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## **New Jersey v. T.L.O.: The Fourth Amendment Goes to School, 19 J. Marshall L. Rev. 115 (1985)**

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## CASENOTES

### NEW JERSEY v. T.L.O.\* THE FOURTH AMENDMENT GOES TO SCHOOL

State and federal courts have struggled incessantly to accommodate the sometimes competing interests of students, protected by the fourth amendment, and the states interest in providing safe educational environments for their students. In advancing such a discerning relationship, the school childrens' legitimate fourth amendment expectations of privacy have sometimes been trampled underfoot.<sup>1</sup> In reaching what purportedly is a reasonable balance between these two interests, the United States Supreme Court has

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\* 105 S. Ct. 733 (1985).

1. See *New Jersey v. T.L.O.*, 105 S. Ct. 733, 738-39 n.2 (1985). Some courts have held that school officials are exempt from the restrictive parameters of the fourth amendment when conducting searches of students. These courts have reasoned that when conducting such searches the officials are private parties acting in *loco parentis*. See *D.R.C. v. State*, 646 P.2d 252 (Alaska App. 1982) (school officials compared to foster parents); *In re B.G.*, 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361, 523 P.2d 244 (1974) (teachers are not classified as government officials under the fourth amendment); *In re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969) (teachers share parental right to use moderate force to obtain obedience and such right extends to searches). In at least one case, however, the Court strictly applied the fourth amendment to the search of a student conducted without probable cause, and held such conduct unconstitutional. *State v. Mora*, 307 So. 2d 317 (La.), *vacated*, 423 U.S. 809 (1975). Other courts have held the "probable cause" standard applicable at least where the police are involved in the search. See, e.g., *M. v. Board of Educ. Ball-Chatham Community Unit School Dist. No. 5*, 429 F. Supp. 288, 292 (S.D. Ill. 1977) (differentiated situation, where police are involved, requiring probable cause, from those where school officials act alone, where lesser standard is applicable); *Picha v. Wielogos*, 410 F. Supp. 1214, 1219-21 (N.D. Ill. 1976) (probable cause must be present where police have "significant participation" in a search of a student or where the search is highly intrusive).

The majority of courts that have faced the issue of the fourth amendment in the school setting have concluded that the inherent safeguards of the amendment do protect children from overreaching searches. However, the exigencies of the school environment require assessing the legality of the searches with a standard less strict than probable cause. These cases uphold warrantless searches by school officials provided that they are supported by a "reasonable suspicion" that the search will yield evidence of a disciplinary rule infraction or violation of a law. See, e.g., *Tarter v. Raybuck*, 742 F.2d 977, 982 (6th Cir. 1984) ("quantum of suspicion" short of probable cause), *cert. denied*, 105 S. Ct. 1749 (1985); *Bilbrey v. Brown*, 738 F.2d 1462 (9th Cir. 1984) (mistaken but reasonable belief that probable cause exists is sufficient to support search); *In re J.A.*, 85 Ill. App. 3d 567, 406 N.E.2d 958 (1980) (proper standard is not probable cause but whether officials have a reasonable suspicion that a student possesses contraband which may endanger himself or others).

held that probable cause<sup>2</sup> is not required to conduct a search of a student on school property, but only that the search, in its totality, be "reasonable."<sup>3</sup> In *New Jersey v. T.L.O.*,<sup>4</sup> the Court reviewed the constitutionality of a search of a student's purse by a school official. The Court determined that the restrictions to which searches by public authorities are ordinarily subject must be eased due to the societal interests involved in meaningful education.<sup>5</sup> Consequently, to conduct a constitutionally valid search of a student, a school official need only have a reasonable suspicion to believe that the student has violated or is violating either the law or the school rules.<sup>6</sup> Applying this reasonable suspicion standard to the circumstances at bar, the *T.L.O.* Court found that an assistant vice principal's search of a juvenile's purse was constitutional for fourth amendment purposes.<sup>7</sup>

In March of 1980, a New Jersey high school teacher, while making a routine check of the women's lavatory, observed T.L.O. and her companion smoking cigarettes in violation of a school rule.<sup>8</sup> Consequently, the teacher took the girls to the vice principal's office to meet with Mr. Choplick, the assistant vice principal. Upon questioning, T.L.O. denied that she was caught smoking and claimed she did

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2. The essence of probable cause requires that the facts and circumstances known to the searching official would warrant "a man of reasonable caution in the belief" that a criminal offense has occurred. *Carroll v. United States*, 267 U.S. 132, 162 (1925). However, probable cause depends upon "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States*, 338 U.S. 160, 175 (1949). The probable cause standard was intended as a "common sense" test which was applied after consideration of the "totality of the circumstances." *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

3. *T.L.O.*, 105 S. Ct. at 743-44.

4. 105 S. Ct. 733 (1985).

5. *Id.* at 743-44. The Court acknowledged society's interest in education when it stated that "[e]ducation is perhaps the most important function of state and local governments." *Id.* at 750 (quoting *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954)). However, the ability to maintain environments conducive to fostering these interests has become increasingly difficult. See generally Elam, *The Gallup Education Surveys: Impressions of a Poll Watcher*, PHI BETA KAPPA MAG. Sept. 1983, at 24, 26-27 (the public has consistently ranked discipline the number one problem in schools; since 1978, drugs have placed second in priority only to discipline); NATIONAL INSTITUTE OF EDUCATION, VIOLENT SCHOOLS—SAFE SCHOOLS: THE SAFE SCHOOL STUDY REPORT TO THE CONGRESS (1978) (Educ. Research Instit. Clearinghouse Catalog No. ED-175-112) (commenting on the problems of drug abuse and violence in our nation's public schools). *But cf.* O. MOLES, TRENDS IN INTERPERSONAL CRIMES IN SCHOOLS (1983) (asserting that problems of violence and vandalism in public schools have declined).

6. *T.L.O.*, 105 S. Ct. at 743.

7. *Id.* at 745-47.

