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THE RIGHT OF PRIVACY AND THE SCHOOL COUNSELOR

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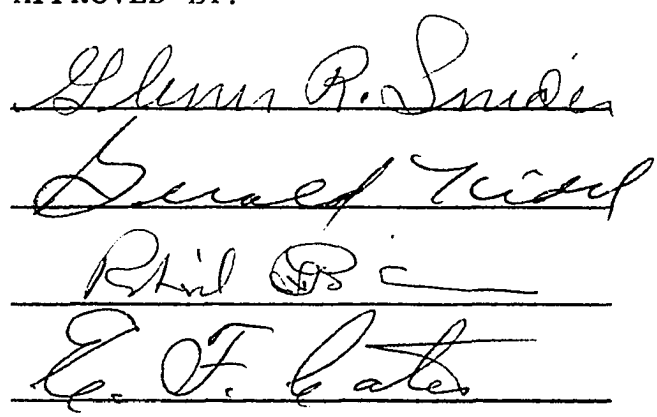

Dissertation Committee

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CHAPTER I

INTRODUCTION

Privacy, like many concepts, has a commonly accepted core of meaning with an indefinite or variable periphery. The human right of privacy is not exclusive of other rights. Many scholars agree that no less than four of the amendments of the Bill of Rights create a constitutional concept of privacy. There are definite lines of delineation among the First, Fourth, Fifth and Fourteenth Amendments which relate to privacy. It is, therefore, important that these amendments be used as a part of the study to underscore the meaning of privacy and its relationship to other civil-human rights.

The right of privacy, although no mentioned specifically in the United States Constitution's Bill of Rights, can be regarded as a human right; a right granted to man that is inalienable and natural, simply because he is a human being, a creature of worth and dignity. The Phi Delta Kappa Guide for Improving Teacher Education in Human Rights states:

> . . .every individual has the right of privacy of person and action, as he develops his personality and tastes, so long as he does not infringe upon the rights of others. The concept of human rights is based on the belief that human beings live together in ways which accord each person full dignity, respect and value, simply because he is human.[1]

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[1] A Guide for Improving Teacher Education in Human Rights (Phi Delta Kappa Commission on Human Rights, 1971), p. 8.

Human rights are basically civil liberties and civil rights. Civil liberties are those personal and social freedoms derived from one's civil relationships which are guaranteed by law against restraint unless made for the common good and public interest. Civil liberties become civil rights when they are claimed and enforced through judicial or administrative action.[2]

The concept of the right of privacy as a civil right has much reference to the First Amendment which provides protection of the inner life of the individual citizen and preservation of democratic political processes. The major protections against invasion of personality were written into the First Amendment, which guaranteed freedoms of religion, of speech, of the press, peaceable assemblage and petition for redress of grievances.

A source of constitutional protection for privacy is found in cases enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures. The language in Supreme Court opinions over the last fifty years clearly indicates that this basic freedom is largely grounded on conceptions of individual privacy.[3]

As Mr. Justice Frankfurter stated in one landmark case:

> The security of one's privacy against arbitrary intrusion by the police, which is at the core of the Fourth

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[2] Ibid.

[3] Arthur R. Miller, The Assault on Privacy (Ann Arbor: University of Michigan Press, 1971), p. 204.

> Amendment, is basic to a free society. . . . The knock at the door, whether of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English speaking peoples.[4]

Although the Fourth Amendment probably was conceived to protect tangible objects, it has been extended to restrict the government's right to seize personal information.[5] Mr. Justice Brandeis, dissenting in another famous case, characterized "the right to be let alone" by the government as "the most comprehensive of rights and the right most valued by civilized man."[6]

The Fifth Amendment's right against self-incrimination is also partially based on the individual's right to be let alone. The Fourteenth Amendment, Section I rephrased the Fifth Amendment. The right of privacy is consistent with that expressed in Griswold v. Connecticut, which struck down Connecticut's attempt to regulate the use of contraceptive devices. Referring to the First, Fourth, and Fifth Amendments, the court noted that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. These create zones of privacy.[7]

Because education is a major vehicle for the achievement of these rights, the school should make them central to its

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[4]Wolf v. Colorado, 338 U. S. 25, 27-28 (1949).

[5]Katz v. United States, 389 U. S. 347, 353 (1967).

[6]Olmstead v. United States, 277 U.S. 438, 278 (1928).

[7]Griswold v. Connecticut, 484 U. S. 479 (1965).

philosophy and practice.[8] Public school officers, counselors, and teachers should place high priority on the worth of the individual, thus exemplifying behaviors which support commitment to these rights.

> It is important that educational programs emphasize not only the rights but the responsibilities inherent in each of them. A major challenge for education at all levels is to teach and practice these rights and responsibilities faithfully and well in every classroom or counseling situation.[9]

Need for the Study

Specifically, school administrators, personnel officers, counselors, and teachers are unclear as to their positions on matters involving the right of privacy whether relating to personal communication, pupil personnel records, or search and seizure. Since recent investigations have brought into focus many invasions of the right of privacy in the lives of American citizens, it would seem that school personnel need to be informed of this right and its implications.

Because school personnel workers and administrators are in positions to exert leadership in the educational process as far as the individual student's rights are concerned, they should have a background of information which permits them to play an active role in protecting the rights of all students and educational personnel.

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[8] Teacher Education in Human Rights, op. cit., p. 8.

[9] Ibid.

Statement of Problem

The problem of this investigation was to investigate the concept and human right of privacy, analyze the degree to which it is recognized in the United States Courts, and to examine its implications for the behavior of educational personnel with special reference to the school counselor and to the public school.

Scope and Limitations

Recent research, the professional literature, and legal materials on the right of privacy are so extensive that a comprehensive study of them is indeed difficult. The following limitations were, therefore, imposed upon this research:

(1) The research and literature which were studied related only to historical-legal matters dealing with privacy concerning the behavior of schools and educational personnel.

(2) Judicial decisions analyzed were those in the United States District Courts and state and federal appellate courts, including the United States Supreme Court, as reported in the National Reporter System between 1960 and 1972.

(3) The cases studied were those involving schools and certain human-civil rights relating to the concept of privacy. Those selected human-civil rights from the list compiled by the Phi Delta Kappa Commission on Human Rights and Education include:

a) The right to freedom of expression, speech, and the right to dissent;

b) The right to freedom of the press;

c) The right to freedom of religion;

d) The right to due process;

e) The right to security of person and property including protection against unlawful search and seizure.

Methodology

The study involved a historical-legal search of literature dealing with the role of school personnel officers, counselors and teachers in the right of privacy as it affects student rights, pupil personnel records, and the behavior of public schools in general as contained in Chapters II and III. In investigating legal enactments and judicial decisions, the following sources were used:

1) For discovering and analyzing state laws - Statutes Annotated

2) For discovering and analyzing cases - Corpus Juris Secundum West's Decennial Digest

3) For case reports - The National Reporter System

Legislative enactments pertaining to the selected human-civil rights relating to the right of privacy were read and listed in tables. Chapter IV presented the findings, conclusions, and recommendations on institutional and personnel practices and behaviors which demonstrate a commitment to the right of privacy.

Definition of Terms

The words and phrases used in this study whose meanings vary from those in common usage were defined as follows according

to the Revised Fourth Edition of Black's Law Dictionary:

Confidential communications - These are certain classes of communications passing between persons who stand in a confidential or fiduciary relation to each other (or who, on account of their relative situation, are under a special duty of secrecy and fidelity), which the law will not permit to be divulged, or allow them to be inquired into in a court of justice for the sake of public policy and good order of society. Examples of such privileged relations are those of husband and wife and attorney and client.

Counseling - A face to face relationship where the client is assisted in self-understanding, decision-making by a professionally prepared certificated person.

Legal Status - Legal status consists of those principles of law which regulate or govern the right of individual privacy and the right of people to know.

Privilege - A particular and peculiar benefit or advantage enjoyed by a person, company, or class beyond the common advantages of other citizens. An exceptional or extraordinary power or exception. A right, power, franchise, or immunity held by a person or class, against or beyond the course of the law.

Pupil personnel record - A pupil personnel record is one kept by the school in accordance with a state law or a local regulation and kept on file in a school or school district office.

Rapport - The harmonious relationship and mutual responsiveness which results from the heightened suggestibility and emotional transference when people have confidence, trust, and esteem for each other.

Right to know - The right to know is the right to become maximally informed. In this study, the right to know is the right to inspect public records or pupil personnel records.

Right of Privacy - The right to be let alone, the right of a person to be free from unwarranted publicity. The right of an individual (or corporation) to withhold himself and his property from public scrutiny, if he so chooses. It is said to exist only so far as its assertion is consistent with law or public policy, and in the proper case equity will interfere if there is no remedy at law to prevent an injury threatened by the invasion of, or infringement upon, this right from motives of curiosity, gain or malice.

CHAPTER II

REVIEW OF RELATED LITERATURE

The people's right to know is the rallying cry whenever there is a suggestion of governmental information management. Yet we also assert that the Constitution guarantees us a right of individuality, autonomy, and freedom from the intrusive activities of government and our fellow man.[10]

Privacy, whether it be physical or informational, is a subjective value. An individual's desire to control the information that comprises his life history is a natural part of the quest for personal autonomy.[11]

To keep society as we know it, the preservation of those aspects of privacy that nurture autonomy and individuality is essential. Thus, Alan Westin has observed:

> Development of individuality is particularly important in democratic societies, since quality of independent thought, diversity of views, and nonconformity are considered desirable traits for individuals. Such independence requires time for sheltered experimentation and testing of ideas, for preparation and practice in thought and conduct, without fear of ridicule or penalty, and for the opportunity to alter opinions before making them public. The individual's sense that it is he who decides when to "go

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[10] Miller, op. cit., p. 250.

[11] Ibid.

> public" is a crucial aspect of his feeling of autonomy. Without such time for incubation and growth, through privacy, many ideas and positions would be launched into the world with dangerous prematurity.[12]

In searching the voluminous literature related to safeguards on privacy, it was necessary to limit discussion to the general background of privacy, general legislation dealing with privacy with emphasis on certain constitutional rights of privacy. Specific cases relevant to the right of privacy and freedom of expression and procedural due process were analyzed for supportive evidence in determining the trend institutions and personnel workers are taking as related to student rights and responsibilities.

General Background on Privacy

The earliest writings revealed man as a gregarious social being depending on his society for protection, aid in sustenance, and for fellowship. Early man possessed cattle, or sheep, or goats, a tent, or perhaps ground or a woman. The first rules, therefore, were to prohibit anything that was rightfully owned from being taken. The practices, rules and moral codes concerning physical trespass came down through history and modern man took them over as part of his common law.[13]

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[12]Alan Westin, Privacy and Freedom (New York: Atheneum, 1967), p. 34.

[13]Milton R. Konvitz, "Privacy and the Law: A Philosophical Prelude," Law and Contemporary Problems, XXXI (1966), 272-73.

Once civilization made the distinction between an "outer" and "inner" man, between the soul and the body, it was impossible to avoid an idea of privacy.[14] The spiritual and material were separated. A distinction was made between "rights inherent and inalienable and rights that are in the power of government to give and take away."[15] This established the difference between the public and private rights, society and solitude, and gave man the idea of a "private space" where he could be himself.[16] As society grew more complex, the desire and need for protection against both property and personal trespass became acute.[17]

The United States in the last half of the twentieth century became a highly complex society and with complexity became a "nation of record keepers."[18] Records were kept on every conceivable thing for every conceivable reason.[19]

Society is caught up in a conflict with privacy. The man who lends money seeks information about the borrower, the employer about the employee, the motor vehicle bureau about the applicant for a license, the doctor about his patient, the Census Bureau and research agencies about all of us. Schools, insurance companies, the armed forces, hospitals and clinics

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[14] Ibid., p. 274.

[15] Ibid., p. 275.

[16] Ibid., p. 276.

[17] Ibid., p. 277.

[18] Martha L. Ware, Law of Guidance and Counseling (Cincinnati: W. H. Anderson Co., 1964), p. iv.

[19] Ibid.

acquire, at an expanding rate, information from clients or patients or applicants, in the belief that men's affairs should be guided by intelligence, and that a relatively free flow of information is most likely to produce a rational society. Yet as more information comes to be regarded as relevant to more issues, and as information is sought in settings in which it is not clear that the request can be denied, what starts as rational pursuit may become an invasion of privacy. The "file" may be transformed into the "dossier," with all the connotations that melodramatic word conveys about secrecy and the risk of overreaching.[20]

There can be little doubt that each institution which collects information about an individual is pressed by its circumstances to accumulate everything which may help it to make an intelligent decision about him. The same circumstances will also press for the exchange of information among them. It is reasonable to assume, therefore, that threats of privacy will increase unless counter pressures are introduced which speak for the individual and for interest in privacy.[21]

Warren and Brandeis wrote in 1890 that the common law secures to each individual the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others, and even if he has chosen to give them

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[20]Abraham S. Goldstein, "Legal Control of the Dossier," On Record (New York: Russell Sage Foundation, 1969), p. 415.

[21]Ibid., p. 416.

expression, he generally retains the power to fix the limits of the publicity which shall be given them.[22]

Though they had in mind principally invasions of privacy through publicity by newspaper gossip columnists, the concept described is broad enough to encompass much more. For a long time, the "right to privacy" was more celebrated by commentators than by courts. But it was ultimately included in the American Law Institute's Restatement of the Law of the Torts and has enjoyed considerable vitality in recent years.[23]

The first Restatement described the action as one which may be brought against a person who unreasonably and seriously interferes with another's interest in not having his affairs known to others.[24]

The revision is more specific. It provides that the right of privacy is invaded when there is:

> (a) Unreasonable intrusion upon the seclusion of another. . . ; or
>
> (b) Appropriation of the other's name or likeness. . . ; or
>
> (c) Unreasonable publicity given to the other's life. . . ; or
>
> (d) Publicity which unreasonably places the other in a false light before the public. . . .[25]

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[22]Samuel Warren and Louis Brandeis, "The Right of Privacy," 4 Harvard L. Rev. 193, 196 (1890).

[23]Goldstein, op. cit., p. 422.

[24]ALI, Restatement of Torts 867 (1938).

[25]ALI, Restatement of Torts, 2nd., Tent. Draft 13, 652 (1967).

> Privacy is a special kind of independence, which can be understood as an attempt to secure autonomy in at least a few personal and spiritual concerns, if necessary in defiance of all the pressures of modern society. It seeks to erect an unbreachable wall of dignity and reserve against the entire world. The free man is the private man, the man who still keeps some of his thoughts and judgments entirely to himself, who feels no over-riding compulsion to share everything of value with others, not even those he loves and trusts.[26]

When one attempts to analyze the proper status to be accorded the right of individual privacy in a democracy such as ours, one is immediately confronted with a mass of contradiction.[27]

The concept of privacy is difficult to define because it is exasperatingly vague and evanescent, often meaning strikingly different things to different people.[28] In part this is because privacy is a notion that is emotional in its appeal and embraces a multitude of different "rights," some of which are intertwined, others often seemingly unrelated or inconsistent.[29]

We claim to be an "open" society with a tradition of free speech and free press that is deeply etched in our political philosophy and expressed in the First Amendment of the Constitution.[30]

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[26]Miller, op. cit., p. 25.

[27]Ibid.

[28]W. Dixon, "The Griswold Penumbra: Constitutional Charter for an Expanded Law of Privacy," 64 Michigan Law Review 197 (1965).

[29]Miller, op. cit., p. 25. [30]Ibid.

With deep concern for insuring individual rights, Thomas Jefferson and James Madison noted the fact that those who were responsible for the development of the Constitution would not be around forever, and that the leaders who would follow might be less enthusiastic about rights to freedom and liberty. They were afraid that, once the country's security was assumed to be guaranteed, people's attention would gradually shift from concern for national survival to individual financial success.[31]

Acting in opposition, Alexander Hamilton felt that the Constitution already covered the basic rights adequately. It was believed that bills of rights were not only unnecessary, but would even be dangerous. They would contain various exceptions to powers not granted; and on this very account, would afford a colorable pretext to claims more than were granted. Jefferson and Madison were victorious in their efforts for our Bill of Rights.[32]

Thus our tradition of privacy has its protective roots in provisions of the Constitution and the Bill of Rights. These rights include freedom of speech, expression and belief; religious freedom and free conscience; protection against search without proper warrant and for unreasonable demands; protection from force to incriminate oneself; and protection from cruel

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[31]Frank K. Kelly, Your Freedoms: The Bill of Rights (New York: Bantam Books, 1966), pp. 15-19.

[32]Ibid.

and unusual punishment.[33] The Constitution thus guarantees us a right of individuality, autonomy, and freedom from intrusive activities of government and our fellow man. Limiting government intrusion on the individual's behavior dates back far beyond American history. In 430 B. C. Pericles warned the Athenians:

> The freedom we enjoy in our Government extends also in private life. There, far from exercising a jealous surveillance over each other, we do not feel called upon to be angry with our neighbor for doing what he likes, or even to indulge in those injurious looks which cannot fail to be offensive, although they inflict no positive penalty. But all this ease in our private relations does not make us lawless as citizens. Against this fear is our chief safeguard, teaching us to obey the magistrates and the laws, particularly such as regard for the protection of the injured, whether they are actually on the statute book or belong to that code, which although unwritten, yet cannot be broken without acknowledged disgrace.[34]

Commencing with the early nineteenth century, there were several court decisions that helped define constitutional rights. "Private sentiment" and "private judgment" came to be accepted as rights during the 1800's.[35]

According to James Holbrook in 1866:

> The laws of the land are intended not only to preserve the person and material property of every citizen sacred from intrusion, but to secure the privacy of his thoughts, so as he sees fit to withhold them from others. Silence is as great a privilege as speech and it is as important that everyone should be able to maintain it whenever he pleases,

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[33]Miller, op. cit., p. 148.

[34]Andrew R. Burn, Pericles and Athens (Mystic, Conn.: Verry Press, 1948), p. 72.

[35]Joseph Story, Commentaries on the Constitution of the United States (Boston: n. p., 1851), p. 591.

as that he should be at liberty to utter his thoughts without restraint.[36]

The Supreme Court's decisions in the area of invasion of privacy were, until very recently, weak and ineffective. What was lacking was a general constitutional interpretation of what was meant by privacy. The Supreme Court failed to find in the First Amendment a strong basis for the right to privacy. "Privacy," according to Westin, "was thus a passive virtue that was invoked only to place limits on assertions of freedom of speech."[37]

There are four states of privacy that may be threatened:

1. When a person is separated from his group and freed from observation by others, this state of privacy is called solitude. Although he continues to be subject to nature, this is the most complete state of aloneness a person can reach.

2. The choice to select one's friend or mate is part of the second state of privacy known as intimacy. One should possess the freedom to select those persons that one wishes to take into confidence and be secure in knowing that he is free to say what is on his mind without the threat of surveillance.

3. When in a public place, riding a subway, walking through a museum or park, the ability to remain free from identification and surveillance is the state of privacy known as anonymity. Constant observation or fear of observation in public tends to destroy the feeling of security and freedom that we all expect. Anonymity makes it possible to start a conversation with a stranger and not be concerned that the information will be affixed to our record.

4. Lastly, the choice to hold back information about ourselves is reserve. No one should be forced to tell more about himself than he chooses, no one should be forced to

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[36]James Holbrook, Ten Years Among the Mail Bags (Philadelphia: n. p., 1855), p. 25.

[37]Westin, op. cit., p. 342.

communicate a part of his life's experience if he chooses not to do so.[38]

As technology of the late nineteenth century began to take hold, the legal and judicial minds of the country searched for constitutional protections against privacy invasion. The issue at hand was whether a nation that was emerging technologically could remain free if the pattern continued to develop whereby the invention, not the man, became central.[39]

In the past twenty years the courts have been able to slowly evolve an operational definition of constitutional privacy. The Supreme Court responded to technological surveillance as follows:

1. The Court has indicated the need for emotional release and self-evaluation by individuals in its decisions on privacy from raucous sound trucks and in the cases protecting the privacy of householders from aggressive solicitors;

2. The Court has protected the permissible deviation function of privacy by guarding the privacy of children who do not want to salute the flag or recite prayers in school because of their religious beliefs, as well as the privacy of university professors in their classroom and campus expressions;

3. The Court has recognized the intimacy function with its ruling guaranteeing marital privacy;

4. The Court has recognized individual and group needs for anonymity and preparatory privacy by its rulings on privacy of associations' membership rolls, anonymity in individual political publications, and the concept of "breathing space" for the exercise of first amendment rights;

5. The Court has protected privacy's function as a protector of modesty with decisions on the inviolability of body from stomach pumping and other unreasonable physical

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[38]Ibid., pp. 31-32.

