NEW JERSEY V. T.L.O.

SUPREME COURT OF THE UNITED STATES
469 U.S. 325
January 15, 1985

OPINION: Justice WHITE…On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N.J., discovered **two girls smoking in a lavatory**. One of the two girls was the respondent, T.L.O., who at that time was a 14-year-old high school freshman. Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the Principal's office, where they met with Assistant Vice Principal Theodore Choplick. In response to questioning by Mr. Choplick, T.L.O.'s companion admitted that she had violated the rule. T.L.O., however, denied that she had been smoking in the lavatory and claimed that she did not smoke at all.

Mr. Choplick asked T.L.O. to come into his private office and **demanded** to see her **purse**. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T.L.O. as he accused her of having lied to him. As he reached into the purse for the cigarettes, Mr. Choplick also noticed a package of cigarette rolling papers. In his experience, possession of rolling papers by high school students was closely associated with the use of marihuana. Suspecting that a closer examination of the purse might yield further evidence of drug use, Mr. Choplick proceeded to search the purse thoroughly. The search revealed a small amount of **marihuana**, a **pipe**, a number of empty plastic **bags**, a substantial quantity of **money** in one-dollar bills, an index card that appeared to be a **list** of students who owed T.L.O. money, and **two letters** that implicated T.L.O. in marihuana dealing...

In determining whether the search at issue in this case violated the Fourth Amendment, **we are faced initially with the question whether that Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. We hold that it does**.

It is now beyond dispute that "the Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers." *Elkins v. United States; Mapp v. Ohio*[1]*; Wolf v. Colorado.* Equally indisputable is the proposition that the Fourteenth Amendment protects the rights of students against encroachment by public school officials…W*est Virginia v. Barnette*[2].

These two propositions…might appear sufficient to answer the suggestion that the Fourth Amendment does not proscribe unreasonable searches by school officials. On reargument, however, the State of New Jersey has argued that the history of the Fourth Amendment indicates that the Amendment was intended to regulate only searches and seizures carried out by **law enforcement officers**; accordingly, although public school officials are concededly state agents for purposes of the Fourteenth Amendment, the Fourth Amendment creates no rights enforceable against them.

It may well be true that the evil toward which the Fourth Amendment was primarily directed was the resurrection of the pre-Revolutionary practice of using general warrants or "writs of assistance" to authorize searches for contraband by officers of the Crown. But this Court has never limited the Amendment's prohibition on unreasonable searches and seizures to operations conducted by the police. Rather, the Court has long spoken of the Fourth Amendment's strictures as restraints imposed upon "governmental action"—that is, "upon the activities of sovereign authority." Accordingly, we have held the Fourth Amendment applicable to the activities of civil as well as criminal authorities: building inspectors *(Camara v. Municipal Court* (1967)), Occupational Safety and Health Act inspectors *(Marshall v. Barlow's Inc.* (1978)), and even firemen entering privately owned premises to battle a fire *(Michigan v. Tyler* (1978)), are all subject to the restraints imposed by the Fourth Amendment. As we observed in *Camara,* "[t]he basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions **by governmental officials.**" Because the individuals interest in privacy and personal security "suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards" *(Marshall v. Barlow's Inc.),* it would be "anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara.*

Notwithstanding the general applicability of the Fourth Amendment to the activities of civil authorities, a few courts have concluded that school officials are exempt from the dictates of the Fourth Amendment by virtue of the special nature of their authority over schoolchildren. Teachers and school administrators, it is said, act in loco parentis in their dealings with students: their authority is that of the parent, not the State, and is therefore not subject to the limits of the

[1] Case 4A-15 on this website.
[2] Case 1A-S-9 on this website.

Fourth Amendment…Today's public school officials do not merely exercise authority voluntarily conferred on them by individual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies…In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents' immunity from the strictures of the Fourth Amendment.

To hold that the Fourth Amendment applies to searches conducted by school authorities is only to begin the inquiry into the standards governing such searches. Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place. The determination of the standard of reasonableness governing any specific class of searches requires "balancing the need to search against the invasion which the search entails." *Camara.* On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order.

