In The

Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF NEW JERSEY,

Petitioner,

-vs-

T.L.O., a Juvenile,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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QUESTION PRESENTED FOR REVIEW

Whether the Fourth Amendment's exclusionary rule applies to searches made by public school officials and teachers in school.

PARTIES TO THE PROCEEDING BELOW

In addition to the captioned parties, the parties in the New Jersey Supreme Court included Jeffrey Engerud, defendant now deceased, and, as *amicus curiae*, the New Jersey School Boards Association and the American Civil Liberties Union of New Jersey.

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OPINIONS BELOW

State in the Interest of T.L.O., 178 N.J. Super. 329, 428 A.2d 1327 (J.D.R.C. 1980), aff'd o.b. in part and rev'd o.g. in part, 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982), rev'd 94 N.J. 331, 463 A.2d 934 (1983).

JURISDICTION

The judgment of the New Jersey Supreme Court which is the subject of this petition for *certiorari* was entered on August 8, 1983, and this petition has been filed within sixty (60) days of that date pursuant to *Rule 20(1)*, Rules of the Supreme Court. The jurisdiction of this Court is invoked pursuant to the provisions of *Title 28, United States Code, Section 1257(3).*

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment IV

> 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.

N.J.S.A. 24:21-19. Prohibited Acts

> A. Manufacturing, distributing, dispensing - Penalties
>
> a. Except as authorized by this act, it shall be unlawful for any person knowingly or intentionally:
>
> (1) To manufacture, distribute, or dispense, or to possess or have under his control with intent to manufacture, distribute, or dispense a controlled dangerous substance; ....

N.J.S.A. 24:21-20. Prohibited Acts

> B. Possession, use or being under influence - Penalties
>
> a. It is unlawful for any person, knowingly or intentionally, to obtain, or to possess, actually or constructively, a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this section with respect to: ...
>
> (4) Possession of more than 25 grams of marijuana, including any adulterants or dilutants, or more than 5 grams of hashish is guilty of a high misdemeanor and shall be punished by imprisonment for not more than 5 years, a fine of not more than $15,000.00 or both; provided, however, that any person who violates this section with respect to 25 grams or less of marijuana, including any adulterants or dilutants, or 5 grams or less of hashish is a disorderly person.

STATEMENT OF THE CASE

On the morning of March 7, 1980, a teacher of mathematics at Piscataway High School entered the girls' restroom and found the juvenile-respondent T.L.O. and a girl named Johnson holding what the teacher perceived to be lit cigarettes. (MT20-1 to 25).[1] Smoking was not permitted and the girls were thus committing an infraction of the school rules. The girls were taken to the principal's office where they met with Theodore Choplick, the assistant vice-principal. (MT21-1 to 3; MT21-24 to 22-11; MT31-18 to 20; MT33-20 to 34-10).

Mr. Choplick asked the two girls whether they indeed were smoking. Miss Johnson acknowledged that she had been smoking and Mr. Choplick imposed three days' attendance at a smoking clinic as punishment. (T49-24 to 50-7). T.L.O. not only denied smoking in the lavatory, but further asserted that she did not smoke at all. (MT27-10 to 17). Rather than merely hand out punishment in the face of T.L.O.'s denial, Mr. Choplick asked T.L.O. to come into a private office. (MT27-14 to 21; MT30-22 to 31-17).

Once inside this office, Mr. Choplick requested the juvenile's purse and she gave it to him. (MT27-24 to 28-7). A package of Marlboro cigarettes was visible inside the purse. (MT28-9 to 11). Mr. Choplick held up the Marlboros and said to the juvenile, "You lied to me." (MT28-14 to 18). In plain view next to the Marlboros was a package of "Easy Roll" rolling papers for cigarettes. (MT28-19 to 24; T16-12 to 14). The juvenile was confronted with the rolling papers and denied that they belonged to her. (MT29-5 to 24).