[39]Miller, op. cit., p. 153.

inspections or intrusions;

6. The Court has extended some protection to the confessional function of privacy in decisions on the right to privacy from government surveillance in the lawyer-client relationship.[40]

General Legislation Dealing with Privacy

Except for statutes dealing with disclosures in particular areas, there has been no specification as to what may or may not be disclosed and to whom. As a result, the doctrine of government privilege has tended to dominate the scene.[41]

It was the Justice Department, for example, that tried to suppress publication of the Pentagon papers. In June 1971, for the first time in American history, two newspapers of general circulation, the New York Times and the Washington Post, were prevented by court order from printing specific articles. Eventually, the Supreme Court voted, six to three, to overturn this "prior restraint," and the publication of the Pentagon papers was resumed.[42]

The Supreme Court, in deciding the case, ruled that the requirements of national defense were not strong enough to override the principle of freedom of the press. The ruling suggested that, in a different situation, the government might be able to exercise prior restraint on that basis. The offshoot of that

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[40]Alan Westin, "Science, Privacy and Freedom: Issues and Proposals for the 1970's," (Part II), Columbia Law Review, Vol. LXVI, No. 7 (Nov. 1966), p. 1243.

[41]Goldstein, op. cit., p. 433.

[42]"Nixon and the Media," Newsweek, January 15, 1973, p. 47.

case, the trial of Daniel Ellsberg and Anthony Russo for leaking the documents, poses still other issues that could reshape the constitutional relationship between the media and the government. The core of the case was the way in which a conviction would have compounded the constriction of information flowing to the public. All charges were dismissed because extraordinary misconduct by the government had irreparably damaged the defendants' right to a fair trial, another invasion of privacy.[43]

The trial was the government's first attempt to imprison someone for "leaking" information to the press. If Ellsberg and Russo were convicted, other press sources would have, presumably, clammed up. The government claimed, in effect, that it owned the information in the Pentagon papers. If this view were upheld, the Administration could prosecute the publishers of any material in its files without regard to the question of national defense by simply relying on the laws against theft.[44]

The other major judicial conflict between government and the press stems from the Supreme Court's decision last year in the "Caldwell case" which involved New York Times reporter Earl Caldwell who has refused to appear before a California grand jury to discuss his interviews with Black Panthers. The Court ruled, five to four, that journalists had no First Amendment right to refuse to appear before grand juries or to withhold

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[43] Ibid.

[44] Ibid., p. 48.

confidential sources and information. The decision upset a delicate balance between the reporter's First Amendment protection and the state's legitimate need for information in criminal cases.[45]

In response to government reaction, there is growing sentiment for a "shield bill" in the state legislatures and Congress. The shield bill is an attempt by the news profession and others to put something in law to protect reporters and other newsmen from having to reveal information they have gathered or the sources of it. The argument for it is that much information comes on a confidential basis and the sources will not cooperate if they feel their identities may be revealed.

Newsmen have gone to jail in recent months for refusing to disclose sources of confidential information. The courts have been getting tougher on them, and the shield bill is an attempt to protect the confidential relationship with sources that have previously existed.

A protective law may or may not be the answer, but newsmen cannot be expected to stand helplessly by and see their sources of information dry up for fear of being exposed. That can never be in the public interest. The public has the right to know and this appears to be guaranteed in the First Amendment. Protecting the right of privacy is necessary to the exercise of the other rights. The inter-relationship can be clearly seen.

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[45] Ibid.

The need for further clarification of the subject of privacy and disclosure in the context of government files led to enactment in 1966 of the Freedom of Information Act. The avowed purpose of this act was to make "information maintained by the executive branch more available to the public."[46]

On first inspection, the act seems so sweeping as to represent an abandonment of privacy in the interest of full disclosure, "the right to know" having won out over the "right to privacy." Closer inspection reveals, however, that there are many exceptions to the disclosure requirement. In particular the statute is to have no effect on matters that are "specifically exempted from disclosure."[47]

The complete text of the exemptions follows:

> (b) This section does not apply to matters that are--
>
> (1) specifically required by Executive order to be kept secret in the interest of national defense or foreign policy;
>
> (2) related solely to the internal personnel rules and practices of an agency;
>
> (3) specifically exempted from disclosure by statute;
>
> (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
>
> (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
>
> (6) personnel and medical files and similar files the disclosure of which would constitute a clearly

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[46]U. S. C. 552 (1967).

[47]Ibid.

unwarranted invasion of personal privacy;

(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.[48]

The exemptions appear to be sufficiently broad to authorize fairly extensive protection of the interest of privacy and confidentiality. But they do so in substantial part through leaving to agency heads the responsibility for deciding when disclosure is to be made, and when not. The statute does not address itself at all to the occasions when agency heads decide in favor of disclosure. The judicial review provision, for example, is available only when disclosure is withheld. No means of enforcing the interest in nondisclosure is provided. The individual affected, therefore, is thrown back on his "rights" under the general body of law, "rights" which do not define the parties who may have access to files and which leave him few effective remedies.[49]

Right of Privacy for Students, Educators, and Others

Pope Pius XII once stated:

And just as it is illicit to appropriate another's good or to make an attempt on his bodily integrity, without his

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[48]Goldstein, op. cit., p. 435. [49]Ibid., p. 436.

> consent, so it is not permissible to enter into his inner domain against his will, whatever is the technique or method used.[50]

Respect for another's privacy is a legitimate expectation in all social relationships. As a value, privacy does not exist in isolation, but it is part and parcel of the system of values that regulates action in society.[51]

In assuming responsibility in the teacher education institution and in the public schools for producing teachers and students who understand and, hopefully, have commitment to human-civil rights, it must be kept in mind that the basic moral and political values of this democratic society constitute the sources from which these rights stem. Our societal values such as the worth and dignity of the individual, the search for truth, justice and the belief that institutions are the servants of mankind serve as the foundation for establishing and implementing these rights.[52]

Those who wish to insure respect for human rights must take the need for responsible exercise of their rights very seriously or their efforts will simply be counter-productive. That is why in the Phi Delta Kappa "Human Rights Creed,"

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[50]Pope Pius XII, in an address to the Congress of the International Association of Applied Psychology, Rome, April 10, 1958, p. 5.

[51]Arnold Simmel, "Privacy Is Not an Isolated Freedom," in Privacy, ed. by James Roland Pennock (New York: Atherton, 1971), p. 71.

[52]Teacher Education in Human Rights, op. cit., p. 22.

emphasis is given to the words, "I believe in the right and its concomitant responsibility. . . ."[53]

The right of privacy, although not mentioned specifically in the United States Constitution's Bill of Rights, can be qualified as a human right, a right granted to man that is inalienable and natural, simply because he is a human being, a creature of worth and dignity. Modern man discerned that he owned far more than his physical possession. Attitudes and beliefs, ideas, and mores were also his possessions.[54]

In viewing the aspects of privacy as it relates to the student, educator, and others, various cases were examined to provide factual support of democracy at work. The human-civil rights cases studied, as related to privacy, included right to freedom of expression and communication with emphasis on school record information, hair and dress rights, and freedom of the press. The right to procedural due process with case studies on search and seizure and student citizenship rights were determined as essential segments for the study of privacy.

Right to Privacy and Freedom of Expression

Freedom of expression, as related to the right of privacy, is provided in the First Amendment of the Bill of Rights. It states:

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[53] Ibid.

[54] Ibid., p. 23.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or of the right of the people to peaceably assemble, and to petition the government for a redress of grievances.[55]

The First Amendment was designed to insure certain basic personal freedoms or civil rights. Freedom of expression, particularly in speech and the press are the basic rights which in a democracy aid in providing to every individual the opportunity to have access to the truth. Because the moral and political value of truth has had high priority as a basic belief of this society, the laws of this nation have consistently protected the individual in the exercise of the rights of free speech and press an enunciated in the First Amendment.[56]

Freedom of expression cannot legally be restricted unless its exercise interferes with the orderly conduct of classes and school work. Students may freely express their points of view provided they do not seek to coerce others to join in their mode of expression and provided also that they do not otherwise intrude upon the rights of others during school hours.[57]

"Punishment for something a student has said, written, published or distributed should be viewed with strictest scrutiny," suggests Harvard's Center for Law and Education.[58]

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[55]U. S. Constitution Amendment I.

[56]Teacher Education in Human Rights, op. cit., p. 33.

[57]Robert L. Ackerly, The Responsible Exercise of Authority (Washington, D. C.: Nat'l Ass. of Sec. Sch. Prin., 1969), p. 7.

[58]Student Rights and Responsibilities, op. cit., p. 20.

"Student actions--especially those covered by the First Amendment, freedom of speech, the press and so on--appear to be becoming increasingly untouchable by any school board that wants to avoid landing in court," agrees H. C. Hudgins, a Temple University professor of school law.[59]

Free expression has always been carefully guarded by the courts. Restrictions on the wearing of buttons and arm bands and the distribution of literature have been upheld only where the practice materially and substantially interfered with school discipline.[60]

Freedom of expression is a necessary element in the exercise of intelligent choice in the selection of alternatives for action and must not lightly be abridged. Teacher education institutions and public schools must serve as laboratories in which these rights can be exercised and practiced by both professional educators and students.[61]

The Phi Delta Kappa Guide for Improving Teacher Education in Human Rights lists public school behaviors which exemplify commitment to freedom of expression. They include:

> 1. The school and the faculty provide opportunities for students to publicly express or hear opinions or views on any subject which they believe is important even if the subject is one of a controversial nature. There is no

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[59]Student Rights and Responsibilities (National School Public Relations Association, 1972), p. 20.

[60]Ackerly, op. cit., p. 7.

[61]Teacher Education in Human Rights, op. cit., p. 34.

restriction on this right except when clear indication is present that the safety or health of the school community is threatened or the educational process likely to be disrupted.

2. Machinery is established by which students participate in the planning of school assemblies, forums, and other gatherings under school auspices. This planning includes the identification of subjects or topics, the selection of speakers and/or establishing objectives for the meetings.

3. School policy protects faculty members as they provide opportunities for the study and discussion of controversial issues and problems within the framework of courses or other experiences which are a part of the school curriculum.

4. Machinery is established by which faculty participate meaningfully in the processes of decision making in the school regarding faculty welfare, problems relating to the operation of the school, the curriculum and any other important matters relating to students and faculty.

5. The student newspaper or other publications are considered learning opportunities for students but the freedom to express opinions there, as elsewhere, carries the responsibility for the statements which are published. This includes publications receiving school assistance as well as those providing their own resources.[62]

"The remedy for today's alienation and disorder among the young," a federal district judge declared recently in a Connecticut case, "is not less but more free expression of ideas. In part," he continued, "the First Amendment acts as a safety valve."[63]

Tinker v. Des Moines Independent Community School District, 393 U. S. 503 (1969), dealt with students passively demonstrating against the Vietnam war by wearing black armbands. Students were reprimanded for this activity by school authorities.

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[62] Ibid., p. 35.

[63] Student Rights and Responsibilities, op. cit., p. 20.

It was held that only when there exists "facts which might reasonably lead authorities to forecast substantial disruption of, or material interference with school activities could the First Amendment rights of high school students be restricted."

> As Judge Kiley points out in Scoville v. Board of Education of Joliet Township High School, the Tinker standard is an extension of a similar rationale put forth in an earlier circuit court case, Burnside v. Byers, 363 F. 2d 244 (5th Cir. 1966). The Burnside case existed at the time of the district court ruling in Scoville, but the test put forth therein was not followed. The approach taken by the first Scoville court is important to note, however, because it represents a position commonly taken by school officials and courts in these kinds of cases. That approach assumed that there was a certain class of student expression which per se justified school authorities in taking disciplinary action--e.g., speech on school grounds which amounts to an "immediate advocacy of, and incitement to, disregard of school administrative procedures"--and that in such cases it was unnecessary for school officials or the courts to make a factual inquiry into the question of whether or not it was reasonable to assume that the activity would result in material disruption. This approach is wrong. A student's First Amendment right to freely express controversial viewpoints can be restricted only if substantial disruption in fact occurs or can be reasonably forecast. The Tinker test is rendered meaningless if some kinds of speech or writing or behavior can be prohibited absent a judgment by school officials as to its impact on the rest of the school.[64]

Perhaps the recognition that high school students have constitutional rights would have gained ground even if two Tinker youngsters and their friend, Christopher Exhardt, hadn't decided to wear black armbands to school in 1965.[65]

> To the extent that the Tinker test protects student expression in the absence of material disruptions in school activities, a significant area of protected student expression has been carved out. Although Justice Fortas was

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[64]Student Rights Litigation Packet, Rev. Ed. (Center for Law and Education, Harvard University, April 1972), p. iv.

[65]Student Rights and Responsibilities, op. cit., p. 3.

> careful to point out that Tinker was not concerned with "aggressive, disruptive or even group demonstrations," the opinion taken as a whole lends strong support to the position that neither the substance nor the means of student expression can, standing alone, constitute grounds for disciplinary action. Scoville has made it clear that high school students have the right to speak out on controversial issues, to criticize school policies and personnel, to distribute literature on school premises, to publish newspapers free from official censorship--all subject, or course, to the interest of the school in maintaining order and to rules and regulations reasonably calculated to maintain order.[66]

The Tinker test is a beginning. Where previously high school students had virtually no legal alternatives when faced with the all-inclusive authority of the school system, they now have some breathing room. The traditional in loco parentis view of the schools seems to be slowly giving way, in the courts at least, to a view of education premised on the fact that neither "students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[67]

Two recent cases involved school officials' attempts to impose prior restraints upon student expression within public schools. Riseman v. Quincy School Committee, 439 F. 2d 148 (1st Cir. 1971) held that students may distribute materials within school buildings and that, while school officials may prescribe reasonable rules as to time, place and manner of distribution, they may not require prior approval of the content of such papers. Eisner v. Stamford Board of Education, 440 F. 2d 803 (2d Cir. 1971) held the opposite. It states that school

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[66] Litigation Packet, op. cit., p. v.

[67] Ibid.

officials may require prior submission of student materials to determine whether they will result in "substantial disruption" of the educational process. Eisner does (rather limply) try to mitigate some of the dangers of such censorship by requiring that school officials make their decision promptly so that students will have the opportunity to challenge it in court.[68]

Hair and Dress

The courts have clearly warned that freedom of speech or expression is essential to the preservation of democracy and that this right can be exercised in ways other than talking or writing. From this generalization, it follows that there should be no restriction on a student's hair style or his manner of dress unless these present a "clear and present" danger to the student's health and safety, cause an interference with work, or create classroom or school disorder.[69]

School authorities cannot arbitrarily regulate the dress or hair style of their students. The Supreme Court has never spoken out on the issue, but the language of Tinker, as well as several favorable lower court opinions, lends support to any challenge of these kinds of regulations. As the court said in Griffin v. Tatum, 300 F. Supp. 60 (M.D. Ala. 1969): "Although there is disagreement over the proper analytical framework, there can be little doubt that the Constitution protects the freedom

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[68] Ibid., p. vii.

[69] Ackerly, op. cit., p. 9.

to determine one's own hair style and otherwise to govern one's personal appearance."[70]

In Bishop v. Colaw, 450 F. 2d 1069 (8th Cir. 1971), the court recognized that long hair does not disrupt the educational process so much as it disrupts school officials themselves and their intolerance:

> Much of the board's case rests upon conclusionary assertions that disruptions would occur without the hair regulations. It is apparent that the opinion testimony of the school teachers and administrators, which lacks any empirical foundation, likely reflects a personal distaste of longer hair styles. . . . Tolerance of individual differences is basic to our democracy, whether those differences be in religion, politics, or life-style.[71]

Some courts have, in effect, upheld the personal distaste of school officials. In King v. Saddleback, 445 F. 2d 932 (9th Cir. 1971), the court upheld a hair regulation as a reasonable exercise of school officials' authority to govern the educational process. In Freeman v. Flake, 448 F. 2d 258 (10th Cir. 1971), the Tenth Circuit dismissed hair cases from three different states saying that no federal issue was presented: "The problem, if it exists, is one for the states and should be handled through state procedures."

Before cases like Tinker had begun to continuously appear in the courts, the civil rights movement flourished; college students were asserting their rights on campuses from Berkeley to Boston; young people of all ages were increasingly involved in antiwar and other protests. The 18-year-old vote called

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[70]Litigation Packet, op. cit., p. vii.

[71]Bishop v. Colaw, 450 F. 2d 1076 (8th Cir. 1971).

attention to further rights of the young. Tinker was decided, and the hoary doctrine of in loco parentis, the theory that schools and teachers could exercise total control over students because they acted as parent-substitutes and out of concern over students' welfare, would never be the same again. Student protest of hair and dress regulations and the desire of all basic human rights reflect a desire for change in the Puritancal system of our educational processes.[72]

It is on the Puritan system of governance that our great public school system was developed and flourished. This was the governance system under which the "Old Deluder Satan" Act was passed and our public schools took original shape. Its key principles are listed:

> 1. Those in authority get that authority from above, and it is essentially unlimited except by their obligations to a higher authority.
>
> 2. Those in authority are fully responsible for seeing to it that those below them behave correctly in every respect.
>
> 3. Those at the bottom have no rights but only privileges extended to them when they have shown acceptable judgment and behavior.
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> 4. Since those at the bottom cannot be counted on to embrace their role voluntarily, the system provides for continuous intimidation, occasional coercion, and as a last resort removal.[73]

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[72]Student Rights and Responsibilities, op. cit., p. 3.

[73]Edward T. Ladd, "Legal Problems Arising from the Regulation of Student Behavior in the Classroom and School," a paper delivered to the University of Texas School Law Conference, San Antonio, Texas, November 16, 1971, p. 11.

What these four principles came to mean in the operation of our public schools and what they have meant over the intervening years requires no elaboration. While over the generations there has been a great broadening of the schools' gene pool, the traits of the original governance system are still apparent.[74]

But Tinker made it clear that in loco parentis as a part of the old governance system must yield to the broader concept of the constitutional rights of the individual, whatever his age. The wearing of black armbands, Justice Fortas wrote, did not constitute "aggressive disruption or even group demonstrations." Rather, it involved "direct primary First Amendment rights akin to 'pure speech.'"[75]

Right of Privacy and the Fourth Amendment (Search and Seizure and Due Process)

Many recent cases have challenged the practices of school authorities by which students are arrested, suspended, expelled, or transferred without being afforded a fair hearing and other procedural safeguards.[76]

The Fourth Amendment of the Constitution of the United States, as a factor in protecting the individual's right to privacy, guarantees:

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[74] Ibid.

[75] Student Rights and Responsibilities, op. cit., p. 4.

[76] Litigation Packet, op. cit., p. x.

> 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 person or things to be seized.[77]

Under the Fourth Amendment, "unreasonable" searches and seizures are prohibited. The difficult task of the courts has been to identify standards for determining unreasonableness and to express their conclusions in understandable terms.[78] Although the specific legal principles resulting from the court's performance of this task are complex and often seem elusive, it is possible to identify the competing interests that the courts must attempt to reconcile in applying the Fourth Amendment. The interest of individual members of society in securing personal privacy must be balanced against the collective interest of society in obtaining the results of a search. These interests can be referred to as "the privacy interests" and the "law enforcement interests." The latter phrase is based on the fact that society's interest on searching has as its most common purpose the enforcement of the criminal law.[79]

> The necessity of determining how this balance will be struck is implicit in the Fourth Amendment itself and is brought to the surface in every search and seizure case. Accordingly this need to balance the law enforcement and

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[77]U. S. Constitution Amendment IV.

[78]David Kaplan, "Search and Seizure: A No Man's Land in Criminal Law," 49 Calif. L. Rev. 474 (1961).

[79]William G. Buss, Legal Aspects of Crime Investigation in the Public Schools (National Organization on Legal Problems of Education, 1971), p. 22.

