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Judicial and statutory definition of authority: Selected case studies of the Burger Court

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JUDICIAL AND STATUTORY DEFINITION OF AUTHORITY: SELECTED CASE STUDIES OF THE BURGER COURT

by

Roger Dale Metcalf

A Dissertation Submitted to
the Faculty of the Graduate School at
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Student willful misconduct is one of the major concerns of school officials. The loss of a day's instruction because of student misconduct or because of discipline for misconduct impacts upon individual students, the school, and society. Teachers, administrators, and legislators have sought and continue to seek solutions to these problems.

This study has investigated willful student misconduct and the punishments inflicted because of this misconduct. The researcher examined corporal punishment and exclusion from school as punishments for several acts of misconduct. The research included a close examination of eight cases decided by the Supreme Court of the United States while Warren Burger was Chief Justice. The purpose of this examination was to ascertain current school officials' authority over students as it was defined by the Burger Court.

This researcher concludes that the authority of school officials was enhanced by these decisions of the Burger Court. Even in the cases which expanded student rights, the Court established guidelines which prudent school officials would use without these mandates. As the seventeen years of the Burger Court passed, the Court became more conservative and allowed greater latitude on the part of school officials to control the conduct of students.

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CHAPTER I

INTRODUCTION

Education has long been a favorite topic for discussion among many groups. Discussions of education are not limited to teachers and administrative staffs. They are not reserved for conventions, conferences, workshops, and seminars for professional educators. Bankers, doctors, lawyers, truck drivers, and other lay groups have an opinion about the issues involved in education. Everyone seems to be having something to say about education in America.

One of the most talked about areas of the public schools is discipline and authority. Considerable energy has been expended and much planning has been done in an attempt to define the authority of school officials. Authority of school officials to create and provide an environment conducive to teaching and learning is a problem of great concern to both school employees and the public. It is not difficult to hear a story about "when I was in school Old Miss Smith dared us to get out of line" or "when I was in school, if I got a whipping at school, I got another one when I got home." In recent years, the perceived authority of school officials to control students has diminished. (Gallup, 1986). This study evaluated the current status of

school officials' authority to control willful misconduct of students through a study of eight cases heard by the Supreme Court during the tenure of Chief Justice Warren Burger.

BACKGROUND OF THE STUDY

Is discipline the most important problem facing the public schools? The answer to this question depends upon who is asked. In sixteen of the last seventeen annual Gallup Polls surveying the attitudes of the public toward the public schools, discipline was listed as the most important problem (Gallup, 1986). Whether this is actually true or not, it has long been the perception of the public. A similar poll taken of teachers listed lack of parental interest as the greatest problem facing schools (Gallup, 1984). Perhaps, in either case, each thinks the other is not doing the job necessary in establishing the structure needed to provide well disciplined and self disciplined students.

Elementary and junior high school students themselves, when surveyed by The Weekly Reader, indicated that school problems such as incomplete assignments, inappropriate dress, absenteeism, disrespect, cheating, stealing, vandalism, alcohol and drugs, and general inappropriate behavior that interferes with other students' learning are real problems to them (Borton, 1987). If, in fact, student behavior is a school problem, then how can school officials

maintain an environment that is conducive to good teaching and learning? They must possess the authority to control this environment.

If a poll were taken to determine how parents would like for their children to be, the results would likely show that parents would like their children to be neat rather than slovenly, polite rather than rude, respectful rather than insolent, and inclined to self restraint rather than self indulgence. They would like for them to be aware of their duties and obligations as well as their rights and privileges. If a similar poll were taken to determine how teachers would want their students to be, the results would likely be the same (Kristol, 1986).

When parents and/or teachers want young people to be neat, they must establish a standard of dress or a dress code. When they want them to be polite, they must insist that they behave politely. When they want them to be respectful, they must insist that they behave respectfully to others. When they want them to exercise self restraint, they must give these young people responsibilities such as homework and household chores. In short, they establish rules of conduct which must be followed.