On the basis of his experience, Mr. Choplick understood possession of rolling papers to indicate that a person is smoking marijuana. (MT29-7 to 9; T15-18 to 16-1). Therefore, Mr. Choplick looked further into the purse and found other drug paraphernalia and documentation of T.L.O.'s sale of marijuana to other students. Mr. Choplick called T.L.O.'s mother and then notified the police. (MT41-5 to 13).

T.L.O.'s mother acceded to a police request to bring her daughter to police headquarters for questioning. (T18-12 to 18). Once at headquarters, T.L.O. was advised of her rights in her mother's presence and signed a *Miranda* rights card so indicating. (T20-3 to 21). The

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1 "MT" refers to the transcript of the motion to supress evidence heard on September 26, 1980;
"T" refers to the transcript of trial on March 23, 1981, the transcript of the juvenile's plea of guilty to other complaints on June 2, 1981, and the transcript of sentencing on January 8, 1982, all contained in one volume.

officer then began to question T.L.O. in her mother's presence. (T23-4 to 6). T.L.O. admitted that the objects found in her purse belonged to her. She further admitted that she was selling marijuana in school, receiving $1 per "joint", or rolled marijuana cigarette. T.L.O. stated that she sold between 18 to 20 joints at school that very morning, before the drug was confiscated by the assistant vice-principal. (T22-2 to 15). A delinquency complaint charging the juvenile with possession of marijuana with the intent to distribute, contrary to *N.J.S.A. 24:21-19(a)(1)* and *N.J.S.A. 24:21-20(a)(4)*, was then drafted and filed the same day. Because the offense occurred on school property, the school, in accordance with its published procedures, administratively suspended the juvenile for ten days.

On September 26, 1980, the State trial court considered and denied the juvenile's motion to suppress evidence. See *State in the Interest of T.L.O., 178 N.J. Super. 329, 428 A.2d 1327, 1343-1345 (J.D.R.C. 1980), aff'd o.b. in part and rev'd o.g. in part 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982).* On March 23, 1981, the juvenile was tried and, at the conclusion of trial, she was found guilty and adjudicated delinquent. (T69-6 to 8). On January 8, 1982, T.L.O. was sentenced to probation for one year with the special condition that she observe a reasonable curfew, attend school regularly and successfully complete a counselling and drug therapy program.

On February 11, 1982, the juvenile filed a Notice of Appeal to the Superior Court of New Jersey, Appellate Division. On June 30, 1982, the Appellate Division, with one judge dissenting, affirmed the denial of the motion to suppress evidence seized in the search of the juvenile's purse, for the reasons expressed in the trial court's reported opinion. *State in the Interest of T.L.O., 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982).*

On July 16, 1982, the juvenile filed a Notice of Appeal as of right to the Supreme Court of New Jersey. On August 18, 1983, the State Supreme Court held that the Fourth Amendment exclusionary rule applies to searches and seizures of students in public schools. *State in the Interest of T.L.O., 94 N.J. 331, 463 A.2d 934 (1983).*

In that same opinion, the New Jersey Supreme Court decided the companion case of *State v. Engerud,* involving a search of a high school student's locker pursuant to information that the student was selling controlled dangerous substances in the school. Shortly after the date of the decision, the defendant Engerud was killed in a motorcycle accident, thus mooting any petition in that case.

SUMMARY OF ARGUMENT

The exclusionary rule should not be applied to a search of a student by a public school official. Because a school official is not primarily interested in whether a conviction is later obtained and conducts searches too infrequently to adapt his methods to the proper rules, application of the exclusionary rule would be an ineffective deterrent of those officials conducting unreasonable school searches. Any incremental deterrent effect of suppression in a later criminal proceeding would be far outweighed by the costs to society of suppression of probative evidence of criminality.

REASONS FOR GRANTING THE WRIT

POINT I

THE EXCLUSIONARY RULE IS INAPPLICABLE TO SEARCHES CONDUCTED BY PUBLIC SCHOOL OFFICIALS IN SCHOOLS.

