Searching Public Schools: *T.L.O.* and the Exclusionary Rule

I. INTRODUCTION

The fourth amendment to the United States Constitution guarantees to all people freedom from "unreasonable searches and seizures."[1] The precise scope of this protection has long been a subject of considerable litigation and debate. Despite this controversy several fourth amendment principles can be discerned.

Under ordinary circumstances an official desiring to conduct a search must first obtain a warrant.[2] The fourth amendment provides that "no Warrant shall issue, but upon probable cause . . . ."[3] For purposes of this Comment, it is sufficient to note that probable cause is a relatively high evidentiary standard which "does not permit obtaining a warrant to be casual or automatic, but at the same time is not so high that warrants become virtually unobtainable."[4] Warrantless searches are permitted in only a few specifically defined situations.[5] In cases in which no warrant is required, the official involved ordinarily must have either probable cause[6] or a reasonable suspicion,[7] depending on the circumstances, before conducting a search.[8] Where searches are permitted under the less stringent reasonable suspicion standard, the

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1. U.S. CONST. amend. IV. The amendment reads:

> 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 person or things to be seized.

2. *See, e.g.*, Payton v. New York, 445 U.S. 573, 586 (1980); Chimel v. California, 395 U.S. 752, 762, *reh'g denied*, 396 U.S. 869 (1969); Katz v. United States, 389 U.S. 347, 357 (1967); Camara v. Municipal Court, 387 U.S. 523, 528–29 (1967); Rios v. United States, 364 U.S. 253, 261 (1960); Jones v. United States, 357 U.S. 493, 497–98 (1958).

3. U.S. CONST. amend. IV.

4. Buss, *The Fourth Amendment and Searches of Students in Public Schools*, 59 IOWA L. REV. 739, 744 (1974). Although its definition has varied over time, Justice Brennan defines probable cause as follows:

> Probable cause exists where "the facts and circumstances within [the officials'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief" that a criminal offense had occurred and the evidence would be found in the suspected place.

New Jersey v. T.L.O., 469 U.S. 325, 358 (1985) (Brennan, J., concurring in part and dissenting in part, citing Carroll v. United States, 267 U.S. 132, 162 (1925)).

5. Professors Hogan and Schwartz indicate that there are five major exceptions to the warrant requirement: (1) when consent is given (Bumper v. North Carolina, 391 U.S. 543 (1968)); (2) when the object of the search is in "plain view" (Harris v. United States, 390 U.S. 234, 236 (1968)); (3) when conducted incident to a lawful arrest (United States v. Robinson, 414 U.S. 218, 224 (1973)); (4) when exigent circumstances exist (Vale v. Louisiana, 399 U.S. 30, 34–35 (1970)); and (5) when in hot pursuit (Warden v. Hayden, 387 U.S. 294 (1967)). Hogan & Schwartz, *The Fourth Amendment and the Public Schools*, 7 WHITTIER L. REV. 527, 537 n.55 (1985) [hereinafter cited as Hogan & Schwartz].

6. *See, e.g.*, Chambers v. Maroney, 399 U.S. 42, *reh'g denied*, 400 U.S. 856 (1970); Warden v. Hayden, 387 U.S. 294 (1967); Schmerber v. California, 384 U.S. 757 (1966); Draper v. United States, 358 U.S. 307 (1959); Brinegar v. United States, 338 U.S. 160 (1949); Carroll v. United States, 267 U.S. 132 (1925).

7. *See, e.g.*, United States v. Hensley, 469 U.S. 221 (1985); United States v. Place, 462 U.S. 696, 700–06 (1983); Pennsylvania v. Mimms, 434 U.S. 106 (1977) (per curiam); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); Adams v. Williams, 407 U.S. 143 (1972); Terry v. Ohio, 392 U.S. 1 (1968).

8. Situations exist in which neither probable cause nor reasonable suspicion are needed. *See, e.g.*, United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (routine stopping of a vehicle at a border for brief questioning); United States v. Robinson, 414 U.S. 218 (1973) (when conducted incident to a lawful arrest); Bumper v. North Carolina, 391 U.S. 543 (1968) (when consent is given).

official involved may conduct only a *limited, minimally intrusive* search.[9] The exclusionary rule operates as a mechanism to enforce fourth amendment rights insofar as it bars the admission, in a criminal prosecution, of evidence which has been seized in violation of these principles.[10]

In *New Jersey v. T.L.O.*,[11] the United States Supreme Court determined, in part, the extent to which public school officials are bound by the above fourth amendment principles. The scope of the protection afforded schoolchildren by this decision has sparked a fair amount of controversy and commentary.[12] This Comment will briefly outline and explain the Court's decision in *New Jersey v. T.L.O.* In addition, this Comment will examine the propriety of the exclusionary rule as a vehicle to enforce the fourth amendment rights now enjoyed by schoolchildren. It is hoped that the reader will acquire an understanding of the practical implications of what the Court did, and failed to do, in *New Jersey v. T.L.O.*

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

A. *T.L.O.'s Dilemma*

On March 7, 1980, a teacher at a New Jersey high school discovered two girls smoking cigarettes in a school restroom.[13] The teacher escorted the two girls to the principal's office, where they were questioned by the assistant vice principal, Theodore Choplick.[14] In response to questioning, one girl admitted that she had been smoking.[15] The other girl, identified only as T.L.O., denied that she had been smoking in the lavatory and claimed that she did not smoke at all.[16]

Choplick asked T.L.O. to come into his office and demanded to see the contents of her purse.[17] Opening the purse, he found a pack of cigarettes and a package of cigarette rolling papers.[18] Recognizing the latter to be closely associated with marijuana use, Choplick proceeded to search the purse thoroughly.[19] The search revealed a small quantity of marijuana and various other drug-related paraphernalia.[20] T.L.O. was taken to police headquarters, where she confessed to selling marijuana at school.[21] The state then brought delinquency charges against her.[22]

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9. *See supra* note 7 and cases cited therein.

10. *See, e.g.*, Mapp v. Ohio, 367 U.S. 643, *reh'g denied*, 368 U.S. 871 (1961); Weeks v. United States, 232 U.S. 383 (1914). *See generally* McCORMICK ON EVIDENCE §§ 164–83 (3d ed. 1984).