But what if established rules are not followed? If young people are to be aware of their obligations, they must realize that for behaviors there are consequences. There are rewards for appropriate behaviors and punishments for

infractions of rules. This is true in society, in the home, and in the school. For these consequences to be possible, authority over young people is necessary. In society, law is the authority and is enforced by community police and court systems. In the home, parents possess the authority and are responsible for the behavior of their children. For a school to function smoothly, rules and guidelines must be established and enforced. For this to be possible, school officials must possess some type of authority over young 1people.

Authority has been defined as "the power to influence or command thought, opinion, or behavior" (Mish, 1984). Authority is the right and duty of one person or group to make decisions which affect another person or group (Bolmier, 1970). Authority must be backed up with the power to enforce the decisions made if it is to be effective.

Authority may be either legitimate or illegitimate. Legitimate authority is derived from knowledge, experience, expertise, and training. It is based on the norms or expectations that a group may have. When a majority of members of a society accept the goals and norms as valid, the authority is legitimate. Authority that is maintained solely by force and coercion is illegitimate. This authority is derived from the power to reward and punish in order to enforce obedience. This authority is not based on the consent of those governed (Gordon, 1977). This study

deals with the use of and the conflict over the legitimate authority of school officials.

There are three types of legitimate authority. Rational or legal authority establishes an impersonal order of authority. The purest type of exercise of legal authority is that which uses a bureaucratic administrative staff. This authority rests on the belief that there are normal rules and those who are elevated to authority under these rules may issue commands. A general has authority over his army. A chief executive officer has authority over his company (Boone, 1977).

Traditional authority is based on the person in authority occupying the traditionally sanctioned position. This type of authority rests on the established belief that there is sanctity in traditions. The leader of a political party has traditional authority over other party members. The obligation of obedience is not based on the impersonal order, but involves personal loyalty.

The third type of authority is charismatic. A qualified leader gains authority by virtue of personal trust, heroism, or exemplary character. A charismatic leader has authority because people believe in him and trust his expertise. Obedience is due because of personal qualities, not an impersonal order. People like and trust this leader. Authority comes because of this fondness and trust (Boone,

1977). School officials may possess all three types of authority.

The basic typologies of authority have been simplified further in writings by Robert Peabody (1964). He uses formal-position authority and functional-knowledge authority as terms to describe different types of authority. These typologies were used in this study because they best fit the authority model of school officials.

Formal-position based authority is rational-legal authority. School officials' authority is formal because as employees they have rights to exhibit behaviors and initiate action in different areas of the school program. They have the ability through formal authority to influence or command thought, opinion, or behavior. They have the ability to control the behavior of students. The position has certain organizational expectations because of its place and the role it plays in the legal bureaucratic structure.

Functional-knowledge based authority is legitimate authority closely related to traditional and to charismatic authority. School officials possess this authority. They can initiate behavior and action in areas of the school program because of the expertise they possess in the educational function. The professional role of a school official has certain expectations based on past behavior of people in the same role. The knowledge, the expertise, the

personality, and the character of the school official add to this functional-based authority.

Legal, statutory and judicial authority is established by the legislatures and the courts. Schools have always been more directly under the control of the local community than the federal government or even the state government (Hogan, 1974). The Constitution of the United States does not mention education. It does state in the tenth amendment that powers not delegated to the United States nor prohibited to the states are reserved to the states or to the people. This amendment has been interpreted as meaning that education is a state function. The American tradition has been to support local control of schools. Because of this, the United States Supreme Court has historically been reluctant to interfere in school matters, particularly those matters related to the rights and responsibilities of students. The Court's position on intervention in school affairs was clearly stated in Epperson v. Arkansas (393 U.S. 97) in 1968. In this case, the Court said that public education is committed to the control of state and local authorities. It recognized that the courts had no business dealing with conflicts arising from the daily operation of the public schools (Zirkel, 1978).

The Constitution and all of its amendments can be read in approximately thirty minutes. It is certainly possible to memorize the entire document word for word and still know

little or nothing about its meaning or implications. The reason is that the formal body of rules known as constitutional law consists primarily of decisions and opinions of the United States Supreme Court. It consists of the gloss that the Justices spread over the document. Charles Evans Hughes asserted that "The Constitution is what the Judges say it is" (Hughes, 1928).

