No. 83-712

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

THE STATE OF NEW JERSEY,
Petitioner,

v.

T.L.O., A JUVENILE,
Respondent.

On Writ of Certiorari to the Supreme Court of New Jersey

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICUS CURIAE* OF THE NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS, AND THE NEW JERSEY PRINCIPALS AND SUPERVISORS ASSOCIATION IN SUPPORT OF PETITIONER

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In accordance with Rule 36 of the Supreme Court of the United States, the undersigned organizations by their attorneys respectfully petition the Court for leave to file a brief *amicus curiae*, in the above titled action.

We seek the permission of the Court at this late date because of its decision on July 5, 1984, to hear reargu-

ment in the Fall term of an issue that was not briefed or argued in the term just concluded, namely:

> Did the assistant principal violate the Fourth Amendment in opening the respondent's purse in the facts and circumstances of this case?

This question, unlike that originally certified to the Court, involves an important legal issue affecting public education in the United States, and an issue which has been the subject of considerable disagreement, if not actual confusion, in the lower courts. That issue is whether, or to what degree, the Fourth Amendment to the United States Constitution applies to searches of students conducted by public school personnel when acting under legitimate authority and direction of their local school boards. If the protections of the Fourth Amendment do so apply, it will also be necessary for the Court to define the standard applicable for the admissibility of evidence discovered in such searches, in school disciplinary proceedings as contrasted with its use in criminal and juvenile court proceedings.

Neither party has consented to the filing of a brief *amicus curiae*, and we have been informally advised that such consent would not be given. It is upon this advice that we are submitting this motion to the Court.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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INTERESTS OF *AMICI CURIAE*

The National Associaiton of Secondary School Principals (NASSP) is a voluntary association of approximately 35,000 administrators of public and private secondary schools throughout the United States. NASSP

was organized in 1916 to provide a spokesman for secondary school administrators and the formulation of all aspects of educational policy in the United States, and to improve programs for students enrolled in the schools. Although NASSP customarily does not seek to intervene in private litigation, it believes that this case involved the issues of such fundamental public importance as to make an expression of its views essential.

The New Jersey Principals and Supervisors Association (NJPAS) is affiliated with NASSP and is composed of approximately 4,000 building administrators and supervisors, including the Piscataway Administrators responsible for conducting the search giving rise to this appeal.

Both NASSP and the New Jersey Principals and Supervisors Association are committed to the improvement and strengthening of secondary education. They seek to be responsive to changes both in school environment, and in the role of education in society. Both the state and national organizations work in concert to promote research and development in curriculum standards and course contents. They also provide professional intern and improvement programs for individuals entering the field of public school administration.

In the course of their professional activities, NASSP and NJPSA believe that they have acquired substantial background and knowledge which may not be adequately provided by the parties to this case. The petitioners believe that such background knowledge and information is essential for a fair and expeditious consideration of the issues of this case, and that they represent a prospective and point of view which corresponds with the public interest.

INTRODUCTION

I

When the T.L.O. case was first certified to this Court, amici did not ask to file a brief because the specific questions certified to the court were, in our opinion, only indirectly related to the operation of the public schools and the specific responsibilities of our members, the principals and assistant principals of those schools. The specific issue presented to the court on appeal was solely whether evidence secured in a school administrative search was admissible in a criminal or quasi-criminal proceeding such as the juvenile court hearing which provided the basis for the appeal. The role of school administrators is to maintain and conduct an educational program. They have no other responsibility for law enforcement than do other citizens. In regard to juvenile court proceedings, their only role is that of witness and with specific regard to the issue of admitting evidence secured in administrative school searches in criminal or juvenile court proceedings, administrators would hold no professional opinion.

Now, however, the Supreme Court has asked a question to be addressed on rehearing which is of far greater relevance and importance to school principals. That question is:

> Did the Assistant Principal violate the Fourth Amendment in opening the respondent's purse in the facts and circumstances of this case?

Before this question can be answered, one must first address another question:

> Does the Fourth Amendment apply at all to student searches conducted by school administrators in the normal course of carrying out their responsibility for enforcement of school rules?

Only if this question is answered in the affirmative must the facts and circumstances be analyzed to see if

there was in fact a violation of the respondent's rights under the Fourth Amendment.

These amici believe there is considerable authority for the contention that the Fourth Amendment should not be applied to school searches conducted by school administrators, but they will not argue this issue here because it has already been well and adequately covered (in the *Brief of Amicus National School Boards Association*, Sections III and IV) already filed.

Even if this Court were to disagree, however, and the Fourth Amendment were held to apply in public schools, these amici would contend that the actions of the Assistant Principal should not be found to constitute a violation of the respondent's rights thereunder. It is to this specific point that amici will direct their argument.

