METAL DETECTORS IN PUBLIC SCHOOLS: A SUBTLE SACRIFICE OF PRIVACY INTERESTS

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The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. . . . They conferred, as against the Government, the right to be let alone — the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.[1]

I. INTRODUCTION

Before passing through the proverbial schoolhouse gate,[2] some American public school students will be compelled to submit to full bodily searches, regardless of whether they are individually suspected of committing a crime or violating a school rule. In many school districts,[3] particularly

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[1]Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

[2]Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969). Writing for the Court, Justice Fortas stated, "It can hardly be argued that . . . students . . . shed their constitutional rights . . . at the schoolhouse gate." *Id.* at 506. In terms of a student's constitutional right of freedom from unreasonable searches and seizures, however, the Court provided that states and their school officials have power to enforce disciplinary rules which affect the management of a school, albeit in a manner "consistent with fundamental constitutional safeguards." *Id.* at 507.

[3]The management of public schools is delegated to local boards of education which carry out their functions in the school district as established by the laws of the state. E. EDMUND REUTTER, JR., SCHOOLS AND THE LAW 16-17 (4th ed. 1980). These boards, which are essentially "quasi-municipal corporations," are territorially divided within a state and are created expressly to operate public schools. *Id.* at 18. School districts and boards of education are comparable to state agencies, in that they are controlled by the legislative bodies of the state. JOSEPH J. COBB, AN INTRODUCTION TO EDUCATIONAL LAW FOR ADMINISTRATORS AND TEACHERS 14-16 (1981). However, due to the fact that the public education system is within the domain of the state, not local government entities, school officials, such as board members, principals and teachers, are considered to be state agents. *Id.* at 14-15. In sum, American public education is a federal concern which is controlled

those in urban areas, metal detectors are deemed a viable solution to controlling crime in elementary and secondary schools.[4] At issue is whether the use of metal detectors violates an individual student's constitutional right to be free from an unreasonable search and seizure conducted by a state agent[5] pursuant to the Fourth Amendment.[6]

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by the state, yet operated by local entities. COBB, *supra*, at 3-5; *see also* Brown v. Board of Educ., 347 U.S. 483, 493 (1954) ("[E]ducation is perhaps the most important function of state and local governments.").

[4]A survey conducted by the National School Boards Association revealed that sixty-two percent of participating school districts had hired trained staffers in violence prevention, while fifteen percent had already installed metal detectors. SCHOOL LAW NEWS, Jan. 14, 1994, at 4. In particular, the installation of metal detectors has been reported in approximately forty-five urban public school systems across the country as a result of the apparent rise in criminal incidents involving juvenile students at school. Thomas Toch et al., *Violence in Schools: When Killers Come to Class*, U.S. NEWS & WORLD REPORT, Nov. 8, 1993, at 34-35.

The crime rate in the educational setting, essentially "a microcosm of larger society," has been attributed to the breakdown of traditional sociological conditions. Donald L. Beci, *School Violence: Protecting Our Children and the Fourth Amendment*, 41 CATH. U. L. REV. 817, 820 (1992) (noting that school violence is "just one symptom signaling the deterioration of family, community, and individual values in our culture"). Additionally, James W. Skillen observed that recent trends in public governance only serve to "crippl[e] traditional patterns of responsibility exercised by families, churches, voluntary organizations, and schools in ways that cannot easily be reconstituted or replicated by government." JAMES W. SKILLEN, THE SCHOOL-CHOICE CONTROVERSY: WHAT IS CONSTITUTIONAL? 73-74 (1993); *see also* R. Craig Wood & Mark D. Chestnutt, *Violence in U.S. Schools: The Problems and Some Responses*, 97 EDUC. L. REP. 619, 620 (1995) (positing that increased arrests in schools may actually contribute to juvenile violence since students will oftentimes carry weapons for self-defense).

[5]*See* Thomas C. Fischer, *From* Tinker *to* TLO*; Are Civil Rights for Students "Flunking" in School?* [sic], 22 J.L. & EDUC. 409, 421 (1993) (arguing that the guarantees of the Fourth Amendment should "protect all citizens (including students) from the unwarranted prying of public officials (including teachers, principals, and deans)").

[6]The Fourth Amendment to the United States Constitution provides:

> 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.

U.S. CONST. amend. IV.

The United States Supreme Court has clearly stated that a public school official who conducts a search of a student's person or private property must comply with the standard of reasonable suspicion.[7] This standard justifies the absence of individualized suspicion[8] in balancing a school district's interests against a student's constitutional rights, and specifically implicates the "right to be let alone."[9] The landmark case of *New Jersey v. T.L.O.*[10] firmly established that the Fourth Amendment applies to school teachers and administrators, and thus purports to protect students from all unreasonable searches and seizures.[11] Thereafter, however, a legacy, at times shocking, of in-school searches has developed under a penumbra of "special needs" principles.[12] While the Court has found suspicionless searches and seizures to be constitutional when used to promote general public safety in specific

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[7]New Jersey v. T.L.O., 469 U.S. 325 (1985) [hereinafter *T.L.O. III*]. The Court's ruling followed a "hotly disputed" five-to-four decision in which the Court ordered a reargument of the case. Frederick J. Griffith, III, New Jersey v. T.L.O. *and its Progeny: The Bill of Rights at School*, 5 COOLEY L. REV. 617, 618 (1988); *cf.* Vernonia Sch. Dist. 47J v. Acton, 115 S. Ct. 2386, 2394 (1995) (upholding random urinalysis tests of student athletes as an effective means of retaliation to increased disciplinary problems attributed to drug use). *T.L.O.* does not control the search and seizure policies followed in private or parochial schools, however, which will not be discussed herein. *T.L.O. III*, 469 U.S. at 327; *see also* Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925) (striking down a state law which compelled public school education for all children, and thereby, recognizing the "liberty of parents and guardians to direct the upbringing and education of children under their control").

[8]*See infra* note 55.

[9]Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

[10]469 U.S. 325 (1985).

[11]*Id.* at 336-37. Although the propriety of the exclusionary rule, as applied to evidence seized in a school search, was primarily at issue in *T.L.O.*, in an unusual case of judicial activism, the Court took this opportunity to fashion a broader constitutional basis for searches and seizures in public schools. *Id.* at 327-38. The dissent, comprised of Justices Brennan, Marshall and Stevens, was particularly resistant to the Court's highly conservative stance. Griffith, *supra* note 7, at 619-20 (commenting on the views of the dissenters regarding the majority's "deferential reverence for authority"). Accordingly, the trend of Fourth Amendment case law has been to minimize the individual citizen's interest in being free from unreasonable searches and seizures, an interest which then-Justice Rehnquist once described as "diaphanous." *See* Delaware v. Prouse, 440 U.S. 648, 666 (1979) (Rehnquist, J., dissenting).

[12]*See* Griffin v. Wisconsin, 483 U.S. 868, 873 (1987).

contexts,[13] the lack of individualized suspicion associated with metal detector searches of school children embodies a blatant disregard of fundamental constitutional safeguards.[14] A critical distinguishing factor of these suspicionless searches in schools, when compared, for example, to highway checkpoint searches,[15] is that in schools, regardless of any prior notice of the ensuing search, there is almost no capability on the part of the student "to avoid the search entirely, or at least to prepare for, and limit, the intrusion on her privacy."[16] Nonetheless, disciplinary practices continue to be upheld based on misplaced constitutional principles.[17]

This Comment will explore the application of the legal standard of reasonable suspicion as applied to metal detectors in public schools. Part II will focus on an overview of the Fourth Amendment, and thereafter, its application to public school students. Part III will address the legal standard of reasonable suspicion as set forth in *New Jersey v. T.L.O.*,[18] and Part IV will explore the impact of that standard. Then, Part V will address the constitutionality of using metal detectors to search students at school. Finally, it will be concluded that, in the interests of the overall safety and welfare of minors, constitutional principles are misconstrued systematically to furnish school boards and their agents with the freedom to circumvent those legal precepts.

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[13]*See* Michigan Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (upholding random highway sobriety checkpoint programs); Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602 (1989) (approving the testing of railroad employees for alcohol and drug use when the employee has been involved in numerous train accidents); National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989) (validating random urinalysis testing of federal customs officers who participate in drug-smuggling interdictions); United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (upholding vehicular checkpoints for the purpose of finding illegal aliens).

[14]*See* Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 507 (1969).

[15]*Sitz*, 496 U.S. at 444.

[16]*Id.* at 463 (Stevens, J., dissenting).

[17]Despite the fact that a law enforcement technique may ultimately serve a societal goal, this "has never been the touchstone of constitutional analysis." *Id.* at 459 (Brennan, J., dissenting).

[18]469 U.S. 325 (1985).

II. AN OVERVIEW OF THE FOURTH AMENDMENT

The Fourth Amendment to the United States Constitution provides for "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . ."[19] Although the original force behind the creation of this Amendment was the prohibition of federal governmental actions conducted pursuant to general warrants, subsequent case law has expanded the permissive scope of a lawful search and seizure.[20]

The first of the two clauses embodied in the Fourth Amendment, the Reasonableness Clause, sets forth the legal nature of all constitutional searches and seizures and, to that extent, guarantees an individual's security and privacy.[21] Secondly, the Warrant Clause requires a warrant to be

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[19]U.S. CONST. amend IV. The Fourth Amendment is applicable to the states through incorporation by the Due Process Clause of the Fourteenth Amendment, which prohibits any state from "depriv[ing] any person of life, liberty, or property, without due process of law. . . ." U.S. CONST. amend. XIV; *see also* Mapp v. Ohio, 367 U.S. 643, 655-57 (1961) (holding that evidence seized in violation of federal constitutional guarantees is inadmissible in a state criminal proceeding), *reh'g denied*, 368 U.S. 871 (1961).

