

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 83-712

TITLE NEW JERSEY, Petitioner v. T. L. O.

PLACE Washington, D. C.

DATE March 28, 1984

PAGES 1 thru 56



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IN THE SUPREME COURT OF THE UNITED STATES

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NEW JERSEY, :
 Petitioner, :
 v. : No. 83-712
T. L. O. :
-----x

Washington, D.C.
Wednesday, March 28, 1984

The above-entitled matter came on for oral argument
before the Supreme Court of the United States at 11:45
o'clock a.m.

APPEARANCES:

ALLAN J. JONES, ESQ., Deputy Attorney General of New Jersey,
Trenton, New Jersey; on behalf of the Petitioner.

LOIS DeJULIO, ESQ., First Assistant Deputy Public Defender,
East Orange, New Jersey; on behalf of the Respondent.

C O N T E N T S

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
ALLAN J. NODES, ESQ., on behalf of the Petitioner	3
LOUIS DeJULIO, ESQ., on behalf of the Respondent	25
ALLAN J. NODES, ESQ., on behalf of the Petitioner - rebuttal	51

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P R O C E E D I N G S

1
2 CHIEF JUSTICE BURGER: We will hear arguments next
3 in New Jersey against T.L.O.

4 Mr. Nodes, I think you may proceed whenever you are
5 ready.

6 ORAL ARGUMENT OF ALLAN J. NODES, ESQ.,

7 ON BEHALF OF THE PETITIONER

8 MR. NODES: Mr. Chief Justice, and may it please the
9 Court, this Court granted certiorari to the New Jersey Supreme
10 Court in this case on the issue of the applicability of the
11 Fourth Amendment exclusionary rule, the school searches conducted
12 by school teachers and school officials.

13 In this case, the respondent was observed smoking a
14 cigarette in a school restroom by a teacher. The teacher took
15 the student to the vice principal's office, and reported the
16 incident to the vice principal. After the vice principal left,
17 the student not only denied having smoked in the restroom, but
18 also stated that it couldn't have been her because she didn't
19 even smoke.

20 After -- following this statement, the vice principal
21 asked for the student's purse, and opened the student's purse,
22 finding a pack of cigarettes lying on the top. He picked up
23 the cigarettes and said something to the effect of, "You lied to
24 me about smoking cigarettes," looked back in the purse, and saw
25 rolling papers for cigarettes. He believed these were indicative

1 of the presence of drug paraphernalia in the purse, and continued
2 to look through the purse. He found marijuana and other
3 indications that the marijuana was in the purse for purposes of
4 distribution.

5 QUESTION: Mr. Nodes, under New Jersey law, can a
6 minor consent to a search?

7 MR. NODES: I don't think there would be any distinc-
8 tion under New Jersey law between a minor consenting to a search
9 and an adult consenting. New Jersey has a slightly stricter
10 standard than the federal standard concerning consent, and it
11 would have been absolutely necessary that the juvenile be aware
12 of her rights prior to the search taking place in order for it
13 to be a consent search. Because of this, the state has always
14 conceded that it was not a consent search.

15 The trial court and the appellate division in New
16 Jersey --

17 QUESTION: You left out one item in the pocketbook,
18 the \$40.

19 MR. NODES: I beg your pardon?

20 QUESTION: You left out one item in the pocketbook --

21 MR. NODES: Yes.

22 QUESTION: -- which was \$40 in \$1 bills, which
23 signified that she was selling it.

24 MR. NODES: Yes, Your Honor.

25 QUESTION: You left that out.

1 MR. NODES: There were also pieces of paper indicating
2 that various other people, Johnny, people like that, owed her
3 \$1, \$1.25, things like that, and all these items were entered
4 into evidence at the juvenile delinquency proceeding against
5 T.L.O., and they were all evidence of an intention to
6 distribute the marijuana which was found in the purse.

7 T.L.O. was adjudicated a delinquent as a result of
8 the evidence which was found, and the trial court and the New
9 Jersey Appellate Division found that the search was totally
10 proper. However, the New Jersey Supreme Court found that the
11 search exceeded reasonable grounds, and therefore found that it
12 was required to exclude the evidence which had been found in
13 the search.

14 Now, in reaching this decision, the New Jersey Supreme
15 Court found that due to the amount of state action involved, that
16 the Fourth Amendment to the United States Constitution would
17 apply to this situation, and we have not protested this ruling.
18 In addition, the New Jersey Supreme Court found that in order
19 for a search to be reasonable under the United States Constitu-
20 tion in the school search context the person conducting the
21 search must have reasonable grounds to believe that the search
22 will uncover evidence of a crime or evidence of a violation of
23 school discipline or school regulations.

24 QUESTION: Mr. Nodes, in your question presented for
25 certiorari, you say whether the Fourth Amendment exclusionary

1 rule applies to searches made by public school officials and
2 teachers in school. Now, the unwary might think that you were
3 talking perhaps about an administrative proceeding where someone
4 has been kicked out of school, wondering whether the exclusionary
5 rule would apply in that, but here the exclusionary rule is
6 applied by the Supreme Court of New Jersey in connection with a
7 criminal prosecution of this person, was it not?

8 MR. NODES: Yes, it was applied in connection with a
9 juvenile delinquency prosecution. The rules in New Jersey would
10 be the same whether it was a juvenile delinquency prosecution or
11 a criminal prosecution.

12 QUESTION: So what we are really talking about here
13 is the standard supporting a search, aren't we, in a school,
14 rather than whether the exclusionary rule applies in this
15 proceeding?

16 MR. NODES: Well, the primary motion that was made
17 by the defendant was for exclusion of the evidence, and the first
18 question that had to be reached by the New Jersey court was
19 whether or not under any circumstances there could be exclusion
20 of evidence illegally taken in the school situation. If the
21 answer to that question was no, under no circumstances would
22 this type of evidence be excluded, then setting a standard
23 wouldn't be absolutely necessary. That would no longer really
24 be in controversy.

25 In the case, the New Jersey Supreme Court did do both.

1 It did set the standard and it also ruled that exclusion was
2 warranted.

3 QUESTION: And so your argument I take it is primarily
4 addressed to the standard?

5 MR. NODES: No, our argument here is primarily addressed
6 to the exclusionary rule issue. We basically agree --

7 QUESTION: Well, do you think it is open to us to deal
8 with the reasonableness of the search?

9 MR. NODES: I believe that could be considered a
10 question subsumed within the --

11 QUESTION: But it wasn't your intention to raise it?

12 MR. NODES: It wasn't our intention to raise it because
13 we agree with the standard that was set forth by the New Jersey
14 Supreme Court. We feel that that is a workable standard.

15 QUESTION: Courts around the country have differed
16 somewhat on that standard, have they not?

17 MR. NODES: Yes, they have. In this whole area there
18 has been a great deal of difference. There have been courts
19 which have held that the Fourth Amendment -- they have gone all
20 the way from saying the Fourth Amendment doesn't even apply to
21 saying that the Fourth Amendment always applies and exclusion
22 is always needed.

23 The reason we didn't specifically address the issue,
24 though, of the standard, we believe both counsel have addressed
25 that issue in their briefs, in footnotes, and we have set forth

1 arguments, and the arguments were made before the New Jersey
2 Supreme Court, is, the reason we didn't address it is because we
3 think the New Jersey Supreme Court set forth a good standard and
4 a workable standard.

