonable under the Fourth Amendment and thus that the evidence seized must be excluded.[2]

3. CONTENTIONS: Petr does not take issue with the state court's determination that the Fourth Amendment applies to protect public school students from unreasonable searches by public school officials or its determination that the search in this case was unreasonable under the Fourth Amendment. It argues only that the exclusionary rule should not apply to remedy such constitutional violations where the search is performed by a public school official. Petr argues that because the school official is primarily interested in maintaining school discipline and not in securing criminal convictions, application of the exclusionary

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[2]In state court, this case had been consolidated with another case involving a search by school officials - New Jersey v. Jeffrey Engerud. In that case, school officials were notified by the police that a father of a student had told them that Engerud was selling drugs to other students. School officials used a pass key to gain access to Engerud's locker. Their search of the locker revealed illegal drugs. The police were notified and criminal proceedings were begun. The lower courts denied the motion to suppress the evidence seized from the locker. In one opinion, the state supreme court reversed the evidentiary rulings made in both this case and the Engerud case. Jeffrey Engerud was killed in a motorcycle accident shortly after the state court handed down its opinion. Thus, his case is not currently before this Court.

rule will have no deterrent effect. Petr argues that in recent years this Court has refused to apply the exclusionary rule unless it will further the goal of deterrence. See, e.g., United States v. Janis, 428 U.S. 433 (1976)(additional marginal deterrence provided by forbidding use in federal civil proceeding of evidence illegally seized by state officials does not outweigh cost to society of applying rule). Petr argues that there is a conflict in the state courts over application of the exclusionary rule to searches by public school officials and that this Court should grant cert. in this case to resolve that conflict.

Resp argues that adequate and independent state grounds justify the decision below and thus that this Court lacks jurisdiction. She argues that under N.J. law juveniles are guaranteed the same right to be secure from unreasonable searches and seizures as are adults. If this Court should determine that juveniles are not entitled to the same protections under the Fourth Amendment as adults, the decision in this case would be unaffected because state law requires equal treatment.

4. DISCUSSION: Petr is correct that there is a conflict concerning application of the Fourth Amendment, and especially the exclusionary rule, to searches conducted by public school officials. The state cases generally reflect four different approaches to the subject: (1) the Fourth Amendment does not apply because a public school official stands in loco parentis and any search by the official in this capacity is a search by a private party rather than a government official; (2) the Fourth

Amendment applies but the exclusionary rule does not because application of that rule has no deterrent effect; (3) both the Fourth Amendment and the exclusionary rule apply but the standard of reasonableness is lowered from probable cause to reasonable suspicion to allow school officials to perform their responsibilities of enforcing school discipline; (4) the Fourth Amendment and the exclusionary rule apply and the standard of reasonableness is probable cause.

In this case, the N.J. court took the third option. It held that "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, the school official has the right to conduct a reasonable search for such evidence." It found that the search conducted in this case was unreasonable and applied the exclusionary rule. There are some strong arguments that application of that rule is inappropriate in cases such as this. The primary if not the sole purpose of the exclusionary rule is deterrence. Before applying that deterrent sanction, it is important to identify the conduct sought to be controlled. In this case, it is the actions of school officials in carrying out their responsibilities under state law to preserve and enforce school discipline. School officials are not responsible for enforcing the law through criminal proceedings. Thus, exclusion in criminal proceedings of evidence seized by school officials in performance of their duties will do little to deter their conduct. Such conduct is better deterred by carefully drawn state laws establishing the authority

of school officials in carrying out their duties. There is a split among the state courts on this issue. However, Petr has cited only one case besides this one in which the exclusionary rule has been applied. This Court denied cert. in that case.

In State v. Mora, 307 So.2d 317 (La. 1975), the La. Supreme Court applied the exclusionary rule to exclude evidence discovered by school officials. This Court granted cert. and then vacated and remanded for the state court to clarify whether its decision was based on state or federal law. Louisiana v. Mora, 423 U.S. 1976 On remand, the state court held that under state law the school officials who had made the search were functioning as governmental agents; that the search was unconstitutional under the Fourth Amendment of the U.S. Constitution and its equivalent in the state constitution; and that exclusion of the evidence was required under Mapp v. Ohio, 367 U.S. 643 (1961). This Court then denied cert. 429 U.S. 1004 (1976)

It seems clear from the opinion below that the decision on the only issue presented in this case was based on federal law: the state supreme court found that the search by the school official violated the Fourth Amendment and that the exclusionary rule should apply under this Court's decision in Mapp. Resp's argument that the decision is based on state law is misplaced. The relevant state law does not provide that juveniles will be treated the same as adults for purposes of the Fourth Amendment. It merely provides that if the defendant in a state proceeding has a Fourth Amendment claim, it will be enforced regardless of

whether he is being tried under the state's criminal code or its juvenile code. See Cert. Petition Appendix A at 6a n.5

There is a conflict in state courts concerning the proper application of Fourth Amendment law to searches performed by school officials. Compare State v. Young, 234 Ga. 488, 216 S.E.2d 586 (Ga. 1975) (Fourth Amendment applies but exclusionary rule does not), with In re W., 29 Cal. App. 3d 777 (1973); State v. Baccino, 282 A.2d 869 (Del. 1971)(Fourth Amendment & exclusionary rule apply but searches may be reasonable on lesser showing than probable cause). However, only one other case has applied the exclusionary rule to exclude evidence seized in such a case from criminal proceedings. See Mora, supra. The Court may want to wait this controversy out a little longer. If not, this case is as good as any to take.

We should have granted. I voted to Deny

I recommend granting Resp's motion to proceed in forma pauperis.

5. RECOMMENDATION: I tentatively recommend a grant.

There is a response.

November 14, 1983 Robinson Opin in petn

Court ..... Voted on....., 19...

Argued ....., 19... *Assigned* ....., 19... No. 83-712

Submitted ....., 19... *Announced* ....., 19...

NEW JERSEY

vs.

T.L.O.

Also motion to proceed ifp.

Petition and motion ifp. Grant

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	POST	DIS	AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.		✓											
Brennan, J.			✓										
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.		✓											
Powell, J.				Join 3									
Rehnquist, J.		✓											
Stevens, J.			✓										
O'Connor, J.		✓											
.....													

3/25

82-712 New Jersey v. T.L.O. & Juvenile

Q Does Exclusionary Rule apply to evidence of drug dealing found when a School official - with probable cause but no warrant - searched a 14yr old student's purse?

Probable cause: Teacher saw Resp. smoking in Rest Room contrary to Rules & took student to Principal. When she denied smoking, her purse was searched.

Juvenile court found: There was "reasonable cause to believe search necessary to maintain school discipline". Once purse was opened, its contents w/within "plain view"

N.J. Appellate Division: Affirmed

N J S/Ct reversed: Students retain Const. rights (of course).

found search not reasonable

Public School officials are state officials subject to 4th Amend., & E/Rule applies. Searches on basis of probable cause are OK, & warrant not required. But here search was not reasonable & E/Rule applies

Purpose of E/Rule inapplicable. School officials have no duty to enforce criminal laws & may not be familiar. Duty is to maintain discipline & order.

83-712 NEW JERSEY v. T.L.O. Argued 3/28/84

Noder (Deputy AG of N.J.)

No distinction bet. right of minors & adults to "consent".

The E/R was applied by TC in a criminal prosecution.

~~Originally~~

Doesn't disagree with ruling of N J S/Ct that "probable cause" ~~or~~ standard applies to searches ~~in~~ of school children.

Only issue is whether E/P applies to conduct of school officials

Ex/Rule will not deter teachers.

TM asked about "locked brief case" Counsel thought this might be unreasonable.

Turn case doesn't deal with Q whether school discipline could be imposed on basis of the finding of drugs.

Case only involves criminal trial

Noder (cont.)

Ingraham v Wright – school systems different. Parental interest – community interest. If child is mistreated parents would object

School Bd & St Bd of Ed also deter misconduct by teachers.

Ms de Julio (Resp)

Issue of use of criminal law.

State hospital search – same as school search

Only "reasonable suspicion" standard applies if weapon is suspected

BRW pressed counsel as to why a different test, a search for school discipline & using result of search in criminal case

No. 83-712, New Jersey v. T.L.O. Conf. 3/30/84

The Chief Justice Rev. or DIG

N.J. Ct held 4th & E/R apply to school searches.

~~He~~ NJ Ct held there was no 4th Amend violation, for school discipline purposes when child was required to open purse, ~~the E/R certainly doesn't apply.~~ But it further held 4th applied ~~to~~ since report was made to police.

Justice Brennan Affirm or DIG

N.J. Ct. distinguished bet. the use of the evidence. E/R should apply whenever ev. obtained illegally - whether from school officials, firemen, or whoever.

I am not to whether ev. could be used in school for disciplinary proceedings in school is not here

Justice White Rev.

E/R doesn't apply to school officials. No deterrence

Justice Marshall Aff in
Agree with WJB.

Justice Blackmun Rev.

Justice Powell Rev.
See my notes

Justice Rehnquist Part

Case in an odd posture

~~Whether~~ Thought only school discipline was involved. Not at least whether E/R should ~~apply~~ apply to ev. to ev. obtained by persons other than police.

Justice Stevens D I G or Affirm

Would apply E/R to ev. here

Justice O'Connor D I G or Aff'm

Regret having granted case

4th Amend was not violated but that issue is not here.

Would apply E/R in a criminal case.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 30, 1984

Re: No. 83-712 New Jersey v. T. L. O.

Dear Chief:

I now vote to reverse this case. Whatever may be the arguments for and against this particular limitation on the Exclusionary Rule, my disagreement with Mapp v. Ohio remains so fundamental that I will seize any opportunity to limit the damage done by that case.

Sincerely,

The Chief Justice

cc: The Conference

Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: Not circulated

Recirculated: (This is a first draft).

See my letter to BRW of 4/21

Byron asked me to review this prior to circulation.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[April —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

This case presents a question concerning the admissibility in juvenile-delinquency proceedings of evidence illegally obtained in an in-school search by a public-school official. Because that official was engaged in enforcing a school disciplinary rule and was not acting with the participation of law-enforcement authorities, we hold that the Fourth Amendment exclusionary rule does not require suppression of the evidence he obtained.

illegally — allegedly

I

On March 7, 1980, a teacher in Piscataway High School in Middlesex County, N. J., observed 14-year-old T. L. O. and another student smoking cigarettes in the girls' lavatory in violation of school regulations. The teacher escorted the girls to the vice-principal's office and accused them of violating the regulation prohibiting smoking in lavatories. In response to the vice-principal's questions, T. L. O.'s companion admitted the infraction and was assigned to a three-day smoking clinic. T. L. O., however, denied smoking in the lavatory and declared that she "didn't smoke at all."

The vice-principal took T. L. O. to a private office, closed the door, and requested her purse. He opened the purse and observed a package of cigarettes plainly visible. Saying that T. L. O. had lied to him, he reached into the purse to remove the cigarettes and saw rolling papers, which in his

experience indicated that marihuana was probably involved. He then looked further into the purse and discovered marihuana, marihuana paraphernalia, a number of one-dollar bills, and index cards and papers containing language clearly indicating drug dealing by T. L. O.

The vice-principal notified T. L. O.'s parents. He also summoned the police and gave them the marihuana and paraphernalia. In her mother's presence at police headquarters, T. L. O. was advised of her rights and admitted to selling marihuana in school. T. L. O. was suspended from school for three days for smoking cigarettes in a nonsmoking area and seven days for possessing marihuana. On T. L. O.'s motion in the Superior Court, Chancery Division, the latter suspension was set aside on the ground that the suspension resulted from evidence seized in violation of the Fourth Amendment. [*T. L. O.*] v. *Piscataway Board of Education*, No. C.2865–79 (Super. Ct. N. J., Ch. Div., Mar. 31, 1980). The validity of that judgment is not before us.

T. L. O. was also charged in the Juvenile and Domestic Relations Court, Middlesex County, with delinquency based on possession of marihuana with the intent to distribute. N. J. Stat. Ann. §§ 2A:4–44; 24:21–19(a)(1); 24:21–20(a)(4) (West Supp. 1983). T. L. O. moved to suppress the physical evidence obtained in the search of her purse; she also sought suppression of her confession on the ground that it was tainted by the allegedly unlawful search. The juvenile court denied T. L. O.'s motion to suppress. *State in Interest of T. L. O.*, 178 N. J. Super. 329, 428 A. 2d 1327 (1980). The court held that the Fourth Amendment applies to school searches, but declared that

"a school official may properly conduct a search of a student's person if the official has 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).

Applying this standard, the court concluded that the vice-principal had reasonable cause to believe that T. L. O. had violated the school's smoking regulations. Once he had opened the purse, the court held, its contents were subject to the plain-view doctrine; having found marihuana and paraphernalia, the vice-principal justifiably continued his search to determine the extent of T. L. O.'s criminal activity. *Id.*, at 343, 428 A. 2d, at 1334.

A divided Appellate Division affirmed the denial of T. L. O.'s suppression motion with respect to the contents of the purse on the basis of the Juvenile Court's opinion, but vacated the adjudication of delinquency and remanded for further proceedings to determine whether T. L. O. had knowingly waived her constitutional rights before confessing. *State in Interest of T. L. O.*, 185 N. J. Super. 279, 448 A. 2d 493 (1982) (per curiam). The Supreme Court of New Jersey reversed the Appellate Division's judgment and directed that the physical evidence be suppressed. *State in Interest of T. L. O.*, 94 N. J. 331, 463 A. 2d 934 (1983). In response to the contention that the exclusionary rule, which was applied to the States in *Mapp* v. *Ohio*, 367 U. S. 643 (1961), should not govern searches by school officials since its primary purpose is to deter violations of constitutional rights by law-enforcement officials, the Supreme Court of New Jersey declared that "the issue is settled by the decisions of the [United States] Supreme Court" and "accept[ed] the proposition that if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings." 94 N. J., at 341, 463 A. 2d, at 939 (footnote omitted).[1]

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[1] Although the court indicated that "[o]ur code of Juvenile Justice buttresses this conclusion," 94 N.J., at 342, n. 5, 463 A. 2d, at 939, n. 5, we agree with the State that the decision below concerning the admissibility of illegally obtained evidence in juvenile-delinquency proceedings does not rest on adequate and independent state grounds. It bears mentioning

The Supreme Court of New Jersey then held that school officials could conduct warrantless searches without violating the Fourth Amendment, and that, in the absence of police participation, such searches should be assessed under a standard less stringent than probable cause. Like the Juvenile Court, the Supreme Court was

"satisfied that 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, the school official has the right to conduct a reasonable search for such evidence." *Id.*, at 346, 463 A. 2d, at 941–942. The court concluded, with two justices dissenting, that the vice-principal's search could not pass muster under this standard. The contents of the purse had no direct bearing on T. L. O.'s infraction since mere possession of cigarettes did not violate the school's rules, and a desire to gather evidence to impeach T. L. O.'s credibility could not justify the search. In any event, the vice-principal had no reasonable grounds to believe that T. L. O.'s purse contained cigarettes, but rather was acting on, "at best, a good hunch." *Id.* at 347, 463 A. 2d, at 942.

We granted the State of New Jersey's petition for certiorari. —— U. S. —— (1983). State and federal courts have disagreed on whether the Fourth Amendment applies to in-school searches and seizures by public-school officials and teachers.[2] For present purposes, however, the State does

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that the Supreme Court of New Jersey denied T. L. O.'s motion—filed after this Court had granted a writ of certiorari—for clarification of its decision to make clear that it was based on state law. *State in Interest of* T. L. O., M–422 (Jan 17, 1984).

[2] State and federal courts have struggled to accommodate the interests protected by the Fourth Amendment and the interest of the States in providing a safe environment conducive to education in the public schools. Some courts have resolved the tension between these interests by giving full force to one or the other side of the balance. Thus, in a number of cases it has been held that school officials conducting in-school searches of students are private parties acting *in loco parentis* who are not subject to

not contest the holding that the Fourth Amendment protects students like T. L. O. from being unreasonably searched by school principals or teachers, the standard of reasonableness

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the constraints of the Fourth Amendment. See, *e. g.*, D. R. C. v. *State*, 646 P. 2d 252 (Alaska App. 1982); *In re G.*, 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970); *In re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969); *People* v. *Stewart*, 63 Misc. 2d 601, 313 N. Y. S. 2d 253 (1970); R. C. M. v. *State*, 660 S. W. 2d 552 (Tex. App. 1983); *Mercer* v. *State*, 450 S. W. 2d 715 (Tex. Civ. App. 1970). See also *State* v. *Kappes*, 26 Ariz. App. 567, 550 P. 2d 121 (1976) (student advisers in dormitory search); *State* v. *Wingerd*, 40 Ohio App. 2d 236, 318 N. E. 2d 866 (1974) (same); *State* v. *Keadle*, 277 S. E. 2d 456 (N.C. App. 1981) (same). At least one court has held, on the other hand, that the Fourth Amendment applies in full to in-school searches by school officials and that a search conducted without probable cause is unreasonable, see *State* v. *Mora*, 307 So. 2d 317 (La.), vacated, 423 U. S. 809 (1975), on remand, 330 So. 2d 900 (La. 1976), and others have made clear that the probable-cause standard applies where there is police involvement, see *M.* v. *Board of Education Ball-Chatham Community Unit School District No. 5*, 429 F. Supp. 288, 292 (SD Ill. 1977); *Picha* v. *Wilgos*, 410 F. Supp. 1214, 1219–1221 (ND Ill. 1976); *State* v. *Young*, 234 Ga. 488, ——, 216 S. E. 2d 586, 594 (1975), or where the search is highly intrusive. See *M. M.* v. *Anker*, 607 F. 2d 588, 589 (CA2 1979). Other courts have struck the balance by holding that the Fourth Amendment applies, but that the exclusionary rule developed to remedy violations of the Amendment does not. See, *e. g.*, *State* v. *Lamb*, 137 Ga. App. 437, 224 S. E. 2d 51 (1976); *State* v. *Young*, *supra*. See also *United States* v. *Coles*, 302 F. Supp. 99 (Maine 1969) (exclusionary rule would not deter search by administrative officer at Job Corps Center).

The applicability of the exclusionary rule, however, is discussed in very few of the cases, for most courts that have considered challenges by students to in-school searches or seizures by school officials have held that the officials' activity did not violate the Fourth Amendment. But see *In re* J. A., 85 Ill. App. 3d 567, 406 N. E. 2d 958 (1980); *People* v. *D.*, 34 N. Y. 2d 483, 358 N. Y.S. 2d 403, 315 N. E. 2d 466 (1974). These courts have rejected the view that school officials conducting in-school searches act as private individuals to which the Fourth Amendment does not apply. *E. g.*,*Horton* v. *Goose Creek Independent School District*, 690 F. 2d 470, 480 (CA5 1982); *Jones* v. *Latexo Independent School District*, 499 F. Supp. 223, 229 (ED Tex. 1980); *Bellnier* v. *Lund*, 438 F. Supp. 47, 51 (NDNY 1977); *Picha* v. *Wilgos*, 410 F. Supp. 1214, 1217–1218 (ND Ill. 1976); *State* v. *Lamb*, 137 Ga. App. 437, 224 S. E. 2d 51 (1976); *People* v. *Ward*, 62

against which the state court held that school officials' conduct is to be judged, or the state court's conclusion that T. L. O.'s purse had been searched contrary to the Fourth Amendment. The sole question presented by the petition is whether the exclusionary rule should be applied so as to bar the use in juvenile-delinquency proceedings of evidence that has been illegally seized by a school teacher without participation by law-enforcement officers. The State submits that the rule should not apply in such circumstances. We agree with this submission and reverse the judgment of the New Jersey Supreme Court.[3]

Mich. App. 46, 233 N. W. 2d 180 (1975); *Doe* v. *State*, —— N. M. ——, 540 P. 2d 827 (1975); *State* v. *Walker*, 19 Or. App. 420, 528 P. 2d 113 (1974). But they typically have held that school officials may act without a warrant, *e. g., Bilbrey* v. *Brown*, 481 F. Supp. 26, 27–28 (Or. 1979); *In re G.*, 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970), and have relaxed the standard of suspicion necessary to justify in-school searches by school officials acting without the participation of law-enforcement officials. *E. g., Horton* v. *Goose Creek Independent School District*, *supra*; *Stern* v. *New Haven Community Schools*, 529 F. Supp. 31 (ED Mich. 1981); *Jones* v. *Latexo Independent School District*, *supra*; *Doe* v. *Renfrow*, 475 F. Supp. 1012 (ND Ind. 1979); *Bellnier* v. *Lund*, *supra*; *In re W.*, 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973); *State* v. *Baccino*, 282 A. 2d 869 (Del. Super. 1971); *State* v. *Young*, *supra*; *In re* J. A., *supra*; *People* v. *Ward*, *supra*; *People* v. *D.*, *supra*; *State* v. *McKinnon*, 88 Wash. 2d 75, 558 P. 2d 781 (1977); *In re L. L.*, 90 Wis. 2d 585, 280 N. W. 2d 343 (App. 1979). In assessing the reasonableness of searches and seizures by school officials, the courts have looked to such factors as: (1) whether the officials acted alone or in concert with the police; (2) whether the search was undertaken to promote school discipline or to facilitate criminal prosecution; (3) the nature and extent of the search; (4) the child's age and disciplinary record; (5) the seriousness of the problem to which the search was addressed; (6) whether the official acted under exigent circumstances; and (7) the probative value and reliability of the evidence on the basis of which the search was undertaken. See *e. g., Bellnier* v. *Lund*, *supra*; *Doe* v. *State*, *supra*; *People* v. *D.*, *supra*; *In re L. L.*, *supra*; Schiff, The Emergence of Student Rights to Privacy Under the Fourth Amendment, 34 Baylor L. Rev. 209, 213 (1982).

[3] In *United States* v. *Leon*, —— U. S. —— (1984), and *Massachusetts* v. *Sheppard*, —— U. S. —— (1984), we held that the exclusionary rule should not be applied where, judged objectively, it cannot be said that offi-

II

Since the Fourth Amendment "has never been interpreted to prescribe the introduction of illegally seized evidence in all proceedings or against all persons," *Stone* v. *Powell*, 428 U. S. 465, 486 (1976), the State's concession that the vice-principal's search of T. L. O.'s purse violated the Fourth Amendment only begins the inquiry in this case. We have repeatedly stressed that the Constitution itself does not require the exclusion of evidence obtained in violation of the Fourth Amendment, *United States* v. *Leon*, —— U. S. ——, —— (1984), and have emphasized that whether the judicially created exclusionary rule is appropriately applied in a particular case or class of cases is "an issue separate and apart from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct." *Illinois* v. *Gates*, 462 U. S. ——, —— (1983).

Analysis

The remedial question before us in this case, our decisions make clear, must be resolved by weighing the costs and benefits of excluding from juvenile-delinquency proceedings evidence illegally obtained by a school official who sought to enforce school disciplinary rules and who acted without the participation of law-enforcement authorities. See *United States* v. *Leon*, *supra*, at ——; *United States* v. *Calandra*, 414 U. S. 338, 347–352 (1974). The primary, if not the only, justification for suppressing the fruits of illegal searches and seizures is the belief that the imposition of that severe remedy will reduce the incentive to violate the Fourth Amendment and deter future illegality. *United States* v. *Leon*, *supra*, at ——; *Stone* v. *Powell*, *supra*, at 486; *United States*

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cers should have known that they were violating the Fourth Amendment. Here, as stated in the text, the Supreme Court of New Jersey held that the vice-principal had "no reasonable grounds" to believe that T. L. O.'s purse contained cigarettes. Hence, there is no occasion to vacate the judgment of the New Jersey court and remand the case for reconsideration in light of *Leon* and *Sheppard*.

v. *Janis*, 428 U. S. 433, 446 (1976). Accordingly, in light of the "substantial cost [imposed] on the societal interest in law enforcement by . . . [excluding] . . . what concededly is relevant evidence," *United States* v. *Janis*, *id.*, at 448–449, we have restricted "the application of the [exclusionary] rule . . . to those areas where its remedial objectives are thought most efficaciously served." *United States* v. *Calandra*, *supra*, at 348. Furthermore, in determining the applicability of the exclusionary rule, we must be convinced that an appreciable deterrent effect has been shown. Speculative benefits do not warrant the "strong medicine" of the exclusionary rule. *United States* v. *Janis*, *supra*, at 453; *United States* v. *Calandra*, *supra*, at 351–352.

On the strength of this balancing test, we have held that the exclusionary rule does not apply in certain types of judicial proceedings, see *United States* v. *Janis*, *supra*; *United States* v. *Calandra*, *supra*,[4] and does not prevent all possible uses of illegally obtained evidence in proceedings to which it is generally applicable. See, *e. g.*, *United States* v. *Havens*, 446 U. S. 620 (1980); *Walder* v. *United States*, 347 U. S. 62 (1964). We also have concluded that the rule constitutes an inappropriate remedy for certain types of objectively reasonable errors by law-enforcement officers. *United States* v. *Leon*, *supra*; *Massachusetts* v. *Sheppard*, —— U. S. —— (1984).

We have not had occasion to consider the applicability of this approach to evidence obtained in unlawful searches or seizures conducted by state or federal governmental employees who do not work for law-enforcement agencies and whose

[4] Although this Court has never addressed the question whether the exclusionary rule applies in juvenile delinquency proceedings and we need not do so to resolve this case, state courts that have considered the issue have consistently held that the rule is applicable. *E. g.*, *In re K.*, 24 Cal. 3d 395, 595 P. 2d 105, cert. denied, 444 U. S. 973 (1979); *In re* J. A., 85 Ill. App. 3d 567, 406 N. E. 2d 958 (1980); *State* v. *Doe*, 98 N. M. 148, 597 P. 2d 1183 (App. 1979); *In re* L. L., 90 Wis. 2d 585, 280 N. W. 2d 343 (App. 1979).

functions do not fall within the realm of law enforcement. We are now confronted with such a case: assuming that there has been a Fourth Amendment violation—because the case comes to us in that position—the question is whether the evidence seized from T. L. O. by the vice-principal may be used against T. L. O. in her juvenile-delinquency proceedings. In making this determination, there is no reason to depart from the general principles that have emerged in cases decided over more than a decade. Guided by these principles, we conclude that applying the exclusionary rule, in the context of juvenile-delinquency or criminal proceedings, to exclude the fruits of in-school searches and seizures, made without the participation of law-enforcement officers,[5] is unlikely to "result in appreciable deterrence . . . [and that] . . . its use in the instant situation is unwarranted." *United States* v. *Janis*, *supra*, at 454.

It goes without saying that a duty to exercise care in promoting the health and physical development of students and to maintain order and discipline is inextricably tied to a school's mission to educate. Although, as they were in this case,[6] school authorities may be required to report to the police what they perceive to be violations of the state or local criminal law, these officials cannot generally be classified as law-enforcement authorities. The unique relationship between schools and students gives rise to concerns that are largely unrelated to desires to obtain criminal convictions or adjudications of delinquency. Cf. *Wyman* v. *James*, 400 U. S. 309, 322–323 (1971). In-school searches ordinarily fur-

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[5] There is no evidence in this record that the vice-principal searched T. L. O.'s purse at the behest of or in cooperation with law-enforcement authorities. The latter's participation in this case began only after the seizure had been made. The state agrees that suppression would be appropriate if a school official had acted as an agent of the police. Brief for Petitioner, 16–17.

[6] We emphasize that the propriety of that decision is not before us in this case and that our opinion is not intended to intimate any view concerning whether the exclusionary rule applies in school disciplinary proceedings.

ther purposes or interests entirely separate and distinct from those served by the criminal-justice system; prohibiting the use in the criminal-justice system of evidence obtained in such searches may well have none of the behavioral effects on either school officials or school boards that exclusion of illegally obtained evidence in criminal prosecutions generally is thought to have on the typical law-enforcement official.

Whether viewed from the perspective of individual school officials or of school boards, "[t]he enforcement of school regulations, the safeguarding of students during school hours through confiscation of weapons and other contraband, and the maintenance of a drug-free learning environment provide substantial incentives to search that would not be lessened by suppression of evidence at a subsequent delinquency proceeding." *D. R. C. v. State*, 646 P. 2d 252, 258 (Alaska App. 1982). School officials may search frequently enough to develop an understanding of state and federal constitutional standards, and school boards may and should have both the incentive and the means to foster such an understanding. But a persuasive case can be made for the proposition that local school officials are "primarily concerned with maintaining internal discipline rather than obtaining convictions," *id.*, at 258, n. 10, and that the admissibility of the evidence in a juvenile court or criminal proceeding is not a substantial concern to them and hence will not appreciably control their conduct. See, *e. g.*, *United States v. Coles*, 302 F. Supp. 99, 102–103 (1969); *State v. Young*, 234 Ga. 488, 489–494, 216 S. E. 2d 586, 588–591 (1975).

It should also be recalled that, in reviewing the propriety of the disciplinary sanction imposed on T. L. O. by her school, the New Jersey Superior Court, Chancery Division, held that she could not suspended from school on the basis of the evidence seized from her purse, a holding consistent with the Supreme Court of New Jersey's decision on the scope of the Fourth Amendment in the case now under review. To the extent that school officials may be deterred by the exclu-

sion of evidence, that result will be effected by forbidding the use of the fruits of their searches in school disciplinary proceedings. It is in those proceedings that the acceptability of school officials' conduct will, in effect, be judged, and it is in the outcome of those proceedings that they presumably are most interested. As long as the Chancery Division's ruling on T. L. O.'s suspension continues to govern the high school—and particularly if it is or becomes the general rule in New Jersey—illegal searches and seizures by school oficials will be adequately deterred. We are quite convinced that also excluding the evidence from juvenile-delinquency proceedings, which fall "outside the offending [officials'] zone of primary interest," *United States* v. *Janis*, 428 U. S., at 458, would produce only marginal deterrence, insufficient to justify the cost to law-enforcement efforts. Cf., *id*, at 453–454; *Stone* v. *Powell*, 428 U. S., at 493–495; *United States* v. *Calandra*, 414 U. S., at 350–352.

On the other hand, if in the long run, the Chancery Division's holding that forbids the use of illegally seized evidence in school disciplinary proceedings does not retain its authority, we have substantial doubt that teachers and other officials will be appreciably restrained in the future by a decision that the Fourth Amendment prohibits the use of probative but illegally obtained evidence in juvenile-delinquency proceedings. In such circumstances, school authorities would have little reason or incentive to forgo searches insofar as the utility of the evidence in school disciplinary proceedings is concerned. It may be that a teacher would be deterred from searching by school rules and policies governing such searches, violation of which may affect the assessment of his performance by his superiors, or even result in charges being filed against him. But if the evidence is admissible in internal proceedings against the student, it seems unlikely that suppressing the evidence in juvenile-delinquency or criminal proceedings would produce the appreciable deterrent consequences necessary to outweigh society's interest in sanction-

ing crimes by students that unquestionably have been exposed by school officials, albeit by officials acting contrary to the applicable constitutional, statutory, or administrative rules governing the performance of the tasks for which they have been hired.

Assuming, as we do, that the vice-principal violated T. L. O.'s Fourth Amendment rights, we do not hold that she should not have a remedy for this violation, but only that she is not entitled to have the evidence suppressed in her juvenile-delinquency proceeding. The exclusionary rule is designed to deter future violations of the Fourth Amendment, particularly infringements on the rights of the innocent who, without the rule, might be subjected to an unacceptable regime of unjustified searches. Under the rationale of the exclusionary rule as it has developed, T. L. O. herself, about whom reliable evidence has come to light showing that she was illegally selling drugs to her classmates, has little entitlement to claim that the evidence should not be used against her. The violation, if it occurred, has already been completed. The admission of the evidence against T. L. O. is not itself a violation of the Fourth Amendment; and excluding it would be a remedy designed not to benefit her, but to forestall similar lawless invasions of the rights of others.

We do not leave T. L. O., others like her, or wholly innocent persons without remedies to vindicate their Fourth Amendment rights. T. L. O. sought judicial review of her suspension and successfully urged that her Fourth Amendment rights had been violated. We assume that resort to the courts will continue to be available to enforce any local, state, or federal standards applicable to searches and seizures carried out by school authorities. Public-school teachers and administrators who know or should have known that their conduct is contrary to the Fourth Amendment will also be subject to liability under 42 U. S. C. § 1983, and they may be subject to action under state law as well. We do not, however, discern any satisfactory predicate for excluding

from state juvenile-delinquency or criminal proceedings the product of in-school searches carried out by school authorities without participation by law-enforcement personnel.

The judgment of the Supreme Court of New Jersey is accordingly reversed.

So ordered.

lfp/ss 04/20/84

83-712 New Jersey v. T.L.O.

On p. 10, I suggest a revision of language in the middle paragraph, commencing with "School officials" as follows:

> "School officials may search frequently enough to develop some understanding of the importance and purpose of the privacy interests protected by the Fourth Amendment. It cannot reasonably be expected, however, for them to be familiar with the application by the courts of the exclusionary rule. As the cases decided at almost every Term of this Court illustrate, this is not an area of the law in which exactitude is a characteristic. Local school officials properly are 'primarily concerned with maintaining internal discipline rather than obtaining convictions,' id., at 258, n. 10, and the admissibility of evidence in a juvenile court or criminal proceedings is not a substantial concern to them and hence is not likely appreciably to control their conduct."

April 21, 1984

83-712 New Jersey v. T.L.O.

Dear Byron:

Thank you for the opportunity to take a look at the proposed draft of your opinion in this case. For the most part I think it is fine. I am troubled by much of what is said from the bottom of p. 10 to the end.

The opinion properly recognizes that a school search may result - as this case did - in two types of Court proceedings: the review by the Superior Court of the suspension of T.L.O. (disciplinary proceedings), and the delinquency prosecution in the Juvenile and Domestic Relations Court. We are concerned here only with the latter. You commence the analysis (p. 7) by relying on decisions that require a "weighing [of] the costs and benefits" of excluding illegally seized evidence obtained by a school official in enforcing school disciplinary rules. As you note, the only cost of not applying the exclusionary rule would be the absence - to a limited extent - of deterrence. Or as you put it, applying the rule would be unlikely to result in "appreciable deterrence". I agree.

What troubles me is the portion of the draft that commences with the last paragraph on page 10. The argument

seems to be that the exclusionary rule applied in a delinquency case would have little deterring effect because school authorities have no responsibility for the criminal laws, and I agree. But you then imply that court deterrence is necessary to protect Fourth Amendment rights, and identify with apparent approval several types of judicial action that would constitute deterrence of a very different kind. You refer to the ruling of the Superior Court that T.L.O. could not properly be suspended on the basis of the search of her purse, and also say:

> "We assume that resort to the courts will continue to be available to enforce any local, state or federal standards applicable to searches and seizures carried out by school authorities. Public school teachers and administrators . . . will also be subject to liability under §1983, and they may be subject to action under state law as well." (p. 12)

These remedies will be available, but as they are not involved in this case I see no reason to address them. The result of this portion of the opinion (pp. 10-12), if I read it correctly, could be to encourage recalcitrant and rebellious students to resort to the courts. Here, a 14-year-old child - whose purse was searched - was found to be a marijuana "pusher". Yet, the Superior Court - on T.L.O.'s petition - overruled the school authorities' imposition of an extremely light disciplinary sentence.

I do not suggest that a 14-year-old in school has no Fourth Amendment rights but I do think children in the

school environment surrender a good deal of the expectation of privacy we emphasize in our cases. With respect to reviewing disciplinary action, I think courts should be required - in applying Fourth Amendment rights - to take into account the uniqueness of the school environment and particularly the importance of leaving disciplinary measures primary to the school authorities. On any cost/benefit analysis, as I view it, deterring Fourth Amendment violations weighs far less in the scales than leaving the school authorities with broad discretion to enforce disciplinary rules that are essential to the proper operation of the schools. The deterring influences I mentioned in Ingraham v. Wright are adequate.

Every recent study of the school discipline problem emphasizes its seriousness. It even affects the recruiting of people into the teaching profession. I saw an article recently to the effect that the combination of low salaries and the problem of maintaining discipline (including threats of violence and actual violence), have resulted in public school teachers being drawn in large part from persons who graduate in the bottom fourth of their college classes. They can't find jobs elsewhere. Young people resent being disciplined, and they will welcome any encouragement to overrule or sue their teachers.

We can avoid getting into a debate on this issue by simply recognizing that the application of the Fourth

Amendment in schools is not before us. Nor is availability of other remedies.

With the one change in the paragraph in the middle of page 10 that I suggest in my memo attached to this letter, I will be happy to join your opinion through the second paragraph on page 10. Beyond that I would dissent.

Sincerely,

Justice White

lfp/ss

lfp/ss 04/20/84

83-712 New Jersey v. T.L.O.

On p. 10, I suggest a revision of language in the middle paragraph, commencing with "School officials" as follows:

> "School officials may search frequently enough to develop some understanding of the importance and purpose of the privacy interests protected by the Fourth Amendment. It cannot reasonably be expected, however, for them to be familiar with the application by the courts of the exclusionary rule. As the cases decided at almost every Term of this Court illustrate, this is not an area of the law in which exactitude is a characteristic. Local school officials properly are 'primarily concerned with maintaining internal discipline rather than obtaining convictions,' id., at 258, n. 10, and the admissibility of evidence in a juvenile court or criminal proceedings is not a substantial concern to them and hence is not likely appreciably to control their conduct."

OK Sally
← 1 & 1 & give
cc to Cannie
with the file.
I'd like to get
this letter
out promptly

lfp/ss 04/23/84 NJ3 SALLY-POW

83-712 New Jersey v. T.L.O.

Dear Byron:

I agree with the first nine pages of your opinion, and with the holding that the exclusionary rule does not apply in a juvenile delinquency or criminal proceedings for the purpose of suppressing evidence obtained in in-school searches.

The only issue before us is the one you decide, namely, the applicability of the rule in a criminal proceedings. You rely properly on the unlikelihood that enforcement of the rule would have any substantial deterrent effect on school authorities. They have no responsiblity for enforcing the criminal law. This is made clear in the first nine pages of the opinion.

From about the middle of page 10, ~~to the end of your opinion,~~ the opinion discusses the applicability of the Fourth Amendment and the exclusion of evidence under the rule in a school disciplinary as distinguished from delinquency proceedings. You observe that to the extent ~~that~~ "school officials may be deterred by the exclusion of evidence, that result will be effected by forbidding use of the fruits of their searches in school disciplinary proceedings." p. 11.

You refer to the ruling of the Superior Court vacating T.L.O.'s seven-day suspension as an example of the deterrence in disciplinary cases that your opinion seems to approve. You also say:

> "We assume that resort to the courts will continue to be available to enforce any local,

> state or federal standards applicable to searches and seizures carried out by school authorities. Public school teachers and administrators . . . will also be subject to liability under §1983, and they may be subject to action under state law as well." (p. 12)

These remedies may be available in appropriate cases, but as they are not involved in this case I see no reason to address them. I am concerned that this portion of the opinion will encourage rebellious students to seek court review of disciplinary action and to institute §1983 suits. Here, a 14-year-old child - whose purse was searched - was found to be a marijuana "pusher". Yet, the Superior Court - on her petition - overruled the school authorities' imposition of an extremely light disciplinary sentence.

I do not suggest that a 14-year-old has no Fourth Amendment rights but I do think children in the

school environment surrender a good deal of the expectation of privacy that underlies Fourth Amendment reasoning we ~~emphasize in our cases~~. With respect to reviewing school disciplinary action, ~~I think~~ courts should be required - in considering alleged ~~applying~~ infringement of Fourth Amendment rights - to take into account the uniqueness of the school environment and particularly the importance of leaving disciplinary measures primary to the school authorities. On any cost/benefit analysis, as I view it, deterring arguable Fourth Amendment violations weighs far less in the scales than the importance of leaving the school authorities with broad discretion to enforce disciplinary rules that are essential - particularly in view of the pervasive drug problem - to the proper operation of the schools. The deterring influences of parents, P.T.A.s, and the community (mentioned in Ingraham v. Wright) are adequate

to prevent serious or frequent abuse of Fourth Amendment rights. The courts have enough to do without overseeing every seven day suspension of a teen age drug

In the first full paragraph on page 10 you also suggest that school officials and school boards "may and should have both the incentive and the means to foster . . . an understanding" of federal constitutional standards. As a generality, this statement is unexceptional. But the implication is that school officials can and should become familiar with the application by the courts of the exclusionary rule. I suppose most such officials understand generally that searches should not be conducted in the absence of reasonable cause,* but this is a standard that even judges have difficulty applying. And certainly school officials cannot reasonably be expected to follow and understand the numerous court decisions on the

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* Where evidence of pervasive drug use exists in a school, I would not foreclose the right of school authorities to screen every child entering the school.

(*) number

foreclose

We screen every person who enters the Capitol now.

exclusionary rule. Consider, for example, the variety of cases involving the rule before us at this Term.

In sum, Byron, the applicability of the exclusionary rule in a criminal proceeding is the only issue before the Court. I would find it difficult to join the portions of your opinion referred to above.

Sincerely,

Justice White

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 23, 1984

No. 83-712: New Jersey v. T.L.O

Dear Lewis,

Thank you for your suggestions about the draft that I am circulating today. I am reluctant to delete the paragraph beginning at the bottom of page 10 and the two following paragraphs. I think they contain the strongest arguments for not applying the exclusionary rule in T.L.O.'s juvenile court proceedings. They neither decide nor imply that the Chancery Decision was correct in holding that the exclusionary rule is applicable in school disciplinary proceedings. That question is not before us.

I could dispense with the penultimate paragraph if that would help, but I hope to retain the prior three paragraphs.

Sincerely,

Byron

Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 23, 1984

Re: 83-712 - New Jersey v. T.L.O.

Dear Byron:

Although the Court has identified deterrence as the primary rationale for the exclusionary rule, this case suggests that more is at stake. We must also be interested in providing an appropriate judicial response to egregious due process violations, as well as a concern for the example that is set by school administrators. Perhaps my thoughts will not write out, but I shall try my hand at a dissent that does not confront you squarely on the deterrence rationale.

Respectfully,

John

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

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April 23, 1984

Re: 83-712 - New Jersey v. T.L.O.

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Respectfully,

John

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 23, 1984

Re: No. 83-712 New Jersey v. T.L.O.

Dear Byron,

For the present, I will await further writing on this case.

Sincerely,

Justice White

Copies to the Conference

Rely on that for deterrence

lfp/ss 04/24/84 NJ3 SALLY-POW

83-712 New Jersey v. T.L.O.

Dear Byron:

I agree ~~with the first nine pages of your~~ opinion, and with the holding that the exclusionary rule does not apply in a juvenile delinquency or criminal proceedings for the purpose of suppressing evidence obtained in in-school searches.

The only issue before us is the one you decide, namely, the applicability of the rule in a criminal proceedings. You rely properly on the unlikelihood that enforcement of the rule would ~~have any~~ substantial deterrent effect on school authorities. They have no responsiblity for enforcing the criminal law. This is made clear in the first nine pages of the opinion.

