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AN ANALYSIS OF LEGAL ENACTMENTS AND JUDICIAL
DECISIONS PERTAINING TO CERTAIN HUMAN-CIVIL
RIGHTS OF PUPILS IN PUBLIC SCHOOLS.

The University of Oklahoma, Ph.D., 1972
Education, general

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UNIVERSITY OF OKLAHOMA

GRADUATE COLLEGE

AN ANALYSIS OF LEGAL ENACTMENTS AND JUDICIAL DECISIONS

PERTAINING TO CERTAIN HUMAN-CIVIL RIGHTS

OF PUPILS IN PUBLIC SCHOOLS

A Dissertation

Submitted to the Graduate Faculty

in partial fulfillment of the requirements for the

Degree of

DOCTOR OF PHILOSOPHY

BY

BILLYE MOATT VAN SCHUYVER

Norman, Oklahoma

1972

AN ANALYSIS OF LEGAL ENACTMENTS AND JUDICIAL DECISIONS
PERTAINING TO CERTAIN HUMAN-CIVIL RIGHTS
OF PUPILS IN PUBLIC SCHOOLS

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ACKNOWLEDGEMENTS

The writer acknowledges a deep sense of gratitude to the members of her dissertation committee, Dr. Glenn R. Snider, Dr. Robert F. Bibens, and Dr. Jack F. Parker, whose patience and genuine interest were such an important contribution to the completion of this work. A special thanks is extended to Dr. Gerald D. Kidd, chairman of the committee. It was his encouragement and assistance which made this research possible.

To the writer's husband, J. C., and dear sons, Mark and Drue, may you someday know how much your love and understanding helped.

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CHAPTER I

INTRODUCTION

Background of the Study

The public schools are a uniquely powerful group of institutions. They are accorded by law certain responsibilities and powers which, for a large part of each day for three-fourths of the year, put them in almost complete control of every non-disabled person between the ages of seven and eighteen who (1) cannot or does not choose to attend private school, or (2) has not completed four years of high school.

In Oklahoma, school laws require that every public school student must attend and comply with the rules of his school under the following restrictions:

- (1) He must attend the school to which he is assigned by the school officials in the district in which he lives.
- (2) He may not transfer to another district at his own choice but may be granted a transfer only at the discretion of the officials of the sending and receiving schools.
- (3) He is expressly forbidden to quit school before he is eighteen or has completed four years of high school, but school officials may at their discretion suspend or expel him.
- (4) He and his parents or guardians are expressly forbidden to exhibit any aggressive action, either real or threatened,

against a school employee, but the school personnel are permitted by law to use force against the student.

5. Both the student and his parents or guardians are subject to imprisonment and fine if they violate the school laws.

From a reading of Oklahoma's school laws the conclusion may be reached that all rights have been reserved to the schools and their officials and that the rights of parents and students have been totally abrogated. This conclusion receives some support from judicial decisions which uphold the view that ". . . the state is permitted to invade the liberty of the individual in order that the state may be protected."¹

That the schools are in fact established and maintained not for the sake of the individual but for the public good is firmly rooted in legal precedent. The Supreme Court of New Hampshire stated in 1912:

The primary purpose of the maintenance of the common school system is the promotion of the general intelligence of the people constituting the body politic and to thereby increase the usefulness and efficiency of the citizens upon which the government of society depends. Free schooling furnished by the state is not so much a right granted to pupils as a duty imposed upon them for the public good. If they do not voluntarily attend the schools provided for them they may be compelled to do so. While most people regard the schools as the means of great personal advantage to the pupils, the fact is too often overlooked that they are governmental means of protecting the state from the consequences of ignorant and incompetent citizenship.²

¹Robert R. Hamilton and Paul R. Mort, The Law and Public Education, (Chicago: The Foundation Press, Inc., 1941), p. 18.

²Fogg v. Board of Education, 82 Atl. 173 (New Hampshire, 1912).

While the power of the states is virtually absolute in the establishment and maintenance of public schools, the Constitution of the United States reserves to individual citizens certain rights and freedoms which must not be violated. When the rights of the state and the rights of the individual are in conflict, the court must rule. Historically, the courts have upheld the schools where the test of reasonableness could be applied. On this point Edwards has said:

In determining whether school officers or teachers have authority to enforce a particular rule or regulation governing the conduct of pupils, the courts universally apply the test of reasonableness The courts are, indeed, very reluctant to declare a board regulation unreasonable.³

On the other hand, recent court cases have affirmed the rights of the individuals over the rights of the school, and a whole chorus of voices has been raised on behalf of the human rights of public school children.

In a recent paper Nat Henthoff deplored the routine violation of the Constitutional rights of high school students, although he did see a trend toward more recognition of those rights:

Such basic rights of an American citizen as freedom of speech and assembly, protection from invasion of privacy, and the guarantee of due process of law do not exist for the overwhelming majority of American high school students.

.

They [the schools] are recognizing that other people do very much perceive civil liberties in the schools as an

³ Newton Edwards, The Courts and the Public Schools (Chicago: The University of Chicago Press, 1948), p. 564.

issue. In the past decade, a rising number of students and their parents. . . have been bringing, and increasingly, winning suits⁴

The Committee on Education and Human Rights of Phi Delta Kappa issued a statement in which it named certain basic human rights highly prized by our society and secured at great cost over the ages.⁵ The Phi Delta Kappa Statement asserts that while education is a powerful and effective means by which society can implement human rights, it cannot do so in schools which do not teach and practice these rights and the democratic values upon which they are based.

Prominent educators such as Henthoff and the members of the Phi Delta Kappa Commission are calling for changes in practices in our public schools. But such critics are what Hamilton and Mort refer to as "the frontiers of change," and it is not to these authorities but to legal enactments and judicial decisions that one must turn to search "for the trends, the commonality, of changes in law"⁶

Statement of the Problem

The problem for this investigation is (a) to discover and analyze the significant recent legislation and judicial decisions relating to selected basic human-civil rights of students in the public schools,

⁴Nat Henthoff, "Why Students Want Their Constitutional Rights," Saturday Review, May 22, 1971, pp. 60-61.

⁵"Education and Human Rights: A Statement of the Commission on Education and Human Rights of Phi Delta Kappa," 1971.

⁶Hamilton and Mort, 3.

and (b) to identify possible legal trends and directions in the interpretation of these rights, and to analyze their implications for the behavior of public schools.

Need for the Study

Historically, local school boards have been granted great power over the systems which they represent. Lacking legislative enactments to guide them, school boards make their own rules, but because no system of rules can be completely codified, much is left to the discretion of the schools' administrators and teachers. Individual patrons have little recourse when school policies and actions seem to them harsh, inhumane, ineffective, or in any way unsuitable. When other methods fail, they may turn to the courts.

A patron initiating litigation is taking a step of great consequence to the future, since a case once decided becomes a precedent for future cases. As Wallace Good pointed out:

In our legal system, while the major concern of the court is with the immediate case, the decisions becomes the guideline for action or restraint in countless other situations. Discussions of recent appellate cases involving regulation of student conduct, then, should indicate the kinds of problems for which legal solutions are being sought, reveal trends concerning the authority of school personnel to regulate student conduct, and hint of changes in what our society expects of the school system.⁷

⁷Wallace E. Good, "Regulations of Student Conduct," The American School Board Journal, CLV (July, 1967), p. 23.

Litigation over matters of pupil control, rights of parents and students with regard to the schools, the doctrine of in loco parentis, and other areas related to human and civil rights of school children seem to be on the increase. This increase in litigation, while perhaps not so great in Oklahoma as in other states, may indicate a gap between what society wants from the schools, and what the schools are providing

There is a need for students and parents to know what their legal rights and opportunities are. If a parent feels that a problem of extreme importance is unresolved in his school system, it is essential for him to know what chance he has of resolving that problem in court. This can be learned by studying the results of previous litigation.

Likewise, school administrators and teachers need to be aware of litigation which has grown out of conflicts in the schools. If, as Good says, judicial decisions indicate the kinds of problems for which legal solutions are being sought, reveal trends, and hint of changes which our society wants from the schools, then school personnel ought to be in possession of those facts.

Purpose of the Study

The purpose of this research is to investigate legislation and judicial decisions having to do with the handling of students in the public schools with regard to the according of certain basic human-civil rights to school children in public school situations. Implications of

those laws and decisions, and apparent legal trends and directions in the interpretation of the rights of public school students, as well as their implications for the behavior of teachers and administrators in public schools, will be reported.

The information gathered in this study ought to serve school teachers and administrators in their efforts to educate children, aid them in understanding the school's responsibility in protecting students in the exercise of their rights, and help clarify in the minds of parents and students those rights and opportunities which our legal system attempts to uphold for all citizens.

Scope and Limitations

Litigation with regard to handling of pupils in public schools has been so extensive in recent years that a satisfactory study of it can not be made in a single effort. Therefore the following limitations were imposed upon this research:

- (1) Statutory laws studied are those of the State of Oklahoma only;
- (2) Judicial decisions studied are those rendered in Federal District Courts and by state and federal appellate courts including the United States Supreme Court, as reported in the National Reporter System;
- (3) The period studied includes the years 1954 through 1972.
- (4) Cases studied are those which relate to certain human-civil rights selected from the list compiled by the Phi Delta Kappa Commission on Human Rights and Education. Those selected human civil rights are as follows:

- a) The right to be secure in the person;
- b) The right to protection against unlawful search and seizure.
- c) The right to due process.
- d) The right to freedom of expression;
- e) The right to freedom of speech;
- f) The right to freedom of the press;
- g) The right to freedom of religion.

(5) Cases having to do with achieving racial balance or racial desegregation of the schools are excluded from this research.

Methodology

This research is a historical study using the method of legal research. In investigating legal enactments and judicial decisions the following sources were used:

- For Oklahoma laws - Oklahoma Statutes Annotated
- For discovering cases - Oklahoma Digest
Corpus Juris Secundum
West's Decennial Digest
- For case reports - The National Reporter System

A search was conducted of Oklahoma's statutory laws and the results of that search are contained in Chapter III of this study.

Judicial decisions rendered by United States District Courts and by state and federal appellate courts including the United

States Supreme Court, were searched for cases involving the selected human-civil rights as those rights were applied to children in the public schools. Decisions were read and summarized. Chapter IV of this study is divided into sections corresponding to each of the selected human-civil rights. Each of these sections provides a table of cases briefly summarized and an analysis of the cases investigated.

A discussion of possible trends and directions in litigation concerning the handling of public school children is contained in Chapter V, Conclusions and Recommendations.

CHAPTER II

REVIEW OF RELATED LITERATURE

The nation's public school system is under attack on so many fronts one wonders if it will be able to survive the barrage.¹ While this statement by Edwin A. Roberts, Jr. may be extreme, critics of our schools have within recent years voiced a wide variety of suggestions for change. Ivan Illich takes the view that the schools are "bridges to nowhere," and that our society ought to be "deschooled." Illich says:

Children are protected by neither the First nor the Fifth Amendment when they stand before that secular priest, the teacher. The child must confront a man who wears an invisible triple crown, like the papal tiara, the symbol of triple authority combined in one person. For the child, the teacher pontificates as pastor, prophet, and priest--he is at once guide, teacher, and administrator of a sacred ritual. He combines the claims of medieval popes in a society constituted under the guarantee that these claims shall never be exercised together by one established and obligatory institution--church or state.

Defining children as fulltime pupils permits the teacher to exercise a kind of power over their persons which is much less limited by constitutional and consuetudinal restrictions than the power wielded by the guardians of

¹Edwin A. Roberts, Jr., "Perfect Equality and the Importance of Appearance," The National Observer, Vol. II, No. 13 (March 25, 1972), p. 11.

other social enclaves. Their chronological age disqualifies children from safeguards which are routine for adults in modern asylum--madhouse, monastery, or jail.²

John Holt, when asked what one giant step forward could most be desired for America's schools, answered:

It would be to make our schools, instead of what they are now, which is jails for children, into a resource for free and independent learning which everyone in the community, of whatever age, could use as much or as little as he wanted.³

Another outspoken critic is Charles Silberman who said that the most important characteristic schools share in common is a preoccupation with order and control. In Crisis in the Classroom Silberman describes incident after incident of mindless, inhumane treatment of child by teacher. He does, however, see some hope:

Fortunately, there are signs of change, in part as a response to student dissent, in part as a result of the growing distaste a number of teachers and administrators feel for the way schools are run, and their conviction that schools can be more humane, that students can handle and benefit from greater freedom and responsibility. Whatever the reasons, there would appear to be a growing ferment in high schools around the country. . . .

.
Like it or not, more and more high schools are going to have to make more and more changes of these sorts. In California, New York, and Connecticut, for example, as well as in a number of other states, schools that have

²Ivan Illich, Deschooling Society, (New York: Harper & Row, 1970), pp. 31-32.

³John Holt, The Underachieving School, (New York: The Pitman Publishing Company, 1969), p. IX.

tried to enforce codes governing dress and grooming in the traditional way--suspending the offending student or denying him "class privileges"--have had their codes overruled by the courts. . . .

Whether or not it is a panacea, however, freedom happens to be a constitutional right; as the Supreme Court has put it, "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." Moreover, the notion that students have constitutional rights which the school cannot infringe is no whim of the moment; it is firmly rooted in the law. As far back as 1943, the Supreme Court made it clear that compulsory school attendance did not mean that students surrendered their rights at the schoolhouse door. The Fourteenth Amendment, the Court declared, "protects the citizen against the State itself and all of its creatures--the Board of Education not excepted. They have, of course, important delicate and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."⁴

Another champion of the civil rights of children is Thomas Gordon who said that in most schools students are blatantly denied civil rights--the right of free speech, the right to wear what they want, the right to due process, and he advises parents to "go to bat to protect their children's civil rights."⁵

These examples from well-known educational writers illustrate the seriousness of the charges which are being brought against

⁴Charles Silberman, Crisis in the Classroom (New York: Random House, 1970), pp. 336-337.

⁵Thomas Gordon, Parent Effectiveness Training, (New York: Peter Wyden, Inc., 1970), p. 247.

America's schools. When authorities such as these speak with such vehemence in behalf of our public school children, it is no wonder that parents and students are voicing their own convictions in court. This burgeoning body of writings coupled with the growing mass of court decisions must eventually influence all schools.

Edward T. Ladd sounds this warning for the professional educator:

When the decision has to be made just where to draw the line between the freedom of some and the authority of others, deep personal feelings come into play. This is now happening in schools throughout the United States, a fact evidenced by the number of students and parents ready to go to court. The professional educator who would deal safely with these feelings, which involve him personally as well as professionally, must have an informed understanding of the various facets of the problem.⁶

Other writers, including writers of textbooks, have given attention to the increasing willingness of federal and state courts to accept cases involving the internal affairs of public education.

In view of the traditional and legal bounds which make public education a function of the states rather than a function of the federal government, it is somewhat surprising to discover the extent of federal litigation which directly affects the public schools. With regard to this, Fellman commented:

The impact of the national government through legislation and appropriation upon the American educational system is at most tangential and indirect. . . . The

⁶Edward T. Ladd, "Civil Liberties, Yet Another Piece of Baggage for Teacher Education?" Reprinted from The Journal of Teacher Education, Vol. 20, No. 2 (Summer, 1969).

United States Constitution, however, is the supreme law of the land, and as such is ultimately enforceable by the Supreme Court. Insofar as the Constitution imposes limitations upon the states, the states are bound by them, and by the interpretations which the Supreme Court attaches to them.⁷

Fellman points out that it was through the Fourteenth Amendment that broad limitations were placed on the states for the purpose of protecting the rights of individuals. This Amendment makes the Bill of Rights operable in the field of education, and in the century since the Fourteenth Amendment was ratified the Supreme Court and other courts have been called upon many times to set limits upon what the states could do in the field of education.

Hamilton and Mort said:

The problem of the courts is clear. They are faced with the necessity of deciding a conflict between the rights of individuals on the one hand and the principle of state determination of its educational policies on the other. Any protection of individual rights pro tanto limits the state in the exercise of its power under the stated principle. The task of the courts is to preserve a reasonable balance between the two concepts. In general it may be said that courts are inclined to allow the states wide discretion in the formulation and alteration of their educational policies. There is, however, a point beyond which they may not go. Just where this point is cannot be determined as an abstract matter, and the final determination of the validity of any legislation, educational or otherwise, is not dependent upon some rigid legal principle, but upon the judicial opinion as to the social desirability of the result sought to be effected through the legislation in question.⁸

⁷David Fellman, The Supreme Court and Education, (New York: Teachers College Press, 1969).

⁸Hamilton and Mort, 26.

The schools themselves are sometimes caught in the middle when state-exercised rights seem to be in conflict with the constitutionally guaranteed rights of individuals. Teachers trained to act in authoritarian modes may find themselves criticized and even prosecuted. The whole educational establishment has come under much criticism for failure to practice the democratic principles which it teaches. As Phi Delta Kappa's Chairman on Human Rights in Teacher Education wrote:

Many people view the education establishment as exceptionally resistant to change. Young people are demanding that our government and other institutions begin to act in accordance with the moral and political values and human rights which lie at the root of the so-called American political democracy.⁹

Phi Delta Kappa's Teacher Education Project aims to alert teacher education institutions to their responsibilities in training those who will teach in the public schools so that these new teachers can help prepare the young to understand and commit themselves to democratic values and human rights.

There is evidence that the youth of America are impatient with waiting for their elders to act in accordance with democratic ideals. Out of this impatience has grown an era of student unrest which reached a peak in the 1960's and was marked by violence on the campuses of colleges and high schools. While the militance

⁹Glenn R. Snider, "Human Rights: A High Priority in Teacher Education," Phi Delta Kappan, November, 1971, p. 172.

manifest during the last decade may be waning, the dissatisfaction with our treatment of students is not. One writer said, "Students at all levels are demanding their rights as human beings and are challenging rules, regulations, and actions of individuals and organizations that infringe on such rights."¹⁰

The term rights as it applies to minors, however, is slippery. What are the rights of an individual who has no legal personhood: who can neither sue nor be sued in his own right; who cannot contract; who cannot choose where he will live; and who cannot choose that he will or will not attend school.

In discussing the significant freedom of religion versus compulsory education case, Wisconsin v. Yoder, recently heard by the United States Supreme Court, Stephen Arons said:

The existence of this paternalistic tug of war between the state and parents for the control of children exposes the fact that young people themselves have few rights and almost no legally acknowledged individuality.¹¹

In 1943 the Supreme Court handed down a decision which seemed to open new doors of freedom for school children. In West Virginia Board of Education v. Barnette, a landmark freedom of religion case the court proclaimed that "educating the young for citizenship is

¹⁰Dale Gaddy, "Rights and Freedoms of Public School Students: Directions from the 1960s," ED 048 666, ERIC, 1970.

¹¹Stephen Arons, "Compulsory Education: The Plain People Resist," Saturday Review, January 15, 1972, p. 57.

reason for scrupulous protection of Constitutional freedoms of the individual, "¹²

Unfortunately, the freedom so tantalizingly offered did not really materialize, and even today with young people becoming more and more vocal in their demands, the schools are considered by many to be enclaves of totalitarianism. The American Civil Liberties Union observes that this totalitarian atmosphere may be fostered because administrators distrust the relatively immature student and consequently emphasize the need for order rather than the need for freedom.

The ACLU stresses the importance of academic freedom and civil liberties to the secondary schools and says:

If each new generation is to acquire a feeling for civil liberties, it can do so only by having a chance to live in the midst of a community where the principles are continually exemplified. For young people, the high school should be such a community.

In practice this means, first, that school administrators should widen the area of teacher and student initiative and responsibility, and should accept and act upon as broad a construction of the rights of teachers and students as is compatible with their responsibilities. It should be possible to strike a balance between the principle of order and that of liberty, well within the outer limits where the one approaches regimentation and the imposition of authoritarian discipline, on the one hand, and license and anarchy on the other.

¹²West Virginia v. Barnette, 319 U.S. 624 (West Virginia, 1943).

Second, that aspect of American academic tradition which stresses the free contest of ideas should be a vital element both in the development of the curriculum and in the classroom teaching. Neither outside officials nor school administrators should permit limitation of expression of points of view to those currently acceptable in the locality, or the region, or even the country. Contemporary accepted opinion needs to be transmitted in the secondary schools, but never exclusively.

No step should be neglected which will enable students to hear and to learn to evaluate strange and unpopular ideas.

Third, opportunities for free speech and assembly should be accorded our students as early as is practicable. Only by practicing some of the rights of citizens, can they grow to the political and social maturity consonant with democracy.¹³

In the pages that follow, the legal enactments of one state, Oklahoma, and the judicial decisions emanating from the highest courts in our land will be reviewed and analyzed to attempt to determine the more significant of these as they relate to our nation's school children and the rights of those children to the freedom about which these various authors have written.

¹³American Civil Liberties Union, Academic Freedom in the Secondary Schools, A Report Prepared by the Academic Freedom Committee (New York: American Civil Liberties Union, 1968).

CHAPTER III

A SURVEY OF OKLAHOMA'S SCHOOL LAWS RELATED TO THE HUMAN-CIVIL RIGHTS OF CHILDREN

Article XIII of the Constitution of the State of Oklahoma is the authority upon which the state's school system is founded. Its eight sections contain the following provisions.

Section 1 - provides for the establishment and maintenance of public schools and for their financial support;

Section 2 - requires the establishment of institutions for the deaf, dumb, and blind;

Section 3 - provides that separate schools be provided for white and colored children ;

Section 4 - sets out compulsory attendance requirements;

Section 5 - vests in the Board of Education the instruction in the public school and provides for the Board's officers ;

Section 6 - sets up a textbook system for the schools;

Section 7 - requires that instruction be provided in agriculture, horticulture, stock feeding and domestic science; and

Section 8 - relates to higher education.

Judicial decisions and statutory enactments have brought about elaboration and changes to the constitutional provisions, including the repeal in 1966 of Section 3.

Title 70 of the Oklahoma Statutes contains the Oklahoma School Code, the purpose of which is to provide for a state system of public school education and for its establishment, organization and support. The School Code was written by the Oklahoma Legislature in 1949 at which time the state's school laws were revised and supplemented. In 1971 the School Code was again revised and various sections of Title 70 were repealed or renumbered.

One purpose of this research, as previously stated, is to analyze Oklahoma's legal enactments pertaining to the following human-civil rights of public school children: (1) the right to be secure in the person, (2) the right to protection against unlawful search and seizure, (3) the right to due process, (4) the right to freedom of expression, (5) the right to freedom of speech, (6) the right to freedom of the press, and (7) the right to freedom of religion.

A reading of the Oklahoma School Code reveals that human-civil rights, as such, are not mentioned therein. However, the following extracts from the Code define the school, describe the powers which statutes have delegated to school officials, and/or relate directly to the handling of students.

The public schools of Oklahoma shall consist of all free schools supported by public taxation. . . .

.

A school year for all public schools in Oklahoma shall consist of at least ten months of four (4) weeks each. . . .

.

The residence of any child for school purposes shall be the legal residence of the parents. . . .

.

All children between the ages of five . . . and twenty-one. . . shall be entitled to attend school free of charge in the district in which they reside.

.

The board of education of each school district shall have the power to make rules and regulations. . . .

.

Any person who strikes, threatens to strike, or otherwise abuses any employee of the school district shall be guilty of a misdemeanor. . . .

.

The teacher of a child attending a public school shall have the same right as a parent or guardian to control and discipline such child during the time the child is in attendance in or in transit to or from the school or any other school function authorized by the school district or classroom presided over by the teacher.

.

It shall be unlawful and a misdemeanor for any teacher to reveal any information concerning any child

.

Any school district may provide transportation for each child who should attend any public elementary or high school. . .

.

It shall be unlawful for a parent, guardian, custodian or other person having control of a child who is over the age of seven (7) years and under the age of eighteen (18) years, and who has not finished four (4) years of high school work, to neglect or refuse to cause or compel such child to attend and comply with the rules of some public, private or other school

.

No sectarian or religious doctrine shall be taught or inculcated in any of the public schools of this state, but nothing in this section shall be construed to prohibit the reading of the Holy Scriptures.

.

Any pupil who is guilty of immorality or persistent violation of the regulations of a public school may be suspended by the principal teacher of such school, which suspension shall not extend beyond the current school year; provided, the pupil suspended shall have the right to appeal from the decision of such principal teacher to the board of education of the district, which shall, upon a full investigation of the matter, determine the guilt or innocence of the pupil and its decision shall be final.

