No. 83-712

IN THE

Supreme Court of the United States

October Term, 1984

State of New Jersey,
Petitioner,

v.

T.L.O., a Juvenile,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

MOTION TO APPEAR AS AMICUS CURIAE AND BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONER

GWENDOLYN H. GREGORY
Deputy Legal Counsel

National School Boards Association
1680 Duke Street
Alexandria, Virginia 22314
(703) 838-NSBA

AUGUST W. STEINHILBER
Associate Executive Director and
Legal Counsel
National School Boards Association

THOMAS A. SHANNON
Executive Director
National School Boards Association

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MOTION TO APPEAR AS AMICUS CURIAE
IN SUPPORT OF PETITIONER

The National School Boards Association (NSBA) moves this Court for leave to participate as amicus curiae herein, for the purpose of filing the attached brief in support of the Petitioner. Counsel for the parties have not consented.

Amicus curiae, National School Boards Association (NSBA), is a nonprofit

federation of this nation's state school boards associations, the District of Columbia school board and the school boards of the offshore flag areas of the United States. Established in 1940, NSBA is the only major national educational organization representing school boards and their members. Its membership is responsible for the education of more than ninety-five percent of this nation's public school children.

This case arises out of an effort by school officials to instill values in the students within their charge and to deal with discipline and the drug problem in the schools -- issues which are of major concern to school districts throughout the country, as well as to the parents of the children who are entrusted to the schools' care.

The Court has requested argument on the question of whether the assistant principal violated the Fourth Amendment in opening respondent's purse in the facts and circumstances of this case. As the dissent notes, **New Jersey v. T.L.O.**, slip op. at page 2, the parties apparently agree that the standard set by the New Jersey Supreme Court "is a workable standard." Thus, it is unlikely that the parties, in addressing the Court's question, will differ in their analyses of the legal issues involved.

The precedent that will be set by this Court in the case at bar will affect the ability of school officials nationwide to carry out their appointed tasks -- educating students, instilling values and protecting them from harm while in school.

Since a majority of the Court has requested guidance on a broader issue than was initially argued by the parties, NSBA is in a unique position to provide that guidance given its special position as a representative of public schools.

Regardless of how the Court rules in this case, its decision will impact not only the criminal justice system, but will also have a direct impact on school districts throughout the country. Thus, the National School Boards Association urges this Court to grant it leave to present its views.

Respectfully submitted,

GWENDOLYN H. GREGORY
Counsel of Record

NSBA Deputy Legal Counsel
1680 Duke Street
Alexandria, VA 22314
(703) 838-6712

AUGUST W. STEINHILBER
NSBA Associate Executive Director & Legal Counsel

THOMAS A. SHANNON
NSBA Executive Director

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IN THE

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AMICUS CURIAE BRIEF OF
THE NATIONAL SCHOOL BOARDS ASSOCIATION
IN SUPPORT OF PETITIONER

INTEREST OF THE AMICUS

National School Boards Association (NSBA), is a nonprofit federation of this nation's state school boards associations, the District of Columbia school board and the school boards of the offshore flag areas of the United States. Established in 1940, NSBA is the only major national educational organization

representing school boards and their members. Its membership is responsible for the education of more than ninety-five percent of this nation's public school children.

The problems of drugs and crime in the schools and of school discipline in general are of major concern to school districts throughout the country, as well as to the parents of the children who are entrusted to the care of the districts.

School boards across the country are concerned that decisions such as that of the court below will seriously undermine their ability to enforce school rules and discipline in a manner which will neither endanger the innocent nor result in life-long criminal stigmas for the guilty.

Amicus is also concerned about the

precedent in this case which, although technically involving only criminal standards, will be applied by lower courts to purely civil matters involving school discipline.

ISSUE PRESENTED FOR REVIEW

Whether the assistant principal violated the Fourth Amendment in opening respondent's purse in the facts and circumstances of this case.

ARGUMENT

I. INTRODUCTION

This Court has requested the parties to address the question: "Did the assistant principal violate the Fourth Amendment in opening respondent's purse in the facts and circumstances of this case?"

Resolution of that issue necessitates inquiry into two other questions: first, whether the respondent's Fourth Amendment rights were violated in the context of the school setting and second, whether her rights were violated in the context of a subsequent criminal proceeding. The answer to these two questions need not necessarily be the same.