From about the middle of page 10, the opinion discusses the applicability of the Fourth Amendment and the exclusion of evidence under the rule in a school disciplinary as distinguished from delinquency proceedings. You observe that to the extent "school officials may be deterred by the exclusion of evidence, that result will be effected by forbidding use of the fruits of their searches in school disciplinary proceedings." p. 11.

You refer to the ruling of the Superior Court vacating T.L.O.'s seven-day suspension as an example of the deterrence in disciplinary cases that your opinion seems to approve. You also say:

"We assume that resort to the courts will continue to be available to enforce any local,

> state or federal standards applicable to searches and seizures carried out by school authorities. Public school teachers and administrators . . . will also be subject to liability under §1983, and they may be subject to action under state law as well." (p. 12)

These remedies may be available in appropriate cases, but as they are not involved in this case I see no reason to address them. I am concerned that this portion of the opinion will encourage rebellious students to seek court review of disciplinary action and to institute §1983 suits. Here, a 14-year-old child - whose purse was searched - was found to be a marijuana "pusher". Yet, the Superior Court - on her petition - found a Fourth Amendment violation, and overruled the school authorities' imposition of an extremely light disciplinary sentence.

I do not suggest that a 14-year-old has no Fourth Amendment rights but I do think children in the

school environment surrender a good deal of the expectation of privacy that underlies Fourth Amendment reasons. With respect to reviewing school disciplinary action, courts should be required - in considering alleged improvement of Fourth Amendment rights - to take into account the uniqueness of the school environment and particularly the importance of leaving disciplinary measures primary to the school authorities.

On any cost/benefit analysis, as I view it, deterring arguable Fourth Amendment violations weighs far less in the scales than the importance of leaving the school authorities with broad discretion to enforce disciplinary rules that are essential - particularly in view of the pervasive drug problem - to the proper operation of the schools. The deterring influences of

parents, P.T.A.s, and the community (mentioned in Ingraham v. Wright) are adequate to prevent serious or frequent abuse of Fourth Amendment rights. The courts have enough to do without overseeing every seven-day suspension of a teenage drug pusher.[1]

In the first full paragraph on page 10 you also suggest that school officials and school boards "may and should have both the incentive and the means to foster . . . an understanding" of federal constitutional standards. As a generality, this statement is unexceptional. But the implication is that school officials can and should become familiar with the application by the courts of the

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exclusionary rule. I suppose most such officials understand generally that searches should not be conducted in the absence of reasonable cause, but this is a standard that even judges have difficulty applying. And certainly school officials cannot reasonably be expected to follow and understand the numerous court decisions on the exclusionary rule. Consider, for example, the variety of cases involving the rule before us at this Term.

In sum, Byron, the applicability of the exclusionary rule in a criminal proceeding is the only issue before the Court. I would find it difficult to join the portions of your opinion referred to above.

Sincerely,

Justice White

lfp/ss

lfp/ss 04/24/84 NJ4 SALLY-POW

83-712 New Jersey v. T.L.O.

Dear Byron:

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Much of the subsequent discussion seems unnecessary. Beginning with the last paragraph on page 10, the opinion considers the applicability of the exclusionary rule to school displinary proceedings as distinguished from the delinquency proceedings challenged here. The New Jersey Superior Court excluded on federal constitutional grounds the challenged evidence from the school disciplinary proceeding, thereby vacating T.L.O.'s

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I also find unnecessary the reference on page 12 to potential §1983 and unidentified state remedies. These remedies may be available in appropriate cases, but as they are not involved in this case I see no reason to mention them. I am concerned that this portion of the opinion in particular will encourage students to seek court review of disciplinary action and to institute §1983 suits.

I do not suggest that a 14-year-old has no Fourth Amendment rights, but I do think children in the school environment surrender a good deal of the expectation of privacy that underlies Fourth Amendment reasoning. Courts should take into account the uniqueness

of the school environment and particularly the importance of leaving disciplinary measures primarily to school authorities.

In sum, Byron, the applicability of the exclusionary rule in a criminal proceeding is the only issue before the Court. I therefore see little reason to include the portion of your opinion I identify above, and probably will write separately.

Sincerely,

Justice White

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 24, 1984

83-712 New Jersey v. T.L.O.

Dear Byron:

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In sum, Byron, the applicability of the exclusionary rule in a criminal proceeding is the only issue before the Court. I therefore see little reason to include the portion of your opinion I identify above, and I probably will write separately.

Sincerely,

L

Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 24, 1984

Re: No. 83-712-New Jersey v. T.L.O.

Dear Byron:

I await further writing.

Sincerely,

T.M.

Justice White

cc: The Conference

April 24, 1984

83-712 New Jersey v. T.L.O.

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I also find unnecessary the reference on page 12 to potential §1983 and unidentified state remedies. These remedies may be available in appropriate cases, but as they are not involved in this case I see no reason to mention them. I am concerned that this portion of the opinion in particular will encourage students to seek court review of disciplinary action and to institute §1983 suits.

I do not suggest that a 14-year-old has no Fourth Amendment rights, but I do think children in the school environment surrender a good deal of the expectation of privacy that underlies Fourth Amendment reasoning. Courts should take into account the uniqueness of the school environment and particularly the importance of leaving disciplinary measures primarily to school authorities.

In sum, Byron, the applicability of the exclusionary rule in a criminal proceeding is the only issue before the Court. I therefore see little reason to include the portion of your opinion I identify above, and I probably will write separately.

Sincerely,

Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 30, 1984

Re: No. 83-712 New Jersey v. T.L.O.

Dear Byron:

Please join me.

Sincerely,

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 30, 1984

Re: 83-712 - New Jersey v. T.L.O.

Dear Lewis,

In response to your letter of April 24, it seems to me that the paragraph beginning at the bottom of page 10 and the following paragraph are relevant and persuasive in negating a deterrence justification for applying the exclusionary rule to juvenile court or criminal proceedings. The paragraph following those two does not seem to me to be subject to the objections you state in your letter. These three paragraphs I would hope to retain. The penultimate paragraph of the draft, however, I would be quite willing to delete.

The draft was of course written against the background of the present law, or lack thereof, relating to the pertinence of the exclusionary rule to civil proceedings. If INS v. Lopez-Mendoza is announced before T.L.O. is finally acted upon by the Court, and if Lopez-Mendoza rules that the exclusionary rule never applies in civil cases, the two paragraphs in the T.L.O. draft discussing school disciplinary proceedings would be changed to reflect the newly announced constitutional ruling.

Sincerely yours,

Byron

Justice Powell

Copies to the Conference

cpm

Doesn't imply any approval by NJ State Law

ABA Law Journal April 1984

May be of interest re T.L.O.

School drug tests

Arkansas policy challenged

Two youths met their deaths in a drug-related automobile accident on a snowy night two years ago in Arkadelphia, Ark. Another time, a shotgun blinded one of three men who were illegally growing marijuana. Suddenly, Arkadelphians knew their quiet town of 10,000 was not immune from the hazards of drug and alcohol abuse.

That's when school officials decided to get tough. The school board adopted a policy that calls for students in grades 5 through 12 who are suspected of using drugs and alcohol to take breath and urine tests. Students who say they have been falsely accused can take a lie detector test to clear their names.

This hardline policy and a similar one established last fall in nearby Hope have been challenged by some parents and the American Civil Liberties Union. ACLU officials, who filed a lawsuit in federal court in February on behalf of parents who challenge the Arkadelphia policy, maintain that the policy violates the Fourth, Fifth and Fourteenth Amendments. (*Patsy Ezell v. James Ford*, 84-6033).

"Students do have Fourth Amendment rights," said Sandra Kurjiaka, executive director of the ACLU in Little Rock. "We see clear constitutional violations." The policy may also violate due process rights, she added.

But school officials say they have no intention of violating students' rights. "We hope it will be a deterrent and serve to caution students that drugs and alcohol are not accepted in school," said Dale Franks, superintendent of the 3,100-student Hope district. Since the Hope school board approved the policy in November, no students have been asked to take the tests. Parents have generally been supportive.

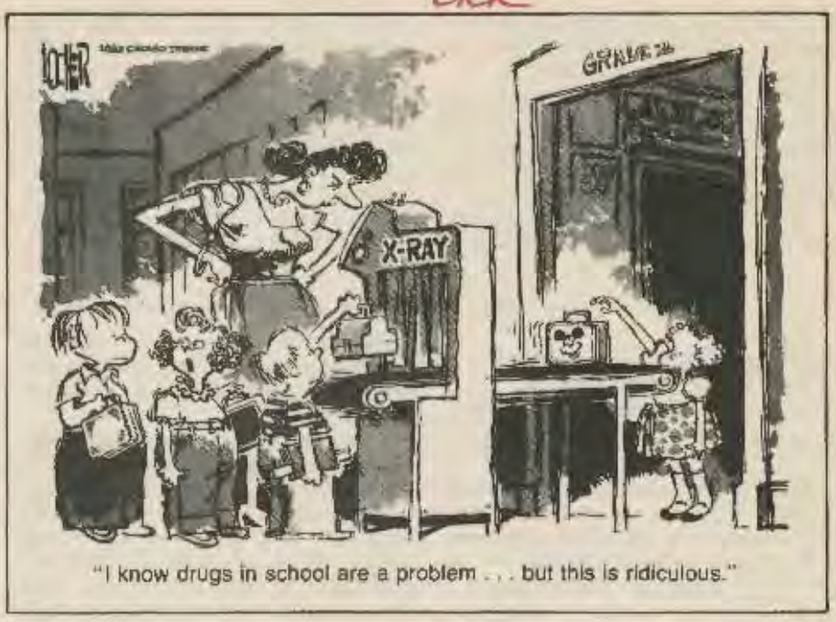
In the Arkadelphia district, urine and breath tests have been given to 16 students since the policy began in the 1982-83 school year, said James Ford, the superintendent. The results indicated that nine students had taken illegal substances. Students found to possess or use alcohol and drugs must withdraw from school for a semester and lose all credits, or else be expelled. Repeated violations bring stronger penalties.

The police and sheriff's departments, the prosecuting attorney, municipal judge, civic organizations and parents were asked for input, Ford said, and law enforcement officials had no problem with the idea. Parents are asked to sign a copy of the policy to show that they have read it and are aware of it.

"The school attorney said . . . [the testing] was a risk, but it depended on how the plan was implemented," Ford said. Urine samples are sent to a laboratory and police officers administer the breath tests, he added.

"We may have to go to court," Ford said, "but if we're going too far, our kids are worth protecting."

—Faye A. Silas



"I know drugs in school are a problem . . . but this is ridiculous."

Clean out your lockers: Arkadelphia Deputy Don Nix shows Ben, a drug-sniffing dog, to parents and students.

Videotaping

Device for fighting child abuse

Minneapolis police report success in their 2-year-old program of videotaping interviews with victims of child abuse: They haven't lost a case, and no child has been called by the defense to testify.

Last year videotaping was used in 75 cases, and about 60 defendants pleaded guilty as soon as they saw the interviews. If a defendant doesn't plead guilty, the tapes are shown in court.

The young victims are interviewed in a setting like a living room. They are given anatomically correct dolls with which to describe the assault. This spares the children the trauma of more traditional interrogation, Lt. Dale Dowson said.

Loren Goldman of the International Association of Chiefs of Police is less sure about another use of videotape, as evidence in drunk driving cases, noting that some people don't look drunk even when breath tests show high blood-alcohol levels.

Some California police departments have stopped the taping, in part because juries were confused when the tapes seemed to contradict breath tests. On the other hand, a new Texas law requires most counties to buy videotape equipment for use in drunk driving cases.

—Staff report

crr 05/09/84

May 9, 1984

RE: No. 83-712, New Jersey v. T.L.O.

TO: Justice Powell

FROM: Cammie

Here is a rough draft of a concurrence in T.L.O. Is this what you had in mind? The New Jersey Superior Court's decision to apply the exclusionary rule to school disciplinary proceedings was based on federal law and thus could not be dismissed as merely a peculiar rule of state law. I think that the Court makes clear in n. 6, page 10 that it is not endorsing this decision. Thus, the Court may be criticized for discussing the issue only on the grounds that the discussion is unnecessary and may unnecessarily prejudge an issue that is not before the Court.

As Justice White mentioned in his letter to you, if INS v. Lopez-Mendoza, No. 83-491 (the exclusionary rule/deportation hearing case), holds that the exclusionary rule is never applicable to civil proceedings, the Court's opinion should be revised. This probably means that Justice White would eliminate the paragraph on pp. 10-11 to which you object. This would make a concurrence unnecessary. This assumes of course that Lopez-Mendoza will come down before T.L.O.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 15, 1984

83-712 New Jersey v. T.L.O.

Dear Byron:

At last, I now have had an opportunity to get back to this case.

In your letter of April 10, circulated to the Conference, you suggested your willingness to eliminate the penultimate paragraph. This helps me. I continue to think, however, that a good deal of what you have said on pages 10 and 11 is unnecessary, and carries implications with which I would find it difficult to agree.

Accordingly, I am circulating a brief opinion that concurs in your opinion with the exception of your discussion of the deterrent effect of applying the exclusionary rule in a school disciplinary case.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

May 15, 1984

May letter. Did not agree to join

83-712 New Jersey v. T.L.O.

Dear Byron:

At last, I now have had an opportunity to get back to this case.

In your letter of April 10, circulated to the Conference, you suggested your willingness to eliminate the penultimate paragraph. This helps me. I continue to think, however, that a good deal of what you have said on pages 10 and 11 is unnecessary, and carries implications with which I would find it difficult to agree.

Accordingly, I am circulating a brief opinion that concurs in your opinion with the exception of your discussion of the deterrent effect of applying the exclusionary rule in a school disciplinary case.

Sincerely,

Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 22, 1984

Re: 83-712 - New Jersey v. T.L.O.

Dear Byron:

I join. I may add a couple of words (well chosen of course) about turning the management of the schools over to the students. Then again, I may restrain myself to cut the flow of needless "concurs."

Regards,

WEB

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 4, 1984

No. 83-712

New Jersey v. T.L.O.

Dear John,

Please join me.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 11, 1984

No. 83-712 New Jersey v. T. L. O.

Dear Byron,

As you know, at Conference I had indicated I thought the exclusionary rule was applicable to the evidence in this case. I am still of that view. I will not be joining John's dissent and will try to circulate something separately as promptly as possible.

Sincerely,

Sandra

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 12, 1984

Re: 83-712 - New Jersey v. T.L.O.

Dear Sandra:

Please join me in your separate dissent.

Respectfully,

John

Justice O'Connor

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 12, 1984

Re: No. 83-712-New Jersey v. T.L.O.

Dear John:

Please join me in your dissent.

Sincerely,

T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 13, 1984

Memorandum to the Conference

Re: No. 83-712, New Jersey v. T.L.O.

My vote is the last one out in this difficult case. This is of no consequence, however, because the several opinions cite Leon, Sheppard, and Lopez-Mandoza, which are not yet out.

It looks as though none of the circulating opinions will command a Court. Sandra correctly points out that the difficulty with the case is that New Jersey has not challenged its Supreme Court's ruling that the search here was unreasonable. Thus, the case comes to us in a disjointed posture.

After some soul-searching, I have concluded to vote to DIG the case. I realize that this is not the usual DIG situation when, after oral argument, the case appears in a different light. It seems to me, however, that our disposition otherwise will tend only to confuse and not to assist.

Perhaps this could be discussed at the conference on Thursday.

H.A.B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 14, 1984

Re: 83-712 - **New Jersey v. T.L.O.**

Dear Harry,

My circulating draft in this case expresses the conference vote, but without your join, it will not fly. You suggest a DIG and there are 4 votes to affirm. I suggest that in the light of Leon, neither disposition is the preferable one and that the case should be held for Leon and then GVR'D.

The trial court in this case admitted the evidence after canvassing the disparate decisions around the country with respect to the applicability of the Fourth Amendment to school officials. There was no authoritative New Jersey precedent until the New Jersey Supreme Court's decision in this case, and I have substantial doubt that the school official should have known that his conduct was in violation of the Fourth Amendment. The state did not challenge the holding of a Fourth Amendment violation, but it does contend that the evidence is nevertheless admissible. Leon has a direct bearing on that issue and I doubt that the case should be affirmed or DIG'D rather than GVR'D.

Sincerely yours,

Byron

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 26, 1984

No. 83-712 New Jersey v. T. L. O.

MEMORANDUM TO THE CONFERENCE

After conferring with Byron, the proposed order for reargument in this case is set forth below:

> "This case is restored to the calendar for reargument. In addition to the question presented in the petition for writ of certiorari and previously briefed and argued, the parties are requested to address the following question:
>
> > Did the assistant principal violate the Fourth Amendment in opening respondent's purse in the facts and circumstances of this case?"

Your suggestions are welcome.

Sincerely,

Sandra

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 29, 1984

Re: No. 83-712 - New Jersey v. T.L.O.

Dear John:

Please join me in your dissent.

Sincerely,

T.M.

Justice Stevens

cc: The Conference

83-712 T.L.O.

Points

1. no dif. bet. reasonable suspicion & "reasonable grounds". See rule stated by Juvenile Ct in their case. BRW p 3, 6 n 5

2. Not limited to police - e.g. Camera - p 8

3. School officials subject to Fourt Amend - Tinker p 9

→ 4. Balancing - Camara - 10

Search + seizure violation of expectations of privacy - 11

NO

& Think expectation is reasonable only when considered w/in the setting of school environment. (Reiny & Bu)

5 - State interest ~~strong~~ "substantial" - 12

may be compelling

cite 56's statistics (but see BRW's cite p 12)

"Major Social problems"

Concerted on Good on p. 13

6 & 5 Searches on reasonable suspicion - 14

7. Reasonable grounds for suspecting - 15

Lee's memo

Tinker - p 6

Gon - 7, 8, 11 414 U.S. 565, 593

Ingraham - 430 U.S 651

Use Lee's summary p 9

Use p 10

Penny's Brief

Brown v. Texas

Students are subject to regs not applicable to public — 19
can't leave; ruler

No susp. of teachers to enforce criminal law or know ct - 20.

No crime need be involved - 21

Justification of less than probable cause is "modest intrusion - a lessened expectation of privacy." - 22
+ on "special relationship" - 23 quote

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

July 2, 1984

No. 83-712

New Jersey v. T.L.O.

Dear John,

Please add me to your dissent.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

July 2, 1984

Re: 83-712 - New Jersey v. T.L.O.

Dear John:

I am puzzled by your June 29 draft "dissent" supplanting your dissent of June 14.

Are you really dissenting against the Court's vote to reargue this case?

Will that forever foreclose you from voting to reargue a case? Or only from cases that do not "merit" reargument?

Regards,

WEB

Justice Stevens

Copies to the Conference

Received 9/26
Good memo. Brings to my
alb 09/25/84 attention a number of marginally
relevant cases...
I certainly agree with Lee
that "probable cause" standard does
not apply - though I think it
existed here (Rasp was seen
smoking in violation of school
rules & lied about it).
The school environment
is different from that in
any other 4th Amend case.

BENCH MEMORANDUM

To: Mr. Justice Powell September 25, 1984

From: Lee

No. 83-712, State of New Jersey v. T.L.O.

QUESTION PRESENTED

Did the assistant principal violate the Fourth Amendment in opening T.L.O.'s purse in the facts and circumstances of this case?

BACKGROUND

I. Factual Background

On the morning of March 7, 1980, a teacher at Piscataway High School entered the girls' restroom and found T.L.O., a fourteen-year-old, and another girl holding lighted cigarettes. Because school regulations prohibited smoking in the restrooms, the teacher took the two girls to the principal's office. Theodore Choplick, the assistant principal, asked the two girls whether they had been smoking. T.L.O.'s companion admitted that she had been smoking, and Choplick assigned her to a three-day clinic. T.L.O., however, denied the teacher's allegations. In fact, T.L.O. claimed that she did not smoke at all.

Following T.L.O.'s denial of guilt, she accompanied Choplick into his office. Inside the office, Choplick asked to see T.L.O.'s purse, and she gave it to him. When the assistant principal opened the purse, a package of Marlboro cigarettes was visible. Choplick took the cigarettes out of the purse, and said, "You lied to me." After the cigarettes were removed from the purse, Choplick could see a package of rolling papers. Because Choplick knew that the rolling papers probably were used for smoking marijuana, he decided to search the purse and to examine all of its contents. Inside the purse, the assitant principal found marijuana, a metal pipe, written documentation of T.L.O.'s sale of marijuana to other students, and forty dollars in cash.

Choplick immediately called T.L.O.'s mother and the police. T.L.O. was then taken to police headquarters for questioning. The fourteen-year-old admitted to the police that she had been selling marijuana at school, receiving $1.00 per

"joint." She stated that she had sold about twenty joints shortly before she was discovered smoking in the rest room.

T.L.O. was charged with possession of marijuana with the intent to distribute it, in violation of N.J. Stat. Ann. §§24:21-19(a)(1) and 24:21-20(a)(4). At her trial, T.L.O. moved to suppress the evidence taken from her purse, claiming that it had been seized in violation of her fourth amendment rights. The fourteen year old student also contended that her confession was inadmissible because it was "tainted" by the unconstitutional search and seizure.

II. The Decisions Below

The Juvenile and Domestic Relations Court for Middlesex County, New Jersey, denied T.L.O.'s motion to suppress. The juvenile court stated that a search by a teacher, if it is based upon "reasonable suspicion," does not violate a student's fourth amendment rights. Choplick had "reasonable cause" to believe that T.L.O. had been smoking in violation of school rules, and therefore was justified in opening her purse to look for cigarettes. The rolling papers, which were in "plain view" following the removal of the cigarettes, gave the assistant principal reasonable cause to continue his search of the purse.

Following the denial of the suppression motion, T.L.O. was tried and found to be a delinquent. She was sentenced to probation for one year, with the special conditions that she observe a reasonale curfew, attend school regularly, and successfully complete a drug therapy program.

The Appellate Division of the Superior Court of New Jersey affirmed the denial of T.L.O.'s motion to suppress. The case was remanded to the trial court, however, for further proceedings. The juvenile court was instructed to determine whether T.L.O. had knowingly waived her Miranda rights.

T.L.O. appealed the denial of her suppression motion to the Supreme Court of New Jersey. The state supreme court reversed, holding that the assistant principal had seized the evidence in violation of T.L.O.'s fourth amendment rights. The "probable cause" standard is inappropriate for school searches when the teacher is not acting in concert with police officers. A school official therefore may conduct a search whenever he has "reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline." The state supreme court found, however, that Choplick did not have "reasonable grounds" for searching the purse. According to the majority, Choplick had, at best, a "good hunch" that the purse contained cigarettes. Therefore, T.L.O.'s fourth amendment rights were violated when the assistant principal opened her purse to search for cigarettes.

The state supreme court held that because the evidence had been seized in violation of T.L.O.'s fourth amendment rights, it should have been excluded at trial pursuant to Mapp v. Ohio, 367 U.S. 643 (1961). The court stated that it was necessary to suppress the evidence in order to deter future violations of students' fourth amendment rights. According to the majority, it was "of little comfort" to T.L.O. that the evidence had been

seized by a school administrator rather than a law enforcement officer. Therefore, the court ordered the exclusion of the illegally seized evidence from any future proceedings against T.L.O. in juvenile court.

Judge Schreiber dissented from the court's holding that T.L.O.'s fourth amendment rights had been violated. He stated that he did not know whether the majority's "reasonable grounds to believe" standard differed from the "reasonable suspicion" standard. If there was a functional difference, the dissenting judge preferred the "reasonable suspicion" standard, for it has been "applied by the Supreme Court." In any event, Judge Schreiber found that the search was proper under either test.

On October 7, 1983, the State of New Jersey filed a petition for certiorari with this Court. The state did not seek review of the finding that T.L.O.'s fourth amendment rights had been violated. Instead, the state challenged only the applicability of the exclusionary rule to searches conducted by school officials. The Court granted cert., and the case was argued on March 28, 1984. On July 5, 1984, the Court restored the case to the calender for reargument. The Court's order stated that the parties were to brief and argue the following the question: "Did the assistant principal violate the Fourth Amendment in opening respondent's purse in the facts and circumstances of this case?"

State's limited petition

DISCUSSION

I. The Applicability of the Fourth Amendment to Searches by Teachers

The state contends that the fourth amendment does not apply to searches by teachers and school officials. The Framers clearly intended for the amendment to apply only to investigations conducted by law enforcement officers. A teacher or school official has no greater responsibility for the detection of penal law violations than does an ordinary citizen. A school search is ordinarily conducted solely to protect the health of the students and to facilitate discipline. Therefore, according to the state, the fourth amendment should not apply to searches by school officials such as Choplick, at least when they are not acting in cooperation with the police.

The state's argument might have some force if the Court were writing on a clean slate. In the past, however, the Court consistently has refused to limit the applicability of the fourth amendment to "law enforcement officers". In Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967), the Court held that the fourth amendment provides protection against warrantless searches by housing officials. Subsequently the Court held that the fourth amendment applies to searches by building inspectors, See v. Seattle, 387 U.S. 541 (1967), OSHA inspectors, Marshall v. Barlow's, Inc., 436 U.S. 307 (1978), and firefighters, Michigan v. Tyler, 436 U.S. 499 (1978). Moreover, despite suggestions to the contrary in the briefs, Hudson v. Palmer, 104 S.Ct. 3194 (1984), did not hold the fourth amendment inapplicable to searches by prison guards. The Hudson Court simply held that a

prisoner does not have a reasonable expectation of privacy in his cell.[1]

The state further argues that the fourth amendment has no applicability to searches conducted in the schools. This argument must fail, however, for the Court has recognized that students do not "shed their constitutional rights ... at the schoolhouse gate." Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). In Tinker, three students were suspended because they wore black armbands to protest U.S. involvement in Viet Nam. Because there was no showing that the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline," the Court held that the suspensions violated the students' first amendment rights. Similarly, in Goss v. Lopez, 419 U.S. 565 (1975), the Court held that the Due Process Clause protected students from school disciplinary action without notice and a hearing. The Court noted that the "informal give and take" required by the fourteenth amendment would not unduly interfere with discipline in the schools. It would not "materially and substantially interfere with the the requirements of appropriate discipline" to hold that the fourth amendment applies to school searches, at least to some extent. Therefore, as in Tinker and Goss, there is no reason to deprive schoolchildren of their constitutional right to be free from unreasonable searches and seizures.[2]

---

[1]The fourth amendment still applies to searches that implicate

Footnote continued on next page.

Footnote(s) 2 will appear on following pages.

There are at least two other reasons why this Court should hold that the fourth amendment applies to school searches, at least to some extent. First, there are a number of reported decisions documenting extreme invasions of schoolchildren's privacy. In Bellnier v. Lund, 438 F.Supp. 47 (N.D.N.Y. 1977), for example, an entire fifth grade class was strip-searched after one student told the teacher that three dollars were missing from his coat pocket. The fourth amendment probably should be interpreted so as to prohibit school officials from conducting such outrageous searches. Furthermore, this Court has recognized that if students are denied all constitutional protections, they may "discount important principles of our government as mere platitudes." West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

In summary, the fourth amendment should apply to school searches, at least to some extent.

II. The Proper Standard: Probable Cause or Reasonable Suspicion

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"legitimate" privacy interests, such as body cavity searches.

[2]The eighth amendment's prohibition of cruel and unusal punishment does not apply to the schools. Ingraham v. Wright, 430 U.S. 651 (1977). This does not suggest, however, that the fourth amendment should have no applicability to school searches. The eighth amendment provides that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Ingraham Court noted that bail, fines, and punishment traditionally have been associated with the criminal process. Therefore, the Court was unwilling to extend the eighth amendment beyond the criminal context. The fourth amendment contains no such limiting language, as it protects all "people" from unreasonable searches and seizures.

Ordinarily, a search or seizure is "unreasonable" within the meaning of the fourth amendment, in the absence of "probable cause." In a number of cases, however, the Court has balanced the public interest against the individual's right to personal security, and concluded that a lesser standard is appropriate. In Terry v. Ohio, 392 U.S. 1 (1969), for example, the Court held that when a policeman has "reason to believe" that he is dealing with an armed and dangerous individual, he may conduct a limited "pat-down" search for weapons. Similarly, in United States v. Brignoni-Ponce, 422 U.S. 873 (1975), the Court found that if a border patrolman has a "reasonable suspicion" that a car contains illegal aliens, he may stop the car and ask a few questions of its occupants.

In deciding whether a school search may be justified on the basis of "reasonable suspicion," the Court must examine the "public need" for a departure from the "probable cause" standard. It appears that there is a substantial need for a lower standard in the schools. In each month of 1978, approximately two and a half million students had their personal property stolen, and about 300,000 others were physically attacked. NIE, U.S. Dept. of Education, 1 Violent Schools-Safe Schools: The Safe School Study Report to the Congress iii, 74-75 (1978). Moreover, there is a well-documented drug problem in the public schools, and many teachers have a difficult time maintaining order in the classroom. Teachers and school officials will find it much easier to maintain order in the classroom, and to protect the students from drugs and violence, if they are able to conduct

searches on the basis of "reasonable suspicion." Therefore, there appears to be a substantial public need for a standard less demanding than "probable cause."

The application of the "reasonable suspicion" standard to school searches cannot be justified soley on the basis of public need. The Court must balance this public need against the "individual's right to personal security." United States v. Brignoni-Ponce, 422 U.S. at 878. In this case, unlike others where the Court has found that a departure from probable cause was warranted, there are substantial privacy interests at stake.[3] In Terry, the Court approved of a limited "pat-down" search for weapons. Similarly, in United States v. Brignoni-Ponce, 422 U.S. 873 (1975), the Court stressed that the intrusion involved was "modest." The border patrolmen were not allowed to search the vehicle or its occupants, and the visual inspection was limited to those parts of the vehicle that could be seen by anyone standing alongside. Therefore, it would be virtually unprecedented to allow a full search[4] on the basis of

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[3]A five-year-old public kindergarten student might not have a legitimate expectation of privacy in his person or effects. I find it difficult to believe, however, that a fourteen-year-old, such as T.L.O., does not have an expectation of privacy in her person and effects, that society is willing to recognize as reasonable. See Katz v. United States, 389 U.S. 347 (1967).

[4]There are at least two situations in which full searches of a person are allowed, even in the absence of "reasonable suspicion." Anyone may be searched as he crosses the border, and a person may be searched immediately following his arrest. The "border search exception" has been justified as necessary to our "national self-protection." Carrol v. United States, 267 U.S. 132 (1925). The "search incident to arrest" exception is needed

Footnote continued on next page.

"reasonable suspicion."[5]

Although the balancing mandated by Terry and Brignoni-Ponce is inconclusive, it appears that a departure from the probable cause standard is justified in the case of school searches. There is a "commonality of interest" between the public school teacher and the student. Goss v. Lopez, 419 U.S. 565, 593 (1975)(Powell,J., dissenting). Because the relationship is "rarely adversary in nature," schoolchildren do not need the same protection from arbitrary and intrusive searches that the fourth amendment usually provides. Moreover, the "openness of the public school and its supervision by the community afford significant safeguards against" unreasonable searches of students. Ingraham. Therefore, this Court probably should hold that a teacher may search his student on the basis of "reasonable suspicion."[6]

III. Was the Search of T.L.O.'s Purse Based Upon "Reasonable Suspicion"?

The Supreme Court of New Jersey held that the assistant

---

to protect the arresting officer and to avoid the destruction of contraband. See United States v. Robinson, 414 U.S. 218 (1973).

[5]Noone has suggested that strip searches should be allowed on the basis of "reasonable suspicion."

[6]The majority of federal and state courts to consider the issue have held that a teacher may search a student in the absence of probable cause. These courts have required that the teacher have "reasonable cause" or "reasonable suspicion." See, e.g., Horton v. Goose Creek Ind. School Dist., 690 F.2d 470 (5th Cir. 1982), cert. denied, 103 S.Ct. 3536 (1983). Precedents

principal had no more than a "good hunch" that cigarettes were in T.L.O.'s purse. It is clear, however, that Choplick's decision to open the purse was justified by "reasonable suspicion." Choplick was "aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant[ed] suspicion" that cigarettes were in the purse. See United States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975). The state court's suggestion that the cigarettes "had no direct bearing on the infraction" is ridiculous. T.L.O. had denied that she smoked at all, and the assistant principal was testing her credibility. The fourth amendment clearly does not prohibit a search for probative evidence, simply because it is not dispostive.

Given that the assistant principal's decision to open the purse was reasonable, his "seizure" of the cigarettes did not violate T.L.O.'s fourth amendment rights. Although the possession of cigarettes was not prohibited by school rules, a teacher had seen T.L.O. smoking in a non-designated area. Therefore, confiscation of the cigarettes was justified. Once the cigarettes were removed, the rolling papers were in plain view. The rolling papers gave Choplick "reason to believe" that there might be marijuana and drug paraphernalia in the purse. Hence, the remainder of the assistant principal's search was justified under the "reasonable suspicion" standard.

SUMMARY

Although the fourth amendment should apply to school searches, there are reasons for departing from the probable cause requirement in this setting. The public schools are open

institutions, and there is a "commonality of interest" between students and teachers. Therefore, school officials should be allowed to search students on the basis of "reasonable suspicion." Choplick had a "reasonable suspicion" that T.L.O.'s purse contained evidence that she had violated a school rule. Therefore, the search did not violate her fourth amendment rights.

I think he had "probable cause". Resp was seen smoking & caught lying

Like the dissenting justice, I am unable to determine whether the state supreme court intended to apply the "reasonable suspicion" standard. The parties and the amicii all appear to assume that there is no difference between "reasonable grounds to believe," the standard applied by the state court, and "reasonable suspicion." I think it possible, however, that the court intended to adopt a standard that is somewhere between "reasonable suspicion" and "probable cause." Therefore, this Court could hold that the state court: (1) used the proper standard, but misapplied it to the facts of the case; or (2) used an improper standard.

lfp/ss 09/27/84 NJ SALLY-POW

83-712 New Jersey v. T.L.O.

This memo records reactions after reading Lee Bentley's helpful bench memo of September 25.

None of the cases cited in support of a Fourth Amendment right in the school house for elementary and high school students is more than marginally relevant. Three categories of cases are cited.

1. Administrative Searches. Camara v. Municipal Court involved searches by housing officials. See v. Seattle (searches by building inspectors). Marshall v. Barlow (OSHA inspectors). Michigan v. Tyler (fire inspectors interested in ascertaining whether there was arson).

In each of these cases there were searches of buildings by government inspectors seeking to ascertain whether laws were being violated. The duty of these officials was to "inspect" (i.e. search).

2. First Amendment. Tinker v. DeMoines upheld First Amendment right to wear black arm bands in the absence of any showing that this would "materially and substantially interfere with . . . appropriate discipline".

3. Other School Cases. Goss v. Lopez involved only a procedural due process claim to notice and some sort of hearing prior to suspension. Ingraham v. Wright, on the other hand, declined to apply the Eighth Amendment to the use of physical punishment to maintain discipline in a school. Of all the cases, Ingraham is the most relevant.

* * *

School Environment

This is unique in many respects. Unlike the "administrative search" cases, only immature children are involved. The problem of maintaining order and discipline in our schools is abundantly documented in the SG's brief. It simply cannot be compared with the situation in any of the cases cited in Lee's memorandum. The educational purpose of schools in our country often is frustrated by the absence of discipline and of means to enforce legitimate school rules. The physical well being of pupils and teachers, as well as their personal belongings, are constantly in jeopardy where adequate means to maintain discipline do not exist. It is unrealistic also to compare the capability of teachers to make the judgments required ~~by~~ of trained officers to comply with

Fourth Amendment requirements. Although the Fourth Amendment, by its terms, is not limited to the criminal law, its origin and history make clear that this was its basic purpose. History surely teaches that no one would have thought at the time of the Constitution that the Fourth Amendment was being adopted to protect immature children in the classroom.

The difficulty of drawing lines - particularly to meet exigent circumstances - between "probable cause", "reasonable grounds", and "reasonable suspicion" is illustrated by this case. In my view, the ~~teacher~~ assist. prin. had probable cause, as respondent was caught in the act of smoking by a teacher in violation of school rules and lied about it. What else would a teacher have to know to be justified in searching a 14-year-old's purse? The Juvenile Court held that the assistant principal "had reasonable cause" to search the purse. Inexplicably, the Supreme Court of New Jersey agreed that "probable cause need not be shown for school searches", agreed with the Juvenile Court that "reasonable grounds" for a search is the appropriate standard, but concluded no such grounds existed in this case!

* * *

I can agree that the Fourth Amendment protects children in school from wholly unreasonable searches. Rather than create a new standard, perhaps "reasonable suspicion" should be adopted but making clear that teachers and school officials are not trained (and really cannot be adequately trained) to make the distinctions that prove so difficult even for lawyers and judges. Therefore, application of the standard should be less stringent where reasonable lay minds could differ as to whether the suspicion that prompted a search was reasonable. Moreover, we should make clear that reasonable school rules and regulation may specific circumstances in which searches lawfully may be made. For example, I would have no doubt that metal detectors - such as those used at our Court - could be installed in school houses.

L.F.P., Jr.

ss

83-712 NEW JERSEY v. T.L.O. Argued 10/2/84

Noder ~~(Dep~~ (Deputy A.G. of N.J.)

Relies on brief as to ~~applicable~~ applicability of 4th Amend

Addresses the "standard" - assuming applicability.

N.J. S/Ct did not ~~even~~ even think there was reasonable suspicion

School Rule: "no smoking in certain areas."

Responding to SOC as to strip-search, Noder responded that such a search normally would be unreasonable

Mr. DeJulio (Rep - T.L.O.)

83-712 T.L.O. 2 7P

1. Special characteristics of schools distinguish this case from criminal law.

2. Limited privacy right exists. E.g. no strip searches.

3. "Reasonable suspicion" as standard. It applies w/R to.
   (a) suspected criminal conduct" (e.g. this case), +
   (b) suspected violation of School Rules

4. Standards applicable to Police investigations + searches do not apply.
   (a) Special characteristics
   (b) Teachers - not law enforcement officers; not trained.

~~5. Exclusionary~~

83-[illegible]13 T.L.O P[illegible].

5. Ingraham v. Wright
(8th Amend/corporal punishment)

Schools "open institutions"

Community oversight
- PTAs, etc

6. History of common law & application of 4th Amend.

Never ~~viewed~~ viewed teacher/pupil relationship as analogous to relationship between law enforcement officers & the public

Resp. of teachers & officials to maintain discipline rooted in tort.

Lee - Always show case no

Very helpful

alb 10/04/84

TO: Justice Powell
FROM: Lee
RE: New Jersey v. T.L.O., the applicability of the exclusionary rule to juvenile delinquency proceedings (Our school discipline case is not before us)

In New Jersey v. T.L.O., the state supreme court held that T.L.O.'s purse had been searched in violation of her fourth amendment rights, and that the evidence that had been seized should have been excluded from her trial in juvenile court. The state did not challenge the court's holding that T.L.O.'s fourth amendment rights had been violated. Instead, the state asked this Court to consider only whether the exclusionary rule barred the use in juvenile delinquency proceedings of evidence that has been illegally obtained by a school teacher. The Court granted cert. on this issue, and it was argued on March 28, 1984.

At the conference, the Court split 5-4 on the applicability of the exclusionary rule. You, CJ, BRW, HAB, and WHR voted to reverse, holding that the exclusionary rule did not apply in this context. WJB, TM, JPS, and SO'C voted to reverse. Justice White was assigned to write the majority opinion, and Justice Stevens was to write the dissent.

Justice White's majority opinion was circulated, and ~~was~~ he was joined by CJ and WHR. Justice White assumed that T.L.O.'s fourth amendment rights had been violated by the assistant principal's search. Nevertheless, he stated that the exclusionary rule should not bar the illegally seized evidence from juvenile delinquency proceedings. Deterrence is the

"primary, if not the only" justification for suppressing the fruits of illegal searches and seizures. Justice White argued that the application of the exclusionary rule in this context would not deter teachers from conducting illegal searches. Teachers have a strong interest in enforcing school rules, and in keeping drugs and weapons out of the classroom. In contrast, few teachers have an interest in the criminal justice system. Therefore, applying the exclusionary rule to juvenile delinquency proceedings would not have "behavioral effects" upon teachers.

Justice White went on to add that the New Jersey courts had held that illegally seized evidence should be excluded from school disciplinary proceedings. He thought that this ruling would deter teachers from violating the fourth amendment rights of schoolchildren, for teachers do have a strong interest in such internal proceedings. He also pointed out that students whose rights were violated could bring §1983 actions against their teachers.

You asked Justice White to remove the discussion about school disciplinary proceedings from his opinion. Although he did not state that the exclusionary rule necessarily should be applied in this context, he certainly implied that it should. There was no reason to reach the issue in this case. Justice White, however, refused to delete this discussion from his opinion. You also asked Justice White to remove the reference to the availability of §1983 actions. Although he agreed to remove this language from the opinion, he subsequently circulated drafts containing this objectionable language.

You joined most of BRW's opinion, but in a short concurrence you pointed out that it was unnecessary to discuss the applicability of the exclusionary rule to school disciplinary proceedings. You also pointed out that "it was unrealistic to extend the subtleties of the Fourth Amendment to the school classroom."

Justice Stevens dissent was short and unpersuasive. He argued that there was no reason to believe that teachers would not be deterred by the application of the exclusionary rule to proceedings in juvenile court. Moreover, the exlcusionary rule should be applied in this context, so as to let students know that "our society attaches serious consequences to violations of constitutional rights." WJB and TM joined this dissent. Justice O'Connor filed a separate dissent in which she stated that there was no reason to depart from Mapp v. Ohio in this context. She pointed out that in no other case had the Court held that illegally seized evidence could be introduced in the state's case-in-chief. JPS joined her separate dissent.

HAB refused to join Justice White's opinion. He was troubled by the state's failure to challenge the finding of a fourth amendment violation. He thought the case should be DIG'ed.

The Court subsequently ordered reargument.

funding

Rev 6-3

No. 83-712, New Jersey v. T.L.O. Conf. 10/5/84

The Chief Justice Reverse

4th A. doesn't apply full force
If it applies, standard is
reasonable suspicion
Students have some rights
No strip searches, but all
~~Rev~~ reasonable means to
enforce Rules & law are lawful.

Justice Brennan Aff in

4th Amend applies.
May eliminate warrant requirements.
Would require "probable cause"
- the Const. standard even when
~~Applies to violations of~~
violation is of a school ~~of~~ Rule.
Ex. Rule applies

Justice White Rev.

4th Amend satisfied
"Reasonable suspicion" is proper
standard.

(Didn't understand what
BRW said about E/R.

Justice Marshall Aff in

Only minor offense here
– smoking.

4th fully applies

Justice Blackmun Rev.

4th applies. See Pico

No need for warrant

Camara might apply

Reasonable suspicion is standard

Justice Powell Reverse

No violation of 4th – though it has some application

There was at least reasonable suspicion.

The evidence is admissible
in the juvenile delinquency case

Brief
4 NEA
appeals
to me.

Justice Rehnquist Rev.

4th applies to any govt action.

E/R doesn't apply

Reasonable suspicion may be OK but would prefer to hold that "reasonable" in 4th standard as in so some of adm. search cases.