The most distinctive feature of the Constitution is that it is the law. It is the paramount, supreme law, but subject to interpretation by the Supreme Court. The Constitution cannot be changed by an ordinary act of legislation (Mason, 1964). But can it be changed by the decisions of the Court? Woodrow Wilson asserted that the Constitution is a very different thing in books than it is in operation. (Mason, 1964)

In Osborn v. Bank of the United States (9 Wheat. 739) Chief Justice Marshall commented that "Judicial power as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing." Justices have continued through the years to assert that they have judicial impotence. They make no laws, establish no policy, and do not govern. "All the court does, or can do is to announce its considered judgment. The only power it has is the power of judgment" (Mason, 1964).

But even though these Justices claim no power, they do have the power to interpret. This is a great power because the only final and authoritative voice of the Constitution is the majority of the Supreme Court. From this majority comes opinion that shifts the focus of attention of the nation. The written word did not change, but the interpretation of those words did change.

If the decisions of the Supreme Court can change the law of the land, not as it is written, but as it is applied then it has great impact on nearly every aspect of the lives of all citizens. There is hardly an area of American life that has not been touched by the hands of the highest tribunal. The sweep of the Court's hand is vast (Tribe, 1985).

The Court is comprised of people, people chosen by the President of the United States with the advice and consent of the Senate. These people, judges, do not operate in a vacuum. They are influenced by economic and social forces. Their birthright, their education, and their environment all influence how they feel about things. Their philosophy, and therefore, their decisions are influenced by who and what they are. They may make one decision at one time and totally reverse that decision at a later date. Their decisions may often lead to economic and social revolutions (Mason, 1964).

The importance of the Supreme Court on the lives of citizens becomes obvious. A casual reader could, however, easily underestimate the importance of the courts on the American educational system. The courts have been asked to settle issues such as what kind of schools there will be and the scope and nature of their work. They have settled questions about the relationship of schools and religion. They have settled questions about equal educational opportunity for each child. And, they have answered questions as to the extent that citizens might enjoy their constitutionally guaranteed rights while being involved in the school systems of the nation (Nolte, 1971).

STATEMENT OF THE PROBLEM

Authority of school officials is one of the major concerns of both school people and lay people. Considerable energy has been expended and much planning has been done to attempt to define school officials' authority. Classes have been disrupted and the learning process hampered at times because of the uncertainty of this authority.

The question of authority emerges when there is conflict caused by the clash of two distinct points of view. A student or a parent questions the authority of the school official and conflict results. When no other resolution is possible, the court system is asked to decide the question. This conflict is often not settled until the Supreme Court

of the United States hears it. The decision rendered here establishes law and defines the authority of the school official by deciding if the actions of the school official violated the rights of the student. The cases analyzed in this study settled conflicts over authority. The decisions either enhanced or diminished the authority of school officials to control the willful misconduct of students. Through examination of these cases, the researcher can arrive at a legal definition of authority. This definition comes from the decisions handed down by the Supreme Court.

An understanding of the statutory and judicial definition of authority of school officials is necessary so that teachers, administrators, and school boards will have no question as to their limits. By knowing these limits, they can provide the best teaching and learning environment available and at the same time guarantee the individual rights of students as citizens.

PURPOSE OF THE STUDY

The purpose of this study was to ascertain the current status of school officials' authority over students. The extent of this authority may change with different courts. This study was to determine, from the cases studied, the nature of changes in the status of school officials' authority. This study sought and investigated facts which led to the discovery of truth about authority. This

determination of authority was realized by an examination of selected major cases decided by the Supreme Court during the tenure of Warren Burger as Chief Justice (1969-1986). Eight cases treating student rights and school officials' authority were examined. Each case was chosen because of its importance in helping to shape educational policy. Not only have these cases been of interest to educators, but also, to the general public. These cases have been landmark cases in determining student rights and the authority of school officials. Analysis of the facts presented in these cases showed the statutory and judicial authority of school officials as defined by this group of justices.

