

SOUTHEAST LAW INSTITUTE™

A. ERIC JOHNSTON
President

3800 Colonnade Parkway, Suite 545
Birmingham, Alabama 35243

HARRY O. YATES
Executive Director

General Counsel

E-mail: SELawInstitute@aol.com
Telephone: (205) 968-0900
Facsimile: (205) 968-6534

Associate Counsel

April 2002

Dear SLI Supporter:

SLI has been very active this month and we have several things to report. We were not only busy working in the legislature, but we also had the opportunity to provide assistance to an individual in need. It was all very rewarding and we would like to give you a brief report on some of those activities.

The Woman's Right to Know Act, which requires that abortion clinics give adequate medical information to women, has been reported out of both Senate and House Committees. Although the Hospital Association wanted some amendments, which we negotiated and resolved, the Bill is still in very good condition. We expect the House version to pass. However, pro-life forces are still struggling to get the Senate version on the calendar for a vote.

The amendments we requested on the teacher background check bill were accepted. Those amendments would serve to get church schools out from under direct state regulation, while still maintaining the protections we originally put into the law which exempt pastors, priests, and other clergy from regulation.

In the wake of the terrible school violence of recent years, a "zero tolerance" mindset has emerged which has resulted in some strong school policies around the country. One might ask, "Exactly what is zero tolerance"? Is it really a necessary tool to use to protect our school children from weapons and drugs or does it's use constitute a violation of students' constitutional rights? This month's educational memo offers some very interesting information, which should give you plenty of food for thought on this very timely subject.

Because of my efforts through the years working with the Department of Education on parental rights and related issues, I have formed a good working relationship with many officials. These efforts paid off recently with an invitation for me to speak to the annual meeting of truant officials, i.e. those who are responsible for school attendance issues. I will speak at their April meeting and give you a full report afterwards.

In our February educational memo, we reported on Governor Siegelman's Early Learning Commission Report, which proposes to bring all of our children under state control from birth. We quoted some comments by Alabama Christian Education director, Robin Mears. Mr. Mears has published a very good response to the report. You may obtain a copy of the response by calling the ACEA office at (205)-849-7902.

As you can see, we have been very busy and we are thankful to make favorable reports to you. Please continue to pray for our immediate legislative efforts and for our ability to render assistance to those in need. Thank you for your continuing financial support. Please share this information and our needs with your friends.

The Southeast Law Institute

A. Eric Johnston

AEJ/klw

**AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE™, INC.**

To: SLI Supporters
Date: April 2002

From: A. Eric Johnston
Re: Zero Tolerance: Protection or Injury?

INTRODUCTION

What is "zero tolerance"? The average citizen probably does not know. One might guess that it means there is no room for movement or give. Mechanical devices sometimes have very close tolerances, but can that same theory work when protecting students' rights?

The concept of zero tolerance came about when public schools began to deal with the harsh realities of weapons and illegal drugs in schools. We are all aware of the tragic events at schools like Paducah, KY and Columbine, CO. We are also extremely concerned about the proliferation of illegal drugs, even in the best schools and neighborhoods. Our children are at risk. There is no doubt about that. In order to protect our children, school officials have passed policies, which state, in effect, "If you are caught with a weapon or a drug on school premises, regardless of the reason you had it, you will be punished." Is it necessary we have such drastic remedies? Let us examine a case and see.

THE FACTS¹

Several months ago SLI was contacted by the parents of a boy who had been suspended from school because he had with him at school prescription medication that had been prescribed for him, but he had not turned it in to school officials in accordance with the school policy. Like many public schools, the policy was if you have required prescription drugs, you must turn them in to the office. There was only once catch. The boy did not know he had the drugs with him. His mother had accidentally put it into his school pack with his lunch. Also, the drug was a very mild antacid to help the boy deal with stress-related problems he had received when he had been physically abused at an earlier time. He was under both medical and psychological care.

These circumstances were explained to school officials. His doctors testified about his condition. It was uncontested that he did not know he had the drug with him. Yet, they insisted on removing him from the school, thereby not only putting a black mark in his record, but increasing a stressful situation, resulting in exacerbating the boy's physical and mental condition.

SLI provided legal assistance through the appeals process in the public school system. The school would make no exceptions. The parents wanted to sue. We reviewed the law with the expectation that we could provide him relief.

THE LAW

What we found is that there is no controlling legal authority at this time, but that in Alabama there have been a very small number of similar cases reported by lower courts. Those courts have said that so long as the school policy permits "due process", the court will not substitute its judgment for the school. Therefore, if the school has a zero tolerance policy, that is, there are no exceptions; the court will look no further if the student had an opportunity to respond before punishment was given.

This seems a most unfortunate state of the law. This same unforgiving response by schools has gotten the same judicial receptions in many states. Fortunately, there may be a case before the U. S. Supreme Court, *Ratner v. Loudon County Public Schools*, which we hope will resolve this issue favorably to students.

SLI's position is that students have constitutional rights, which must be protected. As the U.S. Supreme Court said in *Tinker v. Des Moines* (1962), regarding free speech, students do not leave their rights at the schoolhouse door. Similarly, when students, who are otherwise trying to do their best in school and through no criminal intent or, as in the case above, no fault of their own, are penalized for their actions, there must be constitutional protection. The policy in America has always been that you are "innocent until proven guilty". Should not the rights of school children have similar protection?

CONCLUSION

We do not mean to diminish the need to protect against weapons and drugs in schools. That is something we must treat with great seriousness. However, school officials must have in their policies some discretion to protect constitutional rights of students. Just as we seek to protect our constitutional rights of privacy and freedom from search and seizure, even in the face of terrorist acts, we must do so for our children. A proper balance can be reached.

You may ask, what happened to the boy? He changed schools and has suffered further medical problems. Regardless of his physical and mental condition, the school would not help him and he was left with no choice. Is zero tolerance necessary?

¹ No names are used and the facts have been changed to protect the identity of the persons involved.