> the privacy interests lies at the heart of ajudication of any controversy over the propriety of searching a student's school locker. In a locker search case, as in other Fourth Amendment cases, a conclusion that a search is unreasonable is fundamentally a judgment by a court that a search was conducted under circumstances allowing too little scope to the privacy interest and too much scope to the law enforcement interest.[80]

Although the concept of "reasonableness" may seem to suggest a simple factual judgment, that appearance is quite misleading. Factual differences are extremely important in applying the Fourth Amendment, but the conclusion that a particular search is or is not reasonable should be understood as a policy decision reflecting value judgments about what the Constitution ought or ought not to permit.[81]

In a number of recent cases students have challenged the legality of public school locker searches. It is not clear whether student lockers are areas protected from search or whether they constitute leased "quarters" which still belong to the school but which are temporarily utilized for the convenience of the student. Courts have tended to the opinion that lockers belong to the school, not to the student and, therefore, until decisions like these are reversed in the higher courts, students would be wise to treat their lockers as public, rather than private places.[82]

Until very recently, school officers assumed that they could lawfully inspect and/or search students and their lockers

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[80] Ibid., p. 23. [81] Ibid.

[82] Student Rights and Responsibilities, op. cit., p. 24.

under the doctrine of "in loco parentis." The U. S. Supreme Court, however, has modified that doctrine, notably in the cases In re Gault, 387 U.S. 1 (1967) and Tinker v. Des Moines School District, 393 U.S. 503 (1969) by recognizing that protections guaranteed by the U. S. Constitution also apply to young people with full force and effect.

One important case, People v. Overton involved a search of a high school student's locker for marijuana cigarettes. An invalid search warrant was presented by the policeman to search the student and his locker. The vice-principal, being in agreement of search and having apparently the right to enter the lockers for at least some purposes, used his passkey to all school lockers. The vice-principal and policeman discovered and confiscated marijuana despite the fact that the student objected before, during and after the search because he had not given his personal consent.

After the original decision by the New York Court of Appeals that the search was reasonable, the case was remanded to the court by the United States Supreme Court for further consideration.[83] The original decision was reaffirmed by the New York Court and was subsequently left undisturbed by a federal district court that passed on the student's petition for habeas corpus.[84] The appeal from the denial of the habeas corpus petition was dismissed as moot and the subsequent petition for

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[83]20 N. Y. 2d 360, 283 N. Y. S. 2d 22, 22 N.E. 2d 596 (1967).

[84]Overton v. Reiger, 311 F. Supp. 1035 (S.D.N.Y. 1970).

certiorari was denied by the Supreme Court.[85]

The New York Court of Appeals sustained the search on the theory that whether the search warrant was valid was irrelevant because the vice-principal had prior authority to inspect any locker suspected of containing illegal or harmful materials. The court also ruled that any contraband discovered as a result of the search would be turned over to the police for use in criminal prosecution.[86]

The court placed particular emphasis on the special relationship between students and school officials:

> Not only have the school authorities a right to inspect but this right becomes a duty when suspicion arises that something of an illegal nature may be secreted there. When the vice-principal learned of the detective's suspicion, he was obligated to inspect the locker. This interest, together with the nonexclusive nature of the locker, empowered him to consent to the search by the officers.[87]

The State v. Stein case had many circumstances comparable to those in Overton. The principal of the high school had a key to all students' lockers; he opened the locker and authorized a search by police. This case involved the search for stolen property which was eventually found in a bus station locker that fit a key found in the defendent's school locker. Besides having the principal's consent, the police unambiguously requested and received permission from the student to search the locker. The

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[85]401 U. S. 1003 (1971).

[86]A Legal Memorandum (National Association of Secondary School Principals, September, 1972), p. 2.

[87]Overton v. New York, 20 N.Y. 2d 260, 229 N.E. 2d 283 N.Y. 2d 22 (1967).

search was upheld by the Kansas Supreme Court and the United States Supreme Court denied the student's petition for certiorari.

In this particular case the student thought he had grounds to petition the legality of the search because he had not been given the Miranda warning before the search. The court ruled that the Miranda warning was not applicable to search and seizure generally, and to school student lockers specifically. It further ruled that the validity of a consent to the search of private premises does not depend on the owner's first having been given the warning delineated in the Miranda case.[88]

> The Miranda warning states that an individual subject to arrest must be advised that he has the right to remain silent; that anything he says may be used against him in a court of law; and that, if he cannot afford an attorney, one will be appointed before any further questions are asked.[89]

Two premises were stated in sustaining the legality of the search: (1) consent was given prior to the search; and (2) the student may "own" his locker as against other students but he does not have "ownership" exclusive against the school. A better delineation of the legal nature of the school locker has been brought about by the ruling of the Kansas Supreme Court in the State v. Stein case which was comparable to the Overton case. The ruling stated:

> Although a student may have control of his school locker against his fellow students, his possession is not exclusive

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[88]A Legal Memorandum, op. cit., p. 2.

[89]Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).

> against the school and its officials. A school does not supply its students with lockers for illicit use in harboring pilfered property of harmful substances. We deem it a proper function of school authorities to inspect the lockers under their control and to prevent their use in illicit ways or for illegal purposes. We believe this right of inspection is inherent in the authority vested in school administration and that the same must be retained and exercised in the management of our schools if their educational functions are to be maintained and the welfare of the student body preserved.[90]

A third locker case, In re Donaldson, involved a search of a student's locker for marijuana by the vice-principal, acting on information from a student. Although the search was conducted without the student's consent, the search was held reasonable by the California Court of Appeals.

The Court of Appeals found that:

> . . .the vice principal of the high school was not. . .a governmental official within the meaning of the Fourth Amendment so as to bring into play its prohibition against unreasonable searches and seizures, . .that the school official's search was not to obtain conviction, but to secure evidence of student misconduct, . .that school officials. . .have a responsibility for maintaining order upon the school premises so that the education, teaching, and the training of the students may be accomplished in an atmosphere of law and order.[91]

The Overton and Stein decisions appear to say that school officials may search a student's locker when there is reasonable grounds for such a search without a warrant or the student's permission. Additionally, it seems clear that police have a right to conduct a search when they have "reasonable grounds" to believe that a crime has been committed and that such action

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[90]State v. Stein, 203 Kan. 638, 456 P. 2d 1 (1969), Cert. denied 90 S. Ct. 996 (1970).

[91]In re Donaldson, 269 Cal. App. 2d 509, 75 Cal. Rptr.

would aid in the resolution of the crime.[92]

The search of the person is an area of privacy which cannot be overlooked. In the case People v. Jackson a high school disciplinarian and policeman, being alerted of a student's use of drugs, searched the student off campus without his consent, confiscating drug apparatus. The items were used by the police as "evidence" for arrest. The "evidence" was suppressed at the trial on the grounds that the disciplinarian was acting as a governmental official and searched the student without probable cause.

The decision was reversed by the appellate court, stating that the high school stands "in loco parentis" to the student and that, although the evidence would have been inadmissible if the search had been made by the policeman, because of this "special relationship" the coordinator was not bound by the "probable cause" doctrine and had a duty to investigate suspicions of illegal narcotics use. They ruled that this extended beyond the physical limitations of the school grounds.[93]

Another case involving the search of a person was the State of Delaware v. Baccino in which a high school assistant principal seized a student's coat to compel him to return to class. Based on suspicion of previous use of drugs, the assistant searched his clothing and found narcotics. The student was incarcerated.

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[92]Legal Memorandum, op. cit., p. 3. [93]Ibid.

The Supreme Court of Delaware ruled the evidence admissible:

> For purposes of the Fourth Amendment. . .a school principal's actions are those of a state official and are subject to the Fourth Amendment. This does not mean, however, that the entire law of search and seizure as it applies in the criminal law is automatically incorporated into the school system of this state. The Fourth Amendment is the line which protects the privacy of the individuals including students but only after taking into account the interests of society. In Delaware a principal stands in loco parentis to pupils under his charge for disciplinary action, at least for purposes which are consistent with the need to maintain an effective educational atmosphere. . . . The in loco parentis doctrine is so compelling in light of public necessity and as a social concept antedating the Fourth Amendment, that . . .a search, taken thereupon on reasonable suspicion should be accepted as necessary and reasonable. . . . This standard should adequately protect the student from arbitrary searches and give the school officials enough leeway to fulfill their duties.[94]

Cases dealing with search and seizure of college students are frequently used by courts as guidelines in resolving search and seizure issues arising at the secondary school level. Challenges to dormitory searches have brought many of these cases. For example, in Piazzola & Marinshaw v. Watkins, USCA 5th Circuit, #30332 (April 27, 1971), police searched several rooms without search warrants under the authority of college regulations giving college officers the right to inspect student rooms. A lower court sentenced two students to five years in prison for possession of marijuana.[95]

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[94]State of Delaware v. Baccino, 282 A. 2d 869 (1971).

[95]A Legal Memorandum, op. cit., p. 5.

The appellate court quoted from People v. Cohen, 306 NYS 2d 788 (1968) in reversing its decision and finding the searches and seizures unreasonable: "Certainly, there can be no rational claim that a student will self-consciously waive his Constitutional rights to a lawful search and seizure."

In Moore v. Student Affairs Committee of Troy State University, a contrary view was expressed. The court, in upholding the right of college authorities to search college dormitories, stated:

> The validity of the regulation authorizing search of dormitories thus does not depend on whether a student "waives" his right to Fourth Amendment protection or on whether he has "contracted" it away; rather, its validity is determined by whether the regulation is a reasonable exercise of the college's supervisory duty. In other words, if the regulations--or, in the absence of a regulation, the action of the college authorities--is necessary in aid of the basic responsibility of the institution regarding discipline and the maintenance of an "educational atmosphere," then it will be presumed. . .reasonable despite the fact that it may infringe to some extent on the outer bounds of the Fourth Amendment rights of students.[96]

The guarantees of the Fourth Amendment apply more stringently to a search of the student's person than to a search of the student's property. Therefore, in any contemplated search of a student's person, particularly when this search may lead to criminal charges, a school official should have "probable cause" or justification for immediate search, for example, to prevent injury or loss of evidence.[97]

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[96]Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (1968).

[97]A Legal Memorandum, op. cit., p. 3.

The question of whether evidence discovered as the result of a search that violates Fourth Amendment requirements and, therefore, inadmissible in a criminal proceeding, can be used in an in-school suspension or expulsion proceeding is not entirely clear. At the present time, however, the courts have not specifically disallowed its use, although there is much commentary to the contrary.

The application of Fourth Amendment protection to college dormitory rooms was clearly established by the Piazzola and Moore cases. The other cases seem to conclude that public school lockers are also protected, but that conclusion is not wholly unambiguous. The first Overton opinion of the New York Court of Appeals stated: "It is axiomatic that the protection of the Fourth Amendment is not restricted to dwellings."[98]

Statements about the nature or ownership of the locker can be related to an overall emphasis on the educational setting and the particular relationship between the student and school officials. The cases seem to conclude that the Fourth Amendment may give only limited protection to student lockers, but not that Fourth Amendment protection is entirely lacking.[99]

> Although this law generally allows administrators to search lockers, this should not be viewed as a carte blanche right. As we have seen, students do have some ownership rights, particularly with regard to other students. School officials are charged by the state with operating the schools and safeguarding the health, welfare, and safety of students and school personnel; therefore, when drugs, weapons, or other dangerous materials are suspected, the principal not only has the right but duty to make a thorough investigation.

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[98] Buss, op. cit., p. 28.

[99] Ibid.

> Fishing expeditions as a matter of school policy are not advised. A general search of all lockers in reaction to a bomb threat or widespread drug abuse can be justified as a proper exercise of school authority.[100]

Four different situations in which administrative searches might be made by public school or college officials include:

> 1. The search is part of a general inspection (of lockers or rooms) to maintain standards of cleanliness, sanitation, or neatness. The search does not, in advance, single out a particular student in any way and there is no sanction (or possibly a very minor sanction) for failing to meet the prescribed standards.
>
> 2. The search is designed to locate evidence of an infraction of school or college regulations for which a serious sanction such as expulsion might be imposed. The school or college official making the search is not attempting to enforce the laws of society at large. But the search is focused on a particular student, and it may produce very severe consequences for that student.
>
> 3. This situation is the same as the preceding one except that the school regulation which the student is suspected of violating is, in substance, also a criminal violation. This would be true when the regulation by its own terms prohibits students from "violating the law" (or a particular law) or when substantially the same conduct proscribed by the regulation is also conduct prohibited by criminal law.
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> 4. The "administrative" search is undertaken not to enforce a school or college rule, but for the express purpose of obtaining evidence that a student has committed a criminal offense.[101]

A search, of course, may be made by a police officer with a valid warrant or in connection with a valid arrest. If police are involved, however, parents should be notified and the principal or other school official should be present at the time

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[100] A Legal Memorandum, op. cit., p. 6.

[101] Buss, op. cit., p. 34.

of the search. In all instances a complete report of the incident, together with witnesses and other pertinent information, should be immediately recorded.[102]

Principals and school boards should give further serious study to this constitutional issue, with the help of counsel, before setting firm policies for their schools. There is great need for "prior notice" to the student body and faculty when a policy has been agreed upon or has been amended by school authorities.

In the spirit of due process, the following general guidelines might well be taken into account when personally making a search of the student and/or his property.

1. The student should be present when his property is searched.

2. The presence of a third party as witness could well prevent many kinds of countercharges.

3. Although not legally required in a strict sense, an attempt to secure prior student consent would promote student-administrative relationships.[103]

Privacy--Student Record Information and the Fourth Amendment (Search and Seizure)

Closely related to the question of police at school and to the Fourth Amendment, which has been held to protect the right of privacy, is the issue of the accessibility of the records a school maintains about a student. "Virtually all school systems maintain extensive records that go well beyond the academic," a Russell Sage Foundation study established not long ago. Yet, despite the fact that records often go extensively into a student's personal and family background and health, and contain teachers' opinions and

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[102] A Legal Memorandum, op. cit., p. 6.

[103] Ibid.

> observations, all too few school systems have well defined policies about how these records may be used and to whom they may be released.[104]

In the early nineteenth century when schools were small and curricula simple, records typically consisted of attendance notes and examination grades. No longer do schools merely provide instruction: they are now responsible to society for identifying and fostering ability, overcoming deficiencies of all kinds, and maximizing personal growth in general.[105]

Concomitantly, the amount of information kept in school records has increased rapidly. Sociological and psychological data of all kinds, as well as more sophisticated measures of educational progress, have become an integral part of the modern school record.[106]

The accumulation of all this information on students and their families has its inherent dangers, and principals, counselors, and teachers have not been insensitive to them. With possession of such information comes the responsibility to protect it and use it judiciously. A variety of formal and informal procedures have been developed in an attempt to reconcile the the conflicting claims of the school's need for information about students and the pupil's (and his family's) right to privacy.[107]

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[104] Litigation Packet, op. cit., p. 429.

[105] Vivian S. Teitelbaus and David A. Goslin, "The Russell Sage Guidelines: Reactions from the Field," Personnel and Guidance Journal, Vol. L, No. 4 (December 1971), p. 311.

[106] Ibid., p. 312.

[107] Ibid.

The Russell Sage Foundation held a conference in May 1969 on the ethical and legal aspects of school record-keeping. The report of the conference, Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records, is summarized below.

1. No information should be collected about students without the informed consent of parents and, in some cases, the child. Whether such consent should be obtained individually or through the parents' representatives (e.g., the school board) depends on the information.

2. Information should be classified so that only the basic minimum of data appears on the permanent record card, while the rest is periodically reviewed and, if appropriate, destroyed. These types of data should also be treated differently in terms of access to them.

3. Schools should establish procedures to verify the accuracy of all data maintained in their pupil records.

4. Parents should have full access to their child's records, including the right to challenge the accuracy of the information found therein.

5. No agency or persons other than school personnel who deal directly with the child concerned should have access to pupil data without parental or pupil permission (except in the case of a subpoena).[108]

The dilemma, nevertheless, will not be entirely resolved merely because boards adopt more guarded ways of keeping records. School boards have the dual responsibility for protecting the right of individual privacy while complying with the right of the people to know. In order to accomplish this, they must develop a comprehensive plan for the management of pupil personnel records based on the constraints established by individual

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[108]Russell Sage Foundation, Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records (New York: Russell Sage Foundation, 1970), p. 6.

state laws regulating access to the records. The recommendations that follow are designed not only to protect the privacy of the individual schoolchild but also to open to inspection all school records required by law.

1. Each school board should establish specific regulations governing the management of pupil personnel records. The board's regulations should describe in detail the extent of confidentiality of the different kinds of information that are collected about a child. Regulations should state clearly which kinds of information may be released, to whom, and under what conditions. The regulations also should describe how the different categories of information are to be filed and what security is necessary for their safekeeping. An administrator should be designated and given primary responsibility for the supervision of pupil personnel records.

2. Not all records gathered by the school should be considered part of the child's cumulative folder. The records should be physically divided into categories according to the extent of confidentiality. The extent of confidentiality will determine to whom the records can be legally released. And, above all, nothing other than essential data should be retained.

3. A record should be made and kept of all releases of pupil information. This record should include the names of the persons giving and receiving the information, the reason for and the date of release.

4. No information concerning pupil personnel records of a restricted nature should be released by telephone. The administrator made responsible for the records must be certain of the identity of the person with whom he is dealing.

5. The authorized school records custodian or his representative should be present during any inspection of records. This person should have the necessary knowledge to interpret the data that are being inspected.

6. School districts should not release information not originated by them. Information such as psychological or medical evaluation done by another agency must be released by that agency.

7. Each request for inspection of information should be handled separately unless it is for the purpose of research studies. In the release of information for research studies, the information must be handled in such a way that individual pupils cannot be identified.

8. Inspection of pupil personnel records by anyone--including teachers and other members of the professional staff--should be allowed only when these persons are working directly with the child. Examination of records merely to satisfy curiosity should not be allowed and should be forbidden by specific board rule.[109]

Although the cases presented on the subject of privacy of school records must be read in the light of the U. S. Constitution and pertinent state statutes, they illustrate a willingness of the judiciary to examine the procedures, regulations, and attitudes of our schools regarding pupil personnel records and to hear and resolve those cases where rights to privacy are infringed.[110]

Cases with many legal issues have come about regarding "public vs. private" character of public school records. The courts have not clearly decided on the central question of whether or not student records are public. Specifically, many courts have used the term "quasi-public" to explain their legal status. Public records are generally defined as those being open to all with "lawful, proper, and legitimate interest," for example, police, researchers, journalists, employers, etc.; and quasi-public records defined as those open only to "real parties in interest," for example, pupil's parents, legal counsel, and attending physician. Although some statutes provide limited protection for student records, a number do not provide

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[109]Floyd A. Vanderpool Jr., "A Guide for Keeping Student Records and Getting Rid of Them" (New York: Chronicle Guidance Publications, Inc., n.d.), p. 2.

[110]A Legal Memorandum, op. cit., p. 1.

administrators with guidelines to determine informal access to records by students, parents or police.[111]

A landmark case, Van Allen v. McCleary, granted to a parent a petition for a writ of mandamus. The issue arose when a father, acting on advice of school officials, employed a private physician to administer psychological counseling to his son. There was a great need to examine all of the student's school records. The father's and physician's requests were denied. The New York Supreme Court held that a parent is entitled as a matter of law to inspect his child's school records.

In granting the parent's request, the court stated:

> Petitioners rights, if any, stem not from his status as taxpayer seeking to review the records of a public corporation, but from his relationship with the school authorities as a parent who under compulsory education has delegated to them the educational authority over his child. Thus, the common law rule to the effect that when not detrimental to the public interest, the right to inspect records of a public nature exists as to persons who have sufficient interest in the subject matter, is a guide.
>
> [The court] needs no further citation of authority to recognize the obvious "interest" which a parent has in the school records of his child. We are, therefore, constrained to hold as a matter of law that the parent is entitled to inspect the records.[112]

The court's decision established important rules for the confidentiality of student records.

> Acting in a case brought by the New York Civil Liberties Union in behalf of a city pupil and her mother, New York State Education Commissioner Ewald Nyquist ruled on February 25, 1972 that parents have a right to see all

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[111] Ibid.

[112] Van Allen v. McCleary, 211 N.Y.S. 2d 501 (1961).