Make some sense

Justice Stevens Aff'm

We should decide E/R as we would be giving an advisory opinion.

E/R does apply in criminal cases as here.

Two variables:

1. School rules very - weapons rules more imp. than smoking.
2. What is reasonable search.

This search was not reasonable

Could keep W+R's standard of "reasonable" but search was unreasonable

Ex. would be admissible in a disciplinary proceeding

Justice O'Connor Rev.

This criminal case.

4th does apply

E/R is applicable & must read it

Warrantless search is OK on reasonable suspicion.

N.J. Ct erred in making distinction between types of Rules

And search itself must be "reasonable"

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 29, 1984

No. 83-712

New Jersey v. T.L.O.

Dear Byron,

You will recall that at Conference I expressed the view that the probable cause standard should apply. I shall shortly circulate a brief dissent to that effect.

Sincerely,

Bill

Justice White

Copies to the Conference

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Washington, D. C. 20543

October 29, 1984

Re: No. 83-712 New Jersey v. T.L.O.

Dear Byron,

Please join me.

Sincerely,

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

October 30, 1984

Re: No. 83-712 - New Jersey v. T.L.O.

Dear Byron:

I join.

Regards,

WEB

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 30, 1984

No. 83-712 New Jersey v. T.L.O.

Dear Byron,

Please join me.

Sincerely,

Sandra

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 1, 1984

Re: 83-712 - New Jersey v. T.L.O.

Dear Byron:

Although I agree with a good deal of what you have written, I will be writing separately.

Respectfully,

JPS

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 2, 1984

Re: No. 83-712-New Jersey v. T.L.O.

Dear Byron:

I await the dissent.

Sincerely,

T.M.

Justice White

cc: The Conference

November 8, 1984

83-712 New Jersey v. TLO

Dear Byron:

I will write a brief concurring opinion and hope to get to this soon.

I agree with most of your opinion and the holding. My view about the school environment, as you know, differs a shade or two from yours.

Sincerely,

Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 21, 1984

No. 83-712 New Jersey v. T.L.O.

Dear Lewis,

Please join me in your concurring opinion.

Sincerely,

Sandra

Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

11/12

82-912 T.L.O.

Dear Lewis,

The changes you suggested
in the case of my concurrence
I have no objection to. I
do not understand that
you intend to circulate
your memorandum.

Sincerely,

Sandra

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 8, 1985

Re: No. 83-712-New Jersey v. T.L.O.

Dear John:

Please join me in your dissent.

Sincerely,

T.M.

Justice Stevens

cc: The Conference

&83-712 New Jersey v. TLO (Cammie)%

BRW for the Court 3/31/84
1st draft 4/23/84
2nd draft 6/12/84
Joined by WHR 4/30/84
CJ 5/22/84

LFP dissent
1st draft 5/15/84

JPS dissent
1st draft 6/1/84
2nd draft 6/14/84
Joined by WJB 6/4/84
Joined by TM 6/12/84

SOC dissent
1st draft 6/12/84
Joined by JPS 6/12/84

SOC await other writing 4/23/84

TM awaiting further writing 4/24/84

83-712 New Jersey v. TLO (Lee)

BRW for the Court 10/5/84
1st draft 10/26/84
2nd draft 10/31/84
3rd draft 12/20/84
4th draft 1/4/85
5th draft 1/7/85
Joined by WHR 10/29/84
SOC 10/30/84
CJ 10/30/84

LFP concurring opinion
1st draft 11/21/84
2nd draft 11/30/84
Joined by SOC 11/21/84

HAB concurring in the judgment
1st draft 12/4/84
2nd draft 12/21/84

JPS dissent
1st draft 12/7/84
2nd draft 12/17/84
3rd draft 1/4/85
4th draft 1/8/85
Joined by TM 1/8/85

WJB dissenting
1st draft 1/2/85
2nd draft 1/7/85
3rd draft 1/9/85
Joined by TM 1/8/85

WJB will dissent 10/29/84
JPB will write separately 11/1/84
TM awaiting dissent 11/2/84
LFP will write concurring opinion 11/8/84

See n 6

L 7P

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: APR 2 3 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[April —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

This case presents a question concerning the admissibility in juvenile delinquency proceedings of evidence illegally obtained in an in-school search by a public-school official. Because that official was engaged in enforcing a school disciplinary rule and was not acting with the participation of law enforcement authorities, we hold that the Fourth Amendment exclusionary rule does not require suppression of the evidence he obtained.

I

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N. J., observed 14-year-old T. L. O. and another student smoking cigarettes in the girls' lavatory in violation of school regulations. The teacher escorted the girls to the vice-principal's office and accused them of violating the regulation prohibiting smoking in lavatories. In response to the vice-principal's questions, T. L. O.'s companion admitted the infraction and was assigned to a three-day smoking clinic. T. L. O., however, denied smoking in the lavatory and declared that she "didn't smoke at all."

The vice-principal took T. L. O. to a private office, closed the door, and requested her purse. He opened the purse and observed a package of cigarettes plainly visible. Saying that T. L. O. had lied to him, he reached into the purse to remove the cigarettes and saw rolling papers, which in his

experience indicated that marihuana was probably involved. He then looked further into the purse and discovered marihuana, marihuana paraphernalia, a number of one-dollar bills, and index cards and papers containing language clearly indicating drug dealing by T. L. O.

The vice-principal notified T. L. O.'s parents. He also summoned the police and gave them the marihuana and paraphernalia. In her mother's presence at police headquarters, T. L. O. was advised of her rights and admitted to selling marihuana in school. T. L. O. was suspended from school for three days for smoking cigarettes in a nonsmoking area and seven days for possessing marihuana. On T. L. O.'s motion in the Superior Court, Chancery Division, the latter suspension was set aside on the ground that the suspension resulted from evidence seized in violation of the Fourth Amendment. [*T. L. O.*] v. *Piscataway Board of Education*, No. C.2865–79 (Super. Ct. N. J., Ch. Div., Mar. 31, 1980). The validity of that judgment is not before us.

T. L. O. was also charged in the Juvenile and Domestic Relations Court, Middlesex County, with delinquency based on possession of marihuana with the intent to distribute. N. J. Stat. Ann. §§2A:4–44; 24:21–19(a)(1); 24:21–20(a)(4) (West Supp. 1983). T. L. O. moved to suppress the physical evidence obtained in the search of her purse; she also sought suppression of her confession on the ground that it was tainted by the allegedly unlawful search. The juvenile court denied T. L. O.'s motion to suppress. *State in Interest of T. L. O.*, 178 N. J. Super. 329, 428 A. 2d 1327 (1980). The court held that the Fourth Amendment applies to school searches, but declared that

> "a school official may properly conduct a search of a student's person if the official has 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).

Applying this standard, the court concluded that the vice-principal had reasonable cause to believe that T. L. O. had violated the school's smoking regulations. Once he had opened the purse, the court held, its contents were subject to the plain-view doctrine; having found marihuana and paraphernalia, the vice-principal justifiably continued his search to determine the extent of T. L. O.'s criminal activity. *Id.*, at 343, 428 A. 2d, at 1334.

A divided Appellate Division affirmed the denial of T. L. O.'s suppression motion with respect to the contents of the purse on the basis of the Juvenile Court's opinion, but vacated the adjudication of delinquency and remanded for further proceedings to determine whether T. L. O. had knowingly waived her constitutional rights before confessing. *State in Interest of T. L. O.*, 185 N. J. Super. 279, 448 A. 2d 493 (1982) (per curiam). The Supreme Court of New Jersey reversed the Appellate Division's judgment and directed that the physical evidence be suppressed. *State in Interest of T. L. O.*, 94 N. J. 331, 463 A. 2d 934 (1983). In response to the contention that the exclusionary rule, which was applied to the States in *Mapp* v. *Ohio*, 367 U. S. 643 (1961), should not govern searches by school officials since its primary purpose is to deter violations of constitutional rights by law enforcement officials, the Supreme Court of New Jersey declared that "the issue is settled by the decisions of the [United States] Supreme Court" and "accept[ed] the proposition that if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings." 94 N. J., at 341, 463 A. 2d, at 939 (footnote omitted).[1]

[1] Although the court indicated that "[o]ur code of Juvenile Justice buttresses this conclusion," 94 N.J., at 342, n. 5, 463 A. 2d, at 939, n. 5, we agree with the State that the decision below concerning the admissibility of illegally obtained evidence in juvenile delinquency proceedings does not rest on adequate and independent state grounds. It bears mentioning

The Supreme Court of New Jersey then held that school officials could conduct warrantless searches without violating the Fourth Amendment, and that, in the absence of police participation, such searches should be assessed under a standard less stringent than probable cause. Like the Juvenile Court, the Supreme Court was

> "satisfied that 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, the school official has the right to conduct a reasonable search for such evidence." *Id.*, at 346, 463 A. 2d, at 941–942.

The court concluded, with two justices dissenting, that the vice-principal's search could not pass muster under this standard. The contents of the purse had no direct bearing on T. L. O.'s infraction since mere possession of cigarettes did not violate the school's rules, and a desire to gather evidence to impeach T. L. O.'s credibility could not justify the search. In any event, the vice-principal had no reasonable grounds to believe that T. L. O.'s purse contained cigarettes, but rather was acting on, "at best, a good hunch." *Id.* at 347, 463 A. 2d, at 942.

We granted the State of New Jersey's petition for certiorari. 464 U. S. —— (1983). State and federal courts have disagreed on whether the Fourth Amendment applies to in-school searches and seizures by public-school officials and teachers.[2] For present purposes, however, the State does

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that the Supreme Court of New Jersey denied T. L. O.'s motion—filed after this Court had granted a writ of certiorari—for clarification of its decision to make clear that it was based on state law. *State in Interest of* T. L. O., M–422 (Jan 17, 1984).

[2] State and federal courts have struggled to accommodate the interests protected by the Fourth Amendment and the interest of the States in providing a safe environment conducive to education in the public schools. Some courts have resolved the tension between these interests by giving full force to one or the other side of the balance. Thus, in a number of

not contest the holding that the Fourth Amendment protects students like T. L. O. from being unreasonably searched by school principals or teachers, the standard of reasonableness

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cases it has been held that school officials conducting in-school searches of students are private parties acting *in loco parentis* who are not subject to the constraints of the Fourth Amendment. See, *e. g.*, *D. R. C.* v. *State*, 646 P. 2d 252 (Alaska App. 1982); *In re G.*, 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970); *In re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969); *People* v. *Stewart*, 63 Misc. 2d 601, 313 N. Y. S. 2d 253 (1970); R. C. M. v. *State*, 660 S. W. 2d 552 (Tex. App. 1983); *Mercer* v. *State*, 450 S. W. 2d 715 (Tex. Civ. App. 1970). See also *State* v. *Kappes*, 26 Ariz. App. 567, 550 P. 2d 121 (1976) (student advisers in dormitory search); *State* v. *Wingerd*, 40 Ohio App. 2d 236, 318 N. E. 2d 866 (1974) (same); *State* v. *Keadle*, 277 S. E. 2d 456 (N.C. App. 1981) (same). At least one court has held, on the other hand, that the Fourth Amendment applies in full to in-school searches by school officials and that a search conducted without probable cause is unreasonable, see *State* v. *Mora*, 307 So. 2d 317 (La.), vacated, 423 U. S. 809 (1975), on remand, 330 So. 2d 900 (La. 1976), and others have made clear that the probable-cause standard applies where there is police involvement, see *M.* v. *Board of Education Ball-Chatham Community Unit School District No. 5*, 429 F. Supp. 288, 292 (SD Ill. 1977); *Picha* v. *Wilgos*, 410 F. Supp. 1214, 1219–1221 (ND Ill. 1976); *State* v. *Young*, 234 Ga. 488, 498, 216 S. E. 2d 586, 594 (1975), or where the search is highly intrusive. See *M. M.* v. *Anker*, 607 F. 2d 588, 589 (CA2 1979). Other courts have struck the balance by holding that the Fourth Amendment applies, but that the exclusionary rule developed to remedy violations of the Amendment does not. See, *e. g.*, *State* v. *Lamb*, 137 Ga. App. 437, 224 S. E. 2d 51 (1976); *State* v. *Young*, *supra*. See also *United States* v. *Coles*, 302 F. Supp. 99 (Me. 1969) (exclusionary rule would not deter search by administrative officer at Job Corps Center).

The applicability of the exclusionary rule, however, has been discussed in very few of the cases, for most courts that have considered challenges by students to in-school searches or seizures by school officials have held that the officials' activity did not violate the Fourth Amendment. But see *In re J. A.*, 85 Ill. App. 3d 567, 406 N. E. 2d 958 (1980); *People* v. *D.*, 34 N. Y. 2d 483, 358 N. Y.S. 2d 403, 315 N. E. 2d 466 (1974). These courts have rejected the view that school officials conducting in-school searches act as private individuals to which the Fourth Amendment does not apply. *E. g.*, *Horton* v. *Goose Creek Independent School District*, 690 F. 2d 470, 480 (CA5 1982); *Jones* v. *Latexo Independent School District*, 499 F. Supp. 223, 229 (ED Tex. 1980); *Bellnier* v. *Lund*, 438 F. Supp. 47, 51 (NDNY

against which the state court held that school officials' conduct is to be judged, or the state court's conclusion that T. L. O.'s purse had been searched contrary to the Fourth Amendment. The sole question presented by the petition is whether the exclusionary rule should be applied so as to bar the use in juvenile delinquency proceedings of evidence that has been illegally seized by a school teacher without the participation of law enforcement officers. The State submits that the rule should not apply in such circumstances. We agree with this submission and reverse the judgment of the Supreme Court of New Jersey.[3]

1977); *Picha* v. *Wilgos*, 410 F. Supp. 1214, 1217–1218 (ND Ill. 1976); *State* v. *Lamb*, 137 Ga. App. 437, 224 S. E. 2d 51 (1976); *People* v. *Ward*, 62 Mich. App. 46, 233 N. W. 2d 180 (1975); *Doe* v. *State*, 88 N. M. 827, 540 P. 2d 827 (App. 1975); *State* v. *Walker*, 19 Or. App. 420, 528 P. 2d 113 (1974). But they typically have held that school officials may act without a warrant, *e. g.*, *Bilbrey* v. *Brown*, 481 F. Supp. 26, 27–28 (Or. 1979); *In re G.*, 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970), and have relaxed the standard of suspicion necessary to justify in-school searches by school officials acting without the participation of law enforcement officials. *E. g.*, *Horton* v. *Goose Creek Independent School District*, *supra*; *Stern* v. *New Haven Community Schools*, 529 F. Supp. 31 (ED Mich. 1981); *Jones* v. *Latexo Independent School District*, *supra*; *Doe* v. *Renfrow*, 475 F. Supp. 1012 (ND Ind. 1979); *Bellnier* v. *Lund*, *supra*; *In re W.*, 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973); *State* v. *Baccino*, 282 A. 2d 869 (Del. Super. 1971); *State* v. *Young*, *supra*; *In re J. A.*, *supra*; *People* v. *Ward*, *supra*; *People* v. *D.*, *supra*; *State* v. *McKinnon*, 88 Wash. 2d 75, 558 P. 2d 781 (1977); *In re L. L.*, 90 Wis. 2d 585, 280 N. W. 2d 343 (App. 1979). In assessing the reasonableness of searches and seizures by school officials, the courts have looked to such factors as: (1) whether the officials acted alone or in concert with the police; (2) whether the search was undertaken to promote school discipline or to facilitate criminal prosecution; (3) the nature and extent of the search; (4) the child's age and disciplinary record; (5) the seriousness of the problem to which the search was addressed; (6) whether the official acted under exigent circumstances; and (7) the probative value and reliability of the evidence on the basis of which the search was undertaken. See *e. g.*, *Bellnier* v. *Lund*, *supra*; *Doe* v. *State*, *supra*; *People* v. *D.*, *supra*; *In re L. L.*, *supra*; Schiff, The Emergence of Student Rights to Privacy Under the Fourth Amendment, 34 Baylor L. Rev. 209, 213 (1982).

[3] In *United States v. Leon*, —— U. S. —— (1984), and *Massachusetts v. Sheppard*, —— U. S. —— (1984), we held that the exclusionary rule

II

Since the Fourth Amendment "has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons," *Stone* v. *Powell*, 428 U. S. 465, 486 (1976), the State's concession that the vice-principal's search of T. L. O.'s purse violated the Fourth Amendment only begins the inquiry in this case. We have repeatedly stressed that the Constitution itself does not require the exclusion of evidence obtained in violation of the Fourth Amendment, *United States* v. *Leon*, —— U. S. ——, —— (1984), and have emphasized that whether the judicially created exclusionary rule is appropriately applied in a particular case or class of cases is "an issue separate and apart from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct." *Illinois* v. *Gates*, 462 U. S. ——, —— (1983).

The remedial question before us in this case, our decisions make clear, must be resolved by weighing the costs and benefits of excluding from juvenile delinquency proceedings evidence illegally obtained by a school official who sought to enforce school disciplinary rules and who acted without the participation of law enforcement authorities. See *United States* v. *Leon*, *supra*, at ——; *United States* v. *Calandra*, 414 U. S. 338, 347–352 (1974). The primary, if not the only, justification for suppressing the fruits of illegal searches and seizures is the belief that the imposition of that severe remedy will reduce the incentive to violate the Fourth Amendment and deter future illegality. *United States* v. *Leon*, *supra*, at ——; *Stone* v. *Powell*, *supra*, at 486; *United States*

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should not be applied where, judged objectively, it cannot be said that officers should have known that they were violating the Fourth Amendment. Here, as stated in the text, the Supreme Court of New Jersey held that the vice-principal had "no reasonable grounds" to believe that T. L. O.'s purse contained cigarettes. Hence, there is no occasion to vacate the judgment of the New Jersey court and remand the case for reconsideration in light of *Leon* and *Sheppard*.

v. *Janis*, 428 U. S. 433, 446 (1976). Accordingly, in light of the "substantial cost [imposed] on the societal interest in law enforcement by . . . [excluding] . . . what concededly is relevant evidence," *id.*, at 448–449, we have restricted "the application of the [exclusionary] rule . . . to those areas where its remedial objectives are thought most efficaciously served." *United States* v. *Calandra*, *supra*, at 348. Furthermore, in determining the applicability of the exclusionary rule, we must be convinced that an appreciable deterrent effect has been shown. Speculative benefits do not warrant the "strong medicine" of the exclusionary rule. *United States* v. *Janis*, *supra*, at 453; *United States* v. *Calandra*, *supra*, at 351–352.

On the strength of this balancing test, we have held that the exclusionary rule does not apply in certain types of judicial proceedings, see *United States* v. *Janis*, *supra*; *United States* v. *Calandra*, *supra*,[4] and does not prevent all possible uses of illegally obtained evidence in proceedings to which it is generally applicable. See, *e. g.*, *United States* v. *Havens*, 446 U. S. 620 (1980); *Walder* v. *United States*, 347 U. S. 62 (1964). We also have concluded that the rule constitutes an inappropriate remedy for certain types of objectively reasonable errors by law enforcement officers. *United States* v. *Leon*, *supra*; *Massachusetts* v. *Sheppard*, —— U. S. —— (1984).

We have not had occasion to consider the applicability of this approach to evidence obtained in unlawful searches or seizures conducted by state or federal governmental employees who do not work for law enforcement agencies and whose

[4] Although this Court has never addressed the question whether the exclusionary rule applies in juvenile delinquency proceedings and we need not do so to resolve this case, state courts that have considered the issue have consistently held that the rule is applicable. *E. g.*, *In re K.*, 24 Cal. 3d 395, 595 P. 2d 105, cert. denied, 444 U. S. 973 (1979); *In re* J. A., 85 Ill. App. 3d 567, 406 N. E. 2d 958 (1980); *State* v. *Doe*, 93 N. M. 143, 597 P. 2d 1183 (App. 1979); *In re* L. L., 90 Wis. 2d 585, 280 N. W. 2d 343 (App. 1979).

functions do not fall within the realm of law enforcement. We are now confronted with such a case: assuming that there has been a Fourth Amendment violation—because the case comes to us in that posture—the question is whether the evidence seized from T. L. O. by the vice-principal may be used against T. L. O. in her juvenile delinquency proceedings. In making this determination, there is no reason to depart from the general principles that have emerged in cases decided over more than a decade. Guided by these principles, we conclude that applying the exclusionary rule, in the context of juvenile delinquency or criminal proceedings, to exclude the fruits of in-school searches and seizures, made without the participation of law enforcement officers,[8] is unlikely to "result in appreciable deterrence . . . [and that] . . . its use in the instant situation is unwarranted." *United States* v. *Janis*, *supra*, at 454.

It goes without saying that a duty to exercise care in promoting the health and physical development of students and to maintain order and discipline is inextricably tied to a school's mission to educate. Although, as they were in this case, school authorities may be required to report to the police what they perceive to be violations of the state or local criminal law, these officials cannot generally be classified as law-enforcement authorities. The unique relationship between schools and students gives rise to concerns that are largely unrelated to desires to obtain criminal convictions or adjudications of delinquency. Cf. *Wyman* v. *James*, 400 U. S. 309, 322–323 (1971). In-school searches ordinarily further purposes or interests entirely separate and distinct from those served by the criminal-justice system; prohibiting the

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[8]There is no evidence in this record that the vice-principal searched T. L. O.'s purse at the behest of or in cooperation with law enforcement authorities. The latter's participation in this case began only after the seizure had been made. The State agrees that suppression would be appropriate if a school official had acted as an agent of the police. Brief for Petitioner 16–17.

use in the criminal-justice system of evidence obtained in such searches may well have none of the behavioral effects on either school officials or school boards that exclusion of illegally obtained evidence in criminal prosecutions generally is thought to have on the typical law enforcement official.

Whether viewed from the perspective of individual school officials or of school boards, "[t]he enforcement of school regulations, the safeguarding of students during school hours through confiscation of weapons and other contraband, and the maintenance of a drug-free learning environment provide substantial incentives to search that would not be lessened by suppression of evidence at a subsequent delinquency proceeding." *D. R. C.* v. *State*, 646 P. 2d 252, 258 (Alaska App. 1982). School officials may search frequently enough to develop an understanding of state and federal constitutional standards, and school boards may and should have both the incentive and the means to foster such an understanding. But a persuasive case can be made for the proposition that local school officials are "primarily concerned with maintaining internal discipline rather than obtaining convictions," *id.*, at 258, n. 10, and that the admissibility of the evidence in a juvenile delinquency or criminal proceeding is not a substantial concern to them and hence will not appreciably control their conduct. See, *e. g.*, *United States* v. *Coles*, 302 F. Supp. 99, 102–103 (1969); *State* v. *Young*, 234 Ga. 488, 489–494, 216 S. E. 2d 586, 588–591 (1975).

It should also be recalled that, in reviewing the propriety of the disciplinary sanction imposed on T. L. O. by her school, the New Jersey Superior Court, Chancery Division, held that she could not suspended from school on the basis of the evidence seized from her purse, a holding consistent with the Supreme Court of New Jersey's decision on the scope of the Fourth Amendment in the case now under review.[8] To

[8] We emphasize that the propriety of that decision is not before us in this case and that our opinion is not intended to intimate any view concerning whether the exclusionary rule applies in school disciplinary proceedings.

the extent that school officials may be deterred by the exclusion of evidence, that result will be effected by forbidding the use of the fruits of their searches in school disciplinary proceedings. It is in those proceedings that the acceptability of school officials' conduct will, in effect, be judged, and it is in the outcome of those proceedings that they presumably are most interested. As long as the Chancery Division's ruling on T. L. O.'s suspension continues to govern the high school—and particularly if it is or becomes the general rule in New Jersey—illegal searches and seizures by school oficials will be adequately deterred. We are quite convinced that also excluding the evidence from juvenile delinquency proceedings, which fall "outside the offending [officials'] zone of primary interest," *United States* v. *Janis*, 428 U. S., at 458, would produce only marginal deterrence, insufficient to justify the cost to law enforcement efforts. Cf. *id.*, at 453–454; *Stone* v. *Powell*, 428 U. S., at 493–495; *United States* v. *Calandra*, 414 U. S., at 350–352.

On the other hand, if in the long run, the Chancery Division's holding that forbids the use of illegally seized evidence in school disciplinary proceedings does not retain its authority, we have substantial doubt that teachers and other officials will be appreciably restrained in the future by a decision that the Fourth Amendment prohibits the use of probative but illegally obtained evidence in juvenile delinquency proceedings. In such circumstances, school authorities would have little reason or incentive to forgo searches insofar as the utility of the evidence in school disciplinary proceedings is concerned. It may be that a teacher would be deterred from searching by school rules and policies governing such searches, violation of which may affect the assessment of his performance by his superiors, or even result in charges being filed against him. But if the evidence is admissible in internal proceedings against the student, it seems unlikely that suppressing the evidence in juvenile delinquency or criminal proceedings would produce the appreciable deterrent conse-

quences necessary to outweigh society's interest in sanctioning crimes by students that unquestionably have been exposed by school officials, albeit by officials acting contrary to the applicable constitutional, statutory, or administrative rules governing the performance of the tasks for which they have been hired.

Assuming, as we do, that the vice-principal violated T. L. O.'s Fourth Amendment rights, we do not hold that she should not have a remedy for this violation, but only that she is not entitled to have the evidence suppressed in her juvenile delinquency proceeding. The exclusionary rule is designed to deter future violations of the Fourth Amendment, particularly infringements on the rights of the innocent who, without the rule, might be subjected to an unacceptable regime of unjustified searches. Under the rationale of the exclusionary rule as it has developed, T. L. O. herself, about whom reliable evidence has come to light showing that she was illegally selling drugs to her classmates, has little entitlement to claim that the evidence should not be used against her. The violation, if it occurred, has already been completed. The admission of the evidence against T. L. O. is not itself a violation of the Fourth Amendment; and excluding it would be a remedy designed not to benefit her, but to forestall similar lawless invasions of the rights of others.

We do not leave T. L. O., others like her, or wholly innocent persons without remedies to vindicate their Fourth Amendment rights. T. L. O. sought judicial review of her suspension and successfully urged that her Fourth Amendment rights had been violated. We assume that resort to the courts will continue to be available to enforce any local, state, or federal standards applicable to searches and seizures carried out by school authorities. Public-school teachers and administrators who know or should have known that their conduct is contrary to the Fourth Amendment will also be subject to liability under 42 U. S. C. § 1983, and they may be subject to action under state law as well. We do not,

however, discern any satisfactory predicate for excluding from state juvenile delinquency or criminal proceedings the product of in-school searches carried out by school authorities without participation by law enforcement personnel.

The judgment of the Supreme Court of New Jersey is accordingly reversed.

So ordered.

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To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

- Stylistic changes and pp. 8, 10-11 -

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[June —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

This case presents a question concerning the admissibility in juvenile delinquency proceedings of evidence illegally obtained in an in-school search by a public-school official. Because that official was engaged in enforcing a school disciplinary rule and was not acting with the participation of law enforcement authorities, we hold that the Fourth Amendment exclusionary rule does not require suppression of the evidence he obtained.

I

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N. J., observed 14-year-old T. L. O. and another student smoking cigarettes in the girls' lavatory in violation of school regulations. The teacher escorted the girls to the vice-principal's office and accused them of violating the regulation prohibiting smoking in lavatories. In response to the vice-principal's questions, T. L. O.'s companion admitted the infraction and was assigned to a three-day smoking clinic. T. L. O., however, denied smoking in the lavatory and declared that she "didn't smoke at all."

The vice-principal took T. L. O. to a private office, closed the door, and requested her purse. He opened the purse and observed a package of cigarettes plainly visible. Saying that T. L. O. had lied to him, he reached into the purse to remove the cigarettes and saw rolling papers, which in his experience indicated that marihuana was probably involved.

These changes should not affect your vote or your separate writings. CRR

He then looked further into the purse and discovered marihuana, marihuana paraphernalia, a number of one-dollar bills, and index cards and papers containing language clearly indicating drug dealing by T. L. O.

The vice-principal notified T. L. O.'s parents. He also summoned the police and gave them the marihuana and paraphernalia. In her mother's presence at police headquarters, T. L. O. was advised of her rights and admitted to selling marihuana in school. T. L. O. was suspended from school for three days for smoking cigarettes in a nonsmoking area and seven days for possessing marihuana. On T. L. O.'s motion in the Superior Court, Chancery Division, the latter suspension was set aside on the ground that the suspension resulted from evidence seized in violation of the Fourth Amendment. *[T. L. O.]* v. *Piscataway Board of Education*, No. C.2865–79 (Super. Ct. N. J., Ch. Div., Mar. 31, 1980). The validity of that judgment is not before us.

T. L. O. was also charged in the Juvenile and Domestic Relations Court, Middlesex County, with delinquency based on possession of marihuana with the intent to distribute. N. J. Stat. Ann. §§ 2A:4–44; 24:21–19(a)(1); 24:21–20(a)(4) (West Supp. 1983). T. L. O. moved to suppress the physical evidence obtained in the search of her purse; she also sought suppression of her confession on the ground that it was tainted by the allegedly unlawful search. The juvenile court denied T. L. O.'s motion to suppress. *State in Interest of T. L. O.*, 178 N. J. Super. 329, 428 A. 2d 1327 (1980). The court held that the Fourth Amendment applies to school searches, but declared that

> "a school official may properly conduct a search of a student's person if the official has 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).

Applying this standard, the court concluded that the vice-principal had reasonable cause to believe that T. L. O. had violated the school's smoking regulations. Once he had opened the purse, the court held, its contents were subject to the plain-view doctrine; having found marihuana and paraphernalia, the vice-principal justifiably continued his search to determine the extent of T. L. O.'s criminal activity. *Id.*, at 343, 428 A. 2d, at 1334.

A divided Appellate Division affirmed the denial of T. L. O.'s suppression motion with respect to the contents of the purse on the basis of the Juvenile Court's opinion, but vacated the adjudication of delinquency and remanded for further proceedings to determine whether T. L. O. had knowingly waived her constitutional rights before confessing. *State in Interest of* T. L. O., 185 N. J. Super. 279, 448 A. 2d 493 (1982) *(per curiam)*. The Supreme Court of New Jersey reversed the Appellate Division's judgment and directed that the physical evidence be suppressed. *State in Interest of T. L. O.*, 94 N. J. 331, 463 A. 2d 934 (1983). In response to the contention that the exclusionary rule, which was applied to the States in *Mapp* v. *Ohio*, 367 U. S. 643 (1961), should not govern searches by school officials since its primary purpose is to deter violations of constitutional rights by law enforcement officials, the Supreme Court of New Jersey declared that "the issue is settled by the decisions of the [United States] Supreme Court" and "accept[ed] the proposition that if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings." 94 N. J., at 341, 463 A. 2d, at 939 (footnote omitted).[1]

[1] Although the court indicated that "[o]ur code of Juvenile Justice buttresses this conclusion," 94 N. J., at 342, n. 5, 463 A. 2d, at 939, n. 5, we agree with the State that the decision below concerning the admissibility of illegally obtained evidence in juvenile delinquency proceedings does not rest on adequate and independent state grounds. It bears mentioning

The Supreme Court of New Jersey then held that school officials could conduct warrantless searches without violating the Fourth Amendment, and that, in the absence of police participation, such searches should be assessed under a standard less stringent than probable cause. Like the Juvenile Court, the Supreme Court was

> "satisfied that 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, the school official has the right to conduct a reasonable search for such evidence." *Id.*, at 346, 463 A. 2d, at 941–942.

The court concluded, with two justices dissenting, that the vice-principal's search could not pass muster under this standard. The contents of the purse had no direct bearing on T. L. O.'s infraction since mere possession of cigarettes did not violate the school's rules, and a desire to gather evidence to impeach T. L. O.'s credibility could not justify the search. In any event, the vice-principal had no reasonable grounds to believe that T. L. O.'s purse contained cigarettes, but rather was acting on, "at best, a good hunch." *Id.*, at 347, 463 A. 2d, at 942.

We granted the State of New Jersey's petition for certiorari. 464 U. S. —— (1983). State and federal courts have disagreed on whether the Fourth Amendment applies to in-school searches and seizures by public-school officials and teachers.[2] For present purposes, however, the State does

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that the Supreme Court of New Jersey denied T. L. O.'s motion—filed after this Court had granted a writ of certiorari—for clarification of its decision to make clear that it was based on state law. *State in Interest of T. L. O.*, M–422 (Jan. 17, 1984).

[2] State and federal courts have struggled to accommodate the interests protected by the Fourth Amendment and the interest of the States in providing a safe environment conducive to education in the public schools. Some courts have resolved the tension between these interests by giving full force to one or the other side of the balance. Thus, in a number of

not contest the holding that the Fourth Amendment protects students like T. L. O. from being unreasonably searched by school principals or teachers, the standard of reasonableness

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cases it has been held that school officials conducting in-school searches of students are private parties acting *in loco parentis* who are not subject to the constraints of the Fourth Amendment. See, *e. g.*, *D. R. C.* v. *State*, 646 P. 2d 252 (Alaska App. 1982); *In re G.*, 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970); *In re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969); *People* v. *Stewart*, 63 Misc. 2d 601, 313 N. Y. S. 2d 253 (1970); *R. C. M.* v. *State*, 660 S. W. 2d 552 (Tex. App. 1983); *Mercer* v. *State*, 450 S. W. 2d 715 (Tex. Civ. App. 1970). See also *State* v. *Kappes*, 26 Ariz. App. 567, 550 P. 2d 121 (1976) (student advisers in dormitory search); *State* v. *Wingerd*, 40 Ohio App. 2d 236, 318 N. E. 2d 866 (1974) (same); *State* v. *Keadle*, 277 S. E. 2d 456 (N. C. App. 1981) (same). At least one court has held, on the other hand, that the Fourth Amendment applies in full to in-school searches by school officials and that a search conducted without probable cause is unreasonable, see *State* v. *Mora*, 307 So. 2d 317 (La.), vacated, 423 U. S. 809 (1975), on remand, 330 So. 2d 900 (La. 1976), and others have made clear that the probable-cause standard applies where there is police involvement, see *M.* v. *Board of Education Ball-Chatham Community Unit School District No. 5*, 429 F. Supp. 288, 292 (SD Ill. 1977); *Picha* v. *Wilgos*, 410 F. Supp. 1214, 1219–1221 (ND Ill. 1976); *State* v. *Young*, 234 Ga. 488, 498, 216 S. E. 2d 586, 594 (1975), or where the search is highly intrusive. See *M. M.* v. *Anker*, 607 F. 2d 588, 589 (CA2 1979). Other courts have struck the balance by holding that the Fourth Amendment applies, but that the exclusionary rule developed to remedy violations of the Amendment does not. See, *e. g.*, *State* v. *Lamb*, 137 Ga. App. 437, 224 S. E. 2d 51 (1976); *State* v. *Young*, *supra*. See also *United States* v. *Coles*, 302 F. Supp. 99 (Me. 1969) (exclusionary rule would not deter search by administrative officer at Job Corps Center).

The applicability of the exclusionary rule, however, has been discussed in very few of the cases, for most courts that have considered challenges by students to in-school searches or seizures by school officials have held that the officials' activity did not violate the Fourth Amendment. But see *In re J. A.*, 85 Ill. App. 3d 567, 406 N. E. 2d 958 (1980); *People* v. *D.*, 34 N. Y. 2d 483, 358 N. Y. S. 2d 403, 315 N. E. 2d 466 (1974). These courts have rejected the view that school officials conducting in-school searches act as private individuals to which the Fourth Amendment does not apply. *E. g.*, *Horton* v. *Goose Creek Independent School District*, 690 F. 2d 470, 480 (CA5 1982); *Jones* v. *Latexo Independent School District*, 499 F. Supp. 223, 229 (ED Tex. 1980); *Bellnier* v. *Lund*, 438 F. Supp. 47, 51 (NDNY

against which the state court held that school officials' conduct is to be judged, or the state court's conclusion that T. L. O.'s purse had been searched contrary to the Fourth Amendment. The sole question presented by the petition is whether the exclusionary rule should be applied so as to bar the use in juvenile delinquency proceedings of evidence that has been illegally seized by a school official without the participation of law enforcement officers. The State submits that the rule should not apply in such circumstances. We

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[6] In *United States* v. *Leon*, —— U. S. —— (1984), and *Massachusetts* v.

agree with this submission and reverse the judgment of the Supreme Court of New Jersey.[3]

II

Since the Fourth Amendment "has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons," *Stone* v. *Powell*, 428 U. S. 465, 486 (1976), the State's concession that the vice-principal's search of T. L. O.'s purse violated the Fourth Amendment only begins the inquiry in this case. We have repeatedly stressed that the Constitution itself does not require the exclusion of evidence obtained in violation of the Fourth Amendment, *United States* v. *Leon*, —— U. S. ——, —— (1984), and have emphasized that whether the judicially created exclusionary rule is appropriately applied in a particular case or class of cases is "an issue separate and apart from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct." *Illinois* v. *Gates*, 462 U. S. ——, —— (1983).

The remedial question before us in this case, our decisions make clear, must be resolved by weighing the costs and benefits of excluding from juvenile delinquency proceedings evidence illegally obtained by a school official who sought to enforce school disciplinary rules and who acted without the participation of law enforcement authorities. See *United States* v. *Leon*, *supra*, at ——; *United States* v. *Calandra*, 414 U. S. 338, 347–352 (1974). The primary, if not the only, justification for suppressing the fruits of illegal searches and

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Sheppard, —— U. S. —— (1984), we held that the exclusionary rule should not be applied where, judged objectively, it cannot be said that officers should have known that they were violating the Fourth Amendment. Here, as stated in the text, the Supreme Court of New Jersey held that the vice-principal had "no reasonable grounds" to believe that T. L. O.'s purse contained cigarettes. Hence, there is no occasion to vacate the judgment of the New Jersey court and remand the case for reconsideration in light of *Leon* and *Sheppard*.

seizures is the belief that the imposition of that severe remedy will reduce the incentive to violate the Fourth Amendment and deter future illegality. *United States* v. *Leon*, *supra*, at ——; *Stone* v. *Powell*, *supra*, at 486; *United States* v. *Janis*, 428 U. S. 433, 446 (1976). Accordingly, in light of the "substantial cost [imposed] on the societal interest in law enforcement by . . . [excluding] . . . what concededly is relevant evidence," *id.*, at 448–449, we have restricted "the application of the [exclusionary] rule . . . to those areas where its remedial objectives are thought most efficaciously served." *United States* v. *Calandra*, *supra*, at 348. Furthermore, in determining the applicability of the exclusionary rule, we must be convinced that an appreciable deterrent effect has been shown. Speculative benefits do not warrant the "strong medicine" of the exclusionary rule. *United States* v. *Janis*, *supra*, at 453; *United States* v. *Calandra*, *supra*, at 351–352.

On the strength of this balancing test, we have held that the exclusionary rule does not apply in certain types of judicial proceedings, see *United States* v. *Janis*, *supra*; *United States* v. *Calandra*, *supra*,[4] does not render per se admissible all evidence that came to light through a chain of causation beginning with an illegal search or arrest, see, *e. g.*, *United States* v. *Ceccolini*, 435 U. S. 268 (1978); *Brown* v. *Illinois*, 422 U. S. 590 (1975), and does not prevent all possible uses of illegally obtained evidence in proceedings to which it is generally applicable. See, *e. g.*, *United States* v. *Havens*, 446 U. S. 620 (1980); *Walder* v. *United States*, 347 U. S. 62 (1964). We also have concluded that the rule constitutes an

[4] Although this Court has never addressed the question whether the exclusionary rule applies in juvenile delinquency proceedings and we need not do so to resolve this case, state courts that have considered the issue have consistently held that the rule is applicable. *E. g.*, *In re K.*, 24 Cal. 3d 396, 595 P. 2d 105, cert. denied, 444 U. S. 973 (1979); *In re J. A.*, 85 Ill. App. 3d 567, 406 N. E. 2d 958 (1980); *State* v. *Doe*, 93 N. M. 143, 597 P. 2d 1183 (App. 1979); *In re L. L.*, 90 Wis. 2d 585, 280 N. W. 2d 343 (App. 1979).

inappropriate remedy for certain types of objectively reasonable errors by law enforcement officers. *United States* v. *Leon*, *supra*; *Massachusetts* v. *Sheppard*, —— U. S. —— (1984).

We have not had occasion to consider the applicability of this approach to evidence obtained in unlawful searches or seizures conducted by state or federal governmental employees who do not work for law enforcement agencies and whose functions do not fall within the realm of law enforcement. We are now confronted with such a case: assuming that there has been a Fourth Amendment violation—because the case comes to us in that posture—the question is whether the evidence seized from T. L. O. by the vice-principal may be used against T. L. O. in her juvenile delinquency proceedings. In making this determination, there is no reason to depart from the general principles that have emerged in cases decided over more than a decade. Guided by these principles, we conclude that applying the exclusionary rule, in the context of juvenile delinquency or criminal proceedings, to exclude the fruits of in-school searches and seizures, made without the participation of law enforcement officers,[5] is unlikely to "result in appreciable deterrence . . . [and that] . . . its use in the instant situation is unwarranted." *United States* v. *Janis*, *supra*, at 454.

It goes without saying that a duty to exercise care in promoting the health and physical development of students and to maintain order and discipline is inextricably tied to a school's mission to educate. Although, as they were in this case, school authorities may be required to report to the police what they perceive to be violations of the state or local

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[5] There is no evidence in this record that the vice-principal searched T. L. O.'s purse at the behest of or in cooperation with law enforcement authorities. The latter's participation in this case began only after the seizure had been made. The State agrees that suppression would be appropriate if a school official had acted as an agent of the police. Brief for Petitioner 16–17.

criminal law, these officials cannot generally be classified as law enforcement authorities. The unique relationship between schools and students gives rise to concerns that are largely unrelated to desires to obtain criminal convictions or adjudications of delinquency. Cf. *Wyman* v. *James*, 400 U. S. 309, 322–323 (1971). In-school searches ordinarily further purposes or interests entirely separate and distinct from those served by the criminal-justice system; prohibiting the use in the criminal-justice system of evidence obtained in such searches may well have none of the behavioral effects on either school officials or school boards that exclusion of illegally obtained evidence in criminal prosecutions generally is thought to have on the typical law enforcement official.

