No. 83-712

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF NEW JERSEY,

Petitioner,

v.

T.L.O., a Juvenile,

Respondent.

On Writ Of Certiorari To The Supreme Court Of New Jersey

SUPPLEMENTAL BRIEF FOR PETITIONER UPON REARGUMENT

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STATEMENT OF THE CASE

On the morning of March 7, 1980, a teacher of mathematics at Piscataway High School entered the girls' restroom and found the juvenile-respondent T.L.O. and a girl named Johnson holding what the teacher perceived to be lit cigarettes. (MT20-1 to 25).[1] Smoking was not permitted and the girls were thus committing an infraction of the

[1] "MT" refers to the transcript of the motion to suppress heard on September 26, 1980;

"T" refers to the transcript of the trial on March 23, 1981, the transcript of the juvenile's plea of guilty to other complaints on June 2, 1981, and the transcript of sentencing on January 8, 1982, all contained in one volume.

"AT" refers to the transcript of the previous argument of this case before this Court on March 28, 1984.

school rules. The girls were taken to the principal's office where they met with Theodore Choplick, the assistant vice-principal. (MT21-1 to 3; MT21-24 to 22-11; MT31-18 to 20; MT33-20 to 34-10).

Mr. Choplick asked the two girls whether they were smoking. Miss Johnson acknowledged that she had been smoking, and Mr. Choplick imposed three days attendance at a smoking clinic as punishment. (T49-24 to 50-7). T.L.O. denied smoking in the lavatory and further asserted that she did not smoke at all. (MT27-10 to 17). Mr. Choplick asked T.L.O. to come into a private office. (MT27-14 to 21; MT30-22 to 31-17).

Once inside this office, Mr. Choplick requested the juvenile's purse, and she gave it to him. (MT27-24 to 28-7). A package of Marlboro cigarettes was visible inside the purse. (MT28-9 to 11). Mr. Choplick held up the Marlboros and said to the juvenile, "You lied to me." (MT28-14 to 18). In plain view next to the Marlboros was a package of "Easy Roll" rolling papers for cigarettes. (MT28-19 to 24; T16-12 to 14). Upon being confronted with the rolling papers, the juvenile denied that they belonged to her. (MT29-5 to 24).

On the basis of his experience, Mr. Choplick understood possession of rolling papers to indicate that a person is smoking marijuana and looked further into the purse. There he found marijuana, other drug paraphernalia and documentation of T.L.O.'s sale of marijuana to other students. (MT29-7 to 9; T15-18 to 16-1). Mr. Choplick called T.L.O.'s mother and then notified the police. (MT41-5 to 13).

T.L.O.'s mother acceded to a police request to bring her daughter to police headquarters for questioning. (T18-12 to 18). Once at headquarters, T.L.O. was advised

of her rights in her mother's presence and signed a *Miranda*[2] rights card so indicating. (T20-3 to 21). The officer then began to question T.L.O. in her mother's presence. (T23-4 to 6). T.L.O. admitted that the objects found in her purse belonged to her. She further admitted that she was selling marijuana in school, receiving $1 per "joint," or rolled marijuana cigarette. T.L.O. stated that she sold between 18 and 20 joints at school that very morning, before the drug was confiscated by the assistant vice-principal. (T22-2 to 15). A delinquency complaint charging the juvenile with possession of marijuana with the intent to distribute, contrary to *N.J. Stat. Ann.* 24:21-19(a)(l) (West 1940 & Supp. 1983) and *N.J. Stat. Ann.* 24:21-20(a)(4) (West 1940 & Supp. 1983), was then drafted and filed the same day. Because the offense occurred on school property, the school, in accordance with its published procedures, administratively suspended the juvenile for ten days.

On September 26, 1980, the state trial court considered and denied the juvenile's motion to suppress evidence. *State in the Interest of T.L.O.*, 178 *N.J. Super.* 329, 336-343, 428 *A.*2d 1327, 1330-1334 (J.D.R.C. 1980), aff'd o.b. in part and rev'd on other grounds in part, 185 *N.J. Super.* 279, 448 *A.*2d 493 (Super. Ct. App. Div. 1982). On March 23, 1981, the juvenile was tried and, at the conclusion of trial, she was found guilty and adjudicated delinquent. (T69-6 to 8). On January 8, 1982, T.L.O. was sentenced to probation for one year with the special condition that she observe a reasonable curfew, attend school regularly and successfully complete a counselling and drug therapy program.

On February 11, 1982, the juvenile filed a Notice of Appeal to the Superior Court of New Jersey, Appellate

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[2] *Miranda* v. *Arizona*, 384 *U.S.* 436 *reh'g denied* 385 *U.S.* 890 (1966).

Division. On February 25, 1982, the appellate court stayed execution of the sentence pending final disposition of T.L.O.'s appeal. On June 30, 1982, the Appellate Division, with one judge dissenting, affirmed the denial of the motion to suppress evidence seized in the search of the juvenile's purse, for the reasons expressed in the trial court's reported opinion. *State in the Interest of T.L.O.*, 185 *N.J. Super.* 279, 448 *A.*2d 493 (Super. Ct. App. Div. 1982).

On July 16, 1982, the juvenile filed a Notice of Appeal as of right to the Supreme Court of New Jersey. On August 18, 1983, the State Supreme Court held that the Fourth Amendment exclusionary rule applies to searches and seizures conducted by school officials of students in public schools. *State in the Interest of T.L.O.*, 94 *N.J.* 331, 463 *A.*2d 934 (1983).