We have recognized that even a limited search of the person is a substantial invasion of privacy. *Terry v. Ohio*[3]. We have also recognized that searches of closed items of personal luggage are intrusions on protected privacy interests, for "the Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view." *United States v. Ross* (1982). A search of a child's person or of a closed purse or other bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy.

Of course, the Fourth Amendment does not protect subjective expectations of privacy that are unreasonable or otherwise "illegitimate." To receive the protection of the Fourth Amendment, an expectation of privacy must be one that society is "prepared to recognize as legitimate." The State of New Jersey has argued that because of the pervasive supervision to which children in the schools are necessarily subject, a child has virtually no legitimate expectation of privacy in articles of personal property "unnecessarily" carried into a school. This argument has two factual premises: (1) the fundamental incompatibility of expectations of privacy with the maintenance of a sound educational environment; and (2) the minimal interest of the child in bringing any items of personal property into the school. Both premises are severely flawed.

Although this Court may take notice of the difficulty of maintaining discipline in the public schools today, the situation is not so dire that students in the schools may claim no legitimate expectations of privacy. We have recently recognized that the need to maintain order in a prison is such that prisoners retain no legitimate expectations of privacy in their cells, but it goes almost without saying that "the prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration." *Ingraham v. Wright.* We are not yet ready to hold that the schools and the prisons need be equated for purposes of the Fourth Amendment.

[3] Case 4A-3 on this website.

This is a 1985 case. The Columbine High School massacre occurred in 1999. And, there have been numerous such incidents of violence in our schools ever since. Has the "situation" changed? Is it now more "dire"? How far is the Court "now ready" to go?

Nor does the State's suggestion that children have no legitimate need to bring personal property into the schools seem well anchored in reality. Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessaries of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries. Finally, students may have perfectly legitimate reasons to carry with them articles of property needed in connection with extracurricular or recreational activities. In short, schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds.

Against the child's interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems. Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult…Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.

How, then, should we strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place? It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools. Just as we have in other cases dispensed with the warrant requirement when "the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search," *Camara v. Municipal Court,* **we hold today that school officials need not obtain a warrant before searching a student who is under their authority.**

The school setting also requires some modification of the level of suspicion of illicit activity needed to justify a search. Ordinarily, a search—even one that may permissibly be carried out without a warrant—must be based upon "probable cause" to believe that a violation of the law has occurred. *Almeida-Sanchez v. United States* (1973); *Sibron v. New York* (1968). However, "probable cause" is not an irreducible requirement of a valid search. The fundamental command of the Fourth Amendment is that searches and seizures be reasonable, and although "both the concept of probable cause and the requirement of a warrant bear on the reasonableness of a

search,…in certain limited circumstances neither is required." *Almeida-Sanchez v. United States.* Thus, we have in a number of cases recognized the legality of searches and seizures based on suspicions that, although "reasonable," do not rise to the level of probable cause. *Terry v. Ohio.* Where a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause, we have not hesitated to adopt such a standard.

We…conclude that the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider "whether the…action was justified at its inception," *Terry v. Ohio;* second, one must determine whether the search as actually conducted "was reasonably related in scope to the circumstances which justified the interference in the first place." Under ordinary circumstances, a search of a student by a teacher or other school official will be "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

This standard will, we trust, neither unduly burden the efforts of school authorities to maintain order in their schools nor authorize unrestrained intrusions upon the privacy of schoolchildren. By focusing attention on the question of reasonableness, the standard will spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and **common sense**. At the same time, the reasonableness standard should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools…**Our review of the facts surrounding the search leads us to conclude that the search was in no sense unreasonable for Fourth Amendment purposes.**

The incident that gave rise to this case actually involved two separate searches, with the first—the search for cigarettes providing the suspicion that gave rise to the second, the search for marihuana. Although it is the fruits of the second search that are at issue here, the validity of the search for marihuana must depend on the reasonableness of the initial search for cigarettes, as there would have been no reason to suspect that T.L.O. possessed marihuana had the first search not taken place. Accordingly, it is to the search for cigarettes that we first turn our attention.

