

# 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



13  
Supreme Court of the United States  
Washington, D. C. 20543

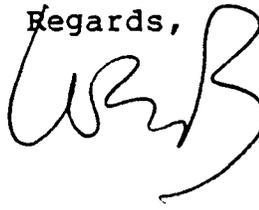
CHAMBERS OF  
THE CHIEF JUSTICE

October 30, 1984

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

Dear Byron:

I join.

Regards,  


Justice White

Copies to the Conference

30 31

MM

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 9, 1984

No. 83-712

Mew Jersey v. T.L.O.

Dear Thurgood and John,

We three are in dissent in the above. I think, however, that my "probable cause" approach did not persuade you at Conference. Perhaps I'd better write my own and leave to you, Thurgood and John, of the decision who will write your dissent.

Sincerely,



Justice Marshall

Justice Stevens

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

October 29, 1984

No. 83-712

New Jersey v. T.L.O.

Dear Byron,

You will recall that at Conference I expressed the view that the probable cause standard should apply. I shall shortly circulate a brief dissent to that effect.

Sincerely,

Justice White

Copies to the Conference

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

From: **Justice Brennan**

Circulated: 1/2/84

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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

[January —, 1985]

JUSTICE BRENNAN, dissenting.

I join Part II of the Court's opinion. Teachers, like all other government officials, must conform their conduct to the Fourth Amendment's protections of personal privacy and personal security. As JUSTICE STEVENS points out, *post*, at 16-17, 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 imbuing their students with an understanding of our system of constitutional democracy, while at the same time immunizing those same teachers from the need to respect constitutional protections. See *Board of Education v. Pico*, 457 U. S. 853, 864-865 (plurality opinion); *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 637 (1943).

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 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. Its decision is supported nei-

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 1, 11

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

From: **Justice Brennan**

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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**

[January —, 1985]

JUSTICE BRENNAN, dissenting.

I fully agree with Part II of the Court's opinion. Teachers, like all other government officials, must conform their conduct to the Fourth Amendment's protections of personal privacy and personal security. As JUSTICE STEVENS points out, *post*, at 16-17, 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 imbuing their students with an understanding of our system of constitutional democracy, while at the same time immunizing those same teachers from the need to respect constitutional protections. See *Board of Education v. Pico*, 457 U. S. 853, 864-865 (1982) (plurality opinion); *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 637 (1943).

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pp. 1, 5

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

From: **Justice Brennan**

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Recirculated: JAN 9 1985

3rd 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

[January —, 1985]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

I fully agree with Part II of the Court's opinion. Teachers, like all other government officials, must conform their conduct to the Fourth Amendment's protections of personal privacy and personal security. As JUSTICE STEVENS points out, *post*, at 16-17, 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 imbuing their students with an understanding of our system of constitutional democracy, while at the same time immunizing those same teachers from the need to respect constitutional protections. See *Board of Education v. Pico*, 457 U. S. 853, 864-865 (1982) (plurality opinion); *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 637 (1943).

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p. 1

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

Justice Brennan

Justice Souter

Justice Ginsburg

# 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

[January 15, 1985]

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

I fully agree with Part II of the Court's opinion. Teachers, like all other government officials, must conform their conduct to the Fourth Amendment's protections of personal privacy and personal security. As JUSTICE STEVENS points out, *post*, at 4, 16, 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 imbuing their students with an understanding of our system of constitutional democracy, while at the same time immunizing those same teachers from the need to respect constitutional protections. See *Board of Education v. Pico*, 457 U. S. 853, 864-865 (1982) (plurality opinion); *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 637 (1943).

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

From: **Justice White**

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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**

[October —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

We granted certiorari in this case to examine the appropriateness of the exclusionary rule as a remedy for searches carried out in violation of the Fourth Amendment by public school authorities. Our consideration of the proper application of the Fourth Amendment to the public schools, however, has led us to conclude that the search that gave rise to the case now before us did not violate the Fourth Amendment. Accordingly, we here address only the questions of the proper standard for assessing the legality of searches conducted by public school officials and the application of that standard to the facts of this case.

