Student search and seizure since TLO

Darryl Craig Wyatt

University of Nevada, Las Vegas
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STUDENT SEARCH AND SEIZURE

SINCE T.L.O

by

Darryl C. Wyatt

Bachelor of Science
University of Nevada, Las Vegas
1984

Master of Education
University of Nevada, Las Vegas
1994

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of the requirement for the

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ABSTRACT

Student Search and Seizure Since T.L.O.

by

Darryl C. Wyatt

Dr. Gerald C. Kops, Examining Committee Chair
Professor of Educational Leadership
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When students in public schools are searched or seized by school officials for any reason, it can sometimes be a violation of their Fourth Amendment right to be free from unreasonable searches and seizures. Two United States Supreme Court decisions—New Jersey v. T.L.O., 469 U.S. 325 (1985), and Vemonia v. Acton, 515 U.S. 646 (1995), have addressed student searches. T.L.O. dealt with the search of a student’s purse after she was caught breaking a school rule, smoking in the bathroom. Vernonia established ground rules for dealing with drug-testing policies in the school environment. In both cases the Supreme Court supported the authority of the school. The United States Supreme Court has recognized that public schools are unique environments and cannot operate effectively using the same standards as other government entities. T.L.O., the earliest of the two and heavily quoted from, spoke to the issue of what guidelines need to be followed when conducting a search of a student. Vernonia, has provided schools and school districts with guidance with respect to drug-testing policies.
Courts have not been consistent with their rulings when dealing with drug-testing policies. This has resulted in rulings that often raise more questions than are answered. One case recently accepted by the United States Supreme Court for review, Earls v. Tecumseh School District, 242 F. 3d 1264, also deals with a drug-testing policy in a public school. School officials are hopeful that the decision the Supreme Court renders in that case will clarify any current misconceptions and lead to more consistent rulings. This study has targeted student search and seizure. In reviewing case law dealing with this topic, the study reports how the various federal courts have interpreted the T.L.O. landmark case over the past 17 years. The study investigates possible patterns in the court’s rulings that provide guidance for today’s school administrators. This study can be used as a guide for future policy making with respect to searches and seizures of students in public schools.
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DEDICATION

This dissertation is dedicated in loving memory of my father, Leonard Walter Wyatt Sr., who inspired me more than I was ever able to tell him.
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The arduous task of completing a dissertation requires the support and assistance of many people. There are always family members and friends that must endure the stresses and frustrations of such a monumental endeavor. I would like to thank the people who have stood by me and have encouraged my many hours of dedicated effort.

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CHAPTER 1

INTRODUCTION

School officials all over the country have faced the difficult task of trying to keep school children safe. The primary legal concept that determined the student-public school relationship, doctrine of ‘in loco parentis’, placed school officials “ in the shoes of a reasonable and prudent parent” (Kops, 1998). Before 1969, it was this doctrine that formed the basis for reviewing student discipline invoked by school administrators. In 1969 the Supreme Court determined that public school students possessed limited constitutional rights in the school setting. Freedom of speech was protected in Tinker v Des Moines School District, 393 U.S. 503 (1969), and due process was protected in Goss v. Lopez, 419 U.S. 565 (1975). The United States Supreme Court ruling in New Jersey v. T.L.O, 469 U.S. 325 (1985) concluded that the Fourth Amendment of the United States Constitution was applicable to searches of students by public school administrators.

Incidents in Jonesboro, Arkansas, and Littleton, Colorado, have made communities aware and concerned with respect to school safety. School administrators have an obligation to protect the students for which they are responsible. Nearly every day newspapers and televisions across the country report random acts of violence in our nation’s schools. These terrifying and frightening incidents have a devastating and long-lasting impact on both students and staff. When threats of violence exist students and
Educators become more vulnerable and the learning process is disrupted (Burke & Herbert, 1996).

Violence in schools harms children in different ways. “The most devastating psychological effect of violence in students’ lives is that it shrinks and distorts their ability to participate in the implied promise of future benefits for school work done today” (Friedlander, pg. 11, 1993). These innocent victims need to be protected. When violence destroys their ability to foresee a decent future, it takes away their motivation and their ability to prepare for it (Friedlander, 1993).

Public concern about school safety is well documented in many national studies. A weapon in school is one concern that especially worries parents. Parents realize the serious threat that weapons in school pose to their children. Just as importantly, parents and educators both know that a safe environment is a critical factor in the teaching/learning equation. The public is insisting that schools incorporate effective means to prevent students from possessing instruments that are capable of harming or killing other students (Hooker, 1995). This may include more searches of lockers, personal effects, and students.

According to a U.S. News & World Report article, a survey that they conducted indicated the crime that most Americans worried about was the bringing of guns to school by students (“Guns of October”, 1996). Students need to be able to feel safe while at school. Attendance improves when school violence declines and students feel safer. (Fiester et al., 1996).

Janet Reno indicated in an interview with NEA Today that youth violence was the single greatest crime problem in America (1997). Caudle (1994), a high school principal,
indicated that all schools are subject to violence and the key to solving the problem at her school was prevention. The problem is expected to grow significantly over the next decade. Reno said, "Unless we get control of youth violence, it can become a much more difficult problem" (NEA Today, 1997). Administrators and teachers are faced with this gloomy reality and must find solutions. Reno contended that educators must be a major part of the solution (NEA Today, 1997).

There are more metal detectors in place now than ever before. Schools employ more security personnel today than in the past. Yet, despite these security-based measures violent acts continue to occur with increased frequency in our public schools (Friedland, 1999). According to the first annual School Safety Report (1998) by the U.S. Department of Education and the Justice Department more than 6,000 students were expelled from school in 1997 for possession of a weapon or for making threatening statements.

During the 1988 legislative session, 28 states introduced school safety legislation (Halford, 1998). The proposals covered a wide range from prevention to punishment. Some proposals never survived committee. Some states that were not willing to wait on the federal government took it upon themselves to create their own measures. Kentucky House Bill 330 established a state center for school safety to research violence prevention efforts and to then disseminate results to school districts (Halford, 1998).

President Clinton had shown that he was passionate about finding a solution to solve this problem. In a summit meeting in October 1997 he encouraged school decision-makers to support curfews, school uniforms, and to crack down on truancy (Halford, 1998). While relevant change takes time, many school districts have now begun to take action to the rise in schoolyard violence incidents.
Nevada is not immune from the problems facing school campuses all across the country. With respect to the Clark County school District, the largest school district in the state and the sixth largest in the country, violence and safety issues can be seen throughout the district. High Schools, Middle Schools and Elementary Schools in Clark County all experience situations that involve the safety of the school’s student population. As the number of students has continued to rise, so have the number of police incidents within the Clark County School District. Incidents had increased by double-digit percentages between 1996 and 2001. According to statistics taken from logs of cases submitted to investigators for processing (8/12/99), matters concerning the safety of students have grown at alarming rates. During the 1998-99 school year there were 667 incidents throughout the district that involved the possession of guns, knives, or drugs. These statistics indicate a need by administrators to be able to take whatever measures necessary to protect the student population of the school they are responsible for.

Lawmakers in Nevada addressed the issue of school violence in the 1999 legislative session. Two bills emerged that are intended to have significant impact on public schools in the state of Nevada. Bills AB14 and AB521 were passed by legislatures in 1999 and signed by Governor Guinn into law. The first bill, AB14, related to students who were continually disruptive to the educational setting. The bill prescribed the conditions under which a pupil shall be deemed suspended from school. In addition, it required schools to notify parents before pupils are deemed habitual disciplinary problems. Per the bill, schools are charged with the responsibility for developing a plan to handle students who are continually disruptive. Teachers now have gained the authority to refuse to admit severely disruptive students into their classroom. These students must be accounted for in
some way, and some person needs to be responsible for them. The next bill, AB 521, related to the authorization to create alternative programs of education for students labeled habitual discipline problems. Superintendents were mandated to create pilot programs to teach students that were unable to be educated in a general school setting. In addition to providing the funding for such a program, the bill also outlined guidelines that the superintendent must follow.

What steps should be taken to combat violence in schools? Most commonly someone will say metal detectors is what our schools need. Metal detectors have now been installed at many secondary schools. According to Halford (1998), "recent research on the effectiveness of high-tech school safety measures, including metal detectors and surveillance cameras, finds these approaches to be only marginally helpful in most settings.

Coben, Weiss, Mulvey, and Dearwater indicated almost three million crimes occur on or near campuses each year. In addition, an estimated 430,000 students took something to school to protect themselves from harm or attack at least once during a six-month period in 1988-1989 (U.S. Dept. of Justice, 1991). A survey of high school students conducted in 1987 indicated 48% of tenth grade boys and 34% of eighth grade boys said they could get a handgun if they wanted one. In 1990, one in 25 high school students carried guns to school, and nationally, over 400,000 students were victims of violent crime during a six-month period (American School Health Association, 1989). A 1993 national survey on the opinions and experiences of American teachers found that 11% of public school teachers and 23% of students reported being victims in or around their school (Metropolitan Life, 1993).
Fiester, Nathanson, Visser, and Martin (1996) reported that every year 16,000 violent incidents take place each school day, that is one every six seconds. In addition, ten American teen-agers are killed in gun accidents, suicides, or homicides each day (National School Safety Center, 1993). In the four-year time span between 1987 and 1991 juvenile arrests for murder increased by 85 percent (National School Boards Association, 1993). It has been reported that 160,000 students skip class each school day due to their fear of physical harm (Follman, 1993).

According to Buckner and Flanery (1996), elementary school students committed violent incidents that accounted for one-fourth of all suspensions from schools nationally. In incidents that involved guns on school property, sixty-three percent of the time junior high school students were involved; twelve percent involved elementary school children; and one percent involved pre-schoolers (National School Board Association, 1993). Statistics from a 1993 study by the U.S. Justice Department revealed that 150,000 students carried guns to school each day. Persons under the age of 18 accounted for nearly one-fifth of all violent crime in America in 1995—murders, rapes, robberies, and aggravated assaults. The number of youths arrested for these crimes was 86 percent higher than the number arrested five years earlier when there were a million more youngsters in this age group ( "Crime in the United States", 1993).

These alarming statistics alert us to the fact that the possibility of violence in classrooms throughout the United States has increased dramatically. Some young people believe that carrying a firearm is a symbol of status among their peers. The fear of being gunned down should be the furthest thing from the minds of students sitting in class trying to focus on their schoolwork. Even the nation's best students are negatively
affected when the concentration of academic learning is interrupted through fear and concern for personal safety.

When school administrators deal with violence or acts of disruption, they must be careful not to trample the rights of students. That leaves school officials wondering how far they can go to protect the student population from harm without violating the rights' of the students. What legal consequences can school officials face when they fail to act when injury results from serious misconduct? Essex (1999) wrote, “School officials have a moral and legal duty to preserve the safety and well-being of all students, while not trampling on the constitutional rights of students involved in disruptive behavior.” Have courts allowed school leaders broad discretion in dealing with students whose behavior poses a threat to the safety and well-being of others? This question is extremely relevant, especially in school environments that had been inundated with incidents of violence or serious acts of misconduct (Essex, 1999). School officials must always remember to act responsibly. “They must resist the temptation to act too aggressively when the situation does not warrant such a response” (Essex, p. 18, 1999).

The rash of violent deaths in our schools in recent years has focused the country’s attention on the issue of weapons on schools campuses and just how safe are our schools. No one can absolutely ensure that major acts of violence will not occur on school grounds. However, school officials must do whatever is necessary to try and protect the children they are responsible for.

In recent years, there have been at least five planned shootings by students in U.S. public schools and one incident in a private school in which more than three people were shot. Beyond the loss of life trauma that accompanies such violent acts, the fear that is
imposed on students and educators is tremendous. If weapons or the fear of weapons are present in the school environment, teachers are unable to teach the way they should and the ability of the students to learn is adversely affected. There are a seemingly endless variety of inexpensive and readily available disguised weapons, including knives manufactured to look like such innocent items as ballpoint pens, lipstick cases, hairbrushes and jewelry. In order to keep the schools safe, school officials must uncover these objects before they cause serious harm. It appears that the more the media reports these horrific acts of violence, the more the seed is planted in the unstable minds of individuals. Administrators must not only be ready and willing to act, they must also understand the limit of their authority.

An August 1998 article in *The Police Chief* identified specific counter measures that needed to be done to combat school violence. The screening measures included; random locker checks, surprise metal detector inspections of purses and bookbags, visual screening techniques, searches of public areas for hidden weapons, surveillance of students entering and exiting campus, locker checks using gun or bomb detecting dogs, and a full aggressive search when a weapon tip is received. These types of preventive measures could be helpful in preventing violent incidents at schools. Would school officials be within their authority according to the courts if they tried these actions?

It is known that most school-age children are law abiding, while a small percentage of offenders create havoc. These serious, habitual violators make up 6 percent of all juveniles and 18 percent of all delinquent youth. They are responsible for 62 percent of all offenses and 66 percent of all violent offenses (Bernard, 1995). How do school officials identify and then deal with these individuals? What is the scope of
administrators legal capacity to take preventive measures in order to protect the integrity of the school, and keep all students safe?

The task of keeping students safe is a challenging one. Administrators must find ways to protect students while at school, and make sure that the constitutional rights of the students are not violated in the process. School leaders have attempted various ways to keep their schools safe and secure. Installation of video cameras, heightened security, metal detectors, and locker searches are a few examples of what administrators have tried in order to protect the students they are responsible for. When making decisions about what measures to take, administrators must remember to not violate the Fourth Amendment right of the students. School officials must constantly be cognizant of how the laws of the land impact the decisions they make for the benefit of the children in their school.

The standard for school search was set in 1985 when the United States Supreme Court ruled on New Jersey v. T.L.O 469 U.S. 325. This case involved the search of a high school student's purse by a school administrator. The vice principal had reason to believe the student had violated a school rule. Through the course of the search some incriminating items were discovered. The student was arrested and the search was challenged as a violation of T.L.O.'s Fourth Amendment protection. School leaders are allowed to search students based on "reasonable suspicion", not "probable cause". Moreover, the actions of school officials are valid as long as they are "reasonable" (Bernard, 1995). The Supreme Court case of New Jersey v. T.L.O ruled that school officials needed individual suspicion before searching students and the search be reasonable in scope. A two-part test decided if a school search was reasonable. The
search must be "justified at its inception", and "reasonably related in scope to its initial justification." Reasonable actions are based on suspicion that the learning environment is threatened (Bernard, 1995). Looking at what is given up in the search and measuring that against what is gained assesses the reasonableness of the search. The text of the Fourth Amendment protects against "unreasonable" searches.

This study will view search and seizure of students from different perspectives. As cases are reviewed in this study a great deal of data will be provided for the reader.

Statement of Problem

It has been 17 years since the United States Supreme Court decided that the Fourth Amendment was applicable to school searches. The ruling in T.L.O. (1985) set a standard that has guided school officials when conducting searches. It is important to now look at what has transpired in the federal court system since that ruling. It is time to assess the current status of the T.L.O. precedent and review application of the precedent to school searches challenged since T.L.O. was rendered. It is that information that will provide the much needed guidance to school officials who are responsible for determining policies and rules that are intended to keep their students safe and free from harm.

Research Questions

During the review of the decisions that dealt with search and seizure of public school students since T.L.O. (1985), this study sought answers to the following questions:

1. How has T.L.O. been interpreted and applied?
   A. What is meant by "reasonable suspicion" as referred to in T.L.O.?
B. Does the “reasonable suspicion” standard articulated in T.L.O apply to school police?

C. Has the Court’s interpretation of T.L.O changed over time? What is the current status of school search jurisprudence?

D. What guidelines should school officials’ follow regarding the search of students?

2. What, if any, impact does the Nevada State Constitution forbidding unreasonable search and seizures have on school searches?

Rationale

School officials must take appropriate action to ensure that school campuses are safe learning environments. The rules of procedure for conducting searches of students permit greater freedom of action for the school official because the objectives are quite different. Preservation of the school environment is seen as requiring a more immediate response because the risk of delay could cause catastrophic results. School discipline is thus unique in that it can be adapted to implement policies that are independent of the more generic concerns of local law enforcement agencies.

Since *T.L.O v. New Jersey* was decided in 1985 many other cases have required the application of the T.L.O precedent regarding search and seizure. Each day school administrators must balance the concerns of school safety with the constitutional rights of students. Administrators must be provided with appropriate and relevant guidance regarding school searches. Knowledge of case law will help the school official be better prepared to make tough decisions in challenging situations.
School administrators in Nevada are not exempt from problems that are facing school officials in other parts of the country. This study serves as an informational tool for administrators who are seeking answers to student search questions or contemplating the implementation of policy regarding student search in some form. School Board officials, Superintendents, Legislators, and other school authorities are able to review the information provided in this document and decide if a policy that they are considering implementing is a venture that they want to initiate at their school or schools. They are now able to look at the legal facts that are involved and then make a more informed decision. This study examined legal facts that were related to the many different types of searches involving public school children. It now becomes a tool for administrators to use in order to make quality decisions regarding search and seizure issues involving students.

**Definition of Terms**

**Common law:** 1. The body of law derived from judicial decisions, rather than from statutes or constitutions. 2. The body of law based on the English legal system, as distinct from a civil-law system. 3. General law common to the country as a whole, as opposed to special law that has only local application. *Black's law dictionary* (7th ed., 1999).

**Federal circuit court:** A court usually having jurisdiction over several counties, districts, or states, and holding sessions in all those areas. *Black's law dictionary* (7th ed., 1999).


Probable cause: A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. Under the Fourth Amendment, probable cause -- which amounts to more than a bare suspicion but less than evidence that would justify a conviction -- must be shown before an arrest warrant or search warrant may be issued. -- Also termed reasonable cause; sufficient cause; reasonable grounds. Black's law dictionary (7th ed., 1999).


Reasonable suspicion: A particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity. A police officer must have a reasonable suspicion to stop a person in a public place. Black's law dictionary (7th ed., 1999).

Search: n. 1. An examination of a person's body, property, or other area that the person would reasonably be expected to consider as private, conducted by a law-enforcement officer for the purpose of finding evidence of a crime. Because the Fourth Amendment prohibits unreasonable searches (as well as seizures), a search cannot ordinarily be conducted without a probable cause. Black's law dictionary (7th ed., 1999).

Seizure: The act or an instance of taking possession of a person or property by legal right or process, especially, in constitutional law, a confiscation or arrest that may

**Strip Search**: A search of a person conducted after that person’s clothes have been removed, the purpose usually being to find any contraband the person might be hiding. *Black’s law dictionary* (7th ed., 1999).

**Limitations**

When reviewing this study, readers should consider the following limitations:

1. The entire opinion of the courts’ was not included. The details present are case briefs that are included as part of the data used for this study.

2. The author is a public school administrator. While every attempt was made to create this document free of bias, some bias may exist.

3. Scholarly comments was limited to law reviews.

4. Inquiry for the study was limited to case law.

**Delimitations**

When reviewing the contents of this study the reader must keep in mind the following delimitations:

1. This study examined cases that were decided in federal courts. Many state constitutions guarantee the same rights that are being questioned.

2. Only cases that were completed and accessible prior to June 5, 2001 were included in this study.
Significance of the Study

There is a conflict between what administrators need to do (protect students), and what they can legally do (student’s rights). For many years the doctrine of in loco parentis shielded administrators from legal disputes. In loco parentis, which requires school officials to act as responsible parents would act, has not been a viable defense in recent court cases. We know “that students do not shed their constitutional rights at the schoolhouse gate” Tinker v. Des Moines, 393 U.S. 503 (1969). Administrators must find middle ground between providing a safe environment and not violating a student’s constitutional rights.

With so much information needed to make qualified decisions, a document that provides facts based on legal research can be very useful. A thorough search revealed that there was no current document that had been published or available that contains that valuable data. This study is a guide to assist school officials when dealing with searches at school. The absence of such a tool prior to this study made this study significant.

School leaders must have a firm foundation from which quality decisions can be made regarding student search. In order for that foundation to be secure, administrators need to know what has happened since T.L.O. was decided. Without information regarding prior decisions, school officials will be forced to make decisions and implement policies to protect students without the benefit of much needed data. This document serves as a guide with examples of cases over the past 17 years and how the various federal courts have ruled in search and seizure cases. This document was needed to provide a tool for administrators when they are forced to make crucial decisions that involved the safety and security of a school and it’s students.
Summary

School violence has become a common occurrence throughout our nation. School officials are faced with the tough challenge of protecting the children that attend our public schools. Statistics indicated that students were bringing weapons to school at an alarming rate, and parents had great concern and fear for their child's safety while at school. It is difficult for a child to focus and learn when they are concerned for their safety.

Administrators need to have the authority to take precautions to prevent acts of violence and destruction. They must not be restricted in their attempts to protect students. Preventive measures could include different options, some of which may be seen as an infringement on the rights of the students. Locker searches, use of metal detectors, vehicle searches, and drug tests are occurring more often.

Administrators need to have guidance as to what is and is not permissible. The United States Supreme Court by way of New Jersey v. T.L.O. 469 U.S. 325 (1985) set the standard for what is acceptable regarding Fourth Amendment rights of students. Since that case was decided 17 years ago, it was time now to see how the federal courts have ruled since then regarding school searches.

This study reviewed many different cases that involved search and seizure. The cases were analyzed in-depth. School leaders are now provided with a document that indicates what has happened since the T.L.O. ruling. Administrators will be able to use the information presented in this study as a guide for planning and implementing policy designed to protect students at school, while being careful not to violate the Fourth Amendment right of those same students.
CHAPTER 2

REVIEW OF THE CASE LAW AND LITERATURE

When examining the history of student searches in public school it was important to begin with the document that is the foundation for the laws of the United States of America, The United States Constitution. Supreme Court Justices must review the United States Constitution when determining if a person's rights have been violated. The Constitution is the legal document that guarantees the rights of the people in the United States. As policies are created throughout our country and laws are made they must not contradict the United States Constitution. The Supreme Court Justices are assigned the task of determining the outcome of a case when a person believes that one or more of their constitutional rights have been violated.

Origins of the Fourth Amendment

In 1791 the Bill of Rights was adopted as part of the United States Constitution. The Bill of Rights contained ten amendments that stipulated specific rights that must be guaranteed. The Fourth Amendment covered the issue of search and seizure. It is rich with historical background rooted in American, as well as English experience. The Fourth Amendment is the one procedural safeguard in the Constitution that directly grew from the events that preceded the Revolutionary War (LaFave, 1996). Those that created the Fourth Amendment to the constitution designed the amendment to safeguard the privacy
and security of private individuals against arbitrary invasions by government officials by protecting reasonable expectations of privacy (Zane, 1987).

The struggle began in England where the authority to search was used as a way to restrict freedom of the press. Greater protection was sought due to the inappropriate searches conducted by the English government. The people of England were encouraged by Parliament leaders who sought restrictions from “general warrant” searches (LaFave, 1996).

In the colonies across the Atlantic from England, important developments were occurring. In an attempt to uncover smuggled goods, custom officials used writ of assistance to enter and search buildings. James Otis, Jr. represented 63 Boston merchants in 1761 to fight for justice. He opposed the issuance of writs in court. While he was unsuccessful in his bid, his message was heard and had an impact on John Adams. John Adams was a participant at the Constitutional Convention in 1787.

The draft constitution did not contain a bill of rights, which caused considerable opposition to the document’s ratification. “One of the points emphasized in the ratification debates was the need for a provision dealing with searches” (LaFave, 1996, p.5). National criticism persuaded President Washington that the addition of a bill of rights was needed. James Madison became the sponsor of the movement in Congress. After some discussion over the language regarding searches and warrants, the committee draft was complete. The Fourth Amendment reads as follows:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and
particularly describing the place to be searched, and the persons or things to be seized (LaFave, 1996).

Early Case Law

For nearly one hundred years the Fourth Amendment remained an unexplored item. It was not until 1886, when the case of Boyd v. United States, 116 US 616 became the first United States Supreme Court case to examine search and seizure issues. Justice Goldberg indicated in his opinion in One 1958 Plymouth Sedan v. Commonwealth of Penn., 380 US 693 (1965), that the Supreme Court acknowledged Boyd v. United States, as the leading case on the subject of search and seizure. The case involved action brought forth by the federal government for the forfeiture of goods believed to be illegally imported by New York merchants George and Edward Boyd. The district judge in the case forced the Boyds to produce documentation showing the quantity and value of some of the goods. Under protest, the Boyds complied with the judge’s orders, and the jury ruled for the government and items seized by custom officials were forfeited. The case went to trial and the jury ruled in favor of the government. The Supreme Court granted certiorari and for the first time was asked to decide an issue that involved the violation of the Fourth Amendment. The Supreme Court deemed the decision by the circuit court erroneous in allowing the seizure of the merchandise. The lower courts decision was reversed and a new trial was ordered.

Justice Miller, who wrote an opinion in concurrence with the ruling, indicated that it was the Fourth Amendment of the Constitution that grants protection from unreasonable
searches and seizures. Justice Miller voiced what he felt was the intentions of those individuals that created the Constitution:

While the framers of the Constitution had their attention drawn, no doubt, to the abuses of this power of searching private houses and seizing private papers, as practice in England, it is obvious that they only intended to restrain the abuse, while they did not abolish the power. Hence it is only unreasonable searches and seizures that are forbidden, and the means of securing this protection was by abolishing searches under warrants, which were called general warrants, because they authorized searches in any place, for any thing (p.614).

Public Schools and the Constitution

Prior to 1967, courts generally did not recognize the fact that students possessed constitutional rights (Zane, 1987). The Supreme Court looked to end that notion in Tinker v. Des Moines Independent School District, 393 U.S. 503 (1969). The Supreme Court concluded that students were persons under the Constitution in school and out of school and therefore deserved the Constitution’s protection. Prior to T.L.O., some courts held that the Fourth Amendment does not apply to school officials because these school leaders act in a private capacity (Zane, 1987). It was believed that since school administrators act in a private capacity no state action exists to trigger the Fourth Amendment protection.

Due to the doctrine of in loco parentis, school officials had the responsibility to act as a reasonable and prudent parent would when dealing with matters that involve students. In court cases that questioned whether or not school administrators violated students’
constitutional rights, lawyers for school leaders often referred to the doctrine of in loco parentis. Lawyers would indicate that the constitution protects society from government agencies and school officials were not considered agents of the state. In the 1960's, it became more prevalent for parents, on behalf of their minor children, to challenge school officials in court when they felt their child's rights were violated. In Tinker, 393 U.S. 503 (1969), the United States Supreme Court made a landmark ruling regarding the constitutional rights of students.

In 1969, the United States Supreme Court made a landmark ruling regarding constitutional rights of students. The Supreme Court determined the constitution applicable to school settings. The ruling in Tinker v. Des Moines School District, 393 U.S. 503 (1969), made administrators aware of the fact that students retain their constitutional rights when at school. The case involved high school students who wore armbands to school and were suspended for violating school policy. The students wore the armbands in protest of actions surrounding the Vietnam War. School officials considered their action justified against the symbolic protest to prevent disturbance at school. After an evidentiary hearing the district court dismissed the complaint on the grounds the school worked within the guidelines of the constitution to avoid disturbance of school discipline. The appellate court affirmed. The United States Supreme Court granted certiorari.

The Supreme Court justices were asked to determine if school officials violated the Free Speech Clause of the First Amendment when they suspended the students for their symbolic protest. The decision was a 5-4 ruling in favor of the students. Justice Fortas, who wrote the opinion of the court, indicated that the school authorities appeared to have
based their decision on the desire to avoid controversy. There were no disturbances at the school that were caused by the wearing of these armbands. If a state agent wishes to prohibit a particular expression of opinion there must be substantial justification. In order for school authorities to restrict students' freedom of expression, as they did when they banned the wearing of armbands, they needed to be able to forecast substantial disruption of or material interference with school activities. Despite the fact the armbands were banned to prevent disruption to the school environment, the Justices did not believe school leaders had any viable reason for the ban. This case was significant for school leaders because they learned from the ruling and the opinion of Justice Fortas that students do not shed their constitutional rights at the schoolhouse gate. Justice Black wrote a strong dissent in which he indicated the ruling diminished the authority of school leaders.

The Tinker ruling had significant impact on how cases involving constitutional rights of students were decided. The United States Supreme Court as well as Federal and State Courts were asked to determine if school administrators violated constitutional rights of students. Courts were asked to balance the doctrine of in loco parentis with the guaranteed rights of students. In order to have a foundation and understand of the legal facts involving search and seizure, it is important to see how federal and state courts ruled when asked to render a decision regarding constitutional rights of students.

In 1975, the issue of the constitutional rights of students was once again before the United States Supreme Court. The Supreme Court Justices were asked to decide if the Fourteenth Amendment applied to school discipline. The Due Process Clause of the Fourteenth Amendment was reviewed in Goss v. Lopez, 419 U.S. 565 (1975). An Ohio
statute empowered the principal of an Ohio public school to suspend a pupil for misconduct for up to 10 days or to expel him; in either case the principal must notify the student's parents within 24 hours and state the reasons for his action.

After being suspended from school, students filed action claiming they were removed from their educational setting without a hearing, which was a violation of the due process clause of the Fourteenth Amendment. In an opinion by Justice White, it was held that the Ohio statute, insofar as it permitted up to 10 days' suspension without notice or hearing, either before or after the suspension, violated the due process clause.

The next time the United States Supreme Court reviewed a student constitutional right case was in 1977. The Justices heard a case that involved the Eighth Amendment in the school setting. The matter of Ingraham v. Wright, 430 U.S. 651 (1977), concerned two students who brought suit against their school for violating their Eighth Amendment right. The students were paddled at school by administrators and contended that the paddling was cruel and unusual punishment. The court ruled that the Eighth Amendment prohibition against cruel and unusual punishment was inapplicable to school paddlings. This case marked the third time that the Supreme Court had ruled on cases involving the constitutional rights of students. This was the first ruling that supported the position of school administration.

**Federal Search Cases Prior to Supreme Court Review**

In Picha v. Wielgos, 410 F. Supp. 1214 (1976), a high school girl brought civil action against a school principal after she was searched for drugs. The principal received a phone call that led him to believe three of his students possessed drugs. He contacted the
police and the girls were searched. No drugs were found. Renee Picha, one of the girls searched, filed suit against the school officials and the police officers on the theory that in the course of the incident her civil rights were violated. The fact that Illinois and many other states had statutes that confer upon school officials the status of in loco parentis regarding their students was raised. Illinois held that this status created certain advantages for school officials regarding the standard of common law tort intent, which must be applied in litigation brought against them by students. In this respect, Illinois equates the nature of tort liability of teachers exactly with the common law tort liability that parents may have toward their children. The court ruled that the in loco parentis authority of school officials cannot transcend constitutional rights. Since the search was conducted at the request of police officers, probable cause was needed. There was no probable cause present, so school officials did conduct a search that violated Picha's civil right.

One year later another federal case involving student search and seizure was heard in Illinois. M.R.S. v. Board of Education Ball-Chatham Community Unit School District No. 5, 429 F. Supp. 288 (1977), involved a student that sued his school district because of a search he was subjected to. A high school administrator was approached by several students and advised that plaintiff and two other subjects were exchanging drugs during study hall. The next day school officials escorted the plaintiff and the two other subjects to a nearby kitchen area to be searched. The plaintiff was asked by one school official to empty his pockets, which he eventually did. Drugs and drug paraphernalia were discovered when plaintiff emptied his pockets. The student's parents were notified and he was suspended for ten days and subsequently expelled from school. The plaintiff brought action against school officials and the school board. He claimed that the search conducted
by the school administrator violated his civil right and cited *Picha v. Wielgos* as precedent. The court indicated that the student's right to be free from unreasonable search and seizure must be balanced with the necessity for school officials to be able to maintain order and discipline in their schools and to fulfill their duties under the in loco parentis doctrine. This case differed from *Picha v. Wielgos* because police officers were not involved in the search so a lesser standard of suspicion applied. In addition the intrusion was slight, requiring the plaintiff to merely empty his pockets. The judge ruled that the search was reasonable.

*Zamora v. Pomeroy*, 639 F 2d 662, (1981), involved the use of drug-sniffing dogs to search lockers for drugs. A student by the name of Vidal Zamora had his high school locker searched without a warrant after a police dog detected the scent of drugs. Marijuana was found in the locker and the boy was suspended and sent to an alternative school to complete the current school year. Despite the fact that no criminal action was taken in this case, Zamora filed suit claiming that the search of his locker violated his Fourth Amendment right. The Tenth Circuit Appellate Court ruled the school had maintained joint custody of the locker and had the right and perhaps the duty to inspect lockers. As seen in other search cases, the doctrine of in loco parentis was reviewed by the court. Justice Doyle, in writing the opinion, indicated that in loco parentis expands the authority to school officials, even to the extent that it may conflict with the rules set forth in the Fourth Amendment.

A drug and alcohol problem in Goose Creek Independent School District in the state of Texas prompted school officials to institute a policy that included having a security service bring dogs to school campuses and randomly check students’ person, vehicles,
and lockers. Many times students would be incorrectly identified by the dogs as being in possession of drugs or alcohol. An action was brought by a group of students that sought to have the school district discontinue the searches. *Horton v. Goose Creek Independent School District*, 690 F 2d 470 (1982), was appealed to the Fifth Circuit Court of Appeals when the plaintiffs were unsuccessful in getting the district court to force the school district to ban the searches. The appellate court ruled that the searches of the students violated their constitutional protection but the searches of lockers and vehicles did not.

The case of *Bilbrey v. Brown*, 738 F 2d 1462 (1982), takes place in the Ninth Circuit, which is relevant to cases in Nevada since that is the circuit that Nevada is in. A bus driver told the school principal that she believed Bilbrey was carrying drugs. The fifth grade student was strip searched by the principal and a teacher who were looking for the drugs. There were no drugs found on the student. The student, through his parents, sued for being subjected to an illegal search. The district court ruled that the search was illegal, but the jury found the administrator and teacher had immunity from monetary damages. The trial court concluded that students are protected by the Fourth Amendment while at school. In addition, school officials need at least reasonable cause to search yet they do not need a warrant as long as the school is acting to preserve the integrity of the educational environment. While it was decided that reasonable cause to search did not exist, it was believed that the search was conducted in good faith so monetary damages were not awarded. The appellate court held that the decision to declare the search violated the student's constitutional rights was correct. However, the appellate court reversed the decision of the jury to not grant monetary damages. That part of the decision
was remanded back to the district court with instructions for a new trial. Court costs were also awarded in favor of the student.

State Courts' Application of Fourth Amendment to School Searches

In the 1967 case of State of New York v. Overton, 301 N.Y.S. 2d 479, a high school administrator, acting on the request of local law enforcement, opened the locker of a student. The locker contained marijuana cigarettes. A motion was filed to suppress the evidence, claiming it was obtained illegally. The trial court denied the motion. The appellate court disagreed stating the search violated the students' protection under the Fourth Amendment. The New York Supreme Court reversed the appellate decision indicating that reasonable suspicion did exist for a search to be conducted.

New York v. Overton, (1967) raised the issue of constitutional rights of students. The court was asked to determine if the school administrator violated the student's constitutional rights when he searched the locker. The ruling was in favor of the school administrator. The court reasoned that the Board of Education, through Dr. Panitz (school administrator), retained dominion over the use of the lockers and therefore the search was legal. The search of the defendant's locker was good because the principal who had general control of the school premises "consented" to the search. This case is significant because it is an indication that student lockers are deemed property of the Board of Education and students are not guaranteed a right of privacy when using them.

A second case involving the constitutional rights of students took place in California. In the 1969 case of Mercer v. Donaldson, 269 C.A. 2d 509, the vice-principal of a high school, acting on a tip, conducted a warrantless search of a student's locker. The school
administrator found marijuana during the search. The student contended that the search was illegal and the marijuana should not be considered evidence due to the unlawful search and seizure.

The court was asked to decide if the school administrator acted unlawfully when he conducted a search for drugs without a warrant. The court ruled in favor of the vice-principal. The court held that the vice-principal stands in loco parentis and has joint control over the locker and also is a private person. This case was significant due to the fact it reinforced the doctrine of in loco parentis and ruled that school officials are not government agents.

A case that was decided a short time after Tinker involved a search of a student where marijuana was uncovered. In Mercer v. State of Texas, 450 SW 2d 715 (1970), a high school principal acted on a tip that a student possessed marijuana. The principal was able to convince the student to empty his pockets. The youth later claimed that the evidence was obtained through an illegal search. The court ruled that the administrator acted in loco parentis and the search was not illegal.

The following year a search and seizure case was brought before the Superior Court of Delaware. In the case of Delaware v. Baccino, 282 A 2d 869 (1971), a high school vice principal took a jacket from a student and conducted a search for contraband. The student was known to use and sell drugs. The jacket contained a sizable amount of illegal drugs so the police were notified. The student was arrested and claimed that his jacket was illegally searched. The youth considered the school administrator a state agent and concluded that probable cause was needed to conduct a search of his jacket. The court ruled that the administrator was not a state agent. The vice principal acted in loco parentis.
so probable cause was not necessary. The court indicated that the school official did have reasonable suspicion to search and the search was declared legal.

