Qualified Immunity of School Officials: Safford Unified School District #1 v. Redding

by David Bloomfield — August 05, 2009

In Safford Unified School Dist. #1, et al. v. Redding, the United States Supreme Court recently held unconstitutional the strip search of a public middle school student for legal drugs which were prohibited by school rules. The Court also held school officials, specifically the assistant principal who ordered the search, immune from personal liability for his illegal action. While the strip search grabbed public attention, the real importance of and the reason the justices granted review is the secondary holding of qualified immunity for the school personnel involved in the search. The majority’s rationale for finding immunity was its contention that the law of student searches was sufficiently ambiguous as to give the assistant principal inadequate notice regarding Savana’s situation. But Justice Souter’s argument on this score rings hollow, an intellectually dishonest, result-oriented analysis that fails to square with either the standards for qualified immunity or the state of search and seizure law, which both Justice Stevens and Justice Ginsberg forcefully state has long been clear, though obviously must be applied by administrators to infinite fact patterns.

Background

In Safford Unified School District #1, et al. v. Redding (2009), the United States Supreme Court recently held unconstitutional the strip search of a public middle school student for legal drugs which were prohibited by school rules. The Court also held school officials, specifically the assistant principal who ordered the search, immune from personal liability for his illegal action.

Public interest in the case may have arisen because of parent concerns about the vulnerability of their children in similar circumstances. Safford, Arizona (pop. 9,500) is a rural town over two hours’ drive from Tucson, the nearest major city. Thirteen year old Savana Redding was accused of violating a school rule against “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.’” In Savana’s case, this consisted of the unsupported allegation of another student, found to possess the contraband, that Savana had given students prescription strength, 400 mg. ibuprofen and over-the-counter naproxen. Despite the strip search, no drugs were found on Savana.
The Court’s most important precedent in school-based search and seizure is \textit{New Jersey v. T.L.O.} (1985), where the warrantless search of a female high school student’s purse for cigarettes, then marijuana, was held constitutional based on a standard of a public school official’s “reasonable suspicion” that the student possessed proscribed material, notwithstanding the Fourth Amendment’s requirement that warrants be obtained only upon a court’s finding of “probable cause.”

\textit{Facts}

In October 2003, Redding was called to Assistant Principal Kerry Wilson’s office. Another student, Marissa Glines, had earlier told Wilson that she had received pills, prohibited by school rules, from Redding. Rather than question Glines further as to when and under what circumstances she had received the drugs and despite denials by Redding, Wilson and Helen Romero, an administrative assistant, unsuccessfully searched Redding’s outer clothing and backpack.

Wilson then had Romero and Peggy Schwallier, the school nurse, carry out a more intrusive search in the privacy of the nurse’s office where Redding was required to strip, then to pull out her bra and the top band of her underpants, revealing at least part of her breasts and pelvic area. After this search also failed to turn up illicit substances, Redding was made to wait outside of Wilson’s office for two hours rather than be allowed to return to class or be sent home. Neither the police nor her parents were ever called during this incident.

\textit{Analysis}

Relying on its precedent in \textit{T.L.O.}, the Supreme Court by a vote of 8-1 in \textit{Safford} upheld the search of Redding’s outer clothing and backpack but determined that the strip search failed to meet the test established in \textit{T.L.O.}, thus overstepping constitutional boundaries:

\begin{quote}
[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 [another student] 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.
\end{quote}

But, given this lopsided result, was this a case that the Supreme Court should have heard in the
first place and of what legal consequence is its decision? Since the Court announced no new rule that would guide future school administrators except in this most narrow of fact patterns, there is more to the case than the mere holding that a strip search in this circumstance is unconstitutional.

While the strip search grabbed public attention, the real importance of Safford and the reason the justices granted review is the secondary holding of qualified immunity for the school personnel involved in the search. The same question was presented in the 2007 case, Morse v. Frederick. However, since Morse found the principal’s conduct constitutional in ripping down a student banner proclaiming “BONG HiTS 4 JESUS” [sic], the Court never reached the question of qualified immunity. Here, given the strong basis for finding Assistant Principal Wilson’s conduct unconstitutional, the question of his immunity was squarely presented.

