*Talking Points*

Suggested points that the student attorneys can use and/or modify for their oral arguments.
*New Jersey v. T.L.O.*
Applied to Seizure of Illegal E-Cigarettes During a Backpack Search at School

**Judge**: The issue before us today is: Are students’ Fourth Amendment rights violated when school officials search a student’s backpack at school and find illegally purchased e-cigarettes?

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| **Issue #1:** **Are school officials considered government actors who must comply with Fourth Amendment restrictions when they conduct searches at school?** | **Issue #1:** **Are school officials considered government actors who must comply with Fourth Amendment restrictions when they conduct searches at school?**  |
| **Students’ Attorney #1** | **School Officials’ Attorney #1** |
| **YES*** School officials are government actors and the Fourth Amendment applies to their actions.
* The 4th Amendment applies to actions taken by government agencies – like schools – not just the police. School officials are government actors. They can enforce education-related laws and regulations. They also are responsible for a safe and orderly learning environment.
* Teachers and administrators are government officials, just like government health and building inspectors, and firefighters. The state gives them the power to conduct searches. Teachers, like other government officials, must comply with 4th Amendment restrictions.
* At one time, schools were considered stand-ins for the parents. Today that is an outmoded concept. Schools aren’t parents. They are government entities.
* The basic purpose of the Fourth Amendment is to protect the privacy and security of individuals from arbitrary invasions by government officials – including school administrators and teachers.

**The host judge asks follow-up questions** | **NO*** School officials are not law enforcement officers and, therefore, the Fourth Amendment doesn’t apply in this case.
* Vice Principal Martin was not acting as a law enforcement officer. He didn’t carry a weapon. He has no training, and he has not taken a law enforcement oath. He was acting in good faith to maintain an orderly learning environment and protect other students from exposure to vaping.
* Although the Court in Tinker v. Des Moines stated that students do not shed their constitutional rights at the schoolhouse gate, it did find that the rights of students are necessarily restricted when they are in an educational environment.
* The search was not carried out in connection with enforcing any statutes or regulations. It was conducted in order to ensure compliance with school regulations. Therefore, the Fourth Amendment doesn’t apply to the search at issue here.

**The host judge asks follow-up questions.**  |
| **Issue #2:** **Do students have a reasonable expectation of privacy at school?** | **Issue #2:** **Do students have a reasonable expectation of privacy at school?** |
| **Students’ Attorney #2** | **School Officials’ Attorney #2** |
| **YES*** The safeguards provided by the Constitution are not limited to adults. As the Supreme Court held in Tinker v. Des Moines in the free speech context: “School officials do not possess absolute authority over their students. Students in school, as well as out of school, are persons under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the state.”
* In the landmark Tinker case, the Court found that “students do not shed their constitutional rights at the schoolhouse gate;” and that actions by school officials that infringe on these rights constitute governmental action.
* If schools want to improve the safety and order of the learning environment, searching students is not the way to do it. In balancing the privacy interest of the students against the government interest in a search, the outcome is clear. Students have a reasonable expectation of privacy in their belongings at school.

**Conclusion** Your Honor, this Court must affirm the privacy rights of all Americans – to protect students from intrusive, unwarranted searches; to prevent teachers from becoming law enforcement officers; and to prevent schools from becoming a police state. Searches conducted by school officials are government action and are subject to Fourth Amendment scrutiny; students have a legitimate expectation of privacy in their belongings at school.**Judge asks follow-up questions.**  | **NO*** There is no absolute right to privacy, and students have, at most, a minimal expectation of privacy at school.
* The Supreme Court has established the key question. In this case it is whether students at school have a “justifiable, reasonable, or legitimate expectation of privacy that has been invaded by government action.”
* The primary question before the Court here is whether a student’s claim of privacy is reasonable.
* Courts use a balancing test to determine if an expectation of privacy is reasonable. In this case, the balance is between society’s substantial interest in educating young people and in the security of its schools. Those concerns are balanced against the limited privacy interests of a student.
* The school is responsible for managing and protecting students. At school, it may be necessary to curtail the rights of the individual student to promote the school’s interest in preserving and promoting the welfare of the general student body.

**Conclusion**When these interests are balanced against each other, there is an obvious result. A student’s limited privacy interest is severely outweighed by the public interest in education and the orderly running of schools. Therefore, students have no reasonable expectation of privacy at school.**Judge asks follow-up questions.**  |