The New Jersey Supreme Court pointed to two grounds for its holding that the search for cigarettes was unreasonable. First, the court observed that possession of cigarettes was not in itself illegal or a violation of school rules. Because the contents of T.L.O.'s purse would therefore have "no direct bearing on the infraction" of which she was accused (smoking in a lavatory where smoking was prohibited), there was no reason to search her purse. Second, even assuming that a search of T.L.O.'s purse might under some circumstances be reasonable in light of the accusation made against T.L.O., the New Jersey court concluded that Mr. Choplick in this particular case had no reasonable grounds to suspect that T.L.O. had cigarettes in her purse. At best, according to the court, Mr. Choplick had "a good hunch."

Both these conclusions are implausible. T.L.O. had been accused of smoking, and had denied the accusation in the strongest possible terms when she stated that she did not smoke at all. Surely it cannot be said that under these circumstances, T.L.O.'s possession of cigarettes would be irrelevant to the charges against her or to her response to those charges. T.L.O.'s possession of cigarettes, once it was discovered, would both corroborate the report that she had been smoking and undermine the credibility of her defense to the charge of smoking. To be sure, the discovery of the cigarettes would not prove that T.L.O. had been smoking in the lavatory; nor would it, strictly speaking, necessarily be inconsistent with her claim that she did not smoke at all. But it is universally recognized that evidence, to be relevant to an inquiry, need not conclusively prove the ultimate fact in issue, but only have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." The relevance of T.L.O.'s possession of cigarettes to the question whether she had been smoking and to the credibility of her denial that she smoked supplied the necessary "nexus" between the item searched for and the infraction under investigation. Thus, if Mr. Choplick in fact had a reasonable suspicion that T.L.O. had cigarettes in her purse, the search was justified despite the fact that the cigarettes, if found, would constitute "mere evidence" of a violation.

Of course, the New Jersey Supreme Court also held that Mr. Choplick had no reasonable suspicion that the purse would contain cigarettes. This conclusion is puzzling. A teacher had reported that T.L.O. was smoking in the lavatory. Certainly this report gave Mr. Choplick reason to suspect that T.L.O. was carrying cigarettes with her; and if she did have cigarettes, her purse was the obvious place in which to find them. Mr. Choplick's suspicion that there were cigarettes in the purse was not an "inchoate and unparticularized suspicion or hunch," *Terry v. Ohio;* rather, it was the sort of "common-sense conclusion about human behavior" upon which "practical people"—including government officials—are entitled to rely. Of course, even if the teacher's report were true, T.L.O. might not have had a pack of cigarettes with her; she might have borrowed a cigarette from someone else or have been sharing a cigarette with another student. But the requirement of reasonable suspicion is not a requirement of absolute certainty: "sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment..." *Hill v. Caljfornia* (1971). Because the hypothesis that T.L.O. was carrying cigarettes in her purse was itself not unreasonable, it is irrelevant that other hypotheses were also consistent with the teacher's accusation. **Accordingly, it cannot be said that Mr. Choplick acted unreasonably when he examined T.L.O.'s purse to see if it contained cigarettes**.

Our conclusion that Mr. Choplick's decision to open T.L.O.'s purse was reasonable brings us to the question of the further search for marihuana once the pack of cigarettes was located. The suspicion upon which the search for marihuana was founded was provided when Mr. Choplick observed a package of rolling papers in the purse as he removed the pack of cigarettes. Although T.L.O. does not dispute the reasonableness of Mr. Choplick's belief that the rolling papers indicated the presence of marihuana, she does contend that the scope of the search Mr. Choplick conducted exceeded permissible bounds when he seized and read certain letters that implicated T.L.O. in drug dealing. This argument, too, is unpersuasive. The discovery of the rolling papers concededly gave rise to a reasonable suspicion that T.L.O. was carrying marihuana as well as cigarettes in her purse. This suspicion justified further exploration of T.L.O.'s purse, which turned up more evidence of drug-related activities: a pipe, a number of plastic bags of the type commonly used to store marihuana, a small quantity of marihuana, and a fairly substantial amount of money. Under these circumstances, it was not unreasonable to extend the search to a separate zippered compartment of the purse; and when a search of that compartment revealed an index card containing a list of "people who owe me money" as well as two letters, the inference that T.L.O. was involved in marihuana trafficking was substantial enough to justify Mr. Choplick in examining the letters to determine whether they contained any further evidence. **In short, we cannot conclude that the search for marihuana was unreasonable in any respect.**