[20]The words "searches" and "seizures" are terms of limitation. 1 WAYNE R. LAFAVE, SEARCHES AND SEIZURES: A TREATISE ON THE FOURTH AMENDMENT § 2.1, at 299 (2d ed. 1987 & Supp. 1995) [hereinafter 1 LAFAVE] (citing Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 356 (1974)). Generally, a "search" involves "'some exploratory investigation, or an invasion and quest, a looking for or seeking out . . . impl[ying] a prying into hidden places for that which is concealed and that the object searched for has been hidden or intentionally put out of the way.'" 1 LAFAVE § 2.1(a), at 301 (quoting C.J.S. *Searches and Seizures* § 1 (1952)). Typically, a search happens when "an expectation of privacy that society is prepared to consider reasonable is infringed." United States v. Jacobsen, 466 U.S. 109, 113 (1984); *see also* Skinner v. Railway Executives' Ass'n, 489 U.S. 602 (1989); National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989). The meaning of the word "seizure," however, is more fundamentally apparent than that of the word "search." 1 LAFAVE § 2.1(a), at 299. A "seizure" is the "'act of physically taking and removing tangible personal property. . . .'" *Id.* (quoting 68 AM. JUR. 2D *Searches and Seizures* § 8 (1973)). A "seizure" occurs when "there is some meaningful interference with an individual's possessory interests in that property." *Id.* at 299-300 (quoting *Jacobsen*, 466 U.S. at 113).

[21]The reasonableness of a search is determined "'by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.'" *Skinner*, 489 U.S. at 619 (quoting Delaware v. Prouse, 440 U.S. 648, 654 (1979)); *see aslo* Carroll v. United States, 267 U.S. 132, 147 (1925) ("The Fourth Amendment does not denounce all searches or seizures, but only such as are unreasonable."); Thomas K. Clancy, *The Role of Individualized Suspicion in Assessing the Reasonableness of Searches and Seizures*, 25 U. MEM. L. REV. 483, 526 (1995)

issued by a "neutral and detached"[22] judicial officer and premised upon probable cause.[23] It is through these complimentary clauses that the Fourth Amendment was intended to prevent unreasonable intrusions by government officials.[24] While there are many exceptions in which guarantees of individual privacy are not maintained,[25] the constitutional interests under the Fourth Amendment have been interpreted by the United States Supreme Court as a "reasonable expectation of privacy."[26]

(explaining that the Framers' impression of reasonableness necessarily incorporates "the search and seizure practices and the legal environment of the time, the contemporary litigation and public opinion decrying the lack of individualized suspicion as a fundamental defect in general warrants, and the historical relationship of the two clauses").

[22]Johnson v. United States, 333 U.S. 10, 14 (1948).

[23]The Supreme Court has stated that probable cause must be *particularized* with respect to the person to be searched. Ybarra v. Illinois, 444 U.S. 85, 91 (1979). In an earlier case, the Court described probable cause as a concept founded upon the standard of reasonableness, thereby incorporating "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." Brinegar v. United States, 338 U.S. 160, 175 (1949).

[24]The creation of a bill of rights to guarantee protection from arbitrary governmental actions was of critical significance at the time of the ratification debates of the Constitutional Convention in 1787. JOHN E. NOWAK, RONALD D. ROTUNDA & J. NELSON YOUNG, CONSTITUTIONAL LAW 376 (1978).

[25]*See, e.g.*, United States v. Ross, 456 U.S. 798, 823-24 (1982) (upholding warrantless search of automobile where a police officer had probable cause that contraband was being transported); Schneckloth v. Bustamonte, 412 U.S. 218, 248-49 (1973) (holding that when an individual, not in the state's custody, provides consent voluntarily prior to a search, the consent serves as a waiver of the limitations created by the Fourth Amendment); United States v. White, 401 U.S. 745, 754 (1971) (finding that electronic surveillance by government agents posed no violation of the defendant's right to privacy), *reh'g denied*, 402 U.S. 990 (1971). There are also instances in which "exigent circumstances," those in which probable cause exists, provide government officials with the ability to conduct warrantless searches. *See* Warden v. Hayden, 387 U.S. 294, 298-300 (1967) (ruling that warrantless entry into house for suspect was reasonable due to perceived likelihood of suspect's future dangerous conduct).

[26]Katz v. United States, 389 U.S. 347, 360 (1967) (Harlan, J., concurring); *see also* Minnesota v. Olson, 495 U.S. 91 (1990); O'Connor v. Ortega, 480 U.S. 709, 716 (1987); Hudson v. Palmer, 468 U.S. 517 (1984); United States v. Jacobsen, 466 U.S. 109 (1984).

Although warrantless searches are deemed *per se* unreasonable, the Court has carved out exceptional cases involving special governmental needs.[27] Pursuant to a balancing test, constitutional guarantees are not recognized "when 'special needs' beyond normal law enforcement . . . justify departures from the usual warrant and probable-cause requirements."[28] In certain situations, the Court has upheld searches initiated solely upon reasonable suspicion,[29] and, in so doing, has rendered constitutional restraints nearly impracticable.[30] Nonetheless, there are

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[27]The requirement of probable cause is notably "less stringent" in the context of administrative, or regulatory, searches, in which an individual's privacy interest is reduced in circumstances concerning public health and safety. George Knopp et al., *Warrantless Searches and Seizures*, 83 GEO. L.J. 692, 758-59 (1995). The Supreme Court in *Camara v. Municipal Court*, the leading case on administrative searches, held that such a search balances "the need to search against the invasion which the search entails." 387 U.S. 523, 536-37 (1967). The Court reviewed three factors in its analysis: (1) whether there existed a special danger necessitating extreme attention; (2) whether a standard lesser than probable cause could lead to "acceptable results"; and (3) whether the search involved a "relatively limited invasion" of the individual's privacy. *Id.* at 537; *cf.* Carroll v. United States, 267 U.S. 132, 141 (1925) (stating that the validation of otherwise unlawful searches which uncover contraband articles "'may suit the purposes of despotic power; but . . . cannot abide the pure atmosphere of political liberty and personal freedom'") (quoting Boyd v. United States, 116 U.S. 616, 632 (1886)).

[28]Griffin v. Wisconsin, 483 U.S. 868, 873-74 (1987) (holding that operation of state probation system presents "special needs" justifying departure from Fourth Amendment restraints). *But see* New Jersey v. T.L.O., 469 U.S. 325, 351 (1985) (Blackmun, J., concurring) (stating that a court should only apply this balancing of interests test when "special needs" are those involving "exceptional circumstances"). *See generally* Stephen J. Schulhofer, *On the Fourth Amendment Rights of the Law-Abiding Public*, 1989 SUP. CT. REV. 87, 90-123 (analyzing the bases for the administrative search and the "special needs" search).

[29]Terry v. Ohio, 392 U.S. 1, 27 (1968) (finding a search and seizure to be valid where based upon a police officer's "specific reasonable inferences" of misconduct); *see also* United States v. Montoya de Hernandez, 473 U.S. 531, 541 (1985) (upholding bowel movement monitoring where a customs agent had reasonable suspicion that international border crosser was an alimentary canal smuggler); United States v. Hensley, 469 U.S. 221, 235 (1985) (finding a search valid where initiated as a result of a "wanted" flyer which was issued by the police department and based on reasonable suspicion). *But see Terry*, 392 U.S. at 37 (Douglas, J., dissenting) (arguing that "'probable cause' rings a bell of certainty that is not sounded by phrases such as 'reasonable suspicion'").

[30]*See* Akhil Reed Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757, 757 (1994) ("The Fourth Amendment today is an embarrassment. Much of what the Supreme Court has said for the last half century . . . is initially plausible but ultimately misguided.").

legislative[31] and judicial[32] remedies for cases in which a Fourth

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[31]42 U.S.C. § 1983 (1988). Section 1983 of the United States Code sets forth the basis of a civil action where there has been a deprivation of constitutional rights. *Id.* The provision states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Id.

A governmental entity can be liable under this provision if the deprivation of rights was caused by an institutionalized procedure or practice. Myron Schreck, *The Fourth Amendment in the Public Schools: Issues for the 1990s and Beyond*, 25 URB. LAW. 117, 120 (1993); *see also* Monell v. Department of Social Servs., 436 U.S. 658, 690 (1978) (holding that government entities are "persons" pursuant to § 1983 and are liable for constitutional deprivations caused by governmental practice). Accordingly, a school district is a state entity that can be liable under § 1983 for acts of deliberate indifference or gross negligence towards students at school. Schreck, *supra* at 120; *see* Leffall v. Dallas Indep. Sch. Dist., 28 F.3d 521, 527 (5th Cir. 1994) (providing no remedy for shooting death of a student after a school dance where there was no evidence of deliberate indifference by teachers toward the student's constitutional rights); Johnson v. Dallas Indep. Sch. Dist., 38 F.3d 198, 203 (5th Cir. 1994), *reh'g denied*, (finding no constitutional remedy under § 1983 for student who was killed as a result of a random criminal act by a trespasser on the school property).

The "special relationship" exception, however, provides that school officials have no duty to protect juveniles while in their temporary care during the school day. DeShaney v. Winnebago County Dep't of Social Servs., 489 U.S. 189, 200 (1989) (finding that the supervisory relationship between teacher and student embodies no constitutional "duty to protect"); *cf.* Genao v. Board of Educ., 888 F. Supp. 501, 504 (S.D.N.Y. 1995) (finding no assumption of duty by school officials to protect teacher in statement by officials, "You are in a good school").

