

Virginia Association of School Business Officials May 24, 2018

M. David Alexander
Virginia Tech

School Law Topics

1. Virginia

- **Transgender**

2. Liability

State

Federal

3. Bullying Liability

4. Technology and the Law

Teacher and Students and Social Media

School Law Topics

5. Cell Phones/Privacy/Search and Seizure
6. School Resource Officers
7. Drug Testing Teachers
8. Religion

Transgender Issues

- 9 million individuals in US
- *G.G. v. Gloucester County School Board* , 2016 WL 1567467(C.A.4 (Va.) 2016) (Remanded by S.Ct.)
- Department of Education *Letter*, January 7, 2015. Department's Office of Civil Rights.
- Deference to Letter defining discrimination under Title IX , “ A school generally must treat transgender student consistent with their gender identity “
- *Gender Identity v. Genitalia*

Transgender Issues

- The American Psychiatric Association Diagnostic and Statistical Manual of Disorders recognized condition “Gender Dysphoria”
- Majority of court cases have ruled covered by Title IX and Equal Protection
- ***A.N. v. Minersville Area School District*** Superintendent said “Minersville isn’t ready for this” , Principal said his “...job was to protect all students from students like [A.N.] transgender. **School Lost case**
- ***Whitaker v. Kenosha Unified School District*** , 7th Cir. ,2017, ruled for transgender student.

Liability

Two types of liability

- 1) **State Torts** –Varies from state to state (State Court)
 - a) Negligence
 - b) Strict Liability (no school cases)
 - c) Intentional torts (Defamation, corporal punishment, etc.)
- 2) **Constitutional Torts (Federal Court)**
 - a) 42 USC section 1983
 - b) Violation of US Constitution or Federal Statute

Commonwealth of Virginia - Negligence

- 1) Teachers Immuned from Negligence
 - a) Common Case Law
 - b) Code of Virginia 8.01-220.1:2
 - c) Paul D. Coverdell Act of 2001 (NCLB)
- 2) Administrators Immuned from Negligence
 - a) Common Case Law
 - b) Teacher Protection Act (ESSA)

Administrators **NOT Immuned** under Code of Virginia, 8.01-220.1:2 *Burns v. Gagon*, 727 S.E.2d 634 (S.Ct. Va. 2012)

Virginia Tort Cases - Common or Case Law

Lentz v. Morris, 372 S.E.2d 608, (1988)

Immuned

- 1) Immunity for teachers (ordinary negligence, does not cover **gross** negligence)

Banks v. Sellers, 294 S.E.2d 862, (1982)

Immuned

- 1) Division Superintendents
- 2) High School Principals

Code of Virginia § 8.01-220.1:2 Civil immunity for teachers under certain circumstances (passed in 2007)

- A. Any teacher employed by a local school board in the Commonwealth shall not be liable for any **civil damages** for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such teacher's scope of employment and are taken in good faith in the course of supervisions, care or discipline of students, **unless such acts or omissions were the result of gross negligence or willful misconduct**

Code of Virginia § 8.01-220.1:2 Civil immunity for teachers under certain circumstances (passed in 2007) (*con't*)

B. No school employee or school volunteer shall be liable for any civil damages arising from the prompt good faith reporting of alleged acts of bullying or crimes against others to the appropriate school official in compliance with specified procedures

Code of Virginia § 8.01-220.1:2 Civil immunity for teachers under certain circumstances (passed in 2007) (*con't*)

c. This section shall not be construed to limit, withdraw or overturn any defense or immunity already existing in **statutory or common law**, or to prohibit any person subject to bullying or a criminal act from seeking redress under other provision of law

Teacher Protection Act of 2001 (Part of NCLB)
Now part of ESSA

- The purpose of this subpart is to provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline, and an appropriate educational environment