The majority’s rationale for finding Wilson immune was its contention that the law of student searches was sufficiently ambiguous as to give the assistant principal inadequate notice regarding Savana’s situation. But Justice Souter’s argument on this score rings hollow, an intellectually dishonest, result-oriented analysis that fails to square with either the standards for qualified immunity or the state of search and seizure law, which both Justice Stevens and Justice Ginsberg forcefully state has long been clear, though obviously must be applied by administrators to infinite fact patterns.

As a professor of education law, I emphasize to my students the importance of legal reflection. No one – neither attorneys nor lay people – can keep the welter of legal requirements, let alone their applicability to specific fact situations, in their heads for instantaneous recall and analysis. But anyone, especially professionals in such a legally-intensive field as education, must be able to recognize when obvious legal issues arise. We look for speed limit signs when we drive, we know to consult an attorney when buying a house, and all principals and assistant principals know that searching students implicates constitutional protections.

Mr. Wilson knew that there are rules and had sufficient time to consult supervisors or school attorneys about the matter. Time was not of the essence as, arguably, was the action of Principal Morse in tearing down Frederick’s drug-related banner. Savanna sat outside his office for 2 hours after the search. That time could have been spent, pre-search, to look before he leaped.

In its understandable desire to protect a public official “just doing his job,” the Court has taught school leaders the wrong lesson: that the consequences of unconstitutional and other illegal actions are minor. Principals around the country have learned this lesson too well and too frequently in the past. Suspensions are often meted out without due process since, even if eventually reversed, the student has been removed from school. Special needs students are denied services since, even if subsequently ordered, money is temporarily saved and administrative convenience served. Teachers are hounded from schools even if charges are eventually not
substantiated.

It appears that in *Safford*, the Supreme Court went out of its way to license this lamentable behavior. *Safford* establishes no new law but simply applies previous precedent in a totally predictable manner to a relatively narrow fact situation: unsuccessfully strip-searching a 13-year old female in pursuit of common, if proscribed, pain relievers. Reaching this conclusion by an 8-1 vote can hardly be the reason the justices heard the school district’s appeal.

Rather, consistent with its recent decision in *Morse v. Frederick*, the Court seems determined to set forth a high standard against personal liability by school officials. Such judicial policy-making is not good for children nor does it promote excellence in school leadership.

**Notes**

1. 557 U.S., No. 08-479 (June 25, 2009)
2. *Safford*, supra, slip opinion at p. 5
3. 469 U.S. 325 (1985)
4. United States Constitution, Amendment 4 (ratified 1791)
5. Justice Thomas dissented.
6. *Safford*, supra, slip opinion, at p. 10
7. 551 U.S. 393 (2007)
8. Since the administrative assistant and school nurse were held by the Circuit Court not to be independent decision makers, their liability was not at issue. *Safford*, supra, slip opinion, at p. 3.
10. “Nothing the Court decides today alters this basic framework. It simply applies *T. L. O.* to declare unconstitutional a strip search of a 13-year-old honors student that was based on a groundless suspicion that she might be hiding medicine in her underwear. This is, in essence, a case in which clearly established law meets clearly outrageous conduct. I have long believed that “[i]t 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.”” [New Jersey v. *T. L. O.*, 469 U. S] at 382, n. 25 (STEVENS, J., concurring in part and dissenting in part) (quoting Doe v. Renfrow, 631 F. 2d 91, 92–93 (CA7 1980)).
11. “The Court’s opinion in *T. L. O.* plainly states the controlling Fourth Amendment law: A search ordered by a school official, even if “justified at its inception,” crosses the constitutional boundary if it becomes “excessively intrusive in light of the age and sex of the student and the nature of the infraction.” 469 U. S., at 342 (internal quotation marks omitted). Wilson’s treatment of Redding was abusive and it was not reasonable for him to believe that the law permitted it.”
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Safford, supra, slip opinion, Ginsberg dissent at p. 2.

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