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# Students' Freedom From Unreasonable Searches and Seizures

## I. Introduction & Brief Background on Searches and Seizures

The Fourth Amendment to the U.S. Constitution states that, "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."[1] This protection, however, is more limited in the educational setting. This paper analyzes two significant U.S. Supreme Court cases regarding students' freedom from unreasonable searches and seizures and evaluates how this area of law has evolved. Finally, this paper will speculate on the future of this area of law and what issues the Court may be presented with in the future.

To provide a brief criminal procedure background on this topic, a search is not generally considered reasonable unless accompanied by a warrant based on probable cause sufficient to establish that a crime has been or is being committed and that evidence bearing

[1] U.S. CONST. AMEND. IV.

on that offense will be found on the person or in the place to be searched.[2] However, a warrant is not always required for a legitimate search or seizure, nor is probable cause always the standard used to determine the reasonableness of that search or seizure.[3]

The landmark 1967 U.S. Supreme Court case of *Katz v. United States* addressed the issue of what constitutes a Fourth Amendment violation.[4] This case held that a Fourth Amendment search or seizure only takes place when a person's "reasonable expectation of privacy" has been violated.[5] To be granted Fourth Amendment protection, a defendant must show an actual, subjective expectation of privacy, and that expectation must be one that society recognizes as being reasonable.[6] Many cases following *Katz* attempted to develop, refine and delineate the boundaries of this seemingly simple rule.[7] But for purposes of searches and seizures inside public schools, perhaps the most important case is *New Jersey v. T.L.O.*

## II. *New Jersey v. T.L.O.*

The 1985 case of *New Jersey v. T.L.O.* examined whether the exclusionary rule could be used as a remedy for searches carried out in violation of the Fourth Amendment by public school officials.[8] In this case, a high school teacher discovered two girls smoking in a

[2] A Brief Review of Search and Seizure Law in the Public Schools, State of Wisconsin Office of the State Public Defender, September, 2009, accessed at: http://www.wisspd.org/html/training/ProgMaterials/Conf2009/LSS.pdf.
[3] *Id.*
[4] Katz v. United States, 389 U.S. 347, 354 (1967).
[5] *Id.* at 360.
[6] *Id.* at 361.
[7] Welsh S. White & James J. Tomkovicz, Criminal Procedure: Constitutional Constraints Upon Investigation and Proof, Sixth Ed. (LexisNexis 2005).
[8] New Jersey v. T.L.O., 469 U.S. 325, 327 (1985).

lavatory, in violation of school rules. One of the two girls was respondent T.L.O., a fourteen-year-old freshman. The teacher took the two girls to the Principal's office, where they met with Assistant Vice Principal Theodore Choplick. T.L.O.'s companion admitted to smoking in the lavatory while being questioned by Mr. Choplick. T.L.O., however, maintained her innocent. While undergoing questioning, Mr. Choplick demanded to search T.L.O.'s purse. In her purse he found a pack of cigarettes, cigarette rolling papers commonly associated with marijuana use. A thorough search of the purse revealed a small amount of marijuana, a pipe, several empty plastic bags, a substantial quantity of money in one-dollar bills, an index card of the names of students who appeared to owe T.L.O. money, and two letters implicating T.L.O. in marijuana dealing. Mr. Choplick notified T.L.O.'s mother and the police, and turned the evidence over to the police. While being questioned at the police department, T.L.O. confessed that she had been selling marijuana at school. The State then brought delinquency charges against T.L.O. in the Juvenile and Domestic Relations Court of Middlesex County. T.L.O. moved to suppress the evidence found in her purse as well as her confession, arguing the search of her purse was in violation of the Fourth Amendment, and the confession was tainted by the alleged unlawful search.[9]

The New Jersey Juvenile court held that the Fourth Amendment did apply to searches by school officials, that the search was a reasonable one and therefore adjudged T.L.O. to be delinquent. On appeal, the Appellate Division of the New Jersey Superior Court affirmed the trial court's finding that there had been no Fourth Amendment violation but vacated

[9] *Id.* at 328-29.