The case of Beckley v. Christopher, 29 C.A. 3d 777 (1973), once again raised the issue of in loco parentis. This was an appeals case that originated in juvenile court. A school administrator received a tip that a school locker contained drugs. Upon opening the locker a bag of marijuana was found. The student was temporarily suspended and the matter was turned over to local law enforcement. The student was able to return to school after a day and a half and received a sentence from juvenile court. The juvenile court case was appealed on the basis that the search was illegal. The court indicated that the constitution was not the only factor affecting the activities of school personnel. While the Constitution imposes a limit on their power, the doctrine of in loco parentis expands their authority. In his opinion, Justice Caldecott indicated that high school personnel are not government officials for purposes of the constitutional rules regulating police conduct. The court indicated that the appropriate test for searches by high school officials was two-pronged. The first requirement was that the search be within the scope of the school official's duties. The second requirement was that the action taken be reasonable under the facts and circumstances of the case. Although in loco parentis applied, the Fourth Amendment limits the power to acts that meet the above requirements. The court indicated that the search was legal.

In a 1974 case New York v. Scott, 358 N.Y.S. 2d 403, a high school student was searched by a teacher and found to possess illegal substances. The student had been under suspicion for about six months for possibly dealing drugs. One morning a teacher noticed the student acting suspiciously. The student was searched and later arrested for drug
possession. It was believed the evidence against him should be suppressed on the grounds that the search was illegal. The motion to suppress was denied by the lower court yet reversed by the appellate court. The lower court advised that public school authorities have special responsibilities, and therefore correspondingly broad powers, to control the school precincts in order to protect the students in their charge. In reversing the lower court's denial to suppress evidence the appellate court indicated that in exercising their authority and performing their duties, public school teachers act not as private individuals but are agents of the state. In order for arbitrary power to be avoided school officials must have minimal basis for conducting a search. The court emphasized the undue risk of psychological harm was great if a school administrator searched a child unjustly.

In 1975, three state courts reviewed cases involving the constitutional rights of students. In the matter of Doe v. New Mexico, 88 NM 347 (1975), a student in possession of marijuana thought evidence against him should be suppressed because the search by the principal without a warrant was illegal. The court ruled that school officials were considered state agents. Thus, the standard that was adopted was that school officials may conduct a search of a student's person if they have reasonable suspicion that a crime is being or has been committed or they have reasonable cause to believe that the search is necessary in the aid of maintaining school discipline.

In the 1975 Michigan court case of People v. Ward, 62 Mich 46, a student suspected of selling drugs at school was summoned to the principal's office. In the presence of the principal and other school officials, including a security officer, the student was asked to empty his pockets, which he did. During the search a bottle of pills was revealed so the police was notified. The student requested that the pills be suppressed as evidence due to
an unlawful search and seizure. The trial court denied the motion to suppress the evidence and the appellate court affirmed that decision. The court held that students do have substantive and procedural rights while at school. The court further indicated that the law of search and seizure, as applied to law enforcement agencies, does not apply to Michigan's school system. It was noted that school officials stand in a unique position with respect to their students. They possess many of the powers and responsibilities of parents, which enable them to control conduct in their schools. At times, the powers and responsibilities regarding discipline and the maintenance of an educational atmosphere may conflict with fundamental constitutional safeguards. A student cannot be subjected to an unreasonable search and seizure. In striking a balance, the court adopted a "reasonable suspicion" standard.

State v. Young, 234 GA 488 (1975), was a case about a high school student who was searched by a school administrator and found to possess marijuana. The assistant principal's reasoning for conducting the search was because he saw a student with Young try to hide something. He searched all the students and only Young possessed drugs. Young asked that the evidence against him be suppressed because the search was illegal. The suppression of evidence motion was denied and the student confessed to the drug possession charge. The case proceeded to the appellate court were the denial of the motion to suppress evidence was reversed. The opinion of the court was that the school official acted in a law enforcement capacity. In doing so, he would have needed probable cause to justify the search. The court ruled that a search of three students simply because one student acts in a suspicious manner is unreasonable.
The case of *State v. Young* (1975) showed how the protection once offered to school administrators by way of in loco parentis had eroded over time. More and more states viewed school officials as state agents. In this particular case, unlike most other cases reviewed, school leaders were held to the same probable cause standard for searches as law enforcement officers. The doctrine of in loco parentis was no longer considered a defense for violating a student's constitutional right.

In the case *State of Florida v. D.T.W.*, 425 So. 2d 1383 (1983), drug paraphernalia and marijuana was uncovered in a student's vehicle while an aide to the dean was patrolling the parking lot. The aide noticed a partially covered object, which he believed to be a bong, in D.T.W.'s car. The aide realized that a bong is typically associated with drug use and the car was parked on school property so the dean was notified. The dean summoned the student and asked him if he could search his car. The student eventually turned his keys over to the dean and a search uncovered a bong and some marijuana cigarettes. D.T.W. filed a motion in district court to suppress the evidence based on an unreasonable search and seizure. The lower court indicated that a reasonable suspicion needed to be present to search and a broad search of a parking lot does not meet that standard, therefore, the motion was granted. The State of Florida appealed the decision of the motion to the appeals court of Florida. The appellate court agreed with the lower court on the reasonable suspicion standard that was needed for a school official to conduct a search, but found the search of the parking lot and the student's car was reasonable. The order granted to suppress the evidence was reversed and the case was remanded for further proceedings consistent with the opinion of the appellate court.
When deciding whether a search of a student was constitutional, federal and state courts routinely applied the standard of reasonable suspicion. This standard is less than the probable cause standard needed by law enforcement. We have seen that when law enforcement officials are present with school leaders during a search, the probable cause standard is applicable. School officials have been deemed state agents and students are protected by the Constitution while at school. The in loco parentis doctrine was not considered a viable defense when violating a student's Fourth Amendment right. The Florida appellate court indicated in State of Florida v. D.T.W., (1983), that it was the doctrine of in loco parentis that allowed school personnel to conduct searches using the lesser standard. Despite the many state and federal cases involving search and seizure of students, the United States Supreme Court did not review the issue until 1985 when they heard New Jersey v. T.L.O. 469 U.S. 325.

Supreme Court Addresses Fourth Amendment Application to Public School Setting

With respect to searches directed at students at educational institutions, New Jersey v. T.L.O. (1985) was the landmark United States Supreme Court case that set the precedent and standard for school searches of students. Prior to 1985, school officials operated under the doctrine of in loco parentis and did not consider their status to be a government agency. This allowed them to handle matters as a reasonable parent would handle them without regards for the child's constitutional rights. Then in 1969 things began to change, when the United States Supreme Court advised school officials that students "do not shed their constitutional rights at the schoolhouse gate" Tinker v. Des Moines 393 U.S. 503.

FACTS

A New Jersey high school teacher discovered a 14-year old freshman and her companion smoking cigarettes in the school lavatory. Smoking in the lavatory was a violation of a school rule so the two girls were brought to the Principal's office. The girls met with Mr. Choplick, an assistant principal at the high school. When questioned by Mr. Choplick one girl admitted violating the school rule by smoking in the lavatory, but the other girl (T.L.O.) denied the allegations against her and said she did not smoke at all. The administrator then demanded to see T.L.O.'s purse. Once the purse was opened he found evidence that she had been untruthful to him. Mr. Choplick found a pack of cigarettes and noticed a package of cigarette rolling papers that are commonly associated with marijuana use. He then proceeded to do a thorough search of the purse. Mr. Choplick uncovered marijuana, a pipe, plastic bags, a fairly substantial amount of money, and two letters that implicated T.L.O. in drug dealing. After notifying T.L.O.'s mother, Mr. Choplick contacted the police and turned over the evidence to them. Thereafter, the State brought delinquency charges against T.L.O. A New Jersey juvenile court admitted the evidence discovered in delinquency proceedings against the student. The respondent filed a motion to suppress the evidence claiming the search by Mr. Choplick violated her right to be protected against unreasonable searches and seizures.

The Juvenile Court held that the Fourth Amendment applied to searches by school officials but that the search in questions was a reasonable one. The court determined that school leaders may properly conduct a search of a student's person if the official has a reasonable suspicion to believe that a crime has been or is being committed, or
reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policy. In finding that the search was reasonable the motion to suppress the evidence was denied and subsequently T.L.O. was adjudged to be delinquent.

The ruling of the juvenile court was appealed. A divided appellate division affirmed the trial court's findings that there had been no Fourth Amendment violation, but vacated the adjudication of delinquency and remanded for a determination of whether T.L.O. had knowingly and voluntarily waived her Fifth Amendment rights before confessing.

The appellate court confirmed that the Fourth Amendment applied to searches conducted by school officials and the New Jersey Supreme Court agreed. The State Supreme Court agreed with the trial court that a warrantless search conducted by a school official is permissible as long as the official has reasonable grounds to believe that a student possessed evidence of illegal activity or activity that would interfere with school discipline and order. The State Supreme Court, with two justices dissenting, sharply disagreed with the juvenile court's conclusion that the search of T.L.O's purse was reasonable.

The New Jersey Supreme Court reversed the order of the trial court and ordered the suppression of the evidence found in T.L.O.'s purse, holding that the search of the purse by the school administrator was unreasonable.

**HOLDING**

On January 15, 1985 the United States Supreme Court decided the case of New Jersey v. T.L.O. The decision concluded that the reasonableness standard described in the case was a proper standard for determining legality of searches conducted by public
school officials. The case set a Supreme Court precedent for school officials to follow regarding searches by public school leaders.

**REASONING**

Justice White, who wrote the opinion for the court, indicated that the Justices were first faced with the question of whether the Fourth Amendment's prohibition on unreasonable searches and seizures applied to searches conducted by public school officials. They held that it does. During argument, the State of New Jersey argued that the Fourth Amendment was intended to regulate only searches and seizures carried out by law enforcement personnel. Although public school officials are concededly agents of the state, the Fourth Amendment creates no rights enforceable against them *Ingraham v. Wright*, 430 U.S. 651 (1977).

The High Court had never limited the Fourth Amendment's protection against unreasonable searches and seizures to operations conducted solely by law enforcement. Their reasoning was that for a long time the Supreme Court has indicated the Fourth Amendment's strictures as restraints imposed upon "governmental action"—that is, "upon the activities of sovereign authority" *Burdeau v McDowell*, 256 U.S. 465, 475 (1921).

The Supreme Court concluded that the Fourth Amendment is applicable to activities of civil as well as criminal authorities. Building inspectors, Occupational Safety and Health Act Inspectors, and even firemen entering privately owned buildings to battle a fire, are all subject to the restrictions imposed by the Fourth Amendment.

The Supreme Court stated public school officials no longer merely exercise authority voluntarily conferred on them by individual parents. They must act in compliance of publicly mandated educational and disciplinary policies. As they carry out searches in
conjunction with their duty as an official representative of the State they cannot claim immunity from Fourth Amendment strictures.

The issue of whether or not the Fourth Amendment applied to searches conducted by school authorities was only one part of the problem the Supreme Court faced. While the underlying premise of the Fourth Amendment had always been that searches and seizures be reasonable, what was reasonable depended 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, at 536-537, 87 S Ct 1727. On one side of the balance are the individual's legitimate expectations of privacy and personal security. The other side of the scale contains the government's need for effective methods to deal with breaches of public order.

Courts have recognized that even a limited search of the person is a substantial invasion of privacy Terry v. Ohio, 392 US 1 24-25, (1968). The State of New Jersey argued in T.L.O. that because of the pervasive supervision to which children in the schools are necessarily subjected to, a child has virtually no expectation of privacy in articles of personal property unnecessarily carried onto school campus.

Justice White indicated that the Supreme Court has taken notice of the difficulty of maintaining discipline in the public schools. However, the situation is not so dire that students in the schools may claim no legitimate expectations of privacy. The Court recently recognized that the need to maintain order in a prison entitles prisoners to no legitimate expectation to privacy in their cells. The prisoner and the school students are certainly not to be considered equal for the purposes of the Fourth Amendment. In
addition, the State does not suggest that children have no legitimate need to bring personal property onto the school grounds. Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, letters, photographs, and the necessaries of personal hygiene and grooming. Some students may have the legitimate need to carry with them articles of property that would be used in connection with extracurricular or recreational activities. 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.

Measured against the child’s right to privacy must be the substantial interest of teachers and administrators to maintain discipline and order in the classroom and on school grounds. Controlling classroom behavior has never been easy, but lately, school disorder has often taken tragic forms. Drug use and violent crime in the schools have become major social problems. The question then becomes how do school officials strike a balance between the student’s legitimate expectations of privacy and the school’s equally legitimate need to maintain an environment in which learning can take place? The Supreme Court Justices have held that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The requirement to have a warrant before conducting a search is one area where school officials have had less restriction. The Supreme Court has recognized that school officials can not be expected to obtain a warrant each time a student is suspected of violating a school rule.
In the T.L.O case the Court officially modified the level of suspicion needed to justify a search. Usually, a legal search must be based upon "probable cause" that a violation of the law has occurred. Through action of the ruling in T.L.O, "reasonable suspicion" of a violation of a law or school rule is considered valid cause to conduct a search. The Supreme Court joined the majority of courts with respect to reasonable suspicion being a sufficient standard to use when deciding if a search by a school official was legal. Courts that have examined this issue concluded that probable cause is not necessary for school officials considering a search of a student. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. As learned from facts in the T.L.O case, the determination of the reasonableness of any search involves a twofold inquiry. First, a person must consider whether the search was justified at its inception. Then, it must be determined whether or not the search was reasonably related to the circumstances that justified the intrusion in the first place. Usually, searches will be justified at 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.

The Justices believed that the standard of using reasonable suspicion instead of probable cause would neither unduly burden the efforts of school authorities to maintain order in their school nor authorize unrestrained intrusions upon the privacy of schoolchildren. The lesser standard will save teachers and school administrators from becoming familiar with the issues surrounding probable cause. This will allow them to regulate their behavior 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 legitimate end of preserving order in the schools.

Justice White, in his opinion of the Court, wrote that it was the conclusion of the Supreme Court that Mr. Choplick's decision to open T.L.O's purse was reasonable. That then raised the question of whether or not the further search for marijuana was reasonable. The Court ruled that the suspicion upon which the search for marijuana was found was provided when Mr. Choplick observed a package of rolling papers in the purse as he removed the pack of cigarettes. T.L.O. did not dispute the reasonableness of Mr. Choplick's belief that the rolling papers indicated the presence of marijuana. She did 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. According to the ruling in the case that argument was unpersuasive. Once the rolling papers were discovered, Mr. Choplick had reasonable suspicion to believe that T.L.O. was carrying marijuana as well as cigarettes in her purse. It was that suspicion that justified further exploration of T.L.O.'s purse. The extended search turned up more evidence of drug-related activities: a pipe, a number of plastic bags of the type used to store marijuana, a small quantity of marijuana, and a fairly substantial amount of money. Under those 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 owed T.L.O. money along with two letters, the inference that T.L.O. was involved in marijuana trafficking was substantial enough to justify Mr. Choplick in examining the letters to determine whether they contained any
further evidence. The Supreme Court held that the search for marijuana was reasonable in every respect, and stated:

A school official may properly conduct a search of a student’s person if the official has a reasonable suspicion that a crime has been or is in the process of being committed, or reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies.

Due to the fact that the search resulting in the discovery of the evidence of marijuana dealing by T.L.O. was reasonable, The New Jersey Supreme Court’s decision to exclude the 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 was reversed.

Justice Powell, who was joined by O'Connor concurred in the opinion and held that greater emphasis needed to be placed on the unique characteristics of elementary and secondary schools that make it necessary to offer schoolchildren the same constitutional protections granted adults and juveniles in a nonschool setting. He stated:

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 (T.L.O., 1985).

Justice Powell indicated that students have a lesser expectation of privacy due to the large number of hours they spend in close association with each other while at school. He did not think that schoolchildren should be offered the same expectation of privacy as the general population. While confirming that students have constitutional rights at school,
Justice Powell affirmed the authority of school officials to take the necessary measures needed to control the educational environment at school.

Justice Blackmun concurred in the judgment and expressed that the special need for an immediate response to behavior that threatens either the safety of school children and teachers or the educational environment itself justifies the court in exempting school searches from the warrant and probable cause requirements, and in applying a standard determined by balancing the relevant interests. He was critical of the decision with regards to the analysis used to determine if a search required probable cause or not. While the Supreme Court has recognized limited exceptions to the probable cause requirement, he did not feel the balancing test should have been used to help decide the T.L.O. case. Justice Blackmun indicated, "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 (T.L.O.) case". He acknowledged how difficult it was for teachers and administrators to maintain order and keep everyone safe on a daily basis. Because elementary and secondary schools are unique settings, Justice Blackmun thought they should be except from warrant and probable cause requirements.

DISSENT

Justice Brennan was joined by Marshall and concurred in part and dissented in part. He expressed the view that teachers were like all government officials and must conform their conduct to the Fourth Amendment's protections of personal privacy and personal security. Fourth Amendment's language dictates that school searches, similar to the one conducted in the case of T.L.O., are only acceptable if supported by probable cause. He
reasoned that by applying the constitutional probable cause standard to the facts of this case, the search of T.L.O.'s purse violated the student's Fourth Amendment rights.

Justice Brennan was extremely critical of the T.L.O. ruling. He advised the following:

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.

Justice Brennan frequently referred to the balancing test used as arbitrary and mentioned that the Framers of the Constitution were exact in their identifying "probable cause" as a prerequisite to a legal search. He did agree that school officials may conduct searches without first obtaining a warrant as long as they are not acting as agents of law enforcement. Justice Brennen wrote, "Full-scale searches unaccompanied by probable cause violates the Fourth Amendment."

In a dissenting opinion, Justice Stevens, joined by Marshall, and joined also by Brennan as to part one, concurred in part and dissented in part. He expressed the view that (1) the court has misapplied the standard of reasonableness embodied in the Fourth Amendment; (2) that a standard better attuned to the concern for violence and unlawful behavior in the schools 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; and (3) that the search in this case failed to meet this standard. Justice Stevens indicated that the school administrator over reacted to a minor infraction of a school rule. He wrote, "The search of a young woman's purse by a school administrator is a serious invasion of her legitimate expectations of privacy".

Scholarly Commentary on the T.L.O Decision

A review of what was being written regarding the Court's decision in the T.L.O. case was conducted. Many articles were redundant so only those that contained pertinent pieces of information were included in this review.

An article published in 1987 in the Cornell Law Review revealed one perspective of the ruling. While much of what was written repeated the actual case itself, some of the information was worthy of including in this study.

Dale Zane (1987) indicated how the United States Supreme Court had significantly altered the "traditional view" (p. 368) of the Fourth Amendment to the Constitution. New Jersey v. T.L.O. represents yet an even further departure from conventional analysis in the context of student searches by a school official. The article examined the Fourth Amendment precedent the Court faced when deciding T.L.O. The author argued that the Court misapplied precedent and reached an improper conclusion that created a new and unnecessary approach to Fourth Amendment jurisprudence.

Zane wrote that the Supreme Court's opinion in New Jersey v. T.L.O. laid to rest the theories formerly used by lower courts to justify intrusive searches of students in the school setting. He indicated that the Court failed to accord students conventional Fourth Amendment protection. The Court carved out another exception to conventional Fourth
Amendment jurisprudence based on the supposed special characteristics of the school environment. In so doing, the Court implied that probable cause is not required for any search that can later be deemed reasonable under the circumstances.

Zane indicated that the Court should employ a balancing test only when it finds that it is impracticable to require a warrant or probable cause, to achieve a law enforcement objective beyond gathering evidence of criminal conduct and that the intrusion upon the individual is limited in scope. The facts of T.L.O. satisfied neither of these requirements.

The author concluded by saying, “Even if a balancing test was appropriate in T.L.O., the Court misapplied it. It is ill advised to treat students differently from the rest of society under the Fourth Amendment simply because they are students” (Zane, 1987, p. 396). Rights are for everyone and need to be cherished and protected. In closing Zane wrote, “As Justice Jackson stated, ‘Fourth Amendment Rights are not mere second-class rights but belong in the category of indispensable freedoms. Among deprivation of rights, none is so effective in…crushing the spirit of the individual and putting terror in every heart’ Brinegar v. United States, 338 U.S. 160, 180 (1949) Jackson, J.,dissenting) (Zane, pg., 396, 1987).”

A John Hogan (1985) article published in a spring edition of the Whittier Law Review did a thorough job explaining T.L.O. v. New Jersey. The article analyzed the case and examined different aspects involved. The doctrine of in loco parentis was examined, as well as, search and seizure standards and search warrant requirements. Opinions of the Justices were also included in the article.

The most compelling information contained in the article was the findings from a survey. School districts from all over the country responded to various questions
regarding the impact T.L.O. will have on schools. The responses were consistent and a genuine interest existed among educators in obtaining information on the T.L.O. matter. The responses indicated that there was just as much concern regarding T.L.O. in small districts as there was in large metropolitan school districts. The responses were received from various districts throughout the nation that ranged in size and location.

Information revealed in this article indicated that state departments of education did not issue any specific directive to local school boards regarding search and seizure. Local boards have and will continue to have jurisdiction over policy regarding search and seizure in public schools. In addition, all school boards that were surveyed indicated that formal policy or guidelines for search and seizure did exist. “Reasonable suspicion” was the standard identified in policies and/or guidelines across the nation as the minimal requirement for conducting a search.

Hogan’s article stated, “none of the state departments of education nor the school districts surveyed maintained statistical records of the number of students searched in their schools” (p.542). Hogan stated that there was now good reason to keep such records in the future. All respondents said that when school police officers were involved the criminal code for search and seizure were applicable and took priority over school policy. All districts reported having written policy, which permitted school personnel to open and search student’s lockers.

In his analysis Hogan said that the doctrine in loco parentis is no longer appropriate in modern society. School administrators represent the state, not the parent when they conduct searches. Hogan’s final comment indicated that state courts could still require a more demanding standard for school searches. In order to do this the decisions must be
based on state constitutions and statutes, not the United States Constitution. That one remark was the statement that is most relevant to this study.

Joe Crace (1986) was highly critical of the Court’s decision. His article described the major components of the case and included opinions of the Justices. The author said that the new relaxed standard by the court assumes too much when it implies that all teachers are conscientious and responsible persons. He advises that the potential abuse of student privacy for trivial rule violations demand the Court re-examine the issue of student searches. Hogan suggested that the Justices should either adopt the standard suggested by Stevens, which requires conduct seriously disruptive of school order, or use a traditional application of probable cause. Crace predicted, “Because of the Court’s failure to distinguish between minor and serious violations, there will undoubtedly be increased litigation involving the issue of a school official’s right to search a student for violation of school rule, even though the violation was not seriously disruptive of school order or educational process” (p. 487). This statement will have relevance to this study as the cases are reviewed to see if this prediction was accurate.

Noticeably absent were any scholarly articles published in law reviews between 1985 and 1987 that reacted favorably to the ruling.

Two articles that were reviewed took a neutral position regarding the T.L.O. decision. Swiger, Bittle, and Gregory, (1985) and Jarriel (1985) just passed on the facts of the case. There was not any wording in the articles that could be construed as negative or unfavorable towards the ruling.
Critical Review of T.L.O

Charles Purkey (1987) claimed that the lack of a clearly defined reasonable cause standard combined with problems in its application created potential for discretionary abuse by educators. The article went on to say that if children were subject to intrusive and arguably unreasonable searches, more cases would end up in court. It was written that educators sought fewer restrictions so they could have more control. The prediction from this author was that students and parents would soon seek greater Fourth Amendment protections against invasions of students' rights of privacy.

Irene Merker published an article in the fall 1985 edition of the Family Law Quarterly that was critical of the Justices' decision in T.L.O. She was concerned that more questions were left unanswered then answered. The Court did not indicate what standard would be applicable when police officers were involved in the search. In addition, Merker said the decision lacked an answer to the question of what expectation of privacy students had with respect to desks, lockers, and other personal property. The author predicted that further rulings limiting the rights of juveniles in the area of the Fourth Amendment would have an impact beyond the immediate holdings. Merker claimed that the T.L.O. decision would dilute Fourth Amendment protection of children. The author made a statement that not only bears relevance to this study, but is also an unusual forecast. "Permitting the state to invade privacy rights of juveniles without adequate cause is to invite youthful hostility to authority that may result in an increase in crime and disobedience. At the same time we may well be conditioning our youth to accept questionable governmental intrusions in their lives, a conditioning that may persist in
adulthood and form the basis for the next generation’s legitimate expectation of privacy” (p.325).

An article by Gerald Reamey that was published in a fall 1985 edition of St. Mary’s Law Journal criticized several different components of the decision. The author claimed that the decision confused the legal parameters for searches of students. It applauded the Court for recognizing school officials as agents of the state and dismissing in loco parentis as a governing standard. The article indicated that the T.L.O. ruling held that students had a lower expectation of privacy simply because of their status. Reamey was critical of the fact that the warrant requirement was abolished and that the level of suspicion for conducting a search was lowered. It was the author’s prediction that the ruling would “inevitably increase the incidence of mistake particularly in the absence of review by a magistrate. If suspected violation of trivial rules not subverting the educational needs of students may be the basis of a full-blown search, the balance struck by the Court accords privacy rights no weight in such cases” (p. 948). While the above quote certainly shows why this review would be relevant to this study, the authors closing message carries even more weight. “It is the result suggested by this skewed balance that is the most alarming facet of the decision in T.L.O. Balancing competing interests to achieve reasonableness is often appropriate, but, like all fluid concepts, it requires great care to avoid abuse, and whatever its virtue, it is likely to foster inconsistency of application and result”(p.949).

Articles by Janette Bertness published in Suffolk University Law Review in the Winter 1985 edition and by Deborah Reperowitz published in the Seton Hall Law Review in the Summer 1985 edition indicated that the ruling by the Supreme Court
Justices created more problems than it solved. While all the specific areas of criticism were mentioned in other reviews listed above, it was important to note that these two authors also were highly critical of the T.L.O. decision.

Summary

Search and seizure law in the United States dates back to the founding of our country. Search and seizure law regarding students in public schools is new. School administrators have been governed by the doctrine of in loco parentis, which means that they take the place of a reasonable and prudent parent when making decisions for children at their school. A 1969, Supreme Court ruling, Tinker, advised school leaders that students retain their constitutional rights while they attend school. Courts have had to find a reasonable balance to allow school officials to make quality decisions regarding searching students while at the same time safeguarding their constitutional rights. The United States Supreme Court made a ruling in 1985, T.L.O., which has had tremendous effect on school policy regarding search and seizure of students. Law journal articles published shortly after the ruling criticized the decision for allowing school administrators to much power. While school leaders were regarded as state agents they were able to conduct a search of student using a standard less than probable cause. The reasonable cause standard that was emphasized in the T.L.O. ruling was seen as arbitrary in many of the published articles.
CHAPTER 3

METHODOLOGY

A specific methodology was established to identify how the study was to gather, analyze, and disseminate data. It was important to create a plan so that the information being sought was collected in a structured manner. The data that was needed to complete this document came from a variety of sources.

This study involved legal research. Berring and Edinger (1999) indicated, "legal research is a complex enterprise" (p.5). Legal research consists of three essential components: (a) finding the law, (b) reading the law, and (c) updating the law (Cohen & Olson, 1996). Legal research is the process of finding the laws that govern most activities in our lives and the materials that define or analyze these laws. Through legal research a person can find the sources needed to predict how courts would act (Cohen & Olson, 1996). Nonlawyers perform legal research for a variety of reasons, from settling a boundary dispute to challenging a traffic ticket. The literature of the law is a central part of our history in this country so therefore legal research is also an important facet to academic pursuits in law school and in universities in general.

In order to analyze T.L.O. v. New Jersey, 469 U.S. 325 (1985), a strong understanding of legal research was required. Identifying which law applied demanded knowledge, resources and expertise in legal research. A lawyer or researcher should be able to analyze any factual situation and apply legal doctrines developed in analogous or
similar situations. These doctrines may conflict with one another from time to time, making it necessary to measure their importance and relevance to a particular problem (Cohen & Olson, 1996).

Legal research involves the use of a variety of printed and electronic sources. Berring and Edinger (1999) have advised that the once uncomplicated process is now filled with choices and alternatives. Court decisions, administrative documents, statutes, scholarly commentaries, and practical manuals are among the types of printed sources that exist. Legal research is the process involved of reviewing all the pertinent information and conducting an intense analysis of that data.

The relative authority associated with legal sources differs. Some authorities are binding, others only persuasive, and some are used as tools for identifying other material. These variations require that researchers evaluate the sources they study. According to Cohen and Olson, (1996) there are three broad categories of legal literature: (a) primary source, (b) finding tools, and (c) secondary materials.

Primary sources are recorded rules that are enforced by the state. Cohen and Olson (1996) indicate the following sources as primary:

1. Constitutions
2. Appellate Court decision
3. Statutes passed by legislatures
4. Executive decrees
5. Regulations and rulings of administrative agencies
6. Law made by governmental agencies in a variety of jurisdictions
"One major category of primary sources is judicial decisions. The United States is a 'common law' country. Its law is expressed in an evolving body of doctrine determined by judges on the basis of cases, which they must decide, rather than on a group of abstract principles. As established rules are tested and adapted to meet new situations, the common law grows and changes over time" (Cohen & Olson, 1996, p.3). The judicial system in our country consists of hierarchies of courts, which includes, in most jurisdictions, a number of trial courts. In addition, one or more intermediate appellate courts are included, as well as a court of final reviews, usually the Supreme Court for the specific jurisdiction. This format has incorporated within it the process of appellate review, in which higher courts review the decisions of lower courts. In addition, a judicial review is provided so that courts can determine the validity of legislative and executive actions.

Statutes, which are the products of legislative actions, are another major primary source. Statutes have come to govern a great number of different human activities. Government agencies create regulations and make decisions, which becomes administrative law. Administrative law is another important primary source. Federal and state agencies develop regulations governing activities within their specific area of expertise. Federal and state agencies perform acts in a "quasi-judicial" capacity by conducting hearings and issuing decisions to settle particular disputes.

Primary sources share a number of ingredients that have a pervasive importance to legal research. They are issued in date order in either official or unofficial publications. Therefore, the researcher requires some means of subject access to find the law that applies to a specific factual situation. The law is changing constantly as of new
regulations, statutes, and decisions are issued each and every year. Cohen & Olson (1996) indicated a frequent updating of legal resources is needed on a yearly basis due to all these changes occurring.

In addition, the development of the law involves a quest for certainty and stability, as reflected in the doctrine *stare decisis* (Cohen & Olson, 1996). This gives primary sources a long-lasting relevance even beyond their initial publication. They remain in effect until they are expressly overruled or repealed.

The primary sources relevant to any problem may range from the earliest enactments of law-making bodies to the most recent decisions, statutes and rulings. A current decision can rely on a precedent that was decided many years ago. An executive order may be based on a statute from a different century. As mentioned, primary sources retain their force and effect until expressly overruled or repealed, even the materials from the earliest years must remain accessible. Since the law is constantly changing, access to the most recent legal sources is also a prerequisite to effective legal research.

**Finding Tools**

Due to an overwhelming amount of decisions and statutes being accumulated since the beginning of legal history, a researcher needs to find tools to access this information (Cohen & Olson, 1996). "Two of the systems, WESTLAW and LEXIS now play a major role in the research process" (Berring & Edinger, 1999, p.8). LEXIS is a computerized database finding tool that provides the capability to search for cases and other documents by using a word or combination of words. Berring and Edinger (1999) advise, "The new world of legal research is rooted in electronic information" (p.8). Finding tools serve only one purpose, the means of locating primary sources. Those sources must then be read to
determine their applicability to a specific situation. When conducting legal research the researcher must use a highly developed sense of relevance (Cohen & Olson, 1996). The variety of electronic databases has grown and the information, which they store, and the search method for using them have improved enormously (Berring & Edinger, 1999).

Secondary Materials

Secondary materials are works that discuss or analyze legal doctrine. Treatises, practice manuals, and law reviews were three sources of secondary materials used for this study. Secondary sources help analyze problems and their footnotes guide the researcher to both primary sources and other secondary materials.

Secondary materials that are considered relevant can be found through law library catalogs, legal periodical indexes, and other bibliographic aids. Also, court decisions and forms of secondary sources often provide citations to persuasive treatises and law review articles. There are some treatises, periodicals and appellate records and briefs that can be accessed via online databases or in CD-ROM format (Cohen & Olson, 1996).

This whole process is done in order to find relevant information and organize it in a fashion suitable to the document being prepared. A citation identifies a legal authority or reference work, such as a constitution, statute, court decision, administrative rule, or treatise. In order to find the legal authority or precedent needed, it is important to know how to read and understand citations. Citations play an essential role in legal research. A standard case citation contains:

- the name of the case;
- the published sources in which the case can be found;
Legal Research for Study

The volume of published American case law contains many decisions that have long since been overruled or limited to specific details. Before T.L.O. could be relied on as a foundation for this study, its current validity had to be verified. According to Cohen and Olson (p.70, 1996), “Shepard’s Citations is the most commonly used service for this purpose.” Shepard’s Citations not only verifies the current status of a case but it also lists every subsequent case that cites the decision in issue. It is Shepard’s that allows a researcher to track the development of a legal doctrine from the original decision forward. Shepardizing is a process that involves collecting law cases. It includes tracing the subsequent treatment of cases, statutes, and other legal authorities by referencing works called Shepard’s Citations (often referred to as “citators”). Shepard’s Citations make it possible for legal researchers to find out about a prior authority’s current status (Cohen & Olson, p. 78, 1996).

The online databases WESTLAW and LEXIS provide computerized access to the text decisions of Supreme Court cases. These two databases are sources of information that provide concise texts and opinions well before other publications can print and distribute them (Berring & Edinger, 1999).

A researcher doing legal research must be able to track a case as it moves through time. Such a source must be timely and reliable (Berring & Edinger, 1999). “Since 1873 that source has been Shepard’s Citations” (Berring & Edinger, 1999, p. 63).
Shepardizing accomplishes three major purposes. First, it traces a case's judicial history. It does this by providing parallel citations for the decision and references to other proceedings. In addition, it verifies the current status of a case to determine whether it is still good law or has been overruled, limited in scope, or otherwise diminished. Finally, it provides research leads to later cases, as well as periodical articles, attorney general opinions, ALR annotations, and other resources (Cohen & Olson, p. 78, 1996).

Shepard's publishes citators for the Supreme Court, the lower federal courts, every state, the District of Columbia, Puerto Rico, and each region of the National Reporter System. U.S. Supreme Court cases are covered in Shepard's United States Citation, which is published in three separate sets for the U.S. Reports, Lawyers' Edition, and the Supreme Court Reporter. Lower federal court decisions are covered in a large set of Shepard's Federal Citations. There are separate parts for decisions in the Federal Reporter and Federal Cases and for decisions in Federal Supplement and specialized reporters. “Updating cases through Shepard's Citations is an essential part of the legal research process” (Cohen & Olson, p. 78, 1996).

Cohen and Olson (1996) indicated that the hardest part of any legal research process is finding the first piece of relevant information. One document often leads to other crucial documents. Cases cite earlier cases as authority; a statute's notes provide useful leads to decisions, other statutes, legislative history, and secondary sources. A periodical article may end up being cite to a number of sources.

Wren and Wren (1983) wrote that a researcher must step back and study the problem carefully before looking anywhere. It must be determined whether the jurisdictional focus is federal or state (Wren & Wren, 1983). This study began, as indicated in chapter 2, by
consulting a legal treatise for information surrounding early law on search and seizure. Scholarly legal review articles were reviewed as well.

Primary sources by themselves often are not very straightforward. Secondary materials try to explain and analyze the law. They offer easier access and summarize the basic rules. In addition, they take the primary sources and place them into context, allowing the legal researcher to select the most promising primary sources to pursue. It must be noted that author bias could show through.

A research question that this study answered inquires as to how T.L.O. has been interpreted and applied. Since the Supreme Court ruling of T.L.O. v. New Jersey is the legal authority for which a current status was being sought, T.L.O. v. New Jersey is called the cited authority. The entries in Shepard under the cited authority that were being reviewed for consideration as part of the data for this dissertation are called the citing authorities. These authorities, such as cases and law review articles are cited (referenced) to the item being reviewed (T.L.O. v. New Jersey). U.S. cases since 1985 were searched and cases that have cited T.L.O. were listed. The specific cases used for this study were derived from that list.

The first thing that was done was to use LEXIS to find the proper set of Shepard's Citations. LEXIS is an important source for legal research involving federal court cases because it provides full text coverage of all federal court cases that appear in print back to the earliest decisions in federal cases (Berring & Edinger, 1999). There are numerous sets of Shepard's Citations; U.S. Supreme Court decisions, Federal Reporters, Federal Supplement, each state, and West's regional reporters. Initially, all cases settled within the Federal Court system were reviewed.
Since focus was K-12 education, cases that did not have anything to do with the educational settings were discarded and not included as part of this study. Additionally, cases that involved issues in higher education were not included, only the K-12 environment was used. Furthermore, cases that did not involve the Fourth Amendment rights of students were removed from the list of cases to consider for this review. That left for consideration only the United States cases that were heard in the federal court system that involved the Fourth Amendment rights of students attending K-12 public educational institutions that were decided after T.L.O. but prior to June 5, 2001.