Whether viewed from the perspective of individual school officials or of school boards, "[t]he enforcement of school regulations, the safeguarding of students during school hours through confiscation of weapons and other contraband, and the maintenance of a drug-free learning environment provide substantial incentives to search that would not be lessened by suppression of evidence at a subsequent delinquency proceeding." *D. R. C.* v. *State*, 646 P. 2d 252, 258 (Alaska App. 1982). School officials may search frequently enough to develop an understanding of state and federal constitutional standards, and school boards may and should have both the incentive and the means to foster such an understanding. But a persuasive case can be made for the proposition that local school officials are "primarily concerned with maintaining internal discipline rather than obtaining convictions," *id.*, at 258, n. 10, and that the admissibility of the evidence in a juvenile delinquency or criminal proceeding is not a substantial concern to them and hence will not appreciably control their conduct. See, *e. g.*, *United States* v. *Coles*, 302 F. Supp. 99, 102–103 (1969); *State* v. *Young*, 234 Ga. 488, 489–494, 216 S. E. 2d 586, 588–591 (1975).[5]

[5] The dissenters would prefer that the effectiveness of the exclusionary rule as a deterrent be determined by empirical evidence. At bottom, how-

It should also be recalled that, in reviewing the propriety of the disciplinary sanction imposed on T. L. O. by her school, the New Jersey Superior Court, Chancery Division, held that she could not suspended from school on the basis of the evidence seized from her purse, a holding consistent with the Supreme Court of New Jersey's decision on the scope of the Fourth Amendment in the case now under review.[7] To the extent that school officials may be deterred by the exclusion of evidence, that result will be effected by forbidding the use of the fruits of their searches in school disciplinary proceed-

ever, the Court's faith in the exclusionary rule has been grounded not so much on empirical evidence, which is flawed and inconclusive, see *United States* v. *Janis*, *supra*, at 452, n. 22, as on an informed judgment concerning the rule's behavioral effects. "[T]his Court has opted for exclusion in the anticipation that that *law enforcement officials* would be deterred from violating Fourth Amendment rights. Then, as now, the Court acted in the absence of convincing empirical evidence and relied, instead, on its own assumptions of human nature and the interrelationship of the various components of the law enforcement system." *Id.*, at 459 (emphasis added). Unlike the dissenters, we are aware of no persuasive reason for concluding that the relevant judgment should not vary depending on the identity, duties, and responsibilities of the governmental official who conducted the search in question. Just as "common sense dictates that the deterrent effect of the exclusion of relevant evidence is highly attenuated when the 'punishment' imposed upon the offending criminal enforcement officer is the removal of that evidence from a civil suit by or against a different sovereign," *id.*, at 457–458, common sense and reasoned analysis suggest that the benefits of the exclusionary rule do not outweigh its costs in cases like this one. The substantial prior judicial experience with searches and seizures undertaken by public-school officials provides, in our view, an adequate basis for concluding that, whether or not evidence that public-school officials obtain illegally from students in in-school searches is admissible in a school's internal disciplinary proceedings, the roles and duties of these officials are such that excluding the fruits of their illegal actions in juvenile delinquency proceedings will have no appreciable deterrent effect in the absence of police instigation or involvement.

[7] We emphasize that the propriety of that decision is not before us in this case and that our opinion is not intended to intimate any view concerning whether the exclusionary rule applies in school disciplinary proceedings.

ings. It is in those proceedings that the acceptability of school officials' conduct will, in effect, be judged, and it is in the outcome of those proceedings that they presumably are most interested. As long as the Chancery Division's ruling on T. L. O.'s suspension continues to govern the high school—and particularly if it is or becomes the general rule in New Jersey—illegal searches and seizures by school officials will be adequately deterred. We are quite convinced that also excluding the evidence from juvenile delinquency proceedings, which fall "outside the offending [officials'] zone of primary interest," *United States* v. *Janis*, 428 U. S., at 458, would produce only marginal deterrence, insufficient to justify the cost to law enforcement efforts. Cf. *id.*, at 453–454; *Stone* v. *Powell*, 428 U. S., at 493–495; *United States* v. *Calandra*, 414 U. S., at 350–352.

On the other hand, if in the long run, the Chancery Division's holding that forbids the use of illegally seized evidence in school disciplinary proceedings does not retain its authority, we have substantial doubt that teachers and other officials will be appreciably restrained in the future by a decision that the Fourth Amendment prohibits the use of probative but illegally obtained evidence in juvenile delinquency proceedings. In such circumstances, school authorities would have little reason or incentive to forgo searches insofar as the utility of the evidence in school disciplinary proceedings is concerned. It may be that a teacher would be deterred from searching by school rules and policies governing such searches, violation of which may affect the assessment of his performance by his superiors, or even result in charges being filed against him. But if the evidence is admissible in internal proceedings against the student, it seems unlikely that suppressing the evidence in juvenile delinquency or criminal proceedings would produce the appreciable deterrent consequences necessary to outweigh society's interest in sanctioning crimes by students that unquestionably have been exposed by school officials, albeit by officials acting contrary to

the applicable constitutional, statutory, or administrative rules governing the performance of the tasks for which they have been hired.

Assuming, as we do, that the vice-principal violated T. L. O.'s Fourth Amendment rights, we do not hold that she should not have a remedy for this violation, but only that she is not entitled to have the evidence suppressed in her juvenile delinquency proceeding. The exclusionary rule is designed to deter future violations of the Fourth Amendment, particularly infringements on the rights of the innocent who, without the rule, might be subjected to an unacceptable regime of unjustified searches. Under the rationale of the exclusionary rule as it has developed, T. L. O. herself, about whom reliable evidence has come to light showing that she was illegally selling drugs to her classmates, has little entitlement to claim that the evidence should not be used against her. The violation, if it occurred, has already been completed. The admission of the evidence against T. L. O. is not itself a violation of the Fourth Amendment; and excluding it would be a remedy designed not to benefit her, but to forestall similar lawless invasions of the rights of others.

We do not leave T. L. O., others like her, or wholly innocent persons without remedies to vindicate their Fourth Amendment rights. T. L. O. sought judicial review of her suspension and successfully urged that her Fourth Amendment rights had been violated. We assume that resort to the courts will continue to be available to enforce any local, state, or federal standards applicable to searches and seizures carried out by school authorities. Public-school teachers and administrators who know or should have known that their conduct is contrary to the Fourth Amendment will also be subject to liability under 42 U. S. C. § 1983, and they may be subject to action under state law as well. We do not, however, discern any satisfactory predicate for excluding from state juvenile delinquency or criminal proceedings the

product of in-school searches carried out by school authorities without participation by law enforcement personnel.

The judgment of the Supreme Court of New Jersey is accordingly reversed.

So ordered.

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: OCT 26 1984

Recirculated: _____

Adapts "reasonable grounds for suspecting" a violation of Rules or of law – 15

Fourth applies to ~~school~~ protect students – 7,

Reversed 10/26

1st DRAFT

See the majority rule – n 2 p 6 (good statement)

Special interest in maintaining order – 12

SUPREME COURT OF THE UNITED STATES

No. 83–712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[October ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

We granted certiorari in this case to examine the appropriateness of the exclusionary rule as a remedy for searches carried out in violation of the Fourth Amendment by public school authorities. Our consideration of the proper application of the Fourth Amendment to the public schools, however, has led us to conclude that the search that gave rise to the case now before us did not violate the Fourth Amendment. Accordingly, we here address only the questions of the proper standard for assessing the legality of searches conducted by public school officials and the application of that standard to the facts of this case.

I

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, New Jersey, discovered two girls smoking in a lavatory. One of the two girls was the respondent T. L. O., who at that time was a 14-year-old high school freshman. Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the principal's office, where they met with Assistant Vice Principal Theodore Choplick. In response to questioning by Mr. Choplick, T. L. O.'s companion admitted that she had violated the rule. T. L. O., however, denied that she had been smoking in the lavatory and claimed that she did not smoke at all.

Mr. Choplick asked T. L. O. to come into his private office and demanded to see her purse. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T. L. O. as he accused her of having lied to him. As he reached into the purse for the cigarettes, Mr. Choplick also noticed a package of cigarette rolling papers. In his experience, possession of rolling papers by high school students was closely associated with the use of marihuana. Suspecting that a closer examination of the purse might yield further evidence of drug use, Mr. Choplick proceeded to search the purse thoroughly. The search revealed a small amount of marihuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of students who owed T. L. O. money, and two letters that implicated T. L. O. in marihuana dealing.

Mr. Choplick notified T. L. O.'s mother and the police, and turned the evidence of drug dealing over to the police. At the request of the police, T. L. O.'s mother took her daughter to police headquarters, where T. L. O. confessed that she had been selling marihuana at the high school. On the basis of her confession and the evidence seized by Mr. Choplick, the state brought delinquency charges against T. L. O. in the Juvenile and Domestic Relations Court of Middlesex County.[1] Contending that Mr. Choplick's search of her purse violated the Fourth Amendment, T. L. O. moved to suppress the evidence found in her purse as well her confession, which, she argued, was tainted by the allegedly unlawful search. The juvenile court denied the motion to sup-

Delinquency suit in Juvenile & Domestic Rel. Ct.

[1]T. L. O. also received a three-day suspension from school for smoking cigarettes in an nonsmoking area and a seven-day suspension for possession of marihuana. On T. L. O.'s motion, the Superior Court of New Jersey, Chancery Division, set aside the seven-day suspension on the ground that it was based on evidence seized in violation of the Fourth Amendment. [T. L. O.] v. *Piscataway Bd. of Educ.*, No. C.2865–79 (Super. Ct. N. J., Ch. Div., Mar. 31, 1980). The Board of Education apparently did not appeal the decision of the Chancery Division.

press. *State in the Interest of* T. L. O., 178 N. J. Super. 329, 428 A. 2d 1327 (1980). Although the court concluded that the Fourth Amendment did apply to searches carried out by school officials, it held that

> "a school official may properly conduct a search of a student's person if the official has 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).

Applying this standard, the court concluded that the search conducted by Mr. Choplick was a reasonable one. The initial decision to open the purse was justified by Mr. Choplick's well-founded suspicion that T. L. O. had violated the rule forbidding smoking in the lavatory. Once the purse was open, evidence of marihuana violations was in plain view, and Mr. Choplick was entitled to conduct a thorough search to determine the nature and extent of T. L. O.'s drug-related activities. *Id.*, at 343, 428 A. 2d, at 1334. Having denied the motion to suppress, the court on March 23, 1981 found T. L. O. to be a delinquent and on January 8, 1982 sentenced her to a year's probation.

On appeal from the final judgment of the juvenile court, a divided Appellate Division affirmed the trial court's finding that there had been no Fourth Amendment violation, but vacated the adjudication of delinquency and remanded for a determination whether T. L. O. had knowingly and voluntarily waived her Fifth Amendment rights before confessing. *State in the Interest of T. L. O.*, 185 N. J. Super. 279, 448 A. 2d 493 (1982). T. L. O. again appealed the Fourth Amendment ruling, and the Supreme Court of New Jersey reversed the judgment of the Appellate Division and ordered the suppression of the evidence found in T. L. O.'s purse. *State in the Interest of T. L. O.*, 94 N. J. 331, 463 A. 2d 934 (1983).

The New Jersey Supreme Court agreed with the lower courts that the Fourth Amendment applies to searches conducted by school officials. The court also rejected the State of New Jersey's argument that the exclusionary rule should not be employed to prevent the use in juvenile proceedings of evidence unlawfully seized by school officials. Declining to consider whether applying the rule to the fruits of searches by school officials would have any deterrent value, the court held simply that the precedents of this Court establish that "if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings." 94 N. J., at 341, 463 A. 2d, at 939 (footnote omitted).

With respect to the question of the legality of the search before it, the court agreed with the Juvenile Court that a warrantless search by a school official does not violate the Fourth Amendment so long as the 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 941–942. However, the court, with two justices dissenting, sharply disagreed with the Juvenile Court's conclusion that the search of the purse was reasonable. According to the majority, the contents of T. L. O.'s purse had no bearing on the accusation against T. L. O., for possession of cigarettes (as opposed to smoking them in the lavatory) did not violate school rules, and a mere desire for evidence that would impeach T. L. O.'s claim that she did not smoke cigarettes could not justify the search. Moreover, even if a reasonable suspicion that T. L. O. had cigarettes in her purse would justify a search, Mr. Choplick had no such suspicion, as no one had furnished him with any specific information that there were cigarettes in the purse. Finally, leaving aside the question whether Mr. Choplick was justified in opening the purse, the court found that the evidence of drug use that he found inside did not justify the extensive "rummaging" through T. L. O.'s papers and effects that followed. *Id.*, at 347, 463 A. 2d, at 942.

We granted the State of New Jersey's petition for certiorari. 464 U. S. —— (1983). Although the State had argued in the Supreme Court of New Jersey that the search of T. L. O.'s purse did not violate the Fourth Amendment, the petition for certiorari raised only the question whether the exclusionary rule should operate to bar consideration in juvenile delinquency proceedings of evidence unlawfully seized by a school official without the involvement of law enforcement officers. When this case was first argued last Term, the State conceded for the purpose of argument that the standard devised by the New Jersey Supreme Court for determining the legality of school searches was appropriate and that the court had correctly applied that standard; the State contended only that the remedial purposes of the exclusionary rule were not well served by applying it to searches conducted by public authorities not primarily engaed in law enforcement.

Last Term — State's position

Although we originally granted certiorari to decide the issue of the appropriate remedy in juvenile court proceedings for unlawful school searches, our doubts regarding the wisdom of deciding that question in isolation from the broader question of what limits, if any, the Fourth Amendment places on the activities of school authorities prompted us to order reargument on that question.[2] Having heard argument on

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[2] State and federal courts considering these questions have struggled to accommodate the interests protected by the Fourth Amendment and the interest of the States in providing a safe environment conducive to education in the public schools. Some courts have resolved the tension between these interests by giving full force to one or the other side of the balance. Thus, in a number of cases courts have held that school officials conducting in-school searches of students are private parties acting *in loco parentis* and are therefore not subject to the constraints of the Fourth Amendment. See, *e. g.*, *D. R. C.* v. *State*, 646 P. 2d 252 (Alaska App. 1982); *In re G.*, 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970); *In re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969); *R. C. M.* v. *State*, 660 S. W. 2d 552 (Tex. App. 1983); *Mercer* v. *State*, 450 S. W. 2d 715 (Tex. Civ. App. 1970). At least one court has held, on the other hand, that the Fourth Amendment

the legality of the search of T. L. O.'s purse, we are satisfied that the search did not violate the Fourth Amendment.

II

In determining whether the search at issue in this case violated the Fourth Amendment, we are faced initially with the

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applies in full to in-school searches by school officials and that a search conducted without probable cause is unreasonable, see *State* v. *Mora*, 307 So. 2d 317 (La.), *vacated*, 423 U. S. 809 (1975), *on remand*, 330 So. 2d 900 (La. 1976); others have held or suggested that the probable-cause standard is applicable at least where the police are involved in a search, see *M.* v. *Board of Educ. Ball-Chatham Community Unit School Dist. No. 5*, 429 F. Supp. 288, 292 (SD Ill. 1977); *Picha* v. *Wilgos*, 410 F. Supp. 1214, 1219–1221 (ND Ill. 1976); *State* v. *Young*, 234 Ga. 488, 498, 216 S. E. 2d 586, 594 (1975), or where the search is highly intrusive, see *M. M.* v. *Anker*, 607 F. 2d 588, 589 (CA2 1979).

The majority of courts that have addressed the issue of the Fourth Amendment in the schools have, like the Supreme Court of New Jersey in this case, reached a middle position: the Fourth Amendment applies to searches conducted by school authorities, but the special needs of the school environment require assessment of the legality of such searches against a standard less exacting than that of probable cause. These courts have, by and large, upheld warrantless searches by school authorities provided that they are supported by a reasonable suspicion that the search will uncover evidence of an infraction of school disciplinary rules or a violation of the law. See, *e. g.*, *Tarter* v. *Raybuck*, No. 83-3174 (CA6, Aug. 31, 1984); *Bilbrey* v. *Brown*, 738 F. 2d 1462 (CA9 1984); *Horton* v. *Goose Creek Independent School Dist.*, 690 F. 2d 470 (CA5 1982); *Bellnier* v. *Lund*, 438 F. Supp. 47 (NDNY 1977); *M.* v. *Board of Educ. Ball-Chatham Community Unit School Dist. No. 5*, *supra*; *In re W.*, 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973); *State* v. *Baccino* 282 A. 2d 869 (Del. Super. 1971); *State* v. *D. T. W.*, 425 So. 2d 1383 (Fla. Dist. Ct. App. 1983); *State* v. *Young*, *supra*; *In re J. A.* 85 Ill. App. 3d 567, 406 N. E. 2d 958 (1980); *People* v. *Ward*, 62 Mich. App. 46, 233 N. W. 2d 180 (1975); *Doe* v. *State*, 88 N. M. 827, 540 P. 2d 827 (App. 1975); *People* v. *D.*, 34 N. Y. 2d 483, 358 N. Y. S. 2d 403, 315 N. E. 2d 466 (1974); *State* v. *McKinnon*, 88 Wash. 2d 75, 558 P. 2d 781 (1977); *In re L. L.*, 90 Wis. 2d 585, 280 N. W. 2d 343 (App. 1979).

Although few have considered the matter, courts have also split over whether the exclusionary rule is an appropriate remedy for Fourth Amendment violations committed by school authorities. The Georgia courts have held that although the Fourth Amendment applies to the

question whether that Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. We hold that it does.

It is now beyond dispute that "the Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers." *Elkins* v. *United States*, 364 U. S. 206, 213 (1960); accord *Mapp* v. *Ohio*, 367 U. S. 643 (1961); *Wolf* v. *Colorado*, 338 U. S. 25 (1949). Equally indisputable is the proposition that the Fourteenth Amendment protects the rights of students against encroachment by public school officials:

> "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." *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U. S. 624, 637 (1943).

These two propositions—that the Fourth Amendment applies to the States through the Fourteenth Amendment, and that the actions of public school officials are subject to the limits placed on State action by the Fourteenth Amendment—might appear sufficient to answer the suggestion that the Fourth Amendment does not proscribe unreasonable

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schools, the exclusionary rule does not. See, *e. g.*, *State* v. *Young*, *supra*; *State* v. *Lamb*, 137 Ga. App. 437, 224 S. E. 2d 51 (1976). Other jurisdictions have applied the rule to exclude the fruits of unlawful school searches from criminal trials and delinquency proceedings. See *State* v. *Mora*, *supra*; *People* v. *D.*, *supra*.

searches by school officials. On reargument, however, the State of New Jersey has argued that the history of the Fourth Amendment indicates that the Amendment was intended to regulate only searches and seizures carried out by law enforcement officers; accordingly, although public school officials are concededly State agents for purposes of the Fourteenth Amendment, the Fourth Amendment creates no rights enforceable against them.[5]

It may well be true that the evil toward which the Fourth Amendment was primarily directed was the resurrection of the pre-Revolutionary practice of using general warrants or "writs of assistance" to authorize searches for contraband by officers of the Crown. See *United States* v. *Chadwick*, 433 U. S. 1, 7–8 (1977); *Boyd* v. *United States*, 116 U. S. 616, 624–629 (1886). But this Court has never limited the Amendment's prohibition on unreasonable searches and seizures to operations conducted by the police. Rather, the Court has long spoken of the Fourth Amendment's strictures as restraints imposed upon "governmental action"—that is, "upon the activities of sovereign authority." *Burdeau* v. *McDowell*, 256 U. S. 465, 475 (1921). Accordingly, we have held the Fourth Amendment applicable to the activities of civil as well as criminal authorities: building inspectors, see *Camara* v. *Municipal Court*, 387 U. S. 523, 528 (1967), OSHA inspectors, see *Marshall* v. *Barlow's, Inc.*, 436 U. S. 307, 312–313 (1978), and even firemen entering privately owned premises to battle a fire, see *Michigan* v. *Tyler*, 436 U. S. 499, 506 (1978), are all subject to the restraints imposed by the Fourth Amendment. As we observed in *Camara* v. *Municipal Court*, *supra*, "[t]he basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals

[5] Cf. *Ingraham* v. *Wright*, 430 U. S. 651 (holding that the Eighth Amendment's prohibition of cruel and unusual punishment applies only to punishments imposed after criminal convictions and hence does not apply to the punishment of schoolchildren by public school officials).

against arbitrary invasions by governmental officials." 387 U. S., at 528. Because the individual's interest in privacy and personal security "suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards," *Marshall* v. *Barlow's*, 436 U. S., at 312–313, it would be "anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara* v. *Municipal Court*, 387 U. S., at 528.

Notwithstanding the general applicability of the Fourth Amendment to the activities of civil authorities, a few courts have concluded that school officials are exempt from the dictates of the Fourth Amendment by virtue of the special nature of their authority over schoolchildren. See, *e. g.*, *R. C. M.* v. *State*, 660 S. W. 2d 552 (Tex. App. 1983). Teachers and school administrators, it is said, act *in loco parentis* in their dealings with students: their authority is that of the parent, not the state, and is therefore not subject to the limits of the Fourth Amendment. *Ibid.*

Such reasoning is in tension with contemporary reality and the teachings of this Court. We have held school officials subject to the commands of the First Amendment, see *Tinker* v. *Des Moines Independent Community School District*, 393 U. S. 503 (1969), and the Due Process Clause of the Fourteenth Amendment, see *Goss* v. *Lopez*, *supra*. If school authorities are state actors for purposes of the consitutional guarantees of freedom of expression and due process, it is difficult to understand why they should be deemed to be exercising parental rather than public authority when conducting searches of their students. More generally, the Court has recognized that "the concept of parental delegation" as a source of school authority is not entirely "consonant with compulsory education laws." *Ingraham* v. *Wright*, 430 U. S., at 662. Today's public school officials do not merely exercise authority voluntarily conferred on them by individ-

ual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies. See, *e. g.*, the opinion in *State in the Interest of T. L. O.*, 94 N. J. 331, 343, 463 A. 2d 934, 940 (1983), describing the New Jersey statutes regulating school disciplinary policies and establishing the authority of school officials over their students. In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the state, not merely as surrogates for the parent, and they cannot claim the parent's immunity from the strictures of the Fourth Amendment.

III

To hold that the Fourth Amendment applies to searches conducted by school authorities is only to begin the inquiry into the standards governing such searches. Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place. The 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." *Camara* v. *Municipal Court*, 387 U. S., at 536–537. On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order.

We have recognized that even a limited search of the person is a substantial invasion of privacy. *Terry* v. *Ohio*, 392 U. S., at 24–25. We have also recognized that searches of closed items of personal luggage are intrusions on protected privacy interests, for "the Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view." *United States* v. *Ross*, 456 U. S. 798, 822–823 (1982). A search of a child's person or of a

closed purse or other bag carried on her person,[4] no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy.

Of course, the Fourth Amendment does not protect subjective expectations of privacy that are unreasonable or otherwise "illegitimate." See, *e. g.*, *Hudson* v. *Palmer*, —— U. S. —— (1984); *Rawlings* v. *Kentucky*, 448 U. S. 98 (1980). To receive the protection of the Fourth Amendment, an expectation of privacy must be one that society is "prepared to recognize as legitimate." *Hudson* v. *Palmer*, —— U. S., at ——. The State of New Jersey has argued that because of the pervasive supervision to which children in the schools are necessarily subject, a child has virtually no legitimate expectation of privacy in articles of personal property "unnecessarily" carried into a school. This argument has two factual premises: (1) the fundamental incompatibility of expectations of privacy with the maintenance of a sound educational environment; and (2) the minimal interest of the child in bringing any items of personal property into the school. Both premises are severely flawed.

Although this Court may take notice of the difficulty of maintaining discipline in the public schools today, the situa-

[4] We do not address the question, not presented by this case, whether a schoolchild has a legitimate expectation of privacy in lockers, desks, or other school property provided for the storage of school supplies. Nor do we express any opinion on the standards (if any) governing searches of such areas by school officials or by other public authorities acting at the request of school officials. Compare *Zamora* v. *Pomeroy*, 639 F. 2d 662, 670 (CA10 1981) ("Inasmuch as the school had assumed joint control of the locker it cannot be successfully maintained that the school did not have a right to inspect it."), and *People* v. *Overton*, 24 N. Y. 2d 522, 301 N. Y. S. 2d 479, 249 N. E. 2d 366 (1969) (school administrators have power to consent to search of a student's locker), with *State* v. *Engerud*, 94 N. J. 331, 463 A. 2d 934 (1983) ("We are satisfied that in the context of this case the student had an expectation of privacy in the contents of his locker. . . . For the four years of high school, the school locker is a home away from home. In it the student stores the kind of personal 'effects' protected by the Fourth Amendment.").

tion is not so dire that students in the schools may claim no legitimate expectations of privacy. We have recently recognized that the need to maintain order in a prison is such that prisoners retain no legitimate expectations of privacy in their cells, but it goes almost without saying that "[t]he prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration." *Ingraham* v. *Wright*, 430 U. S., at 669. We are not yet ready to hold that the schools and the prisons need be equated for purposes of the Fourth Amendment.

Nor does the State's suggestion that children have no legitimate need to bring personal property into the schools seem well-anchored in reality. Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessaries of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries. Finally, students may have perfectly legitimate reasons to carry with them articles of property needed in connection with extracurricular or recreational activities. In short, schoolchildren may find it necessary to carry with them a variety of legitimate, non-contraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds.

Against the child's interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems. See generally NIE, U. S. Dep't of Education, Violent Schools—Safe Schools: The Safe School Study Report to the Congress (1978). Even in schools that have been spared the most severe disciplinary

problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult. "Events calling for discipline are frequent occurrences and sometimes require immediate, effective action." *Goss* v. *Lopez*, 419 U. S. 565, 580 (1975). Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship. See *id.*, at 582–583; *Ingraham* v. *Wright*, 430 U. S. 651, 680–682 (1977).

How, then, should we strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place? It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools. Just as we have in other cases dispensed with the warrant requirement when "the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search," *Camara* v. *Municipal Court*, 387 U. S., at 533, we hold today that school officials need not obtain a warrant before searching a student who is under their authority.

The school setting also requires some modification of the level of suspicion of illicit activity needed to justify a search. Ordinarily, a search—even one that may permissibly be carried out without a warrant—must be based upon "probable cause" to believe that a violation of the law has occurred. See, *e. g.*, *Almeida-Sanchez* v. *United States*, 413 U. S. 266,

273; *Sibron* v. *New York*, 392 U. S. 40, 62–66 (1968). However, "probable cause" is not an irreducible requirement of a valid search. The fundamental command of the Fourth Amendment is that searches and seizures be reasonable, and although "both the concept of probable cause and the requirement of a warrant bear on the reasonableness of a search, . . . in certain limited circumstances neither is required." *Almeida-Sanchez* v. *United States*, *supra*, at 277 (POWELL, J., concurring). Thus, we have in a number of cases recognized the legality of searches and seizures based on suspicions that, although "reasonable," do not rise to the level of probable cause. See, *e. g.*, *Terry* v. *Ohio*, 392 U. S. 1 (1968); *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 881 (1975); *Delaware* v. *Prouse*, 440 U. S. 648, 654–655 (1979); *United States* v. *Martinez-Fuerte*, 428 U. S. 543 (1976); cf. *Camara* v. *Municipal Court*, 387 U. S., at 534–539. Where a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause, we have not hesitated to adopt such a standard.

We join the majority of courts that have examined this issue[5] in concluding that the 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. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider "whether the . . . action was justified at its inception," *Terry* v. *Ohio*, 392 U. S., at 20; second, one must determine whether the search as actually conducted "was reasonably related in scope

[5] See cases cited *supra* n. 2.

to the circumstances which justified the interference in the first place," *ibid.* Under ordinary circumstances, a search of a student by a teacher or other school official[6] will be "justified at its inception" 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.[7] Such a search is permissible in its scope when its intrusiveness is reasonably related to its objectives.

This standard will, we trust, neither unduly burden the efforts of school authorities to maintain order in their schools nor authorize unrestrained intrusions upon the privacy of schoolchildren. By focusing attention on the question of reasonableness, the standard will spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their

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[6] We here consider only searches carried out by school authorities acting alone and on their own authority. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question. Compare *Picha* v. *Wilgos*, 410 F. Supp. 1214, 1219–1221 (ND Ill. 1976) (holding probable cause standard applicable to searches involving the police).

[7] We do not decide whether individualized suspicion is an essential element of the reasonableness standard we adopt for searches by school authorities. In other contexts, however, we have held that although "some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure[,] . . . the Fourth Amendment imposes no irreducible requirement of such suspicion." *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 560–561 (1976). See also *Camara* v. *Municipal Court*, 387 U. S. 523 (1967). Exceptions to the requirement of individualized suspicion are generally appropriate only where the privacy interests implicated by a search are minimal and where "other 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.'" *Delaware* v. *Prouse*, 440 U. S. 648, 654–655 (1979) (citation omitted). Because the search of T. L. O.'s purse was based upon an individualized suspicion that she had violated school rules, see *infra*, we need not consider the circumstances that might justify school authorities in conducting searches unsupported by individualized suspicion.

conduct according to the dictates of reason and common sense. At the same time, the reasonableness standard should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools.

IV

There remains the question of the legality of the search in this case. We recognize that the "reasonable grounds" standard applied by the New Jersey Supreme Court in its consideration of this question is not substantially different from the standard that we have adopted today. Nonetheless, we believe that the New Jersey court's application of that standard to strike down the search of T. L. O.'s purse reflects a somewhat crabbed notion of reasonableness. Our review of the facts surrounding the search leads us to conclude that the search was in no sense unreasonable for Fourth Amendment purposes.[5]

The incident that gave rise to this case actually involved two separate searches, with the first—the search for cigarettes—providing the suspicion that gave rise to the second—the search for marihuana. Although it is the fruits of the second search that are at issue here, the validity of the search for marihuana must depend on the reasonableness of the initial search for cigarettes, as there would have been no reason to suspect that T. L. O. possessed marihuana had the first search not taken place. Accordingly, it is to the search for cigarettes that we first turn our attention.

The New Jersey Supreme Court pointed to two grounds for its holding that the search for cigarettes was unreasonable. First, the Court observed that possession of cigarettes was not in itself illegal or a violation of school rules. Because

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[5] Of course, New Jersey may insist on a more demanding standard under its own construction or statutes. In that case, its courts would not purport to be applying the Fourth Amendment when they invalidate a search.

constitution

the contents of T. L. O.'s purse would therefore have "no direct bearing on the infraction" of which she was accused (smoking in a lavatory where smoking was prohibited), there was no reason to search her purse. Second, even assuming that a search of T. L. O.'s purse might under some circumstances be reasonable in light of the accusation made against T. L. O., the New Jersey Court concluded that Mr. Choplick in this particular case had no reasonable grounds to suspect that T. L. O. had cigarettes in her purse. At best, according to the court, Mr. Choplick had "a good hunch." 94 N. J., at 347, 463 A. 2d, at 942.

Both these conclusions are implausible. T. L. O. had been accused of smoking, and had denied the accusation in the strongest possible terms when she stated that she did not smoke at all. Surely it cannot be said that under these circumstances, T. L. O.'s possession of cigarettes would be irrelevant to the charges against her or to her response to those charges. T. L. O.'s possession of cigarettes, once it was discovered, would both corroborate the report that she had been smoking and undermine the credibility of her defense to the charge of smoking. To be sure, the discovery of the cigarettes would not prove that T. L. O. had been smoking in the lavatory; nor would it, strictly speaking, necessarily be inconsistent with her claim that she did not smoke at all. But it is universally recognized that evidence, to be relevant to an inquiry, need not conclusively prove the ultimate fact in issue, 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." Fed. Rule Evid. 401. The relevance of T. L. O.'s possession of cigarettes to the question whether she had been smoking and to the credibility of her denial that she smoked supplied the necessary "nexus" between the item searched for and the infraction under investigation. See *Warden* v. *Hayden*, 387 U. S. 294, 306–307 (1967). Thus, if Mr. Choplick in fact had a reasonable suspi-

cion that T. L. O. had cigarettes in her purse, the search was justified despite the fact that the cigarettes, if found, would constitute "mere evidence" of a violation. *Ibid.*

Of course, the New Jersey Supreme Court also held that Mr. Choplick had no reasonable suspicion that the purse would contain cigarettes. This conclusion is puzzling. A teacher had reported that T. L. O. was smoking in the lavatory. Certainly this report gave Mr. Choplick reason to suspect that T. L. O. was carrying cigarettes with her; and if she did have cigarettes, her purse was the obvious place in which to find them. Mr. Choplick's suspicion that there were cigarettes in the purse was not an "inchoate and unparticularized suspicion or 'hunch,'" *Terry* v. *Ohio*, 392 U. S., at 27; rather, it was the sort of "common-sense conclusion[] about human nature" upon which "practical people"—including government officials—are entitled to rely. *United States* v. *Cortez*, 449 U. S. 411, 418 (1981). Of course, even if the teacher's report were true, T. L. O. *might* not have had a pack of cigarettes with her; she might have borrowed a cigarette from someone else or have been sharing a cigarette with another student. But the requirement of reasonable suspicion is not a requirement of absolute certainty: "sufficient probability, not certainty, is the touchstone of reasonableness under the Fourteenth Amendment . . . ." *Hill* v. *California*, 401 U. S. 797, 804 (1971). Because the hypothesis that T. L. O. was carrying cigarettes in her purse was itself not unreasonable, it is irrelevant that other hypotheses were also consistent with the teacher's accusation.[9] Accord-

[9] T. L. O. also contends that even if it was reasonable for Mr. Choplick to open her purse to look for cigarettes, it was not reasonable for him to reach in and take the cigarettes out of her purse once he found them. Had he not removed the cigarettes from the purse, she asserts, he would not have observed the rolling papers that suggested the presence of marihuana, and the search for marihuana could not have taken place. T. L. O.'s argument is based on the fact that the cigarettes were not "contraband," as no school rule forbade her to have them. Thus, according to T. L. O., the cigarettes were not subject to seizure or confiscation by

ingly, it cannot be said that Mr. Choplick acted unreasonably when he examined T. L. O.'s purse to see if it contained cigarettes.

Our conclusion that Mr. Choplick's decision to open T. L. O.'s purse was reasonable brings us to the question of the further search for marihuana once the pack of cigarettes was located. The suspicion upon which the search for marihuana was founded was provided when Mr. Choplick observed a package of rolling papers in the purse as he removed the pack of cigarettes. Although T. L. O. does not dispute the reasonableness of Mr. Choplick's belief that the rolling papers indicated the presence of marihuana, she does contend that the scope of the search Mr. Choplick conducted exceeded permissible bounds when he seized and read certain letters that implicated T. L. O. in drug dealing activity. This argument, too, is unpersuasive. The discovery of the rolling papers concededly gave rise to a reasonable suspicion that T. L. O. was carrying marihuana as well as cigarettes in her purse. This suspicion justified further exploration of T. L. O.'s purse, which turned up more evidence of drug-related activities: a pipe, a number of plastic bags of the type commonly used to store marihuana, a small quantity of marihuana, and a fairly substantial amount of money. Under these circumstances, it was not unreasonable to extend the search to a separate zippered compartment of the purse; and when a search of that compartment revealed an index card containing a list of "people who owe me money" as well as two letters, the inference that T. L. O. was involved in mari-

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school authorities, and Mr. Choplick was not entitled to take them out of T. L. O.'s purse regardless of whether he was entitled to peer into the purse to see if they were there. Such hairsplitting argumentation has no place in an inquiry addressed to the issue of reasonableness. If Mr. Choplick could permissibly search T. L. O.'s purse for cigarettes, it hardly seems reasonable to suggest that his natural reaction to finding them—picking them up—could be a Constitutional violation. Accordingly, we find that neither in opening the purse nor in reaching into it to remove the cigarettes did Mr. Choplick violate the Fourth Amendment.

huana trafficking was substantial enough to justify Mr. Choplick in examining the letters to determine whether they contained any further evidence. In short, we cannot conclude that the search for marihuana was unreasonable in any respect.

Because the search resulting in the discovery of the evidence of marihuana dealing by T. L. O. was reasonable, the New Jersey Supreme Court's decision to exclude that evidence from T. L. O.'s juvenile delinquency proceedings on Fourth Amendment grounds was erroneous. Accordingly, the judgment of the Supreme Court of New Jersey is

Reversed.

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: _____

Recirculated: 12-20-1984

– pp. 7, 16-18 and stylistic changes throughout –

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[December ——, 1984]

JUSTICE WHITE delivered the opinion of the Court.

We granted certiorari in this case to examine the appropriateness of the exclusionary rule as a remedy for searches carried out in violation of the Fourth Amendment by public school authorities. Our consideration of the proper application of the Fourth Amendment to the public schools, however, has led us to conclude that the search that gave rise to the case now before us did not violate the Fourth Amendment. Accordingly, we here address only the questions of the proper standard for assessing the legality of searches conducted by public school officials and the application of that standard to the facts of this case.

I

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N. J., discovered two girls smoking in a lavatory. One of the two girls was the respondent T. L. O., who at that time was a 14-year-old high school freshman. Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the Principal's office, where they met with Assistant Vice Principal Theodore Choplick. In response to questioning by Mr. Choplick, T. L. O.'s companion admitted that she had violated the rule. T. L. O., however, denied that she had been smoking in the lavatory and claimed that she did not smoke at all.

Reviewed 12/22 BY. I agree with the Justice that the changes do not require a change in our concurring opinion. On the whole, I think that the changes represent

Mr. Choplick asked T. L. O. to come into his private office and demanded to see her purse. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T. L. O. as he accused her of having lied to him. As he reached into the purse for the cigarettes, Mr. Choplick also noticed a package of cigarette rolling papers. In his experience, possession of rolling papers by high school students was closely associated with the use of marihuana. Suspecting that a closer examination of the purse might yield further evidence of drug use, Mr. Choplick proceeded to search the purse thoroughly. The search revealed a small amount of marihuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of students who owed T. L. O. money, and two letters that implicated T. L. O. in marihuana dealing.

Mr. Choplick notified T. L. O.'s mother and the police, and turned the evidence of drug dealing over to the police. At the request of the police, T. L. O.'s mother took her daughter to police headquarters, where T. L. O. confessed that she had been selling marihuana at the high school. On the basis of the confession and the evidence seized by Mr. Choplick, the State brought delinquency charges against T. L. O. in the Juvenile and Domestic Relations Court of Middlesex County.[1] Contending that Mr. Choplick's search of her purse violated the Fourth Amendment, T. L. O. moved to suppress the evidence found in her purse as well her confession, which, she argued, was tainted by the allegedly unlawful search. The Juvenile Court denied the motion to sup-

[1]T. L. O. also received a 3-day suspension from school for smoking cigarettes in a nonsmoking area and a 7-day suspension for possession of marihuana. On T. L. O.'s motion, the Superior Court of New Jersey, Chancery Division, set aside the 7-day suspension on the ground that it was based on evidence seized in violation of the Fourth Amendment. (*T. L. O.*) v. *Piscataway Bd. of Ed.*, No. C.2865-79 (Super. Ct. N. J., Ch. Div., Mar. 31, 1980). The Board of Education apparently did not appeal the decision of the Chancery Division.

press. *State ex rel. T. L. O.*, 178 N. J. Super. 329, 428 A. 2d 1327 (1980). Although the court concluded that the Fourth Amendment did apply to searches carried out by school officials, it held that

> "a school official may properly conduct a search of a student's person if the official has 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).

Applying this standard, the court concluded that the search conducted by Mr. Choplick was a reasonable one. The initial decision to open the purse was justified by Mr. Choplick's well-founded suspicion that T. L. O. had violated the rule forbidding smoking in the lavatory. Once the purse was open, evidence of marihuana violations was in plain view, and Mr. Choplick was entitled to conduct a thorough search to determine the nature and extent of T. L. O.'s drug-related activities. *Id.*, at 343, 428 A. 2d, at 1334. Having denied the motion to suppress, the court on March 23, 1981 found T. L. O. to be a delinquent and on January 8, 1982, sentenced her to a year's probation.

On appeal from the final judgment of the Juvenile Court, a divided Appellate Division affirmed the trial court's finding that there had been no Fourth Amendment violation, but vacated the adjudication of delinquency and remanded for a determination whether T. L. O. had knowingly and voluntarily waived her Fifth Amendment rights before confessing. *State ex rel. T. L. O.*, 185 N. J. Super. 279, 448 A. 2d 493 (1982). T. L. O. appealed the Fourth Amendment ruling, and the Supreme Court of New Jersey reversed the judgment of the Appellate Division and ordered the suppression of the evidence found in T. L. O.'s purse. *State ex rel. T. L. O.*, 94 N. J. 331, 463 A. 2d 934 (1983).

The New Jersey Supreme Court agreed with the lower courts that the Fourth Amendment applies to searches conducted by school officials. The court also rejected the State of New Jersey's argument that the exclusionary rule should not be employed to prevent the use in juvenile proceedings of evidence unlawfully seized by school officials. Declining to consider whether applying the rule to the fruits of searches by school officials would have any deterrent value, the court held simply that the precedents of this Court establish that "if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings." *Id.*, at 341, 463 A. 2d, at 939 (footnote omitted).

With respect to the question of the legality of the search before it, the court agreed with the Juvenile Court that a warrantless search by a school official does not violate the Fourth Amendment so long as the 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 941–942. However, the court, with two justices dissenting, sharply disagreed with the Juvenile Court's conclusion that the search of the purse was reasonable. According to the majority, the contents of T. L. O.'s purse had no bearing on the accusation against T. L. O., for possession of cigarettes (as opposed to smoking them in the lavatory) did not violate school rules, and a mere desire for evidence that would impeach T. L. O.'s claim that she did not smoke cigarettes could not justify the search. Moreover, even if a reasonable suspicion that T. L. O. had cigarettes in her purse would justify a search, Mr. Choplick had no such suspicion, as no one had furnished him with any specific information that there were cigarettes in the purse. Finally, leaving aside the question whether Mr. Choplick was justified in opening the purse, the court held that the evidence of drug use that he saw inside did not justify the extensive "rummaging" through T. L. O.'s papers and effects that followed. *Id.*, at 347, 463 A. 2d, at 942–943.

We granted the State of New Jersey's petition for certiorari. 464 U. S. —— (1983). Although the State had argued in the Supreme Court of New Jersey that the search of T. L. O.'s purse did not violate the Fourth Amendment, the petition for certiorari raised only the question whether the exclusionary rule should operate to bar consideration in juvenile delinquency proceedings of evidence unlawfully seized by a school official without the involvement of law enforcement officers. When this case was first argued last Term, the State conceded for the purpose of argument that the standard devised by the New Jersey Supreme Court for determining the legality of school searches was appropriate and that the court had correctly applied that standard; the State contended only that the remedial purposes of the exclusionary rule were not well served by applying it to searches conducted by public authorities not primarily engaged in law enforcement.