11. 469 U.S. 325 (1985).

12. *See, e.g.*, Bernstein, *Supreme Court Review*, TRIAL, Ap. 1985 at 14, 15; Hogan & Schwartz, *supra* note 5, at 527–49 (1985); Reamey, New Jersey v. T.L.O.: *The Supreme Court's Lesson on School Searches*, 16 ST. MARY'S L.J. 933–49 (1985); *The Supreme Court, 1984 Term*, 99 HARV. L. REV. 120, 233–43 (1985); Comment, New Jersey v. T.L.O.: *Finding a Reasonable Standard for Searches in Public Schools*, 12 W. ST. U.L. REV. 873–80 (1985).

13. New Jersey v. T.L.O., 469 U.S. 325, 328 (1985).

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* at 329.

22. *Id.*

B. *T.L.O. and the Wheels of Justice*

In the juvenile and domestic relations court of Middlesex County, T.L.O. argued that Choplick's search of her purse violated the fourth amendment,[23] and moved to suppress both the evidence and her confession which, she contended, was tainted by the allegedly unlawful search.[24] The juvenile court concluded that, although the fourth amendment applies to searches carried out by school officials,[25] Choplick's search was reasonable.[26] The court consequently denied T.L.O.'s motion to suppress.[27] The court ultimately found T.L.O. to be a delinquent and sentenced her to one year's probation.[28]

The Appellate Division affirmed the trial court's finding that there had been no fourth amendment violation[29] and T.L.O. appealed. The New Jersey Supreme Court reversed, holding that the search was violative of the fourth amendment.[30] The court viewed Choplick's initial decision to open the purse as unjustified since mere possession of cigarettes did not violate school rules.[31] Choplick's secondary, more thorough search was also unreasonable inasmuch as mere possession of cigarette rolling papers did not justify the extensive "rummaging" through T.L.O.'s purse.[32] The New Jersey court then applied the exclusionary rule to bar the admission of this evidence.[33] The State of New Jersey appealed and the United States Supreme Court granted *certiorari*.

C. *The* T.L.O. *Standard*

The Supreme Court first determined that the fourth amendment's protection against unreasonable searches and seizures applies to regulate the activities of public school officials.[34] The State of New Jersey argued that the fourth amendment applies only to searches conducted by law enforcement officials.[35] The Court rejected this argument, stating that, although the fourth amendment initially was directed at the activities of law enforcement authorities, its basic purpose is to safeguard individual privacy rights against arbitrary invasions by *state agents*.[36] The Court also rejected the position taken by several lower courts that school officials exercise special quasi-parental authority over schoolchildren, and thus are exempt from the strictures of the fourth amendment.[37] The Court observed that "public school officials do not

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23. State *ex rel.* T.L.O., 178 N.J. Super. 329, 335, 428 A.2d 1327, 1330 (1980).
24. New Jersey v. T.L.O., 469 U.S. 325, 329 (1985).
25. State *ex rel.* T.L.O., 178 N.J. Super. 329, 340, 428 A.2d 1327, 1333 (1980).
26. *Id.* at 342–43, 428 A.2d at 1334.
27. *Id.* at 345, 428 A.2d at 1336.
28. New Jersey v. T.L.O., 469 U.S. 325, 330 (1985).
29. State *ex rel.* T.L.O., 185 N.J. Super. 279, 448 A.2d 493 (1982).
30. State *ex rel.* T.L.O., 94 N.J. 331, 463 A.2d 934 (1983).
31. *Id.* at 347, 463 A.2d at 942–43.
32. *Id.* at 348, 463 A.2d at 943.
33. *Id.* at 349–50, 463 A.2d at 943–44.
34. New Jersey v. T.L.O., 469 U.S. 325, 333 (1985).
35. *Id.* at 334.
36. *Id.* at 335 (citing Camara v. Municipal Court, 387 U.S. 523, 528 (1967)).
37. The Court rejected the argument that school officials act *in loco parentis* with respect to students. This doctrine

merely exercise authority voluntarily conferred on them by individual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies."[38] Public school officials are state agents, not surrogate parents, and thus are bound by the fourth amendment.[39]

Turning to the standards applicable in the school search setting, the Court emphasized the need to balance competing interests: the student's legitimate expectations of privacy and personal security against the school's need for effective methods to deal with breaches of order.[40] This balance "does not require strict adherence to the requirement that searches be based on probable cause. . . . Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search."[41]

The Court adopted a two-fold inquiry to determine the reasonableness of any such search: (1) Was the action "justified at its inception;"[42] and (2) Was the search as actually conducted "reasonably related in scope to the circumstances which justified the interference in the first place."[43] The Court elaborated on this standard by stating:

> Under ordinary circumstances, a search of a student by a teacher or other school official will be "justified at its inception" when 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. 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 age and sex of the student and the nature of the infraction.[44]

Applying this standard to the facts, the Court stated that the assistant vice principal's decision to open T.L.O.'s purse was "justified at its inception" since he had received a report that she was smoking in the restroom.[45] This report provided Choplick with reasonable grounds to believe that T.L.O.'s purse contained cigarettes.[46] Choplick's more thorough search of the purse was justified in scope since he had a reasonable basis, after finding the cigarette rolling papers, to believe that T.L.O. was involved in drug-related activity.[47] Thus, the Court concluded that Choplick's conduct was reasonable in all respects, and that the New Jersey Supreme Court's decision to exclude the evidence on fourth amendment grounds was therefore erroneous.[48]

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states that because school officials derive their authority from the parent instead of the state, the school authorities, like parents, are not subject to the constraints of the fourth amendment. *See, e.g.*, D.R.C. v. State, 646 P.2d 252 (Alaska Ct. App. 1982); *In re* G., 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970); Mercer v. State, 450 S.W.2d 715 (Tex. Civ. App. 1970); *In re* Donaldson, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969). *See also* Reamey, *supra* note 12, at 936; Comment, *supra* note 12, at 874–75.

38. New Jersey v. T.L.O., 469 U.S. 325, 336 (1985).
39. *Id.* at 336–37.
40. *Id.* at 337.
41. *Id.* at 341.
42. *Id.* (quoting Terry v. Ohio, 392 U.S. 1, 20 (1968)).
43. *Id.*
44. *Id.* at 341–42 (footnotes omitted).
45. *Id.* at 345.
46. *Id.*
47. *Id.* at 347.
48. *Id.* at 347–48.