.

The superintendent or principal of any public school in the state of Oklahoma shall have the authority to detain and authorize the search for dangerous weapons or controlled dangerous substances, as defined by House Bill No. 1100 . . .
The superintendent or principal authorizing such search shall notify the local law enforcement agency which shall be responsible for obtaining any warrant or other authorization necessary to conduct such search.

.

Any parent or other person who shall willfully or maliciously beat or injure, torture, maim, or use unreasonable force upon a child under the age of seventeen (17) . . . shall be punished by imprisonment in the state penitentiary not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine of not more than Five Hundred Dollars

Provided, however, that nothing contained in this Act shall prohibit any parent, teacher, or other person using ordinary force as a means of discipline, including but not limited to spanking, switching, or paddling.¹⁴

Summary

The public school system of Oklahoma is administered by the State Department of Education which has statutory regulative and administrative powers.

A public school year must consist of 180 days of instruction. All children age five through twenty-one may attend school free of charge; children seven through eighteen must attend school until they have completed four years of high school.

Local school districts are governed by locally elected boards whose rules have the force of law. A child must attend school in the district in which his parents and he may transfer only with approval of the receiving and sending schools, if the transfer serves his best interests as defined by the schools.

Parents neglecting or refusing to send a child to school will be guilty of a misdemeanor and punishable by law.

¹⁴Leslie Fisher, School Laws of Oklahoma, 1971.

Inculcation of sectarian or religious doctrine is forbidden in the schools, although scripture may be read.

A parent or student who strikes, threatens, or abuses a school employee is guilty of a misdemeanor.

The teacher has the same right as a parent to control and discipline a child, including the right to use reasonable corporal punishment. However, a person who willfully or maliciously beats or injures a child is subject to criminal prosecution.

A pupil may be suspended by the principal for the remainder of the school year; he has the right to appeal to the board of education whose decision is final.

The superintendent or principal is expressly authorized to detain and have searched students suspected of concealing dangerous weapons or substances. Law officers are to be called to conduct the search and they are responsible for obtaining warrants. A student found to possess dangerous weapons or substances may be suspended.

CHAPTER IV

AN ANALYSIS OF JUDICIAL DECISIONS RENDERED IN CASES INVOLVING CERTAIN HUMAN-CIVIL RIGHTS OF SCHOOL CHILDREN

Cases Involving the Right to Be Secure in the Person

The Fourth Amendment to the United States Constitution says

"The right of the people to be secure in their persons . . . shall not be violated" and the Eighth Amendment adds, ". . . nor cruel and unusual punishments inflicted."¹ The Phi Delta Kappa Commission relates these basic rights to those contained in the Fourteenth Amendment: "No person shall be . . . deprived of life, liberty, or property without due process of law. . . ." and says:

The right to security of person . . . is basic to freedom as Americans define freedom. If the person is not held inviolate and if property rights are not maintained, then none of the other human rights can really exist. The right to security of person is closely akin to the right of privacy and protects the person from insult or injury by others.²

With the burgeoning of lawsuits relative to the human-civil rights of students in our public schools, the dearth of cases pertaining to violation of the person is especially notable. Since 1954 eight cases

¹U. S., Constitution, Amendments, Art. IV, Art. VIII.

²Phi Delta Kappa Commission on Human Rights and Education, "A Rationale for Analyzing Human-Civil Rights," 1971.

have been published in which a school child through his parents or guardians has sued a teacher or other school official for assault or injury to his person. In none of these cases has the plaintiff appealed to the Constitution or claimed violation of his basic human rights. On the contrary, these are damage cases in which the plaintiffs appeal to the court for relief based on permanent mental or physical injury to the person because of excessive punishment. Of these eight cases (summarized in Table 1, following) five resulted in clear verdicts for the teacher, two were decided in favor of the injured student, and another was remanded to a jury. These assault and battery cases were heard in state courts.

The first such case to be investigated was brought before the Supreme Court of Alabama in 1954.³ Here a school boy, eight and one-half years old, was whipped by a teacher for being unruly and insubordinate. There was conflicting evidence with regard to the instrument used on the boy but it appeared that five licks were administered, the skin was not broken, and the boy missed no school. After a jury trial in which the verdict was rendered in favor of the teacher, the case was appealed. The Supreme Court of Alabama upheld the verdict of the lower court which had noted that the teacher was not angry at the time of the punishment, that he had no legal

³Suits v. Glover, 71 So.2d 49, 260 Ala. 449, 43 ALR 2d 465, (Alabama, 1954).

malice or wicked motives, and that he did not inflict permanent injury to the child. The appellate court added:

A schoolmaster is regarded as standing in loco parentis and has the authority to administer moderate correction to pupils under his care. . . . In determining the reasonableness of the punishment or the extent of malice, proper matters for consideration are the instrument used and the nature of the offense committed by the child, the age and physical condition of the child and the other attendant circumstances.

The case of People v. Baldini, a New York lawsuit, also resulted in a decision for the teacher.⁴ Here a teacher was sued for assault because of striking a child with an open hand and a clenched fist. As a result of this punishment the boy had a bloody nose and a scratch on his back. The Court found that the fifteen-year-old boy had a record of being unruly, that he suffered no permanent injury, and that judgment should be in favor of the defendant teacher. The Court said:

It is the thought of the court that the teacher must be supreme in his classroom, like any other person placed in authority, he must use the authority vested in him wisely and never excessively. The court feels that the legislature has cloaked the teacher with discretion so that he may maintain the authority and decorum necessary for the proper conduct of classroom. Instruction can only be properly and successfully given by one who has the authority over his pupils and who has their respect. The teacher is vested with the right to give orders and as a concomitant of the same he should have the sanctions to enforce them.

⁴People ex rel Ebert v. Baldini, 159 NYS 2d 802 (New York, 1957).

In 1958 an appellate court in Connecticut reached a similar conclusion in the case of Andreozzi v. Rubano.⁵ A fifteen-year-old boy sued a teacher for striking him across the face with the back of his hand after the pupil had assumed a belligerent attitude and uttered a vulgar remark. The teacher testified that he believed the boy intended to strike him.

The court viewed the striking of the student as a corrective action rather than punishment and relieved the teacher of all liability. The court stated:

. . . the defendant acted, not for the purpose of inflicting punishment, but to restore order and discipline. It is manifest from all the facts and circumstances that unless the defendant had taken prompt and effective action, he would have been humiliated in the eyes of his pupils and the order and discipline of the classroom would have been seriously affected.

Tinkham v. Kole, an Iowa case, involved a thirteen-year-old boy who was slapped several times by his teacher for being slow to remove a pair of gloves from his hands.⁶ Although medical evidence tended to show that the boy had a ruptured ear drum as a result of the incident, the trial court dismissed the case saying, ". . . we should stop this foolishness right here and now. The teacher had a right to discipline the student and to use such force as was necessary to do so. . . ." The Supreme Court of Iowa agreed that proper discipline

⁵Andreozzi v. Rubano, 141 A.2d 639 (Connecticut, 1958).

⁶Tinkham v. Kole, 110 N. W. 2d 258 (Iowa, 1961).

is of vital importance but reversed and remanded the case to a jury saying, " . . . the reasonableness of the punishment here was a question of fact for the jury, not one of law for the court."

In 1963 a corporal punishment case came before the Supreme Court of Indiana.⁷ In Indiana State Personnel Board v. Jackson, the defendant was a teacher in a state school for the mentally retarded who spanked a pupil in violation of a school regulation against corporal punishment. Dismissed by the Personnel Board, the teacher asked for a judicial review, as was provided by statute, and was reinstated. The Personnel Board appealed.

In upholding the reinstatement of the teacher, the Supreme Court expressed doubts that a "rule" could deprive a teacher of the right to use physical force to eliminate a disturbance. A judge of the court in a concurring opinion said:

As long as teachers or parents are obligated under the law to educate, teach and train children, they may not be denied the necessary means of carrying out their responsibility as such teachers or parents.

In 1967 the Fourth Circuit Court of Appeals of Louisiana rendered a decision in which a teacher and his school board were held liable for excessive punishment of a pupil.⁸ The principals in Frank v. Orleans Parish School Board were a fourteen year old boy weighing

⁷Indiana State Personnel Board v. Jackson, 192 N.E.2d 740, (Indiana, 1963).

⁸Frank v. Orleans Parish School Board, 195 So.2d 451, (Louisiana, 1967).

one hundred pounds and a thirty-four year old teacher weighing about 230 pounds. The court found that the teacher lifted, shook, and dropped the boy, and that such actions were clearly in excess of that physical force necessary to either discipline the boy or protect the teacher. The court found the defendants to be liable for the injuries incurred from the punishment. As to the legality of corporal punishment, the court stated:

We expressly refrain from making any judicial pronouncement as to whether it is objectionable per se for a teacher in a public school to place his hands upon a student: common sense would dictate, however, that the individual facts and environmental characteristics emanating from each case would disclose both the right and the reasons for a teacher to do so, and the degree of force, if any, which may be used under particular or peculiar circumstances. A general rule in the negative relative to this problem may encourage students to flaunt the authority of their teachers. On the other hand, a general rule permitting physical contact between teacher and student in any instance, without qualification, would obviously encourage the one who occupies a position of superiority to take advantage of those who are in a less favorable position, since they are subject to their authority.

City of Macomb v. Gould is an Illinois case occurring in 1969.⁹

Here the defendant was a school teacher convicted in the circuit court of violating a city ordinance prohibiting fighting. The teacher appealed his conviction. The appellate court, in reviewing the facts found that the teacher had allegedly struck a fifteen year old student several times while charged with the duty of keeping a crowd away

⁹City of Macomb v. Gould, 244 N.E. 2d 634, Ill. App. 2d 361 (Illinois, 1969).

from the fence between stands and playing field during a ball game. The appellate court held that whether the teacher had maliciously inflicted corporal punishment upon the student was a question for the trier of fact and affirmed the lower court's decision.

A similar case with a different outcome was tried in Arizona in 1970. La Frenz v. Gallagher involved a suit for damages against a teacher who pushed a boy during softball class. The lower court found that the punishment was not unreasonable and declined to award damages to the plaintiff. Supreme Court of Arizona upheld that decision noting that corporal punishment which is reasonable in degree is "privileged" since the teacher stands in loco parentis.¹⁰

Within the last year two cases have been tried in United States District Court in which plaintiffs sued to enjoin public school systems from administering corporal punishment to students in the schools. In both cases the Court has decided in favor of the school's right to use corporal punishment, and in both the Court decreed that such punishment is not "cruel and unusual" within the meaning of the Constitutional amendment.

On June 4, 1971, the United States District Court for the Northern District of Texas, Dallas Division, rendered its decision in the case

¹⁰La Frenz v. Gallagher, 462 P.2d 804, 105 Ariz. 255 (Arizona, 1970.)

of Ware v. Estes.¹¹ In this case Douglas Ware, a minor represented by his father, sued the superintendent of the Dallas schools, asking for an injunction restraining the defendants from administering corporal punishment in the Dallas schools without the prior permission of the parent or student. A rule of the school system declared:

Principals are authorized to administer any reasonable punishment, including detention, corporal punishment, suspension for a period not to exceed ten school days at one time, or recommendation for expulsion from school.

The plaintiffs declared that corporal punishment administered without consent violates rights guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution. Besides violating their rights to due process, the plaintiffs charged that corporal punishment constitutes cruel and unusual punishment.

The court noted that there was evidence that the practice of corporal punishment in the Dallas Independent School District has been abused by some of the seven thousand teachers in that system, but said, "This does not, however, show that the policy itself is unconstitutional."

In rendering its decision against the plaintiffs, the court stated as follows:

The Court does not find that corporal punishment as authorized by the state law and the rules of the Dallas Independent School District amounts to cruel and unusual punishment.

¹¹Ware v. Estes et al., 328 F.Supp. 657 (Texas, 1971).

It must be pointed out in this context that if the corporal punishment is unreasonable or excessive, it is no longer lawful and the perpetrator of it may be criminally and civilly liable. The law and policy do not sanction child abuse.

In closing this opinion, the Court feels compelled to utter a general precept in light of the many cases it has had to entertain in the recent past embodying allegations of constitutional violations by the local school district. The following quote will succinctly and accurately describe the Court's attitude with respect to these cases.

"Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. * * * By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 21 L.Ed.2d 228, 234 (1968).

With that the court dismissed the plaintiffs' complaint.

In Sims v. Board of Education, a case tried in United States District Court for the District of New Mexico, a similar judgment was handed down.¹² A minor boy, Zebediah Sims, suing on behalf of himself and all other persons similarly situated, through his parents, asked the court to enjoin the schools in Independent School District No. 22 from administering corporal punishment to pupils in the system. The suit was brought on the grounds that such punishment violates the rights of the plaintiffs under the First, Eighth,

¹²Sims v. Board of Education of Independent School District No. 22, 329 F.Supp. 678 (New Mexico, 1971).

and Fourteenth Amendments. Here as in Ware v. Estes, the federal court declined to substitute its judgment for that of state law and school board regulation, and said:

This Court cannot, under the applicable law, and would not if applicable law permitted the exercise of such discretion, substitute its judgment for the judgment of the defendants in the case at hand on what regulations are appropriate to maintain order and insure respect of pupils for school discipline and property. This Court will not act as a super school board to second guess the defendants. If acts violative of reasonable school regulations be not discouraged and punished, those acts can result in the disruption of the schools themselves. If our educational institutions are not allowed to rule themselves, within reasonable bounds, as here, experience has demonstrated that others will rule them to their destruction.

Let there be no misunderstanding as to the precise holding herein. The role of a federal court in adjudicating claims that state school regulations violate the constitutional rights of pupils is relatively narrow. I do not hold that any school regulation, however loosely framed, is necessarily valid. I do not hold that school authorities have the authority to require pupils to lay aside any constitutional rights when he enrolls. I do not hold that school authorities may act arbitrarily or capriciously in the formulation or in the enforcement of school regulations. I do hold that the defendants have the power to promulgate and to enforce reasonable regulations governing students in attendance with power to impose responsible nondiscriminatory corporal punishment for breaches thereof without violating any federally protected constitutional rights of pupils.

So saying, the Court dismissed the case for failure to state a claim on which relief can be granted.

Summary

Corporal punishment cases fall into two groups: (1) those brought in state courts and charging assault and battery, and (2) those brought

in United States District Courts and charging violation of Constitutional rights.

Of the eight cases reported since 1954 in which students have sued teachers for assault and battery or excessive punishment, five have been decided in favor of the teacher. The common thread running through these decisions is that of "reasonableness."

Of the three cases in which the decision was not in favor of the teacher, one was reversed and remanded to a jury. The other two decisions indicate that there are types of punishment which courts will find "unreasonable":

- (1) A case where a two hundred thirty pound teacher lifted a one hundred pound boy, shook him against the bleachers, lifted him from the ground and dropped him with such force that he suffered a broken arm;
- (2) A case where a teacher attacked a boy on a baseball field and struck him about the head several times so that the teacher was arrested, tried and convicted of fighting.

The two federal cases indicate the unwillingness of federal judges to interject the courts into the operation of the public schools. In these two cases, both class actions, no violation of Constitutional rights was found.

In general, the following statements can be made based upon a review of reported cases:

- (1) Both state and federal courts have upheld corporal punishment as legal and proper, where it is "reasonable."

(2) Both state and federal courts have upheld the schools' right to promulgate and enforce rules of conduct for students.

(3) No court has found corporal punishment to be a violation of the Constitutional rights of pupils in public schools.

(4) In determining reasonableness, courts will take into account the conditions under which the punishment is administered, the size and condition of the child, the nature of the offense, and the motives of the person administering the punishment.

(5) Teachers administering punishment to an "unreasonable" degree may be convicted of assault and battery and may be assessed damages. Members of school boards and other school officials may be held liable for damages where a teacher within the system is responsible for administering excessive punishment.

(6) Courts have relied on the doctrine of in loco parentis in support of the schools' right to administer corporal punishment.

TABLE 1

CASES INVOLVING ALLEGED INFRINGEMENT OF
THE RIGHT TO BE SECURE IN THE PERSON
AND OTHER RIGHTS^a

Case	Disposition
<u>Suits v. Glover</u> , 71 So. 2d 49, 260 Ala. 449, 43 ALR 2d 465 (Alabama, 1954)	Suit by father of young boy claiming damages for assault and battery by teacher upon child. Jury found for the teacher and Supreme Court of Alabama affirmed.
<u>People ex rel Ebert v. Baldini</u> , 159 NYS 2d 802 (New York, 1957)	Assault and battery suit against school teacher who struck a child with an open hand and clenched fist. Court held for the teacher.
<u>Andreozzi v. Rubano</u> , 141 A.2d 639 (Connecticut, 1958)	Fifteen-year-old boy sued teacher who struck him across the face after the pupil assumed a belligerent attitude and uttered a vulgar remark. The Court found for the teacher.
<u>Tinkham v. Kole</u> , 110 N. W. 2d 258 (Iowa, 1961)	A 13-year-old boy sues his teacher for assault and battery after the teacher struck the boy about the head. Although medical evidence indicated the boy had a ruptured ear drum, the trial court dismissed the case. Supreme Court of Iowa remanded the case to a jury.

^aExcept for the two federal cases reported in this table, the corporal punishment cases described here are not civil rights suits, but are damage suits.

TABLE 1 -- Continued

Indiana State Personnel Board v. Jackson,
192 N. E. 2d 740 (Indiana, 1963)

This case involved a teacher in state school for mentally retarded who paddled a student in violation of state statute. After being fired, teacher asked for a judicial review and was reinstated. Personnel Board appealed. Supreme Court of Indiana upheld the review board and ordered the teacher reinstated.

Frank v. Orleans Parish School Board,
195 So. 2d 451 (Louisiana, 1967)

Suit against teacher for assault and battery upon a 14-year-old boy who suffered a fractured arm when he fell or was thrown to the floor. The court found for the student on the ground the punishment was excessive.

City of Macomb v. Gould,
244 N. E. 2d 634 (Illinois, 1969)

Defendant school teacher was convicted in circuit court of violating city ordinance prohibiting fighting and he appealed. The appellate court held that whether he struck 15-year-old student with unreasonable force while charged with duty of keeping crowd away from fence between stands and playing field was question for trier of fact. Verdict affirmed.

La Frentz v. Gallagher,
462 P. 2d 804 (Arizona, 1970)

Teacher sued for assault because he pushed a boy during softball class. Superior Court found for the teacher and co-defendants. Supreme Court of Arizona upheld decision saying that corporal punishment which is reasonable in degree is "privileged."

TABLE 1 -- Continued

Sims v. Board of Education of
Independent School District No. 22,
et al, 329 F.Supp. 680 (New Mexico,
1971)

This is an action in United States District Court, District of New Mexico, to enjoin administration of corporal punishment in schools. The Court ruled that the school officials had power to impose reasonable non-discriminatory corporal punishment and that such punishment did not violate constitutional prohibition against cruel and unusual punishment.

Ware v. Estes, et al,
328 F. Supp. 657 (Texas, 1971)

Class action to restrain corporal punishment in Dallas independent school district. The United States District Court for the Northern District of Texas held that evidence failed to show that district policy relating to corporal punishment was arbitrary, capricious, unreasonable or wholly unrelated to competency of state in determining its educational policy. Court ruled that corporal punishment as authorized by Texas law and rules of Dallas independent school district does not amount to cruel and unusual punishment as defined by U. S. Constitution.

Cases Involving Alleged Infringement
of the Right to Freedom Against
Unlawful Search and Seizure

The Fourth Amendment to the United States Constitution contains these words:

The right of the people to be secure in their persons, houses papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹³

Today the Constitution of every state in the union contains such a provision.

But it is only in very recent times that this guarantee has been viewed as extending to the young citizens who populate our public schools. During this investigation, four such cases were discovered to have been heard in appellate courts. In three of the cases, school officials and others were attempting to find illicit drugs, and in the fourth stolen goods. These cases are summarized in Table 2.

In State v. Stein, a Kansas case, the defendant, a high school boy was convicted in Franklin County District Court on burglary charges, from which conviction he appealed.¹⁴ His appeal was based

¹³U. S., Constitution, Amendments, Art. IV.

¹⁴State v. Stein, 456 P.2d 1, cert.den. 90 S.Ct. 966, 25 L.Ed. 2d 128 (Kansas, 1969).

on the allegation that he was not warned of his right to remain silent and his right to counsel prior to the time his locker was searched by the school's principal and his effects brought to the school office. On appeal to the Supreme Court of Kansas, that Court held that evidence obtained in the search was admissible because a high school principal has custodial control of school lockers and having access thereto, and possessing a master list on all locker combinations and a key to open any locker, he is empowered to open and search the same for contraband upon the request of officers. The Supreme Court upheld the conviction. Certiorari was denied by the United States Supreme Court.

Another 1969 case took place in New York.¹⁵ People v. Overton began in Mount Vernon City Court where high school boy was being prosecuted on charges of possessing illegal drugs, evidence for such prosecution having been obtained by a search of the boy's school locker. Motions were made to suppress the evidence and dismiss the information, but the city court denied such motions. Defendant appealed to the Supreme Court, Appellate Term, which reversed the lower court's decision. The plaintiff, People of New York, appealed that decision. Reargument was had before the Court of Appeals which held that where the police presented the high school with a warrant directing locker search of two students, and where

¹⁵People v. Overton, 249 N.E. 2d 366 (New York, 1969).

respondent student, after a search of his person yielded nothing, indicated that marijuana was in his locker, the vice principal had authority to allow the officers to search respondent's locker. The Court of Appeals reversed the order of Appellate Term, and adhered to the original decision of the City Court.

In 1970 the Court of Appeals of California heard a case involving an alleged illegal search of a student's locker.¹⁶ In this case the vice principal of a school obtained information that a student was in possession of illegal drugs. He searched the boy's locker without consent and discovered marijuana cigarettes. The cigarettes were used as evidence in court. The student contended that the court was in error in using evidence obtained during an illegal search. The Court of Appeals rendered its judgment in favor of the school and stated that the primary purpose of the school official's search was not to obtain convictions but to secure evidence of the student's misconduct, which was a right that the school had under its in loco parentis role.

In 1972 a search and seizure case was tried in United States District Court.¹⁷ In Caldwell v. Cannady, some high school students who had been suspended from school for possession of drugs, brought action seeking a permanent injunction against school authorities

¹⁶In re Donaldson, 75 Cal. Rptr. 220 (California, 1970).

¹⁷Caldwell, et al. v. Cannady, 340 F.Supp. 835 (Texas, 1972)

restraining them from interfering with or prohibiting students' attendance at school. Plaintiffs asked for a declaratory judgment concerning the constitutionality of the school's policy, and asked the court to find that the evidence used against the students was illegally obtained. The search complained of in this case was of an automobile which search took place without a warrant, but during a time that officers could have obtained a warrant. The Court found that as to two litigants, Caldwell and Jones, evidence used against them was found during an illegal search and was unconstitutional. Therefore they were ordered reinstated in school. As to the student Barrow, the Court held that search was reasonable and the evidence properly obtained, and upheld his expulsion from school.

In this case the Court upheld the right of students to be free from improper search; the Court upheld the schools's policy of expelling students found in possession of dangerous or narcotic drugs; the Court found that warrantless search of an automobile was unreasonable where a warrant could have been obtained; and the Court said:

The power to administer public education is delegated by law to local school boards. Those bodies are charged with the principal duty of providing quality education which includes a proper environment for quality education. This duty necessarily carries with it the power to promulgate whatever measures appear reasonably necessary to carry out these purposes.

Summary

Cases involving alleged unconstitutional search and seizure are beginning to appear in appellate courts, as evidenced by three such cases reported from state courts and one from a federal court since 1968. A review of these published cases reveals the following general information:

(1) A court has held that school officials have a custodial right which empowers them to search students' lockers for illegal materials.

(2) A court has held that illegal drugs obtained from a warrantless search of a student's locker may be used as evidence against the student because the school has a right in loco parentis to secure evidence of a student's misconduct.

(3) A court has held that search of a student's locker where student was not given notice of his right to counsel or right to remain silent was legal and that marijuana discovered therein could be used as evidence.

(4) A federal court has held that warrantless search of automobile is unconstitutional and evidence could not be used against students in school's action to expel the students.

(5) A federal court has held that a school has the right to expel students for illegal possession of dangerous narcotics where the evidence is lawfully obtained.