Federal Courts Liability

Constitutional Tort- 42 U.S.C. section 1983

- Every **person (Individual and School Board)** who, under color of any statute, ordinance, regulation, custom, or usage, of any state ...subjects, or causes to be subjected any citizen of the United States ...to the deprivation of any rights , privileges or immunities secured by the **Constitution and laws**, shall be liable to the party injured in an action at law , suit in equity (**Called MONEY**) , or other proper proceedings

Federal Litigation

1. Federal Courts

- Constitution
 - a. 14th Amendment
 - Due process
 - Equal Protection
- Statutes
 - a. Civil Rights Act of 1964
 - b. Title IX of the Educational Amendment 1972
 - c. IDEA
 - d. Rehabilitation Act of 1973, Section 504
 - e. American Disabilities Act

Federal Liability Standards

- Very high standard
- Constitution not written to protect me from you (or minority party)
- Constitution written to protect me from government
- Liability might exist if what the state actually does “shocks the conscience” or the state creates a danger

Constitutional Tort- 42 U.S.C. section 1983

- Schools may have a **duty** by virtue of a **state's tort** or other laws. However, “[s]ection 1983 (Federal) imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of **tort law**”
- Point: There is big difference between state liability and federal liability
- Cannot use common State Tort law to substitute for Federal liability

Bullying Liability

- Cases
 - a) Equal protection
 - b) Title IX –Education Amendments 1972 , Sex
 - c) IDEA Disabilities
 - d) Religion
- Common Factor School Acted with Deliberate Indifference

Nabozny v. Podlesny 92 F.3d 446, (C.A. 7th Circuit) 1996

Equal Protection (Constitutional 14th Amend. Issue)

- Student openly gay
- Student called him names
- Ask administrators for help
- Student mock raped him and urinated on him in bathroom
- Principal said, “go home and change your clothes and if you are going to be gay then you should expect this
- Nabozny showed that when boy struck girlfriend he was expelled
- Court rendered damages against school for “**deliberate indifference**”

Example of **Laws**-Liability --Title IX Education Amendments of 1972

- Sex Discrimination (Federal Law)
- Employee-Employee, Employee-Student, Student-Student (Peer-to-Peer)
- Can be liable if school officials act with “deliberate indifference”
- Even if school officials were ineffective they did not act with **deliberate indifference**. (**Do something, document**)
- *Baynard v. Malone*, 268 F.3d 228 (4th Cir. 2010), Principal liable for deliberate indifference in sexual harassment case. Virginia Case, \$ 300 K

T.K. and S.K. v. New York City Department of Education

Disabilities

- 12 year old special education student, autistic
- Parents complained about bullying
- Principal refused to discuss in IEP meeting Teacher aids reported student was ostracized and subjected to ridicule
- Student intentionally stayed away, and push student away for fun, tripped and when she fell teacher got upset with her
- Court ruled that school had acted “**deliberately indifferent**” Title IX standard for sexual harassment, severe, pervasive and objectively offensive altered education

P.W. and D.W. Guardian, of H.W. v. Fairport Central School District. 927 F. Supp. 2D 76 (W.D.N.Y. 2013)

Gender

- Peer-to-peer bullying
- Jammed lacrosse stick in to his buttock
- Squeezed nipple, on tape of incident. Asst. Prin looked at tape something happened, did nothing
- Name calling
- Over a period of years
- Violation of Title IX
- Court rendered damages against school for “deliberate indifference”

G.D.S. v. Northport-East Northport Union Free School District. 915 f.Supp.2D (E.D.N.Y.2012)

Religion

- Anti-Semitic comments: “Hitler is a good person”; “what is the difference between a Jew and pizza? A pizza doesn’t scream when it goes in the oven”
- Parent met with administrators
- Administration and teachers saw bullying
- Court rendered damages against school for “deliberate indifference”

Zeno v. Pine Plains, Central School District. *702 F.3d 655 (C.A. 2 (NY) 2012)*

Skin Color

- Harassment “nigger”
- “We don’t want your kind here”
- “Go back where you came from”
- “You fxxxing, nigger”
- Student displaced no use
- Million dollar judgment under Title VI of the Civil Right Act
- Court rendered damages against school for “deliberate indifference”

Technology and the Law

***City of Ontario, California v. Quon*, 130 S.Ct. 1619 (S.Ct. 2010)**

- The City of Ontario acquired pagers for text messaging for. There was a limit on the number of characters each pager was allowed under **the city contract** per month. The chief noticed that several employees exceeded the limit. He requested the service provider send him two months of transcripts. The chief discovered that Officer Quon sent or received 456 messages for the month of August 2002 of which 57 were work related; several of the others were sexually explicit.

