

The Burger Court Opinion Writing Database

New Jersey v. T. L. O.

469 U.S. 325 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

May 22, 1984

84 MAY 23 09:31

Re: 83-712 - New Jersey v. T.L.O.

Dear Byron:

I join. I may add a couple of words (well chosen of course) about turning the management of the schools over to the students. Then again, I may restrain myself to cut the flow of needless "concurs."

Regards,

WJB

Justice White

Copies to the Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

July 22, 1984 18

Re: 83-712 - New Jersey v. T.L.O.

Dear John:

I am puzzled by your June 29 draft "dissent" supplanting your dissent of June 14.

Are you really dissenting against the Court's vote to reargue this case?

Will that forever foreclose you from voting to reargue a case? Or only from cases that do not "merit" reargument?

Regards,



Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 2, 1984

No. 83-712

New Jersey v. T.L.O.

Dear John,

You, Thurgood, Sandra and I are in
dissent in the above. Would you be
willing to try your hand at the dissent?

Sincerely,



Justice Stevens

Copies to: Justice Marshall
Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

84 JUN -4 A11 30

June 4, 1984

No. 83-712

New Jersey v. T.L.O.

Dear John,

Please join me.

Sincerely,

Justice Stevens

Copies to the Conference

REMOVED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

July 2, 1984

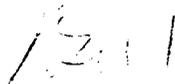
No. 83-712

New Jersey v. T.L.O.

Dear John,

Please add me to your dissent.

Sincerely,



Justice Stevens

Copies to the Conference

The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: Not circulated
Recirculated: (This is a first draft)

See my
letter to B R W
of 4/21

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER v. T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
NEW JERSEY

[April —, 1984]

Bryon
asked me
to review
this prior to
circulation.

JUSTICE WHITE delivered the opinion of the Court.

This case presents a question concerning the admissibility in juvenile-delinquency proceedings of evidence ~~illegally-obtained~~ in an in-school search by a public-school official. Because that official was engaged in enforcing a school disciplinary rule and was not acting with the participation of law-enforcement authorities, we hold that the Fourth Amendment exclusionary rule does not require suppression of the evidence he obtained.

illegally

allegedly

I

On March 7, 1980, a teacher in Piscataway High School in Middlesex County, N. J., observed 14-year-old T. L. O. and another student smoking cigarettes in the girls' lavatory in violation of school regulations. The teacher escorted the girls to the vice-principal's office and accused them of violating the regulation prohibiting smoking in lavatories. In response to the vice-principal's questions, T. L. O.'s companion admitted the infraction and was assigned to a three-day smoking clinic. T. L. O., however, denied smoking in the lavatory and declared that she "didn't smoke at all."

The vice-principal took T. L. O. to a private office, closed the door, and requested her purse. He opened the purse and observed a package of cigarettes plainly visible. Saying that T. L. O. had lied to him, he reached into the purse to remove the cigarettes and saw rolling papers, which in his

u

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 23, 1984

No. 83-712: New Jersey v. T.L.O

Dear Lewis,

Thank you for your suggestions about the draft that I am circulating today. I am reluctant to delete the paragraph beginning at the bottom of page 10 and the two following paragraphs. I think they contain the strongest arguments for not applying the exclusionary rule in T.L.O.'s juvenile court proceedings. They neither decide nor imply that the Chancery Decision was correct in holding that the exclusionary rule is applicable in school disciplinary proceedings. That question is not before us.

I could dispense with the penultimate paragraph if that would help, but I hope to retain the prior three paragraphs.]

Sincerely,

Byron

Justice Powell

~

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: APR 23 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER v. T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
NEW JERSEY

[April —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

This case presents a question concerning the admissibility in juvenile delinquency proceedings of evidence illegally obtained in an in-school search by a public-school official. Because that official was engaged in enforcing a school disciplinary rule and was not acting with the participation of law enforcement authorities, we hold that the Fourth Amendment exclusionary rule does not require suppression of the evidence he obtained.