D. *The* T.L.O. *Standard: An Evaluation*

The Court properly concluded that the fourth amendment applies in the schoolhouse search context inasmuch as it speaks in general terms of the "right of the people to be secure in their persons, houses, papers, and effects . . . ."[49] This language does not exempt schoolchildren from enjoyment of these rights. The fourth amendment is a prohibition against arbitrary *governmental* invasions of privacy;[50] no exception is made for the activities of public school officials. Moreover, as the Court indicates, teachers and other school officials are bound by the commands of the first amendment[51] and the due process clause of the fourteenth amendment.[52] In light of these precedents, it would be somewhat anomalous to argue that school officials are exempt from the fourth amendment.

The Court dispensed with the warrant requirement in this setting.[53] It is difficult to argue with this conclusion since the fourth amendment, strictly speaking, does not require a warrant in this, or any other, context.[54] Rather, the determination of those situations which require a warrant has long been a subject of judicial interpretation, and as Justice Brennan indicates, warrantless searches are permitted when the press of time makes obtaining a warrant impractical.[55] The schoolhouse search situation would appear to fall within this category since a swift response to student misconduct often is needed to maintain a proper educational atmosphere.[56] As Justice Blackmun noted, "[s]uch immediate action obviously would not be possible if a teacher were required to secure a warrant before searching a student."[57] Moreover, school officials are simply unfamiliar with the complexities involved in securing a warrant; requiring a warrant would be unduly burdensome to school authorities whose job is not to obtain search warrants but to educate the youth of this nation.

The Court also dispensed with the probable cause requirement in this context.[58] In its place, the majority substituted the less stringent *Terry v. Ohio*[59] reasonableness standard to determine the validity of searches conducted by school authorities.[60] The majority states that its approach has the advantage of permitting school officials "to regulate their conduct according to the dictates of reason and common sense."[61] Justice Brennan is quite critical of this approach, contending that it is vague and, rather than providing guidance to school officials, "will likely spawn increased litigation and

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49. U.S. CONST. amend. IV.

50. *See supra* note 36 and accompanying text.

51. New Jersey v. T.L.O., 469 U.S. 325, 336 (1985) (citing Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503 (1969)).

52. New Jersey v. T.L.O., 469 U.S. 325, 336 (1985) (citing Goss v. Lopez, 419 U.S. 565 (1975)).

53. New Jersey v. T.L.O., 469 U.S. 325, 340 (1985).

54. U.S. CONST. amend. IV.

55. New Jersey v. T.L.O., 469 U.S. 325, 356 (1985) (Brennan, J., concurring in part and dissenting in part). *See also* Hogan & Schwartz, *supra* note 5, at 537 n.55.

56. New Jersey v. T.L.O., 469 U.S. 325, 352–53 (1985) (Blackmun, J., concurring in the judgment).

57. *Id.* at 353.

58. *Id.* at 341.

59. 392 U.S. 1 (1968). *See also supra* notes 7 and 9 and accompanying text.

60. *See supra* notes 42 and 43 and accompanying text.

61. New Jersey v. T.L.O., 469 U.S. 325, 343 (1985).

greater uncertainty among teachers and administrators."[62] He argues instead for the imposition of the more exacting probable cause standard in this situation.[63]

In fairness, neither the majority's reasonableness approach nor Brennan's probable cause standard is free of ambiguity. School authorities, after all, are not law enforcement officials and are not sophisticated in the intricacies of either concept. But the majority's analysis overlooks several crucial factors which suggest that the probable cause standard may be more appropriate in this context.

First, it is unclear whether the majority's approach actually provides students any meaningful protection against the activities of school officials. It is true that the majority's standard prohibits searches absent reasonable suspicion, but, as one commentator has observed, "reasonable suspicion is really intuitive, a guess, something slightly above a hunch."[64] In *T.L.O.*, for example, the Court validated a search based upon an apparent "hunch" that T.L.O.'s purse contained cigarettes. Choplick, after all, had no substantive basis to believe that T.L.O.'s purse contained cigarettes. He simply "guessed" correctly; this fortuitous event led to the discovery of marijuana. Moreover, Choplick had no need to search T.L.O.'s purse since, presumably, the teacher's report that she had been smoking would be sufficient evidence to discipline her. If school officials are permitted to conduct unnecessary searches based upon a "guess" or a "hunch," then student privacy rights become illusory.

Second, the majority's standard fails to adequately advise school officials as to when they may lawfully undertake a search. The majority states that its approach will "spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause."[65] But the majority overlooks the fact that its standard requires school officials to educate themselves in the niceties of *reasonableness*. This will be particularly difficult in light of the majority's failure to clearly define *reasonableness*. The probable cause standard, by contrast, is a fairly well-defined legal concept as evidenced by the many decisions delineating its contours.[66] Justice Brennan argues that a school system could consult these "decisions and other legal materials and prepare a booklet expounding the rough outlines of the concept. Such a booklet could be distributed to teachers to provide them with guidance as to when a search may be lawfully conducted."[67] The majority simply ignores this logical suggestion and expounds a standard which, at best, provides little guidance to school officials.

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62. *Id.* at 365. Justice Stevens also disagrees with the majority's standard. In his separate opinion, Justice Stevens espouses a reasonableness approach, but his test takes a somewhat different form. Stevens advances a standard that will permit searches of students when there is reasonable cause to believe that a student is engaged in criminal wrongdoing or activity "seriously disruptive of school order, or the educational process." *Id.* at 378 (Stevens, J., concurring in part and dissenting in part).

63. *Id.* at 368.

64. Bernstein, *supra* note 12, at 15.

65. New Jersey v. T.L.O., 469 U.S. 325, 343 (1985).

66. *See, e.g.*, Beck v. Ohio, 379 U.S. 89 (1964); Draper v. United States, 358 U.S. 307 (1959); Brinegar v. United States, 338 U.S. 160 (1949); Carroll v. United States, 267 U.S. 132 (1925). *See generally* McCORMICK ON EVIDENCE § 170 (3d ed. 1984).