8. *T.L.O.*, 105 S. Ct. at 737. The regulation that T.L.O. and her companion were accused of violating was that of smoking in an area not designated for that purpose. There were no school regulations forbidding students from possessing cigarettes or even smoking them in permitted areas. *In re T.L.O.*, 178 N.J. Super. 329, 341-42, 428 A.2d 1327, 1333-34 (N.J. Juv. Ct. 1980).

not smoke at all.<sup>9</sup> Mr. Choplick then demanded to see her purse. Upon opening the purse, he found a package of cigarettes and also noticed a package of rolling papers, frequently associated with the use of marijuana.<sup>10</sup> A more thorough search of the purse revealed a plastic bag containing less than one fifth of an ounce of marijuana, a pipe, forty-seven dollars in singles, and other evidence that implicated her in selling marijuana.<sup>11</sup> Upon discovering these items, Mr. Choplick notified the student's mother and the police.<sup>12</sup>

As a result of the evidence produced by the search, the State of New Jersey brought delinquency charges against T.L.O. in the Juvenile and Domestic Relations Court of Middlesex County.<sup>13</sup> T.L.O. contended that the search of her purse violated the fourth amendment to the United States Constitution and accordingly moved to suppress the evidence, as well as her subsequent confession which, she argued, was tainted by the unlawful search.<sup>14</sup> The Juvenile Court denied the motion to suppress, adjudicated T.L.O. delinquent, and sentenced her to one year's probation.<sup>15</sup> On appeal, T.L.O.

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9. *T.L.O.*, 105 S. Ct. at 737.

10. *Id.* Generally, consent by the person to be searched is a recognized exception to the protections of the fourth amendment. *See, e.g.*, *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) (car owner's consent to search automobile held valid as waiver of expectation of privacy). The consent must be voluntary and must not be the result of an overt or implied coercion. *Id.* at 248. On the notion of consent being an exception to the fourth amendment, see generally Comment, *Students and the Fourth Amendment: "The Torturable Class,"* 16 U.C.D. L. Rev. 709, 720-22 (1983) (asserting that courts do not often use this exception in school searches because the consent, if given, may only be in acquiescence to the superior authority of the school official). When contraband is within "plain view" of a government official it can be legally seized, provided that the official is lawfully in a position to have that view. *E.g.*, *Harris v. United States*, 390 U.S. 234 (1968). *See generally* Annot., 75 L. Ed. 2d 1018 (1985) ("plain view" doctrine in United States Supreme Court decisions).

11. After extending the search to a zippered compartment of the purse, Mr. Choplick also discovered an index card listing people who owed money to T.L.O., and two letters indicating that T.L.O. was selling marijuana. *T.L.O.*, 105 S. Ct. at 737.

12. *Id.*

13. *Id.* The complaint filed with the court alleged that T.L.O. had possessed marijuana with the intent to distribute, in violation of a New Jersey criminal law. *See* N.J. STAT. ANN. § 24:21-19(a)(1) (West 1940 & Supp. 1985) (unlawful to distribute a controlled dangerous substance), and N.J. STAT. ANN. § 24:21-20(a)(4) (West 1940 & Supp. 1985) (unlawful to possess a controlled dangerous substance). Additionally, the school imposed a 3-day suspension for smoking cigarettes in a non-smoking area and a 7-day suspension for possession of marijuana. *T.L.O.*, 105 S. Ct. at 737 n.1. This latter suspension was set aside on the ground that it was based on evidence seized in violation of the fourth amendment. *Id.* (citing *T.L.O. v. Piscataway Bd. of Educ.*, No. C.2865-79 (N.J. Super. Ct. Ch. Div., Mar. 31, 1980)).

14. *T.L.O.*, 105 S. Ct. at 737. After agreeing to answer questions while at police headquarters, T.L.O. admitted to owning the objects found in her purse. She further admitted that she was selling marijuana "joints" (rolled marijuana cigarettes) in school for \$1 each. She stated that on the morning of the search, she had sold approximately 20 joints at school. Brief for Petitioner at 4, *New Jersey v. T.L.O.*, 105 S. Ct. 733 (1985).

15. *In re T.L.O.*, 178 N.J. Super. 329, 343, 428 A.2d 1327, 1334 (1980). The court concluded that the fourth amendment was applicable to a search conducted by

raised only the fourth amendment issue which the Appellate Division of the New Jersey Superior Court, in a divided opinion, affirmed.<sup>16</sup> T.L.O. appealed this ruling to the New Jersey Supreme Court, which reversed the judgment of the Appellate Division and ordered that the evidence found in the purse be suppressed.<sup>17</sup>

Seeking to reverse the New Jersey Supreme Court ruling, the State of New Jersey petitioned the United States Supreme Court for certiorari.<sup>18</sup> The writ was granted,<sup>19</sup> but, after initial arguments, the

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a school official. The court observed, however, that such a search is constitutional only "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 such a search is necessary to maintain school discipline or enforce school policies." *Id.* at 341, 428 A.2d at 1333. In applying the facts of the case to its reasoning, the court found that the initial search was justified by a well founded suspicion that T.L.O. had violated the school rule prohibiting smoking in the lavatories. Once the purse was open, evidence of marijuana violations was in plain view providing adequate support for a more detailed search to determine the nature and extent of T.L.O.'s drug-related activities. *Id.* at 343, 428 A.2d at 1334.

16. *In re T.L.O.*, 185 N.J. Super. 279, 448 A.2d 493 (Ct. App. Div. 1982) (per curiam). However, the court vacated and remanded the judgment finding T.L.O. delinquent for a determination of whether she had knowingly waived her fifth amendment right before confessing. *Id.* A discussion of the fifth amendment question, as it relates to the facts of this case, is beyond the scope of this note.

17. *In re 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 applied to searches conducted by school officials. The court also held that the exclusionary rule should be employed to prevent the use of unlawfully seized evidence in juvenile proceedings by school officials, recognizing that "if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings." *Id.* at 341, 463 A.2d at 939. See also *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (applying the exclusionary rule to state court proceedings); *Weeks v. United States*, 232 U.S. 383, 398 (1914) (applying exclusionary rule to federal court proceedings). See generally Annot., 49 A.L.R. 3D 978 (1973 & Supp. 1984) (admissibility, in a criminal case, of evidence obtained from search conducted by school official).