I

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, New Jersey, discovered two girls smoking in a lavatory. One of the two girls was the respondent T. L. O., who at that time was a 14-year-old high school freshman. Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the principal's office, where they met with Assistant Vice Principal Theodore Choplick. In response to questioning by Mr. Choplick, T. L. O.'s companion admitted that she had violated the rule. T. L. O., however, denied that she had been smoking in the lavatory and claimed that she did not smoke at all.

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

From: **Justice White**

Circulated: \_\_\_\_\_

Recirculated: OCT 31 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

[October —, 1984]

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

From: Justice White

pp. 7, 16-18 and stylistic  
changes throughout

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3rd 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

[December —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

We granted certiorari in this case to examine the appropriateness of the exclusionary rule as a remedy for searches carried out in violation of the Fourth Amendment by public school authorities. Our consideration of the proper application of the Fourth Amendment to the public schools, however, has led us to conclude that the search that gave rise to the case now before us did not violate the Fourth Amendment. Accordingly, we here address only the questions of the proper standard for assessing the legality of searches conducted by public school officials and the application of that standard to the facts of this case.

### I

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

From: **Justice White**

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PAGE: 17

4th 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

[January —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

We granted certiorari in this case to examine the appropriateness of the exclusionary rule as a remedy for searches carried out in violation of the Fourth Amendment by public school authorities. Our consideration of the proper application of the Fourth Amendment to the public schools, however, has led us to conclude that the search that gave rise to the case now before us did not violate the Fourth Amendment. Accordingly, we here address only the questions of the proper standard for assessing the legality of searches conducted by public school officials and the application of that standard to the facts of this case.

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

From: **Justice White**

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ALL PAGES: 7  
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5th 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**

[January —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

We granted certiorari in this case to examine the appropriateness of the exclusionary rule as a remedy for searches carried out in violation of the Fourth Amendment by public school authorities. Our consideration of the proper application of the Fourth Amendment to the public schools, however, has led us to conclude that the search that gave rise to the case now before us did not violate the Fourth Amendment. Accordingly, we here address only the questions of the proper standard for assessing the legality of searches conducted by public school officials and the application of that standard to the facts of this case.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 2, 1984

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

Dear Byron:

I await the dissent.

Sincerely,

*JM.*  
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 8, 1985

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

Dear Bill:

Please join me in your dissent.

Sincerely,

*JM.*

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 8, 1985

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

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

From: **Justice Blackmun**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-712

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

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
NEW JERSEY

[December —, 1984]

JUSTICE BLACKMUN, concurring in the judgment.

I join the judgment 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 “[w]here a careful balancing of governmental and private interests suggests that the public interest is best served” by a lesser standard. *Ante*, at 14. I believe, however, that we have 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.” *Florida v. Royer*, 460 U. S. 491, 514 (1983) (BLACKMUN, J., dissenting). I pointed out in *United States v. Place*, — U. S. —, (1983):

“While the Fourth Amendment speaks in terms of freedom from unreasonable seizures, 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. See *Texas v. Brown*, 460 U. S. 730, 744-745 (1983) (POWELL, J., concurring); *United States v. Rabinowitz*, 339 U. S. 56,

STYLISH 12-1-84

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

From: **Justice Blackmun**

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2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 83-712

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

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
NEW JERSEY

[December —, 1984]

JUSTICE BLACKMUN, concurring in the judgment.

I join the judgment 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 "[w]here a careful balancing of governmental and private interests suggests that the public interest is best served" by a lesser standard. *Ante*, at 14. I believe, however, that we have 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." *Florida v. Royer*, 460 U. S. 491, 514 (1983) (BLACKMUN, J., dissenting). I pointed out in *United States v. Place*, — U. S. — (1983):

"While the Fourth Amendment speaks in terms of freedom from unreasonable seizures, 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. See *Texas v. Brown*, 460 U. S. 730, 744-745 (1983) (POWELL, J., concurring); *United States v. Rabinowitz*, 339 U. S. 56,

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

NOV 8 1984

November 8, 1984

83-712 New Jersey v. TLO

Dear Byron:

I will write a brief concurring opinion and hope to get to this soon.