In that same opinion, the New Jersey Supreme Court decided the companion case of *State* v. *Engerud*, involving a search of a high school student's locker pursuant to information that the student was selling controlled dangerous substances in the school. Shortly after the date of the decision, the defendant, Engerud, was killed in a motorcycle accident, thus mooting any petition in that case.

On October 7, 1983, the State of New Jersey filed a petition for *certiorari* with this Court. *Certiorari* was granted on November 28, 1983. On March 28, 1984, this case was originally argued before the Court. Thereafter, on July 5, 1984, the Court restored the case to the calendar for reargument stating:

> This case is restored to the calendar for reargument. In addition to the question presented by the petition for writ of certiorari and previously briefed and argued, the parties are requested to brief and argue the following question:

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

The present brief is submitted in response to this order.

SUMMARY OF ARGUMENT

The Fourth Amendment does not apply to school searches conducted solely by school teachers and school officials. Assuming, however, that the Fourth Amendment does apply to school searches, the search of respondent's purse was "reasonable" and hence constitutionally justified. Society has substantial interests in an educated populace, in the security of its educational facilities and in the welfare of juveniles. In contrast, a juvenile has a diminished expectation of and interest in privacy in a school environment, because of the expected restraint necessary for security or discipline and the constant interaction among students, faculty and administrators. The foregoing demonstrates that a student has at most a minimal expectation of privacy in personal effects brought into school. In balancing the substantial interests of society in conducting a search of such articles and the students' minimal expectation of privacy therein, a search of such articles is "reasonable" if the searching official has a reasonable or articulable basis for suspecting that they contain evidence of a school infraction. The searching school official in this matter had such a basis to believe that evidence of a violation of a school regulation would be found in respondent's purse.

LEGAL ARGUMENT

The Search Of The Juvenile's Purse Did Not Violate The Fourth Amendment To The United States Constitution.

The State of New Jersey petitioned for *certiorari* in this case on the question whether "the Fourth Amend-

ment's exclusionary rule applies to searches made by public school officials and teachers in school." This Court granted the State's petition and the issue was briefed and argued. On July 5, 1983, the Court ordered that:

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

In its original petition and brief, petitioner addressed the inapplicability of the exclusionary rule to evidence of crimes discovered in school searches conducted by school personnel. Petitioner did not stress the applicability of the Fourth Amendment to school searches, the proper standard for school searches or the correctness of the New Jersey Supreme Court's determination that the search in this case violated the Fourth Amendment. There were several reasons for our emphasis on the exclusionary rule issue. Initially, petitioner did not wish to present what might appear to be solely a factual dispute to this Court. Moreover, this case arose in the context of a suppression motion made in a juvenile delinquency matter. The evidence sought to be suppressed had been obtained during an in-school search conducted by a vice-principal. Thus, if the petitioner's contention that the exclusionary rule was inapplicable to school searches was accepted by this Court, there would be no reason to reach the constitutionality of the underlying search. From petitioner's point of view this would be a desirable result since it would relieve those agencies in charge of presenting criminal prosecutions of the burden of justifying and explaining the actions of other independent agencies with

whom they have little contact and over whom they have no control. Such a result would permit appropriate criminal prosecutions while doing no violence to the Fourth Amendment.[3]

In placing strict emphasis on the exclusionary rule issue, New Jersey did not intend to manifest total accordance with the application of the standard enunciated by the New Jersey Supreme Court to the facts of this case. At oral argument of this case, petitioner noted that the standard set forth by the New Jersey Supreme Court was a workable standard and that the facts presented make this a close case. Certainly, the reasonable grounds standard enunciated by the state court is, in theory, a much more workable standard in the school context than the probable cause standard which is applicable to searches by police officers. Due to the need for school discipline, it is not possible to hold school teachers to the same standard that applies to police officers who are investigating crimes. The enunciation of a lower, commonsense-type standard is more likely to permit the proper functioning of the educational system than a more stringent standard.

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[3] It should be noted at the outset that in the New Jersey Supreme Court petitioner argued that many courts have adopted the position that the Fourth Amendment did not apply to school searches. (State's brief at 10). Petitioner also argued that if the Fourth Amendment were applied to school searches, the probable cause standard would not apply in this context since the student would not have the same expectation of privacy in a school setting as he would have in other places. (State's brief at 19 to 21). Moreover, petitioner argued that the search in the present case was totally proper. (State's brief at 21 to 23). The New Jersey Supreme Court ruled on these issues and did so on the basis of federal rather than state law. *State in the Interest of T.L.O.*, 94 *N.J.* 331, 340, 344-346, 347, 463 *A.*2d 934, 938, 940-942 (1983).

The New Jersey Supreme Court's application of this "reasonable grounds" standard to the facts of this case, however, seems inappropriate. While enunciating a standard which, on its face, allows school teachers to take reasonable steps to maintain school discipline without the necessity to comply with those standards applicable to police officers, the state court seems to have evaluated the vice-principal's actions as if he were a law enforcement officer governed by the strictures of probable cause. As noted by New Jersey Supreme Court Justice Schreiber in dissent:

> Attendance at public school is compulsory. [*N.J. Stat. Ann.*] 18A:38-25. The State is thereby assembling large numbers of young people in schools and has a duty to protect students from being harmed by others and by themselves. The students have a right to pursue their academic endeavors without exposure to dangers or overwhelming distractions. In other words, school authorities have a duty to maintain "a proper educational environment." 3 W. LaFave, *Search and Seizure*, sec. 10.11, at 458 (1978).
>
> * * *
>
> In light of such policy considerations, the "reasonableness" of the searches in the cases before us must be measured against the nature and extent of the intrusions involved. *I part company with the majority's opinion in its assessment of the reasonableness of the school officials' conduct in these cases under either a "reasonable grounds to believe" or a "reasonable suspicion" standard. Regardless of the standard employed these minimal invasions of a student's privacy were a valid exercise of a school administrator's authority.*
>
> After paying lip service to the principle that school officials have the authority to conduct reasonable searches necessary to maintain safe-

> ty, order and discipline within the schools, *ante* at 343, the majority evaluates the conduct of the school official as if he were a policeman.

