I agree with the result reached by the Court and with most of its reasoning. I write separately only to make clear my disagreement with language in the Court's opinion that suggests that exclusion of evidence from school disciplinary proceedings may provide a significant deterrent to Fourth Amendment violations by school officials. That suggestion is unsubstantiated by the current record and is unnecessary to the question before us.

As the Court makes clear, ante, at 9, the only question before us is whether evidence unlawfully seized by school officials during the course of an in-school search must be excluded in juvenile delinquency proceedings. I agree with the Court's conclusion that it need not. Application of the exclusionary rule to criminal proceedings is warranted only where it is clear that exclusion will "result in appreciable deterrence."
As the Court explained, school officials properly are concerned primarily with enforcing school regulations and maintaining a safe and drug-free learning environment. Ante, at 9-10. They, therefore, will have strong incentives to perform in-school searches that will not be diminished by the exclusion of evidence in a subsequent delinquency proceeding.

This explanation sufficiently answers the question whether the exclusionary rule will "result in appreciable deterrence." Nevertheless, the Court goes on to consider the likely deterrent effect of excluding evidence seized by school officials from school disciplinary proceedings. See ante, at 10-11. The basis for the Court's speculation is the decision by the New Jersey Superior Court that evidence seized in this case must be excluded from the disciplinary proceedings involving T.L.O.'s suspension from school.

The Court states in a footnote that "the propriety of that decision is not before us in this case." Ante, at 10 n. 6.
This disclaimer, however, is undermined by the Court's subsequent statement to the effect that "illegal searches and seizures by school officials will be adequately deterred" by the exclusion of evidence from school disciplinary proceedings. Ante, at 11. Not only is this statement totally unsupported by the record in this case, but it suggests an answer to a question that is not currently before us. Moreover, it suggests an answer that is contrary to our decisions concerning the exclusionary rule -- decisions that consistently have refused to extend the rule to civil proceedings. See, e.g., United States v. Janis, 428 U. S. 433 (1976).

Although I join the Court's opinion, I disapprove of its unnecessary musings concerning the deterrent effect of the exclusionary rule in situations that simply are not before us.
By Elsa Walsh
Washington Post Staff Writer

A Baltimore County high school gym class was sent back to school from a roller rink recently after the scent of marijuana was detected in a rink restroom and on some of the students.

When they got back to Towson High, small groups of students were taken to administrative offices and frisked by members of the school staff. Their purses, bags, shoes and socks were searched and, in some cases, clothing was removed and bras and underwear were checked.

School officials found a 5½-inch knife in one girl's pocket and marijuana in the purses of two other students. Juvenile charges were brought against the students. One was suspended and two were expelled.

The incident reflects a troubling problem for school officials around the country: How do they balance the need for a safe school environment against a student's right to Fourth Amendment protection from unreasonable searches?

That is the issue in a case pending before the Supreme Court involving a New Jersey vice principal's search of a student's purse. Courts around the nation have ruled erratically on student searches, and many school officials are nervously awaiting the high court's decision, which is expected before the court's term expires in July. The decision, school officials say, could radically alter when and how they may search students.

"We could be in a heap of trouble," says Peter Blau.

See RIGHTS, A23, Col. 1
George's County schools, where from students this school year, officials collected about 100 weapons from students. "The decision could be devastating."

"It's an issue of real concern to us. We realize the tenuous legal grounds much of this search business is based upon," says Jim Fleming, an assistant superintendent with the Miami school district. Drug trafficking has been a major problem. Through December of this school year, Miami school officials confiscated 98 weapons and processed 97 cases of drug possession. "We are watching the Supreme Court decision very, very closely."

"Essentially, schools seem to expect students to shed their constitutional rights when they come into school," says Barry Goodman, a New Jersey lawyer with the American Civil Liberties Union, who has filed a brief in the Supreme Court case. "They have the rights on the street, but once they walk into school they can forget it. Their rights are lost."