I

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N. J., observed 14-year-old T. L. O. and another student smoking cigarettes in the girls' lavatory in violation of school regulations. The teacher escorted the girls to the vice-principal's office and accused them of violating the regulation prohibiting smoking in lavatories. In response to the vice-principal's questions, T. L. O.'s companion admitted the infraction and was assigned to a three-day smoking clinic. T. L. O., however, denied smoking in the lavatory and declared that she "didn't smoke at all."

The vice-principal took T. L. O. to a private office, closed the door, and requested her purse. He opened the purse and observed a package of cigarettes plainly visible. Saying that T. L. O. had lied to him, he reached into the purse to remove the cigarettes and saw rolling papers, which in his

NOT RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 30, 1984

Re: 83-712 - New Jersey v. T.L.O.

Dear Lewis,

In response to your letter of April 24, it seems to me that the paragraph beginning at the bottom of page 10 and the following paragraph are relevant and persuasive in negating a deterrence justification for applying the exclusionary rule to juvenile court or criminal proceedings. The paragraph following those two does not seem to me to be subject to the objections you state in your letter. These three paragraphs I would hope to retain. The penultimate paragraph of the draft, however, I would be quite willing to delete.

The draft was of course written against the background of the present law, or lack thereof, relating to the pertinence of the exclusionary rule to civil proceedings. If INS v. Lopez-Mendoza is announced before T.L.O. is finally acted upon by the Court, and if Lopez-Mendoza rules that the exclusionary rule never applies in civil cases, the two paragraphs in the T.L.O. draft discussing school disciplinary proceedings would be changed to reflect the newly announced constitutional ruling.

Sincerely yours,



Justice Powell

Copies to the Conference

cpm

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

'84 JUN 12 A9:44

Stylistic changes
and pp. 8, 10-11

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: _____

Recirculated: JUN 12 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
NEW JERSEY

[June —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

This case presents a question concerning the admissibility in juvenile delinquency proceedings of evidence illegally obtained in an in-school search by a public-school official. Because that official was engaged in enforcing a school disciplinary rule and was not acting with the participation of law enforcement authorities, we hold that the Fourth Amendment exclusionary rule does not require suppression of the evidence he obtained.

I

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N. J., observed 14-year-old T. L. O. and another student smoking cigarettes in the girls' lavatory in violation of school regulations. The teacher escorted the girls to the vice-principal's office and accused them of violating the regulation prohibiting smoking in lavatories. In response to the vice-principal's questions, T. L. O.'s companion admitted the infraction and was assigned to a three-day smoking clinic. T. L. O., however, denied smoking in the lavatory and declared that she "didn't smoke at all."

The vice-principal took T. L. O. to a private office, closed the door, and requested her purse. He opened the purse and observed a package of cigarettes plainly visible. Saying that T. L. O. had lied to him, he reached into the purse to remove the cigarettes and saw rolling papers, which in his experience indicated that marihuana was probably involved.

Supreme Court of the United States
Washington, D. C. 20543

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 14, 1984
84 JUN 14 A9:40

Re: 83-712 - New Jersey v. T.L.O.

Dear Harry,

My circulating draft in this case expresses the conference vote, but without your join, it will not fly. You suggest a DIG and there are 4 votes to affirm. I suggest that in the light of Leon, neither disposition is the preferable one and that the case should be held for Leon and then GVR'D.

The trial court in this case admitted the evidence after canvassing the disparate decisions around the country with respect to the applicability of the Fourth Amendment to school officials. There was no authoritative New Jersey precedent until the New Jersey Supreme Court's decision in this case, and I have substantial doubt that the school official should have known that his conduct was in violation of the Fourth Amendment. The state did not challenge the holding of a Fourth Amendment violation, but it does contend that the evidence is nevertheless admissible. Leon has a direct bearing on that issue and I doubt that the case should be affirmed or DIG'D rather than GVR'D.