67. New Jersey v. T.L.O., 469 U.S. 325, 365–66 (1985) (Brennan, J., concurring in part and dissenting in part).

Third, the majority mistakenly views the probable cause standard as unworkable in the schoolhouse search situation. This view runs counter to that expressed by the Court in *Illinois v. Gates*,[68] in which, Justice Brennan notes, the probable cause standard was described as "'practical,' 'fluid,' 'flexible,' 'easily applied,' and 'nontechnical.'"[69] Moreover, teachers and school administrators are a generally well-educated group, which, with a minimal amount of instruction, would appear quite capable of comprehending and administering this "nontechnical" standard.

Finally, as Justice Brennan argues, the majority's approach is a substantial deviation from well-settled fourth amendment doctrine.[70] Justice Brennan's argument is fairly straightforward: full-scale searches are not permitted absent a showing of probable cause;[71] Choplick's "thorough excavation of T.L.O.'s purse"[72] constituted a full-scale search;[73] hence, the probable cause standard is applicable in this context. This position is well-taken. The search of T.L.O.'s purse would not seem to fall within the *Terry v. Ohio*[74] line of cases given Choplick's extensive "rummaging"[75] through the purse.[76] The majority simply ignores this fact and creates an entirely new category of fourth amendment law. This new category permits school officials to conduct searches based upon a reasonable suspicion when the scope of any such inquiry is not "excessively intrusive."[77] Precisely what constitutes an "excessively intrusive" search is unclear and further litigation will undoubtedly be necessary to define the contours of this vague new category of fourth amendment law.

In short, the majority, in casting aside the probable cause standard, may have rendered student privacy interests a nullity and unnecessarily muddled fourth amendment search and seizure law. In so doing, the majority, rather than providing guidance to school officials, has invited more litigation.

Based on the foregoing analysis, the probable cause approach is the more appropriate standard in this context. Imposing the probable cause standard in the schoolhouse search situation poses some difficulties, but these difficulties are not insurmountable. With a minimal amount of instruction, school officials will possess sufficient knowledge to maintain order *and* preserve student privacy rights.

E. T.L.O.*'s Impact*

It is difficult to gauge the overall importance of this decision. As the Court indicates, the majority of lower courts to consider the appropriate standards which should govern the search of a student by a school official have adopted a

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68. 462 U.S. 213 (1983).

69. New Jersey v. T.L.O., 469 U.S. 325, 364 (1985) (Brennan, J., concurring in part and dissenting in part, citing Illinois v. Gates, 462 U.S. 213, 232, 236, 239, *reh'g denied*, 463 U.S. 1237 (1983)).

70. New Jersey v. T.L.O., 469 U.S. 325, 358 (1985) (Brennan, J., concurring in part and dissenting in part).

71. *Id.*

72. *Id.* at 355.

73. *Id.*

74. 392 U.S. 1 (1968).

75. *See supra* text accompanying note 32.

76. *See supra* notes 7 and 9. The *Terry* line of cases permits only *limited, minimally instrusive* searches.

77. *See supra* text accompanying note 44.

reasonableness approach.[78] Hence, the impact of the *T.L.O.* decision may be quite minimal.[79]

The most significant aspect of the Court's opinion centers on the several issues it leaves unresolved. The case did not involve the search of a student's locker, desk, or other school property.[80] Accordingly, the Court did not express an opinion as to the standards governing the search of such areas.[81] Similarly, the police were not involved in the search of T.L.O.'s purse; hence, no opinion was expressed as to the standards governing the search of a student by law enforcement officials.[82] Further, the Court did not decide whether individualized suspicion is an essential element of the reasonableness standard it adopted for searches by school officials.[83] That is, when a school authority has reasonable grounds to suspect wrongdoing by students, may the authority conduct a search of *all* students or only those particular individual students suspected? The *T.L.O.* decision offers no answer. The Court also did not address the standards governing the use of drug-detecting dogs, strip searches, "or what rules would be applicable to a school search case if it were decided by a state court on 'independent state grounds' under the state's constitution or statutes."[84] The final, and perhaps most significant, issue left unresolved by the Court involves the role of the exclusionary rule in school search cases.[85] The balance of this Comment will examine the propriety of the exclusionary rule as a mechanism to enforce student fourth amendment rights.

III. The Exclusionary Rule in School Searches

At common law, the means by which law enforcement authorities obtained evidence to be used in a criminal prosecution had no bearing on its admissibility.[86] In response to the perceived shortcomings of this doctrine, the Supreme Court, in *Weeks v. United States*,[87] held that evidence seized in violation of the fourth amendment was inadmissible in a federal criminal prosecution.[88] The fourth amendment's so-called "exclusionary rule" was thus born.[89] In *Wolf v. Colorado*,[90]

78. New Jersey v. T.L.O., 429 U.S. 325, 332–33 n.2 (1985). *See also* Comment, *supra* note 12, at 879.

79. *See* Comment, *supra* note 12, at 879. This conclusion is further corroborated by a nationwide survey of schools conducted by Professors Hogan and Schwartz which indicated that the vast majority of school systems already use a reasonableness standard. *See* Hogan & Schwartz, *supra* note 5, at 544–45.

80. New Jersey v. T.L.O., 469 U.S. 325, 337 n.5 (1985). *See also* Hogan & Schwartz, *supra* note 5, at 533 n.36.

81. New Jersey v. T.L.O., 469 U.S. 325, 337 n.5 (1985). *See also* Hogan & Schwartz, *supra* note 5, at 533 n.36.

82. New Jersey v. T.L.O., 469 U.S. 325, 341 n.7 (1985). *See also* Hogan & Schwartz, *supra* note 5, at 533 n.36.

83. New Jersey v. T.L.O., 469 U.S. 325, 342 n.8 (1985). *See also* Hogan & Schwartz, *supra* note 5, at 533 n.36.

84. Hogan & Schwartz, *supra* note 5, at 533 n.36.

85. New Jersey v. T.L.O., 469 U.S. 325, 333 n.3 (1985). *See also* Hogan & Schwartz, *supra* note 5, at 533 n.36.

86. Olmstead v. United States, 277 U.S. 438, 467 (1928); State v. Hunt, 280 S.W.2d 37, 39 (Mo. 1955); State v. McGee, 214 N.C. 184–85, 198 S.E. 616–17 (1938); Commonwealth v. Chaitt, 380 Pa. 532, 535, 112 A.2d 379, 381, *cert. denied*, 350 U.S. 829 (1955); State v. Olynik, 83 R.I. 31, 34, 113 A.2d 123, 125 (1955). *See also* McCormick on Evidence § 165 (3d ed. 1984).

