Street Law: 
A Course in Practical Law

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Attached Documents

Attached at the conclusion of this memo, please find:

1. Training Manual
2. Street Law Curriculum: Parts I–III
3. Moot Court Fact Pattern
4. Moot Court “Precedent” Cases
   a. *In re Haseen N.*, 674 N.Y.S.2d 700 (2nd Dep’t 1998) [Edited]
   b. *Doe v. Little Rock Sch. Dist.*, 380 F.3d 349 (8th Cir. 2004) [Edited and adapted for local jurisdiction]
5. Moot Court Outline: Issues and Arguments (to be used by NYLS volunteers)
6. Moot Court Brief Outline (to be filled in by Groundwork students)
Introduction

The goal of this capstone project was to initiate a Street Law chapter at New York Law School (NYLS) with the hopes of this becoming a permanent program housed in the Justice Action Center in conjunction with the Racial Justice Project.

Briefly, Street Law is a program, which was initiated in 1972 at the Georgetown University Law Center and has since been adopted by more than sixty law schools across the country and around the world. The main goal of the Street Law program is to teach practical law to middle and high school aged children, as it affects them in their everyday lives. This leads to the development of a positive attitude toward law and the knowledge that laws can be protective and not just punitive. The program also encourages law students to get involved in their community and obliges them to hone their legal knowledge and teaching skills.

While this goal can be met by teaching students of all socio-economic backgrounds, the focus of this year's program at New York Law School was on children living in a low-income, underserved area of Brooklyn, NY. In particular, NYLS teamed up with the non-profit organization, Groundwork for Success, and worked exclusively with the students of this program. These students were freshmen and sophomores at various high schools throughout East New York and all of the students resided in housing projects in that area.

An additional goal of the Street Law program is to enlighten young students about the legal profession and inspire them to take a path toward higher education and possibly a career in law. This year, NYLS partnered with the New York office of Fried, Frank, Harris, Shriver & Jacobson LLP and arranged for the students to visit the office, meet with practicing attorneys, and present a moot court argument.

As a whole, this program is off to a successful start at New York Law School. Over twenty NYLS students participated in the program and almost all have expressed interest in volunteering next year as well. As such, I believe that I have completed my plans for dissemination of this project; the final piece remains in the hands of Professors Marsico and Archer in determining who will keep the program running for years to come! With regards to the budget, I used JAC funds to purchase Street Law textbooks (both student and teacher editions) and to print elevator signs.
Field Visits to Groundwork Site: Summary of activities and impressions

The first visit to the Groundwork site took place on Friday, March 28. Twenty-two NYLS volunteers (including myself) traveled to East New York to teach the first portion of the curriculum. Approximately twenty-five Groundwork students attended the lesson.

The general format of the lesson involved me teaching general points to the students and explaining the guidelines for an exercise, and then breaking the students into smaller groups whereby they discussed the legal issues invoked by the exercise with fellow Groundwork students and NYLS volunteers. At the end of each exercise, the groups pulled together and individual students from each smaller group stood up and presented a summary of their discussion to the entire group.

This appeared to be an effective method as working in the smaller groups ensured that each student had a chance to be heard. Finally, by bringing the groups together in one concluding discussion, the students gained experience standing up and presenting to a crowd. They were also able to see that their classmates’ discussions were both similar to and different from their own.

The focus of this first lesson was on the pervasiveness of laws in our society and the policy rationales behind many of our laws. The lesson concluded with a basic explanation of the Fourth Amendment. This laid the groundwork for the second lesson. For more information on the curriculum, please see both the attached Training Manual and the document labeled, Visit 1 Curriculum.

Overall, the Groundwork students were extremely engaged in the lesson and were eager to speak up and participate. They all expressed shock at how many laws effect them each and every day. The only tricky part of the lesson arose when we began to discuss the Fourth Amendment. There appears to be a great disparity between the black letter law of the Fourth Amendment with regards to police treatment of individuals in public and the real life exchanges that the Groundwork students have had with officers in their daily lives. Many of the students expressed that they deal with law enforcement nearly everyday and their experiences were not positive ones.

The second visit took place on Friday, April 11. Sixteen NYLS volunteers, including myself, visited the Groundwork site and, for the most part, the same Groundwork students attended.

The lesson started off with a recap of the Fourth Amendment lesson from the previous section. The lesson was then expanded to include a summary of students’ Forth Amendment protections within a public school, and how this differs from a persons’ rights outside of the school. Instead of working in small groups, I taught this lesson to the group as a whole and the students (after warming up a bit) freely participated by answering and asking questions. For more details on this lesson, please see the attached Training Manual and the document labeled, Visit 2 Curriculum.
Perhaps the most challenging and rewarding part of this lesson (both for the NYLS volunteers and the Groundwork students) was the brief writing and moot court arguments, which comprised the remainder of the lesson.

The Groundwork students each read a fact-pattern and three supporting cases. Each student then identified the questions presented. After individually grasping the case at hand, the students were divided into teams of petitioner and respondents and set about composing their arguments. The afternoon culminated in a presentation of the arguments before a three-justice panel (comprised of NYLS students). Each Groundwork student stood up and faced the judges.

It was remarkable to see how some of these students who had previously been timid really took the activity and passionately argued their case before the “court.” Each student articulated a clear understanding of the issues at hand. The students were so engaged that they repeatedly asked for a chance to rebut the other side’s argument. It was truly an inspiring activity for all involved.
Field Visit to Law Offices of Fried, Frank Harris, Shriver & Jacobson LLP:
Summary of activities and impressions

This visit is scheduled to take place on Friday, April 25. The Groundwork students will be given
time to refresh themselves on their moot court arguments and will present the same argument
(based on the same fact-pattern and case law) to a panel of justices comprised of Fried Frank
attorneys.

Following the arguments the students will be treated to lunch at the office, during which time a
Fried Frank attorney will speak to the students about the legal profession. This should be a
positive experience for the students and will hopefully inspire them to work hard in school and
possibly focus on a career in law.
Street Law: A Course in Practical Law

Training Manual

Spring 2008

The Street Law Program is sponsored by the Justice Action Center of New York Law School, in cooperation with Groundwork for Success and Fried, Frank, Harris, Shriver, and Jacobson LLP
Background: The New York Law School Street Law Program

This training manual was designed in Spring 2008, the inaugural year of the Street Law program at New York Law School (“NYLS”). NYLS has teamed up with the non-profit organization, Groundwork for Success, to bring law students and middle and high school students together. The law students will share their knowledge about the law and educate the younger Groundwork students about their legal rights. Further, the New York office of Fried, Frank, Harris, Shriver, and Jacobson LLP has partnered with NYLS as well in an effort to teach the middle and high school students about the legal profession.
What is Street Law?