TABLE 2

CASES INVOLVING ALLEGED INFRINGEMENT OF
THE RIGHT TO FREEDOM AGAINST UNLAWFUL
SEARCH AND SEIZURE

Case	Disposition
<u>Overton v. New York</u> , 249 N. E. 2d 366 (New York, 1969)	Prosecution wherein motions were made to suppress evidence and to dismiss the information. The Mt. Vernon City Court denied the motion, but the Supreme Court, Appellate Term, reversed. An appeal was taken. Upon reargument the Court of Appeals held that where police presented high school principal with a warrant directing locker search of two students and where respondent student, after a search of his person yielded nothing, indicated that marijuana was in his locker, the vice principal, whose duties included enforcement of school rules and regulations, one of which prohibited the storage of material in violation of the law, had authority to consent in the search of respondent's locker. Original decision, reversing order of Appellate Term, adhered to.
<u>Caldwell v. Cannady</u> , 340 F. Supp. 835 (Texas, 1972)	Four high school students suspended for alleged violation of policy prohibiting possession of drugs, brought action to injoin school from interfering with students' attendance at school. The Court held, inter alia, that warrantless search of automobile was unreasonable and thus product of search could not be considered. Suspension of two boys whose car was searched were ordered reinstated in school. Suspension of third student was upheld.

TABLE 2 -- Continued

State v. Stein, 456 P.2d 1,
cert. den. 90 S.Ct. 966,
25 L.Ed 2d 128 (Kansas, 1969)

Defendant was convicted in Franklin County District Court on second degree burglary and grand larceny charges from which he appealed. The Supreme Court held that notwithstanding the fact that defendant was not warned of his right to remain silent and his right to counsel before his locker was searched by the principal and his effects brought to the school office, property taken from locker was admissible.

In re Donaldson, 75 Cal. Rptr. 220
(California, 1970)

Case involving the search of a student's locker by vice-principal of a school when he had information that the student was in possession of illegal drugs. The search was without a warrant and without the student's consent. Marijuana cigarettes found in the locker were admitted into evidence by the court and the student contended that the court was in error in so doing. The court stated that the primary purpose of the school official's search was not to obtain convictions but to secure evidence of student's misconduct, which was a right that the school had under its in loco parentis role. Court of Appeals of California rendered its judgment in favor of the school and against the student.

Cases Involving Alleged Infringement of the Right to Due Process of Law

Until the Civil War, the major provisions of the Constitution and the Bill of Rights protected individuals against federal action only. With the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments, the United States Constitution was provided with far-reaching limitations on state power over the individual. The clause of the Fourteenth Amendment forbidding states to deny individuals due process of law is having far-reaching effects even today. In cases involving the constitutional rights of minors, the due process clause is frequently invoked as a support for the constitutional right under litigation. There is, in addition, a group of cases in which the primary plea is to the due process clause.

Twenty-two such cases have been reported during the period under study, the earliest appearing in 1966 (see Table 3, following). In general, these lawsuits involve students who claim that their suspension, expulsion, or other discipline for misconduct, is unconstitutional in that their rights to due process were violated.

The first two cases reported occurred within a year of each other in the same state and obtained exactly opposite results.

Cosme v. Board of Education of the City of New York was tried

in state court.¹⁸ Here the petitioner was a mother who wanted to have an attorney present at a hearing in which her son's suspension was to be discussed. The Board denied this request and said that under prevailing law, the Board of Education had the right to set the rules and procedures relating to pupil suspension. The appeal court upheld the school board and said:

Respondent is not statutorily mandated to grant a hearing. Moreover, because the hearing or conference is administrative in nature, the petitioner is not entitled to be represented by counsel, who might turn the conference into a quasi-judicial hearing.

Respondent is vested with discretion in the performance of its duties, only a clear abuse of such discretion is reviewable by a court, and no such unauthorized action here appears.

Accordingly, the petition is legally insufficient. Furthermore, any final determination--which has not here occurred--made in or a part of a suspension hearing is reviewable by the Supreme Commissioner of Education. Consequently, the application is premature since administrative remedies by way of review have not been exhausted. For the reasons stated, the motion is denied and the petition dismissed.

In Madera v. Board of Education of the City of New York, a student was suspended from school and denied an attorney's presence at a guidance hearing.¹⁹ He then brought suit in United States District Court. The court's opinion held:

The due process clause of the Fourteenth Amendment is applicable to a district superintendent's guidance conference. The "no attorney" provision deprives plaintiffs of their

¹⁸Cosme v. Board of Education of City of New York, 270 NYS 2d 231 (New York, 1966).

¹⁹Madera v. Board of Education of City of New York, 267 F.Supp. 356 (New York, 1967).

rights to a hearing in a state-initiated proceeding which puts in jeopardy the minor's liberty and right to attend public schools.

Estay v. Lafourche Parish School is a somewhat different kind of case wherein a student claimed that his Fourteenth Amendment rights were violated by a school regulation barring married students from participating in extracurricular activities.²⁰ Heard first in 17th Judicial District Court, the case was affirmed on appeal. The court held that the board had authority to adopt such regulation and that such regulation was neither unreasonable, arbitrary, nor capricious, and enforcement thereof did not deprive the student of any constitutional rights.

A federal district court declared that due process had been violated in the case of Kelley v. Metropolitan County Board of Education of Nashville, where a school's athletic activities had been suspended for a year.²¹ The court held that in view of a lack of pre-existing standards and regulations to strengthen any disciplinary action taken by the school board, and in view of an absence of a formal charge, the athletic program must be reinstated.

Two other federal cases heard in 1969 involved school disruptions, student suspensions, and charges of violation of due process. The first of these, Brown v. Greer, was heard by the United States

²⁰Estay v. Lafourche Parish School, 230 So.2d 443 (Louisiana, 1969).

²¹Kelley v. Metropolitan County Board of Education of Nashville, 293 F. Supp. 485 (Tennessee, 1969).

District Court in Mississippi.²² The evidence in the case showed that the students had used abusive and threatening language toward the superintendent and others, two teachers had been struck in a scuffle with four female students, and the students had disrupted the operation of the school. There had been several incidents but the precipitating one involved several students, who reacted with "frenzy and rage" when the superintendent was taking one of the girls to his office for refusing to answer his question. There was verbal abuse as well as threats directed toward the superintendent, and the students were expelled. A federal court ordered that there should be a hearing in the case, and a hearing was held following which the expulsion was rescinded and the students were suspended for the balance of the school year. The case reported here followed when the students asked the United States District Court to enjoin their suspension. The court found that the actions of the students were not protected by any constitutional rights and that the actions of the school officials were not racially motivated. In its opinion the court said:

The court cannot and will not substitute its judgment for that of the Board of Trustees who acted on reasonable grounds to maintain order and to insure respect by the students for their teachers, principal and superintendent. This Court will not act as a super school board to second guess the Board of Trustees and the superintendent in this case under the facts and circumstances herein. This

²²Brown v. Greer, 296 F.Supp. 595 (Mississippi, 1969).

Court is concerned that if actions of the type involved herein by the plaintiffs are not punished and discouraged, they will not only lead to anarchy but will result in a suppression of the liberty and autonomy that are the lifeblood of a democracy and its educational institutions. If our institutions are not allowed to rule themselves, within reasonable bounds, as here, then others will rule them and will destroy our educational institutions and system which are the touchstone and foundation of any progressive democracy, which owes its very existence to the fact that it is a government of laws and not of men.

Hobson v. Bailey involved an individual girl, Deborah Lynn

Cleaves, who was suspended from school after being absent repeatedly in connection with racial protest and participation in picketing activities.²³ The school believed that she was instrumental in bringing about a school boycott during which absences went up to as high as 65,000 daily. The Court was of the opinion that Miss Cleaves was a victim of a boycott and movement which caused injury to many persons. In its opinion, the Court stated:

While this Court does not believe that its role is merely to review the disciplinary action of the Board of Education with regard to its students, the Court does believe that its proper function is to protect the constitutional rights of the citizens. Even though the school authorities were justified in disciplining Miss Cleaves for her conduct, this discipline should have been dispensed at all stages in accordance with due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

The Court ordered that Miss Cleaves be allowed to return to school.

Five due process cases are reported for 1970. Four of these cases, all heard in federal courts, resulted in decisions against the

²³Hobson v. Bailey, 309 F.Supp. 1393 (Tennessee, 1969).

student. The one case tried in state court was decided in favor of the student.

R. R. v. Board of Education of Shore Regional High School District involved a boy who had been suspended from school for striking another student in that child's home.²⁴ The Supreme Court of New Jersey held that the student, who had been given neither a preliminary hearing nor a full hearing, must be reinstated and provided with extra instruction to help him make up the school work that he had missed. The court found that schools do have a right to suspend students for out-of-school activities, but said that the question of due process must be answered. The court felt that where severe punishment was to be inflicted, the child was entitled to a preliminary hearing and a full hearing.

A case heard in federal courts involved a rule of a high school athletics association which said that if a child over the sixth grade repeats a grade that he has passed, he will lose one year of eligibility for athletic competition.²⁵ Mitchell v. Louisiana High School Athletics Association was first heard in district court which court enjoined the association from enforcing the rule. On appeal the United States Court of Appeals vacated the decision of the lower court and found

²⁴R. R. v. Board of Education of Shore Regional High School District, 263 A.2d 180 (New Jersey, 1970).

²⁵Mitchell v. Louisiana High School Athletics Association, 430 F.2d 1155 (Louisiana, 1970).

that the rule was neither inherently suspect nor an encroachment on a fundamental right, but rather it was grounded in and reasonably related to a legitimate state interest. The court noted that the due process clause does not insulate a citizen against every injury at the hands of the state.

Three 1970 cases concern students involved in serious misconduct for which they were suspended from school. In one of these, Grayson v. Malone, a boy was suspended for disrupting school.²⁶ He and his parents were advised to contact the superintendent for a hearing regarding reinstatement. They did not do so, but brought suit instead. The United States District Court held that their failure to do so amounted to a waiver of their rights to a hearing, and found that there was no denial of due process.

The plaintiff in Davis v. Ann Arbor Public Schools was a high school boy with a record of discipline problems.²⁷ For such misconduct as tardiness, truancy, nonconformance, and minor arson, he was suspended from school, following which he asked the court to enjoin the school so that he could be reinstated. The court denied relief saying that the standard for determining whether one has been afforded due process is whether he has been treated with fundamental fairness.

²⁶Grayson v. Malone, 311 F.Supp. 987 (Massachusetts, 1970).

²⁷Davis v. Ann Arbor Public Schools, 313 F.Supp. 1217 (Michigan, 1970).

Hasson v. Boothby involves three boys suspended for appearing on school property with beer on their breaths.²⁸ In the trial they claimed that they did not know that punishment for involvement with alcohol could be handed down by the superintendent and could exceed exclusion from athletic teams for one athletic season, but they did know that the conduct would be punished.

In its decision, the court made the following statements:

First, plaintiffs were aware that involvement with alcohol on or off school premises was wrong and would be punished by school authorities. . . .

Second, this is not a case where punishment under an over-broad regulation would have the effect of jeopardizing First Amendment rights. . . .

Third, the nature of the penalty imposed is not so severe as to entitle the plaintiffs to full due process protections. The requirements of due process are flexible, and different situations will require different degrees of procedural protection. . . .

The complaint was dismissed.

In 1971 six similar cases were heard. A Texas case, Texarkana Independent School District v. Lewis, was a class action by next friends of eight students who had allegedly participated in major disruptive activity at the senior high school.²⁹ The plaintiffs asked the court to enjoin the school district from suspending or expelling them and all others similarly situated for past or future violations

²⁸Hasson v. Boothby, 318 F.Supp. 1183 (Massachusetts, 1970).

²⁹Texarkana Independent School District v. Lewis, et al., 470 S. W. 2d 727 (Texas, 1971).

of regulations promulgated by the district board of trustees concerning disruptive behavior. The District Court of Bowie County issued an injunction against the school district saying that the guidelines adopted by the school were vague and indefinite and that the expelled students were not afforded procedural due process. The school appealed. The Court of Civil Appeals held that the guidelines promulgated by the district with respect to major disruptive activity were not unconstitutional for vagueness and overbreadth, but that the students were denied procedural due process in that they were not given specific written notice of the charges against them and not allowed sufficient time to prepare a defense. The appeal court also held that the class action was spurious in that it was impossible for a minor or group of minors to bring a class action suit or to be sued in a class action suit. As to this he modified the judgment of the lower court; as to the injunction that judgment was affirmed.

The Supreme Court of New Jersey heard an appeal from a decision by the Commissioner of Education in which students were suspended on charges of physical assault upon other students.³⁰ In Tibbs v. Board of Education of Franklin Township, the appellate court found that the student witnesses whose statements were read at the hearing did not appear to face the accused nor were they named. The court would not entertain a plea by the school that to name these

³⁰Tibbs v. Board of Education of Franklin Township (Somerset County), 276 A.2d 165, affd. 284 A.2d 179 (New Jersey, 1971).

students might subject them to reprisals. The matter was remanded to the Commissioner of Education for a rehearing in which the witnesses would face the accused.

Federal courts received four of the 1971 cases. On February 16, 1971, the United States District Court for Massachusetts issued its order in the case of Pierce v. School Committee of New Bedford.³¹ The court heard a motion for preliminary injunction brought by a suspended high school student who claimed that his federally protected rights were violated. His suspension was based on his constant disruptions and disrespectful manner and behavior, as well as being insolent, defiant, disrespectful, insubordinate, and persistent in his general misconduct over an extended period of time, with the precipitating incident allegedly involving mistreatment of the American flag. He was told the reasons for his denial of readmission. The student claimed that his rights under the Fifth and Fourteenth Amendments had been violated in that he was not granted a requested postponement of the hearing, and that high school rules prohibiting noise and disturbance were vague and overbroad.

The Court found that the school board's ruling was completely consistent with the evidence and that his expulsion was keyed to his entire high school career in which there had been fourteen previous suspensions. The injunction was denied.

³¹Pierce v. School Committee of New Bedford et al., 322 F. Supp. 957 (Massachusetts, 1971).

Farrell v. Joel is a case of a young high school girl who was suspended for taking part in a sit-in and thereby disrupting school activities.³² She asked for an injunction and said that her suspension was a violation of due process because she was not given written notice of the charge against her. The United States District Court held, and the United States Court of Appeals affirmed, that her rights were not violated in that she knew that the sit-in and consequent disruption of school activities was a violation of school rules and that she might be suspended for it.

An action under the Civil Rights Act was heard in United States District Court in Massachusetts when an unmarried, pregnant senior girl brought suit against school officials who had informed her that she was to stop attending regular classes.³³ The district court held that she was entitled to a preliminary injunction requiring school officials to readmit her on a fulltime basis since there was no showing of danger to her nor a valid educational or other reason to justify requiring her to receive educational treatment not equal to that given all others in her class. In this case, Ordway v. Hargraves, the court found that the right to attend public school is a basic personal right or liberty, consequently the burden of justifying a school rule limiting that right is on the school authorities.

³²Farrell v. Joel, 437 F.2d 160 (Connecticut, 1971).

³³Ordway v. Hargraves, 323 F.Supp. 1155 (Massachusetts, 1971).

Lee Pervis and other students brought a class action in United States District Court in Texas against LaMarque Independent School District asking the court to declare invalid a state statute authorizing suspension of incorrigible students, asking that they be reinstated in school, and that their disciplinary records be purged of any reference to their suspension.³⁴ Since this case assailed the constitutionality of a state statute, a three-judge federal court was convened. The court found that the two major plaintiffs had a record of many disciplinary infractions and that they had used intemperate and vulgar language toward the school officials. The court could find no evidence that the constitutional rights of the plaintiffs had been violated and said:

A careful examination of the transcript reflects that this orderly hearing scrupulously protected the rights of the parties and was well calculated to reveal the truth. Indeed, in the aspect of procedural regularity, it somewhat resembled a judicial proceeding and considerably exceeded the minimal "rudimentary elements of fair play" . . .

Judgment was entered for the defendants.

Jackson v. Hepinstall, a New York case tried in federal court, was an action on behalf of a girl suspended because she was involved in an incident with a teacher in which she refused to pick up a squashed orange as ordered.³⁵ The teacher allegedly squeezed her neck and arm

³⁴Pervis v. LaMarque Independent School District, et al., 328 F.Supp. 638 (Texas, 1971).

³⁵Jackson v. Hepinstall, et al., 328 F.Supp. 1104 (New York, 1971).

in a vice-like fashion and brought her before the principal where she was immediately suspended.

The federal judge in this case was greatly irritated at being brought into the case before state remedies had been exhausted. District Judge Foley dismissed the case after finding that a five-day suspension was reasonable and not constitutionally defective. He denied a motion for a three-judge court and said:

For record purposes, if there is any motion open for temporary injunction in behalf of plaintiff, it is denied and dismissed. The complaint in its entirety is dismissed for lack of jurisdiction, or in the alternative for failure to state a claim upon which relief can be granted . . .

Four due process cases have been produced in 1972, one in state court and the remaining three in federal courts.

In Kelley v. Martin the plaintiff was expelled from high school for distributing drugs to fellow students.³⁶ He claimed that he did not know of a regulation against such behavior and said that his right to due process was violated. The Superior Court of Pima County entered an order reversing the school board's ruling, and the school appealed. The Board of Appeals held that the court could not say that the school abused its discretion in expelling a student, a relative newcomer to the school and a first time offender, who distributed drugs to other students on the school premises. The decision of the lower court was reversed.

³⁶Kelley v. Martin, et al., 490 P.2d 836 (Arizona, 1972).

In Florida the Black Students of North Fort Myers Junior-Senior High School brought an action against school officials after they were suspended for walking out of the school in a "riotous" manner.³⁷ They claimed due process was infringed in that they had no prior hearing. The United States District Court upheld the students and said that minimum standards of due process require (1) that written notice of charges against student be provided to student and his parents or guardians, and (2) that student be afforded a hearing with ample opportunity to present his case, and (3) that sanctions, such as suspension, should be imposed only on the basis of substantial evidence. The court noted that whether students walked out of high school peacefully or riotously, they were still entitled to due process.

The three day suspension of high school students who created a disturbance in assembly against regulations, was found not to violate the students' rights in the case of Tate v. Board of Education of Jonesboro, Arkansas.³⁸ The federal court found that where there was no question of the acts involved or the individuals involved, and where both notice and opportunity for an informal hearing were given, and where there was no indication that the suspension adversely affected any student's grades, the students' due process rights were not infringed.

³⁷ Black Students of North Fort Myers Junior-Senior High School ex rel Shoemaker v. Williams, 335 F.Supp. 820 (Florida, 1972).

³⁸ Tate v. Board of Education of Jonesboro, Arkansas, Special School District, 453 F.2d 975 (Arkansas, 1972).

Summary

Of the twenty-two cases researched for this section, thirteen resulted in decisions for the school and against the student. In eight of these cases, the courts decided that the constitutional rights of students had been violated.

Certain general facts can be drawn from a review of these cases:

(1) Courts usually will consider the extent and the seriousness of a student's misconduct when deciding a due process case, as in Brown, Grayson, Davis, Hasson, Pierce, Farrell, Pervis, Jackson, and Kelley.

(2) The matter of having an attorney present at a disciplinary hearing is viewed differently by different courts.

(3) A court which held the right to attend school is a fundamental right will not interfere in rulings about extracurricular activities.

(4) Courts have held for pupils in cases where punishment is carried out without proper notice and without a hearing, as in Hobson, Texarkana, and R. R., if the punishment is severe as in expulsion or suspensions lasting long periods of time.

(5) A court has upheld the right of a student to be faced by his accusers where his punishment may be expulsion or extended suspension.

(6) Courts have held that the right to public education is fundamental and that the fact of being unwed and pregnant, or being an unwed mother, is not sufficient reason to deny a girl her fundamental right to go to school.

(7) Federal courts have held that remedies in state courts should be exhausted before a cause is brought to federal court.

TABLE 3

CASES INVOLVING ALLEGED INFRINGEMENT OF
THE RIGHT TO DUE PROCESS

Case	Disposition
<u>Cosme v. Board of Education of City of New York, 270 NYS 2d 231, (New York, 1966)</u>	Petitioner wanted to have an attorney present at a hearing of the school board called to discuss the suspension of her son for mis conduct. The board denied her request and said that under prevailing law the board of education had the right to set the rules and procedures relating to pupil suspension. On appeal the Court upheld the decision of the school board.
<u>Madera v. Board of Education of the City of New York, 267 F. Supp. 356 (New York, 1967)</u>	Youth requested that at attorney be present at the formal guidance hearing where his suspension was to be considered. His request was denied and the boy brought suit. The court held that the due process clause of the Fourteenth Amendment is applicable to a district superintendent's guidance conference and granted the student the right to have an attorney present.
<u>Estay v. La Fourche Parish School, 230 So. 2d 443 (Louisiana, 1969)</u>	Application for preliminary injunction prohibiting school board from enforcing regulation barring married high school students from participating in extracurricular school activities. Court of Appeal upheld the lower court's decision that the school board had authority to adopt such a rule and that it did not deprive student of any constitutional rights.

TABLE 3 -- Continued

Kelley v. Metro County Board of
Education of Nashville, 293 F.Supp.
485 (Tennessee, 1969)

An action by all students of all Negro high school and parents seeking injunction against school board and state secondary school athletic association who were going to suspend athletic program of the school for a period of one year. Court held that in view of lack of pre-existing standards and regulations to strengthen any disciplinary action taken by the school board, and in view of conspicuous absence of a formal charge, the athletic program must be re established. Action of board was violation of due process.

Brown v. Greer, 296 F. Supp. 595
(Mississippi, 1970)

Students who used abusive and threatening language against superintendent and others, struck two faculty members and disrupted orderly operation of the school were suspended by action of board of trustees. The United States District Court sustained the action of the board and said that rights under the Fourteenth Amendment do not always outweigh the interest of the state in maintaining an educational system.

Hobson v. Bailey, 309 F.Supp. 1393
(Tennessee, 1969)

Mother brought suit to enjoin school officials from refusing to allow student to return to school from which she had been suspended for being absent repeatedly and taking part in racial protest and picketing. The United States District Court held student should be reinstated because her right to due process had been violated.

TABLE 3 -- Continued

R. R. v. Board of Education of
Shore Regional High School District,
263 A.2d 180 (New Jersey, 1970)

Student was suspended for activity outside of school hours and away from the school grounds, and because of alleged prior misconduct. The school was ordered to show cause why the student should not be re-admitted to regular classes. The Supreme Court held that the student should be re-admitted to school and afforded extra instruction necessary to help him catch up with his classes on the ground that he was denied his right to due process in that he had no hearing before he was suspended.

Mitchell v. Louisiana High School
Athletic Association, 430 F.2d 1155
(Louisiana, 1970)

Actions by parents against high school athletic association for injunction prohibiting association from enforcing rules concerning eligibility of high school athletes. The rule is that if a child over the 6th grade repeats a grade that he has passed, he will lose one year of athletic eligibility. The court found that the rule was grounded in reason and that it did not violate the due process rights of the students.

Grayson v. Malone, 311 F.Supp. 987
(Massachusetts, 1970)

Boy suspended for bad conduct claims that his due process rights were violated. The court found that the parents had not contacted the superintendent although told to do so and that their refusal amounted to a waiver of their right to a hearing.

TABLE 3 -- Continued

Davis v. Ann Arbor Public Schools,
313 F. Supp. 1217 (Michigan, 1970)

A boy with record of discipline problems, suspended from school, sued asking injunctive relief. Court found for the schools and said that a young citizen does not surrender his civil rights upon enrollment in public school, but neither does such enrollment clothe him with immunities not enjoyed by other citizens of the community.

Hasson v. Boothby, et al, 318 F.Supp.
1183 (Massachusetts, 1970)

Action under Civil Rights Act by high school students challenging action of school officials in placing students on probation. The District Court held that where high school students suspended after appearing in school property with beer on their breaths did not know that punishment for involvement with alcohol could be handed down by superintendent and could exceed exclusion from athletic team for one athletic season but did know that the conduct would be punished, students' rights under due process clause were not violated by imposition of one-year probation even though no prior published rule forbade such conduct. Complaint dismissed.