Each of the search and seizure cases that fit the criteria from above were reviewed and a thorough analysis was completed. The facts of the cases were extracted to determine the court’s ruling and its rationale. Dissenting Justices opinions were included in cases where that information was available. Legal research guides were used as a reference so the dissemination of data was consistent with current standards.

The cases were organized by geographic region. The United States is divided into thirteen circuit courts of appeal. The cases were put into their respective region depending upon where the case originated. Chapter 5 includes a United States map that indicates the jurisdiction for each circuit. Each circuit was divided to show the specific region that was represented.

In order to collect information for this study a variety of sources were used. The places where information was sought included the following:

1. The Clark County Law Library and UNLV’s William S. Boyd Law School’s library: Legal research guides and legal periodicals were used. Treaties were used to provide valuable foundation information. The law has developed its own unique
terminology over the centuries. For an understanding and mastery of the language of law, a good law dictionary was a necessity. Black’s Law Dictionary was used to set a standard definition on key terms and concepts.

2. The case law and law journal databases on the Lexis service: The program was accessed through the School of Business at the University of Nevada, Las Vegas.

3. Law-based web sites on the Internet were searched for relevant information that became part of the study. The following web sites were reviewed:

   • http://www.law.emory.edu/FEDCTS/
   • http://www.findlaw.com/
   • http://www.law.indiana.edu/law/
   • http://www.lectlaw.com/
   • http://lawguru.com/search/
   • http://www.gpo.ucop.edu/catalog/supreme/
   • http://www.law.cornell.edu/

4. Journal articles located through the search of the Internet or periodicals were read with hopes that they would provide information that would become part of the data used for analysis in this study. Articles published between 1985 and 1987 were reviewed to see what the scholarly mindset was at the time New Jersey v. T.L.O. was decided. To do this a search of LEGALTRAC at the Law Library at the University of Nevada, Las Vegas was conducted. LEGALTRAC is a computerized data-base that searches for periodical articles. By inputting a specific topic (search and seizure) LEGALTRAC located articles that were published during the time period requested (1985-1987). Once a collection of articles was completed NEON was used to try and locate the articles.
LEGALTRAC gave all the vital information needed to find an article, but NEON was used to make sure the article was accessible.

5. The Educational Resources Information Center (ERIC) was also used to thoroughly search articles that may have been relevant to the research topic that had been selected.

Law reviews and articles found in journals that dealt with the search and seizure issue of K-12 public school students were closely analyzed. Published opinions and scholarly comments were quoted in this study. Where appropriate, those opinions and commentaries were cited. Education law and related textbooks were reviewed to supplement current literature, and are listed with the references.

After Collection of Data

Once the preliminary evaluation of the facts was completed, the legal issues identified were arranged in a logical order. Wren and Wren (1983) indicated that by doing so the efficiency and effectiveness of the study would be increased. A multi-issue problem, such as the issue studied, mandated an orderly research approach.

In finding the law that applied, the ultimate goal was to locate primary authorities that had a bearing on the legal problem. Search and seizure issues involving public school students was the legal problem being studied. The 1985 Supreme Court decision in T.L.O. v New Jersey had been identified as the primary source for this issue.

The next step of legal research was the reading of the law (Wren & Wren, 1983). Reading law is more than just using your eyes to identify printed words on a piece of paper. Significance must be attached to what is read. Once a case has been identified, it
must be evaluated for its usefulness to the specific problem. Wren and Wren (1983) identified two different types of evaluations that need to be conducted.

The first analysis is called **internal evaluation**. This is done first to decide whether the authority applies to the research problem.

- How similar are the facts of the court decision to those of the research problem?
- If the facts of the ruling differ, but the decision's holding is helpful, can the decision's facts be re-characterized to increase the similarity to the facts of the problem?
- If the decision's facts are sufficiently similar to those of the research problem to make the decided case relevant, is the decision's holding relevant to any legal issues present in the problem? (Wren and Wren, 1993)

The second type of analysis that must be conducted is called **external evaluation**. If through internal evaluation it is determined that a case applies to the problem, an external evaluation of the authority will then be needed to determine its current status or validity (Wren and Wren, 1993).

- Has the case been overruled or otherwise severely limited? Answering this question involves the updating technique called Shepardizing, which allows researchers to trace the judicial history of a case.
- If the case has not been explicitly overruled, or otherwise invalidated, what is its current status? (Wren and Wren, 1993)
The taking of notes is a necessary component while reading the law. The art of taking notes on court decisions has been refined over the years into a widely accepted technique called “briefing”. Briefing serves both as an efficient means of recording notes and as an additional analytical tool (Wren and Wren, 1993).

Reading a case requires close attention in order to be able to extract all the implications of the court’s decision. Briefing assisted this study by allowing the research to be focused on crucial aspects of a case and sorting out its unhelpful points. Wren and Wren (1983) suggest that briefing run no longer than a page, and contain the following pieces of information:

- Name of the case
- Citation
- Date the decision was rendered
- Author of the majority opinion
- Author(s) of concurring opinion(s), if any
- Author(s) of dissenting opinion(s), if any
- Procedural posture of the case
- Legal topic(s) covered by the case
- Summary of the facts
- Question(s) presented by the case
- Answers to the question(s) presented
- Summary of the court’s reasoning in reaching the answer(s)
- Summary of significant concurring opinion(s), if any
- Summary of significant dissenting opinion(s), if any
• Significance of the case (both in general and as it applies to the problem being researched)

Analytically, the final step in doing legal research is updating the law (Wren & Wren, 1983). This step involves making sure the legal rules that have determined to apply to the problem are still valid. For this study Shepardizing was used to review the current status of the problem. In addition, a computerized database program, LEXIS, was used to search Shepard's Citations.

SUMMARY

This study was legal research that included a thorough analysis of legal cases. This study found the law, read the law, and updated the law that applied to search and seizure of public school students. LEXIS, a computerized database, was searched to identify Shepard's Citations for cases that have cited T.L.O. v. New Jersey. The cases selected to be part of the data used in this study were retrieved from Shepard's Citations. Law reviews, Treaties, and various other reference materials were used to gather as much relevant data as possible in order to complete this study. Data used in this study was retrieved from computerized databases, on-line services, and an assortment of printed materials.

The process of "briefing" was used to analyze cases. Vital components from relevant cases were recorded in a fashion that allowed easy return access. Briefing allowed cases to be summarized so that when a case was revisited it can be done more efficiently and effectively. This process allowed relevant cases to be analyzed. Once that procedure was completed, research questions were then answered.
CHAPTER 4

FINDINGS OF THE STUDY

This study focused on cases in the federal court system dealing with search and seizure in public schools in the years since the Supreme Court handed down the landmark T.L.O. decision in 1985 until June 5, 2001. The study sought to answer the following questions:

1. How has T.L.O. been interpreted and applied?
   A. What is meant by “reasonable suspicion” as referred to in T.L.O.?
   B. Does the “reasonable suspicion” standard articulated in T.L.O apply to school police?
   C. Has the Court’s interpretation of T.L.O. changed over time? What is the current status of school search jurisprudence?
   D. What guidelines should school officials follow regarding the search of students?

2. What, if any, impact does the Nevada State Constitution forbidding unreasonable search and seizure have on school searches?

Each of these questions will be examined thoroughly in the summary in Chapter five. Case briefs of the federal cases decided since T.L.O. are presented in this chapter.
The United States Supreme Court revisited the application of the Fourth Amendment to the public school settings in 1995. The *Vernonia School District v. Acton* case is presented first. To simplify the presentation the lower court cases are arranged by federal circuit and in chronological order within each circuit.

The federal judicial system is a three-tier structure. The trial courts are designated district courts. Each state has at least one federal district court. Federal court decisions, if published, are found in the Federal Supplement. The intermediate level of this structure is entitled the Federal Court of Appeals. Congress has divided the United States into 13 appellate circuits. Eleven of the circuits are numbered and the D.C. circuit and the Federal Circuit make up the remaining two.

Figure 1 illustrates geographical boundaries of various federal circuit courts of appeal. It identifies for the reader the jurisdiction of each federal circuit court.
United States Supreme Court

Since the United States Supreme Court decided T.L.O. in 1985 only one other case involving search and seizure in public schools made it back to the Supreme Court. While many cases in the district courts and appellate courts involved Fourth Amendment issues in the school context, only Vernonia v. Acton was heard and ruled upon by the Supreme Court.


FACTS

Teachers and administrators in an Oregon public school district observed a sharp increase in student drug use and disciplinary problems. Students began to openly discuss their attraction to the drug culture, and boast that there was nothing the school could do about it. An increase in disciplinary problems was also noticed, the number of disciplinary referrals more than doubled from the early 1980’s to the late 1980’s. Students became increasingly rude during class, and outbursts of profane language became common. The school district was particularly concerned with the fact that student athletes were reported to be leaders of the drug culture. They were also concerned in that drug use increased the risk of sports-related injuries. Expert testimony at trial confirmed the deleterious effects of drugs on motivation, memory, judgment, reaction, coordination, and performance. The high school football and wrestling coach witnessed a severe sternum injury suffered by a wrestler, and various omissions of safety procedures and misexecutions by football players, all attributable in his belief to the effects of drug use.

Initially, the District responded to the drug problem by offering special classes, speakers, and presentations designed to deter drug use. A specially trained dog was even
brought in to detect drugs. The problem persisted so officials of the school district sought other ways to deter drug use.

District officials prepared a policy providing for drug testing as a prerequisite for participation in athletics. They presented the policy at a parent “input night” at which the parents in attendance gave their unanimous approval to a proposed urinalysis drug testing program for student athletes. The district’s school board adopted the policy.

The policy provided as follows: (1) all students wishing to participate in interscholastic athletics had to sign a form consenting to the testing and had to obtain their parents’ written consent to the testing, (2) athletes were tested at the beginning of the season for their sport, and (3) random testing of 10 percent of the athletes was done weekly during the season.

The student chosen to be tested had to complete a specimen control form, which included an assigned number. Prescription medications that the student was taking had to be identified and a copy of the prescription or a doctor’s authorization had to be provided. After the urine sample was produced and properly labeled it was sent to an independent laboratory for testing.

A sample that tested positive was put through a second battery of tests as soon as possible to confirm the initial results. If the second test came back negative, no further action was taken. If the second test produced positive results, the athlete’s parents were notified, and the school administrator convened a meeting with the student and his parents. During the meeting the student was given an opportunity to participate in a six-week assistance program that included weekly urinalysis, or suffer the suspension of athletics for the remainder of the current athletic season and the next athletic season. The
student was retested prior to the start of the next athletic season that he or she was eligible. A second offense meant the student was suspended for the remainder of the current athletic season and the next athletic season. A third offense required suspension of the current athletic season and the next two athletic seasons.

In the fall of 1991, a seventh grade student, James Acton, was denied participation in the district's football program because the student and his parents refused to sign the testing consent forms. The student and his parents filed a suit seeking declaratory and injunctive relief from enforcement of the drug testing policy on the grounds that the policy violated the Federal Constitution's Fourth Amendment and a similar provision of the Oregon Constitution. After a bench trial, the district court entered an order denying the claims on the merits and dismissed the action.

After the United States District Court for the District of Oregon dismissed the suit, the United States Court of Appeals for the Ninth Circuit, expressing the view that the policy violated the Fourth Amendment and the Oregon constitutional provision, reversed the district court's decision.

HOLDING

On certiorari, the United States Supreme Court vacated and remanded. In an opinion by Scalia, J., joined by Rehquist, Ch. J., and Kennedy, Thomas, Ginsburg, and Breyer, JJ., the drug testing policy did not violate the student's right, under the Fourth Amendment, to be free from unreasonable searches.

REASONING

The conclusion of the majority was premised partially on the district court's finding that student drug problems in the school district, particularly with respect to students in
interscholastic athletics, were severe enough to demonstrate a need to address such
problems. Justice Scalia also found the policy reasonable under the circumstances, taking
into account (1) the decreased expectation of privacy with regard to students, particularly
student athletes, (2) the relative unobtrusiveness of the search, and (3) the severity of the
need met by the search.

State compelled collection and testing of urine constitutes a “search” under the Fourth
there was no clear practice, either approving or disapproving the type of search at issue,
at the time the constitutional provision was enacted, the “reasonableness” of a search is
judged by balancing the intrusion of the individual’s Fourth Amendment interests against
the promotion of legitimate governmental interests.

The first factor to consider in determining the reasonableness is the nature of the
privacy interest on which the search intrudes. Here, the subjects of the drug testing policy
were children committed to the temporary custody of the State, as school master. In that
role, the State has a right to exercise a degree of supervision and control greater than it
could over free adults. The requirements that public school children submit to physical
examinations and be vaccinated indicate that they possess a lesser privacy expectation
with regard to medical examinations and procedures than the general population. In
addition, student athletes have even less of a legitimate privacy expectation, for an
element of communal undress is inherent in athletic participation, and athletes are subject
to preseason physical exams and rules regulating their conduct.

The privacy interests compromised by the collection of urine samples in the drug
testing policy are negligible, since the conditions of collection are nearly identical to
those commonly encountered in public restrooms. Furthermore, the tests look only for standard drugs, not medical conditions, and the results were released to a limited group.

The nature and immediacy of the governmental concern at issue, and the efficacy of this means for meeting it, also favors a finding of reasonableness. The importance of deterring drug use by all this Nation's schoolchildren cannot be doubted. Additionally, the drug testing policy is directed more narrowly to drug use by athletes, where the risk of physical harm to the user and other players is high. The district court's conclusion that the school district's concerns were immediate was correct. It was self evident that a drug problem largely caused by athletes, and of particular danger to athletes, was effectively addressed by ensuring that athletes did not use drugs. The Fourth Amendment does not require that the "least intrusive" search be conducted.

The court had previously addressed the issue of a constitutional search unsupported by probable cause or a warrant. In Griffin v. Wisconsin, 483 U.S. 868 (1987), the Court held that "special needs" beyond the normal need for law enforcement can make a search legitimate when warrant and probable cause requirements are impracticable. The Court found such "special needs" to exist in the public school context. The T.L.O. decision advised that in that case the warrant requirement would "unduly interfere with the maintenance of the swift and informal disciplinary procedures that are needed" T.L.O., 469 U.S., at 340. In addition, the T.L.O. decision emphasized that the nature of power over school children is custodial and tutelary, which allowed a level of power and control that would not be acceptable over free adults.

Taking into consideration all the factors considered by the Court—the decreased expectation of privacy (as previously seen in T.L.O.), the relative unobtrusiveness of the
search, and the severity of the need met by the search—the Court concluded Vernonia’s drug testing policy was reasonable and therefore, constitutional.

**DISSENT**

O’Connor, J., joined by Stevens, and Souter, JJ, dissented. Justice O’Connor expressed the view that suspicionless drug testing in this case was not justified on the facts presented. The general view of the Supreme Court was that mass suspicionless searches were unreasonable within the meaning of the Fourth Amendment. The Supreme Court would only allow such searches where it was clear that a suspicion-based regime would be ineffectual. Justice O’Connor did not believe that was the circumstance in this case. The dissent argued the drug-testing policy contained two flaws: 1) there was virtually no evidence in the record of a drug problem at the grade school that the student attended when the litigation began, and 2) even as to the school district’s high school, the choice of student athletes as the class to subject to suspicionless testing was unreasonable.

In her dissent, Justice O’Connor rebutted the argument of physical exams and vaccinations being in the same category as drug testing. Physical examinations and vaccinations were not searches for the purpose of finding wrongdoing, and so were wholly nonaccusatory and had no consequences that could be considered punitive. That might explain Fourth Amendment challenges to those searches. Justice O’Connor did not feel the facts presented justified suspicionless drug testing. There was not one shred of evidence that the grade school in the district, where Acton attended, possessed a drug problem. All the evidence reflected a drug problem taking place at the high school.
Justice O'Conner believed the school district's suspicionless policy of testing all student athletes was too broad of a sweep. In addition, it was too imprecise to be reasonable under the Fourth Amendment.

_Vernonia v. Acton_ is a precedent case that has been cited many times since the 1995 Supreme Court ruling. It has served as a landmark case with respect to drug-testing policies enacted in public schools. _T.L.O_ involved search of students in regular school setting. The United States Supreme Court established a separate standard for searches of students involved in athletic activities.

Lower Federal Court Decisions Arranged by Circuit

The following cases were heard in federal courts in their respective circuits. Each case involved a Fourth Amendment issue in the context of a public school. Some circuits were richer with cases than others, but each of the eleven circuits reported on had at least one case that applied to the context of this study.

First Circuit

1st circuit trial courts involving Fourth Amendment issues have reported just two cases. One was the search of the person by a school administrator and the other involved a search of one's belongings. The cases were in two different states, decided one year apart, and neither case was appealed.

FACTS

After several students at a middle school ate pizza for lunch in the school cafeteria, one of the cafeteria workers was unable to find a knife that was used to cut the pizza. The missing knife was approximately 13 ½ inches long and had a nine-inch serrated metal blade. Cafeteria workers and administrators searched the cafeteria for the knife. A pat-down search of students present in the cafeteria was conducted when they were unable to locate the knife. Male and female students were assembled in separate lines. Two female lunchroom aides patted-down the female students.

Sarah, who was then ten years old, was one of the students searched. Sarah’s search took only a few seconds and consisted of patting the area in the vicinity of her front and back pockets and around her ankles. Sarah claimed that the search of her person was unreasonable and, therefore, it violated her rights under the Fourth and Fourteenth Amendment to the United States Constitution.

HOLDING

The district court granted the school district’s motion for summary judgment.

REASONING

The missing knife and the impending danger created by it resulted in reasonable suspicion to conduct a search. The purpose of the search was to find the missing knife and restore the school setting to a safe environment. The justification was that the knife in question had a nine inch serrated blade capable of inflicting serious bodily harm or even fatal injury. In addition, school officials believed students had taken the knife. The court concluded that the pat-down was reasonably necessary to achieve the purpose of the
search. The court considered the relatively limited nature of the intrusion and the compelling safety concerns that the missing knife created. In the absence of any effective alternative for addressing the concern, it was clear to the court that the search conducted was reasonable under the circumstances.


FACTS

This case began when a female student overheard two eighth-grade female students talk about how, earlier in that day, they had been drinking beer in the girls' locker room. In the course of this overheard conversation, one of the students disclosed the names of the two other students with whom they had been drinking beer. One of the students named was Jennifer Greenleaf. A short time after the overheard conversation took place, the student that heard the conversation reported the incident to school officials. Since the student-informant was a trustworthy student who had previously provided school officials with accurate information regarding student conduct, the administrator had reason to trust the report. While they had no basis to suspect that the named students had previously consumed alcohol on school grounds, the student-informant’s report did lend credence to growing concerns about drinking and drug use in school.

Prior to the report, members of the community had informed the school administration of drinking and drug use by students. In addition, administrators and teachers themselves had overheard students discussing this problem. Although they had not caught any student using drugs or alcohol at school, they had in the past uncovered drug paraphernalia in the student bathrooms. The administrators believed they had
reasonable suspicion to search the four students for evidence of beer drinking. Evidence might include beer cans and bottles, as well as bottle caps and openers.

The girls to be searched were the four identified as drinking at school during the overheard conversation. Jennifer Greenleaf, the plaintiff, was one of the girls searched. The principal, Mr. Cote, and the assistant principal, Ms. McCue searched the students and their belongings. Jennifer was brought into a vacant hallway and asked to open her locker, and remove the items in her pockets and backpack. Greenleaf complied with the request of administrators and nothing incriminating was uncovered. Greenleaf was never touched by either administrator. She brought action in district court claiming that her right to be free from unreasonable search and seizure had been violated.

HOLDING

The district court concluded that the search was reasonable.

REASONING

Judge Brody wrote that the search was justified at its inception because there was reasonable suspicion for suspecting that the search would turn up evidence that the student had violated a school rule. The district court concluded that the administrator had reasonable suspicion because of the report of the trustworthy student and the previous drug paraphernalia that was found. He indicated that the principal had reasonable grounds based on the fact that the school-informant was a reliable source and the person whose conversation was overheard had first hand knowledge of the issue because she was one of the students drinking. The court concluded that Mr. Cote’s search of Jennifer did not violate the Fourth Amendment, as construed in New Jersey v. T.L.O.
There were no other cases from the 1st circuit that were relevant to this study. Next, the study reviews cases from the 2nd circuit.

2nd Circuit

The 2nd circuit had only one reported case that was applicable to this study. This case was heard at the trial court level. This 1999 case was unique because it involved a field trip.


**FACTS**

This case involved a search by a high school principal that took place in a hotel room while on a field trip. The senior class of O'Neil High School in New York took a field trip to Disney World in Florida. Before the field trip, Mr. Guarricino, the principal, advised the students that drugs and alcohol were not permitted and room searches would be conducted to make sure all students abided by the rules. In addition, information advising students they would be sent home if they seriously violated a school rule was provided verbally and in writing. Parents also received the information and were asked to sign a permission slip. All students that went on the voluntary field trip had permission slips signed by their parent or guardian. Mr. Guarricino was one of the chaperones on the trip.

Upon returning to his hotel room, Mr. Guarricino noticed a large group of students outside one of the hotel rooms and a strong marijuana odor emanating from the room. With the assistance of hotel security, the principal checked the rooms of all the students.
In one of the rooms he found a bottle of alcohol and in a different room he found marijuana. The two students who occupied the rooms were sent home and suspended from school for three days because drugs and alcohol were uncovered during the search of their rooms. Brian Ricci, one of the students involved, was sent home because an undisclosed amount of marijuana was found in the safe in his room. Ricci brought action against Mr. Guarricino on the grounds that he felt the search violated his Fourth Amendment protection.

**HOLDING**

Defendants' motion for summary judgment was granted and plaintiffs' complaint was dismissed.

**REASONING**

District Court Justice Conner used the T.L.O precedent even though the incident took place off school campus.

The attorney for the plaintiff claimed that there had been no prior court decision addressing Fourth Amendment standards as they apply off campus. Judge Conner indicated that the same standards apply for off campus searches as they do for on campus searches as long as the activity is a school-sponsored event. He indicated that off campus events have a greater need for appropriate supervision and action. The court rejected the suggestion that the location of the search and seizure should somehow have relaxed fourth amendment standards applicable to school searches and seizures. Justice Connor wrote that school field trips present a greater challenge to school officials trying to maintain order and discipline.
The issue of "individualized suspicion" was also addressed. The court indicated that the issue of "individualized suspicion" had no bearing on the final decision. Since *T.L.O.*, the Supreme Court has held that individualized suspicion was not required for a search to be deemed reasonable. In making that determination, the court looked to *Vernonia*, 515 U.S. 646. The court indicated that application of *Vernonia* by the various circuits, involving cases where individualized suspicion did not exist, showed that they supported searches more intrusive than this one, even when there was less of a need for an immediate search. Cases that were cited as support that will be discussed later included: *Desroches v. Caprio*, 156 F.3d. 571 (1998), *Todd v. Rush*, 133 F. 3d 984 (1997), and *Thompson v. Carthage School District*, 87 F. 3d. 979 (1996).

The court concluded suspicion occurred entirely in a public hallway. A group of boys gathered in the hallway outside Ricci's room was sufficient to arouse suspicion. Add to that the odor of marijuana and any reasonable person would have come to the same conclusion. The search was justified at its inception and conducted within reasonable scope. Therefore, Mr. Guarricino committed no constitutional violation.

This 2nd circuit case was the first in this study to review an issue that dealt with an off-campus Fourth Amendment issue. Other reported cases involving field trips are included later in this study. Presented next are cases from the 3rd circuit.

3rd Circuit

The 3rd circuit courts have decided three cases that were relevant to this study. One trial court case involved the strip search of a student to try and prove drug-use. The
appellate court decided two cases in 2000 that were relevant to this study. One case involved a student being forced to submit to a drug test and the other case dealt with a student athlete that was required to submit to a pregnancy test.


While this case was not recommended for publication in federal court, the case is relevant to this study. It was published in Lexis-Nexis, which is how the information was made available for this study.

FACTS

Plaintiff Sostarecz alleged that while in health class she was ordered to report to the school nurse for a drug test because of her inappropriate behavior in class. The nurse checked her pupils, temperature, blood pressure, and pulse. All tests were normal and no signs of drug use were noted. Defendant, Mr. Perry, Vice-Principal, ordered the nurse to take the student into the bathroom and strip-search her for signs of drug use. Plaintiff was forced to unbutton and remove her pants. The nurse supposedly inspected and touched Plaintiff's arms, legs, and private areas for evidence of drug use. No evidence of drug use was observed by the school nurse. The student brought action against the nurse and the administrator claiming that she was subjected to a search that violated her Fourth Amendment right. The defendants claimed qualified immunity.

HOLDING

The court held that the search was unreasonable and the defendants were not entitled to qualified immunity.
REASONING

The court relied on the standard set forth in T.L.O. when deciding this case. The court ruled that examining the Plaintiff’s pupils and vital signs was probably warranted because of her behavior in class and she was suspected of being under the influence of a controlled substance. The court held the removal of Plaintiff’s pants to be unreasonable because the inappropriate classroom behavior did not justify a strip search. The check of the vital signs, which was a reasonable search, indicated normal results. Therefore, a further search was not justified and the court concluded that the defendant’s actions were not reasonable. Once the tests of the pupils and vital signs produced normal results, a reasonable person would not have forced the student to remove her pants so that her legs could be checked for signs of drug use. The court determined that neither defendant, the Vice-Principal or the school nurse, could have reasonably believed that the actions they took were reasonable under the circumstances.

Gruenke v. Seip, 225 F. 3d. 290 (3rd Cir. 2000)

FACTS

Micheal Seip, Leah Gruenke’s swim coach, began to have suspicions that she was pregnant when she became nauseated at practice and had to take numerous bathroom breaks. He had several of her friends and his female coaches speak to her to try and get her to consent to taking a pregnancy test. She refused and insisted she was not pregnant. As time progressed the school nurse and counselor also had informal conversations with the Plaintiff to discuss pregnancy, she continued to deny that she was pregnant. Gruenke finally agreed to take a pregnancy test to clear up any misconceptions about her being
pregnant. The test came back positive. The coaches and a swimmer friend who were with her convinced her to take another test. Gruenke took two more tests that produced negative results. Later, after a visit to a doctor, it was confirmed that she was in fact five or six months pregnant. She concealed that information so she could continue to compete in swim meets. She continued to compete despite being five or six months pregnant.

During the next school year, and after the birth of her child, Gruenke was pulled from several swim meets. She felt that she was pulled from those meets as a means of retaliation although she was never removed from the team.

Action was brought by Gruenke against the swim coach for violating her Fourth Amendment right by forcing her to take a pregnancy test. The district court held that the defendant's conduct was questionable and had he not been entitled to qualified immunity might have found that material facts did exist to show that plaintiff's Fourth Amendment rights had been violated. However, as a matter of law, the district court was unable to say that the law on the issue had been clearly established, and therefore held that the defendant's conduct of insisting on a pregnancy test was entitled to qualified immunity on the fourth amendment claim.

**HOLDING**

The third circuit appellate court indicated that Seip should have known that his conduct would violate a clearly established right, thus abolishing qualified immunity as a defense. Therefore the court reversed the lower court's grant of summary judgment with respect to Gruenke's Fourth Amendment claim and remanded the case back to the district court.
REASONING

The appellate court indicated that the conclusion that the district court came to was wrong. In his opinion, Appellate Justice Roth stated that just because the Supreme Court had not yet ruled on a case similar to this one, it did not mean the right was not clearly established. He advised that a review of current Fourth Amendment law in public school context revealed that the right was clearly established and Seip’s conduct was unreasonable. He indicated that the standard set forth in *Vernonia* clearly established that a school official’s administration of a pregnancy test to a student athlete would constitute an unreasonable search under the Fourth Amendment.

The appellate court noted that the pregnancy test of a student by a school official is clearly a search. The court held that even though the case was one of first impression, the law was clearly established. The court pointed to the Fourth Amendment of the Constitution, which protects individuals from unreasonable search and seizure. The court next applied *T.L.O.*, which extended that protection from state public school officials as well. The court then held that the *Vernonia* decision addressed the issue of how intrusive a urinalysis test is. A urinalysis test is clearly intrusive because it reveals personal information.

The court did not think that the coach’s conduct was reasonable. A swim coach, without any medical background, allegedly forced a swimmer to take a pregnancy test. The court indicated that Seip’s responsibilities could be reasonably construed to teaching and training. They cannot be extended to requiring a pregnancy test. In addition, a reasonable swim coach would have realized that his swimmer’s condition was not
suitable for public speculation. Seip, offered no explanation that could justify his failure to respect the boundaries of reasonableness.

Therefore, the case was reversed and remanded back to the district court.

**Hedges v. Musco, 204 F. 3d 109 (3rd Cir. 2000)**

**FACTS**

A high school student, Tara Hedges, showed up for class behaving oddly, her face was flushed, and her eyes were glossy and red. The teacher asked that she go see the nurse but she refused. School policy indicated that staff members who thought a student to be under the influence of drugs or alcohol shall report the matter as soon as possible to school officials. In addition, the policy indicated that when school officials had reasonable suspicion to believe that a student was under the influence of drugs or alcohol the principal or his designee could conduct a search. Following school policy, the teacher contacted an administrator and had a security guard escort the student to the nurse’s office. At first glance Nurse Kiely thought Hedges was “high.” The nurse checked vital signs and noted that while pulse and respiration were normal her blood pressure was elevated. Believing that the student was under the influence of drugs or alcohol administration advised the security guard to search Hedges’ locker and bookbag. Some small white pills and one large brown pill were uncovered during the search. The student identified the pills as diet pills. Mr. Musco, the principal, contacted the parent and had him come to the school. The pills were turned over to the parent and the principal advised him that his daughter must undergo a drug test before returning to school. The student was taken by her father to a clinic the school recommended and tested for drugs. The pills
were reviewed by a pharmacist and turned out to be diet pills and vitamins. The drug test showed that the student did not have illicit drugs or alcohol in her blood. The morning after the incident took place the school was notified of the test results and the student returned to school. The student sued the principal on the grounds that her Fourth Amendments rights were violated.

The district court denied the plaintiffs motion for summary judgment and granted summary judgment for defendants. The district court held the search was reasonable. The decision in favor of the defendants was appealed by Hedges.

**HOLDING**

The appellate court concluded that the search of the student was reasonable under all circumstances and affirmed the judgment of the district court.

**REASONING**

In reaching the decision, the court relied on T.L.O. to justify the escalation of the search once discovery of the pills warranted it. In addition, the district court relied on Vemonia to determine the constitutionality of drug-testing. The court ruled that the student’s abnormal appearance, and behavior gave school officials the reasonable suspicion they needed to conduct a search. The abnormal appearance was the plaintiff’s flushed face, dilated pupils, and glassy red eyes. The odd behavior was the fact that the student was described as uncharacteristically talkative and outgoing. The search was ruled reasonable at its inception and within appropriate scope of authority.

The appellate court indicated, based on Vemonia, the urinalysis on Hedges was not excessively intrusive given the age and sex of the student and the nature of the infraction. The appellate court relied on the standard set forth in T.L.O. to hold that that the search
conducted need not be the least intrusive way of achieving its objective. The search must not be excessively intrusive, which it was not in this case.

With the decision of Seventh Circuit case Bridgman v. New Trier High School as reference, the appellate court indicated that if a teacher's suspicion is based on objective facts that suggest a student may be under the influence of drugs or alcohol, an examination of the kind performed in this case is permissible. The Third Circuit panel confirmed that the search was reasonable at its inception and reasonably related in scope to the circumstances, which justified the search in the first place. Summary judgment in favor of the school defendants on unreasonable search claims was appropriate.

The cases from the 3rd circuit provided pertinent information for this study and one unique case, Seip, gives insight on forcing a person to submit to a pregnancy test. The cases next to be presented are from the 4th circuit.

4th Circuit

The 4th circuit had four applicable cases. Only one of the four cases was heard in the appellate court. That case was unique because it involved a situation where a student was suspended for not allowing a search of his backpack after it was suspected that the backpack contained a pair of stolen shoes. The three other cases, heard only at the district court level, involved a strip search, a search of one’s belongings, and a seizure case.

FACTS

In Burnham students claimed that on three occasions Roy West, the principal, conducted unreasonable searches against them. The first incident occurred shortly after it was discovered that school property was defaced. West directed teachers to search students’ bookbags, pockets, and pocketbooks for magic makers. Possession of magic markers was a violation of a school rule. There was no evidence to indicate that any student was physically touched during the search.

The second search occurred a few weeks later when a teacher reported to West that several students were seen leaving the school bus with Walkmen or radios. Possession of Walkmen or like items was a violation of a school rule. Without any inquiry, West ordered a search of all students’ bookbags and pocketbooks for Walkmen or similar devices. A search was conducted by the teachers pursuant to West’s instructions.

A third incident occurred a short time later. A teacher reported that she had smelled marijuana smoke in the hallway. West went to the hallway and acknowledged that a smell of marijuana did exist. He looked for physical evidence and found none. West asked several teachers in the area if they had allowed any students out of the classroom recently. When his efforts produced no suspects, he ordered teachers to search all student’s pocketbooks, bookbags, and pockets of male students. One teacher sniffed the hands of a student to determine if they smelled like marijuana. Students were required to turn their pockets inside out and place the contents on tops of desks. In each case the searches failed to produce any evidence of wrongdoing or school violations.
HOLDING

The district court held that unconstitutional searches did occur. The plaintiff’s motion for summary judgment was granted.

REASONING

The district court concluded that the underlying command of the Fourth Amendment is always that searches and seizures be reasonable. All the searches in question were conducted without individualized suspicion. Because the searches were unjustified for lack of individualized suspicion, the court ruled in favor of the students.

The court indicated that the United States Supreme Court had not yet decided whether individualized suspicion was a necessary component to a reasonable search. District Judge Spencer indicated that the searches that were conducted at the middle school were similar to the general searches that prompted the Fourth Amendment protection. The searches in question were all conducted in an atmosphere devoid of individualized suspicion, which Justice Spencer said made the searches unjustified.


This unpublished case contains data relevant to this study so was included despite the fact it was found only in Lexis-Nexis.

FACTS

Plaintiffs, Terrell Caviness and Dante Caviness, were reported, by a fellow student, to be in possession of marijuana while at school. A school counselor and assistant principal summoned the Plaintiffs to the office of the school principal. They were put into separate rooms and detained for the entire school day, six hours. During their detention, Plaintiff’s
belongings were searched out of their presence and a police officer questioned them about the use and possession of marijuana. Defendants found no drugs or other contraband during the six hour detention of the Plaintiffs. The two students brought action claiming that their Fourth Amendment rights had been violated. The Defendants filed motion to dismiss.

**HOLDING**

The court denied the defendant’s motion for dismissal and allowed the case to move forward to discovery.

**REASONING**

In applying the standard established in *T.L.O.*, the court found that the search and six hour seizure of the students could be considered excessive. The court indicated that the issue whether the Fourth Amendment protects against unreasonable seizures of school children (as opposed to merely searches) had not been addressed by the Supreme Court or the Fourth Circuit. The opinion stated that other federal courts have extended the *T.L.O.* framework to the context of student seizure. *Edwards v. Rees*, 883 F. 2d 882 (10th Cir. 1989), which is documented later in this chapter, was used as an example.

In a similar case to the one here, the Tenth Circuit Court of Appeals found that statements made to a vice-principal by two students implicating the plaintiff in making bomb threats to an elementary school were justifiable grounds for the seizure of the plaintiff. In that case, *Edwards v. Rees*, the court held the statements led the vice-principal to believe that questioning the plaintiff about the incident might turn up evidence that the plaintiff had violated either the law or rules of the school. In that case the plaintiff was detained a mere twenty minutes and the concern was a bomb threat.
The reasoning here contended that detaining the plaintiffs for six hours for the possible possession of drugs was not reasonable. Thus, the plaintiffs were given the opportunity to proceed with their case to explore the reasonableness of their detention.

Desroches v. Caprio, 156 F.3d 571 (4th Cir. 1998)

FACTS

James DesRoches was a ninth-grade student at a public high school. He attended an art class that met for half an hour before lunch and half an hour after lunch. One day a girl in his class placed her tennis shoes on top of her desk and left them there while she and the other students went to lunch. When she returned the shoes were gone. She reported the matter to the appropriate school official, James Lee, who conducted an investigation. Mr. Lee interviewed several students in trying to find the missing shoes. During lunch, the classroom remained unlocked. The teacher stayed in the classroom the entire time except for a short period during which she was in a closet in the classroom. The teacher stated that she never saw any student in the classroom that she did not know. Another student claimed that one student that did not belong in the class did enter the room during lunch.

