

Supreme Court of the United States

NEW JERSEY

v.

T.L.O.

469 U.S. 325

Decided Jan. 15, 1985.

Justice WHITE delivered the opinion of the Court.

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.

Mr. Choplick notified T.L.O.'s mother and the police, and turned the evidence of drug dealing over to the police. At the request of the police, T.L.O.'s mother took her daughter to police headquarters, where T.L.O. confessed that she had been selling marihuana at the high school. On the basis of the confession and the evidence seized by Mr. Choplick, the State brought delinquency charges against T.L.O. in the Juvenile and Domestic Relations Court of Middlesex County. Contending that Mr. Choplick's search of her purse violated the Fourth Amendment, T.L.O. moved to suppress the evidence found in her purse as well as her confession, which, she argued, was tainted by the allegedly unlawful search. The Juvenile Court denied the motion to suppress.

* * * Having denied the motion to suppress, the court on March 23, 1981, found T.L.O. to be a delinquent and on January 8, 1982, sentenced her to a year's probation.

On appeal from the final judgment of the Juvenile Court, a divided Appellate Division affirmed the trial court's finding that there had been no Fourth Amendment violation * * * T.L.O. appealed the Fourth Amendment ruling, and the Supreme Court of New Jersey reversed the judgment of the Appellate Division and ordered the suppression of the evidence found in T.L.O.'s purse.

* * *

We granted the State of New Jersey's petition for certiorari. 464 U.S. 991, 104 S.Ct. 480, 78 L.Ed.2d 678 (1983).

* * *Having heard argument on the legality of the search of T.L.O.'s purse, we are satisfied that the search did

not violate the Fourth Amendment.

* * *

II

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.” Equally indisputable is the proposition that the Fourteenth Amendment protects the rights of students against encroachment by public school officials:

* * *

These two propositions—that the Fourth Amendment applies to the States through the Fourteenth Amendment, and that the actions of public school officials are subject to the limits placed on state action by the Fourteenth Amendment—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.^{FN4}

FN4. Cf. *Ingraham v. Wright*, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977) (holding that the Eighth Amendment's prohibition of cruel and unusual punishment applies only to punishments imposed after criminal convictions and hence does not apply to the punishment of schoolchildren by public school officials).

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, see *Camara v. Municipal Court*, 387 U.S. 523, 528, 87 S.Ct. 1727, 1730, 18 L.Ed.2d 930 (1967), Occupational Safety and Health Act inspectors, * * * and even firemen entering privately owned premises to battle a fire, * * * are all subject to the restraints imposed by the Fourth Amendment. As we observed in *Camara v. Municipal Court*, *supra*, “[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.” 387 U.S., at 528, 87 S.Ct., at 1730. Because the individual's 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.*, *supra*, 436 U.S., at 312-313, 98 S.Ct., at 1820, 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 v. Municipal Court*, *supra*, 387 U.S., at 530, 87 S.Ct., at 1732.

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 Fourth Amendment. * * *

Such reasoning is in tension with contemporary reality and the teachings of this Court. We have held school officials subject to the commands of the First Amendment, see *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), and the Due Process Clause of the Fourteenth Amendment * * * If school authorities are state actors for purposes of the constitutional guarantees of freedom of expression and due process, it is difficult to understand why they should be deemed to be exercising parental rather than public authority when conducting searches of their students. More generally, the Court has recognized that “the concept of parental delegation” as a source of school authority is not entirely “consonant with compulsory education laws.” *Ingraham v. Wright*, 430 U.S. 651, 662, 97 S.Ct. 1401, 1407, 51 L.Ed.2d 711 (1977). 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.

III

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 v. Municipal Court*, *supra*, 387 U.S., at 536-537. 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*, . 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*, 456 U.S. 798, 822-823. A search of a child's person or of a closed purse or other bag carried on her person,^{FN5} no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy.

FN5. We do not address the question, not presented by this case, whether a schoolchild has a legitimate expectation of privacy in lockers, desks, or other school property provided for the storage of school supplies. Nor do we express any opinion on the standards (if any) governing searches of such areas by school officials or by other public authorities acting at the request of school officials. * * *

Of course, the Fourth Amendment does not protect subjective expectations of privacy that are unreasonable or otherwise “illegitimate.” See, *e.g.*, *Hudson v. Palmer*, 468 U.S. 517. To receive the protection of the Fourth Amendment, an expectation of privacy must be one that society is “prepared to recognize as legitimate.” *Hudson v. Palmer*, *supra*, 468 U.S., at 526. 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 “[t]he prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration.” * * * We are not yet ready to hold that the schools and the prisons need be equated for purposes of the Fourth Amendment.