Texarkana Independent School District
v. Velma Lewis, et al, 470 S. W. 2d 727
(Texas, 1971)

Class action by next friends of eight students who had allegedly taken part in major disruptive activity at high school to enjoin school from suspending or expelling them. The District Court of Bowie County entered judgment

TABLE 3 -- Continued

<u>Tibbs v. Board of Education of Franklin Township (Somerset County)</u>, 276 A.2d 165, affd. 284 A.2d 179 (New Jersey, 1971)	that the guidelines adopted by the board were vague and indefinite and that the students were not afforded procedural due process. School appealed. Court of Civil Appeals held that the guidelines were not unconstitutionally vague and overbroad, but that the students were denied procedural due process in that they were not given specific written notice of the charges against them and were not allowed sufficient time to prepare defense. Judgment of lower court modified and as modified, affirmed.
<u>Pierce v. School Committee of New Bedford, et al.</u>, 322 F. Supp. 957 (Massachusetts, 1971)	This is a proceeding on appeal from Commissioner of Education. The Superior Court of New Jersey held that expulsions of students on charges of physical assault upon other students would be set aside, where hearing conducted by local board of education on charges was not preceded by identification to expelled students of student witnesses and such witnesses did not appear to testify at the hearing. The matter was remanded to the Commissioner of Education for a rehearing. Action against school committee and principal by student who alleged that his rights had been violated because of insufficient notice before his suspension. The United States District Court held that notice to student that denial of readmission was based on long history of bad conduct was sufficient, and that there was no showing of denial of any federally protected right.

TABLE 3 -- Continued

Farrell v. Joel, 437 F.2d 160
(Connecticut, 1971)

Appeal from an order of the United States District Court for the District of Connecticut denying injunction against suspension from high school and holding that suspension did not contravene student's constitutional rights. The Court of Appeals held that suspension of student from high school for 10 days was not a violation of due process, even though student was not given written notice nor afforded a hearing.

Ordway v. Hargraves, 323 F.Supp.
1155 (Massachusetts, 1971)

Action under Civil Rights Act brought on behalf of pregnant unmarried senior at high school against school officials who had informed student that she was to stop attending regular high school classes. Plaintiff moved for preliminary injunction. The United States District Court held that plaintiff was entitled to preliminary injunction requiring officials to readmit her to regular classes on a full time basis.

Pervis v. LaMarque Independent
School District, 328 F.Supp. 638
(Texas, 1971)

Action to enjoin school district from suspending students for incorrigible conduct as provided by state statute. The District Court held that three-judge district court would not be convened to determine constitutionality of statute where no substantial constitutional question was present. Judgment for defendants.

TABLE 3 -- Continued

<u>Jackson, et al, v. James T. Hepinstall, et al, 328 F.Supp. 1104 (New York, 1971)</u>	Action on behalf of suspended school pupil. The District Court held that complaint attacking constitutionality of state statute permitting five-day suspension of school pupil without hearing and procedure of school authorities in filing juvenile delinquency complaints in family court during or after incident in schools was subject to dismissal for lack of jurisdiction and failure to state claim on which relief could be granted. Due process not violated.
<u>Shull v. Columbus Municipal Separate School District, 338 F.Supp. 1376 (Ohio, 1972)</u>	Class action on behalf of otherwise qualified 10th grade girl denied the right to attend school because she was unwed mother. Court upheld and granted attorney's fees. Court said that her rights to due process and equal protection were violated.
<u>Kelly, et al., v. Martin, et al., 490 P.2d 836 (Arizona, 1972)</u>	Special action challenging school expulsion order. Superior Court of Pima County entered judgment reversing order of the school, and the school officials appealed. Board of appeals held that court could not say that school board abused its discretion in expelling student, a relative newcomer and a first - time offender, who distributed drugs to fellow students on school premises in violation of regulation. Reversed.

TABLE 3 -- Continued

Black Students of North Fort Myers
Junior Senior High School ex rel
Shoemaker v. Williams, et al.,
 335 F.Supp. 820 (Florida, 1972)

Suit by students who were suspended for walking out of school in allegedly "riotous" manner claiming that they had not been afforded due process. The court ruled in favor of the students and said that whether students walked out peaceably or riotously, they were still entitled to hearing before they could be suspended.

Tate v. Board of Education of
Jonesboro, Arkansas, Special
School District, 453 F.2d 975
 (Arkansas, 1972)

Three-day suspension of high school students under regulation, which in effect prohibited creation of disturbance in assembly, for such students' actions in taking part in assertedly "quiet" procession from pep rally during fourth number on program as protest to playing of tune "Dixie" did not violate due process where there was no question as to acts involved or individuals involved therein, both notice and opportunity for an informal hearing were given, and where there was no indication that any suspension caused any failure or otherwise adversely affected any student's over-all grades. Judgment for the school.

Cases Involving Alleged Infringement of
the Right to Freedom of Expression in
Hair Styles and Clothing

In 1954 Newton Edwards wrote, "Relatively few cases have come into the courts testing the authority of school boards to regulate the dress and personal appearance of pupils."³⁹

Edwards could describe only four related cases in the Twentieth Century up that time. One case involved a high school girl of eighteen whose suspension for wearing talcum powder on her face was upheld by the court;⁴⁰ the second was a case in which the court decided that the refusal to wear a cap and gown at graduation was not a proper reason to be denied a diploma;⁴¹ the third was a case involving the wearing of metal heel plates which damaged school floors;⁴² and the fourth concerned the wearing of school uniforms.

³⁹Newton Edwards, 568.

⁴⁰Puggsley v. Sellmeyer, 250 S. W. 538 (Arkansas, 1923)

⁴¹Valentine v. Independent School District of Casey, 183 N. W. 434 (Iowa, 1921).

⁴²Stromberg v. French, 236 N. W. 477 (North Dakota, 1931).

⁴³Jones v. Day, 89 So. 906 (Mississippi, 1921).

Until the middle of the 1960's, these cases composed the body of litigation regarding dress and personal appearance of students. But by 1965 the deluge of hair cases had begun, and since that time few issues have received so much attention in state and federal courts as the issue of personal appearance.

Beginning with Leonard v. School Committee of Attleboro⁴⁴ in 1965, sixty-eight hair style and clothing cases have been reported from the nation's high courts. Table 4 lists these cases and briefly describes each.

A review of these lawsuits reveals that the plaintiffs appealed to the First and Fourteenth Amendments for relief, and in some cases claimed that their rights under the Third, Fifth, Eighth, Ninth, and Tenth Amendments had been infringed. In most cases, the right to wear one's hair and clothing as one pleases was viewed as a right similar to freedom of speech and protected, therefore, by the First Amendment.

Leonard v. School Committee of Attleboro was a "long hair" case involving a seventeen-year-old boy. George Leonard was a conscientious, well-dressed and well-behaved student who was, on his own time, a popular, high-paid rock musician. He wanted to keep his hair long because his image as a performer depended partly

⁴⁴Leonard v. School Committee of Attleboro, 212 N.E.2d 468 (Massachusetts, 1965).

upon his appearance. The Supreme Court of Massachusetts upheld the lower court's denial of his plea and said:

The Court's function in reviewing this type of ruling is limited in the light of the broad discretionary powers which this law confers upon a school committee. . . . The rights of other students, and the interests of the teachers, administrators, and the community at large in a well-run and efficient school system are paramount.

Ferrell v. Dallas Independent School District, decided in 1966, is possibly the first "hair" case ever tried in United States District Court.⁴⁵ Here as in Leonard, the boys involved were musicians, and here also the court ruled in favor of the schools' regulation. In denying plaintiffs' claim, the court stated:

Plaintiffs contend naturally that their primary interest is to get an education, but it appears that they want this education on their own terms. It is inconceivable that a school administrator could operate his schools successfully if required by the courts to follow the dictates of the students as to what their appearance will be, what they should wear, Further, the terms upon which a free public education is granted in the high schools of Texas cannot be fixed or determined by the pupils themselves. . . .

In Dallas v. Firment, also a federal case, the plaintiff contended that to be forced to cut his hair was an infringement upon his right of freedom of expression.⁴⁶ The court could not see that the wearing of long hair was an expression of anything other than conduct.

⁴⁵Ferrell v. Dallas Independent School District, 261 F.Supp. 545 (Texas, 1966).

⁴⁶Davis v. Firment, 269 F.Supp. 524 (Louisiana, 1967).

In 1968 no cases were published, but 1969 brought a flurry of personal appearance actions. Four of these suits, Brick v. Board of Education of School District No. 1, Denver, Colorado,⁴⁷ Crews v. Cloncs,⁴⁸ Giangreco v. Center School District,⁴⁹ and Shows v. Freeman,⁵⁰ were decided in favor of the schools' right to enforce reasonable regulations. In each case the court could find no evidence that constitutionally protected rights were unlawfully infringed. The decision in Crews noted that the right to freedom of expression is not absolute and said: "It is invidious discrimination which is prohibited by the Fourteenth Amendment." This statement seems to reflect the tenor of the other three decisions.

Two 1969 cases in federal courts, Breen v. Kahl,⁵¹ and Westley v. Rossi,⁵² were favorable to the students' right to wear their hair as they pleased. The Breen case was first heard in district court and affirmed on appeal. Certiorari was denied by the United States Supreme Court in 1970. The decision of the district court included this statement:

⁴⁷Brick v. Board of Education, School District No. 1, Denver, Colorado, 305 F.Supp. 1316 (Colorado, 1969).

⁴⁸Crews v. Cloncs, 303 F.Supp. 1370 (Indiana, 1969).

⁴⁹Giangreco v. Center School District, 313 F.Supp. 776 (Missouri, 1969).

⁵⁰Shows v. Freeman, 230 So.2d 63 (Mississippi, 1969).

⁵¹Breen v. Kahl, 419 F.2d 1034 (Wisconsin, 1969).

⁵²Westley v. Rossi, 305 F.Supp. 706 (Minnesota, 1969).

Obviously the relationship of students, faculty, administrators, and school board will be affected in some degree by a judicial declaration of invalidity of a school board regulation. But if the regulation is fairly found to violate the Constitution, responsibility for these consequences rests with the agency which promulgated the regulation. So far as education of young people in obedience is concerned, it is important for them to appreciate the present vitality of our proud tradition that although we respect government in the exercise of its constitutional powers, we jealously guard our freedoms from its attempts to exercise unconstitutional powers.

A peak of activity in personal appearance cases reached the courts in 1970, with thirty-three suits being decided in federal courts and state appellate courts.

In twelve of these 1970 suits, judges viewed freedom in personal appearance as a protected right. In twenty-one cases the courts saw reasons to uphold schools in their grooming regulations.

Three of the "pro-hair" cases reached state appellate courts. Akin v. Board of Education,⁵³ Murphy v. Pocatello School District No. 2,⁵⁴ and Laine v. Ditmann,⁵⁵ all found judges who believed that the school should carry the burden of justification for a rule which encroached upon personal liberties. In the Laine case the young plaintiff stated that although he was not making a religious or

⁵³Akin v. Board of Education, 68 Cal. Rptr. 557 (California, 1970).

⁵⁴Murphy v. Pocatello School District No. 25, 480 P.2d 878 (Idaho, 1970).

⁵⁵Laine v. Ditmann, 259 N.E. 2d 824 (Illinois, 1970).

political statement by wearing long hair, he felt that society was "very sick" and his hair style was meant to set him apart from other people.

Mustaches (Lovelace v. Leechburg⁵⁶ and Crossen v. Fatsi⁵⁷), dungarees (Bannister v. Paradis⁵⁸), and a girl student's long bangs (Sims v. Colfax⁵⁹) went to federal courts in 1970 to be decided in favor of the students. In these cases the courts generally found that the school could show no interference with the educational process. Arbitrariness of rule was viewed with disfavor by these courts.

Richards v. Thurston,⁶⁰ Alexander v. Thompson,⁶¹ Black v. Cothren,⁶² Cordova v. Chonka,⁶³ and Dunham v. Pulsifer,⁶⁴ were federal cases in which long or exotic hair styles were at issue. In each case the judge could find no evidence that disturbance or

⁵⁶Lovelace v. Leechburg Area School District, 310 F.Supp. 579 (Pennsylvania, 1970).

⁵⁷Crossen v. Fatsi, 309 F.Supp. 114 (Connecticut, 1970).

⁵⁸Bannister v. Paradis, 316 F.Supp. 185 (New Hampshire, 1970).

⁵⁹Sims v. Colfax Community School District 307 F.Supp. 385, (Iowa, 1970).

⁶⁰Richards v. Thurston, 304 F.Supp. 449 (Massachusetts, 1970).

⁶¹Alexander v. Thompson, 313 F.Supp. 1389 (California, 1970).

⁶²Black v. Cothren, 316 F.Supp. 468 (Nebraska, 1970).

⁶³Cordova v. Chonka, 315 F.Supp. 953 (Ohio, 1970).

⁶⁴Dunham v. Pulsifer, 312 F.Supp. 411 (Vermont, 1970).

disciplinary problems were the direct result of long hair, and since no compelling educational interest could be served by the hair grooming regulations, the courts declined to uphold them. The court in Richards made the point that uniformity in hair styles and life styles was not of high merit in a comprehensive high school. "From different tones come different tunes," he said.

"Anti-hair" judges got the majority of 1970 cases--twenty-one in all. One of these, Canney v. Board of Instruction,⁶⁵ was heard in state courts; the remaining twenty in federal courts. In each of these cases the key word was "reasonableness." The courts were unwilling to enter the internal workings of school systems where the disputed regulation did not seem "unreasonably" to violate students' constitutional rights. A statement in the decision of Neuhaus v. Torrey summarizes the prevailing view in all these cases:⁶⁶

In these parlous troubled times when discipline in certain quarters appears to be an ugly word, it should not be considered unreasonable nor regarded as an impingement of constitutional prerogatives to require plaintiffs to bring themselves within the spirit, purpose, and intentions of the questioned rule.

There were twenty-two hair style and clothing cases in 1971, twelve decided in favor of the schools' right to regulate, and ten decided in favor of the students' right to control their own appearance.

⁶⁵Canney v. Board of Instruction, 231 So.2d 34 (Florida, 1970).

⁶⁶Neuhaus v. Torrey, 310 F.Supp. 192 (California, 1970).

In both groups the question of reasonableness seemed paramount.

And yet other important points were raised.

In Turley v. Adel Community School District, heard in United States District Court for the Southern District of Iowa, the same court in which Sims v. Colfax was decided, the federal judge said:⁶⁷

Most assuredly, it is common knowledge and evident to all concerned from the mass media as well as personal observation and contact that for whatever reason, men, young and old, in every profession and walk of life, have and are changing their personal appearance as it relates to hair growth and style in varying degrees. This individual right to govern one's appearance is constitutionally protected. In the final analysis, a student is entitled to the same protection unless good reasons can be shown for some restriction.

In making his decision, Judge Hanson cast some adverse reflections upon the doctrine of in loco parentis:

The Court firmly believes that it is the parents who are primarily responsible for their child's appearance. The shop-worn concept of schools being in loco parentis is not accepted by this court. Abnegation of parental responsibility should not be accepted or condoned. . . . Of course, as this and other opinions hold, there are proper areas in respect to appearance in which the school can impose reasonable controls remembering that the school must be prepared to demonstrate the need for such rules.

A similar philosophy was reflected in Berryman v. Hein, an Idaho case where the court said:⁶⁸

⁶⁷Turley v. Adel Community School District, et al., 322 F. Supp. 402 (Iowa, 1971).

⁶⁸Berryman, et al., v. Hein, et al., 329 F. Supp. 616 (Idaho, 1971).

If circumstances were shown wherein student hair styles had in fact had an adverse effect on orderly educational procedures, then school officials would undoubtedly have the power to correct the problem. For these reasons, the court declines to hold that the dress code provision here involved is unconstitutional per se. The dress code was applied, however, in an unreasonable and unconstitutional manner. The evidence has failed to show that the hair of these plaintiffs, or any other students, either constituted or created any problems in student health, safety, discipline, or academic effort. Suspension of the plaintiffs for no more compelling reason than that the hair was long does not comport with due process.

Judge Mann, upholding the right of a student to wear his hair as he pleased, in the case of Conyers v. Glenn, made these statements:⁶⁹

It is one of the most difficult tasks of a citizen in a free society to differentiate those matters in which the state may require compliance with majority will and those in which it may not. The tendency to include in the former category those matters in which we agree with the majority and in the latter, those in which we do not, is provocative of tension. It is obvious that tolerance is necessary on all sides in order to preserve public order.

In the group of "hair" cases heard in 1971 and resulting in decisions adverse to the long-haired student, a number of judges expressed impatience with these plaintiffs for asking federal courts to rule on questions which seemed to be matters for local decision. In Zeller v. Donegal School District the court said:⁷⁰

⁶⁹Conyers v. Glenn, 243 So.2d 204 (Florida, 1971).

⁷⁰Zeller v. Donegal School District, 333 F.Supp. 413 (Pennsylvania, 1971).

While we are in sympathy with the plaintiff's desire to choose his own hair style, we nevertheless recognize that a public school system cannot operate without regulations uniformly applicable to all its students; and that the reasonableness of any regulation concerning hair style can better be determined at the local level.

Perhaps the most influential opinion which this view was expressed was that of Karr v. Schmidt.⁷¹ This was a Texas case originating in the federal district court. The district court enjoined the school from enforcing its hair grooming rule. On motion of the school the Court of Appeals for the Fifth Circuit stayed and suspended the district court's injunction. The students then filed a Motion to Vacate a Stay of Injunction Pending Appeal. This motion was presented to Mr. Justice Hugo Black as a United States Supreme Court Justice assigned to the Fifth Circuit Court of Appeals. Justice Black wrote an opinion which has since been relied on in a number of cases. In that opinion Justice Black made this statement:

I refuse to hold for myself that the federal courts have constitutional power to interfere in this way with the public school system operated by the states. And I furthermore refuse to predict that our Court will hold they have such power. It is true that we have held that this Court does have power under the Fourteenth Amendment to bar state public schools from discriminating against Negro students on account of their race but we did so by virtue of a direct, positive command in the Fourteenth Amendment, which, like the other Civil War Amendments, was primarily designed to outlaw racial discrimination by the States. There is no such direct positive command

⁷¹Karr v. Schmidt, et al., 401 U.S. 120, 27 L. Ed. 2d 797, 91 S. Ct. 592 (Texas, 1971).

about local school rules with reference to the length of hair state school students must have. And I cannot now predict this Court will hold that the more or less vague terms of the Due Process or Equal Protection Clause have robbed the States of their traditionally recognized power to run their school systems in accordance with their own best judgment as to the appropriate length of hair for students.

The motion in this case is presented to me in a record of more than 50 pages, not counting a number of exhibits. The words used throughout the record such as "Emergency Motion" and "harassment" and "irreparable damages" are calculated to leave the impression that this case over the length of hair has created or is about to create a great national "crisis." I confess my inability to understand how anyone would thus classify this hair length case. The only thing about it that borders on the serious to me is the idea that anyone should think the Federal Constitution imposes on the United States courts the burden of supervising the length of hair that public school students should wear. The records of the federal courts, including ours, show a heavy burden of litigation in connection with cases of great importance--the kind of litigation our courts must be able to handle if they are to perform their responsibility to our society. Moreover, our Constitution has sought to distribute the powers of government in this Nation between the United States and the States. Surely the federal judiciary can perform no greater service to the nation than to leave the States unhampered in the performance of their purely local affairs. Surely few policies can be thought of that States are more capable of deciding than the length of the hair of schoolboys. There can, of course, be honest differences of opinion as to whether any government, state or federal should as a matter of public policy regulate the length of haircuts, but it would be difficult to prove by reason, logic, or common sense that the federal judiciary is more competent to deal with hair length than are the local school authorities and state legislatures in our 50 states. Perhaps if the Courts will leave the States free to perform their own constitutional duties they will at least be able successfully to regulate the length of hair their public school students can wear.

At the time of this writing, four 1972 hair grooming cases have been published, all heard by federal district courts and one having reached a United States appeal court. All were decided for the student.

Seal v. Mertz involved the suspension of twenty male students who had been sent from school to get haircuts and who met their attorney on the school parking lot.⁷² The parking lot conference took place in view of students in a classroom and the school claimed that the class was disrupted. The court held that this incident could not be considered as justification for hair length regulation because the incident would never have taken place had there not been such a regulation. The court stated that a public school student has the same right to liberty as an adult under the Fourteenth Amendment except that the law may limit the liberty of students if it interferes with the educational process.

Minnich v. Nabuda, et al., a Pennsylvania case, resulted in a decision for the student.⁷³ The court held that the school's hair grooming regulation would infringe on the student's liberty without due process.

A Michigan high school student in the case of Church v. Board of Education of Saline Area School District, claimed that he grew

⁷²Seal v. Mertz, 338 F.Supp. 945 (Pennsylvania, 1972).

⁷³Minnich v. Nabuda, et al., 336 F.Supp. 769 (Pennsylvania, 1972).

his hair long as a protest to the war in Viet Nam. His long hair, he said, was an act of symbolic expression. The United States District Court held that enforcement of the school's dress code would have a chilling effect on free speech and the First Amendment. The court also noted that although the school is expected to stand in the parent's place in certain areas during school hours, with respect to grooming and dress the school must share that responsibility with parents.

A North Carolina case, Massie et al., v. Henry, et al., was brought by male students who had been suspended for their deliberate refusal to conform to a hair grooming guideline recommended by the student - faculty - parent committee and adopted by the high school principal.⁷⁴ The United States District Court dismissed the action and plaintiffs appealed. The Court of Appeals decided that the guideline was not justified on the theory of need for discipline and considerations of safety. The case was reversed and remanded, and the court said:

Perhaps the length of one's hair may be symbolic speech which under some circumstances is entitled to the protection of the First Amendment. But the record before us does not establish that the minor plaintiffs selected the length of their hair for any reasons other than personal preference. For that reason we prefer in this case to treat their right to wear their hair as they wish as an aspect of the right to be secure in one's person guaranteed by the due process clause.

⁷⁴Massie, et al. v. Henry, et al., 455 F.2d 779 (North Carolina, 1972).

Summary

Hair style and personal appearance cases began quietly in the middle 1960's and reached a crescendo during 1969 and 1970. Plaintiffs in these cases invoked a variety of Constitutional Amendments from the First to the Fifteenth to persuade state and federal courts that hair grooming and dress codes violated their freedoms.

The courts' responses were almost as various as the plaintiffs' prayers. A brief review of the reported cases reveals the following:

(1) Of sixty-eight cases reported, forty decisions have declared dress codes and hair grooming rules as valid; twenty-eight decisions have found such rules to be invalid.

(2) A federal court has declared that a purely "commercial" reason for growing long hair is not a right protected by the First Amendment.

(3) Courts have upheld school dress codes as "reasonable" infringement upon students' liberties.

(4) The courts have held that where no compelling educational interest is involved, dress codes and hair grooming regulations are unconstitutional infringements upon the fundamental rights of students.

(5) Courts have held that the right to wear one's hair as one wishes is a fundamental right for adults, and therefore for minors.

(6) Courts have held that the First Amendment rights are not absolute, and reasonable dress and hair grooming regulations are not improper invasion of such rights.

(7) Where disruptive behavior is likely to result from allowing long hair, hair regulations are proper.

(8) Courts have ruled that the school must carry the heavy burden of justification of regulations which invade freedoms.

(9) Courts have awarded attorneys' fees, costs, and damages to students wrongfully disciplined for wearing long hair.

(10) A court has ruled that the wearing of dungarees cannot be prohibited without infringing upon a student's constitutional rights.

(11) A court has held that disruption caused by a hair grooming regulation cannot be a valid reason for having the regulation.

(12) A court has held that where school's reason for having a hair grooming regulation was to advance economic welfare of the students, such regulation is valid.

(13) A court has decided where shaving is required on a rational basis and not arbitrarily applied, no constitutional question is involved.

(14) Courts have held that school regulation governing boys' haircuts deprived pupils of liberty and property without due process of law and violated Fourteenth Amendment.

(15) A Supreme Court Justice has refused to hold that the federal government has constitutional power to interfere in such school-state matters as the length of a school boy's hair.

(16) A United States Court of Appeals has held that hair length is not akin to pure speech and constitutionally protected, but it is a matter for school boards to decide.

(17) A court has ruled that in matters of hair and dress, the school must share its in loco parentis role with the child's parents.

(18) The United States Court of Appeals has held that the right to wear one's hair as one wishes is an aspect of the right to be secure in one's person guaranteed by the due process clause.

As these summary statements show, the matter of hair and dress in high schools is far from settled, and for every decision in favor of dress codes there can be found an equally compelling decision against them.