Through the course of his investigation, Mr. Lee determined that it was necessary to search the personal belongings of all nineteen students in the class. Only DesRoches objected to the search. When the searches of the other students' bags and backpacks failed to produce the missing tennis shoes Desroches was taken to the principal's office. The principal was unsuccessful in his attempt to get the student to consent to a search of his backpack. DesRoches was then suspended for ten days.
The student, by way of his father, filed action in district court. He claimed that his Fourth Amendment right was violated.

The district court found that the school's action constituted an unreasonable search in violation of the Fourth Amendment. School officials filed an appeal that claimed the search was reasonable under the circumstances.

HOLDING

The appellate court held that the search of DesRoches's backpack was reasonable under the Fourth Amendment. The judgment of the district court was, therefore, reversed.

REASONING

The appellate court was faced with the issue of what constituted reasonable suspicion at "inception" of the search. The appellate court concluded that the inception of the search was not when the search of the class was first announced, as claimed by the district court, but instead when DesRoches was actually punished. After the search of the other eighteen students failed to produce the missing tennis shoes, suspicion turned to DesRoches, which created individualized suspicion. Once school officials had individualized suspicion and DesRoches failed to consent to a search, a suspension was an appropriate consequence.

This 1998 case indicates that the fourth circuit was looking for individualized suspicion.


This unpublished case contains data relevant to this study so was included despite the fact it was found only in Lexis-Nexis.
FACTS

David Austin was a high school student when he was subjected to a strip search by two assistant principals who searched him because they believed he was in possession of drugs. Administrator, Carl Linstrom had been informed that Austin was in possession of drugs. Austin was taken from class by two assistant principals, Harold Lambert and Lindstrom. As the three were walking down the hall, Austin was observed removing something from his pant pocket and placing the item into his waistband. He was taken to Lindstrom's office and required to remove his shirt, empty his pockets, and take off his shoes and socks. As he removed his shoes and socks, a small brass pipe fitting fell to the floor where Lindstrom retrieved it. Believing that he was in possession of marijuana, Lindstrom told Austin to remove his pants. Lindstrom then ran his hands under the elastic band of Austin's underwear touching his hips, lower back, lower stomach, genital area and penis in the process. Austin contends that the search took place while he was standing in front of a floor-to-ceiling length window in Lindstrom's first floor office. Blinds were positioned in such a way that persons from the outside could see in. Austin brought action claiming that his Fourth Amendment right was violated.

HOLDING

The district court held that the student's constitutional rights were violated. The court also granted the defendant's motion for summary judgment on the qualified immunity defense.

REASONING

The court assumed, without deciding, that the defendants' actions violated Austin's constitutional rights. The court, nevertheless, found that at the time of the incident the law
was insufficiently established regarding the legality of the methods and location of the search. Plaintiff did not allege that the contact was improperly motivated. Instead, he acknowledged that the contact was incidental as the defendants conducted a waistband and patdown search while he was wearing a tee shirt and boxer shorts. The court found that, given the absence of case law defining the parameters of how far a school administrator may go in searching a student for drugs, the defendants could not have reasonably known their waistband search violated Austin’s constitutional rights. Nor does the court find that the actions of the defendants in this case were so obviously illegal that any reasonable observer would have known that they constituted a constitutional violation.

All of the cases reviewed from the 4th circuit are included because they contain information relevant to this study. One case in particular, Desroches, is especially helpful due to the fact it helps define when a search originates.

5th Circuit

The two cases in the 5th circuit were both heard at the district court level only and decided nine years apart. The earlier case involved a drug-testing policy and was decided prior to Vernonia. The second case involved a strip search of a student to try and find missing money.
FACTS

In 1988 the East Chambers Consolidated Independent School District, at the urging of students and parents in the community, instituted a urinalysis drug-testing program for all students in grades six through twelve that wanted to participate in extra-curricular activities. The parents and students petitioned the school board to provide a more concerted effort to combat drug and alcohol use. The families that appeared before the board had children that recently undergone substance abuse treatment and they did not think the school was dealing with the drug problem effectively. The school board then advised the principal of the high school to investigate the situation and make recommendations to the board as to what measures could be taken.

The principal's investigation consisted of having three students who had appeared before the school board go through a high school yearbook. After reviewing the yearbook, the boys collectively answered four questions the principal asked them. Their responses indicated that they had seen approximately one-third of the high school student body use drugs other than alcohol and they estimated that 97% of the high school population used alcohol.

The principal reported the finding of his investigation to the school board along with options that included urinalysis testing. The drug-testing policy enacted by the school board called for the mandatory testing of all students prior to participating in extracurricular activities. The students were then tested again randomly throughout the school year.
According to the provisions of the drug testing program all participants in sports were to be tested at the beginning of the semester, then again be tested randomly throughout the school year, at the rate of thirty students per month. The policy required that an initial test be performed on participants in all extra-curricular activities. Students were required to report to the principal's office upon demand and produce a urine sample. The penalty for refusing to submit to the test was exclusion from extra-curricular activities until the student agreed to be tested. Students that tested positive and any time were excluded from activities until they submitted a subsequent test, which proved negative.

One student, Brent Brooks, was denied an opportunity to participate in an extra-curricular activity because he refused to take the drug test. He filed suit against the school district and claimed that the policy was a violation to his Fourth Amendment right.

**HOLDING**

The decision was rendered in favor of the student. The district court indicated that the school board's drug-testing program was unreasonable.

**REASONING**

In the ruling, which was prior to *Vernonia*, the court held that the drug testing was a governmental action and the Fourth Amendment applies to officials of public schools. The urinalysis was considered a search under the Fourth Amendment because the analysis or urine is capable of disclosing facts about which an ordinary citizen has a reasonable expectation of privacy. In his opinion, Justice Gibson indicated that the facts of this particular case were unique, but the standard that applied was well known. The same *T.L.O.* standard that would apply to any other search applied here. Was the action justified reasonable suspicion at its inception, and was it reasonably related in scope to
the circumstances that justified the interference in the first place? It was believed that the
Constitution specified that under ordinary circumstances individualized suspicion that the
search will discover evidence of wrongdoing is needed in order for a search to be legal.
The court cited a case by another court, which appears later in this study, that held drug
testing of the general student body of a public school was unconstitutional Anabel v.
FORD. 653 F. Supp. 22 (W. Ark, 1985). The drug program in question brought a very
private function under the rigid scrutiny of school authorities, without any individualized
suspicion. Justice Gibson indicated the policy the school board approved was, “an across
the board, eagle eye examination of personal information of almost every child in the
school district.” 730 F. Supp. 759, 765. In addition, he said, “It is difficult to imagine any
search of school children more intrusive. The defendant’s drug testing program is further
unreasonable because it is not likely to accomplish its ostensible goals.” Id., 766.

The school district’s goal to prevent substance abuse was too global. According to the
opinion, the program was not supported by the compelling interest that school officials
must have before a warrantless search is permissible. The invasion on the personal
privacy of the students outweighed the unrealistic outcome that the school was trying to
accomplish, which was to prevent substance abuse. A permanent injunction was granted
to prevent school officials from continuing with the unconstitutional urinalysis program.


This unpublished case contains data relevant to this study so was included despite the
fact it was found only in Lexis-Nexis.
FACT

This incident began when a student reported to school personnel that her $42.00 for a band trip was missing. Cherrie Kelly, a high school student, was strip searched by a female vice-principal in search of the $42.00 that was reported stolen. Teacher, Julie Pertuit, originally did a cursory search of her students and the classroom as soon as she was notified of the missing money. When her search failed to discover the money she contacted Security Officer Rhome, who searched the student’s bookbags, desks, and personal property. After this search failed to produce the money Vice-Principal Goudreaux was notified so he could search the male students and Vice-Principal Braden was called to search the female students. The female students were taken into the women’s restroom and told to remove their clothes. An observational only search was conducted, the girls were not touched in any way. Plaintiff, Kelly, brought action claiming that her Fourth Amendment right had been violated.

HOLDING

The search was found to be reasonable and the judge ruled in favor of the defendants.

REASONING

As held by the Supreme Court in T.L.O., the district court concluded that the reasonableness of any search involves a twofold inquiry: was the search justified at its inception; and, was the search actually conducted reasonably related in scope to the circumstances which originally justified the interference. Searches of students are ordinarily justified at inception when there is reasonable suspicion for suspecting the search will turn up evidence the student has violated or is violating either the law or a school rule. In this case it was reasonable to believe that the search of the students would
uncover the missing money. In the Court's opinion, Justice Fallon indicated, "This Circuit recognized that no individualized suspicion is required in school search situations". He held that the search was reasonable and ruled in favor of the defendants.

The cases from the 5th circuit were helpful in providing data that was relevant to this study. Next, is a review of cases from the 6th circuit.

6th Circuit

Of the four cases from the 6th circuit that were included in this study, two were decided by the appellate court. The two cases that were heard in the district court were seven years apart and both involved a strip search by a school official that was trying to locate drugs. The two cases that were decided at the appellate level were quite different. One involved a search that took place during a field trip and the other involved a strip search to locate drugs.


FACTS

Plaintiff Ruth Cales was 15 years of age and a 10th grade student at Howell High School. At the time of the incident Cales was observed by a school security guard ducking behind a parked car at a time she was scheduled to be in class. When asked by the security officer to identify herself Cales gave a false name. She was subsequently taken to the office of assistant principal Daniel McCarthy where she was asked to empty the contents of her purse on a desk. Her purse contained Howell High School
"readmittance slips" which she possessed improperly. Knowing that she had violated a school rule, Mr. McCarthy then instructed Cales to turn her jean pockets inside-out. She subsequently completely removed her jeans. A dispute existed as to why she removed her jeans. A female assistant principal, Mary Steinhelper, asked the Plaintiff to bend over so the contents of her brassiere could be visually examined. The basis of the search was the belief of assistant principal McCarthy that Cales was in possession of illegal drugs.

During the search the only persons present were Mary Steinhelper and Colleen Wise, who was a secretary to assistant principal McCarthy. At no time was the Plaintiff's body touched in any manner.

**HOLDING**

Justice Newblatt indicated that the facts of the case indicated that the search was unreasonable because it was not reasonable at its inception. The Judge ordered that the Plaintiff's motion for summary judgment be granted. In addition, Mr. McCarthy was not granted qualified immunity.

**REASONING**

The court indicated that by removing her jeans it did not make the search any more intrusive. In addressing the first prong of the test to see if the search was reasonable, the district court had to decide if the search was reasonable at its inception. The student was observed ducking behind a parked car at a time she should have been in class and when a security guard questioned her, she gave a bogus name. Based on her conduct, McCarthy concluded that Cales was involved in drugs and should be searched. While it is clear that the student violated a school rule, no basis for a body search was created. The question presented was whether the violation created reasonable suspicion for a search involving
drug usage. In his opinion, District Court Justice Newblatt indicated that the student's ambiguous behavior could have meant that she was truant, stealing hubcaps, or that she had left class to meet a boyfriend. It could have signified that the plaintiff had violated any of an infinite number of laws or school rules. He went on to say:

This Court does not read T.L.O. so broadly as to allow a school administrator the right to search a student because that student acts in such a way so as to create reasonable suspicion that the student has violated some rule or law. Rather, the burden is on the administrator to establish that the student's conduct is such that it creates reasonable suspicion that a specific rule or law has been violated and that a search could reasonably be expected to produce evidence of that violation. (p. 457)

Administration was directed through this decision to make sure there is a connection between the search and the expected wrongdoing. If school officials fail to carry that burden of proof the search necessarily fall beyond the parameters of the Fourth Amendment. Due to the fact that the first prong did not past the TLO test, the second prong was unnecessary.

**Webb v. McCullough, 828 F. 2d 1151 (6th Cir. 1987)**

**FACTS**

Wendy Webb took a school trip to Hawaii as a member of the high school band. The school principal, Thomas McCullough, and his wife were two of the chaperones on the trip. Prior to departure, McCullough advised all members of the band that if anyone used alcohol or illegal drugs they would be sent home. Defendant McCullough had been advised by another chaperone that some students had used an unoccupied room adjacent
to, and sharing a balcony with. Webb’s room the previous night. McCullough contacted hotel security and asked to gain access to the room adjacent to Webb’s. When the hotel security guard opened the door a teenage boy jumped over the barrier that separated the vacant room with Webb’s room. McCullough then entered Webb’s room and saw the boy jump back over the barrier onto the balcony of the vacant room. The boy was apprehended by hotel security and McCullough told Webb and the other girls in the room they were being sent home because they had a boy in their room. While he was telling the girls they were being sent home, another chaperone found a six-pack of beer and a quart of wine in the unoccupied room. Webb and the other girls were then sent home. Webb brought action against McCullough claiming that he violated her Fourth Amendment right to be free from unreasonable searches.

The district court granted Defendant McCullough’s motion for summary judgment indicating that the search was reasonable. Webb then appealed.

HOLDING

The appellate court affirmed the lower court’s decision.

REASONING

Justice Boggs, who wrote the opinion for the appellate court, indicated the court relied heavily on the doctrine of in loco parentis when deciding this matter. While the court acknowledged that in loco parentis doctrine is no longer recognized as a source of school officials’ general authority over pupils, they indicated that because this was a trip far away from school, it applied in this case. Justice Boggs wrote:

It must be remembered that this case arose in the context of a “spring break” trip and that the school officials present were charged with the care and safety of the
plaintiffs while they were more than 5,000 miles from home. More so than in an ordinary situation, the school officials were standing in loco parentis. They were faced with the difficult task of supervising the students in an unstructured environment far different from that present within the confines of the schoolhouse. (p. 457)

The court determined that T.L.O. was applicable to searches conducted during field trips. Administrators were expected to use the same standards set forth in T.L.O. with respect to searches whether it is at school or on field trips. Several crucial facts that explained why in loco parentis applied in this case and not in the T.L.O. case were described in the opinion. One difference noted was because this case did not involve mandated education. It was a voluntary undertaking and parents had to sign a permission slip, which transferred parental authority to school officials. McCullough was not merely acting as an agent of the state in his role as principal, he was also acting in loco parentis. The opinion indicated that the in loco parentis doctrine was no longer recognized as the source of school officials’ general authority over pupils, but it does retain some vitality in appropriate circumstances. In all actuality, this search would be the equivalent of a parent’s search of a child’s room.

Second, greater ranges of activities occur during extracurricular activities than during school, which would require a greater degree of administrative intervention. In addition, there are many more ways for a student to be injured or to transgress school rules or laws during a non-curricular field trip than during relatively orderly school hours. The court advised that parents would be reluctant to permit their children to go on field trips if school official’s authority to impose supervision were subject to the same Fourth
Amendment limitations as apply to police officers. We learned from T.L.O. that school officials have a lesser standard than police officials with respect to searches. The opinion also indicated that it would be inappropriate to expose school districts and administrators to increased tort liability while denying them the authority necessary to lessen the likelihood of student injury. In conclusion, Justice Boggs wrote:

Although we understand Webb's alleged discomfort at being intruded upon, such embarrassment alone simply does not rise to the level of a constitutional claim, because Webb's factual allegations do not show that the searches exceeded the in loco parentis aspect of McCullough's hybrid authority. Thus, there is no genuine issue of material fact on the question of the reasonableness of the searches, and the district court's grant of summary judgment on the issue of the searches is affirmed. (p. 1157)

**Williams v. Elington**, 936 F. 2d 881 (6th Cir. 1991)

**FACTS**

Principal Ellington received a phone call from the parent of a student advising him that a student offered drugs to her daughter. Ellington interviewed the student and discovered that during typing class two girls, Michelle and Angela, produced a clear white vial that contained a white powder. The girls placed the powder on their fingers, sniffed it, and offered it to Ginger who refused it. After talking to the typing teacher, Ellington learned that a letter was found the previous semester under the desk of Angela that indicated she was involved with friends who attend parties that offer the "rich man's drug." Ellington discussed the matter with Angela's' aunt who was the school guidance
counselor. A few days after the incident began, Ginger went to Ellington’s office to report that the girls who were doing drugs before were once again using a white powdery substance. Ellington contacted the two assistant principals and the three of them removed Angela and Michelle from class. The girls were taken to Ellington’s office where Michelle produced a small brown vial that contained a substance called “rush”. While possession of “rush” was not illegal, it was illegal to inhale it. Both girls denied possession of any drugs. Ellington wanted to search the girls’ lockers because the brown vial did not match the description given by Ginger. Assistant Principal Jones searched the locker assigned to Angela and the locker she used to house her belongings. No drugs were found in either locker. Likewise a search of Angela’s books and purse conducted by female Assistant Principal Easley produced no evidence of drugs. Finally, Ellington asked Easley to take Angela into her office and search her person, in the presence of a female secretary. Inside Easley’s office Angela was asked to empty her pockets which she promptly did. Easley then asked the girl to remove her T-shirt and lower her jeans to her knees. Finally, Angela was told to remove her shoes and socks. Easley found no evidence of drugs as a result of the search. Angela filed suit claiming violation of the fourth amendment seeking a declaration that the search conducted was unconstitutional.

The district court ruled in favor of the Defendants. The ruling was appealed.

**HOLDING**

The district court’s granting of summary judgment in favor of Defendants was affirmed.
REASONING

The district court reasoned that Angela had not established the search was unconstitutional as a matter of law. On appeal, Angela alleged that the Defendants’ conduct violated her right to be free from unconstitutional searches pursuant to the fourth amendment. In addition, Angela claimed that the district court erred in ruling that the warrantless strip search was not unreasonable.

The appellate court was satisfied that there were reasonable grounds to conduct the search. Ellington’s decision to search the student and her possessions for drugs was based upon the information that was provided to him through the course of the week. Another student twice told Ellington that Angela was using drugs in school and told by a teacher that an incriminating note regarding drug use had been previously found under Angela’s desk. The tips Ellington received were unverified yet reliable.

The appellate court reasoned that Ellington was not unreasonable to suspect that based on the information he received a search of the student and/or her belongings would produce drugs. The search was justified at its inception and conducted reasonably within the scope of the circumstances that led to the initial interference. The search was conducted by someone of the same sex and had a witness that was the same sex. In addition, the fact that the student was being searched for drugs that could be contained in a small vial and concealed in many place on the body the search was not unreasonable. The appellate court indicated that due to the small size of the vial and the ease to which it could be concealed, the strip search was not excessively intrusive.
FACTS

Terry Widener was a high school student. One day one of Widener’s teachers noticed a strong odor of marijuana emanating from him. The teacher contacted an administrator and a security guard was sent to the classroom to escort the student to the Dean’s office. The security guard indicated that Widener had dilated pupils, was acting sluggish, and smelled of marijuana. Widener gave the security guard permission to search his jacket and bag. Widener was questioned by the security guard about the use and possession of marijuana. After the initial search failed to turn up evidence of wrongdoing, a pat-down search was conducted and the student complied with security’s request to empty his pockets. Still no evidence of marijuana was produced. Widener was then asked to lift his shirt and remove his shoes and socks, which he did. The security guard then asked the student if he was wearing gym shorts, which he responded affirmatively. Widener lowered his pants and was asked to pull the shorts tight around his crotch area to permit the security guard an opportunity to observe whether he was concealing any drugs. Like the previous searches, this produced no evidence of drug possession. Widener confirmed that he never felt threatened, nor was he touched while his pants were lowered. He contended that his Fourth Amendment right to be free from unreasonable searches and seizures was violated.

HOLDING

The district court held that based on the material facts as presented by both parties the search was reasonable. The Defendant’s motion for summary judgment was granted by Justice Spiegel.
REASONING

First, the search was deemed to be reasonable at its inception. The odor of marijuana coupled with dilated pupils was reasonable suspicion to believe that the student had violated the school rule forbidding use or possession of a controlled substance. Second, the search was considered to be reasonably related in scope to circumstances that led to the search in the first place. Since it was marijuana that was being searched for the court concluded that it was reasonable to have the student remove his clothing and visually observe if he was “crotcheting” drugs. The search was reasonable in scope in light of the age and sex of the student involved, and the nature of the rule violation. The Plaintiff was removed from the classroom and the presence of his classmates. In addition, the Plaintiff was only asked to remove his jeans, not his undergarments, and, only in the presence of two security guards of the same sex. Widener was never threatened in any way, touched inappropriately, or touched at all while his pants were down.

Three of the four cases from the 6th circuit involved searches where the students were required to remove clothing. The fourth case once again reviewed a search that took place during a school sponsored field trip.

7th Circuit

The eleven cases that were applicable to this study from the 7th circuit were by far the most from any one circuit. The cases ranged from 1985-2000 and covered a variety of Fourth Amendment issues. Five of the cases were heard only in district court while six cases were decided at the appellate level.

FACTS

Responding to two anonymous phone tips alleging two students were in possession of drugs and drug paraphernalia, an administrator at Reavis High School conducted a locker search of one student and brought a second student (Martens) to her office. Martens was confronted with the allegations of the phone call. He denied he had a controlled substance in his possession and refused to consent to a search. A Sheriff’s deputy, at school on another matter, came by the administrator’s office and spoke to Martens. At the urging of the Sheriff, Marten emptied his pockets. A pipe with marijuana residue was found on Marten’s possession. Martens was suspended from school pending a hearing before the Board of Education. At the conclusion of the hearing the Board decided to expel Martens for the remainder of the school year. The expulsion was not entered on Marten’s permanent school record. Marten claimed that the expulsion kept him from graduating a semester early. He brought action against the district claiming that the search violated his Fourth Amendment right.

HOLDING

The court held in favor of the school district and agreed that the search was reasonable.

REASONING

This case originated prior to the Supreme Court ruling in T.L.O. being handed down. The court waited and used the standard set in T.L.O. for determining if the search of the student was reasonable. Martens did not believe that school personnel had reason to search him based solely on an anonymous phone tip. The court indicated that not only did
school officials have reasonable suspicion to conduct a search but probably probable cause to search Martens.

School personnel have "reasonable suspicion" when they believe that a student has violated or was violating a law or school rule. The court concluded that school officials had reasonable suspicion to believe that Martens violated a school rule when they received the anonymous phone calls. This made the search reasonable at its inception. Justice Moran indicated in his opinion, that reasonable suspicion led to measures reasonably related to the objectives of the search and were not excessively intrusive. The measures consisted of a high school junior being asked in a school office during school hours and in light of specific information relating to marijuana, to empty his pockets. Martens reluctantly complied and that is when incriminating evidence against him was uncovered.

Schaill v. Tippecanoe School District, 864 F 2d 1309 (7th Cir. 1988)

FACTS

Based on drug use by high school baseball players, the board of trustees instituted a drug testing policy in 1986 for all athletes and cheerleaders. The policy originated when baseball coaches, acting on information regarding possible drug use by their players, had sixteen of their players submit urine samples. Of the samples provided, five of the students tested positive for marijuana use. Due to these results, other reports of drug use among athletes, and concern over the general high incidence rate of drug abuse among high school students nationwide, the school board decided to institute a random urine testing policy for all athletes and cheerleaders.
All students and parents/guardians of students desiring to participate in interscholastic athletics within the Tippecanoe School District were required to sign a consent form agreeing to submit to urinalysis if chosen on a random basis. Failure to sign the consent form or failing to take a drug test would result in the individual not being allowed to participate in interscholastic athletics. Each student that participated on an athletic team was assigned a number. School officials were authorized to conduct random urine tests during the sports season. In order to select a student to be tested, the numbers assigned to each student was placed in a box, and a single number was drawn.

The athlete chosen to be tested was escorted by a school official of the same sex to a bathroom, where the student was supplied with an empty specimen bottle. The student was then required to enter a lavatory stall and close the door in order to produce a sample. The student was not under direct visual observation while producing the sample, but the water in the toilet bowl was tinted to prevent the student from providing a false sample. The monitor was instructed to stand outside the stall to listen for normal sounds of urination and then check the warmth of the sample by hand to verify genuineness.

The procedure set up for handling and analyzing the sample was designed to insure accuracy and anonymity. The sample was then sent to a private testing facility, where it was tested for the presence of controlled substances or performance-enhancing drugs. Any sample that tested positive the first time was ran through a second completely different battery of tests. If a sample test still came out positive, the student and his/her parent/guardian were informed of the results. They then had the opportunity to have the sample tested again at a laboratory of their choice. In addition, they had the chance to present to school officials any evidence that suggests an innocent explanation of the
positive results. Factors such as legally taken prescriptions or over-the-counter medication that could have impacted the results.

Absent a satisfactory explanation, the athlete was banned from participating in a portion of the competition events during the athletic season. The first positive urinalysis test resulted in a suspension from 30% of the athletic contests, a second resulted in suspension in 50% of the contests. A third event resulted in the student being barred from competition for a full calendar year. A fourth occurrence resulted in the athlete being barred from all interscholastic competition for the remainder of his/her high school career. No other penalties were imposed, and the student could decrease the specified punishment by participating in an approved drug-counseling program.

Darcy Shaill and Shelly Johnson brought action in district court alleging that the urinalysis program was a violation of the Fourth Amendment right.

The district court ruled that the urinalysis was a "search" but the program was not a violation to any person's Fourth Amendment right. The girls appealed.

**HOLDING**

The judgment of the district court was affirmed by the appellate court.

**REASONING**

The court relied on *T.L.O.* when then decided the search in this case was reasonable. They concluded that probable cause was not a prerequisite to a search in the setting of a school, as explained in the *T.L.O.* decision. To determine the level of suspicion required before a search could be conducted meant balancing the nature and quality of the search, that is how intrusive the search was against the person, with the importance the search is
to the government. It was decided in this case that the minimal intrusion of the student was outweighed by the school's desire to keep the students free of drug use.

The appellate court agreed that the urinalysis was indeed a search. In his opinion, Justice Cudahy said:

We recognize that, if students are to be educated at all, an environment conducive to learning must be maintained. The plague of illicit drug use which currently threatens our nation's school adds a major dimension to the difficulties the schools face in fulfilling their purpose—the education of our children. If the schools are to survive and prosper, school administrators must have reasonable means at their disposal to deter conduct which substantially disrupts the school environment. In this case, we believe that the Tippecanoe County School Corporation has chosen a reasonable and limited response to a serious evil. In formulating its urinalysis program, the school district has been sensitive to the privacy rights of its students, and has sought to emphasize rehabilitation over punishment. We cannot conclude that this approach is inconsistent with the mandates of the constitution. (P. 1324)

This case was decided eight years prior to Vemonia and served as a precursor to the drug testing policy ruling that the United States Supreme Court handed down in 1996.

Cornfield v. Consolidated High School District No. 230, 991 F. 2d.1316 (7th Cir. 1993)

FACTS

Brian Cornfield was a student in a behavioral disorder program at Sandburg High School. One day, a teacher aide found him outside the school building during instruction time, in violation of a school rule. The aide left the student alone and reported the
incident to Cornfield’s teacher and an administrator. The aide told them of her suspicion that Cornfield appeared “too well-endowed.” Another teacher and teacher aide corroborated the story and indicated that there appeared to be an unusual bulge in Cornfield’s crotch area. No action was taken on the day of the incident.

One of Cornfield’s teachers reported that previously the student had indicated to him that he was dealing drugs. In addition, the student tested positive for marijuana and was assigned to a drug rehabilitation program, which he did not successfully complete. A few months prior to this incident Cornfield was found to be in possession of a live bullet. The day after initially suspecting Cornfield of crotching drugs, Cornfield’s teacher suspected him again of being in possession of marijuana. This time Mr. Frye, and the Dean, Mr. Spencer, prevented him from boarding the school bus at the end of the day. Spencer had also observed the unusual bulge in Cornfield’s crotch area. On that day they believed the sixteen-year-old to be “crotching” drugs, and Spencer and Frye asked him to accompany them to the administration office. When confronted with their suspicion, Cornfield grew agitated and began yelling obscenities. Frye telephoned the student’s mother to seek consent to search. She refused. The two school officials escorted Cornfield to the boys’ locker room, made sure that there were no other persons in the room, and locked the door. They had him remove his street clothes and put on a gym uniform. Spencer and Frye visually inspected his naked body and physically inspected his clothes. There was no evidence of drugs or any other contraband produced during the search. Afterwards the school bus returned to the school and took Cornfield home. Alleging that the search violated his Fourth Amendment right, Cornfield brought an action against the School District.
The district court granted summary judgment in favor of the Defendants.

**HOLDING**

The appellate court affirmed the lower court’s ruling.

**REASONING**

School officials filed affidavits that reported several reasons that they suspected Cornfield to be involved with drug activities. According to Spencer, Cornfield once stated that he was dealing drugs, and it was believed that he did not successfully complete a drug rehabilitation program. The bus driver had reported the smell of marijuana from where Cornfield was sitting on the bus and one student reported having observed Cornfield smoking marijuana on one occasion on the bus. In addition, Spencer was told by a student that Cornfield possessed drugs while on school grounds and Cornfield himself had related to Spencer that he constantly thought of drugs.

The district court ruled that the prior incidents coupled with the suspicion of crotchting drugs provided reasonable suspicion for Cornfield to be searched. The appellate court indicated that in order to overcome the district court’s summary judgment, Cornfield would need to establish a genuine issue of material fact. Spencer and Frye relied on a number of relatively recent events reported by various teachers and aides as well as their own personal observations.

The appellate court was presented with a number of incidents that allegedly served as a foundation for reasonable suspicion; therefore, the search was reasonable based on the two-prong test identified in **TLO**. The search was deemed reasonable in scope because Cornfield was sixteen-years-old, the search was conducted in a private area by two adults of the same sex, and Spencer and Frye believed the strip search was the least intrusive act.
that they could conduct to confirm or deny their suspicions. In addition, Cornfield was never touched during the strip search only examined visually from a distance.

As the facts of this case indicated, Frye and Spencer relied on a number of recent events, (as described earlier) and reports by various teachers and aides as well as their personal observations when they decided to conduct a search. The court concluded that the cumulative effect was sufficient to create reasonable suspicion that Cornfield was crotching drugs.


FACTS

On March 4, 1994, immediately following their physical education class, two female students reported to their gym teacher that four dollars and fifty cents was missing from the locker room. The teacher notified Kevin McClung, the principal, of the allegations. McClung, with the assistance of two female staff members, Janice Miller and Diana Stewart, decided to conduct a search of the students and their lockers. The girls were taken into the locker room where their lockers and book bags were searched. The girls were also advised to remove their shoes and socks. McClung instructed Miller and Stewart to take the girls to another part of the locker room and see if the money was hidden in the girls’ bras. All of the strip searches were conducted in the same fashion, although the specific details of each one vary somewhat. Once the girls were searched they were permitted to go on to their next class.

At some point during that day, McClung concluded that the search had been a mistake. He spent that evening and the rest of the weekend contacting the parents of the
students to report what had happened. Six of the girls filed suit, claiming that their Fourth Amendment right had been violated. Both the plaintiffs and the defendants filed motions for summary judgment.

**HOLDING**

The district court granted the Plaintiff's motion for summary judgment and held that the searches were unreasonable. The court was then asked to decide if the Plaintiffs should be awarded monetary damages. Defendants filed motions for summary judgment on the issue of qualified immunity. Defendant's motion for summary judgment on the issue of qualified immunity as to McClung, Miller, and Stewart was denied. The case did not provide information regarding whether or not damages were awarded.

**REASONING**

District Court Judge Lee, who presided over the case, cited Justice Stevens’ opinion in *T.L.O.* (concurring in part and dissenting in part) as a factor having significant impact on his decision. Stevens indicated that it does not matter what standard is applied, shocking strip searches have no place in the schoolhouse. *T.L.O.* 469 U.S. 325, 382. Stevens said, “Deeply intrusive searches outside the custodial context are only reasonable to prevent imminent and serious harm.” *Id.*, at 382. Since it was merely four dollars and fifty cents that was missing, there were no serious grounds for a search as intrusive as the one conducted. Having ruled the search unreasonable the court was then asked to decide if McClung, Miller, and Stewart were immune from monetary damages. The court found that the Plaintiffs had met their burden of establishing that the Defendants violated constitutional rights that a reasonable person would have known. In fact, McClung, by his own admission during testimony indicated that he felt the search had gone too far. A
reasonable person would have known that the strip search was a violation of the students’ Fourth Amendment right; therefore McClung was not entitled to qualified immunity. The seventh circuit addressed the issue of strip searches in *Doe v. Renfrow*, 631 F.2d 91 (1980), which predates *T.L.O.* so was not included in the study. The court in that case specifically concluded that a nude search of a thirteen-year-old child is an invasion and a violation of human decency. With respect to Miller and Stewart, they argued that they should receive qualified immunity because they were simply employees following orders from a superior. The court held that there is no precedent to indicate that teachers and other school personnel are to be held to a lesser standard than the official that actually orders an illegal search, for the purposes of determining the issue of qualified immunity. The evidence presented indicated that both Miller and Stewart were both active participants in the search, and not mere observers. Therefore, they were denied qualified immunity.

*Wallace v. The Batavia School District* 101,68 F. 3d. 1010 (7th Cir. 1995)

**FACTS**

When business teacher James Cliffe walked into his classroom he observed two female students screaming at each other and calling each other vulgar names. He ordered both girls to be seated and quiet down. That tactic did not work and both girls, Heather Wallace and Kim Fairbanks, continued to be verbally abusive to one another. The matter became so aggressive that Cliffe ordered Wallace to get her books and leave the classroom. Wallace failed to respond to Cliffe’s instruction so he grabbed her left wrist to help expedite her exit. Cliffe told Wallace to hurry up and grasped her right elbow to
move her out of the room. Wallace discontinued all movement toward the door and told Cliffe to let go, which he did, and Wallace then proceeded to exit the classroom. Wallace claimed the contact with Cliffe caused injury to her elbow. She sued Cliffe and the school district alleging violations of her Fourth Amendment right to be free from an unreasonable seizure.

The district court granted summary judgment for the defendant. Wallace then appealed that ruling.

**HOLDING**

The appellate court affirmed the lower court's decision.

**REASONING**

Wallace theorized that Cliffe violated her Fourth Amendment right to be free from unreasonable seizures when he grabbed her elbow and wrist. The appellate court recognized the fact that immediate and effective action is sometimes needed to deal with events that call for discipline. Justice Kanne, writing for a unanimous Seventh Circuit panel, indicated in his opinion:

The diminished protection of the Fourth Amendment for public schoolchildren is proper, the Court reasoned in *T.L.O.*, because classroom discipline and order are crucial to effective education, and, moreover, the infusion of schools with drugs and the related escalation of violence make order and discipline all the harder to maintain. (P. 1012)

Justice Kanne mentioned that *T.L.O.* specifically dealt with searches, but several circuit courts have relied upon that ruling to find that seizures of students by teachers also come within the scope of the Fourth Amendment. "While in school or under the
supervision of school authorities, public school students are in a unique constitutional position enjoying less than the full constitutional liberty protection afforded those persons not in school" (P. 1013). The court did not find any indication that Wallace's civil rights were violated in any way. Justice Kanne said:

She was deprived of liberty to some degree from the moment she entered the school, and no one could suggest constitutional infringement based on that basic deprivation. And if, as the Supreme Court recognized in T.L.O., discipline is crucial to education and education, as Epictetus wrote in the DISCOURSES, is necessary for freedom, depriving students of liberty is linked to the ultimate liberation of the student. Moreover, flexibility in discipline is necessary to preserve the informality of the student-teacher relationship. (p. 1013)

The court held that, in the context of the public school, a school official who seizes a student is not in violation of the Fourth Amendment when the restriction of liberty is reasonable under the circumstances then existing and apparent. A teacher or administrator is entitled to take reasonable actions to maintain the goals of achieving order and discipline. Depending on the circumstances, reasonable action may certainly include the seizure of a student in the face of provocation or disruptive behavior. Justice Kanne indicated that Wallace did not present a viable claim that her Fourth Amendment right was violated. He ruled that Cliffe's conduct was not unreasonable. Kanne went on to say, "In fact, the only thing unreasonable in this scenario is that Wallace has made a federal case out of a routine school disciplinary matter" (p. 1015). Kanne concluded by responding, "This type of litigation denigrates the Constitution and is a disservice to
school systems, the federal courts, and the public they serve” (p.1016). The district court decision was affirmed.


FACTS

One day, a fire was found burning in a locker at Schilling Elementary School. Principal Jolas and Police Officer Kamarauskas began investigating the incident immediately. During their investigation they discovered a hand-held propane torch in a locker close to where the fire took place.

Plaintiff, Robert Bills, was a student at the school and was questioned several times by Jolas, Kamarauskas, and other school officials. He was questioned every day regarding his involvement with the fire, for five consecutive days, sometimes without the presence of his parents.

On February 8, 1996, a student that was an acquaintance of Bills, admitted to starting the fire with matches. Notwithstanding this confession on February 9, 1996, Officer Kamarauskas pulled plaintiff out of class, questioned him in a coercive manner, and extracted a signed confession wherein he admitted bringing the torch to school and giving it to the boy that admitted starting the fire. Bills was suspended from school and later expelled for his bringing of a torch to school. His expulsion was later overturned in state court and he returned to school. Following his return to school Bills brought action against Jolas and Kamarauskas claiming that they violated his Fourth Amendment rights by unreasonable seizures and interrogations.
HOLDING

The court held that Bill’s Fourth Amendment right to be free from unreasonable seizure was violated.

