

CONTENTS

Regarding the
Supreme Court, a
4th Amendment
case, dispute
resolution, and
prosperity

Exiting
Wonderland

▲
Visit our
Web site at
www.wpam.com

Telephone:
317-228-0800

Toll-free:
888-868-3855

Fax:
317-334-1795

e-mail:
thotfull@in.net

A Visit to the Supreme Court

I revere the Supreme Court.

My respect for the Court began during history and political science courses in the 1960s. As students, we read cases, learned about the great personalities of the Court, and observed the evolution of its opinions in the context of continuous social change. We read about the Court's ability to moderate political passions and to protect the rights of minorities and of persons whose views are neither popular nor powerful. We began to feel that the Supreme Court represents something more than one-third in the three-way balance that makes our democracy.

Then, in 1967, I met Earl Warren. Chief Justice Warren delivered a speech to a Bolivian judicial conference in Sucre, the official capital city. Following his speech, he flew to Santa Cruz for a comfortable rest at a lower altitude. While there, he invited Peace Corps volunteers to spend the afternoon. This was my first experience with a great leader. In him, I saw a man with more life experiences and more accomplishments than seemed possible, then or now. Although bumper stickers at the time declared "Impeach Earl Warren," serious and sensitive citizens understood his contributions: Governor of California, Chief Justice of the United States, author of two of the most powerful opinions

ever written,¹ and chairman of the commission to investigate the death of President Kennedy. To the surprise of my young eyes, he was human, candid, open, charming, and grandfatherly. On this afternoon, I learned that government is human.

My wife and I attended the October 3 session of the Supreme Court to hear arguments in the case of *City of Indianapolis, et al., Petitioners v. James Edmond, et al.* The case is known as "the roadblock case."

In 1998, Indianapolis began to conduct roadblocks to identify automobiles transporting illegal drugs. I almost was stopped that year. Had I arrived ten seconds earlier, I would have been stopped at the 29th Street exit of Interstate 65 north. However, the roadblock corridors were full, and I was allowed to continue, as were the cars behind me until room was available. Messrs. James Edmond and Joell Palmer were stopped at two other roadblocks. On October 14, 1998, they filed suit against the city. Their action was certified as a class action on October 15. The class was defined as "any and all persons driving vehicles who have been stopped or are subject to being stopped in the future at the drug interdiction roadblocks maintained by the City of Indianapolis in an attempt to interdict and curtail unlawful drug use."

A Federal District Court in Indianapolis upheld the city's actions, saying

¹1954, outlawing segregation in the public schools; 1964, ordering legislative apportionment according to equal populations.

Supreme Court, continued from page 1

that motorists suffered “minimal” objective and subjective intrusion at the checkpoints while the stops effectively advanced governmental interest in restricting drug traffic and enforcing licensing requirements. A divided Federal Court of Appeals disagreed, holding that the checkpoints violated the Fourth Amendment, which states:

“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The City of Indianapolis appealed the Federal Appeals Court decision to the United States Supreme Court.

Sessions of the Supreme Court commence at precisely 10 a.m. Following induction of new attorneys to the Bar of the Supreme Court, arguments begin. Representing the City of Indianapolis as petitioner, attorney A. Scott Chinn began a prepared statement. However, tradition holds that justices immediately interrupt attorneys to ask questions. This tradition makes sessions lively, for the justices and for the audi-

ence, and a personal challenge for attorneys. The questions also reveal primary issues. For example, Justice David H. Souter asked Mr. Chin, “If we sustain the search here, we’d be required to do the same thing if, in a given neighborhood, drug distribution is done on foot?” Mr. Chin responded that people in cars have “a lower expectation of privacy” than pedestrians. Drivers know that they constantly are subject to stop and arrest for speeding, drifting through stop signs, or even broken tail lights. Justice Ruth Bader Ginsburg objected. She said that pedestrians are in full view and must expect less privacy than persons sheltered in an automobile.