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 necessities 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. “Events calling for discipline are frequent occurrences and sometimes require immediate, effective action.” * * * 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*, 387 U.S., at 532-533, 87 S.Ct., at 1733, 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. * * * 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.” * * * 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. See, e.g., *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868. 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 join the majority of courts that have examined this issue in concluding 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*, 392 U.S., at 20, 88 S.Ct., at 1879; 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,” *ibid*. Under ordinary circumstances, a search of a student by a teacher or other school official ^{FN7} 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.^{FN8} 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.

FN7. We here consider only searches carried out by school authorities acting alone and on their own authority. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question.

FN8. We do not decide whether individualized suspicion is an essential element of the reasonableness standard we adopt for searches by school authorities. * * *

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.

IV

There remains the question of the legality of the search in this case. We recognize that the “reasonable grounds” standard applied by the New Jersey Supreme Court in its consideration of this question is not substantially different from the standard that we have adopted today. Nonetheless, we believe that the New Jersey court's application of that standard to strike down the search of T.L.O.'s purse reflects a somewhat crabbed notion of reasonableness. 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." Fed.Rule Evid. 401. 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. *Ibid.*

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*, 392 U.S., at 27, 88 S.Ct., at 1883; rather, it was the sort of "common-sense conclusio[n] 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" * * * 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.^{FN12}

FN12. T.L.O. contends that even if it was reasonable for Mr. Choplick to open her purse to look for cigarettes, it was not reasonable for him to reach in and take the cigarettes out of her purse once he found them. Had he not removed the cigarettes from the purse, she asserts, he would not have observed the rolling papers that suggested the presence of marihuana, and the search for marihuana could not have taken place. T.L.O.'s argument is based on the fact that the cigarettes were not "contraband," as no school rule forbade her to have them. Thus, according to T.L.O., the cigarettes were not subject to seizure or confiscation by school authorities, and Mr. Choplick was not entitled to take them out of T.L.O.'s purse regardless of whether he was entitled to peer into the purse to see if they were there. Such hairsplitting argumentation has no place in an inquiry addressed to the issue of reasonableness. If Mr. Choplick could permissibly search T.L.O.'s purse for cigarettes, it hardly seems reasonable to suggest that his natural reaction to finding them-picking them up-could be a constitutional violation. We find that neither in opening the purse nor in reaching into it to remove the cigarettes did Mr. Choplick violate the Fourth Amendment.

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.

Justice POWELL, with whom Justice O'CONNOR joins, concurring [omitted].

Justice BRENNAN, with whom Justice MARSHALL joins, concurring in part and dissenting in part.

I fully agree with Part II of the Court's opinion. Teachers, like all other government officials, must conform their conduct to the Fourth Amendment's protections of personal privacy and personal security. * * * [T]his 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 imbuing 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.

* * *

Assistant Vice Principal Choplick's thorough excavation of T.L.O.'s purse was undoubtedly a serious intrusion on her privacy. Unlike the searches in *Terry v. Ohio*, * * * the search at issue here encompassed a detailed and minute examination of respondent's pocketbook, in which the contents of private papers and letters were thoroughly scrutinized.^{FN1} Wisely, neither petitioner nor the Court today attempts to justify the search of T.L.O.'s pocketbook as a minimally intrusive search in the *Terry* line. To be faithful to the Court's settled doctrine, the inquiry therefore must focus on the warrant and probable-cause requirements.

FN1. A purse typically contains items of highly personal nature. Especially for shy or sensitive adolescents, it could prove extremely embarrassing for a teacher or principal to rummage through its contents, which could include notes from friends, fragments of love poems, caricatures of school authorities, and items of personal hygiene.

A

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 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.

* * *

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.” *Ante*, at 750. 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.