87. 232 U.S. 383 (1914).

88. *Id.* at 398.

89. The exclusionary rule is not limited to fourth amendment violations; rather, it has been used to bar the admission of evidence seized in violation of both the fifth and sixth amendments. *See* Brewer v. Williams, 430 U.S. 387, *reh'g denied*, 431 U.S. 925 (1977); Miranda v. Arizona, 384 U.S. 436 (1966). *See generally* McCormick on Evidence §§ 150, 155 (3d ed. 1984).

90. 338 U.S. 25 (1949).

decided in 1949, the Court declined to impose the exclusionary rule on the states as a matter of fourteenth amendment due process.[91] Twelve years later, in *Mapp v. Ohio*,[92] the Court abruptly reversed the *Wolf* decision and imposed the exclusionary rule upon the states.[93] Thus, as a general matter, the exclusionary rule bars the admission in federal and state criminal prosecutions of all evidence seized in violation of the fourth amendment.[94]

Since *Mapp*, the Court has been confronted with the often difficult task of defining the ambit of the exclusionary rule. As a general matter, the Court has narrowed the scope of the *Mapp* decision in recent years.[95] But, despite these constrictions, the exclusionary rule continues to be the primary vehicle by which fourth amendment rights are enforced.[96]

In *New Jersey v. T.L.O.*, the United States Supreme Court held that the fourth amendment applies to safeguard the privacy rights of schoolchildren against the activities of school officials.[97] But the Court failed to define the role of the exclusionary rule as a tool to enforce these rights. The issue may be framed as follows: If evidence of student wrongdoing has been discovered by school authorities in the course of an unconstitutional search, does the exclusionary rule bar the admission of this evidence in a criminal prosecution brought against the student?

A. T.L.O.*'s Reargument*

The New Jersey Supreme Court answered the above question in the affirmative,[98] stating that "if an official search violates constitutional rights, the evidence is not admissible in criminal proceedings."[99]

The United States Supreme Court initially granted *certiorari* to review this aspect of the *T.L.O.* case.[100] The Court then ordered reargument of the case on the issue of what limits, if any, the fourth amendment places on the activities of school authorities.[101] Concluding that the search of T.L.O.'s purse was reasonable and therefore lawful, the Court did not reach the issue of the exclusionary rule's application to unlawful searches conducted by school officials.[102] Consequently, one

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91. *Id.* at 33.

92. 367 U.S. 643, *reh'g denied*, 368 U.S. 871 (1961).

93. *Id.* at 655.

94. For a more detailed discussion of the origins and development of the exclusionary rule, see Stewart, *The Road to* Mapp v. Ohio *and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases*, 83 COLUM. L. REV. 1365, 1372–80 (1983).

95. *See, e.g.*, INS v. Lopez-Mendoza, 468 U.S. 1032 (1984); United States v. Leon, 468 U.S. 897, *reh'g denied*, 468 U.S. 1250 (1984); United States v. Havens, 446 U.S. 620, *reh'g denied*, 448 U.S. 911 (1980); Michigan v. Defillippo, 443 U.S. 31 (1979); Stone v. Powell, 428 U.S. 465, *reh'g denied*, 429 U.S. 874 (1976); United States v. Janis, 428 U.S. 433, *reh'g denied*, 429 U.S. 874 (1976); United States v. Peltier, 422 U.S. 531 (1975); United States v. Calandra, 414 U.S. 338 (1974); Alderman v. United States, 394 U.S. 165 (1969); Linkletter v. Walker, 381 U.S. 618 (1965).

96. Jones v. Latexo Indep. School Dist., 499 F. Supp. 223, 238 (E.D. Tex. 1980).

97. *See supra* notes 34–39 and accompanying text.

98. State *ex rel.* T.L.O., 94 N.J. 331, 341–42, 463 A.2d 934, 939 (1983).

99. *Id.* (footnote omitted).

100. New Jersey v. T.L.O., 469 U.S. 325, 331–32 (1985).

101. *Id.* at 332.

102. *Id.* at 332–33. In his separate opinion, Justice Stevens criticizes the Court for failing to reach this issue.

must look initially to the lower courts in an attempt to glean an answer to this question.[103]

B. *The Cases*

Although few have considered the question, a minority of courts appear to have adopted the view that the exclusionary rule does not require the suppression of evidence unconstitutionally seized by teachers and other school authorities.[104] This section will examine three cases which have adopted this position.

In *United States v. Coles*,[105] the District Court for the Northern District of Maine ruled that the exclusionary rule does not bar, in a criminal prosecution, the admission of marijuana seized from a student's suitcase by an administrative officer of a federal job training center.[106] The *Coles* court stated that the official's search was lawful, but even assuming it was not, the student nonetheless could not invoke the exclusionary rule in this situation.[107] As a basis for its decision, the court noted that no court has ever extended the exclusionary rule "so far as to hold that the Fourth Amendment requires the exclusion of evidence obtained through a search in which there was no participation or instigation by a federal or state law enforcement officer."[108] The court rationalized that the purpose of the exclusionary rule is "to discourage police misconduct,"[109] and subjecting persons other than law enforcement personnel to the rule would have no impact on improving standards of police conduct.[110] Therefore, under this rationale, the exclusionary rule has no application unless law enforcement officials are involved.

Similarly, in 1975, in *State v. Young*,[111] a student sought suppression of marijuana which had been seized from his person by an assistant principal, claiming that the search violated the fourth amendment.[112] The Georgia Supreme Court agreed with the *Coles* court, holding that, even if the search was unlawful, the exclusionary rule applied only to unconstitutional searches conducted by law enforcement officials.[113] The Georgia court divided the potentialities into three groups: (1) private persons for whom neither the fourth amendment nor the exclusionary rule apply;

Stevens, along with Justices Brennan and Marshall, believes that the exclusionary rule is applicable in schoolhouse search cases. *Id.* at 371–75 (Stevens, J., concurring in part and dissenting in part).

