

Lesson 8

Search and Seizure in the School

Middle and High School Level

Note

The lawyer-teacher partners should also consider whether or not the school district or school where the presentation is being made has its own drug use (or abuse) policy. If so, the lawyer should be provided with a copy beforehand and part of the discussion during class should consider the relationship of the pertinent policies to the case study situation.

It is suggested that the case study (pages 49 and 50) be photocopied and handed out to all students prior to the class presentation.

THE FOURTH AMENDMENT AND THE EXCLUSIONARY RULE

The Fourth Amendment protects citizens against “unreasonable searches and seizures” by the government. It reads as follows:

“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 on probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.”

The Fourth Amendment does not say what should happen if the police violate the amendment. To put “teeth into the amendment,” the U.S. Supreme Court adopted the exclusionary rule. This rule holds that any evidence illegally seized by law enforcement officials cannot be used in court against the accused. It also applies to evidence obtained from illegal questioning of the accused.

THE CASE OF A PURSE SEARCH

Ms. Cohen, a high school teacher found two students holding lit cigarettes. Since this violated school rules, Cohen took the girls to the principal’s office. When the principal asked the girls whether they had been smoking, one student, T.L.O., denied it and claimed that she did not smoke at all.

The principal then asked for her purse, which she handed to him. When he opened it, he saw cigarettes and a pack of rolling papers. T.L.O. denied that these belonged to her. However, on the basis of experience, the principal knew that rolling papers often indicated marijuana. When he looked further into the purse, the principal found marijuana, drug paraphernalia, \$40.00 in one dollar bills and written documentation of T.L.O.'s sale of marijuana to other students.

DISCUSSION QUESTIONS

1. Should the exclusionary rule apply to searches by school officials of students in high school? Why or why not?
2. If the exclusionary rule applies, under what circumstances should a search be allowed? How much evidence should a school official have before conducting such a search? Should "probable cause" be required? "Reasonable suspicion"?
3. Do you believe that the principal, in the example above, had the right to open T.L.O.'s purse? Could the marijuana and drug paraphernalia be used against her in court?
4. Should high school students have more rights, fewer rights, or the same rights as adults in the community? Explain your answer.

ADDITIONAL FACTS

Ms. Jones is a police liaison officer who has been assigned to the high school to work in cooperation with school officials. Ms. Jones was in the principal's office at the time of the initial questioning but did not participate in the questioning. After the principal found marijuana in T.L.O.'s purse, he asked Ms. Jones to search T.L.O. Ms. Jones conducted a pat down search of T.L.O. from her shoulders to her toes while T.L.O. was made to stand against the wall with her hands up and legs spread apart. The principal and Ms. Jones then conducted a brief interview of T.L.O.

DISCUSSION QUESTIONS

1. Did the police liaison officer have a right to conduct the pat down search?
2. If the police liaison officer had found a marijuana cigarette, could it be used against T.L.O. in court? Why or why not?

THE LAW

Reasonableness standard held to be proper standard for determining legality of searches conducted by public school officials.

In an opinion by White, J., in which Burger, Ch. J., and Powell, Rehnquist, and O'Connor, JJ., joined, and in which Brennan, Marshall, and Stevens, JJ., joined as to point one below, the court held:

1. that the Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials;
2. that school officials need not obtain a warrant before searching a student who is under their authority;
3. that school officials need not strictly adhere to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law, and that the legality of their search of a student should depend simply on the reasonableness, under all the circumstances, of the search, and
4. that the search in this case was not unreasonable under the Fourth Amendment.

CASE SUMMARY

A teacher at a New Jersey high school, upon discovering respondent, then a 14-year-old freshman, and her companion smoking cigarettes in a school lavatory in violation of a school rule, took them to the Principal's office, where they met with the Assistant Vice Principal. When respondent, in response to the Assistant Vice Principal's questioning, denied that she had been smoking and claimed that she did not smoke at all, the Assistant Vice Principal demanded to see her purse. Upon opening the purse, he found a pack of cigarettes and also noticed a package of rolling papers that are commonly associated with the use of marijuana. He then proceeded to search the purse thoroughly and found some marijuana, a pipe, plastic bags, a fairly substantial amount of money and two letters that implicated her in marijuana dealing. Thereafter, the State brought delinquency charges against respondent in the Juvenile Court, which, after denying respondent's motion to suppress the evidence found in her purse, held that the Fourth Amendment applied to searches by school officials but that the search in question was a reasonable one, and adjudged respondent to be a delinquent. 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 the adjudication of delinquency and remanded on other grounds. The New Jersey Supreme Court reversed and ordered the suppression of the evidence found in respondent's purse, holding that the search of the purse was unreasonable.

CONCLUSIONS

1. The Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials and is not limited to searches carried out by law enforcement officers. Nor are school officials exempt from the Amendment's dictates by virtue of their authority over school children. 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 Fourth Amendment's strictures.

2. School children have legitimate expectations of privacy. They may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items by bringing them onto school grounds. But striking the balance between school children's legitimate expectations of privacy and the schools' equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject. Thus, school officials need not obtain a warrant before searching a student who is under their authority. Moreover, school officials need not be held subject to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all circumstances, of the search. Determining the reasonableness of any search involves a determination of whether the search was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Under ordinary circumstances the search of a student by a school official will be justified at its 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. And such a search will be permissible in its scope when 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.

3. Under the above standard, the search in this case was not unreasonable for Fourth Amendment purposes. First, the initial search for cigarettes was reasonable. The report to the Assistant Vice Principal that respondent had been smoking warranted a reasonable suspicion that she had cigarettes in her purse, and thus the search was justified despite the fact that the cigarettes, if found, would constitute "mere evidence" of a violation of the no-smoking rule. Second, the discovery of the

rolling papers then gave rise to a reasonable suspicion that respondent was carrying marijuana as well as cigarettes in her purse, and this suspicion justified the further exploration that turned up more evidence of drug-related activities.

94 NJ 331, 463 A2d 934, reversed.