The Street Law program was initiated in 1972 at the Georgetown University Law Center. Since then, more than sixty law schools across the country and around the world have enacted similar programs. Street Law’s website clearly articulates the goals of the program:

The primary emphasis of Street Law is on teaching practical law as it affects laypersons in their daily lives. Other goals of the course include development of a positive attitude on the part of students toward law and the legal system, improvement in critical thinking and problem solving skills, examination of moral and ethical values, and exposure to vocational opportunities within the legal system.

In more detail, the Street Law program has been designed to meet the following goals:

- Providing a practical understanding of law and the legal system that will be of use to students in their everyday lives
- Improving understanding of the fundamental principles and values underlying the U.S. Constitution, laws, and legal system
- Promoting awareness of current issues and controversies relating to law and the legal system
- Encouraging effective and informed civic participation in our democracy
- Bringing about a greater sense of justice, tolerance, and fairness
- Developing a willingness and an ability to resolve disputes through informal and, where necessary, formal mechanisms
- Improving basic skills, including critical thinking and reasoning, communication, observation, and problem solving
- Improving understanding of the roles that law, lawyers, law enforcement officers, and the legal system play in our democracy

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2 Id.
3 Id.
4 See STREET LAW: A COURSE IN PRACTICAL LAW T1 (Glencoe 7th ed. 2005).
• Providing exposure to the many vocational opportunities that exist within the legal system

It is particularly important to help students develop these skills in the educationally underserved communities of New York City. Very often, students living in these neighborhoods are not aware of the educational and professional opportunities that are available to them. These students should not be overlooked simply because of the neighborhood in which they reside. The Street Law program is designed to inspire and motivate these students to work hard and aim high.

The Street Law program is an important aspect of what is known as Law-Related Education ("LRE"). LRE is a process by which young students engage in a form of legal education and from those lessons can learn to become better citizens. A federally funded study conducted in the early-1980s determined that, when properly implemented, LRE can lead to a reduction in violence and delinquency in youth. Street Law was one of several nationally known curricula used in that study.

An additional benefit of the program is, of course, the benefits it provides to law students. This program is a valuable professional development tool for law students allowing them to master an area of substantive law, hone lawyering skills, and interact with the community and legal professionals.

\[5 \text{ Id. at T20.} \]
\[6 \text{ Id.} \]
\[7 \text{ Id.} \]
\[8 \text{ For more details on the benefits to students visit } \text{http://www.streetlaw.org/lawschoolsrationale.htm.} \]
What is Groundwork for Success?§

Groundwork … Powerful Youth for Powerful Communities!

Groundwork is a non-profit organization that identifies small areas with high rates of poverty within Brooklyn, NY (typically public housing developments and the blocks that surround them) and develops programs to serve the families that live there. In particular, the Groundwork programs focus on the youth within those communities.

Groundwork’s mission is to help young people living in high poverty urban communities to develop their strengths, skills, talents, and competencies through experiential learning and work programs. Groundwork believes that this combination of education, support, and empowerment helps transform these young people’s lives and their communities.

Groundwork was co-founded in 2002 by Richard Buery, an East New York native and civil rights lawyer with a background in youth development and social entrepreneurship. As a long-time East New York public school teacher, Richard's mother was also able to navigate the educational system and get her children into good public school programs and involve them in quality out-of-school experiences. But too few East New York families have access to the information and institutions from which Richard benefited. Groundwork seeks to develop the network of services, experiences, and structures that wealthier communities take for granted.

In 2002, Groundwork received initial support from the Robin Hood Foundation and the Blue Ridge Foundation New York. These were the largest grants either institution has ever made to a start-up community-based youth organization. Groundwork now serves over one thousand families at three campuses in East New York, Brooklyn.

§ All of the information that follows, plus more details, can be found on the Groundwork website at http://www.groundworkinc.org.
Within the umbrella organization of Groundwork, Groundwork for Success is a youth employment, business education, and leadership development program for young adults ages sixteen to twenty. Students who attend the schools served by another Groundwork program, Groundwork Youth, are eligible for the Success program. Participants in the Success program are actually paid employees of Groundwork and participate in peer support groups, college admissions counseling, and leadership training. Most of the Success students also work as team leaders in the Groundwork for Youth program. The Groundwork for Youth Program is an afterschool and summer academy. College students volunteer to work with the Groundwork youth to enhance their literacy, math, artistic, and social skills.
Orientation Goals:

As a result of this orientation, NYLS trainers will be able to:

1. Identify the rationale behind law-related education
2. Discuss how participating in Street Law enhances law student professional development
3. Describe a variety of interactive teaching methodologies
Meet and Greet

Name: ______________________________

Home Town: ___________________________

Please complete this form. Then pair up with someone you do not know and interview them using these questions (and any others you would like answered). Be prepared to introduce your partner to the group.

1. Please share a little about why you decided to participate in Street Law.

2. What is the best educational experience you can recall? (Feel free to be creative and think beyond the "classroom.")

3. What is the worst educational experience you can recall?
**Exercise: Articulating the rationale behind law-related education**

In small groups, please create the following three column headings:

1. Benefits to law students
2. Benefits to high school students
3. Benefits to community.

Work together (for five to ten minutes) to identify how teaching Street Law benefits each of these groups.
The following sections of this training manual detail the curriculum that will be taught to the Groundwork students. NYLS Street Law trainers should be well versed in the curriculum. The questions and activities that appear in the text boxes are exercises for the NYLS students to facilitate familiarity with and understanding of the curriculum.

**Street Law Curriculum: Part I**

The goals of this portion of the curriculum are:

1. To illustrate the pervasiveness of law in our daily lives
2. To show that law is both civil and criminal
3. To illustrate the positive nature of law in our lives; i.e. most laws are protective rather than punitive

**Exercise 1:**

Students will be broken into groups and asked to create the following chart:

<table>
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<tr>
<th>Activity</th>
<th>Affected by Law?</th>
<th>Federal, state, or local law?</th>
<th>Reasons for the law?</th>
<th>Should the law be changed? Why?</th>
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Students will brainstorm and list ten of their daily activities (i.e., waking up, going to school, eating breakfast) and next to each item the students list any laws that affect the activity, the purpose of the law, would the students change any of the laws, etc.