The status of hair grooming and dress code cases may best be described by the United States District Court for Pennsylvania in the case of Axtell v. LaPenn:⁷⁵

An examination of the "long-hair cases" to date makes clear that each such case must be decided on its own factual background and setting.

⁷⁵Axtell v. LaPenn, 323 F.Supp. 1077 (Pennsylvania, 1971).

TABLE 4

CASES INVOLVING ALLEGED INFRINGEMENT OF
THE RIGHT TO FREEDOM OF EXPRESSION
AND OTHER RIGHTS

<u>Freedom of Expression in Hair Styles and Clothing</u>	
Case	Disposition
<u>Leonard v. School Committee of Attleboro</u> , 212 N.E. 2d 468 (Massachusetts, 1965)	Senior boy was suspended from school until he got a hair cut. His parents sued in Superior Court to restrain the school from enforcing its regulation. When this court upheld the school, the family appealed to the Supreme Court of Massachusetts. The Supreme Court upheld the lower court.
<u>Ferrell v. Dallas Independent School District</u> , 261 F.Supp. 545 (Texas, 1966)	Three boys, members of a rock music group, were denied admission to school because of their long hair. The parents brought suit on the grounds that the boys' constitutional rights were violated. The United States District Court ruled in favor of the school.
<u>Davis v. Firment</u> , 269 F.Supp. 524 (Louisiana, 1967)	Plaintiff, suing under the Civil Rights Act, contended that to be forced to cut his hair was an infringement upon his right of freedom of expression. The United States District Court ruled that the wearing of long hair was not an expression of anything except conduct. Ruling in favor of the school.

TABLE 4 -- Continued

Brick v. Board of Education, School District No. 1, Denver, Colorado,
305 F. Supp. 1316 (Colorado, 1969)

Nineteen-year-old senior boy is suspended from school because of long hair. He sues contending that hair length or style is a constitutionally protected right under the First and Fourteenth Amendments. The United States District Court found for the school.

Crews v. Cloncs, 303 F. Supp. 1370
(Indiana, 1969)

Pupil sought injunctive relief requiring school officials to allow him to wear his hair long stating that his constitutional rights were infringed. The United States District Court held that his right of freedom of expression under the First Amendment was not an absolute right. Verdict for the school.

Giangreco v. Center School District,
313 F. Supp. 776 (Missouri, 1969)

Plaintiff asked temporary injunction, restraining order and permanent injunction prohibiting school district from refusing to admit him in his senior year for failure to comply with regulation governing length of hair. Court held that his rights were not abridged. Motions for temporary restraining order and preliminary injunction denied.

Shows v. Freeman, 230 So. 2d 63
(Mississippi, 1969)

Appeal from decree of Chancery Court dissolving temporary injunction enjoining school principal from preventing student from attending school because he violated principal's hair rule. The Supreme Court of Mississippi held that rule was not invasion of family privacy. Verdict in favor of the school.

TABLE 4 -- Continued

Westley v. Rossi, 305 F.Supp. 706
(Minnesota, 1969)

Male student prevented from attending high school because of length of his hair sought injunction against the school. The District Court held that he could not be prevented from attending public school because of the length of his hair. Verdict in favor of plaintiff.

Breen v. Kahl, 419 F.2d 1034,
cert. den. 90 S.Ct. 1836
(Wisconsin, 1969)

Thomas Breen and James Anton were students who were suspended because they would not cut their hair. United States District Court granted judgment to plaintiffs saying that the school failed to carry the heavy burden of justification for the hair grooming rule and that the regulation invaded a freedom which deserved a high degree of protection. Upheld on appeal.

Richards v. Thurston, 304 F. Supp.
449, affd. 424 F.2d 1281
(Massachusetts, 1970)

Student with long hair suspended from school, sought injunction on the ground that his constitutional rights were abridged under the due process clause. The United States District Court held that the boy must be reinstated in school and granted other relief including attorneys' fees. United States Court of Appeals upheld the decision.

TABLE 4 -- Continued

Farrell v. Smith, 310 F. Supp. 732
(Maine, 1970)

Three boys expelled from vocational school because of their long hair ask an injunction and claim infringement of their 14th Amendment rights. The District Court agreed that the right to wear one's hair in any length is an expression of personal liberty protected by the United States Constitution, but denied the relief requested on the grounds that the state had made a showing sufficient to sustain their substantial burden of justification. Verdict for the school.

Schwartz v. Galveston Independent
School District, 307 F. Supp. 1034
(Texas, 1970)

Plaintiff sued in United States District Court because of a rule enforced by his school as to the length of his hair. The court declined to intervene in the activities of the school and dismissed the case.

Jackson v. Dorrier, 424 F.2d 213,
cert den. 91 S.Ct. 55 (Tennessee, 1970)

Pupils sued in United States court because they were suspended from school for violation of hair grooming regulation. The court held for the school and the United States Supreme Court denied certiorari.

Sims v. Colfax Community School
District, 307 F. Supp. 385
(Iowa, 1970)

Suit by girl student whose bangs were too long to comply with school hair grooming regulation. The court found that a public school student's free choice as to appearance and hair style is constitutionally protected.

TABLE 4 -- Continued

Stevenson v. Wheeler County
Board of Education, 306 F. Supp.
 97, affd. 426 F.2d 1154, cert.
 den. 91 S.Ct. 355 (Georgia, 1970)

Students suspended from school for refusing to shave
 sued in United States District Court. The court denied
 his suit on the ground that no constitutional question
 was involved.

Akin v. Board of Education,
 68 Cal. Rptr. 557 (California, 1970)

A student was denied enrollment in high school so
 long as he wore a beard. The appellate court upheld
 the school board.

Meyers v. Arcata Union High
School District, 75 Cal. Rptr 68
 (California, 1970)

Student sued because of dress policy which required
 him to cut his hair. The lower court ordered that
 the student be reinstated in school, and that ruling was
 upheld by the appellate court because of the
 "unconstitutional vagueness" of the school's ruling
 on "extreme hair styles."

Alexander v. Thompson, 313 F.Supp.
 1389 (California, 1970)

Claude Alexander, a minor, sues for injunction against
 high school's enforcement of regulation that sideburns
 be a certain length. The schools were enjoined from
 refusing him enrollment on the grounds that his hair
 style did not conform to the regulation.

TABLE 4 -- Continued

Dunham v. Pulsifer, 312 F. Supp.
411 (Vermont, 1970)

Boy asked the court to enjoin the school from enforcing athletic grooming code. The court found that the rule was not essential to any compelling interest of which the school board is entrusted and its enforcement would be an infringement on the fundamental rights of the plaintiff.

Lovelace v. Leechburg Area School District, 310 F.Supp. 579 (Pennsylvania, 1970)

High school boy suspended because of having a mustache brought suit in United States District Court. The Court held that the fashion code provision prohibiting mustache was reasonable, but in this case the boy's mustache was practically imperceptible, and that the rule was arbitrary. To exclude the boy from school for such a "non-violation" is arbitrary and a violation of his rights.

Gfell v. Rickelman, 313 F.Supp. 364
(Ohio, 1970)

Student seeks injunction against high school dress code. The court found that there was a reasonable reason for the dress code and dismissed the case.

Griffin v. Tatums, 300 F.Supp. 60,
425 F.2d 201 (Alabama, 1970)

Student brought suit in United States District Court challenging school's hair code. The Court said that the touchstone for sustaining regulations concerning student hair style and dress is showing that regulations are necessary to avoid interference with educational process. Court upheld the validity of the school's regulation regarding hair.

TABLE 4 -- Continued

Corley v. Daunhauer, 312 F.Supp.
811 (Arkansas, 1970)

Grade school student, 12 years old, challenged school policy with respect to hair length. The United States District Court held that the public school system has right to require students in school band program to conform their hair length to reasonable requirements of band director. Case dismissed.

Pritchard v. Spring Branch,
308 F.Supp. 570 (Texas, 1970)

Action by high school boy and his father for federal injunction against enforcing male hair grooming regulation. The District Court held that the regulation was not lacking for specificity, uniformity, or fairness, that some discretion needs to be lodged in the school authorities in order to achieve a flexible and effective administration and that enforcement of the rule was rationally related to the efficient operation of the school.

Brownlee v. Bradley County,
Tennessee, Board of Education,
311 F.Supp. 1360 (Tennessee, 1970)

Student expelled because he did not cut his hair sued in United States District Court. The Court held that the regulation of the public schools was neither arbitrary nor capricious and its application to plaintiff did not violate his rights under the Constitution.

Crossen v. Fatsi, 309 F.Supp. 114
(Connecticut, 1970)

Student suspended for wearing a beard and mustache claimed infringement of freedom of expression. United States District Court order the boy reinstated and granted other relief including his costs in the case.

TABLE 4 -- Continued

Wood v. Alamo, 308 F.Supp. 570,
affd. 433 F.2d 551 (Texas, 1970)

Action on behalf of high school student asking injunction and damages for suspension of student from school because of length of his hair. On student's motion for temporary injunction and school officials' motion to dismiss which Court treated as motion for summary judgment, the District Court held that, where high school's written dress code for students was adopted after active participation by students, regulation of hair length was valid. Motion for temporary injunction denied; school officials' motion for summary judgment granted.

Neuhaus v. Torrey, 310 F.Supp. 192
(California, 1970)

Suit by high school athletes against Superintendent of Education of school district for injunctive and declaratory relief against enforcement of school district regulation which established grooming regulations for athletes. On motion for preliminary injunction, the Court held that the grooming standard for male students participating in athletic competition was rational and reasonable. Motion for preliminary injunction denied.

Hatter v. Los Angeles City High School District, 310 F.Supp. 1309
(California, 1970)

Action by students claiming infringement of rights by school district and its officials after students were suspended for violating dress code. The court decided that the case raised no questions of constitutional proportions.

TABLE 4 -- Continued

Gere v. Stanley, et al.,
320 F.Supp. 852 (Pennsylvania,
1970)

High school student who was suspended from school for violation of hair portion of school dress code brought action against school officials claiming violation of his First and Fourteenth Amendment rights. The United States District Court held that hair style regulation was reasonable where student's long hair and goatee were a matter of personal taste and not a means of expression. Complaint dismissed.

Jeffers, Jr., v. Yuba City
Unified School District, et al.,
319 F.Supp. 368 (California, 1970)

Action by suspended high school students to have certain portions of dress code pertaining to length of male students' hair at high school declared unconstitutional and to enjoin defendants from enforcing them. The United States District Court held that high school hair regulation prohibiting beards and forbidding sideburns below ear lobe, and hair draping over ears, shirt collars or eyes was reasonably and rationally related to educational process and did not deprive students of their constitutional rights. Judgment for defendants.

Bouse, et al. v. Hipes, et al.,
319 F. Supp 515 (Indiana, 1970)

Students who were suspended and expelled from school sought permanent injunctive relief ordering defendant school officials to refrain from denying admission and enrollment to them. The United States District Court held that where plaintiff students were expelled and suspended for disciplinary reasons as well, no federal question was involved. Claim dismissed.

TABLE 4 -- Continued

Southern v. Board of Trustees for the
Dallas Independent School District,
318 F.Supp. 355 (Texas, 1970)

Action by student and his mother challenging refusal of school district to admit student to high school due to length of hair. United States District Court held that the regulation was reasonably necessary to insure effective operation of school and promote discipline and decorum of its students. Application for temporary injunction denied.

Carter v. Hodges, et al., 317 F.Supp.
89 (Arkansas, 1970)

Action to enjoin enforcement of high school dress code. The United States District Court held that dress code and provision thereof prohibiting long hair was reasonably related to educational process and was valid and that student's rights under First and Fourteenth Amendments were not violated. Injunction and other relief denied. 96

Bannister v. Paradis, et al.,
316 F.Supp. 185 (New Hampshire,
1970)

Action by junior high school student to enjoin enforcement of prohibition of dress code against wearing of dungarees. The United States District Court held that prohibition was unconstitutional and invalid, in absence of showing that wearing of dungarees in any way inhibited or tended to inhibit the educational process. Injunction granted.

TABLE 4 -- Continued

Black v. Cothren, et al.,
316 F.Supp. 468 (Nebraska, 1970)

Student denied continued attendance at junior high school for failure to comply with grooming regulations sought injunctive relief and damages under Civil Rights Act. The United States District Court held that evidence that, in entire school system, half or slightly less than half of those who caused disciplinary problems did not wear long hair and that half or slightly more than half did wear their hair unusually long was not sufficient to show that unusually long hair caused problems of discipline, so as to justify refusal to admit student, who failed to have his hair cut, on ground that regulation against excessively long hair was tied directly to disciplinary problems. Judgment for plaintiff.

Whitsell v. Pampa Independent School
District, et al., 316 F.Supp. 852
(Texas, 1970)

Action by high school student seeking injunctive relief with respect to school regulation governing length of students' hair. Student claims violations of his rights under the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments. The United States District Court said that the wearing of long hair is a right protected to high school students, but the interest of the state in providing educational system free of interference and disruptions will override such right. Complaint dismissed.

TABLE 4 - - Continued

Murphy v. Pocatello School
District #25, 480 P.2d 878
(Idaho, 1970)

Action against school district for mandamus and for damages for alleged unlawful suspension of plaintiff from attendance at classes. because of violation of hair regulation. It appeared that the reason for the regulation was to assure tranquility in the school and to avoid confrontations between students wearing long hair and those not doing so. It appeared also that the plaintiff had caused no disturbance. The Supreme Court of Idaho held that the school district failed to bear burden of justification. Judgment for plaintiff.

Canney v. Board of Instruction,
231 So. 2d 34 (Florida, 1970)

Proceeding on petition for writ of certiorari to review action of county board of instruction suspending petitioner from high school. The District Court of Appeals held that where legislature had empowered school board to enact regulations, board enacted regulation regarding wearing of hair and prohibiting bizarre and exotic styles, and student admittedly violated regulations, and was suspended for ten days by principal and on same date board extended suspension upon condition and later granted hearing, ample opportunity was given student to conform with said regulation, and his refusal to comply left board no alternative but to continue his suspension. Writ of certiorari denied.

TABLE 4 -- Continued

Laine v. Ditmann, et al.,
259 N.E. 2d 824 (Illinois, 1970)

High school junior brought action against members of school board and school officials to enjoin expulsion from school for wearing his hair down to his shoulders. The Circuit Court rendered judgment adverse to the student and he appealed. The Appellate Court held right of student of personal choice in matters of hair length can only be abridged or curtailed where exercise of that right creates an actual disturbance or disruption to orderly process of school functions. Reversed and remanded with instructions.

Cordova v. Chonko, et al.,
315 F.Supp. 953 (Ohio, 1970)

Action in which high school student sought relief from his suspension from school due to his hair style. United States District Court held that suspension by high school principal denied the student his rights. Court also awarded damages of one cent to the plaintiff.

Livingston v. Swanquist, et al.,
314 F.Supp. 1 (Illinois, 1970)

Dispute involving school dress code in which plaintiffs charged violation of their constitutional rights and sought equitable and declaratory relief and damages. The United States District Court held that school dress code did not violate protection afforded by Federal Constitution and enforcement of code did not deprive plaintiffs of freedom of speech and expression. Relief denied, cause dismissed.

TABLE 4 -- Continued

Mercer, et al. v. Lothamer, et al.,
321 F.Supp. 335 (Ohio, 1971)

Action in United States District Court by students to permanently enjoin school officials from enforcing provisions of school dress code, particularly provision concerning acceptable length of hair for male students. The Court held that school dress code provision that length of boys' hair should not cover collar was not arbitrary and unreasonable and was reasonably related to teaching proper grooming, self-discipline and etiquette, and that such code did not violate students' constitutional rights. Application denied.

Pound, et al. v. Holladay, et al.
322 F.Supp. 1000 (Mississippi, 1971)

Action by high school students who were suspended for violation of dress code relating to hairstyles, for judgment declaring hairstyle regulation unconstitutional and for an injunction prohibiting implementation of the regulation. The United States District Court held that hairstyle regulation was reasonably necessary and dismissed the action.

Turley v. Adel Community School
District, et al., 322 F.Supp. 402
(Iowa, 1971)

Action challenging constitutionality of public school regulation seeking to control length of students' hair and restrain enforcement against minor plaintiff. The United States District Court held that the rule was unconstitutional where school failed to demonstrate the reasonableness of the hair rule. Judgment accordingly.

TABLE 4 -- Continued

Hammonds et al. v. Shannon,
et al., 323 F.Supp. 681
(Texas, 1971)

Action for injunctive declaratory relief restraining school officials from enforcing dress code in high school. The United States District Court held that record established that dress code was reasonable and valid in all respects and violated no constitutional rights of plaintiffs. Complaint dismissed.

Axtell v. LaPenn, et al.,
323 F.Supp. 1077 (Pennsylvania,
1971)

Civil rights action by parents on behalf of students for injunction restraining school administrators and school board from enforcing school regulation pertaining to boys' hair cuts and to require the students' reinstatement after suspension for violating the rule. The United States District Court held that the code was unreasonable and infringed on fundamental rights guaranteed by the Constitution.

Press v. Pasadena Independent
School District, 326 F.Supp. 550
(Texas, 1971)

Action by eight grade girl suspended from school for wearing pantsuit in violation of dress code and for participating in demonstration, for injunctive and declaratory relief. Court gave reasons why a federal district court should abstain from entering into such matters. The Court abstained.

Lambert v. Marushi, et al.,
322 F.Supp. 326 (West Virginia,
1971)

Action by long-haired student challenging school's suspension of him until he cut his hair. The District Court held that school officials failed to show that his long hair caused discipline problems.

TABLE 4 -- Continued

Martin, et al. v. Davison, et al.,
322 F.Supp. 318 (Pennsylvania, 1971)

Action by pupil and his parents to enjoin school district from enforcing suspension of pupil for violation of regulation pertaining to boys' haircuts and for declaration that the regulation was unconstitutional. The United States District Court held that where style and length of hair worn did not constitute health problem nor disrupt school activity, enforcement of such regulation deprived pupil of liberty without due process. Order accordingly.

Dawson v. Hillsborough County,
Florida, School Board, 322 F.Supp.
286 (Florida, 1971)

Action wherein students sought injunctive relief requiring school board to terminate their suspension for violating long hair provision of school dress code. The United States District Court held that the school board failed to show that long hair had caused disruption or that it constituted a health hazard and that therefore its enforcement violated the constitutional rights of the student. Relief granted.

Parker v. Fry, et al.,
323 F.Supp. 728 (Arkansas, 1971)

Action for alleged violation of civil rights of high school student suspended because of length and style of his hair. On plaintiff's application for temporary injunction the United States District Court held that showing of disruptive effect of high school student's shoulder-length hair was insufficient to justify high school rule prohibiting males from wearing "extreme hair styles." Temporary injunction granted.

TABLE 4 -- Continued

Rumler v. Bd. of School Trustees
for Lexington County District No. One
Schools, 327 F.Supp. 729 (South
Carolina, 1971)

Complaint by which plaintiffs sought judgment declaring that regulation of board of trustees covering appearance of students attending high schools in district violated First, Eighth and Fourteenth Amendments. The United States District Court held that such regulation did not violate plaintiffs' rights. Prayer for restraining order and/or permanent injunction denied; action dismissed.

Berryman v. Hein, 329 F.Supp. 616
(Idaho, 1971)

Action by high school students suspended for violating a grooming regulation regarding length of hair seeking a permanent injunction against enforcement of the rule. The United States District Court held that a grooming regulation is reasonable and therefore valid only if there is evidence that disruption of educational process will result because students wear long hair. Injunctive relief granted.

Valdes v. Monroe County Board of
Public Instruction, et al., 325 F.Supp.
572 (Florida, 1971)

Action by students to enjoin enforcement of regulation of school board pertaining to length of students' hair. The United States District Court held that reasonableness of public school board regulations pertaining to wearing of long hair did not violate students' constitutional rights. Case dismissed.

TABLE 4 -- Continued

Howell et al. v. Wolf, et al.,
331 F.Supp. 1342 (Georgia, 1971)

Action by students who had been denied entrance to high school because of their failure to comply with rules promulgated by board of education regarding boys' hair styles. The United States District Court held that where the rule was promulgated as aid to efficient operation of school system, the court would not enjoin operation of rule. Judgment for defendants.

Zeller v. Donegal School District,
et al., 333 F.Supp. 412 (Pennsylvania,
1971)

Proceeding on motion of school district to dismiss action brought on behalf of student challenging rule governing hair style. The United States District Court held that there is lack of a substantial federal question involved. Motion granted.

Bishop v. Colaw, 450 F.2d 1069
(Missouri, 1971)

Action by suspended public high school student and his parents against board of education and state to obtain readmission of student and a declaratory judgment overturning dress code regulations governing hair length and style of male students. The United States District Court entered judgment for defendant and plaintiffs appealed. The Court of Appeals held that public high school dress code regulating hair length and style was invalid and unenforceable where regulation was not necessary to carry out institutional mission of high school. Reversed and remanded.

TABLE 4 -- Continued

<u>Komadina v. Peckham</u> , 478 P.2d 113 (Arizona, 1971)	Mandamus to support order directing that plaintiff be registered and enrolled in high school after he had been refused admission because of length of his hair. Superior Court of Pima County order that the boy be enrolled and the high school principal and board of education appealed. Court of Appeals held that principals refusal to admit plaintiff as student because of length of hair was unreasonable and arbitrary and a violation of his rights as an individual. Judgment for student.
<u>Montalvo v. Madera Unified School District Board of Education</u> , 98 Cal. Rptr. 593 (California, 1971)	Action by student suspended on account of violating school's hair grooming regulation. The court said that hair style, without more, is not per se an expression of speech, symbolic or pure, within protection of the First Amendment. But hair style is protected by the "liberty" umbrella of the Fourteenth Amendment. Decision for student.
<u>Karr v. Schmidt, et al.</u> , 401 U.S. 120, 27 L.Ed. 2d 797, 91 S.Ct. 592 (Texas, 1971)	This case originated in the United States District Court for the Western District of Texas which held that a rule adopted by the school authorities of El Paso requiring boys not to wear hair hanging over their ears or collars or obstructing their vision violated the due process and equal protection clauses of the Fourteenth Amendment. The District Court enjoined enforcement of the rule. The school appealed and the Court of Appeals for the

TABLE 4 -- Continued

	Fifth Circuit stayed and suspended the injunction. Certain students then moved for vacation of the Court of Appeals stay. Mr. Justice Hugo Black as circuit justice denied the motion.
<u>Conyers v. Glenn, et al.,</u> 243 So.2d 204 (Florida, 1971)	Student suspended from high school for failure to cut his long hair sought temporary injunction and hearing before school board. After issuance of temporary injunction the Circuit Court dismissed complaint and the student appealed. District Court of Appeal held that the student was entitled to due process and that the regulation of individual style and taste is a matter for the individual. Reversed and remanded with directions to reinstate temporary injunction.
<u>Cranson v. Otero School District</u> <u>R-1 (Colorado);</u> <u>Freeman v. Flake (Utah);</u> <u>White v. Board of Education of</u> <u>Hobbs Municipal School District</u> <u>No. 16 (New Mexico);</u> 448 F.2d 258 (1971)	These three cases involving regulation of hair styles of male students in public schools are joined on appeal from United States District Courts decisions. The Court of Appeals held that the United States Constitution and statutes do not impose on federal courts the duty and responsibility of regulating hair styles of male students in public schools, and the problem, if any, is one for the states and should be handled through state procedures. Affirmed in part, reversed in part, and remanded with directions.

TABLE 4 -- Continued

Laucher v. Simpson,
276 N. E. 2d 261 (Ohio, 1971)

Student suspended from school for violation of dress code limiting length of hair sued in Common Pleas Court which upheld the school board's regulation and refused to grant injunction at the request of student. The Court of Appeals held that where student knew of the adoption of dress code limiting length of hair suspension from school was proper. Decision for school.

Massie et al. v. Henry, et al.,
455 F.2d 779 (North Carolina, 1972)

Action by male student who had been suspended for deliberate refusal to conform to guideline regarding the length of hair and side burns. The United States District Court for the Western District of North Carolina dismissed the action and the plaintiffs appealed. The Court of Appeals held that the guideline was not justified on theory of need for discipline and considerations of safety. Reversed and remanded.