State in the Interest of T.L.O., 94 *N.J.* 331, 335-354, 463 *A.*2d 934, 945-946 (1983) (emphasis added).

Thus, although the standard enunciated by the New Jersey Supreme Court is facially reasonable and workable, that court's application of the standard presents unnecessary obstacles to proper school discipline. Both parties, at oral argument, agreed that the facts presented made this a close case. (AT21-16 to 22; AT35-6 to 9). In such a situation, teachers and administrators should not be faced with the dilemma of making the type of borderline decisions which the standard seems to require. As will be argued herein, commonsense and the need for school safety should be the linchpins. The vice-principal's actions in this case should be evaluated in this context.

A. The Fourth Amendment's Proscription Against Unreasonable Searches And Seizures Is Inapplicable To The Facts And Circumstances Of This Case.

In the present case, the New Jersey Supreme Court ruled that a search of a public high school student by a school official constitutes an official search for purposes of the Fourth Amendment. Accordingly, the state court subjected the search of respondent T.L.O. to Fourth Amendment scrutiny. Petitioner submits, however, that the facts and circumstances of this case indicate that the instant search did not fall within the purview of the Fourth Amendment because the vice-principal was not acting as a law enforcement officer.

This Court has never ruled that the Fourth Amendment regulates all searches of students or their belongings by school officials. In *Tinker* v. *Des Moines Independent Community School District*, 393 *U.S.* 503 (1969),

this Court determined that students were afforded First Amendment protection while in school. Subsequently, however, this Court in *Ingraham* v. *Wright*, 430 *U.S.* 651 (1972), held that in general the Eighth Amendment did not prohibit corporal punishment administered in school. The rulings in each case were predicated upon an analysis of the history of the particular amendment in question and the evils which it addressed. Read together, the cases indicate that the amendments comprising the Bill of Rights, including the Fourth Amendment, are not automatically applicable to actions of public school officials by virtue of the fact that such conduct is governmental action.[4] Rather, the applicability of the Fourth Amendment to school searches conducted by school officials must be determined through an analysis of the text of the amendment in light of its history and a determination whether such searches lie within the evils which the amendment's drafters sought to proscribe.

An historical and textual analysis of the Fourth Amendment indicates that it was enacted to condemn and prevent the type of abuses perpetrated by colonial revenue officers who had been issued general warrants and writs of assistance by British officials. Such warrants and writs granted the officers unlimited discretion to search for smuggled goods. *See Boyd* v. *United States*, 116 *U.S.* 616, 624-632 (1886). To prevent a recurrence of the abuses which such unfettered discretion naturally engendered, the framers of the Fourth Amendment provided therein

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[4] Petitioner acknowledges that many authorities deem the Fourth Amendment to be applicable to school searches conducted by public school officials because such officials are employed by public entities. *See, e.g., Horton* v. *Goose Creek Ind. School Dist.*, 690 *F.*2d 470, 480 (5th Cir. 1982), *cert. denied* ___ *U.S.* ___, 103 *S.Ct.* 3536 (1983); *State v. Baccino*, 282 *A.*2d 869 (Del. Super. Ct. 1971). *But see* contrary authorities listed in footnote 7, *infra.*

that a warrant must be supported by probable cause and must describe the place to be searched and the articles to be seized. This provision was linked by conjunction to a provision which required that official searches and seizures be conducted in a reasonable manner.[5] Clearly, the historical context in which the Fourth Amendment was enacted and the juxtaposition in the amendment's text of the warrant requirement with the requirement of reasonable searches and seizures indicates that the amendment's framers enacted it to regulate investigations conducted by law enforcement officers.

In recent years, this Court has determined that the strictures of the Fourth Amendment apply to public officials who are not police officers but who, as an integral part of their duties, undertake searches for the purpose of discovering and preventing violations of law—*i.e.*, statutes, ordinances or administrative regulations or codes. This trend began with *Camara* v. *Municipal Court*, 387 *U.S.* 523 (1967), which applied the Fourth Amendment to searches conducted by housing inspectors. Subsequent to *Camara*, this Court applied the Fourth Amendment to fire inspectors, *See* v. *City of Seattle*, 387 *U.S.* 541 (1967); border patrol officials, *Almeida-Sanchez* v. *United States*, 413 *U.S.* 266 (1973); and Occupational Safety and Health Act (OSHA) inspectors, *Marshall* v. *Barlow's, Inc.*, 436 *U.S.* 307 (1978). Each of the cases in this trend involved area-wide exploratory searches by specialized law enforcement officers for violations of law and thus

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[5] The Fourth Amendment provides:

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

U.S. Const. amend. IV.

dealt with the kind of intrusion which the Fourth Amendment was intended to regulate. *See Boyd* v. *United States*, 116 *U.S.* at 624-632.