Sincerely yours,



Justice Blackmun

Copies to the Conference

RECEIVED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 24, 1984

Re: No. 83-712-New Jersey v. T.L.O.

Dear Byron:

I await further writing.

Sincerely,

Jm.
T.M.

Justice White

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 12, 1984

Re: No. 83-712-New Jersey v. T.L.O.

Dear John:

Please join me in your dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 29, 1984

Re: No. 83-712 - New Jersey v. T.L.O.

Dear John:

Please join me in your dissent.

Sincerely,

J.M.

T.M.

Justice Stevens

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 13, 1984

Memorandum to the Conference

Re: No. 83-712, New Jersey v. T.L.O.

My vote is the last one out in this difficult case. This is of no consequence, however, because the several opinions cite Leon, Sheppard, and Lopez-Mandoza, which are not yet out.

It looks as though none of the circulating opinions will command a Court. Sandra correctly points out that the difficulty with the case is that New Jersey has not challenged its Supreme Court's ruling that the search here was unreasonable. Thus, the case comes to us in a disjointed posture.

After some soul-searching, I have concluded to vote to DIG the case. I realize that this is not the usual DIG situation when, after oral argument, the case appears in a different light. It seems to me, however, that our disposition otherwise will tend only to confuse and not to assist.

Perhaps this could be discussed at the conference on Thursday.

H.A.B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

July 2, 1984

Re: No. 83-712 - New ^{York} v. T.L.O.

Dear Sandra:

At the end of whatever recital the Court makes in this case, would you please add: "JUSTICE BLACKMUN dissents."

Sincerely,



Justice O'Connor

cc: The Conference

April 21, 1984

83-712 New Jersey v. T.L.O.

Dear Byron:

Thank you for the opportunity to take a look at the proposed draft of your opinion in this case. For the most part I think it is fine. I am troubled by much of what is said from the bottom of p. 10 to the end.

The opinion properly recognizes that a school search may result - as this case did - in two types of Court proceedings: the review by the Superior Court of the suspension of T.L.O. (disciplinary proceedings), and the delinquency prosecution in the Juvenile and Domestic Relations Court. We are concerned here only with the latter. You commence the analysis (p. 7) by relying on decisions that require a "weighing [of] the costs and benefits" of excluding illegally seized evidence obtained by a school official in enforcing school disciplinary rules. As you note, the only cost of not applying the exclusionary rule would be the absence - to a limited extent - of deterrence. Or as you put it, applying the rule would be unlikely to result in "appreciable deterrence". I agree.

What troubles me is the portion of the draft that commences with the last paragraph on page 10. The argument

seems to be that the exclusionary rule applied in a delinquency case would have little deterring effect because school authorities have no responsibility for the criminal laws, and I agree. But you then imply that court deterrence is necessary to protect Fourth Amendment rights, and identify with apparent approval several types of judicial action that would constitute deterrence of a very different kind. You refer to the ruling of the Superior Court that T.L.O. could not properly be suspended on the basis of the search of her purse, and also say:

"We assume that resort to the courts will continue to be available to enforce any local, state or federal standards applicable to searches and seizures carried out by school authorities. Public school teachers and administrators . . . will also be subject to liability under §1983, and they may be subject to action under state law as well."
(p. 12)

These remedies will be available, but as they are not involved in this case I see no reason to address them. The result of this portion of the opinion (pp. 10-12), if I read it correctly, could be to encourage recalcitrant and rebellious students to resort to the courts. Here, a 14-year-old child - whose purse was searched - was found to be a marijuana "pusher". Yet, the Superior Court - on T.L.O.'s petition - overruled the school authorities' imposition of an extremely light disciplinary sentence.