Schools are different from the streets, argues Tom Shannon, executive director of the National School Boards Association in Alexandria. "We are not at war with our children," says Shannon, "but this is not the street. Certain rights people have in school have to be subordinated to the common good and safety of all children." Shannon has also filed a brief in Supreme Court case.

In the New Jersey case, a Piscataway, N.J., student, who is identified only as T.L.O. in court papers, was searched in a bathroom on March 7, 1980. When the girl denied the accusation, the vice principal searched her purse. "The whole rummaging" of the girl's purse was unreasonable, they contended, adding that the marijuana found should not have been permitted as evidence in a criminal court proceeding. Strict standards are particularly important when impounded material is turned over for a court proceeding.

"It would be ironic in the extreme," wrote the ACLU in its brief, "if our schools, the institution upon which we rely to teach our children the rights and responsibilities of our constitutional form of government, violations of those rights are countenanced . . . ."

School officials are hoping the Supreme Court will clear up some of the confusion and set clearer guidelines as to when students can be searched and when the evidence can be used in court. At present, school districts and courts around the country require standards varying from suspicion to "probable cause." Some, such as in Maryland, Virginia and the District, allow searches when there appears to be "reasonable" belief that the student has drugs, a weapon or stolen property. In others, such as Miami, a student is asked if he or she will permit a search; if the student refuses the parent or police will be called to judge if the stricter standard of "probable cause" can be met.

"Searches are shaks," says Miami's Fleming. As a result of the differing interpretations, numerous problems have arisen. In California, lawyers are expecting the high court's decision to affect a similar case in the State Supreme Court. In that case, a student was standing in a hallway during class time and a school staff member, concerned that he might be skipping class, searched his bag and found marijuana.

A group of Northern Virginia parents are considering filing suit against an elementary school because a group of boys recently were required to strip to their shorts when some material was missing from a classroom.

And, principals in Burbank, Calif., have strongly endorsed the use of dogs to sniff out drugs, but the ACLU has filed suit to block the action. For civil libertarians opposing the searches, some of their most surprising foes are parents. "At one time we tried using publicity [about searches] to shock the consciences of adults, but we got the opposite response," says John Roemer, executive director of the Maryland chapter of the ACLU. "The parents damned for more."

For the most part, parents supported the search of the Towson High students. They wanted their children's schools safe and drug-free. But some students were annoyed. "I was mad," said 15-year-old Melanie Gore. "A lot of people felt it was unfair that they put us through a lot of embarrassment . . . . People shouldn't bring drugs into school in the first place, but the teachers weren't even sure who was smoking."
When a 14-year-old Baltimore City student was gunned down in a junior high hallway after refusing to turn his jacket over to two youths, the students were searched reasonably, but the girls did not pursue court action because most of their classmates expressed disinterest.

After a rash of violence or a well-publicized incident, the pleas become more emotional. Newspapers publicized incident, the pleas for a crackdown last year when a loaded gun was found in the desk of a third grade student in the Miami area.

ACL lawyers told two Towson High students who contacted them that they had a good shot at proving the students were searched unreasonably, but the girls did not pursue court action because most of their classmates expressed disinterest.

Essentially, schools seem to expect students to shed their constitutional rights when they come into school. They have the rights on the street, but once they walk into school they can forget it. Their rights are lost.

the athletes provide information about probable crimes and act as a deterrest to attacks.

Last year, there were about a dozen necklace snatchings at Norland Miami. This year, none have been reported.

"The forbidding size of the athletes may be an influencing factor. The captain of the Varsity Patrol, Clyde Montgomery, is a 6-foot-1, 200-pound linebacker.

"I believe I'm a civil libertarian," says Frank Blount, who heads the Detroit security staff. "But I also believe kids should go to school to learn. There's no place in our schools for weapons. We don't hand them out at the school door."

The most troublesome and troubling of the search techniques used by school systems appears to be strip searches, the effect of which, say opponents, can be a lifetime of humiliation and fear.

