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Constitutional Law - How the Fourth Amendment Applied to Public High School Students - New Jersey v. T.L.O

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CONSTITUTIONAL LAW – How the Fourth Amendment Applies to Public High School Students – *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

FACTS

A teacher at Piscataway High School in Piscataway, New Jersey, observed Terry Lee Owens (T.L.O.) and another student smoking cigarettes in the restroom. Although permitted in designated areas of the school, smoking was prohibited in the restrooms. The teacher escorted the two students to the assistant principal. The other student admitted she had been smoking in the restroom, and was ordered to attend a smoking clinic for three days as punishment. T.L.O. denied smoking and claimed that she did not smoke at all.

The assistant principal ushered T.L.O. into his private office where he asked to look through her purse. The examination of the purse immediately revealed a pack of cigarettes and a package of cigarette rolling papers. The assistant principal then looked further into her purse and found a metal pipe, empty plastic bags, a plastic bag containing marijuana, an index card with a list of names under the caption "people who owe me money," forty dollars in small bills, and two letters which implicated T.L.O. in drug selling.

The assistant principal called the police and T.L.O.'s mother, and turned the evidence of drug dealing over to the police. At the request of the police, T.L.O.'s mother took T.L.O. to the police station where she admitted selling marijuana at the high school. On the basis of the confession and the evidence seized by the assistant principal, the state brought delinquency charges against T.L.O. in Juvenile and Domestic Relations Court. She also received a three-day suspension from school for smoking and a seven-day suspension for possession of marijuana.

In the delinquency proceeding brought by the state, T.L.O. moved to dismiss the complaint and suppress the evidence.[1] This motion was based on two arguments. The first was based upon a Chancery Division proceeding wherein T.L.O. had brought a complaint against the school to show cause why she should not be reinstated in school. The judge upheld the suspension for smoking but vacated the suspension for possession of marijuana, finding that the suspension resulted from evidence obtained in a warrantless search which violated the fourth amendment.[2] T.L.O.

1. State in Interest of T.L.O., 178 N.J. Super. 329, 428 A.2d 1327 (1980).
2. *Id.* at 334, 428 A.2d at 1329.

argued at the delinquency hearing that the criminal charge should be barred by *res judicata* and collateral estoppel.[3] Second, she argued that the search and seizure was unlawful and sought to suppress the evidence.[4] The court, holding that *res judicata* and collateral estoppel did not apply, and that the search was reasonable, denied her motion.[5]

The New Jersey appellate court affirmed the denial of the motion to suppress the evidence but found the record and conclusions of the trial judge inadequate on the issue of the sufficiency of the *Miranda* waiver asserted by T.L.O. The court vacated the adjudication of delinquency and remanded for further proceedings.[6] The New Jersey Supreme Court reversed and ordered the evidence suppressed because the search was unreasonable and violated T.L.O.'s fourth amendment rights.[7] The United States Supreme Court reversed, holding that the search of T.L.O.'s purse was not unreasonable under the fourth amendment.[8]

BACKGROUND AND HISTORY

The fourth amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[9]

Early on, the Supreme Court interpreted the fourth amendment to apply to all invasions by the government of the sanctities of home and privacies of life, and any evidence obtained by such an illegal invasion was inadmissible in subsequent proceedings.[10] The "government" was interpreted to mean the federal government and its employees.[11] In *Weeks v. United States*,[12] the Court held that to admit evidence illegally seized from a person's home by federal officers would be to judicially approve open defiance of the fourth amendment's protective restrictions on searches and seizures.[13] However, the Supreme Court distinguished evidence

3. *Id.* at 335, 428 A.2d at 1330.
4. *Id.*
5. *Id.* at 345, 428 A.2d at 1336.
6. State in Interest of T.L.O., 185 N.J. Super. 279, 448 A.2d 493 (1982).
7. State in Interest of T.L.O., 94 N.J. 331, 463 A.2d 934 (1983).
8. New Jersey v. T.L.O., 469 U.S. 325, 341-46 (1985).
9. U.S. CONST. amend. IV.
10. Boyde v. United States, 116 U.S. 616 (1885).
11. *Id.* at 630.
12. 232 U.S. 383 (1914).
13. *Id.*

obtained by government officials from evidence obtained by private citizens and turned over to federal agents: the fourth amendment does not apply to private citizens obtaining evidence.[14] Also, for years the Supreme Court held that the fourth amendment did not apply to the states in excluding evidence obtained in an illegal search and seizure.[15] Finally, in *Wolf v. Colorado*,[16] the Court held that the fourth amendment applied to the states through the fourteenth amendment.[17] The *Weeks* exclusionary rule, however, was not applied to the states because it did not "derive explicitly from the Fourth Amendment."[18] Later, *Elkins v. United States*[19] struck down the "silver platter" doctrine, which allowed admission of illegally seized evidence by the state into federal courts.[20] Finally, in *Mapp v. Ohio*,[21] the Court overruled *Wolf*, holding that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissable in a state court."[22]

Fourth Amendment Application to Criminal Procedure

The Supreme Court has held that the usual fourth amendment criminal procedure standard is that warrantless searches are unreasonable and violate the fourth amendment unless the exigencies of the situation make a warrantless search imperative or one of the exceptions applies.[23] The Court has developed six narrow exceptions to the warrant requirement in criminal procedure: 1) searches incident to lawful arrest,[24] 2) automobile searches,[25] 3)

14. Burdeau v. McDowell, 256 U.S. 465 (1920).

15. Smith v. Maryland, 59 U.S. (18 How.) 71, 76 (1855).

16. 338 U.S. 25 (1949).

17. *Id.*

18. *Id.* at 28.

19. 364 U.S. 206 (1960).

20. *Id.*

21. 367 U.S. 643 (1961).

22. *Id.* at 655.

23. McDonald v. United States, 335 U.S. 451 (1948).

24. Warrantless searches are valid after a valid arrest and evidence obtained from such a search is admissable because the arrest upon probable cause justifies the search. United States v. Rabinowitz, 339 U.S. 56 (1950). *See also* United States v. Robinson, 414 U.S. 218 (1973). In 1969, however, the Court overturned this kind of limitless search based on valid arrest. It restricted the search to "a search of the arestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." Chimel v. California, 395 U.S. 752, 763 (1969). Of course, without a valid arrest, a search is not valid and evidence obtained from such a search is inadmissable. Beck v. Ohio, 379 U.S. 89 (1964).

25. The Supreme Court, recognizing the need for warrantless searches of automobiles, reasoned in Carroll v. United States, 267 U.S. 132 (1925) that

> [t]he Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling, house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because

hot pursuit and other exigent circumstances,[26] 4) consent,[27] 5) plain view,[28] and 6) the stop-and-frisk exception which provides the starting point for analyzing the instant case. The exceptions for consent and plain view do not depend on exigency like the others do, but all are based on probable cause except the stop-and-frisk exception.