adjudication of delinquency and remanded on other grounds.[10] The U.S. Supreme Court granted certiorari to examine the appropriateness of the exclusionary rule as a remedy for searches carried in violation of the Fourth Amendment by public school officials.[11]

The Court first addressed the issue of whether the Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. The Court determined that the prohibition *did* apply to searches conducted by public school officials and was not limited to searches carried out by law enforcement officers. In its reasoning, the Court concluded that school officials are not exempt from this prohibition by virtue of the special nature of their authority over schoolchildren. In carrying out searches and other functions pursuant to disciplinary policies mandated by state statutes, school officials act as representatives of the State, not merely as surrogates for the parents of students, and they cannot claim the parents' immunity from the requirements of the Fourth Amendment.[12]

Second, the Court held that the search of T.L.O.'s purse was reasonable.[13] The Court acknowledged the determination of the standard of reasonableness in a search requires "balancing the need to search against the invasion which the search entails."[14] The two competing interests in the educational environment are the child's interest in privacy, weighed against the substantial interest of teachers and administrators in maintaining discipline in the

[10] *Id.* at 330.
[11] *Id.* at 331.
[12] *Id.* at 333-37.
[13] *Id.* at 343.
[14] Camara v. Municipal Court, 387 U.S. 523, 536-37 (1967).

school.[15] The Court stated that the school setting required some easing of traditional rules regarding searches. For example, the warrant requirement is not appropriate in schools because this requirement would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in schools.[16]

Furthermore, the Court lowered the evidentiary standard applying to search and seizure by school officials from probable cause to reasonable suspicion, stating that the public interest is best served by this lower evidentiary burden. To be constitutional, the search must be (1) "justified at its inception" and (2) "reasonably related in scope to the circumstances which justified the interference in the first place."[17] Applying this standard to ordinary circumstances in schools would mean that school officials would be justified at a search's inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Notably, *T.L.O.* limits permissible searches to ones in which the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and the nature of the infraction."[18]

Applying this unique standard to the facts of *New Jersey v. T.L.O.*, the Court concluded the search of T.L.O.'s purse was not unreasonable for Fourth Amendment purposes.[19] In support of this conclusion, the Court determined that the initial search for

[15] T.L.O., 469 U.S. at 337.
[16] *Id.* at 340.
[17] *Id.* at 341.
[18] *Id.* at 341-42.
[19] *Id.* at 343.

cigarettes was reasonable due to the Assistant Vice Principal's report that T.L.O. had been smoking, and the reasonable suspicion that she still had cigarettes in her purse.[20] In addition, the discovery of the cigarette rolling papers gave rise to a reasonable suspicion that T.L.O. was carrying marijuana, and this suspicion justified the further search that resulted in evidence of drug-related activities.[21] This case represented a major shift in criminal procedure requirement in public schools and set a standard that would be used for decades to come.

III. *Safford Unified School District v. Redding*

A more recent examination of the issue of searches and seizures within public schools was presented in the 2009 U.S. Supreme Court case *Safford Unified School District v. Redding.* This case dealt with a much more invasive type of search: a strip search of a thirteen-year-old female student believed to be carrying prohibited pills.[22]

In this case, Savana Redding was confronted by the assistant principal of her public school, Mr. Kerry Wilson, with a planner filled with contraband including knives, a lighter, a permanent marker and a cigarette. Savana admitted ownership of the planner, but denied the other items belonged to her. The assistant principal then showed Savana four ibuprofen pills and one naproxen pill, medications that are prohibited under school rules. Savana denied any knowledge of the pills, despite Mr. Wilson's statement that he received a report about her giving the pills to fellow students. Savana agreed to let Mr. Wilson and Ms. Romero, an

[20] *Id.* at 346.
[21] *Id.* at 347.
[22] Safford Unified Sch. Dist. v. Redding, 129 S.Ct. 2633, 2638 (2009).

administrative assistant, search her backpack. When no contraband was found in her backpack, Mr. Wilson instructed Ms. Romero to take Savana to the school nurse's office to search her clothes for pills. Ms. Romero and the nurse, Ms. Peggy Schwallier, asked Savana to remove her jacket, socks, and shoes, leaving her in stretch pants and a T-shirt (both without pockets), which she was then asked to remove. Finally, Savana was told to pull her bra out and to the side and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. This search produced no pills.[23]