Because the search resulting in the discovery of the evidence of marihuana dealing by T.L.O. was reasonable, the New Jersey Supreme Court's decision to exclude that evidence from T.L.O.'s juvenile delinquency proceedings on Fourth Amendment grounds was erroneous. Accordingly, the judgment of the Supreme Court of New Jersey is Reversed.

CONCURRENCE: Justice POWELL/O'CONNOR…I would place greater emphasis...on the special characteristics of elementary and secondary schools that make it unnecessary to afford students the same constitutional protections granted adults and juveniles in a nonschool setting.

In any realistic sense, students within the school environment have a lesser expectation of privacy than members of the population generally. They spend the school hours in close association with each other, both in the classroom and during recreation periods. The students in a particular class often know each other and their teachers quite well. Of necessity, teachers have a degree of familiarity with, and authority over, their students that is unparalleled except perhaps in the relationship between parent and child. It is simply unrealistic to think that students have the same subjective expectation of privacy as the population generally. But for purposes of deciding this case, I can assume that children in school—no less than adults—have privacy interests that society is prepared to recognize as legitimate...

In *Ingraham v. Wright,* we declined to extend the Eighth Amendment to prohibit the use of corporal punishment of schoolchildren as authorized by Florida law. We emphasized in that opinion that familiar constraints in the school, and also in the community, provide substantial protection against the violation of constitutional rights by school authorities. "[A]t the end of the school day, the child is invariably free to return home. Even while at school, the child brings with him the support of family and friends and is rarely apart from teachers and other pupils who may witness and protest any instances of mistreatment." The *Ingraham* Court further pointed out

that the "openness of the public school and its **supervision by the community** afford significant safeguards" against the violation of constitutional rights...

Finally, recognition that each community does supervise its own open school board. But, our citizens must have the knowledge of the constitution before they can govern effectively. That is what we are about!

The primary duty of school officials and teachers, as the Court states, is the education and training of young people. A State has a compelling interest in assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students. And apart from education, the school has the obligation to protect pupils from mistreatment by other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern. For me, it would be unreasonable and at odds with history to argue that the full panoply of constitutional rules applies with the same force and effect in the schoolhouse as it does in the enforcement of criminal laws. In sum, although I join the Court's opinion and its holding, my emphasis is somewhat different.

I'm just wondering. Will the Court ever recognize a constitutional right in parents and innocent students to be educated in a "crime-free drug-free" environment? Is there a point at which such a "right" trumps the "right" not to be subjected to an intrusive search?

CONCURRENCE: Justice BLACKMUN…The Court's implication that the balancing test is the rule rather than the exception is troubling for me because it is unnecessary in this case. The elementary and secondary school setting presents a special need for flexibility justifying a departure from the balance struck by the Framers. As Justice POWELL notes, "without first establishing discipline and maintaining order, teachers cannot begin to educate their students." Maintaining order in the classroom can be a difficult task. A single teacher often must watch over a large number of students, and, as any parent knows, children at certain ages are inclined to test the outer boundaries of acceptable conduct and to imitate the misbehavior of a peer if that misbehavior is not dealt with quickly. Every adult remembers from his own schooldays the havoc a water pistol or peashooter can wreak until it is taken away. Thus, the Court has recognized that "events calling for discipline are frequent occurrences and sometimes require immediate, effective action." Indeed, because drug use and possession of weapons have become increasingly common among young people, an immediate response frequently is required not just to maintain an environment conducive to learning, but to protect the very safety of students and school personnel.