The parties apparently agree on the answer to the second question, at least with regard to the standard used by the Supreme Court of New Jersey in determining whether the Fourth Amendment was violated. See dissent, **New Jersey v. T.L.O.**, slip op at page 2.

The parties have not addressed the first question as to the standard to be applied to school searches in the context

of the school setting. It is the belief of amicus that the Fourth Amendment does not apply to searches conducted by school officials in the context of instilling values in the students who are in their charge and in enforcing school rules and maintaining order and discipline.

Because of the need to maintain discipline and protect children compelled by law to be present in the schools, amicus submits that the Fourth Amendment's standards should not be transplanted by the courts from the criminal enforcement context into the classroom.

Should the Court determine that the Fourth Amendment applies to searches in the context of the schools, the standard of "reasonableness" under which a school official's conduct is judged should be a

lesser standard than applies in the criminal context. The assistant principal's actions in the case at bar satisfied this lesser standard.

Amicus contends that a school official need only demonstrate that a rational basis existed for a search. Under this rational basis test, the school official should not be required to demonstrate a suspicion that a school rule has been violated but must show that the reason for the search was not arbitrary. Here, there was a rational basis for the assistant principal's search of the respondent's purse; he did not search her purse to determine whether she had violated a school rule but rather to show that the student had lied to him. The fact that there existed no general rule against smoking is irrelevant.

The rational basis test for a search satisfies the lesser standard of reasonableness for school searches, unlike the more stringent criminal standard of probable cause which requires sufficient indicia to support a belief that a crime has been committed. One of the major defects in the New Jersey Supreme Court analysis is that its lesser standard requires a showing that the school officials believed that a school rule had been violated. School officials should not be restricted to searches only for the purpose of determining a possible violation of a school rule.

Like other school officials and teachers, the assistant principal in the case at bar serves not only as an enforcer of school rules but also as an educator responsible for instilling

values in the students. It was in this latter capacity that he searched the respondent's purse. Because there was a rational basis to support the search, the search cannot be construed as arbitrary. While this reason may not be sufficient to justify a police officer searching a suspect, since the officer must have probable cause to believe the suspect has violated a criminal law, amicus submits that school officials should be permitted to make reasonable searches for valid reasons other than the possible violation of a school rule. See G. Rogister, A. Majestic & B. Williams, Search and Seizure in the Schools (1984).*

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*Copies on file with the Clerk of the Court.

II. SCHOOL SEARCHES ARE A NECESSARY TOOL FOR MAINTAINING DISCIPLINE, ORDER AND SAFETY

Every state in this nation mandates, in one form or another, that children of certain prescribed ages attend school. P. Lines, "Private Education Alternatives and State Regulation," Education Commission of the States (1982). Faced with compulsory attendance laws, parents across the country entrust their children to the care of the schools, expecting the schools not only to educate but also to protect the students in their custody. Unfortunately, however, schools are being confronted by a rising tide of drugs, weapons, and disorderly conduct that makes their protective duties more and more difficult. School searches are a vital tool in the struggle to protect other students from dangerous

instrumentalities such as weapons and drugs, and to enforce school rules in a fair, certain and immediate fashion.

Recent estimates show that nearly three million school children may be the victims of crime each month. See Appendix A. Though students between the ages of 12 and 19 spend only about 25% of their waking time in school, it is estimated that 6% of all assaults and 40% of all robberies against this group occur while they are in school. National Institute of Education, Violent Schools--Safe Schools: The Safe School Study Report to the Congress 31-32 (1978). Ironically, it would almost appear that students are safer on the streets than in the classroom.

Nor are the effects of crime in the school limited to purely physical

factors. Students living in an atmosphere of fear cannot possibly receive the full benefits of their education. Surveys show that 4% of students may stay home from school each month because of their fear of becoming yet another victim of crime in the schools. See Appendix B.

Certainly, it is not the intent of amicus to convey the impression that schools are nothing more than armed camps. They are not. However, the efforts undertaken by schools attempting to alleviate the problem are continually being thwarted by judicial decisions such as that of the court below.