5 QUESTION: What exactly is your quarrel with the
6 Supreme Court of New Jersey?

7 MR. NODES: Our quarrel with the Supreme Court of New
8 Jersey is that we do not feel that the exclusionary rule works
9 as a deterrent in the school search situation, and because of
10 that we don't feel that exclusion of evidence from a later
11 criminal proceeding should ever occur when the search was
12 instituted by school teachers and school officials.

13 QUESTION: So teachers and school administrators
14 should not be treated the same way as policemen and law
15 enforcement --

16 MR. NODES: That is our primary contention. Yes, Your
17 Honor.

18 QUESTION: Has the exclusionary rule been applied in
19 other administrative search contexts?

20 MR. NODES: Yes, it has been applied in other -- in
21 exclusionary -- in other administrative search contexts, such as
22 OSHA searches --

23 QUESTION: Or fire protection people, and so forth?

24 MR. NODES: Well, yes. I am not certain that those
25 are actually administrative searches. The people involved in

1 them were searching for evidence of arson, which is definitely a
2 crime, and it often wasn't a firefighter per se.

3 QUESTION: In the other context, do you think it was
4 based on a deterrence rationale?

5 MR. NODES: I believe that certainly with the fire-
6 fighters --

7 QUESTION: In administrative contexts?

8 MR. NODES: Yes, I believe it was. The persons who --

9 QUESTION: But you somehow think that school officials
10 can't be deterred?

11 MR. NODES: I think it is much less likely that a
12 school official will be deterred. The firefighter, and I
13 believe in both Clifford and Tyler, the real persons who were
14 doing most of the searching were either fire inspectors or
15 police who were called in by fire inspectors, and they were
16 very definitely searching for evidence of a very serious crime.
17 It wasn't an administrative search, and the other searches that
18 are closer to pure administrative searches, such as Cameron and
19 Barlows, cases like that, the persons who were doing the searches
20 on a regular basis conducted searches for violations of civil
21 regulations and administrative regulations. That was their
22 primary duty, and the purpose of the search was to find violations,
23 and it was clear that that evidence would be presented in the
24 trial. That was their primary function. I think --

1 QUESTION: Well, is it your view that school
2 officials, regardless of the exclusionary rule's application,
3 would continue to do what they always have done?

4 MR. NODES: It is our contention that the exclusionary
5 rule has very little effect on a school teacher. We feel that
6 there are other means of teaching school teachers compliance with
7 the Constitution and ensuring that there is compliance with the
8 Constitution.

9 QUESTION: Well, if that is so, then how can you
10 square that with your argument that the application of the rule
11 will create havoc in the schools? It just seems inconsistent.

12 MR. NODES: Well, I think that what it is is that if
13 the exclusionary rule is to be applied, and if it is to have
14 any effect, it can work only under very limited circumstances.
15 I think that one of the journals pointed out in the respondent's
16 brief, the Journal of Law and Education set forth the way the
17 exclusionary rule could work, and basically the journal suggested
18 that in the school situation administrators and teachers could
19 identify people in schools who were likely to cause trouble.
20 They could watch where these students went, and make notes of
21 where they went. They could watch who these students associated
22 with and make notes of that.

23 They could make notes of whether the people -- the
24 students seemed to sometimes be intoxicated, seemed to be acting
25 beligerent, seemed to be cutting classes, seemed to be late a

1 great deal of time. And basically, what it sounds like is that
2 in order for the rule to work, school teachers are going to have
3 to turn into policemen, and they have to turn into policemen who
4 will develop a dossier on a student before conducting a search.

5 QUESTION: Mr. Attorney General, in this particular
6 case, if the girl involved had a locked briefcase, would it have
7 been all right to break it open?

8 MR. NODES: I think this case presents a difficult
9 question, and it was a question obviously in the New Jersey
10 Supreme Court, in the New Jersey courts, and that is why there
11 was a split. A locked briefcase would show an added indication
12 that the person had an expectation of privacy. Under the
13 standard set up by the New Jersey Supreme Court --

14 QUESTION: But a closed pocketbook wouldn't be?

15 MR. NODES: Well, I think that the --

16 QUESTION: Have you ever seen a woman that didn't
17 take her pocketbook without a purse?

18 MR. NODES: Possibly not, Your Honor, but I think that
19 it was a standard set up by the New Jersey Supreme Court. The
20 court indicated that the greater the intrusion, the more
21 significant the intrusion, the higher the standard would have
22 to be in any event. So I think before we went into something
23 that was locked --

24 QUESTION: That could be classified as free-wheeling.

25 MR. NODES: I think it would better be classified as a

1 common sense approach which school teachers can actually use.

2 QUESTION: But sometimes -- anyway.

3 QUESTION: General Nodes, let me just ask you this
4 question, if I may, following up on what Justice O'Connor was
5 asking you, on the effect of what you are asking for. You are not
6 challenging the standard or the application of the standard in
7 this case. You are taking a broad position, as I understand you,
8 that the exclusionary rule simply doesn't apply in the criminal
9 context when the search is made by a school official.

10 MR. NODES: Absolutely.

11 QUESTION: But as I understand the New Jersey court,
12 it would permit these searches to go ahead and let the results
13 of the search be used for school disciplinary purposes and
14 management of the school without any deterrent whatsoever.

15 MR. NODES: Okay. The New Jersey Supreme Court has
16 not specifically addressed that issue, and has not said that.

17 QUESTION: But this case doesn't preclude that.

18 MR. NODES: No.

19 QUESTION: All this case deals with is whether after
20 the material is obtained it can be used for criminal purposes.

21 MR. NODES: That is correct. I would note that a
22 chancery judge in New Jersey did rule in this case that evidence
23 would be excluded from the disciplinary proceeding.

24 QUESTION: But that is not before us.

25 MR. NODES: That is not before us, and that is a

1 single opinion that wasn't contested. Our only contention is
2 really that the exclusionary rule shouldn't apply in a criminal
3 trial when the search was conducted by school officials.

4 QUESTION: And that is no matter how flagrant the
5 violation might be.

6 MR. NODES: Yes, we think that regardless of how
7 flagrant it would be, the standard would be the same, the
8 application of the exclusionary rule would have very little
9 effect, and that is the problem. We just don't believe the
10 effect is there.

11 This Court has often noted that there is a balancing
12 test that must be used in determining whether or not the
13 exclusionary rule would be applied in any context. For instance,
14 in *United States v. Havens*, the Court allowed excludable evidence
15 to be used for purposes of impeachment. In *United States v.*
16 *Colandra*, possibly excludable evidence was allowed to be
17 presented before a grand jury. In *U.S. v. Janis*, the Court
18 allowed evidence which had actually been suppressed, quashed in
19 a state criminal proceeding to be introduced in a federal civil
20 proceeding. In *Stone v. Powell*, this Court found that the
21 additional benefits of allowing certain seizure points to be
22 raised in the federal habeas corpus context would be slight in
23 relation to the costs.

24 I think that all these cases have centered very squarely
25 on the idea that a balancing test must be used, that the

1 exclusionary rule has as its purpose the deterrent
2 effect, and that we must be sure that that deterrent
3 effect outweighs any detriments of the exclusionary rule
4 before we will automatically apply the rule.