> school records concerning their children, including teacher's comments, guidance notes and other informal data that are placed in a student's file. This ruling is a significant step beyond McCleary, which expressly stated that the parent's right did not extend beyond access to the student's official school records. While the ruling does not have the binding effect of state law or administrative regulations, Nyquist has indicated that his ruling represents the firm policy of the Commissioner's office and the state department of education. The Nyquist ruling directed that the full contents of the student's records be made available for inspection by her parents. A fair interpretation of the ruling would allow parents access to such data as teacher notes, guidance data, record books and correspondence and reports from social agencies, etc.[113]

The issue of privacy and the parent/student right to see and challenge high school recommendations to college admissions offices was upheld by the court in a landmark case, Creel v. Brennan. The long held assumption that communications between a high school and college admissions office are a protected privilege and confidential matter was challenged and rejected.[114]

The right of high school officials, however, to include non-academic disciplinary material in recommendations to college admissions offices was upheld in Einhorn v. Maus. The court stated:

> School officials have the right and, we think, a duty to record and to communicate true factual information about their students to institutions of higher learning, for the purpose of giving to the latter an accurate and complete picture of applicants for admission.[115]

Of significant note to educators, in Elder v. Anderson, the court upheld a student's right to recover damages for

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[113]Litigation Packet, op. cit., p. 430.

[114]Creel v. Brennan (Bates College Case), No. 3572, Superior Court of Androscoggin City, Maine (1968).

[115]Einhorn v. Maus, 300 Supp. 1169 (1969).

improper release of information about him.

It is doubtful if pupil personnel records can be kept confidential from the pupil and parent if the issue is challenged in the courts. The right to inspection is generally given by common law to persons with "real interest." Common law privilege is generally given in those states not having legislation on confidentiality of student records.

> Attorneys who represent parents/students in a school related action often find themselves in need of overall statistics about the school or school system. Included in this data might be such things as statistics about racial composition, test scores, tracks, college access, records of school practices, names and addresses of students or school personnel, financial data on the school system, and other school records and information. The general public has a right to much of this information. Federal law requires local educational authorities to retain vast bodies of data as a precondition to receiving funds under various federal programs. Data to which the public does not have an automatic right of access may be easy prey for interrogatories, subpoenas and other discovery devices.[116]

The cases that follow delineate some of the situations which have dealt with access to the kinds of statistics and information mentioned.

Marmo v. New York City Board of Education involved an individual charged with a crime. It was requested that the board of education grant permission to inspect school records for names and addresses of high school classmates. The board denied the request based on confidentiality. The court, in ruling that a "sufficient interest" was known, upheld the parent/student right to classmates' names and addresses for the purpose

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[116]Litigation Packet, op. cit., p. 430.

of legal defense. In reaching its decision, the court quoted the court in the case of Werfel v. Fitzgerald:

> Where the defense of the person accused of a crime requires access to public records or even to records sealed from general examination, the right of inspection has a greater sanction and must be enforced.[117]

In the Board of Trustees of Calaveras Unified School District v. Leach, the court held that a grand jury may not compel the district to open its personnel records. School personnel were denied access to their own personnel records. The court's decision was based on the fact that the local school district needed to maintain a degree of confidentiality in personal matters. The personnel records are not "public" even to the personnel themselves. The court ruled:

> Further, the personnel records of the district are maintained as confidential files; it is common knowledge that such matters are among the most confidential and sensitive records kept by a private or public employer and their use remains effective only so long as the confidence of the records, and the confidence of those who contribute to those records, are maintained. It does not matter that here the employees themselves sought disclosure of the records; the records are the property of and are in the custody and control of the district, not the employees.[118]

It is presumed that the decision would also serve as a rationale to deny parent/student access to school personnel records.

The confidentiality issue was involved in the case, Wagner v. Redmond, when appointed school officials were compelled

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[117]Werfel v. Fitzgerald, 260 N.Y.S. 2d 791 (1963).

[118]Board of Trustees of Calaveras Unified School District v. Leach, 65 Cal. Rptr. 588 (1968).

to allow school board members access to student records for the purpose of obtaining names and addresses of students.[119] In another case, King v. Ambellan, the superintendent of schools was compelled to make available to a member of the board of education certain school records of students for inspection. The court, in upholding the ruling, stated:

> Where a teen-age program designed to help young with special problems in education or social adjustment or both was put into effect by Board of Education and personnel was employed and engaged in the program, a member of Board of Education, was opposed to program and who desired to send letter expressing his opposition to parents of each child participating in program, was entitled to names of young people enrolled in project. The majority members of Board of Education could not by resolution restrict right of the opposing board member to inspect official records kept by Board of Education or its employees of business and affairs of the school district.[120]

One could conclude that students and their parents have a right to see and challenge all school records concerning the student. Defamation actions are increasingly brought against school authorities as they relate to a student's character evaluation. "An institution might presently be enjoined from giving 'unreasonable' publicity to the private lives of its students, or otherwise be held to account for an invasion of privacy" as stated by the American Bar Association's Section of Individual Rights and Responsibilities. The Association suggests:

> To minimize the risk of improper disclosures, academic records should be kept separate from disciplinary records. The conditions of access to each should be set forth in an

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[119]Wagoner v. Redmond, 127 So. 2d 275 (1960).

[120]King v. Ambellan, 173 N.Y.S. 2d 98 (1958).

> explicit policy statement. Transcripts of academic records should contain only information about academic status. Information from disciplinary or counseling files should not be available to unauthorized persons within the institution or to any person outside the institution without the express consent of the student involved except under legal compulsion or in cases where the safety of persons or property is involved. No records should be kept which reflect political activities or beliefs of students. Special provision should be made to prevent misuse of old disciplinary records of former students. A student should have access to his records under reasonable circumstances. Administrative staff and faculty members should respect confidential information about students which they acquire in the course of their work. Students are likewise bound to respect the confidentiality of the files and records of faculty and administrators.[121]

Most educators would agree that every school system should have well defined plans on access to student records. If a demand is made for examination of school records, a well delineated policy will prevent unnecessary conflict and confusion.

Right of Privacy and the Fifth and Fourteenth Amendments (Procedural Due Process and Citizenship Rights)

When the Supreme Court declared in a 1967 ruling (In re Gault, et al.) that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone," it reinforced for students of all ages access to the right to "due process of law" which both the Fifth and Fourteenth Amendments guarantee. That the right is fundamental, even though perhaps often denied to students, is widely accepted.[122]

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[121] American Bar Association, Code of Professional Responsibility and Canons of Judicial Rights, 1969, p. 16.

[122] Student Rights and Responsibilities, op. cit., p. 27.

The Fifth Amendment provided that:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.[123]

The Fifth Amendment's right against self-incrimination and the provision for due process are partially based on the individual's right to be let alone.

> The right against self-incrimination is a major judicial procedure aimed at achieving justice and the protection of other human-civil rights. This right stems from the long established belief that no person should be forced to convict himself, particularly since the law for centuries had resorted to torture in order to obtain confessions. It is also assumed that innocent people should be protected from remarks which might make them appear to be guilty and the belief also that the major burden of proof should be on government to prove guilt.[124]

It is due process that assures the preservation of private rights against government encroachment. So a principal, representing authority in school, must be careful to ensure due process to dissidents just as he himself expects to be protected from arbitrary tactics on the part of the police or the law courts, representing authority in the larger society.[125]

Due process may be defined as a course of legal proceedings in accordance with the rules and principles established for

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[123]U.S. Constitution, Amendment V.

[124]Teacher Education in Human Rights, op. cit., p. 43.

[125]Ackerly, op. cit., p. 3.

the enforcement and protection of individual rights.[126]

Public school behaviors which exemplify commitment to this right include:

1. Teachers or school administrators or school committees do not exercise unfair pressure or undue influence on students in an effort to implicate them in disruptive problems or situations which arise at school.

2. The school attempts to keep student organizations or groups from exerting influence on students which might constitute an invasion of this right.

3. Students are assumed to be innocent until proven guilty.[127]

The Fourteenth Amendment, Section 1 defines citizenship and specifies certain privileges which citizens of the United States possess. The amendment provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any citizen of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.[128]

The due process clause of the Fourteenth Amendment is becoming increasingly significant for public school students throughout the country. A growing trend of authority is firmly establishing that due process entitles a public school secondary student to a hearing before he is subjected to severe punishment such as expulsion or suspension for the remainder of the semester

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[126] Ibid.

[127] Teacher Education in Human Rights, op. cit., p. 43.

[128] U.S. Constitution, Amendment XIV, Sec. 1.

or school year.[129]

Despite this trend, many public school students in numerous districts apparently have not received fair hearings and other procedural safeguards.

The scenarios in the cases are familiar: a student is told that he has been suspended (expelled, transferred) from school, often with no prior warning or indication of the charges against him. The parents are invited to attend a "conference" to be informed of the problem. The student may or may not be reinstated. On many occasions, neither the student nor his parents are given the opportunity, or the means, to challenge the accusations made by the school authorities.[130]

The case of Jones v. Gillespie emphasized procedural due process and the court's strong disapproval of many typical suspension arrangements. The procedure by which students were suspended from school was challenged by a student and his parents. The plaintiff represented the class of all students in the Philadelphia public schools. The plaintiff made known to the court that students were often suspended for long periods of time without receiving a fair hearing. The case resulted in a consent decree that:

> 1. Defendants, their agents, employees, and all others acting in concert with them, are hereby enjoined from suspending any student in the School District of Philadelphia from school attendance for a period longer than five days

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[129]Robert A. Butler, "The Public High School Student's Constitutional Right to a Hearing," Clearinghouse Review, Vol. V, No. 8 (December 1971), p. 1.

[130]Litigation Packet, op. cit., p. x.

> unless such longer suspension is authorized by the School Board of defendant School District or a committee thereof after proper hearing. A suspension shall not be deemed to exceed five days where a suspended student has been notified to return to school before five days but fails to do so through no fault of defendants.
>
> 2. In furtherance of this decree, defendant School District shall establish, by written regulations, effective procedures to ensure conformity to the aforesaid provisions of this decree, and defendant School District shall, in the preparation of such regulations, consider matters including but not limited to: formation of the hearing committee, notice by the principal to the committee, time, place, notice to the student, right to counsel, evidence to be considered, form of hearing and appeals therefrom, and consequences of failure to hold a hearing within five days.[131]

The principal must, in the final analysis, exercise the authority and assume responsibility for the proper application of all rules. The rule of law, not the rule of personality, should be his guide.[132]

Therefore, rules regulating behavior in the school should reflect the school authorities' obligation to respect the constitutional rights of students and to require a mature sense of responsibility on the part of students toward others and toward the school.[133]

Comparison of State and Federal Constitutions on Right of Privacy

Evidence of protection of man's privacy against intrusion by state governments were searched through respective

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[131] Jones v. Gillespie (ct. of Comm. Pl., Phila., 22 April 1970): Complaint, Interrogatories, Brief, Court Order.

[132] Ackerly, op. cit., p. 16.

[133] Ibid.

constitutions of the fifty states. A Bill of Rights was contained in all of the state constitutions which provided basically the same protection as did the federal constitution. The amendments of the state and federal constitutions in regard to individual privacy provided constitutional protection against government invasion alone. Through state statutes and law of torts, invasions of privacy by private individuals was forbidden. The amendments of the Bill of Rights pertinent to the study include the First, Fourth, Fifth and Fourteenth Amendments. See Table 1 for findings.

State Statutory References for Access to Public Records

(inferences for access to pupil personnel records)

State statutory provisions were examined to determine access to public records. Statutory provisions for inspection of public records were very important in this study because inferences could be drawn regarding access to pupil personnel records which are considered public or quasi-public. A definition of public records which were open or closed, and to whom, plus any provision for duplicating records that were open were searched for in the statutes of each state. The investigation of statutory provisions of public records to determine access to pupil personnel records was based on the right of privacy. See Table 2.

The pertinent statutory provisions were, therefore, examined for each state. It was found that forty-four of the fifty state statutes listed at least one reference to public

inspection of public records. Open records varied considerably from state to state. Most states provided that all records of all offices using public funds be open. A few states regulated possession or access of records to state, county, and municipal records only. A few states listed school board records as definitely open. The majority of the states provided exceptions to open records provisions.

TABLE 1

COMPARISON OF STATE AND FEDERAL CONSTITUTIONS ON RIGHT OF PRIVACY

U.S. Const. Amend.:	I.--Freedom of religion, speech, press	IV.--Searches & seizures	V.--Right of accused	XIV.--Citizenship rights/ Inalienable rights
	Art. & Sec.	Art. & Sec.	Art. & Sec.	Art. & Sec.
Alabama	1-3, 4	1-5, 1	1-6	1-1
Alaska	1-4, 5	1-14	1-9	1-1
Arizona	2-6, 12	2-8	2-10	- -
Arkansas	2-6, 24	2-15	2-8	2-2
California	1-4, 9	1-19	1-13	1-1
Colorado	2-4, 10	2-7	2-16	2-3
Connecticut	1-3, 4	1-7	1-8	- -
Delaware	1-1, 5	1-6	1-7	- -
Florida	1-3, 5	1-7	1-10	1-1
Georgia	1-2-112, 2-115	1-2-116	1-2-106	- -
Hawaii	1-3	1-5	1-11	1-2
Idaho	1-9	1-17	1-13	1-1
Illinois	2-3, 4	2-6	1-9	2-1

TABLE 1--Continued

U.S. Const. Amend.:	I.--Freedom of religion, speech, press	IV.--Searches & seizures	V.--Right of accused	XIV.--Citizenship rights/ Inalienable rights
	Art. & Sec.	Art. & Sec.	Art. & Sec.	Art. & Sec.
Indiana	1-2, 9	1-11	1-13	1-1
Iowa	1-3, 7	1-8	1-10	1-1
Kansas	BR[a]-7, 11	BR-15	BR-10	BR-11
Kentucky	BR-5, 8	BR-10	BR-11	BR-1
Louisiana	1-4, 3	1-7	1-11	- -
Maine	1-3, 4	1-5	1-6	1-1
Maryland	Art. 36, 10, 41	- -	Art. 22 J	- -
Massachusetts	Pt.[b] 1-Art. 2, 16	Pt. 1 Art. 14	Pt. 1 Art. 12	Pt. 1 Art. 1
Michigan	1-5	1-11	1-20	- -
Minnesota	1-3, 16	1-10	1-7	- -
Mississippi	3-18	3-23	3-26	- -
Missouri	1-5, 8	1-15	1-19	1-2

TABLE 1--Continued

U.S. Const. Amend.:	I.--Freedom of religion, speech, press	IV.--Searches & seizures	V.--Right of accused	XIV.--Citizenship rights/ Inalienable rights
	Art. & Sec.	Art. & Sec.	Art. & Sec.	Art. & Sec.
Montana	3-4, 10	3-7	3-18	3-3
Nebraska	1-4, 5	1-7	1-12	1-1
Nevada	1-9	1-18	1-8	1-1
New Hampshire	Pt. 1-5, 22	Pt. 1-19	Pt. 1-15	- -
New Jersey	1-3, 6	1-7	1-10	1-1
New Mexico	2-11, 17	2-10	2-15	2-1
New York	1-3, 8	1-12	1-6	- -
North Carolina	1-20, 26	1-15	1-11	1-5
North Dakota	1-4, 9	1-18	1-13	1-1
Ohio	1-7, 11	1-14	1-10	1-1
Oklahoma	2-22	2-30	2-21	2-2
Oregon	1-1, 2, 8	1-9	1-12	1-1
Pennsylvania	1-7	1-8	1-9	1-1

TABLE 1--Continued

U.S. Const. Amend.:	I.--Freedom of religion, speech, press	IV.--Searches & seizures	V.--Right of accused	XIV.--Citizenship rights/ Inalienable rights
	Art. & Sec.	Art. & Sec.	Art. & Sec.	Art. & Sec.
Rhode Island	1-3	1-6	1-13	- -
South Carolina	1-4	1-16	1-17	- -
South Dakota	6-3, 5	6-11	6-9	6-1
Tennessee	1-3, 19	1-7	1-9	- -
Texas	1-6, 8	1-9	1-10	- -
Utah	1-4, 15	1-14	1-12	1-1
Vermont	Ch.[c]1 Art. 1, 13	Ch. 1 Art.11	Ch. 1 Art. 10	Ch. 1 Art. 1
Virginia	1-12, 16	1-10	1-8	1-1
Washington	1-5, 11	1-7	1-9	- -
West Virginia	3-7, 15	3-6	3-14	1-1
Wisconsin	1-3, 18	1-11	1-8	1-1
Wyoming	1-18, 20	1-4	1-11	1-2

a = Bill of Rights
b = Part
c = Chapter

TABLE 2

STATUTORY REGULATIONS RELATIVE TO ACCESS TO PUPIL PERSONNEL RECORDS AS OF 1972

Name of state	Specifically open	Implied open	Specifically closed	Implied closed
Alabama		Title 41, Sec. 145		
Alaska				Sec. 9.25.12d
Arizona		39-121 15-201		
Arkansas			Act 93 of 1967 Sec. 4	
California			Art. 6 Sec. 10751	
Colorado			Open Records Bill 1967 Sec. 4 Part 3-a	
Connecticut			10-209	
Delaware				*
Florida		Chap. 119 Sec. 119.01		
Georgia		Chap. 40-27 Sec. 40-2701		
Hawaii		Chap 7A Sec. 7a-1		
Idaho		59-1009		
Illinois		Sec. 43.5, 43.6		
Indiana		Chap. 6 Sec. 57-602, 57-603, 57-605		
Iowa				*

TABLE 2--Continued

Name of state	Specifically open	Implied open	Specifically closed	Implied closed
Kansas		45-201		
Kentucky		Sec. 171.650		
Louisiana		Title 44 Sec. 2, 3, 4, 5, 7		
Maine				Chap. 13
Maryland				*
Massachusetts		Chap. 66 Sec. 10		
Michigan			Chap. 21 600.2161	
Minnesota		Chap. 15 Sec. 15, 17		
Mississippi			6225-02	
Missouri				Sec. 109.180
Montana				Title 93 Sec. 93-1001
Nebraska				Sec. 84-712.01
Nevada		Sec. 239.010		
New Hampshire			91-A:5	
New Jersey	18A:36-19			
New Mexico	Chap. 71 Sec. 71-5-2			
New York				*
North Carolina		Chap. 132 Sec. 132-1		
North Dakota		Sec. 44-04-18		

TABLE 2--Continued

Name of state	Specifically open	Implied open	Specifically closed	Implied closed
Ohio		Sec. 149.43		
Oklahoma			Title 70 Sec. 6-16	
Oregon				Sec. 192-005 Par. 6
Pennsylvania				Title 65 Sec. 66.1 Par. 2
Rhode Island				*
South Carolina				9-11; 9-12
South Dakota		Title 48 Sec. 48-0701		
Texas				5441A Par. 1, 2
Tennessee		Title 15 Sec. 15:304 15:305		
Utah				78-26-2
Vermont				*
Virginia				17-43
Washington		40.04.010		
West Virginia				*
Wisconsin	Sec. 18.01 Par. 1			
Wyoming			9-692.2 (viii)	

*Open Public Records were mentioned in the statutes. It was, therefore presumed that Pupil Personnel Records were closed by implication.

CHAPTER III

INSTITUTIONAL COMMITMENT TO THE RIGHT OF PRIVACY

The exercising of a right must be tempered with responsibility for insuring that no real threat be posed to the enjoyment of legitimate rights of all individuals on the part of others. The right of privacy as a legitimate right should involve school faculties in activities designed to identify and describe institutional behaviors or practices which demonstrate a concern for and a commitment to human rights.[134]

Chapter III is limited to the study of the institutional commitment to the right of privacy with emphasis on behaviors and practices of school personnel: the administrator, the teacher, and the counselor. A study of various professional organizations and associations was made to determine the trend or direction taken recently by professional organizations and personnel officers in regard to the right of privacy.

Actions of Professional Organizations Regarding Privileged Communication

In our country each individual has the right to be left alone and to be protected from unauthorized publicity in his

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[134]Teacher Education in Human Rights, op. cit., pp. 21, 24.

essentially private affairs, including his communication in certain relationships. For the sake of the good order of society, the law will not permit such communications to be divulged.[135]

Through statutory law and common law, husband and wife, parent and child, and attorney and client have protection of nondisclosure. Many states provide protection of nondisclosure to the physician, clergyman, psychiatrist, and psychologist. Journalists and accountants in a few states have legal privileged communication.

Pardue, Whichard, and Johnson found that in order for communications to be regarded as confidential in a professional relationship, they must meet the following criteria:

> (a) Originate with the understanding that they will not be disclosed.
>
> (b) Be essential for the maintenance of the relationship.
>
> (c) Be fostered because the community desires it. Be maintained with the understanding that harm to the relationship would be greater than good incurred in litigation.
>
> (d) In order for them to be regarded as privileged against compulsory disclosure, they must also be legally authorized by statute or case precedent.[136]

A number of state professional associations are wanting more than the standard ethical code in regard to the right of privacy and confidentiality. Active counselors in these associations are attempting to gain the right of privileged

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[135]L. R. Caruso, "Legal Aspects of Privacy and Confidentiality of Student Files and Records," The College Counsel, Vol. IV (1969), p. 26.