[32]Weeks v. United States, 232 U.S. 383, 393 (1914) (espousing that unlawfully seized criminal evidence must be suppressed for being "of no value"). The exclusionary rule provides that private property, even though of a criminal nature, which is uncovered as a result of an unlawful search and seizure by officials, may not be introduced in a court of law as evidence of the accused's wrongdoing. *Id.* at 398; *see also* Mapp v. Ohio, 367 U.S. 643 (1961), *reh'g denied*, 368 U.S. 871 (1961). Accordingly, the *Weeks* Court opined that well-intentioned efforts of courts and government agents to punish the guilty must not yield to well-established constitutional principles. 232 U.S. at 393. *See generally* I.N.S. v. Lopez-Mendoza, 468 U.S. 1032 (1984); United States v. Janis, 428 U.S. 433 (1976); United States v. Calandra, 414 U.S. 338 (1974); *see also* Christine D'Elia, *The Exclusionary Rule: Who Does it Punish?*, 5 SETON HALL CONST. L.J. 563,

Amendment violation has occurred.

The privacy interest at stake will determine whether there has been an infringement of Fourth Amendment guarantees.[33] The Court has articulated that not every privacy expectation will be protected, but only those which are considered legitimate.[34] Such an assessment will depend upon the nature of the search insofar as the individual's legal relationship with the state is concerned.[35]

The Court has stated that "supervision" constitutes a "special need" justifying "a degree of impingement upon privacy."[36] In the context of the probation system, for example, the Court has found that, pursuant to a supervisory role, the warrantless search of a probationer's residence was reasonable in light of the "special needs" of the state to protect the general public from harm.[37] Analogously, this logic extends to the student-teacher relationship.

A. THE APPLICATION OF THE FOURTH AMENDMENT TO SCHOOLS

While the state's authority over minors exceeds its control over adults,[38] children maintain a federally protected privacy interest through the Fourth Amendment.[39] Despite that guarantee, the Supreme Court has

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597-600 (1995) (concluding that the exclusionary rule fails to deter unlawful searches and seizures).

[33]*See, e.g.*, Hudson v. Palmer, 468 U.S. 517, 525 (1984) (holding that the extent of a prisoner's privacy interests in his cell is determined by an objective standard based upon societal expectations).

[34]*Id.* at 527.

[35]*See* Griffin v. Wisconsin, 483 U.S. 868 (1987); Stanley v. Illinois, 405 U.S. 645 (1972).

[36]*Griffin*, 483 U.S. at 875.

[37]*Id.* at 877.

[38]Prince v. Massachusetts, 321 U.S. 158, 170 (1944) (distinguishing between the state's power over the conduct of minors, as compared to adults).

[39]This privacy right is one which can be understood in terms of other of constitutional rights to privacy and bodily integrity previously conferred to juveniles by the Supreme Court. *See, e.g.*, Carey v. Population Servs. Int'l, 431 U.S. 678 (1977) (right to obtain contraceptives); Planned Parenthood of Central Mont. v. Danforth, 428 U.S. 52 (1976) (right to obtain an abortion absent parental consent).

provided that school officials, unlike law enforcement officials,[40] are not subject to the procedural requirements of obtaining a warrant, nor need they demonstrate probable cause in order to justify the search of a minor's person or personal property.[41] School authorities have the power of control, restraint, and correction over students, a power which courts will disrupt in the event of a perceived abuse.[42] This wide discretion allows school administrators and teachers to enforce disciplinary rules regardless of the existence of any rule delineating applicable procedures for confronting disciplinary infractions.[43]

By holding that school officials are state agents, *New Jersey v. T.L.O.* established that teachers and administrators may conduct searches and seizures based upon their own personal beliefs that a violation occurred.[44] Writing for the majority, Justice White explained that requiring a warrant or probable cause in such circumstances would "unduly interfere with the

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[40]*See, e.g.*, In re Marrhonda G., 613 N.E.2d 568, 569 (N.Y. 1993) (finding police officer's search of a juvenile's bag pursuant to "plain touch" exception unjustified where officer could have obtained a warrant).

[41]New Jersey v. T.L.O., 469 U.S. 325 (1985). The Court did not determine whether a student has a privacy interest in "lockers, desks, or other school property provided for the storage of school supplies. . . ." *Id.* at 337 n.5. Theoretically, where the use of a locker, for example, is clearly conveyed to be nonexclusive as against school authorities, a student is given the opportunity to limit the potential for a privacy invasion by the property he chooses to place therein. 4 WAYNE R. LAFAVE, SEARCHES AND SEIZURES: A TREATISE ON THE FOURTH AMENDMENT § 10.11(d), at 177 (2d ed. 1987 & Supp. 1995) [hereinafter 4 LAFAVE]; *see, e.g.*, *In re Isaiah B.*, 500 N.W.2d 637 (Wis. 1993) (holding that a student has no privacy interest in the contents of his school locker).

The *T.L.O.* decision enhanced the ability of school officials to perform certain searches and seizures of a student's person or private property without having to comply with the procedural and substantive mandates of the Fourth Amendment, as law enforcement officials typically must. Jeffrey T. Sultanik, *A Case for Mandatory Urine Testing for Drugs in Public Schools*, 19 J.L. & EDUC. 387, 394 (1990). Consequently, many disciplinary methods implemented by school boards and state legislatures fall within a "questionable gray area" of constitutional permissibility. Beci, *supra* note 4, at 818.

[42]68 AM. JUR. 2D *Schools* § 252, at 531 (1993).

[43]*Id.* at 532 (citing Richards v. Thurston, 424 F.2d 1281, 1282 (1st Cir. 1970)).

[44]*T.L.O. III*, 469 U.S. at 343.

maintenance of the swift and informal disciplinary procedures needed in the schools."[45]

The broad test fashioned by the *T.L.O.* Court balances "the child's interest in privacy . . . [against] the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds."[46] A search will be constitutionally permissible under this test so long as it is "not excessively intrusive" in light of several considerations:[47] the particular school's internal policies;[48] the state's compulsory attendance statute;[49] and the age and sex of the student.[50] Based on a combination of

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[45]*Id.* at 340; *see also* Goss v. Lopez, 419 U.S. 565, 580 (1975) (finding that frequent disciplinary infractions sometimes compel "immediate, effective action").

[46]*T.L.O. III*, 469 U.S. at 339.

[47]*Id.* at 342.

[48]Significant implications have resulted from the internal gathering of evidence for student disciplinary actions. MARK G. YUDOF, ET AL., EDUCATIONAL POLICY AND THE LAW: CASES AND MATERIALS 230-39 (2d ed. 1982). Complexity in this process derives from the school's rules and regulations, the student's age, the nature of the alleged infraction, and the potentiality for the evidence to be used against a student in a criminal proceeding. *Id.* at 230-31. Despite the weight of these various factors, it is noteworthy that those individuals who establish and enforce school policies are not elected by citizens, nor are their decisions regulated by state legislatures. Griffith, *supra* note 7, at 628. Additionally, it is unlikely that the teacher or administrator carrying out disciplinary policies has had any legal training. *Id.* Thus, it seems highly specious to embody an individual's constitutional rights in a school rule, which is enforced by such "enormous unchecked authority." *Id.* at 628-29; *see also* Bilbrey v. Brown, 738 F.2d 1462, 1468-69 (9th Cir. 1984) (refusing to extend good faith immunity to school officials for unjustified searches, which included a strip search).

[49]Every state has a statute compelling attendance in public school between specified ages. *See, e.g.*, IND. CODE ANN. § 20-8.1-3-17 (1994) (ages of 7 and 16); MD. CODE ANN., EDUC. § 7-301(a) (1991 & Supp. 1992) (ages of 5 and 16); N.J. CODE ANN. § 18A:38-25 (1989) (ages of 6 and 16); TENN. CODE ANN. § 49-6-3001(c)(1) (1992) (ages of 7 and 17); *see also* Brown v. Board of Educ., 347 U.S. 483, 493 (1954) ("Compulsory school attendance laws . . . demonstrate our recognition of the importance of education to our democratic society.").

A state's power to compel attendance is founded upon the common law doctrine of *parens patriae*, which literally means "parent of the country" and refers to the traditional role of the state to act as a guardian of juveniles, or individuals under legal disability. BLACK'S LAW DICTIONARY 1114 (6th ed. 1990); *see also* Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

[50]*T.L.O. III*, 469 U.S. at 342.

the foregoing factors, evidence uncovered by a teacher or administrator may be introduced against a student in school disciplinary proceedings, as well as juvenile court.[51] Accordingly, blanket searches[52] can be valid under these criteria, but oftentimes represent aggressive efforts to improve the safety and welfare of students attending school.[53] Moreover, random searches,[54] which target selected students, are generally found to be reasonable independent of any requirement of individualized suspicion.[55]

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[51]There is a notable difference between school disciplinary proceedings and state criminal proceedings. H.C. HUDGINS, JR. & RICHARD S. VACCA, LAW AND EDUCATION: CONTEMPORARY ISSUES AND COURT DECISIONS 327-30 (3d ed. 1991). School officials are not required to observe the same standards of criminal justice as law enforcement officers or legal officers, although most of the same standards apply. *Id.* at 327. For example, a student must be given notice of the charges against her and of the right to a hearing. *Id.* However, courts are typically divided on issues of representative counsel, the calling of witnesses and the right to a transcript of the matter. *Id.* at 328-29. Moreover, a penalty imposed by a school official will be less harsh for the student than one exacted by a judge, albeit a student can be tried in both arenas because double jeopardy does not apply to school proceedings. *Id.* at 329.

