Cullen | Dykman

Suspension of 5th Grader in Crayon-Drawing Threat Upheld by Court

April 27, 2012

In *Cuff v. Valley Central School District*, the U.S. Court of Appeals for the 2nd Circuit voted 2-1 to uphold the six-day suspension of a fifth-grade student ("B.C.") who, through a crayon drawing, expressed his "wish" for violence towards his school and teachers. The crayon drawing was created in the context of an assignment given to students by their science teacher, who asked the students to fill in a picture of an astronaut and write "wishes" or other statements next to the astronaut's left leg. After a fellow classmate complained about "B.C.'s wish to blow up his school and teachers," the science teacher sent B.C. to the principal's office. The principal suspended B.C. for six days and soon thereafter, B.C.'s parents sued the Valley School District on First Amendment free-speech grounds, alleging that the suspension violated B.C.'s First Amendment rights.

The 2nd Circuit majority based its decision on two grounds. First, the Court found that the school officials met the "substantial disruption" test illustrated by the Supreme Court in *Tinker v. Des Moines*, 393 U.S. 503 (1969). In the instant case, "it was reasonable for the school officials to fear that, if permitted, other students might well be tempted to copy or escalate B.C.'s conduct. This might have led to a *substantial decrease in discipline*, an increase in behavior distracting students and teachers from the educational mission, and tendencies to violate acts." Since it was reasonably foreseeable that the astronaut drawing could create a substantial disruption at the school, under *Tinker*, the six-day suspension did not violate B.C's First Amendment rights.

Furthermore, the majority acknowledged "the wave of school shootings that have tragically affected our nation" and the need to confront the problem of school violence across America. By affording great deference to school officials, like the ones in this case, school officials are better able to evaluate threats to safety and school violence without fear that they will be called into court to defend their actions. Therefore, regardless of whether B.C. lacked intent or capacity to carry out his wish of "blowing up the school with the teachers in it," the discipline, in this case, was the school's attempt to "keep students safe" and therefore was appropriate.

While the majority of the Court of Appeals affirmed the school's punishment of the student, this decision was by no means unanimous. One judge, Judge Pooler, vehemently dissented with the majority opinion. Judge Pooler believed that this case presented a classic example of a class clown trying to be funny in front of his fellow peers and a "crude joke gone awry." Furthermore, Judge Pooler specifically noted that it was the science teacher who instructed the children that they could write about "anything, even about missiles" and that this freedom designated by the teacher called for an open arena where children, like B.C., could freely express themselves. According to Judge Pooler, this case is excessively deferential to school officials and the majority's holding

devalues the significant First Amendment protections all students possess, even while at school.

If your institution has questions or concerns about this topic and you would like further information, please email Jim Ryan at jryan@cullenanddykman.com or call him at 516-357-3750. *A special thanks to Hayley Dryer, a third-year law student at Benjamin N. Cardozo School of Law, for helping with this post.*