In response to questions, Mr. Chinn added that roadblocks to find drugs serve two additional purposes: checking driver’s licenses and automobile registration, and identifying drivers impaired by alcohol or drugs. He argued that these ancillary purposes are sufficient to survive a constitutional challenge, even though the primary purpose is to restrict drug traffic on the highways. In 1996 (*Whren v. United States*), “the Court held that as long as the police activity was objectively reasonable—stopping a car with a broken taillight, for example—it was irrelevant whether that action was a pretext for another, like a search for drugs.”² Mr. Chinn called attention to other cases. In 1976 (*United States v. Martinez-Fuerte*), the Court upheld border patrol-sponsored checkpoints to detect arrival of illegal aliens. In *Michigan v. Sitz*, 1990, the Court upheld the right of police to conduct sobriety checkpoints at which cars were briefly stopped and drivers examined for signs of intoxication. (This practice continues in Carmel, Indiana. Carmel police conduct sobriety checkpoints on roads exiting from the Deer Creek Music Center following concerts.) The Court concluded in *Sitz* that the ability of these check-

points to advance the states’ interest was sufficient to strike the balance “in favor of the state program.”

Kenneth Falk, legal director of the Indiana Civil Liberties Union, opened the opposing case saying, “This case is not *Martinez-Fuerte*. This case is not *Sitz*. The Indianapolis roadblocks are criminal investigatory seizures of primarily innocent persons without cause.” He drew a distinction between “regulatory” functions and a “criminal investigatory cause.” According to him, a regulatory function is to check for licenses and registrations, but a stop having the “programmatic purpose” of detecting illegal transportation of drugs is a “criminal” seizure not permitted under the Fourth Amendment without “probable cause.” The presence of drug-detecting dogs that sniff automobiles defines the nature of the stop. Since a dog “cannot check for licenses,” and since no car was released from the police corridors until the dog’s work was completed, the Court must conclude that the Indianapolis stops are unconstitutional searches and seizures. In the conclusion to his written brief, Mr. Falk added:

“Surely, strenuous constitutional objections would be raised if the police, in an effort to interdict unlawful drugs, entered every house in a neighborhood in the hope that they would see drugs in plain view, or in the hope that their companion drug detection dogs would indicate the presence of drugs so more intrusive searches could be launched.”

The Supreme Court fosters stable business. At one level, the Court resolves specific business disputes. These disputes, if left to fester, would cause continuing uncertainty among all persons who conduct commerce. The Court plays a more important function,

Thoughtful Wealth Planning & Management

is published four times per year by Wealth Planning & Management, LLC, P.O. Box 40994, Indianapolis, IN 46240-0994. All rights reserved. Reproduction in whole or in part is strictly forbidden. News services may quote from this periodical with proper attribution. This issue was completed Nov. 3, 2000. The DJIA was 10,817.95 and the S&P 500 was 1,426.69.

Publisher: John W. Guy
 Editor: Lois Sherman
 Design: The Art Room

²*New York Times*, October 4, 2000, page A23.

Investor Alice

Alice was not a strategic investor.

Instead, she was led by a rabbit through a maze of uncoordinated, illogical and counterproductive happenings, demonstrating repeatedly that she did not know where she was going. She always was late, out of place, and lost, until she awakened in a tranquil world of flowers and songs, to be carefully protected by a loving mother.

Perhaps the Cheshire Cat was a successful strategic investor. At the fork in the road, he allowed Alice to ask him "Which way should I turn?" His response: "Where do you want to go?" Alice said: "I don't know," to which he replied, "Wellll, then it does not matter which way you turn!"

Of course, we never will know if the Cat was a good strategic investor, but we can assume he had some prerequisites to success, including a willingness to ask the right question at the right time, an ability to get all the facts before providing an answer, as well as a certain inscrutability. At least he seemed to understand prerequisites to forming a strategy.