Schools are not only in the business of instilling book learning, but also of teaching moral values and discipline through the orderly, certain, and

immediate implementation of school rules. The student infringing school rules benefits little by having his or her conduct ignored and even less by having it referred to the criminal justice system. The ideal way to handle the matter is to show the students that their violations of school rules will lead to immediate and certain action against them by school authorities. They must be taught that rules are to be obeyed or immediate consequences will follow. Students are children, not adults, and need and want this type of certainty in their lives.

Unfortunately, today's criminal justice system is neither certain nor immediate. If anything, the criminal justice system teaches students that the law protects the wrongdoer. This is not

to say that the criminal justice system is invalid, especially when applied to accused criminals faced with possible loss of liberty. But the rules in effect for that system have no place in the public schools, which should operate in much the same manner as parents operate their disciplinary system at home.

According to one study, only three percent of the referrals to juvenile courts come from the schools. Report to the Nation on Crime and Justice 60 (1983). It is clear that schools are attempting to deal with the problem of crime internally, through the usual procedures available to them -- procedures which in the past have included searches of students' purses, pockets and lockers. They are acting not as surrogates for the criminal justice

system, but rather, as surrogates for the parents, teaching the difference between right and wrong:

> In the school, as in the family, there exists on the part of the pupils the obligations of obedience to lawful commands, subordination, civil deportment, respect for the rights of other pupils and fidelity to duty. These obligations are inherent in any proper school system, and constitute, so to speak, the common law of the school. Every pupil is presumed to know this law .... **Interest of L.L.**, 280 N.W.2d 343, 349, citing **State ex rel Burpee v. Burton**, 45 Wis. 150, 155 (1878).

Similarly, in the case at bar, the principal who searched the student was less interested in getting evidence to support a school disciplinary proceeding or a criminal investigation than in expressing his displeasure with the lie the student was telling him by claiming not to smoke although she had cigarettes

in her purse. The court below, unfortunately, concerned itself with criminal justice concepts of "plain view" and the fact that the principal, upon being told by the student that she didn't smoke, searched her purse and removed a package of cigarettes. Thus the court, using search standards established in the the criminal setting, reasoned that the principal had no cause for his actions. The school's real interest, however, which went unrecognized by the court, was in instilling the virtue of telling the truth, not in obtaining evidence for a criminal prosecution. Thus, standards such as "plain view" should not even have been brought to bear.

It is important that courts understand that the education system is not a court, not a police station, and

that school officials are not law enforcement agents. Respect for the laws of the land and for the rules of the school is important for all students to learn. Strict enforcement of school rules is the surest and least obtrusive means for achieving respect, and the methods, including searches, should be left to the educators, not the courts.

III. THE FOURTH AMENDMENT WAS NOT INTENDED TO APPLY IN THE SCHOOL SETTING

Apart from the special needs of school officials to educate and protect students entrusted and compelled to be in their care, the history of the Fourth Amendment provides further support for the belief of amicus that the Fourth Amendment's prohibitions have no place in the classroom.

The Fourth Amendment was originally formulated in response to the general warrants in England and the writs of assistance in the Colonies, which gave the holder broad power, for life, to search and seize property at will. W. Ringel, Searches and Seizures, Arrests and Confessions 2-3 (1972). The first mention of the colonists' displeasure with then prevalent search and seizure practices appears in the writings of Samuel Adams, who in 1772 helped compile a report on the "Rights of the Colonists and a List of Infringements and Violations of Rights." The venom of the people against the writs and those executing them is eloquently expressed by Adams:

> Thus, our houses and even our bedchambers are exposed to be ransacked, our boxes chests and trunks broke open ravaged and

> plundered by wretches whom no prudent man would venture to employ even as menial servants .... Those Officers may under colour of law and the cloak of a general warrant break thro' the sacred rights of the Domicil, ransack mens houses ... and with little danger to themselves commit the most horred murders. Adams, "The Rights of the Colonists and A List of Infringements and Violations of Rights," in 2 The Writings of Samuel Adams 350-69, (H.A. Cushing 1906).

James Madison's original proposal for the Fourth Amendment similarly concerned itself with warrants and the home, and did not even mention more general "unreasonable searches and seizures," but only that "the right of the people to be secured in their persons, houses, papers, and effects, shall not be violated by warrants issuing without probable cause ...." An amendment during House debate on the Bill of Rights added the language

relating to "unreasonable searches and seizures." 1 Annals of Congress 685-792 (August 17, 1789).