Regarding the legality of Mr. Choplick's search, the court noted that a search by a school official does not violate the fourth amendment as long as the official has "reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with maintaining order and discipline in the school." *In re T.L.O.*, 94 N.J. at 346, 463 A.2d at 941-42. The New Jersey Supreme Court, however, disagreed with the Juvenile Court's ruling that the search was reasonable on three grounds. First, the contents of the purse had no direct bearing on the accusations made against T.L.O. *Id.* at 346, 463 A.2d at 942. Possession of cigarettes was not a school rule infraction and a mere desire to discredit T.L.O.'s denial of smoking was insufficient to justify the search. Second, even if a reasonable suspicion to believe that T.L.O. possessed cigarettes would have justified the search, Mr. Choplick had no such suspicion. *Id.* Third, aside from whether the initial search was justified, the court concluded that the presence of the rolling papers did not justify the subsequent in-depth search. *Id.* at 347, 463 A.2d at 942-43.

18. In its decision, the Supreme Court of New Jersey addressed three separate issues: first, what is the proper standard to use in determining the reasonableness of a school official's search of a student; second, given the facts of this case, did Mr. Choplick violate that standard; and, third, whether the exclusionary rule bars the use of evidence, in a criminal proceeding, that a school official procured in violation of this standard. *In re T.L.O.*, 94 N.J. 331, 463 A.2d 934 (1983). The State of New Jersey, however, petitioned for review of only the third issue.

19. *New Jersey v. T.L.O.*, 104 S. Ct. 480 (1983). Although the United States

Court notified the parties that the case would be held over for reargument.<sup>20</sup> The Court requested the parties to brief and argue an additional question: "Did the assistant principal violate the Fourth Amendment in opening respondent's purse in the facts and circumstances of the case?"<sup>21</sup>

The Supreme Court found that Mr. Choplick's conduct did not amount to an unreasonable search and seizure under the fourth amendment based on three considerations. First, the search of T.L.O.'s purse did not constitute a severe invasion of her personal privacy rights when balanced against the school's interests in preserving internal discipline and order.<sup>22</sup> Second, the search was justified at its inception.<sup>23</sup> Third, the search, as conducted, was reasonably related in scope to the circumstances which led to the interference in the first place.<sup>24</sup>

The *T.L.O.* Court initially observed that the fourth amendment ultimately requires that searches and seizures be "reasonable."<sup>25</sup> The Court went on to note that reasonableness depends upon the circumstances under which the search takes place.<sup>26</sup> Determining the standard of reasonableness governing any specific search requires a balancing of the need for the search against the individual's legitimate expectations of privacy and personal security.<sup>27</sup>

Supreme Court originally granted certiorari to decide the issue of the appropriate remedy in juvenile court proceedings for unlawful school searches, they stated that the more important question to address was what limits the fourth amendment imposes on school administrators. On this latter point, the Court ordered reargument. *New Jersey v. T.L.O.*, 105 S. Ct. 733, 738 (1985).

20. *T.L.O.*, 105 S. Ct. at 738.

21. *New Jersey v. T.L.O.*, 104 S. Ct. 3583 (1984). The Court's request for reargument was characterized by Justice Stevens as indictative of its "voracious appetite for judicial activism in its fourth amendment jurisprudence." *Id.* at 3584 (Stevens, Brennan & Marshall, J.J., dissenting). Justice Stevens stated in his dissent from the reargument order that the Court should have simply dismissed the writ as improvidently granted. *Id.* Instead, however, it granted reargument in order to resolve an issue of which none of the litigants sought review. *Id.* at 3584-85.

22. *New Jersey v. T.L.O.*, 105 S. Ct. 733, 742-43 (1985). *See also* *Zamora v. Pomeroy*, 639 F.2d 662, 670 (10th Cir. 1981) (search of a student's locker is not an unconstitutional invasion of protected rights). *But see* *United States v. Ross*, 456 U.S. 798, 822-23 (1982) (searches of closed items of personal luggage are invasions of protected privacy rights); *Terry v. Ohio*, 392 U.S. 1, 24-25 (1967) (even a limited search of the person constitutes a substantial invasion of privacy).

23. *T.L.O.*, 105 S. Ct. at 744.

24. *Id.*

25. *Id.* at 741.

26. *Id.*

27. *T.L.O.*, 105 S. Ct. at 741. An expectation of privacy, however, must be one that society is willing to recognize as legitimate in order to receive the protection of the fourth amendment. *Katz v. United States*, 389 U.S. 347, 360-61 (1967) (Harlan, J., concurring).

The scope of this note prevents a thorough discussion of the relationship between the fourth amendment and the constitutional right to privacy. For a general discussion on this relationship, see 16A AM. JUR. 2D CONSTITUTIONAL LAW § 602 (1979 &

The State of New Jersey contended that students have minimal expectations of privacy for two reasons: first, students must be subjected to necessary and pervasive supervision while in school and second, students' interests in items of personal property must be minimized when they are carried onto school property.<sup>28</sup> The Court rejected both premises. First, the Court held that students retain the same expectancy of privacy outside the schoolroom as they do inside.<sup>29</sup> Second, the Court noted that the state's minimized personal property contention was not realistic;<sup>30</sup> it held, just as students "do not shed their constitutional rights at the schoolhouse gate,"<sup>31</sup> they likewise do not waive all rights to privacy merely by bringing personal property onto school ground.<sup>32</sup> Nevertheless, the child's legitimate expectations of privacy must be considered along with the substantial and equally reasonable interests of teachers and school officials in maintaining discipline in the classroom.<sup>33</sup> Accordingly, the Court reasoned, some easing of the restrictions to which searches by public officials are ordinarily subject was required to balance these equivalent interests.<sup>34</sup>

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Supp. 1984).

28. Supplemental Brief for Petitioner at 16-25, *New Jersey v. T.L.O.*, 105 S. Ct. 733 (1985). Petitioner asserted that education is compulsory, therefore "the student has a legal duty to submit to the authority of school officials. In accordance with their duty to maintain discipline, school officials closely scrutinize students. It is therefore unrealistic for a student to claim more than a minimal expectation of privacy." *Id.* Petitioner also argued that since school attendance is compulsory only to age 16, some students have necessarily accepted the school regulations and resulting limitations on their privacy. *Id.* at 20. *But cf.* *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 511 (1969) (upholding students' constitutional rights).

