

## **New Jersey v. T.L.O. / Excerpts from the Dissenting Opinions**

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### ***The following are excerpts from Justice Brennan’s opinion, concurring in part and dissenting in part:***

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.

Our holdings that probable cause is a prerequisite to a full-scale search are based on the relationship between the two Clauses of the Fourth Amendment. The first Clause (“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . .”) states the purpose of the Amendment and its coverage. The second Clause (“ . . . and no Warrants shall issue but upon probable cause . . .”) gives content to the word “unreasonable” in the first Clause.

For me, the finding that the Fourth Amendment applies, coupled with the observation that what is at issue is a full-scale search, is the end of the inquiry. But even if I believed that a “balancing test” appropriately replaces the judgment of the Framers of the Fourth Amendment, I would nonetheless object to the cursory and shortsighted “test” that the Court employs to justify its predictable weakening of Fourth Amendment protections.

As compared with the relative ease with which teachers can apply the probable-cause standard, the amorphous “reasonableness under all the circumstances” standard freshly coined by the Court today will likely spawn increased litigation and greater uncertainty among teachers and administrators.

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.

On my view of the case, we need not decide whether the initial search conducted by Mr. Choplick—the search for evidence of the smoking violation that was completed when Mr. Choplick found the pack of cigarettes—was valid. For Mr. Choplick at that point did not have probable cause to continue to rummage through T.L.O.’s purse . . . Therefore, the fruits of this illegal search must be excluded and the judgment of the New Jersey Supreme Court affirmed.

**The following are excerpts from Justice Steven’s opinion, concurring in part and dissenting in part:**

[T]he New Jersey court . . . reasoned that this Court’s cases have made it quite clear that the exclusionary rule is equally applicable “whether the public official who illegally obtained the evidence was a municipal inspector, a firefighter, or a school administrator or law enforcement official.” It correctly concluded “that if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings.”

Schools are places where we inculcate the values essential to the meaningful exercise of rights and responsibilities by a self-governing citizenry. If the Nation’s students can be convicted through the use of arbitrary methods destructive of personal liberty, they cannot help but feel that they have been dealt with unfairly. The application of the exclusionary rule in criminal proceedings arising from illegal school searches makes an important statement to young people that “our society attaches serious consequences to a violation of constitutional rights,” and that this is a principle of “liberty and justice for all.”

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.

In the view of the state court, there is a quite obvious and material difference between a search for evidence relating to violent or disruptive activity, and a search for evidence of a smoking rule violation. This distinction does not imply that a no-smoking rule is a matter of minor importance. Rather, like a rule that prohibits a student from being tardy, its occasional violation in a context that poses no threat of disrupting school order and discipline offers no reason to believe that an immediate search is necessary to avoid unlawful conduct, violence, or a serious impairment of the educational process.

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.”

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.”

I respectfully dissent.

### **Questions to Consider**

1. In Justice Brennan's dissent, what is his objection to the "reasonableness" standard used in the Court's majority opinion?
2. What does Justice Brennan say will be the likely result of using the "reasonableness" standard?
3. Why does Justice Brennan say the search of T.L.O.'s purse should have been ruled unconstitutional?
4. Justice Stevens says, "The application of the exclusionary rule in criminal proceedings arising from illegal school searches makes an important statement to young people that 'our society attaches serious consequences to a violation of constitutional rights,' and that this is a principle of 'liberty and justice for all.'" Do you agree or disagree?
5. Justice Stevens suggests an alternate standard for use in judging the legality of school searches. What is that standard? Do you think this standard would work better than the standard in the Court's majority opinion?
6. In his conclusion, Justice Stevens makes an argument that the Court's decision is a "curious moral for the Nation's youth." Do you agree or disagree with this argument? Why?
7. Did reading the separate opinions in this case change your opinion about the Court's decision? Explain.