B

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. The Court’s decision jettisons the probable-cause standard—the only standard that finds support in the text of the Fourth Amendment—on the basis of its Rohrschach-like “balancing test.” Use of such a “balancing test” to determine the standard for evaluating the validity of a full-scale search represents a sizable innovation in Fourth Amendment analysis. This innovation finds support neither in precedent nor policy and portends a dangerous weakening of the purpose of the Fourth Amendment to protect the privacy and security of our citizens. Moreover, even if this Court’s historic understanding of the Fourth Amendment were mistaken and a balancing test of some kind were appropriate, any such test that gave adequate weight to the privacy and security interests protected by the Fourth Amendment would not reach the preordained result the Court’s conclusory analysis reaches today. Therefore, because I believe that the balancing test used by the Court today is flawed both in its inception and in its execution, I respectfully dissent.

* * *

2

I * * * do not accept the majority’s premise that “[t]o hold that the Fourth Amendment applies to searches conducted by school authorities is only to begin the inquiry into the standards governing such searches.” 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. In particular, the test employed by the Court vastly overstates the social costs that a probable-cause standard entails and, though it plausibly articulates the serious privacy interests at stake, inexplicably fails to accord them adequate weight in striking the balance.

* * *

A legitimate balancing test whose function was something more substantial than reaching a predetermined conclusion acceptable to this Court’s impressions of what authority teachers need would therefore reach rather a different result than that reached by the Court today. On one side of the balance would be the costs of applying

traditional Fourth Amendment standards—the “practical” and “flexible” probable-cause standard where a full-scale intrusion is sought, a lesser standard in situations where the intrusion is much less severe and the need for greater authority compelling. Whatever costs were toted up on this side would have to be discounted by the costs of applying an unprecedented and ill-defined “reasonableness under all the circumstances” test that will leave teachers and administrators uncertain as to their authority and will encourage excessive fact-based litigation.

On the other side of the balance would be the serious privacy interests of the student, interests that the Court admirably articulates in its opinion, *ante*, at 741-742, but which the Court's new ambiguous standard places in serious jeopardy. I have no doubt that a fair assessment of the two sides of the balance would necessarily reach the same conclusion that, as I have argued above, the Fourth Amendment's language compels—that school searches like that conducted in this case are valid only if supported by probable cause.

II

Applying the constitutional probable-cause standard to the facts of this case, I would find that Mr. Choplick's search violated**757 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.

Mr. Choplick then noticed, below the cigarettes, a pack of cigarette rolling papers. Believing that such papers were “associated,” see *ante*, at 737, with the use of marihuana, he proceeded to conduct a detailed examination of the contents of her purse, in which he found some marihuana, a pipe, some money, an index card, and some private letters indicating that T.L.O. had sold marihuana to other students. The State sought to introduce this latter material in evidence at a criminal proceeding, and the issue before the Court is whether it should have been suppressed.

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. 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 *369 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.

* * *

Justice STEVENS, with whom Justice MARSHALL joins, and with whom Justice BRENNAN joins as to Part I, concurring in part and dissenting in part. (omitted)

Daily Camera

Student privacy murky in tech world

Rules unclear on whether Monarch had right to search phones

By Amy Bounds

Sunday, October 14, 2007

Public-school students can have their lockers searched, be sent home for wearing a shirt that promotes drugs and have an article in a school-sponsored newspaper or yearbook censored, but constitutional limits when it comes to the privacy of technology — such as cell phones — are murkier.

All that's required for a school administrator to search a car or backpack is "reasonable suspicion" that the student is breaking the law or even a school rule.

"It's false to say you have zero privacy in school, but it's accurate to say you have very little privacy," said Paul Ohm, a University of Colorado law professor. "Courts are really willing to be very forgiving of the steps school administrators take to maintain school safety and school security."

But while the courts typically have sided with schools, students don't give up all their rights when they walk through the school doors.

A school can't force students to stand and recite the Pledge of Allegiance or search every student's backpack just in case one might contain drugs or a weapon. Students also are allowed to wear clothing that makes a political statement — as long as it doesn't cause a disruption — and enjoy more freedom of speech with "underground" publications.

However, there are fewer court decisions on privacy rights involving electronic or Web-based technology to provide direction to schools. A complaint against Louisville's Monarch High School is raising the issue of the privacy of student cell-phone text messages.

"Until we have a court case that says a school has crossed the line, it's hard to say where the line is," Ohm said.

The American Civil Liberties Union last week accused administrators at Monarch High of violating state law and the Fourth Amendment by seizing students' cell phones, reading their text messages and making transcripts.

Boulder Valley technology policies

The Boulder Valley School District doesn't have a policy prohibiting cell-phone use in class, instead leaving that decision up to individual schools. Generally, most Boulder Valley high schools require cell phones to be turned off during class but allow them to be used during lunch, free periods and in the halls.

