



## OPINION: Supreme court teaches student they are outside Constitution

Nat Hentoff October 17, 2013

I was furious to see this headline from civil liberties guardian the Rutherford Institute last week: “U.S. Supreme Court Refuses to Hear Case of Student Subjected to Random Lockdown and Mass Search by Police in Public School.”

I was furious, but not shocked because, as I’ll explain, this has happened before.

Here are the facts of the case:

“On April 22, 2010, the principal of Central High School in Springfield, Mo. announced over the public address system that the school was going into ‘lockdown’ and that students were prohibited from leaving their classrooms.

“School officials and agents of the Greene County Sheriff’s Department thereafter ordered students in random classrooms to leave all personal belongings behind and exit the classrooms (despite the previous order). Dogs were also brought in to assist in the raid.

“Upon re-entering the classrooms, students allegedly discovered that their belongings had been rummaged through.”

Mellony and Doug Burlison, the parents of two kids enrolled in Central High School, sued the school district for violating the Fourth Amendment and the Missouri Constitution. These searches were conducted without any individually cited suspicions of wrongdoing by any of the students, not to mention total disregard of due process.

But in March of this year, the Eighth Circuit Court of Appeals ruled that the school’s concern with exposing drug use outweighed the privacy rights of the locked down students.

And, after an appeal to John Roberts’ Supreme Court, the plaintiffs got unpleasant news on Oct. 7: Among the court’s long list of cases for which certiorari, or review, was denied was Burlison v. Springfield Public Schools.

There was not one word about why our highest court couldn’t be bothered with this.

Most Americans have not even heard of the Burlisons' case, so I'm not going to let it fade away. That's why I hereby challenge all members of this Supreme Court to read (or reread) Justice William Brennan's furious dissent in a similar 1981 case, *Diane Doe v. Renfrow*.

I knew Justice Brennan. A powerful protector of our individual liberties, he was personally amiable, seldom raised his voice and addressed his friends, including me, as "pal." But when the majority of that Supreme Court prompted his long dissent in the Doe case, he told me in his chambers, "I was really mad."

Here's a brief look at the case:

In 1979, Diane Doe, aged 13 (her last name was not given, because she was a minor), was sitting in her classroom at Highland Junior High School, in Highland, Ind. Next to that building was a senior high school.

Suddenly, all the classrooms in both schools were entered by school and police officials — along with police-trained German shepherds — who were undertaking a mass search for drugs and drug paraphernalia. No students in particular were under suspicion; all of them were under general suspicion.

The students had to sit quietly for more than two hours with their hands upon their desks and the contents of their desks in plain view. ... Each student was inspected by a German shepherd. Justice Brennan wrote (in dissent) that when one of the dogs came to Diane, it "sniffed at her body, and repeatedly pushed its nose and muzzle into her legs." By its concentrated attention, the dog had marked the girl as a person under suspicion.

Diane sued the school and police, claiming her Fourth Amendment rights had been violated. No judge had issued a warrant for this mass dragnet search.

A federal district judge later threw out her case, declaring her rights had not been violated. The Seventh Circuit Court of Appeals gave her damages for the dog's strip search. However, the court denied her basic constitutional claim concerning the totality of the mass lockdown — without, wrote Brennan in his dissent, any focus "on particular individuals who might have been engaged in drug activity at school."

The appeals court ruled the school's interest in drug use outweighed Diane's privacy rights. The Supreme Court then refused any further review of the case.

In his dissent of the Supreme Court's decision, Justice Brennan roared: "Schools cannot expect their students to learn the lessons of good citizenship when the school authorities themselves disregard the fundamental principles underpinning our constitutional freedoms."

Do you agree?