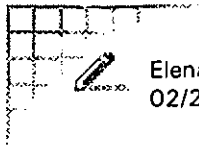
NLWJC - Kagan

DPC - Box 011 - Folder 026

Crime - No - Knock Drug Searches



Elena Kagan
02/23/97 02:16:46 PM

Record Type: Record

To: Bruce R. Lindsey/WHO/EOP

cc:
Subject: no-knock case

Cheryl tells me that you're talking with DOJ about the no-knock case -- and that we agree (with each other, if not with DOJ) on what DOJ ought to argue. Let me know what happens, and let me know if there's anything Bruce or I can do to help.

Bruce + Dennis—
Do you think it makes sense
to ask DOJ to file an amicus brief
supporting the decision of the Wisconsin SCt?
Elena

THE NEW YORK TIMES **NATIONAL** SATURDAY, JANUARY 4, 1997

Supreme Court to Decide on No-Knock Drug Searches by Police

By LINDA GREENHOUSE

WASHINGTON, Jan. 3 — Less than two years after ruling that the police are generally required to knock and announce their presence before entering a home to conduct a search, the Supreme Court agreed today to decide whether to create a blanket exception to that rule when the object of the search is evidence of illegal drug dealing.

The Justices accepted an appeal from a ruling by the Supreme Court of Wisconsin that the police "do not have to knock and announce" when they suspect drug dealing and have a warrant to search a home. "Exigent circumstances are always present" under such circumstances, the state court said, given the ease with which the evidence can be destroyed or the suspects can flee.

The Supreme Court's 1995 decision, Wilson v. Arkansas, indicated that unannounced entries could be more easily justified in drug cases than in other types of searches, but suggested that the reasonableness of any particular entry should be evaluated case by case rather than with a blanket policy.

A half-dozen state courts that have examined the issue after the 1995 ruling have declined to create a general exception for drug searches. The Wisconsin Supreme Court, which had recognized a general exception before the 1995 decision, is alone in adhering to that approach.

The appeal was brought by a man who was convicted in 1992 of dealing in cocaine on the basis of evidence the police obtained from his hotel room in Madison. The police had a search warrant but did not announce their presence to the man, Steiney J. Richards.

When narcotics are at issue, do police officers have more power?

The Wisconsin Supreme Court's decision last June, upholding the conviction and rejecting Mr. Richards's challenge to the search, came over the dissent of Chief Justice Shirley Abrahamson, who said the decision "cannot be squared" with the United States Supreme Court's ruling in Wilson v. Arkansas. The Wisconsin court created an exception that "swallows the rule," Justice Abrahamson said.

The 1995 decision was written by Justice Clarence Thomas for a unanimous Court. Justice Thomas cited English court cases, going back to the early 1600's, to support his conclusion that requiring the police to announce their presence was firmly embedded in the English common law that helped form the views of the framers of the Constitution.

"The common-law knock-and-announce principle was woven quickly into the fabric of early American law," Justice Thomas said.

The decision's conclusion was that the question of whether the police knocked and announced their presence must be part of the analysis of whether a search was "reasonable," within the meaning of the Fourth Amendment's prohibition against unreasonable search and seizure.

In the appeal the Court accepted today, the defendant's lawyer, David R. Karpe, told the Justices that "the law is in great need of clarification as to what reasonableness requires." Mr. Karpe asked: "Need a court ask only two questions about police entry into a home? One, Was there a warrant? Two, Is this a drug case? Does this satisfy the reasonableness requirement?"

The case, Richards v. Wisconsin, No. 96-5955, is to be argued in March.

In another case today, the Court accepted an appeal filed by the State of Pennsylvania and agreed to decide whether a hearing was required before a public agency could suspend an employee without pay.

In a ruling last summer, the United States Court of Appeals for the Third Circuit, in Philadelphia, held that the 14th Amendment's guarantee of due process requires a hearing in all such cases, at which employees can learn the charges against them and have a chance to tell their version of events. If the matter is urgent and the agency believes that it must remove the employee immediately without waiting for a hearing, the appeals court said, the constitutional violation can be prevented by continuing to pay the employee during the period of suspension.

The case, Gilbert v. Homar, No. 96-651, grew out of the suspension of a campus police officer at East Stroudsburg University after his arrest in a drug raid at a friend's home. The university, part of the Pennsylvania state system, suspended the officer, Richard J. Homar, without pay during its investigation.

After the criminal charges were dismissed a few weeks later, the university paid the officer his back wages and demoted him to the position of groundskeeper at a lower salary. He sued on the ground that the lack of a hearing before his suspension had violated his right to due process. He lost in Federal District Court in Scranton before prevailing on the due process issue in the Third Circuit. Other issues in the case have yet to be decided.

Pennsylvania's Attorney General, Thomas W. Corbett Jr., told the Justices in the state's appeal that in establishing a fixed rule, the Third Circuit had ignored the "flexible analysis which has long been the hallmark" of the Supreme Court's approach to due process. Mr. Corbett said government agencies were often faced with "the urgent need for prompt action to protect the public confidence, and even the public safety, when public employees are charged with criminal or other wrongdoing."

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