City of Ontario, California v. Quon, 130 S.Ct. 1619 (S.Ct. 2010), (con't)

- The court held: (1) Quon had a reasonable privacy expectation; (2) petitioners' review of the transcript constituted a Fourth Amendment search; and (3) the principles applicable to a government employer's search of an employee's physical office apply as well in the electronic sphere.

City of Ontario, California v. Quon, 130 S.Ct. 1619
(S.Ct. 2010), (con't)

- The Court ruled the chief had reasonable grounds to examine the officer's text messages; therefore, there was no violation of the Fourth Amendment

City of Ontario, California v. Quon, 130 S.Ct. 1619 (S.Ct. 2010), (con't)

- The Court must proceed with care when considering the whole concept of privacy expectations in communications made on electronic equipment..... The judiciary risks error by elaborating too fully on the Fourth Amendment implications of **emerging technology before its role in society has become clear.**

Technology and the Law

- Statutes and court decisions provide guidance to school leaders, but they are **lagging behind the rapid development of technology**. This explosion of technology has impacted decisions regarding student disciplinary matters. Therefore, school leaders have been making discipline decisions about a new phenomenon without legal certainty. The administrator's tool box only the tools that he/she possesses, which reside in court cases

Technology and the Law

- Teacher Social Media
- Disciplining Students for use of Social Media

Employees Social Media

- A Chesterfield County School's (VA) art teacher was fired after a YouTube video surfaced. The "YouTube video show[ed] [the teacher] with a fake nose and glasses, a towel on his head and black thong. ...[p]racticing his private abstract artwork, much of which is produced when he smears his posterior and genitals with paint and presses them against a canvas. The video was widely dispersed among students." (<http://malottblog.blogspot.com>) The pictures sold for \$400 to \$900 per picture. The School Board voted unanimously to dismiss him, whereupon he filed suit claiming violations of his First Amendment rights. The Board agreed to a \$65,000 settlement. (The Tuscaloosa News, May 8, 2008)

Employees Social Media

- A 26 year old teacher in Broward, Florida was fired when the principal learned that she, using an alter ego, was posing for bikini photos for XXXTransvision Radio Magazine and Miami parties.com. The unapologetic teacher posted: “I’m too sexy for my job ... lol ...” She also was quoted in the press as saying, “Lots of teachers get fired or asked to resign for the same things I did.” (Footnote: The Inquistr/Inquistr. ltd, May 10, 2013)

In re O'Brien (Teacher dismissed)

- A teacher, posted two statements on Facebook. The first “I’m not a teacher – I’m a warden for the future criminals”, and “They had a scared straight program in school – why couldn’t [I] bring [first] graders.” A “Scared Straight” for sixth graders and older students was conducted at the school; O’Brien had briefly attended the program
- After the Facebook posting the principal received parental complaints about the postings; then major news organizations descended upon the school. At a Home-School Council meeting that evening, the majority of the agenda was devoted to the Facebook postings

In re O'Brien (Teacher dismissed)

- O'Brien was recommended for dismissal based on "conduct unbecoming a teacher". O'Brien posted on Facebook out of frustration, because she had recently been hit by a student, had students hitting each other, and items stolen in her classroom. She also apologized for the postings

In re O'Brien (Teacher dismissed)

- O'Brien filed suit claiming her Facebook postings were protected by the First Amendment. The court ruled that O'Brien was **not speaking as a citizen on a matter of public concern**, which is constitutionally protected, but, even if her speech were a matter of public concern and therefore protected, she still would have been dismissed because of the disruption caused by the postings

