

# Fair Test for Student Athletes

The question before the Supreme Court was whether an appellate judge was correct when he said, "Children are compelled to attend school but nothing suggests that they lose their right to privacy in their excretory functions when they do so." By a 6-3 vote the court decided on Monday that the public school athletes voluntarily compromise that right in Vernonia, Ore.

In the late 1980s Vernonia teachers and administrators became alarmed by a boastful, flaunting embrace of drugs by students who became increasingly rude, profane and disruptive. Authorities noted that athletes, who often loom large in the lives of small towns, were leaders of the drug culture. And authorities worried about drug use increasing the risk of sports injuries. In addition to psychological effects on motivation, drugs can impair judgment, slow reaction time, mask pain, interfere with the body's normal fatigue responses and increase heart rate and blood pressure.

So the school district instituted a policy of random urinalysis drug testing of all athletes. But James Acton, then a seventh-grader eager to play football, objected, arguing that the testing violates the Constitution's Fourth Amendment protection against "unreasonable searches."

So, what is "reasonable"? Vernonia's policy is, says the court. Speaking through Justice Scalia, whose opinion was joined by Justices Rehnquist, Kennedy, Thomas, Ginsburg and Breyer, the court noted that it is settled law that such testing constitutes a search. Reasonableness is judged by balancing the intrusiveness of a search against the promotion of a legitimate governmental interest, which the prevention of drug use by children surely is.

Unemancipated minors do not enjoy all the rights of adults, particularly in the context of a school acting somewhat *in loco parentis*, charged with inculcating civility. Students are routinely required to have vaccinations and physical examinations. And regarding non-compulsory participation in athletics, Scalia says: "School sports are not for the bashful." Athletes commonly submit to regulations and codes of conduct. So, "We find insufficient basis to contradict the judgment of Vernonia's parents, its school board, and the district court, as to what was reasonable in the interest of these children under the circumstances."

Justice O'Connor, dissenting and joined by Justices Stevens and Souter (appointees of

Reagan, Ford and Bush, respectively), says the record in this case does not demonstrate that there was a drug problem at Acton's particular school. So much for trusting the judgment of the community and its institutions. O'Connor says that Fourth Amendment law generally forbids broad "searches" of whole groups (in this case, athletes). Individualized suspicion is required to justify searches. She quotes a 1925 Supreme Court ruling:

"It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search."

But adult drivers have different rights than students, especially the subcategory of voluntary student athletes. Furthermore, O'Connor concedes that the record "demonstrates there was a drug-related discipline problem in Vernonia of 'epidemic proportions.'" The

Oxford English Dictionary defines "epidemic" as "widely prevalent, universal." So what is wrong with a testing program that targets a category of persons—athletes—most identified with something "widely prevalent," persons who can avoid testing by avoiding non-compulsory athletic activity?

O'Connor would have the district deal with its drug problem, which she says the record showed to be "of epidemic proportions" (epidemic, but not proven to have touched Acton's school?), by focusing testing on students whose behavior is disruptive or otherwise suspicious. She says breezily that "any distress arising from what turns out to be a false accusation can be minimized by keeping the entire process confidential."

What America is she living in? The real America is full of people as litigious as Acton, people encouraged by court rulings to be exquisitely sensitive about their rights and dismissive of the judgments of local authorities. In this America, false accusations breed lawsuits, so O'Connor's suggestion is a recipe for causing the district to back off and live with its epidemic.

Time was when the discipline problems in American schools concerned running in the halls and cutting classes. But Vernonia is in today's America, where rights are trumps and seventh-graders get lawyers and local authorities get no respect. Which just may have something to do with the fact that the Vernonia school district, which is not unlike thousands of others, has a handbook in which the list of disciplinary "problem areas" includes "recklessly endangering," "weapons," "extortion," "arson" and "explosive devices."