Brooklyn school officials last week settled a case with the parents of two P.S. 282 students who sued, charging that most of the children in a substitute teacher's class were stripped after $50 was discovered to be missing from the instructor's purse, even though the money was found on one of the first students examined.

The parents of a 12-year-old Wilminglon, N.J., child are in the process of settling a case against school officials. The parents said their daughter was partially strip-searched after some students were seen brushing close enough to her to have either given or received something. A school nurse examined the girl but found no evidence of drugs.

"It was really embarrassing and we didn't know what was going on," said one student who was late getting to her job after the Towson skating incident. "We didn't know why it was happening. It was really weird and awful. I don't know why they had to search all of us."

But Towson High Assistant Principal Ray Gross defends the search. "We had both probable cause and reasonable belief to think some of our students were using drugs. We had a number of different sources supporting this assumption," said Gross. "Some of the girls did complain to me that their bras and underwear were checked. If that happened, that shouldn't have."
Justice Powell, concurring.

I agree with the decision reached by the Court and with most of its reasoning. I do not agree, however, with the language in the opinion that suggests that exclusion of evidence from school disciplinary proceedings may provide a deterrent to Fourth Amendment violations by school officials. This suggestion has no support in the record and is unnecessary to a decision of the question before us.

As the Court states, ante, at 9, the only question presented is whether evidence unlawfully seized by school officials during the course of an in-school search must be excluded in juvenile delinquency.
proceedings. I agree with the Court's conclusion that the exclusionary rule is not applicable. The school officials, in searching respondent's purse, were acting pursuant to their duty to enforce school regulations and maintain a safe and drug-free learning environment. They had no responsibility for enforcing the criminal laws. Application of the exclusionary rule, as the Court correctly reasons, would be unlikely to result in appreciable deterrence. ¹ My difficulty concerns the

¹ The courts below found an absence of probable cause for the search that revealed the drugs and evidence that T.L.O. was selling drugs to her youthful schoolmates. Determination of what constitutes "probable cause" is a question on which lawyers and judges, as well as police officials, frequently differ. It would be unrealistic to extend the subtleties of the Fourth Amendment the school classroom. I therefore do not agree with the statement in the Court's opinion that "school boards may and should have both the incentive and the means to foster an understanding [of federal constitutional standards]". See, ante, at 10. Decisions of the courts, including this Court, frequently decide close questions of alleged Fourth Amendment violations and applications of the exclusionary rule. Footnote continued on next page.
portion of the Court's opinion, see ante, at 10-11, that goes on to consider the likely deterrent effect of excluding evidence seized by school officials in school disciplinary proceedings as distinguished from delinquency proceedings. The basis for the Court's speculation in this respect is the decision by the New Jersey Superior Court, in the disciplinary proceedings, that the evidence found in T.L.O.'s purse must be excluded.

The Court is careful to state in a footnote that the "propriety of that decision is not before us in this case." Ante, at 10, n. 6. This disclaimer, however, is
undermined by the Court's subsequent statement to the effect that "illegal seizures and searches by school officials will be adequately deterred" by the exclusion of evidence from disciplinary proceedings. Ante, at 11. This statement is unsupported in the record, and it suggests or implies an answer to a question not before us. Moreover, it suggests an answer that is contrary to our decisions concerning the exclusionary rule - decisions that consistently have refused to extend the rule to civil proceedings. See, e.g., United States v. Janis, 428 U.S. 433 (1976).

Although I join the judgment and the greater part of the Court's opinion, I dissent from that portion of it that speculates unnecessarily as to a deterrent effect of the rule in situations that are not before us. 2

Footnote(s) 2 will appear on following pages.
If, indeed, the decision of the New Jersey Superior Court were before us, or if I am permitted also to speculate, I would say with some confidence that the judgment of that court should be reversed. There is no evidence of overreaching conduct on the part of the school officials, and the seven-day suspension of T.L.O. for selling drugs to 14-year-old children in school, was a singularly modest penalty.
New Jersey v. T.L.O., No. 83-712

POWELL, J., concurring:

After balancing the interests of students against those of the government, the majority holds that school searches need not be based on probable cause. I agree that the fourth amendment should not prohibit a teacher from conducting a search when "reasonable grounds" exist to suspect that the search will turn up evidence of a violation of school rules or the law. Nevertheless, I write separately to emphasize that our departure from the probable cause standard cannot be justified under the test set forth in *Camara v. Municipal Court*, 387 U.S. 523 (1967), which balances the interests of the student
against those of the school. Our holding should be premised on the principle that students are entitled to only those constitutional protections that will not "materially and substantially interfere with the requirements of appropriate discipline ... in the schools." Tinker v. Des Moines School Dist., 393 U.S. 503 (1969).

I.

In Camara, we held that "there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails." Identifying the competing interests, the majority recognizes that teachers and school
administrators have a "substantial interest" in maintaining discipline in the classroom. A teacher's ability to maintain order will be frustrated by a requirement that searches be based on probable cause. The majority recognizes, however, that the government's "need" for a departure from the probable cause standard must be balanced against the concomitant intrusion on the privacy interests of students. The Court finds that the schoolchild's "subjective" expectation of privacy, at least with respect to his person and personal effects, is as great as that of an adult. Furthermore, the Court states that the student's expectation is one that society recognizes as "legitimate."

The majority apparently finds that the school's need to maintain discipline outweighs any intrusion upon
the student's privacy interest, even though it acknowledges the substantiality of the privacy invasion represented by a search. I cannot understand this finding since in other cases where the Court has approved a search or seizure on the basis reasonable suspicion, the resulting intrusion has been quite limited. In United States v. Brignoni-Ponce, 422 U.S. 873 (1975), for example, we held that a roving border patrolman may stop a car that he "reasonably suspects" contains illegal aliens. Despite the government's substantial interest in limiting the influx of illegal aliens, this departure from the probable cause standard was sanctioned only after we found that the brief stop of an automobile constitutes a "modest" intrusion. This case, unlike Brignoni-Ponce,
involves a privacy interest so substantial that results under the Camara "balancing test" are inconclusive.

II.

Only by recognizing the limited nature of the schoolchild's constitutional rights can we justify our departure from the standard of probable cause. Although this Court has recognized that students do not "shed their constitutional rights ... at the schoolhouse gate," Tinker v. Des Moines School Dist., 393 U.S. 503, 506 (1969), it has been reluctant to interfere with the discretion of teachers and school officials. We consistently have refused to afford students constitutional protections
which would materially interfere with the operation of the public schools.

In *Tinker*, the Court held that the first amendment protected high school students' right to wear black armbands to protest the Vietnam War. Although the students' conduct was "closely akin to 'pure speech,'" the Court did not intimate that the school policy forbidding the armbands could be sustained only if it served a "compelling state interest." Cf. *Brown v. Hartlage*, 456 U.S. 45, 53-54 (1982). Instead, the *Tinker* Court held that school officials could not restrict the students' conduct because the wearing of armbands did not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." The Court's analysis thus indicates that
schoolchildren are not entitled to the same first amendment rights enjoyed by adults. The decision to afford students only limited constitutional protection was based on the Court's recognition of the "need for affirming the comprehensive authority of ... school officials ... to prescribe and control conduct in the school."

In *Goss v. Lopez*, 417 U.S. 565 (1975), the Court held that students could not be suspended from school, even for less than ten days, without a notice and a hearing. Again, the Court was careful to limit the nature of the student's constitutional right so as to avoid interfering with the operation of the schools. The "notice" to which the student was entitled could be given orally, immediately prior to the hearing. The decision
did not grant the student a right to counsel, to cross-examination, or to call witnesses. The teacher was required only to give the student an explanation of the evidence against him and "an opportunity to present his side of the story." The Court recognized that these procedures were "rudimentary;" nevertheless it stated that requiring more than this "informal give-and-take" would make the short suspension too costly as a disciplinary tool and would destroy its effectiveness as part of the teaching process.