REASONING

In his opinion, Justice Zagel indicated that school officials may only search and seize students when it is reasonable to do so under the circumstances. He said:

Although plaintiff’s factual allegations are scant in this regard, I conclude that his assertions that Jolas repeatedly pulled him out of class and interrogated him on a daily basis for at least five days and continued to interrogate him after another boy admitted starting the fire at Schilling school sufficiently allege a degree of unreasonableness to withstand a motion to dismiss. (p. 513)

The decision of the court was made without trial and purely on the pleadings of the litigants. The threshold inquiry regarding the qualified immunity defense as Justice Zagel saw it was did Jolas violate any of plaintiff’s statutory or constitutional rights? He concluded that the fact that school officials repeatedly pulled Bills from class and interrogated him, even after another boy claimed responsibility for the fire, was unreasonable enough to withstand the motion to dismiss. The motion for qualified immunity was denied.

Bridgman v. New Trier High School District NO. 203,
128 F. 3d 1146 (7th Cir. 1997)

FACTS

Andrew Bridgman was a freshman student at New Trier Township High School. On February 27, 1995 he was required to attend an after-school smoking cessation program
as a result of being caught smoking cigarettes at school. Mary Dailey was the supervisor of the program that Bridgman attended. Upon Bridgman's arrival at the program, Dailey noticed that Bridgman was giggling and acting unruly. Dailey indicated that throughout the program Bridgman behaved inappropriately, had dilated pupils, bloodshot eyes, and erratic handwriting. As a result of her observations, Dailey became suspicious that Bridgman had been using marijuana.

Bridgman was taken by Dailey into an adjoining room and accused of being under the influence of drugs, which he denied. The student asked, and was granted permission, to phone his mother. After his phone conversation with his mother Bridgman was taken into another adjoining room where he was examined by the school's Health Services Coordinator, Joanne Swanson. Swanson noticed that the student's blood pressure and pulse were considerably higher than what was recorded during a physical examination earlier in the year. She also noted that the student's eyes were not bloodshot but his pupils were dilated. Swanson did not regard Bridgman's behavior as strange or believe he was under the influence of drugs.

After the examination, Dailey told Bridgman to remove his outer jersey and hat and empty his pockets so that she could conduct a search. His shoes and socks were removed as well. Dailey searched all his garments along with the contents of his pockets. Bridgman continued to wear his undershirt and pants at all times.

The student's mother arrived and she escorted him into another room for a private conversation. Upon their return, Ms. Bridgman was asked to grant permission for a reactivity test. A reactivity test shows how eyes react to light. Ms. Bridgman refused to
authorize a reactivity test and opted instead to take her son to a pediatrician for a drug
test. The drug test indicated that Bridgman had not been using marijuana.

Bridgman filed action alleging that his Fourth Amendment right had been violated by
the alleged unreasonable search conducted by Dailey.

The district court held that the search was not unreasonable and granted summary
judgment to the defendant. Bridgman argued that the summary judgment was
inappropriate and appealed the lower court's ruling.

HOLDING

The appellate court affirmed the grant of summary judgment handed down by the
district court.

REASONING

Justice Cummings wrote the opinion of the court. The question that needed to be
answered was whether or not Dailey's actions in ordering the medical assessment and
conducting the search were appropriate. Cummings indicated in his opinion that:

Dailey's own expertise as a certified drug addiction counselor, along with medical
publications she produced suggesting that a respectable segment of medical opinion
supports both her interpretation of Bridgman's alleged symptoms and her use of the
medical assessment as an investigative tool, indicate that her suspicions and further
actions, based upon the symptoms she alleges, were not unreasonable. The
symptoms were sufficient to ground Dailey's suspicion, and the medical assessment
was reasonably calculated to uncover further evidence of the suspected drug use.

(p. 1149)
In reviewing the district court's summary judgment ruling the appellate court had to decide whether Bridgman's challenges to Dailey's alleged observations created a genuine issue of material fact. Swanson's account of what took place did not support all the details of Dailey's and Bridgman denied he was unruly. Cummings said, "a plaintiff's own uncorroborated testimony is insufficient to defeat a motion for summary judgment" (p. 1150). Thus the student's denial of behaving disruptively does not create a genuine issue as to Dailey's claim. What behavior counts as "unruly" is a matter of judgment and the person responsible for the smoking cessation program was empowered to make that judgment. The observations of Swanson and Bridgman's mother occurred some time after Dailey formulated her suspicion that Bridgman was using marijuana. The fact that Bridgman's eyes were not noticeably bloodshot by the time Swanson and Ms. Bridgman saw him does not mean they were not bloodshot at the time that Dailey says they were. For these reasons, Bridgman has not demonstrated a genuine issue of material fact, and the challenged search was both justified at its inception and reasonably related in scope to its objectives. The appellate court agreed with the lower court's conclusion that the search was not excessively intrusive in relation to its purpose.

**Todd v. Rush County Schools, 133 F. 3d 984 (7th Cir.1998)**

**FACTS**

John Wilson, Athletic Director of the High School in Rush County came to believe that there was a growing drug problem at the school. He indicated that recent events in the county had caused school officials to become concerned about the well being of all students and they initiated a drug-testing program to prevent an epidemic of drug,
alcohol, and tobacco problems in the county. A fact of the case revealed that Wilson and an assistant superintendent had a subjective perception that drug-use was growing among students in Rush County. They were only able to provide a few discrete examples of incidents. In the 1970s a senior on the track team drowned on a school trip due to suspected alcohol use. More recently, an automobile crash that involved Rush County High School students occurred during summer vacation when students in the car were “huffing”.

Wilson began to collect information from other school systems in order to develop a proposed drug-testing program at the High School. The Rush County School Board reviewed the drug-testing program proposed publicly and there was minimal opposition to it. They approved the program and it became effective in October 1996. The terms of the program prohibited a High School student from participating in any extracurricular activity or driving to school unless the student and parent or guardian consented to a test for drugs, alcohol, or tobacco in random, unannounced urinalysis exams. Extracurricular activities were defined to include all sport activities and all clubs including Student Council. The program also covered students who wished to drive to school. Once consent was given, participation in these organizations was allowed, and students could be subjected to testing at any time. The motivation for the implementation of the program was the concern about the use of drugs, alcohol, and tobacco by students. Todd, a freshman, was denied the opportunity to videotape the football team as an extracurricular activity because his father, a retired Rush County Sheriff, refused to sign the consent form.
Todd indicated that extracurricular programs are a valuable school experience, and participation may assist a student in getting into college. He brought action against the district on the grounds that the policy violated his Fourth Amendment right. He claimed the incidents that school officials cited as reasons for instituting the drug-testing program were not reason enough to claim that the county had a drug problem and therefore the drug-testing policy was unnecessary. Todd brought suit against the Rush County School District.

The district court ruled in favor of the school. Plaintiff’s motion for summary judgment was denied, and Defendant’s motion for summary judgment was granted.

**HOLDING**

The case was appealed where the judgment of the district court was affirmed.

**REASONING**

Judge Cummings wrote the opinion for the appellate decision. The outcome of the case was governed by *Vernonia v. Acton*, 515 U.S. 646 and *Schaill v. Tippenanoe* 864 F 2d. 1309 (7th Cir. 1988). Those two cases upheld random urinalysis requirements for students that participated in interscholastic athletics. Similar to those cases, the drug policy at Rush County was undertaken in conjunction with the district’s responsibilities as a guardian and tutor of children entrusted to its care. In *Vernonia* the Supreme Court determined that deterring drug use by students was a compelling interest.

The opinion stated that participation in interscholastic athletics was a benefit that carried enhanced prestige within the community, therefore, it was not unreasonable to couple those benefits with the obligation of a drug test. The emphasis of the drug-testing
program was to protect the health of the students involved. The appellate court viewed the policy as non-punitive and more of an early prevention mechanism.

District court Judge Tinder stated that there was no significant opposition to the drug-testing program by the community during its planning phases. In his opinion Justice Tinder indicated that there is no minimum triggering point of substance abuse that must be met to justify the "important enough" interest on the part of the school system. Some use of these prohibited substances by youth may give rise to legitimate concern about the potential for a rapid increase in abuse, if unchecked. He concluded by saying:

Being elected class president may put a student in a venerated position, much like that of a star athlete. In fact, the same could be said of any student who participates and excels in extracurricular activity. Thus, the school has an interest in the conduct of those who may serve as an example to others. In the final analysis, the reasoning of Vernonia seems to hold true for any student who is a member of an extracurricular activity. The Court simply pointed out these reasons were especially applicable to student athletes. (p. 989)

The district court reasoned that extracurricular activities, like sports, are voluntary activities. Participation in these programs is a privilege; any student joining these activities would be subject to regulation beyond that of a non-participant. Therefore, the drug-testing policy was constitutional.
**Willis v. Anderson Community School Corporation,**
158 F. 3d 415 (7th Cir. 1998)

**FACTS**

In 1996, officials from two high schools met to discuss growing disciplinary problems and their perception of increased drug and alcohol use among students. In an attempt to address the problems a drug testing policy was established. Students were to be tested on an individualized suspicion basis. The policy called for drug testing students who: possessed or used tobacco products; was suspended for three or more days for fighting; is habitually truant; or violated any other school rule that resulted in at least a three-day suspension.

The purpose of the policy was to identify students that were involved with drugs as early as possible so that they could receive the help they needed. Students that tested positive were not given any additional punishment. The results of the drug-test were disclosed only to parents and a designated school official. However, students who tested positive could be expelled from school if they failed to complete a drug education program. In addition, as evident in this case, a student who refused to undergo a test would be considered to have admitted unlawful substance use.

James Willis was suspended for fighting and was required to take a drug test upon his return to school. He refused to provide a urine sample and was again suspended from school and advised that if he refused to submit to the test upon his return, he would be deemed to having admitted unlawful drug use and would be suspended a third time pending expulsion proceedings. Willis filed suit claiming that the policy violated his Fourth Amendment right.
The district court ruled in favor of the school district supporting the policy. Willis then filed an appeal.

**HOLDING**

The appellate court reversed the lower court’s ruling.

**REASONING**

The appellate court indicated that the policy addressed a concern that could be tackled by means of a traditional, suspicion-based approach. Justice Cudahy wrote in his opinion:

> The foregoing analysis indicates, while the nature and immediacy of the government’s concern is analogous to that in *Vernonia*, both the efficacy of the policy and the privacy interest of the individual are different. Particularly because the Corporation has not demonstrated that a suspicion-based system would be unsuitable, in fact would not be highly suitable. (p. 424)

The school tried to prove that a “causal nexus” relationship existed between fighting and illegal drug use. They provided various literatures to help prove their point. However, the data presented from their own drug tests results proved that only a small percentage of students suspended for fighting actually tested positive for drug use.

Justice Cudahy stated that a prudent person could reasonably conclude that statistics suggest some relationship does exist between fighting and drug use. That relationship is by no means conclusive and does not prove that fighting and drug uses are consistently connected. The appellate court was therefore unable to find that the school’s data was sufficient enough to establish reasonable suspicion when a student was suspended for fighting.
The appellate court indicated that it was important to establish some boundaries so as not to sanction "routine drug testing." Because a suspicion-based system could easily address the Corporation's concern, the appellate court reversed the district court's ruling.

Hilton v. Lincoln-Way High School, Docket No. 97 C 3872 (E.D.Ill. 1998)

This civil rights action was brought in district court in Illinois. The decision of the court was not published. However, the data was retrieved and used for this study through its Lexis number.

FACTS

Kimberly Hilton auditioned for and became a member of the Lincoln-Way Band. In May 1996, she auditioned for and was accepted to participate in the Marching Knights, which is a segment of the Lincoln-Way Band. As a member of the Marching Knights, Hilton was required to attend a weeklong retreat.

During the retreat members of the Marching Knights were required to attend what Hilton described as a "mandatory pizza party" which was held in the locker room with the exits barred by chaperones. Eventually, the members of the band were escorted out to a football field and all but the first year members, including Hilton, were told that they could leave. After being required to perform humiliating acts, first year members were then escorted to their rooms and told they could not leave. Plaintiff contended that the actions of the school officials responsible for the retreat violated her Fourth Amendment right to be free from unreasonable seizure.
HOLDING

The district court held that facts presented were sufficient to move forward with the case. The defendant’s motion to dismiss the case was denied.

REASONING

Relying on the facts of the case as described by the plaintiff the district court found that Hilton had sufficiently alleged a seizure under the Fourth Amendment. School officials argued that even if a seizure did exist it was reasonable under the circumstances. The district court confirmed that a determination as to whether a seizure was reasonable required a close examination of the factual circumstances.

The district court concluded that students do not forfeit their constitutional rights at the schoolhouse gate and the Fourth Amendment protects students from unreasonable searches and seizures by public school officials. Therefore, the district court denied the school official’s motion to dismiss and allowed the case to proceed.

Joy v. Penn-Harris-Madison School Corporation, 212 F. 3d 1052 (7th Cir. 2000)

FACTS

Penn-Harris-Madison School Corporation created a drug testing policy for students because of the serious health risks associated with alcohol, drugs, and tobacco.

Several high school students brought suit against the school system because of the drug testing policy that was initiated in 1998. The policy focused on five groups and defined them as follows:

1. All students that participate in extracurricular activities. Activities will include all athletic teams, music groups, academic competitions, clubs and
organizations. These students will be part of a pool of students that will be randomly selected for testing.

2. All students who drive to school.

3. All students and staff that volunteer to be part of the random pool.

4. All students who are suspended from school for three consecutive days for student misconduct or substantial disobedience. These students must submit to a drug test before being allowed to return to school.

5. All students for which there is reasonable suspicion of being under the influence of drugs or alcohol must submit to a mandatory test.

The fourth prong of the policy, regarding suspended students, was not enforced pursuant to seventh circuit's opinion in Willis v. Anderson, 158 F. 3d 415 (7th Cir. 1998).

In its policy the school officials stated that extracurricular activities were a privilege not a right. The school leaders went on to explain that students participating in those activities assume greater responsibility and make certain sacrifices. The policy mandates that students in extracurricular activities submit to random testing for drugs, alcohol, and tobacco. In addition, all students participating in extracurricular activities must have attended at least one drug education session. Also, each participant and their parent or guardian had to sign and return a form that indicated consent to testing. Failure to return the consent form resulted in nonparticipation in the activity.

Students who refused to take the test were deemed to have admitted drug use and were subject to the terms of the policy, which follows. Students that sold/provided/transmitted/manufactured/used/possessed/purchased alcohol and other drugs or possession of drug paraphernalia would result in the following:
1. Notification of parents/guardians

2. An immediate student/principal due process hearing as prescribed by law prior to any recommendation for suspension/expulsion.

3. A report to local law enforcement officials by the school’s administration as required by law.

4. A report to the local Child Welfare/protection Service as required by law.

5. If disciplinary due process provisions result in a recommendation for suspension/expulsion, it will be recommended that documented proof of an interview assessment by a certified drug treatment expert be provided to the principal prior to readmittance to school.

6. Provisions to benefit the student readmitted after expulsion will include a conference with the parent/guardian, building principal, and the at-risk counselor.

The policy states:

Smoking by students or possession of tobacco products was not permitted on school property at any time. Use of or possession of tobacco products would result in the following:

a. First offense—a three day suspension from school.

b. Second offense—a five day suspension from school.

c. Third offense—a five day suspension from school and a recommendation for expulsion.

Another section of the policy indicated that student athletes and those participating in activities would be expelled from the team if they committed a drug or alcohol offense.
during the season. If the offense occurred out-of-season a meeting would take place that would outline the consequences for future offenses. A second violation, in-season or out-of-season, would result in expulsion from all extracurricular activities for one school year.

As for tobacco, the first offense during the season would result in probation for one school year in all extracurricular activities the student participated in. The second in-season offense would result in expulsion from all activities for the remainder of the season. No consequences were listed for tobacco violations during the off-season.

Several students at Penn High School claimed that the policy violated their Fourth Amendment rights. The drug testing policy allowed for random, suspicionsless drug testing for alcohol, drugs, and tobacco of students involved in extracurricular activities and of students driving to school. This action was brought forth by a group of five students that either drove to school and/or participated in extracurricular activities.

Using the seventh circuit decision in Willis as a guide, the district had the school system remove the testing of suspended students from the policy. The district court then granted summary judgment for the school prompting the Plaintiffs to appeal their case to the circuit court.

**HOLDING**

Based on the Todd precedent the circuit court upheld the lower court’s decision regarding the drug testing policy in part and reversed in part. Drug testing student drivers and extracurricular activity participants for drugs and alcohol was affirmed, but the judgment of the district court insofar as it sanctioned the random testing of student drivers for nicotine was reversed.
REASONING

The drug testing policy in question required all students involved in extracurricular activities to sign and return a consent form that allowed the school to conduct a drug test. The consent form had to be signed by the student and by a parent or guardian and then returned to the school prior to the student’s participation in the extracurricular activities. Failure to return the form resulted in nonparticipation in the activity. The policy also indicated that all students who drove to school would have to be part of the random pool to be tested. In addition, students suspended for three consecutive days for student misconduct or substantial disobedience would have to be tested before returning to school. All students for which there was reasonable suspicion of being under the influence of drugs or alcohol would be required to submit to a mandatory test.

In deciding the case the court looked primarily at *Vernonia* for guidance, but also referred to *Todd*, which was also a seventh circuit case. In his opinion, Justice Ripple indicated that when the circuit court allows suspicionless drug testing based on a special need the court engages in a balancing test between the intrusion on the individual’s Fourth Amendment right and the search’s promotion of legitimate governmental interests. The appellate court concluded that the school system had demonstrated a sufficient government need to overcome the students’ Fourth Amendment rights and to allow the administration of random drug test to students who chose to drive on school property. The appellate court described the danger as well-defined and indicated that to test purely on individualized suspicion would diminish the possibility of real and immediate injury. In contrast, the school system had not demonstrated a sufficient government need to test student drivers for nicotine. The appellate court, using *Vernonia*
as its guide, stated that there had been an inadequate showing that such an intrusion was justified.

The justices on the panel that decided this case were bound by the ruling in Todd to render this ruling. The judges clearly thought that students involved in extracurricular activities should not be subject to random, suspicionless drug testing as a condition for participation. However, because the Todd case was not substantially different, and the decision was handed down by the same circuit court, this panel of judges felt obligated to render the decision they did. Due to the decision of this same appellate court in Todd this panel ruled as indicated and stated until the United States Supreme Court addresses this matter they must adhere to the holdings in Todd.

The 7th circuit was rich with data for this study. Eleven cases were included because they were relevant to the topic of this dissertation.

8th Circuit

The 8th circuit provided five cases that were applicable to this study. Two of the cases questioned the constitutionality of drug-testing policies. One of those cases was decided at the district court level while the second case, fourteen years later, rose to the level of appellate court. Of the remaining three cases one was settled in district court and the other two went to appellate court before being resolved.

FACTS (Balch)

This case involved action brought by three individuals challenging a drug-abuse policy that was instituted by an Arkansas public school system. Plaintiffs, Dan Pless, was a student, and Benson Anable and Laura Balch were former students within the school system. Each incident involved different scenarios with different rulings and different reasoning. The policy contained the following provisions:

Sale, distribution, use or possession of alcoholic beverages, controlled substances, (illegal drugs), marijuana, or other materials expressly prohibited by federal, state, or local laws is not permitted by students in school buildings, on school property, or at school functions. Also, the sale, distribution or abusive use of prescription, patent or imitation drugs is not permitted. A trace of illegal drugs/alcohol in one’s body is a violation of this policy.

Violation of this policy will result in the following consequences;

1. When possible, the parent/guardian will be notified.
2. The law enforcement agency will be notified of any criminal activity and school officials will cooperate fully.
3. The student may be required to submit to any or all of the following tests;
   a. Blood
   b. Breath
   c. Urinalysis
   d. Polygraph
A student may be searched where there is reasonable suspicion that the student may be hiding evidence of a wrongdoing.

One day, during class, Plaintiff Balch went to the girls' bathroom. A couple of girls, that were in the bathroom at the same time as Balch, reported to school officials that Balch smoked marijuana while in the bathroom. Principal Green questioned Balch and although she did not exhibit any physical signs of having smoked marijuana, advised her that she was suspected of violating the drug-abuse policy and could prove her innocence by undergoing a urinalysis test. Balch claimed that she was told she had to take the test. Because the incident happened on a Friday afternoon the test was not conducted until Tuesday of the following week. Results from Balch's urinalysis test came back positive and she voluntarily withdrew from school rather than being expelled.

Her lawsuit stemmed from the fact that she believed the urinalysis was unreasonable because the principal lacked individualized suspicion and had no probable cause to believe she had smoked marijuana.

**HOLDING (Balch)**

The court held that the test reached beyond the boundaries permissible of school officials. The court ruled in favor of Balch regarding her claim that the urinalysis violated her Fourth Amendment right. Balch was awarded $1.00 as nominal damages and $500.00 as compensatory damages.

**REASONING (Balch)**

The district court relied on T.L.O when deciding this case. The court concluded that reasonable grounds did exist to believe Balch had at least possessed marijuana, which was a violation of a school rule. There was sufficient “individualized suspicion” to
warrant school officials in calling upon Balch to make an explanation. School officials would have then had an opportunity to observe her conduct and demeanor and formulate a belief as to the credibility of her explanation. School officials could have then taken other "less intrusive" steps to try and justify a drug test. No search of person, locker, car, or purse was done or even considered. School officials immediately chose to have Balch consent to a urinalysis.

Justice Waters wrote:

With regard to plaintiff Balch, the court finds and concludes that she did not voluntarily consent to the urinalysis and that school officials were not warranted in concluding that there was a high probability and clear indication that significant evidence would be disclosed by the Emit immunoassay urine test. The court further finds and concludes that the use of the Emit immunoassay urine test is an effort by school officials to impermissibly regulate and control activities of students unrelated to the school environment or legitimate goals of school officials, and is not sufficiently probative of guilt or innocence of the student to justify its use. (p. 44)

The court found that the urine tests, as applied by the school system, was unnecessary and excessively intrusive in light of the age and sex of the students and the lack of the need. The use of such tests, as applied, was banned.

FACTS (Anabel)

Anable and his stepbrother were referred to the principal for being disruptive and being in the bathroom without a hall pass. Due to his conduct, it was evident that Anable's stepbrother had been drinking. Superintendent Ford indicated that both students smelled of alcohol. A Seven-Up bottle smelling of liquor had been found in the vehicle in
which the boys rode to school. Ford determined that the boys were in violation of the school’s drug-abuse policy and told the students that they needed to take a breathalyzer test or they could withdraw or be expelled from school. They took the test and Anable’s results indicated that his blood alcohol level was .06. The policy called for any student with a measurable amount of alcohol in their blood to be withdrawn or expelled from school. Anable then withdrew from school.

Plaintiff Anable argued that the blood, breath, urine, and polygraph tests outlined in the drug-abuse policy were unreasonable, and if they were permissible the appropriate standard for utilizing the tests is one of probable cause plus a clear indication that further evidence will be found. Because Anable was subjected to only the breathalyzer test, the court confined its focus to that test.

**HOLDING (Anabel)**

The district court found that reasonable suspicion did exist to warrant a breathalyzer test and ruled in favor of the school.

**REASONING (Anabel)**

The court was unaware of any case involving breathalyzer tests, in which any court had determined the appropriate standard governing under what circumstances an accused could be required to submit to such a test. The court applied the same standard that was handed down in *T.L.O.* The court indicated that school officials had sufficient evidence to support their claim that Anable was in violation of a school policy. Further, because Anable registered .06 blood alcohol content when tested, it is clear that the test found more than a mere trace present. The court believed that the breathalyzer was not an exceptionally invasive procedure. Therefore, the court ruled in favor of the defendants.
and indicated that Anable's taking of the breathalyzer test was not unconstitutional. School officials were entitled to believe that there was a clear indication that alcohol in a significant amount would be found in Anable's breath and blood.

**FACTS** *(Pless)*

The third plaintiff, Matthew Pless, alleged that despite the fact he had never been accused of violating the drug-abuse policy, he felt threatened by the policy because he had engaged in activities that would subject him to the sanctions of the drug-abuse policy. Matthew and his parents argued that Matthew often drinks one glass of watered-down wine at home with meals. Matthew alleged that his conduct had been and will be in violation of the policy. He indicated that the policy was unconstitutionally vague, impermissibly overbroad, and that the tests involved are incompatible with the Fourth Amendment.

**HOLDING** *(Pless)*

The suit brought forth by the third plaintiff, Matthew Pless, was dismissed.

**REASONING** *(Pless)*

The opinion of Chief Justice Waters indicated:

Matthew does not have a personal stake in the outcome of this controversy. He stands to lose nothing, even should the court uphold the challenged policy in toto.

There is no actual or threatened injury to Matthew resulting from this policy. Any injury is purely speculative and hypothetical. With regard to Matthew, there is no necessity for the court to rule on the issue. Accordingly, the court concludes that Matthew Pless does not have standing to challenge the policy at issue. (p. 34)
Since Matthew did not have any justifiable reason to bring action against the school regarding the policy. He was not harmed in any way by the policy so he had no basis for which to bring action.

Cason v. Cook. 810 F. 2d 188 (8th Cir. 1987)

FACTS

A student approached Connie Cook, the vice-principal of North High School, and told her that her gym locker had been broken into and that she was missing a pair of sweatpants and a duffle bag. She also reported that a friend was missing a pair of sweatpants. A few minutes later, another student approached Ms. Cook and reported that her wallet and coin purse had been taken from her gym locker. The student reported that the wallet contained $65 along with several credit cards.

Wanda Jones, a police officer who had been assigned to North High School as a liaison officer was standing with Ms. Cook when these reports were made. The liaison officer was instructed to cooperate with the school officials. Ms. Cook interviewed several students in the locker room and was supplied with the names of four students who had been seen in the locker area around the time of the thefts; Shy Cason was one of the students identified and then interviewed.

Cason was removed from her classroom and taken into an empty restroom. Cason testified that Ms. Cook and Ms. Jones took her into a restroom and the door was locked. Ms. Jones did not participate in the questioning. Ms. Cook informed Cason why she was being questioned and allowed her an opportunity to respond. After Cason admitted being in the locker room but denied having any of the missing items, Ms. Cook told her that she
was going to search her purse. Ms. Cook then took Cason’s purse and dumped the contents onto a shelf in the restroom. In her purse was a coin purse that matched exactly the description of the missing coin purse. Cason was then patted-down and escorted to her locker and asked to open it. The remaining missing items were not found in the locker. Ms. Cook then took Cason to her office and questioned her further. Cason admitted that she did take part in the thefts.

Ms. Jones did participate in a joint interview with Cason. Ms. Jones presented Cason with a Juvenile Appearance Card. Liaison officers in lieu of arrests issue these cards. The card required that Cason and a parent report to Ms. Jones office at the police station. Cason contended that the search violated her Fourth Amendment right because Jones represented law enforcement and would have needed probable cause, not reasonable suspicion, to conduct a search.

The district court held that the police involvement aspect distinguished this case from T.L.O., and relied on the Marten’s 620 F. Supp. 29 (N.D. Ill. 1985) decision for guidance. Due to the fact that school personnel asked for and conducted the initial search, Jones’ involvement with a law enforcement agency was not a sufficient enough issue to raise the search standard in this case to probable cause. After careful review of the details of the case the district court found that the reasonableness standard was the correct standard, as opposed to the probable cause standard, and that the Cook had met this standard and thus there was no violation of Cason’s constitutional rights.

**HOLDING**

The Eighth Circuit Court of Appeals held agreeing with the lower court that reasonable suspicion, not probable cause, was the appropriate standard to apply.
REASONING

The district court indicated that no evidence was presented that supported the proposition that the activities were at the behest of a law enforcement agency. Ms. Jones' involvement was limited to the pat-down search only after evidence connecting Cason to violation of a school rule or criminal law had been uncovered. At most, then, this case represents a police officer working in conjunction with school officials. In addition, the appellate court decided that the initial search of the purse was based on reasonable suspicion, because Cason was identified as a suspect in the thefts. The subsequent pat-down search was made only after physical evidence was found on her possession that linked her to the locker thefts.

Due to the fact that school officials had cause to suspect Cason of violating a school rule or criminal act, the initial search of her purse was justified at the inception. Once the item associated with the reported thefts, the coin purse, was recovered on Cason's possession, the scope of the search was entitled to be broadened. These two aspects were consistent with standards that were established to conduct a search as set forth in the T.L.O. decision.

Thompson v. Carthage School District, 87 F. 3d 979 (8th Cir. 1996)

FACTS

On the morning of October 26, 1993, a school bus driver for Carthage High School told Norma Bartel, the principal, that there were fresh cuts on seats of her bus. Concerned that a knife or other cutting weapon was on school grounds, Bartel decided that all male students should be searched. After the search began, students told Bartel that there was a
gun at school that morning. Bartel and the science teacher Ralph Malone conducted the search by bringing each class of students to Malone's classroom. The students were told to remove their jackets, shoes, socks, and empty their pockets. All items were placed on a large table. The students were then checked for concealed weapons with a metal detector. A pat-down search was conducted on students that activated the metal detector.

Lea was a ninth grade student at the time of the search. His class was one of the last to be searched. Neither Bartel nor Malone had reason to suspect that Lea had cut the school bus seats or had brought a weapon to school that morning. During the course of the search, Malone searched Lea's coat pockets and discovered a used book of matches, a match box, and a cigarette package. These items were considered to have been contraband so they were shown to the principal. A search of the match box uncovered "a white substance". The white substance was turned over to law enforcement, who tested it and reported that it was crack cocaine. After a hearing, Lea was expelled for the remainder of the school year. Lea brought action claiming that the search conducted on him violated his Fourth Amendment rights.

The district court held that Lea's expulsion was wrongful because the search was in violation of the student's Fourth Amendment rights. The court awarded Lea attorney fees and $10,000 in compensatory damages against defendants Bartel, Malone, the Superintendent, and school board members who voted for the expulsion.

An appeal followed.
HOLDING

The appellate court held that the search conducted by Bartel was reasonable under standards set forth in T.L.O. The judgment of the district court was reversed and the case was remanded for entry of judgment in favor of defendants.

REASONINGS

The district court indicated that the school officials had no individualized suspicion that Lea was carrying a weapon and there was no justification in the first place to search all the boys. In addition, the court reasoned, Bartel and Malone seized the matchbox containing the drugs after they knew Lea did not possess a gun or knife.

Appellate Court Justice Loken, who wrote the opinion, indicated that the lower court erred in declaring the search unreasonable. The lower court reasoned that Bartel needed individualized suspicion to conduct the search. The appellate court stated that in T.L.O. the Supreme Court left open the issue whether individualized suspicion is always required for school searches. The lower court concluded that the broad search was not justified at its inception but the appellate court disagreed. Justice Loken stated:

Though she had no basis for suspecting any particular student, this was a risk to student safety and school discipline that no “reasonable guardian and tutor” could ignore. Bartel’s response was to issue a sweeping, but minimally intrusive command, “Children, take off your shoes and socks and empty your pockets” (p. 983).

The appellate court held Bartel’s minimally intrusive search for dangerous weapons was constitutionally reasonable. The lower court further concluded that the scope of the search was not reasonably related to its original purpose because Lea’s pockets were searched after the metal detector revealed that he did not possess a gun or knife. The
appellate court reasoned that in a school setting, Fourth Amendment reasonableness does not turn on “hairsplitting argumentation.”


**FACTS**

This case involved two eighth grade girls who were strip searched by a teacher. The incident began when a student reported to Principal Sauerwein that $200 had been stolen from her locker. Sauerwein proceeded to the place where the incident occurred and he locked the locker room door. Later it developed either $57.00 or $59.00 missing, not $200 as first reported. Sauerwein began his investigation by having the girls empty the contents of their pockets onto a table. The initial search failed to produce the missing money so the principal decided to have two teachers take the girls into the bathroom and search them further. The Plaintiffs were taken into the bathroom and told to strip. One Plaintiff only dropped her pants to her knees. The Plaintiffs were told to remove their underwear, but they refused to do so. One teacher then pulled their underwear away from the Plaintiff’s bodies causing them to become quite embarrassed. No money was found on the Plaintiffs and when they left the locker room they were crying. Konop and Genzler brought action claiming that their Fourth Amendment right had been violated. The teachers and the principal claimed the searches were not unreasonable, and if the searches were found to be unreasonable they were protected by qualified immunity.

**HOLDING**

The district court held in favor of the Plaintiff and held school officials were not entitled to qualified immunity.
REASONING

The court concluded that school officials did not act reasonably when they conducted the strip search without a reasonable basis to believe a particular student committed a crime. The school officials possessed no specific information that any particular student had stolen the money. Since the locker room was unlocked at the time of the theft every adult and student had access to entry. Sauerwein had testified at his deposition that anyone could have entered the locker room and taken the money. The court determined that the search was not justified at its inception. In order for a search to be justified there must be reasonable grounds for suspecting that the search will turn up evidence of wrongdoing. In addition, the search was not reasonably related in scope. Once the defendants failed to locate the money in the pockets, shoes or socks, they did not have reasonable suspicion to search the bra. Further, failure to uncover the money in the bras certainly did not justify extending the search to the underwear. The searches were ruled a violation of the Plaintiff's constitutional right to be free from unreasonable searches and seizures.

The court looked at a case decided prior to T.L.O. for guidance with the issue of a strip search. Doe v. Renfrow, 631 F. 2d. 91 (7th Cir. 1980) held that strip searches were generally not reasonable. United States Supreme Court Justice Stevens, in his separate opinion concurring in part and dissenting in part in T.L.O. wrote, "one thing is clear under any standard, the shocking strip searches that are described in some cases have no place in the schoolhouse." 469 U.S. 325, 382. Stevens said, "Outside the custodial context, deeply intrusive searches are only reasonable when they are to prevent imminent and serious harm" (p. 382).
The next question was whether or not the defendants could claim qualified immunity as a defense. The court ruled that the law was clearly established and a reasonable person should have known that the strip searches that were conducted violated a person's constitutional right. Searches of the magnitude that was conducted in this case should be reserved for situations where students' safety is at risk.

Miller v. Wilkes, 172 F.3d 574 (8th Cir. 1999)

FACTS

This case involved an action brought by Plaintiff, Pathe Miller, against Cave City Schools because of a drug-testing policy they instituted. The policy provided that students in grades seven through twelve that wanted to participate in any school activity outside the regular curriculum must have a parent or guardian sign parental consent to allow random drug-testing. The absence of a signed parental consent form or the refusal of the student to be tested would result in the student being barred from participation in any school activity outside the regular curriculum. In addition, a student's refusal to submit to the test when randomly selected would result in the student being barred from participating in any school activity for the rest of the school year.

The policy stipulated that a positive test would result in the student being on probation for twenty days. Also, the parent or legal guardian of the student would be notified and counseling or rehabilitation would be recommended. After the twenty day period the student would be tested again, this time at the student's expense. If the results are once again positive the student is banned from participation in any extracurricular school activity for one calendar year. After the calendar year, the student would be
allowed to participate in school activities only upon testing negative for prohibited substances. Test results were retained by the superintendent or his designee, secured in a locked file and maintained separate from students’ regular school files. The files would then be destroyed two years after termination of enrollment or upon graduation.

Miller indicated that he would participate in various school events if he was not prevented from doing so by his parents’ refusal to consent to random drug testing. Miller’s parents refused to sign the consent to test form which prohibited his participation in all extracurricular activities. It was argued that random collection and analysis of a urine sample without a warrant, probable cause, or individualized suspicion was unconstitutional. The action brought by Miller alleged that the random testing required by the drug testing policy violated his constitutional right under the Fourth Amendment.

The district court granted summary judgment for the school district. The case was then appealed.

**HOLDING**

The appellate court upheld the district court’s judgment.

**REASONING**

The appellate court relied heavily relied upon the *Vernonia* ruling when deciding this case. The standard that was set by the Supreme Court in *Vernonia* was to weigh the intrusiveness of the search against the expected governmental benefit produced by the search. Does the expected benefit of a lesser drug problem in the school and community outweigh the intrusive violation of being forced to undergo a urinalysis? The appellate court reiterated the Supreme Court’s conclusion that public school children have a lower expectation of privacy than do ordinary citizens.
Justice Bowman, in his opinion for the court wrote:

The essence of a public school’s power over children is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults, and the reasonableness inquiry cannot ignore this fact of life. For the Vernonia Court, in fact, student status was fundamental to its conclusions concerning the diminished expectation of privacy. (p. 578)

Public school students are subjected to various screenings for hearing and vision, are required to be vaccinated against disease, and in some cases required to take physical examinations. Therefore, all students have a limited expectation of privacy in the public school environment, especially with respect to medical examinations and procedures. The appellate court did not feel that the Vernonia ruling meant that only student athletes could be subjected to random drug testing.

The High Court did indicate that legitimate expectations of privacy are even less with student athletes, but the appellate court did not interpret that to mean that only students who engage in extracurricular sports could be found to have a lesser expectation of privacy.