I do not suggest that a 14-year-old in school has no Fourth Amendment rights but I do think children in the

school environment surrender a good deal of the expectation of privacy we emphasize in our cases. With respect to reviewing disciplinary action, I think courts should be required - in applying Fourth Amendment rights - to take into account the uniqueness of the school environment and particularly the importance of leaving disciplinary measures primary to the school authorities. On any cost/benefit analysis, as I view it, deterring Fourth Amendment violations weighs far less in the scales than leaving the school authorities with broad discretion to enforce disciplinary rules that are essential to the proper operation of the schools. The deterring influences I mentioned in Ingraham v. Wright are adequate.

Every recent study of the school discipline problem emphasizes its seriousness. It even affects the recruiting of people into the teaching profession. I saw an article recently to the effect that the combination of low salaries and the problem of maintaining discipline (including threats of violence and actual violence), have resulted in public school teachers being drawn in large part from persons who graduate in the bottom fourth of their college classes. They can't find jobs elsewhere. Young people resent being disciplined, and they will welcome any encouragement to overrule or sue their teachers.

We can avoid getting into a debate on this issue by simply recognizing that the application of the Fourth

Amendment in schools is not before us. Nor is availability of other remedies.

With the one change in the paragraph in the middle of page 10 that I suggest in my memo attached to this letter, I will be happy to join your opinion through the second paragraph on page 10. Beyond that I would dissent.

Sincerely,

Justice White

lfp/ss

lfp/ss 04/20/84

83-712 New Jersey v. T.L.O.

On p. 10, I suggest a revision of language in the middle paragraph, commencing with "School officials" as follows:

"School officials may search frequently enough to develop some understanding of the importance and purpose of the privacy interests protected by the Fourth Amendment. It cannot reasonably be expected, however, for them to be familiar with the application by the courts of the exclusionary rule. As the cases decided at almost every Term of this Court illustrate, this is not an area of the law in which exactitude is a characteristic. Local school officials properly are 'primarily concerned with maintaining internal discipline rather than obtaining convictions,' *id.*, at 258, n. 10, and the admissibility of evidence in a juvenile court or criminal proceedings is not a substantial concern to them and hence is not likely appreciably to control their conduct."

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 24, 1984

83-712 New Jersey v. T.L.O.

Dear Byron:

I agree with the first nine pages of your opinion, and with the holding that the exclusionary rule does not apply in a juvenile delinquency or criminal proceeding for the purpose of suppressing evidence obtained in in-school searches.

The only issue before us is the one you decide, namely, the applicability of the rule in a criminal proceeding. You rely properly on the unlikelihood that enforcement of the rule would have any substantial deterrent effect on school authorities. They have no responsibility for enforcing the criminal law. This is made clear in the first nine pages of the opinion.

Much of the subsequent discussion seems unnecessary. Beginning with the last paragraph on page 10, the opinion considers the applicability of the exclusionary rule to school disciplinary proceedings as distinguished from the delinquency proceedings challenged here. The New Jersey Superior Court excluded on federal constitutional grounds the challenged evidence from the school disciplinary proceeding, thereby vacating T.L.O.'s seven-day suspension. Your note 6 states that the Court intimates no view as to the propriety of that decision. It seems to me, however, that the subsequent discussion of the potential deterrent effect of such a decision can be read to encourage students to litigate. This is particularly true in view of your statement on page 12 that "We assume that resort to the courts will continue to be available to enforce any ... federal standards applicable to searches and seizures carried out by school authorities."

I also find unnecessary the reference on page 12 to potential §1983 and unidentified state remedies. These remedies may be available in appropriate cases, but as they are not involved in this case I see no reason to mention them. I am concerned that this portion of the opinion in particular will encourage students to seek court review of disciplinary action and to institute §1983 suits.

I do not suggest that a 14-year-old has no Fourth Amendment rights, but I do think children in the school environment surrender a good deal of the expectation of privacy that underlies Fourth Amendment reasoning. Courts should take into account the uniqueness of the school environment and particularly the importance of leaving disciplinary measures primarily to school authorities.

In sum, Byron, the applicability of the exclusionary rule in a criminal proceeding is the only issue before the Court. I therefore see little reason to include the portion of your opinion I identify above, and I probably will write separately.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

SECRET OF 1984 18

May 15, 1984

83-712 New Jersey v. T.L.O.