Originally, courts held that the Fourth Amendment's prohibitions did not apply to searches conducted by state officials, but only to federal authorities. Federal officials would thus attempt to circumvent search and seizure rules by having state authorities present to them "on a silver platter" evidence illegally obtained for use in federal court prosecutions, a practice which came to a halt with this Court's decision in **Elkins v. United States,** 364 U.S. 206 (1960). Ultimately, in **Mapp v. Ohio,** 367 U.S. 643 (1961), this Court held that the Fourth Amendment is incorporated into the Fourteenth Amendment and thus applies to state as

well as federal officials. Of course, all of these cases arose out of searches conducted by law enforcement officials for the purpose of obtaining criminal convictions.

Running throughout the cases interpreting the Fourth Amendment are several consistent threads. Though decisions interpreting the Fourth Amendment have extended its protections from the home to motor vehicles and other areas, in each instance, it can be argued that there is a high expectation of privacy, an expectation which does not exist in the school setting. Further, even cases which do not involve criminal justice officials such as policemen do involve law enforcement agents of one type or another. See, e.g., **Camara v. Municipal Court**, 387 U.S. 523 (1967).

These law enforcement officials, like police officers, are primarily devoted to the cause of detecting violations of the law, unlike school officials, for whom such activities are a mere adjunct to their primary duty of educating and caring for the children in their charge.

This "legislative history" and the distinctions drawn above are vital to an equitable resolution of the case at bar. This Court need not overrule its earlier decisions to hold here that there is no Fourth Amendment right in the schools where a search is conducted to enforce school rules and maintain order, rather than to hand over evidence to law enforcement officials "on a silver platter." It is clear that the Fourth Amendment was intended to protect accused persons from unreasonable criminal or

quasi-criminal procedures, not students being taught the difference between right and wrong.

IV. CRIMINAL JUSTICE STANDARDS ARE NOT TRANSFERABLE TO THE SPECIAL SETTING OF THE SCHOOL

Lower courts have attempted, as did the lower court in the case at bar, to adopt lesser standards of "reasonable" in determining whether a violation of the Fourth Amendment has occurred. However, the standards are difficult, if not impossible, to apply in the educational setting particularly since the standards are designed for the criminal context but must be applied in a civil context.

Several state courts have articulated a standard of "reasonable suspicion," a standard traceable to this Court's decision in **Terry v. Ohio,** 392 U.S. 1 (1968). **Terry,** however, involved

a criminal search, and attempts to apply such standards in the school discipline context often result in arbitrary and unpredictable decisions.

For example, in **People v. Singletary**, 37 N.Y.2d 311, 333 N.E.2d 369 (1975), a New York court upheld the search of a student as the result of a tip from another student who had identified drug offenders on five previous occasions. But the same court, in **People v. D.**, 34 N.Y.2d 483, 315 N.E.2d 466 (1974), refused to find "reasonable suspicion" to justify a search on the basis of a "confidential source," and observations of the student making two brief trips to the bathroom, each time with two different students. Other inconsistent interpretations of "reasonable suspicion" can be found in

State v. Baccino, 282 A.2d 869 (Del. Super. 1971); **W.J.S. v. State,** 409 So.2d 1209 (Fla. App. 1982); **State v. Feazell,** 360 So.2d 907 (La. App. 1978); and **L.L. v. Circuit Court of Washington County,** 90 Wis.2d 585, 280 N.W.2d 343 (1979).

The court below cites a standard adopted in earlier cases, calling for school officials, before conducting a search, to consider "the child's age, history and school record, the prevalence and seriousness of the problem in the school to which the search was directed, the exigency to make the search without delay, and the probative value and reliability of the information used as a justification for the search." **New Jersey v. T.L.O.,** 463 A.2d 934, 942 (1983) (citations omitted).

Yet in applying the standard it discounts as unreasonable the fact that the principal had been observing Engerund for some time and that a teacher had seen T.L.O. smoking in the restroom, because these observations do not squarely fit into criminal justice standards on anonymous tips and probable cause.