29. The Court cautioned that even though the ability to maintain order and discipline in our public schools is growing difficult, the situation is not so dire as to believe that students can claim no legitimate expectations of privacy. The Court noted that such a belief would liken students to criminals in prison cells and acknowledged that "[t]he prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration [and] [w]e are not yet ready to hold that the schools and the prisons need be equated for purposes of the Fourth Amendment." *T.L.O.*, 105 S. Ct. at 742 (quoting *Ingraham v. Wright*, 430 U.S. 651, 669 (1977)).

30. *T.L.O.*, 105 S. Ct. at 742.

31. *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 511 (1969).

32. *T.L.O.*, 105 S. Ct. at 742. However, several lower courts have ruled that certain types of school searches do not infringe on student's reasonable expectations of privacy. *See Doe v. Renfrow*, 475 f. Supp. 1012 (N.D. Ind. 1979) (drug detection dogs used to sniff high school and junior high school students), *modified*, 631 F.2d 91 (7th Cir. 1980); *In re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969) (search of locker); *State v. Stein*, 203 Kan. 638, 456 P.2d 1 (search of locker), *cert. denied*, 397 U.S. 947 (1969).

33. *T.L.O.*, 105 S. Ct. at 742.

34. Generally, searches by public officials are unreasonable absent a search warrant based on probable cause. *See New York v. Belton*, 453 U.S. 454, 457 (1981) (search of an individual requires search warrant unless certain exceptions can be shown); *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (search of a person without a search warrant is *per se* unreasonable); *Katz v. United States*, 389 U.S. 347, 357

In easing these restrictions, the *T.L.O.* Court first decided that the fourth amendment requirement of obtaining a warrant prior to a search was unsuitable in the school environment.<sup>35</sup> Second, the Court lessened the level of suspicion needed to make the search of a student constitutional.<sup>36</sup> Ordinarily, for a search to be valid, even one without a warrant, it must be supported by probable cause to believe that a violation of a law has occurred.<sup>37</sup> The Court noted, however, that when a balancing of governmental and individual interests suggests the public interest is best served by a fourth amendment standard of reasonableness less rigorous than probable cause, it has not hesitated to adopt such a standard.<sup>38</sup> Supported by this logic, the *T.L.O.* Court concluded that the public interest in education was best served when the legality of a search of a student depends not on a belief rising to the level of probable cause, but "simply on the reasonableness, under all circumstances, of the search."<sup>39</sup>

Determining the reasonableness of a search involves an inquiry whether the action was justified at its inception and whether it was reasonably related in scope to the circumstances which justified the interference initially.<sup>40</sup> In the case of a search of a student it will

(1967) (search of person absent a warrant presumptively unlawful). However, in limited instances, the Court has waived the requirement. See *Terry v. Ohio*, 392 U.S. 1 (1968) (no warrant necessary to search when suspect is believed to be carrying dangerous weapon); *Camara v. Municipal Court*, 387 U.S. 523, 539 (1967) (prompt administrative inspections without warrant are valid in emergency situations). Ordinarily, even in instances where a warrant is not required, the search must be premised upon probable cause to believe that a violation of the law has occurred. *E.g.*, *Almeida-Sanchez v. United States*, 413 U.S. 266, 273 (1973) (probable cause to believe that car is carrying contraband is required to validate intrusion upon right to travel without interruptions); *Sibron v. New York*, 392 U.S. 40, 62-6 (1968) (search of known drug addict valid since premised on experienced judgment of police officer rising to level of probable cause).

35. *T.L.O.*, 105 S. Ct. at 743. *Accord Camara*, 387 U.S. at 532-33 (1967) (warrant unnecessary to conduct limited inspection of dwelling in emergency).

36. *T.L.O.*, 105 S. Ct. at 743.

37. *Id.* For a delineation on the characteristics of probable cause, see *supra* note 2. For a discussion of warrantless searches and the requirement of probable cause, see *supra* note 34.

38. *T.L.O.*, 105 S. Ct. at 743. See, *e.g.*, *Horton v. Goose Creek Indep. School Dist.*, 690 F.2d 470, 481 (5th Cir. 1982) (school officials must have reasonable cause for their actions), *cert. denied*, 463 U.S. 1207 (1983); *In re C.*, 26 Cal. App. 3d 320, 102 Cal. Rptr. 682 (1972) (search for marijuana predicated on "good cause"); *In re B.G.*, 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361, 523 P.2d 244 (1970) (search for drugs predicated on "reasonable belief"). *But cf.* *Bellnier v. Lund*, 438 F. Supp. 47 (N.D.N.Y. 1977) (search of classroom predicated on insufficient suspicion).

39. *T.L.O.*, 105 S. Ct. at 743.

40. *Terry v. Ohio*, 392 U.S. 1, 20 (1968). For extreme examples of searches where the scope greatly exceeded the circumstances which allegedly gave rise to the search, see *Stern v. New Haven Community Schools*, 529 F. Supp. 31 (E.D. Mich. 1981) ("two-way" mirror installed in boy's lavatory); *M.M. v. Anker*, 477 F. Supp. 837 (E.D.N.Y. 1979) (strip search), *aff'd*, 607 F.2d 588 (2d Cir. 1979); *Doe v. Renfrow*, 475 F. Supp. 1012 (N.D. Ind. 1979) (strip search), *modified*, 631 F.2d 91 (7th Cir. 1980); *Bellnier v. Lund*, 438 F. Supp. 47 (N.D.N.Y. 1977) (where an entire fifth grade class



usually be justified at its inception where there are reasonable grounds to suspect that the search will reveal evidence in violation of the law or the school rules.<sup>41</sup> As long as the methods used for conducting the search are reasonably related to the objectives of the search, and the search itself is not excessively intrusive in light of the age and sex of the student and the nature of the infraction, it will be held valid.<sup>42</sup>

In applying the "reasonableness under all circumstances" standard to the facts of this case, the Court found that Mr. Choplick's search of T.L.O.'s purse was reasonable for fourth amendment purposes and, consequently, reversed the judgment of the New Jersey Supreme Court.<sup>43</sup> Regarding the initial search of T.L.O.'s purse, the Court stated that, regardless whether the cigarettes had a direct bearing on the infraction alleged, if Mr. Choplick had a reasonable suspicion to believe T.L.O. was carrying cigarettes, the possession would have weakened the credibility of her denial to the accusations.<sup>44</sup> Such a possibility provided a sufficient nexus between the item searched for and the infraction under investigation, despite the fact that the possession would have been mere evidence of a violation of school rules.<sup>45</sup> Additionally, Mr. Choplick's belief that T.L.O.