103. This Comment will consider only those cases which have ruled on the issue of the exclusionary rule's application to unlawful searches conducted by school officials acting alone. This case overview also is limited to those cases which have ruled on this issue without resorting to the doctrine of *in loco parentis*, which was rejected by the Court in *T.L.O. See supra* notes 37–39 and accompanying text.

104. *See, e.g.*, Bellnier v. Lund, 438 F. Supp. 47 (N.D.N.Y. 1977); United States v. Coles, 302 F. Supp. 99 (N.D. Me. 1969); State v. Young, 234 Ga. 488, 216 S.E.2d 586 (1975); State v. Lamb, 137 Ga. App. 437, 224 S.E.2d 51 (1976).

105. 302 F. Supp. 99 (N.D. Me. 1969).

106. *Id.* at 103.

107. *Id.* at 102.

108. *Id.* at 103 (footnote omitted). Cases decided subsequent to *Coles* have held the exclusionary rule applicable when neither federal nor state law enforcement agents were involved. *See infra* notes 128–29 and accompanying text. *See also* Michigan v. Tyler, 436 U.S. 499 (1978).

109. United States v. Coles, 302 F. Supp. 99, 103 (N.D. Me. 1969).

110. *Id.*

111. 234 Ga. 488, 216 S.E.2d 586 (1975).

112. *Id.* at 488, 216 S.E.2d at 588.

113. *Id.* at 489, 216 S.E.2d at 589.

(2) governmental agents, including public school officials, for whom the fourth amendment applies but the exclusionary rule does not; and (3) governmental law enforcement agents for whom both the fourth amendment and the exclusionary rule apply.[114] The Georgia court noted that, if teachers or other school authorities violate a student's constitutional rights, the student's remedy is to seek civil damages rather than excluding the evidence.[115]

In a third case, *Bellnier v. Lund*,[116] school officials strip searched an entire classroom of students in search of three dollars of missing money.[117] The students, through their parents, brought a civil rights action against the school.[118] Although the exclusionary rule was not at issue in this case, the District Court for the Northern District of New York indicated that the exclusionary rule would not be the appropriate remedy for a student who had been subjected to an unlawful search by a school official.[119] The court adopted the *Young* court's analysis and stated that a student's recourse in this context was to seek a civil damage remedy.[120] The court declined, however, to award money damages in this case in light of the good faith immunity enjoyed by school officials under the doctrine of *Wood v. Strickland*.[121]

The view espoused by the *Coles, Young* and *Bellnier* courts is seriously flawed in two significant respects. These courts expound the idea that the exclusionary rule has no application unless the searching party is a police officer.[122] But this position is simply inaccurate in light of the *Mapp* decision, which states that "*all* evidence obtained by searches and seizures in violation of the Constitution is . . . inadmissible in a [federal or state criminal prosecution]."[123] This command is not restricted to the activities of police officers; rather, it requires suppression of all evidence unlawfully seized by any person subject to the strictures of the fourth amendment. In *T.L.O.*, the Supreme Court stated that school officials are state agents and as such are bound by the fourth amendment.[124] Thus, a combination of *Mapp* and *T.L.O.* would seem to require the suppression of evidence unconstitutionally seized by school officials.

The second major flaw in the minority position involves its failure to provide a remedy to students who have been subjected to an unlawful search by a school official. The *Young* court stated that, when evidence of student wrongdoing has been discovered by school officials while conducting an unlawful search, the student cannot have the evidence excluded from a criminal prosecution but must seek a civil damage remedy.[125] The *Bellnier* court, on the other hand, disallowed a monetary award in a similar situation because school officials enjoy a good faith immunity from

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114. *Id.* at 493–94, 216 S.E.2d at 591.
115. *Id.* at 494, 216 S.E.2d at 591.
116. 438 F. Supp. 47 (N.D.N.Y. 1977).
117. *Id.* at 50.
118. *Id.* at 49.
119. *Id.* at 53.
120. *Id.*
121. 420 U.S. 308, *reh'g denied*, 421 U.S. 921 (1975). The doctrine of *Wood v. Strickland* restricts the availability of damages to actions against those school officials who act in bad faith. *Id.* at 322.
122. *See supra* notes 105–20 and accompanying text.
123. Mapp v. Ohio, 367 U.S. 643, 655, *reh'g denied*, 368 U.S. 871 (1961)(emphasis added).
124. *See supra* note 39 and accompanying text.
125. *See supra* note 115 and accompanying text.

civil damages.[126] The minority view thus works to deny recourse to a student whose fourth amendment rights have been violated. In *T.L.O.*, the Supreme Court recognized that students possess privacy rights which are protected by the fourth amendment,[127] but the minority view fails to provide a mechanism to enforce these rights. Simply stated, unenforceable fourth amendment rights are, in reality, no rights at all; they are worthless.

An apparent majority of courts, by contrast, have adopted the position that the exclusionary rule requires the suppression of evidence unlawfully seized from students by school authorities.[128] Although this author agrees with the position taken by these courts, the opinions have, for the most part, simply assumed that the exclusionary rule applies in this context.[129] Hence, these cases will not be examined in detail. Instead, this Comment will explore the three major policy bases which underlie the existence of the exclusionary rule and apply these policies to the schoolhouse search situation in an attempt to further illustrate *why* the exclusionary rule should apply in this context.

C. *The Policy Bases of the Exclusionary Rule*

1. *Deterrence*

The most prevalent modern-day justification for the existence of the exclusionary rule is the desire to deter law enforcement officials from engaging in unconstitutional searches.[130] It is argued that the exclusionary rule accomplishes this by rendering unlawfully obtained evidence inadmissible in a criminal prosecution.[131] The extent to which the exclusionary rule *actually* deters police misconduct has been

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126. *See supra* note 121 and accompanying text.

127. *See supra* notes 34–39 and accompanying text.