[136]Jerry Pardue, Willis Whichard, and Elizabeth Johnson, "Limiting Confidential Information in Counseling," Personnel and Guidance Journal, Vol. 49, No. 1 (1970), p. 15.

communication through legislation. The main purpose behind the movement is to offer counselors a relationship in which they feel free to speak their opinions without fear of disclosure.

The privilege of confidentiality is generally agreed to be essential where information of a private and personal nature, which may either be incriminating or "just no one else's business," is necessary to the effectiveness of a socially-accepted, interpersonal relationship. Wigmore, in his monumental treatise on evidence, describes four fundamental conditions under which a privilege arises:

> A privilege exists, for persons making or receiving a communication not to disclose the communication, whenever (1) the communication originated in mutual confidence that it would not be disclosed; and (2) the confidentiality of such communication, by securing freedom of consultation, is essential to the efficient maintenance of some intimate relation between those persons; and (3) the relation is one deemed by the community to need to be thus indirectly fostered; and (4) the injury to that relation, caused by risk of the disclosure of the communication, would be more serious than the injury to justice caused by the option of its suppression.[137]

Guidance counselors should know under what conditions and to whom, and only to whom, they must make use of privileged communications without being in danger of legal action for libel and slander. Liability insurance can be purchased, and legal advice should be sought when doubts arise; but these protective steps can only supplement a basic working knowledge of any

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[137]John H. Wigmore, Wigmore's Code of the Rules of Evidence in Courts of Law (Boston: Little, Brown and Company, 1942), p. 29.

prevailing limitations.[138]

Although there is no standard model statute for privileged communication for counselors, Geiser and Rheingold suggest a model to follow:

> A client, or his authorized representative, has a privilege to prevent a witness from disclosing, in any judicial, administrative, or legislative proceeding, communications pertaining to the diagnosis or treatment of the client's mental or emotional disorder, or difficulty in personal or social adjustment between the client and any of the following: a member of a mental health profession, any other professional or lay person who participates with such a member of a mental health profession in the accomplishment of individual or group diagnosis or treatment, or members of the client's family, or between any of these persons as concern diagnosis or treatment.[139]

The value of such legislative provisions continues to be a topic of considerable concern and debate. The American Personnel and Guidance Association has not made a sustained effort to obtain privileged communication for its members. Perhaps the guidelines provided in the 1961 Ethical Standards of APGA will help local jurisdictions and institutions to reconcile competing principles and form adequate supplementary policies.

The American Personnel and Guidance Association outlines the following on ethical responsibility:

> 1. The member's primary obligation is to respect the integrity and promote the welfare of the counselee or client with whom he is working.

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[138]T. M. Carter, "Professional Immunity for Guidance Counselors," Personnel and Guidance Journal, Vol. I, No. 33 (1954), p. 130.

[139]R. L. Geiser and P.D. Rheingold, "Psychology and Legal Process: Testimonial Privileged Communication," American Psychologist, Vol. 19 (1964), p. 836.

2. The counseling relationship and information resulting therefrom must be kept confidential consistent with the obligations of the member as a professional person.

3. Records of the counseling relationship including interview notes, test data, correspondence, tape recordings, and other documents are to be considered professional information for use in counseling, research, and teaching of counselors but always with full protection of the identity of the client and with precaution so that no harm will come to him.

4. The counselee or client should be informed of the conditions under which he may receive counseling assistance at or before the time he enters the counseling relationship. This is particularly true in the event that there exists conditions of which the counselee or client would not likely be aware.

5. The member reserves the right to consult with any other professionally competent person about his counselee or client. In choosing his professional consultant, the member must avoid placing the consultant in a conflict of interest situation, i.e., the consultant must be free of any other obligatory relation to the member's client that would preclude the consultant being a proper party to the member's efforts to help the counselee or client.

6. When the member learns from counseling relationships of conditions which are likely to harm others over whom his institution or agency has responsibility, he is expected to report the condition to the appropriate authority, but in such a manner as not to reveal the identity of his counselee or client.

7. In the event that the counselee or client's condition is such as to require others to assume responsibility for him, or when there is clear and imminent danger to the counselee or client or to others, the member is expected to report this fact to an appropriate responsible authority, and/or take such other emergency measures as the situation demands.[140]

The American Personnel and Guidance Association issues most policy statements on this subject. Other groups are interested in the problem however. For example, the Academic Freedom

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[140]American Personnel and Guidance Association, Code of Ethics (Washington, D.C.: APGA, 1961), p. 1.

Committee of the American Civil Liberties Union (ACLU) has adopted a statement entitled "Teacher Disclosure of Information about Students to Prospective Employers." ACLU believes the teacher-student relationship is a "privileged" one, that the student does not normally expect that his utterances in the classroom, his discussions with teachers, or his written views will be reported outside the college or school community.[141]

The National Education Association's Code of Ethics, in describing teacher obligations with regard to the guidance of youth, specifies that teachers should:

> Respect the right of every student to have confidential information about himself withheld except when its release is to authorized agencies or is required by law.
>
> Refrain from discussing confidential and official information with unauthorized persons.[142]

Regardless of the positions of the professional organizations, however, and regardless of the possibility that the courts might be expected to uphold the counselee's right of privacy if he were to bring suit to establish it, the fact that the effectiveness of counseling depends to a great degree upon the confidentiality which the counseling relationship implies cannot be disregarded. Therefore, a gesture for stronger professional security in keeping secret the client's personal communication through state legislation should be a primary

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[141]John D. Killian, "The Law, the Counselor and Student Records," Personnel and Guidance Journal, Vol. 48, No. 6 (1970), p. 425.

[142]National Education Association, Code of Ethics (Washington, D. C.: NEA, 1952), p. 1.

goal.[143]

State Legislation

Reflection makes it evident that the privilege in question is intricately linked with the entire process of professionalization. Two different possibilities for securing the privilege of confidentiality for counselees are open to school counselors or professional organizations of counselors. First, they may test the attitude of the courts by claiming privileged communication status and refusing to testify to the personal, confidential information given them by counselees if subpoenaed by a witness. Second, in their respective states they may press for legislation which will recognize the confidential nature of the information with which they work.[144]

The rationale for introducing such a statute echoes a sublime note for the counseling cause. "No other professional worker is so accessible, particularly at the emergence of problems when timely involvement or referral will make such a significant contribution to the effective development of individuals."[145]

Proponents of legislation point out that privileged communication is necessary because counselors are becoming increasingly involved with youthful clients who are engaging in illegal acts. If the counselor is to remain relevant and effective, he must be able to protect the privacy of his client's

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[143]Westley Huckins, Ethical and Legal Considerations in Guidance (Boston: Houghton-Mifflin Company, 1968), p. 20.

[144]Ibid., p. 33.

[145]Wisconsin Assembly Bill 850.

communication to him.

Organizational efforts have been made in North Dakota, Michigan, Indiana, and Idaho as related to privileged communication for school counselors. Privileged communication laws for school counselors have been introduced in other states, but had not been passed by this writing. There are conflicting points of view as to the extension of legal protection for counselors. The legal profession in particular is generally opposed to granting privileges to newer professions. Lay people are also sometimes suspicious of the motives and professionalism of those who try to uphold the right to maintain confidentiality.[146]

If the motivation stems largely from a selfish, status-oriented need, legislation will provide dubious security. Counselors in need of a law to buttress up their own status insecurities or to be used to cloak counseling privacy will find that such motivation has detrimental effects.[147]

Opinions have varied regarding the desirability of privileged communication and resultant professional immunity for counseling in professional education. Through continuous efforts of the North Dakota Guidance and Counseling Association, school administrators, the Department of Public Instruction and interested legislators, the North Dakota legislature passed a

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[146]L. Litwack, D. Rochester, R. Oates, and W. Addison, "Testimonial Privileged Communication and the School Counselor," The School Counselor, November 1969, p. 110.

[147]Eldon M. Gade, "Implications of Privileged Communication Laws for Counselors," The School Counselor, January 1972, p. 150.

privileged communication bill in 1969 which reads:

> For the purpose of counseling in a school system, any elementary or secondary school counselor possessing a valid North Dakota Guidance credential from the Department of Public Instruction, and who has been duly appointed a counselor for a school system by its proper authority, shall be legally immune from disclosing any privileged or confidential communication made to such counselor in a counseling interview. Such communication shall be disclosed when requested by the counselee.[148]

Attesting to the soundness and reception of the bill was the fact that the House of Representatives passed the bill 93 to 0, while the Senate voted for it 32 to 15.

A Michigan statute explicitly provides protection for the school counselor by stating:

> No teacher, guidance officer, school executive or other professional person engaged in character building in the public schools or in any other educational institution, including any clerical worker of such school and institutions, who maintains records of students' behavior or who has such records in his custody, or who receives in confidence communications from students or other juveniles, shall be allowed in any proceedings, civil or criminal, in any court of this state, to disclose any information obtained by him from such records or such communications, nor to produce such records or transcript thereof, except that such testimony may be given, with the consent of the person so confiding or to whom such relate, if such person is 21 years of age or over, or if such a person is a minor with consent of his parent or legal guardian.[149]

The Indiana statute, passed in 1965, states that:

> Any counselor duly appointed or designated as a counselor for the school system by its proper officials and for the purpose of counseling pupils in such school system shall be immune from disclosing any privileged or confidential communication made to such counselor as such by any pupil herein referred to. Such matters so communicated shall be privileged

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[148]North Dakota Century Code, Section 31-01-06.1.

[149]Michigan Statutes Annotated, sec. 27A. 2165.

and protected against disclosure.[150]

The Idaho privileged communication bill provides protection to the counselee in that the counselor cannot be subpoenaed or examined in a court of law concerning confidential information communicated during a counseling interview. The wording of the law is as follows:

> Any certified counselor, psychologist or psychological examiner, duly appointed, regularly employed and designated in such capacity by any public or private school in this state for the purpose of counseling students, shall be immune from disclosing, without the consent of the student, any communication made by any student so counseled or examined in any civil or criminal action to which such student is a party. Such matters so communicated shall be privileged and protected against disclosure.[151]

Although the evidence is too tenuous to claim a trend in legislation for privileged communication, it should be noted that the situation is not static and that more and more legislation is being proposed and passed which recognizes privileged communication as essential to the socially necessary functions performed, not only by counselors and psychologists, but by accountants, journalists, and social workers as well.[152]

An Evaluation of the North Dakota Statute

A study was made to determine the reactions of a school counselor sample to the effect of the law on the relationship and rapport with various school personnel, students, and parents.

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[150]Indiana Statutes Annotated, c. 299, sec. 2.

[151]Idaho Code, sec. 9-203.

[152]Huckins, op. cit., p. 20.

The results of the survey indicated that 65 percent of the respondents had favorable experiences, and 35 percent felt that the law had not affected their counseling relationships. A few counselors felt that the law had widened the gap between the administrator and the counselor.[153] (See Table 4.)

In the study Gade provides counselor reactions to the law and its affect on their work.

Favorable Comments:

> "This law is like fire insurance. Good to have when you need it."
>
> "Husband of one of my students called for information and I was able to tell him I had privileged communication."
>
> "Several students have stated: 'You can't tell anyone what we tell you, can you?' And then when reassured regarding this new protection proceeded to unload."
>
> "Possible that I can more objectively counsel with a student with this bit of security. . .possibly some students feel more free. I have talked with a few students who have had problems that could reach the courts. I have felt that it helped some here."
>
> "I have been involved in a court hearing the past year and several previously, and have never been requested to reveal confidential information. I do, however, feel more comfortable to know that I have this protection should I be requested by the court to reveal information I consider confidential."
>
> "Probably has given me more confidence as a counselor."
>
> "Some of our students in _____ were involved with drug pushers and users in _____. These students were questioned and there was not enough evidence against them to bring them to juvenile court. Several of these students confided in me as their counselor."[154]

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[153]Gade, op. cit., p. 150.

[154]Eldon Gade, "The Development and Reactions to a Privileged Communication Law," (unpublished paper, University of North Dakota, 1970), p. 5.

Representative Comments Indicating Confusion, Lack of Confidence, or Antagonism:

> "I don't really believe that anyone I work with actually realizes that such a law was passed."
>
> "This seems to be the crux of the problem--who has the protection of the statute--counselor or client?"
>
> "No situation has come up in which the act could be strictly applied."
>
> "I get the feeling that the principal resents the fact that counselors have gained this position."
>
> "I have always felt my communication was privileged, therefore, I see little value in this law. It may, in time, prove valuable in a legal sense. My rapport has always been established on the grounds that our sessions are confidential and private. My only real concern is with my clients and their feelings in this matter."
>
> "I have always felt that I had privileged communication."
>
> "This is the first knowledge I have of the law existing."
>
> "We are a rural community with very few troubles that this (law) would cover."[155]

Among the twenty-five comments about the law, nine could be classified as favoring the law, ten as neutral or ambivalent, and six comments as critical of the law.[156]

An examination of the favorable comments about how the law has been helpful indicated a prevailing theme of giving the counselor a greater sense of confidence,,security, and comfort in the protection he now possesses. Another theme, among the favorable comments, was the belief that students felt freer to unload to the counselor than before.[157]

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[155] Ibid., p. 6.

[156] Ibid., p. 7.

[157] Ibid.

The counselor reactions seem to indicate a continuous need of local organizational effort to not only publicize the privilege communication law, but also to sponsor workshops and conferences centering on the theme of counselor ethics and the law.

TABLE 3

NORTH DAKOTA SCHOOL COUNSELORS' REACTIONS TO THE PRIVILEGED COMMUNICATION LAW

Question	Counselor Responses				
	Very Much or Much	A Little or Some-what	No Change or No Effect	No Rating	Has Hurt
1. Has the law improved your rapport with students?	1	21	9	9	0
2. Has the existence of the law improved your rapport with parents?	0	21	8	11	0
3. Has the existence of this law improved your relationship with your principal?	2	15	10	10	3
4. Has the law improved your relationship with teachers?	2	16	11	10	1

Public School Practices Affecting the Right of Privacy

The public school is a sensitive social institution. It reflects the hopes and aspirations of its clientele. When a

society experiences significant ferment and dislocations, the schools become prime targets of social critics. The more precarious the prestige of public education, the more vulnerable the position of the administrator.[158]

The school administrator and other educational personnel receive salaries from the state government and local board of education. The renumeration is in return for helping, or aiding others to help, pupils to learn desirable ways of behaving in our society.

Educators play a large role in training students, our future leaders, for full participation in the democratic process. Public school officials are often confused concerning the exercise and denial of personal human-civil rights. Students claiming violation of their rights to freedom of expression, and freedom from unwarranted search and seizure are more frequently taking their cases to court. School practices related to privacy rights and others must be an integral part of the school operation whether in classroom interaction or extracurricular programs.

To specifically focus on human behavior practices in schools as related to the right of privacy, a total of 347 randomly selected students from nine secondary schools in a large metropolitan school system in Oklahoma were asked to analyze school personnel human-civil rights behaviors in their schools.

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[158]Stephen J. Knezevich, "The Ethical Concerns for Professional School Administrators," Ethics and the School Administrator (Danville, Ill.: The Interstate Printers & Publishers, Inc., 1970), p. 15.

The "Todd Student Human-Civil Rights Questionnaire" was used as the instrument to examine responses. Relevant statements of the "Todd Student Human-Civil Rights Questionnaire" were cited, focusing on the intensity of responses to various statements in percentages as related to privacy.

More than 47 percent agreed that they were not allowed freedom of expression relative to the school operation, programs or curricula. Approximately 13 percent were undecided. The right to freedom of expression as a personal right of privacy appeared to be violated.[159]

The response to the statement relating to the right to freedom of expression with regard to confidential communication between counselor and counselee revealed that 71 percent of the students felt that counselors could not be trusted in keeping highly confidential information upon their requests. In addition to this, 16 percent were undecided or not sure of the counselor's position on the release of pupil information when confidential reports are involved.[160]

The results indicated that the student's right to privacy and security of property were also violated by school

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[159]Melvin Todd, "An Analysis of Policies and Practices in Selected Urban Oklahoma High Schools Which Indicate a Commitment to or a Violation of Human Rights" (unpublished Ed.D. dissertation, University of Oklahoma, 1970), p. 3 of Appendix (Todd Student Human-Civil Rights Questionnaire).

[160]Ibid., p. 2.

personnel. More than 47 percent felt that their lockers were searched without their permission. Equally revealing was the fact that an additional 15 percent of the students were undecided or ambiguous to the position of the statement which would indicate a lack of awareness to their rights as related to search and seizure or an indifferent attitude.[161]

The statements in the questionnaire concerned with privacy were related to two basic areas. They were the right to freedom of expression and freedom from unlawful search and seizure. Both rights appears to be violated by the school personnel according to the statements identified in the Guide for Improving Teacher Education in Human Rights:

1. Confidence of school records is maintained.

2. Student-counselor communications are privileged.

3. The school and the faculty provide opportunities for students to publicly express or hear opinions or views on any subject which they believe is important even if the subject is one of a controversial nature. There is no restriction on this right except when clear indication is present that the safety or health of the school community is threatened or the educational process likely to be disrupted.

4. Machinery is established by which students participate in the planning of school assemblies, forums, and other gatherings under school auspices. This planning includes the identification of subjects or topics, the selection of speakers and/or establishing objectives of the meetings.

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[161] Ibid., p. 7.

> 5. The student newspaper or other publications are considered learning opportunities for students but the freedom to express opinions there, as elsewhere, carries with it responsibility for the statements which are published. This includes publications receiving school assistance as well as those providing their own resources.[162]

It is agreed by many educators that involved students learn more. Increased learning and commitment to an organization increases when one is involved in decision-making activities related to the organization.

An example of a large school system whose basic educational policy centers around student involvement is Montgomery County, Maryland. The system stresses:

> Students must be actively involved in the learning process. Therefore in each course and at each grade level, students shall be encouraged to participate in establishing course goals, suggesting interest areas, planning classroom activities and appraising the course. Student suggestions and recommendations concerning curricular offerings and opportunities shall be permitted at any time and shall be solicited by the professional staff.[163]

Various ways of increasing student involvement were reported in Student Rights and Responsibilities:

> 1. Edina-Morningside, Minnesota, has a Student Board of Education, partially student council-appointed, which meets just prior to meetings of the "senior" school board to present concerns to their elders through the superintendent.
>
> 2. In Salinas, California, a student sits with four faculty and administrative members of each teacher-applicant screening committee. Chosen by the principal and approved by the head of the department in need of a teacher, the student-screener is expected to be, according to local officials, "an all-around, well adjusted student with a lot of contact with the concerned department." He (or she) exercises one-fifth of the say in hiring a teacher.

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[162] Teacher Education in Human Rights, op. cit., p. 34.

[163] Student Rights and Responsibilities, op. cit., p. 47.

3. Bay City, Michigan, sends student council members as ex officio representatives to the Board of Education, where they cast votes recorded as "advisory."

4. Students in Buffalo, Atlanta and San Diego have been paid stipends (one district reported $10 a day) for working as members of curriculum writing and review teams.

5. Baltimore's city school board has added two secondary school students, elected by their peers, as non-voting "associates." They will, according to the Baltimore Sun, participate in "all board discussions, public and private, except those dealing with personnel and site acquisitions.

6. Governor Francis Sargent of Massachusetts has signed a bill adding a student as a full-fledged, voting member of that state's board of education. The student is elected to the state board through a long process that begins in his high school. Each Massachusetts secondary school elects a representative to serve on one of fifteen regional advisory councils. Three members from each regional council are elected to a state advisory council. The chairman of the state council also serves on the state board of education.

7. In Madison, Wisconsin, where two students, elected at large, sit as nonvoting school board members, James Madison High School substitutes a Student-Faculty Policies and Procedures Council for a student council. This group, according to the principal, "makes all decisions which govern the policies and procedures affecting general operation of the school.[164]

The recognition of student rights and involvement did not come about overnight. For example, it took three years for the Montgomery County Student Alliance group to get school officials to recognize and implement their demands. The students based their demands on the premise that the public schools have "critically negative and absolute destructive effects on human beings and their curiosity, natural desire to learn, confidence, individuality, creativity, freedom of thought and self-respect."[165]

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[164] Student Rights and Responsibilities, op. cit., p. 16.

[165] Ibid.

