ISSUE 18

Can Zero Tolerance Violate Students Rights?

YES: Hon. David Souter, from Majority Opinion in *Safford Unified School District #1 v. Redding* (June 25, 2009)

NO: Hon. Clarence Thomas, from Dissenting Opinion in *Safford Unified School District #1 v. Redding* (June 25, 2009)

ISSUE SUMMARY

YES: Supreme Court justice David Souter, delivering the opinion of the Court, hold that school officials, in carrying out a zero-tolerance policy on drug possession, violated a student's Fourth Amendment right against unreasonable search and seizure when they included a strip search of the girl.

NO: Justice Clarence Thomas, in dissent, states that the majority opinion imposes too vague a standard on school officials and that it grants judges sweeping authority to second-guess measures those officials take to maintain discipline and ensure safety.

Approximately a decade ago, after the tragedy at Columbine, school systems across the nation introduced zero-tolerance policies aimed at the curtailment of harmful student behaviors. The initial focus of these policies was on the elimination of weapons but soon spread to restrictions on any type of drugs or medication, legal or illegal, doctor-prescribed or readily available in stores. By 2006 about 95% of schools in the United States had zero-tolerance policies and nearly half of them reported taking serious action against students, including expulsion, suspension, and transfer to an alternative school.

While many of the practices involved in the enforcement of these policies have been welcomed by all members of the school community insofar as they promoted a safer environment for learning, questions have been raised in recent years about the appropriateness of some actions of school officials. Authors exploring this issue include Randall R. Beger, "Expansion of Police Power in Public Schools and the Vanishing Rights of Students," *Social Justice* (Spring/Summer 2002); Mary Ann Manos, *Knowing Where to Draw the Line: Ethical and Legal Standards for Best Classroom Practice* (2006); Kris Axtman, "Why

Tolerance Is Fading for Zero Tolerance in Schools," *The Christian Science Monitor* (March 31, 2005); Bob Herbert, "6-Year-Olds Under Arrest," *The New York Times* (April 9, 2007); and Elizabeth Frost, "Zero Privacy: Schools Are Violating Students' Fourteenth Amendment Right of Privacy Under the Guise of Enforcing Zero-Tolerance Policies," *Washington Law Review* (May 2006).

Media attention to this issue has stirred public concern and parents of students subjected to allegedly unfair treatment by school officials have initiated lawsuits. Lawyers pursuing such cases have often used a precedent established in the 1969 Supreme Court ruling in *Tinker v. Des Moines Independent School District* that students in school are still "persons" under the Constitution and are therefore possessed of fundamental rights that the state must respect. Subsequent Supreme Court cases involving First and Fourth Amendment rights are reviewed by Nelda Cambron-McCabe in "Balancing Students' Constitutional Rights," *Phi Delta Kappan* (June 2009). She concludes that while the courts have granted school officials considerable latitude in maintaining a school environment conducive to learning they must also honor students' rights in the process. An excellent source on this historical problem of appropriate balance is *From Schoolhouse to Courthouse: The Judiciary's Role in American Education* (2009), edited by Joshua M. Dunn and Martin R. West. The current period of security guards, metal detectors, surveillance cameras, locker raids, and book bag searches has captured the attention of the ACLU and other concerned groups.

The question of how far school authorities can go in fulfilling zero-tolerance policies came to a head in the Supreme Court's recent ruling in *Safford Unified School District #1 v. Redding*, argued April 21, 2009 and decided June 25, 2009. The case involved what is characterized as a strip search of a 13-year-old middle school student, Savana Redding, accused of hiding ibuprofen tablets in violation of the school's no-tolerance policy on drugs that banned the possession even of nonprescription pain relievers without explicit permission. School officials claimed that they were on high alert because a student had nearly died the year before after taking medication brought to the school by a friend and that they had good reasons to be suspicious of Savana despite her honor roll grades and spotless disciplinary record. After the event, Savana never returned to Safford Middle School. The Supreme Court ruled in her favor.

