

CONCURBY:

POWELL; BLACKMUN; BRENNAN (In Part); STEVENS (In Part)

CONCUR:

JUSTICE POWELL, with whom JUSTICE O'CONNOR joins, concurring.

I agree with the Court's decision, and generally with its opinion. I would place greater emphasis, however, on the special characteristics of elementary and secondary schools that make it unnecessary [***41] to afford students the same constitutional protections granted adults and juveniles in a nonschool setting.

In any realistic sense, students within the school environment have a lesser expectation of privacy than members of the population generally. They spend the school hours in close association with each other, both in the classroom and during recreation periods. The students in a particular class often know each other and their teachers quite well. Of necessity, teachers have a degree of familiarity with, and authority over, their students that is unparalleled except perhaps in the relationship between parent and child. It is simply unrealistic to think that students have the same subjective expectation of privacy as the population generally. But for purposes of deciding this case, I can assume that children in school -- no less than adults -- have privacy interests that society is prepared to recognize as legitimate.

However one may characterize their privacy expectations, students properly are afforded some constitutional protections. In an often quoted statement, the Court said that students do not "shed their constitutional rights ... at the schoolhouse gate." *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969). [***42] The Court also has "emphasized the need for affirming the comprehensive authority of the states and of school officials ...[*349] to prescribe and control conduct in the schools." *Id.*, at 507. See also *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). The Court has balanced the interests of the student against the school officials' need to maintain discipline by recognizing qualitative differences between the constitutional remedies to which students and adults are entitled.

In *Goss v. Lopez*, 419 U.S. 565 (1975), the Court recognized a constitutional right to due process, and yet was careful to limit the exercise of this right by a student who challenged a disciplinary suspension. The only process found to be "due" was notice and a hearing described as "rudimentary"; it amounted to no more than "the disciplinarian ... informally [discussing] the alleged misconduct with the student minutes after it has occurred." *Id.*, at 581-582. In *Ingraham v. Wright*, 430 U.S. 651 (1977), we declined to extend the Eighth Amendment to prohibit the use of corporal punishment of schoolchildren [***43] as authorized by [**747] Florida law. We emphasized in that opinion that familiar constraints in the school, and also in the community, provide substantial protection against the violation of constitutional rights by school authorities." [At] the end of the school day, the child is invariably free to return home. Even while at school, the child brings with him the support of family and friends and is

rarely apart from teachers and other pupils who may witness and protest any instances of mistreatment." *Id.*, at 670. The Ingraham Court further pointed out that the "openness of the public school and its supervision by the community afford significant safeguards" against the violation of constitutional rights. *Ibid.*

The special relationship between teacher and student also distinguishes the setting within which schoolchildren operate. Law enforcement officers function as adversaries of criminal suspects. These officers have the responsibility to investigate criminal activity, to locate and arrest those who violate our laws, and to facilitate the charging and bringing of such persons to trial. Rarely does this type of adversarial [*350] [***44] relationship exist between school authorities and pupils. n1 Instead, there is a commonality of interests between teachers and their pupils. The attitude of the typical teacher is one of personal responsibility for the student's welfare as well as for his education.

n1 Unlike police officers, school authorities have no law enforcement responsibility or indeed any obligation to be familiar with the criminal laws. Of course, as illustrated by this case, school authorities have a layman's familiarity with the types of crimes that occur frequently in our schools: the distribution and use of drugs, theft, and even violence against teachers as well as fellow students.

The primary duty of school officials and teachers, as the Court states, is the education and training of young people. A State has a compelling interest in assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students. And apart from education, the school [***45] has the obligation to protect pupils from mistreatment by other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern. For me, it would be unreasonable and at odds with history to argue that the full panoply of constitutional rules applies with the same force and effect in the schoolhouse as it does in the enforcement of criminal laws. n2

n2 As noted above, decisions of this Court have never held to the contrary. The law recognizes a host of distinctions between the rights and duties of children and those of adults. See *Goss v. Lopez*, 419 U.S. 565, 591 (1975)(POWELL, J., dissenting.)

In sum, although I join the Court's opinion and its holding, n3 my emphasis is somewhat different.

n3 The Court's holding is that "when there are reasonable grounds for suspecting that [a] search will turn up evidence that the student has violated or is violating either the law or the rules of the school," a search of the student's person or belongings is justified. *Ante*, at 342. This is in accord with the Court's summary of the views of a majority of the state and federal courts that have addressed this issue.