Argument in the New Jersey v T.L.O. Search and Seizure Case

New Jersey:

We argue firstly that the Fourth Amendment should be held inapplicable (not relevant or appropriate) to school searches.

That amendment was intended as a deterrent to law enforcement officers and police officers, and was not intended to be used against private citizens or against those who act in loco parentis(in the place of a parent). We believe that school teachers do act in loco parentis. And we believe that the standard which should be applied to school searches should be lower than probable cause, and in fact should be a standard of reasonable suspicion.

Unidentified Justice: Are you saying that the school and the teachers and the authorities stand in the shoes of the parent?

Allan J. Nodes: Yes, at least as far as the supervision and welfare of the student is concerned. The school teachers and administrators ensure that the students arrive at school properly. They ensure that they behave while they are in school. They maintain discipline. If there is an injury or sickness, the school teacher or school administrator is the first person responsible for taking care of that. In many instances, a parent can't be contacted. The school makes the decision as to whether or not a doctor or a hospital will be called in. We do believe, again, that if the Fourth Amendment does apply, that a standard lower than probable cause is warranted, and I think that although the in loco parentis arguments would also have application here, and although I think it is apparent that students have a lesser expectation of privacy while attending a public school than they would have on the street, I believe that very simply the educational system cannot properly operate if teachers are required to abide by a probable cause standard.

T.L.O.:

There were a number of students in the girls' restroom, one of whom did candidly acknowledge that she was smoking.

I think that the inference that all of them possessed tobacco cigarettes, or in the alternative hypothetical that they all possessed marijuana in their purse would not be reasonable.

It may well have been, and may have been the case, that perhaps they were all passing one cigarette around, and no one possessed anything. The problem with the search conducted here is that even if the information had been that the student was seen tucking a package of cigarettes into her purse, there was no reason for the principal to locate and seize that package. But I think that the problem here is simply that the search was for something which was not against school rules to possess, was not illegal or contraband per se, and also had--

Unidentified Justice: Incidentally, Ms. DeJulio, I gather you don't agree with your colleague that even a probable cause standard would be satisfied here, assuming the applicability of the Fourth Amendment.

Lois De Julio: No, we do not believe that the information which the principal had satisfies even the lesser standard of reasonable grounds, and certainly the extent of the search went far beyond any scope that would be constitutionally permitted, even if he had arguably had reasonable grounds to open the purse.

The student is required by law to submit to the authority of teachers, so it would be doubtful that a student could realize that he could refuse, the fact that students are by law required to submit to the authority of a teacher is one of the most important reasons why school officials must be considered governmental action for Fourth Amendment purposes.

A private citizen could stop a child on the street, ask to see what he had in his pockets, and the child could say no, and walk away. But in the school context, the lawful authority, the teacher, the school administrator, can compel the student to submit to the intrusion of a search, and the student has no recourse but to submit. This is the type of governmental harassment which we submit the framers of the Fourth Amendment designed the Amendment to protect against.

In this particular case, we are talking about an infraction which was complete in itself.

To borrow Justice Marshall's example, if the student had been cursing in the hallway, the infraction is complete in itself.

There would be no basis to conduct a search because there is nothing that a search could contribute

Unidentified Justice: But here the girl denied that she had cigarettes.

Lois De Julio: --She denied that she smoked. And certainly the question of whether she smoked or not would not have been determined by the discovery or the failure to discover cigarettes in her purse. To take the opposite approach, if the principal had opened her purse and had not found a package of cigarettes, if he had found nothing in her purse, that would not have acquitted her of the infraction. It is not permitted for the police to go searching or to obtain a warrant when they have some amorphous (vague; ill-organized; unclassifiable) idea that there might be something that would be evidential. They cannot go into the house of a suspect and take away everything in the house on the theory that some of it might at some point prove evidential.

Supreme Court Decision:

*Held:*

1. “The Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials, and is not limited to searches carried out by law enforcement officers. Nor are school officials exempt from the Amendment's dictates by virtue of the special nature of their authority over schoolchildren. In carrying out searches and other functions pursuant to disciplinary policies mandated by state statutes, school officials act as representatives of the State, not merely as surrogates for the parents of students, and they cannot claim the parents immunity from the Fourth Amendment's strictures.

2. Schoolchildren have legitimate expectations of privacy.  But striking the balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject. Thus, school officials need not obtain a warrant before searching a student who is under their authority. Moreover, school officials need not be held subject 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.

3. Under the above standard, the search in this case was not unreasonable for Fourth Amendment purposes.”