Although we originally granted certiorari to decide the issue of the appropriate remedy in juvenile court proceedings for unlawful school searches, our doubts regarding the wisdom of deciding that question in isolation from the broader question of what limits, if any, the Fourth Amendment places on the activities of school authorities prompted us to order reargument on that question.[2] Having heard argument on

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[2] State and federal courts considering these questions have struggled to accommodate the interests protected by the Fourth Amendment and the interest of the States in providing a safe environment conducive to education in the public schools. Some courts have resolved the tension between these interests by giving full force to one or the other side of the balance. Thus, in a number of cases courts have held that school officials conducting in-school searches of students are private parties acting *in loco parentis* and are therefore not subject to the constraints of the Fourth Amendment. See, *e. g.*, *D. R. C.* v. *State*, 646 P. 2d 252 (Alaska App. 1982); *In re G.*, 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970); *In re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969); *R. C. M.* v. *State*, 660 S. W. 2d 552 (Tex. App. 1983); *Mercer* v. *State*, 450 S. W. 2d 715 (Tex. Civ. App. 1970). At least one court has held, on the other hand, that the Fourth Amendment

the legality of the search of T. L. O.'s purse, we are satisfied that the search did not violate the Fourth Amendment.[3]

II

In determining whether the search at issue in this case violated the Fourth Amendment, we are faced initially with the

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applies in full to in-school searches by school officials and that a search conducted without probable cause is unreasonable, see *State* v. *Mora*, 307 So. 2d 317 (La.), vacated, 423 U. S. 809 (1975), on remand, 330 So. 2d 900 (La. 1976); others have held or suggested that the probable-cause standard is applicable at least where the police are involved in a search, see *M.* v. *Board of Ed. Ball-Chatham Community Unit School Dist. No. 5*, 429 F. Supp. 288, 292 (SD Ill. 1977); *Picha* v. *Wilgos*, 410 F. Supp. 1214, 1219–1221 (ND Ill. 1976); *State* v. *Young*, 234 Ga. 488, 498, 216 S. E. 2d 586, 594 (1975); or where the search is highly intrusive, see *M. M.* v. *Anker*, 607 F. 2d 588, 589 (CA2 1979).

The majority of courts that have addressed the issue of the Fourth Amendment in the schools have, like the Supreme Court of New Jersey in this case, reached a middle position: the Fourth Amendment applies to searches conducted by school authorities, but the special needs of the school environment require assessment of the legality of such searches against a standard less exacting than that of probable cause. These courts have, by and large, upheld warrantless searches by school authorities provided that they are supported by a reasonable suspicion that the search will uncover evidence of an infraction of school disciplinary rules or a violation of the law. See, *e. g.*, *Tarter* v. *Raybuck*, No. 83–3174 (CA6, Aug. 31, 1984); *Bilbrey* v. *Brown*, 738 F. 2d 1462 (CA9 1984); *Horton* v. *Goose Creek Independent School Dist.*, 690 F. 2d 470 (CA5 1982); *Bellnier* v. *Lund*, 438 F. Supp. 47 (NDNY 1977); *M.* v. *Board of Ed. Ball-Chatham Community Unit School Dist. No. 5*, *supra*; *In re W.*, 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973); *State* v. *Baccino* 282 A. 2d 869 (Del. Super. 1971); *State* v. *D. T. W.*, 425 So. 2d 1383 (Fla. Dist. Ct. App. 1983); *State* v. *Young*, *supra*; *In re J. A.*, 85 Ill. App. 3d 567, 406 N. E. 2d 958 (1980); *People* v. *Ward*, 62 Mich. App. 46, 233 N. W. 2d 180 (1975); *Doe* v. *State*, 88 N. M. 827, 540 P. 2d 827 (App. 1975); *People* v. *D.*, 34 N. Y. 2d 483, 358 N. Y. S. 2d 403, 315 N. E. 2d 466 (1974); *State* v. *McKinnon*, 88 Wash. 2d 75, 558 P. 2d 781 (1977); *In re L. L.*, 90 Wis. 2d 585, 280 N. W. 2d 343 (App. 1979).

Although few have considered the matter, courts have also split over whether the exclusionary rule is an appropriate remedy for Fourth Amendment violations committed by school authorities. The Georgia courts have held that although the Fourth Amendment applies to the

question whether that Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. We hold that it does.

It is now beyond dispute that "the Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers." *Elkins* v. *United States*, 364 U. S. 206, 213 (1960); accord, *Mapp* v. *Ohio*, 367 U. S. 643 (1961); *Wolf* v. *Colorado*, 338 U. S. 25 (1949). Equally indisputable is the proposition that the Fourteenth Amendment protects the rights of students against encroachment by public school officials:

> "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

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schools, the exclusionary rule does not. See, *e. g.*, *State* v. *Young*, *supra*; *State* v. *Lamb*, 137 Ga. App. 437, 224 S. E. 2d 51 (1976). Other jurisdictions have applied the rule to exclude the fruits of unlawful school searches from criminal trials and delinquency proceedings. See *State* v. *Mora*, *supra*; *People* v. *D.*, *supra*.

[1] In holding that the search of T. L. O.'s purse did not violate the Fourth Amendment, we do not, as JUSTICE STEVENS suggests, see *post*, at ——, implicitly determine that the exclusionary rule applies to the fruits of unlawful searches conducted by school authorities. The question whether evidence should be excluded from a criminal proceeding involves two discrete inquiries: whether the evidence was seized in violation of the Fourth Amendment, and whether the exclusionary rule is the appropriate remedy for the violation. Neither question is logically antecedent to the other, for a negative answer to either question is sufficient to dispose of the case. Thus, our determination that the search at issue in this case did not violate the Fourth Amendment implies no particular resolution of the question of the applicability of the exclusionary rule.

discount important principles of our government as mere platitudes." *West Virginia State Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 637 (1943).

These two propositions—that the Fourth Amendment applies to the States through the Fourteenth Amendment, and that the actions of public school officials are subject to the limits placed on state action by the Fourteenth Amendment—might appear sufficient to answer the suggestion that the Fourth Amendment does not proscribe unreasonable searches by school officials. On reargument, however, the State of New Jersey has argued that the history of the Fourth Amendment indicates that the Amendment was intended to regulate only searches and seizures carried out by law enforcement officers; accordingly, although public school officials are concededly state agents for purposes of the Fourteenth Amendment, the Fourth Amendment creates no rights enforceable against them.[4]

It may well be true that the evil toward which the Fourth Amendment was primarily directed was the resurrection of the pre-Revolutionary practice of using general warrants or "writs of assistance" to authorize searches for contraband by officers of the Crown. See *United States* v. *Chadwick*, 433 U. S. 1, 7–8 (1977); *Boyd* v. *United States*, 116 U. S. 616, 624–629 (1886). But this Court has never limited the Amendment's prohibition on unreasonable searches and seizures to operations conducted by the police. Rather, the Court has long spoken of the Fourth Amendment's strictures as restraints imposed upon "governmental action"—that is, "upon the activities of sovereign authority." *Burdeau* v. *McDowell*, 256 U. S. 465, 475 (1921). Accordingly, we have held the Fourth Amendment applicable to the activities of civil as well as criminal authorities: building inspectors, see

[4] Cf. *Ingraham* v. *Wright*, 430 U. S. 651 (1977) (holding that the Eighth Amendment's prohibition of cruel and unusual punishment applies only to punishments imposed after criminal convictions and hence does not apply to the punishment of schoolchildren by public school officials).

Camara v. *Municipal Court*, 387 U. S. 523, 528 (1967), OSHA inspectors, see *Marshall* v. *Barlow's, Inc.*, 436 U. S. 307, 312–313 (1978), and even firemen entering privately owned premises to battle a fire, see *Michigan* v. *Tyler*, 436 U. S. 499, 506 (1978), are all subject to the restraints imposed by the Fourth Amendment. As we observed in *Camara* v. *Municipal Court*, *supra*, "[t]he basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." 387 U. S., at 528. Because the individual's interest in privacy and personal security "suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards," *Marshall* v. *Barlow's, Inc.*, *supra*, at 312–313, it would be "anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara* v. *Municipal Court*, 387 U. S., at 530.

Notwithstanding the general applicability of the Fourth Amendment to the activities of civil authorities, a few courts have concluded that school officials are exempt from the dictates of the Fourth Amendment by virtue of the special nature of their authority over schoolchildren. See, *e. g.*, *R. C. M.* v. *State*, 660 S. W. 2d 552 (Tex. App. 1983). Teachers and school administrators, it is said, act *in loco parentis* in their dealings with students: their authority is that of the parent, not the State, and is therefore not subject to the limits of the Fourth Amendment. *Ibid.*

Such reasoning is in tension with contemporary reality and the teachings of this Court. We have held school officials subject to the commands of the First Amendment, see *Tinker* v. *Des Moines Independent Community School District*, 393 U. S. 503 (1969), and the Due Process Clause of the Fourteenth Amendment, see *Goss* v. *Lopez*, 419 U. S. 565 (1975). If school authorities are state actors for purposes of the

consitutional guarantees of freedom of expression and due process, it is difficult to understand why they should be deemed to be exercising parental rather than public authority when conducting searches of their students. More generally, the Court has recognized that "the concept of parental delegation" as a source of school authority is not entirely "consonant with compulsory education laws." *Ingraham* v. *Wright*, 430 U. S. 651, 662 (1977). Today's public school officials do not merely exercise authority voluntarily conferred on them by individual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies. See, *e. g.*, the opinion in *State ex rel. T. L. O.*, 94 N. J., at 343, 463 A. 2d, at 934, 940, describing the New Jersey statutes regulating school disciplinary policies and establishing the authority of school officials over their students. In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents' immunity from the strictures of the Fourth Amendment.

III

To hold that the Fourth Amendment applies to searches conducted by school authorities is only to begin the inquiry into the standards governing such searches. Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place. The 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." *Camara* v. *Municipal Court*, *supra*, at 536–537. On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order.

We have recognized that even a limited search of the person is a substantial invasion of privacy. *Terry* v. *Ohio*, 392 U. S. 1, 24–25 (1967). We have also recognized that searches of closed items of personal luggage are intrusions on protected privacy interests, for "the Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view." *United States* v. *Ross*, 456 U. S. 798, 822–823 (1982). A search of a child's person or of a closed purse or other bag carried on her person,[5] no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy.

Of course, the Fourth Amendment does not protect subjective expectations of privacy that are unreasonable or otherwise "illegitimate." See, *e. g.*, *Hudson* v. *Palmer*, 468 U. S. —— (1984); *Rawlings* v. *Kentucky*, 448 U. S. 98 (1980). To receive the protection of the Fourth Amendment, an expectation of privacy must be one that society is "prepared to recognize as legitimate." *Hudson* v. *Palmer*, *supra*, at ——. The State of New Jersey has argued that because of the pervasive supervision to which children in the schools are necessarily subject, a child has virtually no legitimate expectation of privacy in articles of personal property "unnecessarily"

[5] We do not address the question, not presented by this case, whether a schoolchild has a legitimate expectation of privacy in lockers, desks, or other school property provided for the storage of school supplies. Nor do we express any opinion on the standards (if any) governing searches of such areas by school officials or by other public authorities acting at the request of school officials. Compare *Zamora* v. *Pomeroy*, 639 F. 2d 662, 670 (CA10 1981) ("Inasmuch as the school had assumed joint control of the locker it cannot be successfully maintained that the school did not have a right to inspect it."), and *People* v. *Overton*, 24 N. Y. 2d 522, 249 N. E. 2d 366 (1969) (school administrators have power to consent to search of a student's locker), with *State* v. *Engerud*, 94 N. J. 331, 348, 463 A. 2d 934, 943 (1983) ("We are satisfied that in the context of this case the student had an expectation of privacy in the contents of his locker. . . . For the four years of high school, the school locker is a home away from home. In it the student stores the kind of personal 'effects' protected by the Fourth Amendment").

carried into a school. This argument has two factual premises: (1) the fundamental incompatibility of expectations of privacy with the maintenance of a sound educational environment; and (2) the minimal interest of the child in bringing any items of personal property into the school. Both premises are severely flawed.

Although this Court may take notice of the difficulty of maintaining discipline in the public schools today, the situation is not so dire that students in the schools may claim no legitimate expectations of privacy. We have recently recognized that the need to maintain order in a prison is such that prisoners retain no legitimate expectations of privacy in their cells, but it goes almost without saying that "[t]he prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration." *Ingraham* v. *Wright*, 430 U. S., at 669. We are not yet ready to hold that the schools and the prisons need be equated for purposes of the Fourth Amendment.

Nor does the State's suggestion that children have no legitimate need to bring personal property into the schools seem well anchored in reality. Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessaries of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries. Finally, students may have perfectly legitimate reasons to carry with them articles of property needed in connection with extracurricular or recreational activities. In short, schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds.

Against the child's interest in privacy must be set the substantial interest of teachers and administrators in maintain-

ing discipline in the classroom and on school grounds. Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems. See generally 1 NIE, U. S. Dept. of Health, Education and Welfare, Violent Schools—Safe Schools: The Safe School Study Report to the Congress (1978). Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult. "Events calling for discipline are frequent occurrences and sometimes require immediate, effective action." *Goss* v. *Lopez*, 419 U. S., at 580. Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship. See *id.*, at 582–583; *Ingraham* v. *Wright*, 430 U. S., at 680–682.

How, then, should we strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place? It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools. Just as we have in other cases dispensed with the warrant requirement when "the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search," *Camara* v. *Municipal Court*, 387 U. S., at 532–533, we hold today that school officials need

not obtain a warrant before searching a student who is under their authority.

The school setting also requires some modification of the level of suspicion of illicit activity needed to justify a search. Ordinarily, a search—even one that may permissibly be carried out without a warrant—must be based upon "probable cause" to believe that a violation of the law has occurred. See, *e. g.*, *Almeida-Sanchez* v. *United States*, 413 U. S. 266, 273 (1973); *Sibron* v. *New York*, 392 U. S. 40, 62–66 (1968). However, "probable cause" is not an irreducible requirement of a valid search. The fundamental command of the Fourth Amendment is that searches and seizures be reasonable, and although "both the concept of probable cause and the requirement of a warrant bear on the reasonableness of a search, . . . in certain limited circumstances neither is required." *Almeida-Sanchez* v. *United States*, *supra*, at 277 (POWELL, J., concurring). Thus, we have in a number of cases recognized the legality of searches and seizures based on suspicions that, although "reasonable," do not rise to the level of probable cause. See, *e. g.*, *Terry* v. *Ohio*, 392 U. S. 1 (1968); *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 881 (1975); *Delaware* v. *Prouse*, 440 U. S. 648, 654–655 (1979); *United States* v. *Martinez-Fuerte*, 428 U. S. 543 (1976); cf. *Camara* v. *Municipal Court*, 387 U. S., at 534–539. Where a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause, we have not hesitated to adopt such a standard.

We join the majority of courts that have examined this issue[4] in concluding that the 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

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[4] See cases cited in n. 2, *supra*.

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. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider "whether the . . . action was justified at its inception," *Terry* v. *Ohio*, 392 U. S., at 20; 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," *ibid.* Under ordinary circumstances, a search of a student by a teacher or other school official[7] will be "justified at its inception" 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.[8] Such a search will be permissible in its scope

[7] We here consider only searches carried out by school authorities acting alone and on their own authority. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question. Cf. *Picha* v. *Wilcox*, 410 F. Supp. 1214, 1219–1221 (ND Ill. 1976) (holding probable cause standard applicable to searches involving the police).

[8] We do not decide whether individualized suspicion is an essential element of the reasonableness standard we adopt for searches by school authorities. In other contexts, however, we have held that although "some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure[,] . . . the Fourth Amendment imposes no irreducible requirement of such suspicion." *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 560–561 (1976). See also *Camara* v. *Municipal Court*, 387 U. S. 523 (1967). Exceptions to the requirement of individualized suspicion are generally appropriate only where the privacy interests implicated by a search are minimal and where "other 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.'" *Delaware* v. *Prouse*, 440 U. S. 648, 654–655 (1979) (citation omitted). Because the search of T. L. O.'s purse was based upon an individualized suspicion that she had violated school rules, see *infra*, at 16–20, we need not consider the circumstances that might justify school authorities in conducting searches unsupported by individualized suspicion.

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.[9]

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[9] Our reference to the nature of the infraction is not intended as an endorsement of JUSTICE STEVENS' suggestion that some rules regarding student conduct are by nature too "trivial" to justify a search based upon reasonable suspicion. See *post*, at ——. We are unwilling to adopt a standard under which the legality of a search is dependent upon a judge's evaluation of the relative importance of various school rules. The maintenance of discipline in the schools requires not only that students be restrained from assaulting one another, abusing drugs and alcohol, and committing other crimes, but also that students conform themselves to the standards of conduct prescribed by school authorities. We have "repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." *Tinker v. Des Moines Independent Community School Dist.*, 393 U. S. 503, 507 (1969). The promulgation of a rule forbidding specified conduct presumably reflects a judgment on the part of school officials that such conduct is destructive of school order or of a proper educational environment. Absent any suggestion that the rule violates some substantive constitutional guarantee, the courts should, as a general matter, defer to that judgment and refrain from attempting to distinguish between rules that are important to the preservation of order in the schools and rules that are not.

Thus, in most cases, the nature of the infraction will enter into the calculus only to the extent that it affects the likelihood that a search of any given level of intrusiveness will reveal evidence bearing directly on the infraction. Suspicions relating to certain kinds of infractions (for example, violations of rules against the possession or use of particular items) will frequently provide grounds for a search, while suspicions of other infractions (for example, rules regulating conduct unrelated to possession or use of physical objects) will rarely provide any justification for a search. In the ordinary case, a search limited in scope to measures reasonably likely to turn up evidence of an infraction will not be deemed to violate the Constitution. Nonetheless, certain extraordinarily intrusive searches (as, for example, "strip searches" or body cavity searches) may be justifiable, if at all, only when there is reason to believe that they will reveal evidence that a student has violated some criminal law or poses a significant and immediate threat to the safety of fellow students. It is only in the exceptional case in which the authorities have resorted to such extreme measures, however,

This standard will, we trust, neither unduly burden the efforts of school authorities to maintain order in their schools nor authorize unrestrained intrusions upon the privacy of schoolchildren. By focusing attention on the question of reasonableness, the standard will spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense. At the same time, the reasonableness standard should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools.

IV

There remains the question of the legality of the search in this case. We recognize that the "reasonable grounds" standard applied by the New Jersey Supreme Court in its consideration of this question is not substantially different from the standard that we have adopted today. Nonetheless, we believe that the New Jersey court's application of that standard to strike down the search of T. L. O.'s purse reflects a somewhat crabbed notion of reasonableness. Our review of the facts surrounding the search leads us to conclude that the search was in no sense unreasonable for Fourth Amendment purposes.[10]

The incident that gave rise to this case actually involved two separate searches, with the first—the search for ciga-

that the court's perception of the importance of the rule that the school officials have sought to enforce in carrying out a search should be a factor in determining the legality of the search. In most cases, the need to consider the importance of the underlying rule will not arise, because excessively intrusive searches will be prevented by the requirement that any intrusion be justified by a reasonable likelihood that it will reveal evidence of an infraction.

[10] Of course, New Jersey may insist on a more demanding standard under its own Constitution or statutes. In that case, its courts would not purport to be applying the Fourth Amendment when they invalidate a search.

rettes—providing the suspicion that gave rise to the second—the search for marihuana. Although it is the fruits of the second search that are at issue here, the validity of the search for marihuana must depend on the reasonableness of the initial search for cigarettes, as there would have been no reason to suspect that T. L. O. possessed marihuana had the first search not taken place. Accordingly, it is to the search for cigarettes that we first turn our attention.

The New Jersey Supreme Court pointed to two grounds for its holding that the search for cigarettes was unreasonable. First, the court observed that possession of cigarettes was not in itself illegal or a violation of school rules. Because the contents of T. L. O.'s purse would therefore have "no direct bearing on the infraction" of which she was accused (smoking in a lavatory where smoking was prohibited), there was no reason to search her purse.[11] Second, even assuming that a search of T. L. O.'s purse might under some circumstances be reasonable in light of the accusation made against T. L. O., the New Jersey court concluded that Mr. Choplick in this particular case had no reasonable grounds to suspect that T. L. O. had cigarettes in her purse. At best, accord-

[11] JUSTICE STEVENS interprets these statements as a holding that enforcement of the school's smoking regulations was not sufficiently related to the goal of maintaining discipline or order in the school to justify a search under the standard adopted by the New Jersey court. See *post*, at ——. We do not agree that this is an accurate characterization of the New Jersey Supreme Court's opinion. The New Jersey court did not hold that the school's smoking rules were unrelated to the goal of maintaining discipline or order, nor did it suggest that a search that would produce evidence bearing directly on an accusation that a student had violated the smoking rules would be impermissible under the court's reasonable suspicion standard; rather, the court concluded that any evidence a search of T. L. O.'s purse was likely to produce would not have a sufficiently direct bearing on the infraction to justify a search—a conclusion with which we cannot agree for the reasons set forth *infra*, at ——. JUSTICE STEVENS' suggestion that the New Jersey Supreme Court's decision rested on the perceived triviality of the smoking infraction appears to be a reflection of his own views rather than those of the New Jersey court.

ing to the court, Mr. Choplick had "a good hunch." 94 N. J., at 347, 463 A. 2d, at 942.

Both these conclusions are implausible. T. L. O. had been accused of smoking, and had denied the accusation in the strongest possible terms when she stated that she did not smoke at all. Surely it cannot be said that under these circumstances, T. L. O.'s possession of cigarettes would be irrelevant to the charges against her or to her response to those charges. T. L. O.'s possession of cigarettes, once it was discovered, would both corroborate the report that she had been smoking and undermine the credibility of her defense to the charge of smoking. To be sure, the discovery of the cigarettes would not prove that T. L. O. had been smoking in the lavatory; nor would it, strictly speaking, necessarily be inconsistent with her claim that she did not smoke at all. But it is universally recognized that evidence, to be relevant to an inquiry, need not conclusively prove the ultimate fact in issue, 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." Fed. Rule Evid. 401. The relevance of T. L. O.'s possession of cigarettes to the question whether she had been smoking and to the credibility of her denial that she smoked supplied the necessary "nexus" between the item searched for and the infraction under investigation. See *Warden* v. *Hayden*, 387 U. S. 294, 306–307 (1967). Thus, if Mr. Choplick in fact had a reasonable suspicion that T. L. O. had cigarettes in her purse, the search was justified despite the fact that the cigarettes, if found, would constitute "mere evidence" of a violation. *Ibid.*

Of course, the New Jersey Supreme Court also held that Mr. Choplick had no reasonable suspicion that the purse would contain cigarettes. This conclusion is puzzling. A teacher had reported that T. L. O. was smoking in the lavatory. Certainly this report gave Mr. Choplick reason to suspect that T. L. O. was carrying cigarettes with her; and if

she did have cigarettes, her purse was the obvious place in which to find them. Mr. Choplick's suspicion that there were cigarettes in the purse was not an "inchoate and unparticularized suspicion or 'hunch,'" *Terry* v. *Ohio*, 392 U. S., at 27; rather, it was the sort of "common-sense conclusio[n] about human behavior" upon which "practical people"—including government officials—are entitled to rely. *United States* v. *Cortez*, 449 U. S. 411, 418 (1981). Of course, even if the teacher's report were true, T. L. O. *might* not have had a pack of cigarettes with her; she might have borrowed a cigarette from someone else or have been sharing a cigarette with another student. But the requirement of reasonable suspicion is not a requirement of absolute certainty: "sufficient probability, not certainty, is the touchstone of reasonableness under the ~~Fourteenth~~ Fourth Amendment . . . ." *Hill* v. *California*, 401 U. S. 797, 804 (1971). Because the hypothesis that T. L. O. was carrying cigarettes in her purse was itself not unreasonable, it is irrelevant that other hypotheses were also consistent with the teacher's accusation. Accordingly, it cannot be said that Mr. Choplick acted unreasonably when he examined T. L. O.'s purse to see if it contained cigarettes.[12]

[12]T. L. O. contends that even if it was reasonable for Mr. Choplick to open her purse to look for cigarettes, it was not reasonable for him to reach in and take the cigarettes out of her purse once he found them. Had he not removed the cigarettes from the purse, she asserts, he would not have observed the rolling papers that suggested the presence of marihuana, and the search for marihuana could not have taken place. T. L. O.'s argument is based on the fact that the cigarettes were not "contraband," as no school rule forbade her to have them. Thus, according to T. L. O., the cigarettes were not subject to seizure or confiscation by school authorities, and Mr. Choplick was not entitled to take them out of T. L. O.'s purse regardless of whether he was entitled to peer into the purse to see if they were there. Such hairsplitting argumentation has no place in an inquiry addressed to the issue of reasonableness. If Mr. Choplick could permissibly search T. L. O.'s purse for cigarettes, it hardly seems reasonable to suggest that his natural reaction to finding them—picking them up—could be a constitutional violation. We find that neither in opening the purse nor in reaching

Our conclusion that Mr. Choplick's decision to open T. L. O.'s purse was reasonable brings us to the question of the further search for marihuana once the pack of cigarettes was located. The suspicion upon which the search for marihuana was founded was provided when Mr. Choplick observed a package of rolling papers in the purse as he removed the pack of cigarettes. Although T. L. O. does not dispute the reasonableness of Mr. Choplick's belief that the rolling papers indicated the presence of marihuana, she does contend that the scope of the search Mr. Choplick conducted exceeded permissible bounds when he seized and read certain letters that implicated T. L. O. in drug dealing. This argument, too, is unpersuasive. The discovery of the rolling papers concededly gave rise to a reasonable suspicion that T. L. O. was carrying marihuana as well as cigarettes in her purse. This suspicion justified further exploration of T. L. O.'s purse, which turned up more evidence of drug-related activities: a pipe, a number of plastic bags of the type commonly used to store marihuana, a small quantity of marihuana, and a fairly substantial amount of money. Under these circumstances, it was not unreasonable to extend the search to a separate zippered compartment of the purse; and when a search of that compartment revealed an index card containing a list of "people who owe me money" as well as two letters, the inference that T. L. O. was involved in marihuana trafficking was substantial enough to justify Mr. Choplick in examining the letters to determine whether they contained any further evidence. In short, we cannot conclude that the search for marihuana was unreasonable in any respect.

Because the search resulting in the discovery of the evidence of marihuana dealing by T. L. O. was reasonable, the New Jersey Supreme Court's decision to exclude that evidence from T. L. O.'s juvenile delinquency proceedings on

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into it to remove the cigarettes did Mr. Choplick violate the Fourth Amendment.

Fourth Amendment grounds was erroneous. Accordingly, the judgment of the Supreme Court of New Jersey is

Reversed.

very well to Justice Stevens' dissent.

Lee

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: JUN 1 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[June —, 1984]

JUSTICE STEVENS, dissenting.

". . . One nation, under God, indivisible, with liberty and justice for all."

"But, my child, you must remember that there are certain exceptions . . . ."

I

Justice Brandeis was both a great student and a great teacher. It was he who wrote:

> "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead* v. *United States*, 277 U. S. 438, 485 (1928) (dissenting opinion).

Those of us who revere the flag and the ideals for which it stands believe in the power of symbols. Rules of law have a symbolic power that may vastly exceed their utility. Questions about the Fourth Amendment and the exclusionary rule are often answered with utilitarian judgments about its deterrent impact on the behavior of unknown officials in unknown circumstances. That approach results from mistaken priorities. Practical considerations require us to place limits on the ideal application of some of our constitutional values;

You have joined most of BRW's Court opinion — This is Unpersuasive hyperbole.

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such considerations are not, however, the basic motivating rationale for the rules themselves.

Serious practical problems attend the maintenance of discipline in a school setting. Official behavior that would constitute an intolerable intrusion into privacy in a domestic setting may be entirely reasonable in the classroom. Moreover, it is arguable that the manner in which a teacher acquires knowledge of facts that justify the discipline of a student should be irrelevant to the administration of an appropriate punishment. This case, however, does not involve any question concerning a school disciplinary proceeding; a school's authority to take whatever steps are necessary, up to and including the expulsion of a student, in order to protect other students and preserve an appropriate educational environment, is simply not at issue here. The case deals only with an evidentiary question that can arise only in a criminal proceeding after an unconstitutional search and seizure has occurred.

Because it has agreed to hear this case even though the merits of the Fourth Amendment issue are not presented in the State's petition for certiorari, the majority does not tell us what conduct by school officials violates the Fourth Amendment; its decision is made in a kind of vacuum that makes it less than apparent what methods may be used under today's holding to obtain evidence for use in a criminal prosecution. However, a few things are clear about the consequences of today's holding. The majority itself tells us that its holding applies when a school official has "no reasonable grounds" for undertaking a search or seizure. *Ante*, at 6–7, n. 3. Moreover, in determining what a reasonable search or seizure is within the meaning of the Fourth Amendment,[1] judgments as to reasonableness are appropriately informed

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[1] The Fourth Amendment provides, in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."

by the State's broad power to protect minors in its care,[2] and the necessarily ample discretion afforded school officials to maintain an appropriate educational environment.[3] Given these premises, it will likely be the case that only the most abusive search and seizure will cross the line into constitutional unreasonableness. Thus, the random body cavity search, the arbitrary strip search—in short, the tactics of the police state—may well be the kinds of methods for obtaining evidence that are ultimately at issue here.

II

The Court's decision not to apply the exclusionary rule to evidence obtained by school officials in the course of their duties rests on an empirical judgment: "prohibiting the use in the criminal-justice system of evidence obtained in such searches may well have none of the behavioral effects on either school officials or school boards that exclusion of illegally obtained evidence in criminal prosecutions is generally thought to have on the typical law enforcement official." *Ante*, at 9–10. The Court cites no empirical evidence in support of its conclusion; there is none in the record. The Court's assumptions about the sociology of schools may be correct,[4] but they are based not on any principle of law, nor

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[2] See, *e. g.*, *Schall* v. *Martin*, 467 U. S. ——, —— (1984); *McKeiver* v. *Pennsylvania*, 403 U. S. 528, 550 (1971) (plurality opinion); *id.*, at 351–352 (WHITE, J., concurring).

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[4] However, their correctness surely is not clear beyond doubt. The record tells us nothing about the duties or responsibilities of the vice-principal who searched TLO. For all we know, an important part of his job was to refer students who have committed crimes to the authorities and to ensure that they are successfully prosecuted. A number of States have statutes requiring school officials to report certain kinds of criminal conduct by students to the authorities so that they may be prosecuted. See

on anything in the record. Instead, they are premised on five Justices' personal experiences and beliefs.

The problem with this approach has been candidly identified by JUSTICE BLACKMUN: "Like all courts, we face institutional limitations on our ability to gather information about 'legislative facts,' and the exclusionary rule itself has exacerbated the shortage of hard data concerning the behavior of police officers in the absence of such a rule." *United States* v. *Leon*, *ante*, at —— (concurring opinion). This case illustrates the problem. I am unaware of how we have gathered or could gather information about the relevant "legislative facts."[5] That being the case, I think it unwise to make law based on little more than our best guesses.

The rule of *Mapp* v. *Ohio*, 367 U. S. 643 (1961), is perfectly adequate to decide the case before us: "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." *Id.*, at 655. It is true that this holding rested, in part, on its deterrent effect, see *id.*, at 656, and as a general matter it is tolerably clear to me, as it has been to the Court, that the existence of an exclusionary remedy does deter the authorities from violating the Fourth Amendment by sharply reducing their incentive to do so.[6] But beyond that

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Ala. Code § 16-1-24 (Supp. 1983); Cal. Educ. Code § 48902 (West Supp. 1984); Conn. Gen. Stat. § 10-233g (West Supp. 1983); Haw. Rev. Stat. § 296-71 (Supp. 1983); Ill. Rev. Stat., ch. 122, § 10-21.7 (1983); Tenn. Code Ann. § 49-6-4301 (repl. 1983). Thus, in these States school officials have been in effect assigned law enforcement duties. Informal policies to similar effect may be widespread.

[5] Until today, the Court had proceeded with more caution in this area, recognizing the difficulty of gathering data and making empirical judgments as to the deterrent effect of the exclusionary rule. See *Stone* v. *Powell*, 428 U. S. 465, 492 (1976); *United States* v. *Janis*, 428 U. S. 433, 449–458 (1976).

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generalized judgment I have little confidence in our ability to gather "legislative facts" sufficient to engage in the kind of exacting sociological analysis necessary to holdings like that of today's majority.[7] For whatever the limitations on the use of the exclusionary rule in collateral contexts, *ante*, at 7–8, until today, "[t]he Court has not questioned, in the absence of a more efficacious sanction, the continued application of the rule to suppress evidence from the State's case where the Fourth Amendment violation has been deliberate and substantial." *Franks* v. *Delaware*, 438 U. S. 154, 171 (1978).[8] I would not start down the road of creating *ad hoc* exceptions to the rule of *Mapp* v. *Ohio*.

III

It was no accident that in *Mapp* the Court harkened back to Justice Brandeis' *Olmstead* dissent in explaining its holding.[9] The exclusionary rule does have an "overall educative effect." *Stone* v. *Powell*, 428 U. S. 465, 493 (1976). Nowhere would it be more anomalous to deprecate the importance of that effect than in our schools:

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[7] Moreover, one "legislative fact" overlooked by the majority is that its holding may invite abuse and generate litigation, by tempting some law enforcement officials to solicit covertly the aid of school authorities in obtaining evidence that can be used in criminal prosecutions. It was its experience with this same type of abuse—the danger that federal law enforcement officials would seek the aid of state officials not subject to the exclusionary rule in order to obtain evidence—that induced this Court to hold that state officials should be subject to the same exclusionary rule as are federal authorities. See *Mapp*, 367 U. S., at 658. Cf. *Elkins* v. *United States*, 364 U. S. 206 (1960) (rejecting for similar reasons the "silver platter doctrine" which allowed federal courts to admit evidence obtained by state authorities in violation of the Constitution if done without involvement of federal officers).

[8] The Court has consistently held that there is no alternative remedy of demonstrated efficacy to the suppression of evidence. See *Franks*, 438 U. S., at 652–653; *Mapp*, 367 U. S., at 652–653.

[9] See 367 U. S., at 659.

> "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." *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 637 (1943).

Schools are places where we inculcate the values essential to a self-governing citizenry that can responsibly exercise the rights and responsibilities it has under our Constitution.[10] If the Nation's students can be convicted through the use of arbitrary methods destructive of personal liberty, they cannot help but feel that they have been dealt with unfairly.[11] If

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[10] See *Board of Education* v. *Pico*, 457 U. S. 853, 864–865 (1982) (plurality opinion); *id.*, at 876, 880 (BLACKMUN, J., concurring in part and concurring in judgment); *Plyler* v. *Doe*, 457 U. S. 202, 221 (1982); *Tinker* v. *Des Moines School Dist.*, 393 U. S. 503, 507, 511–513 (1969).

[11] Cf. *In re Gault*, 387 U. S. 1, 26–27 (1967) (conviction of juveniles through processes lacking in procedural regularity alienate them by creating an appearance of arbitrariness).

Justice Frankfurter, who did not advocate applying the exclusionary rule to the States, see *Wolf* v. *Colorado*, 338 U. S. 25 (1949), nevertheless respected the warning in Justice Brandeis' *Olmstead* dissent. See *Irvine* v. *California*, 347 U. S. 128, 149 (1954) (dissenting opinion) (footnote omitted) ("Of course it is a loss to the community when a conviction is overturned because the indefensible means by which it was obtained cannot be squared with the commands of due process. A new trial is necessitated, and by reason of the exclusion of evidence derived from the unfair aspects of the prior prosecution a guilty defendant may escape. But the people can avoid such miscarriages of justice. A sturdy, self-respecting democratic community should not put up with lawless police and prosecutors. 'Our people may tolerate many mistakes of both intent and performance, but, with unerring instinct, they know that when any person is intention-

they or their companions are deprived of their liberty through such methods, being left to a speculative and probably unrewarding civil remedy, they cannot but conclude that the ideals of our Constitution are but "a form of words";[12] the belief that ours is a Government of laws and not men and that the Constitution is a fundamental charter of human liberty cannot but be sullied.[13]

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ally deprived of his constitutional rights those responsible have committed no ordinary offense. A crime of this nature, if subtly encouraged by failure to condemn and punish, certainly leads down the road to totalitarianism.' "); *Rochin* v. *California*, 342 U. S. 165, 173–174 (1952) ("It has long since ceased to be true that due process of law is heedless of the means by which otherwise relevant and credible evidence is obtained. . . . [T]he general requirement [is] that States in their prosecutions respect certain decencies of civilized conduct. . . . [T]o sanction the brutal conduct which naturally enough was condemned by the court whose judgment is before us, would be to afford brutality the cloak of law. Nothing would be more calculated to discredit law and thereby to brutalize the temper of a society.").

[12] The *Mapp* Court wrote:

"Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. Were it otherwise, then just as . . . the assurance against unreasonable federal searches and seizures would be 'a form of words,' valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom 'implicit in the concept of ordered liberty.' " 367 U. S., at 655.

[13] JUSTICE BRENNAN has written of an analogous case:

"We do not know what class petitioner was in when the police and dogs burst in, but the lesson the school authorities taught her that day will undoubtedly make a greater impression than the one her teacher had hoped to convey. I would grant certiorari to teach petitioner another lesson: that the Fourth Amendment protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,' and that before police and local officers are permitted to conduct dog-assisted dragnet inspections of public school students, they must obtain a warrant based on sufficient particularized evidence to

If the validity of the Court's holding is to be judged entirely by its deterrent value, the result is a matter of small importance. But if we look to the symbolic value of the holding—if we examine it as a statement about the Constitution's importance to our Nation—then the Court is surely wrong. This is a case in which the Court has an opportunity—at a relatively low cost—to teach our students "that our society attaches serious consequences to violation of constitutional rights." *Stone* v. *Powell*, 428 U. S. 465, 493 (1976). Because I consider that message more important than the preservation of this evidence for use in a criminal proceeding against an errant child, I respectfully dissent.

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establish probable cause to believe a crime has been or is being committed. Schools cannot expect their students to learn the lessons of good citizenship when the school authorities themselves disregard the fundamental principles underpinning our constitutional freedoms." *Doe* v. *Renfrow*, 451 U. S. 1022, 1027–1028 (1981) (BRENNAN, J., dissenting from denial of certiorari).

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I

Justice Brandeis was both a great student and a great teacher. It was he who wrote:

> "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead* v. *United States*, 277 U. S. 438, 485 (1928) (dissenting opinion).

Those of us who revere the flag and the ideals for which it stands believe in the power of symbols. Rules of law have a symbolic power that may vastly exceed their utility. Questions about the Fourth Amendment and the exclusionary rule are often answered with utilitarian judgments about its deterrent impact on the behavior of unknown officials in unknown circumstances. That approach results from mistaken priorities. Practical considerations require us to place limits on the ideal application of some of our constitutional values;

such considerations are not, however, the basic motivating rationale for the rules themselves.

Serious practical problems attend the maintenance of discipline in a school setting. Official behavior that would constitute an intolerable intrusion into privacy in a domestic setting may be entirely reasonable in the classroom. Moreover, it is arguable that the manner in which a teacher acquires knowledge of facts that justify the discipline of a student should be irrelevant to the administration of an appropriate punishment. This case, however, does not involve any question concerning a school disciplinary proceeding; a school's authority to take whatever steps are necessary, up to and including the expulsion of a student, in order to protect other students and preserve an appropriate educational environment, is simply not at issue here. The case deals only with an evidentiary question that can arise only in a criminal proceeding after an unconstitutional search and seizure has occurred.

Because it has agreed to hear this case even though the merits of the Fourth Amendment issue are not presented in the State's petition for certiorari, the majority does not tell us what conduct by school officials violates the Fourth Amendment; its decision is made in a kind of vacuum that makes it less than apparent what methods may be used under today's holding to obtain evidence for use in a criminal prosecution. However, a few things are clear about the consequences of today's holding. The majority itself tells us that its holding applies when a school official has "no reasonable grounds" for undertaking a search or seizure. *Ante*, at 6–7, n. 3. Moreover, in determining what a reasonable search or seizure is within the meaning of the Fourth Amendment,[1] judgments as to reasonableness are appropriately informed

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[1]The Fourth Amendment provides, in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."

by the State's broad power to protect minors in its care,[2] and the necessarily ample discretion afforded school officials to maintain an appropriate educational environment.[3] Given these premises, it will likely be the case that only the most abusive search and seizure will cross the line into constitutional unreasonableness. Thus, the random body cavity search, the arbitrary strip search—in short, the tactics of the police state—may well be the kinds of methods for obtaining evidence that are ultimately at issue here.

II

The Court's decision not to apply the exclusionary rule to evidence obtained by school officials in the course of their duties rests on an empirical judgment: "prohibiting the use in the criminal-justice system of evidence obtained in such searches may well have none of the behavioral effects on either school officials or school boards that exclusion of illegally obtained evidence in criminal prosecutions is generally thought to have on the typical law enforcement official." *Ante*, at 9–10. The Court cites no empirical evidence in support of its conclusion; there is none in the record. The Court's assumptions about the sociology of schools may be correct,[4] but they are based not on any principle of law, nor

[2] See, *e. g.*, *Schall* v. *Martin*, 467 U. S. ——, —— (1984); *McKeiver* v. *Pennsylvania*, 403 U. S. 528, 550 (1971) (plurality opinion); *id.*, at 351–352 (WHITE, J., concurring).

[3] See, *e. g.*, *Board of Education* v. *Pico*, 457 U. S. 853, 863–864, 868 (1982) (plurality opinion); *id.*, at 880–881 (BLACKMUN, J., concurring in part and concurring in judgment); *id.*, at 889 (BURGER, C. J., dissenting); *Ingraham* v. *Wright*, 430 U. S. 651, 681–682 (1977); *Goss* v. *Lopez*, 419 U. S. 565, 589–590 (POWELL, J., dissenting).

[4] However, their correctness surely is not clear beyond doubt. The record tells us nothing about the duties or responsibilities of the vice-principal who searched TLO. For all we know, an important part of his job was to refer students who have committed crimes to the authorities and to ensure that they are successfully prosecuted. A number of States have statutes requiring school officials to report certain kinds of criminal conduct by students to the authorities so that they may be prosecuted. See

on anything in the record. Instead, they are premised on five Justices' personal experiences and beliefs.

The problem with this approach has been candidly identified by JUSTICE BLACKMUN: "Like all courts, we face institutional limitations on our ability to gather information about 'legislative facts,' and the exclusionary rule itself has exacerbated the shortage of hard data concerning the behavior of police officers in the absence of such a rule." *United States* v. *Leon*, *ante*, at —— (concurring opinion). This case illustrates the problem. I am unaware of how we have gathered or could gather information about the relevant "legislative facts."[5] That being the case, I think it unwise to make law based on little more than our best guesses.

The rule of *Mapp* v. *Ohio*, 367 U. S. 643 (1961), is perfectly adequate to decide the case before us: "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." *Id.*, at 655. It is true that this holding rested, in part, on its deterrent effect, see *id.*, at 656, and as a general matter it is tolerably clear to me, as it has been to the Court, that the existence of an exclusionary remedy does deter the authorities from violating the Fourth Amendment by

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Ala. Code § 16–1-24 (Supp. 1983); Cal. Educ. Code § 48902 (West Supp. 1984); Conn. Gen. Stat. § 10–233g (West Supp. 1983); Haw. Rev. Stat. § 296–71 (Supp. 1983); Ill. Rev. Stat., ch. 122, § 10–21.7 (1983); Tenn. Code Ann. § 49–6-4301 (repl. 1983). Thus, in these States school officials have been in effect assigned law enforcement duties. Informal policies to similar effect may be widespread.

