New Jersey v. T.L.O. / Excerpts from the Concurring Opinion

The following are excerpts from Justice Blackmun's concurring opinion:

I join the judgment of the Court and agree with much that is said in its opinion. I write separately, however, because I believe the Court omits a crucial step in its analysis of whether a school search must be based upon probable cause. The Court correctly states that we have recognized limited exceptions to the probable-cause requirement "[w]here a careful balancing of governmental and private interests suggests that the public interest is best served" by a lesser standard. I believe that we have used such a balancing test, rather than strictly applying the Fourth Amendment's Warrant and Probable-Cause Clause, only when we were confronted with "a special law enforcement need for greater flexibility."

The Court's implication that the balancing test is the rule rather than the exception is troubling for me because it is unnecessary in this case. The elementary and secondary school setting presents a special need for flexibility justifying a departure from the balance struck by the Framers.

Education "is perhaps the most important function" of government, *Brown v. Board of Education*, (1954), and government has a heightened obligation to safeguard students whom it compels to attend school. The special need for an immediate response to behavior that threatens either the safety of schoolchildren and teachers or the educational process itself justifies the Court in excepting school searches from the warrant and probable-cause requirement, and in applying a standard determined by balancing the relevant interests. I agree with the standard the Court has announced, and with its application of the standard to the facts of this case. I therefore concur in its judgment.

Questions to Consider

1. In what way does Justice Blackmun disagree with the reasoning of the majority opinion?

2. Does Justice Blackmun think school employees should need to have a warrant to search students? Why or why not?

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