Thus, it must be concluded that the Fourth Amendment, properly viewed in its historical context, does not apply in every instance in which a government employee conducts a search.[6] Rather, the amendment applies only to two kinds of situations: first, investigations of those suspected of crime by those performing the function of and employed as police officers or their agents; and second, searches carried out to prevent violations of administrative statutes or regulations having criminal or quasi-criminal penalties.[7] Neither situation is involved here.

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[6] Such a position is not contrary to *Burdeau* v. *McDowell*, 256 *U.S.* 465 (1921), wherein it was stated that the Fourth Amendment is applicable to "governmental agencies." Clearly, the thrust of *Burdeau* was that the Fourth Amendment was not applicable to searches by private citizens, and not that the amendment was applicable to all governmental action. It should be noted that the *Burdeau* Court could not have conceived of the Fourth Amendment applying to school searches by public officials, since such officials acted under state authority and the Fourth Amendment had not yet been deemed to be applicable at the state level. *Mapp* v. *Ohio*, 367 *U.S.* 343 (1961). Moreover, the *Burdeau* Court reached its determination that private acts were beyond the purview of the Fourth Amendment through an historical analysis like the one stated above. Such an analysis clearly indicates that the amendment was enacted exclusively to proscribe unreasonable searches and seizures by law enforcement agents.

[7] The Fourth Amendment's applicability is contingent upon the nature of the duties performed by a searching official rather than the fact of his public employment. A number of state court authorities have so determined. *See, e.g.*, *J.M.A.* v. *State*, 542 *P.*2d 170 (Alaska 1975); *Bell* v. *State*, 519 *P.*2d 804 (Alaska 1974); *State* v. *Pearson*, 15 *Or. App.* 1, 514 *P.*2d 884, 886 (Ct. App. 1973). Other state courts have reached this conclusion within the context of a school search and

Clearly, the assistant vice-principal who conducted the search was not a law enforcement official. He had no greater responsibility for the detection of penal law violations than did the ordinary citizen. Moreover, the search was not motivated by an intent to ensure the enforcement of penal statutes or regulations. Rather, it was conducted exclusively for school related purposes—to protect the health of respondent and her peers and to facilitate school discipline. Since the assistant vice-principal was not a law enforcement official and was not functioning in a law enforcement capacity, the Fourth Amendment is inapplicable to the instant search. The New Jersey Supreme Court's determination to the contrary was thus erroneous.

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have determined accordingly that the Fourth Amendment does not apply to a searching public school official. *See, e.g., D.R.C.* v. *State*, 646 *P.*2d 252 (Alaska Ct. App. 1982); *In re C.*, 26 *Cal. App.*3d 320, 102 *Cal. Rptr.* 682 (Ct. App. 1972); *In re G.*, *11 Cal. App.*3d 1193, 90 *Cal. Rptr.* 361 (Ct. App. 1970); *In re Donaldson*, 269 *Cal. App.*2d 509, 75 *Cal. Rptr.* 220, 222 (Ct. App. 1969) ("We find the principal of the high school not to be a governmental official within the meaning of the Fourth Amendment so as to bring into play its prohibition of unreasonable searches and seizures."); *People* v. *Stewart*, 63 *Misc.*2d 601, 313 *N.Y.S.*2d 253 (Crim. Ct. 1970); *State* v. *Keadle*, 51 *N.C. App.* 660, 277 *S.E.*2d 456, 459-460 (Ct. App. 1981); *Commonwealth* v. *Dingfelt*, 227 Pa. *Super.* 380, 323 *A.*2d 145, 147 (Super. Ct. 1974) ("[s]chool officials are not law officers of the government. . . ."); *Ranniger* v. *State*, 460 *S.W.*2d 181 (Tex. Civ. App. 1970); *Mercer v. State*, 450 *S.W.*2d 715, 717 (Tex. Civ. App. 1970) ("The principal in dealing with [the searched student] acted *in loco parentis*, not for an arm of government."). The United States Court of Appeals for the Tenth Circuit would apparently be receptive to such a position in an appropriate case. *See Palacios* v. *Foltz*, 441 *F.*2d 1196 (10th Cir. 1971) (actions of school officials in refusing to allow a student to run for election to student government were found not to constitute state action).

B. The Search Conducted In The Present Case Was Reasonable.

Assuming that the Fourth Amendment applies to school teachers and officials, the vice-principal's decision to search T.L.O.'s purse was reasonable and did not infringe upon T.L.O.'s Fourth Amendment rights. The vice-principal met T.L.O. after a teacher reported that T.L.O., contrary to school regulations, had been smoking in the restroom. When T.L.O. denied that she had been smoking in the lavatory and maintained that she did not smoke at all, the vice-principal opened her purse and observed a package of cigarettes. After removing the cigarettes in order to confront T.L.O. with the fact that she had lied, the vice-principal observed drug paraphernalia in plain view. This observation formed the basis for a further search into the purse, which revealed evidence suggesting that T.L.O. was distributing drugs. T.L.O. cannot establish that the vice-principal's actions violated her Fourth Amendment right to be free from unreasonable searches.

In *Camara* v. *Municipal Court*, 387 *U.S.* at 536-537, this Court observed that "there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails." This concept of a flexible assessment of a search's reasonableness was more recently reiterated in *Bell* v. *Wolfish*, 441 *U.S.* 520 (1979), where the Court held:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails.

Id. at 559.

The Fourth Amendment prohibits arbitrary invasions of a person's legitimate expectations of privacy by state officials. When society's substantial interest in providing students with an education in a safe environment is balanced against a student's limited privacy interests, it is manifest that a student has little—expectation of privacy in personal effects brought into the school. Hence, after the vice-principal received information from a teacher that T.L.O. had been smoking, his decision to examine her purse, which was capable of concealing evidence of the infraction, was reasonable.