Such standards would be well utilized if the school official was acting as a law enforcement officer. But school officials are primarily <u>educators</u>, not enforcers, and act to protect the other children in their charge, as well as to ensure that school regulations and order are maintained. If there is only a rumor that a child is carrying a gun -- that child should be searched immediately, regardless of whether the suspicion is reasonable as that term is used in the criminal context.

For example, in March of 1983, two third-grade students were found with a fully-loaded .45-caliber gun inside one of the students' desks. Miami Herald, 3/10/83, p. 1C. Should schools be prohibited from searching for weapons merely because they lack probable cause sufficient to obtain a criminal warrant? Of course not. No harm is done if the search is to no avail, but a child's life may have been saved if the search produces a weapon.

The mechanistic rules of the criminal context simply have no place in the setting of the school and the classroom. Rules such as the "clear view" doctrine, cited by the court below, and the "reasonable suspicion" standard which has been suggested as a substitute for probable cause, are all unnecessarily

rigorous. As stated by the Georgia Supreme Court in **State v. Young,** 234 Ga. 488, 496, 216 S.E.2d 586, 592 (1975): "Teachers and administrators must be allowed to search without hindrance or delay subject only to the most minimal restraints necessary to insure that students are not whimsically stripped of personal privacy and subjected to petty tyranny."

Teachers in a classroom are charged with the responsibility of maintaining order. Although one suspected of crime could not (without probable cause) be ordered by a police officer to empty his pockets or open her purse, surely our forefathers did not intend to require a teacher to meet criminal standards of probable cause or even "reasonable suspicion" in order to look through a

child's desk for the slingshot which sent a stone at another, or for the gum being chewed against school rules. Surely our forefathers did not intend the Fourth Amendment to require probable cause or reasonable suspicion before a principal could open a student's locker in the search for a gun reported by an anonymous tip to be there. Should our school officials be forced to wait until drugs are sold or a child is harmed before they are allowed to take action?

Just as school authorities view corporal punishment as a less drastic means of discipline than suspension or expulsion, **Ingraham v. Wright**, 430 U.S. 651, 657 (1977), so school authorities view the informal enforcement of school rules through searches, discussions with the student, and even suspensions and

expulsions as less drastic means of discipline than turning the schools into a criminal justice system with probable cause proceedings, formal advising of rights and calling in the police authorities, with the attendant permanent damage to the student such a process may entail. As one court, in praise of a school's efforts stated:

> Without the intervention of law enforcement officers, and with little or no disruption of school activities or discipline, they conducted an informal investigation of the reported matter. Their information may not have proved to be valid, but their action insured that the adverse effect on the student's well-being, on his present and future emotional reaction to the event, as well as on the several societal interests concerned, would be kept at a minimum. **In re G.**, 11 Cal. App. 3d 1193, 1197 (1970).

In discounting the notion that school officials be viewed as standing in

loco parentis rather than as officers of the state, the lower court notes that parents infrequently search their children and turn them over to the police for prosecution. **New Jersey v. T.L.O.**, 463 A.2d at 938, n.4. Yet studies show that only about three percent of the referrals to juvenile courts come from the schools, the same percentage as are referred by parents. Report to the Nation on Crime and Justice 60 (1983).

The lower court in **New Jersey v. Engerud**, a companion case to **T.L.O.** mooted by the death of the student, noted that its opinion was not intended to "disparage the school officials' actions in these cases. They must often, as here, act on short notice based on the information that they possess. Such officials have immunity from damages for

claims resulting from their good faith judgments." The court cited **Wood v. Strickland,** 420 U.S. 308 (1975), to support its analysis on "good faith." However, other lower courts interpret the "good faith" test as applying only where the law in an area is unsettled, not where school officials subjectively believe their actions were correct. If the Fourth Amendment is applied to the schools, teachers and administrators will be subjected to damage actions where searches are held to be unreasonable, even though those officials believed in "good faith" that their actions were reasonable under the circumstances. In order to avoid such actions, school officials will simply stop making searches at all, which could have dire consequences for all children -- the guilty as well as the innocent.