[52]Blanket searches, which are not based upon any quantum of suspicion, involve numerous searches at one time and "'pos[e] a greater threat to liberty' than do suspicion-based ones, which 'affec[t] one person at a time.'" Vernonia Sch. Dist. 47J v. Acton, 115 S. Ct. 2386, 2397 (1995) (O'Connor, J. dissenting) (quoting Illinois v. Krull, 480 U.S. 340, 365 (1987) (O'Connor, J., dissenting)); *cf.* Carroll v. United States, 267 U.S. 132, 153-54 (1925) (reasoning that it would be "intolerable and unreasonable" to allow a state agent to stop and search every passing vehicle for contraband "and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search").

[53]*See* Perry Zirkel, *Another Search for Student Rights*, 75 PHI DELTA KAPPAN 729 (1994).

[54]Specifically, in the context of prison searches, random searches need not comply with an enunciated policy when initiated for the purpose of effective security. Hudson v. Palmer, 468 U.S. 517, 529 (1984).

[55]Individualized, or particularized, suspicion is directed at an individual, or individuals, specifically, not collectively. *See* Zirkel, *infra* note 55, at 729 (attributing the Court's disregard of individualized suspicion to conduct searches and seizures in public schools to society's "warlike view of alcohol, drugs, and violence in the schools"); Robert S. Johnson, *Metal Detectors in Public Schools: A Policy Perspective*, 80 EDUC. L. REP. 1, 1 (1993) (noting that schools officials "increasingly wonder whether [it is] legal and advisable for a public school district to utilize metal detectors to conduct searches of students for weapons . . . when the individuals searched have done nothing in particular to arouse suspicion that [they are] carrying weapons"). The Supreme Court has typically justified the absence of individualized suspicion in cases where the privacy interests impaired by the search were considered minimal. *See* Skinner v. Railway Labor

III. THE FEDERAL STANDARD OF REASONABLE SUSPICION

State and federal court decisions preceding the *T.L.O.* ruling relied on varying measures of reasonableness on a case by case basis to determine whether searches and seizures conducted by school officials were proper under the Fourth Amendment.[56] The United States Supreme Court felt compelled to set forth a lenient test[57] to appease what the Court perceived

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Executives' Ass'n, 489 U.S. 602, 624 (1989).

The holding in *Vernonia School District 47J v. Acton* derived from what the Court deemed to be a "major problem" with drug use. *Acton*, 115 S. Ct. 2386, 2388 (1995). In a dissenting opinion, however, Justice O'Connor criticized the validation of intrusive searches of student athletes, "an overwhelming majority of whom ha[d] given school officials no reason whatsoever to suspect they use[d] drugs at school." *Id.* at 2397 (O'Connor, J., dissenting). Searches which are premised upon individualized suspicion, the Justice noted, have the potential of giving the targeted suspect the power to "avoid such a search by not acting in an objectively suspicious way." *Id.* From this perspective, the student would have the ability to anticipate an in-school search, which could deter the occurrence of the underlying infraction. *Id.* at 2397-98 (O'Connor, J., dissenting); *see generally* Eugene C. Bjorklun, *School Locker Searches and the Fourth Amendment*, 92 EDUC. L. REP. 1065 (1994); Martin R. Gardner, *Student Privacy in the Wake of* T.L.O.*: An Appeal for an Individualized Suspicion Requirement for Valid Searches and Seizures in the Schools*, 22 GA. L. REV. 897 (1988); Jane M. Lavoie, New Jersey v. T.L.O. *and its Progeny: Misapplication of an Appropriate Standard*, 4 YALE L. & POL'Y REV. 141 (1985).

[56]*See, e.g.*, Tarter v. Raybuck, 742 F.2d 977, 984 (6th Cir. 1984) (upholding bodily search where school official had "reasonable cause" to believe that students were smoking and selling marijuana); Rone v. Daviess County Bd. of Educ., 655 S.W.2d 28, 30 (Ky. Ct. App. 1983) (finding strip search of student for drugs to be reasonable where there was no offensive touching); M. v. Board of Educ. Ball-Chatham Community Unit Sch. Dist. No. 5, 429 F. Supp. 288, 292 (S.D. Ill. 1977) (finding search, initiated by student tip, to be based on a standard of "reasonable cause to believe"); State v. McKinnon, 558 P.2d 781, 784 (Wash. 1977) (finding search reasonable where school official had "reasonable grounds" for suspicion of wrongdoing); State v. Young, 216 S.E.2d 586, 593 (Ga. 1975) (holding that search prompted by student's furtive gestures was within the Fourth Amendment). *But see* Horton v. Goose Creek Indep. Sch. Dist., 690 F.2d 470, 481-82 (5th Cir. 1982) (finding canine sniffing of students to implicate personal security and dignity to the extent that searches for drugs and alcohol could not be reasonable, especially where there was no individualized suspicion), *cert. denied*, 463 U.S. 1207 (1983); Doe v. Renfrow, 475 F. Supp. 1012, 1025 (N.D. Ind. 1979) (finding, in part, that strip search of student, initiated due to signals by drug-detecting dogs and after she had already emptied her pockets, was unreasonable), *reh'g denied*, 631 F.2d 91 (7th Cir. 1980).

[57]The Seventh Circuit referred to the *T.L.O.* test as a "flexible standard" which integrates legitimate privacy expectations that are "not monolithic." Cornfield by Lewis v. Consolidated High Sch. Dist. No. 230, 991 F.2d 1316, 1321 (7th Cir. 1993).

as surmounting incidents of crime committed by juvenile students on school grounds.[58] The Court took this opportunity in *New Jersey v. T.L.O.*[59] While the initial search carried out by the school official in *T.L.O.* was premised upon a relatively minor infraction of a disciplinary rule,[60] the factual circumstances that developed thereafter led to the imposition of serious criminal charges involving an illegal substance and drug dealing.[61] Since school officials are now afforded greater leeway under the Fourth Amendment to enforce disciplinary rules, it inheres that they actually have more legal support to initiate a search for evidence in violation of criminal laws.[62]

T.L.O., a fourteen-year-old freshman, denied an accusation that she had been smoking in a restricted area on the high school grounds.[63] Unconvinced, the assistant vice principal led T.L.O. into a private office where he opened her purse and looked into it without her consent.[64] As he

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[58]New Jersey v. T.L.O., 469 U.S. 325, 339 (1985) (noting that "drug use and violent crime in the schools have become major social problems").

[59]*Id.* at 327-28. The Court emphasized the need for school officials to be able to fashion policies in an *ad hoc* manner to foster and maintain a safe, educational climate. *Id.* at 342 n.8; *cf.* DeShaney v. Winnebago County Dep't of Social Servs., 489 U.S. 189, 200 (1989).

[60]In 1980, T.L.O. and another girl were accused by a teacher of smoking in one of the school lavatories at Piscataway High School, located in Middlesex County, New Jersey. *T.L.O. III*, 469 U.S. at 328. In the presence of the assistant vice principal, the other girl admitted to violating the school smoking policy, but T.L.O. denied any such wrongdoing. *Id.* Nonetheless, the assistant vice principal suspected T.L.O. of carrying cigarettes in her purse. *Id.*

[61]After removing a pack of cigarettes from T.L.O.'s purse, the assistant vice principal discovered marijuana and drug paraphernalia. *Id.* In addition, rolled-up dollar bills and a list of student names were located, revealing T.L.O.'s pattern of drug dealing among the student body. *Id.*

[62]Schreck, *supra* note 31, at 122 (positing that the current standard enhances ability to search for narcotics and weapons than, in fact, for cigarettes).

[63]*T.L.O. III*, 469 U.S. at 328. T.L.O. told the assistant vice principal that she had not been smoking on that occasion and that she did not smoke at all. *Id.*

[64]*Id.*

identified and removed a pack of cigarettes[65] from her purse, he discovered other items which he associated with drug use and immediately proceeded to examine the remainder of the contents therein.[66] As a result of subsequent searches, the assistant vice principal seized an illegal substance and other evidence implicating T.L.O. in drug-related activities.[67] Thereafter, the State of New Jersey instituted criminal proceedings against T.L.O. in Juvenile and Domestic Relations Court, where the school official's initial search for cigarettes was determined to have been based upon a "well-founded suspicion" that the student violated the school smoking policy.[68]

When the case reached the New Jersey Supreme Court, the court ordered the suppression of the seized evidence, finding that the basis for the subsequent searches of T.L.O.'s purse violated the standard of

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[65]As T.L.O. argued, the mere possession of cigarettes did not constitute contraband, as smoking was permitted in certain designated areas on the high school property. *Id.* at 346-47 n.12. Pursuant to this argument, therefore, the school official was not justified in removing the cigarettes at all from her purse. *Id.* Regarding the student's contentions as "hairsplitting argumentation," however, the Supreme Court validated the assistant vice principal's conduct. *Id.*

[66]When the assistant vice principal removed the pack of cigarettes, he identified rolling papers, which, "[i]n his experience," was an indication of drug use. *Id.* at 328.

[67]*Id.* The seized evidence was thereafter turned over to state law enforcement authorities, and a full confession was elicited from T.L.O. *Id.* at 328-29. As a result, T.L.O. received a three-day suspension from school for smoking cigarettes in a restricted area and a seven-day suspension for the possession of marijuana. State ex rel. T.L.O., 428 A.2d 1327, 1335 (N.J. Super. 1980) [hereinafter *T.L.O. I*]. The suspension for drug possession was quashed by a chancery court as being violative of the Fourth and Fourteenth Amendments. *Id.* Curiously enough, the Piscataway Board of Education did not appeal the decision of the chancery court. *T.L.O. III*, 469 U.S. at 329 n.1.