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was strip searched after one student claimed three dollars were missing from his coat pocket; no money was found). For interesting newspaper accounts of searches bordering on the extreme, see generally Jackson (Miss.) Clarion-Ledger, Oct. 6, 1978, at 1A, col. 4 (entire class of fifth and sixth grade girls individually ordered to raise their dresses and lower their underpants in attempt to find the girl responsible for leaving a soiled sanitary napkin on the lavatory floor); N.Y. Times, Nov. 11, 1982, at B3, col. 1 (students met at school by thirty security officials who, as the students entered the school, individually searched them with handheld metal detectors).

41. *T.L.O.*, 105 S. Ct. at 744.

42. *Id.* See, e.g., *State v. D.T.W.*, 425 So. 2d 1383 (Fla. Dist. Ct. App. 1983) (prevalence of problems involving weapons on campus gave school the right to patrol parking lot and student's rule violation was in plain view of patrolling teacher); *Doe v. State*, 88 N.M. 347, 540 P.2d 827 (N.M. Ct. App. 1975) (students' conduct, after being caught smoking between classes, gave rise to teacher's reasonable suspicion that students had been smoking marijuana); *Bellnier v. Lund*, 438 F. Supp. 47 (N.D.N.Y. 1977) (strip search following alleged theft of money was unreasonable because there was no "present danger" to other students); *State v. McKinnon*, 88 Wash. 2d 75, 558 P.2d 781 (1977) (search of student following phone tip was reasonable in light of prevalence of drug dealing on campus and possibility of contraband being destroyed). Accord *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 513 (1969) (school's limitation of student's constitutional rights is justified when student's behavior "materially disrupts classwork or involves substantial disorder or invasion of the rights of others").

43. *New Jersey v. T.L.O.*, 105 S. Ct. 733, 747 (1985), *rev'g In re T.L.O.*, 94 N.J. 331, 463 A.2d 934 (1983).

44. *T.L.O.*, 105 S. Ct. at 746.

45. *T.L.O.*, 105 S. Ct. at 746. Compare *Warden v. Hayden*, 387 U.S. 294 (1967), observing that:

The requirements of the Fourth Amendment can secure the same protection of privacy whether the search is for "mere evidence" or for fruits, instrumentalities or contraband. There must, of course, be a nexus—automatically provided in the case of fruits, instrumentalities or contraband—between the item to be

possessed cigarettes was not itself unreasonable because the requirement of reasonable suspicion is not a requirement of absolute certainty.<sup>46</sup>

Having determined that the initial search was constitutional, the Court then found the subsequent search, which led to the discovery of marijuana, constitutional as well.<sup>47</sup> The Court noted that Mr. Choplick's discovery of the rolling papers gave rise to a reasonable suspicion that the purse contained contraband. This reasonable suspicion, therefore, justified his conducting a more thorough search of T.L.O.'s handbag.<sup>48</sup> Based on this reasoning, the Court concluded that the New Jersey Supreme Court erred when it ruled that the evidence be excluded from T.L.O.'s juvenile proceedings.<sup>49</sup>

In holding that the New Jersey Supreme Court erred, the *T.L.O.* Court correctly reasoned that a student's rights do not necessarily preclude school officials from conducting searches when necessary to fulfill their educational responsibilities.<sup>50</sup> Also well reasoned was the Court's holding that neither a warrant nor the strict probable cause standard is required in the school setting.<sup>51</sup> However, in construing the reasonableness standard in light of the recognized legitimate expectations of privacy held by students and the particular facts of the case, the Court should have been compelled to rule that the search of T.L.O.'s purse was unconstitutional for two reasons. First, the search of T.L.O.'s purse constituted a full scale intrusion into an area of expected privacy.<sup>52</sup> The Court, nevertheless, used the reasonableness standard to determine the validity of the search.<sup>53</sup>

seized and criminal behavior. Thus in the case of "mere evidence," probable cause must be examined in terms of the cause to believe that the evidence sought will aid in a particular apprehension or conviction.

*Id.* at 306-07.

46. *T.L.O.*, 105 S. Ct. at 746. See *Hill v. California*, 401 U.S. 797, 804 (1971) ("sufficient probability," not certainty, acts as the touchstone of "reasonableness" under the fourth amendment).

47. *T.L.O.*, 105 S. Ct. at 746-47.

48. *Id.* But cf. *M.M. v. Anker*, 607 F.2d 588, 589 (2d Cir. 1979) (probable cause required for highly intrusive searches, "reasonableness" required for less intrusive searches).

49. *T.L.O.*, 105 S. Ct. at 747. The Court commented that, in holding that the search of T.L.O.'s purse did not violate the fourth amendment, it was not determining the applicability of the exclusionary rule to the fruits of unlawful searches in the school setting.

50. *T.L.O.*, 105 S. Ct. 733, 743-44 (1985).

51. *T.L.O.*, 105 S. Ct. at 742-43.

52. In concurring with the majority on the "reasonableness" standard, Justice Brennan noted that a student's purse typically contains items of a highly personal nature. The search of such an adolescent's purse could prove extremely embarrassing for a school official to rummage through since they often contain friend's notes, caricatures of school authorities, love letters, and items of personal hygiene. *T.L.O.*, 105 S. Ct. at 751 n.1 (Brennan, J., concurring).

