Court Puts The Lid On Nosy Questionnaires

December 26, 2001

Many parents assume that the tests given to their children in public school are only for educational purposes. To the contrary, schools increasingly demand that students answer nosy questions unrelated to academics.
That practice may soon end due to a federal appellate decision issued last week in C.N. v. Ridgewood Board of Education. The Court held against the Ridgewood (NJ) school district's use of an intrusive questionnaire.

The Ridgewood public schools asked their students highly offensive questions, most having no academic connection. Young pupils were confronted with a 156-question survey about sex, drugs, suicide, and other personal matters.

Question 108 was this: "How many times, if any, in the last 12 months have you used LSD (`acid')?" The acceptable answers were "0"; "1"; "2"; "3-5"; "6-9"; "10-19"; "20-39"; "40+".

Question 101 was: "Have you ever tried to kill yourself?" Acceptable answers were "No"; "Yes, once"; "Yes, twice"; "Yes, more than two times".

The questionnaire asked students to incriminate themselves by saying how many times they had "stolen something from a store" (question 56); "damaged property just for fun (such as breaking windows, scratching a car, putting paint on walls, etc.)" (question 59); used heroin, opium, morphine, alawan, PCP or Angel Dust (questions 105-7).

Students as young as 12 years old were told to take this survey under the assurance of anonymity. The unmistakable impression conveyed to the students was that illegal and immoral conduct is rampant among our youth and probably normal.

The questionnaire embraced a relativistic, rather than a principled, approach to social problems. Its implicit message was that the issue is not whether certain behavior is wrong, but how frequently it occurs.

Using tests or questions to shape attitudes is nothing new to politicians. Misleading "push polling" of voters is a well-known campaign technique, and brainwashing tests in school by totalitarian regimes have been well documented.

Because federal funds were involved with the Ridgewood test, the Protection of Pupil Rights Amendment applied. That federal law requires prior written parental consent before telling children to answer questions about sexual or illegal behavior, or mental or psychological problems potentially embarrassing to the student or his family.

The Ridgewood questionnaire asked students such questions without the prior written consent of their parents. The school administered the survey as though it were a test given during a compulsory classroom period, with every single student participating.

Several parents, shocked that such a test was given without their knowledge or consent, sued the school district in federal court. This test was not what they sent their children to school for, and their right to withhold consent from this questionnaire was violated.

The district court predictably sided with the school, even embracing the school's claim that it was doing a "good deed." The court could not explain, however, why it was a "good deed" to ask 12-year-olds about suicide over the objections of their parents.

The parents appealed to the Third Circuit Court of Appeals. This month it ruled unanimously in favor of the parents.

It reversed the district court's decision that the survey was merely voluntary. "The circumstances that surrounded the administration of the survey were -- given the nature of the school setting -- sufficient to infer that . . . students were required to take the survey."

The record revealed that one principal told the students to "take it seriously," an ironic command, given the survey's questions and skewed choice of answers. Affidavits from students confirmed that, contrary to the school district's claim, the survey was given in a test-like environment.

The Supreme Court has held that local governmental units, such as public schools, are liable for rights violations. The Ridgewood Board of Education could be liable for giving the survey if Board policy required students to take it without prior parental written consent.

The Court of Appeals agreed with the parents that the school's administration of the questionnaire may have violated the First Amendment's prohibition against compelled speech, and the Fourth Amendment's prohibition against unreasonable intrusion into the household.

The Court also agreed with the parents that the Board may have violated "the substantive due process rights for the adults to raise their children as guaranteed by the Fifth" Amendment. That right is of paramount importance to another New Jersey parent, who is currently suing his child's school over its admission requirement that all children be given the controversial hepatitis B vaccine.

Why aren't school officials spending class time to improve students' academic achievements? Instead of asking students if they have taken LSD more than 40 times, how about asking them if they know what is 40 times 40?