Create and complete a chart for yourselves.

Are you shocked to see how many laws affect you every day? Do you think the students will be shocked? Do you have any general comments about this exercise?
After discussing the students’ lists, the students should be shocked to see how many laws affected them every day and how most of these laws are there to protect their health and safety.

Can you identify the purpose of laws generally? What are some goals that society seeks to accomplish with a system of laws? Can you identify a time when the goals of one law may conflict with the goals of another law?

Groundwork students will engage in the same exercise. Students should isolate the purposes of laws—why do societies create laws and what do they hope the laws will accomplish? NYLS trainers should help Groundwork students consider situations where the goals of laws may conflict with each other. Students should identify some societal problems that the laws cannot solve.
Exercise 2:

For each of the following laws, students should indicate whether moral, economic, political, or social values are involved.

1. All drivers must stop at stop signs
2. It is a crime to cheat on your tax returns
3. All citizens may vote at age 18
4. Special government programs lend money to minority owned businesses at low interest rates
5. Government officials may not accept gifts from people who want them to pass certain laws
6. Possession of marijuana is a crime

Consider the above list.

Identify which values each rule elicits. Do some rules elicit more than one value? Do they ever

After the students indicate the corresponding value, a discussion will follow whereby the Groundwork students will address the values that attach to each law—some laws involve more than one value. At the end of the discussion the students should have an understanding that the laws by which we live are designed with a specific purpose and are not mere annoyances. The students should walk away with an understanding that there are many factors that determine the creation of our laws.
Street Law Curriculum: Part II

The goals of this portion of the curriculum are:

1. To teach the students some of their basic rights with regard to interactions with local law enforcement
2. To empower students by explaining that they do have rights; they are not powerless
3. To teach the students about a specific area of law and guide them to apply the law to a set of facts

Exercise 1:

Students will be asked to create a list of what they think their rights are with regard to law enforcement in a public setting (not in school). For example, if a police officer stops the student on the street, must the student stop? Is she or he required to show identification? Two volunteer students will then engage in an exercise whereby one acts as a police officer and the other acts as himself/herself. The “police officer” will stop the student for questioning on the street and the students will act out an altercation for a few minutes. The students will then discuss what happened—did the student have to answer the officer’s questions? Did the officer have the right to arrest the student? Was their any use of force—is that permissible?

Do you know your rights?

Important things to remember:

1. Do not carry contraband. If you are not carrying any contraband then you should have nothing to worry about.
2. Assume that the police officers have been watching you before they stopped you—don’t lie about your activities. If you say something that contradicts what the officers have seen this can raise the level of suspicion thus possibly allowing the officer to search you.
3. If approached by officers do not reach for your pockets or waistband – if your hands are already in your pockets, tell the officers that you are going to remove your hands from your pockets before doing so. If the officers think you are reaching for a weapon or
that you have your hands on a weapon, that can raise the level of suspicion thus possibly allowing the officer to search you.

According to a pamphlet created by the ACLU, titled “What to do if you are stopped by the police,” students should adhere to the following guidelines when encountering an officer:

- Think carefully about your words, movements, body language and emotions
- Don’t get into an argument with the police
- Remember that anything you say or do can be used against you
- Keep your hands where the police can see them
- Don’t run
- Don’t touch the officer
- Don’t resist, even if you believe you are innocent
- Don’t complain on the scene or tell the police that they are wrong
- Ask for a lawyer immediately upon arrest and do not make any statements until the lawyer is present
- Remember the officer’s name and badge number
- Write down everything you remember as soon as you can
- Try to find witnesses and names and phone numbers
- If you are injured, take photographs of the injuries and seek medical attention
- If you feel your rights have been violated, file a complaint with police department’s internal affairs division or civilian complaint board

See attached ACLU pamphlet for more information.

Why do we have these rights?

What is so important about the right to remain silent? Are there any negative consequences to...
discussion should also focus on the fact that while the students should know that they have the right not to answer questions, they should also be aware that refusing to do so, or being disrespectful to an officer may provide enough suspicion to allow the police to arrest or search the person.
Exercise 2:

Fourth Amendment Basics

Ask the students what they know about privacy in the constitutional sense. Can the police search their homes? Their person?

Read the text of the amendment to the students and explain what it means.

Text of the Fourth Amendment: 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.

Summary: The Fourth Amendment protects citizens not against all searches and seizures, but against unreasonable searches and seizures. Generally a search and seizure without a warrant is considered to be unreasonable, but there are exceptions. The remedy for a violation of the Fourth Amendment is exclusion: inclusion of the evidence obtained through the unlawful search will not be permitted at trial. This is known as the exclusionary rule.

What is an unreasonable search? What is the standard that the police must meet in order to make an arrest?

Students will be asked for examples of what they might think to be an unreasonable search. The NYLS instructor will then explain some exceptions to the reasonableness doctrine. Inform the students that this information will be important for their moot court exercise and that they should take notes.

Exceptions: What is unreasonable?
• **Encounter.** Not considered a seizure. Essentially an encounter occurs when the individual is free to walk away from the police officer at anytime. An officer can engage in informal contact with a person at any time without a need for prior information.
  - **Ex.** An officer asks a pedestrian if she saw the person who broke a store window
  - **Ex.** An officer talks to a class about safety

• **Stop.** Not considered a seizure. A brief period of questioning during which no charges are made. The person is not free to leave at any time. An officer can stop a person if they have a *reasonable suspicion* that a person is involved in a crime that is planned or taking place. Then the officer can stop the person and ask for identification and an explanation of suspicious activity. Reasonable suspicion is more than a hunch and is based on specific details or facts.
  - **Ex.** An officer sees a person pacing in front of a store window, picking up rocks, and looking up at the window

• **Stop and Frisk.** Not considered a search or seizure. An officer “pats down” the outer garments of an individual to *check for weapons* in order to protect the officer’s safety. In the case of *Terry v. Ohio*, the U.S. Supreme Court sanctioned stopping and frisking a suspect to search for weapons when there was *reasonable suspicion* that a crime was about to be committed and that the suspect might be armed and dangerous. If an item is felt during the frisk and the officer believes the item to be dangerous, the item will be taken, or seized. IF the item provides the police with probable cause to arrest the person, the officer may then do a full search of the person (including looking in pockets and socks).