One other issue that makes this case different from Vernonia is the fact that there was no immediate concern of a drug problem by school officials. Justice Bowman responded to that matter by saying:

We must acknowledge, however, that there is not the same “immediacy” here as there was in Vernonia, and this is where the facts before us differ most significantly from those the Supreme Court faced when declaring Vernonia’s drug testing policy to be constitutional. We do not believe, however, that this difference must
necessarily push the Cave City policy into unconstitutional territory, as it does not mean that the need for deterrence is not imperative. (p. 580)

The appellate court recognized the fact that drug and alcohol abuse in public schools is a serious social problem in all parts of the country. The opinion indicated that the Court did not think that a school district had to wait until there was a demonstrable problem with substance abuse before they could take measures to help protect its schools against the problems often associated with drug use. The appellate court determined that Cave City public school students who participated in extracurricular activities had a lowered expectation of privacy and that the random testing's intrusion upon that expectation was not significant. In addition, the School District had an immediate interest in discouraging drug and alcohol use by its students and that the random testing serves to promote that interest. Therefore, the judgment of the district court was affirmed.

The five cases from the 8th circuit revolved around three issues. Two of the cases involved drug-testing policies, two of the cases included a search of one's person, and one case dealt with a strip search. Now on to the cases from the 9th circuit.

9th Circuit

The 9th circuit provided four cases for this study. Two of the cases were ultimately decided at the appellate court level. One case involved an unreasonable seizure, two cases dealt with unreasonable searches of one's person and belongings, and one unique case involved the use of K 9's for a search.

**FACTS**

On May 27, 1994, Plaintiff, Timothy Juran, and 72 other students departed for a school sanctioned senior field trip. Soon after leaving town one of the students became ill and admitted to the school's vice-principal that he had been drinking. The school administrator also noticed that another student appeared to have been passed out. One of the students reported to the vice principal that several students including plaintiff had been at a party the prior evening at which alcohol was consumed. The administrator attempted to obtain the identity of those students who had been drinking. When he was unsuccessful, he ordered that the bus return to school and he notified the police. The students were all taken to the police station and required to take a breathalyzer test to determine who had been drinking. Plaintiff was tested and his blood-alcohol level was .033. He was issued a citation by the police and suspended from school for three days. Plaintiff initiated a lawsuit alleging that his rights were violated.

**HOLDING**

The district court ruled in favor of the school.

**REASONING**

In determining whether or not the Plaintiff's Fourth Amendment right was violated, the district court used the probable cause standard to decide if the search was reasonable because law enforcement personnel conducted the search. The court reviewed the facts of the case and determined that school officials and police officers did have probable cause to detain Plaintiff and subject him to a breathalyer search. Justice Jones cited ten facts of
the case that were relevant to his decision that probable cause to conduct a search did exist. The ten compelling issues were:

1. Shortly after the departure, one of the buses had to stop because a student became ill.
2. The vice-principal noticed a student smelled like alcohol and the student admitted he had been drinking.
3. A former class president reported to the vice-principal that there had been a party the prior evening at which alcohol had been consumed.
4. The former class president also indicated that the plaintiff had been drinking at the party.
5. The informant, the former class president, was a highly reliable and credible source of information.
6. The vice-principal learned that the party occurred outdoors and many people came directly from the party to school.
7. The plaintiff's jeans and boots were muddy.
8. Prior to the breathalyzer, the vice-principal detected the odor of alcohol when he was in the plaintiff's presence, as well as when he approached others who were allegedly drinking at the party.
9. The vice-principal noticed the plaintiff's eyes were bloodshot, and he was lethargic.
10. Prior to the breathalyzer, school officials informed police that several student, including plaintiff, had been drinking.
Judge Jones stated in his opinion, "In light of the totality of the circumstances, and the facts known to the school officials and the police officers prior to administering the breathalyzer, I conclude that the search was supported by probable cause." Because the court held that probable cause existed to conduct the search, Judge Jones did not address the potentially lower standard of reasonable suspicion. The court did make reference to Cason v. Cook, 810 F. 2d 188 (8th Cir. 1987), which involved a search by school officials with the assistance of police officers after the discovery of physical evidence. In that case the standard of probable cause was not used because law enforcement personnel became involved after school officials had already uncovered evidence of wrongdoing. In contrast, this case had law enforcement personnel summoned to prove wrongdoing based on facts supplied by school officials.


FACTS

Charles Rasmus, suffered from Attention Deficit Disorder and was diagnosed as emotionally disabled. While in eighth-grade he was transferred to a special school for students with unique needs. The school contained an "alternative classroom" where students who misbehaved were sent. In the alternative classroom there was a closet where students who misbehaved in the alternative classroom were sent for time-out. One day Charles was sent by his teacher to the alternative classroom because he made a derogatory comment to the teacher's aide. While in the detention room Charles became involved in a confrontation with another student. Mr. Rojas, the teacher's aide in the alternative classroom, was able to get the situation under control. Soon afterwards, in
violation of school policy, Charles began talking to another student. Mr. Rojas asked them to stop talking but they chose not to. Mr. Rojas then ordered Charles into the time-out room. Charles emptied his pockets, took off his shoes and entered the room without incident. After Charles entered the room, Mr. Rojas closed and locked the door. After approximately ten minutes, Charles was let out of the room. Charles’ parents were notified about the incident the same day it happened. Plaintiff brought action claiming that his Fourth Amendment right to be free from unreasonable seizure had been violated. Defendants claimed they did not violate Charles’ Fourth Amendment right and if they did they are entitled to qualified immunity.

HOLDING

The court held that the locking of Charles in a time out room was “excessively intrusive”, and did violate his constitutional right to be free from unreasonable seizure.

The court also held that Mr. Rojas was entitled to qualified immunity.

REASONING

The court relied on T.L.O. and an Arizona Department of Education publication regarding treatment of special education students when rendering the decision. The publication produced by the Arizona Department of Education (AZ-TAS) was instrumental in the court’s decision. AZ-TAS contained guidelines governing the use of time-out rooms for special-needs students. Defendant’s actions violated many of the guidelines.

AZ-TAS stated that the Arizona Department of Education does not advocate the use of time-out rooms. However, time-out rooms could be used for special needs students if their Individual Education Plan called for it. Charles’ plan did not include the use of time-
out rooms. In addition, AZ-TAS stated that institutions that used time-out rooms develop policies and procedures regarding the use of the rooms and get written consent of the parents to allow their child to be placed in one. The school involved in this case did not have polices and procedures regarding the use of time-out rooms, and failed to notify Charles’ parents that he could be placed in one. Most significantly, AZ-TAS included a blanket prohibition on locked time-out rooms.

In her opinion, Judge Silver indicted that T.L.O.’s ruling advised, “Reasonableness depends on all of the circumstances.” As guided by AZ-TAS, placing Charles in a locked time out constituted an unreasonable response to his behavioral problems. She went on to say, “A reasonable factfinder could conclude that the defendants’ placement of Charles in a locked time out room was ‘excessively intrusive’ in light of his age and emotional disability” (p. 732).

With material facts present to question the reasonableness of the seizure, the court next looked at the issue of qualified immunity. Justice Silver stated that the lack of a clearly established law entitled Mr. Rojas to qualified immunity.

Smith v. McGlothlin, 119 F. 3d 786 (9th Cir. 1997)

FACTS

It started one morning before school when the principal, McGlothlin, and a security guard traveled to a cul-de-sac by the school to investigate reports of students smoking. Neighbors had called to complain that students stop in the cul-de-sac on the way to school to smoke. As McGlothlin approached the 20 or so students, he noticed a cloud of smoke over their heads and furtive motions he associated with the discarding of smoking
materials. Because he could not see which of the students had been smoking, he escorted all of them back to school where they were placed in the suspension room. He then had each student searched individually, which took about two hours. When Beth Ann Smith was searched she was found to be carrying a double-edged dagger with a four-inch blade, a folding knife with a three-inch blade, and a smaller knife. School officials turned her over to police. A juvenile court judge suppressed the evidence because there was no individualized suspicion to search and dismissed the charges. Smith then brought suit against McGlothlin, who ordered the search, which led to the discovery of the knives.

The district court dismissed on grounds of qualified immunity. The lower court held that it was not clearly established that the search was improper; McGlothlin, as a state official, was therefore immune from suit. Smith appealed the fact that qualified immunity applied. The court did not rule on whether or not the search was lawful, but did indicate that there would be authority to conclude it was.

**HOLDING**

The lower court's ruling on McGlothlin's qualified immunity was affirmed by the appellate court.

**REASONING**

The appellate court, in an opinion written by Justice Kozinski, held the search was lawful and that the juvenile court erred in suppressing the evidence. The opinion found that T.L.O left open whether individualized suspicion was an essential element of the reasonableness standard.

Justice Kozinski was highly critical of the plaintiff, her parents, and their attorney for bringing forth this action. He stated:
Smith’s complaint is a triumph of petulance over common sense. A teenager who gets into trouble because she is caught bringing knives to school might, for a lack of mature judgment, feel that she is the one who has been wronged. But she can’t turn such wishful thinking into a lawsuit without support from her parents and the services of a lawyer – adults who do not have youth and inexperience as excuses. Before bringing suit, Smith’s parents might profitably have pondered their own culpability and considered what they might have done to prevent their child’s misconduct. Smith’s lawyer might have thought about whether it was right to impose the cost, risk and pain of a lawsuit on a civil servant who acted reasonably under difficult circumstances. And Smith herself might have thanked her lucky stars when she got off easy because her juvenile court judge misread the law and suppressed the evidence. Smith and the adults that abetted her might all have taken a lesson in common sense from the other students who were subjected to the same search – and thus suffered the same “harm” – but did not make a federal case out of it. (p. 788)

In T.L.O. the Court left open whether individualized suspicion was an element of the reasonableness standard. By way of Vernonia the Court approved a student search that was not based on individualized suspicion, suggesting that individualized suspicion is not a prerequisite to reasonableness. The appellate court advised that if they were to rule on whether or not the search in question was lawful, they believe it was. However, they felt no need to make such a ruling because the district court dismissed on grounds of qualified immunity. The lower court held that it was not clearly established that the
search was improper, therefore, vice-principal McGlothlin, a state official, was immune from suit. It was that point that the appellate court agreed with and affirmed.

**BC v. Plumas Unified School District**, 192 F.3d. 1260 (9th Cir. 1999)

**FACTS**

One day, Principal Spears and Vice Principal Barrera told plaintiff and his classmates to exit their classroom. As they exited, the students passed a deputy sheriff and a drug-sniffing dog stationed outside the door. The students were required to wait outside while the dog sniffed backpacks, jackets, and other belongings that the students left in the room. The students were never warned that a search was about to take place or that a drug-sniffing dog was going to be used. No drugs were found that day at school.

Plaintiff brought action in district court claiming that the dog-sniff was an unreasonable search that lacked individualized suspicion and his time confined to the hallway, where he waited while the dog sniffed the classroom, was an unreasonable seizure.

The district court ruled that the dog-sniff was an unreasonable search but determined that defendants were entitled to qualified immunity because the parameters of permissible dog sniff searches were not clearly established. The district court ruled in favor of the defendants on the seizure issue. The court determined school officials have jurisdiction over where the students should be during the school day. If school officials want to have students in the hallway, that’s permissible. B.C. appealed his case to the Ninth Circuit Appellate Court.
HOLDING

The appellate court agreed with the district court that the dog sniff was a search and the random and suspicionless search was unreasonable. They affirmed the lower court’s ruling that there was no unreasonable seizure of person or property in this case and that the defendants were entitled to qualified immunity.

REASONING

The appellate court first had to decide if the dog sniff constituted a search. Justice Pregerson, who wrote the opinion, indicated that a search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. Neither the Supreme Court nor the Ninth Circuit had addressed the use of K’9’s to assist in searching students in the past, which makes this case important. The court held that the dog sniff infringed B.C.’s reasonable expectation of privacy, thereby concluding it was a search. After that question was answered, the Court moved to decide if the search was constitutional. A search that lacks individualized suspicion could still be a valid search when the privacy interests implicated by the search are minimal and an important governmental interest furthered by the search would be placed in jeopardy by a requirement of individualized suspicion. The court noted that deterring drug use by students is important, but there was no indication of a drug crisis or even a drug problem at the school where the dog sniff took place. The court stated that the precedent case regarding suspicionless searches was Vernonia. The school where this search took place was not experiencing a drug crisis or problem like Vernonia was. Therefore, there was no need for a suspicionless search. In the absence of a drug crisis or problem, the school’s interest in deterring drug use would not have been jeopardized by an individualized suspicion requirement. In addition, the
district court stated that there was no indication a search based on suspicion had been tried and was proven ineffective. These facts were in contrast to those in Vernonia, where drug use at the school had sharply increased. For these reasons the appellate court held that the random and suspicionless dog-sniff was unreasonable.

DISSENT

Justice Brunetti, concurred with most of the opinion, but wrote separately because he felt the Supreme Court and circuit court precedent did not support the majority’s conclusion that an unreasonable search occurred. Referring to an earlier case he wrote:

This court concluded that a dog sniff is not a search under the Fourth Amendment if:

(1) it discloses only the presence or absence of a contraband item, and (2) its use ensures that the owner of the property is not subjected to the embarrassment and inconvenience entailed in less discriminate and more intrusive investigative methods. (p. 1265)

Justice Brunetti, also indicated that even if the dog sniff in this case constituted a search, the majority failed to conduct the proper balancing test to determine whether the search was unreasonable. The majority concluded that the search was unreasonable because the school district’s interest in deterring drug abuse would not be jeopardized by requiring individualized suspicion, basing its conclusion on the fact that the record does not disclose a drug problem or crisis at the school. Justice Brunetti indicated:

This analysis is problematic. The majority fails to explain how the school district’s important - if not compelling - interest in keeping its schools and students free from drugs is not jeopardized if, as the majority concludes, the school district must wait until a known drug problem or crisis exists before the district can conduct preemptive

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and protective drug searches. Under the majority’s reasoning, school districts must wait until they experience an actual drug epidemic before they can conduct preemptive searches for illegal drugs. The Fourth Amendment does not support such a rule. (p. 1267)

Justice Brunetti agreed with the majority in the decision to affirm the lower court’s ruling, but was sharply critical of the reasoning used to determine if the search was reasonable. The majority relied on the fact that there was no existing drug problem at the school and therefore, a suspicionless search was unreasonable. Justice Brunetti stated that Supreme Court decisions and prior circuit court decisions do not support that premise. He indicated that he did not think a school should have to wait until they were in a crisis state to try and deter drug use.

There were no other cases from the 9th circuit that contained relevant to contribute to the body of this study. Next, a review of cases from the 10th circuit.

10th Circuit

The 10th circuit provided three suitable cases for this study. None of the cases went to the appellate court. One case involved a strip search, the other a search of a car driven to school by a student, and the most recent questioned a drug-testing policy.

FACTS

An adult woman, Ms. Vivian Williams, advised Assistant Principal, Bernice Contrell, that Darrell Singleton had stolen $150.00 from her car. Williams also indicated to Contrell that the student's mother sold drugs and that Singleton was in trouble with the police. Williams failed to elaborate as to what kind of trouble with the police Singleton was in or how she had that information. Contrell notified Assistant Principal Jim Antos of the situation and he notified Principal Thomas Barry.

Plaintiff, Singleton, was a thirteen-year-old male student at Central Middle School when he was summoned to the assistant principal's office. Antos and Barry took the Plaintiff into Barry's office for questioning. Singleton claimed that while in the office Antos reached into his jean pockets and turned them inside out. He then had Plaintiff take off his shoes and socks and searched them. Antos then patted Singleton in the crotch area, lowered his pants to his knees, and searched the inside waistband of his boxer shorts. The searches uncovered no money or contraband. Singleton brought action claiming his constitutional rights were violated. Defendants filed motion for summary judgment.

HOLDING

The district court granted the defendants motion for summary judgment.

REASONING

The district court indicated that the law regarding the constitutionality of student searches was clearly established. Based on the facts of the case, the court found that the search was justified because the administrator believed a search would turn up evidence that the student had violated the law. The test focused on the level of suspicion required
to determine that Singleton had violated either the law or school rules. The statements of Ms. Williams, alleging that the plaintiff had stolen a large sum of money from her and that plaintiff had been in trouble with the police, provided reasonable suspicion for suspecting that a search would turn up evidence of such a violation. Courts have held that information provided to school officials can serve as a basis for reasonable suspicion that a student has engaged in illegal activity, as seen previously in Williams v. Ellington, 936 F. 2d 881, 887-89 (6th Cir. 1991).

The court held that reasonable grounds to justify a search did exist. In addition, the scope of the search was appropriate in light of the plaintiff's age and sex and the nature of the suspected infraction. The search was conducted in the privacy of the principal's office with only two male administrators present. Plaintiff was never required to remove his underwear, and was never touched in an inappropriate manner. The search was justified at inception and the scope of the search was reasonably related to the circumstances that necessitated the search.


FACTS

One evening Mark Hotzel, a police officer assigned to Northwest High School, received an anonymous call indicating that a student, Charlie James, carries a gun in his car, even when he goes to school. The next day, Hotzel advised associate principal, Harlan Hess, of the anonymous tip. Hotzel and Hess then met with Hank Goodman, a campus police officer assigned to Northwest High School. The three then went to James' class, escorted him to an office, and advised him of the tip. The plaintiff asked for and
was granted permission to call his father. James’ father indicated that the car was his, there was a gun in it, and they had permission to search it to remove the gun. Hotzel, Hess, Goodman, and James went to car, Hotzel located the gun, and James was arrested. He was later expelled from school.

James filed suit alleging that there was no probable cause to search his vehicle and no search warrant. He also claimed that he was seized when Hess and Hotzel questioned him in the auto-tech office. The defendants claimed they were entitled to qualified immunity.

**HOLDING**

The district court granted defendant’s motion for summary judgment.

**REASONING**

In deciding the case, the court was not persuaded that *T.L.O.* precedent applied because of the police involvement. It was law enforcement that conducted the search not school officials. The court held that there was no incident of unreasonable seizure and that the school administrator was only present for the search, so he did nothing inappropriate. Since Hess was present, but did not participate in the search the court held he did not violate James’ Fourth Amendment right and granted his motion for summary judgment.

With respect to Hotzel, who acted on behalf of law enforcement, the court held he needed probable cause, not reasonable suspicion, to search the car. Without rendering a decision whether or not he thought probable cause did exist to conduct a search, Judge Van Bebber granted Hotel’s motion for summary judgment on the grounds of qualified immunity. When a defendant raises the defense of qualified immunity, plaintiff must show the law was clearly established when the alleged violation occurred and must come
forward with facts or allegations sufficient to show the official violated the clearly established law. The court held that it was not the defendants' burden to demonstrate that the law was not clearly established. James had the heavy burden of demonstrating that the defendants knew they were doing wrong and did so anyway. The district court reasoned that James did not meet that burden of proof and held in favor of the defendant.

**Earls v. Tecumseh School District, 242 F. 3d 1264 (10th Cir. 2001)**

**FACTS**

This case involved a drug-testing policy for all high school students that desired to participate in any extracurricular activity. Students seeking to participate in such activities must sign a written consent agreeing to submit to drug-testing. Drug-testing was done prior to and during participation of the extracurricular activity. The test detected amphetamines, marijuana, cocaine, opiates, barbiturates, and benzodiazepines. It did not detect alcohol or nicotine. The policy indicated as follows:

The students to be tested are called out of class in groups of two or three. The students are directed to a restroom, where a faculty member serves as a monitor. The monitor waits outside the closed restroom stall for the student to produce the sample. The monitor pours the contents of the vial into two bottles. Together, the faculty monitor and the student seal the bottles. The student is given a form to sign, which is placed, along with the filled bottles, into the mailing pouch in the presence of the student. Random drug-testing was conducted in this manner on approximately eight occasions during the 1998/99 school year. Approximately twenty students were tested each time. (p. 1272)
Students who refused to submit to the drug-testing were by policy prohibited from participating in any extracurricular activity. There were no academic sanctions imposed. Plaintiff Lindsey Earl, was a member of the show choir, marching band, and the academic team. Earl and her parents challenged the application of the policy to them as a condition to participation in those activities. She did not challenge the policy as it applied to athletes. Earl challenged on the basis she did not believe that random suspicionless drug-testing was constitutional as a prerequisite for students that desired to participate in extracurricular activities other than sports.

The district court held that the policy did not violate Fourth Amendment protection against unreasonable searches. The case was then appealed.

**HOLDING**

The appellate court applied the factors identified by the Supreme Court in *Vernonia* and concluded the testing policy was unconstitutional. The case was reversed and remanded back to the district court for further proceedings.

**REASONING**

A split 2-1 vote held that the policy was unconstitutional. The majority opinion is quite different from the dissenting opinion, which is also included in this study.

In his opinion Justice Anderson acknowledged that the Fourth Amendment usually required some level of individual suspicion before a search may constitutionally proceed. He stated that the Supreme Court has recognized a reducible requirement of suspicion. The ultimate measure of the constitutionality of a government search is "reasonableness." The opinion mentioned the fact that the Supreme Court has deemed the collection and testing of urine to be a search and subject to the reasonableness standard. Anderson stated
that *Vernonia* was used as the primary guide for analysis in this case because it involved an allegation of special need for a suspicionless search in a public school environment.

In the opinion for the majority Justice Anderson cited *Vernonia* when he indicated that "reasonableness" was the ultimate constitutionality measurement of a governmental search. The deciding factor in this case was the fact that the school district was not able to show a special need for the policy. In *Vernonia*, the school district was able to show that a special need existed, drug-abuse problem in the district that compelled school officials to institute the drug-testing policy. The majority in this case did not feel that the school district had a drug-abuse problem. Records reflected that the school district, per their own admission in federal applications, did not have a drug-abuse problem. Testimony from teachers and other school officials indicated minimal incidents or concern regarding drug usage. Of the 243 students tested during the 1998-99 school year only three tested positive for use of drugs. The majority held that the policy was unconstitutional because there was no special need to create such a policy. Justice Anderson indicated that, unlike in *Vernonia*, there was no drug "epidemic" or "immediate crisis" that would warrant a drug-testing policy. The evidence of actual drug-use especially among those tested, was minimal.

The court considered the character of the particular intrusion involved. The drug-testing process was deemed relatively unintrusive after considering that the physical process by which the urine was collected for testing was similar to conditions typically encountered in public restrooms. The court also examined whether the testing was unduly intrusive because of the information it revealed about the individual's body. The court determined the test to be minimally intrusive in that regard because it disclosed the
existence of drugs, not medical or other physical conditions. Tests were all standardized, and the information revealed was disclosed to school personnel on a need to know basis, not law enforcement. Thus, the court concluded the invasion of privacy was not significant.

While there was clearly some drug use at the Tecumseh schools such use among students subject to the testing policy was negligible. It was vastly different from the epidemic of drug use and discipline problems exhibited from the groups subject to testing in Vermonia. With those details in mind the privacy interests of the students was balanced against the District's interest in testing pursuant to the policy.

Applying factors set forth by the Supreme Court in Vermonia the appellate court concluded that the testing policy was unconstitutional because the need did not exist for it. The court also indicated that a school need not wait until a drug-problem of epidemic proportion exist before it may drug test groups of students. Justice Anderson went on to say that in order for a district to impose a random suspicionless drug testing policy as a condition for extracurricular participation there must be evidence of some identifiable drug abuse problem. In addition, the district must show how testing the group of students being tested will actually redress the drug problem. The opinion stated that the justices realized that their conclusion was in direct conflict with some courts, yet in complete agreement with two fellow circuits.

DISSENT

In contrast, Circuit Judge Ebel, wrote a dissenting opinion. He indicated that drugs are a serious problem in our public schools just because of alarming rates of drug usage among school-age children. Included in the opinion were statistics from recent surveys.
that were published regarding school-age children's drug-usage. Ebel cited T.L.O. when he wrote that search warrants and probable cause are impractical in the school setting. *Vernonia* was cited when Justice Ebel stated that suspicion-based testing changes the relationship between student and teacher from one of trust and cooperation to one of distrust and adversarial interactions. In addition, Justice Ebel wrote that drug use by students in the closed environment of a public school interferes with the rights of other students to learn and grow in an educational environment. He indicated that extracurricular activities were a privilege afforded the students, not a guaranteed right. Since participation was on a volunteer basis students who chose to not submit to a drug test could refrain from extracurricular activities.

Justice Ebel stated that by reimposing a special needs requirement in its opinion and thereby requiring a school district to demonstrate a drug problem among a sufficient number of those subject to testing, the majority both reneged on its earlier holding that a school district need not demonstrate special need for random, suspicionless drug testing in public school and required more of the school district in this case than was ever required of *Vernonia*. The dissent opinion indicated that Justice Ebel agreed with Justice Anderson in that the majority opinion is concurrent with some courts while contradicting other courts' past decisions on similar cases. In addition, he felt the decision was inconsistent with earlier rulings by the same body of justices. He closed by encouraging the school district to pursue the fight to the United States Supreme Court if necessary.

The 10th circuit included cases involving a strip search, a drug-testing policy, and the search of a student's car.
11th Circuit

Four cases from the 11th circuit contributed to the body of this study. Three of the four cases went to the appellate level. Two of the cases involved strip searches, one pertained to an unreasonable seizure, and the other case dealt with the search of one's person.

Edwards v. Rees, 883 F. 2d 882 (11th Cir. 1989)

FACTS

This case originated when a bomb threat was called into a junior high school where Dale Rees was the Assistant Principal. Two students advised Rees that Plaintiff, Craig Edwards, a high school student, made the call. Rees went to Edward's school and removed him from class and took him to an office for questioning. Rees interrogated Edwards for twenty minutes, in what was described as an intimidating and coercive manner. Edwards brought action against Rees and the school district for violating his Fourth Amendment right to be free from unreasonable seizure.

The trial court ruled in favor of the defendants, which prompted an appeal by the plaintiff.

HOLDING

The trial court's decision was affirmed in the appellate court.
REASONING

The appellate court relied on the standards set forth in T.L.O. when they determined school officials had the right to detain and question Edwards. Appellate court Justice Seth, wrote in his opinion, that Rees' conduct was justified at its inception by the statements made to him by two students, both of which implicated Edwards as the individual who called in the bomb threat. He indicated that the same relaxed standards in cases involving school searches support applying the same standard in school seizure cases. The appellate court held that Edwards was seized, but the seizure was reasonable. Judge Seth said, "Given the seriousness of the suspected offense, questioning Craig Edwards in an office in the school building for twenty minutes was reasonably related in scope to determining whether he had indeed called in the bomb threat." The opinion went on to say that the interrogation did not even come close to violating Plaintiff's Fourth Amendment right. The legality of a search of a student should only depend on the reasonableness of the search. The statements made to Rees implicating the high school student made it reasonable to believe that evidence regarding the bomb threat might turn up by questioning Edwards.

C.B. v. Driscoll, 82 F. 3d 383 (11th Cir. 1996)

FACTS

This case began when a student notified assistant principal Johnson that CB was going to make a drug sale at school later in the day. The drugs were believed to have been hidden in CB's coat. Principal Driscoll and Assistant Principal Johnson went to CB's class, asked him to follow them into the hallway, and informed him that it had been
reported that he was in possession of drugs. They asked him to empty his pockets, and he removed two plastic packets containing what appeared to be marijuana. The packets contained a substance that looked like marijuana, but was not marijuana. School policy prohibited students from possessing drugs or "look-alikes." The student was punished according to the standards of the school district and then brought action against the principal for conducting an illegal search. The district court held the search did not violate the Fourth Amendment. The Plaintiff then appealed.

**HOLDING**

The appellate court indicated that reasonable grounds did exist for the search and affirmed the lower court's ruling.

**REASONING**

CB argued that there were no reasonable grounds for him to be searched because no administrator observed him with drugs, or acting strangely. Referring to the Supreme Court ruling in *T.L.O.*, the appellate court held that school officials only needed reasonable suspicion to believe a search would turn up evidence of wrongdoing in order to make the search constitutional. School officials were not required to have certainty of wrongdoing, merely sufficient probability.

The appellate court reasoned that the tip given provided the sufficient probability to justify the search. A fellow student provided the information to the administrator directly and thus was more likely to be reliable than an anonymous tip. It was more reliable because the informant could face disciplinary repercussions if the information is misleading.
Jenkins v. Talladega City Board Education, 115 F. 3d 821 (11th Cir. 1997)

FACTS

Cassandra Jenkins and Oneika McKenzie were eight-year-old second graders in Hilda Fannin’s classroom. One of their classmates reported to Fannin that $7.00 was missing from her purse. Several students accused Plaintiffs, Jenkins and McKenzie, as well as another student, of taking the money. Fannin initially searched McKenzie’s backpack but failed to find the money. The students were taken into the hallway by Fannin where they were questioned about the missing money. After the interrogation failed to produce any positive results, Fannin, at the request of another teacher, Susannah Herring, had the students remove their shoes and socks. When these efforts failed to reveal the allegedly stolen money, Herring, along with guidance counselor, Melba Sirmon, directed the Plaintiffs to the girls’ restroom. The girls were asked to remove their clothes while in the restroom. Having once again failed to find the money Herring and Sirmon brought the Plaintiffs to the office of school principal, Crawford Nelson. The money was never located. Jenkins and McKenzie filed a complaint against the school board claiming that their Fourth Amendment right had been violated. The district court held that the searches were unreasonable. In addition, the district court concluded that the defendants were entitled to qualified immunity.

The Plaintiffs disagreed with the qualified immunity claim and filed an appeal.

HOLDING

The appellate court found that the defendants were entitled to qualified immunity and the decision of the district court was affirmed.
**REASONING**

The district court held that because there was not even reasonable suspicion to believe the girls possessed contraband, because the teachers ignored less intrusive means, and because the personal invasion was extreme, the searches were not justifiable. A less intrusive means might have been to first question whether the money was actually stolen as opposed to misplaced or spent. The appellate court reviewed the issue of whether or not the defendants were entitled to qualified immunity in this case. The court chose not to discuss the wisdom of the defendant's conduct in this matter. In his opinion, Justice Birch did indicate that the defendants exercised questionable judgment given the circumstances with which they were confronted. Despite that, the court was forced to focus on the narrow legal issue of whether the defendants were entitled to qualified immunity. The court had to decide if the law was clearly established when the incident took place, such that reasonable teachers standing in the defendants place reasonably should have known that the search to locate the allegedly stolen money violated Jenkins' and McKenzie's Fourth Amendment rights. Justice Birch stated that school officials could not possibly have been able to decide whether a search was reasonable or not based on the decision of *T.L.O.* Phrases that referred to the age and sex of the student or referred to more or less intrusive means, were too broad. As of the date of the search, May 1, 1992, neither the Supreme Court nor any eleventh circuit court defined a reasonable search in context to the facts outlined in *T.L.O.* Justice Birch went on to state that school officials should not have to draw conclusions from previously decided cases. Therefore, the motion to grant summary judgment for the defendants on grounds of qualified immunity was affirmed.

FACTS

On the morning of October 31, 1996 a fifth grade elementary school student brought an envelope containing $26.00 to school. He placed the envelope on a desk in the classroom. Within minutes the envelope disappeared. The teacher, Tracey Morgan, conducted a search of all students’ personal belongings. She looked through bookbags, desks, decorations, and had each student remove his or her shoes. Morgan patted down each student’s socks, checked girl’s purses, and had students turn their pockets inside out. When her initial search failed to produce the envelope she solicited the help of Officer Billingslea who was in her class to teach a drug-resistance lesson. Officer Billingslea took the male students into the boy’s restroom and had them lower their pants and raise their shirts so he could check for the missing envelope. Morgan took the female students into the girl’s restroom where they were subjected to a search. The girls were required to lower their pants, raise their dresses and shirts, and pop up their bras. The missing envelope of money was never found. Several of the students brought action against the teacher, police officer, principal, and school district claiming that their Fourth Amendment right had been violated. Defendants filed a qualified immunity defense.

HOLDING

The court concluded that the searches were illegal. However, defendant’s motions for summary judgment were granted on grounds of qualified immunity.

REASONING

As the Supreme Court in T.L.O. did not determine the boundaries for strip searches in schools, the district court was forced to review circuit court cases for help in settlement of
the current action. In *Jenkins v. Talladega City Board of Education*, 115 F. 3d 821, (11th Cir. 1997), the eleventh circuit had an opportunity to determine the proper standards for determining when a strip search of a student in a public school violated the Constitution. In that case the court did not reach the question of the constitutionality of the search, because even if the search was unlawful, school officials were entitled to qualified immunity. In *Jenkins* the court chose not to rule on the legality of the search, and was fully sympathetic towards the task of school officials in trying to maintain order. Judge Carnes concluded from those two facts that the circuit court was not convinced that the strip search in *Jenkins* was unconstitutional.

Justice Carnes applied the two-prong test from *T.L.O.* when making her decision regarding the constitutionality of the searches. Applying the first prong of the test the teacher had the necessary suspicion to conduct some type of search for the missing money. The teacher had reason to believe the money was missing because a student advised her that the money was on his desk a short time ago and then it was gone. The deterrence value of a search could deter future thefts. The first prong of the test was met. The teacher had reasonable suspicion that someone had violated a school rule or had broken a law.

Next, Judge Carnes analyzed the second prong of the test, scope of the search. The teacher would have fully been within a reasonable scope for a search if she had searched desks, book bags, and purses. The court stated that looking into a fifth graders personal belongings was not overly intrusive. In the present case the teacher went beyond those boundaries and imposed a strip search. Judge Carnes indicated that strip searches are only reasonable for school officials to conduct if those officials have reasonable suspicion that
a particular student may be in possession of dangerous items, drugs, contraband, stolen items, or the like.

Judge Carnes concluded that the search in this case was not reasonable under the circumstances. The scope of the search was unreasonable in light of what was being searched for. Therefore, the search was unreasonable.

After the searches were deemed to be unconstitutional, the court was forced to review the qualified immunity defense filed by the defendants. Qualified immunity places the burden of proof on the Plaintiffs. They must prove that the law regarding strip searches was clearly established at the time and that a reasonable person would have known that the strip searches violated the students’ constitutional rights. In her opinion, Justice Carnes indicated that the doctrine of qualified immunity protects a teacher who made a mistake in judgment, even when a federal court determined that the teacher’s acts exceeded a judicially set standard. Conflicting rulings from other circuits led the court to find that the law on the matter had not been clearly established and found the defendants entitled to qualified immunity.

Nevada State Constitution Issues

There is one state case that provided relevant information for this study. The case is from Indiana and questions whether residents of the state of Indiana garner more protection from the Indiana Constitution search and seizure provisions than they receive from the United States Constitution Fourth Amendment.

FACTS

This case involved two high school girls, Rosa Linke and Reena Linke. They were both students at Northwestern School Corporation (NSC) and involved in extracurricular activities. A committee, which comprised of parents and school employees, was formed after three students died in two separate drug and alcohol related incidents. NSC was mostly concerned with preventing future tragedies. On January 12, 1999 NSC implemented a drug-testing policy for students that participated in sports or other extracurricular activities.

The policy applied to all students in seventh through twelfth grade. The policy indicated that students wishing to participate in athletics, certain extracurricular activities, or certain co-curricular activities must consent to random drug testing. In addition, students that desired to drive to school must also subject themselves to testing. All students desiring to participate in activities outlined in the policy were required to sign a consent form agreeing to random drug testing.

The drug testing was accomplished through urinalysis and students were chosen at random. Once a randomly chosen to be tested, he/she was taken by the school principal to a trailer containing restroom facilities. The student then produced a urine sample, which was taken to a laboratory to be tested for prohibited substances. Substances included in the policy were alcohol, amphetamines, steroids, barbiturates, cocaine, LSD, marijuana, methadone, nicotine, opiates, and other specified drugs. A positive result would be re-tested and if positive again the results would be sent to the school. Next, a conference was held with the student’s parent or guardian where the student was given an
opportunity to explain the positive test results. The positive test results were never made part of the student's academic record, and penalties depended on the circumstances. The student could be banned from participating in extracurricular activities or from driving to school for a specified period of time. After enough time has passed to allow the substance to be eliminated from the student's body, a re-test may be conducted. If the re-test came back negative, the student could then resume participation in extracurricular activities or driving to school. A positive re-test meant the school could subject the student to subsequent tests throughout the rest of the school year.

Two girls and their parents believed that the drug-testing policy enacted by NSC violated both the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Article 1, Section 11 of the Indiana Constitution is identical to the Fourth Amendment of the United States Constitution.

The trial court denied the Linkes' motion for summary judgment and issued findings of fact and conclusions of law. Concluding that the NSC drug-testing was reasonable under the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution, the trial court denied the Linkes' request for injunctive and declaratory relief and entered a final judgment in favor of NSC. The case was appealed to the Court of Appeals of Indiana.

**HOLDING**

The Court of Appeals held the drug-testing policy was contrary to Article 1, Section 11 of the Indiana Constitution. The trial court judgment was reversed and remanded to the trial court with instruction to enter summary judgment for the Linkes.
During a conversation with NSC Superintendent, Ryan Snoddy, it was learned that NSC has filed an appeal to the Indiana Supreme Court. A phone call to the clerk of the Indiana Supreme Court on 6/5/01, revealed that the Supreme Court of Indiana agreed to review the transcripts of the case, but a decision was still pending.

