

Legally Speaking
© 2009 Marianna Brown Bettman
All Rights Reserved

Students and Strip Searches

A student at Safford Middle School named Jordan got sick after he took some pills he'd gotten from a classmate. He told the school principal and assistant principal that there were students bringing drugs and weapons to school. About a week later, Jordan handed a white pill over to Assistant Principal Wilson, and told Wilson he'd gotten it from classmate Marissa Glines.

Wilson found out from the school nurse that the pill Marissa had given Jordan was prescription strength ibuprofen. Wilson had Marissa removed from class, and asked her to empty her pockets. This turned up more pills, later identified as over-the-counter strength naproxen, an anti-inflammatory drug. Marissa fingered Savana Redding as her supplier. Marissa's teacher gave Wilson a day planner, which Savana had loaned to Marissa. The planner contained knives and other contraband.

Wilson got Savana Redding—age 13, and an honor student at the school—out of class and into his office. Savana admitted the day planner was hers, and admitted she and Marisa were friends, but denied anything to do with the pills or the other contraband.

So far this sounds like something that has probably happened countless times in countless schools.

Savana agreed to let Wilson search her stuff. He and his assistant Helen Romero searched her backpack, and found nothing. But then Wilson had Romero take Savana to

the school nurse's office to search her clothes for pills. Romero and the nurse first had Savana remove her outer clothing, and again finding nothing, had her pull out her bra and underpants for a further look. Again they found nothing. In the words of majority opinion author Souter, " the exact label for this final step in the intrusion is not important, though strip search is a fair way to speak of it."

Savana's mother filed a lawsuit against the school district, Assistant Principal Wilson, Romero, and the school nurse for conducting a strip search in violation of her daughter's Fourth Amendment Rights. The school officials filed an immunity defense. Officials performing their duties are protected from personal liability by qualified immunity unless there is a violation of clearly established law. Romero and the school nurse were dismissed from the case. When the case reached the high court, only the claim against Wilson and the School District itself remained.

In the school setting, courts give a great deal of deference to the authority of school administrators, especially when it comes to the enforcement of rules for the safety of students. In 2007, the high court upheld a principal's decision to suspend a student for carrying a banner that the principal interpreted as advocating illegal drug use. That case, *Morse v. Frederick*, gave the benefit of the doubt in a clash between student free speech and the right to regulate it to the school administration. While it looked like Savana Redding's case might go the same way, it didn't, despite the zero drug tolerance policy of the school district in the case.

The Fourth Amendment protects us from unreasonable searches and seizures. Generally, in a case involving an adult, a law enforcement official must have probable

cause to conduct a search, or that search will be presumptively unreasonable. But in a precedent established in 1985, the Court held that in a school setting the level of suspicion of illegal activity necessary to justify a search was reduced from probable cause to reasonable suspicion.

All nine justices on the Court agreed in this case that Assistant Principal Wilson had reasonable suspicion to search Savana Redding's backpack and outer clothing. But eight of the justices agreed with Savana that the search of her underwear was constitutionally unacceptable, and that a search so violative of personal privacy in a young adolescent required a far more significant justification than did the search of her outer clothing and belongings. "Here, the content of the suspicion failed to match the degree of the intrusion", wrote since-retired Justice David Souter. To which Justice John Paul Stevens added, most eloquently, "this is, in essence, a case in which clearly established law meets clearly outrageous conduct... [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." Justice Ruth Bader Ginsburg wrote, "any reasonable search for the pills should have ended when inspection of Redding's backpack and jacket pockets yielded nothing."

In short the Court held that the assistant principal did not have enough of a basis to suspect Savana of hiding pills in her underwear. So Savana's lawsuit against the School District goes forward.

The Justices split on the immunity issue. Seven justices agreed that the Assistant Principal was entitled to immunity from any personal liability because the law

was so unsettled and unclear on the strip search question. On this point Justices Stevens and vehemently dissented, and would hold Wilson personally liable in this case. Ginsburg was harshly critical of Wilson, noting he asked no follow-up questions of Marissa Glines nor tested her accusations for truthfulness, and had no past incidents of any kind involving Savana. Noting that “to make matters worse, Wilson did not release Redding to return to class or to go home after the search. Instead, he made her sit on a chair outside his office for over two hours. At no point did he attempt to call her parent. Abuse of authority of that order should not be shielded by official immunity.”

Justice Thomas is out there on his own. He continues to believe that schools stand in the role of parent to students, and courts should not interfere with their disciplinary decisions. He found the search here both reasonable and justified. “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... It is a mistake for judges to assume the responsibility for deciding which school rules are important enough to allow for invasive searches and which rules are not.”

In this case, after the oral argument, Justice Ginsburg told USA Today that she didn’t think her colleagues quite got it. “They have never been a 13-year-old girl,” she told the newspaper. “It’s a very sensitive age for a girl. I didn’t think that my colleagues,

some of them, quite understood." But in the end, it appears that most did. The influence of the wise old woman on the Court?