5 I believe that the benefits of applying the
6 exclusionary rule to the school search situation are
7 really very limited and very questionable. The rule in
8 effect punishes law enforcement officers for
9 transgressions which are committed by law enforcement
10 officers and transgressions themselves and other law
11 enforcement officers.

12 CHIEF JUSTICE BURGER: We will resume there at
13 1:00 o'clock, counsel.

14 MR. NODES: Thank you.

15 (Whereupon, at 12:00 o'clock p.m., the Court
16 was recessed, to reconvene at 1:00 p.m. of the same
17 day.)

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1 This simply will not work with school
2 teachers, because they are not a part of this law
3 enforcement community, and their interests are different
4 than law enforcement officers. They do obviously have
5 an interest in ensuring that there is discipline in the
6 schools. This interest, however, is secondary to the
7 primary interest, which is to educate the students.

8 The primary function of a police officer is
9 law enforcement. A policeman becomes a policeman
10 because of an interest in enforcing laws. A school
11 teacher becomes a school teacher because of an interest
12 in education. Because the interest in law enforcement
13 is so secondary, the benefits of the exclusionary rule
14 in the school search situation would be even less than
15 they are in the general criminal law situation. This
16 Court has noted often that there is clearly very little
17 empirical data of the effectiveness of the exclusionary
18 rule, and there is some question as to how well it works
19 for law enforcement.

20 When we remove the person who is doing the
21 search one step further from the law enforcement and one
22 step further from the trial at which exclusion will
23 occur, there is much more question about the
24 effectiveness of the exclusionary rule, and much more
25 question as to whether or not it will actually be a

1 deterrent.

2 As far as the real detriments of the
3 exclusionary rule, the major detriment has, of course,
4 been noted on many occasions by this Court, that the
5 guilty may go free because of the rule. This is
6 tolerated because the rule is felt to foster respect for
7 criminal laws and respect for our system of criminal
8 justice in general.

9 But as Justice Powell writing for the Court in
10 *Stone v. Powell* noted, the indiscriminate use of the
11 exclusionary rule could actually have the opposite of
12 the intended effect. It could actually nurture
13 disrespect for our criminal laws, and could actually
14 nurture disrespect for our system of criminal justice.

15 This is obviously a detriment any time the
16 exclusionary rule is possibly extended. This detriment
17 may be even greater in the school search situation
18 because disrespect of our criminal laws and disrespect
19 of the system of justice is not a lesson which we should
20 teach our students.

21 Therefore, before the exclusionary rule is
22 applied to school searches by school teachers and
23 officials, it should be very clear that the benefits of
24 the rule outweigh the detriments, and that there are no
25 other means of exacting compliance with the

1 Constitution. We believe that the detriments have been
2 set forth very clearly and that the benefits are very
3 limited, and the only way that we could really get a
4 beneficial effect from the exclusionary rule in a school
5 search situation so that it would foster compliance with
6 the Constitution is to have teachers act as policemen,
7 to have teachers follow the same rules as policemen, for
8 teachers to actually investigate as policemen.

9 I suggest that this would totally change the
10 educational system in this country.

11 QUESTION: May I ask one question on this? As
12 Justice C' Connor pointed out before lunch, there is
13 apparently some diversity among the states as to what
14 the right standard is, but we don't reach that
15 question. I was wondering, have any of the states that
16 have addressed this question, has any court held that
17 the exclusionary rule does not apply?

18 MR. NODES: The District Court -- the Supreme
19 Court of Alaska found that the Fourth Amendment in a DRC
20 case didn't apply.

21 QUESTION: But any court that has held the
22 Fourth Amendment has been violated but you don't apply
23 the exclusionary rule to school teachers?

24 MR. NODES: I don't remember the name of the
25 case offhand, but I know there have been District Courts

1 that have held that. I could supply the Court with the
2 name of the case.

3 QUESTION: Federal District Courts?

4 MR. NODES: Yes, sir.

5 But in addition to this detriment that would
6 occur by either -- by changing the school system, by
7 using the exclusionary rule and by forcing school
8 teachers to act as policemen, we believe that the
9 exclusionary rule is unnecessary because there are other
10 deterrents in the school situation which will really
11 work.

12 As this Court noted in *Ingram v. Wright*, the
13 school situation is different than many other
14 situations. In the school situation, there is a great
15 deal of community interest and a great deal of parental
16 interest. Now, in that case, of course, this Court
17 found that if corporal punishment in a public school
18 went too far, the community pressures in addition to
19 possible criminal proceedings and possible civil
20 proceedings would have the effect of stopping further
21 transgressions.

22 We suggest that this would be at least as true
23 in a school search situation, and we suggest that the
24 more egregious a search, the more chances the deterrence
25 would occur. If a student goes home and complains to

1 his parent that he has just been the subject of an
2 unreasonable search, there is a high likelihood that the
3 parent will complain to the principal or to the board of
4 education, and there is a great likelihood that the
5 principal or the board of education will take action on
6 the basis of that complaint.

7 In New Jersey, as in many other states, there
8 are systems for bringing community complaints to boards
9 of education. If a complaint were filed against a
10 school teacher or an administrator, the local board of
11 education would consider the complaint, and if there was
12 merit, they would report the complaint to the state
13 board of education. That board has the power to remove
14 tenure from the school teacher, cause the school teacher
15 to be fired, or to revoke the license of a school
16 teacher.

17 We believe that this is the type of a real
18 deterrent against unlawful actions which will actually
19 work and which will actually have an effect on school
20 teachers and on school administrators, and I think that
21 the final analysis is, we will find that if unreasonable
22 searches continue, the community pressure will stop
23 them. So there is an automatic safeguard in place to
24 unreasonable searches in the school situation.

25 In addition, there is the possibility of

1 criminal action being brought against a student or
2 teacher who conducts an unreasonable search, and this
3 would be particularly true in the situation of a
4 possible strip search or a search of that type. There
5 are obvious criminal possibilities, and the teacher who
6 is involved in a search like that or the official would
7 have to consider those possibilities.

8 QUESTION: But that is not this case.

9 MR. NODES: I beg your pardon?

10 QUESTION: What criminal action would there be
11 in this case?

12 MR. NODES: I think there would be --

13 QUESTION: Visual, charged with looking?

14 MR. NODES: Admittedly, there would be very
15 little chance of criminal action in a case like this.
16 We believe that this is a less intrusive search than
17 many others that have been referred to in the
18 defendant's brief, and I believe that this is a much
19 closer call than in many of the other situations which
20 defendant has referred to.

21 And because it is such a close call, there
22 would be less of a chance of deterrence obviously. The
23 Supreme Court of New Jersey, while finding that the
24 search in this case was not within Constitutional
25 bounds, did not say that the general actions of the

1 school vice principal were totally unreasonable, but
2 just that they were unreasonable under the
3 Constitution. In that situation, it is obviously much
4 harder to deter.

5 I think, though, that this case, at least in
6 New Jersey, has taught educators what the framework is
7 within which they must work. I think because of this
8 case they have learned something, regardless of whether
9 there is actually exclusion or not.

