

## ***FLORIDA v. BOSTICK (1991)***

### **Court Gives Police a Clean Sweep**

In a 5-4 decision this spring, the Supreme Court upheld the use of police “sweeps” as a tactic to catch drug couriers in *Florida v. Bostick*. This practice was widely used throughout Broward County. During these sweeps, police would board interstate buses and question passengers as to their destination and the contents of their luggage. Often this discussion would lead to a passenger giving consent to a search of his or her luggage. The lower court had ruled that these searches were unconstitutional.

Writing for the majority, Justice O’Connor stated that Bostick was not “seized” within the meaning of the Fourth Amendment and, therefore, the officers were not required to have reasonable suspicion before questioning him. The Court disagreed with Bostick’s argument that the cramped confines of a bus made the encounter intimidating and coercive. Since the bus was about to depart anyway, the Court reasoned, Bostick would not have felt free to leave even if the officers were not present. The proper test to determine whether an individual is “seized” is whether “a reasonable person would feel free to decline the officer’s requests or otherwise terminate the encounter.” O’Connor concluded that “no seizure occurs when police ask questions of an individual, ask to examine the individual’s identification, and request consent to search his or her luggage — so long as the officers do not convey a message that compliance with their requests is required.” Furthermore, Bostick’s refusal to cooperate would not have raised the suspicion necessary for a seizure.

However, according to Justice Marshall’s dissent, bus passengers are effectively intimidated by such police action and feel they cannot leave the bus or decline to answer questions. Such actions could be used by officers as an example of “suspicious behavior.” Since the officers usually stand in the aisle blocking access to the door, in the cramped confines of a bus, no reasonable person would feel comfortable saying “no” to an officer.

Reaction to the decision varies. One law professor commented that O’Connor failed to give a blanket endorsement of the tactic, and trial judges are still given a large amount of discretion. Civil liberties lawyers, however, worry that the ruling will be applied to uphold searches for objects other than drugs.