SIGNIFICANCE OF THE STUDY

The loss of instructional time affects students, the school, and society. When school officials do not or cannot enforce rules and control behavior, instructional time is lost. Interruption interferes with successful learning and could result in failure of students to gain necessary skills for success in later life. Students cannot learn in an environment of uncertainty .

Teachers and other school officials are affected by lack of authority. Teaching time is lost and teachers are frustrated. Administrative time and energy must be used that could better be utilized in planning and improving the curriculum. When teachers and administrators are committed

to providing a quality education, they need authority to control the school environment so this quality education will be possible.

Very often, the trust that the public has in education rests mainly on its perception of student behavior in the schools. Excessive disruption of the educational process reduces public confidence and, in turn, support of the schools. The high cost of providing quality education when students will not or cannot be forced to take advantage of it is of great concern to the taxpaying public. Society's rules must be followed and what better place for students to learn a responsible place in society than the school? Students unprepared for productive roles as citizens will be a great burden to society.

The legal authority of school officials comes in part from the interpretation of laws by the United States Supreme Court. As the personnel on the Court changes, different interpretations place emphasis on different ideas. It has long been the perception of the public that the Warren Court was very liberal. The authority of school officials would, it would seem, have diminished during this Court's tenure. When Richard Nixon had an opportunity to appoint a Chief Justice, he chose Warren Burger, a judge famous for his tough stand on law-and-order. Only through close examination of cases decided by a particular court can one determine the effect of its decisions on the citizens. Only

through a close examination of the Burger Court can one determine the effect of the decisions of this Court on the authority of school officials.

As school officials, both boards of education and administrators, search for methods of providing a good school environment for learning and teaching, it is important to examine the legal aspects of their authority. This research and study can assist in ascertaining the authority of school officials.

DEFINITION OF TERMS

For purposes of this study, the following terms are identified and defined:

AFFIRM is to declare that a judgment, decree, or order is valid and right and must stand as rendered (Black, 1979)

AUTHORITY is the power or right to direct the actions or thoughts of others. (Urdang, 1968) It is the freedom to make choices external of other forces.

CONSERVATIVE is a policy that believes in a limited role for government and allows for clear distinctions between public and private activities. To the conservative, the primary function of government is to not be a catalyst for reform, but to maintain the existing order (Lowi, 1969).

CORPORAL PUNISHMENT is physical punishment as distinguished from pecuniary punishment or a fine (Black, 1979).

DISCIPLINE is correction, chastisement, punishment, or a penalty (Black, 1979).

EXPULSION is the dismissal of a student from school for a long period of time. It could be for the remainder of the year of permanently (Black, 1979).

IN LOCO PARENTIS means in the place of parents (Black, 1979).

LANDMARK CASES are cases that mark a turning point in events (Mish, 1984).

LIBERAL is a philosophy that believes in an expanded role for government in protecting the public from the inequities that are inherent in society. A liberal government wishes to be a positive force for change and reform (Lowi, 1969).

PER CURIAM is a phrase used to distinguish an opinion of the whole court from an opinion written by any one judge (Black, 1979).

REASONABLE means fair, proper, just, and moderate. A reasonable decision is suitable under the circumstances (Black, 1979).

REASONABLE FORCE is that degree of force which is not excessive and is appropriate in protecting oneself or one's property (Black, 1979).

REMAND means sending back by the appellate court to the court from which it came (Black, 1979).

RES JUDICATA means that a case is judged and is no longer subject to dispute (Black, 1979).

REVERSE is to set aside by an appellate court a decision of a lower court (Black, 1979).

SCHOOL OFFICIALS are groups that can make decisions concerning students or policy in a school. This includes school boards, teachers, and administrators.

PUBLIC SCHOOLS are schools that are maintained at public expense.

THE SUPREME COURT is highest court in the United States.

STUDENTS are persons formally engaged in learning, especially, those enrolled in an institution of education (Urdang, 1968).