Dear Byron:

At last, I now have had an opportunity to get back to this case.

In your letter of April 10, circulated to the Conference, you suggested your willingness to eliminate the penultimate paragraph. This helps me. I continue to think, however, that a good deal of what you have said on pages 10 and 11 is unnecessary, and carries implications with which I would find it difficult to agree.

Accordingly, I am circulating a brief opinion that concurs in your opinion with the exception of your discussion of the deterrent effect of applying the exclusionary rule in a school disciplinary case.

Sincerely,



Justice White

lfp/ss

cc: The Conference

Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: MAY 15 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
NEW JERSEY

[May —, 1984]

JUSTICE POWELL, concurring in part and concurring in the result.

I agree with the decision reached by the Court and with most of its reasoning. I do not agree, however, with the language in the opinion that suggests that exclusion of evidence from school *disciplinary* proceedings may provide a deterrent to Fourth Amendment violations by school officials. This suggestion has no support in the record and is unnecessary to a decision of the question before us.

As the Court states, *ante*, at 9, the only question presented is whether evidence unlawfully seized by school officials during the course of an in-school search must be excluded in juvenile *delinquency* proceedings. I agree with the Court's conclusion that the exclusionary rule is not applicable. The school officials, in searching respondent's purse, were acting pursuant to their duty to enforce school regulations and maintain a safe and drug-free learning environment. They had no responsibility for enforcing the criminal laws. Application of the exclusionary rule, as the Court correctly reasons, would be unlikely to result in appreciable deterrence.*

*The courts below found an absence of probable cause for the search that revealed the drugs and evidence that T. L. O. was selling drugs to her youthful schoolmates. Determination of what constitutes "probable cause" is a question on which lawyers and judges, as well as police officials, frequently differ. It would be unrealistic to extend the subtleties of the Fourth Amendment to the school classroom. I therefore do not agree

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST



March 30, 1984

Re: No. 83-712 New Jersey v. T. L. O.

Dear Chief:

I now vote to reverse this case. Whatever may be the arguments for and against this particular limitation on the Exclusionary Rule, my disagreement with Mapp v. Ohio remains so fundamental that I will seize any opportunity to limit the damage done by that case.

Sincerely,

The Chief Justice

cc: The Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 30, 1984

Re: No. 83-712 New Jersey v. T.L.O.

Dear Byron:

Please join me.

Sincerely,

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 2, 1984

Re: 83-712 - New Jersey v. T.L.O.

Dear Bill:

I shall be happy to undertake the dissent.

Respectfully,



Justice Brennan

cc: Justice Marshall
Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 23, 1984

Re: 83-712 - New Jersey v. T.L.O.

Dear Byron:

Although the Court has identified deterrence as the primary rationale for the exclusionary rule, this case suggests that more is at stake. We must also be interested in providing an appropriate judicial response to egregious due process violations, as well as a concern for the example that is set by school administrators. Perhaps my thoughts will not write out, but I shall try my hand at a dissent that does not confront you squarely on the deterrence rationale.

Respectfully,



Justice White

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: JUN 1 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF NEW JERSEY

[June —, 1984]

JUSTICE STEVENS, dissenting.

“ . . . One nation, under God, indivisible, with liberty and justice for all.”

“But, my child, you must remember that there are certain exceptions”

I

Justice Brandeis was both a great student and a great teacher. It was he who wrote:

“Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.” *Olmstead v. United States*, 277 U. S. 438, 485 (1928) (dissenting opinion).

Those of us who revere the flag and the ideals for which it stands believe in the power of symbols. Rules of law have a symbolic power that may vastly exceed their utility. Questions about the Fourth Amendment and the exclusionary rule are often answered with utilitarian judgments about its deterrent impact on the behavior of unknown officials in unknown circumstances. That approach results from mistaken priorities. Practical considerations require us to place limits on the ideal application of some of our constitutional values;

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 12 P3:36

June 12, 1984

Re: 83-712 - New Jersey v. T.L.O.