In the excerpts from the 8-1 ruling presented below, Justice Souter details the bases for the judgment, which included protection of the school officials from further suits, although Justices Stevens and Ginsburg dissented on that point. Justice Thomas, agreeing with the school official immunity point, was the lone dissenter on the central ruling regarding the violation of the student's rights.

YES

David H. Souter

Strip Search Violates 14th Amendment

Justice Souter delivered the opinion of the Court.

The issue here is whether a 13-year-old student's Fourth Amendment right was violated when she was subjected to a search of her bra and underpants by school officials acting on reasonable suspicion that she had brought forbidden prescription and over-the-counter drugs to school. Because there were no reasons to suspect the drugs presented a danger or were concealed in her underwear, we hold that the search did violate the Constitution, but because there is reason to question the clarity with which the right was established, the official who ordered the unconstitutional search is entitled to qualified immunity from liability.

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The events immediately prior to the search in question began in 13-year-old Savana Redding's math class at Safford Middle School one October day in 2003. The assistant principal of the school, Kerry Wilson, came into the room and asked Savana to go to his office. There, he showed her a day planner, unzipped and open flat on his desk, in which there were several knives, lighters, a permanent marker, and a cigarette. Wilson asked Savana whether the planner was hers; she said it was, but that a few days before she had lent it to her friend, Marissa Glines. Savana stated that none of the items in the planner belonged to her.

Wilson then showed Savana four white prescription-strength ibuprofen 400-mg pills, and one over-the-counter blue naproxen 200-mg pill, all used for pain and inflammation but banned under school rules without advance permission. He asked Savana if she knew anything about the pills. Savana answered that she did not. Wilson then told Savana that he had received a report that she was giving these pills to fellow students; Savana denied it and agreed to let Wilson search her belongings. Helen Romero, an administrative assistant, came into the office, and together with Wilson they searched Savana's backpack, finding nothing.

At that point, Wilson instructed Romero to take Savana to the school nurse's office to search her clothes for pills. Romero and the nurse, Peggy Schwallier, asked Savana to remove her jacket, socks, and shoes, leaving her in stretch pants and a T-shirt (both without pockets), which she was then asked to remove. Finally, Savana was told to pull her bra out and to the side

From Supreme Court of the United States, June 25, 2009.

and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. No pills were found.

Savana's mother filed suit against Safford Unified School District #1, Wilson, Romero, and Schwallier for conducting a strip search in violation of Savana's Fourth Amendment rights. The individuals (hereinafter petitioners) moved for summary judgment, raising a defense of qualified immunity. The District Court for the District of Arizona granted the motion on the ground that there was no Fourth Amendment violation, and a panel of the Ninth Circuit affirmed. . . .

A closely divided Circuit sitting en banc, however, reversed. Following the two-step protocol for evaluating claims of qualified immunity, . . . the Ninth Circuit held that the strip search was unjustified under the Fourth Amendment test for searches of children by school officials set out in *New Jersey* v. *T. L. O.*, . . . (1985). . . . The Circuit then applied the test for qualified immunity, and found that Savana's right was clearly established at the time of the search: "'[t]hese notions of personal privacy are "clearly established" in that they inhere in all of us, particularly middle school teenagers, and are inherent in the privacy component of the Fourth Amendment's proscription against unreasonable searches'" . . . . The upshot was reversal of summary judgment as to Wilson, while affirming the judgments in favor of Schwallier, the school nurse, and Romero, the administrative assistant, since they had not acted as independent decisionmakers. . . .

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The Fourth Amendment "right of the people to be secure in their persons . . . against unreasonable searches and seizures" generally requires a law enforcement officer to have probable cause for conducting a search. "Probable cause exists where 'the facts and circumstances within [an officer's] knowledge and of which [he] had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed," . . . and that evidence bearing on that offense will be found in the place to be searched.

In *T. L. O.*, we recognized that the school setting "requires some modification of the level of suspicion of illicit activity needed to justify a search," . . . and held that for searches by school officials "a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause" . . . . We have thus applied a standard of reasonable suspicion to determine the legality of a school administrator's search of a student, . . . and have held that a school search "will be permissible in its 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" . . . .