Such immediate action obviously would not be possible if a teacher were required to secure a warrant before searching a student. Nor would it be possible if a teacher could not conduct a necessary search until the teacher thought there was probable cause for the search. A teacher has neither the training nor the day-to-day experience in the complexities of probable cause that a law enforcement officer possesses, and is ill-equipped to make a quick judgment about the existence of probable cause. The time required for a teacher to ask the questions or make the observations that are necessary to turn reasonable grounds into probable cause is time during

which the teacher, and other students, are diverted from the essential task of education. A teacher's focus is, and should be, on teaching and helping students, rather than on developing evidence against a particular troublemaker.

Education "is perhaps the most important function" of government and government has a heightened obligation to safeguard students whom it compels to attend school. The special need for an immediate response to behavior that threatens either the safety of schoolchildren and teachers or the educational process itself justifies the Court in excepting school searches from the warrant and probable-cause requirement, and in applying a standard determined by balancing the relevant interests. I agree with the standard the Court has announced, and with its application of the standard to the facts of this case. I therefore concur in its judgment.

CONCURRENCE/DISSENT: Justice BRENNAN/MARSHALL…Teachers, like all other government officials, must conform their conduct to the Fourth Amendment's protections of personal privacy and personal security. As Justice STEVENS points out, this principle is of particular importance when applied to schoolteachers, for children learn as much by example as by exposition. It would be incongruous and futile to charge teachers with the task of embuing their students with an understanding of our system of constitutional democracy, while at the same time immunizing those same teachers from the need to respect constitutional protections. *Board of Education v. Pico* (1982)[4] (plurality opinion); *West Virginia v. Barnette* (1943).

Pleeeeze! The key phrase is "constitutional protections." We have seen quite clearly that constitutional "rights" vary depending upon the circumstances of time, place and context. There is absolutely nothing incongruous with teaching a system of democracy that recognizes "**different rules for schools**."

I do not, however, otherwise join the Court's opinion. Today's decision sanctions school officials to conduct full-scale searches on a "reasonableness" standard whose only definite content is that it is not the same test as the "probable cause" standard found in the text of the Fourth Amendment. In adopting this unclear, unprecedented, and unnecessary departure from generally applicable Fourth Amendment standards, the Court carves out a broad exception to standards that this Court has developed over years of considering Fourth Amendment problems. Its decision is supported neither by precedent nor even by a fair application of the "balancing test" it proclaims in this very opinion...

I agree that schoolteachers or principals, when not acting as agents of law enforcement authorities, generally may conduct a search of their students' belongings without first obtaining a warrant. To agree with the Court on this point is to say that school searches may justifiably be held to that extent to constitute an exception to the Fourth Amendment's warrant requirement. Such an exception, however, is not to be justified, as the Court apparently holds, by assessing net social value through application of an unguided "balancing test" in which "the individual's legitimate expectations of privacy and personal security" are weighed against "the government's need for effective methods to deal with breaches of public order." The Warrant Clause is something more than an exhortation to this Court to maximize social welfare as we see fit. It requires that the authorities must obtain a warrant before conducting a full-scale search. The

[4] Case 1A-S-31 on this website.

undifferentiated governmental interest in law enforcement is insufficient to justify an exception to the warrant requirement. Rather, some special governmental interest beyond the need merely to apprehend lawbreakers is necessary to justify a categorical exception to the warrant requirement. For the most part, special governmental needs sufficient to override the warrant requirement flow from "exigency"—that is, from the press of time that makes obtaining a warrant either impossible or hopelessly infeasible. Only after finding an extraordinary governmental interest of this kind do we—or ought we—engage in a balancing test to determine if a warrant should nonetheless be required.

To require a showing of some extraordinary governmental interest before dispensing with the warrant requirement is not to undervalue society's need to apprehend violators of the criminal law. To be sure, forcing law enforcement personnel to obtain a warrant before engaging in a search will predictably deter the police from conducting some searches that they would otherwise like to conduct. But this is not an unintended result of the Fourth Amendments protection of privacy; rather, it is the very purpose for which the Amendment was thought necessary. Only where the governmental interests at stake exceed those implicated in any ordinary law enforcement context—that is, only where there is some extraordinary governmental interest involved—is it legitimate to engage in a balancing test to determine whether a warrant is indeed necessary.