In the present case,[2] the New Jersey Supreme Court ruled that a search of a public high school student's person or belongings by a school teacher or administrator constitutes an "official search" for Fourth Amendment purposes. Thus, the court ruled that the holdings of this Court require that any evidence seized pursuant to an unreasonable school search be excluded from evidence in any criminal or juvenile delinquency proceeding.[3]

This Court has never ruled that the Federal Constitution requires the exclusion of evidence seized pursuant to a school search performed solely by school officials devoid of any police involvement. Indeed, this Court has noted that its Fourth Amendment exclusionary rule mandates have related exclusively to searches conducted by police officials. Moreover, this Court has ruled that the exclusionary rule clearly does not apply to searches conducted by private persons not connected with law enforcement. *Burdeau v. McDowell, 256 U.S. 465 (1921).* The State of New Jersey asserts that although school officials are employed by the public and may be considered as public officials for some purposes, they have no more connection with law enforcement than any other citizen. Therefore, we submit that this Court never intended the exclusionary rule to apply to criminal proceedings emanating from searches and seizures by school teachers and officials. The contrary holding of the New Jersey Supreme Court is clearly unsupported and erroneous.

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2 *State in the Interest of T.L.O., 94 N.J. 331, 463 A.2d 934 (1983).*

3 In this regard, it is noted that in this portion of its opinion the New Jersey Supreme Court ruled entirely on the basis of this Court's decisions and mandates. Thus, it is clear that this Court's jurisdiction is properly invoked. *Michigan v. Long, _____ U.S. _____, 103 S.Ct. 3969, 3974-3975 (1983).* The state court did refer to the fact that a state statute buttressed its conclusion that it was required to exclude evidence in a situation such as this. *94 N.J. at 342 n.5.* The authority cited, however, refers only to the fact that the exclusionary rule applies equally to juvenile delinquency and adult criminal proceedings. The State of New Jersey did not contest this issue in the state courts and does not raise this issue in this Court. While agreeing that under New Jersey law the same types of illegally seized evidence would be excluded in both juvenile delinquency and adult criminal proceedings, we challenge the state court's finding that, on the basis of federal authority, evidence seized in a public school search is subject to the exclusionary rule as enunciated in *Mapp v. Ohio, 367 U.S. 643 (1961).*

The primary, if not the sole, justification for the exclusionary rule is the deterrence of illegal police conduct that violates Fourth Amendment rights.[4] *Stone v. Powell, 428 U.S. 465 (1976); United States v. Janis, 428 U.S. 433, 446 (1976); United States v. Calandra, 414 U.S. 338, 347-348 (1974).* In recent years, this Court has refused to apply the rule to situations where it would achieve little or no deterrence, and has articulated a balancing test for the rule's application.

The exclusionary rule is justified in the illegal search context only because of its expected deterrence of future police misconduct. In determining whether to apply the rule, the benefits of deterrence are to be weighed against the substantial detriment to society and the truth-finding process inherent in excluding relevant evidence of criminality. *United States v. Calandra, 414 U.S. at 347;* see *United States v. Ceccolini, 435 U.S. 268 (1978).* Evidence should be excluded only where the benefit accruing to society from the additional deterrent to unlawful police practices equals or exceeds the detriment to society caused by the release of criminals. This Court has refused to rule "that anything which deters illegal searches is thereby commanded by the Fourth Amendment." *Alderman v. United States, 394 U.S. 165, 174-175 (1969).* The exclusionary rule is simply not coextensive with the Fourth Amendment. See *United States v. Havens, 446 U.S. 620 (1980)* (defendant may be impeached by evidence illegally obtained); *Michigan v. DeFillippo, 443 U.S. 31 (1979)* (that the statute pursuant to which defendant was arrested was later declared unconstitutional did not require suppression of evidence seized incident to that arrest); *United States v. Caceres, 440 U.S. 741 (1979)* (violation of IRS regulations regarding electronic surveillance does not require suppression of tape recordings in the prosecution of a taxpayer for bribery of an IRS agent); *United States v. Janis, 428 U.S. 433 (1976)* (additional marginal deterrence provided by forbidding use in federal civil proceeding of evidence illegally seized by state officials does not outweigh cost to society of applying rule in that situation); *United States v. Peltier, 422 U.S. 531 (1975)* (no suppression remedy for good faith border search occurring prior to Supreme Court decision holding that such searches must be based on probable cause); *United States v. Calandra, 414 U.S. 338 (1974)*