A number of our cases on probable cause have an implicit bearing on the reliable knowledge element of reasonable suspicion, as we have attempted to flesh out the knowledge component by looking to the degree to which known facts imply prohibited conduct, . . . the specificity of the information

received, . . . and the reliability of its source. . . . At the end of the day, however, we have realized that these factors cannot rigidly control, . . . and we have come back to saying that the standards are "fluid concepts that take their substantive content from the particular contexts" in which they are being assessed. . . .

Perhaps the best that can be said generally about the required knowledge component of probable cause for a law enforcement officer's evidence search is that it raise a "fair probability" . . . or a "substantial chance" . . . of discovering evidence of criminal activity. The lesser standard for school searches could as readily be described as a moderate chance of finding evidence of wrongdoing.

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In this case, the school's policies strictly prohibit the nonmedical use, possession, or sale of any drug on school grounds, including "'[a]ny prescription or over-the-counter drug, except those for which permission to use in school has been granted pursuant to Board policy.'" . . . A week before Savana was searched, another student, Jordan Romero (no relation of the school's administrative assistant), told the principal and Assistant Principal Wilson that "certain students were bringing drugs and weapons on campus," and that he had been sick after taking some pills that "he got from a classmate." . . . On the morning of October 8, the same boy handed Wilson a white pill that he said Marissa Glines had given him. He told Wilson that students were planning to take the pills at lunch.

Wilson learned from Peggy Schwallier, the school nurse, that the pill was Ibuprofen 400 mg, available only by prescription. Wilson then called Marissa out of class. Outside the classroom, Marissa's teacher handed Wilson the day planner, found within Marissa's reach, containing various contraband items. Wilson escorted Marissa back to his office.

In the presence of Helen Romero, Wilson requested Marissa to turn out her pockets and open her wallet. Marissa produced a blue pill, several white ones, and a razor blade. Wilson asked where the blue pill came from, and Marissa answered, "'I guess it slipped in when *she* gave me the IBU 400s.'" . . . When Wilson asked whom she meant, Marissa replied, "'Savana Redding.'" . . . Wilson then enquired about the day planner and its contents; Marissa denied knowing anything about them. Wilson did not ask Marissa any followup questions to determine whether there was any likelihood that Savana presently had pills: neither asking when Marissa received the pills from Savana nor where Savana might be hiding them.

Schwallier did not immediately recognize the blue pill, but information provided through a poison control hotline indicated that the pill was a 200-mg dose of an anti-inflammatory drug, generically called naproxen, available over the counter. At Wilson's direction, Marissa was then subjected to a search of her bra and underpants by Romero and Schwallier, as Savana was later on. The search revealed no additional pills.

It was at this juncture that Wilson called Savana into his office and showed her the day planner. Their conversation established that Savana and Marissa were on friendly terms: while she denied knowledge of the contraband, Savana admitted that the day planner was hers and that she had lent it to

Marissa. Wilson had other reports of their friendship from staff members, who had identified Savana and Marissa as part of an unusually rowdy group at the school's opening dance in August, during which alcohol and cigarettes were found in the girls' bathroom. Wilson had reason to connect the girls with this contraband, for Wilson knew that Jordan Romero had told the principal that before the dance, he had been at a party at Savana's house where alcohol was served. Marissa's statement that the pills came from Savana was thus sufficiently plausible to warrant suspicion that Savana was involved in pill distribution.

This suspicion of Wilson's was enough to justify a search of Savana's backpack and outer clothing. If a student is reasonably suspected of giving out contraband pills, she is reasonably suspected of carrying them on her person and in the carryall that has become an item of student uniform in most places today. If Wilson's reasonable suspicion of pill distribution were not understood to support searches of outer clothes and backpack, it would not justify any search worth making. And the look into Savana's bag, in her presence and in the relative privacy of Wilson's office, was not excessively intrusive, any more than Romero's subsequent search of her outer clothing.