In this case, such extraordinary governmental interests do exist and are sufficient to justify an exception to the warrant requirement. Students are necessarily confined for most of the schoolday in close proximity to each other and to the school staff. I agree with the Court that we can take judicial notice of the serious problems of drugs and violence that plague our schools. As Justice BLACKMUN notes, teachers must not merely "maintain an environment conducive to learning" among children who "are inclined to test the outer boundaries of acceptable conduct," but must also "protect the very safety of students and school personnel." A teacher or principal could neither carry out essential teaching functions nor adequately protect students' safety if required to wait for a warrant before conducting a necessary search.

I emphatically disagree with the Court's decision to cast aside the constitutional probable-cause standard when assessing the constitutional validity of a schoolhouse search...

Applying the constitutional probable-cause standard to the facts of this case, I would find that Mr. Choplick's search violated T.L.O.'s Fourth Amendment rights. After escorting T.L.O. into his private office, Mr. Choplick demanded to see her purse. He then opened the purse to find evidence of whether she had been smoking in the bathroom. When he opened the purse, he discovered the pack of cigarettes. At this point, his search for evidence of the smoking violation was complete...

At the point when the pack of cigarettes was found, Mr. Choplick no longer had probable cause to continue to rummage through T.L.O.'s purse. **Mr. Choplick's suspicion of marihuana possession at this time was based solely on the presence of the package of cigarette papers. The mere presence without more of such a staple item of commerce is insufficient to warrant a person of reasonable caution in inferring both that T.L.O. had violated the law by possessing marihuana and that evidence of that violation would be found in her purse.**

Just as a police officer could not obtain a warrant to search a home based solely on his claim that he had seen a package of cigarette papers in that home, Mr. Choplick was not entitled to search possibly the most private possessions of T.L.O. based on the mere presence of a package of cigarette papers. Therefore, the fruits of this illegal search must be excluded and the judgment of the New Jersey Supreme Court affirmed...

Staple item of commerce? Rolling papers? In a teenager's purse? At the high school? Oops! I guess we should all know that it is just as likely, if not more so, that a teenager would roll her own non-marihuana cigarettes as it is that she would roll her own marihuana cigarettes? Flag on the field! Real World Violation!

CONCURRENCE/DISSENT: Justice STEVENS/MARSHALL…Assistant Vice Principal Choplick searched T.L.O's purse for evidence that she was smoking in the girls' restroom. Because T.L.O.'s suspected misconduct was not illegal and **did not pose a serious threat to school discipline**, the New Jersey Supreme Court held that Choplick's search of her purse was an unreasonable invasion of her privacy and that the evidence which he seized could not be used.

I know there is plenty of room for disagreement, but I continue to have a serious problem with Justice Stevens determining for any school board "what is" and "what is not" a serious threat to school discipline. It would seem that a pervasive "in-your-face-I-will-smoke-when-and-where-I-want-to" attitude would, indeed, pose such a serious threat. Flag! Real world violation!

I fear that the concerns that motivated the Court's activism have produced a holding that will permit school administrators to search students suspected of violating only the most trivial school regulations and guidelines for behavior…The Court's standard for deciding whether a search is justified "at its inception" treats all violations of the rules of the school as though they were fungible. For the Court, a search for curlers and sunglasses in order to enforce the school dress code is apparently just as important as a search for evidence of heroin addiction or violent gang activity.

Does anyone really think that is a fair description of the Court's holding?

The majority, however, does not contend that school administrators have a compelling need to search students in order to achieve optimum enforcement of minor school regulations. To the contrary, when minor violations are involved, there is every indication that the informal school disciplinary process, with only minimum requirements of due process, can function effectively without the power to search for enough evidence to prove a criminal case. In arguing that teachers and school administrators need the power to search students based on a lessened standard, the United States as amicus curiae relies heavily on empirical evidence of a contemporary crisis of violence and unlawful behavior that is seriously undermining the process of education in American schools. A standard better attuned to this concern would permit teachers and school administrators to search a student when they have reason to believe that the search will uncover evidence that the student is violating the law or engaging in conduct that is seriously disruptive of school order, or the educational process.