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the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. *Id.* at 153. The standard for such a stop and search is probable cause to believe the vehicle contains contraband. *Id.* at 155. *See also* Brinegar v. United States, 338 U.S. 160 (1949). This principle was expanded in Chambers v. Maroney, 399 U.S. 42 (1970), where there was probable cause to believe that a car contained armed robbers. The tools of the robbery obtained from the subsequent search of the car's interior after the car was towed to the police station were admissible into evidence. A recent case, United States v. Ross, 456 U.S. 798 (1982), clarifies the extent of a *Carroll* search. Here, the police officers stopped a suspect, based on a tip from an informant, and opened his trunk and a brown paper bag in the trunk which contained contraband. Later at the police station, the officers opened a zippered pouch found in the car, which contained currency. Both the currency and contraband were admitted into evidence. The Court upheld both searches, reasoning that "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *Ross*, 456 U.S. at 825. Several years before, in South Dakota v. Opperman, 428 U.S. 364 (1976), the Court had held that because, under *Carroll*, 267 U.S. 132 (1925), standards are lower for an automobile, an inventory search of a car secured by police after a parking violation was valid as long as the procedure is a standardized one. Contraband found by such a search is admissible into evidence because the search was reasonable.

26. The exception for hot pursuit applies to arrest of fleeing felons in their homes. In Warden v. Hayden, 387 U.S. 294 (1967), the Court upheld the warrantless entry into and search of a robbery suspect's home in order to locate him after he fled the scene of a robbery. The Court also upheld a warrantless search of the house for weapons or accomplices, reasoning that "[s]peed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons which could be used against them or to effect an escape." *Warden*, 387 U.S. at 299. Later, in United States v. Santana, 427 U.S. 38 (1976), the Court upheld a warrantless entry into the suspect's home after she had retreated there to avoid a proper arrest, based on probable cause, in a public place. The subsequent search which produced drugs and money was also upheld because any delay would have resulted in the destruction of the evidence. *Santana*, 427 U.S. at 38. The Court characterized this situation as a "true 'hot pursuit' " and that "the need to act quickly here is even greater than in that case [*Warden v. Hayden*] while the intrusion is much less." *Santana*, 427 U.S. at 42. The Court has limited the hot pursuit exception most recently in Welsh v. Wisconsin, 466 U.S. 740 (1984). Here, police entered a man's home without a warrant to arrest him for driving while intoxicated, based solely on a witness, report that the man had driven his car off the road and walked away. The Court found that such a warrantless entry and seizure for a civil, nonjailable traffic offense was prohibited by the fourth amendment. *Id.* at 754.

27. A logical exception to a warrant search is search by consent. If consent to a search is voluntarily given, it is permissible for the police to conduct the search. Schneckloth v. Bustamonte 412 U.S. 218 (1973). Consent to a search may also be given by a person other than the defendant if the relationship is such that the defendant assumed the risk that this person would consent to a search. Frazier v. Cupp, 394 U.S. 731 (1969). It is also permissible for the police to conduct a search based on consent even if the police could have just as easily obtained a search warrant. State v. Matlock, 415 U.S. 164 (1974).

28. The plain view doctrine embodies another exception to the warrant requirement for search and seizure. Harris v. United States, 331 U.S. 145 (1947), held that if the entry on the property was authorized, any evidence of a crime in plain view could be seized and used as evidence. Again, the Court restricted this doctrine to the arrestee's person in the case of valid arrest, and to the immediate area in the case of valid arrest and other authorized entries upon the property. Chimel v. California, 395 U.S. 752, 763 (1969). Coolidge v. New Hampshire, 403 U.S. 443 (1971), extended the plain view doctrine to include a recognized exception to the warrant requirement, but warned that the doctrine could not be used to conduct a general search from "one object to another until something incriminating at last emerges." *Id.* at 466. Also, a valid plain view seizure depended upon a valid prior intrusion, inadvertent discovery of the objects, and whether it is immediately apparent that the objects are evidence of a crime. *Id.* at 443. For a valid plain view seizure, the initial prior intrusion, then, must be either pursuant to a warrant or based on one of the exceptions.

The stop-and-frisk exception to the warrant requirement for search and seizure, on which the Court relies in the instant case, is set out in *Terry v. Ohio.*[29] The Court recognized the necessity of allowing police officers to stop someone on reasonable suspicion to prevent a crime, regardless of whether there was probable cause to arrest the person.[30] Also, in order to protect the lives of the police officer and bystanders, the Court allowed a search for weapons based on reasonable belief that the suspect is armed.[31] The Court articulated reasonable suspicion for a stop as "conduct which leads him [police officer] reasonably to conclude in light of his experience that criminal activity may be afoot *and* that the persons with whom he is dealing may be armed and presently dangerous."[32] The Court emphasized that the officer's "suspicion" could not be just a hunch, but must be "reasonable inferences which he is entitled to draw from the facts in light of his experience."[33] A search may arise from this stop *only* if the officer identifies himself as a police officer, makes reasonable inquiries, and still fears for his and others' safety.[34] The search must be limited to the outer clothing and to the discovery of weapons which might be used against the officer.[35] Weapons seized at this search may be used as evidence against the person on charges of carrying a concealed weapon.[36]

In a case decided the same day as *Terry,* the Court emphasized that the stop had to be based on reasonable suspicion, defined as something that "suggest[s] particular criminal activity, completed, current, or intended."[37] Without this kind of reasonable suspicion, there is no right to conduct a search for weapons.[38] In this companion case, the officer had seen the suspect talking with two known drug addicts over a period of eight hours. He had observed nothing else suspicious about his behavior. He seized the suspect in a restaurant and subsequently searched him, finding drugs.[39] The Court held that the stop was not based on reasonable suspicion to prevent a crime and the search was not based on reasonable belief that the suspect carried a weapon.[40]

29. 392 U.S. 1 (1968).
30. *Id.* at 29.
31. *Id.*
32. *Id.* at 30.
33. *Id* at 27.
34. *Id.* at 30.
35. *Id.*
36. *Id.* at 31.
37. Sibron v. New York, 392 U.S. 40, 73 (1968) (Harlan, J., concurring).
38. *Id.* at 74 (Harlan, J., concurring).
39. *Id.*
40. *Id.* at 65.