Certainly, no school official would seriously argue, in light of this Court's decisions, that students shed their constitutional rights "at the schoolhouse gate." **Tinker v. Des Moines Independent Community School District**, 343 U.S. 503 (1969). But in the context of the classroom, students have different rights than those persons being processed through the criminal justice system. The convicted felon has rights under the Eighth Amendment; the student does not. **Ingraham v. Wright**, 430 U.S, 651 (1977). Even Constitutional guarantees which are not directed toward the criminal justice system, such as those arising under the First Amendment, are very much different in the schoolhouse setting. See **Island Trees Union Free School District v. Pico**, 457 U.S. 853 (1982).

Both precedent and common sense dictate a determination by this Court that portions of the Constitution, specifically the Fourth Amendment, are neither necessary nor applicable in the context of maintaining school discipline.

V. STUDENT LOCKERS ARE NOT PROTECTED BY THE FOURTH AMENDMENT

Although the companion case to this action, **N.J. v. Engerud,** is technically moot because of the death of the defendant, it is necessary to discuss that case in the context of any discussion of the Fourth Amendment's place in the schools. In that case, the court below determined that there was an "expectation of privacy" which the student possessed in his locker -- his "home away from home," -- and that school officials could therefore not search the

locker without the student's permission.

The search of the locker was based on an anonymous tip and on the subjective suspicions of the principal. The court applied the three prong test of **Aguilar v. Texas**, 378 U.S. 108 (1964), a criminal case, to determine the reliability of the tip, and held that it failed to meet that test. It is the position of amicus that it is simply inappropriate to require school officials attempting to maintain order and protect the well-being of the children entrusted to their care, to have to meet these types of tests, which are designed to protect the accused within the criminal justice system, not students in a school.

As noted above, the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment

is directed ...." **United States v. United States District Court,** 407 U.S. 297, 313 (1971). The lower court opinion to the contrary notwithstanding, the public school student's locker is not his castle, nor is there a reasonable expectation of privacy in the school. Most other courts have held that since schools have control over students' lockers, there is no expectation of privacy in the lockers. See, e.g., **Overton v. Rieger,** 311 F. Supp. 1035 (S.D.N.Y. 1970); **In the Matter of Chrisopher W.,** 105 Cal. Rptr. 775 (Ct. App. 1973); **In re Donaldson,** 75 Cal. Rptr. 220 (Ct. App. 1969); **People v. Lanthier,** 448 P.2d 625, 628 (Sup. Ct. Cal. 1971). See generally, Annot., Admissibility in Criminal Case of Evidence Obtained by Search Conducted by

School Official or Teacher, 49 A.L.R.3d 978, 979. The New Jersey Supreme Court, however, has said that such an expectation of privacy does not exist unless the school has a policy of regularly inspecting students' lockers. Thus, even if the school had a written policy to the effect that lockers could be opened at any time by school officials, it would probably still not be enough to meet the New Jersey court's standard, without a regular inspection practice.

VI. ALTERNATIVES EXIST TO THE FOURTH AMENDMENT TO PROTECT STUDENTS' CONSTITUTIONAL RIGHTS

It has been argued that to exempt schools from the application of the Fourth Amendment would leave students with no remedy for gross acts by school

officials against their person. That, of course, is not true. Amicus argues not for an exemption of the schools from the Constitution, but only from its Fourth Amendment, which was not intended to and indeed should not apply in the classroom. Other constitutional provisions would continue to protect students from severe abuses arising from searches. For example, where searches or punishment for infractions are discriminatory in application, the Equal Protection Clause may come into play. Where a particular search oversteps the bounds of necessity in a given situation or otherwise "shocks the conscience of the Court," the student may assert a violation of liberty interests as well as common law remedies. The value of such alternatives can best be demonstrated by decisions such as

Rochin v. California, 342 U.S. 165 (1951), a decision arising before the Fourth Amendment was found to apply to the states. In **Rochin**, this Court overturned a state conviction because the search (pumping the stomach of the defendant to recover morphine capsules) so "shocks the conscience" that it amounted to a denial of due process.