53. *Id.* at 745-47. But see *In re T.L.O.*, 94 N.J. 331, 339, 463 A.2d 934, 942 (1978) where the court noted: "The assistant principal did not have reasonable

This unqualified application of the reasonableness standard was an unprecedented expansion of the standards the Court has historically applied to full scale searches.<sup>54</sup> Second, the search of T.L.O.'s purse was initiated when she violated a minor school rule.<sup>55</sup> The Court, however, failed to consider the nonthreatening nature of T.L.O.'s conduct which precipitated the search when it applied the reasonableness standard.<sup>56</sup> In failing to distinguish the type of conduct which would warrant a search, the Court ignored precedent by holding the standard applicable to *all* school searches involving breaches of school rules or the law.<sup>57</sup> By not clarifying the parameters within which these searches should be confined, the Court seriously impaired students' fourth amendment rights to be free from unwarranted state searches and seizures.

Many studies have indicated that our public schools face serious problems of crime and discipline.<sup>58</sup> As noted by the *T.L.O.* Court, the frequency of these problems demand that school officials be able to deal swiftly and effectively when confronted with them.<sup>59</sup> Accordingly, and in line with precedent,<sup>60</sup> the Court departed from the

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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.* (emphasis added).

54. See, e.g., *Dunaway v. New York*, 442 U.S. 200 (1979) (probable cause can be replaced because seizure was so minimally intrusive); *Terry v. Ohio*, 392 U.S. 1 (1968) (balancing test applied to limited search of outer clothing); *Carroll v. United States*, 267 U.S. 132, 149 (1925) (probable cause required for a full scale search). *Accord* *United States v. Place*, 462 U.S. 696, 706-07 (1983) (brief detention of luggage for "canine sniff"); *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (brief frisk); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (characterizing intrusion as minimal); *United States v. Brignoni-Ponce*, 422 U.S. 873, 882 (1975) (brief border stop of an automobile, lasting less than a minute, where Court noted "any further detention must be based on consent or probable cause").

55. For a discussion of the school rule T.L.O. allegedly violated, see *supra* note 8.

56. For a discussion of the "reasonableness standard" and its application to the *T.L.O.* case, see *supra* notes 40-46 and accompanying text.

57. *T.L.O.*, 105 S. Ct. at 762-63 (Stevens, J., dissenting).

58. *T.L.O.*, 105 S. Ct. at 742. See generally Brief for United States as *Amicus Curiae* at 24-5, *New Jersey v. T.L.O.*, 105 S. Ct. 733 (1985) (discussing the virtual "state of chaos" of the schools); Elam, *The Gallup Education Surveys: Impressions of a Poll Watcher*, PHI BETA KAPPAN MAG., Sept. 1983, at 22 (statistical data from several surveys on the problems facing our schools); NATIONAL INSTITUTE OF EDUCATION, NATIONAL SCHOOL BOARD'S RESEARCH ACTION BRIEF (1982) (Educ. Research Inst. Clearinghouse Catalog No. Ed-208-453) (data on drug abuse and violence in our public schools).

59. *T.L.O.*, 105 S. Ct. at 743 (quoting *Goss v. Lopez*, 419 U.S. 565, 580 (1975)).

60. E.g., *United States v. Place*, 462 U.S. 696, 701-02 (1983) (absence of practical alternatives); *Mincey v. Arizona*, 437 U.S. 385, 393-94 (1978) (warrants are generally required where the "exigencies of the situation do not show the search to be reasonable under the fourth amendment"); *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968) (officer required to take immediate steps to determine if suspect is armed); *Warden v. Hayden*, 387 U.S. 294, 298-300 (1966) ("hot pursuit" of fleeing suspect); *Johnson v. United States*, 333 U.S. 10, 15 (1948) (exceptional circumstances are needed to dispense with the magistrate's warrant requirement).

fourth amendment dictates requiring that a school search be predicated on a warrant or probable cause.<sup>61</sup> By substituting the fourth amendment's inherent balancing test<sup>62</sup> for its own, the Court fairly accommodated both the school's interests in preserving order and the student's expectations of privacy. Through its holding that the validity of school searches will be assessed by this reasonableness standard, the Court reinforced its long held belief that "education is perhaps the most important function of government."<sup>63</sup> As Justice Blackmun accurately stated in his concurring opinion, "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 exempting school searches from the warrant and probable cause requirement."<sup>64</sup>

After adopting this well reasoned, well supported standard, however, the Court applied it in a dangerously unprecedented way, weakening the fourth amendment's fundamental purpose.<sup>65</sup> Previous Supreme Court decisions support the proposition that the prerequisite of a full scale search is probable cause.<sup>66</sup> Only those intrusions that are substantially less than full scale searches will be justified in

61. See, e.g., *Horton v. Goose Creek Indep. School Dist.*, 690 F.2d 470, 481 (5th Cir. 1982) (school official must have "reasonable cause" for his action), *cert. denied*, 463 U.S. 1207 (1983); *State v. D.T.W.*, 425 So. 2d 1383, 1386 (Fla. Dist. Ct. App. 1983) (reasonably prudent person would be suspect of the presence of contraband); *M. v. Board of Educ. Ball-Chatham Community Unit School Dist. No. 5*, 429 F. Supp. 287 (S.D. Ill. 1977) ("reasonable cause to believe"); *Bellnier v. Lund*, 438 F. Supp. 47, 53 (E.D.N.Y. 1975) ("some articulable facts providing reasonable reasons to search student"); *Jones v. Latexo Indep. School Dist.*, 499 F. Supp. 223, 236 (E.D. Tex. 1980) ("reasonable cause to believe" contraband would be found).

62. In *United States v. Place*, 462 U.S. 696 (1983), Justice Blackmun commented on the inherent balancing test of the fourth amendment, stating:

While the Fourth Amendment speaks in terms of freedom from unreasonable seizures, the Amendment does not leave the reasonableness of most searches to the judgment of courts or government officers; the Framers of the Amendment balanced the interests involved and decided that a search is reasonable only if supported by a judicial warrant based on probable cause.

*Id.* at 722. Only in those instances where exceptional circumstances are present, which make the warrant or probable cause requirement impractical, is a court entitled to substitute its balancing of interests for that of the Framers. *T.L.O.*, 105 S. Ct. at 749 (Blackmun, J., concurring).