In determining whether the official's decision to search was "reasonable", this Court must initially determine whether and to what extent T.L.O. had a protected privacy interest in the contents of her purse. After having determined the extent of the student's privacy interest, the Court should consider that privacy interest in determining under what circumstances it was "reasonable" to conduct a search. This Court may resolve these issues by considering categorically the nature of the authority conducting the search, as well as the purpose of the search; the school environment, including the age of the students; and society's interest in providing a safe and orderly environment conducive to the institutional objective of providing an education.[8] *See Terry* v. *Ohio*, 392

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[8] The determination whether a particular search is "reasonable" for Fourth Amendment purposes is generally reached on a case-by-case basis after examination of the unique factual setting. *See Terry* v. *Ohio*, 392 *U.S.* 1, 17-18 n.15 (1968). This case-by-case analysis, however, has led to general rules which permit categorical treatment of searches conducted in certain delineated situations. *See Hudson* v. *Palmer*, ___ *U.S.* ___, 52 *U.S.L.W.* 5052, 5057 (U.S. July 3, 1984) (O'Connor, J., concurring). *See, e.g., id.* at 5053-5057 (prisoners have no constitutionally protected expectation of privacy in their prison

U.S. 1, 9 (1968) (although the Fourth Amendment guarantees the right to personal security in all places the "specific contents and incidents of this right must be shaped by the context in which it is asserted"); *cf. Goss* v. *Lopez*, 419 *U.S.* 565 (1975) (although the due process clauses of the Fifth and Fourteenth Amendments apply to students, a court must weigh heavily the institutional concerns of schools when determining what process is due).

1. T.L.O. had no legitimate expectation of privacy in the contents of her purse.

A citizen has no absolute right to privacy. The Fourth Amendment provides only that governmental searches must not be arbitrary. The applicability of the Fourth Amendment turns on whether "the person invoking its protection can claim a 'justifiable,' a 'reasonable,' or a 'legitimate expectation of privacy' that has been invaded by government action." *See, e.g., Hudson* v. *Palmer*, ___ *U.S.* ___, 52 *U.S.L.W.* 5052, 5054 (U.S. July 3, 1984), quoting *Smith* v. *Maryland*, 442 *U.S.* 735, 740 (1979). This Court must thus determine whether a student's claim of privacy is the kind of expectation that society is prepared to recognize as "reasonable." *Hudson* v. *Palmer*, ___ *U.S.* at ___, 52 *U.S.L.W.* at 5054, citing

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cell); *United States* v. *Ross*, 456 *U.S.* 798 (1982) (search of vehicles and all containers found therein); *United States* v. *Santana*, 427 *U.S.* 38, 43 (1976) (law enforcement officers may conduct a warrantless search to prevent the loss or destruction of evidence); *United States* v. *Robinson*, 414 *U.S.* 218, 235 (1973) (searches without a warrant are permissible when incident to a lawful custodial arrest); *Almeida-Sanchez* v. *United States*, 413 *U.S.* 266, 272 (1973) (border searches); *Terry* v. *Ohio*, 392 *U.S.* 1 (1968) (reasonable suspicion justifies stop and frisk for weapons). The issues raised by a school official's search of a student suspected of violating school regulations are appropriate for such categorical treatment.

Katz v. *United States*, 389 *U.S.* 347, 360-361 (1967) (Harlan, J., concurring).

As this Court recently held, "Determining whether an expectation of privacy protectible under the Fourth Amendment is 'legitimate' or 'reasonable' necessarily entails a balancing of interests." *Hudson* v. *Palmer*, ___ *U.S.* at ___, 52 *U.S.L.W.* at 5054. The two interests at issue here are society's substantial interest in an educated populace and in the security of its educational facilities as balanced against the limited privacy interests of a student. The balancing of these interests demonstrates that a student has at most a minimal expectation of privacy in personal effects brought into the school.

No one argues that the State's interest in providing its citizens with an education is insubstantial. As this Court has repeatedly emphasized, "Education is perhaps the most important function of state and local governments." *Brown* v. *Board of Education*, 347 *U.S.* 483, 493 (1954). Similarly, this Court has recognized that the student has a substantial interest in receiving a public education. *See San Antonio Independent School District* v. *Rodriguez*, 411 *U.S.* 1, 29-30 (1973). In accordance with these strong interests, this Court has recognized that, to fulfill its educational purpose, the State's authority to prescribe and enforce standards of conduct in its schools must be very broad. *See, e.g.*, *Goss* v. *Lopez*, 419 *U.S.* at 574; *Ingraham* v. *Wright*, 430 *U.S.* at 681; *Tinker* v. *Des Moines Independent Community School District*, 393 *U.S.* at 507. The State's authority to regulate a student's conduct originates with its need to maintain an environment conducive to education and also to fulfill its obligation to the students and to their parents to provide a safe learning environment.

The school official's need to maintain order and discipline and to protect the health and welfare of the students requires that the school official be afforded the authority to search students.[9] Society's general interest in the prevention of crime is even more compelling when the suspect is a juvenile because of a state's *parens patriae* interest in the welfare of the child. *Schall* v. *Martin*, ___ *U.S.* ___, 81 L.Ed 2d 207, 216, 52 *U.S.L.W.* 4681, 4684-4685 (U.S. June 4, 1984). *See also Eddings* v. *Oklahoma*, 455 *U.S.* 104, 115 (1982) (minority "is a time and condition of life when a person may be most susceptible to influence and psychological damage"); *Bellotti* v. *Baird*, 443 *U.S.* 622, 635 (1979) (juveniles "often lack the experience, perspective and judgment to recognize and avoid choices that could be detrimental to them"). The state's interest in protecting juveniles is heightened in the school environment because the state has compelled their attendance.