Thus, several lower court cases involving student searches might well have been successfully litigated under the due process clause. Strip searches of young children, where no danger to other children is involved, may be an example of conduct gross enough to raise constitutional implications. See, e.g., **Bellnier v. Lund**, 438 F. Supp. 47 (N.D.N.Y. 1977). If, as stated by the court in **Doe v. Renfrow**, 631 F.2d 91, 92,

reh'g denied, 635 F.2d 582 (7th Cir. 1980), cert. denied, 451 U.S. 1022 (1981), "it does not require a constitutional scholar to conclude that [the search] is an invasion of constitutional rights of some magnitude," then the **Rochin** doctrine would clearly apply and there would be no need to resort to the Fourth Amendment to protect the student's rights.

Common law damage actions may also be an adequate remedy for gross violations resulting from searches of students' persons. In **Ingraham v. Wright**, 430 U.S. 651, this Court, in holding that the Eighth Amendment's proscription against "cruel and unusual punishment" does not apply to the schools, noted that the common law (and the state's statutory remedies)

adequately protects students against abusive imposition of corporal punishment in the schools. The rational of the Court in **Ingraham** applies equally to an analysis of the Fourth Amendment:

> The openness of the public school and its supervision by the community afford significant safeguards against the kinds of abuses from which the Eighth Amendment protects the prisoner. Id. at 670.

VII. CONCLUSION

In a recent Gallup Poll survey respondents were asked to name the biggest problems facing their public schools. They chose lack of discipline (named by 25% of respondents) and use of drugs (named by 18% of respondents) as the top two problems in the schools. Phi Delta Kappan, Sept., 1983.

School board members, school

teachers, principals and other school officials are attempting to deal with this problem through internal procedures which will teach students, without imposing life-long criminal stigmas. Judicial decisions such as that below, threaten to erode the ability of local school officials to accomplish this mission by changing the long-standing relationship of student and teacher, and student and principal, from one revolving around a learning environment and the teaching of values, to one of policeman and suspect. "Courts should not 'intervene' in the resolution of conflicts which arise in the daily operations of school systems' unless 'basic constitutional values' are 'directly and sharply implicated' in those conflicts." **Island Trees Union Free School District v. Pico**, supra.

Clearly, the Fourth Amendment is not a constitutional value which is directly or sharply implicated where a school principal is acting in the capacity of educator and supervisor of school discipline policies in the manner described in the case below. Where school officials take on the role of surrogate law enforcement officer, a different rule might attach. That, however, is not the situation here. Here the school personnel were not taking on the role of "sovereign" where, according to Justice Rehnquist's analysis in **Island Trees**, supra, the constitutional duties may be different. Instead, the personnel were acting in the role of "government as educator."

There is a need, in order to protect innocent students as well as to teach the

guilty, for school personnel to have a free hand, within the bounds of good taste, to search the property of students within their charge. Such searches do not implicate Fourth Amendment considerations unless the school personnel are acting as surrogate law enforcement officers for the purpose of handing over evidence to the criminal justice system "on a silver platter."

Further, a finding that the Fourth Amendment does not apply to school administrative searches will not leave students unprotected. Should a search overstep the boundaries of good taste and "shock the conscience," other constitutional and common-law rights would be implicated and students would have the full protection of the laws to seek damages or other relief against

offending officials and the school district itself.

Recent "reports" and "studies" present simplistic solutions to the problem of crime in the schools, advocating more reporting by the school of criminal activity on school property, and implying that less effort should be made to advise students of their rights. That is certainly not what is advocated by amicus. Amicus believes only that the Fourth Amendment does not apply in the context of school personnel enforcing school rules and protecting the health and safety of students. Amicus continues to believe that students do, and should, have constitutional rights in the school; however, because of their youth, inexperience and their need for protection in the educational

environment, society must not treat children in school in the same manner as criminal suspects are treated in the criminal justice system.

Amicus submits that the assistant principal did not violate the Fourth Amendment for two reasons: first, because the search was conducted in the context of the school setting and, thus, the Fourth Amendment should not be held to apply; and second, even if the Fourth Amendment does apply in the school setting, the assistant principal's search of the student's purse was reasonable under the circumstance since he demonstrated a rational basis for carrying out the search.

Respectfully submitted,

GWENDOLYN H. GREGORY
Counsel of Record

NSBA Deputy Legal Counsel
1680 Duke Street
Alexandria, VA 22314
(703) 838-6712

AUGUST W. STEINHILBER
NSBA Associate Executive Director & Legal Counsel

THOMAS A. SHANNON
NSBA Executive Director