SUMMARY OF FACTS

Amici will assume that the facts of this case are correctly stated in the opinion of the Supreme Court of New Jersey, and will not recount them in detail. In essence, they present a common high school situation in which a teacher reported to an assistant principal that she had observed two female students who had been smoking in a restroom in violation of a school rule. When interrogated by the assistant principal, one girl admitted that she was smoking, but the other, designated as T.L.O. in this case, not only denied the specific charge, but denied that she smoked at all.

Suspecting that the student was lying, the administrator then opened the student's purse which was on his desk, and saw a pack of cigarettes in plain view. Upon picking up the cigarettes, he saw rolling papers in the purse, also in plain view. Knowing that such papers were often used for making marijuana cigarettes, the administrator thereupon emptied the purse, and found a metal pipe of the kind used for smoking marijuana, empty plastic bags,

and one bag containing a tobacco-like sustance. His search also revealed an index card recording the names of "people who owe me money" and two letters which, when read later, indicated that T.L.O. was dealing in drugs.

The assistant principal called the student's mother and the police, and T.L.O. was subsequently charged with delinquency based on possession of marijuana with intent to distribute. In juvenile court her motion to suppress the evidence uncovered in the school administrator's search was denied, and on appeal, the appellate division affirmed the denial of the suppression motion. While other issues were presented in the state court proceedings, they are irrelevant to the question now presented to this Court for argument.

ARGUMENT

I. WHATEVER FOURTH AMENDMENT RIGHTS CHILDREN MAY HAVE, THESE RIGHTS ARE NOT UNLIMITED, AND WITHIN THE CONTEXT OF THE PUBLIC SCHOOL, THEY MUST BE BALANCED AGAINST THE INTERESTS OF THE STATE IN PUBLIC EDUCATION.

This case presents to the Supreme Court for the first time the issue of the Fourth Amendment's protection of children as students in the public school, and it is certainly arguable that in this context, the Amendment should not apply at all. Amici will not present argument on this point, however, because it has already been well and fully presented to the Court by other amici at earlier stages of this litigation. (See in particular *Brief of Amicus National School Boards Association*, Sections III and IV.) Amici here will therefore direct their attention to the proposition that regardless of whether the Fourth Amendment does apply to students in public schools, that protection so afforded is not unlimited and must be balanced against the legitimate interests of the state in conducting programs of public education. This was well recognized by this Court in the celebrated case of *Tinker v.*

Des Moines Independent School District, 393 U.S. 503 (1969) itself upon which respondent heavily relies, the Court there saying that student rights under the First Amendment must still be, "applied in light of the special characteristics of the school environment." Id. at 506. See also *Sullivan v. Houston Independent School District*, 475 F. 2d 1071 (5th Cir.), *cert. den.* 414 U.S. 1032 (1973).

Indeed, both the majority and the dissenting minority of the New Jersey Supreme Court in their opinions in this case below, agree that respondent's rights under the Fourth Amendment are not unlimited, and must be balanced against the legitimate interests of the state, *State in Interest of T.L.O.*, 463 A. 2d 934, 940, and 945 (1983).

II. THE APPROPRIATE STANDARD TO BE APPLIED TO SEARCHES OF STUDENTS BY PUBLIC SCHOOL ADMINISTRATORS SHOULD BE LESS STRINGENT THAN THAT OF "PROBABLE CAUSE" REQUIRED TO BE SHOWN BY LAW ENFORCEMENT OFFICERS.

A great variety of approaches have been taken by the courts in trying to strike the appropriate balance between student privacy interests and the necessity for school officials to maintain adequate control over the school environment. Some have emphasized the role of the administrator, holding it to be qualitatively different from that of law enforcement officers. *R.C.M. v. State*, 660 S.W. 2d, 552 (Tex. Crim. App.; 1983). Others have focussed on the purpose of the search, distinguishing the enforcement of school rules from that of police in securing evidence for criminal prosecution, *Horton v. Goose Creek Independent School District*, 677 2d 482 (5th Cir.; 1982). Some courts have sought to make distinctions in the appropriate balance of interests based on the place searched, and the degree of intrusiveness into the student's privacy involved. *M.M. v. Anker*, 607 F. 2d 588 (2nd Cir.; 1979). But, regardless of the rationale, in the overwhelming ma-

jority of recent cases involving student searches conducted by school administrative personnel, if the Fourth Amendment was held to apply at all, the courts have agreed that the appropriate standard to be applied to school searches was less than the probable cause standard required of law enforcement officers. (See generally *Annotation, Admissibility in Criminal Case of Evidence Obtained by Search Conducted by School Official or Teacher*, 49 A.L.R. 3d 978; 1973, and *Comment: School Searches and the Fourth Amendment*, by Ivan B. Gluckman, 13 *West Education Law Reporter* 199 (1983).