It may be argued that the Court expanded the *Terry* stop to include not only crime prevention, but also crime detection. In *Adams v. Williams,*[41] the officer stopped a suspect based on a tip from a known informant that the suspect was presently carrying narcotics and a concealed weapon.[42] When the suspect refused to get out of the car, the officer reached in and seized the weapon from where he had been informed the weapon would be carried.[43] The Court upheld the validity of the stop and the seizure of the weapon.[44]

In recent years the Court has applied the *Terry* stop-and-frisk exception to situations where narcotics agents have reasonable grounds to suspect that a person is transporting narcotics. The Court has held strictly to the concept that the stop must be only long enough to dispel the suspicion that a crime is being committed. For example, in *Florida v. Royer,*[45] a plurality opinion, the suspect was taken to a small room at an airport for further questioning, and there the narcotics agents obtained the key to the suspect's suitcase but not his consent to search the suitcase.[46] The Court held that the evidence of narcotics found in the suitcase could not be used to convict because the detention was more intrusive than necessary to conduct the brief questioning permissible under the *Terry* exception.[47] The subsequent search was therefore invalid.[48] Likewise, in *United States v. Place,*[49] detention of the suspect's bag for ninety minutes, even though on reasonable grounds for suspicion of transporting narcotics, exceeded the limits of the *Terry* exception.[50] These later cases uphold the *Terry* standard, i.e., that the stop must be based on reasonable suspicion to prevent or detect a crime, and that the stop must be *brief* or it may well become an illegal seizure.

Another recent case extended the *Terry* search for weapons beyond the outer clothing of the person to the passenger compartment of the car. *Michigan v. Long*[51] validated the search of an automobile in those areas where a weapon could be hidden.[52] In this case, the officer reasonably believed, based on " 'specific and

41. 407 U.S. 143 (1972).
42. *Id.*
43. *Id.* at 145.
44. *Id.* at 149.
45. 460 U.S. 491 (1983).
46. *Id.* at 494.
47. *Id.* at 504.
48. *Id.* at 507-08.
49. 462 U.S. 696 (1983).
50. *Id.* at 709-10.
51. 463 U.S. 1032 (1983).
52. *Id.* at 1049-52.

articulable facts . . . taken together with the rational inferences from those facts . . .' " that the suspect was dangerous and might gain immediate control of weapons.[53]

The Court, in fashioning the *Terry* standard, adopted a version of the balancing test which it had set out the year before for administrative searches in *Camara v. Municipal Court of San Francisco.*[54] The *Terry* standard balances the interests of crime prevention and protection of officers' and bystanders' lives against the slight intrusion required for a weapons search.[55] These competing interests have to be balanced on the facts of the individual case, but the intrusion can be based on less than probable cause.[56] The Court also has applied this balancing test to the border patrol cases, relying on both *Terry*[57] and *Camara.*[58]

Fourth Amendment Application to Border Searches

Border patrol officers have historically been required to observe a less stringent standard for search and seizure than that provided by the fourth amendment. Searches at the border may be conducted without a warrant and without probable cause.[59] Under the *Camara*[60] balancing test, the competing interests are searches limited to persons who seek to enter our country and a strong national sovereignty interest in preventing illegal entry of persons and substances. However, questions about the validity of stops and searches arise as to fixed checkpoints and roving patrols once the aliens have crossed the border. Distance from the border is one factor to be considered. The standard for a search of a car by a roving patrol at points away from the vicinity of the border is probable cause to believe that the car contains illegal aliens.[61] The Court applied the same standard for a vehicle search at a permanent check-point stop at points away from the border.[62] In the general area of the border, however, the border patrol can stop

53. *Id.* at 1049, *quoting* Terry v. Ohio, 392 U.S. 1, 21 (1967). The officers investigated this car after they had observed it erratically weaving down the road and swerving off into a ditch. They observed a hunting knife on the floorboard of the driver's side. The officers then did a pat-down of Mr. Long for weapons and did a general search of the interior of the car for weapons. The car search revealed marijuana stashed under the armrest of the front seat. The marijuana was allowed into evidence because the initial search was valid. *Id.* at 1035-36.

54. 387 U.S. 523 (1967). *See infra* notes 67-71 and accompanying text.

55. Terry v. Ohio, 392 U.S. 1 (1968).

56. *Id.* at 27.

57. Terry v. Ohio, 392 U.S. 1 (1968).

58. 387 U.S. 523 (1967).

59. United States v. Ramsey, 431 U.S. 606, 619 (1977).

60. Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967). *See supra* text accompanying note 58 and *infra* text accompanying notes 67-71.

61. Almeida-Sanchez v. United States, 413 U.S. 266 (1973).

62. United States v. Ortiz, 422 U.S. 891 (1975).

a car based on reasonable suspicion that the car contains illegal aliens.[63] But the stop must be brief and the questions about citizenship and/or suspicious circumstances must be reasonably related to the circumstances which gave rise to the suspicion.[64] A search must be based on probable cause.[65] The Court held that at fixed checkpoints near the border, vehicles may be stopped without even reasonable suspicion as long as the occupants are only briefly questioned and no searches are involved.[66]

Fourth Amendment Application to Administrative Searches

In *Camara v. Municipal Court of San Francisco,*[67] the Court upheld the right of a resident to require a warrant before admitting a housing inspector to inspect the premises.[68] However, the Court went on to say that probable cause, for which the warrants are to be issued, was to be based upon the reasonableness of the agency's appraisal of conditions in the area as a whole, not on a particular dwelling.[69] The Court recognized that prevention of conditions which could be hazardous to public health and safety was a legitimate governmental interest requiring a housing inspection search, but the Court balanced this interest against the necessity of protecting the citizens against intrusive searches. If the agency had reasonable cause to inspect, the Court reasoned, the probable cause requirement for obtaining a warrant would be met.[70] During the same term, the Court ruled that a warrant was necessary for inspection of commercial property not open to public use.[71]

The Court later recognized that a statutory scheme which regulated an industry could provide for inspection without notice. Such a provision in the statute had the effect of a warrant by giving notice that inspections would routinely be carried out.[72] In the case of gun control, the Gun Control Act gave statutory notice of warrantless searches[73] and in the case of liquor licenses, Congress had made it an offense to refuse admission to a liquor license inspector.[74] The Court has continued to uphold the necessity of a

63. United States v Brignoni-Ponce, 422 U.S. 873, 881 (1975).

64. *Id.* at 881-82.

65. *Id.* at 882.

66. United States v. Martinez-Fuerte, 428 U.S. 543 (1976).

67. 387 U.S. 523 (1967).

68. *Id.*

69. *Id.* at 538.

70. *Id.* at 539.

71. See v. City of Seattle, 387 U.S. 541, 546 (1967).

72. Donovan v. Dewey, 452 U.S. 594, 601-02 (1981) (Mine Safety Act gives notice that warrantless searches will be carried out.).