Dear Sandra:

Please join me in your separate dissent.

Respectfully,



Justice O'Connor

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 14 AIO:22

P. 4

From: Justice Stevens

Circulated: _____

Recirculated: JUN 14 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF NEW JERSEY

[June —, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE MARSHALL, join, dissenting.

“ . . . One nation, under God, indivisible, with liberty and
justice for all.”

But, my child, you must remember that there are certain
exceptions

I

Justice Brandeis was both a great student and a great
teacher. It was he who wrote:

“Our Government is the potent, the omnipresent
teacher. For good or for ill, it teaches the whole people
by its example. Crime is contagious. If the Govern-
ment becomes a lawbreaker, it breeds contempt for law;
it invites every man to become a law unto himself; it in-
vites anarchy.” *Olmstead v. United States*, 277 U. S.
438, 485 (1928) (dissenting opinion).

Those of us who revere the flag and the ideals for which it
stands believe in the power of symbols. Rules of law have a
symbolic power that may vastly exceed their utility. Questions
about the Fourth Amendment and the exclusionary rule
are often answered with utilitarian judgments about its de-
terrent impact on the behavior of unknown officials in un-
known circumstances. That approach results from mistaken
priorities. Practical considerations require us to place limits
on the ideal application of some of our constitutional values;

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 29 AM 11:55

From: Justice Stevens

Circulated: JUN 29 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF NEW JERSEY

[July —, 1984]

JUSTICE STEVENS, dissenting.

In its decision in this case, the New Jersey Supreme Court addressed three distinct questions: (1) what is the proper standard for judging the reasonableness of a school official's search of a student's purse; (2) on the facts of this case, did the school official violate that standard; and (3) whether the exclusionary rule bars the use in a criminal proceeding of evidence that a school official obtained in violation of that standard. The Supreme Court held (1) that the correct standard is one of reasonable suspicion rather than probable cause; (2) that the standard was violated in this case; and (3) that the evidence obtained as the result of a violation may not be introduced in evidence against TLO in any criminal proceeding, including this delinquency proceeding.

New Jersey's petition for certiorari sought review of only the third question.¹ The reasons why it did not seek review of either of the other two questions are tolerably clear. There is substantial agreement among appellate courts that the New Jersey Supreme Court applied the correct standard and it is apparently one that the New Jersey law enforcement authorities favor. As far as the specific facts of the case are concerned, presumably New Jersey believed that this Court

¹The petition presented a single question for review: "Whether the Fourth Amendment's exclusionary rule applies to searches made by public school officials and teachers in school."

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: JUL

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF NEW JERSEY

[July —, 1984]

JUSTICE STEVENS, with whom JUSTICE MARSHALL joins, |
dissenting.

In its decision in this case, the New Jersey Supreme Court addressed three distinct questions: (1) what is the proper standard for judging the reasonableness of a school official's search of a student's purse; (2) on the facts of this case, did the school official violate that standard; and (3) whether the exclusionary rule bars the use in a criminal proceeding of evidence that a school official obtained in violation of that standard. The Supreme Court held (1) that the correct standard is one of reasonable suspicion rather than probable cause; (2) that the standard was violated in this case; and (3) that the evidence obtained as the result of a violation may not be introduced in evidence against TLO in any criminal proceeding, including this delinquency proceeding.

New Jersey's petition for certiorari sought review of only the third question.¹ The reasons why it did not seek review of either of the other two questions are tolerably clear. There is substantial agreement among appellate courts that the New Jersey Supreme Court applied the correct standard and it is apparently one that the New Jersey law enforcement authorities favor. As far as the specific facts of the case are

¹The petition presented a single question for review: "Whether the Fourth Amendment's exclusionary rule applies to searches made by public school officials and teachers in school."

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: JUL 3 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF NEW JERSEY

[July 6, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE MARSHALL join, dissenting.