[68]The complaint against T.L.O. alleged the possession of a controlled dangerous substance with intent to distribute in violation of state criminal laws. *T.L.O. I*, 428 A.2d at 1329 (citing N.J. STAT. ANN. 24:21-19(a)(1); N.J. STAT. ANN. 24:21-20(a)(4)). T.L.O. moved to suppress the evidence, as well as her confession, which, she contended, was taken as a result of an unreasonable search and seizure. *Id.* at 1330. In denying her motion, the court would not give *res judicata* or collateral estoppel effect to the chancery court's decision to suppress the evidence, and reasoned that a school official does not violate a student's Fourth Amendment rights where a school official has "reasonable suspicion that a crime has been or is in the process of being committed, *or* reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies." *Id.* at 1333 (emphasis in original).

reasonableness guaranteed by the federal constitution.[69] Writing for the court, Justice O'Hern stated that a warrantless search carried out by a school official will be valid only where that official "has *reasonable grounds* to believe that a student possesses evidence of illegal activity or [some] activity that would interfere with school discipline and order. . . ."[70] Accordingly, the court was not persuaded that the constitutional standard was met, and surmised that the assistant vice principal only "had, at best, a good hunch."[71]

The United States Supreme Court granted *certiorari* to the State of New Jersey to examine the application of the exclusionary rule in juvenile proceedings.[72] The Court, however, primarily used this opportunity to

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[69]State *ex rel.* T.L.O., 463 A.2d 934 (N.J. 1983) [hereinafter *T.L.O. II*]. The court also relied, in part, on the New Jersey Code of Juvenile Justice provision guaranteeing "[t]he right to be secure from unreasonable searches and seizures. . . ." *Id.* at 939 n.5 (quoting N.J.S.A. 2A:4-60).

[70]*Id.* at 941 (emphasis added).

[71]*Id.* at 942; *cf.* Terry v. Ohio, 392 U.S. 1, 27 (1968) ("[D]ue weight must be given, not to [the officer's] inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience."). Writing for the court, Justice O'Hern explained that a student has an expectation of privacy in her belongings. *T.L.O. II*, 463 A.2d at 942; *see also* Katz v. United States, 389 U.S. 347, 359 (1967) (holding that search conducted with electronic surveillance device violated the targeted individual's right to privacy). Consequently, the court noted that the initiation of the search had no direct bearing on the possession of cigarettes, since smoking was, in fact, permitted on the school property in designated areas. *T.L.O. II*, 463 A.2d at 942.

[72]New Jersey v. T.L.O., 469 U.S. 325, 327 (1985). The State of New Jersey's petition for *certiorari* solely raised the issue of the exclusionary rule's application in juvenile delinquency proceedings where evidence had been seized unlawfully by a school official. *Id.* at 331. Moreover, T.L.O. had not raised a claim against the Piscataway Board of Education's disciplinary proceeding, but had only contested the use of the evidence seized by the assistant vice principal in the juvenile court proceedings. *Id.*; *see also* Fischer, *supra* note 5, at 421.

In consideration of the relationship of the Fourth Amendment to public schools, the Court concluded that the assistant vice principal's search did not violate T.L.O.'s constitutional right to be free from an intrusive search. *T.L.O. III*, 469 U.S. at 333. That determination aside, the Court proceeded to define an appropriate balancing test for assessing the legality of searches and seizures conducted by public school officials. *Id.*

consider the relationship of the Fourth Amendment to public schools.[73] As justification for the Court's activist role, Justice White opined that, although "[m]aintaining order in the classroom has never been easy, . . . in recent years, school disorder has often taken particularly ugly forms."[74]

As a starting point, the Court recognized that the Fourth Amendment applies to state actors through the Fourteenth Amendment, and that the Fourteenth Amendment protects an individual's rights from encroachment by those state actors.[75] In determining that school officials are state actors, the

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[73]In terms of how state and federal courts have weighed the interests of the student's interest in privacy against the needs of the school, the Supreme Court commented as follows:

> State and federal courts considering these questions have struggled to accommodate the interests protected by the Fourth Amendment and the interest of the States in providing a safe environment conducive to education in the public schools. Some courts have resolved the tension between these interests by giving full force to one or the other side of the balance. Thus, in a number of cases courts have held that school officials conducting in-school searches of students are private parties acting *in loco parentis* and are therefore not subject to the constraints of the Fourth Amendment. . . . At least one court has held, on the other hand, that the Fourth Amendment applies in full to in-school searches by school officials and that a search conducted without probable cause is unreasonable . . . ; others have held or suggested that the probable-cause standard is applicable at least where the police are involved in a search . . .; or where the search is highly intrusive.
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> The majority of courts that have addressed the issue of the Fourth Amendment in the schools, have, like the Supreme Court of New Jersey in this case, reached a middle position: the Fourth Amendment applies to searches conducted by school authorities, but the special needs of the school environment require assessment of the legality of such searches against a standard less exacting than that of probable cause. These courts have, by and large, upheld warrantless searches by school authorities provided that they are supported by a reasonable suspicion that the search will uncover evidence of an infraction of school disciplinary rules or a violation of the law.

Id. at 332 n.2 (citations omitted).

[74]*Id.* at 339.

[75]*Id.* at 334. While the authority of the state over public education is derived from the Tenth Amendment, the Court has stated that "the responsibility for public education is primarily the concern of the States," and, as such, must be managed in accordance with federal constitutional principles. Cooper v. Aaron, 358 U.S. 1, 19 (1958). Specifically, state legislatures possess plenary power to make provisions to accommodate educational finances, curricula, teacher evaluations, disciplinary policies and numerous other needs.

Court redefined the traditional role of school officials. The Court concluded that the reasoning of *in loco parentis*[76] "is in tension with contemporary reality and teachings of this Court,"[77] and therefore, school officials could not claim immunity from the Fourth Amendment.[78]

While a precept of the Fourth Amendment is for searches and seizures to be reasonable, the Court referred to the standard established in *Camara v. Municipal Court.*[79] The *Camara* test mandates that an individual's privacy expectations are to be balanced against the state's need to effectively control breaches of public order.[80] In applying this test, the Court recognized that even a limited, well-defined search can be considerably intrusive, leading to an "undoubtedly . . . severe violation of subjective expectations of privacy."[81] The Court cautioned that the Fourth

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COBB, *supra* note 3, at 5.

[76]*In loco parentis*, which is not qualified by the federal constitution, is defined as "[i]n the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties and responsibilities." BLACK'S LAW DICTIONARY 787 (6th ed. 1990). This doctrine, in conjunction with compulsory education laws, has provided the traditional basis for the moral and legal responsibilities of school officials in their temporary supervision of students. *See* Beci, *supra* note 4, at 823.

[77]*T.L.O. III*, 469 U.S. at 336; *see also* Goss v. Lopez, 419 U.S. 565, 576 (1975) (holding that suspensions imposed without notice or hearing violated a student's right to due process under the Fourteenth Amendment); Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 513-14 (1969) (ruling that suspensions based on the content of a student's expression infringed upon the protection afforded by the Free Speech Clause of the First Amendment).

[78]*T.L.O. III*, 469 U.S. at 336-37.

[79]387 U.S. 523 (1967). The Court reasoned that "there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails." *Id.* at 536-37.

[80]*Id.* at 539. Based on this test, an individual is purportedly protected from arbitrary governmental invasions. Albeit finding "no substitute for individualized review," Justice White espoused that administrative searches of private property would be justified where there is a reasonable governmental interest at stake. *Id.* at 539.

[81]*T.L.O. III*, 469 U.S. at 337-38 (citing Terry v. Ohio, 392 U.S. 1, 24-25 (1968)).

Amendment would not extend to expectations of privacy which are deemed unreasonable or illegitimate.[82]

The Court's analysis clarified that a school search would need to satisfy the two-fold inquiry set forth in *Terry v. Ohio*.[83] First, a student search will be "justified at its inception" when it is reasonably apparent that it will uncover evidence that a law or school rule has been violated.[84] Second, the scope of the search must be reasonably related to the particular set of circumstances.[85] The Court concluded that this balancing test, which ignores the notion of individualized suspicion,[86] "spare[s] teachers and school administrators the necessity of schooling themselves in the niceties of

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[82]*Id.* at 338. The Court explicated that subjective expectations of privacy are reasonable so long as they are those which society is "prepared to recognize as legitimate." *Id.* (quoting Hudson v. Palmer, 468 U.S. 517, 526 (1984)); *see also Hudson*, 468 U.S. at 527 ("Determining whether an expectation of privacy is 'legitimate' or 'reasonable' necessarily entails a balancing of interests."); Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) ("[T]he [subjective] expectation [must] be one that society is prepared to recognize as 'reasonable.'"). The *T.L.O.* Court, then, provided examples of items carried by a student which would be deemed legitimate: school supplies, keys, money, articles of personal hygiene, handbags, and wallets. *T.L.O. III*, 469 U.S. at 339. A student carrying such noncontraband items as these, the Court explained, has not waived her privacy rights simply by taking them onto school premises. *Id.*

Joined by Justice O'Connor, Justice Powell concurred in the decision of the Court, but emphasized a line of reasoning based primarily on the "special characteristics" of public schools. *Id.* at 348 (Powell, J., concurring). Pursuant to this analysis, the Justice noted, there would be no need for a court to determine whether students enjoy the same constitutional protections extended to adults beyond the setting of the school. *Id.* While recognizing that students have "some" constitutional protections, Justice Powell envisioned such privacy expectations as "lesser . . . than members of the population generally." *Id.*

[83]392 U.S. at 1 (establishing the circumstance by which a police officer may "stop and frisk" an individual reasonably suspected of criminal conduct).