REASONING

In the majority opinion for the Indiana intermediate court of appeals written by Judge Sullivan, the *Vernonia v. Acton* case was cited on several occasions. Justice Sullivan focused primarily on the dissenters and the dissenting opinion in the *Vernonia v. Acton* case. Supreme Court Justice O'Connor, citing *TLO*, who was joined by two other Justices, maintained that the level of suspicion in the school context is "objectively reasonable suspicion." Judge Sullivan's opinion, which was joined by Justice Bailey and Justice Vaidik, went on highlight Justice O'Connor's dissent opinion of *Vernonia*. The opinion indicated that the Indiana Supreme Court had explained that when examining constitutional issues, claims based upon the Indiana Constitution should be analyzed separately from those based upon their federal counterpart in the United States Constitution. The Court noted that even in cases where the Indiana Constitution and the United States Constitution are substantially and textually parallel, Indiana Courts are not obligated by interpretations of the United States Supreme Court or any other court based on the elaboration of the rights guaranteed under the Indiana Constitution.

Justice Sullivan reasoned that Article 1, Section 11 of the Indiana constitution, provides greater protection than the Fourth Amendment of the United States Constitution. The opinion went on to indicate that Article 1, Section 11 should be analyzed under an independent reasonableness standard. The court held that Article 1, Section 11 had an
implicit general requirement of individualized suspicion with regard to searches of school children. The court chose to not depart from the practice of requiring individualized suspicion with respect to searches. This was an attempt to protect against the abuses associated with blanket suspicionless searches of school children. The Indiana test regarding search and seizure has always been one of reasonableness. When the Court focused on the reasonableness of the behavior of school officials in the Linkes' case, it held that the NSC policy of conducting suspicionless drug-testing was unconstitutional.

The court acknowledged that Vermontia and its successors created justifications to extend the Fourth Amendment analysis beyond requiring individualized suspicion. The opinion of Judge Sullivan indicated that the Indiana Court of Appeals saw no reason to similarly extend their analysis of Article 1, Section 11 of the Indiana Constitution. The opinion noted that the school system's goal was to prevent future tragedies and NSC was unable to show a direct correlation between drug use and its need to randomly test the majority of the student population. The court considered the drug testing policy a move toward testing all students for drugs. The court did not agree with the federal court decisions in Todd, Willis, and Joy. Those cases were all from Indiana and all involved a random drug testing policy. In wishing to not create the same chaos in Indiana state court that Todd, Willis, and Joy caused in federal court, the Indiana appellate court held the NSC policy was contrary to Article 1, Section 11, of the Indiana Constitution.

Question two of this study addressed the impact the Nevada Constitution has on search and seizure in public schools. This question became urgent based on the Linke case in the Indiana State Court. As seen, the state of Indiana case involved a school
district and a civil action that claimed a drug testing policy at the school violated an article in the Indiana Constitution.

In addition, in recent years the American Civil Liberties Union in New Jersey brought action against a New Jersey public school claiming that a district policy violated students' New Jersey Constitutional rights. That case was settled prior to it being argued in court.

Article 1, Section 18 of the Nevada Constitution protects as follows:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by Oath or Affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized (NRS, 1998, pg.57).

The Nevada Constitution Article 1, Section 18, and the United States Constitution Fourth Amendment are identically worded. There have been no state cases relating to search and seizure in public schools in Nevada. Search and seizure cases in general have indicated that the Nevada Constitution and the United States Constitution are coexistent. A search and seizure case regarding the search of a burglary suspect, Dean v. Fogliani, 407 P.2d 580, 81 Nev. 541, (1965), contained a passage in District Judge Zenoff's opinion that implied the Nevada Constitution Article 1, Section 18, and the United States Constitution Fourth Amendment are parallel. With respect to the seizure of evidence, Judge Zenoff stated, "...and contrary to the Fourth Amendment of the United States Constitution and Article 1, Section 18, of the Nevada Constitution" (Dean v. Fogliani, 407 P. 2d 581). As a footnote to that case, both the entire identical texts of the United States Constitution and the Nevada Constitution were cited.
States Constitution Fourth Amendment and Article 1, Section 18, of the Nevada Constitution were included.

A later case, Luciano v. Marshall, 593 P.2d 751, 95 Nev. 276, (1979), another search and seizure case in state court also referenced the coexistence of the protection offered under the United States Constitution and the Nevada Constitution. A portion of the text of that case reads, “…the constitutional prohibitions against unreasonable searches and seizures found in the United States and Nevada constitutions” (Luciano v. Marshall, 593 P.2d 752).

In Gama v. State, 920 P.2d 1010, 112 Nev. 833, (1996), the state court was more direct with the correlation between the Nevada Constitution and the United States Constitution. The case involved search and seizure during a traffic stop. A segment of the text in Gama indicated, “…we now conclude that the Nevada Constitution’s search and seizure clause provides no greater protection than that afforded under its federal analogue…” Gama v. State, (920 P.2d 1013).

Unlike the situation in Indiana, justices in Nevada have decided that the Nevada Constitution does not offer greater protection than the United States Constitution. If a case similar to Linke arose in Nevada where an individual argued that the Nevada Constitution provides more protection than the United States Constitution, a look at Gama v. State would prove otherwise.
Summary

Chapter four consisted of a collection of cases that involved Fourth Amendment issues in the public school. Briefs were presented for forty-five primary data cases. One case was from the United States Supreme Court, forty-three cases were from the eleven federal circuit courts, and one case from the Indiana State Court. The United States Supreme Court case was presented first, the federal circuit court cases next, and the state case last. The briefs from the federal circuit courts were arranged in chronological order.

The concern most often presented involved drug-testing policies. Twelve of the forty-five cases reviewed were issues brought forth due to drug-testing policies at public schools. Seven cases involved strip searches of students and three cases were included that involved searches during school sponsored field trips. The data presented in chapter four will be used to answer the questions of the study, which is included in chapter five. Chapter five will also contain a conclusion and recommendations for further study.
CHAPTER 5

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS FOR FURTHER STUDY

Summary

Of the 45 cases discussed in this study, students' actions prevailed 19 times while losing 26 cases. This information suggests that the chances of school administrators ultimately prevailing against students in similar circumstances are a mere 58 percent. Considering that fact, administrators must have a firm understanding of the Constitutional law regarding search and seizure of students in public schools in order for them to fair well in the federal court system.

Of the cases reported on in this study one was a United States Supreme Court case where the school district prevailed. Forty-three cases were heard in federal court and school districts came out on top 25 times while students were victorious 18 times. The final case was a case heard in state court. In that case, Linke v. Northwestern, the district won at the lower level, but the students won at the appellate level. The state supreme court will hear the case sometime in the future.

To begin, let us address the study questions in turn:

1. How has T.L.O. been interpreted and applied?
T.L.O. has been cited in many search and seizure cases involving public school students. The holding in T.L.O. applies only to searches of students that were conducted by public school officials. Officials are persons who have a primarily educational function, including administrators, teachers, and others with similar duties. Justices in the federal court system overseeing litigation involving dog-sniffs, locker searches, strip searches, drug-testing policies, vehicles searches, seizures, and searches of one's person have all applied guidelines set forth in T.L.O. to determine the outcome of their respective case. T.L.O. has been interpreted and applied in such a way that allows school officials reasonable intrusions on students as long as legitimate governmental interests are served. Any government conduct that intrudes on a justified expectation of privacy is considered to be a search or seizure and must be reasonable according to Fourth Amendment standards.

Certain categories of individuals are afforded less than full protection under the Fourth Amendment; students in public schools are one such group. The Supreme Court held in New Jersey v. T.L.O. that public school officials do not need search warrants or probable cause before searching students under their authority. The High Court held that such legal restrictions would unduly burden teachers and school officials and hinders their attempts to maintain order and discipline and would ultimately interfere with their effectiveness as educators. The Court concluded that a reduced standard was justified for searches and seizures in school settings because of the substantial government interest in maintaining a proper learning environment for educating children. Students are accorded reduced Fourth Amendment protection mainly because of their membership in a specific class-public school children-and not because of the age. The reduced standards as
provided for in T.L.O usually applies only to searches and seizures conducted by public school officials under whose authority the student falls. In Edwards v. Rees, 883 F. 2d 882 (11th Cir. 1989), the court held that a vice-principal from one school could seize a student from another school.

The court stated that student searches must be "reasonable" within their context for them to be lawful. While the standards set in T.L.O. have been used in search and seizure cases, court decisions have varied as to how those standards should be applied and interpreted. All courts have recognized that children in schools do have legitimate expectations of privacy, which are protected by the Fourth Amendment. To determine whether a privacy expectation is reasonable, the Supreme Court weighs the likely impacts of a governmental intrusion on individual privacy and freedom against the interests served by such intrusion. Some courts are less rigid in requiring a logical link between the object of a search and the manner in which it was conducted. In Thompson v. Carthage, 87 F. 3d 979 (8th Cir. 1996), for example, the court of appeals permitted a search where school officials reached in and pulled out small soft objects from the jacket of a male high school student. The student was searched as part of a mandatory suspicionless search for knives and other metal weapons. The conclusion was justified by the court by quoting from New Jersey v. T.L.O., "in a school setting, Fourth Amendment reasonableness does not turn on 'hairsplitting argumentation.'" 469 U.S. 325 (1985).

In general, courts have not allowed the doctrine of in loco parentis to serve as a viable defense when educators are responsible for violating Fourth Amendment rights of students. Public school officials act as representatives of the government. Consequently, they must comply with Fourth Amendment restrictions when conducting student searches.
and seizures. The Supreme Court has specifically rejected the notion that public school officials are exempt from these restrictions because they act as surrogates for the parents of students rather than as government agents. Public school officials do not need search warrants or probable cause to search or seize evidence from students under their authority. Since warrants and probable cause are not required, the legitimate privacy interests of public schoolchildren are protected by requiring that searches and seizures must be "reasonable" under all circumstances. In order to be "reasonable" the student search must be justified at its inception. School officials must "reasonably" suspect that the search of a particular place will uncover evidence to indicate that the student has violated or is violating the law or a school rule. Absolute certainty is not a requirement; "reasonable suspicion" requires only sufficient probability. The requirement for at least a reasonable suspicion applies to any student search regardless of the seriousness of the suspected violation. Student searches are also gauged in relation to the circumstances that initially justified them. The scope, intensity, and methods of each student search as it is conducted must be consistent with its initial objective and not be excessively intrusive to the student in relation to the violation or the suspect's age and sex.

Application of the standards set forth in T.L.O. extends to all persons enrolled in the public schools as students, regardless of whether they are a juvenile or not. However, there are different standards that apply to adult education students, university students, and other persons of similar status. The holdings in T.L.O. apply to student searches conducted only by public school officials. These officials are those who have primarily an educational function. That would include; administrators, teachers, counselors, nurses, and others that perform similar functions within the school environment.
Courts within the federal court system have uniformly looked to the **T.L.O.** precedent when deciding cases that involve search and seizure issues of public school students. The issue of the case most frequently was whether or not a particular search or seizure was reasonable according to the Fourth Amendment. A school official needs to have “reasonable suspicion” that a student is violating or has violated a school rule or law in order to justify a search. The courts were often called upon to determine what was “reasonable suspicion”.

The issue of whether or not **T.L.O.** is applicable in search and seizure cases off school grounds has been addressed thoroughly in this study. On three separate occasions the federal courts reviewed cases that involved searches of hotel rooms during field trips, Ricci v. Guarricino 54 F. Supp. 2d 186 (S.D. N.Y., 1999), Webb v. McCullough 828 F. 2d 1151 (6th Cir. 1987), and Juran v. Independence Or. Central School District 898 F. Supp. 728 (D.Or., 1995). All three cases appeared in different circuits, 2nd, 6th, and 9th, yet the outcome was the same. The courts held that **T.L.O.** is the applicable standard to be used when considering search and seizure cases of public school students by school officials during field trips. Reasonable suspicion was required prior to the search and the administrator must act with the same level of care as if the search was being conducted on school grounds. Another case that originated off school grounds was Edwards v. Rees 883 F. 2d 882 (11th Cir. 1989). The principal of a middle school went to a neighboring high school to interview a student about an incident. The court concluded that the middle school principal’s interrogation of the high school student was reasonable. The court reasoned that the **T.L.O.** ruling did not limit school officials to searches and seizures on their own school property. One final case of the study involving activities that occurred
off campus was Smith v. McGlothlin 119 F. 3d 786 (9th Cir. 1997). Acting on a tip from a
neighbor of the school, a high school principal traveled to a nearby cul-de-sac to
investigate allegations of students smoking on their way to school. The principal escorted
all the students back to school where they were searched. The 9th circuit court found the
searches to be reasonable.

The issue of drug-testing policies was a major component of this study. The Vernonia
case, which was handed down by the United States Supreme Court, is the standard that
federal courts are obligated to adhere to with respect to drug-testing policies at public
schools. The High Court decided that student athletes had a lower expectation to privacy
and the governmental interest to deter drug problems outweighed the minimal intrusion
caused by urinalysis. In addition to the Vernonia case, there are eight federal cases and
one state case included in this study regarding drug-testing policies. The decisions varied
not only by circuit but from case to case as well. Three of the federal cases were decided
prior to Vernonia. In Brooks v. East Chambers Consolidated Independent School District
1985), the courts ruled that drug-testing policies established by the schools were
unconstitutional because they tested students without having individualized suspicion.
Another case prior to Vernonia, Schail v. Tippecanoe School District 864 F. 2d 1309 (7th
Cir. 1988), involved a dispute regarding a drug-testing policy. The outcome of that case
was quite different. The court held that the school was allowed to randomly test student
desiring to participate in sports because the mission of the school to deter drug use
outweighed the minimal intrusion caused by the urinalysis.
There were six cases decided after *Vernonia* included in this study. Five of those cases were argued on the federal level and one was heard in state court. The first case decided after *Vernonia* was *Todd v. Rush* 133 F. 3d 984 (7th Cir. 1998). The case was similar to *Vernonia* in that it required students who participated in sports to submit to random drug-testing. The district court upheld the school’s drug-testing policy. The following year in the same circuit a similar case had an opposite ruling, *Willis v. Anderson Community School Corporation* 158 F. 3d 415 (7th Cir. 1998), involved a drug-testing policy for students having disciplinary problems. School officials believed that growing disciplinary problems was the result of increased drug and alcohol use among their students. The district court ruled the policy reasonable, but that decision was overturned at the appellate level. The appellate court indicated that boundaries were needed and because those being tested were not identified based on individualized suspicion, the policy was unconstitutional. *Miller v. Wilkes* 172 F. 3d 574 (8th Cir. 1999), involved drug-testing for all students who wanted to participate in any extracurricular activity. The appellate court relied heavily on *Vernonia* and decided the policy met constitutional standards. *Joy v. Penn-Harris-Madison School Corporation* 212 F. 3d 1052 (7th Cir. 2000), was the next federal case included in this study regarding drug-testing policies. Like the drug-testing policy in *Miller*, *Joy’s* drug-testing policy required any student desiring to participate in extracurricular activities to submit to random urinalysis. The court relied on the *Vernonia* case and the precedent set by the seventh circuit in *Todd* to hold the drug-testing policy was constitutional.

In 2001 courts began to interpret *Vernonia* differently. *Earls v. Tecumseh* 242 F. 3d 1264 (10th Cir. 2001), was like many of the cases heard by federal courts in recent years.
A school district instituted a drug-testing policy to randomly test any student that wanted to participate in extracurricular activities. The district court held the policy was constitutional. The appellate court relied on *Vernonia* and decided the policy was unconstitutional. In *Vernonia*, the school district claimed, and supported with evidence, drug use was causing discipline problems and creating injuries to athletes. The United States Supreme Court, in *Vernonia*, indicated that because of the drug problem the school district was having it was constitutional for school officials to randomly drug-test student athletes. In *Earls*, the appellate court concluded that the school district had not shown evidence to support the conclusion that a drug problem existed in the district. Therefore, the lower court’s decision, which supported the drug-testing policy, was reversed.

The final drug-testing policy action examined in this study was a case heard in state court, *Linke v. Northwestern* 734 N.E. 2d 252 (2000). The policy required students wishing to participate in athletics and certain extracurricular activities to subject themselves to random drug-testing. The case was brought in state court and argued the policy violated Article 1, Section 11 of the Indiana Constitution. Article 1, Section 11 of the Indiana Constitution is written word for word the same as the Fourth Amendment of the United States Constitution. Concluding the policy was constitutional, the district court ruled in favor of the school district. The state appellate court held that citizens of Indiana are afforded greater protection under the Indiana Constitution than they are given by the United States Constitution. The Indiana appellate court ruled the policy violated Article 1, Section 11 of the Indiana Constitution because students were not tested based on individualized suspicion.
A. What is meant by “reasonable suspicion” as referred to in T.L.O.?

In order for reasonable suspicion to exist, a person conducting a search must have sufficient information to support a belief that evidence of illegal or inappropriate conduct will be found in a particular place. A person can meet this requirement when he/she can relate what specific facts and observations are known and explain how realistic inferences from that information provide an objective basis for the belief. There must be a logical relationship between the objects sought, an illegal or inappropriate activity, and the place to be searched. It is not necessary to rule out every possible contradictory belief. It is entirely possible to reasonably suspect something to be true even if you wonder that there might be a perfectly legitimate explanation to the observed behavior. Reasonable suspicion is present when there is sufficient evidence to believe that a person has committed or is committing a crime or when it is believed that a school rule has been broken or in the process of being violated. Although it is not possible to formulate a general set of rules, school officials can suspect students of past, present, or imminent infractions based on their conduct, appearance, or location.

School officials can legitimately conduct a reasonable search for reasons of caution. If they believe the safety of the students would be jeopardized without the search, then a search is permissible. The fact that a dangerous item is believed to be in the possession of a student could be “reasonable suspicion” to conduct a search as the courts held in Brousseau v. Westerly, 11 F. Supp. 2d 177(D.R.I., 1998) and Thompson v. Cathage School District, 87 F. 3d 979 (8th Cir. 1996).

Anonymous informants are considered to be viable examples of how reasonable suspicion can be created. School officials will receive anonymous tips from time to time.
While the anonymous tip can provide the basis for a valid reasonable suspicion, caution is advised. The informant should stand nothing to gain by providing the tip and the information should be plausible because it relates to a suspected or ongoing problem. The tip should be detailed and not a vague blanket accusation. An anonymous tip has served effectively as "reasonable suspicion" as evident in the following cases: Greenleaf v. Cote, 77 F. Supp 2d 168 (D. Me., 1999), Williams v. Ellington, 936 F. 2d 881 (6th Cir. 1991), Martens v. District No. 220 Board of Education, 620 F. Supp 1282 (D.C.Ill. 1985), Smith v. McGlothlin, 119 F. 3d 786 (9th Cir. 1997) and C.B. v. Driscoll, 82 F. 3d 383 (11th Cir. 1996).

The official's personal observation and knowledge can serve as a source of reasonable suspicion. Perhaps the most reliable basis for reasonable suspicion is something the official observes directly and interprets in light of knowledge and experience. This direct approach assures an accurate recounting of what facts were known and how they were interpreted to arrive at any suspicions motivating a search. Widener v. Frye, 809 F. Supp. 35 (S.D. Ohio 1992), and Cornfield v. Consolidated High School District No. 230 991 F. 2d. 1316 (7th Cir. 1993) are examples of how personal observation can warrant reasonable suspicion to conduct a search.

Suspicious behavior was held by some courts to meet the "reasonable suspicion" standard as evident in Ricci v. Guarricino, 54 F. supp. 2d 186 (S.D.N.Y. 1999), Hedges v. Musco, 204 F. 3d 109 (3rd Cir. 2000), Bridgman v. New Trier High School District No. 203, 128 F. 3d 1146 (7th Cir. 1997), and Juran v. Independence Or Central School District, 898 F. Supp. 728 (D.Or. 1995).
In contrast, the federal district court in Michigan, ruled in *Cales v. Howell Public Schools*, 635 F. Supp. 454 (E.D. Mich. 1985), that suspicious behavior alone was not sufficient to indicate that “reasonable suspicion” existed to conduct a search. In *Cales*, a student was searched by school officials because she was seen by a security officer ducking behind a parked car and then gave a bogus name. School officials believed that a search for drugs was in order based on her actions. The court held that her actions could have been the result of many things and not necessarily because she was in possession of drugs. That 1985 decision held the search to be unconstitutional. Another example of an unreasonable search was shown in *Burnham v. West* 681 F. Supp. 1160 (E.D. Va. 1987). In that case a school principal discovered defacement of school property and directed all teachers to search each student’s bookbags, pockets, and pocketbooks for magic markers. He ordered another search when he was informed by a teacher that a student was seen with a “Walkman” or radio, which violated school rules. When a teacher reported the smell of marijuana in a hallway, another broad search was ordered. The three “sweep searches” were held to have violated the students’ Fourth Amendment rights.

**B. Does the “reasonable suspicion” standard articulated in *T.L.O.* apply to school police?**

The ruling in *T.L.O.* did not clarify whether or not the “reasonable suspicion” standard applied to school police. The *T.L.O.* decision has been interpreted to apply only to student searches that were conducted by public school officials. Three cases from the study included law enforcement involvement.
Federal courts have ruled differently on this issue. Whether “probable cause” or “reasonable suspicion” is the standard used for searches of students when law enforcement personnel are involved depends largely on the extent of their involvement.

In *James v. Unified School District No. 512*, a Tenth Circuit case, school officials believed that a student had a gun in his car and called local law enforcement officers to investigate the matter. The police officers in that case arrested the student for the weapon violation. The court ruled that T.L.O. was not applicable in this case because school officials did not conduct the search. A Seventh Circuit case, *Martens v. District #220*, also involved police personnel, but had a different ruling. A school administrator had a student in his office for questioning regarding possession of drugs. The school official was trying to get the student to empty his pockets when a law enforcement officer happened to stop by the office. The police officer was at the school for another reason and went to the principal’s office without being requested. The officer advised the student that it would be in his best interest to cooperate and empty his pockets. The court in that case held that the school official conducted the search and therefore, T.L.O. applied. The search was held to be constitutional because school officials conducted the search, therefore the standard of reasonable suspicion was the appropriate standard to govern the search.

A third case relevant to this issue was *Juran v. Independence Or Central School District* 898 F. Supp. 728 (D.Or. 1995). A busload of students on their way out-of-town on a field trip contained several students suspected of being under the influence of alcohol. The school administrator contacted local law enforcement and had the bus taken to the police department. Once at the police station, the students were each given a
breathalyzer test by police so they could determine who had been drinking. The court indicated that probable cause was the appropriate standard to use in this case because the search, breathalyzer, was conducted by law enforcement officials.

C. Has the court's interpretation of T.L.O. changed over time? What is the current status of school searches?

The United States Supreme Court has ruled that under the Fourth Amendment to the United States Constitution, searches of students by school officials need not adhere to the standard of "probable cause" imposed upon law enforcement officers. Instead, the legality of student searches depends on the "reasonableness" of the search in light of the circumstances. There must be reasonable grounds to believe that the search will reveal a violation of a school rule or produce evidence of unlawful activity. The states remain free to provide greater protection for students.

The interpretation of T.L.O. by the courts has varied over time. However, the standards themselves are the same today as they were when the case was handed down in 1985. "Reasonable suspicion" is still needed to justify a search and the search must still be restricted to an area within scope relatively related to the circumstances that justified the search originally. The governmental interest in the outcome of the search must outweigh the individual's expectation to privacy interest. Whether referring to breathalyzer tests, locker searches, K-9 sniffs, or searches of one's person or belongings, courts have consistently relied upon the standards set in T.L.O when deciding search and seizure cases involving students.

What constitutes reasonable suspicion and what lies within the limit of scope for a search was addressed earlier. The one area that has continued to be debated in various
circuits is "individualized suspicion". The courts have decided several cases where "individualized suspicion" was raised as an issue. In the landmark case of *Vernonia v. Acton*, the United States Supreme Court held that "individualized suspicion" was not a prerequisite to a valid search. Civil rights leaders viewed that decision as a blow to the constitutional rights of school children while school officials applauded the Supreme Court for recognizing the unique challenges school officials face. That decision granted schools broader discretion with respect to student searches.

Courts before and since *Vernonia* have differed on the question of "individualized suspicion." In *C.B. v. Driscoll* 82 F. 3d 383 (11th Cir. 1996), a student received disciplinary consequences for possessing a drug "look-a-like", which was a violation of a school rule. Another student advised school administrators that C.B. possessed the "look-a-like" drug. Appellate Judge Edmonson indicated, "The tip in this case provided sufficient probability, viewed against the reasonable grounds standard, to justify the search here. *C.B. v. Driscoll*, 82 F. 3d 383, 385 (11th Cir. 1996).

Decisions handed down by the United States Supreme Court are frequently analyzed and interpreted by lower courts. Unless the details of the lower court's case are identical in every way to the precedent case the justices will have to use some discretion with respect to how they rule. Cases very similar in nature have been presented in this study with opposite decisions. Sometimes the reason for the discrepancy was because the cases were in different circuits. However, we have even seen similar cases within the same circuit that have had different decisions rendered. In *Cornfield v. Consolidated High School District No. 230*, 991 F. 2d 1316 (7th Cir. 1993), school officials strip searched a student on mere suspicion that he was carrying drugs. The court held the search to be
constitutional because school officials had reasonable suspicion to believe he was concealing drugs in his pants, even though he was not. In contrast, in Oliver v. McClung, 919 F. Supp 1206 (N.D. Ind. 1995), middle school girls were strip searched in an attempt to find $4.50 that was missing from a locker. It was held that the search of the students violated their constitutional right to be free from unreasonable search and seizure. Justice Stevens in his opinion indicated that no matter what standard is applied, shocking strip searches have no place in the schoolhouse. Those two cases are example of how two cases from the same circuit with similar circumstances, both involving strip searches, can have different results.

Another example of how the standards can be applied differently can once again be found in decisions rendered in the 7th circuit. Todd v. Rush, 133 F. 3d.984 (7th Cir. 1998), involved the constitutionality of a school’s drug-testing policy. The appellate justices upheld the drug-testing indicating that Vernonia v. Acton 515 U.S. 646 (1995) governed the outcome of that case. That same year in the same circuit a similar drug-testing policy upheld at the district court level was overturned at the appellate level. In Willis v. Anderson, 158 F. 3d 415 (7th Cir. 1998), a school’s drug-testing policy was challenged in court. The district court upheld the policy and the appellate court reversed. That body of justices, while making reference to Vernonia v. Acton, indicated the policy and privacy interest of the individual were different. Just two years later, Joy v. Penn-Harris-Madison School Corporation, 212 F. 3d 1052 (7th Cir. 2000), was before the appellate court. This case once again challenged a school’s drug-testing policy. Once again the appellate justices allowed Vernonia, and this time Todd, to govern their decision. The court upheld
the school's drug testing policy and indicated the United States Supreme Court needs to address this matter so clarification can be provided.

The standards for search set in T.L.O. have not changed. The interpretation of those standards has varied greatly over time and across circuits. The current status is that courts use T.L.O and Vernonia as guides, but then interpret them based on their analysis of their respective case. Courts are anxiously awaiting the United States Supreme Court's ruling in the Earl v. Tecumseh School District, 242 F. 3d 1264 (10th Cir. 2001) so that consistent decisions can be rendered.

D. What guidelines should school officials follow regarding the search of students?

In Justice White's opinion in T.L.O. it was learned that school searches needed to be justified at inception and the search related in scope to the objectives that justified the intrusion in the first place. As indicated in T.L.O.'s ruling and seen applied many times, the age and sex of the student coupled with the infraction also play a vital role in the determination of a valid search. Searches of school students by school officials can only be conducted if there is "reasonable suspicion" that the search will uncover evidence related to criminal activity, inappropriate school conduct, or an emergency situation. In the previous cases we saw various types of searches: searches of one's person or belongings; personal item searches; automobile searches; and locker searches, Oliver v. McClung, 919 F. Supp. 1206 (N.D. Ind. 1995). This study advises that breathalyzer tests and urinalysis examinations are also considered searches for Fourth Amendment purposes, Juran v. Independence Or. Central School District, 898 F. Supp. 728 (D. Or. 1995). Regardless of the type of search being conducted the standard is the
same. There must be "reasonable suspicion" present to justify the search at its inception. Once the search is justified it must be conducted relatively within the scope of the circumstances that prompted the search in the first place. The violation of the student's reasonable expectation of privacy must be weighed against the state's interest for the intrusion. This relates to the intrusiveness of the search versus the infraction of the student. When students are not subjected to excessive intrusion courts had generally ruled in favor of the school. When students are strip searched in an attempt to find missing money, courts usually find that to be unreasonable and generally rule against the school, Oliver v. McClung, 919 F. Supp. 1206 (N.D. Ind. 1995), Konop v. Northwestern School District 26 F. Supp. 2d 1189 (D. S.D. 1998), and McKenzie v. Talladega City Board of Education 115 F. 3d 821 (11th Cir. 1997). The one exception to that identified in the study was Singleton v. Board of Education 894 F. Supp. 386 (D. Kan. 1995). A high school student was accused by an adult of having stolen $150.00 from her car. In that case the search by school officials, which included the student being required to lower his pants, was deemed reasonable.

In order to justify a search as intrusive as a strip search the school official needs to be protecting the health and welfare of the student. As seen in the ruling in Sostarecz v. Misco and Konop v. Northwestern, 26 F. Supp. 2d 1189 (D. S.D. 1998) school officials cannot legitimately subject students to a search as intrusive as a strip search simply to prove they may have broken a school rule or law. Unless a strip search will uncover evidence that the student is an immediate threat to himself or others it is probably best for school officials to not conduct strip searches.
As indicated by the number of times school officials prevailed in search and seizure cases, Courts generally support the efforts of school leaders that are trying to maintain order in their educational environment. When bad judgment is used and school officials excessively invade a student's legitimate expectation of privacy, as seen in a couple of cases, the courts rule in favor of the student.

2. What, if any, impact does the Nevada State Constitution forbidding unreasonable search and seizures have on school searches?

Article 1, Section 18 of the Nevada Constitution is consistent with the Fourth Amendment of the United States Constitution and identically worded with respect to searches and seizures. As written, Article 1, Section 18 of the Nevada Constitution reads:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches shall not be violated; and no warrants shall issue but on probable cause, supported by Oath or Affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.

This study was unable to produce any federal student search or seizure case that originated in Nevada. In addition, the only relevant state case included, Linke v. Northwestern 734 N.E 2d 252 (2000), was from Indiana. That case was relevant and included because it challenged Article 1, Section 11 of the Indiana Constitution. That article is also worded exactly the same as Article 1, Section 18 of the Nevada Constitution and the Fourth Amendment of the United States Constitution. The Indiana appellate court, in Linke, held that the citizens of Indiana are afforded greater protection.
under the Indiana Constitution then they are afforded under the United States Constitution. Nevada state courts has disagreed with that premise.

In *Gama v. State* 112 Nev. 833 (1996), the court held that the Nevada Constitution on search and seizure does not offer greater protection than the Fourth Amendment to the United States Constitution. In one additional case, *Dean v. Fogliani* 81 Nev. 541 (1965), the action brought into question the legality of a search with respect to the Fourth Amendment of the United States Constitution or Article 1, Section 18 of the Nevada Constitution. The judge's decision failed to indicate any particular hierarchy that would have given a ranking preference of one over the other. Instead Nevada courts have consistently held that Article 1, Section 18 of the Nevada Constitution and the Fourth Amendment of the United States Constitution are coexistent and equal in authority.

Article 1, Section 18 of the Nevada Constitution is no more restrictive and offers no greater protection than the Fourth Amendment of the United States Constitution, so there is no impact on searches. The same guidelines and restrictions regarding the search of public school students by school officials that applies in the federal court also applies in state court.

**Matrix of Cases Studied**

Table 1 lists the student search and seizure cases this study has reviewed, the year the case was decided, the geographical circuit, the level of jurisdiction, the issue involved, and the outcome—whether favoring the school district or the student.
Table 1.

Matrix of Student Search and Seizure Cases

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<th>CASE</th>
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Conclusions

The Fourth Amendment to the United States Constitution provides that the Federal Government insure “[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures,...” This restraint on government conduct generally bars officials from undertaking a search or seizure absent individualized suspicion.” Chandler v. Miller, (1997). The Fourteenth Amendment extends this guarantee to searches and seizures by state officers, including public school officials. New Jersey V. T.L.O., (1985). As evident in Vernonia School District v. Acton, the ultimate measure of the constitutionality of a government search is “reasonableness.” Ordinarily, to be reasonable under the Fourth Amendment, the search must be based on individualized suspicion. Courts evaluate the facts of a particular case and determine whether or not it meets the reasonableness standard by balancing two factors: the search’s intrusion on the Fourth Amendment privacy interest of the individual and its promotion of legitimate governmental interests. Vernonia v. Acton at 653-54

The Supreme Court ruled in T.L.O. that public schools generally have “special needs” that justify modifying the normal law-enforcement procedures. Due to the unique environment that schools provide, courts have recognized that the need to establish a safe learning environment renders certain kinds of searches constitutional even though the search would be considered unconstitutional in other settings. Evidence presented in this study indicates that when issues of safety are involved, the courts are more likely to rule that a search is justified, even if it invades the privacy rights of the student. With respect to obtaining a warrant prior to conducting a search, the Supreme Court found that the warrant requirement “would unduly interfere with the maintenance of the swift and
informal disciplinary procedures that are needed,” in addition, “strict adherence to the requirement that searches be based on probable cause” would undercut “the substantial need of teachers and administrators for freedom to maintain order in the schools.” T.L.O. at 340-41.

The Supreme Court has placed practical limits on the scope, intensity, and methods of a search. When a search does not meet the requirements set by the Supreme Court it will be considered unreasonable. The initial infraction that brings about the original reasonable suspicion determines the limits of the search. The scope of a search is where officials can search and is determined by the description of the suspected location of items sought-after. For example, if officials have reasonable suspicion to suspect that illegal drugs are being stored in a student’s locker they could search the locker and open anything in the locker that could conceivably contain contraband. This suspicion would allow officials to open any box, container, tin, book, bag, or other containers found within the locker that could hold drugs. In contrast, if school officials were searching for a baseball bat used in assault they would only be able to search areas that would be large enough to store a baseball bat. Glove compartment of a car, purses, bookbags, personal papers, and small bags would be off limits because they could not conceal a baseball bat. School officials must make sure that when conducting searches they limit the search to areas within an appropriate scope of authority.

The data revealed that pat-down searches were quite common and used in many of the cases that were reviewed. The primary purpose of a pat-down search is to obtain tactile information that would justify further searching beneath the surface of the outer garments. School officials may invade the surface below outer garments when they seek

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to retrieve any object revealed by a pat-down if the size, shape, and density are consistent with those of the item being sought. They may also retrieve, open and examine any container that might plausibly contain the item. Cason v. Cook, at 193 (a pat-down search for stolen currency was not excessively intrusive when a stolen coin purse was already found in the student’s purse).

As violence and drug use has increased in public schools, administrators have been prompted to implement policies to counter unacceptable student behaviors. School officials have conducted searches of lockers and personal property with greater frequency (Foley and Ling, 1995). Some administrators have resorted to strip searches in order to locate drugs or contraband. Administrators that conduct strip searches of students risk great legal consequences when those searches are carried out.

With respect to strip searches, school officials must be very familiar with the law and make sure they find themselves in an unavoidable situation. School leaders may constitutionally conduct strip searches in unique situations involving threats to health and safety. School officials that search should not be “excessively intrusive in light of the age and sex of the student and the nature of the infraction” (New Jersey v. T.L.O., at 342). “In fact, strip searches are probably only permissible in the school setting, if permissible at all, where there is threat of imminent serious harm” (Jenkins v. Talladega City Board of Education, at 1047 n.20). The data indicated that in order for strip searches to be legal reasonable suspicion must exist that the student possesses a weapon or contraband. In addition, the reasonable suspicion standard with respect to scope and governmental interests should be strictly applied. Examples of strip searches that were conducted at school where the courts held that reasonable suspicion did not exist include requiring two
eight-year old girls to strip twice because they were accused of stealing $7 from another student (Jenkins v. Talladega City Board of Education), requiring a 15 year-old girl who was hiding behind a parked car during school to remove her jeans (Cales v. Public School), requiring a student to undress down to his underwear so a search for drugs could be conducted (Austin v. Lambert), requiring fifth grade student to be strip searched in an attempt to find an envelope that contained $26 (Thomas v. Clayton County Board of Education), conducting a strip search of seventh-grade girls in an effort to find $4.50 that had been stolen (Oliver v. McClung), requiring two eighth-grade girls to be strip searched in order to find $57 stolen from a locker (Konop v. Northwestern School District), and requiring a female high-school student to remove her pants so her legs could be checked for signs of drug use (Sostarecz v. Misko). In his dissenting and concurring opinion in T.L.O., Justice Stevens indicated that “strip searches have no place in the school house”.