10 There is also the chance of bringing a tort
11 action or a 1983 action either in the state court or in
12 the federal court against a teacher or a school official
13 who unreasonably searches a student. These types of
14 things have been known not to be effective deterrents in
15 the law enforcement situation where law enforcement
16 officers are dealing primarily with criminals and people
17 who on the most part are found to have contraband.

18 However, in the situation of an unreasonable
19 search of a school student, I suggest that there would
20 be a much greater chance that a 1983 action could be
21 successful because the school student is simply going to
22 provide a much more sympathetic figure to put before a
23 jury when requesting damages. And even if damages
24 aren't actually returned in each case, the school
25 teachers and school officials' awareness of the

1 possibility of damages can have a detrimental -- a
2 deterrent effect.

3 Defendant or respondent has pointed out that
4 in Wood v. Strickland this Court limited the liability
5 of school officials from 1983 actions, and said that
6 they would not be liable for good faith violations, and
7 the respondent points out that this would limit the
8 detrimental -- the deterrent effect which these type of
9 actions can have.

10 We believe that these cases teach another
11 lesson. The Court has determined that because of the
12 realities of a school situation, because of the
13 necessities for making sure that there is discipline in
14 schools, that schools shall be treated somewhat
15 differently, that school teachers and administrators
16 shall not be treated precisely as law enforcement
17 officers.

18 Now, having limited the first party deterrent
19 effect that a 1983 action may have, we believe that it
20 would not be appropriate to try to enforce compliance
21 with the Constitution by means of a third party
22 deterrent, and in the school search situation, that is
23 what the exclusionary rule would really amount to,
24 because the school teacher is clearly one step removed
25 from the police officer to whom they turn over the

1 evidence, and that person is one step removed from the
2 prosecutor from who the evidence will be suppressed.

3 We believe that in an ideal situation a means
4 would clearly be developed to ensure that the
5 Constitution was complied with while enforcement of
6 criminal laws went on. This Court has noted that in the
7 criminal situation this wasn't possible and therefore a
8 choice must be made and a compromise must be reached,
9 and the exclusionary rule was set up as a choice, as a
10 compromise between ensuring full criminal prosecution
11 and ensuring the constitutional rights are highly
12 regarded by law enforcement officers and other state
13 officials.

14 We now are facing a situation where we don't
15 have to make a choice, where we don't have to accept a
16 compromise. We have a situation where the benefits of
17 the rule would be slight, but we do have other
18 deterrents. We can teach the school children that they
19 must comply with the criminal laws while also teaching
20 them that there are deterrents in place which will
21 ensure that their constitutional rights won't be
22 violated. We suggest this is the rule we should be
23 teaching these students.

24 I would reserve the rest of my time for
25 rebuttal.

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CHIEF JUSTICE BURGER: Ms. DeJulio?
ORAL ARGUMENT OF LOIS DE JULIO, ESQ.,
ON BEHALF OF THE RESONDENTS

MS. DE JULIO: Mr. Chief Justice, and may it please the Court.

This case arises in the factual setting of the public school system, but I would urge the Court not to let the context obscure the fact that the issues presented here are not ones of educational policy, but are rather ones of criminal law. The question is not whether or under what circumstances schools may regulate the conduct of their students. It is not whether this school may use certain types of evidence in its own internal disciplinary proceedings to form the basis for imposing school sanctions.

Rather, the question is whether a court of law may permit an individual to be convicted of a crime based upon evidence illegally seized from him by a government official.

QUESTION: Suppose, Ms. DeJulio, that all of these events that took place here took place not in the principal's office, but after the young lady got home, and it was her mother, not the school teacher.

MS. DE JULIO: Well, Your Honor --

QUESTION: And lay aside for a minute how the

1 police get the evidence, but do you think the Fourth
2 Amendment enters that setting?

3 MS. DE JULIO: Your Honor, the Fourth
4 Amendment has never been applied to actions by purely
5 private citizens, and certainly a parent would be acting
6 in a purely private capacity. However, courts have
7 distinguished between the teacher acting as a state
8 official and the parent acting in a parental role. At
9 one time, courts held that the teacher acted in loco
10 parentis, that is to say, instead of the parent, and
11 that doctrine may well have accorded with facts of the
12 educational system as it stood 200 years ago, when the
13 parent would hire a tutor or select a private school
14 that would carry out the parents' own educational
15 philosophy and disciplinary standards.

16 But in today's modern compulsory system of
17 education, the teacher serves a very different role.

18 QUESTION: Let me follow that now. The mother
19 is called to the school by the principal, and the whole
20 episode occurs just as it did here, except that the
21 mother orders the girl to open her purse. The same
22 answer?

23 MS. DE JULIO: I would submit, yes, that that
24 might very well be perfectly proper under the
25 Constitution, and if the parent gave the evidence to the

1 police, that may well also be proper.

2 QUESTION: Well, I just said that the parent
3 didn't give it to the police here. The principal of the
4 school then takes the evidence after the mother directs
5 the daughter to disclose it.

6 MS. DE JULIO: That may very well be a
7 perfectly proper course of events. In this case, it did
8 not occur in that way, and the issue of whether the
9 juvenile herself consented to the search by the
10 principal under New Jersey law was decided against the
11 state because it was not shown that she was aware she
12 had a right to refuse, which would be the test under New
13 Jersey state law for a consent search.

14 QUESTION: May I ask another hypothetical
15 question? Let's assume you have a patient in a state
16 hospital, and the hospital has a patient who has been
17 forbidden to smoke, and the nurse has reason to believe
18 that the particular patient is smoking, and searched his
19 or her purse. You would have the same situation? Would
20 you or would you not?

21 MS. DE JULIO: I think that conduct would most
22 likely be permissible.

23 QUESTION: Why?

24 MS. DE JULIO: Well, the test the New Jersey
25 Supreme Court set forth did not prevent teachers or

1 educators from conducting searches. It merely required
2 that they have some reasonable basis to do so.

3 QUESTION: Yes. Well, I am thinking about the
4 application of the exclusionary rule.

5 MS. DE JULIO: With regard to the application
6 of the exclusionary rule, we would submit that if an
7 improper search were conducted by a governmental
8 employee, and I would --

9 QUESTION: Well, let's assume that the nurse
10 had probable cause to believe that there were cigarettes
11 there and when the purse was opened found marijuana.

12 MS. DE JULIO: Well, if that were found to be
13 correct, if there were probable cause, then that would
14 be a constitutionally permissible search. However, if
15 not, it might be that the exclusionary rule would apply
16 in that circumstance, depending on whether the actions
17 of the nurse were considered --

18 QUESTION: If the court found the search was
19 not reasonable, the exclusionary rule would apply?

20 MS. DE JULIO: If the court found as a matter
21 of fact, and I don't know, because I am not aware of the
22 circumstances in state hospitals, whether the actions of
23 a state hospital employee would constitute governmental
24 action for Fourth Amendment purposes.

25 QUESTION: A state hospital would be similar

1 in that respect, wouldn't it, to a public school?

2 MS. DE JULIO: I could certainly see some very
3 definite similarities, and I would, without knowing
4 more, conclude that that may be the case.