WILLFUL MISCONDUCT is inappropriate behavior of students that results in disruption of normal school activities or danger to persons or property.

WRIT OF CERTIORARI is an order by an appellate court which is used when the court has discretion on whether or not to hear an appeal. If the writ is denied, the court refuses to hear the appeal. If it is granted, the higher court may hear the case (Black. 1979).

QUESTIONS TO BE ANSWERED

This study involved an investigation of selected cases decided by the Supreme Court. These cases were studied in detail and analyzed to determine their effect upon the authority which school officials have over students. The research and study answered the following questions:

Given that the decisions of the Supreme Court have major impact on the lives of all citizens of the United States; and, given that the personalities of the Court have great effect on the decisions made, what was the impact of the decisions made by the Supreme Court during the tenure of Chief Justice Warren Burger (1969-1986) on the authority of school officials over students?

(1) Was the authority of school officials to use corporal punishment as a means of discipline for student misconduct enhanced or diminished by these landmark decisions of the Burger Court?

(2) Was the authority of school officials to use suspension and/or expulsion from school as a means of discipline for student misconduct enhanced or diminished by these landmark decisions of the Burger Court?

(3) Was the authority of school officials to conduct searches and seize illegal property of students enhanced or diminished by these landmark decisions of the Burger Court?

(4) Was the authority of school officials to control speech of students enhanced or diminished by these landmark decisions of the Burger Court?

(5) Was the authority of school officials to control the behavior of students enhanced or diminished by these landmark decisions of the Burger Court?

DELIMITATIONS OF THE STUDY

This was a study and an analysis of selected court cases involving student rights and behaviors that were heard by the Supreme Court between 1969 and 1986. This time span was chosen because it was the period in which Warren Burger served as Chief Justice of the United States. These selected cases were arbitrarily chosen for full, detailed, and analytical reporting. These cases were chosen because of their treatment of the conflict over authority of school officials to control the behavior of students. They were chosen because educational policy has been shaped by the decisions rendered. They are landmark cases in the area of school official's authority as balanced against the rights of students. Cases decided earlier than 1969 that have relevance to this topic will be cited in less detail.

Analysis of the cases included reasons for the litigation, results of the court cases, and implications these cases have for school officials. The analysis of each case describes, not only the majority opinion, but any concurring and dissenting opinions. The majority opinion has the effect of law. The dissenting opinions can have effects as later cases are settled. The majority opinion was used to analyze this Court's affect on the definition of school official's authority.

ORGANIZATION OF THE STUDY

The remainder of this study is divided into four major chapters. Literature and research relevant to this issue will be reviewed in Chapter II. This chapter will contain an historical sketch of authority, the Supreme Court's impact on schools, and the development of authority during 1969-1986. Chapter III will describe the methodology used in the study.

Chapter IV will be a thorough examination of selected cases decided during the Warren Burger Court. Each will be analyzed to determine its effect on the authority of school officials as well as its implications for the daily operations of schools.

The final chapter will include the summary, findings, conclusions and any recommendations for further study.

CHAPTER II

LITERATURE REVIEW

OVERVIEW

Student behavior has always been a major concern of educators, parents, and communities. Of equal concern has been the authority of school officials to control student behavior. States have traditionally given local public school officials a considerable degree of discretionary authority to deal with the governance of student conduct. This power, or authority, has allowed school officials to run their schools with a relatively free hand. This authority and freedom have been confirmed by the courts. As long as school officials have acted reasonably and prudently, and have not been in violation of some constitutional or statutory provisions, the courts have upheld challenges to authority of school officials (La Morte, 1971).

Volumes of literature have been written concerning the control and management of children in a school situation. Continuing contributions supplement or restate ideas that have been written. It would also seem that, with all the ideas that have been expressed and with all the articles and books that have been written, all of the questions about

discipline and control of students would have been answered. It would seem that one would have only to refer to the literature to be able to find a plan that would achieve the necessary order and decorum in any school.