Munroe v. Central Bucks School District, 2015 WL 5167011(C.A.3 (Pa.)2015) (Teacher Dismissed)

- Teacher began Blog titled "Where are we going , and Why are we in this Handbasket"
- Wrote 84 Blogs in a little over a year, most **not** about school, food, children, films , etc.
- When entering grades required comments , teacher said she wanted to write on report cards what she thought and not " canned" comments.
- " If kid had no personality , I'll put ability to work independently"
- Teacher stated she would like to put on card what she really thought.
- " Seems smarter than she actually is"
- " Lazy'

Munroe v. Central Bucks School District, 2015 WL 5167011(C.A.3 (Pa.)2015) (Teacher Dismissed)

- “ two words come to mind : brown AND nose”
- “ Dunderhead”
- “ Lazy Asshole”
- “ Dresses like a street walker”
- “ Weirdest Kid I’ve ever seen”
- “ Liar and Cheater”
- There was a LOT more comments.
- Administrators found about Blog when local reporter begin asking questions. Students were circulating on Facebook and other social media.

Munroe v. Central Bucks School District, 2015 WL 5167011(C.A.3 (Pa.)2015) (Teacher Dismissed)

- E-mails from parents telling administrator they did not want child in teacher's class.
- Over 200 parents requested opt-outs
- On ABC, CBS, NBC, CNN, FOX NEWS and other TV stations.
- COURT: “ Nevertheless , we reluctantly assume for purposes of this opinion that Munroe's speech satisfied the ‘public concern’ requirement”
- BUT: Even if free speech and matter of public concern was **DISRUPTIVE**, Teacher dismissed.

Student Issues - Free Speech

- Students usually **claim** that their **free speech rights** have been **violated** when issues of bullying, cyberbullying, MySpace , Facebook, Twitter, Blogs, etc. are litigated
- Discipline for off campus behavior

Student Free Speech Cases- Supreme Court

- *Tinker v. Des Moines*

Students have First Amendment Rights, limiting material or substantial disruption or reasonably forecast disruption

Student Free Speech

- *Bethel v. Fraser*

Students lewd and indecent speech is not protected by the First amendment

Fraser's Speech at School Assembly

- I know a man who is firm - he's firm in his pants, he's firm in his shirt, his character is firm – but most of all, his belief in you, the students of Bethel, is firm
- Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts – he drives hard, pushing and pushing until finally – he succeeds
- Jeff is a man who will go to the very end – even the climax, for each and every one of you
- So vote for Jeff for A.S.B. vice-president – he'll never come between you and the best our school can be

Student Issue Free Speech

- *Hazelwood v. Kuhlmeirer*

School may regulate the content of school news paper, “Legitimate Pedagogical Concern”, school board controls curriculum

Student Issue Free Speech (*con't*)

- *Morse v. Frederick*

Principal did not violate student's free speech rights by confiscating banner "Bong hits for Jesus", at off campus activity, promoting drugs



Student Issues Free Speech (*con't*)

Thus, because of Tinker, Bethel, and Hazelwood, Morse, freedom of expression in school can be described as follows: “**First**, ‘vulgar’ or plainly offensive speech ([**Bethel**]-type speech) may be prohibited without showing....disruption or substantial interference with the schoolwork.