• **Arrest.** Considered a seizure. A persons suspected of a crime is taken into custody. The person is not free to go and must remain with the police. An officer must have *probable cause* to make an arrest. Probable cause is the reasonable belief that a person has committed a crime. In some cases, prior to the arrest, officers must request an arrest warrant from a judge, who will determine whether there is probable cause to believe that the person named has committed a crime. Other times, no warrant is needed (for example in an emergency situation).
Exercise 3:

Fourth Amendment Protections: Focus on Students

Up to this point, the students have learned that the Fourth Amendment does not protect against all searches and seizures, only unreasonable ones. Students should now be made aware that the U.S Supreme Court has granted school authorities broad discretion to search students and their possessions in several situations. The Supreme Court has upheld many school searches as reasonable although they may seem unreasonable outside of the context of the school.

Do you think that the Fourth Amendment should apply differently in the school setting? Should minors have the same privacy rights as adults?

Four students will be selected to participate in a role-play based on the facts of *New Jersey v. T.L.O.* One student will play a teacher, two will play students (one should be a female), and the fourth should play the principal.

- Students should play out a scene in which the teacher catches the two students smoking and takes them to the principal’s office. The principal asks the students of they have been smoking. The female students should deny that she was or ever has smoked. The principal should ask the female student to see her purse; she should give it to the principal. Upon opening the purse, the principal will see cigarettes and rolling papers; the female should deny that these items belong to her.

- Knowing the rolling papers are often associated with marijuana, the principal searches further and finds $40 in singles, and a list of notes about the female student’s sale of marijuana to other students.

Following the role-play, ask the students the following questions:

- Should the exclusionary rule apply to searches by school officials of students in high school? Why or why not?
  - Students’ answers will vary. Below is the ‘correct’ answer
  - In 1985 case of *New Jersey v. TLO* the state of New Jersey argues that the exclusionary rule should not apply at schools at all. New Jersey argued that school officials were not agents of the state (like police). Instead, the state argued that school officials were acting in the shoes of parents and that escalating problems of drugs and violence justified the not applying the exclusionary rule in the school setting.
The Court disagreed with New Jersey and held that students were citizens who should have the same basic rights as citizens on the street—although a lower standard or proof (lower than probable cause) might be required.

Further, the Court held that public school officials were agents of the state.

Note that private schools are not governed by TLO.

• How much evidence should a school official have before searching a student’s purse or locker? Should the standard of probable cause or reasonable suspicion be required?
  1) Students’ answers will vary. Below is the ‘correct’ answer.
  2) In TLO, the Court ruled that the standard of probable cause required for searches outside school did not apply to school officials searching a students’ purse or person—instead the standard is reasonable suspicion. There has not been a case on lockers specifically but most courts will apply the reasonable suspicion standard.
  3) In TLO, the Court held that students could be searched if the school official had “reasonable grounds for suspecting that the search will turn up evidence that the student has violated, or is violating either the law or rules of the school.”
    • Thus, violating a no-smoking rule can justify a search.

• Do you believe that the principal had the right to open up the student’s purse? Could the drug paraphernalia found be used against the student in court?
  1) Students’ answers will vary. Below is the ‘correct’ answer.
  2) In TLO, the Court found that the fact that the student had been observed smoking in violation of the school rules provided reasonable suspicion. This justified the principal’s decision to open the purse, and seeing the rolling papers provided reasonable suspicion to look further.
  3) The general rule with regards to purses and backpacks is that the school official must have a reasonable suspicion to start the search and then the scope of the search must also be reasonable.

• Should students have fewer rights or the same rights as adults in the community? Explain your answer
  1) Students’ answers will vary.
  2) Some people argue that students should have restricted rights because if their age, lack of maturity, and the fact that schools are special places of learning that should not be compromised by the distractions that stem from drugs and violence.
  3) Others argue that students cannot be taught the principals of the Constitution or other civil values if they do not apply to them.
  4) An argument has also been made that if a school provides students fewer rights than adults, this sends the message that the rights of students are not important.
Street Law Curriculum: Part III

During this portion of the program, the students will participate in a moot court exercise. This will include reading a fact pattern, writing a brief, and ultimately arguing before a panel of ‘judges.’ The fact pattern will be based on the Fourth Amendment in the school setting and the students will work form the knowledge they gained from the previous lessons on this topic.

What is a moot court exercise?

Ask the students if they know what a moot court exercise is.

- A moot court simulates an appellate court or Supreme Court oral argument. The appeals court rules on the lower court’s decision. No witnesses are called and the basic facts of the case are not disputed.
- The party bringing the appeal is called the petitioner or the appellant.
- The other side (the side that won in the lower court) is called the respondent or appellee.

Initial steps for moot court

1. Students will preview the fact pattern and should be sure to know the following:
   - What happened in this case?
   - Who are the parties involved?
   - How did the lower court rule?
   - Which party is bringing this appeal?

2. Students should be sure to clearly understand the issues involved in the case.
   - The students should be able to phrase the issues in the form of a question.
   - Ex. Did the principal violate the student's Fourth Amendment rights by searching her backpack without probable cause?

Preparation for justices, petitioners, and respondents

1. Justices:
   - Discuss the issue involved.
   - Study the precedent.
   - Prepare questions to ask the lawyers for each side.
   - Select a chief justice to preside over the hearing.
• Briefing Exercise: Each justice should draft a short “brief,” including the
topics presented, statement of facts, petitioners best argument,
respondents best argument, and conclusion.
  • NYLS trainers will read the briefs and provide written
    feedback.

2. Lawyers:

• Determine the strongest legal and public policy arguments for their side
• Determine which legal precedents help their side.
• Determine the strongest legal and public policy arguments for the other side,
  and which legal precedents help the other side.
• Consider questions that the justices are likely to ask and formulate answers.
• Choose two students to present for each side (P1, P2 and R1, R2).
• NYLS students will assist the Groundwork students in this activity and help
  them to draft short briefs.
• Briefing Exercise: Each lawyer should draft a short “brief,” including the
  topics presented, statement of facts, argument, and conclusion.
  • NYLS trainers will read the briefs and provide written
    feedback.

Moot court procedures

1. The chief justice calls the court to order, announces the case and asks the petitioners
to begin.
2. P1 presents. P2 presents.
3. R1 presents. R2 presents.
4. P1 rebutts.
5. Justices should then deliberate publicly in front of the class—each justice will give
  his or her decision and reasons and the chief justice will tally the votes and announce
  the decision of the court.