This, however, is not the case. Few gatherings of educators are held where the problem of discipline is not discussed. The problem is complex and is aggravated further by the fact that the administration of pupil personnel in public schools gives rise to many very significant practical problems. These problems involve students, teachers, parents, administrators, school boards, and the community at large. How they are handled will affect the effectiveness of the entire school program (Flowers, 1964).

Every act of misbehavior demands much time and energy. This time and energy could be better spent planning and implementing programs that would provide improved educational opportunity for students. Having constitutional rights does not mean that a student's conduct can go unregulated. Reasonable restraints are a part of life for all of society. Reasonable regulations must be devised and enforced to be able to provide an environment for good teaching and learning.

Often school boards and/or state legislatures enact policies or statutes governing one aspect or another of the rights and duties of school children and their parents. A local board has the major responsibility for this policy

development and has been granted the discretion to govern student behavior. The personal freedom of coming and going and doing at will, and the ignoring of certain rules of behavior cannot be permitted. However, when parents are dissatisfied with the policies and regulations of a board, they may appeal to courts to protect what they may regard as their rights and the rights of their children. (Flowers, 1964).

To resolve this conflict, courts have tried to balance these interests. The test has been to view the student's loss of a particular freedom or right as weighed against the interests of the school. In Tinker v. Des Moines (1969) it was established that rules and regulations should be based on a determination of the school's legitimate interests. There should be no rule if the purpose of the rule or regulation is unclear or nonexistent.

A board of education may, then, enforce any rule or regulation that is reasonably necessary to protect the best interests of the school. Historically, courts have been reluctant to declare a board regulation unreasonable. They have been careful not to substitute their own discretion for that of the people elected and/or professionals hired to perform that function. Courts will set aside a rule only if it is unreasonable or if it is unconstitutional. (Flowers, 1964).

AUTHORITY

The Constitution of the United States does not actively establish the authority for the educational systems of the country. In Amendment X, the Constitution states that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Since there is no mention of education in the United States Constitution, this power or authority is delegated to the states or to the people.

Each of the states has developed a system of educating the youth of that state. These systems have been developed by legislative bodies and court systems. North Carolina has established this authority in its Constitution. In Article I, Section 15 of the North Carolina Constitution, it is established that "the people have a right to the privilege of education and it is the duty of the state to guard and maintain that right."

The constitutions of the various states have set up the limits within which educational systems may function. State legislatures have authority with respect to policy for school control as long as they stay within these constitutional limits.

Legislatures adopt statutes which will be the authority under which school systems are operated. These statutes are

usually very general, especially in matters dealing with the control of pupils. Most of the legislation concerning school control is permissive. The responsibility and authority to legislate the specifics of school control are delegated to the local school districts. Since the school district is considered a subdivision of the state, this is a natural delegation of authority. The school board members at the local level are considered to be state officials performing functions of this important area of state government. The local board members serve as a quasi-legislative body which enacts rules and regulations governing school control within the boundaries of the local school district. The rules and regulations that the local board develops will be considered legal if they pass the tests of reasonableness and constitutionality (Flowers, 1964).

Just as legislatures delegate authority to school boards, these boards delegate authority and responsibility to school personnel for operating schools and exercising the necessary control over pupils (Flowers, 1964). These school officials establish restrictions and requirements that they consider desirable and necessary for the proper conduct and morale of the school. When there is disagreement over these restrictions and requirements, a question of authority arises. It then becomes the duty of another governmental

branch, the judiciary, to settle the question and determine the proper authority.

A theoretical discussion of authority can help with an understanding of the question of authority. Authority is defined by Black (1979) as the permission or right to exercise powers, to implement and enforce laws, to exact obedience, to command, or to judge. Authority is often synonymous with power. It is sometimes considered the lawful delegation of power by one person or body to another person or body (Gordon, 1977). Constitutions give legislatures the authority or power to make laws establishing education. Legislatures pass authority along to local school boards. Local boards then vest the authority for direct control of schools to the school officials trained and hired to do this job.