Minnich v. Nabuda, et al.,
336 F.Supp. 769 (Pennsylvania,
1972)

Action by high school students and their guardians seeking to enjoin school officials from enforcing hair length provision of dress code. United States District Court held that neither the school officials' testimony that enforcement of boys' hair length rule per se was beneficial as an instrument for enforcing entire disciplinary system nor the fact that parents generally

TABLE 4 -- Continued

	approved of dress code was sufficient to justify regulation; in absence of evidence that boys' hair regulation was necessary to prevent disruption of educational process the regulation which provided that a boy's hair could not extend below his eyebrows in front or collar in rear would fall as infringement of liberty of the affected student without due process of law.
<u>Seal v. Mertz</u> , 338 F.Supp. 945 (Pennsylvania, 1972)	Suit by male students regarding regulation of length of hair. Having been sent home to get hair cuts, 20 boys met in the school parking lot to talk to an attorney representing some of the youths. This distracted some students who were in a classroom facing the parking lot. However, the United States District Court said that it should not be considered a justification for the hair regulation in that if there had been no such rule the incident would never have taken place. Judgment for the plaintiffs.
<u>Church v. Board of Education of Saline Area School District</u> , 339 F.Supp. 538 (Michigan, 1972)	Action by student suspended for violating hair grooming code. The United States District Court held that the effect of enforcing dress code would have a chilling effect on free speech and the First Amendment. Decision for the student.

Cases Involving Alleged Infringement of
the Right to Freedom of Expression in
Armbands and other Symbols

A group of related lawsuits has grown up alongside the hair grooming and dress code cases. These are the cases in which students sue for the right to express themselves symbolically by wearing armbands, buttons, or other item on their person.

The first two such decisions reported came from the same court in the same state on the same day. The details of these two cases are almost identical, but the decisions are exactly opposite.

Burnside v. Byars involved a group of students who were suspended because they refused to stop wearing so-called "freedom buttons" to school.⁷⁶ These buttons bore the letters SNCC in the center, with the words "one man, one vote" around the edge.

The opinion of the court contained the following words:

The regulation which is before us now prohibits the wearing of "freedom buttons" on school property. The record indicates only a mild showing of curiosity on the part of the other school children over the presence of some 30 or 40 children wearing such buttons. Even the principal testifies that the children were not expelled for causing a commotion or disrupting classes, but for violation of school regulations. Thus it appears that the wearing of the "freedom buttons" did not hamper the school in

⁷⁶Burnside v. Byars, 363 F.2d 744 (Mississippi, 1966).

in carrying on its regular schedule of activities. Nor would it seem likely that the simple wearing of buttons unaccompanied by improper conduct would ever do so. . .

. . . school officials cannot . . . infringe on their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and in the school rooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.

Blackwell v. Issaquena is the sister case to Burnside.⁷⁷

Students wore the same buttons to school and were suspended for doing so. However, in the Blackwell case, the students marched into classrooms, threw buttons into windows and attempted to force buttons on others in the school. The court in this case upheld the school officials because of the disturbance and commotion which arose out of the wearing of the buttons, and said:

In the instant case, as distinguished from the facts in Burnside, there was more than a mild curiosity on the part of those who were wearing, distributing, discussing, and promoting the wearing of buttons. There was an unusual degree of commotion, boisterous conduct, and a collision with the rights of others, an undermining of authority, and a lack of order, discipline and decorum. The proper operation of the public school system is one of the highest and most fundamental responsibilities of the state. The school authorities in the instant case had a legitimate and substantial interest in the school's operation. In this case the reprehensible conduct was so inexorably tied to the wearing of the buttons that the two were not separable. In these circumstances we consider the rule of the school authorities reasonable.

⁷⁷Blackwell v. Issaquena County Board of Education, 363 F.2d 749 (Mississippi, 1966).

Another "freedom button" case is that of *Guzick v. Drebus*.⁷⁸ A student asked the United States District Court for injunctive relief from school authority's refusal to permit him to wear the button while attending school, from refusing to reinstate plaintiff, and for declaratory judgment that rule proscribing wearing of such buttons was unconstitutional, and for damages. The district court held that where the rule, which prohibited wearing of any buttons or other insignia, significantly contributed to the preservation of peace and order in the high school, which was subject to racial tension, and the rule was applied uniformly and consistently, the rule was reasonable.

The button in question contained this terminology: "April 5 Chicago G. I. Civilian Anti-War Demonstration Student Mobilization Committee." Court held that invoking the rule against such button did not constitute denial of student's constitutional rights.

A portion of the decision stated as follows:

Upholding the Shaw High School rule prohibiting buttons or other symbols does not sound the death knell for student freedom of speech. . . .

The evidence in this case has made it abundantly clear that the school authorities have a factual basis upon which to forecast substantial disruption of, or material interference with, school activities if student behavioral conduct regarding the wearing of buttons is not regulated.

The cause was dismissed.

⁷⁸*Guzick v. Drebus*, 305 F.Supp. 472, *affd.* 431 F.2d 594 (Ohio, 1969).

In 1969 the United States Supreme Court, for the first time in its history, rendered a decision in a case pertaining to discipline of high school students where no religious elements were involved. The case of Tinker v. Des Moines has since become one of the most quoted and probably one of the most influential school law cases ever tried.⁷⁹

The background of this historic lawsuit is as follows:

Principals in Des Moines schools became aware that certain students were planning to wear armbands to school to protest the war in Viet Nam. These administrators decided that such behavior would be unacceptable and announced that any student wearing such armbands to school would be suspended until he returned without it. Among other students, John Tinker, age 15; Christopher Tinker, age 16; and Mary Beth Tinker, age 13; wore their black armbands to school and were suspended.

The parents of the Tinker children appealed to the United States District Court for an injunction to restrain the school authorities from disciplining the children, although by the time the petition was heard the children had already returned to school without their armbands, as the protest period had passed. The district court dismissed the complaint and the Tinkers appealed to the Court of Appeals for the Eighth Circuit.

⁷⁹Tinker v. Des Moines Independent School District, 258 F.Supp. 971, 393 U.S. 503 (Iowa, 1969).

The appellate case affirmed the decision of the lower court, so the Tinkers took their case to the United States Supreme Court and asked for a writ of certiorari. The Supreme Court agreed to hear the case, and it was now up to that body to decide whether or not the wearing of black armbands was a form of expression protected under the First Amendment. In February, 1969, more than three years after the Tinker children had appeared in school wearing their symbols of protest, the United States Supreme Court rendered its decision from which the following excerpt is taken:

. . . [The wearing of armbands] was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. . . .

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

The court was very careful in its wording to attempt to leave with the schools the authority with which law and custom have invested them.

It said:

. . . the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school authorities, consistent with fundamental constitutional safeguards. . . . Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

 Our problem involves direct, primary First Amendment rights akin to "pure speech."

Texas courts heard two armband cases the same year that the Tinker case was decided. In one of these cases, Aguirre v. Tahoka Independent School District,⁸⁰ the court held with Tinker that where there was no evidence that wearing the symbols caused disruption of the school, the regulation against them was improper.

In the case of Butts v. Dallas Independent School District,⁸¹ a federal court took an opposite view. In its decision denying an injunction against the school, the court stated:

This is not a Tinker case fact situation. The Court should not interfere with the disciplinary actions of the School District which are designed to prevent disruption. It would be well to note, in closing, one last quote from the Tinker case. Justice Fortas says of the students that " * * * they themselves must respect their obligations to the State. " It occurs to this Court that one obligation students have to the State is to obey school regulations designed to promote the orderly educational process.

Hernandez v. School District No. One is a Colorado case in which students, suspended by the high school for wearing black berets, sought a declaration that their constitutional rights were violated.⁸² The evidence showed that there were real discipline problems in this school aggravated by a group of youths calling themselves the Black Berets. The Court dismissed the complaint and said, "Disruptive

⁸⁰Aguirre v. Tahoka Independent School District, 311 F.Supp. 664 (Texas, 1969).

⁸¹Butts v. Dallas Independent School District, 306 F.Supp. 488 (Texas, 1969).

⁸²Hernandez v. School District No. One, 315 F.Supp. 289 (Colorado, 1970).

conduct of the plaintiffs is not immunized by the Constitutional guarantee of free speech."

Another armband case was tried in United States District Court for the Eastern District of North Carolina in early 1971.⁸³ John Hill and Gary Matson, high school students, brought suit against Robert Lewis, the principal of their school, for an injunction restraining him from suspending them from school. The students claimed that their constitutional right to wear armbands as a form of symbolic speech had been infringed by the suspension. In reviewing the facts of the case, the court determined that this school was situated near an Army base and that more than a third of the students were from military families. The court determined that the school had two diverse factions represented by the black armbands (non-war) on the one hand, and the red, white and blue armbands on the other. There was evidence that serious conflict was developing on the campus and that the presence of armbands and other symbols would aggravate the situation. The court refused to grant an injunction and made this statement:

In the balancing of First Amendment rights the duty of the State to operate its public school system for the benefit of all its children must be protected even if governmental regulations incidentally limit the untrammelled exercise of speech, symbolic or otherwise, by those who would impede the education of those who desire to learn.

⁸³Hill v. Lewis, 323 F.Supp. 55 (North Carolina, 1971).

A similar decision was reached in Melton v. Young.⁸⁴ This case was brought by a student who had been suspended for wearing to school a shoulder patch consisting of a replica of the Confederate flag. Parents of the boy sued on the grounds that the boy's constitutional rights under the First and Fourteenth Amendments had been abridged. The court found that although the school's regulation against "provocative symbols" was too vague, broad, and imprecise to be constitutional, the principal was correct in suspending the student. This decision was based on evidence that racial disorders had occurred at the school in the previous year, and that wearing of the Confederate symbol might precipitate another such disruption.

Summary

Within a span of five years federal courts have heard nine cases regarding freedom of expression in the wearing of armbands and other symbols. The most significant of these cases is Tinker v. Des Moines, the only school discipline case (other than those with religious themes) ever to be heard by the United States Supreme Court.

Decisions in these First Amendment lawsuits may be summarized as follows:

⁸⁴Melton v. Young , 328 F.Supp. 88 (Tennessee, 1971)

(1) A federal appellate court has held that the wearing of "freedom buttons" unaccompanied by disruptive behavior, cannot be prohibited without infringing on the students' constitutional rights.

(2) A federal appellate court has held that where the wearing of "freedom buttons" is accompanied by commotion, disturbance, and a collision with the rights of others, the school will be upheld in banning such symbols.

(3) A federal appellate court has held that where school officials have a factual basis upon which to forecast substantial disruption resulting from the wearing of freedom buttons, the school is correct in prohibiting such buttons.

(4) The United States Supreme Court has held that the wearing of armbands, unaccompanied by disruption or commotion, is a form of symbolic speech protected by the Constitution.

(5) A federal district court has held students' rights to free expression were not violated when they were suspended for wearing black berets and aggravating severe discipline problems in the school.

(6) United States District Court has held that in a school where there were strong factions representing diverse views on the war, the prohibition of armbands was proper and did not violate the rights of the children.

(7) A federal court has held that where the wearing of a shoulder patch might precipitate a reoccurrence of racial disorder in a school, the principal was correct in suspending the offending student.

TABLE 4 -- Continued

Freedom of Expression in Armbands and Other Symbols ^a	
<u>Burnside v. Byars,</u> 363 F.2d 744 (Mississippi, 1966)	Students suing in United States District Court for injunction against school's rule forbidding the wearing of freedom buttons were denied the relief sought and appealed to the United States Court of Appeals. The appellate court found that there were no disruptions or commotions occurring as a result of wearing the buttons and reversed the lower court.
<u>Blackwell v. Issaquena County</u> <u>Board of Education,</u> 363 F.2d 749 (Mississippi, 1966)	Students suspended for wearing freedom buttons brought suit in United States District Court for injunction against school. When that court rejected their suit, the case was taken to the United States Court of Appeals which found that disruption and boisterous conduct, undermining authority, discipline and decorum accompanied the wearing of the buttons. Decision in favor of the school.

^aPlaintiffs in cases involving the wearing of armbands, freedom buttons, and other symbols plead infringement of freedom of expression, freedom of speech, and other Constitutional rights, but all such cases are listed here under Freedom of Expression.

TABLE 4 - - Continued

Guzick v. Drebus, 305 F.Supp.
472, affd. 431 F.2d 594 (Ohio, 1969)

Action by a student for injunctive relief from school authority's refusal to permit him to wear button while attending school, from refusing to reinstate plaintiff, and for declaratory judgment that rule proscribing wearing of such buttons was unconstitutional, and for damages. The United States District Court held that where rule significantly contributed to preservation of peace and order in high school and was applied uniformly and consistently, rule was reasonable. The U. S. Court of Appeals affirmed.

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

This case involved an effort by the plaintiffs to recover damages and an injunction against enforcement of a regulation by the school district which prohibited the wearing of black arm bands in the school. The United States District Court upheld the school board's regulation but an appeal to the Supreme Court of the United States brought a reversal of that opinion and of the supporting opinion of the Court of Appeals for the Eighth Circuit. Justice Abe Fortas, writing the majority opinion for the Supreme Court said that both First and Fourteenth Amendment rights are available to students. Justice Fortas said that the mere anticipation of disorder is not enough on which to deny students the right to express themselves. He declared the school regulation unreasonable and unconstitutional.

TABLE 4 -- Continued

Butts v. Dallas Independent School District, 306 F.Supp. 488 (Texas, 1969)

Action to enjoin independent school district and superintendent from enforcing district's policy of prohibiting wearing of black armbands. The United States District Court held that the regulation was designed to prevent disruption and that as such it was not a violation of students' First Amendment rights. Temporary injunction denied.

Aguirre v. Tahoka Independent School District, 311 F.Supp. 664 (Texas, 1969)

Action by five minor children to enjoin school from enforcing the district's regulation prohibiting students from wearing apparel decorations which are disruptive, distracting or provocative. In this instance the children were wearing brown armbands. The United States District Court found that grievances of plaintiffs were worthy of corrective action and came within protection of the First Amendment. Judgment for plaintiffs.

Hernandez v. School District No. One, 315 F. Supp. 289 (Colorado, 1970)

Action by suspended high school students seeking a declaration that their constitutional rights were violated in that they were suspended for wearing black berets. The court held that it was not a violation of their First Amendment rights to free expression where such students had engaged in disruptive conduct. Complaint dismissed.

TABLE 4 -- Continued

Hill et al. v. Lewis, et al.,
323 F. Supp. 55 (North Carolina,
1971)

Action in which injunction was sought which would restrain high school principal from suspending plaintiffs, or others similarly situated for exercise of their alleged constitutional right to wear armbands as form of symbolic speech in protest against Viet Nam War. United States District Court held that where disruptive behavior accompanied the wearing of armbands, the regulation was reasonable. Preliminary injunction denied.

Melton v. Young, et al.,
323 F. Supp. 88 (Tennessee,
1971)

Suit challenging constitutionality of suspension of student from public high school for wearing a Confederate shoulder patch against regulation of school against wearing "provocative clothing." The United States District Court held that regulation was too vague, broad, and imprecise to be allowed to stand before requirements of either First or Fourteenth Amendments; however, validity of principal's action in suspending student was not unconstitutional where racial disorders might have occurred as a result of wearing the shoulder patch. Order accordingly.

Cases Involving Alleged Infringement of the Right to Freedom of Speech

There is a small group of lawsuits closely related to the "Freedom of Expression" cases described in the preceding two sections of this chapter, except that in this group of cases the speech alleged to have been violated was not symbolic in nature. These cases, three in number, differ greatly from each other in details, but in each case the plaintiff appealed to the First Amendment and declared that his freedom of speech had been infringed.

The first such case, Whitfield v. Simpson,⁸⁵ had as its plaintiff a Negro student who had been expelled for gross disobedience. The student claimed that his expulsion amounted to an infringement of his right to free speech, and he also claimed that other Negro students had been offended in the same way. The United States District Court heard the evidence in the matter, found that there was "not one scintilla" of evidence that the freedom of speech and expression of Negro students in the school had been violated, and dismissed the case.

⁸⁵Whitfield v. Simpson, 312 F.Supp. 889 (Illinois, 1970).

State v. Lundquist, originating in Circuit Court in Maryland, concerned a school teacher, who, for himself and others, asked the court to find unconstitutional a state statute which required all students and teachers, except those objecting for religious reasons, to stand, salute the flag, and recite the pledge of allegiance in unison.⁸⁶ The Circuit Court affirmed the lower court and held that such statute unconstitutionally abridged freedom of speech.

Lundquist, the plaintiff teacher, testified that he loved his country, respected his flag and the other symbols of the nation. He said, however, that he was repulsed by the idea that the rituals in question should be forced on anyone.

In its decision the Court of Appeals said:

Entertaining no doubt that there is ample authority to punish students or teachers who materially disrupt proper school activities, including voluntary patriotic programs, we are far from convinced that the mere refusal to participate in any phase of the pledge of allegiance ritual is punishable. To reach a contrary conclusion would allow the schools to discipline such refusal as "an act of disrespect" even though they may not compel this ceremony in the first place.

There was another case in this group where plaintiffs sought to enjoin members of the school board from, among other things, reinstating the suspension of students who had been involved in a sit-in. The court found that the affected students had disrupted

⁸⁶State v. Lundquist, 278 A.2d 263 (Maryland, 1971).

classes by moving noisily through the halls, had forced the removal of a few classes from their scheduled locations, and did not themselves attend classes because of the sit-in.

The court found that suspending the students did not violate their First Amendment rights. In denying request for a permanent injunction, it said:

Where speech is mixed with conduct as in the case of a sit-in, the state may reasonably regulate the time, place, and manner of such activity in order to prevent serious interference with normal usage of the facility or area in which the demonstration is to take place.

Summary

In three diverse "Freedom of Speech" cases, courts have made the following decisions:

(1) Expelling a student for gross disobedience does not amount to violating his constitutional right to free speech.

(2) A statute which required all students and teachers, except those objecting on religious grounds, to salute the flag and recite the pledge of allegiance unconstitutionally abridged freedom of speech.

(3) Students expelled for disrupting schools' activities during sit-in demonstration did not have their First Amendment rights violated.

TABLE 5

CASES INVOLVING ALLEGED INFRINGEMENT OF
FREEDOM OF SPEECH AND OTHER RIGHTS

Whitfield v. Simpson,
312 F.Supp. 889 (Illinois, 1970)

Negro student expelled for gross disobedience claims that suspension was unconstitutional and that his freedom of speech was infringed. Court found no evidence that the freedom of speech had been violated. Dismissed.

State v. Lundquist,
278 A.2d 263 (Maryland, 1971)

Action challenging statute which required all students and teachers, except those objecting for religious reasons, to stand, salute the flag, and pledge allegiance in unison. The Circuit Court entered declaratory decree invalidating key provisions of such statute, and state appealed. Court of Appeals held that such statute unconstitutionally abridged freedom of speech. Decree affirmed.

Gebert et al. v. Hoffman, et al.
336 F.Supp 694 (Pennsylvania, 1972)

Class action seeking to enjoin members of school board from reinstating temporary suspensions of students who had taken part in sit-in and demonstrations. District Court held that such behavior had been disruptive to the schools' educational program and that the actions of school officials in terminating the sit-in by suspending the students involved did not violate the First Amendment rights of the students. Request for permanent injunction denied.

Cases Involving Alleged Infringement of
the Right to Freedom of Press

Scoville v. Board of Education of Joliet Township High School District 204, tried in federal district court in Illinois, is one of the earliest freedom of press cases to come out of a public high school.⁸⁷ The facts in the case are as follows: Raymond Scoville and Arthur Breen, 17-year-old high school students, distributed to other students and faculty at the high school sixty copies of a mimeographed journal entitled "Grass High." A part of the publication was critical of the school's administration and it urged students to refuse to accept or to destroy all "propaganda" that the administration published.

The two boys were expelled from school and otherwise disciplined. They brought action for declaratory and injunctive relief against the school and its officers. The court found that dissemination of "Grass High" under the circumstances alleged was reasonably found by the Board of Education to constitute gross misconduct, and that the board had a right to make such a finding. The court found and stated:

. . . where speech takes the form of immediate incitement to disregard of legitimate administrative regulations necessary to orderly maintenance of a public high school system, and

⁸⁷Scoville v. Board of Education of Joliet Township High School District No. 204, 286 F.Supp. 987 (Illinois, 1968).

where the speech occurs, not on a street or on a public park, where the rights of free speech are virtually absolute, but rather on the very property dedicated to a special public use, the education of younger citizens; and where the speech is directed to an audience, which, because of its immaturity, is more likely than an adult audience to react to the detriment of the school system, then it is the opinion of this Court that the interest in maintaining the school system outweighs the protection afforded the speaker by the First Amendment.

The court issued judgment for the defendants in the case.

A similar case was heard in United States District Court in New York in 1969. Schwartz v. Schuker was an action on behalf of a high school student suspended for bringing on school premises copies of a newspaper published off campus.⁸⁸ When asked to surrender the papers, Jeffrey Schwartz refused to do so. He was suspended for his actions after which suspension he brought action against the school.

The court noted "a pattern of open and flagrant defiance of school discipline, aided and abetted by his parents' encouragement." In its decision the court quoted Madera v. Board of Education where Judge Moore said:

Law and order in the classroom should be the responsibility of our respective educational systems. The Courts should not usurp this function and turn disciplinary problems, involving suspension, into criminal adversary proceedings, which they definitely are not.

⁸⁸Schwartz v. Schuker, 298 F.Supp. 238 (New York, 1969).

In denying the student's request for an injunction, the court made this statement:

While there is a certain aura of sacredness attached to the First Amendment, nevertheless these First Amendment rights must be balanced against the duty and obligation of the state to educate students in an orderly and decent manner to protect the rights not of a few but of all the students in the school system. The line of reason must be drawn somewhere in this area of ever expanding permissibility. Gross disrespect and contempt for the official of an educational institution may be justification not only for suspension but also for expulsion of a student.

Baker v. Downey⁸⁹ was tried in a California federal court in 1969 and resulted in a decision in favor of the school which had suspended two students for publishing and distributing off-campus a newspaper called OINK. The newspaper contained articles critical of the school's administration as well as articles and pictures which were considered to be profane and obscene.

The superintendent and principal of the school said that they believed the newspaper threatened the educational program of the school and would diminish control and discipline, so they removed the two boys from their school offices and suspended them for ten days. The students, asking for injunctive relief, claimed that their rights to free speech under the First Amendment were violated, and that they had not been accorded due process of law.

The United States District Court denied the injunction saying:

Due process is not a fixed inflexible procedure which must be accorded in every situation. It varies with the

⁸⁹Baker v. Downey, 307 F. Supp. 517 (California, 1969).

circumstances involved. In the instant case, the school officials were charged with the conduct of the educational program and if the temporary suspension of a high school student could be not accomplished without first preparing specifications of charges, giving notice of hearing, and holding a hearing, or any combination of these procedures, the discipline and ordered conduct of the educational program and the moral atmosphere required by good educational standards would be difficult to maintain.

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 . . . freedom of speech is not the right to say anything one may please in any manner or place. The rule that the constitutional right to free speech and assembly may be infringed by the State, if there are compelling reasons to do so, must also be considered.

The case of Vought v. Van Buren,⁹⁰ another student newspaper suit tried in federal court, had a different outcome from the one just described. The plaintiff in this case was a sixteen-year-old boy, David Vought, who was told to leave the school, and then was informed by letter that the board of education had recommended that he be expelled for the remainder of the school year. His offense was being in possession of a publication entitled "Argus" which contained certain four-letter words that were objectionable to the principal.

In the trial it was determined that the plaintiff's expulsion was not based on the general content of the Argus, or its literary quality or lack thereof, but solely on its containing the disagreeable four-letter words and variations of them. In court the plaintiff's attorney introduced as an exhibit a copy of The Catcher in the Rye, a novel

⁹⁰Vought v. Van Buren Public Schools, 306 F. Supp. 1388 (Michigan, 1969).

required or approved for ninth and tenth grade English classes in the Van Buren schools. The novel was shown to contain the same four-letter words which caused Vought's expulsion from school.

The judge in this case found the facts in this case to be very confusing, since the boy was severely punished for reading in the Argus what he was required to read in English class. Judge Thornton made these comments:

If we, as a trial court, are confused, what are we to suppose is the state of mind of a student subjected to such a double standard? If the Argus is obscene within the meaning of the school principal's "directive," then surely "The Catcher in the Rye" and the Harper's article /another exhibit taken from the school's library/ must also be obscene. And if the student is invited and/or required to read the latter two, what can the school authorities have in mind in expelling him for possession of the former?