[5]The Court seems to rely on "prior judicial experience" as the basis for its empirical judgment. See *ante*, at 11, n. 6. However, the cases the Court cites *ante*, at 4–6, n. 2, do not contain material that supplies a data base for the Court's conclusion, nor even a consensus as to whether the exclusionary rule should apply to such searches. Until today, the Court had proceeded with more caution in this area, recognizing the difficulty of gathering data and making empirical judgments as to the deterrent effect of the exclusionary rule. See *Stone* v. *Powell*, 428 U. S. 465, 492 (1976); *United States* v. *Janis*, 428 U. S. 433, 449–453 (1976).

sharply reducing their incentive to do so.[6] But beyond that generalized judgment I have little confidence in our ability to gather "legislative facts" sufficient to engage in the kind of exacting sociological analysis necessary to holdings like that of today's majority.[7] For whatever the limitations on the use of the exclusionary rule in collateral contexts, *ante*, at 7–8, until today, "[t]he Court has not questioned, in the absence of a more efficacious sanction, the continued application of the rule to suppress evidence from the State's case where the Fourth Amendment violation has been deliberate and substantial." *Franks* v. *Delaware*, 438 U. S. 154, 171 (1978).[8] I would not start down the road of creating *ad hoc* exceptions to the rule of *Mapp* v. *Ohio*.

III

It was no accident that in *Mapp* the Court harkened back to Justice Brandeis' *Olmstead* dissent in explaining its holding.[9] The exclusionary rule does have an "overall educative effect." *Stone* v. *Powell*, 428 U. S. 465, 493 (1976). No-

[6] See, *e. g.*, *Stone* v. *Powell*, 428 U. S. 465, 492 (1976); *United States* v. *Janis*, 428 U. S. 433, 453 (1976); *United States* v. *Calandra*, 414 U. S. 338, 347–348 (1974); *Alderman* v. *United States*, 394 U. S. 165, 174–175 (1969).

[7] Moreover, one "legislative fact" overlooked by the majority is that its holding may invite abuse and generate litigation, by tempting some law enforcement officials to solicit covertly the aid of school authorities in obtaining evidence that can be used in criminal prosecutions. It was its experience with this same type of abuse—the danger that federal law enforcement officials would seek the aid of state officials not subject to the exclusionary rule in order to obtain evidence—that induced this Court to hold that state officials should be subject to the same exclusionary rule as are federal authorities. See *Mapp*, 367 U. S., at 658. Cf. *Elkins* v. *United States*, 364 U. S. 206 (1960) (rejecting for similar reasons the "silver platter doctrine" which allowed federal courts to admit evidence obtained by state authorities in violation of the Constitution if done without involvement of federal officers).

[8] The Court has consistently held that there is no alternative remedy of demonstrated efficacy to the suppression of evidence. See *Franks*, 438 U. S., at 169; *Mapp*, 367 U. S., at 652–653.

[9] See 367 U. S., at 659.

where would it be more anomalous to deprecate the importance of that effect than in our schools:

> "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." *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 637 (1943).

Schools are places where we inculcate the values essential to a self-governing citizenry that can responsibly exercise the rights and responsibilities it has under our Constitution.[10] If the Nation's students can be convicted through the use of arbitrary methods destructive of personal liberty, they cannot help but feel that they have been dealt with unfairly.[11] If

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[10] See *Board of Education* v. *Pico*, 457 U. S. 853, 864–865 (1982) (plurality opinion); *id.*, at 876, 880 (BLACKMUN, J., concurring in part and concurring in judgment); *Plyler* v. *Doe*, 457 U. S. 202, 221 (1982); *Tinker* v. *Des Moines School Dist.*, 393 U. S. 503, 507, 511–513 (1969).

[11] Cf. *In re Gault*, 387 U. S. 1, 26–27 (1967) (conviction of juveniles through processes lacking in procedural regularity alienate them by creating an appearance of arbitrariness).

Justice Frankfurter, who did not advocate applying the exclusionary rule to the States, see *Wolf* v. *Colorado*, 338 U. S. 25 (1949), nevertheless respected the warning in Justice Brandeis' *Olmstead* dissent. See *Irvine* v. *California*, 347 U. S. 128, 149 (1954) (dissenting opinion) (footnote omitted) ("Of course it is a loss to the community when a conviction is overturned because the indefensible means by which it was obtained cannot be squared with the commands of due process. A new trial is necessitated, and by reason of the exclusion of evidence derived from the unfair aspects of the prior prosecution a guilty defendant may escape. But the people can avoid such miscarriages of justice. A sturdy, self-respecting democratic community should not put up with lawless police and prosecutors.

they or their companions are deprived of their liberty through such methods, being left to a speculative and probably unrewarding civil remedy, they cannot but conclude that the ideals of our Constitution are but "a form of words";[12] the belief that ours is a Government of laws and not men and that the Constitution is a fundamental charter of human liberty cannot but be sullied.[13]

'Our people may tolerate many mistakes of both intent and performance, but, with unerring instinct, they know that when any person is intentionally deprived of his constitutional rights those responsible have committed no ordinary offense. A crime of this nature, if subtly encouraged by failure to condemn and punish, certainly leads down the road to totalitarianism.'"); *Rochin* v. *California*, 342 U. S. 165, 173–174 (1952) ("It has long since ceased to be true that due process of law is heedless of the means by which otherwise relevant and credible evidence is obtained. . . . [T]he general requirement [is] that States in their prosecutions respect certain decencies of civilized conduct. . . . [T]o sanction the brutal conduct which naturally enough was condemned by the court whose judgment is before us, would be to afford brutality the cloak of law. Nothing would be more calculated to discredit law and thereby to brutalize the temper of a society").

[12] The *Mapp* Court wrote:

"Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. Were it otherwise, then just as . . . the assurance against unreasonable federal searches and seizures would be 'a form of words,' valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom 'implicit in the concept of ordered liberty.'" 367 U. S., at 655.

[13] JUSTICE BRENNAN has written of an analogous case:

"We do not know what class petitioner was in when the police and dogs burst in, but the lesson the school authorities taught her that day will undoubtedly make a greater impression than the one her teacher had hoped to convey. I would grant certiorari to teach petitioner another lesson: that the Fourth Amendment protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,' and that before police and local officers are permit-

If the validity of the Court's holding is to be judged entirely by its deterrent value, the result is a matter of small importance. But if we look to the symbolic value of the holding—if we examine it as a statement about the Constitution's importance to our Nation—then the Court is surely wrong. This is a case in which the Court has an opportunity—at a relatively low cost—to teach our students "that our society attaches serious consequences to violation of constitutional rights." *Stone* v. *Powell*, 428 U. S. 465, 493 (1976). Because I consider that message more important than the preservation of this evidence for use in a criminal proceeding against an errant child, I respectfully dissent.

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ted to conduct dog-assisted dragnet inspections of public school students, they must obtain a warrant based on sufficient particularized evidence to establish probable cause to believe a crime has been or is being committed. Schools cannot expect their students to learn the lessons of good citizenship when the school authorities themselves disregard the fundamental principles underpinning our constitutional freedoms." *Doe* v. *Renfrow*, 451 U. S. 1022, 1027–1028 (1981) (BRENNAN, J., dissenting from denial of certiorari).

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: JUN 29 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[July —, 1984]

JUSTICE STEVENS, dissenting.

In its decision in this case, the New Jersey Supreme Court addressed three distinct questions: (1) what is the proper standard for judging the reasonableness of a school official's search of a student's purse; (2) on the facts of this case, did the school official violate that standard; and (3) whether the exclusionary rule bars the use in a criminal proceeding of evidence that a school official obtained in violation of that standard. The Supreme Court held (1) that the correct standard is one of reasonable suspicion rather than probable cause; (2) that the standard was violated in this case; and (3) that the evidence obtained as the result of a violation may not be introduced in evidence against TLO in any criminal proceeding, including this delinquency proceeding.

New Jersey's petition for certiorari sought review of only the third question.[1] The reasons why it did not seek review of either of the other two questions are tolerably clear. There is substantial agreement among appellate courts that the New Jersey Supreme Court applied the correct standard and it is apparently one that the New Jersey law enforcement authorities favor. As far as the specific facts of the case are concerned, presumably New Jersey believed that this Court

[1] The petition presented a single question for review: "Whether the Fourth Amendment's exclusionary rule applies to searches made by public school officials and teachers in school."

is too busy to take a case just for the purpose of reviewing the State Supreme Court's application of this standard to the specific facts of this case.

The single question presented to the Court has now been briefed and argued. Evidently unable or unwilling to decide the question presented by the parties, the Court, instead of dismissing the writ of certiorari as improvidently granted, orders reargument directed to the questions that New Jersey decided not to bring here. This is done even though New Jersey *agrees* with its Supreme Court's resolution of these questions, and has no desire to seek reversal on those grounds.[2] Thus, in this nonadversarial context, the Court has decided to plunge into the merits of the Fourth Amendment issues despite the fact that no litigant before it wants the Court's guidance on these questions. Volunteering unwanted advice is rarely a wise course of action.

Of late, the Court has acquired a voracious appetite for judicial activism in its Fourth Amendment jurisprudence, at least when it comes to restricting the constitutional rights of the citizen. In *United States* v. *Leon*, *ante* at ——, and *Massachusetts* v. *Sheppard*, *ante*, at ——, the Court fashioned a new exception to the exclusionary rule despite its acknowledgement that narrower grounds for decision were available in both cases.[3] In *United States* v. *Karo*, *ante*, at ——, in order to reverse a decision requiring the suppression

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[2] At oral argument, the following colloquy took place between counsel for New Jersey and the bench:

"QUESTION: Well, do you think it is open to us to deal with the reasonableness of the search?

"MR. NODES: I believe that could be considered a question subsumed within the—

"QUESTION: But it wasn't your intention to raise it?

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of evidence, the Court on its own initiative made an analysis of a factual question that had not been presented or argued by either of the parties and managed to find a basis for ruling in favor of the Government. In *Segura* v. *United States*, *ante*, at ——, two creative Justices reached the surprising conclusion that an 18–20 hour warrantless occupation of a citizen's home was "reasonable," despite the fact that the issue had not been argued and the Government had expressly conceded the unreasonableness of the occupation. And, as I have previously observed, in recent Terms the Court has elected to use its power of summary disposition exclusively for the benefit of prosecutors.[4] In this case, the special judicial action is to order the parties to argue a constitutional question that they have no desire to raise, in a context in which a ground for decision that the Court currently views as nonconstitutional is available,[5] and on which the State's chief prosecutor believes no guidance from this Court is necessary.

I believe that the adversary process functions most effectively when we rely on the initiative of lawyers, rather than the activism of judges, to fashion the questions for review. I respectfully dissent.

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[5] We are told that questions concerning the remedies for a Fourth Amendment violation are not constitutional in dimension. *United States* v. *Leon*, *ante*, at ——. Apparently, this Court has imposed the exclusionary rule on the States as a result of the Fourth Amendment's "invisible radiations," *Keeton* v. *Hustler Magazine, Inc.*, 465 U. S. ——, ——, n. 12 (1984), which act to somehow give the Court nonconstitutional supervisory powers over the State courts.

To: The Chief Justice
Justice Brennan
Justice White
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Justice O'Connor

From: **Justice Stevens**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[July —, 1984]

JUSTICE STEVENS, with whom JUSTICE MARSHALL joins, dissenting.

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Justice Brennan
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Justice O'Connor

From: **Justice Stevens**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[July 6, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[December —, 1984]

JUSTICE STEVENS, dissenting.

Assistant Principal Choplick searched T. L. O.'s purse for evidence that she was smoking in the girls' restroom. Because T. L. O.'s suspected misconduct was not illegal and did not pose a serious threat to school discipline, the New Jersey Supreme Court held that Choplick's search of her purse was an unreasonable invasion of her privacy and that the evidence which he seized could not be used against her in criminal proceedings. The New Jersey court's holding was a careful response to the case it was required to decide.

The State of New Jersey sought review in this Court, first arguing that the exclusionary rule is wholly inapplicable to searches conducted by school officials, and then contending that the Fourth Amendment itself provides no protection at all to the student's privacy. The Court has accepted neither of these frontal assaults on the Fourth Amendment. It has, however, seized upon this "no smoking" case to announce "the proper standard" that should govern searches by school officials who are confronted with disciplinary problems far more severe than smoking in the restroom. Although I agree with Part II of the Court's opinion, I continue to believe that the Court has unnecessarily and inappropriately reached out to decide a consitutional question. More importantly, I fear that the concerns that motivated the Court's activism have produced a holding that will permit school admin-

istrators to search students suspected of violating only the most trivial school regulations and guidelines for behavior.

I

The question the Court decides today—whether Mr. Choplick's search of T. L. O.'s purse violated the Fourth Amendment—was not raised by the state's petition for writ of certiorari. That petition only raised one question: "Whether the Fourth Amendment's exclusionary rule applies to searches by public school officials and teachers in school."[1] The State quite properly declined to submit the former question because "it did not wish to present what might appear to be solely a factual dispute to this Court."[2] By reaching the merits of that factual dispute, the Court implicitly decides the question raised by the State in its petition for certiorari.

This Court has no license to decide the merits of Fourth Amendment questions unless they are relevant to a case before it. These questions typically arise in criminal cases when a defendant challenges the admission of allegedly tainted evidence. Unless the exclusionary rule applies, there is no reason for the Court to go further and decide the Fourth Amendment question.[3] Since this Court has twice had the threshold question argued, since it does not disagree with the New Jersey Supreme Court's ruling that the exclusionary rule applies, and since it has addressed and decided the merits of this particular case, it is fair to infer—notwithstanding its disclaimer—that the Court has implicitly decided that the exclusionary rule applies in a case of this kind.

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[1] Pet. for Cert., at i.

[2] Supp. Br. for Petitioner, at 6.

[3] Few cases have explicitly considered which question should be decided first. Compare *Pirado* v. *Commissioner*, 689 F. 2d 307, 309 n. 2 (CA2 1982) (Newman, J., joined by Winter, J.) ("Each issue is of constitutional dimension," and exclusionary rule question may be decided first when a decision that it does not apply will completely dispose of the case), cert. denied, 460 U. S. 1014 (1983) with *id.*, at 315 (Oakes, J., concurring) (The constitutionality of the search must logically be decided first).

The Court's decision not to disturb the New Jersey Supreme Court's holding on this question is plainly correct. As the state court noted, this case does not involve the use of evidence in a school disciplinary proceeding; the juvenile proceedings brought against T. L. O. involved a charge that would have been a criminal offense if committed by an adult.[4] Accordingly, the exclusionary rule issue decided by that court and later presented to this Court concerned only the use in a criminal proceeding of evidence obtained in a search conducted by a public school administrator.

Having confined the issue to the law enforcement context, the New Jersey court then reasoned that this Court's cases have made it quite clear that the exclusionary rule is equally applicable "whether the public official who illegally obtained the evidence was a municipal inspector, *See* v. *Seattle* 387 U. S. 541 [1967]; *Camara* [v. *Municipal Court,*] 387 U. S. 523 [1967]; a firefighter, *Michigan* v. *Tyler*, 436 U. S. 499, 506 [1978]; or a school administrator or law enforcement official."[5] It correctly concluded "that if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings."[6]

When a defendant in a criminal proceeding alleges that she was the victim of an illegal search by a school administrator, the application of the exclusionary rule is a simple corollary of the principle "that all evidence obtained by searches and seizures in violation of the Constitution is, by that same, authority, inadmissible in a state court." *Mapp* v. *Ohio*, 367 U. S. 643, 655 (1961). The practical basis for this principle is, in part, its deterrent effect, see *id.*, at 656, and as a general matter it is tolerably clear to me, as it has been to the Court, that the existence of an exclusionary remedy does deter the authorities from violating the Fourth Amendment by sharply

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[4] *State in the Interest of T. L. O.*, 94 N. J. 331, 337 nn. 1 & 2, 342 n. 5, 463 A. 2d 934, 937, nn. 1 & 2, 939, n. 5 (1983).

[5] *Id.*, at 341, 463 A. 2d, at 939.

[6] *Id.*, at 341–342, 463 A. 2d, at 989.

reducing their incentive to do so.[7] In the case of evidence obtained in school searches, the "overall educative effect"[8] of the exclusionary rule adds important symbolic force to this utilitarian judgment.

Justice Brandeis was both a great student and a great teacher. It was he who wrote:

> "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead* v. *United States*, 277 U. S. 438, 485 (1928) (dissenting opinion)

Those of us who revere the flag and the ideals for which it stands believe in the power of symbols. We cannot ignore that rules of law also have a symbolic power that may vastly exceed their utility.

Schools are places where we inculcate the values essential to the meaningful exercise of rights and responsibilities by a self-governing citizenry.[9] If the Nation's students can be convicted through the use of arbitrary methods destructive of personal liberty, they cannot help but feel that they have been dealt with unfairly.[10] The application of the exclusion-

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[7] See, *e. g.*, *Stone* v. *Powell*, 428 U. S. 465, 492 (1976); *United States* v. *Janis*, 428 U. S. 433, 453 (1976); *United States* v. *Calandra*, 414 U. S. 338, 347–348 (1974); *Alderman* v. *United States*, 394 U. S. 165, 174–175 (1969).

[8] *Stone* v. *Powell*, 428 U. S., at 493.

[9] See *Board of Education* v. *Pico*, 457 U. S. 853, 864–865 (1982) (BRENNAN, J., joined by MARSHALL & STEVENS, JJ); *id.*, at 876, 880 (BLACKMUN, J., concurring in part and concurring in judgment); *Plyler* v. *Doe*, 457 U. S. 202, 221 (1982); *Ambach* v. *Norwick*, 441 U. S. 68, 76 (1979); *Tinker* v. *Des Moines School Dist.*, 393 U. S. 503, 507, 511–513 (1969); *Brown* v. *Board of Education*, 347 U. S. 483, 493 (1954); *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 637 (1943).

[10] Cf. *In re Gault*, 387 U. S. 1, 26–27 (1967). JUSTICE BRENNAN has written of an analogous case:

ary rule in criminal proceedings arising from illegal school searches makes an important statement to young people that "our society attaches serious consequences to a violation of constitutional rights,"[11] and that this is a principle "of liberty and justice for all."[12]

Thus, the simple and correct answer to the question presented by the state's petition for certiorari would have required affirmance of a state court's judgment suppressing evidence. That result would have been dramatically out of character for a court that not only grants prosecutors relief from suppression orders with distressing regularity,[13] but

"We do not know what class petitioner was in when the dogs burst in, but the lesson the school authorities taught her that day will undoubtedly make a greater impression than the one her teacher had hoped to convey. I would grant certiorari to teach petitioner another lesson: that the Fourth Amendment protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,' . . . . Schools cannot expect their students to learn the lessons of good citizenship when the school authorities themselves disregard the fundamental principles underpinning our constitutional freedoms." *Doe* v. *Renfrow*, 451 U. S. 1022, 1027–1028 (1981) (BRENNAN, J., dissenting from denial of certiorari).

[11] *Stone* v. *Powell*, 428 U. S., at 493.

[12] 36 U. S. C. § 172 (pledge of allegiance to the flag).

[13] A brief review of the Fourth Amendment cases involving criminal prosecutions sinceOctober Term, 1982, support the proposition. Compare *Florida* v. *Rodriguez*, —— U. S. —— (1984) (*per curiam*); *United States* v. *Leon*, —— U. S. —— (1984); *Massachusetts* v. *Sheppard*, —— U. S. —— (1984); *Segura* v. *United States*, —— U. S. —— (1984); *United States* v. *Karo*, —— U. S. —— (1984); *Oliver* v. *United States*, —— U. S. —— (1984); *United States* v. *Jacobsen*, —— U. S. —— (1984); *Massachusetts* v. *Upton*, —— U. S. —— (1984) (*per curiam*); *Florida* v. *Meyers*, —— U. S. —— (1984) (*per curiam*); *Michigan* v. *Long*, —— U. S. —— (1983); *Illinois* v. *Andreas*, —— U. S. —— (1983); *Illinois* v. *Lafayette*, —— U. S. —— (1983); *United States* v. *Villamonte-Marquez*, —— U. S. —— (1983); *Illinois* v. *Gates*, —— U. S. —— (1983); *Texas* v. *Brown*, 460 U. S. 730 (1983); *United States* v. *Knotts*, 460 U. S. 276 (1983); *Illinois* v. *Batchelder*, 463 U. S. —— (1983) (*per curiam*); *Cardwell* v. *Taylor*, 461 U. S. 571 (1983) (*per curiam*) with *Thompson* v. *Louisiana*, —— U. S. —— (1984) (*per curiam*); *Welsh* v. *Wisconsin*, —— U. S. —— (1984);

also is prone to rely on grounds not advanced by the parties in order to protect evidence from exclusion.[14] In characteristic disregard of the doctrine of judicial restraint, the Court avoided that result in this case by ordering reargument and directing the parties to address a constitutional question that the parties, with good reason, had not asked the Court to decide. Because judicial activism undermines the Court's power to perform its central mission in a legitimate way, I dissented from the reargument order. See —— U. S. —— (1984). I have not modified the views expressed in that dissent, but since the majority has brought the question before us, I shall explain why I believe the Court has misapplied the standard of reasonableness embodied in the Fourth Amendment.

II

The search of a young woman's purse by a school administrator is a serious invasion of her legitimate expectations of privacy. A purse "is a common repository for one's personal effects and therefore is inevitably associated with the expectation of privacy." *Arkansas* v. *Sanders*, 442 U. S. 753, 762 (1979). Although such expectations must sometimes yield to the legitimate requirements of government, in assessing the constitutionality of a warrantless search, our decision must be guided by the language of the Fourth Amendment: "The right of the people to be secure in their persons, houses, papers and effects, against *unreasonable* searches and seizures, shall not be violated . . . ." In order to evaluate the reasonableness of such searches, "it is necessary 'first to focus upon the governmental interest which allegedly justifies official in-

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Michigan v. *Clifford*, —— U. S. —— (1984); *United States* v. *Place*, —— U. S. —— (1983); *Florida* v. *Royer*, 460 U. S. 491 (1983).

[14] *E. g. United States* v. *Karo*, —— U. S. ——, —— (1984); see also *United States* v. *Segura*, —— U. S. ——, —— (1984) (Opinion of BURGER, C. J. joined by O'CONNOR, J.); cf. *United States* v. *Gates*, 459 U. S., 1028, 1028 (1982) (STEVENS, J., dissenting from reargument order, joined by BRENNAN & MARSHALL, JJ.)

trusion upon the constitutionally protected interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.' " *Terry* v. *Ohio*, 392 U. S. 1, 20–21 (1968) (quoting *Camara* v. *Municipal Court*, 387 U. S. 523, 534–535, 536–537 (1967)).[15]

The "limited search for weapons" in *Terry* was justified by the "immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him." 392 U. S., at 23, 25. When viewed from the institutional perspective, "the substantial need of teachers and administrators for freedom to maintain order in the schools," *ante*, at 14 (majority opinion), is no less acute. Violent, unlawful, or seriously disruptive conduct is fundamentally inconsistent with the principal function of teaching institutions which is to educate young people and prepare them for citizenship.[16] When such conduct occurs amidst a sizable group of impressionable young people, it creates an explosive atmosphere that requires a prompt and effective response.

Thus, warrantless searches of students by school administrators are reasonable when undertaken for those purposes. But the majority's statement of the standard for evaluating the reasonableness of such searches is not suitably adapted to that end. The majority holds that "a search of a student by a teacher or other school official will be 'justified at its incep-

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[15] See also *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 881–882 (1976); *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 567 (1976).

[16] Cf. *ante*, at 3 (BLACKMUN, J., concurring in the judgment) ("The special need for an immediate response to behavior that threatens either the safety of school children and teachers or the educational process itself justifies the Court in excepting school searches from the warrant and probable cause requirement"); *ante*, at 3 (POWELL, J., concurring, joined by O'CONNOR, J.) ("Without first establishing discipline and maintaining order, teachers cannot begin to educate their students."

tion' 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.*" *Ante*, at 15. This standard will permit teachers and school administrators to search students when they suspect that the search will reveal evidence of even the most trivial school regulation or precatory guideline for student behavior. The Court's standard for deciding whether a search is justified "at its inception" treats all violations of the rules of the school as though they were fungible. For the Court, a search for curlers and sunglasses in order to enforce the school dress code[17] is apparently just as important as a search for evidence of heroin addiction or violent gang activity.

The majority, however, does not contend that school administrators have a compelling need to search students in order to achieve optimum enforcement of minor school regulations.[18] To the contrary, when minor violations are in-

[17] Parent-Student Handbook of Piscataway [N. J.] H. S. (1979), Record Doc. S–1, at 7. A brief survey of school rule books reveals that, under the majority's approach, teachers and school administrators may also search students to enforce school rules regulating:

(i) secret societies;
(ii) students driving to school;
(iii) parking and use of parking lots during school hours;
(iv) smoking on campus;
(v) the direction of traffic in the hallways;
(vi) student presence in the hallways during class hours without a pass;
(vii) profanity;
(viii) school attendance of interscholastic athletes on the day of a game, meet or match;
(ix) cafeteria use and cleanup;
(x) eating lunch off-campus; and
(xi) unauthorized absence.

See *Id.*, 7–18; Student Handbook of South Windsor [Conn.] H. S. (1984); Fairfax County [Va.] Public Schools, Student Responsibilities and Rights (1980); Student Handbook of Chantilly [Va.] H. S. (1984).

[18] Cf. *Camara* v. *Municipal Court*, 387 U. S. 523, 535 ("There is unanimous agreement among those most familiar with this field that the only effective way to seek universal compliance with the minimum standards re-

volved, there is every indication that the informal school disciplinary process, with only minimum requirements of due process,[19] can function effectively without the power to search for enough evidence to prove a criminal case. In arguing that teachers and school administrators need the power to search students based on a lessened standard, the United States as *amicus curiae* relies heavily on empirical evidence of a contemporary crisis of violence and unlawful behavior that is seriously undermining the process of education in American schools.[20] A standard better attuned to this concern 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.*

This standard is properly directed at "[t]he sole justification for the [warrantless] search."[21] In addition, a standard that varies the extent of the permissible intrusion with the gravity of the suspected offense is also more consistent with common law experience and this Court's precedent. Criminal law has traditionally recognized a distinction between essentially regulatory offenses and serious violations of the

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quired by municipal codes is through routine periodic inspections of all structures. . . . [I]f the probable cause standard . . . is adopted, . . . the reasonable goals of code enforcement will be dealt a crushing blow.")

[19] See *Goss* v. *Lopez*, 419 U. S. 565, 583–584 (1975).

[20] "The sad truth is that many classrooms across the country are not temples of learning teaching the lessons of good will, civility, and wisdom that are central to the fabric of American life. To the contrary, many schools are in such a state of disorder that not only is the educational atmosphere polluted, but the very safety of students and teachers is imperiled." Br. for United States as *Amicus Curiae* 23.

See also Br. for National Education Ass'n as *Amicus Curiae* 21 ("If a suspected violation of a rule threatens to disrupt the school or threatens to harm students, school officials should be free to search for evidence of it . . . .").

[21] *Terry* v. *Ohio*, 392 U. S., at 29; *United States* v. *Brignoni-Ponce*, 422 U. S., at 881–882.

peace, and graduated the response of the criminal justice system depending on the character of the violation.[22] The application of a similar distinction in evaluating the reasonableness of warrantless searches and seizures "is not a novel idea." *Welsh* v. *Wisconsin*, —— U. S. ——, —— (1984).[23]

In *Welsh*, police officers arrived at the scene of a traffic accident and obtained information indicating that the driver of the automobile involved was guilty of a first offense of driving while intoxicated—a civil violation with a maximum fine of $200. The driver had left the scene of the accident, and the officers followed the suspect to his home where they arrested him without a warrant. Absent exigent circumstances, the warrantless invasion of the home was a clear violation of *Payton* v. *New York*, 445 U. S. 573 (1980). In

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[22] Throughout the criminal law this dichotomy has been expressed by classifying crimes as misdemeanors or felonies, *malum prohibitum* or *malum in se*, crimes that do not involve moral turpitude or those that do, and major or petty offenses. See generally W. LaFave, Handbook on Criminal Law § 6 (1972).

Some codes of student behavior also provide a system of graduated response by distinguishing between violent, unlawful or seriously disruptive conduct, and conduct that will only warrant serious sanctions when the student engages in repetitive offenses. See, *e. g.*, Parent-Student Handbook of Piscataway [N. J.] H. S. (1979), Record Doc. S–1, at 15–16; Student Handbook of South Windsor [Conn.] H. S. ¶ E (1984); Rules of the Board of Education of the District of Columbia Chap. IV, §§ 431.1–.10 (1982). Indeed, at Piscataway H. S. a violation of smoking regulations that is "[a] student's first offense will result in assignment of up to three (3) days of after school classes concerning hazards of smoking." Record Doc. S–1, at 15.

[23] In *Goss* v. *Lopez*, 419 U. S. 565, 582–583 (1975) (emphasis added), the Court noted that similar considerations require some variance in the requirements of due process in the school disciplinary context:

"[A]s a general rule notice and hearing should precede removal of the student from school. We agree . . ., however, that there are recurring situations in which prior notice and hearing cannot be insisted upon. *Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school.* In such cases the necessary notice and rudimentary hearing should follow as soon as practicable . . . ."

holding that the warrantless arrest for the "noncriminal, traffic offense" in *Welsh* was unconstitutional, the Court noted that "application of the exigent-circumstances exceptions 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." —— U. S., at ——.

The logic of distinguishing between minor and serious offenses in evaluating the reasonableness of school searches is almost too clear for argument. In order to justify the serious intrusion on the persons and privacy of young people that New Jersey asks this Court to approve, the State must identify "some real immediate and serious consequences." *McDonald* v. *United States*, 335 U. S. 451, 460 (1948) (Jackson, J., concurring, joined by Frankfurter, J.).[24] While school administrators have entirely legitimate reasons for adopting school regulations and guidelines for student behavior, the authorization of searches to enforce them "shows a shocking lack of all sense of proportion." *Id.*, 459.[25]

[24] In *McDonald* police officers made a warrantless search of the office of an illegal "numbers" operation. Justice Jackson rejected the view that the search could be supported by exigent circumstances:

"Even if one were to conclude that urgent circumstances might justify a forced entry without a warrant, no such emergency was present in this case. . . . *Whether there is reasonable necessity for a search without waiting to obtain a warrant certainly depends somewhat upon the gravity of the offense thought to be in progress* as well as the hazards of the method of attempting to reach it. . . . [The defendant's] criminal operation, while a shabby swindle that the police are quite right in suppressing, was not one which endangered life or limb or the peace and good order of the community . . . ."

McDonald v. *United States*, 335 U. S. 451, 459–460 (1948).

[25] While a policeman who sees a person smoking in an elevator in violation of a city ordinance may conduct a full-blown search for evidence of the smoking violation in the unlikely event of a custodial arrest, *United States* v. *Robinson*, 414 U. S. 218, 236 (1973); *Gustafson* v. *Florida*, 414 U. S. 260, 265–266 (1973), it is more doubtful whether a search of this kind would be reasonable if the officer only planned to issue a citation to the offender and depart, see *Robinson*, *supra*, 414 U. S., at 236, n. 6. In any case, the majority offers no rationale supporting its conclusion that a student de-

The majority offers weak deference to these principles of balance and decency by announcing that school searches will only be reasonable in scope "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.*" *Ante*, at 15 (emphasis added). The majority offers no explanation why a two-part standard is necessary to evaluate the reasonableness of the ordinary school search. Significantly, in the balance of its opinion the Court pretermits any discussion of the nature of T. L. O.'s infraction of the "no smoking" rule.

The "rider" to the Court's standard for evaluating the reasonableness of the initial intrusion apparently is the Court's perception that its standard is overly generous and does not, by itself, achieve a fair balance between the administrator's right to search and the student's reasonable expectations of privacy. The Court's standard for evaluating the "scope" of reasonable school searches is obviously designed to prohibit physically intrusive searches of students by persons of the opposite sex for relatively minor offenses. The Court's effort to establish a standard that is, at once, clear enough to allow searches to be upheld in nearly every case, and flexible enough to prohibit obviously unreasonable intrusions of young adults' privacy only creates uncertainty in the extent of its resolve to prohibit the latter. Moreover, the majority's application of its standard in this case—to permit a male administrator to rummage through the purse of a female high school student in order to obtain evidence that she was smoking in a bathroom—raises grave doubts in my mind whether its effort will be effective.[25] Unlike the Court, I be-

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tained by school officials for questioning, on reasonable suspicion that she has violated a school rule, is entitled to no more protection under the Fourth Amendment than a criminal suspect under custodial arrest.

[25] One thing is clear under any standard—the shocking strip searches that are described in some cases have no place in the school house. See *Doe v. Renfrow*, 631 F. 2d 91, 92–93 (CA7 1980) ("It does not require a

lieve the nature of the suspected infraction is a matter of first importance in deciding whether *any* invasion of privacy is permissible.

III

The Court embraces the standard applied by the New Jersey Supreme Court as equivalent to its own, and then deprecates the state court's application of the standard as reflecting "a somewhat crabbed notion of reasonableness." *Ante*, at 16. There is no mystery, however, in the state court's finding that the search in this case was unconstitutional; the decision below was not based on a manipulation of reaonable suspicion, but on the trivial character of the activity that promoted the official search. The New Jersey Supreme Court wrote:

> "We are satisfied that 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*, the school official has the right to conduct a reasonable search for such evidence.
>
> "In determining whether the school official has reasonable grounds, courts should consider 'the child's age, history, and school record, *the prevalence and seriousness of the problem in the school to which the search was directed*, the exigency to make the search without delay, and the probative value and reliability of the information used as a justification for the search.' "[27]

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constitutional scholar to conclude that a nude search of a 13-year-old child is an invasion of constitutional rights of some magnitude"), cert. denied, 451 U. S. 1022 (1981); *Bellnier* v. *Lund*, 438 F. Supp. 47 (ND N. Y. 1977); *People* v. *Scott D.*, 34 N. Y. 2d 483, 315 N. E. 2d 466, 358 N. Y. S. 2d 403 (1974); *M. J.* v. *State*, 399 So. 2d 996 (Fla. App. 1981). To the extent that deeply intrusive searches are ever reasonable outside the custodial context, it surely must only be to prevent imminent, and serious harm.

[27] 94 N. J., at 346, 463 A. 2d, at 943 (quoting *State* v. *McKinnon*, 88 Wash. 2d 75, 81, 558 P. 2d 781, 784 (1977)) (emphasis added).

The emphasized language in the state court's opinion focuses on the character of the rule infraction that is the predicate for the search.

In the view of the state court, there is a quite obvious, and material difference between a search for evidence relating to violent or disruptive activity, and a search for evidence of a smoking rule violation. This distinction does not imply that a no smoking rule is a matter of minor importance. Rather, like a rule that prohibits a student from being tardy, its occasional violation in a context that poses no threat of disrupting school order and discipline offers no reason to believe that an immediate search is necessary to avoid unlawful conduct, violence or a serious impairment of the educational process.

A correct understanding of the New Jersey court's standard explains why that court concluded in T. L. O.'s case that "the assistant principal did not have reasonable grounds to believe that the student was concealing in her purse evidence of criminal activity or evidence of activity that *would seriously interfere with school discipline or order.*"[22] The importance of the nature of the rule infraction to the New Jersey Supreme Court's holding is evident from its brief explanation of the principal basis for its decision:

> "A student has an expectation of privacy in the contents of her purse. Mere possession of cigarettes did not violate school rule or policy, since the school allowed smoking in designated areas. The contents of the handbag had no direct bearing on the infraction.
>
> The assistant principal's desire, legal in itself, to gather evidence to impeach the student's credibility at a hearing on the disciplinary infraction does not validate the search."[23]

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[22] 94 N. J., at 347, 463 A. 2d, at 942 (emphasis added).

[23] *Ibid.* The court added:

"Moreover, there were not reasonable grounds to believe that the purse contained cigarettes, if they were the object of the search. No one had furnished information to that effect to the school official. He had, at best,

Like the New Jersey Supreme Court, I would view this case differently if the assistant principal had reason to believe T. L. O.'s purse contained evidence of criminal activity, or of an activity that would seriously disrupt school discipline. There was, however, absolutely no basis for any such assumption—not even a "hunch."

In this case, Mr. Choplick overreacted to what appeared to be nothing more than a minor infraction—a rule prohibiting smoking in the bathroom of the Freshman's and Sophmores' building.[20] It is, of course, true that he actually found evidence of serious wrongdoing by T. L. O., but no one claims that the prior search may be justified by his unexpected discovery. As far as the smoking infraction is concerned, the search for cigarettes merely tended to corroborate a teacher's eyewitness account of T. L. O.'s violation of a minor regulation designed to channel student smoking behavior into designated locations. Because this conduct was neither unlawful nor significantly disruptive of school order or the educational process, the invasion of privacy associated with the forcible opening of the T. L. O.'s purse was entirely unjustified at its inception.

A review of the sampling of school search cases relied on by the Court demonstrates how different this case is from those in which there was indeed a valid justification for intruding on a student's privacy. In most of them the student was suspected of a criminal violation;[21] in the remainder either vio-

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a good hunch. No doubt good hunches would unearth much more evidence of crime on the persons of students and citizens as a whole. But more is required to sustain a search."

Id., at 347, 463 A. 2d, at 942–943.

It is this portion of the New Jersey Supreme Court's reasoning—a portion that was not necessary to its holding—to which this Court makes its principal response. See *ante*, at 18.

[20] See Parent-Student Handbook of Piscataway [N. J.] H. S. 15, 18 (1979), Record Doc. S–1. See also Tr. of Mar. 31, 1980 Hearing 13–14.

[21] See, *e. g.*, *Tarter* v. *Raybuck*, 742F. 2d 977 (CA6 1984) (search for marijuana); *M.* v. *Board of Education Ball-Chatham Community Unit School*

lence or substantial disruption of school order or the integrity of the academic process was at stake.[32] Few involved matters as trivial as the no smoking rule violated by T. L. O.[33] The rule the Court adopts today is so open-ended that it may make the Fourth Amendment virtually meaningless in the school context. Although I agree that school administrators must have broad latitude to maintain order and discipline in our classrooms, that authority is not unlimited.

IV

The schoolroom is the first opportunity most citizens have to experience the power of government. Through it passes every citizen and public official, from schoolteachers to policemen and prison guards. The values they learn there, they take with them in life. One of our most cherished ideals is the one contained in the Fourth Amendment: that the Government may not intrude on the personal privacy of its citizens without a warrant or compelling circumstance. The

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Dist No.5,, 429 F. Supp. 288 (SD Ill. 1977) (drugs and large amount of money); *D. R. C.* v. *State*, 646 P. 2d 252 (Alaska App. 1982) (stolen money); *In re W.*, 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973) (marijuana); *In re G.*, 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970) (amphetamine pills); *In re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969) (methedrine pills); *State* v. *Baccino*, 282 A. 2d 869 (Del. Super. 1971) (drugs); *State* v. *D. T. W.*, 425 So. 2d 1383 (Fla. Dist. Ct. App. 1983) (drugs); *In re J. A.*, 85 Ill. App. 567, 406 N. E. 2d 598 (1980) (marijuana); *People* v. *Ward*, 62 Mich. App. 46, 233 N. W. 2d 180 (1975) (drug pills); *Mercer* v. *State*, 450 S. W. 2d 715 (Tex. Civ. App. 1970) (marijuana); *State* v. *McKinnon*, 88 Wash. 2d 75, 558 P. 2d 781 (1977) ("speed").

[32] See, *e. g.*, *In re L. L.*, 90 Wis. 2d 585, 280 N. W. 2d 343 (App. 1979) (search for knife or razor blade); *R. C. M.* v. *State*, 660 S. W. 2d 552 (Tex. App. 1983) (student with bloodshot eyes wandering halls in violation of school rule requiring students to remain in examination room or at home during mid-term examinations).

[33] See, *e. g.*, *State* v. *Young*, 234 Ga. 488, 216 S. E. 2d 586 (1975) (three students searched when they made furtive gestures and displayed obvious conciousness of guilt); *Doe* v. *State*, 88 N. M. 347, 540 P. 2d 827 (1975) (student searched for pipe when a teacher saw him using it to violate smoking regulations).

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: 6/12

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[June —, 1984]

JUSTICE O'CONNOR, dissenting.

In this case the Court decides that the exclusionary rule does not bar the admission in a criminal proceeding of evidence illegally seized from students in public schools by public school officials. The Court's conclusion is premised on its belief that public school officials cannot be deterred by application of the exclusionary rule in criminal juvenile proceedings. This empirical speculation cannot, in my view, be reconciled with the presumption consistently applied in this Court's past cases: that exclusion of evidence from the prosecution's case-in-chief at criminal trials will tend to deter unlawful searches and seizures by any and all officials of the State. The Court has relied on this presumption both because of the uncertainties inherent in assessing the exclusionary rule's deterrent effect and because of society's compelling need for predictable rules to guide the administration of criminal trials. Since today's decision ignores that heretofore applied presumption, I respectfully dissent.

The proscriptions of the Fourth Amendment are not limited to "the paradigmatic entry into a private dwelling by a law enforcement officer in search of the fruits or instrumentalities of a crime." *Michigan* v. *Tyler*, 436 U. S. 499, 504 (1978). Rather, they extend to all unreasonable encroachments by the government, "whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards." *Marshall* v.

These arguments were made in briefs & oral argument & rejected by the Conference Vote. Nothing new here. LFP

Barlow's Inc., 436 U. S. 307, 312–313 (1978). Accordingly, the Court has found unreasonable, within the meaning of the Fourth Amendment, actions of both police and non-police officers alike. See, *e. g.*, *Michigan* v. *Clifford*, —— U. S. —— (1984) (fire department investigators); *Michigan* v. *Tyler*, *supra* (firefighters); *Marshall* v. *Barlow's Inc.*, *supra* (Occupational Health and Safety Administration inspectors); *Camara* v. *Municipal Court*, 387 U. S. 523 (1967) (building inspectors); *Jones* v. *United States*, 357 U. S. 493 (1958) (alcohol tax collectors).

Concomitantly, whenever the Court has found unreasonable government action, it has generally required, as one remedy, that evidence derived therefrom be excluded from the prosecution's case-in-chief at criminal trials. See *Mapp* v. *Ohio*, 367 U. S. 643 (1961); *Weeks* v. *United States*, 232 U. S. 383 (1914). Though the empirical tests of the exclusionary rule are inconclusive, the Court has consistently "*assumed* that the immediate effect of exclusion will be to discourage law enforcement officials from violating the Fourth Amendment by removing the incentive to disregard it." *Stone* v. *Powell*, 428 U. S. 465, 492 (1976) (emphasis added); see also *Franks* v. *Delaware*, 438 U. S. 154, 171 (1978). The Court bases this deterrence theory on a more general systemic assumption: that exclusion will "encourage those who formulate law enforcement policies, and the officers who implement them, to incorporate Fourth Amendment ideals into their value system." *Stone* v. *Powell*, *supra*, at 492. On this basis, the Court has applied the exclusionary rule to the fruits of Fourth Amendment intrusions of both police and non-police officer alike, reasoning that both police and non-police officials can and should be encouraged to incorporate Fourth Amendment values into the conduct of their day-to-day activities. See, *e. g.*, *Dunaway* v. *New York*, 442 U. S. 200 (1979) (police officers); *Michigan* v. *Clifford*, *supra* (non-police officers); *Michigan* v. *Tyler*, *supra* (non-police officers).