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4 *The second asserted justification, that of the "imperative of judicial integrity," although mentioned (see United States v. Peltier, 422 U.S. 531, 536-538 (1975);* and *Elkins v. United States, 364 U.S. 206, 222 (1969)),* has been substantially, if not completely, discounted in importance as a basis for suppressing probative evidence. See *Stone v. Powell, 428 U.S. at 485.*

(exclusionary rule is inapplicable to grand jury proceedings because the speculative and undoubtedly minimal advance in the deterrence of police misconduct would be achieved at the expense of substantially impeding the role of the grand jury); *Alderman v. United States, 394 U.S. 165 (1969)* (additional benefits of extending the exclusionary rule to persons aggrieved by introductions of evidence unlawfully obtained in violation of another's privacy rights does not justify "further encroachment upon the public interest"); *Walder v. United States, 347 U.S. 62 (1954)* (the exclusionary rule is inapplicable to evidence used to impeach the defendant).

In balancing the expected deterrence benefits of applying the exclusionary rule against the expected detriments, in the context of a search by a public school official, it is clear that the balance weighs heavily against excluding evidence. Indeed, it has been argued that exclusion can be an effective deterrent only if two conditions are met: (1) the searcher must have a strong interest in obtaining convictions, and (2) the searcher must conduct searches and seizures regularly in order to be familiar enough with the rules to adapt his methods to conform to them. Note, *19 Stan. L. Rev. 608, 614-615 (1967)*. Neither condition can be met in the case of a public school official. The assistant vice-principal in this case had no interest in obtaining a criminal conviction. Indeed, the object of his search was evidence of a school disciplinary infraction wholly unrelated to any criminal prosecution. The possibility of suppression in a subsequent criminal judicial proceeding, had it occurred to the assistant vice-principal, would not have deterred him from enforcing the school's rules, his primary concern.

In this regard, the incentive of school officials to search could not be lessened by the suppression of evidence at a subsequent delinquency proceeding. Substantial incentives for school officials to search are provided by the need to enforce school regulations, to safeguard students during school hours by confiscating weapons and other contraband and to maintain a drug-free learning environment. Under the circumstances of this case, the vice-principal would undoubtedly have followed the same course of conduct in his attempt to enforce the school's non-smoking regulations regardless of his consideration, or knowledge, that any "evidence" seized would not be used later in a court of law.

Further, school authorities conduct searches infrequently and even less frequently come in contact with the criminal justice system. They have little interest in obtaining convictions, and are unlikely to even learn whether a court deems a particular search valid. Thus, there

is no reasonable possibility that a school official will become familiar with the law governing searches and seizures and be able to conform his conduct accordingly. The facts of this case demonstrate this principle quite plainly. A layman considering the juvenile's ready compliance with the request to hand over her purse might well conclude that she consented to the search. Clearly though, under *State v. Johnson, 68 N.J. 349, 346 A.2d 66 (1975),* which requires that a person be specifically informed of his right to refuse permission to search, the consent was not valid. It is unreasonable to request principals, teachers and others not involved in law enforcement to understand, and be able to apply to myriad factual situations, complex principles of law which give lawyers and judges pause.

Thus, it can be seen that application of the exclusionary rule to this type of case would be costly and ineffective. The suppression of evidence impedes the search for truth and frustrates achievement of that goal. The cost, both to society and to the juvenile, is high. Balanced against these costs, there is little or no benefit. The primary value of the exclusionary rule, deterrence, is not present, for school officials acting in the course of their employment have little or no interest in criminal proceedings and are not likely to know whether or why evidence they have discovered has been suppressed. Thus, application of the exclusionary rule to searches by school authorities without law enforcement involvement is senseless. Indeed, it is clear beyond doubt that when this Court developed the exclusionary rule, it did not intend to regulate the conduct of school officials who deal primarily with minor school disciplinary problems and infractions of school rules. Rather, it intended the rule to deter misconduct on the part of those persons who are charged with the regular enforcement of the criminal laws.