While Tinker and Goss recognized limitations on the constitutional rights of students, Ingraham v. Wright, 430 U.S. 651 (1977), went further and held the eighth amendment totally inapplicable to the schools. The Ingraham decision was based primarily on our conclusion
that the eighth amendment was intended only to protect those convicted of crimes. Nevertheless, we went on to state that even if it had some application outside the context of criminal punishments, the eighth amendment should not prohibit corporal punishment of public school students.

_Tinker, Goss, and Ingraham_ do not indicate that the rights of students are unimportant. Instead, these decisions reflect an awareness that school officials must be given broad discretionary authority in the daily operation of the public schools. But despite our reluctance to afford schoolchildren full constitutional rights, we are confident that their interests will be protected, because: (1) those members of the community with a substantial interest in the public schools will
supervise their operation; and (2) there is a "commonality of interest" between teachers and students.

The public school is an open and highly visible institution in the community. Although attendance is compelled, students leave school at the end of the day and return to their families. *Ingraham*, 430 U.S. at 670. Instances of mistreatment usually are reported to parents and other concerned individuals. Therefore, the teacher knows that if he acts unfairly, he faces the unwelcome prospect of irate parents in his office. Wilkinson, *Goss v. Lopez: The Supreme Court as School Superintendant*, 1975 The Supreme Court Rev. 25, 70. If the school official's explanation fails to satisfy them, the concerned parents may approach a school board member or another elected official. Given the usual geographic concentration of
parents around the schools in which they are interested, their ability to influence the school's operation through political channels will be substantial.

Our refusal to grant schoolchildren full constitutional protection can also be justified by the "commonality of interest" between teachers and students. *Goss v. Lopez*, 419 U.S. 565, 593 (Powell, J., dissenting).

The constitution articulates individual liberties because of an underlying assumption that citizens and state officials have conflicting interests. Since the teacher serves as an educator, adviser, and friend to the student, the interests of the two usually coincide. Id. at 594. Hence, it is unnecessary to give schoolchildren the same constitutional protection afforded to some others. A policeman who is "engaged in the competitive process of
ferreting out crime," *Terry v. Ohio*, 392 U.S. 1, 12 (1968), may have little regard for the rights of a criminal suspect. The same cannot be said about a teacher who thinks that his student has violated a school regulation; in many cases, the teacher will be as concerned with the welfare of the offending student as with that of his classmates.

III.

The ability of concerned parents to supervise the schools, as well as the "commonality of interest" between teachers and students, make it appropriate to relax the constitutional protections afforded schoolchildren. Students should be granted only those constitutional rights which will not "materially and substantially
interfere with the requirements of appropriate discipline in ... the school." The probable cause requirement would substantially interfere with the efforts of school authorities to maintain discipline in the classroom. Requiring a teacher to wait until there is probable cause to search would frustrate his efforts to act quickly so as to prevent not only infractions of school rules, but also injuries to other students. Moreover, teachers often are unfamiliar with the legal technicalities of the probable cause standard. They would find its application to the classroom setting impossibly difficult. Allowing the search of a student on the basis of "reasonable grounds," however, gives school officials the discretion that they need to maintain discipline in the schools. It is on this basis that I join Part III of the majority opinion.
TO: Justice Powell
FROM: Lee

Justice White's draft opinion certainly reaches the right result. It seems to me, however, that he skips one step in the analysis. He correctly recognizes that the determination of what is "reasonable" requires "balancing the need to search against the invasion which the search entails." Camara v. Municipal Court, 387 U.S. at 536-537 (page 10). In setting up the equation, he states that: (1) a student has a substantial expectation of privacy that is infringed by a search of her person or purse (pages 10-12); and (2) there is a great need to maintain discipline in the classroom (pages 12-13). He then announces that the search of a student may be based on "reasonable grounds." (page 15). The analysis is very conclusory; after identifying a severe intrusion and a weighty governmental need, Justice White simply picks a standard less demanding than probable cause.