Follow-up activity

After the moot court, the NYLS students should engage the Groundwork students in a discussion
based on the following questions:

• Did the process seem fair?
• Which arguments seemed most convincing?
• What does the court’s decision mean for the parties?
• What does the court’s decision mean for society?
• If you could repeat this simulation, how would you prepare differently? What would you do the same?
Visit to the New York office of Fried, Frank, Harris, Shriver, and Jacobson LLP

The final portion of this program involves a field trip for the Groundwork students to the New York office of Fried, Frank, Harris, Shriver, and Jacobson LLP. Once at Fried Frank, the students will be present their moot court arguments to a panel of justices comprised of Fried Frank attorneys and partners.

NYLS trainers will serve as moral support for the students. The NYLS trainers will also help the students to refine their arguments, and will provide the final written feedback on the Groundwork students’ briefs.
Moot Court Fact Pattern

Supreme Court, Appellate Division, First Department, New York
In re John D.,
A Person Alleged to be a Juvenile Delinquent, Appellant
Jan. 29, 2008

Facts:
John D. is a sophomore student at New York High School, a public high school located in Brooklyn, New York. On November 30, 2005, John D. attended his math class as he always did on Mondays at 1:00 pm. The teacher, Ms. Multiplication, began class by reviewing the previous night’s homework assignment, when she was suddenly interrupted by a beeping noise that lasted for approximately three seconds. Ms. Multiplication continued on with the lesson, when she was interrupted again by the same noise. The teacher ignored it one more time and tried to continue teaching. Once again she was interrupted.

This time, Ms. Multiplication questioned her class about the noise, as she believed the source to be a student’s cell phone. Students at New York High School are permitted to carry cell phones but they must be turned off during school hours and it is a serious violation of the rules to use a cell phone while in school—particularly while in the classroom.

Ms. Multiplication asked her students if anyone had a cell phone switched on. No one replied and the teacher asked again for the student who was responsible for the cell phone noise to come forward. By this point, the beeping had stopped and no further cell phone noise was heard for the duration of the incident.

Because the students refused to respond, Ms. Multiplication called upon the school’s principal, Mrs. Rules, to report to the classroom and question the students about the cell phone. Mrs. Rules lined the students up at the front of the room and, starting from the left side of the line, proceeded to search the pockets of each student, looking for the offending cell phone.
John D. was standing toward the right side of the line and began to get nervous. He started sweating and could not manage to stand still. When Mrs. Rules reached John D. and searched his pockets, she was shocked to find, not a cell phone, but a hunting knife with a six-inch blade.

**Lower Court Opinion:**
John D. appeared before the Family Court, Kings County. The court found that John D. had committed the act of unlawful possession of a weapon by a person under the age of sixteen and deemed him a juvenile delinquent. John D. was then placed with the office of Children and Family Services for a period of twelve months.

The lower court determined that search of John D. was reasonable based on the U.S. Supreme Court case of New Jersey v. T.L.O. In that case, the Supreme Court held that a search of a student by a teacher or other school official will be justified where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating the laws or rules of the school.

The lower court also ruled that the search was reasonable because it met the standard for reasonableness as stated in the case of Matter of Haseen N. In that case, the court said that non-police school personnel were entitled to search the students so long as (1) the search technique used was the least intrusive, most practical means of locating the offensive items and (2) the search represented a proper balance between the students’ right to privacy and the schools’ right to make sure that rules are not broken.

The lower court also said that the search was proper even though a ringing cell phone did not threaten the safety of the students. The court again cited the T.L.O. case, which said that a search may be reasonable (1) if it threatens the safety of the schoolchildren or the teachers or, (2) if it threatens the education process itself. In this case, the ringing cell phone threatened the educational process.

Not all of the judges on the lower court agreed with each other. Although in the end the court found that John D. did unlawfully possess a knife, some judges wanted to find him not guilty. Those judges are called “the dissent.”
The dissent said that the search of John D. was not reasonable because students still have Fourth Amendment rights even when they are in school. In *Haseen*, the court said that search was only reasonable if it was not intrusive and considered the privacy interest of the students. The dissent believed that the principal could have asked students to open to their book bags and that would have been more reasonable. Also, the dissent believed that a cell phone was not dangerous so the students’ right to privacy was more important.

Also, the dissent believed that the principal had to have a belief that John D. in particular had the offensive cell phone in his pocket in order for the search to be reasonable. In this case, the principal only believed that someone in the classroom had a cell phone.
In a juvenile delinquency proceeding pursuant to Family Court Act article 3, the appeal is from an order of the Family Court, Kings County (Pearce, J.), dated March 18, 1997, which, at the close of the fact-finding hearing, reopened the hearing on that branch of the respondent's omnibus motion which was to suppress a weapon, granted that branch of the motion, suppressed the weapon, and dismissed the petition.

Ordered that the order is reversed, without costs or disbursements, that branch of the respondent's motion which was to suppress a weapon is denied, the petition is reinstated, and the matter is remitted to the Family Court, Kings County, for the purpose of entering an appropriate fact-finding order, and for a dispositional hearing.

At a suppression hearing on the instant juvenile delinquency petition, a guidance counselor testified that on the morning of Halloween, October 31, 1996, the principal of Intermediate School 390 had ordered certain school staff to "pat down" the outer clothing of the students as they arrived, with the aim of preventing a recurrence of the egg-throwing melees that had occurred on the three previous Halloweens. As the counselor "patted down" the 13-year-old respondent, he felt a hard object in the boy's "mid-section". Unzipping the respondent's jacket, the counselor saw what looked like "the butt of a gun" in the boy's waistband. The counselor escorted the respondent over to Safety Sergeant Ronald Foster, and told Foster to "check" the boy. Foster opened the respondent's jacket and saw a .22 caliber pistol in his belt.

At the suppression hearing, the Presentment Agency established the legality of the
respondent's search, and the respondent did not demonstrate, by a preponderance of the evidence, that the search was unlawful (see, e.g., Matter of Juan C. v. Cortines, 223 AD2d 126, 129, revd on other grounds 89 NY2d 659; People v. Caple, 31 AD2d 752; People v. Merola, 30 AD2d 963, 964). Thereafter, the court erred when, after a fact-finding hearing, it changed its decision and suppressed the gun, (1) without prior notice to the Presentment Agency; (2) having shifted the burden of proof to the Agency; and (3) having raised the burden of proof on the suppression issue from a preponderance of the evidence to proof "beyond a reasonable doubt" (see, e.g., Family Ct Act § 330.2).