The Court has never before engaged in an analysis of whether a particular class of government officials actually will be deterred by application of the exclusionary rule. To be sure, the Court has rejected application of the exclusionary rule in some cases because it would not, by that application, be likely appreciably to deter future police misconduct. See, *e. g.*, *United States* v. *Havens*, 446 U. S. 620 (1980) (illegally obtained evidence may be used to impeach defendant); *United States* v. *Calandra*, 414 U. S. 338 (1974) (use of illegally obtained evidence permitted at a grand jury proceeding); *United States* v. *Janis*, 428 U. S. 433 (1976) (evidence illegally seized by state authorities may be used in civil suit brought by federal tax authorities); *Stone* v. *Powell*, *supra* (exclusionary rule questions cannot generally be considered on federal *habeas corpus*); cf. *INS* v. *Lopez-Mendoza*, —— U. S. —— (1984) (exclusionary rule inapplicable in civil deportation proceedings because social costs outweigh the admitted marginal deterrent effect). Yet none of these cases entailed, as does the instant matter, the introduction of illegally seized evidence into the State's case-in-chief at a criminal proceeding, where "the need for deterrence and hence the rationale for excluding the evidence is the strongest . . . ." *United States* v. *Calandra*, *supra*, at 348. In none of these cases was application of the exclusionary rule rejected, as it is in this case, because of a judicial intuition that the offending officials could not be deterred by application of the rule in the criminal case-in-chief. Rather, these cases considered and rejected proposals to *extend* the exclusionary rule's application beyond the prosecution's criminal case-in-chief because the *additional* deterrent effect to be gained was insufficient to outweigh the concomitant social costs to be incurred.

Nor does this case fit within the analytic framework articulated in cases such as *Wong Sun* v. *United States*, 371 U. S. 471 (1963), and *United States* v. *Leon*, —— U. S. —— (1984). In *Wong Sun*, the Court held that illegally seized evidence of crime will nevertheless be admissible whenever the official

error complained of is sufficiently attenuated from the evidence thereby discovered. 371 U. S., at 484. In *Leon*, the Court held that evidence of crime will nevertheless be admissible whenever the error making its seizure unconstitutional is an objectively reasonable one. —— U. S., at ——. In short, relying on the experience it has gathered from years of adjudicating police search and seizure problems, the Court has concluded that deterrence of particular categories of Fourth Amendment intrusions is unlikely to result from application of the exclusionary rule to the evidence derived therefrom. By striking contrast, in this case the Court has categorically determined that deterrence of certain *persons*, as opposed to the commission of certain *errors*, will not result by excluding the evidence illegally seized from the prosecution's criminal case-in-chief at trial. That determination is, in my view, irreconcilable with the Court's consistently applied assumption that all government officials can and should be encouraged to incorporate Fourth Amendment ideals into their value systems. Such a determination is especially unfortunate in this case, since the Court has so little experience with public school official search and seizure problems.

The Court apparently proposes now to assess in every case whether prohibiting "the use in the criminal-justice system of evidence obtained in [non-police officer] searches [will] have . . . the behavioral effects . . . that exclusion of illegally obtained evidence in criminal prosecutions generally is thought to have on the typical law enforcement official." *Ante*, at 9–10. I fear this approach will not lead to principled decisionmaking. It makes little sense, in the absence of determinate empirical evidence, to expect judges in state and federal courts to be able to draw reliable and consistent conclusions about the exclusionary rule's deterrent effect on various government officials. If social scientists thoroughly trained in statistical analysis cannot reach consistent conclusions concerning the rule's deterrent effect, there is little reason to believe that trial judges trained only in legal analysis will be

able to do any better. The difference, of course, is that judges do not engage in mere academic debate; they must adjudicate real prosecutions and dispose of them in a principled manner. The Court's new approach will unnecessarily complicate, and possibly undermine, their performance of this task.

This case serves as a good example of the arbitrary distinctions that may very well attend the Court's new approach. The Court suggests that public school officials cannot be deterred by application of the exclusionary rule in criminal proceedings because they cannot fairly be classified as "law enforcement officers." *Ante*, at 9. Yet public school officials are no less concerned with "law enforcement" than are other regulatory agents to whom the exclusionary rule has already been applied. Like firefighters, building inspectors, and alcohol tax collectors, public school officials are charged with enforcing government regulations and with administering a government program. School authorities are responsible for enforcing compulsory attendance laws and for maintaining order and good discipline in the schools. School officials, like these other regulatory agents, are often obliged to seek out and report to the police evidence of criminal conduct. See *post*, at ——, n. 4 (STEVENS, J., dissenting). If the presumption of deterrence properly applies to these other public officials, then it should apply to public school officials as well. All can fairly be characterized as engaging in "law enforcement." Nothing in today's decision provides the federal and state courts with a principled basis for distinguishing among them and arbitrary distinctions are bound to result.

I am sympathetic to the Court's disagreement with the Supreme Court of New Jersey's determination that the evidence seized from respondent has to be excluded from her criminal trial, but my sympathy turns on a different ground. School administrators must be given great discretion in their efforts to maintain order and discipline in the public schools. Students correspondingly can expect less privacy in the

grade schools and high schools than can other persons in non-educational settings. In short, the intrusions that must be tolerated in public schools necessarily extend beyond those which would pass Fourth Amendment scrutiny in other environments. On this basis, it is more likely that various searches conducted by school officials on school premises will be characterized as "reasonable" within the meaning of the Fourth Amendment. However, since the State has not challenged the Supreme Court of New Jersey's contrary holding on this issue, the judgment of that court must be affirmed. I respectfully dissent from the Court's conclusion to the contrary.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[June ——, 1984]

JUSTICE O'CONNOR, dissenting.

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To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: 1/9/85

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[January ——, 1985]

JUSTICE BRENNAN, dissenting.

I join Part II of the Court's opinion. Teachers, like all other government officials, must conform their conduct to the Fourth Amendment's protections of personal privacy and personal security. As JUSTICE STEVENS points out, *post*, at 16–17, this principle is of particular importance when applied to schoolteachers, for children learn as much by example as by exposition. It would be incongruous and futile to charge teachers with the task of embuing their students with an understanding of our system of constitutional democracy, while at the same time immunizing those same teachers from the need to respect constitutional protections. See *Board of Education* v. *Pico*, 457 U. S. 853, 864–865 (plurality opinion); *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 637 (1943).

I do not, however, otherwise join the Court's opinion. Today's decision sanctions school officials to conduct full-scale searches on a "reasonableness" standard whose only definite content is that it is *not* the same test as the "probable cause" standard found in the text of the Fourth Amendment. In adopting this unclear, unprecedented, and unnecesary departure from generally applicable Fourth Amendment standards, the Court carves out a broad exception to standards that this Court has developed over years of considering Fourth Amendment problems. Its decision is supported nei-

This is a good dissent. It points out that in the other Terry-type cases, when the Court has balanced interests

ther by precedent nor even by a fair application of the "balancing test" it proclaims in this very opinion.

I

Three basic principles underly this Court's Fourth Amendment jurisprudence. First, warrantless searches are *per se* unreasonable, subject only to a few specifically delineated and well-recognized exceptions. See, *e. g.*, *Katz* v. *United States*, 389 U. S. 347, 357 (1967); accord *Welsh* v. *Wisconsin*, —— U. S. ——, —— (1984); *United States* v. *Place*, —— U. S. ——, —— (1983); *Steagald* v. *United States*, 451 U. S. 204, 211–212 (1981); *Mincey* v. *Arizona*, 437 U. S. 385 (1978); *Terry* v. *Ohio*, 392 U. S. 1, 20 (1968); *Johnson* v. *United States*, 333 U. S. 10, 13–14 (1948). Second, full-scale searches—whether conducted in accordance with the warrant requirement or pursuant to one of its exceptions—are "reasonable" in Fourth Amendment terms only on a showing of probable cause to believe that a crime has been committed and that evidence of the crime will be found in the place to be searched. *Beck* v. *Ohio*, 379 U. S. 89, 91 (1964); *Wong Sun* v. *United States*, 371 U. S. 471, 479 (1963); *Brinegar* v. *United States*, 338 U. S. 160, 175–176 (1949). Third, categories of intrusions that are substantially less intrusive than full-scale searches or seizures may be justifiable in accordance with a balancing test even absent a warrant or probable cause, provided that the balancing test used gives sufficient weight to the privacy interests that will be infringed. *Dunaway* v. *New York*, 442 U. S. 200, 210 (1979); *Terry* v. *Ohio*, 392 U. S. 1 (1968).

Vice-Principal Choplick's thorough excavation of T. L. O.'s purse was undoubtedly a serious intrusion on her privacy. Unlike the searches in *Terry* v. *Ohio*, *supra*, or *Adams* v. *Williams*, 407 U. S. 143 (1972), the search at issue here encompassed a detailed and minute examination of respondent's pocketbook, in which the contents of private papers and let-

ters were thoroughly scrutinized.[1] Wisely, neither petitioner nor the Court today attempt to justify the search of T. L. O.'s pocketbook as a minimally intrusive search in the *Terry* line. To be faithful to the Court's settled doctrine, the inquiry therefore must focus on the warrant and probable cause requirements.

A

I agree that school teachers or principals, when not acting as agents of law enforcement authorities, generally may conduct a search of their students' belongings without first obtaining a warrant. To agree with the Court on this point is to say that school searches may justifiably be held to that extent to constitute an exception to the Fourth Amendment's warrant requirement. Such an exception, however, is not to be justified, as the Court apparently holds, by assessing net social value through application of an unguided "balancing test" in which "the individual's legitimate expectations of privacy and personal security" are weighed against "the government's need for effective methods to deal with breaches of public order." *Ante*, at 10. The Warrant Clause is something more than an exhortation to this Court to maximize social welfare as *we* see fit. It requires that the authorities must obtain a warrant before conducting a full-scale search. The undifferentiated governmental interest in law enforcement is insufficient to justify an exception to the warrant requirement. Rather, some *special* governmental interest beyond the need merely to apprehend lawbreakers is necessary to justify a categorical exception to the warrant requirement. For the most part, special governmental needs sufficient to override the warrant requirement flow from "exigency"—that is, from the press of time that makes obtaining a warrant

[1] A purse typically contains items of highly personal nature. Especially for shy or sensitive adolescents, it could prove extremely embarrassing for a teacher or principal to rummage through its contents, which could include notes from friends, fragments of love poems, caricatures of school authorities, and items of personal hygiene.

either impossible or hopelessly infeasible. See *United States* v. *Place*, —— U. S., at ——; *Mincey* v. *Arizona*, 437 U. S., at 393–394; *Johnson* v. *United States*, 333 U. S., at 15. Only after finding an extraordinary governmental interest of this kind have we—or ought we—engage in a balancing test to determine if a warrant should nonetheless be required.[2]

To require a showing of some extraordinary governmental interest before dispensing with the warrant requirement is not to undervalue society's need to apprehend violators of the criminal law. To be sure, forcing law enforcement personnel to obtain a warrant before engaging in a search will predictably deter the police from conducting some searches that they would otherwise like to conduct. But this is not an unintended *result* of the Fourth Amendment's protection of privacy; rather, it is the very *purpose* for which the Amendment was thought necessary. Only where the governmental interests at stake exceed those implicated in any ordinary law enforcement context—that is, only where there is some extraordinary governmental interest involved—is it legitimate to engage in a balancing test to determine whether a warrant is indeed necessary.

In this case, such extraordinary governmental interests do exist and are sufficient to justify an exception to the warrant requirement. Students are necessarily confined for most of the school day in close proximity to each other and to the school staff. I agree with the Court that we can take judicial notice of the serious problems of drugs and violence that plague our schools. As JUSTICE BLACKMUN notes, teachers must not merely "maintain an environment conducive to

[2] Administrative search cases involving inspection schemes have recognized that "if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent inspections are essential. In this context, the prerequisite of a warrant could easily frustrate inspection . . . ." *United States* v. *Biswell*, 406 U. S. 311, 316 (1972); accord *Donovan* v. *Dewey*, 452 U. S. 594, 603 (1981). Cf. *Marshall* v. *Barlow's, Inc.*, 436 U. S. 307 (1978) (holding that a warrant is nonetheless necessary in some administrative search contexts).

learning" among children who "are inclined to test the outer boundaries of acceptable conduct," but must also "protect the very safety of students and school personnel." *Ante*, at 3. A teacher or principal could neither carry out essential teaching functions nor adequately protect students' safety if required to wait for a warrant before conducting a necessary search. For these reasons, I agree with the Court's conclusion that Mr. Choplick did not need a warrant before searching T. L. O.'s purse.

B

I emphatically disagree with the Court's decision to cast aside the constitutional probable cause standard when assessing the constitutional validity of a schoolhouse search. The Court's decision jettisons the probable cause standard—the only standard that finds support in the text of the Fourth Amendment—on the basis of of its Rohrschach-like "balancing test." Use of such a "balancing test" to determine the standard for evaluating the validity of a full-scale search represents a sizable innovation in Fourth Amendment analysis. This innovation finds support neither in precedent nor policy and portends a dangerous weakening of the purpose of the Fourth Amendment to protect the privacy and security of our citizens. Moreover, even if this Court's historic understanding of the Fourth Amendment were mistaken and a balancing test of some kind were appropriate, any such test that gave adequate weight to the privacy and security interests protected by the Fourth Amendment would not reach the preordained result the Court's conclusory analysis reaches today. Therefore, because I believe that the balancing test used by the Court today is flawed both in its inception and in its excecution, I respectfully dissent.

1

An unbroken line of cases in this Court have held that probable cause is a prerequisite for a full-scale search. In *Carroll v. United States*, 267 U. S. 132, 149 (1925), the Court

held that "[o]n reason and authority the true rule is that if the search and seizure . . . are made upon probable cause, . . . the search and seizure are valid." Under our past decisions probable cause—which exists where "the facts and circumstances within [the officials'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief" that a criminal offense had occurred and the evidence would be found in the suspected place, *id.*, at 162—is the constitutional minimum for justifying a full-scale search, regardless whether it is conducted pursuant to a warrant or, as in *Carroll*, within one of the exceptions to the warrant requirement. *Henry* v. *United States*, 361 U. S. 98, 104 (1959) (*Carroll* "merely relaxed the requirements for a warrant on grounds of practicality," but "did not dispense with the need for probable cause"); accord *Chambers* v. *Maroney*, 399 U. S. 42, 51 (1970) ("In enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution.").[3]

Our holdings that probable cause is a prerequisite to a full-scale search are based on the relationship between the two clauses of the Fourth Amendment. The first clause ("The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated . . . .") states the purpose of the amendment and its coverage. The second clause (" . . . and no warrants shall issue, but upon probable cause . . . ") gives con-

[3] In fact, despite the somewhat diminished expectation of privacy that this Court has recognized in the automobile context, see *South Dakota* v. *Opperman*, 428 U. S. 364, 367–368 (1976), we have required probable cause even to justify a warrantless automobile search, see *United States* v. *Ortiz*, 422 U. S. 891, 896 (1975) ("A search, even of an automobile, is a substantial invasion of privacy. To protect that privacy from official arbitrariness, the Court always has regarded probable cause as the minimum requirement for a lawful search.") (footnote omitted); *Chambers* v. *Maroney*, 399 U. S. 42, 51 (1970).

tent to the word "unreasonable" in the first clause. "For all but . . . narrowly defined intrusions, the requisite 'balancing' has been performed in centuries of precedent and is embodied in the principle that seizures are 'reasonable' only if supported by probable cause." *Dunaway* v. *New York*, 442 U. S. 200, 214 (1979).

I therefore fully agree with the Court that "the underlying command of the Fourth Amendment is always that searches and seizures be reasonable." *Ante*, at 10. But this "underlying command" is not directly interpreted in each category of cases by some amorphous "balancing test." Rather, the provisions of the warrant clause—a warrant and probable cause—provide the yardstick against which official searches and seizures are to be measured. The Fourth Amendment neither requires nor authorizes the conceptual free-for-all that ensues when an unguided balancing test is used to assess specific categories of searches. If the search in question is more than a minimally intrusive *Terry*-stop, the constitutional probable cause standard determines its validity.

To be sure, the Court recognizes that probable cause "ordinarily" is required to justify a full-scale search and that the existence of probable cause "bears upon" the validity of the search. *Ante*, at 13–14. Yet the Court fails to cite any case in which a full-scale intrusion upon privacy interests has been justified on less than probable cause. The line of cases begun by *Terry* v. *Ohio*, 392 U. S. 1 (1980), provides no support, for they applied a balancing test only in the context of minimally intrusive searches that served crucial law enforcement interests. The search in *Terry* itself, for instance, was a "limited search of the outer clothing." *Id.*, at 30. The type of border stop at issue in *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 880 (1975), usually "consume[d] no more than a minute"; the Court explicitly noted that "any further detention . . . must be based on consent or probable cause." *Id.*, at 881. See also *United States* v. *Hensley*, —— U. S. ——, —— (1985) (momentary stop); *United States*

v. *Place*, —— U. S. ——, —— (1983) (brief detention of luggage for canine "sniff"); *Pennsylvania* v. *Mimms*, 434 U. S. 106 (1978) *(per curiam)* (brief frisk after stop for traffic violation); *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 560 (1976) (characterizing intrusion as "minimal"); *Adams* v. *Williams*, 407 U. S. 143 (1972) (stop and frisk). In short, all of these cases involved "'seizures' so substantially less intrusive than arrests that the general rule requiring probable cause to make Fourth Amendment 'seizures' reasonable could be replaced by a balancing test." *Dunaway*, *supra*, at 210.

Nor do the "administrative search" cases provide any comfort for the Court. In *Camara* v. *Municipal Court*, 387 U. S. 523 (1967), the Court held that the probable cause standard governed even administrative searches. Although the *Camara* Court recognized that probable cause standards themselves may have to be somewhat modified to take into account the special nature of administrative searches, the Court did so only after noting that "because [housing code] inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy." *Id.*, at 537. Subsequent administrative search cases have similarly recognized that such searches intrude upon areas whose owners harbor a significantly decreased expectation of privacy, see, *e. g.*, *Donovan* v. *Dewey*, 452 U. S. 594, 598–599 (1981), thus circumscribing the injury to Fourth Amendment interests caused by the search.

Considerations of the deepest significance for the freedom of our citizens counsel strict adherence to the principle that no search may be conducted where the official is not in possession of probable cause—that is, where the official does not know of "facts and circumstances [that] warrant a prudent man in believing that the offense has been committed." *Unted States* v. *Henry*, 361 U. S., at 102; see also *id.*, at 100–101 (discussing history of probable cause standard). The Fourth Amendment was designed not merely to protect

against official intrusions whose social utility was less as measured by some "balancing test" than its intrusion on individual privacy; it was designed in addition to grant the individual a zone of privacy whose protections could be breached only where the "reasonable" requirements of the probable cause standard were met. Moved by whatever momentary evil has aroused their fears, officials—perhaps even supported by a majority of citizens—may be tempted to conduct searches that sacrifice the liberty of each citizen to assuage the perceived evil.[4] But the Fourth Amendment rests on the principle that a true balance between the individual and society depends on the recognition of "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." *Olmstead* v. *United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting). That right protects the privacy and security of the individual unless the authorities can cross a specific threshold of need, designated by the term "probable cause." I cannot agree with the Court's assertions today that a "balancing test" can replace the constitutional threshold with one that is more convenient for those enforcing the laws but less protective of the citizens' liberty; the Fourth Amendment's protections should not be defaced by "a balancing process that overwhelms the individual's protection against unwarranted official intrusion by a governmental interest said to justify the search and seizure." *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 570 (BRENNAN, J., dissenting).

2

I thus do not accept the majority's premise that "[t]o hold that the Fourth Amendment applies to searches conducted by school authorities is only to begin the inquiry into the

[4] As Justice Stewart said in *Coolidge* v. *New Hampshire*, 403 U. S. 443, 455 (1971), "In times of unrest, whether caused by crime or racial conflict or fear of internal subversion, this basic law and the values that it represents may appear unrealistic or 'extravagant' to some. But the values were those of the authors of our fundamental constitutional concepts."

standards governing such searches." *Ante*, at ——. For me, the finding that the Fourth Amendment applies, coupled with the observation that what is at issue is a full-scale search, is the end of the inquiry. But even if I believed that a "balancing test" appropriately replaces the judgment of the Framers of the Fourth Amendment, I would nonetheless object to the cursory and short-sighted "test" that the Court employs to justify its predictable weakening of Fourth Amendment protections. In particular, the test employed by the Court vastly overstates the social costs that a probable cause standard entails and, though it plausibly articulates the serious privacy interests at stake, inexplicably fails to accord them adequate weight in striking the balance.

The Court begins to articulate its "balancing test" by observing that "the government's need for effective methods to deal with breaches of public order" is to be weighed on one side of the balance. *Ante*, at 10. Of course, this is not correct. It is not the government's need for effective enforcement methods that should weigh in the balance, for ordinary Fourth Amendment standards—including probable cause—may well permit methods for maintaining the public order that are perfectly effective. If that were the case, the governmental interest in having effective standards would carry no weight at all as a justification for *departing* from the probable cause standard. Rather, it is the costs of applying probable cause as opposed to applying some lesser standard that should be weighed on the government's side.[5]

[5] I speak of the "government's side" only because it is the terminology used by the Court. In my view, this terminology itself is seriously misleading. The government is charged with protecting the privacy and security of the citizen, just as it is charged with apprehending those who violate the criminal law. Consequently, the government has *no* legitimate interest in conducting a search that unduly intrudes on the privacy and security of the citizen. The balance is not between the rights of the government and the rights of the citizen, but between opposing conceptions of the constitutionally legitimate means of carrying out the government's varied responsibilities.

In order to tote up the costs of applying the probable cause standard, it is thus necessary first to take into account the nature and content of that standard, and the likelihood that it would hamper achievment of the goal—vital not just to "teachers and administrators," see *ante*, at 12—of maintaining an effective educational setting in the public schools. The seminal statement concerning the nature of the probable cause standard is found in *Carroll* v. *United States*, 267 U. S. 132 (1925). *Carroll* held that law enforcement authorities have probable cause to search where "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief" that a criminal offense had occurred." *Id.*, at 162. In *Brinegar* v. *United States*, 338 U. S. 160 (1949), the Court amplified this requirement, holding that probable cause depends upon "the factual and practical considerations of everyday life on which reasonable prudent men, not legal technicians, act." *Id.*, at 175.

Two Terms ago, in *Illinois* v. *Gates*, —— U. S. —— (1983), this Court expounded at some length its view of the probable cause standard. Among the adjectives used to describe the standard were "practical," "fluid," "flexible," "informal," "easily applied," and "nontechnical." See *id.*, at ——, ——, ——. The probable cause standard was to be seen as a "commonsense" test whose application depended on an evaluation of the "totality of the circumstances." *Id.*, at ——.

Ignoring what *Gates* took such great pains to emphasize, the Court today holds that a new "reasonableness" standard is appropriate because it "will spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense." *Ante*, at 16. I had never thought that our pre-*Gates* understanding of probable cause defied either reason

or common sense. But after *Gates*, I would have thought that there could be no doubt that this "nontechnical," "practical," and "easily applied" concept was eminently serviceable in a context like a school, where professional teachers require the flexibility to respond quickly and decisively to emergencies.

A consideration of the likely operation of the probable cause standard reinforces this conclusion. Discussing the issue of school searches, Professor LaFave has noted that the cases that have reached the appellate courts "strongly suggest that in most instances the evidence of wrongdoing prompting teachers or principals to conduct searches is sufficiently detailed and specific to meet the traditional probable cause test." 3 W. LaFave, Search and Seizure § 10.11, at 459–460 (1978).[4] The problems that have caused this Court difficulty in interpreting the probable cause standard have largely involved informants, see, *e. g.*, *Illinois* v. *Gates*, —— U. S. —— (1983); *Spinelli* v. *United States*, 393 U. S. 410 (1969); *Aguilar* v. *Texas*, 378 U. S. 108 (1964); *Draper* v. *United States*, 358 U. S. 307 (1959). However, three factors make it likely that problems involving informants will not make it difficult for teachers and school administrators to make probable cause decisions. This Court's decision in *Gates* applying a "totality of the circumstances" test to determine whether an informant's tip can constitute probable cause renders the test easy for teachers to apply. The fact that students and teachers interact daily in the school building makes it more likely that teachers will get to know students who supply information; the problem of informants who remain anonymous even to the teachers—and who are therefore unavailable for verification or further questioning—is unlikely to arise. Finally, teachers can observe the behavior

[4] It should be noted that Professor LaFave reached this conclusion in 1978, *before* this Court's decision in *Gates* made clear the "flexibility" of the probable cause concept.

of students under suspicion to corroborate any doubtful tips they do receive.

As compared with the relative ease with which teachers can apply the probable cause standard, the amorphous "reasonableness under all the circumstances" standard freshly coined by the Court today will likely spawn increased litigation and greater uncertainty among teachers and administrators. Of course, as this Court should know, an essential purpose of developing and articulating legal norms is to enable individuals to conform their conduct to those norms. A school system conscientiously attempting to obey the Fourth Amendment's dictates under a probable cause standard could, for example, consult decisions and other legal materials and prepare a booklet expounding the rough outlines of the concept. Such a booklet could be distributed to teachers to provide them with guidance as to when a search may be lawfully conducted. I cannot but believe that the same school system faced with interpreting what is permitted under the Court's new "reasonableness" standard would be hopelessly adrift as to when a search may be permissible. The sad result of this uncertainty may well be that some teachers will be reluctant to conduct searches that are fully permissible and even necessary under the constitutional probable cause standard, while others may intrude arbitrarily and unjustifiably on the privacy of students.[7]

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[7] A comparison of the language of the standard ("reasonableness under all the circumstances") with the traditional language of probable cause ("facts sufficient to warrant a person of reasonable caution in believing that a crime had been committed and the evidence would be found in the designated place") suggests that the Court's new standard may turn out to be probable cause under a new guise. If so, the additional uncertainty caused by this Court's innovation is surely unjustifiable; it would be naive to expect that the addition of this extra dose of uncertainty would do anything other than "burden the efforts of school authorities to maintain order in the schools," *ante*, at 15. If, on the other hand, the new standard permits searches of students in instances when probable cause is absent—instances, according to this Court's consistent formulations, when a person of

One further point should be taken into account when considering the desirability of replacing the constitutional probable cause standard. The question facing the Court is not whether the probable cause standard should be replaced by a test of "reasonableness under all the circumstances." Rather, it is whether traditional Fourth Amendment standards should recede before the Court's new standard. Thus, although the Court today paints with a broad brush and holds its undefined "reasonableness" standard applicable to *all* school searches, I would approach the question with considerably more reserve. I would not think it necessary to develop a single standard to govern all school searches, any more than traditional Fourth Amendment law applies even the probable cause standard to *all* searches and seizures. For instance, just as police officers may conduct a brief stop and frisk on something less than probable cause, so too should teachers be permitted the same flexibility. A teacher or administrator who had reasonable suspicion that a student was carrying a gun would no doubt have authority under ordinary Fourth Amendment doctrine to conduct a limited search of the student to determine whether the threat was genuine. The "costs" of applying the traditional probable cause standard must therefore be discounted by the fact that, where additional flexibility is necessary and where the intrusion is minor, traditional Fourth Amendment jurisprudence itself displaces probable cause when it determines the validity of a search.

A legitimate balancing test whose function was something more substantial than reaching a predetermined conclusion acceptable to this Court's impressions of what authority teachers need would therefore reach rather a different result than that reached by the Court today. On one side of the

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reasonable caution would not think it likely that a violation existed or that evidence of that violation would be found—the new standard is genuinely objectionable and impossible to square with the premise that our citizens have the right to be free from arbitrary intrusions on their privacy.

balance would be the costs of applying traditional Fourth Amendment standards—the "practical" and "flexible" probable cause standard where a full-scale intrusion is sought, a lesser standard in situations where the intrusion is much less severe and the need for greater authority compelling. Whatever costs were toted up on this side would have to be discounted by the costs of applying an unprecedented and ill-defined "reasonableness under all the circumstances" test that will leave teachers and administrators uncertain as to their authority and will encourage excessive fact-based litigation.

On the other side of the balance would be the serious privacy interests of the student, interests that the Court admirably articulates in its opinion, *ante*, at 10–12, but which the Court's new ambiguous standard places in serious jeopardy. I have no doubt that a fair assessment of the two sides of the balance would necessarily reach the same conclusion that, as I have argued above, the Fourth Amendment's language compels—that school searches like that conducted in this case are valid only if supported by probable cause.

II

Applying the constitutional probable cause standard to the facts of this case, I would find that Mr. Choplick's search violated T. L. O.'s Fourth Amendment rights. After escorting T. L. O. into his private office, Mr. Choplick demanded to see her purse. He then opened the purse to find evidence whether she had been smoking in the bathroom. When he opened the purse, he discovered the pack of cigarettes. At this point, his search for evidence of the smoking violation was complete.

Mr. Choplick then noticed, below the cigarettes, a pack of cigarette rolling papers. Believing that such papers were "associated," see *ante*, at 2, with the use of marijuana, he proceeded to conduct a detailed examination of the contents of her purse, in which he found some marihuana, a pipe, some

money, an index card, and some private letters indicating that T. L. O. had sold marihuana to other students. The State sought to introduce this latter material in evidence at a criminal proceeding, and the issue before the Court is whether it should have been suppressed.

On my view of the case, we need not decide whether the initial search conducted by Mr. Choplick—the search for evidence of the smoking violation that was completed when Mr. Choplick found the pack of cigarettes—was valid. For Mr. Choplick at that point did not have probable cause to continue to rummage through T. L. O.'s purse. Mr. Choplick's suspicion of marijuana possession at this time was based *solely* on the presence of the package of cigarette papers. The mere presence without more of such a staple item of commerce is insufficient to warrant a person of reasonable caution in inferring both that T. L. O. had violated the law by possessing marijuana and that evidence of that violation would be found in her purse. Just as a police officer could not obtain a warrant to search a home based solely on his claim that he had seen a package of cigarette papers in that home, Mr. Choplick was not entitled to search possibly the most private possessions of T. L. O. based on the mere presence of a package of cigarette papers. Therefore, the fruits of this illegal search must be excluded and the judgment of the New Jersey Supreme Court affirmed.

III

In the past several Terms, this Court has produced a succession of Fourth Amendment opinions in which "balancing tests" have been applied to resolve various questions concerning the proper scope of official searches. The Court has begun to apply a "balancing test" to determine whether a particular category of searches intrudes upon expectations of privacy that merit Fourth Amendment protection. See *Hudson* v. *Palmer*, —— U. S. ——, —— (1984) ("Determining whether an expectation of privacy is 'legitimate' or 'reasonable' necessarily entails a balancing of interests."). It ap-

plies a "balancing test" to determine whether a warrant is necessary to conduct a search. See *ante*, at ——; *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 564–566 (1976). In today's opinion, it employs a "balancing test" to determine what standard should govern the constitutionality of a given category of searches. See *ante*, at ——. Should a search turn out to be unreasonable after application of all of these "balancing tests," the Court then applies an additional "balancing test" to decide whether the evidence resulting from the search must be excluded. See *United States* v. *Leon*, —— U. S. —— (1984).

All of these "balancing tests" amount to brief nods by the Court in the direction of a neutral utilitarian calculus while the Court in fact engages in an unanalyzed exercise of judicial will. Perhaps this doctrinally destructive nihilism is merely a convenient umbrella under which a majority that cannot agree on a genuine rationale can conceal its differences. Compare *ante*, at —— (WHITE, J., delivering the opinion of the Court) with *ante*, at —— (POWELL, J., joined by O'CONNOR, J., concurring) and *ante*, at ——, (BLACKMUN, J., concurring in the judgment). And it may be that real force underlying today's decision is the belief that the Court purports to reject—the belief that the unique role served by the schools justifies an exception to the Fourth Amendment on their behalf. If so, the methodology of today's decision may turn out to have as little influence in future cases as will its result, and the Court's departure from traditional Fourth Amendment doctrine will be confined to the schools.

On my view, the presence of the word "unreasonable" in the text of the Fourth Amendment does not grant a shifting majority of this Court the authority to answer *all* Fourth Amendment questions by consulting its momentary vision of the social good. Full-scale searches unaccompanied by probable cause violate the Fourth Amendment. I do not pretend that our traditional Fourth Amendment doctrine automatically answers all of the difficult legal questions that occasion-

ally arise. I do contend, however, that this Court has an obligation to provide some coherent framework to resolve such questions on the basis of more than a conclusory recitation of the results of a "balancing test." The Fourth Amendment itself supplies that framework and, because the Court today fails to heed its message, I must respectfully dissent.

and departed from the probable cause standard, the intrusion on privacy interests has been minimal. We made the same point in earlier drafts of our opinion, but removed it at SOC's request.

This dissent has convinced me that your analysis is the only way to deal with the issue posed by this case. WJB does not even attempt to challenge the reasoning of our concurring opinion.

Lee

crr 05/09/84

DRAFT OPINION

New Jersey v. T.L.O.

Justice Powell, concurring.

I agree with the result reached by the Court and with most of its reasoning. I write separately only to make clear my disagreement with language in the Court's opinion that suggests that exclusion of evidence from school disciplinary proceedings may provide a significant deterrent to Fourth Amendment violations by school officials. That suggestion is unsubstantiated by the current record and is ~~unnecessary~~ extraneous to the question before us.

As the Court ~~makes clear~~ states, ante, at 9, the only question before us is whether evidence unlawfully seized by school officials during the course of an in-school search must be excluded in juvenile delinquency proceedings. I agree with the Court's conclusion that it need not. Application of the exclusionary rule to criminal proceedings is warranted only where it is clear that exclusion will "result in appreciable deterrence." United

States v. Janis, 428 U.S. 433, 454 (1976). As the Court explains, school officials properly are concerned primarily with enforcing school regulations and maintaining a safe and drug-free learning enviornment. Ante, at 9-10. They, therefore, will have strong incentives to perform in-school searches that will not be diminished by the exclusion of evidence in a subsequent delinquency proceeding.

This explanation sufficiently answers the question whether the exclusionary rule will "result in appreciable deterrence." Nevertheless, the Court goes on to consider the likely deterrent effect of excluding evidence seized by school officials from school disciplinary proceedings. See ante, at 10-11. The basis for the Court's speculation is the decision by the New Jersey Superior Court that evidence seized in this case must be excluded from the disciplinary proceedings involving T.L.O.'s suspension from school.

The Court states in a footnote that "the propriety of that decision is not before us in this case." Ante, at 10 n. 6.

This disclaimer, however, is undermined by the Court's subsequent statement to the effect that "illegal searches and seizures by school officials will be adequately deterred" by the exclusion of evidence from school disciplinary proceedings. Ante, at 11. Not only is this statement ~~totally~~ unsupported by the record in this case, but it suggests an answer to a question that is not currently before us. Moreover, it suggests an answer that is contrary to our decisions concerning the exclusionary rule -- decisions that consistently have refused to extend the rule to civil proceedings. See, e.g., United States v. Janis, 428 U.S. 433 (1976).

Although I join the Court's opinion, I disapprove of its unnecessary musings concerning the deterrent effect of the exclusionary rule in situtations that simply are not before us.

Officials Weigh School Safety, Student Rights

File in T.L.O. (to be restaged)

Post 6/11/84

By Elsa Walsh
Washington Post Staff Writer

A Baltimore County high school gym class was sent back to school from a roller rink recently after the scent of marijuana was detected in a rink restroom and on some of the students.

When they got back to Towson High, small groups of students were taken to administrative offices and frisked by members of the school staff. Their purses, bags, shoes and socks were searched and, in some cases, clothing was removed and bras and underwear were checked.

School officials found a 5½-inch knife in one girl's pocket and marijuana in the purses of two other students. Juvenile charges were brought against the students. One was suspended and two were expelled.

The incident reflects a troubling problem for school officials around the country: How do they balance the need for a safe school environment against a student's right to Fourth Amendment protection from unreasonable searches?

That is the issue in a case pending before the Supreme Court involving a New Jersey vice principal's search of a student's purse. Courts around the nation have ruled erratically on student searches, and many school officials are nervously awaiting the high court's decision, which is expected before the court's term expires in July. The decision, school officials say, could radically alter when and how they may search students.

"We could be in a heap of trouble," says Peter Blau-

See RIGHTS, A23, Col. 1

RIGHTS, From A1

velt, chief of security for Prince George's County schools, where officials collected about 100 weapons from students this school year, some during searches. "The decision could be devastating."

"It's an issue of real concern to us. We realize the tenuous legal grounds much of this search business is based upon," says Jim Fleming, an assistant superintendent with the Miami schools, where drug trafficking has been a major problem. Through December of this school year, Miami school officials confiscated 98 weapons and processed 97 cases of drug possession. "We are watching the Supreme Court decision very, very closely."

"Essentially, schools seem to expect students to shed their constitutional rights when they come into school," says Barry Goodman, a New Jersey lawyer with the American Civil Liberties Union, who has filed a brief in the Supreme Court case. "They have the rights on the street, but once they walk into school they can forget it. Their rights are lost."

Schools are different from the streets, argues Tom Shannon, executive director of the National School Boards Association in Alexandria. "We are not at war with our children," says Shannon, but "this is not the street. Certain rights people have in school have to be subordinated to the common good and safety of all children." Shannon has also filed a brief in Supreme Court case.

In the New Jersey case, a Piscataway, N.J., student, who is identified only as T.L.O. in court papers, was seen smoking in the school bathroom on March 7, 1980. When the girl denied the accusation, the vice principal searched the girl's purse.

The administrator found cigarettes on top and rolling papers not far below. A deeper look into the purse yielded marijuana, empty plastic bags, a pipe and a list of names of persons who owed the student money. The evidence was turned over to police, and the girl was convicted of possession of marijuana with intent to distribute.

The conviction was overturned last year by the New Jersey Supreme Court, which ruled that students should be guaranteed the same rights as adult offenders and that the search was improper. The evidence was suppressed.

At issue in the New Jersey case, now on appeal to the high court, is whether the evidence found by the vice principal should have been permitted in court, even if the search did not meet a legal standard of reasonableness or fairness. Attorneys for the state argue that school administrators are not trained police officers and should not have to meet the same criminal law standards. They say the purpose of school searches is a pragmatic one: to maintain a safe and disciplined environment.

In friend-of-the-court briefs, school board attorneys have urged the court to permit broader discretion for school administrators in searches.

"We are concerned about an overbroad decision that could endanger a school's ability to act *in loco parentis*," says Shannon. "It could hamstring administration efforts and teachers' efforts to control what is going on in the school."

Goodman and the girl's lawyers, on the other hand, contend that children in school should be afforded the same guarantees they have elsewhere. They argue that because smoking was allowed in other areas of the Piscataway school building, possession of cigarettes was not a violation of school rules and was not a reasonable indication that the purse contained marijuana.

The "wholesale rummaging" of the girl's purse was unreasonable, they contended, adding that the marijuana found should not have been permitted as evidence in a criminal court proceeding. Strict standards are particularly important when impounded material is turned over for a court proceeding.

"It would be ironic in the extreme," wrote the ACLU in its brief, "if in our schools, the institution upon which we rely to teach our children the rights and responsibilities of our constitutional form of government, violations of those rights are countenanced . . . ."

School officials are hoping the Supreme Court will clear up some of the confusion and set clearer guidelines as to when students can be searched and when the evidence can be used in court. At present, school districts and courts around the country require standards varying from suspicion to "probable cause." Some, such as in Maryland, Virginia and the District, allow searches when there appears to be "reasonable" belief that the student has drugs, a weapon or stolen property. In others, such as Miami, a student is asked if he or she will permit a search; if the student refuses the parent or police will be called to judge if the stricter standard of "probable cause" can be met.

"Searches are shaky," says Miami's Fleming.

As a result of the differing interpretations, numerous problems have arisen. In California, lawyers are expecting the high court's decision to affect a similar case in the State Supreme Court. In that case, a student was standing in a hallway during class time and a school staff member, concerned that he might be skipping class, searched his bag and found marijuana.

A group of Northern Virginia parents are considering filing suit against an elementary school because a group of boys recently were required to strip to their shorts when some material was missing from a classroom.

And, principals in Burbank, Calif., have strongly endorsed the use of dogs to sniff out drugs, but the ACLU has filed suit to block the action.

For civil libertarians opposing the searches, some of their most surprising foes are parents. "At one time we tried using publicity [about searches] to shock the consciences of adults, but we got the opposite response," says John Roemer, executive director of the Maryland chapter of the ACLU. "The parents clamored for more."

For the most part, parents supported the search of the Towson High students. They wanted their children's schools safe and drug-free. But some students were annoyed.

"I was mad," said 15-year-old Melanie Gore. "A lot of people felt it was unfair that they put us through a lot of embarrassment . . . . People shouldn't bring drugs into school in the first place, but the teachers weren't even sure who was smoking."

ACLU lawyers told two Towson High students who contacted them that they had a good shot at proving the students were searched unreasonably, but the girls did not pursue court action because most of their classmates expressed disinterest.

After a rash of violence or a well-publicized incident, the pleas become more emotional. Newspapers were splashed with community demands for a crackdown last year when a loaded gun was found in the desk of a third grade student in the Miami area.

When a 14-year-old Baltimore City student was gunned down in a junior high hallway after refusing to turn his jacket over to two youths, some parents and members of the news media called for school guards to begin carrying metal detectors.

Guards in Detroit schools began using metal detectors this year after local government officials and residents became incensed by a spate of attacks on students, even though many of the assaults occurred off school grounds. This year Detroit guards, using the scanners, have found 59 guns and 69 knives.

Fed up with the large volumes of drugs floating around schools, students in Miami have formed Youth Crime Watch teams in all 77 of the system's secondary schools and 60 of the 176 elementary schools. At Norland Miami High, 11 varsity athletes patrol the halls at lunch time and between classes. School officials say the athletes provide information about probable crimes and act as a deterrent to attacks.

Last year, there were about a dozen necklace snatchings at Norland Miami. This year, none have been reported.

The forbidding size of the athletes may be an influencing factor. The captain of the Varsity Patrol, Clyde Montgomery, is a 6-foot-1, 200-pound linebacker.

"I believe I'm a civil libertarian," says Frank Blount, who heads the Detroit security staff. "But I also believe kids should go to school to learn. There is no place in our schools for weapons. We don't hand them out at the school door."

The most troublesome and troubling of the search techniques used by school systems appears to be strip searches, the effect of which, say opponents, can be a lifetime of humiliation and fear.

"Essentially, schools seem to expect students to shed their constitutional rights when they come into school. They have the rights on the street, but once they walk into school they can forget it. Their rights are lost."

Brooklyn school officials last week settled a case with the parents of two P.S. 282 students who sued, charging that most of the children in a substitute teacher's class were stripped after $50 was discovered to be missing from the instructor's purse, even though the money was found on one of the first students examined.