63. *T.L.O.*, 105 S. Ct. at 750 (Blackmun, J., concurring) (quoting *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954)). See also *State v. Mora*, 423 U.S. 809, 822 (1975) (where the Court noted: "It is essential that the youth of this nation learn that the magnificence of our Constitution is founded upon genuine rights and not mere platitudes").

64. *T.L.O.*, 105 S. Ct. at 750 (Blackmun, J., concurring).

65. The basic purpose of the fourth amendment is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967). See also *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) (the fourth amendment recognizes "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.").

66. For a list of these decisions, see cases cited *supra* note 54.

accordance with a balancing test, provided that the test gives sufficient consideration to the privacy interests infringed.<sup>67</sup> At no point does the Court, or even the petitioners in their brief, cite to a case where a full scale search was upheld on less than probable cause.<sup>68</sup>

In *Terry v. Ohio*,<sup>69</sup> which involved the stopping and frisking of a suspect, the Court acknowledged that the search was justified because the officer conducted a carefully limited search of the suspect's outer clothing.<sup>70</sup> Analogously, several federal courts have recently viewed a purse or handbag as "the functional equivalent of clothing,"<sup>71</sup> "an extension of the person,"<sup>72</sup> to be afforded the same degree of protection traditionally given to the body because it is more a personal item than a mere object.<sup>73</sup> Ironically, in *Terry*, where the reason for the search was to determine if the suspect was carrying a weapon, the Court emphasized the limited nature of the intrusion when it held the search valid.<sup>74</sup> In *T.L.O.*, however, the Court completely failed to recognize the seriousness of the intrusion even though the reason for the search was only to gain evidence to discredit *T.L.O.*'s denial. The Court should have held that where a search in question is more than a minimally intrusive *Terry* type search, a school official is prohibited from searching a student unless "a specific threshold of need,"<sup>75</sup> as designated by the fourth amendment requirement of probable cause, is exhibited.<sup>76</sup> By failing to follow the tenet that "as the intrusiveness of the search intensifies, the standard of Fourth Amendment reasonableness approaches probable cause,"<sup>77</sup> the Court sharply deviated from precedent.<sup>78</sup> Through this deviation, the Court has inadvertently exposed students' expected

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67. *Dunaway v. New York*, 442 U.S. 200, 210 (1979).

68. *T.L.O.*, 105 S. Ct. at 753-55 (Brennan and Marshall, J.J., dissenting).

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

70. *Id.* at 30.

71. *E.g.*, *United States v. Johnson*, 475 F.2d 977, 979 (D.C. Cir. 1973) (purse left unattended on table falls within bounds of search warrant since it is not being worn or appended to person); *United States v. Teller*, 397 F.2d 494, 496 (7th Cir. 1968) (purse becomes a mere household item when left open on bed), *cert. denied*, 393 U.S. 937 (1971); *United States v. Riccietelli*, 259 F. Supp. 665, 666 (D. Conn. 1966) (not in actual possession of pocketbook therefore not considered search of person but of object).

72. *United States v. Teller*, 397 F.2d 494, 497 (7th Cir. 1968), *cert. denied*, 393 U.S. 937 (1971).

73. *E.g.*, *United States v. Johnson*, 475 F.2d 977, 979 (D.C. Cir. 1973) (personal item appended); *United States v. Teller*, 397 F.2d 494, 496 (7th Cir. 1968) (when worn or possessed by owner), *cert. denied*, 393 U.S. 937 (1971); *United States v. Riccietelli*, 259 F. Supp. 665, 666 (D. Conn. 1966) (when in actual possession). *See generally* Annot., 29 A.L.R. 4TH 771 (1984) (lawfulness of warrantless search of purse or wallet).

74. *Terry v. Ohio*, 392 U.S. 1, 30 (1968).

75. *T.L.O.*, 105 S. Ct. at 754 (Brennan and Marshall, J.J., dissenting).

76. *Id.*

77. *M.M. v. Anker*, 607 F.2d 588, 589 (2d Cir. 1979).

78. *See supra* note 54.

rights of privacy to arbitrary invasions.<sup>79</sup>

The Court adopted a two-pronged test to determine whether a search was in fact "reasonable."<sup>80</sup> First, whether the search was justified at its inception and, second, whether the search was reasonably related to the circumstances that gave rise to it. The Court, however, in applying this test to the facts of the case, failed to distinguish the type of violation that would justify the application of the reasonableness standard.<sup>81</sup> By omitting any distinction, the Court held that all infractions of the law and school rules are equivalent despite contrary case law.<sup>82</sup> Distinguishing between minor and more serious infractions in evaluating the reasonableness of a search "is not a novel idea."<sup>83</sup> Cognizant of this, the New Jersey Supreme Court advised the state's lower courts to consider several factors in determining whether a school official had reasonable grounds to search a student.<sup>84</sup> These factors included the student's history, school record, the prevalence and seriousness of the problem in the school to which the search was directed, and the exigency to make the search without delay.<sup>85</sup> Under this analysis, the search of T.L.O.'s purse would have been justified if Mr. Choplick reasonably believed T.L.O. was concealing evidence of a criminal activity or evidence of an activity that would seriously interfere with school discipline or the safety of others. T.L.O., however, was accused of a minor school infraction.<sup>86</sup> She was a model student who had no prior record of any disciplinary infractions.<sup>87</sup> Further, the State of New Jersey never introduced evidence that she presented any serious threat to school safety.<sup>88</sup>

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79. *T.L.O.*, 105 S. Ct. at 756-57 (Brennan and Marshall, J.J., dissenting).

80. *T.L.O.*, 105 S. Ct. at 744. For a discussion of this two-prong test, see *supra* text accompanying note 40.

81. For the Court's application of the test to the facts of this case, see *supra* text accompanying notes 41-42.

82. Criminal laws have been traditionally distinguished between minor and serious offenses, classifying them accordingly as misdemeanors and felonies. Courts have also considered the severity of the offense in determining the appropriate sentences. See generally W. LaFAVE, HANDBOOK ON CRIMINAL LAW § 6 (1972) (distinguishing offenses by degree).