A clearer and more workable definition of authority has been developed by Vacca (cited in Bolmeir, 1970). He stated that authority is considered to be the ability of one person to control the behavior of another in such a way as to bring about a result observable as compliant behavior.

According to Hudgins (1986), if one possesses authority, he is free to make choices external of other forces. Choices can be made without regulations, burdens, or any considerations of other factors.

Taking the ideas of Hudgins and Vacca together, one can develop a working understanding of authority. For the

purposes of this presentation, authority is the ability of one person or group to be able to control the behavior of another individual or group. This control would be possible without consideration of other outside factors or external forces and would bring about a result that could be observed as compliant behavior.

Although authority has been handed down from constitutions to legislatures to local boards to school officials, an examination must take place to understand if, in fact, school officials do possess this authority and why. By virtue of their professional positions, school officials have both authority and responsibility. They often have authority that school boards themselves do not possess. In 1943 in State v. Board of Education of Lewis County, the West Virginia Court held that the law does not require that boards supervise professional work of school officials. It stated that they were not qualified to judge on methods of instruction and discipline. Professionally trained personnel should control these matters.

The professional position that school officials hold is functional or knowledge based authority. It is legitimate authority and is closely akin to rational or charismatic authority. School officials can initiate behaviors and actions in areas of the school program because of the expertise they possess in the educational function. The professional role of a school official has certain

expectations based on past behaviors of people in the same role. The knowledge, the expertise, the personality, and the character of a school official all give authority to the position. This authority comes, not from legislatures, but from the function, knowledge, and tradition of the position (Peabody, 1964).

The other legitimate authority possessed by school officials is formal-position based authority. This is the legal or rational authority given by the lawmaking body. School officials' authority is formal because as employees of the board, they have rights to exhibit behaviors and initiate actions in different areas of the school program. They have the legal right to control the behavior of students in such a way as to bring about an observable compliant behavior. They have the legal authority to control the behaviors of students. The position itself has certain organizational expectations because of its place and the role its incumbent plays in the legal bureaucratic structure (Peabody, 1964).

A classroom teacher has a closer association with and a greater understanding of students than do any other school personnel. This gives the teacher a special relationship, both functional and formal, with students. One of the basic legal principles regarding pupil control and authority is that the teacher, by virtue of the position, has legal authority over a pupil comparable to that which a parent has

over his child (Flowers, 1964). This principle is known as in loco parentis and is most often used to control, restrain, or correct pupils.

Black (1979) defines in loco parentis as acting in place of a parent or instead of a parent. One acting in place of a parent would be charged with a parent's rights, duties, and responsibilities. Any discussion of authority and discipline would be incomplete without some mention of the concept of in loco parentis.

Teachers and school officials have been considered as standing in loco parentis to those under their care and keeping. They have the authority to administer moderate correction to pupils under their care. A school official must use the standard of care which the normal parent would use in the same or similar circumstances. In cases of punishment, the school must show a lack of malice, reasonable grounds for punishment, and a punishment commensurate with the offense. The school must act as a reasonably prudent parent would act under the same circumstances. If these elements are present, the school officials have been allowed to act in place of parents in exercising authority over students (Nolte, 1971).

Traditionally, the concept of in loco parentis has been accepted without question. Some legal authorities in recent years have downplayed the importance of this concept. They point out that the term originally was used solely in

connection with corporal punishment and that it was later broadened to cover all aspects of the school/child relationship. They further state that the vastly increased complexity of today's educational patterns, as well as changing family structures and values have tended to lessen the accuracy of a description of the school's role as being in place of parents (Peek, 1987).

Phay (1976) suggested that the problems in schools only mirror the problems in society at large. Schools are not what they were forty years ago. He feels that it is impossible to impose the type of discipline that was at one time used because the degree of legal authority has decreased. The total in loco parentis that once was practiced by school officials has been modified. Courts have been willing to look at school actions and have even overturned some that have been found arbitrary, unreasonable, or unconstitutional.