Despite the fact that this Court has never, even inferentially, applied the exclusionary rule to searches by school officials, the issue presented in this case has divided the state courts. A decision by this Court is needed in order to end the confusion in this area.

While adopting varying rationales, many state courts have ruled that the purpose of the Fourth Amendment exclusionary rule -- "discouraging lawless police conduct"[5] -- would not be furthered by application of the rule to school searches. Therefore, these states have permitted evidence seized by school officials to be admitted into evidence at criminal proceedings without regard to the constitutionality of the search. See *D.R.C. v. State, 646 P.2d 252, 258 (Alas. Ct. App. 1982); In re G., 11 Cal. App.3d 1193, 90 Cal. Rptr. 361*

5 *Terry v. Ohio, 392 U.S. 1, 12 (1968).*

(Ct. App. 1970); In re Donaldson, 269 Cal. App.2d 509, 75 Cal. Rptr. 220 (Ct. App. 1969); State v. Young, 234 Ga. 488, 216 S.E. 2d 586 (1975); People v. Stewart, 63 Misc.2d 601, 313 N.Y.S.2d 253 (Crim. Ct. N.Y. 1970); State v. Wingerd, 40 Ohio App.2d 235, 318 N.E.2d 866 (Ct. App. 1974); Commonwealth v. Dingfelt, 227 Pa. Super. 380, 323 A.2d 145 (Super. Ct. 1974); Mercer v. State, 450 S.W.2d 715 (Tex. Ct. App. 1970). See also *Keene v. Rogers, 316 F.Supp. 217 (N.D. Me. 1970); United States v. Coles, 302 F.Supp. 99 (N.D. Me. 1969).*

It must be noted, however, that other jurisdictions have ruled that even when acting alone, without any law enforcement involvement, public school officials are government agents for purposes of the exclusionary rule. In these jurisdictions, as in New Jersey following the State Supreme Court ruling in the present case, evidence obtained in a search conducted by school officials which does not strictly comply with the strictures of the Fourth Amendment will be suppressed at a criminal trial. See *State v. Baccino, 282 A.2d 869 (Del. 1971); State v. Mora, 307 So.2d 317 (La. 1975), vacated and remanded sub nom. Louisiana v. Mora, 423 U.S. 809 (1976), aff'd on remand 330 So.2d 900 (La. 1976), cert. den. 429 U.S. 1004 (1976); Doe v. State, 540 P.2d 827 (N.M. 1975); State v. Walker, 528 P.2d 113 (Or. Ct. App. 1974). Cf. Jones v. Latexo Indep. School Dist., 449 F.Supp. 223 (E.D. Tex. 1980).*

The important and recurring nature of the issue presented in this case is demonstrated by the chronology of *Louisiana v. Mora, supra.* In that case, the Supreme Court of Louisiana suppressed evidence obtained in a school search. This Court granted the State's petition for *certiorari* but remanded the case for consideration of whether the state judgment was based on state or federal grounds. The Supreme Court of Louisiana ruled, in a split decision, that it had ruled on the basis of both state and federal grounds, thus depriving this Court of jurisdiction. The State's reapplication for *certiorari* was denied. Although this Court was deprived of jurisdiction in *Louisiana v. Mora,* the issue presented in that case continues to reach disparate results. Compare *Jones v. Latexo Indep. School Dist., supra,* and *State in the Interest of T.L.O., supra,* with *Bellnier v. Lund, 438 F.Supp. 47 (N.D.N.Y. 1977),* and *D.R.C. v. State, supra.* Thus, this case presents an issue which has not been but should be decided by this Court. In addition, the decision of the New Jersey Supreme Court is in conflict with decisions of the courts of other states. Therefore, this Court should grant *certiorari* pursuant to *Supreme Court Rule 17(a) and (b).*

CONCLUSION

For the reasons set forth herein, it is respectfully urged that the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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