[84]*Id.* at 20.

[85]*Id.* The *Terry* Court established that a law enforcement officer may conduct a "carefully limited search" of an individual only after observing suspicious conduct from which it can be reasonably deduced that the individual is "armed and presently dangerous." *Id.* at 30.

[86]Specifically, the Court did not resolve whether individualized suspicion was to be a factor in the determination of reasonableness. *T.L.O. III*, 469 U.S. at 342 n.8. The Court noted that, "[a]lthough 'some quantum of individualized suspicion is usually a prerequisite to a constitutional search and seizure[,] the Fourth Amendment imposes no irreducible requirement of such suspicion.'" *Id.* (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 560-61 (1976)). *But see supra* note 55.

probable cause," thereby allowing them to rely on their own common sense.[87] Moreover, as a matter of policy, the Supreme Court advised lower courts to defer to the judgment of school officials,[88] except when the school official's conduct was based upon an inchoate hunch,[89] an unquestionably vague threshold. Hence, the Court's decision encourages school officials to freely initiate searches.[90]

In sum, a legal standard was established which, the Court admitted, was not one of absolute certainty, but "'sufficient probability.'"[91] As reasonable suspicion is not an evidentiary standard, school officials are invested with generous latitude, but, the Court noted, states can individually

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[87]*T.L.O. III*, 469 U.S. at 343. Although concurring in the judgment of the Court, Justice Blackmun departed from the dismissal of the probable cause element. *Id.* at 351, 352 (Blackmun, J., concurring) (finding the application of a balancing of interests test to be "troubling" in this case).

[88]*Id.* at 343 n.9 ("[C]ourts should, as a general matter, defer to that judgment and refrain from attempting to distinguish between rules that are important to the preservation of order in the schools and rules that are not.").

[89]*Id.* at 346.

[90]Acknowledging that disciplinary rules could not be properly enforced if school officials had to wait each time to conduct a search, Justice Brennan, joined by Justice Marshall, argued that the warrant requirement should be dispensed with only where there was "a showing of some extraordinary governmental interest." *Id.* at 357 (Brennan, J., concurring in part and dissenting in part).

[91]*Id.* at 346 (quoting Hill v. California, 401 U.S. 797, 804 (1971)). Justice White explained that "what is reasonable depends on the context within which a search takes place." *Id.* at 337. Justice Stevens, however, questioned the impact of the Court's "open-ended" test in stating,

> The schoolroom is the first opportunity most citizens have to experience the power of government. Through it passes every citizen and public official, from schoolteachers to policemen and prison guards. The values they learn there, they take with them in life. One of our most cherished ideals is the one contained in the Fourth Amendment: that the government may not intrude on the personal privacy of its citizens without a warrant or compelling circumstance. The Court's decision today is a curious moral for the Nation's youth.

Id. at 385-86 (Stevens, J., concurring in part and dissenting in part).

adopt more particularized standards.[92] Viewed as a triumph for state authority, *New Jersey v. T.L.O.* potentially removed the legitimate rights of juveniles from the protective cover of the United States Constitution to the unpredictable judgments of teachers and school administrators who act alone and pursuant to their own authority.[93]

IV. THE LEGACY OF *NEW JERSEY V. T.L.O.*

Since *T.L.O.*, a large percentage of federal and state courts confronted with the Court's reasonable suspicion standard have upheld school searches and seizures.[94] With *New Jersey v. T.L.O.*, the Court guided lower courts

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[92]*Id.* at 343 n.10; *see also* Michigan v. Long, 463 U.S. 1032, 1040-41 (1983) (holding that a federal court will not review a state court's decision which is based upon adequate and independent grounds where permitted by federal law principles).

[93]*T.L.O. III*, 469 U.S. at 341 n.7; *see also* Griffith, *supra* note 7, at 648 (criticizing the Court's apparent "end justifies the means" strategy); Lowell C. Rose, *"Reasonableness" — The High Court's New Standard for Cases Involving State Rights*, 75 PHI DELTA KAPPAN 589, 592 (1988) (noting that the Court's "minimum scrutiny" standard places a great deal of confidence in school teachers and administrators). Arguably, from the point of view of the student, the search of one's person or property might be a better solution, considering other potential forms of enforcement. William J. Stuntz, *Implicit Bargains, Government Power, and the Fourth Amendment*, 44 STAN. L. REV. 553, 564 (1992) ("The risk of having one's purse opened may be worth bearing, if the alternative is a risk of unjustified suspension or substantial restrictions on movement around school grounds.").

[94]*See, e.g.*, S.D. v. State, 650 So. 2d 198, 199 (Fla. Dist. Ct. App. 1995) (upholding detention of student by school security guard based on anonymous tip); In re Doe, 887 P.2d 645, 655 (Haw. 1994) (finding that school principal had individualized suspicion to search the student for drugs); State v. Mark Anthony B., 433 S.E.2d 41, 46 (W. Va. Ct. App. 1993) (finding that school official had "articulable" suspicion to conduct search of student, but that strip search exceeded standard of reasonableness); In re Gregory M., 627 N.E.2d 500, 503 (N.Y. 1993) (holding that investigative touching by security officer of student's book bag was reasonable after officer heard metallic thud therefrom); State v. Serna, 860 P.2d 1320, 1325 (Ariz. Ct. App. 1993) (upholding warrantless search of student for narcotic drugs by security personnel); Martinez v. School Dist. No. 60, 852 P.2d 1275, 1278 (Colo. Ct. App. 1992) (finding search reasonable wherein school official required student to blow in his face to smell student's breath for alcohol); State v. Moore, 603 A.2d 513, 515 (N.J. App. Div. 1992) (finding assistant principal's search of student's book bag reasonable where prompted by guidance counselor's suspicion); State v. Slattery, 787 P.2d 932, 935 (Wash. Ct. App. 1990) (finding warrantless search of student's car and locked briefcase to be within the school-search exception); Cason v. Cook, 810 F.2d 188, 192 (8th Cir. 1987) (finding reasonable suspicion standard to be proper in upholding search and seizure of student's personal property by school official and police liaison officer); *see*

to accommodate broad public safety concerns that a narrower legal standard, arguably, would frustrate.[95] While most courts have generally premised their decisions on this school-search exception, few courts have deviated in pursuit of a more demanding basis.[96] Thus, in applying *T.L.O.*, courts have tended to apply the legal standard with unfettered predictability.

Even with the minimum requirement of reasonable suspicion, courts have, surprisingly, extended much credence to dubious informants.[97] At an extreme, reasonable suspicion has been established based only on an anonymous tip.[98] This is of critical import since accusations furnished by students are given greater weight than those supplied by adults in criminal investigations for the reason that an accused student has no recognized right

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also Schreck, *supra* note 31, at 122.

[95]By not requiring individualized suspicion, school officials are essentially given authorization to perform a search in two circumstances: (1) when a past infraction propels the officials to search collective groups of students, rather than any particular student; and (2) when the officials seek to employ broad searches of the general student body as a deterrent to future misconduct. Schreck, *supra* note 31, at 130-31. *Compare* Desilets v. Clearview Regional Bd. of Educ., 627 A.2d 667, 673 (N.J. App. Div. 1993) (upholding the blanket search of students' hand baggage prior to embarking on a school field trip) *with* Kuehn v. Renton Sch. Dist. No. 403, 694 P.2d 1078, 1081 (Wash. 1985) (finding general searches conducted before school trip to be unreasonable for lacking the "[belief] that drugs or alcohol would be found in the luggage of each individual student searched").

[96]*See, e.g.*, In re Doe, 887 P.2d 645, 655 (Haw. 1994). In *In re Doe*, the Hawaii Supreme Court upheld a search which was based on substantial evidence of the targeted student's drug use. 887 P.2d at 647. Although the opinion strongly acknowledged *T.L.O.* precepts, the court specifically noted that individualized suspicion was a key element in justifying the school official's actions. *Id.* at 655.

[97]*See* People in Interest of P.E.A., 754 P.2d 382, 389-90 (Colo. 1988) (en banc) (upholding search initiated by tip from two students after which targeted students had to undergo pat-down searches); State v. Joseph T., 336 S.E.2d 728, 737 (W. Va. 1985) (upholding search of student's locker based solely on accusation of wrongdoing by another student).

[98]In *S.D. v. State*, a school security employee detained a high school student based on an anonymous tip that the student may have been concealing a gun underneath his clothing. 650 So.2d 198, 199 (Fla. Dist. Ct. App. 1995). The court found the search reasonable based upon public safety concerns. *Id.*

to cross-examine his accuser.[99] Indeed, the standard has yielded to mere speculation.[100]

Searches not initiated based on individualized suspicion were recently validated by the Supreme Court in *Michigan Department of State Police v. Sitz*.[101] The Court fashioned a three-part test in upholding random checkpoint searches of motorists.[102] Pursuant to a *Sitz* analysis, a search will be valid where: (1) the state has a valid need to address; (2) the method of the search is within reasonable parameters; and (3) the impact upon an individual's privacy interest is limited.[103]

Although the *Sitz* test serves to reinforce the leniency embodied in the earlier *T.L.O.* standard,[104] some courts have sought a more particularized standard. A state appellate court, in the case of *Matter of Appeal in Pima County Juvenile Action*,[105] refused to uphold a search which uncovered a

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[99]J.M. Sanchez, *Expelling the Fourth Amendment from American Schools: Students' Rights Six Years After* T.L.O., 21 J.L. & EDUC. 381, 394 (1992); Wood & Chestnutt, *supra* note 4, at 625; *see also* Newsome v. Batavia Local Sch. Dist., 842 F.2d 920, 924-26 (6th Cir. 1988) (finding that a student was not denied due process in refusal to allow him to learn the identity of, and cross-examine, his accusers).