In its decision in this case, the New Jersey Supreme Court addressed three distinct questions: (1) what is the proper standard for judging the reasonableness of a school official's search of a student's purse; (2) on the facts of this case, did the school official violate that standard; and (3) whether the exclusionary rule bars the use in a criminal proceeding of evidence that a school official obtained in violation of that standard. The Supreme Court held (1) that the correct standard is one of reasonable suspicion rather than probable cause; (2) that the standard was violated in this case; and (3) that the evidence obtained as the result of a violation may not be introduced in evidence against TLO in any criminal proceeding, including this delinquency proceeding.

New Jersey's petition for certiorari sought review of only the third question.¹ The reasons why it did not seek review of either of the other two questions are tolerably clear. There is substantial agreement among appellate courts that the New Jersey Supreme Court applied the correct standard and it is apparently one that the New Jersey law enforcement authorities favor. As far as the specific facts of the case are

¹The petition presented a single question for review: "Whether the Fourth Amendment's exclusionary rule applies to searches made by public school officials and teachers in school."

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

July 3, 1984

Re: 83-712 - New Jersey v. T.L.O.

Dear Chief:

Yes, I really am dissenting from the vote to reargue this case. Your first vote, you will recall, was to dismiss the writ as improvidently granted. It baffles me that you can consider a case worth either no argument or two arguments.

This does not, of course, forever foreclose me from voting to reargue cases that merit such treatment. Surely this is not such a case simply because some Members of the Court voted to grant under a mistaken impression with regard to the nature of the question that was presented by the cert. petition.

Respectfully,



The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 23, 1984

Re: No. 83-712 New Jersey v. T.L.O.

Dear Byron,

For the present, I will await further writing on
this case.

Sincerely,



Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

84 JUN 11 P12:54

June 11, 1984

No. 83-712 New Jersey v. T. L. O.

Dear Byron,

As you know, at Conference I had indicated I thought the exclusionary rule was applicable to the evidence in this case. I am still of that view. I will not be joining John's dissent and will try to circulate something separately as promptly as possible.

Sincerely,

Sandra

Justice White

Copies to the Conference

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

'84 JUN 12 P1:49

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-712

NEW JERSEY, PETITIONER *v.* T. L. O.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF NEW JERSEY

[June —, 1984]

JUSTICE O'CONNOR, dissenting.

In this case the Court decides that the exclusionary rule does not bar the admission in a criminal proceeding of evidence illegally seized from students in public schools by public school officials. The Court's conclusion is premised on its belief that public school officials cannot be deterred by application of the exclusionary rule in criminal juvenile proceedings. This empirical speculation cannot, in my view, be reconciled with the presumption consistently applied in this Court's past cases: that exclusion of evidence from the prosecution's case-in-chief at criminal trials will tend to deter unlawful searches and seizures by any and all officials of the State. The Court has relied on this presumption both because of the uncertainties inherent in assessing the exclusionary rule's deterrent effect and because of society's compelling need for predictable rules to guide the administration of criminal trials. Since today's decision ignores that heretofore applied presumption, I respectfully dissent.

The proscriptions of the Fourth Amendment are not limited to "the paradigmatic entry into a private dwelling by a law enforcement officer in search of the fruits or instrumentalities of a crime." *Michigan v. Tyler*, 436 U. S. 499, 504 (1978). Rather, they extend to all unreasonable encroachments by the government, "whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards." *Marshall v.*

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 26, 1984

No. 83-712 New Jersey v. T. L. O.

MEMORANDUM TO THE CONFERENCE

After conferring with Byron, the proposed order for reargument in this case is set forth below:

"This case is restored to the calendar for reargument. In addition to the question presented in the petition for writ of certiorari and previously briefed and argued, the parties are requested to address the following question:

Did the assistant principal violate the Fourth Amendment in opening respondent's purse in the facts and circumstances of this case?"

Your suggestions are welcome.

Sincerely,

Sandra