At the suppression hearing, the Presentment Agency *506 established the reasonableness of the administrative search of all students under the circumstances presented. The method used--a quick pat-down of the students' outer clothing by non-police school personnel--was the least intrusive, most practical means of locating concealed eggs, and represented a reasonable balance between the competing interests of the students in privacy and the school administrators in maintaining order (see, e.g., Vernonia School Dist. 47J v. Acton, 515 US 646; New Jersey v. T.L.O., 469 US 325, 329; Wallace v. Batavia School Dist. 101, 68 F3d 1010, 1013-1014; Horton v. Goose Cr. Ind. School Dist., 690 F2d 470, 480, cert denied 463 US 1207; Matter of Gregory M., 82 NY2d 588, 592; People v. Scott D., 34 NY2d 483, 486). Accordingly, we conclude that the administrative "search" was justified at its inception, and was reasonable in scope.

Moreover, after the guidance counselor had observed a gun butt in the respondent's waistband and had communicated his apprehensions to Safety Sergeant Foster, the latter had sufficient "individualized suspicion" to hold open the top of respondent's jacket and recover the gun (Matter of Gregory M., supra, at 593). The remaining contentions are either unpreserved for appellate review or without merit.


This case requires us to decide whether the practice of the [New York] School District (NYSD) that subjects secondary public school students to random, suspicionless searches of their persons and belongings by school officials is unconstitutional. We conclude that such searches violate the students' fourth amendment rights because they unreasonably invade their legitimate expectations of privacy.

Jane Doe is a secondary school student in the NYSD. One day during the school year, all of the students in Ms. Doe's classroom were ordered to leave the room after removing everything from their pockets and placing all of their belongings, including their backpacks and purses, on the desks in front of them. While the students were in the hall outside their classroom, school personnel searched the items that the students had left behind, including Ms. Doe's purse, and they discovered marijuana in a container in her purse. The parties have stipulated that NYSD has a practice of regularly conducting searches of randomly selected classrooms in this manner.

In her amended complaint, Ms. Doe, individually and on behalf of a class of "all secondary public school students who have started seventh grade in the [NYSD] as of the 1999-2000 school year," claimed that this method of conducting searches is unconstitutional. The district court entered judgment for the NYSD and dismissed the complaint with prejudice. We reverse.

I.
The fourth amendment provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." "In carrying out searches … school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents' immunity from the strictures of the Fourth Amendment." See New Jersey v. T.L.O., 469 U.S. 325, 334-37, 83 L. Ed. 2d 720, 105 S. Ct. 733 (1985). "Reasonableness" is "the touchstone of the constitutionality of a governmental search," Board of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls, 536 U.S. 822, 828, 153 L. Ed. 2d 735, 122 S. Ct. 2559 (2002), and the relevant constitutional question in school search cases is "whether the search was reasonable in all the circumstances," Thompson v. Carthage Sch. Dist., 87 F.3d 979, 982 (8th Cir. 1996).

In determining whether a particular type of school search is constitutionally reasonable, we engage in a fact-specific "balancing" inquiry, under which the magnitude of the government's need to conduct the search at issue is weighed against the nature of the invasion that the search entails. "On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order." T.L.O., 469 U.S. at 337.

After reviewing the reasonableness issue de novo, we conclude that the district court underestimated the extent to which the NYSD's search practice intrudes upon its students' legitimate privacy interests, and overestimated the substantiality of the NYSD's factual showing that such an intrusion was necessary to address a significant difficulty in the schools. Students presumptively have a legitimate, though limited, expectation of privacy in the personal belongings that they bring into public schools. Because subjecting students to full-scale, suspicionless searches eliminates virtually all of their privacy in their belongings, and there is no evidence in the record of special circumstances that would justify so considerable an intrusion, we hold that the search practice is unconstitutional.

II.
We ask first whether secondary public school students in the NYSD retain any legitimate expectations of privacy. The district court, quoting *Earls*, 536 U.S. at 830, noted that a "student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety." "Students in public schools do indeed have lesser expectations of privacy than people generally have in public situations, due in large part to the government's responsibilities "as guardian and tutor of children entrusted to its care." *Vernonia*, 515 U.S. at 665 (footnote omitted). Public school students' privacy interests, however, are not nonexistent. We think it is clear that schoolchildren are entitled to expect some degree of privacy in the personal items that they bring to school.

The Supreme Court has observed that there is a tension between the types of privacy "interests protected by the Fourth Amendment and the interest of the States in providing a safe environment conducive to education in the public schools," *id.* at 332 n.2, and has concluded that the fourth amendment allows school officials some flexibility in resolving this tension. But it has characterized as "severely flawed" a state's argument that "because of the pervasive supervision to which children in the schools are necessarily subject, a child has virtually no legitimate expectation of privacy in articles of personal property 'unnecessarily' carried into a school." *id.* at 338. While the Court has acknowledged that students' privacy rights are limited due to the "difficulty of maintaining discipline in the public schools," and that "drug use and violent crime in the schools have become major social problems," it has stated that "the situation is not so dire that students in the schools may claim no legitimate expectations of privacy." *id.* at 338-39.

III. Given that public school students retain some legitimate expectation of privacy in their persons and belongings, we are bound to inquire into the character of the intrusion that the LRSD's search practice imposes. We respectfully disagree with the district court's determination that the search practices of the NYSD are "minimally intrusive."

A search of a child's person or of a closed purse or other bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy." *T.L.O.*, 469 U.S. at 337-38. Students often carry items of a personal or private nature in their pockets and bags, and many students (whether or not they are carrying contraband) must surely feel uncomfortable or embarrassed when officials decide to rifle through their personal belongings.

IV. While the line separating reasonable and unreasonable school searches is sometimes indistinct, we think it plain enough that the NYSD's search practice crosses it. In light of the government's legitimate interest in maintaining discipline and safety in the public schools, the privacy that students in those schools are reasonably entitled to expect is limited. The NYSD's search practice, however, effectively reduces these expectations to nothing, and the record contains no evidence of unique circumstances that would justify significant intrusions.
1. The Fourth Amendment's Reasonableness Standard Governs the School Setting

NEW JERSEY V. T.L.O.

469 U.S. 325 (1985)

Justice White delivered the opinion of the Court.