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Here it is that the parties part company, with Savana's claim that extending the search at Wilson's behest to the point of making her pull out her underwear was constitutionally unreasonable. The exact label for this final step in the intrusion is not important, though strip search is a fair way to speak of it. Romero and Schwallier directed Savana to remove her clothes down to her underwear, and then "pull out" her bra and the elastic band on her underpants. . . . Although Romero and Schwallier stated that they did not see anything when Savana followed their instructions, . . . we would not define strip search and its Fourth Amendment consequences in a way that would guarantee litigation about who was looking and how much was seen. The very fact of Savana's pulling her underwear away from her body in the presence of the two officials who were able to see her necessarily exposed her breasts and pelvic area to some degree, and both subjective and reasonable societal expectations of personal privacy support the treatment of such a search as categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings.

Savana's subjective expectation of privacy against such a search is inherent in her account of it as embarrassing, frightening, and humiliating. The reasonableness of her expectation (required by the Fourth Amendment standard) is indicated by the consistent experiences of other young people similarly searched, whose adolescent vulnerability intensifies the patent intrusiveness of the exposure. . . . The common reaction of these adolescents simply registers the obviously different meaning of a search exposing the body from the experience of nakedness or near undress in other school circumstances. Changing for gym is getting ready for play; exposing for a search is responding to an accusation reserved for suspected wrongdoers and fairly understood as so degrading that a number of communities have decided that strip searches in schools are never reasonable and have banned them no matter what the facts may be. . . .

The indignity of the search does not, of course, outlaw it, but it does implicate the rule of reasonableness as stated in *T. L. O.,* that "the search as actually conducted [be] reasonably related in scope to the circumstances which justified the interference in the first place." . . . The scope will be permissible, that is, when it is "not excessively intrusive in light of the age and sex of the student and the nature of the infraction." . . .

Here, the content of the suspicion failed to match the degree of intrusion. Wilson knew beforehand that the pills were prescription-strength ibuprofen and over-the-counter naproxen, common pain relievers equivalent to two Advil, or one Aleve. He must have been aware of the nature and limited threat of the specific drugs he was searching for, and while just about anything can be taken in quantities that will do real harm, Wilson had no reason to suspect that large amounts of the drugs were being passed around, or that individual students were receiving great numbers of pills.

Nor could Wilson have suspected that Savana was hiding common painkillers in her underwear. Petitioners suggest, as a truth universally acknowledged, that "students . . . hid[e] contraband in or under their clothing," . . . and cite a smattering of cases of students with contraband in their underwear. . . . But when the categorically extreme intrusiveness of a search down to the body of an adolescent requires some justification in suspected facts, general background possibilities fall short; a reasonable search that extensive calls for suspicion that it will pay off. But nondangerous school contraband does not raise the specter of stashes in intimate places, and there is no evidence in the record of any general practice among Safford Middle School students of hiding that sort of thing in underwear; neither Jordan nor Marissa suggested to Wilson that Savana was doing that, and the preceding search of Marissa that Wilson ordered yielded nothing. Wilson never even determined when Marissa had received the pills from Savana; if it had been a few days before, that would weigh heavily against any reasonable conclusion that Savana presently had the pills on her person, much less in her underwear.

In sum, what was missing from the suspected facts that pointed to Savana was any indication of danger to the students from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her underwear. We think that the combination of these deficiencies was fatal to finding the search reasonable.

In so holding, we mean to cast no ill reflection on the assistant principal, for the record raises no doubt that his motive throughout was to eliminate drugs from his school and protect students from what Jordan Romero had gone through. Parents are known to overreact to protect their children from danger, and a school official with responsibility for safety may tend to do the same. The difference is that the Fourth Amendment places limits on the official, even with the high degree of deference that courts must pay to the educator's professional judgment.

We do mean, though, to make it clear that the *T. L. O.* concern to limit a school search to reasonable scope requires the support of reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing before a search can reasonably make the quantum leap from outer clothes and

backpacks to exposure of intimate parts. The meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own demanding its own specific suspicions.

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The strip search of Savana Redding was unreasonable and a violation of the Fourth Amendment, but petitioners Wilson, Romero, and Schwallier are nevertheless protected from liability through qualified immunity. . . .