> If the courts are to be obeyed, if students are to enjoy their constitutional rights and to learn democracy in democratically run schools and, indeed, if the American system of public education is to remain operable, there can be little doubt that the course ahead will probably be one of greater student freedoms and responsibilities and more involvement by the "clients" in the shaping of educational decisions. But the course will not be an easy one to steer, nor will all waters traversed be calm.[166]

Students are not only challenging school practices that violate their right to freedom of expression, but also the legality of public school locker searches.

> Many legal specialists are of the opinion that the structures in the Fourth Amendment against search and seizure probably are not applicable to a student's person or to his desk or locker. Nonetheless, we caution principals against any such searching except under extreme circumstances, unless permission to do so has been freely given by the student, the student is present and other competent witnesses are at hand.[167]

"Unreasonable" searches and seizures are prohibited under the Fourth Amendment. Judicial courts are having a problem in interpreting what is meant by "unreasonable" search and under what circumstances. Because the possession of narcotics is a criminal offense, as well as a problem of school discipline, it is in this connection that the problem is most frequently arising.

The court stated In re Donaldson that the "school stands in loco parentis and shares in matters of discipline, the parent's right to use moderate force to obtain obedience, and that right extends to the search of the appellant's locker under the factual situation herein related."[168]

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[166] Ibid., p. 9.

[167] Ackerly, op. cit., p. 12.

[168] In re Donaldson, 75 Cal. Rptr. 220.

The court further stated:

> We find the vice principal of the high school not to be a governmental official within the meaning of the Fourth Amendment so as to bring into play its prohibition against unreasonable searches and seizures. Such school official is one of the school authorities with an obligation to maintain discipline in the interest of a proper and orderly school operation, and the primary purpose of the school official's search was not to obtain convictions, but to secure evidence of student misconduct. That evidence of crime is uncovered and prosecution results therefrom should not itself make the search and seizure unreasonable.[169]

To many, it is evident that the doctrine of in loco parentis still survives as related to privacy and search and seizure of lockers.

The American Civil Liberties Union of Maryland, in its Bill of Rights for High School Students, makes the following statements on search and seizure:

> 1. Students shall be free from searches and seizures of their personal effects, lockers or any other facility assigned to their personal use.
>
> 2. A judicial warrant shall be necessary for all searches and seizures, except in the event of probably cause to believe that a specific place substantially and immediately endangers physical health or safety, property, or the activities of others.[170]

Although much individual and professional organization effort have been gestured toward establishing guidelines for locker search and seizure, the legality of locker search and seizure remains the crux of the unsolved problem. Administrators can expect to be involved in increased court action until legal guidelines are established based upon court interpretation.

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[169] Ibid.

[170] Student Rights and Responsibilities, op. cit., p. 16.

Psychological Testing and Student Privacy in the School

Technological and legislative efforts are continuously being made to preserve some measure of individual privacy. Many motives exist for invading privacy, ranging from the collection of data for national uses through purely commerical motives to simple human curiosity. The government's wiretapping of private conversations of Daniel Ellsberg, accused of leaking so-called "top secret" information to the public, and the invasion of Ellsberg's psychiatrist's office for pertinent files without warrant are examples of "national security" motives for invading privacy. As in the government, there is a conflict between the student's claim for privacy and the institution's claim for data.[171]

Along with physical surveillance, schools are often charged with invasion of privacy related to psychological testing and data collection.

> In addition to idle and irresponsible conversation, counselee privacy may be abrogated by counselors and school personnel through use of psychological tests. Especially this is true of that type of test which purports to measure personality characteristics and which is concerned with such intimate aspects of the individual as family relationships, sexual behavior, moral attitudes, and the like.[172]

This is a psychological test which goes beyond measurement of intelligence skills or aptitudes. The issue of invasion

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[171]William F. Godwin and Katherine Anne Bode, "Privacy and the New Technology," Personnel and Guidance Journal, Vol. 50, No. 4 (1971), p. 301.

[172]Huckins, op. cit., p. 16.

of psychological privacy evolves when the individual's inner processes are probed through test measurement. Professional educators, in general, accept various forms of psychological testing as quite justifiable, especially testing for mental ability and aptitude to show academic potential.

The personality tests and family background inventories, however, used on public school students are viewed by many as a definite intrusion into the student's private world. Many view this procedure by school personnel as a means to extract information and insights from students about home life or inner world instead of imparting knowledge and insights to him.

It has been estimated that nearly half of the nation's public schools use personality test instruments on certain students and about a quarter of the schools use them on all the students. On most occasions, parents are not informed when the tests are given and are not usually advised until afterwards.

Right-wing campaigns against school personality testing increased in the mid 1950's. William H. Whyte's article in Fortune Magazine (1954) first brought widespread attention to personality testing. Whyte complained that personality tests permitted "the organization" to gauge "normality" in individuals and to select "well adjusted" employees. The organizations studied were not as concerned with intelligence, aptitude, life record or a test of potential merit as with a test of potential loyalty.

> In terms of scientific accuracy, Whyte was convinced that personality tests attempted to rate "the immeasurable," since they tried to convert abstract traits into a concrete measure that can be placed on a linear scale. The subjective

> attitudes of the tester were more often the basis for evaluation of the key questions than the "answers" of the candidate. The questions themselves, far from being "clear" and "neutral," were highly ambiguous, Whyte contended, loaded with arguable assumptions about ideology, interests, cultural outlook, sociability, degree of aggressiveness, sex life, and even humor. The "mathematical proofs" of validity, Whyte suggested, were "purely internal," comparing the results of one test with another or of one tested group with another group taking the same test. The only scientific proof would be verification analysis based on the subsequent behavior of the persons tested, and such studies had not been done in industry.[173]

Whyth explored the "moral issue" involved in personality testing after citing counterpoints against the scientific validity of the tests. He believed that in return for the salary given the individual, the company can ask for superlative work, but it should not ask for the individual's psyche as well.[174]

Controversial personality probing tools used in the schools include the Minnesota Counseling Inventory, the Moody Problem Check List, the California Test of Personality, and the Black Test produced by the Psychological Corporation.

Highly personal information is revealed when students in some schools are subjected to projective tests in which they observe pictures and then purportedly reveal their inner drives. For example, the Blacky Pictures include eleven cartoons of the adventures of a dog named Blacky. The characters include Blacky, Mama, Papa and Tippy, a sibling figure of unspecified age and sex. Each cartoon is designed to depict a state of psychosexual development or an object relationship within the development.

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[173]Westin, op. cit., p. 244.

[174]Ibid.

Each cartoon is introduced with a comment. Introductory comments and the "dimension" being tested are listed below:

Cartoon I. "Here is Blacky with Mama. . . ."--Oral Eroticism.

Cartoon II. "Here Blacky is relieving himself (herself). . . ." --Ana Sadism.

Cartoon III. "Here is Blacky watching Mama and Papa. . . ." --Oedipal Intensity.

Cartoon IV. "Here Blacky is discovering sex. . . ." --Masturbation Guilt.

Cartoon V. "Here Blacky is watching Tippy. . . ." --Castration Anxiety (M) or Penis Envy (F).[175]

> A textbook imparts information to a child; the testing tool extracts information or presumed insights from the child. It is true that the extracted information may be used later in an effort to help the child or to decide what to do about him; but you still have the disturbing fact that the extraction was based on a compulsory invasion of the child's personality by a government-operated institution, the school.[176]

> Many children badly need more understanding. And a better knowledge of the child's inner world and family situation can contribute to that understanding. But the use of probing tools clearly involves trespass and should be used only with parental consent and preferably by a trained consultant outside the school system so that the results do not go into the child's cumulative school file where they might serve to stigmatize him years later. The outside consultant could with verbal permission make a verbal report to the appropriate school authorities.[177]

Parents should show an increased interest in the use of personality tests on pupils. School personnel should be aware that the use of personality probing tests without parental

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[175]Vance Packard, The Naked Society (New York: David McKay Company, Inc., 1968), p. 141.

[176]Ibid.

[177]Ibid., p. 143.

permission can lead to court action.

Data Collection in the Schools and Privacy

The influence of technological advancement has led to the development of computerized information storage and retrieval systems for school use. For example, the Cooperative Plan for Guidance and Admission (CPGA) is designed to increase the amount and kinds of information recorded about each student in comparison with conventional records, as well as to provide easier access to such information. Large-scale computers are used to generate comprehensive student reports related to academic and personal information. Various school systems have adopted this kind of record-keeping system.[178]

Six basic trends are at work which have had an enormous effect on privacy created by the information processing revolution:

> First, is the general expansion of information-gathering and record-keeping in contemporary American society, even apart from computers.
>
> Second, the mobility of persons and the standardization of life in mass society have led to the development of large private and governmental investigative systems whose function is the amassing of personal dossiers on tens of millions of Americans.
>
> Third, general information gathering and the dossier have been radically accelerated by the advent of the electronic digital computer, with its capacity to store more records and manipulate them more effectively and rapidly than was ever possible before.

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[178]David A. Goslin and Nancy Bordier, "Record-Keeping in Elementary and Secondary Schools," On Record (New York: Russell Sage Foundation, 1969), p. 40.

> Fourth, the development of many new public programs has produced a requirement for more personal data about individuals than in previous research or record-keeping.
>
> Fifth, advances in the computer field are rapidly accelerating the sharing of data among those who use the machines.
>
> Sixth, we have entered an era in which automatic data processing will gradually replace many of the cash transactions of the past, providing an increasing trail of records about significant transactions of the individual's life.[179]
>
> We seem to have a mania for collecting data, however, and with the advent of computers and other file maintenance aids, we can presume that a form of Parkinson's Law will apply: Data needs will expand to fill the available data-collection and data storage facilities. Under these circumstances there is bound to be a conflict between the student's claim for privacy and the institution's claim for data.[180]

It is understandable that school officials need certain information about students for curricula planning, guidance and counseling. Who may see pupil record information and the conditions under which the school permits or does not permit access to it is a serious question. The student's and parent's right to know and examine personal information collected are very serious concerns of privacy.

Godwin and Bode have suggested that schools should publish periodically a full disclosure of the kinds of data retained on students, including not only official records, but also records maintained by individual teachers, counselors and administrators. This kind of procedure would call attention

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[179]Westin, op. cit., pp. 161-62.

[180]Godwin and Bode, op. cit., p. 298.

to the school's data-retention policies. The aforementioned technique can also provide officials with an incentive to collect and retain only data justifiable to the community at large.[181]

Retrieval Systems and Privacy

There is a growing literature on file protection schemes for computer-based files, including elaborate password systems, tamper-proof processors and transmitting lines, computer room security procedures, and cryptographic means for enciphering data.[182]

Such schemes certainly have their uses. They make it more difficult and more expensive to intrude upon the lives of others without authorization, and so may discourage some of the attempts that are not strongly motivated. The greatest intrusion of privacy at present is not by those who pay surreptitiously, but rather by those very persons and agencies who have authorized access to personal data.[183]

Large-scale personal data retrieval systems must be expected to come into very general use. Despite the obvious opportunities that these systems offer, they may also involve important hazards for individual and organizational privacy. It is imperative, if privacy interests are to be protected, that stringent protective devices be included in each information

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[181] Ibid.

[182] Ibid., p. 300.

[183] Ibid.

system of this type. These devices should involve limitations upon the scope and character of the data that are collected, their dissemination, and their use. They must be tailored to the problems presented by each information system.[184]

Many researchers are aware that possessing identifying information imposes on them certain obligations to protect the anonymity of their subjects. Few attempts have been made to develop improved techniques for insuring data security and respondent anonymity. Alexander W. Astin and Robert F. Boruch, researchers with the American Council on Education, elaborated on a "Link" system for protecting the anonymity of subjects in longitudinal research and for maintaining the security of data files.[185]

The system had been developed in connection with the Cooperative Institutional Research Program of the American Council on Education. However, its basic design is applicable, perhaps with only minor variations, to longitudinal research in education and other fields.[186] The authors elaborate the following:

> Briefly, what we did was to remove the identification numbers from the name-and-address files, and substitute a

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[184]Charles Lister, "Privacy and Large-Scale Personal Data Systems," Personnel and Guidance Journal, Vol. 49, No. 3 (1970), p. 207.

[185]Alexander W. Astin and Robert F. Boruch, "A 'Link' System for Assuring Confidentiality of Research Data in Longitudinal Studies," American Council on Education Research Reports, Vol. 5, No. 3 (1970), pp. 5-6.

[186]Ibid., p. 5.

second, unrelated set of identification numbers. At the same time, we created a third file--the "Link" file--which contained only the two sets of numbers: the original numbers from the research data file and the new numbers from the name-and-address file (note that this Link file represents the only means of linking the subject's identity with his answers to the questions). The final step in establishing the new system was to deposit the Link file at a computer facility located in a foreign country. No copies of the file are kept at ACE or any other place within the United States.

The nature of the agreement with the foreign computer facility is such that they will neither copy the file nor make it available to outside persons, including research personnel of the American Council on Education. The foreign facility is bound to this agreement even in the event that the American Council on Education should subsequently request that the file be returned. In other words, a basic condition of the agreement is that the foreign facility is under no circumstances to release this Link file to other individuals or organizations. Thus, both ACE and the foreign agency must violate the agreement before research data can ever again be matched directly with identifying data.

Storing the Link file in a foreign country provides two important protections for the data. One such protection concerns Congressional or judicial subpoena of the files. Since judicial or legislative subpoenas have no validity outside the United States, it would be impossible for Congressional committees or courts to obtain access to information on individual subjects. Thus, even if courts or committees could obtain both the data file and the name-and-address file, there would be no way for them to link up records in one file with records in the other without the Link file. The possibility of using data files for extra-legal harassment of individuals is virtually eliminated also.

A second, perhaps more basic, form of protection concerns possible "snooping" by members of the Research staff. Traditionally, researchers have persuaded subjects to provide them with data under conditions where the guarantee of anonymity is primarily a matter of ethics and good will. Thus, the possibility of prying or snooping by individual researchers who had access to these "confidential" data almost always existed. The Link system, however, provides protection against even this eventuality. It should be noted that the principle of the Link system does not necessarily involve using a foreign country in order to protect against unwarranted disclosure by individual researchers: The agreement could as well be between two agencies within the United

States. Use of a foreign country, however, does afford the additional protection against subpoena.[187]

A schematic sample of how the Link system treats personal questionnaire data provided by freshmen when they first enter college is provided in Figure 1. Collection procedures for follow-up data are diagrammed in Figure 2.[188]

Although the Link system may appear at first to be extreme and perhaps unnecessarily expensive and time-consuming, it is no doubt much more economical than most hardware-software computer systems that have been proposed to achieve file security.[189]

Technology has been charged with destroying personal privacy. Some look to technology itself for solutions and counter-measures to the threat; others seek to control the threat by laws. But protection by control of human incentives holds most promise. Schools, for example, suffer from datamania or an insatiable appetite for data which might be alleviated by upper control of incentives.[190]

Except for accidental disclosures, individual privacy will be threatened when someone sees an apparent gain in acquiring that information. There are four basic ways of reducing or eliminating this threat to confidential information:

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[187]Astin and Boruch, op. cit., p. 7.

[188]Ibid., pp. 17-18.

[189]Clark Weisman, "Programming Protection: What Do You Want to Pay?" SDC Magazine, Vol. 10, No. 7 (1967), pp. 30-31.

[190]Godwin and Bode, op. cit., p. 298.

1. The existence of information can be held secret so that few will realize its potential for gain.

2. The expense and/or risk involved in acquiring information can be made sufficiently great to offset the gain.

3. Information can be rendered useless to others, so that they no longer see any gain in acquiring it.

4. Information can be destroyed.[191]

Access of nonschool personnel and some school personnel to pupil records is a very difficult issue. A major point of contention involves specification of the conditions under which data gathered for one purpose may be used for some other purpose without the consent of the individual and/or his parents from whom the information was collected. It is generally agreed that many schools permit representatives from outside agencies to examine pupil record information without the consent of the student or parent. Because all pupil records are subpoenable by the courts, complete withholding of pupil information is not possible unless some extreme method like the Astin and Boruch system of confidentiality is used.[192]

The Administrator and the Student's Right of Privacy

Because the principal of a secondary school is a highly visible and influential figure in the administrative structure of the school, he characteristically finds himself at the point where the often conflicting wishes of students, teachers, and

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[191] Ibid., p. 302.

[192] Goslin and Bordier, op. cit., p. 30.

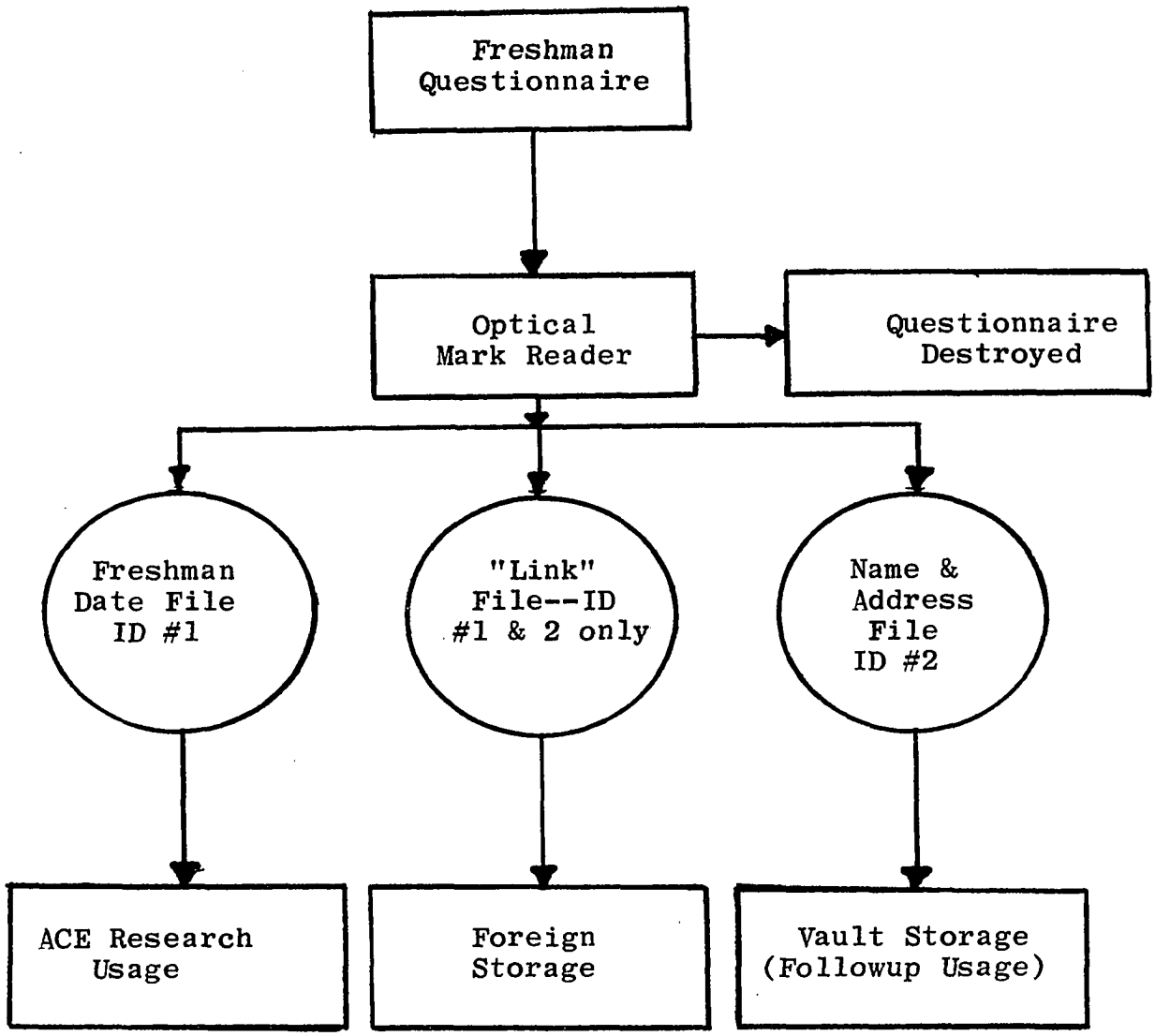

Fig. 1.--Astin and Boruch's Procedures for Handling Freshman Questionnaire (Pretest) Data--a schematic sample of confidentiality.

parents collide with overall school administrative policy. It is the principal above all others who must undertake to make these divergent interests compatible so that the school can be what it is intended to be, a place where learning can take place.[193]

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[193] Ackerly, op. cit., p. 1.