We granted certiorari in this case to examine the appropriateness of the exclusionary rule as a remedy for searches carried out in violation of the Fourth Amendment by public school authorities. Our consideration of the proper application of the Fourth Amendment to the public schools, however, has led us to conclude that the search that gave rise to the case now before us did not violate the Fourth Amendment. Accordingly, we here address only the questions of the proper standard for assessing the legality of searches conducted by public school officials and the application of that standard to the facts of this case.

I

On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N.J., discovered two girls smoking in a lavatory. One of the two girls was the respondent T.L.O., who at that time was a 14-year-old high school freshman. Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the Principal's office, where they met with Assistant Vice Principal Theodore Choplick. In response to questioning by Mr. Choplick, T.L.O.'s companion admitted that she had violated the rule. T.L.O., however, denied that she had been smoking in the lavatory and claimed that she did not smoke at all.

Mr. Choplick asked T.L.O. to come into his private office and demanded to see her purse. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T.L.O. as he accused her of having lied to him. As he reached into the purse for the cigarettes, Mr. Choplick also noticed a package of cigarette rolling papers. In his experience, possession of rolling papers by high school students was closely associated with the use of marihuana. Suspecting that a closer examination of the purse might yield further evidence of drug use, Mr. Choplick proceeded to search the purse thoroughly. The search revealed a small amount of marihuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of students who owed T.L.O. money, and two letters that implicated T.L.O. in marihuana dealing.

Mr. Choplick notified T.L.O.'s mother and the police, and turned the evidence of drug dealing over to the police. At the request of the police, T.L.O.'s mother took her daughter to police headquarters, where T.L.O. confessed that she had been selling marihuana at the high school. On the basis of the confession and the evidence seized by Mr. Choplick, the State brought delinquency charges against T.L.O. in the Juvenile and Domestic Relations Court of Middlesex County. Contending that Mr. Choplick's search of her purse violated the Fourth Amendment, T.L.O. moved to suppress the evidence found in her purse as well as her confession, which, she argued, was tainted by the allegedly unlawful search. The Juvenile Court denied the motion to suppress...
II

In determining whether the search at issue in this case violated the Fourth Amendment, we are faced initially with the question whether that Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. We hold that it does.

It is now beyond dispute that "the Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers." ... Equally indisputable is the proposition that the Fourteenth Amendment protects the rights of students against encroachment by public school officials:

The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. West Virginia State Bd. of Ed. v. Barnette.

These two propositions—that the Fourth Amendment applies to the States through the Fourteenth Amendment, and that the actions of public school officials are subject to the limits placed on state action by the Fourteenth Amendment—might appear sufficient to answer the suggestion that the Fourth Amendment does not proscribe unreasonable searches by school officials. On reargument, however, the State of New Jersey has argued that the history of the Fourth Amendment indicates that the Amendment was intended to regulate only searches and seizures carried out by law enforcement officers; accordingly, although public school officials are conceivably state agents for purposes of the Fourteenth Amendment, the Fourth Amendment creates no rights enforceable against them.

It may well be true that the evil toward which the Fourth Amendment was primarily directed was the resurrection of the pre-Revolutionary practice of using general warrants or "writs of assistance" to authorize searches for contraband by officers of the Crown....

Notwithstanding the general applicability of the Fourth Amendment to the activities of civil authorities, a few courts have concluded that school officials are exempt from the dictates of the Fourth Amendment by virtue of the special nature of their authority over schoolchildren.... Teachers and school administrators, it is said, act in loco parentis in their dealings with students: their authority is that of the parent, not the State, and is therefore not subject to the limits of the Fourth Amendment.

Such reasoning is in tension with contemporary reality and the teachings of this Court. We have held school officials subject to the commands of the First Amendment, see Tinker, and the Due Process Clause of the Fourteenth Amendment, see Goss v. Lopez, 419 U.S. 565 (1975). If school authorities are state actors for purposes of the constitutional guarantees of freedom of expression and due process, it is difficult to understand why they should be deemed to be exercising parental rather than public authority when conducting searches of their students. More generally, the Court has recognized that
"the concept of parental delegation" as a source of school authority is not entirely "consonant with compulsory education laws." Ingraham v. Wright, 430 U.S. 651 (1977). Today's public school officials do not merely exercise authority voluntarily conferred on them by individual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies. . . . In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents' immunity from the structures of the Fourth Amendment.

III

To hold that the Fourth Amendment applies to searches conducted by school authorities is only to begin the inquiry into the standards governing such searches. Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place. The determination of the standard of reasonableness governing any specific class of searches requires "balancing the need to search against the invasion which the search entails." . . . On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order.

We have recognized that even a limited search of the person is a substantial invasion of privacy. . . . We have also recognized that searches of closed items of personal luggage are intrusions on protected privacy interests, for "the Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view." . . . A search of a child's person or of a closed purse or other bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy.

Of course, the Fourth Amendment does not protect subjective expectations of privacy that are unreasonable or otherwise "illegitimate." . . . To receive the protection of the Fourth Amendment, an expectation of privacy must be one that society is "prepared to recognize as legitimate." The State of New Jersey has argued that because of the pervasive supervision to which children in the schools are necessarily subject, a child has virtually no legitimate expectation of privacy in articles of personal property "unnecessarily" carried into a school. This argument has two factual premises: (1) the fundamental incompatibility of expectations of privacy with the maintenance of a sound educational environment, and (2) the minimal interest of the child in bringing any items of personal property into the school. Both premises are severely flawed.

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2 We do not address the question, not presented by this case, whether a schoolchild has a legitimate expectation of privacy in lockers, desks, or other school property provided for the storage of school supplies. Nor do we express any opinion on the standards (if any) governing searches of such areas by school officials or by other public authorities acting at the request of school officials. Compare Zerbst v. Frazee, 300 U.S. 81 (1937), with In re Brown, 333 U.S. 157 (1948) (public housing official who had a "reasonable suspicion that the premises contained" evidence of narcotics in a tenant's residence had authority to conduct a search of those premises).
Although this Court may take notice of the difficulty of maintaining discipline in the public schools today, the situation is not so dire that students in the schools may claim no legitimate expectations of privacy. We have recently recognized that the need to maintain order in a prison is such that prisoners without saying that "[t]he prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration." . . . We are not yet ready to hold that the schools and the prisons need be equated for purposes of the Fourth Amendment.