The parents of a 12-year-old Willingboro, N.J., child are in the process of settling a case against school officials. The parents said their daughter was partially strip-searched after some students were seen brushing close enough to her to have either given or received something. A school nurse examined the girl but found no evidence of drugs.

"It was really embarrassing and we didn't know what was going on," said one student who was late getting to her job after the Towson skating incident. "We didn't know why it was happening. It was really weird and awful. I don't know why they had to search all of us."

But Towson High Assistant Principal Ray Gross defends the search. "We had both probable cause and reasonable belief to think some of our students were using drugs. We had a number of different sources supporting this assumption," said Gross. "Some of the girls did complain to me that their bras and underwear were checked. If that happened, that shouldn't have."

School officials concede that searches sometimes go too far but generally say most staff members involved in searches have no wish to infringe on students' rights or privacy—only a need to protect the majority.

"In strip searches the rule of thumb is, 'What is reasonable?' " says Prince George's security chief Blauvelt. "There are times when actions taken are just not reasonable .... But principals have never received any training in this area of school security.

"They fly by the seats of their pants, and what's a good idea today may not be a good idea tomorrow," says Blauvelt.

"But if the Supreme Court were to rule school administrators do not have their current rights to search and seizure, I think the schools would have a tendency to become open territory, if you will. I don't think anyone wants that."

Extra cc of copy sent to Print Shop for Chambers Draft 5/12/84

lfp/ss 05/12/84 nf NJ1 SALLY-POW

82-712 New Jersey v. T.L.O.

Justice Powell, concurring.

I agree with the decision reached by the Court and with most of its reasoning. I do not agree, however, with the language in the opinion that suggests that exclusion of evidence from school disciplinary proceedings may provide a deterrent to Fourth Amendment violations by school officials. This suggestion has no support in the record and is unnecessary to a decision of the question before us.

As the Court states, ante, at 9, the only question presented is whether evidence unlawfully seized by school officials during the course of an in-school search must be excluded in juvenile delinquency

proceedings. I agree with the Court's conclusion that the exclusionary rule is not applicable. The school officials, in searching respondent's purse, were acting pursuant to their duty to enforce school regulations and maintain a safe and drug-free learning environment. They had no responsibility for enforcing the criminal laws. Application of the exclusionary rule, as the Court correctly reasons, would be unlikely to result in appreciable deterrence.[1] My difficulty concerns the

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[1]The courts below found an absence of probable cause for the search that revealed the drugs and evidence that T.L.O. was selling drugs to her youthful schoolmates. Determination of what constitutes "probable cause" is a question on which lawyers and judges, as well as police officials, frequently differ. It would be unrealistic to extend the subtleties of the Fourth Amendment the school classroom. I therefore do not agree with the statement in the Court's opinion that "school boards may and should have both the incentive and the means to foster an understanding [of federal constitutional standards]". See, ante, at 10. Decisions of the courts, including this Court, frequently decide close questions of alleged Fourth Amendment violations and applications of the exclusionary

Footnote continued on next page.

portion of the Court's opinion, see ante, at 10-11, that goes on to consider the likely deterrent effect of excluding evidence seized by school officials in school disciplinary proceedings as distinguished from delinquency proceedings. The basis for the Court's speculation in this respect is the decision by the New Jersey Superior Court, in the disciplinary proceedings, that the evidence found in T.L.O.'s purse must be excluded.

The Court is careful to state in a footnote that the "propriety of that decision is not before us in this case." Ante, at 10, n. 6. This disclaimer, however, is

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rule. Keeping abreast of, and understanding, these developments has been a problem for law enforcement officials who are briefed regularly on Court decisions. School officials rarely possess legal training, and few schools could provide adequate briefing. It would be unreasonable on its face to suggest that they should be held to the same standards that the law expects of police officials.

undermined by the Court's subsequent statement to the effect that "illegal seizures and searches by school officials will be adequately deterred" by the exclusion of evidence from disciplinary proceedings. Ante, at 11. This statement is unsupported in the record, and it suggests or implies an answer to a question not before us. Moreover, it suggests an answer that is contrary to our decisions concerning the exclusionary rule - decisions that consistently have refused to extend the rule to civil proceedings. See, e.g., United States v. Janis, 428 U.S. 433 (1976).

Although I join the judgment and the greater part of the Court's opinion, I dissent from that portion of it that speculates unnecessarily as to a deterrent effect of the exclusionary rule in situations that are not before us.[2]

Footnote(s) 2 will appear on following pages.

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[2] If, indeed, the decision of the New Jersey Superior Court were before us, or if I am permitted also to speculate, I would say with some confidence that the judgment of that court should be reversed. There is no evidence of overreaching conduct on the part of the school officials, and the seven-day suspension of T.L.O. for selling drugs to 14-year-old children in school, was a singularly modest penalty.

Justice-
I hope this is what you had in mind. As we discussed, there are several citations missing. I could also add some explanatory footnotes.
Lee

alb 11/01/84

New Jersey v. T.L.O., No. 83-712

POWELL,J., concurring:

After balancing the interests of students against those of the government, the majority holds that school searches need not be based on probable cause. I agree that the fourth amendment should not prohibit a teacher from conducting a search when "reasonable grounds" exist to suspect that the search will turn up evidence of a violation of school rules or the law. Nevertheless, I write separately to emphasize that our departure from the probable cause standard cannot be justified under the test set forth in Camara v. Municipal Court, 387 U.S. 523 (1967), which balances the interests of the student

against those of the school. Our holding should be premised on the principle that students are entitled to only those constitutional protections that will not "materially and substantially interfere with the requirements of appropriate discipline ... in the schools." Tinker v. Des Moines School Dist., 393 U.S. 503 (1969).

I.

In Camara, we held that "there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails." Identifying the competing interests, the majority recognizes that teachers and school

administrators have a "substantial interest" in maintaining discipline in the classroom. A teacher's ability to maintain order will be frustrated by a requirement that searches be based on probable cause. The majority recognizes, however, that the government's "need" for a departure from the probable cause standard must be balanced against the concomitant intrusion on the privacy interests of students. The Court finds that the schoolchild's "subjective" expectation of privacy, at least with respect to his person and personal effects, is as great as that of an adult. Furthermore, the Court states that the student's expectation is one that society recognizes as "legitimate."

The majority apparently finds that the school's need to maintain discipline outweighs any intrusion upon

the student's privacy interest, even though it acknowledges the substantiality of the privacy invasion represented by a search. I cannot understand this finding since in other cases where the Court has approved a search or seizure on the basis reasonable suspicion, the resulting intrusion has been quite limited. In United States v. Brignoni-Ponce, 422 U.S. 873 (1975), for example, we held that a roving border patrolman may stop a car that he "reasonably suspects" contains illegal aliens. Despite the government's substantial interest in limiting the influx of illegal aliens, this departure from the probable cause standard was sanctioned only after we found that the brief stop of an automobile constitutes a "modest" intrusion. This case, unlike Brignoni-Ponce,

involves a privacy interest so substantial that results under the Camara "balancing test" are inconclusive.

II.

Only by recognizing the limited nature of the schoolchild's constitutional rights can we justify our departure from the standard of probable cause. Although this Court has recognized that students do not "shed their constitutional rights ... at the schoolhouse gate," Tinker v. Des Moines School Dist., 393 U.S. 503, 506 (1969), it has been reluctant to interfere with the discretion of teachers and school officials. We consistently have refused to afford students constitutional protections

which would materially interfere with the operation of the public schools.

In Tinker, the Court held that the first amendment protected high school students' right to wear black armbands to protest the Vietnam War. Although the students' conduct was "closely akin to 'pure speech,'" the Court did not intimate that the school policy forbidding the armbands could be sustained only if it served a "compelling state interest." Cf. Brown v. Hartlage, 456 U.S. 45, 53-54 (1982). Instead, the Tinker Court held that school officials could not restrict the students' conduct because the wearing of armbands did not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." The Court's analysis thus indicates that

schoolchildren are not entitled to the same first amendment rights enjoyed by adults. The decision to afford students only limited constitutional protection was based on the Court's recognition of the "need for affirming the comprehensive authority of ... school officials ... to prescribe and control conduct in the school."

In Goss v. Lopez, 417 U.S. 565 (1975), the Court held that students could not be suspended from school, even for less than ten days, without a notice and a hearing. Again, the Court was careful to limit the nature of the student's constitutional right so as to avoid interfering with the operation of the schools. The "notice" to which the student was entitled could be given orally, immediately prior to the hearing. The decision

did not grant the student a right to counsel, to cross-examination, or to call witnesses. The teacher was required only to give the student an explanation of the evidence against him and "an opportunity to present his side of the story." The Court recognized that these procedures were "rudimentary;" nevertheless it stated that requiring more than this "informal give-and-take" would make the short suspension too costly as a disciplinary tool and would destroy its effectiveness as part of the teaching process.

While Tinker and Goss recognized limitations on the constitutional rights of students, Ingraham v. Wright, 430 U.S. 651 (1977), went further and held the eighth amendment ~~totally~~ inapplicable to the schools. The Ingraham decision was based primarily on our conclusion

that the eighth amendment was intended only to protect those convicted of crimes. Nevertheless, we went on to state that even if it had some application outside the context of criminal pubishments, the eighth amendment should not prohibit corporal punishment of public school students.

Tinker, Goss, and Ingraham do not indicate that the rights of students are unimportant. Instead, these decisions reflect an awareness that school officials must be given broad discretionary authority in the daily operation of the public schools. But despite our reluctance to afford schoolchildren full constitutional rights, we are confident that their interests will be protected, because: (1) those members of the community with a substantial interest in the public schools will

supervise their operation; and (2) there is a "commonality of interest" between teachers and students.

The public school is an open and highly visible institution in the community. Although attendance is compelled, students leave school at the end of the day and return to their families. Ingraham, 430 U.S. at 670. Instances of mistreatment ~~usually are~~ may be reported to parents and ~~other concerned individua~~friends. Therefore, the teacher knows that if he acts unfairly, he faces the unwelcome prospect of irate parents in his office. Wilkinson, Goss v. Lopez: The Supreme Court as School Superintendant, 1975 The Supreme Court Rev. 25, 70. If the school official's explanation fails to satisfy them, the concerned parents may approach a school board member or another elected official. Given the usual geographic concentration of

parents around the schools in which they are interested, their ability to influence the school's operation through political channels will be substantial.

Our refusal to grant schoolchildren full constitutional protection can also be justified by the "commonality of interest" between teachers and students. Goss v. Lopez, 419 U.S. 565, 593 (Powell,J., dissenting). The constitution articulates individual liberties because of an underlying assumption that citizens and state officials officials have conflicting interests. Since the teacher serves as an educator, adviser, and friend to the student, the interests of the two usually coincide. Id. at 594. Hence, it is unnecessary to give schoolchildren the same constitutional protection afforded to some others. A policeman who is "engaged in the competitive process of

ferreting out crime," Terry v. Ohio, 392 U.S. 1, 12 (1968), may have little regard for the rights of a criminal suspect. The same cannot be said about a teacher who thinks that his student has violated a school regulation; in many cases, the teacher will be as concerned with the welfare of the offending student as with that of his classmates.

III.

The ability of concerned parents to supervise the schools, as well as the "commonality of interest" between teachers and students, make it appropriate to relax the constitutional protections afforded schoolchildren. Students should be granted only those constitutional rights which will not "materially and substantially

interfere with the requirements of appropriate discipline in ... the school." The probable cause requirement would substantially interfere with the efforts of school authorities to maintain discipline in the classroom. Requiring a teacher to wait until there is probable cause to search would frustrate his efforts to act quickly so as to prevent not only infractions of school rules, but also injuries to other students. Moreover, teachers often are unfamiliar with the legal technicalities of the probable cause standard. They would find its application to the classroom setting impossibly difficult. Allowing the search of a student on the basis of "reasonable grounds," however, gives school officials the discretion that they need to maintain discipline in the schools. It is on this basis that I join Part III of the majority opinion.

alb 10/26/84

TO: Justice Powell
FROM: Lee
RE: No. 83-712, New Jersey v. T.L.O., Justice White's first draft

Justice White's draft opinion certainly reaches the right result. It seems to me, however, that he skips one step in the analysis. He correctly recognizes that the determination of what is "reasonable" requires "balancing the need to search against the invasion which the search entails." Camara v. Municipal Court, 387 U.S. at 536-537 (page 10). In setting up the equation, he states that: (1) a student has a substantial expectation of privacy that is infringed by a search of her person or purse (pages 10-12); and (2) there is a great need to maintain discipline in the classroom.(pages 12-13). He then announces that the search of a student may be based on "reasonable grounds."(page 15). The analysis is very conclusory; after identifying a severe intrusion and a weighty governmental need, Justice White simply picks a standard less demanding than probable cause.

It seems that a decision to depart from the probable cause standard should be justified in either of two ways. First, the Court could hold that schoolchildren have restricted privacy interests. Unfortunately, it would be difficult to limit the use of this rationale to the school setting. If juveniles have such limited privacy interests, why not allow policemen to search

would be to rely upon the reasoning in your opinion in Ingraham v. Wright. In Ingraham, you stated that the "openness of the public school and its supervision by the community afford significant safeguards against" abuses of corporal punishment. That same openness will tend to prevent unreasonable searches.

With the exception of his failure to discuss the relevance of your opinion in Ingraham, Justice White's draft appears to be satisfactory. He was wise to avoid deciding whether a school search would ever be appropriate in the absence of individualized suspicion. (page 15, note 7). I therefore recommend that you join Justice White's opinion. I am not sure whether you will want to write a short concurring opinion.

My First Draft

While in the classroom, students necessarily have a lesser expectation of privacy than the general public has in an unrestricted environment.

lfp/ss 11/05/84 PLO SALLY-POW

83-712 New Jersey v. T.L.O.

JUSTICE POWELL, concurring.

I agree with the Court's decision, and much of, however, with much but not all its opinion. ~~However,~~ I would place greater emphasis on the special characteristics of the school, ~~environment(s) — an environment in which students necessarily have a lessened expectation of privacy than the population generally.~~[1]

In ~~a number of~~ several cases, we have recognized the special characteristics of the school, ~~environment.~~ To be sure, the Court properly has said that students do not "shed their constitutional rights . . . at the schoolhouse

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[1]The Court's opinion states that "[a] search of a [school] child's person or of a closed purse or of a bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy". Ante, at 10, 11. This expectation also is said to be "legitimate". Ante, at 12. If indeed a school child's expectation of privacy is "no less" ~~than that of~~ as an adult, it is not clear to me how the Court can conclude that a standard less than probable cause is appropriate. In cases in which a lesser standard has been applied - quite properly I think - there have been circumstances that lessened the reasonableness of one's expectation of privacy. See, e.g., United States v. Brignoni-Ponce, 422 U.S. 873 (1975). (Lee: cite other cases.) The age of a child may be relevant, as the law applies different standards based upon age even in a non-school environment (Lee, cite cases).

I would not leave Murtaugh that one adult can on a school house create the detainment & have knowledge searched on the absence of reasonable cause objection existing

(brief stop of automobile involved a "modest" intrusion); Terry v. Ohio, 392 U.S. 1 (1968) (search for weapons was "limited"); United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (intrusion caused by routine checkpoint stop is "quite limited").

gate". Tinker v. Des Moines School District, 393 U.S. 503, 506 (1969). But we have refused consistently to afford students constitutional protections ~~that~~ which normally are enjoyed by juveniles as well as adults in non-school ~~environments~~ settings. 3/ In Goss v. Lopez, 417 U.S. 565 (1975), ~~a~~ the Court recognized a constitutional right to due process, ~~was recognized~~ and yet ~~the Court was~~ we were careful to limit the exercise of this right by a student who challenged a disciplinary suspension. The only process found to be "due" was ~~notice~~ notice ~~and a~~ and a hearing described as "rudimentary"; amounting to no more than "the disciplinarian * * * informally discuss[ing] the alleged misconduct with the student minutes after it has occurred". Id., at 581-582. In Ingraham v. Wright, 430 U.S. 651 (1977), we declined to extend the Eighth Amendment to prohibit the use of corporal punishment of school children ~~authorized by Florida law~~. We emphasized that ~~there are~~ in that opinion constraints in the school and community ~~that~~ provide substantial protection against the violation of constitutional rights by school authorities. ~~The "public school remains an open institution * * *~~ "At the end of the school day, the child is invariably free to return home. Even while at school, the child brings with him the support of family and friends, and is rarely apart

from teachers and other pupils who may witness and protect any instances of mistreatment". Id., at 670. The Court further pointed out that the "openness of the public school and its supervision by the community affords significant safeguards" against the violation of constitutional rights. Id., at 670.

It is necessary also to bear in mind the unique nature of the responsibility of school officials and teachers. Unlike police officers, they have no law enforcement responsibility or indeed any obligation to be familiar with the criminal laws and their applicability.[2] The primary duty of school officials and teachers, of course, is to educate and train young people. A state has a compelling interest in assuring that this responsibility is met. As a predicate even to undertaking the teaching and training of children, order and discipline, must be maintained. And apart from education, there is the duty

[2]Of course, as illustrated by this case, school authorities are familiar - unhappily - with the types of crimes that occur frequently in our schools: the distribution and use of drugs, theft, and even violence against teachers as well as fellow students. [Lee, see SG's Biref for studies of crime problem, and add those that BRW does not cite.]

to protect pupils from mistreatment by other children, and also to protect teachers from the type of violence that in recent years has prompted national concern. For me, it simply makes little sense to argue that the full panoply of constitutional rules applies in the schoolhouse with the same force and effect as these rules apply generally to the enforcement of criminal laws. In sum, although I agree with the Court's conclusion and its holding,[3] I reach these results by somewhat different reasoning. Although I acknowlege that the difference may be one of modest degree.

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[3] The Court's holding is that "when there are reasonable grounds for suspecting that [a] search will turn up evidence that the student has violated or is violating either the law or the rules of the school", a search of the student or his person or belongings is justified. Ante, at ____.

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lfp/ss 11/05/84 PLO SALLY-POW

83-712 New Jersey v. T.L.O.

JUSTICE POWELL, concurring.

I agree with the Court's decision, and much of its opinion. I would place greater emphasis on the special characteristics of the school environment - an environment in which students necessarily have a lessened expectation of privacy than the population generally.[1]

In a number of cases, we have recognized the special characteristics of the school environment. To be sure, the Court properly has said that students do not "shed their constitutional rights . . . at the schoolhouse

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gate". Tinker v. Des Moines School District, 393 U.S. 503, 506 (1969). But we have refused consistently to afford students constitutional protections that normally are enjoyed by juveniles as well as adults in non-school environments. In Goss v. Lopez, 417 U.S. 565 (1975), a constitutional right to due process was recognized, and yet the Court was careful to limit the exercise of this right by a student who challenged a disciplinary suspension. The only process found to be "due" was notice and a hearing described as "rudimentary", amounting to no more than "the disciplinarian * * * informally discuss[ing] the alleged misconduct with the student minutes after it has occurred". Id., at 581-583. In Ingraham v. Wright, 430 U.S. 651 (1977), we declined to extend the Eighth Amendment to the use of corporal punishment of school children authorized by Florida law. We emphasized that there are constraints in the school and community that provide substantial protection against the violation of constitutional rights by school authorities. The "public school remains an open institution * * * at the end of the school day, the child is invariably free to return home. Even while at school, the child brings with him the support of family and friends, and is rarely apart

from teachers and other pupils who may witness and protect any instances of mistreatment". Id., at 670. The Court further pointed out that the "openness of the public school and its supervision by the community affords significant safeguards" against the violation of constitutional rights. Id., at 670.

It is necessary also to bear in mind the unique nature of the responsibility of school officials and teachers. Unlike police officers, they have no law enforcement responsibility or indeed any obligation to be familiar with the criminal laws and their applicability.[2] The primary duty of school officials and teachers, of course, is to educate and train young people. A state has a compelling interest in assuring that this responsibility is met. As a predicate even to undertaking the teaching and training of children, order and discipline must be maintained. And apart from education, there is the duty

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[2]Of course, as illustrated by this case, school authorities are familiar - unhappily - with the types of crimes that occur frequently in our schools: the distribution and use of drugs, theft, and even violence against teachers as well as fellow students. [Lee, see SG's Biref for studies of crime problem, and add those that BRW does not cite.]

to protect pupils from mistreatment by other children, and also to protect teachers from the type of violence that in recent years has prompted national concern. For me, it simply makes little sense to argue that the full panoply of constitutional rules apply in the schoolhouse with the same force and effect as these rules apply generally to the enforcement of criminal laws. In sum, although I agree with the Court's conclusion and its holding,[3] I reach these results by somewhat different reasoning - though I acknowlege that the difference may be one or modest degree.

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[3]The Court's holding is that "when there are reasonable grounds for suspecting that [a] search will turn up evidence that the student has violated or is violating either the law or the rules of the school", a search of the student or his person or belongings is justified. Ante, at ____.

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lfp/ss 11/14/84 NJ SALLY-POW

73-712 New Jersey v. T.L.O.

JUSTICE POWELL, concurring.

I agree with the Court's decision, and with much ~~- but not all -~~ of its opinion. I would place greater emphasis on the special characteristics of the school, and on the status of pupils in the elementary and secondary grades. This case concerns a fourteen-year-old girl, and the extent to which the Fourth Amendment applies to a search of her purse by a school official. Within the school environment, pupils certainly have a lesser ~~and~~ stet expectation of privacy than members of the population generally. They spend the school hours in close association with each other, both in the classroom and at play. The children in a particular class come to know

each other and as well as their teachers. It is quite unreasonable to think that they have the same subjective expectation of privacy as adults in the population at large.[1]

In this case, I have no doubt that T.L.O., with marijuana and $40 in her purse, was anxious not to have its contents revealed to school officials. This sort of

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[1]The Court's opinion states that "[a] search of a [school] child's person or of a closed purse or of a bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy". Ante, at 10, 11. This expectation also is said to be "legitimate". Ante, at 12. If indeed a school child's expectation of privacy is "no less" than that of an adult, it is not clear to me how the Court can conclude that a standard less stringent than probable cause is appropriate. I would not have thought that an adult visiting in a schoolhouse could be detained and his pockets search in the absence of probable cause. In cases in which a lesser standard has been applied - quite properly I think - there have been circumstances that lessened the reasonableness of one's expectation of privacy. See, e.g., United States v. Brignoni-Ponce, 422 U.S. 873 (1975) (brief stop of automobile involved a "modest" intrusion; Terry v. Ohio, 392 U.S. 1 (1968)(search for weapons was "limited); United States v. Martinez-Fuerte, 428 U.S. 543 (1976)(intrusion cause by routine checkpoint stop is "quite limited").

expectation or hope of privacy is quite different from the generally prevailing disposition of children to share freely with each other whatever they happen to have with them. But for purposes of deciding this case, I can assume that children in school reasonably may have - no less than adults - subjective expectations of privacy. Cf. Supra, n. 1.

In a broader sense, I view this case as one to be decided in light of the special characteristics of a school. No one now doubts that students have constitutional rights. In an often quoted statement, the Court properly said that students do not "shed their constitutional rights . . . at the schoolhouse gate". Tinker v. Des Moines School District, 393 U.S. 503, 506 (1969). The Court in Tinker also "emphasized the need for

affirming the comprehensive authority of the states and of school officials, consistent with fundamental constitutional standards, to prescribe and control conduct in the schools". Id., at 507. See also Epperson v. Arkansas, 393 U.S. 97, 104 (1968). In addressing the assertion of particular constitutional rights by a student, the Court has found qualitative differences between juveniles and adults in entitlement to remedies.

In Goss v. Lopez, 417 U.S. 565 (1975), the Court recognized a constitutional right to due process, and yet was careful to limit the exercise of this right by a student who challenged a disciplinary suspension. The only process found to be "due" was notice and a hearing described as "rudimentary"; it amounted to no more than "the disciplinarian * * * informally discuss[ing] the

alleged misconduct with the student minutes after it has occurred". Id., at 581-582. In Ingraham v. Wright, 430 U.S. 651 (1977), we declined to extend the Eighth Amendment to prohibit the use of corporal punishment as authorized by Florida law of school children. We emphasized in that opinion that familiar constraints in the school, and also in the community, provide substantial protection against the violation of constitutional rights by school authorities. "At the end of the school day, the child is invariably free to return home. Even while at school, the child brings with him the support of family and friends, and is rarely apart from teachers and other pupils who may witness and protect any instances of mistreatment". Id., at 670. The Ingraham Court further pointed out that the "openness of the public school and

its supervision by the community afford significant safeguards" against the violation of constitutional rights. Id., at 670.

The school environment and its special characteristics distinguish the setting within which school children operate from the adult world. Law enforcement officers function as adversaries of persons who commit crimes. Such officers have the responsibility to investigate criminal activity, to locate and arrest those who violate our laws, and to charge and bring to trial persons thought to be guilty. Rarely is there this type of adversarial relationship betwen school authorities and pupils. Traditionally, there has been and is a commonality of interests particularly between teachers and their pupils. This is not to say that the former act in

loco parentis in relationships with students in a sense that would exempt teachers and officials from the application of the Fourth Amendment. The point is that the attitude of the typical teacher is one of personal responsibility for the pupil's welfare as well as for his education. Unlike police officers, school authorities have no law enforcement responsibility or indeed any obligation to be familiar with the criminal laws and their applicability.[2]

The primary duty of school officials and teachers, as the Court states, ~~of course~~, is the education and training of young people. A state has a compelling interest in

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[2]Of course, as illustrated by this case, school authorities have a layman's familiarity with the types of crimes that occur frequently in our schools: the distribution and use of drugs, theft, and even violence against teachers as well as fellow students.

assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students. And apart from education, the school has the obligation to protect pupils from mistreatment by other children, and also to protect teachers themselves from violence by the few students whose conduct ~~that~~ in recent years has prompted national concern. For me, it would be unreasonable and at odds with history to argue that the full panoply of constitutional rules apply in the schoolhouse with the same force and effect that these rules have when applied generally in the enforcement of criminal laws.[3]

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[3]As noted above, decisions of this Court have never held to the contrary. The law recognizes a host of constitutional distinctions between the rights and duties of children and those of adults. See Goss v. Lopez, supra, at 591 (Powell, J., dissenting.)

In sum, although I agree with mu[illegible] Court's opinion and its holding,[4] my emphas[illegible] different.

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[4]The Court's holding is that "when there are reasonable grounds for suspecting that [a] search will turn up evidence that the student has violated or is violating either the law or the rules of the school", a search of the student or his person or belongings is justified. Ante, at 15.

Sally copy my addition

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Another draft

lfp/ss 11/14/84 NJ SALLY-POW

73-712 New Jersey v. T.L.O.

JUSTICE POWELL, concurring.

I agree with the Court's decision, and with much - but not all - of its opinion. I would place greater emphasis, ~~however~~, on the special characteristics of the school, and on the status of pupils in the elementary and secondary grades. This case concerns a fourteen-year-old girl, and the extent to which the Fourth Amendment applies to a search of her purse by a school official. Within the school environment, pupils certainly have a lesser expectation of privacy than members of the population generally. They spend the school hours in close association with each other, both in the classroom and at play. The children in a particular class come to know

They have little reason - particularly at the younger ages - to be concerned with privacy

each other intimately as well as their teachers. It is unreasonable to think that they have the same subjective expectation of privacy as adults in the population at large.[1]

In this case, I have no doubt that T.L.O. with marijuana and $40 in her purse, was anxious not to have its contents revealed to school officials. This sort of

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[1]The Court's opinion states that "[a] search of a [school] child's person or of a closed purse or of a bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy". Ante, at 10, 11. This expectation also is said to be "legitimate". Ante, at 12. If indeed a school child's expectation of privacy is "no less" than that of an adult, it is not clear to me how the Court can conclude that a standard less stringent than probable cause is appropriate. I would not have thought that an adult visiting in a schoolhouse could be detained and his pockets search in the absence of probable cause. In cases in which a lesser standard has been applied - quite properly I think - there have been circumstances that lessened the reasonableness of one's expectation of privacy. See, e.g., United States v. Brignoni-Ponce, 422 U.S. 873 (1975) (brief stop of automobile involved a "modest" intrusion; Terry v. Ohio, 392 U.S. 1 (1968)(search for weapons was "limited); United States v. Martinez-Fuerte, 428 U.S. 543 (1976)(intrusion cause by routine checkpoint stop is "quite limited").

expectation of privacy, ~~of course, is not legitimate and~~ is quite different from the general ~~attitude~~ of children to share freely with each other whatever they happen to have with them. But for purposes of deciding this case, I can assume that children in school reasonably may ~~not~~ have less than adults - subjective expectations of privacy. Supra, n. 1.

In a broader sense, I view this case ~~within the framework~~ in light of the special characteristics of a school. No one now doubts that students have constitutional rights. In an often quoted statement, the Court properly said that students do not "shed their constitutional rights . . . at the schoolhouse gate". Tinker v. Des Moines School District, 393 U.S. 503, 506 (1969). The Court in Tinker also "emphasized the need for affirming the comprehensive

authority of the states and of school officials, consistent with fundamental constitutional standards, to prescribe and control conduct in the schools". Id., at 507. See also Epperson v. Arkansas, 393 U.S. 97, 104 (1968). In addressing the assertion of particular constitutional rights by a student, the Court has recognized qualitative differences between juveniles and adults in entitlement to remedies.

In Goss v. Lopez, 417 U.S. 565 (1975), the Court ~~recognized~~ found a constitutional right to due process, and yet was careful to limit the exercise of this right by a student who challenged a disciplinary suspension. The only process found to be "due" was notice and a hearing described as "rudimentary"; it amounted to no more than "the disciplinarian * * * informally discuss[ing] the

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school and its supervision by the community afford significant safeguards" against the violation of constitutional rights. Id., at 670.

The school environment and its special characteristics distinguish the setting within which school children operate from the adult world. Law enforcement officers function as adversaries of persons who commit crimes. Such officers have the responsibility to investigate criminal activity, to locate and arrest those who violate our laws, and to charge and bring to trial persons thought to be guilty. Rarely is there this type of adversarial relationship betwen school authorities and pupils. Traditionally, there has been and is a commonality of interest between teachers and school officials on the one hand and their pupils on the other.

This is not to say that the former act in loco parentis in relationships with students in a sense that would exempt teachers and officials from the application of the Fourth Amendment. The point is that the attitude of the teacher in particular is one of personal responsibility for the pupil's welfare as well as for education. See Ocampo, Lopez, [illegible], at [illegible]. Unlike police officers, they have no law enforcement responsibility or indeed any obligation to be familiar with the criminal laws and their applicability.[2]

The primary duty of school officials and teachers, of course, is the education and training of young people. A

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[2] Of course, as illustrated by this case, school authorities are familiar - unhappily - with the types of crimes that occur frequently in our schools: the distribution and use of drugs, theft, and even violence against teachers as well as fellow students. [Inc, see SG's Brief for studies of crime problem, and add those that BRW does not cite.]

state has a compelling interest in assuring that the school meets this responsibility. Without first establishing discipline, teachers cannot begin to educate their students. And apart from education, the school has the obligation to protect pupils from mistreatment by other children, and also to protect teachers themselves from the type of violence that in recent years has prompted national concern. For me, it would be unreasonable and at odds with history to argue that the full panoply of constitutional rules applies in the schoolhouse with the same force and effect that these rules have when applied generally in the enforcement of criminal laws.[3] In sum, although I agree with much of the Court's opinion and its holding, my reasoning is somewhat

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May Filed

lfp/ss 11/15/84 NJ SALLY-POW

73-712 New Jersey v. T.L.O.

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the attitude of the typical teacher is one of personal responsibility for the pupil's welfare as well as for his education. Unlike police officers, school authorities have no law enforcement responsibility or indeed any obligation to be familiar with the criminal laws and their applicability.[2]

The primary duty of school officials and teachers, as the Court states, is the education and training of young people. A state has a compelling interest in assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their

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lfp/ss 11/15/84 NJ SALLY-POW

73-712 New Jersey v. T.L.O.

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I agree with the Court's decision, and with much of its opinion. However, I would place greater emphasis on the special characteristics, which make it unnecessary to afford students the same constitutional protections granted adults and juveniles in a non-school setting. ~~of the school, and on the status of pupils in the elementary and secondary grades. This case concerns a fourteen-year-old girl, and the extent to which the Fourth Amendment applies to a search of her purse by a school official.~~ Within the school environment, pupils ~~certainly~~ have a lesser expectation of privacy than members of the population generally. They spend the school hours in close association with each other, both in the classroom and during recreation periods. ~~at play.~~ The ~~children~~ students in a particular class often ~~come to~~ know each other and their

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lfp/ss 11/16/84 NJ SALLY-POW, Footnotes pp

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lfp/ss 11/19/84 NJ SALLY-POW

73-712 New Jersey v. T.L.O.

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quite well. Of necessity, teachers have a degree of familiarity with, and authority over their students thatis unparalleled except perhaps in the relationship between parent and child. It is simply unrealistic to think that students have the same subjective expectation of privacy as population generally.[1] But for purposes of deciding this case, I can assume that children in school have - no less than adults - privacy interests that society is prepared to recognize as legitimate.. Cf. supra, n. 1.

However one may characterize their privacy expectations, students properly are afforded some constitutional protections. In an often quoted statement, the Court said that students do not "shed their constitutional rights . . . at the schoolhouse gate". Tinker v. Des Moines School District, 393 U.S. 503, 506

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ADDITION TO CONCURRENCE IN

NEW JERSEY v. T.L.O., NO. 83-712

Insert before the last ¶ of your concurrence I also find the Court's reference to the potential liability of public school teachers under 42 U.S.C. §1983 unnecessary and disturbing. There is no §1983 claim at issue here. Moreover, I think that it is important to emphasize that school officials must be given great discretion in their efforts to maintain order and discipline in the unique enviornment of the schoolground and the classroom. For this reason, the conduct of school officials in enforcing school rules should not be held to the same high standards applicable to law enforcement officials under the Fourth Amendment. While §1983 remedies may be available against school officials in the

appropriate case, I suspect that conduct that would support a claim under §1983 against a police official rarely will support a claim under §1983 against a school official.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: _____

1st CHAMBERS DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[May —, 1984]

JUSTICE POWELL, concurring.

I agree with the decision reached by the Court and with most of its reasoning. I do not agree, however, with the language in the opinion that suggests that exclusion of evidence from school *disciplinary* proceedings may provide a deterrent to Fourth Amendment violations by school officials. This suggestion has no support in the record and is unnecessary to a decision of the question before us.

As the Court states, *ante*, at 9, the only question presented is whether evidence unlawfully seized by school officials during the course of an in-school search must be excluded in juvenile *delinquency* proceedings. I agree with the Court's conclusion that the exclusionary rule is not applicable. The school officials, in searching respondent's purse, were acting pursuant to their duty to enforce school regulations and maintain a safe and drug-free learning environment. They had no responsibility for enforcing the criminal laws. Application of the exclusionary rule, as the Court correctly reasons, would be unlikely to result in appreciable deterrence.[1]

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that the judgment of that court should be reversed. There is no evidence of overreaching conduct on the part of the school officials, and the seven-day suspension of T. L. O. for selling drugs to 14-year-old children in school, was a singularly modest penalty.

05/12

Cammie Robinson
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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

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1st ~~CHAMBERS~~ DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[May —, 1984]

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Justice Stevens
Justice O'Connor

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Justice White
Justice Marshall
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Justice Powell
Justice Rehnquist
Justice Stevens

L.F.P. 11/20

From: **Justice Powell**

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Lee - in view of change on p 3, another 1st Draft should be obtained ~~before~~ for circulation.

Lee - Have a co-clerk read this. Has it been cite checked?

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[November ——, 1984]

JUSTICE POWELL, concurring.

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[1] The Court's opinion states that "[a] search of a [school] child's person or of a closed purse or of a bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy". *Ante*, at 10, 11. This expectation also is said to be "legitimate". *Ante*, at 12. If indeed a school child's expectation of privacy is "no less" than that of an adult, it is not clear to me how the Court can conclude that a standard less stringent than probable cause is appropriate. An adult—even one visiting in a schoolhouse—hardly could

case, I can assume that children in school have—no less than adults—privacy interests that society is prepared to recognize as legitimate. Cf. *supra*, n. 1.

However one may characterize their privacy expectations, students properly are afforded some constitutional protections. In an often quoted statement, the Court said that students do not "shed their constitutional rights . . . at the schoolhouse gate." *Tinker* v. *Des Moines School District*, 393 U. S. 503, 506 (1969). Nevertheless, the Court also has "emphasized the need for affirming the comprehensive authority of the states and of school officials . . . to prescribe and control conduct in the schools." *Id.*, at 507. See also *Epperson* v. *Arkansas*, 393 U. S. 97, 104 (1968). The Court has balanced the interests of the student against the school officials' need to maintain discipline by recognizing qualitative differences between the constitutional remedies to which students and adults are entitled.

In *Goss* v. *Lopez*, 419 U. S. 565 (1975), the Court recognized a constitutional right to due process, and yet was careful to limit the exercise of this right by a student who challenged a disciplinary suspension. The only process found to be "due" was notice and a hearing described as "rudimentary"; it amounted to no more than "the disciplinarian informally discuss[ing] the alleged misconduct with the student minutes after it has occurred." *Id.*, at 581–582. In *Ingraham* v. *Wright*, 430 U. S. 651 (1977), we declined to extend the Eighth Amendment to prohibit the use of corporal punishment of school children as authorized by Florida law. We emphasized in that opinion that familiar constraints in the school, and also in the community, provide substantial protection against the violation of constitutional rights by school authorities. "At the end of the school day, the child is invariably free to return home. Even while at school, the child brings with him the support of family and friends, and is

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rarely apart from teachers and other pupils who may witness and protest any instances of mistreatment." *Id.*, at 670. The *Ingraham* Court further pointed out that the "openness of the public school and its supervision by the community afford significant safeguards" against the violation of constitutional rights. *Id.*, at 670.

The special relationship between teacher and student also distinguishes the setting within which school children operate. Law enforcement officers function as adversaries of criminal suspects. These officers have the responsibility to investigate criminal activity, to locate and arrest those who violate our laws, and to charge and bring to trial persons thought to be guilty. Rarely does this type of adversarial relationship exist between school authorities and pupils.[2] Instead, there is a commonality of interests between teachers and their pupils. The attitude of the typical teacher is one of personal responsibility for the student's welfare as well as for his education.

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The primary duty of school officials and teachers, as the Court states, is the education and training of young people. A state has a compelling interest in assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students. And apart from education, the school has the obligation to protect pupils from mistreatment by other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern. For me, it would be unreasonable and at odds with history to argue that the full panoply of constitutional rules apply with the same force and effect in

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[4] The Court's holding is that "when there are reasonable grounds for suspecting that [a] search will turn up evidence that the student has violated or is violating either the law or the rules of the school", a search of the student or his person or belongings is justified. *Ante*, at 15. This is in accord with the Court's summary of the views of a majority of the state and federal courts that have addressed this issue. See *ante*, n. 2, p. 6.

To: The Chief Justice
Justice Brennan
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From: **Justice Powell**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Lee -
Circulate this
Make corrections in a 2nd draft for next Monday.

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11/20

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

RC

From: **Justice Powell**

Circulated: NOV 21 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[November ——, 1984]

JUSTICE POWELL, concurring.

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To: The Chief Justice
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Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice Powell**

Circulated: NOV 2 1 1984

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

[November ——, 1984]

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Lee Bentley
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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice Powell**

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~~1st~~ 2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

with whom Justice O'Connor joins, [November ——, 1984]

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Lee Bentley
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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice Powell**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

December [November —], 1984]

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

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P. 1, 3

To: The Chief Justice
Justice Brennan
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Justice Blackmun
Justice Powell
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From: **Justice Powell**

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2nd DRAFT

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|| footnote deleted

schoolhouse gate". *Tinker* v. *Des Moines School District*, 393 U. S. 503, 506 (1969). The Court also has "emphasized the need for affirming the comprehensive authority of the states and of school officials . . . to prescribe and control conduct in the schools." *Id.*, at 507. See also *Epperson* v. *Arkansas*, 393 U. S. 97, 104 (1968). The Court has balanced the interests of the student against the school officials' need to maintain discipline by recognizing qualitative differences between the constitutional remedies to which students and adults are entitled.

In *Goss* v. *Lopez*, 419 U. S. 565 (1975), the Court recognized a constitutional right to due process, and yet was careful to limit the exercise of this right by a student who challenged a disciplinary suspension. The only process found to be "due" was notice and a hearing described as "rudimentary"; it amounted to no more than "the disciplinarian . . . informally discuss[ing] the alleged misconduct with the student minutes after it has occurred". *Id.*, at 581–582. In *Ingraham* v. *Wright*, 430 U. S. 651 (1977), we declined to extend the Eighth Amendment to prohibit the use of corporal punishment of school children as authorized by Florida law. We emphasized in that opinion that familiar constraints in the school, and also in the community, provide substantial protection against the violation of constitutional rights by school authorities. "At the end of the school day, the child is invariably free to return home. Even while at school, the child brings with him the support of family and friends, and is rarely apart from teachers and other pupils who may witness and protest any instances of mistreatment." *Id.*, at 670. The *Ingraham* Court further pointed out that the "openness of the public school and its supervision by the community afford significant safeguards" against the violation of constitutional rights. *Id.*, at 670.

The special relationship between teacher and student also distinguishes the setting within which school children oper-

ate. Law enforcement officers function as adversaries of criminal suspects. These officers have the responsibility to investigate criminal activity, to locate and arrest those who violate our laws, and to facilitate the charging and bringing of such persons to trial. Rarely does this type of adversarial relationship exist between school authorities and pupils.[1] Instead, there is a commonality of interests between teachers and their pupils. The attitude of the typical teacher is one of personal responsibility for the student's welfare as well as for his education.

The primary duty of school officials and teachers, as the Court states, is the education and training of young people. A state has a compelling interest in assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students. And apart from education, the school has the obligation to protect pupils from mistreatment by other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern. For me, it would be unreasonable and at odds with history to argue that the full panoply of constitutional rules applies with the same force and effect in the schoolhouse as it does in the enforcement of criminal laws.[2]

In sum, although I join the Court's opinion and its holding,[3] my emphasis is somewhat different.

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[1] Unlike police officers, school authorities have no law enforcement responsibility or indeed any obligation to be familiar with the criminal laws. Of course, as illustrated by this case, school authorities have a layman's familiarity with the types of crimes that occur frequently in our schools: the distribution and use of drugs, theft, and even violence against teachers as well as fellow students.

[2] As noted above, decisions of this Court have never held to the contrary. The law recognizes a host of distinctions between the rights and duties of children and those of adults. See *Goss* v. *Lopez*, *supra*, at 591 (POWELL, J., dissenting.)

[3] The Court's holding is that "when there are reasonable grounds for

suspecting that [a] search will turn up evidence that the student has violated or is violating either the law or the rules of the school," a search of the student's person or belongings is justified. *Ante*, at 15. This is in accord with the Court's summary of the views of a majority of the state and federal courts that have addressed this issue. See *ante*, at 6, n. 2.