5 QUESTION: So the hospital would be in the
6 same situation generally that the school is?

7 MS. DE JULIO: In that circumstance, it may
8 very well. Again, the circumstances that I am not aware
9 of might lead a court to conclude that it would not be
10 state action, but with regard to schools and educational
11 officials, the vast majority of state courts and lower
12 federal courts which have considered the question have
13 found that school authorities, at least in our modern
14 system of compulsory education --

15 QUESTION: Could you help me? What do you
16 think the predicate is for a legal search by a school
17 officer of a young lady's purse? Under New Jersey law,
18 I take it it is probable cause.

19 MS. DE JULIO: No, Your Honor. With the --

20 QUESTION: What do you think the Fourth
21 Amendment would be satisfied with?

22 MS. DE JULIO: Well, the standard that the New
23 Jersey court set forth was a reasonable ground standard,
24 which, by reading the context of the decision they
25 viewed to be a significantly less stringent standard

1 than probable cause.

2 QUESTION: So you think the Fourth Amendment
3 doesn't apply in full force in the school context?

4 MS. DE JULIO: Well, certainly the New Jersey
5 Supreme Court did not think so.

6 QUESTION: I am asking you what you think.

7 MS. DE JULIO: We argued below that the
8 standard of probable cause should be applied.

9 QUESTION: And you still are submitting that?

10 MS. DE JULIO: Well, Your Honor, that issue
11 was not before the Court because the --

12 QUESTION: I am asking you what you think the
13 standard is.

14 MS. DE JULIO: Well, certainly when the search
15 at issue is a personal search, and by that I mean a
16 search of a --

17 QUESTION: Well, a search of what is involved
18 here, search of a purse.

19 MS. DE JULIO: Of a purse, of a pocket. I
20 would submit, and the New Jersey Supreme Court did
21 indicate that its own standard, as the search became
22 more intrusive, the level of reasonableness would
23 closely approach probable cause, that certainly that --

24 QUESTION: Why would you dispense with the
25 warrant requirement?

1 MS. DE JULIO: Well, the requirement of a
2 warrant presents certain difficulties for the school
3 authorities.

4 QUESTION: So the Fourth Amendment rules
5 really don't apply in their full force in the school
6 context?

7 MS. DE JULIO: That has been the prevailing
8 decisions by most courts which have considered it.

9 QUESTION: And you are comfortable with that?

10 MS. DE JULIO: I would certainly be
11 comfortable with a probable cause standard even in the
12 absence of a warrant.

13 QUESTION: Without a warrant. Search without
14 a warrant.

15 MS. DE JULIO: But I think that the
16 circumstances may well devolve into the exigent
17 circumstances exception in most cases because of the
18 nature of the school environment. The ability of the
19 administrator --

20 QUESTION: Well, if there are exigent
21 circumstances, there is no violation of the Fourth
22 Amendment.

23 MS. DE JULIO: That is correct, Your Honor.

24 QUESTION: And no ground for excluding the
25 evidence.

1 MS. DE JULIO: And I think that is why the New
2 Jersey court and many other state courts found that the
3 warrant requirement would be particularly difficult for
4 schcols to comply with because, as my adversary noted,
5 schools are not primarily involved in investigating
6 criminal conduct.

7 QUESTION: Well, they could hardly get a
8 warrant anyway, could they?

9 MS. DE JULIO: It would be difficult. They
10 would have to go --

11 QUESTION: Difficult? I don't know how they
12 could even get a warrant. They aren't law enforcement
13 officials, are they?

14 MS. DE JULIO: It might present very difficult
15 procedural problems.

16 QUESTION: Ms. DeJulio, are you suggesting
17 that the presence of exigent circumstances dispenses
18 with the need for probable cause as well as the need for
19 a warrant?

20 MS. DE JULIO: No, Your Honor. In our
21 position before the New Jersey State Supreme Court, we
22 argued that probable cause should be the required test
23 when a full search was being conducted. We obviously
24 distinguish between the less intrusive search, such as
25 the frisk for a weapon, which might arise in the school

1 setting because obviously the police would only have to
2 meet a reasonable suspicion test in that circumstance,
3 and we conceded that if a school authority had
4 reasonable suspicion to believe that a student was armed
5 and dangerous, that the lesser standard would be
6 justified in that circumstance as well.

7 QUESTION: Do you think a Terry standard would
8 be enough then?

9 MS. DE JULIO: Well, certainly in a weapons
10 situation if we hold the police to that standard I think
11 it would be difficult to argue that we should not allow
12 educators to act in that circumstance on the basis of
13 reasonable suspicion or reasonable grounds, but again,
14 the New Jersey Supreme Court determined that the
15 reasonable grounds was the standard that they would
16 adopt for all school searches, regardless of the purpose
17 or the nature of the substance being searched for, with
18 the caveat that as the search became more intrusive, the
19 reasonable grounds would more closely approach probable
20 cause.

21 QUESTION: Do you agree that issue isn't
22 before us?

23 MS. DE JULIO: Your Honor, it is not before
24 this Court as I understand it because the New Jersey
25 Supreme Court found the search of the juvenile to be

1 unreasonable. Therefore we were not in a position to
2 petition, and the state did not take issue, as I
3 understand it, with the nature of the standard which the
4 New Jersey Supreme Court adopted.

5 QUESTION: So you think as it comes to us we
6 must accept the notion that there was no -- not even
7 reasonable suspicion or reasonable grounds.

8 MS. DE JULIO: I think the facts of the case
9 do support the conclusion that there was no reasonable
10 basis for the search at the outset. Moreover, the New
11 Jersey Supreme Court made the further finding that even
12 if the initial opening of the purse had been reasonable,
13 the scope of the search enlarged far beyond the
14 reasonableness that would have justified the opening of
15 the purse.

16 The principal testified that he opened the
17 purse looking for tobacco cigarettes, and that he saw a
18 package of Marlboro cigarettes sitting right on top. At
19 that point, he had done all that one could argue would
20 be reasonable by any stretch of the imagination, but he
21 then proceeded to remove the cigarettes, observe the
22 rolling papers, which he then felt gave him a basis to
23 go further, to open up zippered compartments, to read
24 personal papers which the student had.

25 QUESTION: Well, when he found the Marlboro

1 cigarettes, he had more evidence towards probable cause
2 than he did before he found them, because she had said,
3 I don't smoke, and that shows that she lied as to saying
4 that she didn't smoke, and therefore supports an
5 inference that she lied in her other denials.

6 MS. DE JULIO: Well, Your Honor, I think it is
7 a close case, but I think that we have to keep in mind
8 that in this school, unlike many others, smoking was not
9 per se forbidden. The school permitted students to
10 smoke in certain designated areas, so that many students
11 would be lawfully carrying cigarettes in their purses or
12 pockets. So that the search for cigarettes really was
13 not proof positive either that the juvenile had been
14 smoking in the girls' room, which was not a specially
15 designated area.

16 QUESTION: No, but it was proof positive that
17 she had lied, or a very strong inference that she had
18 lied when she said she didn't smoke.

19 MS. DE JULIO: Your Honor, I think it may have
20 been some evidence, but I don't think it was conclusive
21 in that the fact that she was carrying cigarettes did
22 not prove that she herself smoked.

23 QUESTION: No, but I mean, you don't need a
24 whole lot more than that, I don't think.

25 MS. DE JULIO: Well, as I would be happy to

1 concede, I think that it is a close case, and that the
2 facts would support, however, the conclusion that the
3 New Jersey Supreme Court made.