Clarence Thomas

NO

School Officials Deserve Leeway

JUSTICE THOMAS, concurring in the judgment in part and dissenting in part.

I agree with the Court that the judgment against the school officials with respect to qualified immunity should be reversed. . . . Unlike the majority, however, I would hold that the search of Savana Redding did not violate the Fourth Amendment. The majority imposes a vague and amorphous standard on school administrators. It also grants judges sweeping authority to second-guess the measures that these officials take to maintain discipline in their schools and ensure the health and safety of the students in their charge. This deep intrusion into the administration of public schools exemplifies why the Court should return to the common-law doctrine of *in loco parentis* under which "the judiciary was reluctant to interfere in the routine business of school administration, allowing schools and teachers to set and enforce rules and to maintain order." . . . But even under the prevailing Fourth Amendment test established by *New Jersey* v. *T. L. O.,* . . . all petitioners, including the school district, are entitled to judgment as a matter of law in their favor.

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"Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place." . . . Thus, although public school students retain Fourth Amendment rights under this Court's precedent, . . . those rights "are different . . . than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children." . . . For nearly 25 years this Court has understood that "[m]aintaining order in the classroom has never been easy, but in more recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems." . . . In schools, "[e]vents calling for discipline are frequent occurrences and sometimes require immediate, effective action." . . .

For this reason, school officials retain broad authority to protect students and preserve "order and a proper educational environment" under the Fourth Amendment. . . . This authority requires that school officials be able to engage in the "close supervision of schoolchildren, as well as . . . enforc[e] rules against conduct that would be perfectly permissible if undertaken by an adult." . . . Seeking to reconcile the Fourth Amendment with this unique public school setting, the Court in *T. L. O.* held that a school search is "reasonable" if it is "'justified at its inception'" and "'reasonably related in scope to

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the circumstances which justified the interference in the first place.'" . . . The search under review easily meets this standard.

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A "search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." . . . As the majority rightly concedes, this search was justified at its inception because there were reasonable grounds to suspect that Redding possessed medication that violated school rules. . . . A finding of reasonable suspicion "does not deal with hard certainties, but with probabilities." . . . To satisfy this standard, more than a mere "hunch" of wrongdoing is required, but "considerably" less suspicion is needed than would be required to "satisf[y] a preponderance of the evidence standard." . . .

Furthermore, in evaluating whether there is a reasonable "particularized and objective" basis for conducting a search based on suspected wrongdoing, government officials must consider the "totality of the circumstances." . . . School officials have a specialized understanding of the school environment, the habits of the students, and the concerns of the community, which enables them to "'formulat[e] certain common-sense conclusions about human behavior.'" . . . And like police officers, school officials are "entitled to make an assessment of the situation in light of [this] specialized training and familiarity with the customs of the [school]." . . .

Here, petitioners had reasonable grounds to suspect that Redding was in possession of prescription and nonprescription drugs in violation of the school's prohibition of the "non-medical use, possession, or sale of a drug" on school property or at school events. . . . As an initial matter, school officials were aware that a few years earlier, a student had become "seriously ill" and "spent several days in intensive care" after ingesting prescription medication obtained from a classmate. . . . Fourth Amendment searches do not occur in a vacuum; rather, context must inform the judicial inquiry. . . . In this instance, the suspicion of drug possession arose at a middle school that had "a history of problems with students using and distributing prohibited and illegal substances on campus." . . .

The school's substance-abuse problems had not abated by the 2003–2004 school year, which is when the challenged search of Redding took place. School officials had found alcohol and cigarettes in the girls' bathroom during the first school dance of the year and noticed that a group of students including Redding and Marissa Glines smelled of alcohol. . . . Several weeks later, another student, Jordan Romero, reported that Redding had hosted a party before the dance where she served whiskey, vodka, and tequila. . . . Romero had provided this report to school officials as a result of a meeting his mother scheduled with the officials after Romero "bec[a]me violent" and "sick to his stomach" one night and admitted that "he had taken some pills that he had got[ten] from a classmate." . . . At that meeting, Romero admitted that "certain students were bringing drugs and weapons on campus." . . . One week later, Romero handed the assistant principal a white pill that he said he had

received from Glines. . . . He reported "that a group of students [were] planning on taking the pills at lunch." . . .