128. *See, e.g.*, People v. J.A., 85 Ill. App. 3d 567, 406 N.E.2d 958 (1980); State v. Mora, 307 So. 2d 317 (La. 1975), *vacated on other grounds*, 423 U.S. 809 (1975); State *ex rel.* T.L.O., 94 N.J. 331, 463 A.2d 934 (1983); State v. Engerud, 94 N.J. 331, 463 A.2d 934 (1983); People v. D., 34 N.Y.2d 483, 358 N.Y.S.2d 403, 315 N.E.2d 466 (1974); People v. Bowers, 72 Misc. 2d 800, 339 N.Y.S.2d 783 (1973), *aff'd*, 77 Misc. 2d 697, 356 N.Y.S.2d 432 (1974); State v. Walker, 19 Or. App. 420, 528 P.2d 113 (1974).

129. *See supra* note 128 and cases cited therein. For two well-written opinions applying the exclusionary rule to school disciplinary proceedings, see Jones v. Latexo Indep. School Dist., 499 F. Supp. 223 (E.D. Tex. 1980) and Smyth v. Lubbers, 398 F. Supp. 777 (W.D. Mich. 1975).

130. *See, e.g.*, INS v. Lopez-Mendoza, 468 U.S. 1032 (1984); United States v. Leon, 468 U.S. 897, *reh'g denied*, 468 U.S. 1250 (1984); United States v. Havens, 446 U.S. 620, *reh'g denied*, 448 U.S. 911 (1980); Michigan v. Defillippo, 443 U.S. 31 (1979); Stone v. Powell, 428 U.S. 465, *reh'g denied*, 429 U.S. 874 (1976); United States v. Janis, 428 U.S. 433, *reh'g denied*, 429 U.S. 874 (1976); United States v. Peltier, 422 U.S. 531 (1975); United States v. Calandra, 414 U.S. 338 (1974); Alderman v. United States, 394 U.S. 165 (1969).

131. In recent years, a majority of the Supreme Court has employed a "cost-benefit" analysis to determine when the exclusionary rule will apply. The majority's approach weighs the costs of excluding probative evidence against the benefits of additional deterrence of official misconduct. If the costs are determined to outweigh the benefits, the exclusionary rule is deemed inapplicable. For examples of the "cost-benefit" approach, see INS v. Lopez-Mendoza, 468 U.S. 1032 (1984); United States v. Leon, 468 U.S. 897, *reh'g denied*, 468 U.S. 1250 (1984); United States v. Havens, 446 U.S. 620, *reh'g denied*, 448 U.S. 911 (1980); Michigan v. Defillippo, 443 U.S. 31 (1979); Stone v. Powell, 428 U.S. 465, *reh'g denied*, 429 U.S. 874 (1976); United States v. Janis, 428 U.S. 433, *reh'g denied*, 429 U.S. 874 (1976); United States v. Peltier, 422 U.S. 531 (1975); United States v. Calandra, 414 U.S. 338 (1974). For a criticism of the "cost-benefit" approach, see Kamisar, *Does (Did) (Should) the Exclusionary Rule Rest On A "Principled Basis" Rather Than an "Empirical Proposition"?*, 16 CREIGHTON L. REV. 565 (1983).

a subject of considerable controversy.[132] But the deterrence basis remains the principle justification for the existence of the exclusionary rule.

Applying the deterrence policy to the schoolhouse search situation, Professor Yale Kamisar[133] has stated:

> A teacher or school official may worry about a civil action, an angry parent, or group of parents, and maybe even whether the evidence will be admissible in a school disciplinary proceeding. . . . But, . . . a teacher or school administrator is not likely to be thinking very much about a juvenile delinquency or a criminal proceeding, and his or her behavior is not likely to be influenced very much by the inadmissibility of the evidence in such proceedings.[134]

Therefore, if one accepts the deterrence basis as the *sine qua non* of the exclusionary rule, as Kamisar theorizes a majority of the Supreme Court believes, then a strong argument can be made that the exclusionary rule should not apply in the schoolhouse search context since its deterrent value is quite weak.[135]

While having students stand trial may not be preeminent in the minds of school officials, it is this author's view that school authorities will be deterred from engaging in unconstitutional conduct by application of the exclusionary rule. With widespread drug abuse and increased instances of violent crime currently plaguing American schools, teachers and other school authorities have a keen interest in obtaining the just punishment of those students who engage in such activities. Given this motivation, it seems unlikely that a teacher would engage in an unlawful search knowing that such conduct could jeopardize, if not preclude, the punishment of a wayward student.

At minimum, application of the rule will promote systemic obedience to the Supreme Court's *T.L.O.* decision. Justice Brennan has argued that the exclusionary rule is not designed to punish individual officials for their failure to obey the dictates of the fourth amendment; rather, its chief deterrent function is to encourage institutional compliance with the fourth amendment.[136] The exclusionary rule, if applied in this setting, will encourage school boards to establish procedures whereby teachers are guided to act in compliance with the *T.L.O.* decision. Once school officials possess this knowledge, they will be inclined to regulate their conduct according to the training they have received, and the exclusionary rule's overall deterrent function will be fulfilled.

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132. *See, e.g.*, Canon, *Is the Exclusionary Rule in Failing Health? Some New Data and a Plea Against a Precipitous Conclusion*, 62 KY. L.J. 681 (1974); Kamisar, *Does the Exclusionary Rule Affect Police Behavior?*, 62 JUDICATURE 70 (1978); Kamisar, *Does (Did) (Should) the Exclusionary Rule Rest On A "Principled Basis" Rather Than an "Empirical Proposition"?*, 16 CREIGHTON L. REV. 565 (1983); Murphy, *Judicial Review of Police Methods in Law Enforcement*, 44 TEX. L. REV. 939 (1966); Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. CHI. L. REV. 665 (1970); Spector, Mapp v. Ohio: *Pandora's Problems For the Prosecutor*, 111 U. PA. L. REV. 4 (1962); Spiotto, *Search and Seizure: An Empirical Study of the Exclusionary Rule and Its Alternatives*, 2 J. LEGAL STUD. 243 (1973).

133. Henry K. Ransom Professor of Law, University of Michigan.

134. Speech by Professor Yale Kamisar, U.S. Law Week Constitutional Law Conference in Washington, D.C. (Sept. 13–14, 1985), *cited in* 54 U.S.L.W. 2199, 2200 (Oct. 15, 1985).

135. *Id.* at 2200.

