FOURTH AMENDMENT SYMPOSIUM

Thursday, March 11, 2010

CHANGING OUR PERSPECTIVE: SCHOOL SEARCHES WRIT LARGE

NEW JERSEY V. T.L.O. (1985)

- What happened?
- What did N.J. Supreme Court say?
- What did the U.S. Supreme Court say?
  - School officials are governmental agents for purposes of the Fourth Amendment
  - Adopts reasonableness standard but feels N.J. Sup. Ct.'s application of standard reflects "a somewhat crabbed notion of reasonableness"
  - So what is Supreme Court's notion of reasonableness?
**T.L.O. Definition of Reasonableness**

* First, search must be justified at its inception:
  
  * There must be reasonable grounds for suspecting that search will yield evidence that student has violated or is violating either (1) the law or (2) the rules of the school.

**Definition of Reasonableness Cont’d**

* Second, the search must be reasonably related in scope to the circumstances that justified the interference in the first place:
  
  * Search is reasonable in scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.


* Involved random drug-testing of student athletes—evidence of widespread drug use at school, apparently centered around student athletes.
* Ct adopted “special needs” analysis to uphold searches (Scalia: school acts as “custodian and tutor”).
* O’Connor dissent: does not like suspicionless searches, thinks some level of suspicion is required.
James Acton, the plaintiff

Future football star?

Involved random drug-testing of students desiring to participate in any extra-curricular activity, not just athletics.

In practice, the policy was applied only to competitive activities, but nominally it applied to all activities, including, e.g., National Honor Society, Future Farmers of America, and the like.

No reports of widespread drug use at school.

Lindsey Earls, the plaintiff

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Justice Thomas wrote opinion for majority.

Extended Acton to cover other extracurricular activities, e.g., academic team, band, etc.

What was important was the “custodial and tutelary” function of the school.

**SAFFORD UNIF. SCHOOL DIST. NO. 1 V. REDDING, 129 S. CT. 2633 (2009)**

Ct. held strip search of 13-year-old student to be unreasonable and violative of the Fourth Amendment.

**SAVANA REDDING AT 13**
SAVANA AT THE SUPREME COURT

Strip search is a search that goes beyond the outer clothing (i.e., a coat or sweater, shoes and socks).

TENDENCY TO VIEW THESE CASES FROM A NARROW PERSPECTIVE

- Tend to view these cases in isolation
- E.g., tend to view them as “search and seizure cases”
- And more specifically, as “school searches and seizures”
- We should view them in a larger context as part of the Court’s overall jurisprudence

JURY TRIAL CASES AS EXAMPLE

- In re Gault (1967)
  - notice of the charges
  - right to counsel
  - right to confrontation and cross examination
  - privilege against self-incrimination
- In re Winship (1970)
  - proof beyond a reasonable doubt in delinquency cases
- McKeiver v. Pennsylvania (1971)
  - right to jury trial

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**MCKEIVER AS A “JURY TRIAL” CASE, NOT A “JUVENILE” CASE**

- Duncan v. Louisiana (1968)
- Williams v. Florida (1970)
- McKeiver v. Pennsylvania (1971)
- Johnson v. Louisiana (1972) and Apodaca v. Oregon (1972)
- Baliew v. Georgia (1978)
- Burch v. Louisiana (1979)

**SEARCH & SEIZURE CASES VIEWED IN CONTEXT OF OTHER “SCHOOL” CASES**

- E.g., First Amendment cases
  - Bethel School Dist. No. 403 v. Fraser (1986)
  - Morse v. Frederick (2007)

In response to rumors that students were going to wear black arm bands to school to protest the Viet Nam War, school board enacted a policy banning the wearing of arm bands.

The Supreme Court held that suspending students who wore black arm bands to school violated their First Amendment freedom of expression.

Court said students do not “shed their constitutional rights at the schoolhouse gate.”
Christopher Eckhardt and his parents at school board meeting.

Suspension of senior high school student for making nomination speech in school assembly that contained sexual innuendo, did not violate his First Amendment right of free expression.

_BETHEL SCHOOL DISTRICT NO. 403 V. FRASER (1986)_

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**MORSE V. FREDERICK, 551 U.S. 393 (2007)**

- High school student’s First Amendment right to free expression was not violated when the school principal confiscated his sign that read: “BONG HITS 4 JESUS” and suspended him from school.
- One question was whether the sign was displayed “at school” since it was displayed on a public street that ran beside the school.

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**MORSE V. FREDERICK – “THE SIGN”**

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**HAZELWOOD SCHOOL DISTRICT V. KUHLMEIER, 484 U.S. 260 (1988)**

- School principal’s action in banning publication of two articles in school newspaper did not violate students’ First Amendment freedom of press because newspaper was not “public forum” but rather was curriculum-based since it was part of journalism course.
The point is, that with the exception of *Tinker v. Des Moines Indep. Community School Dist.* In 1969, and more recently, *Safford Univ. School Dist. No. 1 v. Redding* in 2009, the school cases are only part of a series of cases in which the Supreme Court has held that students in public schools have limited constitutional rights, whether Fourth Amendment rights or First Amendment rights.

**SCHOOL SEARCH CASES VIEWED IN CONTEXT OF SCHOOL CASES GENERALLY**

- *South Dakota v. Opperman* (1976)

**“SCHOOL SEARCH” CASES VIEWED IN CONTEXT OF SEARCH CASES GENERALLY**

- *South Dakota v. Opperman* (1976)
CEZANNE-THE CARDPLAYERS

WHO IS THIS?

WALTER SICKERT-THE CAMDEN TOWN MURDER
CONCLUSION

- Impressionism
  - Brush strokes
  - Use of light
  - Ordinary subjects
  - Human perspective and experience
  - Compare to other schools and periods

- School search cases
  - Compare to search cases generally
  - Compare to other school cases
  - Gives us historical context and texture