73. United States v. Biswell, 406 U.S. 311, 317 (1972).

74. Colonnade Corp. v. United States, 397 U.S. 72, 77 (1970).

warrant or statutory scheme in administrative searches by holding that in the absence of a warrant or statutory scheme, warrantless searches are invalid under the fourth amendment.[75]

Fourth Amendment Application to School Settings by State and Federal Courts

State court decisions regarding fourth amendment application to school settings can generally be categorized into four groups: nonapplication, full application, reasonable suspicion standard reduced by the *in loco parentis* doctrine, and application of the fourth amendment but not the exclusionary rule. A much quoted case, *Mercer v. State*,[76] held that the fourth amendment did not apply to a search of a high school student and subsequent seizure of marijuana by the principal because the principal "acted *in loco parentis*, not as an arm of the government."[77] The evidence was turned over to the police and the student was adjudged a delinquent child.[78] However, another often quoted case, *State v. Mora*,[79] held that principals and instructors, as state employees responsible for public education, came within the purview of the fourth amendment.[80] Furthermore, that court determined that a "search on school grounds of a student's personal effects by a school official who suspects the presence or possession of some unlawful substance" did not fall within an exception to a warrantless search and the evidence could not be used in criminal prosecution.[81]

Between these two extremes, state courts have not required warrants for a school search, and probable cause has been reduced to reasonable suspicion. A Delaware Superior Court decision determined that the fourth amendment applies to school officials but that the doctrine of *in loco parentis* balances against the fourth amendment rights and reduces the standard necessary to initiate a search from probable cause to reasonable suspicion.[82] A Florida District Court of Appeals adopted this reasonable suspicion standard but the decision is unclear as to whether it viewed school officials as an arm of the state government or as *in loco parentis*.[83] Another variation came from the Supreme Court of Georgia, which held that the fourth amendment applies to school

75. Marshall v. Barlow's, Inc., 436 U.S. 307, 315 (1978).

76. 450 S.W.2d 715 (Tex. Civ. App. 1970)

77. *Id.* at 717.

78. *Id.* at 716-17. *See also* D.C.R. v. State, 646 P.2d 252, 254 (Alaska Ct. App. 1982); R.C.M. v. State, 660 S.W.2d 552, 554 (Tex. App. 1983).

79. 307 So. 2d 317, *vacated*, 423 U.S. 809 (1975), on remand, 330 So. 2d 900 (La. 1976).

80. *Id.* at 319.

81. *Id.* at 320.

82. State v. Baccino, 282 A.2d 869, 872 (Del. Super. 1971).

83. Nelson v. State, 319 So. 2d 154, 156 (Fla. Ct. App. 1975).

officials conducting warrantless searches but that the standard was reduced from probable cause to reasonable suspicion.[84] This court, however, distinguished between government agents and law enforcement agents, holding that the exclusionary rule does not apply to evidence obtained in an invalid search by government agents such as school officials.[85] Students whose fourth amendment rights have been violated must seek other legal remedies aside from having the illegally obtained evidence suppressed in criminal proceedings.[86]

The federal district and circuit courts, while agreeing that the fourth amendment applies to school officials conducting searches, have been inconsistent about the standard for the search. They have upheld at least an individualized reasonable suspicion standard for a body search, and in some cases have moved to the stricter probable cause standard. In *Bilbrey v. Brown*,[87] the Ninth Circuit held that school officials should have had probable cause to suspect, or at least a reasonable belief, that two fifth grade students possessed drugs before they conducted a body search and that school officials were not immune from prosecution for failing to obey this standard.[88] One federal district court ruled that a search, and an eventual strip search, of an entire classroom for missing money was invalid, "there being no reasonable suspicion to believe that each student searched possessed contraband or evidence of crime."[89] The Seventh Circuit held that a strip search of a thirteen-year-old by school officials for drugs after a dog sniff reaction was "an invasion of constitutional rights of some magnitude."[90] The Fifth Circuit held that canine sniff investigations of school lockers and automobiles were not searches under the fourth amendment, but that canine sniff investigations of bodies were searches and, without individual probable cause, were invalid.[91]

Other federal courts have held that a reasonable suspicion standard applies to searches but that the evidence thus obtained may be used only in hearings to determine school suspension.[92] In fact, the Sixth Circuit specifically stated that its decision did not reach the issue of whether the reasonable suspicion standard would be

84. State v. Young, 234 Ga. 488, 496, 216 S.E.2d 586, 592 (1975).

85. *Id.* at 494, 216 S.E.2d at 591.

86. *Id.*

87. 738 F.2d 1462 (9th Cir. 1984).

88. *Id.*

89. Bellnier v. Lund, 438 F. Supp. 47, 54 (N.D. N.Y. 1977).

90. Doe v. Renfrow, 631 F.2d 91, 92 (7th Cir. 1980).

91. Horton v. Goose Creek Ind. School Dist., 690 F.2d 470, 482 (5th Cir. 1982), *cert. denied*, 463 U.S. 1207 (1983).

92. M. v. Board of Educ. Ball-Chatham Community Unit School Dist. No. 5, 429 F. Supp. 288, 292 (S.D. Ill. 1977).

enough if the evidence were handed over to the police for criminal prosecution.[93] Finally, a federal district court held that a probable cause standard must be met when a warrantless school search was conducted at the request of and in conjunction with the police.[94]

The Supreme Court's Rulings on Other Constitutional Rights of Public School Students.

While each constitutional right has a different history and basis for interpretation and application, an overview of the Supreme Court's posture toward public school students and their constitutional rights reveals a balancing of absolute rights against governmental needs. *West Virginia State Board of Education v. Barnette,*[95] in a strongly worded opinion, held that the "action of the local authorities [Board of Education] in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the first amendment . . . to reserve from all official control."[96] This opinion came in response to a school board's expelling students who refused on religious principles to salute and pledge to the flag. The Court held that the first amendment applied to these students through the fourteenth amendment, which "protects the citizen against the State itself and all of its creatures—Boards of Education not excepted."[97] The Court pointed out, however, that the students' refusal to salute and pledge conflicted with no other student's rights.[98]

Similarly, the Court held in *Tinker v. Des Moines Independent Community School District*[99] that students who were suspended from school for wearing black armbands in protest of the hostilities in Vietnam had been denied their first amendment rights, saying that "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[100] The Court was again careful to point out that the protest did "not concern aggressive, disruptive action or even group demonstrations,"[101] and that the armbands did not conflict with any other student's rights or with the responsibility of school officials to control conduct in the schools.[102]

93. Tarter v. Raybuck, 742 F.2d 977, 984 (6th Cir. 1984), *cert. denied,* 470 U.S. 1051 (1985).

94. Picha v. Wielgos, 410 F. Supp. 1214 (N.D. Ill. 1976).

95. 319 U.S. 624 (1943).