We are compelled to reject the position of the defendants in this case because it is preposterous on its face. It is contrary to any sense of fairness or consistency--a student, placed in the situation in which this school has placed this student, is required to make a judgment that we, as a court, would find it difficult to make.

. . . . We make the observation that even though plaintiff testified he realized he might be considered in violation of the "directive," the drastic incident, carrying as it does a lifetime stigma, is hardly punishment fitting the crime.

The court declared that the inconsistency in this case was so inherently unfair as to be arbitrary and unreasonable, constituting denial of due process, and he ordered that the plaintiff's expulsion be set aside.

Sullivan v. Houston Independent School District⁹¹ was an action for an injunction and for declaratory relief in connection with the expulsion of two high school boys for publishing a newspaper which they entitled "Pflashlyte." Sullivan and Fischer were both good students and typical young American men of high moral character. They became concerned because the school would frequently indict a student for violating "regulations" although there were no written regulations in existence. Concern for this problem led to a rally which was broken up by the coaches who threw books around the park, ripped up students' notebooks, and accused students of being Communists and Fascists.

The newspaper "Pflashlyte" was drafted as a response to these events and to criticize school policies. The evidence showed that any interruptions of class periods caused by the newspaper were minor and relatively few in number. It was also shown that expulsion of the boys was without hearing or other due process.

In finding that the school's action was a violation of First Amendment rights and a denial of due process, the court said:

. . . the Court is well aware of the problems in the school system, of discipline. I am also aware of the fact that young men, one or two years older than these two young boys, for the last 175 years about every 25 years are called upon to give their lives to protect the First Amendment rights.

⁹¹Sullivan v. Houston Independent School District, 307 F. Supp. 1328 (Texas, 1969).

In 1970 some students in Stamford, Connecticut, brought an action against the Board of Education challenging the board's right to require that the contents of student newspapers be approved by the administration before it could be distributed. This case, Eisner v. Stamford Board of Education,⁹² was tried on one issue only: Is it constitutionally valid for the school to require prior approval of literature before it can be distributed?

The affected students authored a newspaper called "The Stamford Free Press." They had distributed three issues of the paper, but were warned that if they tried to circulate a fourth, they would be suspended.

The court viewed this case as a classic example of prior restraint of speech and press constituting a violation of the First Amendment. In its decision the court declared that there was not "a scintilla of proof which would justify the infringement of the students' constitutional rights to be free of prior restraint in their writings." The court also noted that student newspapers are valuable educational tools which serve to aid school administrators by providing them with an insight into student thinking and student problems. A judgment was rendered for the plaintiffs.

The case of Katz et al. v. McAulay et al.⁹³ was an action in federal district court to enjoin school officials from preventing

⁹²Eisner v. Stamford Board of Education, 314 F.Supp. 832, (Connecticut, 1970).

⁹³Katz v. McAulay, 324 F.Supp. 1047 (New York, 1970).

plaintiffs from distributing leaflets on the school grounds. The leaflets in question solicited funds to aid in the trial of the "Chicago Seven."

Pursuant to a resolution of the Board of Regents of the State of New York which prohibits the soliciting of funds from school children the defendant school officials forbade plaintiffs to distribute the leaflet in question. The one exception to the "no-soliciting" rule allows the American Junior Red Cross to come to the school for that purpose.

In this suit, the plaintiffs declared that the policies, regulations and actions of the defendants are unconstitutional, discriminatory, and a violation of their right to freedom of speech.

In its decision the court disposed of the claim of discrimination by noting that the school had stated that it would no longer allow solicitations of any kind, not even the Junior Red Cross. In dealing with the claim of violation of freedom of speech, the court pointed out that the leaflet was banned only because it asked for money. Finding no precedent regarding the solicitation of funds, the court reached its own decision that the school's regulation prohibiting such activity was reasonable and did not infringe on the First Amendment rights of the plaintiffs. The motion of the plaintiffs was denied. Court of Appeals affirmed this decision.

The complaint of a group of high school students in Houston, Texas, seeking a restraining order against their school to prevent their being disciplined for distributing an unauthorized newspaper

at the school, was dismissed by a United States District Court.

Graham v. Houston Independent School District⁹⁴ was a civil rights case which claimed that the students' First Amendment rights were infringed, and that the students were not accorded due process. In denying the plaintiffs' application, the court stated:

I conclude that the school authorities do have the power to discipline students who disregard school rules and administrative directives. It must be added that since the students knew they were violating school policy, and because they were offered a hearing before the principal, and because I do not agree that the school district rule. . . is void, these plaintiffs were not denied due process of law.

Summary

Twelve cases having to do with printing, publishing, or distributing written materials on or near school grounds to students and faculty, have come before the courts within less than four years' time. While these cases varied greatly in details, in general the plaintiffs appealed to the First Amendment, almost all claiming that their right to freedom of speech had been abridged.

The first three cases reported resulted in decisions for the school and against the student. In at least two of these early cases, the newspaper which was brought onto the high school campus contained extremely vulgar and obscene statements critical of the school's administration.

⁹⁴Graham v. Houston, 325 F.Supp. 1164 (Texas, 1970).

A number of subsequent cases were decided in favor of the plaintiff students.

A review of all cases with regard to freedom of press reveals that the following decisions have been rendered:

(1) A federal court has decided that dissemination of a student newspaper will not be protected under the First Amendment where its effect is to incite disrespect and encourage disobedience.

(2) A federal court has found that where a student has a history of flagrant defiance of school discipline and has shown gross disrespect and contempt for the school, his suspension for bringing on campus a forbidden newspaper, will be upheld.

(3) A federal court held that where student distributed a newspaper containing profane and obscene articles critical of a schools' administration, his suspension is proper.

(4) A federal court held that were a boy was expelled because a publication he had at school contained four-letter words, which words were also contained in school-approved literature, his expulsion was a violation of his constitutional rights.

(5) A federal court held that students expelled without a hearing for publishing and distributing a newspaper in which they questioned school policies, were denied their rights under the First Amendment and were denied due process.

(6) A federal court found that a requirement by a school that all publications be read and approved by the administration before distribution was prior restraint of speech and press.

(7) A federal court decided that where a school has regulation against solicitations on school grounds, its prohibition of a leaflet asking for money to assist in raising defense funds for a group of "activists" cannot be considered a violation of freedom of speech.

(8) Where students knew they were disobeying school rules and regulations in distributing a newspaper at school, federal court found that their right to due process was not violated.

TABLE 6

CASES INVOLVING ALLEGED INFRINGEMENT OF
FREEDOM OF PRESS AND OTHER RIGHTS

Case	Disposition
<u>Scoville v. Board of Education of Joliet Township High School District 204, County of Will, State of Illinois</u> , 286 F.Supp. 987 (Illinois, 1968)	Action for declaratory and injunctive relief against school district which expelled a student for distributing a student publication. The Court held that discipline and expulsion of student for distributing journal urging students to refuse to accept or to destroy materials published by the school, did not violate right to free speech. Case dismissed.
<u>Schwartz v. Schuker</u> , 298 F.Supp. 238 (New York, 1969)	Action on behalf of high school student for judgment and injunction to reinstate him as student and for other relief after he had been suspended for bringing a forbidden newspaper on campus. The United States District Court found no violation of his First Amendment rights. Case dismissed.
<u>Baker v. Downey</u> , 307 F.Supp. 517 (California, 1969)	Action by two students who were suspended and otherwise disciplined because they published an off-campus newspaper called <u>OINK</u> . The Court held that their rights were not violated. Injunctive relief denied.

TABLE 6 -- Continued

Vought v. Van Buren Schools,
306 F.Supp. 1388 (Michigan, 1969)

Sixteen-year-old boy was expelled from school for the remainder of the year for having possession on the school grounds of a publication called Argus which contained certain four-letter words. The United States District Court found the expulsion to be based on actions by the school which were inconsistent, arbitrary and unreasonable and which constituted denial of due process. Judgment for the student.

Sullivan v. Houston Independent
School District, 307 F. Supp. 1328
(Texas, 1969)

Action for injunction reinstating two high school students and for declaratory relief against regulations of school district. The United States District Court found that the expulsion of the two boys for producing and distributing a newspaper critical of the school was a violation of their First Amendment rights and of their right to due process. Injunction granted.

Eisner v. Stamford Board of
Education, 314 F. Supp. 832,
affd. in part, mod. in part
440 F.2d 803 (Connecticut, 1970)

Action by high school students challenging right of Board of Education to require approval of content of student newspaper before distribution. On cross motions for summary judgment, the district court determined that regulation was on its face constitutionally invalid as providing unjustified prior restraint of speech and press. Judgment for plaintiffs.

TABLE 6 -- Continued

Katz et al. v. McAulay, et al.,
324 F.Supp. 1047 (New York, 1970)

Action by plaintiff students for declaratory relief and injunction restraining school officials from preventing plaintiffs from distributing leaflets. Plaintiffs moved for preliminary injunction. The United States District Court held that school regulation was not intended to prevent exercise of freedom of speech and was reasonable. Motion denied.

Graham, et al. v. Houston
Independent School District, et al.,
325 F.Supp 1164 (Texas, 1970)

Civil rights action by student seeking injunction against school officials to prevent disciplining of students for distributing a newspaper. The United States District Court held that school authorities have power to discipline students who disregard school rules and that students' constitutional rights were not infringed. Application denied; complaint dismissed.

Sullivan v. Houston Independent School
District, et al., 333 F. Supp. 1149
(Texas, 1971)

Student moved for order requiring school officials to show cause why they should not be held in contempt of court for their alleged violation of prior injunction (307 F.Supp. 1328). The Court found that school board regulation prohibiting publication which advocates illegal conduct or disobedience to published rules was void as being in direct violation of court's prior injunction. The Court issued an order supplementing and clarifying its order in the earlier case.

TABLE 6 -- Continued

Quarterman v. Byrd, et al.,
453 F.2d 54 (North Carolina, 1971)

Action for a declaratory judgment that a high school rule requiring permission of principal for distribution of printed material was violative of First Amendment and for injunctive relief. The United States District Court for the Eastern District of North Carolina denied application for injunctive relief and plaintiff appealed. The Court of Appeals held that school rule was invalid on its face. Order of District Court vacated and cause remanded for entry of relief in accordance with opinion.

Riseman, et al. v. School Committee
of the City of Quincy, et al., 439 F.2d
148 (Massachusetts, 1971)

Plaintiff, a high school junior, sought permission from the School Committee to distribute an anti-war leaflet and was denied. He sued in United States District Court and his request was denied as to distributing within the school, but the Court enjoined the school from preventing him from doing so outside the school. He appealed to the U. S. Court of Appeals which reversed and remanded the District Court's judgment.

Egner v. Texas City Independent
School District, 338 F.Supp. 931
(Texas, 1972)

Action by high school student challenging school district for suspending him for distributing certain literature. Action was commenced in a state court wherein a restraining order was entered. Before hearing in state court on the merits, defendants removed the suit. Plaintiffs filed a motion to remand. The United States District Court held that state judicial remedy had not been exhausted. Case remanded to state court.

Cases Involving Alleged Infringement of the
Right to Freedom of Religion

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This admonition from the First Amendment to the Constitution of the United States, made applicable to the states by the Fourteenth Amendment, has been the subject of many cases at law during the Twentieth Century. In 1947 the Supreme Court of the United States said: "The First Amendment has erected a wall of separation between church and state. That wall must be kept high and impregnable."⁹⁵

The effort to keep that wall high, especially with regard to the schools, has produced a number of significant court cases during the period under study.

The United States Supreme Court has rendered a number of far-reaching decisions in the past decade. A pair of these, involving prayer and Bible readings in the schools, have set precedents for numerous other decisions.

Previous to these Supreme Court decisions, three state cases were published. The first of these, *Carden v. Bland*,⁹⁶ was destined to be

⁹⁵Everson v. Board of Education, 330 U.S. 1 (New Jersey, 1946).

⁹⁶Carden v. Bland, 288 S. W. 2d 719 (Tennessee, 1956)

nullified in effect some six years later by a decision of the United States Supreme Court. The Carden case was a test of a state law requiring Bible reading and recitation of the Lord's Prayer at the opening of the school day. The State Supreme Court found that the statute was constitutional and the practices were proper.

A Florida case, Brown v. Orange County Board of Instruction,⁹⁷ disputed school officials' right to distribute the King James Bible in public schools and claimed that such distribution was discriminatory. The court held that this practice did tend to impair the rights of plaintiffs and their children to be free from government action in the practice of religion and that it was discriminatory.

Mitchell v. McCall⁹⁸ concerned a young girl who, because of her religious beliefs, refused to wear a prescribed uniform in her physical education classes. Her school conceded that she could come to the class in attire of her own choosing, but required her to take part in the activities of the class. Her father objected to that arrangement because it would set his daughter apart from the others and make her appear "a speckled bird." He asked the court to require the school to offer a separate class for his daughter and those who shared her belief.

⁹⁷Brown v. Orange County Board of Instruction, 128 So. 2d 181, 93 ALR 2d 986 (Florida, 1960).

⁹⁸Mitchell v. McCall, 143 So.2d 629 (Alabama, 1962).

The Supreme Court of Alabama denied the plaintiff's plea and made this statement:

All citizens, in so far as they hold views different from the majority of their fellows, are subject to such inconveniences and this is especially true of those who hold religious or moral beliefs which are looked upon with disdain by the majority. It is precisely every citizen's right to be a "speckled bird" that our constitutions, federal and state, seek to insure. And solace for the embarrassment that is attendant upon holding such beliefs must be found by the individual citizen in his own moral courage and strength of conviction, and not in a court of law.

In 1962 the Supreme Court of the United States agreed to hear a case which originated in New York and which involved a state-written prayer.⁹⁹ The facts in the case are these: The Board of Regents of the State of New York composed a prayer which they recommended to the schools of the state in their publication, "Statement on Moral and Spiritual Training in the Schools." The Board of Education of Union Free School District No. 9, New Hyde Park, New York, adopted the prayer and directed the principal to cause it to be said aloud in the presence of a teacher in each class at the beginning of each school day. The prayer contained these words:

Almighty God, we acknowledge our dependence upon Thee,
and we beg Thy blessings upon us, our parents, our teachers,
and our country.

Ten parents from the school district brought suit saying that the prayer was contrary to their beliefs and that it was unconstitutional in that it

⁹⁹Engel v. Vitale, 176 N. E. 2d 579, 370 U. S. 422, 8 L. Ed. 2d 601, (New York, 1962).

violated the First Amendment which commands that Congress shall make no law respecting an establishment of religion. The New York Court upheld the prayer so long as it was voluntary. The plaintiffs appealed to the United States Supreme Court which reversed the state court and said:

We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious. . .

A Pennsylvania case, Abington Township v. Schempp, and a Maryland case, Murray v. Curlett, were joined for consideration by the Supreme Court in 1962.¹⁰⁰ Schempp was a case in which parents brought suit in the United States District Court for the Eastern District of Pennsylvania to enjoin enforcement of a Pennsylvania statute requiring reading without comment at the opening of each school day verses from the Bible and recitation of the Lord's Prayer by the students in unison. In this case the lower court held for the parents and the appeal was brought by the school. The Murray case was a petition for mandamus to compel rescission of the rule of the Baltimore schools requiring Bible reading and prayer as a part of the day's exercises. The Maryland Court of

¹⁰⁰School District of Abington Township v. Schempp (Pennsylvania) and Murray v. Curlett (Maryland), 374 U.S. 203 (1963).

Appeals rendered its decision in favor of the school, and the parent brought an appeal to the Supreme Court of the United States.

The Supreme Court of the United States upheld the Pennsylvania decision and reversed the decision of the Maryland Court of Appeals, holding that required Bible readings and recitation of prayer as a part of the school's daily exercises was a violation of the Establishment Clause of the First Amendment as applied to the states through the Fourteenth Amendment.

The Engel, Schempp and Murray cases began to have an effect almost immediately upon litigation. A review of cases published in 1964 reveals five lawsuits testing state statutes requiring religious exercises in public schools.

In Delaware the case of Johns v. Allen¹⁰¹ resulted in a permanent injunction which declared the state statute requiring religious exercises daily in state schools to be unconstitutional.

The decision in Sills v. Board of Education¹⁰² declared unconstitutional statutes of New Jersey which required Bible readings and prayer.

A Florida case, Chamberlin v. Dade County Board of Instruction,¹⁰³ in which Florida's supreme court found the state's statute to be lawful, was reversed by the United States Supreme Court.

¹⁰¹Johns v. Allen, 231 F.Supp. 852 (Delaware, 1964).

¹⁰²Sills v. Board of Education, 200 A.2d 615 (New Jersey, 1964).

¹⁰³Chamberlin v. Dade County Board of Instruction, 377 U.S. 402, 12 L.Ed. 407 (Florida, 1964).

Adams v. Engelking¹⁰⁴ brought in United States District Court challenged Idaho's statutes requiring Bible readings and prayer in the schools. The decision of the court was that the statute was unconstitutional.

In Massachusetts a mandamus suit to compel the school committee to comply with a statute respecting Bible readings culminated in a decision by the Supreme Judicial Court of Massachusetts that such statutes were unconstitutional.¹⁰⁵

Another action involved a municipality and its requirement of Bible readings and prayer in the public schools. Attorney General v. School Committee of North Brookfield¹⁰⁶ was a proceeding on petition to enjoin the committee from ordering continuation of Bible readings and prayer. The Supreme Court of the state issued an injunction as prayed for by plaintiffs.

The Supreme Court of the United States refused to hear the case of Stein v. Oshinsky¹⁰⁷ in the matter of a New York elementary school principal who had ruled that kindergarten children should not recite in school the prayer "God is great, God is good, and we thank him for our food." The Supreme Court's refusal to hear the case

¹⁰⁴Adams v. Engelking, 232 F.Supp. 666 (Idaho, 1964).

¹⁰⁵Waite v. School Committee of Newton, 202 N.E. 297 (Massachusetts, 1964).

¹⁰⁶Attorney General v. School Committee of North Brookfield, 199 N.E. 2d 553 (Massachusetts, 1964).

¹⁰⁷Stein v. Oshinsky, 382 U.S. 957 (New York, 1965).

had the effect of upholding the principal's ruling that such a prayer was improper even when voluntary.

Plaintiffs in Reed v. Van Hoven¹⁰⁸ instituted suit under the First and Fourteenth Amendments claiming that certain practices in the school violated free exercise clause and establishment clause of the First Amendment. The court here attempted to accommodate those students whose free exercise of religion might be violated if they were prevented from entering into voluntary religious exercises at school. The court ordered that those students who wish to say prayer or read scriptures according to their choice in morning before school begins and after the school day ends, should be permitted to do so, provided that they meet in a room other than their regular home room, and complete their exercise at least five minutes before classes start or end. No bell is to ring to signify the start of the prayer exercise, and if a prayer is to be said at lunch time, it is to be a silent prayer.

In explaining this unusual order, the federal judge said:

This approach is by no means a final judgment of the court, nor should it be taken as a preliminary indication of a final judgment. In suggesting this plan the court is merely trying to arrive at an interim accommodation, having foremost in mind the natural, God-given rights of each parent to determine the course of religious education for his child, but also considering the fact that the present proposal of the school board does relate to a serious effort to reconcile divergent opinions in an area

¹⁰⁸Reed v. Van Hoven, 237 F.Supp. 48 (Michigan, 1965).

where rigid, dogmatic positions too often abound, with the effect that a problem of continuing importance results in increased misunderstanding and bitterness, a situation which must certainly be regretted by all, regardless of religious affiliation, or lack of it.

The *Engel* and *Schempp* cases, *supra*, were decided on the basis of the establishment clause of the First Amendment. The accommodation suggested in this opinion is an attempt to avoid the nexus between official authority and religion which constitutes a violation of the establishment clause.

The judge noted that he would follow the events in the school to see if the plan he was proposing constituted a solution to the school's problems. In the meantime, he declined to grant an injunction, although he reserved the right to do so if it became necessary.

Epperson v. Arkansas¹⁰⁹ an action by a teacher in the Arkansas public schools challenges the validity of state statutes prohibiting the teaching of evolution in state supported schools. Susan Epperson, a tenth grade biology teacher, charged that the statute which made it illegal for a teacher to "teach the theory or doctrine that mankind ascended or descended from a lower order of animals," or to adopt or use in any school a textbook that teaches this theory, was unconstitutional. The Supreme Court of Arkansas refused to declare the law unconstitutional, but noted that it had become more of a "curiosity than a vital fact of life."

Justice Abe Fortas, speaking for the Supreme Court of the United States, declared the law unconstitutional in that it offended

¹⁰⁹Epperson v. Arkansas, 393 U.S. 97, 98 S.Ct. 266, 21 L.Ed. 228 (Arkansas, 1968).

the Establishment Clause. In his words: "The overriding fact is that Arkansas' law selects from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious doctrine; that is, with a particular interpretation of the Book of Genesis by a particular religious group."

He further stated:

The State's undoubted right to prescribe the curriculum for its public schools does not carry with it the right to prohibit, on pain of criminal penalty, the teaching of a scientific theory or doctrine where that prohibition is based upon reasons that violate the First Amendment. It is much too late to argue that the State may impose upon the teachers in its schools any conditions that it chooses, however restrictive they may be of constitutional guarantees....

A case involving sex education in the public schools was brought to court under the Establishment of Religion clause. Cornwell v. State Board of Education,¹¹⁰ Maryland case heard in federal district court, asked the court to prevent implementation of a program of sex education in county schools on the grounds that to do so would deny the free exercise of religion to the plaintiffs and would in fact establish religious concepts. Applying the principles of the Epperson case, the Schempp case, and others, the court said:

. . . it is quite clear to this Court that the purpose and primary effect of the bylaw here is not to establish any particular religious dogma or precept, and that the bylaw does not directly or substantially involve the state in religious exercise or in the favoring of the religion or any particular religion. The bylaw may be considered quite simply as a public health measure.

¹¹⁰ Cornwell v. State Board of Education, 27 L. Ed. 246 (Maryland, 1969).

The Court further stated that the state's interest in the health of its children outweighs claims based upon religious freedom and the right of parental control. The case was dismissed.

A unique case involving freedom of speech and freedom of religion was tried in United States District Court in New York.¹¹¹ Three students, Mary Frain, Susan Keller, and Raymond Miller brought suit through their parents, asking a preliminary injunction against their schools. These students, who did not believe in reciting the Pledge of Allegiance, refused to leave the class room during this ritual as the school required them to do because they considered exclusion from the room to be a punishment for their exercise of constitutional rights.

The two girls, both twelve years old, were in accelerated classes at Junior High School 217Q; Raymond Miller, a black boy, was a senior at Jamaica High School. All refused to recite the Pledge because of a belief that the words "with liberty and justice for all" are not true in America today. One of the students was an atheist who also objected to the words "under God."

These words were a part of the court's opinion:

These civil rights actions are significant because they pit popular ideas of patriotism and the authority of school administrators against students' rights of free expression. The particular controversy is minor, involving the refusal of three students to leave their "homerooms" during the daily Pledge of Allegiance, as a condition for exercising their undoubted constitutional

¹¹¹Frain v. Baron and Miller v. Schuker, 307 F.Supp. 27 (New York, 1969).

right not to participate in the pledge. The resulting collision is serious because it involves suspension from school as one alternative, and a court injunction against the school authorities.

Referring to the Tinker case, the court said "it is now beyond dispute that the Constitution goes to school with the student. . . ." The injunction was granted.

A case testing anti-evolution statutes in Mississippi was instituted by Mrs. Arthur G. Smith against the state and the board of education.¹¹² Smith asked an injunction against enforcement of the statutes. Chancery Court, in which the action was begun, sustained demurrers filed by the defendants. Mrs. Smith appealed to the state's supreme court. That court, in reversing and remanding the case, said:

The decisions of the Supreme Court of the United States which interpret the Constitution of the United States are binding upon us and we have no choice other than to follow such decisions. Therefore we find that the anti-evolution statutes are unconstitutional.

Vaughn v. Reed¹¹³ in the United States District Court for the Western District of Virginia, was an action to enjoin religious education programs in elementary schools. These programs were conducted by teachers who were sent to the school by outside

¹¹²Smith v. State of Mississippi and State Board of Education, 242 So. 2d 692 (Mississippi, 1970).