4 QUESTION: Well, the only -- as you have
5 suggested yourself, there is only one question here, the
6 application of the exclusionary rule.

7 MS. DE JULIO: Of the exclusionary rule.

8 QUESTION: Which I suppose assumes that there
9 has been a violation.

10 MS. DE JULIO: Yes, Your Honor, and certainly
11 the state --

12 QUESTION: And that even so, the evidence
13 should not be excluded.

14 MS. DE JULIO: And we would submit that that
15 -- the past decisions of this Court, without exception,
16 when the state is attempting to utilize the fruits of
17 its illegal conduct on its direct case in chief in a
18 criminal matter, that the exclusionary rule must be
19 applied. While, as my adversary notes, the more recent
20 decisions of this Court have indicated that the
21 exclusionary rule is not constitutionally mandated in
22 every circumstance where Fourth Amendment violation
23 occurs, those cases have not in any way affected the
24 core deterrent function of the rule, which is to prevent
25 the government from profiting from the fruits of its own

1 illegal conduct, to impose a criminal sanction upon the
2 victim of the search.

3 This case arises from a criminal prosecution
4 in which the state was attempting to use the evidence to
5 prove guilt the result of which would be the imposition
6 of the criminal sanction upon the victim of the search.

7 QUESTION: When you use the term "criminal,
8 unlawful conduct," you are speaking of the teacher's
9 conduct in opening the purse, are you?

10 MS. DE JULIO: Yes, Your Honor. I would
11 suggest that is the government's action in opening the
12 purse, and that in that capacity the teacher acted as
13 the government.

14 QUESTION: But you said that that is perfectly
15 valid for the teacher to do that in terms of dealing
16 with school discipline.

17 MS. DE JULIO: It would be perfectly valid if
18 the school teacher had some reasonable grounds to
19 believe that the student was violating a school
20 regulation or --

21 QUESTION: Well, I thought you had conceded
22 that before.

23 MS. DE JULIO: No, Your Honor, we did not
24 concede that in the facts of this case. The student had
25 violated a school rule. There is no question about

1 that. She was observed by a teacher smoking in a
2 restricted area, an area where it was not permissible to
3 be smoking, but that fact would be, I think, analogous
4 to a situation where a teacher may have found two
5 students fighting in a hallway. Certainly that is a
6 breach of school rules as well as a criminal violation.

7 QUESTION: So you don't say at all or concede
8 at all that a school official may search a purse just as
9 a routine matter without reasonable grounds and use that
10 as a matter of school discipline?

11 MS. DE JULIO: Whether the evidence that was
12 found --

13 QUESTION: Without ever -- and with no
14 intention of ever presenting it in a criminal
15 prosecution.

16 MS. DE JULIO: I don't believe that the
17 intention of the searcher should govern the outcome.
18 The Fourth Amendment protects against intrusions into
19 personal privacy. The intrusion is equally invasive
20 regardless of the intent of the individual searching,
21 whether it be for some innocuous substance such as
22 bubble gum in a school context or whether it be for a
23 dangerous object, such as a weapon. We permit the
24 intrusion --

25 QUESTION: Well, I would think then on the

1 facts of this case if you are right that there was no
2 reasonable grounds to search the purse that you would
3 object to the use of the fruits of that search to impose
4 any kind of discipline on this person.

5 MS. DE JULIO: Your Honor, that argument could
6 be made, and in fact --

7 QUESTION: Well, how about -- what is your
8 position on that?

9 MS. DE JULIO: This case came out of a
10 criminal proceeding.

11 QUESTION: I know it did. I know it did.

12 MS. DE JULIO: The decision would be with
13 regard to a school disciplinary proceeding. The law is
14 unclear. There is no law --

15 QUESTION: Well, why wouldn't the answer be
16 the same? If the school officer has violated the
17 constitutional rights of the student, why would the
18 evidence be usable against him?

19 MS. DE JULIO: The more recent decisions of
20 this Court have distinguished between the types of
21 proceedings in which the exclusionary rule would be
22 applied. I could certainly make very substantial
23 argument that a school disciplinary proceeding might
24 well be the type of proceeding to which we would want to
25 apply the exclusionary rule.

1 However, I think that we recognize that while
2 people may suffer substantial detriments in civil cases
3 in other settings, we have certain very strict rules
4 that we apply to criminal prosecutions because we
5 recognize that the consequences there are even more
6 serious than might be the case in a comparable civil law
7 setting.

8 Certainly if this matter had come up on the
9 appeal from the ruling of the chancery court in this
10 matter that the evidence could not have been utilized to
11 impose a disciplinary sanction, it would be a very
12 different case, and I think the arguments that would be
13 made on both sides would be very different. That was
14 not the case here, and I did not nor can I at this point
15 definitively make the arguments that should be made on
16 both sides of that question.

17 I do feel that perhaps the briefs filed by the
18 amicus curiae in this case, the school boards
19 associations, really address arguments that ought to be
20 made at some point in an appropriate appeal where the
21 issue was whether the illegally seized evidence could be
22 utilized in a school disciplinary proceeding, but I
23 would state without exception that when we are dealing
24 with a criminal law proceeding, the exclusionary rule
25 must be applied when a state seeks to introduce fruits

1 of an illegal search into its direct case in chief.

2 QUESTION: Ms. DeJulio, may I ask you a
3 somewhat different type question? I am sure you know
4 that many states conduct rather intensive educational
5 programs for police officers to make sure that they know
6 their duty and the basic legal principles applicable to
7 the performance of those duties. Had New Jersey
8 instituted any such programs for the education of its
9 teachers?

10 MS. DE JULIO: Your Honor, I was called by the
11 New Jersey Department of Education subsequent to the
12 decision in the state court, and they indicated to me
13 that they were interested in making that kind of
14 training available, but then the petition for certiorari
15 was filed, and I believe the matter has been held in
16 abeyance pending the outcome of the matter in this
17 Court.

18 QUESTION: How many public school teachers are
19 there in New Jersey?

20 MS. DE JULIO: I would not have any estimate.
21 I couldn't begin to tell you.

22 QUESTION: Do you have any idea how much
23 instruction New Jersey gives its police officers?

24 MS. DE JULIO: Your Honor, I don't know. I
25 would suggest, however, that the test which was involved

1 in this case is a very simple one. Reasonable ground is
2 a very flexible, very easy concept to understand, and I
3 think that in dealing with teachers and school
4 authorities, we are by definition dealing with a very
5 educated, highly motivated group of people.

6 QUESTION: But we have exclusionary rule cases
7 at every term of this Court, and I am told by law
8 enforcement officers that every time we hand down a new
9 decision, that requires a new briefing of the police.

10 MS. DE JULIO: Well, certainly, Your Honor --

11 QUESTION: Is it your idea that should be done
12 in the public school system?

13 MS. DE JULIO: I think that public school
14 teachers are already on a continuing basis being made
15 aware of a variety of legal concepts that do impact upon
16 education. We live in a modern society, with many, many
17 laws, and certainly schools are the subject of much
18 litigation and many statutes and many regulations.

