

The 4TH Amendment is still alive in School Searches

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Safford United School District #1 v. Redding (2009), 531 F. 3d. 1071

The United States Supreme Court softened its stance on the rights of students in *Safford v. Redding*. The High Court continued its use of the reasonableness test enunciated in *New Jersey v. T.L.O. (1985), 469 U.S. 325*, and found that a strip search of a 13-year-old student by school officials was unconstitutional.

Savannah Redding, a 13-year-old honors student, was subjected to a strip search by school authorities at Stafford Middle School in Stafford, Arizona. Savannah had been accused by a classmate of bringing and hiding prescription-strength ibuprofen pills on school grounds. Redding's classmate had been caught by school officials with various contraband prior to naming Redding. When approached, Redding denied the allegations and even consented to a search of her backpack. Nothing was found in the backpack. Nevertheless, school officials still escorted Redding to the nurse and told her to strip to her underwear. Redding was ordered to move her underwear in a manner that would cause any drugs to be revealed. No drugs were found. Redding's mother brought a civil rights suit against the school district and the officials involved. The suit included a claim that the strip search violated Redding's 4th Amendment rights.

The Supreme Court continued its use of the long-standing *T.L.O.* decision concerning school/student searches. The Court in *T.L.O.* found that the 4th Amendment does govern school searches. The Court established a two-pronged analysis to maintain the balance between the students' expectation of privacy and the school's legitimate need to maintain order and a conducive learning environment. The first step of the analysis requires the school officials to have reasonable suspicion that the student has violated the law or a school rule or regulation. The second step allows for a search, but the search cannot be "excessively intrusive in light of the age and sex of the student and the nature of the infraction."

In applying this framework to Redding's case, the Court found that the initial contact with Redding and the search of her backpack and outer clothes were reasonable.

On the other hand, the Court rejected the idea that the strip search was reasonable in light of the circumstances. The Court, speaking through Justice Souter, found that no information was ascertained to lead school officials to believe that Redding was transporting or hiding contraband in her underwear, or that the pills involved presented a danger to students. Thus, the search was excessively intrusive. The Court found the search to be sufficiently embarrassing, frightening and humiliating to violate Redding's expectation of privacy. Justice Stevens, concurring in part and dissenting in part, put it succinctly: "...it does not require a constitutional scholar to conclude that a nude search of a 13-year-old child is an invasion of constitutional rights of some magnitude." Stevens went on to state that this "is a case in which clearly established law meets clearly outrageous conduct."

The lone dissenter, Justice Thomas, had no problems with the strip search. Thomas argued to abandon the 4th Amendment analysis in favor of reinstating the common law doctrine of *in loco parentis*. This doctrine would give school officials the same rights and discretion as the parents of the children. Parents are immune from the dictates of the 4th Amendment. Under Thomas's analysis, school officials would also be immune.

Redding is an important decision for a number of reasons. It continues the constitutional ideal that schools officials can act on reasonable suspicion instead of the higher standard of probable cause. However, it reinforces that students do have reasonable expectations of privacy on school grounds. The Court acknowledged that on a daily basis students carry with them items that are not contraband. The Court was unwilling to find that students waive all rights to privacy merely by bringing items on school grounds. The Court's balancing test under *T.L.O.* clearly supported students' rights in this case.