96. *Id.* at 642.

97. *Id.* at 637.

98. *Id.* at 630.

99. 393 U.S. 503 (1969).

100. *Id.* at 506.

101. *Id.* at 508.

102. *Id.*

In 1975, the Court decided in *Goss v. Lopez*[103] that a student who is suspended from school for a period of ten days or less is entitled to a due process hearing prior to suspension.[104] For more serious suspensions or expulsions, the Court suggested that more formal proceedings may be necessary.[105] In *Ingraham v. Wright*,[106] however, the Court refused to apply the eighth amendment to disciplinary corporal punishment in public schools because historically the amendment pertained to criminal punishment only.[107] The Court further held that the "Due Process Clause does not require notice and a hearing prior to the imposition of corporal punishment . . . as that practice is authorized and limited by the common law [of Florida]."[108]

The Court seems willing to extend constitutional rights to public school students as long as the practice of those rights does not interfere with the state's interest in providing an effective environment in which to educate those students. Also, none of these cases involved a question of criminal prosecution outside of school disciplinary procedures.

INSTANT CASE

The Supreme Court originally granted the State of New Jersey's petition for certiorari on the question of whether the exclusionary rule operated to bar the evidence in T.L.O.'s juvenile delinquency proceedings.[109] The state conceded for argument that the New Jersey Supreme Court had correctly decided that the search was invalid under the fourth amendment, but argued that the exclusionary rule did not apply to suppress evidence from an illegal search conducted by public authorities who were not police officers.[110] The Supreme Court did not wish to decide this issue without first deciding the broader issue of fourth amendment application to school settings, and the case was re-argued on that issue.[111]

In a majority opinion written by Justice White, the Supreme Court relied on *Mapp v. Ohio*[112] to hold that the fourth amendment, through the fourteenth amendment, applies to state

103. 419 U.S. 565 (1975).
104. *Id.* at 581.
105. *Id.* at 584.
106. 430 U.S. 651 (1977).
107. *Id.*
108. *Id.* at 682.
109. New Jersey v. T.L.O., 464 U.S. 991 (1983).
110. New Jersey v. T.L.O., 469 U.S. 325, 331 (1985).
111. *Id.* at 332.
112. 367 U.S. 643 (1961). *See supra* text accompanying note 21.

officers,[113] and relied on *West Virginia State Board of Education v. Barnette*[114] to hold that it applies to school officials.[115] In response to the state's argument that the history of the fourth amendment indicates that it applies only to searches carried out by law enforcement officers, the Supreme Court applied its holding in *Camara v. Municipal Court*[116] that the fourth amendment applies to civil as well as criminal authorities, and rejected the state's argument.[117] The Supreme Court went even further and rejected the *in loco parentis* doctrine, which several states had relied on to rule that the fourth amendment does not apply to school personnel at all.[118] The Court reasoned that if, on the one hand, under its holdings in *Tinker v. Des Moines Independent Community School District*[119] and in *Goss v. Lopez,*[120] school officials are subject to upholding students' first amendment and due process rights, then school officials cannot act as surrogate parents where students' fourth amendment rights are involved.[121]

The Court next addressed the issue of what standard of reasonableness is required in school searches. Again relying on language from *Camara,*[122] the Court suggested that determination of a standard requires that the Court balance the need to search against the kind of invasion the search involves, based on a reasonable expectation of privacy.[123] The State of New Jersey argued that the school setting provides no expectation of privacy because such an expectation is incompatible with an educational environment and because students have a minimal interest in bringing personal property to school.[124] The Court rejected this argument: "In short, schoolchildren [sic] may find it necessary to carry with them a variety of legitimate, noncontraband [sic] 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."[125] The Court went on to recognize that even a limited search of a person under *Terry v. Ohio*[126] constitutes a substantial

113. New Jersey v. T.L.O., 469 U.S. at 334.
114. 319 U.S 624 (1943); *see supra* text accompanying notes 95-98.
115. New Jersey v. T.L.O., 469 U.S. at 334.
116. 387 U.S. 523 (1967); *see supra* text accompanying notes 67-70.
117. New Jersey v. T.L.O., 469 U.S. at 335.
118. *Id.* at 741.
119. 393 U.S. 503 (1969); *see supra* text accompanying notes 99-102.
120. 419 U.S. 565 (1975); *see supra* text accompanying notes 103-105.
121. New Jersey v. T.L.O., 469 U.S. at 336.
122. 387 U.S. 523 (1967).
123. New Jersey v T.L.O., 469 U.S. at 337.
124. *Id.* at 338.
125. *Id.* at 339.
126. 392 U.S. 1 (1968).

invasion, and that the search of a closed bag is a severe violation under its holding in *United States v. Ross.*[127] Likewise, the search of a child's purse by a school official is a similarly substantial invasion of privacy.[128]

But against these interests, the Court weighed the interest of school officials in maintaining discipline, just as it weighed the governmental interests in *Terry*[129] and *Ross*[130] against such an invasion of privacy. Thus, it first held that school officials need not have a warrant for a search because the burden of obtaining a warrant frustrates the object of the search.[131] Second, the Court reduced the standard from probable cause to reasonable suspicion,[132] citing *Terry v. Ohio,*[133] *United States v. Brignoni-Ponce,*[134] *Delaware v. Prouse,*[135] *United States v. Martinez-Fuerte,*[136] and *Camara.*[137] Each of these cases recognized an exception to the probable cause standard for warrantless searches after balancing a legitimate governmental need against the privacy rights of individuals. The Court then applied a two-pronged test to determine the reasonableness of the search. Relying on *Terry,* the Court looked to 1) whether the search was justified at its inception and 2) whether the search conducted was reasonably related to the circumstances which justified the search in the first place.[138] The Court then articulated the application of this test:

> [A] search of a student . . . 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. Such a search will be permissible in its 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.[139]

Finally, the Court applied this test to the facts of T.L.O.'s case. Calling the New Jersey Supreme Court's ruling a "somewhat crabbed notion of reasonableness,"[140] the Supreme Court held that

127. 456 U.S. 798 (1982).

128. New Jersey v. T.L.O., 469 U.S. at 337-38.

129. 392 U.S. at 29; *see Supra* notes 29-36 and accompanying text.

130. 456 U.S. at 825; *see supra* note 25.

131. New Jersey v. T.L.O., 469 U.S. at 340.

132. *Id.* at 342.

133. 392 U.S. 1 (1968); *see supra* notes 29-36 and accompanying text.

134. 422 U.S. 873 (1975); *see Supra* notes 63-65 and accompanying text.