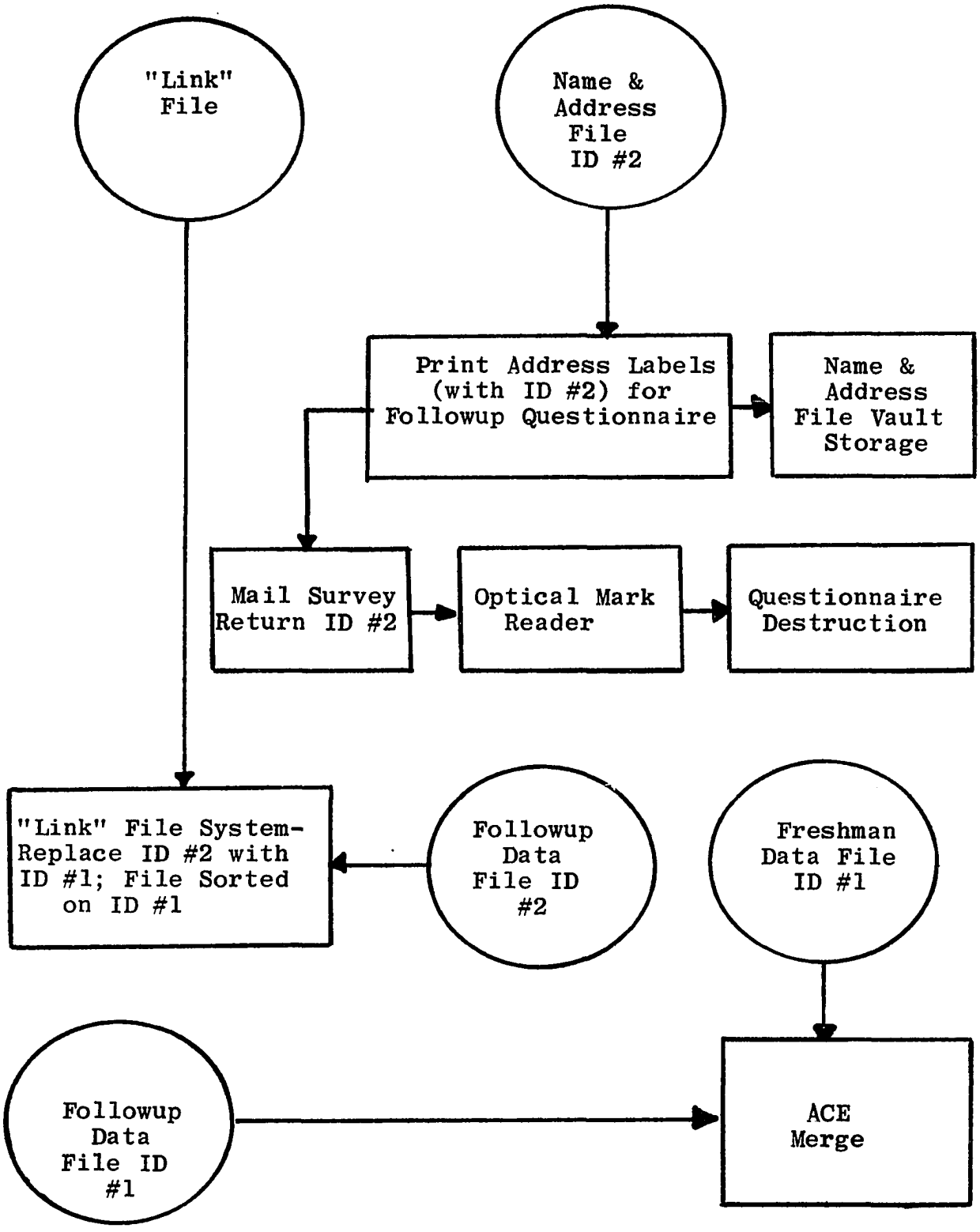

Fig. 2.--Astin and Boruch's Procedures for Conducting Followup (Post-test) Studies--a schematic sample of confidentiality.

Public school principals and staff need to rethink the meaning of their status in loco parentis. If the student is suspected of a crime, the student should be guaranteed full access to due process of law pending full disclosure. If the principal falls short of this obligation to the accused, the administration may suffer embarrassing complications at a later date. In fact, any school administrator must place high priority on the school's obligation to protect the basic human rights of all students.

> Resulting leadership must therefore respect human rights . . . such as freedom of speech and press and religion, the right of due process of law, the right of privacy, the right of dissent, and equality of opportunity for every individual in all aspects of society. Decision making involves values, and the principal and school should behave in a manner which reflects these values /a/nd concern for human rights/./[194]

Because the right to privacy is significantly related to free speech, press, religion and due process, any violation of these rights by the principal shows a lack of respect for these basic rights of constitutional law.

Violations of the right to privacy identified in the Guide for Improving Teacher Education in Human Rights are:

1. Disregard for the personal property rights of the student.

2. Disregard for the proper maintenance and confidentiality of student records.

3. Disdain by school officials for the privileged communications between students and counselors.

4. Institutional use against students of physical punishment or the threat of other forms of recrimination and the failure

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[194]Oklahoma Association of Secondary School Principals, "The Secondary School Principalship," a position paper adopted May 3, 1969, p. 1.

to adequately protect students from assault or threat from others.

5. The indiscriminate use of student athletes by coaches without value for the students' safety or well being.

6. The application of rules for athletic participation which infringe on students' right of privacy.[195]

In effecting changes in institutional behavior which relates to the implementation of human rights, effective participation in a society built on the democratic tradition and dedicated to what is called the "American Way" requires acceptance of the concept of the supreme worth and dignity of the individual. The commitment also requires positive attitudes toward human differences, placement of high priority on the values associated with democracy and possessing skill in using the processes which make democracy work.[196]

Some behaviors by which a school or college administrator demonstrates his commitment to human and civil rights are listed below.

1. Because the administrator believes that all who are affected have the right to participate in making policies which affect them, he arranges for the organization of representative participation of faculty and students in the policy-making and decision-making processes of the institution.

2. He entertains committees and receives petitions concerning exercise or denial of rights and requests for policy, administrative or organizational changes.

3. Because he believes in the right of due process, when dealing with accusations against faculty members or students, he arranges for the accusors to face the accused; for the latter to defend himself; and requires enforcement of the doctrine that an individual is presumed innocent until proven guilty.

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[195] Teacher Education in Human Rights., op. cit., p. 40.

[196] Ibid., p. 50.

4. Because he believes in the right of every child to equal educational opportunity, which, according to Supreme Court decisions, cannot be provided in segregated situations, he actively promotes desegregation of schools with respect to faculty and classrooms, and provides the leadership required to secure this goal.

5. He uses language which expresses respect for the worth and dignity of others.

6. He challanges others who deny the rights of any individual or group.

7. He exercises his rights without infringing or denying the same to anyone else.

8. He works actively, along and through organizations, to secure the rights of others.

9. He creates the school climate within which democratic processes are encouraged and developed.[197]

The Teacher and the Student's Right of Privacy

Teachers and administrators are, for the most part, genuinely interested in students and their needs. Teachers always have had the responsibility of leading young people and creating a desire for knowledge and learning. In addition, teachers must provide students with the tools of learning.

A good learning environment is created when the teacher warmly and wholly accepts all the students in her classes. By this she helps each child to clarify his self-understanding because she provides the emotional base necessary if further relations with this adult teacher are to be accepted by this child as important and as contributing to his self-understanding.

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[197] Ibid., p. 56.

Because she understands that people differ somewhat in their value pattern and in priorities assigned to certain values in making decisions about behavior, she knows that conflicts about the exercise of rights are bound to occur. When situations of this nature occur, the teacher should use and teach students appropriate democratic methods of resolving conflicts: discussion, negotiation, mediation and arbitration.

In the commitment to human-civil rights, the teacher believes in the full dignity and worth of the individual. The student must be guided through classroom interaction for the concomitant responsibility of valueing others' rights. This means that students must become partners in the process of education. To be a partner, students must share in the vital decisions of school life, particularly in those decisions that affect his privacy and his constitutional rights. We must place equal importance on the student's participation in decisions which affect the rights of others.

A teacher committed to the right of privacy and other human-civil rights believes:

1. In the right to freedom of speech and the right to dissent. He creates opportunities for full and open discussion of issues, encourages students to present all sides of controversial issues, exercises no reprisals on those who differ from him or take far-out left or right positions. At the same time, he enforces the ground rule which requires one person to speak at a time in order to secure his right to be heard and others the right to hear.

2. Because he believes in the right of privacy, and to self expression, he does not search students' lockers, intercept, confiscate and read notes which students write to each other. He opposes rules and regulations which infringe on the student's rights to express himself in his own appearance.

3. Because he believes everyone has the right to be physically safe in his classroom and school, he creates an environment and sets up conditions in which individuals are protected against physical, mental, and social abuse by other adults and/or the peer group.

4. Because he believes in the democratic processes, he uses them and requires students to use them in setting up qualifications for student officers, and in nominating and election procedures. He does not attempt to influence or nullify the outcomes.

5. Because he believes in the right to due process, he gives an accused student opportunity to tell his side and to present witnesses. He regards the student as innocent until proven guilty.

6. Because he believes human differences have positive values, he brings into close association with him people who differ in race, religion, and ethnic origins.[198]

The Counselor and the Student's Right of Privacy

Privacy, in the sense that it indicates the absence of undue interference in the affairs of the individual, is necessary to freedom. The right of privacy or the right to be let alone is based upon the Greek and Judeo-Christian concepts of the value and dignity of the human personality.[199]

While it may be desirable for a person to relax personal defenses and to share himself and his feelings and aspirations with others, the preservation of the voluntary aspect of this process is essential. To be effective in counseling and in other interpersonal relationships, this must be given. It cannot be demanded.[200]

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[198] *Teacher Education in Human Rights*, op. cit., pp. 54-55.

[199] Huckins, op. cit., p. 15.

[200] *Ibid.*

Of vital importance are both the general aspects of the right of privacy existing on behalf of counselees or clients and any legal immunity existing for counselors; a working knowledge of such freedom and "task effectiveness."[201]

Mutuality of confidence between counselor and client appears basic to adequate counseling, for it is essential that the client often entrust his secrets, his very self to his counselor. With a fundamental part of the counselor's work involving the receipt of highly personal information, each does well in keeping this trust in proper perspective at all times. Confidentiality involves trust and faith between two people.[202]

The effectiveness of counseling depends to a great degree upon the confidentiality which the counseling relationship implies. Probably no client or counselee can risk being completely candid about himself without a feeling of considerable assurance that the disclosures he makes will be kept in confidence. Lacking this, it is doubtful that any counselor, no matter how proficient his use of techniques, will be able to help his client deal with any but the most superficial problems.[203]

> The right of privacy of the counselee or client may be disregarded or impinged upon as far as school counselors and guidance workers are concerned, in two different ways. In the first instance, they may be guilty of relating

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[201]Pardue, Whichard and Johnson, op. cit., p. 14.

[202]Ibid.

[203]Huckins, op. cit., p. 21.

> confidences from counseling relationships in an indiscriminate manner or they may be forced to testify to confidential disclosures when, and if, their knowledge of counselee could be assumed to have some bearing upon a court decision. In the second instance the implication of confidence may be nullified through the failure to properly safeguard student personnel records. Since the function performed by counselors, of all the educational operations of the school, is most dependant upon this type of record, the responsibility of maintaining confidentiality and respecting the rights of students to personal privacy as far as these records are concerned falls most heavily upon counselors.[204]

Marsh and Kinnick reached the following conclusions concerning confidentiality:

> 1. We should establish institutional policies regarding confidentiality. The counselor should participate in the formulation of these policies; but once the policy is determined, the counselor is obliged to abide by it.
>
> 2. There should be a willingness on the part of the counselor to share information with other professional members of the institution when they are both working to help the student, when disciplinary matters are not involved, and when the student is made aware of it.
>
> 3. Proper use of terminology should be developed even to the extent of substituting the term privilege for the word confidential since the former has more legal significance than the latter.
>
> 4. Some authoritative instruction on the legalities on the counseling role should be introduced into our counselor education programs.
>
> 5. We must be honest with ourselves and our students and not proclaim a confidentiality that at best is only partial and at worst fiction.[205]

Schneider suggested that a study of the confidentiality of communication leads to several obvious conclusions when applied to the schools:

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[204] Ibid.

[205] John Marsh and Bernard Kinnick, "Let's Close the Confidentiality Gap," Personnel and Guidance Journal, Vol. 48 (January 1970), pp. 363-65.

1. The obligation of confidentiality is relative rather than absolute since there are conditions that can alter it.

2. Confidentiality depends upon the nature of the material. Material which is already public, or could easily become so, is not bound by confidentiality in the same way as the entrusted secret.

3. Material that is harmless does not bind the counselor to confidentiality.

4. The material that is necessary for a counselor or agency to function effectively is often released from the bonds of confidentiality.

5. Confidentiality is always conditioned by the intrinsic rights of the counselee to his integrity and reputation, to the secret, and to resist unjust aggression.

6. Confidentiality is also limited by the right of the counselor to preserve his own reputation and integrity, to resist harm or aggression, and to preserve privileged communications.

7. Confidentiality is determined and limited by the rights of an innocent third party and by the rights of the community.[206]

Schneider identified those occasions where the right to confidentiality is forfeited. The obligation of secrecy lapses when:

1. The security of the public demands revelation.

2. The secret is invalid.

3. There is unjust aggression.

4. Consent is given by the client.

5. There is publication of the secret.

In addition, the revelation of confidential material is permitted when to do so would prevent serious harm to the client. This is based on the assumption that the client himself would give permission in order to prevent serious

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[206]Alexander Schneider, "The Limits of Confidentiality," Personnel and Guidance Journal, Vol. XLII (1963), pp. 252-54.

harm to himself. In addition, an innocent third party may be protected.[207]

Though individuals deserve and often keenly desire their normal right to privacy, they often seek counseling or guidance in which they, of necessity, want to speak of highly personal matters. Clearly, confidentiality is a matter of privacy, an individual right which belongs to the client himself; and by explaining to the client the prevailing limits of confidentiality in the counselor-client relationship, the counselor demonstrates his belief in this personal right.[208]

Obstacles to confidentiality in the school setting exist because a number of school administrators are not explicitly aware of the specific counselor responsibilities to the student. The lack of professional understanding of the counselor's role has caused tremendous conflict when highly personal matters about students are involved. The counselor in fear that his or her job may be in jeopardy, reveals information that would otherwise be kept secret.

At times, the information desired by the administrator is not significantly related to the problem being investigated. The counselor should have the privilege of collaborating with the administrator in regard to the kind of information to be revealed without fear. If the administrator does not go along with this procedure, then the student should know before the

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[207] Ibid.

[208] Pardue, Whichard and Johnson, op. cit., p. 16.

counseling session begins that there are or may be obstacles to confidentiality of information disseminated.

Because administrators are now required to take more courses in guidance and counseling for certification, an increased understanding of counselor relationship with the student has made the counselor-administrator's position more cordial.

CHAPTER IV

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Summary

The purpose of this study was to investigate the concept and human right of privacy, analyze the degree to which it is recognized in the United States Courts, and examine implications for the behavior of educational personnel with special reference to the school counselor and the public school in general.

The research and legal literature on the right of privacy were found to be very extensive. A totally comprehensive study of the subject area would be difficult. Therefore, the following limitations were imposed:

1) The research and literature studied pertained only to historical-legal matters dealing with privacy as related to the behavior of schools and educational personnel.

2) Judicial decisions analyzed were those in the United States District Courts and state and federal appellate courts, including the United States Supreme Court, as reported in the National Reporter System.

3) The years 1960-1972 comprised the period of time covered by the investigation.

4) The cases studied were those which pertained to certain human-civil rights relating to the concept of privacy

as identified by the Phi Delta Kappa Commission on Human Rights and Education: a) the right to freedom of expression and speech and the right to dissent; b) the right to freedom of the press; c) the right to freedom of religion; d) the right to due process; and e) the right to security of person and property including protection against unlawful search and seizure.

The right to privacy was found to be a peripheral framework intertwined with other rights. An analysis of the rights to freedom of expression, security of person and property, and due process showed a close relationship to the right of privacy. These human-civil rights establish the major basis for the right of privacy.

The study further demonstrated how federal and state legislation focus on assuring the aforementioned rights through basic guarantees provided by the federal and state constitutions.

The concept of privacy was viewed as the right to be let alone. With this right, there was found to be a concomitant responsibility for not infringing on the rights of others.

The desire and need for protection against both property and personal trespass became acute as society became more complex. The United States in the twentieth century became a "nation of record keepers" and these actions and conditions often conflict with the right of privacy and other human rights.

Implications from the literature on the invasion of privacy by the increasing use of records revealed that unless counter pressures are introduced which protect the individual, threats to the right of privacy will increase. With specific

emphasis on the schools, it was found that attempts to assure some aspect of privacy for the student whose rights had been invaded was accomplished through privileged communication laws for the counselor and state statutes for legal access to pupil personnel records. Landmark court decisions were also part of the counter pressures which helped to further delineate the individual student's right of privacy. Previously, a general constitutional interpretation of what was meant by privacy as related to court decisions was weak and ineffective.

Advancement in technology and the increased manipulation of the computer were cited as proliferating an almost uncontrollable case of "datamania" in the government, industry, and schools. Files on individuals became dossiers after personal information had been gathered and compiled from many sources. The complex society's effect on the individual and his right to independence and personal autonomy was and continues to be closing in on man's "private space" where he can be himself.

Major Findings

Right to Privacy and Freedom of Expression

The right of privacy and freedom of expression, specifically the freedoms of speech, press, and religion, are intertwined because, as a basic personal civil right, every individual is constitutionally guaranteed the privilege of exercising his point of view providing others are not coerced to join in his or her mode of expression. An analysis of relevant court cases showed a positive increased concern on the part of students and

others for holding personal beliefs on matters affecting them.

In regard to freedom of expression and the personal right to wear one's hair style and manner of dress as one chooses, the analysis of relevant cases indicated that there should be no restrictions on a student's hair style or manner of dress unless a "clear and present danger" to the student's health and safety interferes with work or causes disorder in the classroom.

The court decisions relating to personal freedom of expression for students clearly indicated a decreasing emphasis on in loco parentis jurisdiction for administrators to a broader concept regarding the constitutional rights of the individual, regardless of age.

Right to Privacy and Security of Person and Property

Although the Fourth Amendment has been a significant factor with regard to unreasonable search and seizure, the difficult task of the courts appeared to be establishing standards for determining "reasonableness." Actions of school administrators on search and seizure rights precipitated unprecedented court hearings relative to locker searches and searches of persons. Since the courts have not clearly determined whether student lockers constitute leased "quarters" which still belong to the school or discrete areas protected from unwarranted search, students need to treat their lockers as public property, but the educators should generally regard them as private property except in specific instances.

The doctrine of in loco parentis relative to search of students and their lockers by school personnel was modified through court decrees which recognized that the protections guaranteed by the Constitution apply to all people.

The Right of Privacy and Student Record Information

The accessibility of student personnel records was found to be closely related to the Fourth Amendment. Since information kept in school records has increased rapidly to include voluminous data on academic and personal development, ethical and legal guidelines for the collection, maintenance, and dissemination of pupil record information became a prime obligation of administrators. There appeared to be a basic conflict between protecting the individual on the one hand and the right of the people to know on the other. This conflict is apparently resulting in reducing the right of the people to know.

As with search and seizure, guidelines for accessibility of pupil personnel data, therefore, indicated a responsibility on the part of the administrator to establish who should have access to pupil record information based on state statutes. The public vs. "private" character of public school records continues to be a central problem. Legal issues have come about through related cases. The courts have not clearly defined the status of student records, whether public, quasi-public, or closed. Parents and/or students contend that they have a right to examine all profiles on their person. Legislation specifically

focusing on this area was determined as necessary in assisting administrators in determining the authorized persons to inspect records.

Procedural Due Process and Citizenship Rights

The study indicated that the individual right to procedural due process and citizenship rights had not been provided by many administrators for students. The individual's right to be let alone was noted to be the basis for restraint of self-incrimination. The study revealed that students are not always assumed innocent until proven guilty. Therefore, many of the established procedures for investigation and solving of discipline problems often violated constitutional rights of students who, according to law, have this fundamental right for self-protection because of full citizenship as adults.

