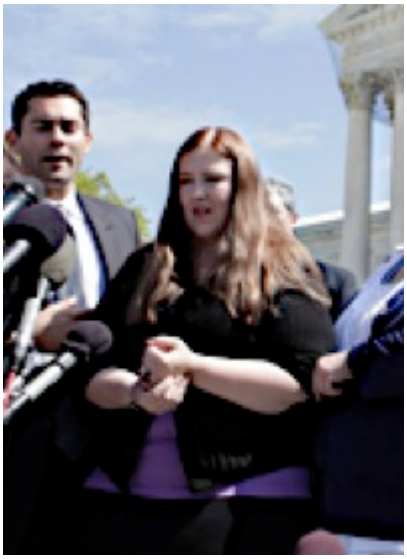
Written by **Ann Shibler** on June 25, 2009

Final Ruling in Strip Search Case



The highly visible case centered on Savana Redding who attended a school with a policy of zero tolerance for all drugs, over-the-counter types and prescription, as well. Acting on what has now been determined to be a false accusation by a fellow student, school officials strip searched the child without parental permission or presence. They defended themselves saying they were only falling back on the school's policy that said the school had the right to "search and seize property, including school property temporarily assigned to students, when there is reason to believe that some material or matter detrimental to health, safety, and welfare of the student(s) exists."

The court's ruling of qualified immunity from liability was based on the court's assertion that the constitutional standard was not clear at the time of the search. Citing as precedent *New Jersey v. T.L.O.*, a 1985 case that said that the school in question was justified in conducting a limited search of a student's backpack and outer clothing only, Justice Souter opined that because lower court interpretations of *T.L.O.* vary widely, school officials who order underwear searches are not violating "clearly established law." Here Souter cites precedence and turns right around and ignores that precedent.

The *Wall Street Journal* suggested that the male justices of the high court seemed "puzzled at Ms. Redding's humiliation over displaying her body to adult inquisitors." Justice Bryer asked at the oral argument that occurred in April, "Why is this a major thing, to say, 'Strip down to your underclothes," which is what children do when they change for gym?" This brought a response from Justice Ruth Bader Ginsburg reminding Bryer that Ms. Redding wasn't stripping down to her underwear, but instead shaking her underwear out.

Justice Souter referred to this point in the written ruling, writing: "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." Souter went on to say that the content of the suspicion failed to match the degree of intrusion in this case.

Justices John Roberts, Jr., Antonin Scalia, Anthony Kennedy, Stephen Bryer, and Samuel Alito, Jr. joined Souter in agreeing that constitutional rights were violated and that qualified immunity should be in store for the school officials. Justices John Paul Stevens and Ruth Bader Ginsburg agreed on the constitutional violation, but dissented on the qualified immunity issue. Stevens and Ginsburg argued that the constitutional standard should have been quite clear to school officials. Stevens wrote, "It does not require a constitutional scholar to conclude that a nude search of a 13-year-old is an invasion of constitutional rights of some magnitude." To which Ginsburg added:

> Any reasonable search for the pills would have ended when inspection of Redding's backpack and jacket pockets yielded nothing. Wilson [assistant principal] had no cause to suspect, based on prior experience at the school or clues in this case, that Redding had hidden pills — containing the equivalent of two Advils or one Aleve — in her underwear or body. 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 Clarence Thomas believed school officials should be immune, taking the strongest position against student rights and in favor of school administrators' authority by voting against the constitutional violation and for qualified immunity. In his written opinion, he insists that schools know best in these matters and believes that the school officials had more than reasonable grounds to suspect that Redding was in possession of harmful drugs *and* that even judges are not qualified to "second-guess the best manner for maintaining quiet and order in the school environment." Thomas believes, "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." He added:

> It is a crime to possess or use prescription-strength Ibuprofen without a prescription. See Ariz. Rev. Stat. Ann. §13–3406(A)(1) (West Supp. 2008) ("A person shall not knowingly … [p]ossess or use a prescription-only drug unless the person obtains the prescription-only drug pursuant to a valid prescription of a prescriber who is licensed pursuant to [state law]").5 By prohibiting unauthorized prescription drugs on school grounds — and conducting a search to ensure students abide by that prohibition — the school rule here was consistent with a routine provision of the state criminal code. It hardly seems unreasonable for school officials to enforce a rule that, in effect, proscribes conduct that amounts to a crime.

The court it seems, took great pains to guard against any "ill reflection" on the assistant principal who ordered the search and on the two female staff members who carried it out. Souter wrote, "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 court has spoken and the case reverts back to a lower court for an assessment of damages the school district may still be liable for.

Obvious to even laypersons is the new realization that even if one violates the Constitution in a flagrant and obvious manner, one's actions can still qualify for immunity and one will not be held liable for any damages or punishment.