136. United States v. Leon, 468 U.S. 897, 953 (1984) (Brennan, J., dissenting). *See also* Stewart, *supra* note 94, at 1400.

In short, it is unlikely that application of the rule will deter every school official from engaging in an unlawful search, but the rule will further the goal of educating school authorities as to when a lawful search may be undertaken. In this context, the rule will promote greater awareness, and hence fewer violations, of student privacy rights.

2. *Judicial Integrity*

A second major policy justification for the existence of the exclusionary rule is the so-called "imperative of judicial integrity."[137] This concept embodies the notion that it is *wrong* in itself for a court to sanction the use of evidence that has been unlawfully seized, or to use Justice Stewart's words, the "federal courts [should not] be accomplices in the willful disobedience of a Constitution they are sworn to uphold."[138] If courts permit "official lawlessness" by allowing the state's use of tainted evidence, they risk the loss of public support and invite disrespect and anarchy.[139]

Applying the judicial integrity concept to the schoolhouse context presents an especially compelling reason why the exclusionary rule should bar the admission of evidence illegally seized by school authorities. From an early age, schoolchildren are taught to respect legal institutions and view the courts as paragons of virtue and fairness. In order to foster and sustain this respect, it is imperative that students not be denied basic constitutional protections by the courts when evidence has been improperly obtained. Students must be shown that, *in fact*, a court will not sanction misconduct—especially official misconduct. If a court tolerates official lawlessness by allowing the use of tainted evidence seized by a school authority, students "cannot help but feel that they have been dealt with unfairly,"[140] and their once well-founded respect for the judiciary may be forever lost.

3. *Equity*

A third policy basis underlying the existence of the exclusionary rule, and one that parallels the judicial integrity justification, is the equitable notion that the government should not profit from its own wrongdoing.[141] This policy is aimed at

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137. Elkins v. United States, 364 U.S. 206, 222 (1960).

138. Stewart, *supra* note 94, at 1382 (quoting Elkins v. United States, 364 U.S. 206, 223 (1960)).

139. The origins of this principle can be found in numerous Supreme Court decisions. *See, e.g.*, Mapp v. Ohio, 367 U.S. 643, 648, *reh'g denied*, 368 U.S. 871 (1961); Elkins v. United States, 364 U.S. 206, 222, 223 (1960); Olmstead v. United States, 277 U.S. 438, 469 (1928) (Holmes, J., dissenting); Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920); Weeks v. United States, 232 U.S. 383, 393 (1914). The extent to which the "judicial integrity" doctrine remains a viable policy consideration in exclusionary rule litigation is unclear in light of the majority's seemingly complete reliance on the deterrence rationale. *See supra* notes 130–32 and accompanying text.

140. New Jersey v. T.L.O., 469 U.S. 325, 373–74 (1985) (Stevens, J., concurring in part and dissenting in part)(footnote omitted).

141. The roots of this policy basis also can be found in several Supreme Court decisions. *See, e.g.*, Olmstead v. United States, 277 U.S. 438, 469, 471 (1928) (Holmes & Brandeis, J.J., dissenting); Weeks v. United States, 232 U.S. 383, 391–92, 394 (1914). *See also* United States v. Calandra, 414 U.S. 338, 357 (1974) (Brennan, J., dissenting). As with the judicial integrity doctrine, it is unclear how much weight this policy is currently given by a majority of the Court.

maintaining public trust in government.[142] It is argued that the government, having discovered evidence while conducting an unlawful search, should not be permitted to benefit from its own lawless behavior by using the tainted evidence.[143] Justice Brandeis captured the essence of this argument when he stated:

> In a government of laws, existence of the government will be imperilled [sic] if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.[144]

Much like the judicial integrity doctrine, this policy basis is applicable in schoolhouse search cases as well. As Justice Brennan has observed, "[s]chools cannot expect their students to learn the lessons of good citizenship when the school authorities themselves disregard the fundamental principles underpinning our constitutional freedoms."[145] American schools seek to inculcate children with the vital necessity of obeying the law and the rules of the school. It is incongruous to expect schoolchildren to obey the law when teachers openly flaunt the law by engaging in unlawful searches without consequences.

This section has examined the three major policy bases which justify the existence of the exclusionary rule as a vehicle to enforce the freedoms guaranteed by the fourth amendment and has discussed the application of these policy bases in the schoolhouse search setting. Based on the foregoing analysis, it is this author's assertion that the exclusionary rule should bar the use of evidence unlawfully obtained by school authorities in a criminal prosecution brought against a student.

IV. Conclusion

This Comment has discussed the Supreme Court's decision in *New Jersey v. T.L.O.*, where the Court determined, in part, the extent to which public school officials are bound by the fourth amendment. Although "the Court's extension of Fourth Amendment protection to students is comforting,"[146] the standard adopted to govern schoolhouse searches is open to criticism. The majority's standard it fails to provide students with any substantive protection against the activities of overzealous school authorities. Moreover, the majority's approach has provided little, if any, guidance to school officials and has unnecessarily muddled fourth amendment search and seizure law. For these reasons, the probable cause standard is the more workable approach in this context, in that it not only affords students greater protection against overly eager school officials, but it also provides school authorities far greater guidance as to when a lawful search may be undertaken.

This Comment also has explored the propriety of the exclusionary rule as a vehicle to enforce student fourth amendment rights. Application of the rule in this

142. United States v. Calandra, 414 U.S. 338, 357 (1974) (Brennan, J., dissenting).
143. *Id.*
144. Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).
145. Doe v. Renfrow, 451 U.S. 1022, 1028 (1981) (Brennan, J., dissenting from denial of *cert.*).
146. Bernstein, *supra* note 12, at 15.

setting is consistent with, if not mandated by, the *Mapp* decision and will provide a remedy to students who have been subjected to an unlawful search by a school official. In addition, application of the rule in schoolhouse search cases will deter unconstitutional conduct by school officials, maintain student respect for the judiciary, and prohibit school authorities from profiting from their own lawlessness.

As the Supreme Court has stated, "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."[147] Imposition of the probable cause standard combined with use of the exclusionary rule will provide students with no greater rights than they are entitled to under the Constitution.

Charles W. Hardin, Jr.

147. Shelton v. Tucker, 364 U.S. 479, 487 (1960).