[100]The standard set by the Court "has been diluted to a point where the flimsiest of excuses . . . can precipitate invasions of students' legitimate expectations of privacy." Sanchez, *supra* note 99, at 394.

[101]469 U.S. 444 (1990). In 1986, the Michigan Department of State Police implemented a sobriety checkpoint program pursuant to guidelines delineating procedures, checkpoint locales and publicity. *Id.* at 447. Every vehicle travelling along targeted routes would be required to stop, and the drivers would be checked for signs of intoxication prior to resuming their course of travel. *Id.* If a driver was found to be intoxicated, however, he would be removed from the flow of traffic, and, if necessary, be subjected to additional sobriety tests. *Id.* Should a determination of intoxication be made based on a combination of field tests and observations of the police officer, an arrest of the driver would ensue. *Id.*

[102]*Id.* at 449.

[103]*Id.*

[104]Schreck, *supra* note 31, at 131-32 ("[T]he *Sitz* decision would permit schools to engage in general searches of students depending on the seriousness and imminence of harm, the effectiveness of the search, and the degree of intrusion on privacy.").

[105]Matter of Appeal in Pima County Juvenile Action, 733 P.2d 316 (Ariz. Ct. App. 1987). The court determined that the juvenile court's denial of the minor's motion to suppress the evidence was in error. *Id.* at 316. In this case, a school monitor and principal instructed a student to go to the school's office merely because the student was

student's possession of cocaine in deciding that the principal had no personal knowledge related to this misconduct.[106] There, the court emphasized the lack of "specific reports which would give rise to a reasonable suspicion that the minor [had committed a crime]."[107]

In another action, a district court rejected the extent of a search in the case of *Cales v. Howell Public Schools*.[108] Noting that the student's actions were "ambiguous," the court found that the facts failed to warrant "reasonable suspicion that a [strip] search would turn up evidence of drug usage."[109] Unlike the circumstances in *T.L.O.*, where a search for noncriminal evidence escalated to charges of criminal activity, the *Cales* court placed the burden on the school official to prove that the actions of the student had generated reasonable suspicion to the extent that the student committed a specific infraction, and not "'*some*' rule or law."[110] The court propounded that "[i]f the administrator fails to carry this burden, any subsequent search necessarily falls beyond the parameters of the Fourth Amendment."[111]

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observed by bleachers located on the school grounds. *Id.* Although the principal had never received any reports associating this student with drug use, the principal compelled the student to empty his pockets. *Id.* at 316-17.

[106]*Id.* at 317.

[107]*Id.*

[108]Cales v. Howell Pub. Schs., 635 F. Supp. 454, 457 (E.D. Mich. 1985).

[109]*Id.* In *Cales*, a vice principal conducted a search of a 15-year-old student based on an observation of the student "ducking" behind cars in the school parking lot during the school day. *Id.* at 455. Assuming that this student possessed drugs, the vice principal compelled the student to hand over her purse, turn the pockets of her jeans inside-out, and remove her jeans. *Id.* Then, the student was required to bend over, so that the school official could look into the student's undergarment. *Id.* While that the court noted that the student was never "touched" during this search, such a finding does not lessen the intrusiveness of this school official's actions. *Id.*

[110]*Id.* at 457.

[111]*Id.* This logic contradicts that of *T.L.O.*, in which a school official's search and seizure of drugs and drug-related items was upheld, despite the fact that the initiation of the search was based on a suspicion of cigarette smoking. *Id.*

Despite these determinations, state courts, which have greater latitude than lower federal courts to adopt or alter *T.L.O.*,[112] have rarely questioned whether the lack of individualized suspicion is a necessary guideline, and often fail to seek out compelling circumstances particularized to a student, a measure which would deter future abuses of authority.[113]

V. THE CONSTITUTIONALITY OF METAL DETECTORS IN PUBLIC SCHOOLS

Although case law on metal detector searches is sparse, these searches are increasingly utilized by school districts and state legislatures[114] as a means to prevent the infiltration of weapons into the classroom.[115] Further, federal lawmakers have proposed a bill to apportion funds to schools for the

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[112]*See* Sanchez, *supra* note 99, at 388-89. In *In re William G.*, the court interpreted the standard as one "requir[ing] articulable facts [and] rational inferences from those facts, warranting an objectively reasonable suspicion" that a rule has been violated. *William G.*, 709 P.2d 1287, 1295 (Cal. 1985).

[113]Ellen M. Alderman, *Dragnet Drug Testing in Public Schools and the Fourth Amendment*, 86 COLUM. L. REV. 852, 874-75 (1986). Since an administrative search directly threatens an individual's constitutional rights, courts should give special attention to such searches in schools. *Id.* at 874. Courts can do this by first considering the need for the search, then determining whether there was proper authorization for the search and whether proper guidelines were followed. *Id.* In this manner, a dragnet search will be a just alternative only where "[t]he school district . . . make[s] a strong showing that other less intrusive methods cannot curb the problem at hand." *Id.*

[114]The use of metal detectors may be authorized legislatively. *See, e.g.*, FLA. STAT. ANN. § 232.256(4) (1989) ("This section shall not be construed to prohibit the use of metal detectors . . . in the course of a search. . . ."); TENN. CODE ANN. § 46-6-4207 (1994) ("To facilitate a search which is found to be necessary of a students, . . . metal detectors and other devices designed to indicate the presence of dangerous weapons, drug paraphernalia or drugs may be used in searches, including hand-held models . . . [and] stationary detector[s].").

[115]Otherwise known as an electronic weapons detector, or magnetometer, a metal detector can be operated with "no understanding of its theory." 4 LAFAVE § 10.6(d), at 21 (quoting United States v. Lopez, 328 F. Supp. 1077, 1086 (E.D.N.Y. 1971)). "Its calibration is easy and its adjustment can be assured by simple visual observations." *Id.* (quoting *Lopez*, 328 F. Supp. at 1086). Most school districts implementing metal detectors choose to utilize hand-held devices, or "wands," which cost approximately $115 each. U.S. NEWS & WORLD REPORT, *supra* note 4, at 35. Walk-through devices, which are shaped like door frames, are more expensive, costing, on the average, upwards of $2,500, but these are also far more effective in identifying the possession of metal. *Id.*

purpose of safety.[116] The intrusion of an individual's expectation of privacy is considered insignificant in these searches since the purpose thereof is limited to the identification of a student's possession of metal.[117] In accordance with other judicially-created exceptions to the Fourth Amendment, a search of this nature is likely to pass constitutional muster if there is a substantial demonstrated need, a minimal intrusion of privacy, and clear procedural guidelines.[118]

Thus far, courts have found metal detector searches to be constitutional for reasons of public safety in the contexts of airport passenger boarding areas[119] and courthouse entrances.[120] In terms of airport searches, for instance, the advanced warning given to affected passengers has been viewed as providing not only the necessary consent, but also the opportunity to avoid the metal detector search by not entering the airport and travelling by some other means.[121] This reasoning does not comport,

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[116]Under the Safe Schools Act of 1994, the 103d Congress proposed to appropriate funds to local school systems to combat drugs and violence, and thereby "offer a disciplined environment conducive to learning, by ensuring that all schools are safe and free of violence." Goals 2000: Educate America Act - Safe Schools, Pub. L. No. 103-227, 108 Stat. 204, § 701(b) (1994). Several means of utilizing these grant funds to accomplish this goal were enumerated in this proposal, including the "[a]cquiring and installing [of] metal detectors and hiring [of] security personnel." *Id.* at § 705(a)(13).

[117]Schreck, *supra* note 31, at 142.

[118]Wood & Chestnutt, *supra* note 4, at 626-28; *see also* Camara v. Municipal Court, 387 U.S. 523, 536-37 (1967) (outlining factors which justify an administrative search).

[119]United States v. Davis, 482 F.2d 893 (9th Cir. 1973). In *United States v. Davis*, the Ninth Circuit validated metal detector searches for weaponry possession due to the administrative needs underlying pre-boarding screening. *Id.* at 908. In support of this holding, the circuit court referred to the dilemma created by airline hijacking as "unquestionably grave and urgent." *Id.*; *see also* United States v. Epperson, 454 F.2d 769, 771-72 (4th Cir. 1972) (ruling that, given threats of air piracy, the frisk of an airline passenger was reasonable where instigated by signal from magnetometer that passenger possessed a metallic object).

[120]Klarefeld v. United States, 944 F.2d 583 (9th Cir. 1991). In terms of courthouse entrances, security searches involving the use of metal detectors are permissible as a result of threats of violence which require "an urgent need for protective measures." *Id.* at 586.

[121]*See* United States v. Doran, 482 F.2d 929 (9th Cir. 1973). Recently, a legal aid society brought a constitutional claim against the chief administrator of New York courts for subjecting adults, as well as juveniles, to magnetometer searches upon their entry to family court. Legal Aid Soc'y of Orange County v. Crosson, 784 F. Supp. 1127, 1128 (S.D.N.Y. 1992). The searches were upheld for being part of the general practice, and

however, with the school setting, since compulsory education statutes explicitly compel a child's attendance.[122] Accordingly, a student does not have the opportunity to avoid a metal detector search simply by choosing not to enter the school building without becoming subject to discipline.[123]

Even though the Court has never directly encountered the issue of metal detectors in public schools, it is likely that the Court would validate such a search in light of *Vernonia School District 47J v. Acton*,[124] in which an intrusive search was found to be reasonable due to an infringement which the Court, curiously, deemed "negligible."[125] Moreover, unlike the facts in *Vernonia*, in which urine tests were compelled from a particular group of students,[126] metal detectors effectuate an intrusion, though not physical,[127] of the privacy rights of an entire student population merely for dutifully attending school. Thus, the failure of the Court to determine the necessity of individualized suspicion in any meaningful way provides no real guidance for suspicionless searches involving metal detectors.