A student's safety while attending school, although an important consideration in itself, is also fundamental to the educational process. The significance of these institutional concerns—safety of the school community and the need for an orderly working environment—"must be viewed in light of the disciplinary problems commonplace

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[9] Some commentators refer to the special relationship between the school official and the student, which arises from the school officials' role in supervising and safeguarding students. It has long been recognized that a school official undertakes the safety and supervision of the students submitted to his charge and likewise, because of this added responsibility, undertakes "such a portion of the power of the parent . . . that of restraint and correction, as may be necessary to answer the purposes for which he is employed." 1 *W. Blackstone*, Comm. 453 (1870). Because of this special relationship between the school official and the student, the official is deemed to stand *in loco parentis*. Frels, *Searches and Seizures in the Public School*, 11 *Hous. L. Rev.* 876 (1974).

in the schools." *Ingraham* v. *Wright*, 430 *U.S.* at 681. As the Court noted in *Goss* v. *Lopez*, 419 *U.S.* at 580, "Events calling for discipline are frequent occurrences and sometimes require immediate, effective action." [10]

The teacher who, in the midst of an examination, suspects that a student possesses a "crib sheet"; a school principal who hears a rumor that a weapon has been brought into the school by a student who intends to settle a dispute with another student; or a school counselor who learns that a drug distributor is working within the school environment must act immediately to eliminate the threat to the proper operation of the school. Indeed, this Court has recognized that to delay the imposition of discipline is often tantamount to a failure to discipline. *See Ingraham* v. *Wright*, 430 *U.S.* at 680-681.

For this reason, assessment of the need for, and the appropriate means of maintaining school discipline "is committed generally to the discretion of school authorities subject to state law." *Ingraham* v. *Wright*, 430 *U.S.* at 682. The safety of the school community, and the substantial interest in public education that both the State and the individual student share, must be balanced against the student's limited expectations of privacy.

Balanced against the institutional requisites is the invasion of personal rights which any search may entail. However, it is also clear that students within the public schools do not occupy the same constitutional position as either adults or children outside that location. Juveniles

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[10] It is instructive to note that in all but one of the past 15 years, the public has ranked discipline as the number one problem in schools. Since 1978, drugs have generally placed second in priority only to discipline. Elam, *The Gallup Education Surveys: Impressions of a Poll Watcher*, Phi Beta Kappan Magazine, Sept. 1983, at 26-27.

are subject to a greater degree of parental and state control than adults.[11] *Cf. Schall* v. *Martin*, ____ *U.S.* at ____, 81 *L.Ed* 2d at 218, 52 *U.S.L.W.* at 4684. Because children lack the capacity to care for themselves they are subject to the control of their parents and the state when acting in place of the parent. *Id.* Consequently, in many situations a juvenile's expectation of privacy will not be as great as that of an adult. A school environment presents one of these situations.

From the time a student attends school, the school takes on the parents' responsibilities to manage and protect that student. And, in the public school, it may be necessary to subordinate an individual student's liberty and privacy interests to the school's obligation and interest in preserving and promoting the student's general welfare. *Id.* at ____, 81 *L.Ed.* 2d at 216, 52 *U.S.L.W.* at 4684-4685. Although the Fourth Amendment protects "people not places," *United States* v. *Katz*, 389 *U.S.* at 351, this Court has emphasized that the location of the search is a significant factor that must be considered in assessing an individual's claim of privacy. *United States* v. *Ross*, 456 *U.S.* at 823 ("[T]he protection afforded by the [Fourth] Amendment varies in different settings").

Students have a lessened expectation of privacy in a school environment because of the expected restraint

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[11] Some students are adults. Nevertheless, when they willingly enter the school environment, they necessarily accept the school regulations and the resulting limitations on their privacy. *N.J. Stat. Ann.* 18A:38-25 (West 1968) (school attendance is compulsory only to age 16). In an environment where juveniles are closely scrutinized and regulated for their own protection, other persons entering that environment may expect to be subjected to similar scrutiny. *Cf. United States* v. *Biswell*, 406 *U.S.* 311, 316 (1972) (firearms dealer enters business with knowledge of pervasive regulation and therefore cannot object to warrantless search).

necessary for security or discipline and the constant interaction among students, faculty and administrators. *See, e.g., In re L.L.*, 90 *Wis.*2d 585, 600-601, 280 *N.W.*2d 343, 350-351 (1979). In this regard, *N.J. Stat. Ann.* 18A:37-1 (West 1968) provides:

> Pupils in the public schools shall comply with the rules established in pursuance of law for the government of such schools, pursue the prescribed course of study and submit to the authority of the teachers and others in authority over them.

Thus, while attending public school, 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. *Cf. Donovan* v. *Dewey*, 452 *U.S.* 594, 598-599 (1981) (warrantless search of stone quarry permitted because owner has limited expectation of privacy due to pervasive regulation of mining operations); *United States* v. *Biswell*, 406 *U.S.* 311, 316 (1972) (warrantless search of firearms dealer permissible because dealer entered business with knowledge of the pervasive regulation). This examination of the school environment demonstrates that a student necessarily has a diminished expectation of privacy upon entering a school.