School officials justifiably took quick action in light of the lunchtime deadline. The assistant principal took the pill to the school nurse who identified it as prescription-strength 400-mg Ibuprofen. . . . A subsequent search of Glines and her belongings produced a razor blade, a Naproxen 200-mg pill, and several Ibuprofen 400-mg pills. . . . When asked, Glines claimed that she had received the pills from Redding. . . . A search of Redding's planner, which Glines had borrowed, then uncovered "several knives, several lighters, a cigarette, and a permanent marker." . . . Thus, as the majority acknowledges, . . . the totality of relevant circumstances justified a search of Redding for pills.

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The remaining question is whether the search was reasonable in scope. Under *T. L. O.,* "a search will be permissible in its 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." . . . The majority concludes that the school officials' search of Redding's underwear was not "'reasonably related in scope to the circumstances which justified the interference in the first place,'" . . . notwithstanding the officials' reasonable suspicion that Redding "was involved in pill distribution," . . . . According to the majority, to be reasonable, this school search required a showing of "danger to the students from the power of the drugs or their quantity" or a "reason to suppose that [Redding] was carrying pills in her underwear." . . . Each of these additional requirements is an unjustifiable departure from bedrock Fourth Amendment law in the school setting, where this Court has heretofore read the Fourth Amendment to grant considerable leeway to school officials. Because the school officials searched in a location where the pills could have been hidden, the search was reasonable in scope under *T. L. O.*

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The majority finds that "subjective and reasonable societal expectations of personal privacy support . . . treat[ing]" this type of search, which it labels a "strip search," as "categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of clothing and belongings." . . . Thus, in the majority's view, although the school officials had reasonable suspicion to believe that Redding had the pills on her person, . . . they needed some greater level of particularized suspicion to conduct this "strip search." There is no support for this contortion of the Fourth Amendment.

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The analysis of whether the scope of the search here was permissible under that standard is straightforward. Indeed, the majority does not dispute

that "general background possibilities" establish that students conceal "contraband in their underwear." . . . It acknowledges that school officials had reasonable suspicion to look in Redding's backpack and outer clothing because if "Wilson's reasonable suspicion of pill distribution were not understood to support searches of outer clothes and backpack, it would not justify any search worth making." . . . The majority nevertheless concludes that proceeding any further with the search was unreasonable. . . . But there is no support for this conclusion. The reasonable suspicion that Redding possessed the pills for distribution purposes did not dissipate simply because the search of her backpack turned up nothing. It was eminently reasonable to conclude that the backpack was empty because Redding was secreting the pills in a place she thought no one would look. . . .

Redding would not have been the first person to conceal pills in her undergarments. . . . Nor will she be the last after today's decision, which announces the safest place to secrete contraband in school.

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The majority compounds its error by reading the "nature of the infraction" aspect of the *T. L. O.* test as a license to limit searches based on a judge's assessment of a particular school policy. According to the majority, the scope of the search was impermissible because the school official "must have been aware of the nature and limited threat of the specific drugs he was searching for" and because he "had no reason to suspect that large amounts of the drugs were being passed around, or that individual students were receiving great numbers of pills." . . . Thus, in order to locate a rationale for finding a Fourth Amendment violation in this case, the majority retreats from its observation that the school's firm no-drug policy "makes sense, and there is no basis to claim that the search was unreasonable owing to some defect or shortcoming of the rule it was aimed at enforcing." . . .

Even accepting the majority's assurances that it is not attacking the rule's reasonableness, it certainly is attacking the rule's importance. This approach directly conflicts with *T. L. O.* in which the Court was "unwilling to adopt a standard under which the legality of a search is dependent upon a judge's evaluation of the relative importance of school rules." . . . Indeed, the Court in *T. L. O.* expressly rejected the proposition that the majority seemingly endorses—that "some rules regarding student conduct are by nature too 'trivial' to justify a search based upon reasonable suspicion." . . .

