Talking Points

New Jersey v. T.L.O. Applied to a Search at School

The Judge and student attorneys start with the Opening Protocol Script. After the last student attorney introduces himself/herself, the Judge says:

The issue before us today is whether, under the circumstances of this case, the search of Ms. Brittany Porter’s purse violated the Fourth Amendment to the U.S. Constitution.

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| Judge: We will start with Question #1.Does the Fourth Amendment apply to searches conducted by public school officials, and not just law enforcement officers?Because Ms. Brittany Porter is the Petitioner bringing this case, her attorney will go first. | Judge: Now we will hear from the Respondent, the Government.Does the Fourth Amendment apply to searches conducted by public school officials, and not just law enforcement officers? |
| Brittany Porter’s Attorney #1 | Government’s Attorney #1 |
| YES* Public school teachers and administrators are employed by and act on behalf of local and state governments. As such, they are state actors and their actions must conform to the Constitution, specifically the Fourth Amendment.
* Students do not “shed their…constitutional rights at the schoolhouse gate.” If students are to become responsible citizens, then school officials must lead by example and follow the same constitutional provisions that they are teaching their students.

Judge asks follow-up questions. | NO* Teachers are not law enforcement personnel. Their job is to teach, not gather evidence. Their actions are not subject to the Fourth Amendment.
* While it is true that students do not “shed their…constitutional rights at the schoolhouse gate,” neither do they retain all the rights of adults. Students are not entitled to Fourth Amendment rights in a school setting. Fourth Amendment protections are incompatible with the nature of an educational environment.

Judge asks follow-up questions. |
| Judge: We turn our attention now to question #2. Again, we will start with the petitioner.Do students have a legitimate expectation of privacy in school? | Judge: Question #2 for the Government is the same:Do students have a legitimate expectation of privacy in school? |
| Brittany Porter’s Attorney #2 | Government’s Attorney #2 |
| YES* Students may find it necessary to carry to school items and information of a personal nature that they do not wish to be made public. There is no reason to suggest that students waive their right to privacy simply because they bring such items onto school property.
* In addition to school books and supplies, students also carry medicine, religious symbols, photographs, letters, diaries and other personal items. They also bring cell phones and digital devices that contain extensive personal information about themselves, their families, and friends. Students do not waive their privacy interests simply because they bring these items to school.
* In light of the need to maintain order and discipline in school, there are times when students may have a reduced expectation of privacy. At times, schools must strike a balance between privacy and educational and safety needs. This does not mean that students have no legitimate expectation of privacy.

Judge asks follow-up questions.  | NO* Students at school are under the supervision of teachers and school authorities all day. With such extensive oversight, as well as camera surveillance, they do not have a legitimate expectation of privacy.
* Student safety outweighs students’ expectations of privacy. There is no need for students to bring inappropriate or extraneous materials to school.
* Even if students at school have some expectation of privacy, it must be balanced against the substantial interest of maintaining an orderly learning environment. In a school setting, privacy rights will almost always yield to educational interests.

Judge asks follow-up questions. |
| Judge: Now let’s look at Question #3.For the petitioner: What should be the test for determining the legality of student searches at school? | Judge: Question #3 for the Government is the same.What should be the test for determining the legality of student searches at school? |
| Brittany’s Porter’s Attorney #3 | Government’s Attorney #3 |
| * The Fourth Amendment’s prohibitions on unreasonable searches and seizures should be fully applicable in the school setting. If circumstances permit, a search warrant should be obtained before school authorities search a student or the student’s property.
* If a search warrant cannot be obtained because of the unique nature of the school environment, then school officials should at least be required to have probable cause that a crime was committed or a school rule was broken before searching a student or a student’s property. This is required by the Fourth Amendment and has been supported by case law.
* If school officials seize evidence in violation of the Fourth Amendment, the evidence should not be admissible in any criminal or delinquency hearing. That is what the exclusionary rule covers. This practice is necessary to deter school officials from violating the Fourth Amendment.

Judge asks follow-up questions. | * Even if the Fourth Amendment does apply to school officials, it does not apply in all circumstances. Given school officials’ legitimate need to act quickly to maintain an orderly learning environment, school officials should not be required to get a warrant before searching students.
* School authorities should not be held to the probable cause standard applicable to most Fourth Amendment searches. Instead, the legality of the search should depend on reasonableness under all circumstances. Determining the reasonableness of the search should depend on whether it was 1) justified at its inception, and 2) reasonably related in scope to the circumstances that justified the search in the first place.
* Since it is not the primary job of school officials to collect evidence of a crime, even if they violate the Fourth Amendment by conducting a search that later seems unreasonable, that fact should not prohibit evidence from being admitted at trial.

Judge asks follow-up questions. |

Judge: And now I will turn the program over to the moderator, who will

facilitate the audience debate that will serve as jury deliberations on these issues.