A second component of the privacy inquiry is the scope of the intrusion or the object of the search, for the level of privacy that an individual may expect is determined in part by the nature of the search undertaken. *See, e.g., Oliver* v. *United States*, ____ *U.S.* ____, 104 *S.Ct.* 1735, 1740-41 (1984); *Rakas* v. *Illinois*, 439 *U.S.* 128 (1978); *United States* v. *Chadwick*, 433 *U.S.* 1, 7-9 (1977). A student can claim no legitimate expectation of privacy in school property, such as lockers or desks, temporarily

used by the student for storage of books or clothing. Such items are randomly assigned and the length of possession may vary from a class period to an entire semester. The school's ownership of the items is unquestioned and it reserves the right to inspect or reclaim the property at any time. Generally, school regulations provide notice regarding the proper use of these facilities and the school's intention to ensure that these amenities are properly maintained. As the school officials have the authority to enter and to inspect these areas to ensure compliance with health and safety requirements as well as school regulations, a student has no legitimate expectation of privacy to rely on in an effort to prevent the search. Since a school, of necessity, retains a right to search areas such as lockers and desks for safety and health violations in general, a student cannot maintain that if the safety or health violations also relate to violations of our criminal laws—as in the case of weapons or illicit drugs—that the criminal nature of the locker's contents vests him with a greater expectation of privacy than he would otherwise have. *Compare Stoner* v. *California*, 376 *U.S.* 483, 485-486 (1964), *with United States* v. *Jeffers*, 342 *U.S.* 48 (1951). The school maintains full access to and control over these areas. Thus, they are fully entitled to search places of this type at any time and may validly consent to searches by others. See *United States* v. *Matlock*, 415 *U.S.* 164, 170-171 (1974).

Moreover, items such as lockers and desks are not provided for the purpose of affording a student privacy but to further the school's interest in safety by providing storage facilities. It would be anomalous, therefore, for a student to argue that the school's interest in safety, which prompted the school to provide these facilities, should be subordinate to the student's interest in shielding the contents of a locker or desk so that the school is restrained

from maintaining the safety of these facilities. The student simply has no legitimate reason to expect privacy in these items.

A student may, however, claim a limited expectation of privacy in his person and in personal effects that are closely associated with the person and that are legitimately brought to school. *Cf. United States* v. *Chadwick*, 433 *U.S.* at 9; *Terry* v. *Ohio*, 392 *U.S.* at 1. It is this limited privacy interest which must be balanced against society's substantial interest in education and safety. It is also apparent, however, that a student has little or no expectation of privacy in personal possessions that are not required in school. By exercising a choice in transporting personal items into a school, a student may be deemed to have waived a privacy claim. Any arguable privacy interest in such unnecessary items of personal property must be subordinate to the school's safety and disciplinary needs. Society's substantial interest in providing an education in a safe environment, and indeed the student's interest in receiving an education, outweighs the student's limited privacy interests in personal possessions brought into the school. Under this rationale, a student has no protected expectation of privacy in such items within the school. Hence, T.L.O.'s purse, voluntarily and unnecessarily brought into the school, may be deemed to be an item in which any privacy interest was so minimal that, as to it, the Fourth Amendment is inapplicable. And, in the absence of a finding that a privacy interest has been violated, there is no need for the Court to reach the issue of whether the search was reasonable. If this Court concludes, however, that a student retains some privacy interest in personal posses-

sions unnecessarily brought into the school, that interest is necessarily minimal.[12]

2. Society's substantial interest in school safety and discipline justifies searches based on reasonable suspicion.

In balancing the school's need to search in order to promote discipline against T.L.O.'s expectation of privacy in her purse, it is clear that the search conducted in this case was constitutionally reasonable.[13] The nature of the school environment and its institutional concerns man-

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[12] The student's expectation of privacy is higher with regard to items necessarily brought into the school, such as clothing. The privacy expectation is clearly greatest when the school official seeks the extreme intrusion of a strip search. Where the privacy interest is higher, the countervailing institutional need to search must be greater in order to justify the search.

[13] It cannot seriously be maintained that school officials should be required to obtain a warrant before conducting searches for infractions of school rules. This Court has observed that a warrant must be secured when "reasonably practicable." *United States* v. *Ross*, 456 *U.S.* 798, 807 (1982), citing *Carroll* v. *United States*, 267 *U.S.* 132, 156 (1925). No warrant will be required when "the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search." *Camara* v. *Municipal Court*, 387 *U.S.* 523, 533 (1967). The warrant requirement is incompatible with society's interest in safe educational institutions.

School officials face countless infractions of school rules. *Ingraham* v. *Wright*, 430 *U.S.* 651, 681 (1972). To maintain order in the schools, infractions must be dealt with immediately. The delay in resolving controversies engendered by the warrant process would disrupt the educational process. Imposition of a warrant requirement for school disciplinary searches would significantly hamper the school's ability to enforce discipline. As this Court observed in another school context,

> Hearings - even informal hearings - require time, personnel, and a diversion of attention from normal school pur-

date that a school official be permitted to search when the school official has an articulable or reasonable basis either for searching a particular student or an entire area of the school.[14] *Cf. Delaware* v. *Prouse*, 440 *U.S.* 648, 663 (1979). This standard would adequately protect the student's minimal privacy interest from arbitrary invasions while affording the school official the necessary flexibility to maintain school safety and discipline.

> suits. School authorities may well choose to abandon . . . punishment rather than incur the burdens of complying with the procedural requirements.