Lower courts faced with this novel issue have found that metal detector searches in public schools comply with the Fourth Amendment.[128] These courts have relied on the existence of, and compliance with, search guidelines established by the school district which are subsequently carried out by law enforcement personnel.[129]

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for involving no detention or bodily probing. *Id.* at 1130. However, the court emphasized that there was a large influx of daily visitors, many of whom were participants in highly emotional legal battles. *Id.* at 1132.

[122]Beci, *supra* note 4, at 831; *see also supra* note 49.

[123]Schreck, *supra* note 31, at 142-43.

[124]115 S. Ct. 2386 (1995) (upholding random urinalysis testing of student athletes). There has been some case law generated on the issue of urinalysis searches at college-level institutions. *See, e.g.*, Hill v. National Collegiate Athletic Ass'n, 865 P.2d 633 (Cal. 1994); University of Colo. v. Derdeyn, 863 P.2d 929 (Colo. 1993).

[125]115 S. Ct. at 2393.

[126]The search therein was directed at high school varsity athletes. *Id.* at 2388-89.

[127]Katz v. United States, 389 U.S. 347, 353 (1967) (noting that "the reach of [the Fourth] Amendment cannot turn upon the presence or absence of a physical intrusion").

[128]In re F.B., 658 A.2d 1378 (Pa. Super. Ct. 1995); People v. Dukes, 580 N.Y.S.2d 850 (Crim. Ct. 1992).

[129]*Dukes*, 580 N.Y.S.2d at 851.

In a rare published decision on this issue, a state court approved the use of hand-held detectors to search students upon arrival to school.[130] In *People v. Dukes*,[131] the court found the search to be a "minimally intrusive one," in that the police officers could not conduct pat-down searches unless the hand-held wands were activated in the precise area of the student's person or property.[132] In addition, the lack of student consent was determined to be less crucial, since juveniles are mandated by law to attend school.[133]

Similarly, in *In re F.B.*,[134] a high school student contested a metal detector search for lacking the element of individualized suspicion.[135] F.B. argued that no safeguards, written or otherwise, warned that his privacy interest would be violated in such a manner, although the court commented that the school had followed "uniform procedure."[136] In finding that the

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[130]*Id.* at 850. The court noted, "[T]his is the first time this issue has been litigated." *Id.*

[131]580 N.Y.S.2d 850 (Crim. Ct. 1992). A randomly-conducted search uncovered a switchblade knife in a student's bag. *Id.* In finding the search to be a reasonable one, the court referenced the practice of using metal detectors in airports and courthouses. *Id.* at 852.

[132]Pursuant to guidelines adopted by former Chancellor Richard E. Green, the search method subjected students entering school to a bodily scanning by hand-held wands operated in conjunction with law enforcement authorities. *Id.* at 851. These devices were operated by police officers upon students of the same sex as the officers, and each search was immediately preceded by an explanation of the scanning procedure. *Id.* If the device was activated, then the officer would be required to ask the student to open her property and allow the officer to examine the contents therein. *Id.* The court noted that the police officers required "reasonable suspicion" prior to searching those students targeted from the crowd once lines into the school became too long. *Id.*; *cf.* United States v. Albarado, 495 F.2d 799, 809 (2d Cir. 1974) (finding frisk, after signal from metal detector, unreasonable where individual was not permitted to first empty his pockets or pass through the device a second time).

[133]*Id.* at 853; *see also supra* note 49.

[134]658 A.2d 1378 (Pa. Super. Ct. 1995). Police officers randomly searched the personal property of certain students, then scanned those students' bodies with a metal detector. *Id.* at 1380.

[135]*Id.*

[136]*Id.* at 1382. Upon entry to the school building, students were required to form lines in the gymnasium, and then individually undergo bodily scanning, unless the lines became too congested, at which time the guidelines permitted students to be randomly selected for searching. *Id.*; *cf.* Dare v. Kuhlmann, 575 N.Y.S.2d 190, 190-91 (App. Div. 1991)

T.L.O. test for reasonableness was met, the court dispensed with the need for individualized suspicion in that circumstance.[137]

If implemented at all, however, metal detectors must be operated as a means to ensure safety on school grounds, not mete out criminal activity, which is the role of law enforcement.[138] More and more, police are being used to actively gather information of criminal activity and assist school officials in ferreting out crime, a practice which raises concerns regarding warrants and the element of probable cause.[139] In this regard, the potential for these searches to violate the constitutional rights of students poses a grave threat, and also can diminish the overall quality and purpose of educational life[140] by significantly superseding academic interests with costly security measures.[141] Sadly, metal detectors can transform entire school buildings into what one court described as "medieval fortresses."[142] To avoid this dilemma, there should be some degree of particularized suspicion as a prerequisite to this practice, otherwise other constitutional precepts could be implicated.[143]

(rejecting an inmate's contention of the denial of due process for failing to receive notice of the facility's search procedures regarding metal detectors).

[137]*In re F.B.*, 658 A.2d at 1382.

[138]Knopp et al., *supra* note 27, at 760-62; Schreck, *supra* note 31, at 150 (citing Charles W. Avery & Robert J. Simpson, *Search and Seizure: A Risk Assessment Model for Public School Officials*, 16 J.L. & EDUC. 403, 418 (1987)).

[139]Schreck, *supra* note 31, at 150 (citing Tarter v. Raybuck, 742 F.2d 977, 982-83 (6th Cir. 1984)).

[140]The Supreme Court has acknowledged the power of education to lay "the very foundation of good citizenship . . . in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." *Brown I*, 347 U.S. 483, 493 (1954).

[141]*See supra* note 115.

[142]People v. Dukes, 580 N.Y.S.2d 850, 853 (Crim. Ct. 1992).

[143]Presently, the school districts which have typically installed metal detectors are those located in urban areas, and thereby, tend to subject primarily those students from low-economic and minority households to bodily searches. *See supra* note 4. In an examination of the policies affecting minority students in the United States, Celia M. Ruiz alluded to a possible equal protection argument:

In analyzing disciplinary rules and practice, the Court must approach with great caution increasingly strong-armed tactics in the context of public schools to assuage perceived evils.[144] The standard of reasonable suspicion should not allow school officials, working in conjunction with police officers, to target any student at will or subject every student in attendance to the indignities and delays[145] associated with blanket and random searches.[146] Furthermore, in a practical sense, the installation of metal detectors as a security measure, along with the participation of police officers, may serve to curtail violent incidents involving dangerous weapons, but will not ultimately cure the underlying causes, and may, in fact, aggravate them.[147]

VI. CONCLUSION

Despite privacy interests and constitutional guarantees, the vast majority of post-*T.L.O.* courts have found that public necessity is most effectively served when school searches are premised upon a generalized

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> Now, many years after *Brown I*[,] additions to the school environment of guns and other violent weapons have forced some schools to spend money on security guards or metal detectors, while other schools in a different part of the district may be able to use their funds to upgrade facilities (e.g., build a computer lab) or hire new faculty. In this context, how can one even begin to evaluate "equality" between such schools?

Celia M. Ruiz, *Equity, Excellence and School Reform: A New Paradigm for Desegregation*, 101 EDUC. L. REP. 1, 3 n.11 (1995).

[144]Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 459 (1990) (Brennan, J., dissenting) (citing Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting)).

[145]Metal detectors have been known to cause delays of anywhere from thirty minutes to over one hour before all of the students can be guided through school entranceways. CHICAGO SUN-TIMES, Nov. 4, 1993, at 3.

[146]*See* Terry v. Ohio, 392 U.S. 1, 38 (1968) (Douglas, J., dissenting) ("To give the police greater power than a magistrate is to take a long step down the totalitarian path.").

[147]*See* Hattie Ruttenberg, *The Limited Promise of Public Health Methodologies to Prevent Youth Violence*, 103 YALE L.J. 1885, 1991 (1994) (reasoning that public health methodologies are "ill-suited to reducing the underlying conduct . . . [that] is symptomatic of deep societal and structural ills that should be addressed directly"); *see generally* Brian Koy Harper, *Peer Mediation Programs: Teaching Students Alternatives to Violence*, J. DISP. RESOL. 323 (1993); S. Randall Humm, *Criminalizing Poor Parenting Skills as a Means to Contain Violence By and Against Children*, 139 U. PENN. L. REV. 1123 (1991).

level of suspicion. Recent Fourth Amendment decisions from the Court make it clear that the future path is evident: the Court will continue to dilute the right of minors to be free from unreasonable searches and seizures. However, it must become critical for the Court to delineate boundaries within which school officials can take action in order to preserve the student's privacy interests. Should "special needs" continue to broadly override a student's privacy interest, schools across the country will literally assume the appearance of detention facilities, if they have not already done so. While the maintenance of a stable educational environment is clearly a needful goal, school authorities should not be permitted to sacrifice the protected privacy expectations of elementary and secondary school students.[148]

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[148]In responding to the Court's rationale regarding governmental searches, Justice Marshall wrote,

> History teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure. . . . [W]hen we allow fundamental freedoms to be sacrificed in the name of real or perceived exigency, we invariably come to regret it.

Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 635 (1989) (Marshall, J., dissenting) (citations omitted).