A strategy is "a plan, method, or series of maneuvers or stratagems for obtaining a specific goal or result." It is a method for getting from here to there, but it presumes acceptance of where "there" is. Obviously, no strategy exists without a goal or target, the place or circumstance in which achievements are finally measured.

An investment strategy requires a goal, a specific, measurable, written statement that describes the end result of our investment choices. In the absence of a goal, investing becomes meaningless, even dull, and we do not make choices in a reasonable and consistent manner.

Some say their goal is to save for

retirement, or to provide a college education for children. Such goals are common, but only because they are easy to express and socially acceptable. In fact, they are not goals, but mere expressions of interest, like saying "I would like to play football," instead of saying, "My goal is to be an all-conference quarterback."

Specific and measurable goals are expressed like this: "I will save and invest to have \$120,000 by August 1, 2005 (when I will retire to play golf three times per week)." Or, "We will have \$40,000 when our son enters college in September of 2015." These are specific and measurable. Being specific, they lead to concrete financial strategies designed to achieve the goals.

Other potential goals might not be as crucial as the ones above. For example, "My goal is to own a boat, a big boat, a boat so big it does not rock when you step on it." Or, "I want to have \$1 million in the bank in two years to spend on a race for public office." Or, "I really do want to own a Rolls Royce."

We express financial goals two ways. The first is to aspire to earn a defined rate of return. This form of expression does not declare a time line or a finite end result. An example is the investor who declares that he wants to earn 10 percent on his money or, alternatively, to match results of a stock average. These goals do lead to strategies. Either the investor must acquire assets having a chance to earn 10 percent or, to match results of an average, the investor must acquire stocks that are in the average or that perform similarly to stocks in the average. The other style of expressing a goal is to fix a specific and measurable point we wish to reach over a defined period. In this style, a company executive tells his troops that earnings per share should rise to \$4.00 a share by 2002. The executive is assuming a risk—the declaration of a future, measurable

circumstance which, to his potential personal embarrassment, might not be achieved. If earnings reach only \$3.20 per share, observers can readily measure the failure. The same is true for an investor who openly predicts that he/she will be a millionaire by age 40. Success (as well as failure) is easily measured, and the strategy is simple to prepare by assuming a required rate of return and a necessary annual rate of savings.

How do investors set goals? The starting point is a statement of personal resources: a balance sheet and income statement that demonstrate in writing presently available resources. Then the task becomes more difficult, because the investor must be totally honest. Questions include: "Am I motivated to make money as a goal, or would I prefer to advance social causes, or to teach? What personal attributes do I bring to the table? How do these attributes affect my ability to achieve a financial goal? Am I nervous, healthy, patient, consistent, studious, personable, educated, knowledgeable and relaxed? Can I accept high risk?" Once we know both tangible and intangible personal resources, we can set the goal. "OK, I am going to have \$\$\$\$ by the year 200X in order to. . ." Everything else is simple. Just match resources to the goal, determine if the goal is reasonable, and start down the road by selecting investments that are likely to do the job. We design the strategy that will take us to the finish line in the prescribed time.

Do the goal and corresponding strategy have to be serious? Sometimes yes; sometimes no. If an entire college education is at stake, the goal is serious and might require a strategy of annual savings, guaranteed investments, and lower yields that correspond to conservative investments. But, if the goal is not crucial, such as to own the big boat or the Rolls, then a more speculative strategy might work.

continued on page 4

Supreme Court, *continued from page 2*

however, when it resolves major issues of social conduct and governmental conduct. For example, Chief Justice Warren's opinion that Congressional and legislative districts should be fairly apportioned according to population resolved and eliminated a growing bitterness among citizens whose votes were relatively weak under the former system. In *Indianapolis v. Edmond*, the Court will put to rest the question whether roadblocks to detect drugs advance a legitimate state interest, or whether they unconstitutionally infringe on personal freedom. When the case is decided, both citizens and police will know how to act. We will know "the rules."