¹¹³Vaughn v. Reed, 313 F. Supp. 431 (Virginia, 1970).

private organizations. They purported to teach about religion rather than indoctrinating students. Also, students whose parents who had not signed cards were excused for study period during the religious program. The federal court granted an injunction and in its decision quoted Illinois ex rel McCollum v. Board of Education¹¹⁴:

Here not only are the state's tax supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory school machinery. This is not separation of Church and State.

The court also said:

[We sustain] the position of plaintiff that no religious education program should be conducted in the public schools which employs material or practices which would amount to an indoctrination of religion. At the same time the court holds that a program encompassing all students controlled by the school authorities and practices without indoctrination of religion is not unconstitutional. . . .

The facts in this case suggest that the state is aiding religion in violation of the Establishment Clause of the First Amendment.

In 1971 the Alabama Civil Liberties Union brought suit against the Governor of Alabama, et al.,¹¹⁵ attacking the constitutionality of Alabama statutes requiring daily readings from the Bible in the public schools. This case is the latest published case which

¹¹⁴Illinois ex rel McCollum v. Board of Education, 333 U.S. 203 (Illinois, 1948).

¹¹⁵Alabama Civil Liberties Union, et al., v. George C. Wallace, et al., 331 F. Supp. 966 (Alabama, 1971).

was found during this research testing the constitutionality of Bible-reading statutes. The federal court in Alabama ruled as follows:

Order, Judgment, and Decree of this Court that Defendant, Alabama State Board of Education, within a reasonable time notify all local Superintendents of Education, who will in turn notify all public school principals and teachers, that Code of Alabama . . . requiring daily Bible reading in public school has been declared unconstitutional and void, and that an injunction has issued enjoining the daily reading of Bible verses for religious purposes in the public schools of Alabama.

An Idaho action brought in state court challenged a statute which provided for busing of children to parochial schools.¹¹⁶ Epeldi v. Engelking was a class action for declaratory judgment declaring such statute to be unconstitutional. The District Court entered a judgment upholding these statutes, but upon appeal to the Supreme Court of Idaho, that decision was reversed. The appellate court held that the Legislature shall not make any appropriation or pay monies to help support or sustain any school controlled by any church.

A similar case was tried in United States District Court in Missouri. Bruska v. State of Missouri ex rel State Board of Education,¹¹⁷ however, was a suit by parents of children who attended parochial schools. These parents sought to have declared

¹¹⁶ Epeldi v. Engelking, 488 P.2d 860 (Idaho, 1971).

¹¹⁷ Bruska v. State of Missouri ex rel State Board of Education, 332 F. Supp. 275 (Missouri, 1971).

unconstitutional a state statute forbidding the use of public funds to aid directly or indirectly religious or sectarian schools. The plaintiffs reasoned thusly: In compliance with Missouri's compulsory school attendance law, parent-plaintiffs have the constitutional right to select the school of their choice according to the dictates of their consciences and the practice of their religion, and such freedom of choice is "abridged, diminished and destroyed" by denying tax supported educational benefits to those who do not choose to send their children to free public schools.

On motion to dismiss, the three-judge district court held that the statutes implementing Missouri's Constitution establishing and providing for funding of a free public school system do not violate either constitutional right to free exercise of religion or the right to equal protection. The action was dismissed.

The United States Supreme Court has recently issued its decision in a case which may have far-reaching influence on public education, and perhaps on American society as well. State v. Yoder has been in litigation since 1968 when the State of Wisconsin brought suit against Jonas Yoder and others for criminal violation of the compulsory education laws of Wisconsin.¹¹⁸ Yoder,

¹¹⁸ State v. Yoder, et al., 182 N.W. 2d 539, cert. gr. 91 S.Ct. 2173, 29 L.Ed. 2d 160 (Wisconsin, 1972).

a member of the Amish faith who believes that higher education of any kind is a deterrent to salvation, was convicted in a state court. He appealed to Wisconsin's Supreme Court and his conviction was subsequently reversed. The State then appealed to the United States Supreme Court, which agreed to hear the case. On May 15, 1972, the Supreme Court issued its decision in favor of Yoder and the other Amish and said:

Enforcement of the state's requirement of compulsory formal education after the eighth grade would gravely endanger if not destroy the free exercise of respondent's religious beliefs.

The Court pointed out that the state's interest in universal education is by no means absolute to the exclusion or subordination of all other interests. However, the Supreme Court gave no support to those who would challenge the validity of compulsory education laws generally. Chief Justice Warren E. Burger, speaking for the Court, said, "It cannot be overemphasized that we are not dealing with a way of life and mode of education by a group claiming to have recently discovered some 'progressive' or more enlightened process for rearing children for modern life."

Summary

Cases at law regarding the right to freedom of religion have been brought in both state and federal courts during the period under study. The Supreme Court of the United States has granted

certiorari in a number of actions and has issued decisions which have striking effect upon public schools throughout the nation.

A review of cases investigated reveals the following important findings from the nation's courts:

(1) The United States Supreme Court found that state-prescribed prayers for use in public schools are unconstitutional, in that such prayers violate the Establishment of Religious Clause of the First Amendment.

(2) The United States Supreme Court found that required daily Bible reading and recitation of the Lord's prayer in public schools is unconstitutional and that these procedures violate the Establishment of Religion Clause.

(3) State statutes requiring Bible reading and prayer daily in the public schools have been tested in both state and federal courts and have been declared unconstitutional.

(4) Released time statutes have been found to be constitutional.

(5) The Supreme Court of the United States has found that statutes prohibiting the teaching of evolution in state support schools and colleges is a violation of the First Amendment and the Fourteenth Amendment to the Constitution.

(6) By denying certiorari, the Supreme Court affirmed a decision that sex education program in a public school did not violate the First Amendment and was not an establishment of religion.

(7) Federal court found that requiring children who refused to recite the Pledge of Allegiance to leave the room during that ritual was a violation of their constitutional rights.

(8) A federal court has found unconstitutional the practice of allowing outside teachers to come to school and conduct religious services.

(9) A state supreme court has held that it is unconstitutional to provide aid to parochial schools in the form of transportation.

(10) A federal court has upheld the constitutionality of state statutes which forbid the use of state funds for religious or sectarian education.

(11) The United States Supreme Court has upheld the right of members of the Amish religion to remove their children from the public schools after the eighth grade on the grounds that compelling them to remain in school would endanger their religious freedom.

TABLE 7

CASES INVOLVING ALLEGED INFRINGEMENT
RIGHT TO FREEDOM OF RELIGION

Carden v. Bland, 288 S. W. 2d 718
(Tennessee, 1956)

Proceeding by citizen and taxpayer against City Board of Education to enjoin board members and others from engaging in certain practices pertaining to religion and to obtain judgment declaring statute to be unconstitutional. Chancery Court held that statute was not unconstitutional. Supreme Court affirmed.

Brown v. Orange County Board of Instruction, 128 So. 2d 181, 93 ALR 2d 986 (Florida, 1960)

Action by parents against school officials authorizing King James Bible to be distributed in public schools. The court held that distribution tended to impair rights of plaintiffs and their children to be free from governmental action in practice of religion. Decision for plaintiffs.

Mitchell v. McCall, 143 So. 2d 629
(Alabama, 1962)

Case in which female child had refused to wear the prescribed uniform in a required physical education class saying that it was against her religion. The school conceded that they would not require her to wear the uniform, but she would have to attend the class. Her father sued because the school would not provide a separate class for her and those who shared her belief. The Supreme Court denied the plaintiff's claim.

TABLE 7 -- Continued

Engel v. Vitale, 176 N.E. 2d 579,
370 U.S. 421, 8 L.Ed. 2d 601
(New York, 1962)

This was a case to determine the Constitutionality of New York State composed and administered 22-word non-denominational prayer in public schools. The Supreme Court of the United States held "The New York laws officially prescribing the Regents' prayer are inconsistent with both the purpose of the Establishment Clause and with the Establishment Clause itself."

Abington School District v. Schempp
(Pennsylvania) AND
Murray v. Curlett (Maryland)
374 U.S. 203, 10 L.Ed 2d 844 (1963)

Two cases combined for review by United States Supreme Court. The case was to establish constitutionality of Pennsylvania's statutory requirement of reading ten verses from Holy Bible in public schools and Maryland's practice of daily Bible reading and Lord's Prayer recitation in public schools. Supreme Court held that all three procedures violated the Establishment of Religion Clause of the United States Constitution.

Attorney General v. School Committee
of North Brookfield, 199 N.E. 2d 553
(Massachusetts, 1964)

Proceeding on petition to enjoin school committee from ordering continuation of Bible reading and prayer in public schools of a municipality. The Committee was so enjoined by the Supreme Court of the State.

TABLE 7 -- Continued

Johns et al. v. Allen, et al.,
231 F. Supp. 852 (Delaware, 1964)

Proceeding to enjoin reading of verses of Bible and recital of Lord's Prayer in unison by pupils in public schools. United States District Court held that statute requiring reading of Bible verses was unconstitutional and practice of reciting Lord's Prayer in unison constituted establishment of religion by state officers in violation of First Amendment. Permanent injunction issued.

Sills v. Board of Education of
Hawthorne, New Jersey, 200 A.2d
615 (New Jersey, 1964)

Proceeding involving practice of religious ceremonies in public schools. The Superior Court, Chancery Division, declared statutes requiring Bible reading at opening of school was unconstitutional and enjoined school board from authorizing or practicing ceremonies in public schools. Appeal was taken. The Supreme Court of New Jersey upheld the lower court and declared that statutes were unconstitutional.

Dilger v. School District 24,
352 P.2d 564 (Oregon, 1964)

Action for judgment adjudicating respective rights and duties of parents and school district under released time statute. Adverse judgment by lower court, parent appealed to Supreme Court of the state. Although Court held that the statute was not unconstitutional, it said that administrative powers must be entrusted to the school board.

TABLE 7 -- Continued

Chamberlin v. Dade County Board
of Public Instruction, 12 L. Ed. 407,
377 U.S. 402 (Florida, 1964)

The Supreme Court of Florida issued a judgment uphold-
ing state public school Bible readings and prayer
recitations. Such judgment was vacated by United States
Supreme Court, and the Supreme Court then reaffirmed
its judgment. On appeal, the Supreme Court of the
United States reversed the judgment on the ground
that such activities are constitutionally impermissible
in the public schools of a state.

Adams v. Engelking, 232 F. Supp. 666
(Idaho, 1969)

Class action to declare invalidity of Idaho statute pro-
viding for compulsory daily reading of Bible in public
schools and to restrain enforcement thereof. The
United States District Court held that the statute was
unconstitutional as violation of Establishment Clause
of First Amendment.

Waite, et al. v. School Committee
of Newton, et al., 202 N. E. 2d 297
(Massachusetts, 1964)

Mandamus proceeding to compel school committee to
comply with statute respecting Bible reading in public
schools. Supreme Court of Massachusetts entered its
order overruling demurrer and dismissing petition.
Petitioners appealed and the Supreme Judicial Court
held that statute requiring Bible reading in public
schools without written note or comment is unconstitu-
tional.

Stein v. Oshinsky, 382 U.S. 957
(New York, 1965)

This case resulted in upholding a ruling by a principal
that a children's prayer in verse form could not be
recited even voluntarily by public school children.

TABLE 7 -- Continued

Reed v. Van Hoven, 237 F.Supp.
48 (Michigan, 1965)

Parents of public school children brought suit against superintendent of schools and members of school board to enjoin religious exercises in the public schools. The court declined to grant an injunction saying that post-school or pre-school sessions if children wanted such sessions so long as they did not meet in their home rooms, no bells rang to signal such sessions, and they were completed at least five minutes before school began, were not unconstitutional. Injunction denied.

Epperson v. Arkansas, 393 U.S. 97,
98 S.Ct. 266, 21 L.Ed. 228 (Arkansas,
1968)

The Supreme Court held that the Arkansas statutes forbidding the teaching of evolution in public schools and colleges supported in whole or in part by public funds were contrary to the freedom of religion mandate of the First Amendment and in violation of the Fourteenth Amendment. Judgment for plaintiff.

Cornwell v. Board of Education, et al.,
314 F.Supp. 340, affd. 428 F.2d 471,
cert. den. 91 S.Ct. 240, 400 U.S. 942,
27 L.Ed. 246 (Maryland, 1969)

Cornwell and others brought action for their minor children asking court to prevent implementation of program of sex education in county school. United States District Court held that plaintiffs' First and Fourteenth Amendment rights were not violated; Appeal Court affirmed; Supreme Court of the United States denied certiorari.

TABLE 7 -- Continued

Frain, et al. v. Schuker, et al.,
307 F.Supp. 27 (New York, 1969)

Civil rights actions brought by students who refused to leave their school rooms during daily pledge of allegiance as condition for exercising constitutional right not to participate in pledge. The court held that conclusionary assertions in defendants' affidavits of real and present threat to maintenance of discipline and fear of disorder would not support finding of serious harm to school authorities and would not justify refusal to grant preliminary injunction to students. Preliminary injunction granted.

State Board of Education v. Board
of Education of Netcong, 262 A.2d 21
(New Jersey, 1970)

Action by state officers seeking declaratory judgment and injunction with respect to program of local board of education for "period for free exercise of religion" in public schools. The appellate court found that the children were actually "captive" of the program and that such program was unconstitutional establishment of religion.

Smith v. State of Mississippi and
State Board of Education, 242 So.2d
692 (Mississippi, 1970)

Plaintiff sought injunction against enforcement of anti-evolution statutes in Chancery Court which denied injunction and sustained demurrers of defendants. Plaintiff appealed to Supreme Court of Arkansas which found that statutes which prohibited the teaching of evolutionary theory as being in violation of freedom of religion mandate of First Amendment. Reversed and remanded.

TABLE 7 -- Continued

<u>Vaughn v. Reed, et al.</u> , 313 F.Supp. 431 (Virginia, 1970)	Action to enjoin religious education program in elementary schools. The United States District Court held that weekly classes which were conducted by teachers sent to school by outside private organizations and purported to teach about religion rather than to indoctrinate students and from which students whose parents had not signed cards were excused for study period violated the First Amendment. Ordered accordingly.
<u>Alabama Civil Liberties Union, et al., v. Wallace, et al.</u> , 331 F.Supp. 966 (Alabama, 1971)	Suit was brought against state officials attacking constitutionality of Alabama statutes requiring daily readings from the Bible in the public schools. On motion for summary judgment the United States District Court held that such statutes, as well as the practice of conducting Bible readings in the public schools, violated the First Amendment. Injunction issued.
<u>Epeldi v. Engelking</u> , 488 P.2d 860 (Idaho, 1971)	Class action for declaratory judgment involving constitutionality of statute providing for busing of parochial school children. District Court entered judgment upholding constitutionality of statute and defendants appealed. Supreme Court of Idaho held that it was unconstitutional to provide such aid to parochial schools. Reversed.

TABLE 7 -- Continued

<u>Bruska v. State of Missouri</u> <u>ex rel State Board of Education,</u> 332 F.Supp. 275 (Missouri, 1971)	Action by parents of school children seeking injunctive and other relief based on asserted invalidity of provisions of Missouri Constitution and implementing statutes governing use of public funds for religious or sectarian education. On motions to dismiss, the three-judge United States District Court held that such Constitutional provisions and implementing statutes do not violate either constitutional rights to free exercise of religion or equal protection. Action dismissed.
<u>State v. Yoder</u> , 182 N. W. 2d 539, cert. gr. 91 S.Ct. 2173, 29 L.Ed. 160 (Wisconsin, 1972)	This action was begun in state courts where parents, members of the Amish faith, were convicted for refusal to send their children to the local high school after completion of the eighth grade. The Amish resisted on the grounds that their religious doctrine holds that higher education of any kind is a deterrant to salvation and took the case to the Supreme Court of the United States. On May 15, 1972, Chief Justice Warren E. Burger speaking for the Court, ruled that members of the Amish religious sect are not subject to state compulsory education laws on the grounds that enforcement of such laws would endanger if not destroy the free exercise of their religious beliefs.

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

Restatement of the Problem

The problem for this investigation is (a) to discover and analyze the significant recent legislation and judicial decisions relating to selected basic human-civil rights of students in the public schools, and (b) to identify possible legal trends and directions in the interpretation of these rights, and to analyze their implications for the behavior of public schools.

Summary

The public schools touch and influence the life of almost every American citizen. At the same time, the schools are themselves influenced by movements afoot in the society at large.

Traditionally, the power of the public schools over their pupils has gone almost without challenge. Today, however, precipitated in part by unrest among college age students, high school and even

elementary school children are challenging rules and regulations that infringe on their rights as human beings. In many instances, these challenges become actions in the nation's courts.

One hundred and fifty-two decisions rendered by state and federal courts on the human-civil rights of public school students are reviewed in this study. That these cases, plus perhaps hundreds more in other areas of civil rights, have occurred in less than twenty years suggests that students, parents, and other citizens see the courts as a solution to problems which cannot be resolved on a local level. The trend toward "going to court" seems fairly well established.

None of the cases investigated occurred in or was begun in an Oklahoma court. While this does not mean that Oklahoma did not have such litigation in its lower state courts and in the United States District Courts for Oklahoma, it does mean that it had no such litigation which judges considered of sufficient import to be sent to the National Reporter System for publication.

A review of Oklahoma's school laws reveals carefully drawn statements on the administration of schools and upon discipline and control of students. No definite conclusion can be drawn from the absence of human-civil rights litigation with regard to Oklahoma's schools; however, it is a fairly new state, relatively less populous, and rural in tradition, and these may be contributing factors.

Any conclusions to be based on a study of the cases reviewed are limited since the facts in any case at law are necessarily different from those in any other case. Additionally, there are the influences of earlier precedents, diverse jurisdictions, and dissimilar statutes. The projection of trends and directions is an even more uncertain undertaking than that of drawing conclusions. However, keeping in mind these limitations, certain general conclusions may be drawn and general directions discerned from the body of cases in each of the selected human-civil rights:

Conclusions

(1) The right to be secure in the person

Based on the fact that no reported case has questioned the teacher's right to inflict reasonable physical punishment upon the child, there appears to be no trend away from the courts' affirming the use of such punishment as a form of discipline.

(2) The right to protection against search and seizure

More and more students are testing the schools' practices in search and seizure, and the tendency of court decisions has been to place some limitation on the right of the school to conduct search and seizure. The number of cases recently reported and the variant opinions rendered indicate that cases revolving around this right may appear more frequently in the nation's courts.

(3) The right to due process

Schools are under the obligation to develop reasonable and clearcut rules and regulations relating to student conduct and behavior, and to provide procedural due process to students, including notice of hearing, presence of legal counsel, and confrontation by an accusing witness.

(4) The right to freedom of expression

The federal courts are clear with regard to the right of students to wear armbands and other symbols, and the schools should make no rules regarding these. On the other hand, in cases relating to personal appearance and dress, the issue is not resolved; school rules and regulations regarding personal appearance are subject to the test of reasonableness.

(5) The right to freedom of speech

Court decisions seem to indicate clearly that freedom of speech and freedom of expression must be accorded to students, where the freedom is used in a responsible manner and is not disruptive of the school's purposes.

(6) The right to freedom of press

Court decisions seem to indicate more freedom in the production and distribution of student newspapers so long as these actions and activities are not disruptive to the school and antagonistic to its purposes.

(7) The right to freedom of religion

It seems clear from the cases reported that the direction of the courts is toward maintaining a wall of separation between church and school, and public schools therefore should refrain from activities or practices relating to religion.

In addition to these conclusions directed toward the specific human-civil rights, five general conclusions seem justified:

(1) Students of all ages, supported by their parents, are challenging what seem to them to be discriminatory, arbitrary, and unreasonable rules and regulations of the public schools.

(2) The society at large and the courts in particular are demonstrating that they view minor children as "persons" entitled to the human-civil rights due an adult citizen.

(3) Federal and state courts have demonstrated a willingness to review disputes which in the past would have been rejected.

(4) Litigation regarding human-civil rights of students increased strikingly during the last decade of the period under study.

(5) Many of these cases arose because school administrators were not prepared for situations which might have been foreseen had they been alert to conditions in the community and the society at large.

Recommendations

The courts are not always definite in their interpretation of students' rights, nor do they always render decisions consistent with other similar cases. Also, citizens in different parts of the nation seem to hold slightly divergent views about "permissiveness" versus "control" of minor children. Nevertheless, a movement toward full civil rights for students seems well-defined.

In view of these facts, certain general recommendations based on the litigation and literature reviewed during this study may be made for the school and its officials and for parents and students:

(1) Every school official ought to be thoroughly informed about the Constitution and the rights of students under it, and all school actions and rules should comply with the Constitution.

(2) School teachers ought to be trained to accept children as human beings entitled to full human rights.

(3) Teacher education institutions ought to provide opportunities for teachers and other educators to understand and gain commitment to basic human rights and the need for effective human relationships.

(4) School administrators should review rules and regulations periodically to discard the outmoded and irrelevant, and to restate those that are vague and overbroad.

(5) Friendly rapport and communication between faculty and student body should be fostered so that problems may be aired before they become insurmountable.

(6) Where possible, school rules and regulations ought to be a joint effort with faculty and students.

(7) Schools have the responsibility to establish the machinery and processes, including grievance machinery, by which students and teachers participate in the matters and decisions which affect them in the school.

(8) Careful provisions should be made for according due process to students who are charged with misbehavior that may result in severe punishment.

(9) Administrators would do well to encourage lines of communication between home and school so that parents will feel free to talk about problems before they become serious.

(10) Students should be taught to accept their responsibility for the efficient and productive operation of the school.

(11) Regulations of dress, hair style, and personal conduct which is not disruptive to the school, ought to be avoided in that such regulations may cause more trouble than they prevent.

(12) While corporal punishment, suspension, and expulsion have been sanctioned by courts, the use of these severe penalties ought to be avoided in favor of democratic solutions.

(13) Discrimination of any kind should be scrupulously avoided in the handling of school children.

(15) While adherence to the law and the Constitution may prevent many lawsuits, true regard for children as human beings and for providing them with an atmosphere in which to absorb democratic principles at work, will be the best preventative for severe problems that may wind up in court.

(16) All public schools should evaluate their institutional behaviors and practices with regard to the degree to which they may or may not infringe upon students' rights.

(17) All public schools ought to establish procedures by which they can develop a handbook or guide, identifying student rights investigated in this study, as well as other important rights. These publications should emphasize student responsibility in the exercise of these rights.

These recommendations are admittedly subjective, but adherence to them might have prevented a large percentage of the human-civil rights cases which have reached our courts in such large numbers in recent years.

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GLOSSARY OF TERMS

Action	- a judicial proceeding; a law suit.
Appellate court	- a tribunal with the power to review the proceedings of another, either as to law or to fact, or both.
Case	- a contested question in a court of justice.
Certiorari	- a method of review of the action taken by a lower court.
Civil rights	- the enjoyment of the guaranties contained in constitutional or statutory provisions designed to prevent discrimination in the treatment of a person.
Corporal punishment	- physical punishment such as whipping or slapping.
Decision	- the report of a conclusion reached; especially the conclusion of a court in the adjudication of a case.
Due process	- the administration of laws equally applicable to all under established rules which do not violate fundamental principles of private rights.
Enactment	- the process by which a legislative bill becomes a law. Creating a law, that is giving it an existence.
Federal court	- A United States Court; a court upon which the judicial power of the United States is conferred by the Constitution.

Infringement	- an encroachment
Injunction	- a formal command of the court ordering persons named therein to refrain from doing certain specified acts.
In loco parentis	- one who has taken a position in reference to a child of that of a lawful father; "in place of the parent."
Litigation	- an action or suit; a series or group of related suits or actions.
Mandamus	- a command by order or writ issuing from a court of law requiring the performance of a particular duty therein specified. A coercive writ; one that commands performance, not desistance.
Precedent	- a decision or determination of a point of law made by a court in a case to be followed by a court of the same rank or of a lower rank in a subsequent case presenting the same legal problem.
Pro tanto	- for so much; for as far as it goes; to such an extent.
Reasonable	- not extreme; not arbitrary, capricious or confiscatory.
Rescission	- a repeal; an abrogation.
Right	- that to which a person has a just and valid claim, whether it be land, a thing, or the privilege of doing something or saying something.
Statute	- an act of the legislature of an organized body.
United States District Court	- the trial courts of the federal system, one for each federal judicial district, their jurisdictions and venue of actions prescribed by the United States Code.