It seems that a decision to depart from the probable cause standard should be justified in either of two ways. First, the Court could hold that schoolchildren have restricted privacy interests. Unfortunately, it would be difficult to limit the use of this rationale to the school setting. If juveniles have such limited privacy interests, why not allow policemen to search children in the park without probable cause? A better approach
would be to rely upon the reasoning in your opinion in *Ingraham v. Wright*. In *Ingraham*, you stated that the "openness of the public school and its supervision by the community afford significant safeguards against" abuses of corporal punishment. That same openness will tend to prevent unreasonable searches.

With the exception of his failure to discuss the relevance of your opinion in *Ingraham*, Justice White's draft appears to be satisfactory. He was wise to avoid deciding whether a school search would ever be appropriate in the absence of individualized suspicion. (page 15, note 7). I therefore recommend that you join Justice White's opinion. I am not sure whether you will want to write a short concurring opinion.
JUSTICE POWELL, concurring.

I agree with the Court's decision, and much of its opinion. I would place greater emphasis on the special characteristics of the school environment in which students necessarily have a lesser expectation of privacy than the population generally. 1

In a number of cases, we have recognized the special characteristics of the school environment. To be sure, the Court properly has said that students do not "shed their constitutional rights . . . at the schoolhouse.

1The Court's opinion states that "[a] search of a [school] child's person or of a closed purse or of a 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". Ante, at 10, 11. This expectation also is said to be "legitimate". Ante, at 12. If indeed a school child's expectation of privacy is "no less" than that of an adult, it is not clear to me how the Court can conclude that a standard less than probable cause is appropriate. In cases in which a lesser standard has been applied - quite properly I think - there have been circumstances that lessened the reasonableness of one's expectation of privacy. See, e.g., United States v. Brignoni-Ponce, 422 U.S. 873 (1975) (Lee: cite other cases.) The age of a child may be relevant, as the law applies different standards based upon age even in a non-school environment (Lee: cite cases).
gate". Tinker v. Des Moines School District, 393 U.S. 503, 506 (1969). But we have refused consistently to afford students constitutional protections that normally are enjoyed by juveniles as well as adults in non-school settings. In Goss v. Lopez, 417 U.S. 565 (1975), the constitutional right to due process was recognized, and yet the Court 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"; amounting to no more than "the disciplinarian * * * informally discuss[ing] the alleged misconduct with the student minutes after it has occurred". Id., at 581-582. In Graham v. Wright, 430 U.S. 651 (1977), we declined to extend the Eighth Amendment to the use of corporal punishment of school children authorized by Florida law.

We emphasized that there are constraints in the school and community that provide substantial protection against the violation of constitutional rights by school authorities. An "public school remains an open institution * * * 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 protect any instances of mistreatment". Id., at 670. The Court further pointed out that the "openness of the public school and its supervision by the community affords significant safeguards" against the violation of constitutional rights. Id., at 670.

 Unlike police officers, they have no law enforcement responsibility or indeed any obligation to be familiar with the criminal laws and their applicability. The primary duty of school officials and teachers, of course, is to educate and train young people. A state has a compelling interest in assuring that this responsibility is met. An prerequisite even to undertaking the teaching and training of children, order and discipline, maintained. And apart from education, there is the duty the school has the obligation

\[1\]\n
2 Of course, as illustrated by this case, school authorities are familiar - unhappily - 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. [Lee, see SG's Brief for studies of crime problem, and add those that BRW does not cite.] The other studies cited in the Srs Brief were not really helpful. The library currently is searching for other studies dealing with the crime problem in the schools.
to protect pupils from mistreatment by other children, and also to protect teachers from the type of violence that in recent years has prompted national concern. For me, it simply makes little sense to argue that the full panoply of constitutional rules apply in the schoolhouse with the same force and effect as these rules apply generally to the enforcement of criminal laws. In sum, although I agree with the Court's conclusion and its holding, \(^3\) I reach these results by somewhat different reasoning, although I acknowledge that the difference may be one of modest degree.

\(^3\) 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 or his person or belongings is justified. Ante, at ___.