135. 440 U.S. 648 (1979). In this case, a police officer stopped a car for a discretionary spot check of driver's license and car registration. The officer found marijuana in plain view on the floor of the car. The Court held that without articulable and reasonable suspicion that a motorist is unlicensed or the car unregistered or without the car being involved in a violation of law, such a discretionary stop is unreasonable under the fourth amendment. Any evidence of marijuana must be suppressed because it was seized upon an invalid stop. *Id.* at 663.

136. 428 U.S. 543 (1976); *see supra* note 66 and accompanying text.

137. 387 U.S. 523 (1967); *see supra* notes 67-71 and accompanying text.

138. New Jersey v. T.L.O., 469 U.S. at 341.

139. *Id.* at 341-42.

140. *Id.* at 343.

the search of T.L.O.'s purse by the vice principal was reasonable.[141] The Court explained that there were two searches—the search for cigarettes and the search for evidence of marijuana. The search for cigarettes was justified at its inception because T.L.O. had been accused of smoking by a teacher, T.L.O. denied smoking in the restroom, and she denied that she smoked at all. According to the Court, the vice principal had a reasonable suspicion that her purse contained cigarettes, and the search was confined to her purse. Both prongs of the Court's test were met by this reasoning. Further, the search revealed rolling papers which gave the vice principal a reasonable suspicion that the purse contained marijuana. His continued search through her purse was justified and the search was confined to the purse, thus meeting both prongs of the Court's test. The first search, which was valid, gave rise to the second search, making the second search valid. Therefore, the evidence obtained in this valid search should not be excluded in the juvenile delinquency proceedings against T.L.O.[142]

The four related issues which the Court explicitly chose not to decide in this case were: 1) whether the exclusionary rule is the appropriate remedy for evidence obtained in an invalid search by school authorities,[143] 2) whether the fourth amendment applies to searches of lockers, desks, or other school property by school officials or other public authorities,[144] 3) what the appropriate standard is for a search carried out by school authorities in conjunction with the police,[145] 4) and whether individualized suspicion is an essential element of the reasonableness standard for a search by school officials.[146]

In their concurrence, Justices Powell and O'Connor emphasized that public school students have a lesser expectation of privacy because of the characteristics of the school setting which make it "unnecessary to afford students the same constitutional protections granted adults and juveniles in a nonschool setting."[147] Their reasoning is based on the government's interest in maintaining discipline within the schools so that school officials can perform their

141. *Id.*

142. *Id.* at 347-48.

143. *Id.* at 333 n.3.

144. *Id.* at 337 n.5.

145. *Id.* at 341 n.7. The Court cites without comment Picha v. Wielgos, 410 F. Supp. 1214 (N.D. Ill. 1976), which held that a probable cause standard was necessary for such searches. *See supra* note 94 and accompanying text.

146. *Id.* at 342 n.8. The Court implies that individualized suspicion may be necessary unless the provacy interests in a situation are minimal.

147. *Id.* at 348.

primary function—educating young people.[148]

Justice Blackmun, in his concurrence, also emphasized this special governmental interest. He suggested that the balancing test is an exception to probable cause for warrantless searches, which the Court has applied only where special governmental interests are involved, and the school setting falls within that exception.[149]

Finally, Justices Brennan, Marshall and Stevens concurred that the fourth amendment applies to school officials. However, Justices Marshall and Brennan dissented as to the lowering of the standard from probable cause, finding the balancing test "Rohrschach-like [sic]"[150] and concluding that any such balancing test that gave the proper weight to the interests of privacy would not have reached the result it did in this case.[151]

Justice Stevens based his dissent on two arguments. First, he stated that the court "unnecessarily and inappropriately reached out" to decide this constitutional question when the case did not reach the Court on this issue.[152] Second, Justice Stevens argued that the standard the Court has reached allows school officials to search students for violations of any school rule as well as for violations of law. He would limit applicability of the standard to reasonable suspicion that a student is violating the law or engaging in conduct which will seriously disrupt the school process.[153] This standard, Justice Stevens suggested, will offer more protection for the privacy rights of the students and allow school officials to maintain adequate discipline. Applying this standard to the present case, Justice Stevens concluded that T.L.O.'s conduct was neither unlawful nor seriously disruptive of the school process and the search was, therefore, unjustified.[154]

ANALYSIS AND CONCLUSION

The decision in *New Jersey v. T.L.O.* carves out a new fourth amendment standard for application to public school students. The decision tries to strike a balance among the various state court rulings by holding, on the one hand, that the fourth amendment does apply to school searches by school officials and, on the other

148. *Id.* at 350.

149. *Id.* at 352.

150. The Rorschach Test, developed by Swiss psychiatrist Hermann Rorschach is a method of psychological testing where a person is asked to describe what he sees in ten inkblots which are either black, gray, or with patches of color. For more information, consult *The New Encyclopedia Britannica Micropaedia*, 15th ed., s.v. "Rorschach Test."

151. New Jersey v. T. L. O., 496 U. S. at 358.

152. *Id.* at 371.

153. *Id.* at 378.

154. *Id.* 384.

hand, by reducing the standard for such a search to reasonable suspicion and by eliminating the warrant requirement. The decision also follows the general view of the courts that the standard for a school search is a lower one than probable cause due to the special nature of the school setting and the governmental interest involved in providing an effective educational environment for young people.[155] The decision comports with Supreme Court rulings involving the application of other constitutional rights to school situations[156] by holding that the fourth amendment does apply to public school students. The court recognizes, as it did in *Tinker v. Des Moines Independent Community School District*,[157] that young people do not lose their rights during that part of the day when they are students.[158] Even the lowering of the standard to reasonable suspicion is not unexpected. The decisions in *Tinker*,[159] *Goss*,[160] and *West Virginia State Board of Education*[161] were careful to point out that the students who were exercising their constitutional rights were not interfering with the rights of other students nor were they disrupting the school process. The Court recognized the necessity, even in these cases, of maintaining an effective educational atmosphere in the schools.

But, the decision in this case is an unprecedented application of the fourth amendment. The Supreme Court has extended the application of this reasonable suspicion standard beyond school rule infractions to violations of law. Furthermore, it has allowed a search for evidence of a school rule infraction to evolve into a search for evidence of criminal conduct. In essence, the Court has reduced the standard for a warrantless, intrusive search for criminal evidence to reasonable suspicion.

Granted, the Court has recognized exceptions to the warrant requirement. The automobile exception promulgated in *Carroll*[162] was recognized because evidence of a crime could easily vanish while a warrant was sought; however, the search was based on probable cause. While school officials perhaps need not be hampered with the necessity of obtaining a warrant, reasonable sus-

155. *See, e.g.*, State v. Baccino, 282 A.2d 869 (Del. Super. Ct. 1971); Nelson v. State, 319 So. 2d 154 (Fla. Dist. Ct. App. 1975); State v. Young, 234 Ga. 488, 216 S.E.2d 586 (1975), *cert. denied*, 423 U.S. 1039 (1975); *see supra* notes 82-86 and accompanying text.