Indeed, in the case at bar, again there is little meaningful disagreement on this point between the court's majority and the dissenting minority in the court immediately below. The dissenting opinion indicates a preference for the "reasonable suspicion" standard rather than the "reasonable grounds to believe" standard applied by the court's majority. We would concur, if only because the former standard has already been applied in many cases (see listing in dissent supra at p. 944) and because it has been applied by this court in at least one case, *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975). In addition, it is confusing to introduce a new standard without clearly delineating how it may differ from the very similarly worded "reasonable suspicion" standard. But the important point is that, in either case, administrators would be held to a lower standard than that of law enforcement authorities in recognition of the different responsibilities they carry, and the purposes of the searches they conduct.

That purpose should be, and was in the case at bar, the enforcement of school rules, not the enforcement of criminal statutes. The fact that the product of the search included contraband which subsequently became the basis of a criminal or quasi-criminal prosecution should be totally irrelevant to the legitimacy of the original search, or the use of materials uncovered in it for school disciplinary purposes.

Conversely, the admissibility of the evidence uncovered in the search by a school administrator in a subsequent criminal or quasi-criminal action is also a separate question which should be evaluated on a different basis, and might well reach a different result. While this is a legitimate issue in the case at bar as originally certified to the Court, it is outside of the scope of the present question presented by the Court for reargument.

III. THE SCHOOL REGULATION UPON WHICH PETITIONER'S ADMINISTRATOR BASED HIS ACTIONS REGARDING RESPONDENT T.L.O. WAS A VALID ONE WHICH ADMINISTRATOR HAD A RESPONSIBILITY TO ENFORCE.

One possible basis for attacking the legality, if not the constitutionality, of the administrator's search, would be if he lacked the proper authority to make such a search. But there seems little if any basis for such a claim in this case. As pointed out by the court in the state supreme court opinion below, (p. 940) :

> The Legislature has specifically charged school officials to maintain order, safety and discipline. The statutes give them authority to prevent disorderly conduct by pupils, N.J.S.A. 18A:25-2, and students are required to submit to such authority, N.J.S.A. 18A:37-1, Specifically, school officials have power to suspend pupils for illegal possession or consumption of drugs or alcohol, N.G.S.A. 18A:37-2(j), for assaulting teachers, N.J.S.A. 18A:37-2.1, or for other good cause. See N.J.S.A. 18A:37-2,-4. Other statutes allow them to deal specifically with pupils who are under the influence of drugs or alcohol, N.J.S.A. 18A:40-4.1 (principal shall notify parent) ; N.J.S.A. 18A:35-4a (board of education shall establish policies and procedures for evaluating and treating alcohol users). Finally, N.J.S.A. 18A:6-1 grants specific power to seize weapons or other dangerous items and to quell disturbances.
>
> [3-5] Taken together, these statutes yield the proposition that school officials, within the school setting,

have the authority to conduct reasonable searches necessary to maintain safety, order and discipline within the schools. This holding comports with prevailing decisional law.

Indeed, in light of the plenitude of legislative instruction, administrative employees of a school district charged with disciplinary responsibilities might well be found to be delinquent in their duties if they failed to take whatever steps were reasonable to find out whether disciplinary rules established to protect students and the educational process were being violated. One such step which may be necessary as well as appropriate to such an investigation is a search.

IV. THE ADMINISTRATOR'S SEARCH OF RESPONDENT T.L.O.'S PURSE WAS REASONABLE UNDER ALL OF THE FACTS AND CIRCUMSTANCES, AND NOT IN VIOLATION OF ANY RIGHTS WHICH THE STUDENT MAY HAVE HAD UNDER THE FOURTH AMENDMENT.

If the legislature of New Jersey clearly granted authority to school officials to establish reasonable regulations for the control of student conduct in the state's public schools, and if the district's administrators are responsible for their proper enforcement, then the only possible avenues for attacking the administrator's behabior in this case would be to contend: (1) that the specific regulation involved was not itself reasonable; or (2) that the administrator's actions in seeking to carry it out were unreasonable.

As stated succinctly by the dissenting justices below, "No one has questioned the validity of the school regulations here involved, as it concerns the prohibition of smoking in the school. Indeed, the regulation is fully and clearly supported by a state statute requiring public schools to display signs indicating that smoking is prohibited in the building except in designated areas."

(N.J.S.A. 26:3D-18 cited in the dissent in paragraph 2 of its opinion.) School officials therefore had a right, and indeed, a responsibility for enforcing the district's regulation, and in order to do so, it was necessary to investigate any reported violation of it.

The only remaining question which would then require an affirmative answer in order to validate the administrator's actions in this case would be: Were his actions taken in order to investigate the reported infraction of the school's rules so unreasonable as to constitute a violation of the respondent's constitutional rights? In order to answer that question all of the known facts and circumstances of the incident must be examined closely.