A strip search was held to be reasonable in Singleton v. Board of Education. A school official searched a student for $150 the student allegedly had stolen. Despite the fact the student’s crotch area was patted and he was required to lower his cut-offs, the district court found the search to be reasonable because it was conducted in private and the student was not required to remove his underwear. Another example where a student was required to remove his clothes and the search was deemed reasonable was Cornfield v. Consolidated High School. School officials were trying to find a large quantity of drugs the student supposedly had in his pants. The court indicated that requiring the student to remove his clothes was the least intrusive means and the decision was affirmed in the appellate court. Other decisions permitting a strip search are Williams v. Ellington, where
the court permitted a search of a high school student’s undergarments by school officials looking for a vial of cocaine based on an allegation by a fellow student, and *Widener v. Frye*, where school officials were allowed to remove the jeans of a 15-year old male thought to be in possession of marijuana. The research indicates that strip searches for illegal drugs can be defended more easily that a strip search for a modest sum of money.

Testing for illegal drugs and alcohol by means or urinalysis has become increasingly common because of concerns of drug use in public schools. The court held in *Schaill v. Tippecanoe County School District*, that any program involving drug testing of students, which is usually student athletes, must take into consideration the privacy, due process, and equal protection rights of the student. Courts have examined the constitutional validity of urinalysis testing on a case-by-case basis. The United States Supreme Court held in *Vernonia v. Acton*, that testing of a selected subgroup of students was considered a reasonable search. State and Federal courts that have reviewed cases involving the urine testing of the general student body in a public school has found it to be unconstitutional. *Anable v. Ford*, 653 F. Supp. 22 (W.D. Ark. 1985); *Odenhemim v. Carlstadt-East Rutherford Regional School District*, 510 A 2d 709 (N.J. Super. 1985); *Brooks v. East Chambers Consolidated Independent School District*. As learned from *Vernonia v. Acton*, the intrusiveness of urinalysis testing of a student’s privacy rights must be weighed against the governmental interests sought to be furthered by the testing. In order to evaluate the government's interest, three factors must be looked at: (1) the nature of the concern, (2) the immediacy of the problem, and (3) the efficacy of the policy in addressing the problem. The Supreme Court rejected the notion that drug testing must be
based on individualized suspicion and indicated that drug use by schoolchildren is an important state interest that warrants governmental concern and action.

The Supreme Court has twice addressed the issue of drug searches in public schools. Those two cases, New Jersey v. T.L.O. and Vernonia v. Acton, could signal the start of a trend toward expanding the scope of constitutionally permissible drug searches to include suspicionless searches of all students (Bradfield, 1997). In New Jersey v. T.L.O the Supreme Court held that individualized suspicion is usually required for a search of a student to be considered reasonable. In Vernonia v. Acton, the High Court indicated that individualized suspicion is not required for a drug testing program for student athletes, and concluded suspicionless testing is generally preferable to individualized suspicion based testing.

Dog sniff searches are important consideration for school districts contemplating drug detection programs. Courts have reached different conclusions on the constitutionality of suspicionless dog sniffs of students' lockers and students' persons. Suspicionless dog sniffs have typically been upheld by state and federal courts. The issue has not been heard at the United States Supreme Court level. Whether a dog sniff is actually a search under the requirements of the Fourth Amendment depends on the particular circumstances in each case. Courts are more likely to find a dog sniff was a search when the dogs were used to sniff the individual rather than possessions (Van Dyke and Sakurai, 1999). The Fifth Circuit Court of Appeals held that lack of individualized suspicion makes a dog sniff of a student's person unconstitutional Horton v. Goose Creek Independent School District. The court was concerned that dogs touched students during the search and that was considered offensive and personally intrusive. The Fifth Circuit
also held that the school officials were not solely acting in loco parentis when carrying out the search. The school leaders were acting as agents of the government, and therefore the Fourth Amendment applied to their actions.

In a more recent Ninth Circuit Case, Powers v. Plumas Unified School District, the court held that a dog sniff of a student's person was considered a search. In addition, the court indicated that a random and suspicionless search was unreasonable in this case. The appellate court noted that a search that lacks individualized suspicion could still be a valid search if the privacy interests implicated by the search are minimal and an important governmental interest will be furthered by the search. In Powers v. Plumas, the court acknowledged that deterring drug use was an important function, but there was no indication of a drug crisis or even a drug problem when the search took place.

It is well understood, or should be well understood, that students are not stripped of their constitutional rights upon entering the schoolhouse. The United States Supreme Court recognized that students are protected by the Amendments of the United States Constitution. Tinker v. Des Moines, 393 U.S. 503 (1969). In T.L.O, the Court rejected the premise that school officials act in loco parentis and are not subject to dictates of the Fourth Amendment. The Court held the Fourth Amendment does apply to searches by school officials. 105 S. Ct. at 740-41. The Court did make a concession when they rejected the standard of "probable cause" for school officials when conducting a search. Id., at 743. The legality of the search depends on reasonableness. When determining the reasonableness of a search, the search must be justified at inception, and reasonably related in scope to the circumstances that initially prompted the search. Id., at 744. As seen in cases presented, when school officials are not familiar with the constitutional law
involving searches and seizures they subject themselves and the school district to possible litigation. By being knowledgeable of what is and is not acceptable, educators can save themselves a great deal of time, effort, and money.

The two areas that seem to cause the greatest degree of litigation are strip searches and drug-testing policies. While earlier cases involving strip searches usually ended favorably for the schools, the trend has since shifted. Unless the student is being searched for a safety or health reason, courts have most recently concluded that these searches go beyond the limits of legality. These searches are deemed to be excessively intrusive, and the results of this study indicate that school officials should avoid them when student safety is not a concern. As Justice Stevens was quoted as saying in his separate opinion in T.L.O., dissenting in part and concurring in part, “One thing is clear under any standard—the shocking strip searches that are described in some case have no place in the school house.” 469 U.S. 325, 382. These deeply intrusive searches should only be considered reasonable outside the custodial context when they are “to prevent imminent, and serious harm.” /id., at 383.

The issue of drug-testing policies became a controversial topic as of late. As seen through the results of this study circuits have not always been in agreement as to how the case precedent, Vernonia, should be interpreted. Vernonia, has made it clear that school districts that can prove a drug problem exists can randomly and without individualized suspicion drug-test its athletes. What is unclear is how much proof must a school district exhibit to qualify as ample indication that the school district has a drug problem. In addition, is it permissible to test all students participating in extracurricular activities, or
just athletes? These are a couple of questions where the answer varies depending on the circuit.

In closing, it is imperative to reiterate the importance of educators knowing the constitutional law with respect to student searches. This study provides a concise summary of how search and seizure cases involving students in public schools have been resolved over the past sixteen years. The data presented here is intended to help teachers, administrators, and other school officials avoid the unpleasant process of a lawsuit.

Recommendations For Further Study

With one exception, the cases that were presented in this study represent rulings within the federal court system. An examination of state cases that deal with search and seizure in public school would be an interesting study. As seen in Linke v. Northwestern, unlike in Nevada, courts may hold that state constitutions offer more protection that the United States Constitution. There are many cases that involve search and seizure of public school students that were never heard at the federal level, yet are worthy of review. An example is found in Coffman v. State, 782 S. W. 2d 249, (Texas App. 1989). Usually, a student’s behavior cannot in itself be grounds for reasonable suspicion and therefore justify a search. In the state court case of Coffman v. State a student, out of class without an excuse, first ignored an assistant principal and then became excited and aggressive. The student clutched his book bag behind him as if he was trying to prevent the administrator to see what was in it. The school official gained control of the book bag and did proceed to search it. The court held that the student’s behavior was enough for reasonable suspicion.
State Courts have reviewed T.L.O. and have interpreted it differently in some instances. One prime example is the issue of a student's expectation to privacy with respect to school property. State courts that decided public school students do have an expectation to privacy in lockers and other school property include Mississippi (In re S.C. v. State, 583 So. 2d 188, 1991). The court did indicate that a student would have less of a privacy interest at school than they would at home or in an automobile. Other states that have ruled similarly are; New Jersey (State v. Engerud, 94 N.J. 331, A.2d 934, 1983), New Mexico (State v. Michael G., 748 P.2d, N.M. App. 1987), Washington (State v. Brooks, 718 P.2d 837, Wash. App. 1986), and West Virginia (State v. Joseph T., 336 S.E. 2d 728, W.Va. 1985). Hawaii’s Department of Education Regulation, Chapter 19, Subchapter 4, subsection 8-19-14 (1986) indicates that students do have an expectation of privacy in individually assigned school property. A Wisconsin court ruled that students have a minimal expectation of privacy in their jackets hanging in school cloak rooms, and that an undifferentiated pat-down search of all jackets to try and find a missing portable radio was constitutional. In re L.J., 468 N.W. 2d 211 (Wis. App. 1991). In a separate Wisconsin case, the state court held that students had no reasonable expectation of privacy in their lockers when the school system had a written policy retaining ownership and control of school lockers as long as students were made aware of the policy. In re Isiah B. v. State, 500 N. W. 2d 637 (Wis. 1993). In Commonwealth v. Cass, 709 A2d 350 (Pa. 1998), the Pennsylvania Supreme Court ruled that public school students possess only a minimal expectation of privacy in their lockers.

The Earls case from the 10th circuit has been granted certiorari by the United States Supreme Court. The Supreme Court has agreed to hear the case on appeal from the
The case originated when the school district instituted a drug-testing policy for all students that participated in extra-curricular activities. The district court held the policy to be constitutional. A 2-1 vote in the appellate court held the policy unconstitutional because, unlike in Vemonia, the school district was not able to prove a special need existed to initiate the drug-testing policy. In his dissenting opinion Justice Ebel encouraged the school district to pursue this case to the United States Supreme Court if necessary because he so strongly opposed the decision. This case is worth watching because the findings of the Supreme Court will have significant impact on which students schools are able to drug-test. The Vemonia decision allowed schools to drug-test athletes, the Tecumseh school district is asking that all students involved in extracurricular activities be subject to drug-testing. A study regarding the impact of the decision may be worthwhile.

A study to identify how well informed school leaders are with respect to search and seizure could prove to be beneficial. Administrators and policy makers could be presented with a survey that contains a variety of hypothetical situations to analyze based on their understanding of school law. In addition, a similar study could be conducted with classroom teachers. Courts hold teachers, administrators, and policy makers accountable for what they should know with respect to students’ constitutional rights. A study of how up to date educators are on current federal law regarding search and seizure could prove to be beneficial. Results of the study could be used by school districts to determine if additional training is needed in that area. The potential savings created by avoiding litigation could well be worth the cost. Board members and superintendents could review the results to see how they could better prepare educators in their districts.
The following issues were covered in this study. However, the questions this study sought answers to did not fully explain answers to some key concerns. While the United States Supreme Court decision in *T.L.O* and *Vernonia* answered some questions, there are still some issues left unanswered. The student’s expectation of privacy with respect to school property is one such issue. Which standard applies when law enforcement is involved is another issue. If school police is involved in the search is “probable cause” always required instead of reasonable suspicion? The final matter left unanswered by the *T.L.O* and *Vernonia* decisions is the question of “individualized suspicion”. Is “individualized suspicion” an essential element of the reasonable suspicion standard that was articulated in *T.L.O*? This study had found cases where courts have indicated it is, and some courts that have held that it is not. Undoubtedly, the final word has not been written on this subject. It is just a matter of time before the United States Supreme Court is faced with another Fourth Amendment issue involving public school students. At that time they will hopefully clear up some of the unanswered questions regarding this matter.
APPENDIX A

THE SUPREME COURT T.L.O. CASE

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N.J., discovered two girls smoking in a school 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 marijuana. 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 marijuana, 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 marijuana 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 marijuana 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. Although the court concluded that the Fourth Amendment did apply to searches carried out by school officials, it held that a school official may properly conduct a search of a student's person if the official has a reasonable suspicion that a crime has been or is in the process of being committed, or reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies. Id., at 341, 428 A.2d, at 1333.

Applying this standard, the court concluded that the search conducted by Mr. Choplick was a reasonable one. The initial decision to open the purse was justified by Mr. Choplick's well-founded suspicion that T.L.O. had violated the rule forbidding smoking in the lavatory. Once the purse was open, evidence of marijuana violations was in plain view, and Mr. Choplick was entitled to conduct a thorough search to determine the nature and extent of T.L.O.'s drug-related activities. 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 judgement of the Juvenile Court, a divided Appellate Division affirmed the trial court’s findings that there had been no Fourth Amendment violation, but vacated the adjudication of delinquency and remanded for a determination of whether T.L.O. had knowingly and voluntarily waived her Fifth Amendment rights before confessing. State ex rel T.L.O., 185 NJ Super 279, 448 A2d 493 (1982). T.L.O. appealed the Fourth Amendment ruling, and the Supreme Court of New Jersey reversed the judgement of the Appellate Division and ordered the suppression of the evidence found in T.L.O.’s purse. State ex rel T.L.O., 94 NJ 331, 463 A2d 934 (1983).

The New Jersey Supreme Court agreed with the lower courts that the Fourth Amendment applies to searches conducted by school officials. The court also rejected the State of New Jersey’s argument that the exclusionary rule should not be employed to prevent the use in juvenile proceedings of evidence unlawfully seized by school officials. Declining to consider whether applying the rule to the fruits of searches by school officials would have any deterrent value, the court held simply that the precedents of this Court establish that “if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings.”

With respect to the question of the legality of the search before it, the court agreed with the Juvenile Court that a warrantless search by a school official does not violate the Fourth Amendment so long as the official “has reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order.” However, the court, with two justices dissenting, sharply disagreed
with the Juvenile Court's conclusion that the search of the purse was reasonable. According to the majority, the contents of T.L.O.'s purse had no bearing on the accusation against T.L.O., for possession of cigarettes (as opposed to smoking them in the lavatory) did not violate school rules, and a mere desire for evidence that would impeach T.L.O.'s claim that she did not smoke cigarettes could not justify the search. Moreover, even if a reasonable suspicion that T.L.O. had cigarettes in her purse would justify a search, Mr. Choplick had no such suspicion, as no one had furnished him with any specific information that there were cigarettes in the purse. Finally, leaving aside the question whether Mr. Choplick was justified in opening the purse, the court held that the evidence of drug use that he saw inside did not justify the extensive "rummaging" through T.L.O.'s papers and effects that followed.

Although we originally granted certiorari to decide the issue of the appropriate remedy in juvenile court proceedings for unlawful school searches, our doubts regarding the wisdom of deciding that question in isolation from the broader question of what limits, if any, the Fourth Amendment places on the activities of school authorities prompted us to order reargument on that question. 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.

1 "State and federal courts considering these questions have struggled to accommodate the interests protected by the Fourth Amendment and the interest of the States in providing a safe environment conducive to education in public schools. Some courts have resolved the tension between these interests by giving full force to one or the other side of the balance. Thus, in a number of cases courts have held that school officials conducting in-school searches of students are private parties acting in loco parentis and are therefore not subject to the constraints of the Fourth Amendment" (83 L.Ed., pg. 728).
The Court’s Analysis

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:

“The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures-Boards of Education not excepted. These have, of course, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedom of the individual, if we are not o strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.” West Virginia State Bd. of Ed. v. Barnette, 319 US 624, 637, 87 L Ed 1628, 63 S Ct 1178, 147 ALR 674 (1943).

On reargument, however, the State of New Jersey argued that the Fourth Amendment’s history indicated 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 the purpose of the Fourteenth Amendment, the Fourth Amendment creates no rights enforceable against them. 2

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” Burdeau v McDowell. S Ct 574 (1921). Accordingly, we have held that the Fourth Amendment applicable to the activities of civil as well as criminal authorities: building inspectors, 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.

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...[T.L.O.] at 934, 940.

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

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2 Ingraham v. Wright, 430 US 651, 51 L Ed 2d 711, 97 S Ct 1401 (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).
class of searches requires 'balancing the need to search against the invasion which the search entails.' 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. Of course the Fourth Amendment does 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 expectation of privacy in articles of personal property "unnecessarily" carried into a school.

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 the "[t]he prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration" [Ingraham] at 669. We are not yet ready to hold that schools and prisons are 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

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3 Camara v. Municipal, at 536-537, 87 S Ct 1727.
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.

'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 student-teacher relationships.

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] at 532-533 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." Almeida Sanchez v. United States 413 U.S. 266 at 277. Thus we have in a number of cases recognized the legality of searches and seizures based on suspicions that, although "reasonableness," do not rise to the level of probable cause. Terry v. Ohio, 392 U.S. 1 (1968); Delaware v. Prouse, 440 U.S. 648,
654-655. 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 school 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; 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\(^6\) 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.

\(^6\) 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.
This standard will, we trust, neither unduly burden the efforts of school authorities to maintain order in their school 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 legitimate end of preserving order in the schools.

There remains the question of legality of the search in this case. We recognize the "reasonableness 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 the 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 unreasonableness for Fourth Amendment purposes.7

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.

7 Of course, New Jersey may insist on a more demanding standard under its own Constitution or statutes. In that case, its courts would not purport to be applying the Fourth Amendment when they invalidate a search.
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." 94 N.J., at 347, 463 A. 2d, at 942.

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 that she had been smoking and undermine the credibility of her defense to the charge of smoking. To be sure, the discovery of 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

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* Justice Stevens interprets these statements as a holding that enforcement of the school's smoking regulations was not sufficiently related to the goal of maintaining discipline or order to justify a search under the standard adopted by the New Jersey court.
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 ‘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]’ 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....’ 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.

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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 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 the evidence from T.L.O's juvenile delinquency proceedings on Fourth Amendment grounds
was erroneous. Accordingly, the judgement of the Supreme Court of New Jersey is reversed.

Justice Powell, with whom Justice O'Connor joins, concurring.

I agree with the Court's decision, and generally with its opinion. I would place greater emphasis, however, 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 teacher quite well. Of necessity, teachers have a degree of familiarity with, and authority over, their students that is unparalleled except perhaps 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 the case, I can assume that children in school—no less than adults—have privacy interests that society is prepared to recognize as legitimate.

However one may characterize their privacy expectations, students properly are afforded some constitutional protections. In an often quoted statement, the Court said that students do not shed their constitutional rights... at the schoolhouse gate." The Court also has "emphasized the need for affirming the comprehensive authority of the states and of school officials... to prescribe and control conduct in the schools." Epperson v. Arkansas, 393 U.S. 97, 104 (1968). The Court has balanced the interests of the students

10 See Tinker v. Des Moines
against the school officials’ need to maintain discipline by recognizing qualitative
differences between the constitutional remedies to which students and adults are entitled.

In *Goss v. Lopez*, 419 U.S. 565 (1975), the Court recognized a constitutional right to
due process, and yet was careful to limit the exercise of this right by a student who
challenged a disciplinary suspension. The only process found to be “due” was notice and
a hearing described as “rudimentary”; it amounted to no more than “the
disciplinarian...informally discussing the alleged misconduct with the student minutes
after it occurred.” *Id.* 581-582. In *Ingraham v. Wright*, 430 U.S. 651 (1977), 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.” *Ibid.*

The special relationship between teacher and student also distinguishes the setting
within which schoolchildren operate. Law enforcement officers have the responsibility to
investigate criminal activity, to locate and arrest those who violate our laws, and to
facilitate the charging and bringing of such persons to trial. Rarely does this type of
adversarial relationship exist between school authorities and pupils. Instead, there is a
commonality of interests between teachers and their pupils. The attitude of the typical
teacher is one of personal responsibility for the student’s welfare as well as for his
education.
In sum, although I join the Court’s opinion and its holding, my emphasis is somewhat different.

Justice Blackmun, concurring in the judgement.

I join the judgement of the Court and agree with much that is said in its opinion. I write separately, however, because I believe the Court omits a crucial step in its analysis of whether a school search must be based upon probable cause. The Court correctly states that we have recognized limited exceptions to the probable-cause requirement “where a careful balancing of governmental and private interests suggests that the public interest is best served” by a lesser standard. I believed that we used such a balancing test, rather than strictly applying the Fourth Amendment’s Warrant and Probable Cause Clause, only when we were confronted with a “special law enforcement need for greater flexibility.”

“While the Fourth Amendment speaks in terms of freedom from unreasonable [searches], the Amendment does not leave the reasonableness of most [searches] to the judgment of courts or government officers; the Framers of the Amendment balanced the interests involved and decided that a [search] is reasonable only if supported by a judicial warrant based on probable cause. Texas v. Brown, 460 U.S. 730, 744-745 (1983).

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, “[w]ithout first establishing

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11 The court’s holding is that “when there are reasonable grounds for suspecting that a search will turn up evidence that the student has violated or is violating either the law or the rules of the school,” a search of the student’s person or belongings is justified.
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 school days the havoc a water pistol or pea shooter can wreak until it is taken away. Thus, the Court has recognized that "[e]vents calling for discipline are frequent occurrences and sometimes require immediate, effective action." Goss v. Lopez, 419 U.S. 565, 580 (1975). 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 judgement 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.

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 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.

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 text 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."

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 Amendment's protection of privacy; rather, it is the very purpose for which the Amendment was thought necessary.

I emphatically disagree with the Court's decision to cast aside constitutional probable-cause standards 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 Rohrshach-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. 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.

An unbroken line of cases in this Court have held that probable cause is a prerequisite for a full-scale search. In Carroll v. United States, 267 U.S. 132, 149 (1925), the Court held that “[o]n reason and authority the true rule is that is the search and seizure ...are made upon probable cause...the search and seizure are valid.” Under our past decisions probable cause—which exists where “the facts and circumstances within [the officials’] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief” that a criminal offense had occurred and the evidence would be found in the suspected place, id., at 162—is the constitutional minimum for justifying a full-scale search, regardless of whether it is conducted pursuant to a warrant or, as in Carroll within one of the exceptions to a warrant requirement. Henry v. United States, 361 U.S. 98, 104 (1959) (Carroll “merely relaxed the requirements for a warrant on grounds of practicality,” but “did not dispense with the need for probable cause”); accord, Chambers v. Maroney, 399 U.S. 42, 51 (1970) (“in enforcing the Fourth Amendment’s prohibition against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution”)
Our holdings that probable cause us 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 all but ...narrowly defined intrusions, the requisite 'balancing' has been performed in centuries of precedent and is embodied in the principle that seizures are 'reasonable' only if supported by probable cause." Dunaway v. New York, 442 U.S., at 214.

I therefore fully agree with the Court that "the underlying command of the Fourth Amendment is always that searches and seizures be reasonable." Ante, at 337. But this "underlying command" is not directly interpreted in each category of cases by some amorphous "balancing test." Rather, the provisions of the Warrant Clause—a warrant and probable cause—provide the yardstick against which official searches and seizures are to be measured. The Fourth Amendment neither required nor authorizes the conceptual free-for-all that ensues when an unguided balancing test is used to assess specific categories of searches. If the search in question is more than a minimally intrusive Terry stop, the constitutional probable-cause standard determines its validity.

To be sure, the Court recognizes that probable cause "ordinarily" is required to justify a full-scale search and that the existence of probable cause "bears on" the validity of the search. Ante, at 340-341. Yet the Court fails to cite any case in which a full-scale intrusion upon privacy interests has been justified on less than probable cause. The line of cases begun by Terry v. Ohio, 392 U.S. 1 (1968), provides no support, for they applied a...
balancing test only in the context of minimally intrusive searches that served crucial law enforcement interests. The search in Terry itself, for instance, was a “limited search of the outer clothing.” Id., at 30. The type of border stop at issue in United States v. Brignoni-ponce, 422 U.S. 873, 880 (1975), usually “consume[d] no more than a minute”; the court explicitly noted that “any further detention ... must be based on consent or probable cause.” Id., at 882.

Considerations of the deepest significance for the freedom of our citizens counsel strict adherence to the principle that no search may be conducted where the official is not in possession of probable cause—that is, where the official does not know of “facts and circumstances [that] warrant a prudent man in believing that the offense has been committed.” Henry v. United States, 361 U.S., at 102 (discussing history of probable cause standard). The Fourth Amendment was designed not merely to protect against official intrusions whose social utility was less as measured by some “balancing test” than its intrusion on individual privacy; it was designed in addition to grant the individual a zone of privacy whose protections could be breached only where the “reasonable” requirements of the probable-cause standard were met. Moved by whatever momentary evil has aroused their fears, officials—perhaps even supported by a majority of citizens—may be tempted to conduct searches that sacrifice the liberty of each citizen to assuage the perceived evil. But the Fourth Amendment rests on the principle that a true balance between the individual and society depends on the recognition of “the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.” Olmstead v. United States, 277 U.S. 438, 478 (1928) That right protects the privacy and security of the individual unless the authorities can cross a specific threshold of need,
designated by the term "probable cause." I cannot agree with the Court's assertions today that a "balancing test" can replace the constitutional threshold with one that is more convenient for those enforcing the laws but less protective of the citizens' liberty; the Fourth Amendments protections should not be defaced by "a balancing process that overwhelms the individual's protection against unwarranted official intrusion by a governmental interest said to justify the search and seizure." United States v. Martinez-Fuerte, supra, at 570.

I thus 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." Ante, at 337. For me, the finding that the Fourth Amendment applies, coupled with the observation that what 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.

The Court begins to articulate its "balancing test" by observing that "the government's need for effective methods to deal with breaches of public order" is to be weighed on one side of the balance. Of course, this not correct. It is not the government's need for effective enforcement methods that should weigh in the balance, for ordinary Fourth Amendment standards-including probable cause-may well permit methods for
maintaining the public order that are perfectly effective. If that were the case, the governmental interest in having effective standards would carry no weight at all as a justification for departing from the probable-cause standard. Rather, it is the costs of applying probable-cause as opposed to applying some lesser standard that should be weighed on the government’s side.

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. Of course, as this Court should know, an essential purpose of developing and articulating legal norms is to enable individuals to conform their conduct to those norms. A school system conscientiously attempting to obey the Fourth Amendment’s dictates under a probable-cause standard could, for example, consult decisions and other legal materials and prepare a booklet expounding the rough outlines of the concept. Such a booklet could be distributed to teachers to provide them with guidance as to when a search may be lawfully conducted. I cannot but believe that the same school system faced with interpreting what is permitted under the Court’s new “reasonableness” standard would be hopelessly adrift as to when a search may be permissible. The sad result of this uncertainty may well be that some teachers will be reluctant to conduct searches that are fully permissible and even necessary under the constitutional probable-cause standard, while others may intrude arbitrarily and unjustifiably on the privacy of students.

One further point should be taken into account when considering the desirability of replacing the constitutional probable-cause standard. The question facing the Court is not
whether the probable-cause standard should be replaced by a test of "reasonableness under all circumstances." Rather, it is whether traditional Fourth Amendment standards should recede before the Court's new standard. Thus, although the Court today paints with a broad brush and holds its undefined "reasonableness" standard applicable to all school searches, I would approach the question with considerable more reserve. I would not think it necessary to develop a single standard to govern all school searches, any more than traditional Fourth Amendment law applies even the probable-cause standard to all searches and seizures. For instance, just as police officers may conduct a brief stop and frisk on something less than probable-cause, so too should teachers be permitted the same flexibility. A teacher or administrator who had reasonable suspicion that a student was carrying a gun would no doubt have authority under ordinary Fourth Amendment doctrine to conduct a limited search of the student to determine whether the threat was genuine. The "costs" of applying the traditional probable-cause standard must therefore be discounted by the fact that, where additional flexibility is necessary and where the intrusion is minor, traditional Fourth Amendment jurisprudence itself displaces probable cause when it determines the validity of a search.

A legitimate balancing test whose function was something more substantial than reaching a predetermined conclusion acceptable to the 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 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 337-339, 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.

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 open 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,” ante, at 328, with the use of marijuana, he
proceeded to conduct a detailed examination of the contents of her purse, in which he
found some marijuana, a pipe, some money, an index card, and some private letters
indicating that T.L.O. had sold marijuana 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 marijuana possession at this time was based solely on the presence of the 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 marijuana 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.

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 against her in criminal proceedings. The New Jersey court's holding was a careful response to the case it was required to decide.

The State of New Jersey sought review in this Court, first arguing that the exclusionary rule is wholly inapplicable to searches conducted by school officials, and then contending that the Fourth Amendment itself provides no protection at all to the student's privacy. The Court has accepted neither of these frontal assaults on the Fourth Amendment. It has, however, seized upon this "no smoking" case to announce "the proper standard" that should govern searches by school officials who are confronted with disciplinary problems far more severe than smoking in the restroom. I continue to believe that the Court has unnecessarily and inappropriately reached out to decide a constitutional question. More importantly, 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 the most trivial school regulations and guidelines for behavior.

The question the Court decides today—whether Mr. Choplick's search of T.L.O.'s purse violated the Fourth Amendment—was not raised by the State's petition for writ of certiorari. That petition only raised one question: "Whether the Fourth Amendment's exclusionary rule applies to searches made by public school officials and teachers in school." The State quite properly declined to submit the former question because "[it] did not wish to present what might appear to be solely a factual dispute to this Court." Since this Court has twice had the threshold question argued, I believe that it should expressly consider the merits of the New Jersey Supreme Court's ruling that the exclusionary rule applies.
The New Jersey Supreme Court's holding on this question is plainly correct. As the state court noted, this case does not involve the use of evidence in a school disciplinary proceeding; the juvenile proceedings brought against T.L.O. involved a charge that would have been a criminal offense if committed by an adult. Accordingly, the exclusionary rule issue decided by that court and later presented to this Court concerned only the use in a criminal proceeding of evidence obtained in a search conducted by a public school administrator.

Having confined the issue to the law enforcement context, the New Jersey court then 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, See v. Seattle 387 U.S. 541 [1967]; Camara [v. Municipal Court,] 387 U.S. 523 [1967]; a firefighter, Michigan v. Tyler, 436 U.S. 499, 506 [1978]; 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."

When a defendant in a criminal proceeding alleges that she was the victim of an illegal search by a school administrator, the application of the exclusionary rule is a simple corollary of the principle that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." Mapp v. Ohio, 367 U.S. 643, 655 (1961). The practical basis for this principle is, in part, its deterrent effect, see id., at 656, and as a general matter it is tolerably clear to me, as it has been to the Court, that the existence of an exclusionary remedy does deter the authorities from violating the Fourth Amendment by sharply reducing their incentive to
do so. In the case of evidence obtained in school searches, the "overall educative effect" of the exclusionary rule adds important symbolic force to this utilitarian judgment.

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."

Thus, the simple and correct answer to the question presented by the State's petition for certiorari would have required affirmance of a state court's judgment suppressing evidence. That result would have been dramatically out of character for a Court that not only grants prosecutors relief from suppression orders with distressing regularity, but also is prone to rely on grounds not advanced by the parties in order to protect evidence from exclusion. In characteristic disregard of the doctrine of judicial restraint, the Court avoided that result in this case by ordering reargument and directing the parties, with good reason, had not asked the Court to decide. Because judicial activism undermines the Court's power to perform its central mission in a legitimate way, I dissented from the reargument order. I have not modified the views expressed in that dissent, but since the majority has brought the question before us, I shall explain why I believe the Court has misapplied the standard of reasonableness embodied in the Fourth Amendment.
The search of a young woman's purse by a school administrator is a serious invasion of her legitimate expectation of privacy. A purse "is a common repository for one's personal effects and therefore is inevitably associated with the expectation of privacy." Arkansas v. Sanders, 442 U.S. 753, 762 (1979). Although such expectations yield to the legitimate requirements of government, in assessing the constitutionality of a warrantless search, our decision must be guided by the language of the Fourth Amendment: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated ..." In order to evaluate the reasonableness of such searches, "it is necessary 'first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionality protected interests of the private citizen.' for there is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion in which the search [or seizure] entails.'" Terry v. Ohio, 392 U.S. 1, 20-21 (1968).

The "limited search for weapons" in Terry was justified by the "immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him." 392 U.S., at 23, 25. When viewed from the institutional perspective, "the substantial need of teachers and administrators for freedom to maintain order in the schools, " ante, at 341 (majority opinion), is no less acute. Violent, unlawful, or seriously disruptive conduct is fundamentally inconsistent with the principal function of teaching institutions which is to educate young people and prepare them for citizenship. When such conduct occurs amidst a sizable group of impressionable young people, it creates an explosive atmosphere that requires a prompt and effective response.
Thus, warrantless searches of students by school administrators are reasonable when undertaken for those purposes. But the majority's statement of the standard for evaluating the reasonableness of such searches is not suitably adapted to that end. The majority holds that "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." Ante, at 341. This standard will permit teachers and school administrators to search students when they suspect that the search will reveal evidence of even the most trivial school regulation or precatory guideline for student 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.

The majority, however, does not content 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 "[t]he 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, 466 U.S. 740, 750 (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, 445 U.S. 573 (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." 466 U.S., at 753.
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." McDonald v. United States, 335 U.S. 451, 460 (1948). While school administrators have entirely legitimate reasons for adopting school regulations and guidelines for student behavior, the authorization of searches to enforce them "display a shocking lack of all sense of proportion." Id., 459.

The majority offers weak deference to these principles of balance and decency by announcing that school searches will only be reasonable in 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." Ante, at 342. The majority offers no explanation why a two-part standard is necessary to evaluate the reasonableness of the ordinary school search. Significantly, in the balance of its opinion the Court pretermits any discussion of the nature of T.L.O's infraction of the "no smoking" rule.

The "rider" to the Court's standard for evaluating the reasonableness of the initial intrusion apparently is the Court's perception that its standard is overly generous and does not, by itself, achieve a fair balance between the administrator's right to search and the student's reasonable expectation of privacy. The Court's standard for evaluating the "scope of reasonable school searches is obviously designed to prohibit physically intrusive searches by persons of the opposite sex for relatively minor offenses. The Court's effort to establish a standard that is, at once, clear enough to allow searches to be
upheld in nearly every case, and flexible enough to prohibit obviously unreasonable intrusions of young adults' privacy only creates uncertainty in the extent of its resolve to prohibit the latter. Moreover, the majority's application of its standard in this case – to permit a male administrator to rummage through the purse of a female high school student in order to obtain evidence that she was smoking in a bathroom – raises grave doubts in my mind whether its effort will be effective. Unlike the Court, I believe the nature of the suspected infraction is a matter of first importance in deciding whether any invasion of privacy is permissible.

The Court embraces the standard applied by the New Jersey Court as equivalent to its own, and then deprecates the state court's application of the standard as reflecting "a somewhat crabbed notion of reasonableness." Ante, at 343. There is no mystery, however, in the state court's finding that the search in this case was unconstitutional; the decision below was not based on a manipulation of reasonable suspicion, but on the trivial character of the activity that promoted the official search. The New Jersey Supreme Court wrote:

"We are satisfied that when a school official has reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order, the school official has the right to conduct a reasonable search for such evidence."

"In determining whether the school official has reasonable grounds, courts should consider 'the child's age, history, and school record, the prevalence and seriousness of the problem in the school to which the search was directed, the exigency to make the
search without delay, and the probative value and reliability of the information used as justification for the search.'"

The emphasized language in the state court's opinion focuses on the character of the rule infraction that is to be the object of the search.

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.

A correct understanding of the New Jersey court's standard explains why that court concluded in T.L.O.'s case that "the assistant principal did not have reasonable grounds to believe that the student was concealing in her purse evidence of criminal activity or evidence of activity that would seriously interfere with school discipline or order." The importance of the nature of the rule infraction to the New Jersey Supreme Court's holding is evident from its brief explanation of the principal basis for its decision: "A student has an expectation of privacy in the contents of her purse. Mere possession of cigarettes did not violate school rule or policy, since the school allowed smoking in designated areas. The contents of the handbag had no direct bearing on the infraction."

"The assistant principal's desire, legal in itself, to gather evidence to impeach the student's credibility at a hearing on disciplinary infraction does not validate the search."
Like the New Jersey Supreme Court, I would view this case differently if the Assistant Vive 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 of the freshmen’s and sophomores’ building. 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.

A review of the sampling of school search case relied on by the Court demonstrates how different this case is from those in which there was a valid justification for intruding on a student’s privacy. In most of them the student was suspected of a criminal violation; in the remainder either violence or substantial disruption of school order or the integrity of the academic process was at stake. Few involved matters as trivial as the no-smoking rule violated by T.L.O. 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 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 State Board of Education v. Barnette, 319 U.S. 624, 638 (1943).

I respectfully dissent.
APPENDIX B

CASES CITING T.L.O (SHERPARDIZED LISTING)

The following pages contain a listing of 475 of the cases in the federal court system which contain a reference to T.L.O. Counting state court entries (which were beyond the scope of this study), there were 1076 total cases on record that have cited the T.L.O. case. The federal cases in the following list are presented with Supreme Court cases first, then entries by circuit. The cases in this study were drawn from this printout, which was obtained from the Lexis/Nexis service available at the Lied School of Business at the University of Nevada, Las Vegas. UNLV – The Lied Business Information Center

LEXIS/NEXIS

1076 Citing References
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