Second, school-sponsored speech (**Hazelwood**-type speech) may be restricted when the limitation is reasonably related to legitimate educational concerns

Student Issues Free Speech (*con't*)

- Third, speech that is neither vulgar nor school-sponsored (Tinker-type) may only be prohibited if it causes a substantial and material disruption of the schools operation or a reasonable forecast of disruption.” Fourth (Morse-type) may take action regarding activities that relate to drugs

Student Issues Free Speech (*con't*)

1. **Tinker** may apply to **off campus**
2. Rule: if there is a nexus between the outside activity and the school that **materially and substantially** disrupts then the student may be disciplined
3. **Bethel** applies to on campus only
4. **Hazelwood** – applies to the Curriculum
5. **Morse** – on campus drugs only

Material and Substantial Disruption

- The Supreme Court has ruled that the school must be able to show that the students' actions "materially or substantially" disrupted the school environment before taking an action against the students. To take an action school officials must have "something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint"

Material and Substantial Disruption (*con't*)

- The Court also stated that the student's First Amendment rights ceased if school officials could show "facts which might reasonably have led [them] to **forecast** substantial disruption of or material interference with school activities"

Material and Substantial Disruption (*con't*)

- When determining whether substantial disruption has occurred the courts inquiry is highly fact intensive. “... [E]xisting case law has not provided clear guidelines as to when a substantial disruption is reasonably foreseeable.” Hence, there is no magic number of students or classrooms that must be impacted

Material and Substantial Disruption (*con't*)

- Courts have considered several factors when determining whether the **material and substantial disruption test** has been met. The fact that students are merely discussing topics or situations is not sufficient to meet the substantial disruption standard. This does not provide evidence that “classroom activities were substantially disrupted”

Material and Substantial Disruption (*con't*)

- The court in *Tinker* concluded that the armbands “neither interrupted school activities nor sought to intrude in the school affairs or the lives of others.” The armbands caused “... discussion outside the classroom, but no interference with work and no disorder” occurred; thus mere discussing of a situation is insufficient to meet the *Tinker* standard

Material and Substantial Disruption (*con't*)

1. True threat, **Not protected** by the constitution
 - a) Posted message about another student wanted to rip student's heart out and pound head with ice pick. *D. C. v. R. R.* (California 2010)

Kowalski v. Berkeley Co. Schools (W.VA.) 2011 Case
Cyberbullying (Upheld School)

Senior created and posted MySpace web pages called "S.A.S.H.", "student against sluts and herpes", "No No herpes, we don't want no herpes" Another student responded on webpage saying "students against Shays' herpes" referring to a student Shay N. Another student stated "Shay has herpes"

Kowalski v. Berkeley Co. Schools (con't)

- Court ruled that school did not violate students rights by suspending her for creating and posting webpage. Applied Tinker disruption test, Cyber bullying, Tinker Case
- In 4th Circuit (Virginia)

Layschock v. Hermitage School District, 2011,
(3rd Circuit)...Upheld student (14-0 vote)

- Justin Layschock was a seventeen-year old senior. While Justin was at his grandmother's house during non-school hours; he used her computer to create what he would later refer to as a “parody profile” of his Principal

Layschock v. Hermitage School District (con't)

- The only school resource that was involved in creating the profile was a photograph of the Principal copied from the School District's website. Justin created the profile on "MySpace." Justin created the profile by giving bogus answers to survey. All of Justin's answers were based on a theme of "big," because the Principal was a large man. For example, Justin answered "tell me about yourself" questions as follows:

Layschock v. Hermitage School District (con't)

For example, Justin answered “tell me about yourself” questions as follows:

1. Birthday? too drunk to remember
2. Are you a health freak? big steroid freak?
3. In the past month have you smoked? big blunt?
4. In the past month have you been on pills> big pills
5. In the past month, have you gone Skinny Dipping?
big lake, not big dick?
6. In the past month have you Stolen Anything? big
keg

Layschock v. Hermitage School District (con't)

1. Ever been drunk? big number of times
2. Ever been called a Tease? big whore
3. Ever been beaten up? big fag
4. Ever Shoplifted? big bag of Kmart
5. Number of Drugs I have taken? big

Under “Interests,” Justin listed: “Transgender, Appreciators of Alcoholic Beverages.” Justin also listed “Steroids International” as a club the principal belonged to

Principal believed all of the profiles were “degrading,” “demeaning,” “demoralizing,” and “shocking”