The power of the Supreme Court to decide and to resolve is particularly important to Chichi who attended the session with me. Like myself, Chichi admires the Supreme Court because her experiences growing up in Bolivia did not include courts as a means for resolving disputes. As a young person, she saw conflicts and revolutions. Her father was a military leader, and he served a short term as Mayor of Santa Cruz. During his term, she witnessed shouting, screaming and waving of guns as people alternately defended or protested various local policies, and she saw her father dragged to jail for a few weeks when his political party was forcefully removed from power. To her, our system is unique, a stark contrast to her childhood experiences. She learned about our judicial system during studies toward qualifying for citizenship. She is impressed with the system, and she has valued participating in it, first as a juror, then as a witness in her own defense against a traffic

ticket. (She won that one.)

After the arguments, Chichi and I left the chamber, and we walked west to the Capitol. There, in the Rotunda, we observed an original copy of the Magna Carta. Next, we walked one block north to a park and found the Rev. Jesse Jackson speaking about rights of Americans who have disabilities. We then drove to the Vietnam Memorial and the Lincoln Memorial, concluding our day with a tour of the new Franklin Roosevelt Memorial. In this short day, we saw the following: a formal defense of our liberties before the Court, the first Constitution-like document defining liberties, a rally of free people exercising free speech to defend their personal situations, memorials remembering the Civil War and the Vietnam War that were conflicts no court could resolve, and a memorial to a president who overcame his disability to become a leader.

I want the Court to decide *Indianapolis v. Edmond* in a manner that prohibits police roadblocks that randomly attempt to detect that a crime has been committed. To me, the roadblocks are extravaganzas that have no chance to achieve important goals. The supposition that a few dozen roadblocks at a few dozen different times and places will suppress drug traffic is, to me, absurd, and these intrusions interrupt the free travel of 100 vehicles for every five instances in which probable cause is observed.

More important to me, however, is that the Supreme Court is a place of final decision. If the Court does not agree with me, that's O.K. If the Court places another value higher than my

value, I can live with that, for my highest desire is to know the rules. I cannot agree with every rule, but I must comply with rules if I am to be a civilized person. The Supreme Court is an arbiter of the rules. The Court's significance is that Americans either agree with, or acquiesce to, its decisions. The Court effectively brings to conclusion countless festering disputes. It settles those disputes, at least for a time, while assuring that every point of view is heard and that reason and precedent are applied to create the solution. We all respect final judgments articulated by the Court. I revere the Court because our society accepts its judgments. I believe that its role is supremely important in sustaining both peace among our people and the positive business climate of our nation.

Investor Alice, *continued from page 3*

Any goal is acceptable: a trip, purchase of a car, or money to develop an invention. The goal produces the strategy that determines the choice of investments. Specific, measurable, written goals allow us to avoid unbirthdays parties, in which only the Mad Hatter enjoys the moment. However, poor Alice did not understand. Everyone else was in control of her life, to the point where an irrational Queen (who definitely was in charge) was able to say, "off with her head," with thousands of people willing to implement her order. Alice had no goal, no strategy, no definable personality, but she did provide all of us an invaluable service: she taught us how to avoid wonderlands.

Good night, Dorothy. You done good.

PLEASE READ THIS DISCLAIMER: Clients and principals of Wealth Planning&Management, LLC, may own securities mentioned in this newsletter. This newsletter is designed to stimulate thought, to help readers to formulate investment philosophies, and to encourage the assumption of risk. However, WP&M does not in any way warrant results from the use of information in this newsletter. WP&M does not guarantee the accuracy of this information. The information is not an offer to sell, or a solicitation of an offer to buy, any security. Readers should not assume that recommendations herein will be profitable or will equal past performance. The possibility of loss is inherent in making any investment, and no information source, including this one, can present all facts and all risks.