An eye-witness report was given to the assistant principal by a member of the school's faculty that T.L.O. and another female student had been observed smoking in a location in which smoking was not permitted under the school district's regulation. The administrator was obligated to investigate this report. He did so in the only way possible, by interrogating the accused students. One admitted her infraction, but the other, respondent in this case, did not, denying not only the specific accusation, but the allegation that she smoked at all.

Faced with this denial, we would respectfully suggest that the administrator had but one possible way to check on T.L.O.'s veracity, and that was to see if her purse contained cigarettes or evidence of the presence of some such smoking material. It was for this purpose that the assistant principal thereupon opened the student's purse and discovered a package of cigarettes which, according to the statement of facts by the dissenting judges, "sat on top, plainly visible."

To whatever degree the administrator's action might have interfered with the privacy of the respondent student, that action must be evaluated in light of all of the circumstances, including most notably the absence of any

other method of deciding whether the report of the teacher or the denial by the student was to be believed. It has been suggested by respondent's counsel in oral argument before this Court that the administrator could have taken the word of the teacher and disciplined the student without attempting verification of the report by opening her purse. We would agree that legally such an action would have been sustainable. But as a matter of educational administration, we would submit that the administrator's action was far superior. Taking the teacher's word against that of the student without even seeking other corroboration as a basis for school disciplinary action is a major source of school-student friction, and can hardly be taken as a prescription for teaching respect for students as citizens.

The other major factor to consider, among those delineated by the New Jersey Supreme Court itself, is the intrusiveness of the search (p. 942). We would submit that the mere opening of respondent's purse constituted a very minor intrusion into her privacy, especially under all of the facts and circumstances of this case. Whether those facts would have justified a more thorough search of the purse's contents merely for the purpose for which it was opened is another question, but one that is not presented here. The further search that did occur was occasioned instead by the evidence of much more serious violations not only of school rules but of criminal law. This evidence being in plain view, further search and confiscation of the suspect materials would have been justified even by law enforcement officers. There should, therefore, be no question that the more thorough search of respondent's purse by a school administrator was perfectly legal and justifiable.

On July 5, 1984, the same day that this honorable Court requested reargument in the case at bar, the Court handed down opinions in two cases involving searches by police officers. *United States v. Leon*, —— U.S. —— (1984) and *Massachusetts v. Shepard*, —— U.S. ——

(1984). In its decisions, the Court held that an exception to the exclusionary rule should apply where these officers conducted searches that might otherwise have violated the Fourth Amendment, in good faith. If good faith on the part of law enforcement officers provides such an exception to the Fourth Amendment, certainly the same exception should apply to searches by school administrators whose duties and purposes do not even include the enforcement of criminal law with its much greater penalties.

V. THE SUPREME COURT OF NEW JERSEY ERRED IN SUBSTITUTING ITS JUDGMENT FOR THAT OF THE ORIGINAL TRIER OF THE FACTS, THE JUVENILE AND DOMESTIC RELATIONS COURT.

The Supreme Court of New Jersey accepted the standard applied by the lower state courts for evaluating the authority of school administrators in conducting administrative searches of students in their schools. It reversed the judgment of those lower courts, both the original trier of the facts and original court of appeal, only on the ground that the actions of the assistant principal did not meet the requirements of the legal standard applied.

We would submit that, as a basic principle of administrative law, this ruling of the Supreme Court of New Jersey is in error.

This Court needs no citations of authority for the principle that the findings of fact as well as the interpretation of those facts by a trial court are to be respected unless there is clear evidence that the conclusions drawn from the facts were totally unreasonable. In the case at bar this principle is supported further by the so-called "two-court rule" which states that a second level appellate court is to limit its review to questions of law when the first level appellate court sustained the trial court. *American Jurisprudence 2d*, Appeal and Error, Sec. 828. In light of the disagreement among the members of the New Jersey Supreme Court the conclusions of the trial court

were certainly not so unreasonable as to justify reversal by the second level state court of appeal.

As a matter of administrative law, too, it would seem that the action of the New Jersey Supreme Court is in error. It is not the role of the courts to substitute their judgment for that of administrators charged with making decisions based upon their professional knowledge and experience. This general admonition against such exercise of judicial power was most clearly applied in the educational context when, speaking for this Court, Justice White warned less than ten years ago:

> It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. . . . The system of public education that has evolved in this nation relies necessarily upon the discretion and judgment of school administrators and school board members. . . ."
>
> *Wood v. Strickland*, 420 U.S. 308, 326 (1975).

Certainly this reasoning applies equally well to our state courts.

CONCLUSION

For the reasons given above, the decision of the Supreme Court of New Jersey that the actions of petitioner's administrators were in violation of respondent's Fourth Amendment rights should be reversed.

Respectfully submitted,

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