83. *Welsh v. Wisconsin*, 104 S. Ct. 2091, 2098 (1984) (search of a home following minor traffic violation). See also *Goss v. Lopez*, 419 U.S. 565, 582-83 (1975) (distinguishing between students' conduct that poses immediate threat to school safety and conduct that is simply in violation of minor disciplinary rules).

84. *In re T.L.O.*, 94 N.J. 331, 346, 463 A.2d 934, 941-42 (1983), *reversed*, 105 S. Ct. 733 (1985).

85. *Id.*

86. For a discussion of the actual rules T.L.O. was accused of violating, see *supra* note 8 and accompanying text.

87. Supplemental Brief for Respondent at 25, *New Jersey v. T.L.O.*, 115 S. Ct. 733 (1985).

88. *Id. Cf. In re L.L.*, 90 Wis. 2d 585, 280 N.W.2d 343 (Wis. Ct. App. 1979) (one factor in determining whether a search for a weapon was valid was the student's history of carrying weapons).

Likewise, the cases relied upon by the *T.L.O.* Court lend little support to its reasoning. The cited cases mostly involved students that had been accused of criminal violations,<sup>89</sup> substantial disturbances of school order<sup>90</sup> or where the integrity of the educational process was at odds with student behavior.<sup>91</sup> Few involved minor rule infractions similar to the no smoking rule that *T.L.O.* allegedly violated.<sup>92</sup> *T.L.O.*'s conduct was not unlawful, did not pose a serious threat to student or teacher safety, and was not disruptive of school order, thus the Court should have affirmed the New Jersey Supreme Court, finding the forcible opening of *T.L.O.*'s purse completely unjustified at its inception and in its scope.<sup>93</sup>

*New Jersey v. T.L.O.* held simply that a search of a student by a school official need not be predicated on the fourth amendment requirement of a warrant or probable cause.<sup>94</sup> The official need only have a reasonable suspicion to believe that the student has violated or is violating the law or school rules.<sup>95</sup> Such a search will be constitutional if, after considering all the circumstances, it is "reasonable."<sup>96</sup> This is a laudable holding. It ensures some aid to public school officials faced with the responsibility of educating our children in environments often plagued with crime and drug abuse.<sup>97</sup>

89. See, e.g., *Tarter v. Raybuck*, 742 F.2d 977, 979 (6th Cir. 1984) (search for marijuana), *cert. denied*, 105 S. Ct. 1749 (1985); *D.R.C. v. State*, 646 P.2d 252, 253 (Alaska App. 1982) (stolen money); *In re Christopher W.*, 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973) (search for marijuana); *State v. Baccino*, 282 A.2d 869, 870 (Del. Super. Ct. 1971) (search for marijuana of student known to experiment with drugs); *M. v. Board of Educ. Ball-Chatham Community Unit School Dist. No. 5*, 429 F. Supp. 288, 289 (S.D. Ill. 1977) (same).

90. E.g., *In re L.L.*, 90 Wis. 2d 585, 280 N.W.2d 343 (1979) (search of a student suspected of carrying a weapon).

91. E.g., *R.C.M. v. State*, 660 S.W.2d 552 (Tex. Ct. App. 1983) (student with bloodshot eyes wandering the halls when students were required to remain in the classroom for midterm exams).

92. E.g., *State v. Young*, 234 Ga. 488, 216 S.E.2d 586 (1975) (search of three students after making secretive gestures and then showing signs of guilt), *cert. denied*, 423 U.S. 1039 (1975); *Doe v. State*, 88 N.M. 347, 540 P.2d 827 (1975) (student searched for pipe after teacher witnessed him smoking in violation of school rule).

93. *In re T.L.O.*, 94 N.J. 331, 339, 463 A.2d 934, 942 (1983), *reversed*, 105 S. Ct. 733 (1985).

94. 105 S. Ct. at 743. For the reasoning the court used to reach this holding, see *supra* text accompanying notes 35-39.

95. *Id.*

96. *T.L.O.*, 105 S. Ct. at 743-44. For a discussion of what factors the Court looks at to determine reasonableness, see *supra* text accompanying notes 40-42.

97. For an analysis of the data regarding the problems facing our nation's public schools, see *supra* note 5 and accompanying text. The Attorney General as *Amicus Curiae* commented:

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 our students and teachers is imperiled.

Brief for United States as *Amicus Curiae* at 23, *New Jersey v. T.L.O.*, 105 S. Ct. 733

Nevertheless, the extent to which the Court applied this broad ruling portends a serious weakening of students' constitutionally protected rights to privacy and security.<sup>98</sup> The Court acted without precedent in allowing school officials to conduct full scale searches without sufficient justification.<sup>99</sup> The impact of this ruling in the schools will undoubtedly be to teach the students a vital lesson.<sup>100</sup> Unfortunately, however, that lesson is one inconsistent with the teachings of the fundamental guarantees of this nation. As Justice Stevens stated in his dissent:

Schools are places where we inculcate the values essential to the meaningful exercise of rights and responsibilities by a self-governing citizenry. 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.<sup>101</sup>

School officials cannot hope to teach the lessons of good citizenship when they themselves are allowed, as in *T.L.O.*, to disregard the basic values embodied in the Constitution.<sup>102</sup>

*Timothy G. Kelly*

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(1985).

98. *T.L.O.*, 105 S. Ct. at 757 (Brennan and Marshall, J.J., dissenting).

99. For an analysis of the Court's reasoning on this matter, see *supra* text accompanying notes 43-49.

100. See, e.g., *Doe v. Renfrow*, 451 U.S. 1022, 1027 (1981) (Brennan, J., dissenting from denial of certiorari), where Justice Brennan commented: "we do not know what class petitioner was attending when the police dogs burst in, but the lesson the school authorities taught her that day will undoubtedly make a greater impression on her than the one her teacher had hoped to convey."

101. *T.L.O.*, 105 S. Ct. at 760-61.

102. *Doe v. Renfrow*, 451 U.S. 1022, 1027-28 (1981) (Brennan, J., dissenting from denial of certiorari).