The majority's decision in this regard also departs from another basic principle of the Fourth Amendment: that law enforcement officials can enforce with the same vigor all rules and regulations irrespective of the perceived importance of any of those rules. "In a long line of cases, we have said that when an officer has probable cause to believe a person committed even a minor crime in his presence, the balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable." . . . The Fourth Amendment rule for searches is the same: Police officers are entitled to search regardless of the perceived triviality of the underlying law. As we have explained, requiring police to make "sensitive, case-by-case determinations of

government need," . . . for a particular prohibition before conducting a search would "place police in an almost impossible spot" . . . .

The majority has placed school officials in this "impossible spot" by questioning whether possession of Ibuprofen and Naproxen causes a severe enough threat to warrant investigation. Had the suspected infraction involved a street drug, the majority implies that it would have approved the scope of the search. . . . In effect, then, the majority has replaced a school rule that draws no distinction among drugs with a new one that does. As a result, a full search of a student's person for prohibited drugs will be permitted only if the Court agrees that the drug in question was sufficiently dangerous. Such a test is unworkable and unsound. School officials cannot be expected to halt searches based on the possibility that a court might later find that the particular infraction at issue is not severe enough to warrant an intrusive investigation. . . .

In determining whether the search's scope was reasonable under the Fourth Amendment, it is therefore irrelevant whether officials suspected Redding of possessing prescription-strength Ibuprofen, nonprescription-strength Naproxen, or some harder street drug. Safford prohibited its possession on school property. Reasonable suspicion that Redding was in possession of drugs in violation of these policies, therefore, justified a search extending to any area where small pills could be concealed. The search did not violate the Fourth Amendment.

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POSTSCRIPT

Can Zero Tolerance Violate Student Rights?

While public sentiment and media commentary tended to side with the final ruling in *Safford Unified School District #1 v. Redding*, the conduct of school officials charged with the responsibility of carrying out zero-tolerance policies will most likely come under further legal scrutiny. Does the Fourth Amendment require a stricter standard than "reasonableness" for justifying actions such as student strip searches? Is the zero-tolerance basis for school discipline itself faulty and in need of modification? Does the principle enunciated by Justice Stephen Breyer in an earlier case continue to guide legal opinions, namely that "school officials need a degree of flexible authority to respond to disciplinary challenges and the law has always considered the relationship between teachers and students special"?

These and related questions are explored in depth in "Law and Order in the Classroom" by Richard Arum and Doreet Preiss in *Education Next* (Fall 2009); *Zero-Tolerance Policies in Schools* (2009), edited by Peggy Daniels; and Bryan R. Warnick's "Surveillance Cameras in Schools: An Ethical Analysis," *Harvard Educational Review* (Fall 2007).

Additional perspectives on the privacy issue at hand and important subtopics can be found in these sources: Ross W. Greene, *Lost at School* (2008), which explores the need for changing the culture and practice of discipline in the schools; Joseph A. Lieberman, *School Shootings: What Every Parent and Educator Needs to Know to Protect Our Children* (2008), which identifies characteristics of the antisocial personality; Justin M. Bathon and Martha M. McCarthy, "Student Expression: The Uncertain Future," *Educational Horizons* (Winter 2008); Alfie Kohn, "Safety from the Inside Out: Rethinking Traditional Approaches," *Educational Horizons* (Fall 2004); Pedro A. Noguera, "Rethinking Disciplinary Practices," *Theory Into Practice* (Autumn 2003); Alfie Kohn, *Beyond Discipline: From Compliance to Community* (2006); and Anne Gregory and Dewey Cornell, "'Tolerating' Adolescent Needs: Moving Beyond Zero-Tolerance Policies in High School," *Theory Into Practice* (Spring 2009).

Discipline and classroom management are among the primary concerns of beginning teachers. No foolproof theories of discipline exist, but a wide-ranging exploration of ideas such as those in the sources cited above and those in first-hand anecdotal accounts by first-year teachers can help in the construction of a reasonable approach when coupled with the sage advice of veteran educators.