A new technology-use agreement for students says that "a school may temporarily hold (pending parental or same-day pick up) personal technology resources that are used inappropriately. Individual schools may

choose to have additional rules and regulations pertaining to the use of personal, networked and communications resources in their respective buildings."

But there is no policy that addresses whether schools can read text messages on confiscated phones.

The ACLU of Colorado sent a letter Wednesday to the Boulder Valley school board demanding changes after at least 13 students reported having their cell phones taken and their text messages read at the end of last school year. Parents of those students contacted the civil rights group following the seizures.

'I'm pretty mad'

Chris Wolny, an 18-year-old Monarch High senior, is one of the students whose cell phone was taken. He said the main student involved, a sophomore, sent him a text message asking if he knew where to get marijuana. Though he said his reply was "no," Wolny said he was still called to the office.

When asked for his cell phone, Wolny said he handed it over and an assistant principal began reading through his text messages. He said he asked if that was legal, but the assistant principal didn't respond and didn't explain why she was looking through his phone.

"They typed up all the messages I wrote," he said. "They took my phone for a week-and-a-half to two weeks. They kept saying I was under investigation."

He said he was suspended for three days for drug-related activity on school grounds, though he said he replied "no" to several messages from students asking him about getting marijuana.

"I'm pretty mad," he said. "They went through messages that were private."

Martha McCarthy, an educational law and policy professor at Indiana University and author of "Public School Law: Teachers' and Students' Rights," said it appears the school crossed a line by reading text messages.

"It's OK to confiscate and hold a cell phone," she said. "To search it, you would need to have reasonable suspicion that the student is doing something unlawful or breaking a school rule."

What the ACLU says happened

The American Civil Liberties Union gives the following details of the cell-phone confiscation allegations at Monarch High School:

On May 24, a school security officer brought a sophomore to see Assistant Principal Drew Adams because the student was suspected of breaking two school rules — being in a prohibited parking lot and smoking cigarettes.

Adams took the student's cell phone, calling it a "distraction," and later told the student he had read text messages that made some "incriminating" mentions of marijuana.

The student's mother learned Adams had written down text messages from her son's phone, and when she asked for the phone back, she said Adams insisted on keeping it over the Memorial Day weekend.

When the phone eventually was returned, the student's mother discovered Adams had sent messages to her son's friends, posing as the student.

After the first phone was taken, other student phones were seized, and more teens were interrogated.

CU's Ohm said it will come down to the reason school administrators give for reading the text messages. So far, the school district has not provided Monarch High's version of the incident.

"Courts measure the reason for versus the invasion of the search," he said. "If this was really about smoking in the parking lot, it seems like a stretch to say you need to read messages on a phone."

But, he said, it's possible the school will provide a more narrowly defined reason.

As for allegations that a school administrator sent messages from a student's cell phone to other students posing as the phone's owner, he said the school is on shakier ground.

"From an ethical point of view, that seems much harder to defend," he said.

Boulder Valley officials said they support Monarch and its administrators, noting that the administrators contacted the district's legal counsel before confiscating student cell phones and transcribing text messages.

But, Boulder Valley spokesman Briggs Gamblin said, the district is reviewing the incident.

School board members who responded to a request for their position on the cell-phone issue — Helayne Jones, Teresa Steele, Lesley Smith and Patti Smith — all said they don't have enough information yet to take a position. But, they said, they're willing to review their policies once the district's investigation is complete.

"I'm just going to wait until we're done investigating it and have everything before us," Patti Smith said.

Freedom of speech at schools

Professor McCarthy said recent court decisions have upheld the right of schools to discipline students for what they post online — if there's a connection to the school. Threatening a teacher or other students on a MySpace page, for example, can get a student in trouble.

She said schools also have "a lot of latitude" in censoring school-sponsored publications, needing only to show that the material is inconsistent with the school's educational mission. But to censor an "underground" student paper or a blog, the material needs to have a negative effect on the school, she said.

Courts generally have rejected student challenges to school dress codes, she said, if the school can provide an educational reason such as reducing gang activity.

Less clear is when students wear clothing that expresses religious beliefs, but those beliefs are contrary to school goals. For example, she said, a court recently agreed with a school that didn't allow a student to wear a shirt proclaiming homosexuality as a sin. The school argued it wanted to prevent harassment of other students.