Professional Organization Activity Regarding Privileged Communication

Various professional education associations have gone beyond the standard ethical code in regard to privacy and confidentiality. Results indicated that legislation providing for assured protection from pressures of others for student confidential information became and continues to be a primary target of school counselors for maintaining close interpersonal relationships with counselees. It was generally assumed that for the counselor to have good counseling rapport and be effective, he or she must be in the position to withhold information professionally perceived to be detrimental to the involved party

unless permission to release it is granted by the counselee and/or parent or subpoenaed by the court. Legislation granting right of privileged communication appears to be the only machinery for assuring this protection.

The general effort on the part of professional organizations for successful privileged communication laws in several states has been widespread, but legislators appeared to be reluctant to grant "privilege" to newer professions, unlike the practice of law and medicine.

Counselors working in one state with this kind of legislation were perceived as not understanding all the aspects of their privileged communication law. The counselor reaction to the law often demonstrated a need for further counseling orientation by the professional associations of those states in which these laws exist.

School Practices Affecting the Right of Privacy

Practices in the public schools showed many alleged violations of various aspects of privacy whether done consciously or unconsciously. Specifically, the student's right to freedom of expression, freedom from unreasonable search and seizure, and due process were aspects of privacy being invaded.

Psychological testing or the probing of "inner" thoughts or ideas by school personnel reflected a possible invasion or intrusion into the individual's private world. Controversial personality probing tools often gleaned highly personal information which was not always used to the individual's advantage.

Increased interest in the use of psychological testing has caused concerned school personnel to secure permission for this kind of testing or be subject to court action for personal intrusion.

The information processing revolution, as a result of advanced technology, was shown to have an enormous influence on privacy relative to the collection of psychological and academic data. Although one can understand the necessity of certain academic and personal information for school operation and educational guidance, the study showed a need for guidelines for collection and disclosure of data. The guidelines were determined as justifiable and needed to avoid court action for violations of personal rights.

Administrators, teachers, and counselors were viewed as principal targets for guarding student's rights, whether related to successful school operation, academic or personal development. Positive behaviors on the part of all school personnel indicates a commitment to assuring personal rights of all involved.

Conclusions

1. It was concluded that the increasing number of students who are seeking redress in the courts for invasion of privacy is probably due to an increased concern for denial of this right and a feeling that redress is more likely to be forthcoming from the courts than in previous years.
2. An increased number of both public schools and colleges are modifying their practices in order to avoid infringing on the

privacy and other rights of students.

3. The study showed that there is an increasing awareness on the part of people everywhere to existing practices which violate individual autonomy. Therefore, more and more people are demanding that those practices be curtailed which tend to dehumanize the individual.

4. Students and their parents are increasingly demanding the right to see and challenge all information in school records concerning them. As a result, the status of school records, whether "open" or "closed," has become a major issue.

5. Although there is a growing trend of information gathering through electronic retrieval systems, concerned agencies and institutions are using stringent protective devices for maintaining individual and organizational privacy.

6. Counselors are becoming increasingly more conscious of the need for privileged communication laws for assuring confidentiality of highly personal information revealed during counseling sessions.

7. Recent national events, particularly the Watergate investigation, as related to individual autonomy, have indicated that society appears to have revitalized the individual concern for privacy. At the same time the potential danger of invading that privacy is increased with greater technological advances.

Recommendations

Educational institutions should carefully study and adopt guidelines designed to protect the right of privacy for students in all aspects of the school operation. In so doing,

it is recommended that public schools adopt policies regarding the following:

1. Machinery should be established for meaningful participation of all students in the affairs of the school.
2. Students should be given the opportunity to express their opinions about subject matter relative to their lives.
3. The administration should take the lead in abolishing dress codes for students.
4. Clear and defensible policies regarding the collection, use and release of confidential records should be adopted by all school districts and these policies should properly protect the student's right of privacy.
5. Only student data that are relevant to the functioning of the school should be collected.
6. Counseling reports or personal history data should be kept separate from academic data. This can help curtail accidental release of privileged data to unauthorized persons.
7. Schools should have a policy of "prior notice" related to locker searches to avoid an unnecessary court action for invasion of what students consider "private property."
8. State legislation should be enacted in all states establishing privileged communication for all school counselors.

APPENDIX A

LIST OF STATUTES EXAMINED

Alabama: Code of Alabama, Recompiled (1958).

Alaska: Alaska Statutes.

Arizona: Arizona Revised Statutes Annotated.

Arkansas: Arkansas Statutes Annotated.

California: West's Annotated California Codes.

Colorado: Colorado Revised Statutes (1963).

Connecticut: Connecticut General Statutes Annotated (1958).

Delaware: Delaware Code (1953).

Florida: Florida Code Annotated (1965).

Georgia: Georgia Code Annotated.

Hawaii: Revised Laws of Hawaii.

Idaho: Idaho Code.

Illinois: Smith-Hurd Illinois Annotated Statutes (1963).

Indiana: Burn's Indiana Statutes Annotated.

Iowa: Code of Iowa (1966).

Kansas: Kansas Statutes Annotated.

Kentucky: Kentucky Revised Statutes.

Louisiana: Louisiana Revised Statutes (1950).

Maine: Revised Statutes Annotated (1964).

Maryland: Annotated Code of the Public Laws of Maryland (1957).

Massachusetts: Massachusetts General Laws Annotated.

Michigan: Michigan Statutes Annotated.

LIST OF STATUTES (continued)

Minnesota: Minnesota Statutes (1967).

Mississippi: Mississippi Code Annotated (1942) (Recompiled 1956).

Missouri: Missouri Revised Statutes (1959).

Montana: Revised Codes of Montana (1947).

Nebraska: Reissue Revised Statutes of Nebraska (1943).

Nevada: Nevada Revised Statutes (1943).

New Hampshire: New Hampshire Revised Statutes Annotated.

New Jersey: New Jersey Statutes Annotated.

New Mexico: New Mexico Statutes Annotated (1953).

New York: McKinney's Consolidated Laws of New York Annotated.

North Carolina: General Statutes of North Carolina.

North Dakota: North Dakota Century Code Annotated.

Ohio: Page's Ohio Revised Code Annotated.

Oklahoma: Oklahoma Statutes Annotated.

Oregon: Oregon Revised Statutes.

Pennsylvania: Purdon's Pennsylvania Statutes Annotated.

Rhode Island: General Laws of Rhode Island (1956).

South Carolina: Code of Laws of South Carolina (1962).

South Dakota: South Dakota Compiled Laws (1967).

Tennessee: Tennessee Code Annotated.

Texas: Vernon's Texas Annotated Statutes.

Utah: Utah Code Annotated (1953).

Vermont: Vermont Statutes Annotated.

Virginia: Code of Virginia Annotated (1950).

Washington: Revised Code of Washington Annotated.

LIST OF STATUTES (continued)

West Virginia: West Virginia Code.

Wisconsin: Wisconsin Statutes (1967).

Wyoming: Wyoming: Wyoming Statutes Annotated (1957).

APPENDIX B

LIST OF CONSTITUTIONS EXAMINED

Alabama: Constitution of Alabama of 1901.

Alaska: Constitution of the State of Alaska, 1959.

Arizona: Constitution of the State of Arizona, 1910.

Arkansas: Constitution of the State of Arkansas, 1874.

California: California Constitution Annotated, 1879.

Colorado: Constitution of the State of Colorado, 1876.

Connecticut: Constitution of the State of Connecticut, 1955.

Delaware: Constitution of the State of Delaware, Adopted 1897.

Florida: Constitution of the State of Florida, 1885.

Georgia: Constitution of the State of Georgia, 1945.

Hawaii: Constitution of the State of Hawaii, 1959.

Idaho: Constitution of the State of Idaho, 1890.

Illinois: Constitution of Illinois, 1870.

Indiana: Constitution of the State of Indiana, 1851.

Iowa: Constitution of Iowa, 1857.

Kansas: Constitution of the State of Kansas, 1859.

Kentucky: Constitution of Kentucky, 1960.

Louisiana: Constitution of Louisiana, 1921.

Maine: Constitution of the State of Maine, 1820.

Maryland: Constitution of Maryland, 1867.

Massachusetts: Constitution of the Commonwealth of Massachusetts, Revised 1919.

LIST OF CONSTITUTIONS (continued)

Michigan: Constitution of the State of Michigan, 1963.

Minnesota: Constitution of Minnesota, 1857.

Mississippi: Constitution of the State of Mississippi, 1890.

Missouri: Constitution of Missouri, 1945.

Montana: Constitution of the State of Montana, 1889.

Nebraska: Constitution of the State of Nebraska, 1875.

Nevada: Constitution of the State of Nevada, 1864.

New Hampshire: Constitution of the State of New Hampshire, 1784.

New Jersey: Constitution of the State of New Jersey, 1947.

New Mexico: Constitution of the State of New Mexico, 1911.

New York: Constitution of the State of New York, 1938.

North Carolina: Constitution of North Carolina, 1868.

North Dakota: Constitution of North Dakota, 1889.

Ohio: Constitution of Ohio, 1851.

Oklahoma: Constitution of the State of Oklahoma, 1907.

Oregon: Constitution of Oregon, 1859.

Pennsylvania: Constitution of the State of Pennsylvania, 1874.

Rhode Island: Constitution of the State of Rhode Island and Providence Plantations, 1842.

South Carolina: Constitution of the State of South Carolina, 1895.

South Dakota: Constitution of South Dakota, 1889.

Tennessee: Constitution of Tennessee, 1870.

Texas, Constitution of the State of Texas, 1876.

Utah; Constitution of Utah, 1896.

Vermont: Constitution of the State of Vermont, 1793.

Virginia: Constitution of Virginia, 1902.

LIST OF CONSTITUTIONS (continued)

Washington, Constitution of the State of Washington, 1889.

West Virginia: Constitution of West Virginia, 1872.

Wisconsin: Constitution of the State of Wisconsin, 1848.

Wyoming: Constitution of the State of Wyoming, 1890.

APPENDIX C

LIST OF CASES EXAMINED

Bishop v. Colaw, 450 F. 2d 1076 (8th Circ. 1971).

Board of Trustees of Calaveras Unified School District v. Leach, 65 Cal. Rptr. 588 (1968).

Burnside v. Byers, 363 F. 2d 244 (5th Cir. 1966).

Creel v. Brennan (Bates College Case), No. 3572, Superior Court of Androscoggin City, Maine (1968).

Eihern v. Maus, 300 Supp. 1169 (1969).

Eisner v. Stamford Board of Education, 440 F. 2d 803 (2d Cir. 1971).

Freeman v. Flake, 448 F. 2d 258 (10th Cir. 1971).

Griffin v. Tatum, 300 F. Supp. 60 (M.D. Ala. 1969).

Griswold v. Connecticutt, 484 U. S. 479 (1969).

In re Donaldson, 75 Cal. Rptr. 220.

In re Gault, 387 U. S. 1 (1967).

Jones v. Gillespie (Ct. of Comm. Pl., Phil., April, 1970). Complaint, Interrogatories, Brief, Court Order.

Katz v. United States, 389 U. S. 347, 353 (1967).

King v. Ambellan, 173 N.Y.S. 2d 98 (1968).

King v. Saddleback, 445 E. 2d 932 (9th Cir. 1971).

Miranda v. Arizona, 384 U. S. 436, 86 S. Ct. 1602 (1966).

Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (1968).

Olmstead v. United States, 277 U. S. 438 278 (1928).

Overton v. New York, 20 N. Y. 2d 260, 229 N.E. 2d 283 N. Y. 2d 22 (1967).

Overton v. Reiger, 311 F. Supp. 1035 (S. D. N. Y. 1970).

Overton v. Reiger, 401 U. S. 1003 (1971).

People v. Cohen, 306 N.Y.S. 2d 788 (1968).

Piazzola and Marinshaw v. Watkins, U.S.C.A. 5th Circuit, 30032 (April 27, 1971).

Riseman v. Quincy School Committee, 439 F. 2d 148 (1st Cir. 1971).

Scoville v. Board of Education of Jolliet Township High School District, 286 F. Supp. 988 (N. D. Ill. 1968).

State of Delaware v. Baccino, 282 A. 2d 869 (1971).

State v. Stein, 203 Kan. 638, 456 P. 2d 1 (1969), Cert. denied 90 S. Ct. 996 (1970).

Tinker v. Des Moines School District, 393 U. S. 503 (1969).

Van Allen v. McCleary, 211 N.Y.S. 2 501 (1961).

Wagoner v. Redmond, 127 So. 2d 275 (1960).

Werfel v. Fitzgerald, 260 N.Y.S. 2d 791 (1963).

Wolf v. Colorado, 338 U. S. 25 (Colorado, 1949).

APPENDIX D

LIST OF PRIVILEGED COMMUNICATION STATUTES EXAMINED

Idaho Code, sec. 9-203.

Indiana Statutes Annotated, c. 299, sec. 2.

Michigan Statutes Annotated, sec. 27A. 2165.

North Dakoka Century Code, Section 31-01-06.1.

BIBLIOGRAPHY

BIBLIOGRAPHY

Books

Ackerly, Robert L. The Responsible Exercise of Authority. Washington, D. C.: National Association of Secondary School Principals, 1969.

Burn, Andrew R. Pericles and Athens. Mystic, Conn.: Verry Press, 1948.

Buss, William G. Legal Aspects of Crime Investigation in the Public Schools. Topeka: National Organization on Legal Problems of Education, 1971.

Cross, Harold L. The People's Right to Know. Morningside Heights, N. Y.: Columbia University Press, 1953.

Holbrook, James. Ten Years Among the Mail Bags. Philadelphia: n. p., 1855.

Huckins, Westley. Ethical and Legal Considerations in Guidance. Boston: Houghton-Mifflin Company, 1968.

Kelly, Frank K. Your Freedoms: The Bill of Rights. New York: Bantam Books, 1966.

Knezevich, Stephen J. "The Ethical Concerns for Professional School Administrators," Ethics and the School Administrator. Danville, Ill.: The Interstate Printers and Publishers, Inc., 1970.

Miller, Arthur R. The Assault on Privacy. Ann Arbor: University of Michigan Press, 1971.

Packard, Vance. The Naked Society. New York: David McKay Company, 1964.

Schwartz, Bernard. A Commentary on the Constitution of the United States. Part III. New York: Macmillan Company, 1968.

Simmel, Arnold. "Privacy Is Not an Isolated Freedom." Privacy. Edited by James Roland Pennock. New York: Atherton, 1971.

Story, Joseph. Commentaries on the Constitution of the United States. Boston: n.p., 1851.

Ware, Martha L. Law of Guidance and Counseling. Cincinnati: W. H. Anderson Company, 1964.

Westin, Alan. Privacy and Freedom. New York: Atheneum Press, 1967.

Wheeler, Stanton, ed. On Record: Files and Dossiers in American Life. New York: Russell Sage Foundation, 1969.

Wigmore, John H. Wigmore's Code of the Rules of Evidence in Courts of Law. Boston: Little, Brown and Company, 1942.

Periodicals

Astin, Alexander W., and Boruch, Robert F. "A Link System for Assuring Confidentiality of Research Data in Longitudinal Studies." American Council on Education Research Reports, Vol. V, No. 3 (1970), pp. 5-18.

Butler, Robert A. "The Public High School Student's Constitutional Right to a Hearing." Clearinghouse Review, Vol. V, No. 8 (December 1971), pp. 431-64.

Carter, T. M. "Professional Immunity for Guidance Counselors." Personnel and Guidance Journal, Vol. I, No. 33 (1954), pp. 130-35.

Caruso, L. R. "Legal Aspects of Privacy and Confidentiality of Student Files and Records." The College Counsel, Vol. IV (1969), pp. 26-36.

Dixon, W. "The Griswold Penumbra: Constitutional Charter for an Expanded Law of Privacy." 64 Michigan Law Review, 197 (1965).

Gade, Eldon M. "Implications of Privileged Communication Laws for Counselors." The School Counselor, January 1972, pp. 150-51.

Geiser, R. L., and Rheingold, P. D. "Psychology and Legal Process: Testimonial Privileged Communication." American Psychologist, Vol. XIX (1964), pp. 831-38.

Godwin, William F., and Bode, Katherine Anne. "Privacy and the New Technology." Personnel and Guidance Journal, Vol. L, No. 4 (1971), pp. 298-304.

Kaplan, David. "Search and Seizure: A No Man's Land in Criminal Law." California Law Review 474 (1961).

Killian, John D. "The Law, the Counselor and Student Records." Personnel and Guidance Journal, Vol. XLVIII, No. 6 (1970), pp. 423-32.

Konvitz, Milton R. "Privacy and the Law: A Philosophical Prelude." Law and Contemporary Problems, Vol. XXXI (1966) pp. 423-33.

Lister, Charles. "Privacy and Large-Scale Personal Data Systems." Personnel and Guidance Journal, Vol. IL, No. 3 (1970), pp. 207-11.

Litwack, L.; Rochester, D.; Oates, R; and Addison, W. "Testimonial Privileged Communication and the School Counselor." The School Counselor, November, 1969, pp. 108-10.

Marsh, John, and Kinnick, Bernard. "Let's Close the Confidentiality Gap," Personnel and Guidance Journal, Vol. XLVIII (January 1970), pp. 362-65.

"Nixon and the Media," Newsweek, January 15, 1973, pp. 15-20.

Pardue, Jerry; Whichard, Willis; and Johnson, Elizabeth. "Limiting Confidential Information in Counseling." Personnel and Guidance Journal, Vol. IL, No. 1 (1970), pp. 14-20.

Schneider, Alexander. "The Limits of Confidentiality." Personnel and Guidance Journal, Vol. XLII (1963), pp. 252-54.

Teitelbaus, Vivian S., and Goslin, David A. "The Russell Sage Guidelines: Reactions from the Field." Personnel and Guidance Journal, Vol. L (December, 1971), pp. 311-17.

Warren, Charles, and Brandeis, Louis. "Right of Privacy." 4 Harvard Law Review, 193 (1890).

Weisman, Clark. "Programming Protection: What Do You Want to Pay?" SDC Magazine, Vol. X, No. 7 (1967), pp. 12-151.

Westin, Alan. "Science, Privacy and Freedom: Issues and Proposals for the 1970's." Part II. Columbia Law Review, Vol. LXVI, No. 7 (November 1966), pp. 1205-1253.

Publications of the Government, Learned Societies, and other Organizations

American Bar Association. Code of Professional Responsibility and Canons of Judicial Rights. 1969.

American Personnel and Guidance Association. Ethical Standards. Washington, D. C.: 1961.

Center for Law and Education, Harvard University. Student Rights Litigation Packet, Revised Edition. Cambridge: April, 1972.

National Association of Secondary School Principals. A Legal Memorandum, April 1972.

National Education Association. Code of Ethics. Washington, D. C.: 1952.

Oklahoma Association of Secondary School Principals. "The Secondary School Principalship." A position paper adopted May 3, 1969.

Phi Delta Kappa Commission on Human Rights. A Guide for Improving Teacher Education in Human Rights, 1971.

Report of a Conference on the Ethical and Legal Aspects of School Record Keeping. Sterling Frost, Chairman. Guidelines for the Collection, Maintenance and Dissemination of Pupil Records. Hartford: Russell Sage Foundation, Inc., 1970.

Vanderpool, Floyd A. Jr. A Guide for Keeping Student Records and Getting Rid of Them. New York: Chronicle Guidance Publications, Inc., n.d.

Legal Literature

Black, Henry C. Black's Law Dictionary. Revised 4th ed. St. Paul: West Publishing Company, 1968.

Corpus Juris Secundum. Brooklyn: The American Law Books Company and the West Publishing Company.

National Reporter System. St: Paul: West Publishing Company.

Restatement of Torts. American Law Institute.

United States Constitution and Amendments.

West's Decennial Digest. St. Paul: West Publishing Company.

Other Sources

Gade, Eldon M. "The Development and Reactions to a Privileged Communication Law." Unpublished paper, University of North Dakota, 1970.

Ladd, Edward T. "Legal Problems Arising from the Regulation of Student Behavior in the Classroom and School." A paper delivered at the University of Texas School Law Conference. San Antonio, Texas, November 16, 1971. (Mimeographed)

Pope Pius XII. An Address to the Congress of the International Association of Applied Psychology, Rome, April 10, 1958.

Todd, Melvin. "An Analysis of Policies and Practices in Selected Urban Oklahoma High Schools which Indicate a Commitment to or a Violation of Human Rights." An Unpublished Ed. D. dissertation, University of Oklahoma, 1970.