Layschock v. Hermitage School District, 2011

Decision

1. Student entering school website to take principal's photo was not sufficient Nexus
2. What school considered lewd and offensive (**Bethel** does not allow school district to punish Justin for expressive conduct outside of school)
3. School did not dispute that **Tinker** did not apply because it was not disruptive
4. **Court ruled school violated student free speech**

J.S. v. Blue Mountain School District, 2011 (8-6 vote)

An eighth-grade honor student at Blue Mountain Middle school, was upset with her principal for disciplining her for dress-code violations. She created a MySpace page in retaliation depicting her portrayal of a bisexual Alabama Middle School Principal. J. S. accused her principal of “having sex in his office”, “hitting on students and their parents”, and being a “sex addict, fuc.... in his office”

J.S. v. Blue Mountain School District, 2011 (con't)

-she called him a “dick head”, stated that he was “put on this world with a small dick”, and called him a “fagass”. She stated that his wife “looks like a man” and that his son “looks like a gorilla”. She stated that the principal enjoyed “riding the fraintrain”, a reference to his wife Debra Frain, who worked at the school as a guidance counselor- and that “it’s a slow ride but you’ll get there eventually.” Created at home on the weekend. Student wrote letters to the wife apologizing. The student said it was a joke between her and her friends

J.S. v. Blue Mountain School District, 2011 (con't)

Court Ruled

1. School could not forecast substantial disruption
2. School could not punish student for use of profane language outside of school, non school hours
3. Was not “materially or substantially” disruptive

Sexting

1. VA Attorney General opinion (11/24/2010)
 - a) “ In my opinion searches and seizures of student cellular phones and laptops are permitted when there is reasonable suspicion...”
 - b) Sexual material for minor (under 18), child pornography, promptly contact law enforcement.
2. “Virginia Guidelines For No Prevention of Sexual Misconduct and Abuse in Virginia Public Schools”

Sexting (*con't*)

3. VDOE reports 46 educators or school employers were arrested in past 3 years because of misconduct with students or other minors
4. Of the 169 actions taken by the Board of Education against licenses since 2000, 120 were in response to sexual misconduct involving minors. In many of these cases, school divisions filed petitions only after receiving an inquiry from VDOE about a case in which a license holder had been convicted and no licensure action had been initiated by the division

Cell Phones/Privacy/Search and Seizure

Search and Seizures

1. T.L.O. v. New Jersey
 - a) Reasonable Suspicion-- not probable cause– (4th Amendment)
 - b) Search has to be Reasonable at Inception
2. Strip Searches
 - a) Safford United Sch. Dist v Redding
 - i. Did not rule out strip searches.
 - ii. Must be danger to school – higher standard than reasonable suspicion if strip search.

Search and Seizures (*con't*)

3. Lockers, Cars, Canines
4. Drug Testing
 - a) Special Needs
 - b) *Vernonia School District v. Acton*. (athletes, 1995)
 - c) Board of Education v. Earls (all extracurricular activity 2002)
5. Washington State Case – student drug testing may violate your state constitution. *York v. Wahkiakum School District* (2008) (Washington)

Search and Seizures (*con't*)

- Most school search and seizure cases focus on the **Exclusionary Rule**. That is the reason they are T.L.O., Doe, Isiah B. plaintiffs because they are under age.
- Students very, very seldom challenge expulsion or suspension, but they frequently challenge what was found at school in juvenile hearings or criminal case, they ask that what was found at school be declared illegal evidence.

Virginia-Cell Phone

Gallimore v. Henrico Co. Sch. Bd. (2015)

- Report student had marijuana, administrator search backpack, shoes, pockets, sandwich wrapper and Vaseline jar – All reasonable
- Administrator searched cell phone – unreasonable – cell phone could not have contained marijuana
- Associate Principal was not entitled to qualified
- Immunity for students' unreasonable search.