156. *See, e.g.*, Ingraham v. Wright, 430 U.S. 651 (1977); Goss v. Lopez, 419 U.S. 565 (1975); Tinker v. Des Moines Indep. Community School Dist., 393 U. S. 503 (1969); West Virginia State Bd. of Educ. v. Barnette, 319 U. S. 624 (1943); *see Supra* notes 95-108 and accompanying text.

157. 393 U. S. 503 (1969).

158. *Id.* at 506.

159. Tinker v. Des Moines Indep. Community School Dist., 393 U. S. 503 (1969).

160. Goss V. Lopez, 419 U.S. 565 (1975).

161. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943).

162. 267 U.S. 132 (1925); *see supra* text accompanying note 25.

picion for an intrusive search does not fit within the spirit of the *Carroll* exception, even conceding that the necessity for warrantless searches is similar in schools and automobiles.

The Court has also recognized an exception to the probable cause standard for warrantless searches. The Court relies heavily on the *Terry*[163] exception to fashion its lower standard for school searches. While *Terry* lowered the standard for a warrantless search to reasonable suspicion, the exception was specifically designed to allow police officers to prevent commission of a crime, and the subsequent search was a limited intrusion specifically made to protect the officer from an assault with a weapon.[164] Even when the Court extended the *Terry* exception to the situation where law enforcement had a reasonable suspicion that a suspect was transporting narcotics, the stop could be only long enough to dispel the suspicion and no search could ensue unless there was reason to believe the suspect was armed and dangerous.[165]

The application of the *Terry* exception in this case poses problems. If the Court applies the exception to school rule infractions, T.L.O.'s vice-principal had a reasonable suspicion that T.L.O. had been smoking in the restroom, as the teacher alleged. But it was not a school rule infraction to have cigarettes at school or to smoke on campus. The infraction was smoking in the restroom. There was no reasonable suspicion that the vice-principal could dispel by searching T.L.O.'s purse for evidence that she had broken the rule of not smoking in the restroom. Such evidence could not be found in her purse. The Court thus went beyond *Terry* and its progeny when it held that the initial search of T.L.O.'s purse for cigarettes was valid.

The second search, or continued search of T.L.O.'s purse, poses an even more perplexing problem. The vice-principal had no reasonable suspicion that T.L.O. was about to commit or had committed the crime of possession of drugs. He would have no valid reason to stop and question her about any suspicious activity under *Terry*. He only became aware of the possibility that T.L.O. possessed drugs only when he found the drug paraphernalia during the first search. But, the Court hinged the validity of the second search on the validity of the first one,[166] a search the Court has gone outside of the scope of *Terry* to validate. The Court seems to have hinged an invalid search onto an invalid search and called it valid.

163. 392 U.S. 1 (1968); *see supra* notes 29-36 and accompanying text.

164. 392 U.S. at 30.

165. *See, e.g.*, U.S. v. Place, 462 U.S. 696 (1983); Florida v. Royer, 460 U.S. 491 (1983).

166. New Jersey v. T. L. O., 469 U. S. 325, 347 (1985).

The Court also relies on *Camara*[167] to support a standard of reasonable suspicion by bringing from that case the idea of the balancing test. School searches for school rule infractions have much in common with administrative searches. Administrative searches have as their goal promulgation of health and safety standards or regulation of industry which bears on public health and safety. Detection of criminal offenses is not their objective, though evidence found can be used in criminal trials. But a *Camara* search of a residence or private commercial property requires a warrant or legislative notice that a warrantless search can be conducted.[168] And although probable cause does not have to be particularized to one dwelling or business, but can be based on the reasonable observation of an area, the warrant still protects citizens against unreasonable intrusions into their homes or onto their property. Likewise, school searches for evidence of rule infractions bear on the health and safety of the students and teachers and also deal with regulating the educational process. If criminal sanctions are not the objective of a school search, the standard perhaps can be lowered to reasonable suspicion because the results to individuals are less harsh. However, the Court in the present case applies a balancing test with a lowered standard to an intrusive search of a girl's purse based *only* on reasonable suspicion and *without* a warrant. The Court then allows evidence from this intrusive search to be used in criminal proceedings. The Court, thus, goes beyond *Camara* to validate the search of T.L.O.'s purse.

Even in the border patrol cases, where the government's immediate need to search is perhaps at its greatest, the Court has never reduced the standard for an intrusive search to reasonable suspicion. In *United States v. Brignoni-Ponce*,[169] the Court reduced the standard to reasonable suspicion that the car contained illegal aliens for stopping a car near the border, but the stop could only be brief.[170] No search could be undertaken on less than probable cause.[171] The Court also held that in *Martinez-Fuerte*[172] that fixed checkpoint stops were valid along the border, without a warrant or even without suspicion of any wrongdoing, but only because the stops were brief and did *not* involve a search.[173] In T.L.O.'s case, the

167. 387 U.S. 523 (1967); *see supra* notes 54, 58, 67, 122, 137, and accompanying text.

168. *See* Donovan v. Dewey, 452 U.S. 594 (1981); Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); *see supra* notes 67-75 and accompanying text; United States v. Biswell, 406 U.S. 311 (1972); Colonnade Corp. v. United States, 397 U.S. 72 (1970); See v. City of Seattle, 387 U.S. 541 (1967); Camara v. Municipal Court, 387 U.S. 523 (1967).

169. 422 U.S. 873 (1975); *see supra* notes 63-65 and accompanying text.

170. *Id.* at 881-82.

171. *Id.*

172. 428 U.S. 543 (1976); *see supra* note 66 and accompanying text.

173. *Id.* at 557-67.

Court has articulated a standard that does not comport with the standards for border patrol stops and searches. The Court has allowed an intrusive search for evidence of a school rule infraction—an administrative concern—to extend into a search for criminal evidence on less than probable cause for either search, an approach the Court *rejected* for border patrol searches.[174]

The uniqueness of the ruling in this case hinges on the concept that an intrusive search may be undertaken on reasonable suspicion that a school rule has been broken, an administrative concern, *or* on reasonable suspicion that there is criminal wrong-doing, and that the evidence obtained by the subsequent search can be used interchangeably to support either or both charges. The Court seems to be striving for flexibility between the two categories of misconduct to allow school officials greater latitude to initiate a search and use any evidence obtained for purposes of either school disciplinary proceedings or criminal proceedings. The Court has never before recognized this kind of exception to fourth amendment search and seizure standards. It is a unique combination of administrative and criminal searches with a lower standard applicable to both.