I agree with most of your opinion and the holding. My view about the school environment, as you know, differs a shade or two from yours.

Sincerely,



Justice White

lfp/ss

cc: The Conference

Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: **Justice Powell**

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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

[November —, 1984]

JUSTICE POWELL, concurring.

I agree with the Court's decision, and with much of 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 non-school setting.

Within the school environment students 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 teachers quite well. Of necessity, teachers have a degree of familiarity with, and authority over, their students that is unparalleled except perhaps in 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.<sup>1</sup> But for purposes of

*add  
comma*

<sup>1</sup>The Court's opinion states that "[a] search of a [school] child's person or of a closed purse or of a bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy." *Ante*, at 10, 11. This expectation also is said to be "legitimate." *Ante*, at 12. If indeed a school child's expectation of privacy is "no less" than that of an adult, it is not clear to me how the Court can conclude that a standard less stringent than probable cause is appropriate. An adult—even one visiting in a schoolhouse—hardly could

11/29

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

P. 1, 3

From: Justice Powell

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NOV 30 1984

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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

[December —, 1984]

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 non-school 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 teachers quite well. Of necessity, teachers have a degree of familiarity with, and authority over, their students that is unparalleled except perhaps in 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 this 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

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

  
CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

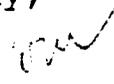
October 29, 1984

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

Dear Byron,

Please join me.

Sincerely,



Justice White

cc: The Conference

91 10 30 1984

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

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 1, 1984

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

Dear Byron:

Although I agree with a good deal of what you have written, I will be writing separately.

Respectfully,



Justice White

Copies to the Conference

81 1 31 1984

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

From: **Justice Stevens**

Circulated: DEC 7 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

[December —, 1984]

JUSTICE STEVENS, dissenting.

Assistant 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 used 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. Although I agree with Part II of the Court's opinion, 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 admin-

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

STYLISTIC CHANGES THROUGHOUT,  
SEE PAGES: 14

From: Justice Stevens

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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

[December —, 1984]

JUSTICE STEVENS, dissenting.

Assistant 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 used 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. Although I agree with Part II of the Court's opinion, 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 only

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

From: Justice Stevens

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*8. 1. 2*  
*Former footnote 3 deleted*

3rd 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

[January —, 1985]

JUSTICE STEVENS, dissenting.

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

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Justice White  
Justice Marshall  
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Justice Powell  
Justice Rehnquist  
Justice O'Connor

2.1

From: **Justice Stevens**

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4th 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

[January —, 1985]

JUSTICE STEVENS, with whom JUSTICE MARSHALL joins, and with whom JUSTICE BRENNAN joins as to Part I, dissenting.

Assistant 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 used 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. Although I join Part II of the Court's opinion, I continue to believe that the Court has unnecessarily and inappropriately reached out to decide a constitutional question. See 468 U. S. — (1984) (STEVENS, J., dissenting from reargument order). More im-

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

From: Justice Stevens

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## 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

[January 15, 1985]

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 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 used 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. Although I join Part II of the Court's opinion, I continue to believe that the Court has unnecessarily and inappropriately reached out to decide a constitutional question. See 468 U. S. — (1984) (STEVENS, J., dissenting from reargument order). More im-

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

October 30, 1984

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

Dear Byron,

Please join me.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

November 21, 1984

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

Dear Lewis,

Please join me in your concurring opinion.

Sincerely,



Justice Powell

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91 10 31 1984

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Washington, D. C. 20543

11/28/84

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

<sup>3</sup>  
82-712 T.L.O.

Dear Lewis,

The changes do indeed  
take care of my concerns.

Thank you very much!

I am pleased that  
you wrote this  
conurrence.

Sincerely,

Sandra