19 QUESTION: And this also would have to be done
20 in the hospitals?

21 MS. DE JULIO: Well, Your Honor, as I
22 indicated, I think that might be the case if it were
23 found that the action of a state hospital or a state
24 institution rose to the level of government action for
25 Fourth Amendment purposes. Also, I think that it is

1 fair to say that when you are dealing with a complicated
2 educational system, the continuing education of teachers
3 in all aspects is something that is rather routine.
4 This could be very easily incorporated into that kind of
5 ongoing training that teachers are getting in their
6 academic fields and other related areas.

7 Perhaps ironically, many teachers themselves
8 are responsible for teaching their students
9 constitutional principles. As a history teacher, I was
10 required to teach constitutional law to my students. So
11 I think we are dealing with a core of people and a core
12 of expertise that is more than adequate to deal with
13 whatever demands the legal standard may require.

14 QUESTION: Ms. DeJulio, when the principal saw
15 the pocketbook and knew the facts around it, what then
16 could he do legally in your mind? How much?

17 MS. DE JULIO: I believe that when he -- he
18 should not have opened the pocketbook. I believe that
19 the search of the pocketbook was independent of --

20 QUESTION: What could he have done?

21 MS. DE JULIO: I think he could have imposed a
22 sanction upon the student based upon the testimony of
23 the teacher who observed her smoking a cigarette in a
24 non-permitted area.

25 QUESTION: And that is it?

1 MS. DE JULIO: And that would have been the
2 extent of it. I think we are not dealing with a
3 possessory offense, and the search of her purse would
4 have been a fishing expedition.

5 QUESTION: Ms. DeJulic, you have private
6 secondary schools in New Jersey, don't you?

7 MS. DE JULIO: Yes, Your Honor.

8 QUESTION: Suppose the same facts here took
9 place in a private school, and instead of being a public
10 school principal it was a headmaster or headmistress.
11 Different case?

12 MS. DE JULIO: That may very well present a
13 different case, because the Fourth Amendment has been
14 held not to apply to private citizens such as cases
15 involving employers searching employees' desk drawers
16 and it may be that a private school teacher, since
17 private schools are different, and are perhaps not
18 subject to the same regulations and standards, and are
19 not an arm of the government --

20 QUESTION: So if a youngster wants to get into
21 drugs, he had better stay in the public school side?

22 (General laughter.)

23 MS. DE JULIO: Well, Your Honor, I think that
24 that is very much oversimplifying, and I think it is
25 ignoring the fact that the rule imposed by the New

1 Jersey Supreme Court would not prevent a teacher from
2 conducting a search if he had reasonable grounds to
3 believe that a student had drugs in a purse or a pocket,
4 and I think that the cases are -- the reported cases are
5 legion where searches were conducted under a reasonable
6 grounds or reasonable suspicion test in various states,
7 and the teachers were upheld because they did have some
8 reason to believe that the student either possessed
9 drugs or some other substance which was dangerous to
10 them

11 The test that the New Jersey Supreme Court
12 developed was one which took into consideration the
13 special problems of educators while at the same time
14 recognizing that we do have to protect the rights of
15 students and their rights to personal privacy. The
16 state counts many costs of applying the exclusionary
17 rule to this type of circumstance, but it does not
18 consider the costs that society will suffer if we fail
19 to deter unreasonable searches of students.

20 For every search of a student that uncovers
21 evidence of wrongdoing, countless other students,
22 innocent students, will have had their privacy violated,
23 and some of those intrusions may not be minimal, but as
24 some of the reported cases show, may extend to such
25 extremes as strip searches. The emotional trauma which

1 this type of indignity will inflict upon impressionable
2 adolescents is a cost which society would have to pay
3 and which should not be ignored in any cost benefit
4 analysis.

5 QUESTION: What about the costs to the
6 children of other parents to whom this young lady is
7 selling drugs?

8 MS. DE JULIO: Your Honor, the --

9 QUESTION: That is a social cost of some
10 importance, isn't it?

11 MS. DE JULIO: It certainly is, and certainly
12 the question of dealing with drugs and other criminal
13 conduct in the schools has been the subject of many
14 studies which have suggested many remedial measures that
15 could be implemented to attack the problem. I think
16 that the use of searches is at best a bandaid approach
17 to a problem which I don't think any educator would view
18 as a remedial measure of first choice. Certainly the
19 drug problem has to be dealt with and should be dealt
20 with.

21 The question is whether we have to throw out
22 students' Fourth Amendment rights in order to do it.
23 The drug problem in society at large is certainly a
24 serious one, but we have not permitted the police to
25 throw away the Fourth Amendment. We have not completely

1 neutralized the Fourth Amendment protections through the
2 exclusionary rule in order to attack the problem of
3 drugs or weapons in our society.

4 The standard which was imposed below was a
5 compromise that recognized that when you are dealing
6 with children you perhaps have more responsibility than
7 when you are dealing with adults, and that may justify
8 the lesser standard that was imposed.

9 Also, the court specifically stated that there
10 were many factors which could be taken into
11 consideration, such as the age of the child, the child's
12 prior involvement in criminal activity or disruptive
13 behavior, the nature of the school's own problems, all
14 of which would be considered by a court in determining
15 whether a reasonable grounds existed for the search to
16 be conducted.

17 It is also important to recognize particularly
18 in the school context that the exclusionary rule does
19 deter conduct on the part of teachers, that while
20 teachers are not, like the police, directly involved in
21 the criminal justice process, they do have some
22 interest, substantial interest in seeing criminal
23 prosecutions against their students brought to a
24 successful conclusion, because they are responsible for
25 maintaining order in the school.

1 And the fact of a juvenile or criminal
2 conviction would certainly assist the school in dealing
3 with a dangerous or disruptive student. It might remove
4 the student entirely from the school by means of a
5 custodial disposition, or through some lesser sanction
6 might persuade the student to conform his conduct to
7 school norms.

8 So, I think that teachers would be deterred,
9 and do have some incentive to follow Fourth Amendment
10 guidelines that would ensure that no evidence would be
11 suppressed in a later court proceeding.

12 I think it is also important to recognize in
13 the school context that the exclusionary rule serves an
14 educative as well as a deterrent function. Suppression
15 of evidence is a demonstration to society as a whole and
16 to those who govern us that we value highly our
17 constitutional rights, and we attach serious
18 consequences to those who violate them. If we expect
19 schools to teach students to respect --

20 QUESTION: You said serious consequences on
21 those who violate them. The teacher, in your view,
22 violated the rights. Now, what is the serious
23 consequence on the teacher?

24 MS. DE JULIO: Your Honor, the serious
25 consequence will be the fact that the subsequent court

1 proceeding stemming from the illegal evidence that was
2 discovered will be dismissed.

3 QUESTION: Well, in the abstract, the teacher
4 perhaps couldn't care less.

5 MS. DE JULIO: Your Honor, I think in many
6 ways the teacher has more reason, because it is not in
7 the abstract. The teacher -- the student will be back
8 in the classroom.

9 QUESTION: But the teacher, unlike the
10 policeman, is not involved in a criminal justice project
11 or law enforcement.

12 MS. DE JULIO: But the teacher does have the
13 responsibility of maintaining order and discipline in
14 the school, and if a destructive student or a dangerous
15 student is not dealt with in the criminal justice
16 process, then the school may have to deal with him under
17 much more difficult circumstances.

18 I think that it is important that we show
19 students that the constitutional system of government is
20 more than a collection of empty promises, and that by
21 applying the exclusionary rule in these circumstances,
22 we protect the students' Fourth Amendment rights and
23 give an effective deterrent for their violation.