Savana's mother filed suit against the school district, Wilson, Romero and Schwallier, alleging the school officials' strip search violated her daughter's Fourth Amendment right. The District Court for the District of Arizona granted the motion on the ground that there was no Fourth Amendment violation, and a panel of the Ninth Circuit affirmed. A closely divided Circuit sitting en banc, however, reversed, finding that the strip search was unjustified under the Fourth Amendment test for searches of children by school officials set out in *New Jersey v. T.L.O.*[24]

The U.S. Supreme Court granted certiorari to determine whether Savana's Fourth Amendment right was violated when she was subjected to a search of her bra and underpants by school officials acting on reasonable suspicion that she had brought prohibited medications to school.[25] Applying the standard set forth in *New Jersey v. T.L.O.*, the Court held that this

[23] *Id.*
[24] *Id.*
[25] *Id.* at 2637.

search did violate the student's Fourth Amendment right.[26] In its analysis, the Court agreed that Mr. Wilson had sufficient suspicion to justify a search of Savana's backpack and outer clothing because another student had stated they she previously received pills from Savana.[27] Furthermore, Savana had been connected to an incident involving alcohol and cigarettes at a school dance, and another student reported he attended a party at her house where alcohol was served.[28] Given this background information, and the low level of intrusion the search required, the Court concluded that the search of Savana's backpack and outer clothing was Constitutionally permissible.[29]

The Court did not extend this reasoning to justify the search of Savana's bra and underwear, however. In this situation, Savana had a subjective expectation of privacy; one which was reasonable given the search's patent intrusiveness. The Court relied again on *New Jersey v. T.L.O.*, judging whether the search was "reasonably related in scope to the circumstances which justified the interference in the first place."[30] In this case, the content of the suspicion failed the match the degree of intrusion because the Court found no indication that the pills presented a danger to students or were actually concealed in Savana's underwear. For these reasons, the Court held Wilson lacked sufficient suspicion to justify this very intrusive type of search.[31]

[26] *Id.* at 2643.
[27] *Id.* at 2640.
[28] *Id.* at 2641.
[29] *Id.*
[30] T.L.O., 469 U.S. at 341.
[31] Redding, 129 S.Ct. at 2642.

IV. Conclusion

When evaluating jurisprudence regarding searches and seizures of public school, it is clear that *New Jersey v. T.L.O.* set the stage for all future analysis. This landmark case determined that the Fourth Amendment's prohibition of unreasonable searches and seizures did apply to searches conducted by public school officials.[32] This case also established distinct evidentiary rules in school settings, such as dispensing with the warrant requirement and using a standard of reasonable suspicion, instead of probable cause.[33] The result of this decision appeared to make it easier for public school officials to legally search students, though the Court did limit the intrusiveness of a search "in light of the student's age and sex and the nature of the infraction".[34]

Twenty-four years later, the Court further clarified limits to the rights of school officials to search students by applying the *New Jersey v. T.L.O.* test again in *Safford Unified School District v. Redding.* The U.S. Supreme Court then held that a strip search of a young girl was in violation of the Fourth Amendment because of the highly intrusive nature of the search, which was unjustified given the content of school officials' suspicion.[35]

Although it's been many years since *New Jersey v. T.L.O.* was decided, it is clear that the test presented in this case is still highly relevant to modern jurisprudence regarding searches and seizures of public school students. As future cases arise, it is likely that the test will be further developed and refined to address different types of searches of students. For

[32] T.L.O., 469 U.S. at 341.
[33] *Id.* at 341.
[34] *Id.* at 342.
[35] Redding, 129 S.Ct. at 2643.

example, it is plausible that the Supreme Court would one day decide a case about the use of full-body scanners in schools, similar to how metal detectors are utilized now. Other concerns about the Fourth Amendment may be raised by the unlocking of the human genome, and a desire to protect oneself from searches of an individual's DNA. With the technological and biological advancements that our society is pioneering, it is also clear that the courts will be faced with novel questions as this area of jurisprudence develops in the future.