Gallimore v. Henrico Co. Sch. Bd. (2015) (con't)

“Common sense dictates that a school administrator cannot claim to look for marijuana and then look through a student’s cell phone. No reasonable school administrator could believe that searching a student’s cell phone would result in finding marijuana –the purpose for which the administrator initiated the search”

School Resource Officers

- Triad Model (Law Enforcement, Teacher, Counselor)
- School to prison pipeline
 - Taser, Handcuffs
- School District Police Departments
- New York 5000 Officers, 6th largest in U.S.
- Search and Seizure
- Miranda
- Excessive Force

Excessive Force

C.B. v. City of Sonora, 769 F.3d 1005, (9th Cir. 2014)

- 11 year old boy with ADHD who had a Section 504 plan.
- He forgot to take medication , became unresponsive and “ shut down.” Sitting on bench on playground doing nothing but refusing to go back to class.
- Present around child teacher, principal and S.R. They then called the chief of police who arrived with one officer.
- Police Chief ordered him arrested and handcuffed.
- He was taken handcuffed to his Uncle’s place of business.

Excessive Force (*con't*)

C.B. v. City of Sonora, 769 F.3d 1005, 1030-31 (9th Cir. 2014)

- The law was is clearly established that, at a minimum, police use of force in response to school-related incidents had to be reasonable in light of the circumstances and not excessively intrusive. And the law was clearly established that, as a general matter, police use of force must be carefully calibrated to respond to the particulars of a case, including the wrongdoing at issue, the safety threat posed by the suspect, and the risk of flight.

Excessive Force (*con't*)

C.B. v. City of Sonora, 769 F.3d 1005, (9th Cir. 2014)

- Applying handcuffs to C.B.(11 year old student), and keeping him handcuffed for the approximately thirty minutes it took to drive to his uncle's business, was an obvious violation of these standards. It is beyond dispute that handcuffing a small, calm child who is surrounded by numerous adults, who complies with all of the officers' instructions, and who is, by an officer's own account, unlikely to flee, was completely unnecessary and excessively intrusive. Moreover...., keeping C.B.(student) handcuffed for approximately thirty minutes in the back seat of a safety-locked vehicle.

Excessive Force (*con't*)

C.B. v. City of Sonora, 769 F.3d 1005, (9th Cir. 2014)

- Police did not have qualified Immunity.
- This case constr

Excessive Force (con't)

J.W. v. Birmingham Bd. of Education, 2015 WL 6945118 (N.D.Ala. 2015)

- S.R.O.'s used chemical spray against students.
- Used Chemical spray 199 times from 2006-2014
- Eight students brought suit as class action for all students.
- On one occasion sprayed pregnant student . Two boy and girl students were cursing each other loudly. Officer handcuffed girl and then sprayed her.
- After being sprayed most were arrested and charges never pressed.
- Court found credibility of officer lacking , Such as, “ The Court did not find Officer Clark’s testimony credible...”.

Excessive Force (con't)

J.W. v. Birmingham Bd. of Education, 2015 WL 6945118 (N.D.Ala. 2015)

- Court found: officer's use of spray on handcuffed, sobbing student constituted excessive force.
- officer's use of spray on non-resisting being held by A.P excessive force.
- Officer's not entitled to qualified immunity
- Failure to decontaminate sprayed students constituted excessive force.
- Birmingham City violated student's Fourth Amendment Rights.

Drug Testing Teachers

5. Teachers Drug Testing (No Supreme Court Cases) (Mixed)

Knox Co. Educ. Assoc. v. Knox Co. Bd. of Ed. – upheld drug testing (6th Circuit)

- *American Federation of Teachers v. Kanawha Co. Bd. of Ed.* (No special needs, for safety, violates constitution, In 4th Circuit)
- *Smith Co. Ed. Assoc. v. Smith Co. Bd. of Ed.* (violate teachers rights)
- *Jones v. Graham* (violate the North Carolina Constitution)

Religion

1. Both Student and Teachers
2. Equal Access Act, Clubs
3. Forum Analysis, passing out religious literature:
Free Speech v. Establishment Clause
4. Prayer, Graduation, Football Game
5. Ten Commandments