Ingraham v. *Wright*, 439 *U.S.* at 680.

See also *United States* v. *Ross*, 456 *U.S.* at 816 n.21 (requirement that a law enforcement officer must obtain a separate warrant to search each container located within a vehicle entails expenditure of time and public resources not justified by individual's privacy interest). Moreover, the lengthy delays involved in obtaining a warrant would increase the intrusion and serve to further stigmatize the subject of the search. *Cf. United States* v. *Ross*, 456 *U.S.* at 822 n.28 (prohibiting police from opening containers found in a vehicle until they obtained a warrant would increase the intrusion on privacy interests). In sum, the nature of the school environment and purpose of the institution mandate the conclusion that the warrant requirement does not apply to searches conducted by school administrators.

[14] There is no need for a particularized suspicion focused upon an individual student in order for a school search to be undertaken. *See United States* v. *Martinez-Fuerte*, 428 *U.S.* 543, 560-561 (1976). If, for example, a school were experiencing a pervasive drug or weapon problem in its general student population, there would be no impediment to a search of all personal effects brought into the school. *See Delaware* v. *Prouse*, 440 *U.S.* 648, 663 (1979). Where such an unfocused need to search is shown, there is no further need for individualized suspicion because such a search does not involve the unconstrained exercise of discretion. Indeed, the standard of reasonableness imposed on the exercise of official discretion by the Fourth Amendment is to prohibit only arbitrary invasions of an individual's privacy. *Delaware* v. *Prouse*, 440 *U.S.* at 654; *Marshall* v. *Barlow's, Inc.*, 436 *U.S.* 307, 323 (1978); *United States* v. *Martinez-Fuerte*, 428 *U.S.* at 555.

Indeed, the New Jersey Supreme Court adopted this standard in this case. The court stated that a school official need only have "reasonable grounds" to believe that evidence of a crime or school violation would be found in order to search. The court nevertheless invalidated the vice-principal's search of T.L.O.'s purse. An examination of the facts reveals that the New Jersey Supreme Court erred in concluding that the vice-principal lacked "reasonable grounds." The vice-principal's search of T.L.O.'s purse was a minimal invasion of her privacy.[15] This minimal affront to the student's institutionally limited privacy interest was a valid exercise of the vice-principal's authority to assure that the school regulation against smoking was not violated and to discipline T.L.O. if a violation had occurred. A teacher reported that T.L.O. had been smoking in the girls' restroom, in violation of a school regulation. When questioned by the school vice-principal, T.L.O. not only denied the offense, but asserted that she did not smoke at all. The vice-principal thereupon opened her purse and observed a package of cigarettes in plain view, thus revealing that T.L.O. had lied when she claimed that she did not smoke and further that T.L.O. was also probably untruthful when she denied violating the school regulation.

As T.L.O. voluntarily carried the purse and its contents into the highly regulated location of a public school, T.L.O. could have only a very limited expectation of

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[15] It is noted that the student's consent to the search of her purse in the present case may very well have constituted a valid consent search for Fourth Amendment purposes. *United States* v. *Mendenhall*, 446 *U.S.* 544 (1980); *Schneckloth* v. *Bustamonte*, 412 *U.S.* 218 (1973). Nevertheless, the New Jersey courts adhere to a higher standard for consent searches than that enunciated in the foregoing cases. *State* v. *Johnson*, 68 *N.J.* 349, 346 *A.*2d 66 (1975). Therefore, no argument in this regard was made at the state court level.

privacy in the contents of her purse. Hence, the intrusiveness of opening the purse to see the immediately visible contents was minimal. When contrasted with the broad supervisory authority of the school official to enforce school regulations, it is manifest that the action of the vice-principal was entirely reasonable, perhaps even essential to his duties. Once the cigarettes were removed, the drug paraphernalia was in plain view, thereby justifying a more complete search of the purse. That the New Jersey Supreme Court first described a standard of "reasonable grounds" and then proceeded to label this search improper under that standard, reveals either that the standard is too readily, and incorrectly, equated with that of probable cause or that the state court simply misapplied it.

Thus, we submit that a search within the school context is reasonable when the school official conducting the search can provide an articulable basis for the need to conduct a particular search. Where a school official has such a basis for believing that a student possesses evidence of illegal activity or of an activity which would interfere with school discipline and order, the school official has the right to conduct a search for such evidence. This standard will allow school officials to properly exercise their authority to discipline students and maintain an orderly learning environment.

To effectively manage students in the public school, a school official must be free to exercise his judgment "independently, forcefully, and in a manner best serving the long-term interest of the school and students." *Wood* v. *Strickland*, 420 *U.S.* 308, 320 (1975). The operation of each component of our educational system must depend on the experience and common sense of our school personnel. Where a school official believes it necessary or advisable in the exercise of his disciplinary duties to undertake

a search of a student, his judgment should be accorded great weight. For, indeed, our teachers are on the front-line in protecting our children from themselves and other students. Theirs is a formidable struggle to educate and develop the best in our youth, and teachers must be as unconstrained as possible in achieving this end.

CONCLUSION

For the foregoing reasons, the State of New Jersey urges this Court to rule that, under the facts and circumstances of this case, the assistant principal's search of respondent's purse did not violate the Fourth Amendment. Moreover, in reliance on the arguments made in the briefs previously filed by petitioner, we urge this Court to rule that the exclusionary rule is inapplicable to school searches performed by school administrators and teachers and, therefore, to reverse the decision of the New Jersey Supreme Court suppressing evidence.

Respectfully submitted,

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