This standard is properly directed at the sole justification for the [warrantless] search. In addition, a standard that varies the extent of the permissible intrusion with the gravity of the suspected offense is also more consistent with common-law experience and this Court's precedent. Criminal law has traditionally recognized a distinction between essentially regulatory offenses and serious violations of the peace, and graduated the response of the criminal justice system depending on the character of the violation. The application of a similar distinction in evaluating the reasonableness of warrantless searches and seizures "is not a novel idea." *Welsh v. Wisconsin* (1984).

In *Welsh*, police officers arrived at the scene of a traffic accident and obtained information indicating that the driver of the automobile involved was guilty of a first offense of driving while intoxicated—a civil violation with a maximum fine of $200. The driver had left the scene of the accident, and the officers followed the suspect to his home where they arrested him without a warrant. Absent exigent circumstances, the warrantless invasion of the home was a clear violation of *Payton v. New York* (1980). In holding that the warrantless arrest for the "noncriminal, traffic offense" in *Welsh* was unconstitutional, the Court noted that "application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense…has been committed."

The logic of distinguishing between minor and serious offenses in evaluating the reasonableness of school searches is almost too clear for argument. In order to justify the serious intrusion on the persons and privacy of young people that New Jersey asks this Court to approve, the State must identify "some real immediate and serious consequences." While school administrators have entirely legitimate reasons for adopting school regulations and guidelines for student behavior, the authorization of searches to enforce them "displays a shocking lack of all sense of proportion."

…Like the New Jersey Supreme Court, I would view this case differently if the Assistant Vice Principal had reason to believe T.L.O.'s purse contained evidence of criminal activity, or of an activity that would seriously disrupt school discipline. There was, however, absolutely no basis for any such assumption—not even a "hunch."

In this case, Mr. Choplick overreacted to what appeared to be nothing more than a minor infraction—a rule prohibiting smoking in the bathroom…It is, of course, true that he actually found evidence of serious wrongdoing by T.L.O., but no one claims that the prior search may be justified by his unexpected discovery. As far as the smoking infraction is concerned, the search for cigarettes merely tended to corroborate a teacher's eyewitness account of T.L.O.'s violation of a minor regulation designed to channel student smoking behavior into designated locations. Because this conduct was neither unlawful nor significantly disruptive of school order or the educational process, the invasion of privacy associated with the forcible opening of T.L.O.'s purse was entirely unjustified at its inception…The rule the Court adopts today is so open-ended that it may make the Fourth Amendment virtually meaningless in the school context. Although I agree that school administrators must have broad latitude to maintain order and discipline in our classrooms, that authority is not unlimited.

The schoolroom is the first opportunity most citizens have to experience the power of

government. Through it passes every citizen and public official, from schoolteachers to policemen and prison guards. The values they learn there, they take with them in life. One of our most cherished ideals is the one contained in the Fourth Amendment: that the government may not intrude on the personal privacy of its citizens without a warrant or compelling circumstance. The Court's decision today is a curious moral for the Nation's youth. Although the search of T.L.O.'s purse does not trouble today's majority, I submit that we are not dealing with "matters relatively trivial to the welfare of the Nation. There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution." *West Virginia v. Barnette. I* respectfully dissent.

To quote Justice Stevens, he believes that "The Court's decision today is a curious **moral** for the Nation's youth." Look, we are not dealing with the police coming into T.L.O.'s home and searching her purse. We are dealing with the very folks whom we charge with teaching good morals to our youth. On the contrary, it would appear that Justice Stevens would prefer a system that would have permitted T.L.O. to use the constitution to get away with (1) smoking in the bathroom, (2) lying to her vice-principal and (3) selling illegal drugs, to which I say, "If you had your way, Justice Stevens, your decision would be a curious **moral** for the Nation's youth." This is not that difficult. If you are going to do drugs, don't take them with you when boarding a plane. You are going to be searched. In like manner, don't take them with you when going to school. You might be searched if there is reason to suspect you are in violation of a school rule. For me, I think the Nation and the constitution is in much better hands with the majority than with Justice Stevens. Disagreement is welcome. Have at it!