Recognizing that school officials have a legitimate interest in maintaining discipline, a lowered standard for a brief, limited scope, nonintrusive search for evidence of a school rule infraction, which would not be used in criminal proceedings, is useful and perhaps necessary. This kind of search would avoid the preposterous situation, which this decision seems to contemplate, of being able to undertake an intrusive search for non-disruptive offenses like the search for a pass to prove a student was in the hallway without one, or a search for car keys to prove the student drove a car to school against the rules. Probable cause should still be the standard for an intrusive search for evidence of criminal wrong-doing, evidence which can be used in criminal proceedings. This standard should not be difficult to meet considering that students spend a great part of the school day in close proximity to teachers, school officials, and other students. It seems logical that if school officials can turn evidence over to the police for criminal prosecution, they ought to be held to the same standards as the police in searching for evidence of criminal wrong doing. Otherwise, the "silver platter" doctrine, which was rejected by the Court in *Elkins v. United States*,[175] has returned for use

174. *See, e.g.*, U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976); U.S. v. Ortiz, 422 U.S. 891 (1975); U.S. v Brignoni-Ponce, 422 U.S. 873 (1975); Almeida-Sanchez v. U.S., 413 U.S. 266 (1973); *see supra* notes 61-70 and accompanying text.

175. 364 U.S. 206 (1960); *see supra* note 19 and accompanying text.

in the school context. Still available is the *Terry* exception that allows school officials to search for weapons on reasonable suspicion that a student may be carrying a weapon at school.

This standard, which would clearly separate searches for school infractions on the one hand and for criminal wrongdoing on the other, recognizes the dual nature of school search concerns, administrative and criminal. It also allows school officials to maintain discipline at two levels, one for school rules and another for criminal laws. Where these two levels overlap, school officials will have obtained evidence of criminal wrongdoing under a probable cause standard, and there will be no confusion about whether the search was undertaken for a rule violation or a law violation. Under this kind of standard, students will be afforded some right to privacy, and they will have notice as to what circumstances may subject them to a search. They will also have notice as to how extensive this search may be. The danger of the Court's new standard is that the definition of reasonable suspicion is left to the discretion of school officials under the circumstances of each case. Thus, students cannot be sure whether they are being searched for evidence of a rule infraction or a violation of a law; nor can they know how intrusive the search may become, short of a strip search.

Assuming, *arguendo*, that the standard announced in this case is comprehensible, the most perplexing aspect of the decision is the Court's application of the standard to the facts of the case. The standard, reasonable suspicion that the student has violated a school rule, does not seem to apply to T.L.O. Smoking was not a rule violation at Piscataway High School. Smoking outside the designated area was a rule violation, and a teacher saw T.L.O. break that rule. No further search for corroborative evidence should have been necessary. The vice-principal undertook the search because he had a reasonable suspicion that T.L.O. had lied to him about not smoking at all. The vice-principal's search for cigarettes was not for evidence of a school rule infraction, since it was not an infraction to have cigarettes at school. It is hard to understand how this search was justified at its inception. The Court then allows evidence found in this search to be used in criminal proceedings. If a student's ability to rely on the fourth amendment for protection of privacy is weakened with the reduction of the standard, it is virtually destroyed by the standard's application to this set of facts. The Court implies that students may be intrusively searched merely because a school official wishes to make a point that a student lied to him. The application of this vague standard to this set of facts implies that the discretion of

school officials will be given unprecedented credence to uphold a search under the fourth amendment.

The Supreme Court claims that its decision does not reach the issue of searches conducted in conjunction with police, but cites *Picha*[176] to imply that a probable cause standard would be necessary.[177] It is hard to distinguish the difference between a police officer looking for evidence of a crime and a school official looking for evidence of a crime or rule infraction turning over evidence for criminal proceedings. The end result is the same: the school official can undertake the search on reasonable suspicion of a school rule infraction and end up with criminal evidence. In essence, the Court has decided that police involvement can be based on reasonable suspicion by their accepting and using evidence obtained by a school official based on reasonable suspicion. From here it seems only a short leap to the situation where law enforcement requests that school officials search students for the police officers and turn over any evidence of criminal activity to those officers. The Court also claims not to decide the issue of the standard for searches of other school property, like lockers and desks, in which students may store belongings.[178] By upholding the validity of an intrusive search of a girl's purse for evidence of a rule infraction, it has upheld intrusion where a school official has no arguable right to intrude under normal expectations. Students normally might expect a school official to have a right to search desks and lockers since they are school property. It is puzzling why the Court chooses to rule as it does on a very personal intrusion and chooses not to comment on the standard for a search of school property.

Even though the Court holds that the fourth amendment applies to searches and seizures in schools,[179] and even though the Court recites that students have some expectations of privacy,[180] the new standard and its application to this set of facts undercuts this holding. This unprecedented fourth amendment standard guarantees little privacy to school students. What effect this decision will have on school searches will, of course, vary with each state. As the Court points out, states will be able to set a higher standard for school searches and seizures and will therefore not rely on this decision to determine the validity of school searches.[181] Those

176. Picha v. Wielgos, 410 F. Supp. 1214 (N.D. Ill. 1976); *see Supra* notes 94 and 145 and accompanying text.

177. New Jersey v. T.L.O., 469 U.S. at 341 n.7.

178. *Id.* at 337-38 n.5.

179. *Id.* at 336-37.

180. *Id.* at 338.

181. *Id.* at 343 n.10.

states which have held that the fourth amendment applies with probable cause can now choose to lower their standards to fit this decision or maintain their stricter ones. Those states which held that school officials were not bound by fourth amendment constraints will have to recognize that the fourth amendment applies, abandon the *in loco parentis* doctrine and relabel their policy as "reasonable suspicion under the circumstances."[182] The Court simply sets a minimum standard for school searches.

Neither state courts, school officials, nor students have been given any guidance as to what a valid search may involve. The Court has said that reasonableness is to be determined by the school official within the circumstances of each case, taking into account various characteristics of the student. State courts, in the absence of more specific guidelines, are still left the task of determining what constitutes valid searches under this decision. Perhaps this is what the Supreme Court really set out to accomplish. Ultimately, however, school officials will be left to decide the reasonableness of a search. They will have to strike a balance between not searching to avoid the risk of litigation and taking too many opportunities to find reasonable suspicion, rendering fourth amendment protection totaly inoperative for students.

More importantly, this ambiguous standard leaves students with only the Court's words that they have some expectations of privacy or that the fourth amendment protects them. The expectations are minimal at best and the protection uncertain at most.

Gwendolyn G. Combs

182. *Id.* at 340-41.