24 QUESTION: Do you think that the teacher
25 having suffered this penalty that you describe is

1 thereafter not going to be concerned about whether
2 students are using marijuana or other drugs?

3 MS. DE JULIO: I think that the teacher --

4 QUESTION: What is going to be the impact on
5 the teacher?

6 MS. DE JULIO: I think that the impact will be
7 that the teacher or school authority will learn to
8 conform their behavior to the reasonable grounds
9 standard which was adopted and which was the basis for
10 determining whether conduct is proper or improper under
11 the unreasonable search and seizure guarantees.

12 QUESTION: Then as Justice Powell, I think,
13 suggested, teachers had better take a course on the
14 Fourth Amendment.

15 MS. DE JULIO: I think that teachers will have
16 to learn something about the Fourth Amendment. I think
17 that they already have to learn a great deal about law
18 and how law impacts upon them and their role as
19 educators. I think this will be a relatively easy lesson
20 to teach, and certainly we are dealing with
21 professionals in the area of teaching and learning.

22 In conclusion, I would merely remind the Court
23 that we opposed the granting of certiorari and continue
24 to oppose it on the grounds that the decision below was
25 based upon independent and adequate state grounds. The

1 New Jersey Supreme Court we would argue based its
2 decision upon independent grounds which would not be
3 affected by any modification of the federal law which
4 was cited in the --

5 QUESTION: May I ask in that connection
6 whether apart from the federal cases, does New Jersey
7 have its own exclusionary rule?

8 MS. DE JULIO: Your Honor, we have a provision
9 in our state constitution which, though worded very
10 similarly to the federal provision, has been construed
11 by the New Jersey Supreme Court on many occasions to
12 provide broader protections.

13 QUESTION: That is not my question. My
14 question is whether New Jersey has an exclusionary
15 rule. I know you have argued they have a broader
16 protection of Fourth Amendment. Do they have an
17 independent exclusionary rule?

18 MS. DE JULIO: I do not believe that they do,
19 but I do believe that in this case they determined that
20 the exclusionary rule should be applied based on their
21 state law proceedings and on provisions of the state
22 constitution.

23 CHIEF JUSTICE BURGER: Do you have anything
24 further, Mr. Nodes?

25 ORAL ARGUMENT BY ALLAN J. NODES, FSQ.,

1 ON BEHALF OF THE PETITIONER - REBUTTAL

2 MR. NODES: Yes, Mr. Chief Justice. Very
3 briefly, in regards to the question that was asked by
4 Justice Powell concerning police training, I believe
5 that the general rule in New Jersey is that an attempt
6 is made to train police officers at least twice a year,
7 and they are given updated training each time a major
8 new constitutional decision comes down which impacts on
9 the Fourth or Fifth Amendment.

10 QUESTION: How long has that been going on, if
11 you know, this kind of police training?

12 MR. NODES: I am aware of it for about the
13 last five or six years. I am just not aware of it
14 earlier than that, Your Honor.

15 QUESTION: Is that for municipal as well as
16 state police?

17 MR. NODES: Yes, there is a program. I do not
18 -- cannot speak to the frequency for each municipality,
19 but the municipal police are included in that program.

20 After this decision in State in the Interest
21 of T.L.C. came down from the New Jersey Supreme Court,
22 there were inquiries from school boards concerning what
23 they were allowed to do, and these inquiries have
24 continued. I don't believe that many of these inquiries
25 have related to what can we do in order to ensure that

1 you, the Attorney General's office, can get
2 prosecutions. They simply want to know that they are
3 legally entitled to do. Questions have always been
4 asked in those terms. Legally, what can we do to keep
5 the schools safe? I believe the interest is much more,
6 what can we do to actually follow the law and to ensure
7 that we won't be subject to civil liability later on.

8 QUESTION: Do you think if there were no
9 exclusionary rule they would lose interest in knowing
10 what the law was?

11 MR. NODES: I don't believe so, no.

12 QUESTION: So they wouldn't have this problem
13 of trying to find out what the Fourth Amendment means
14 anyway, I guess.

15 MR. NODES: Well, I think it would come up in
16 other contexts. I think it would come up in the context
17 such the Wood v. Strickland context. It would later
18 have to be determined in a case like that.

19 QUESTION: So the outcome of this case really
20 won't affect the teachers' need for or desire for
21 education about the Fourth Amendment.

22 MR. NODES: That's correct. We don't believe
23 the exclusionary rule will do that.

24 QUESTION: If you wanted -- if you only raised
25 the single question about the exclusionary rule, and if

1 you wanted to argue about the Fourth Amendment, you
2 should have come up here with another question. You
3 seem to -- You come here on the assumption that there
4 has been a violation of the Fourth Amendment.

5 MR. NODES: We didn't contest the
6 constitutional violation. That is correct. We didn't
7 contest it because we believe that the Court never
8 needed to reach that, because the exclusionary rule did
9 not automatically have to be applied in any event.

10 QUESTION: Well, part of your argument is that
11 the teachers would like to know what the Fourth
12 Amendment means, because you would expect that they
13 would obey it then.

14 MR. NODES: Yes, Your Honor.

15 QUESTION: And there wouldn't be the same
16 temptation to disobey it that there is in law
17 enforcement?

18 MR. NODES: I don't know if I understand the
19 question, Your Honor.

20 QUESTION: Well, the exclusionary rule rests
21 on, at least a lot of people think so, not everybody, on
22 its deterrent effect, and you must exclude the evidence
23 to deter police conduct that is violative of the -- it
24 isn't enough for them to know what the Fourth Amendment
25 means. You must also exclude the evidence.

1 MR. NODES: Yes, or provide another deterrent,
2 so you have to teach people -- yes, people have to know
3 what the Fourth Amendment says, and then there has to be
4 a deterrent to their violating and doing what they know
5 is wrong.

6 QUESTION: Well, actually, in New Jersey is it
7 not just the Fourth Amendment, since the protections of
8 the counterpart of the Fourth Amendment in the state
9 constitution apparently broader than we have said they
10 were under the Fourth Amendment.

11 MR. NODES: In many cases --

12 QUESTION: I guess your teachers have to know
13 what the state constitution guarantees are, don't they?

14 MR. NODES: I believe under this case that --
15 although in some cases the New Jersey Supreme Court has
16 given broader protections --

17 QUESTION: In the consent area.

18 MR. NODES: I beg your pardon?

19 QUESTION: In the consent area.

20 MR. NODES: Yes, in the consent area. In
21 general, the opinions of the United States Supreme Court
22 are followed in New Jersey.

23 CHIEF JUSTICE BURGER: Thank you, counsel.
24 The case is submitted.

25 (Whereupon, at 1:45 o'clock p.m., the case in

1 the above-entitled matter was submitted.)

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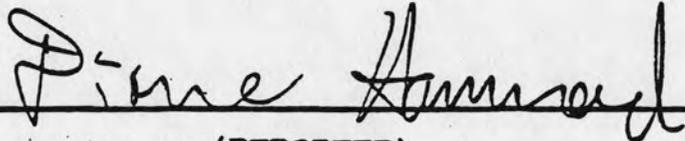
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#83-712-NEW JERSEY, Petitioner v. T. L. O.

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