Nor does the State's suggestion that children have no legitimate need to bring personal property into the schools seem well anchored in reality. Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessities of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries. Finally, students may have perfectly legitimate reasons to carry with them articles of property needed in connection with extracurricular or recreational activities. In short, schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waivered all rights to privacy in such items merely by bringing them onto school grounds.

Against the child's interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems. . . . Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult. "Events calling for discipline are frequent occurrences and sometimes require immediate, effective action." Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.

How, then, should we strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place? It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools. Just as we have in other cases dispensed with the warrant requirement when "the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search," we hold today that school officials need not obtain a warrant before searching a student who is under their authority.

The school setting also requires some modification of the level of suspicion of illicit activity needed to justify a search. Ordinarily, a search—even one that
may permissibly be carried out without a warrant—must be based upon “probable cause” to believe that a violation of the law has occurred. However, "probable cause" is not an irreducible requirement of a valid search. The fundamental command of the Fourth Amendment is that searches and seizures be reasonable, and although "both the concept of probable cause and the requirement of a warrant bear on the reasonableness of a search, . . . in certain limited circumstances neither is required." Thus, we have in a number of cases recognized the legality of searches and seizures based upon suspicions that, although "reasonable," do not rise to the level of probable cause. Where a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause, we have not hesitated to adopt such a standard.

We join the majority of courts that have examined this issue in concluding that the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based upon probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider "whether the . . . action was justified at its inception," second, one must determine whether the search as actually conducted "was reasonably related in scope to the circumstances which justified the interference in the first place." 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.

This standard will, we trust, neither unduly burden the efforts of school authorities to maintain order in their schools nor authorize unrestrained intrusions upon the privacy of schoolchildren. By focusing attention on the question of reasonableness, the standard will spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense. At the same time, the reasonableness standard should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools.

IV

There remains the question of the legality of the search in this case. We recognize that the "reasonable grounds" standard applied by the New Jersey Supreme Court in its consideration of this question is not substantially different from the standard that we have adopted today. Nonetheless, we believe that the

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8 We do not decide whether individualized suspicion is an essential element of the reasonableness standard we adopt for searches by school authorities.
New Jersey court's application of that standard to strike down the search of T.L.O.'s purse reflects a somewhat crabbed notion of reasonableness. Our review of the facts surrounding the search leads us to conclude that the search was in no sense unreasonable for Fourth Amendment purposes.
Moot Court Outline: Issues and Arguments
(to be used by NYLS volunteers)

Questions Presented (Issues)

1. Did Mrs. Rules’s search of John D. violate the student’s Fourth Amendment rights?

2. Was the search of John D.’s pockets the least intrusive, most practical means of locating the offensive items?

3. Was the search of John D.’s pockets reasonable in that it represented the proper balance between the student’s right to privacy and the school’s right to make sure that rules are not broken?

Rule

1. The search of a student by a teacher or other school official will be justified where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating a law of the school (New Jersey v. TLO)

2. Non-police school personnel are entitled to search the students if
   a. The search technique used is the least intrusive, most practical means of locating the offensive items, and
   b. The search represents a proper balance between the student’s right to privacy and the school’s right to make sure that rules are not broken (Matter of Haseen N.)

Petitioner Arguments

Petitioner is arguing that the hunting knife should be excluded from the trial as evidence obtained through an unlawful search.

1. The search violates the Fourth Amendment because it undermines the student’s reasonable expectation of privacy.
   a. New Jersey v. TLO:
      i. “Schoolchildren have legitimate expectation of privacy”
ii. “A search of a child’s person or of a closed purse or other bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy”

iii. “…the situation is not so dire that students in the schools may claim no legitimate expectations of privacy”

2. The search of the student’s pockets was not the least intrusive, most practical means of locating the offensive item (in this case, a cell phone).
   a. Mrs. Rules could have engaged in a pat-down of the exterior of the children’s clothing or could have asked the students to open their bags.
   b. In In re Haseen, the court upheld the search, however, in that case, the counselor patted-down the student and felt a hard object -- only after feeling this hard object, and thus acquiring reasonable suspicion, did the counselor unzip the student’s jacket did he see the butt of a gun
   c. Further, TLO requires that in order for a search to be reasonable, it must also be reasonable in scope
      i. Reaching into the students pockets was not within a reasonable scope – a pat-down of the pockets would have uncovered a cell phone – there was no need to look into the students’ pockets

**Respondent Arguments**

Respondent is arguing that the hunting knife was discovered as part of a constitutional search and thus should be admitted into evidence.

1. The search did not violate the Fourth Amendment because the need to protect the students’ safety outweighed any reasonable expectation of privacy that the students may have had
   a. New Jersey v. TLO:
      i. “Against the child’s interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds”
      ii. “Drug use and violent crimes have become major social problems”
      iii. “The warrant requirement is unsuited for the school environment”
      iv. “…the accommodation of the privacy interests of school children with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based upon probable cause … rather the legality of a search of a student should depend simply on the reasonableness … of the search”
2. The search was the least intrusive, most practical means of locating the offensive item
   a. The students were asked several times to produce the offensive cell phone and no one complied, thus the principal has no choice but to look into the students’ pockets to find the phone.

3. The search was reasonable because the ringing cell phone threatened the educational process and the teachers had a legitimate need to find the cell phone
   a. The teacher must maintain a level of control over the classroom in order to facilitate the learning process; the cell phone was disrupting this process.

4. John D. exhibited suspicious behavior by sweating and his inability to stand still – this alone was sufficient to create reasonable suspicion that the student has violated or is violating the law or rules of the school.

5. Doe v. [New York] School District held that “subjecting students to full-scale, suspicionless searches eliminates virtually all of their privacy in their belongings” and they found the search at issue to be unconstitutional.
   a. However, in this case, the search was neither “full-scale” nor Suspicionless.
   b. The principal did not search the students’ bags, only their pockets and the suspicion had been roused by the beeping cell phone.
Moot Court Brief Outline
(to be filled in by Groundwork students)

Questions Presented
What question(s) is the court trying to answer?

Summary of Material Facts
State the facts that are most important and relevant for the side of the case that you are presenting. Try to state only the facts that will help your case and to limit the facts that might hurt your case.

Argument
What are your main points? List them and explain. Try to be persuasive and use quotes and information from the other cases.

Also, try to think of what your opponents might argue and come up with an argument to defend against theirs.

Conclusion
Summarize your argument and restate why the justices should find in your favor.