Even though it appears that the concept of in loco parentis seems to have declined in function, it may not have. Discipline and structure in the home are not what they once were. Discipline and structure are no longer present as they once were in any part of society. The concept of in loco parentis is not invalid. School and parents have a common goal to establish a learning environment that meets the needs of all children. As they work toward this goal, the schools stand in the place of the

parent while the child is under their jurisdiction. If so, the concept of in loco parentis once again becomes meaningful. The school's action in disciplinary matters is perceived as the school having temporarily assumed the parent's authority to discipline the child and having at the same time accepted the parent's responsibility of caring about the child's well being (Peek, 1987).

If it can be assumed that school regulations are properly adopted and lawfully and reasonably implemented, then school officials possess the authority, both functional and formal, to control the behaviors of students under their charge. But sometimes subjective authority or the values of individuals clash with objective authority or the requirements of law. When this happens, incompatible actions are demanded. Values demand one thing but external authority demands something else. These demands produce conflict. If negotiations and diplomacy cannot settle the issue, then the courts are asked to be the final authority (Cooper, 1982).

Having constitutional rights does not mean that a student's conduct can go unregulated. Reasonable restraints are a part of life in schools and in all of society. For schools to be able to provide an environment for learning, reasonable regulations must be devised for student conduct. The personal freedom of coming and going at will and the total disregard of rules cannot and should not be permitted.

The authority and responsibility for exercising necessary control has been delegated to school officials.

Despite accusations to the contrary, courts do not attempt to legislate for the public schools. It is their responsibility and authority to interpret the laws, rules, and regulations with respect to the constitutionality, legislative intent, and reasonableness of the laws (Flowers, 1964). They have done this by the balance-of-interest test. The student's loss of a particular right or freedom is weighed against the interests of the school. The decision of the court becomes the authority and then has the force of law.

The conflict of ideas and opinions causes a conflict over authority. Very frequently, the aspirations or actions of people collide with the statutory provisions or with the rules and regulations of school officials. Pupils sometimes object to certain restrictions and requirements imposed upon them, even though those responsible for their creation consider them to be desirable, necessary, and proper for the conduct and morale of the school. When the restrictions and requirements appear to be unnecessary, unreasonable, or illegal a pupil and/or his parent may stand up for their legal rights. This disagreement brings litigation and a decision by the courts, thus establishing authority.

Courts have been reluctant to question school actions with respect to a child except in extreme cases involving

bodily injury or malicious discipline. But the assumption that school regulations are properly adopted and lawfully and reasonably implemented is not always valid. As the importance of education increased in society, courts began to consider education as a right that could not be denied without proper reason and unless proper procedures were followed (Phay, 1976). The authority of school officials, both functional and formal, is in place. The question is over its proper use.

THE CONSTITUTION

A constitution is a statement which outlines the agreed basic principles of formal organizations. The structure and purposes of the organization and the rights of its citizens are established by a constitution.

In western political philosophy, the principles of constitutional government often have been based on a belief in a higher law. In modern democracies, a constitution's function is to put everyone, including the rulers or leaders, under the law. The Constitution of the United States does this. It sets forth the nation's fundamental laws. It establishes the form of the national government and defines the rights and liberties of the American people.

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and

establish this Constitution for the United States of America.

During the bicentennial year of 1987, any school child in America who had not already been exposed to these famous words certainly has been. Former Chief Justice of the United States Warren Burger led the recitation of this, the preamble to the United States Constitution, as the nation joined in on national television. Celebrations of the two hundred years of this document were staged throughout the year and throughout the nation.

The document itself is rather remarkable. As constitutions go, it is short. Relatively few changes have been made in it. It has remained intact and has existed as the law of the land for all these years. It is the world's oldest written constitution (Schmidt, 1987).

The Constitution's basic features provide for a supreme law. Notwithstanding any other legal document or practice, the Constitution is supreme. Its organizational plan is famous. Foremost in this plan is the separation of powers. This was a design to limit the powers of the new government. The framers felt that the best way to do this was to separate the powers into three distinct and non-overlapping branches, the executive, the legislative, and the judiciary.

These three branches were set up so they could not function totally independent of each other. This insures cooperation and sharing. The President can veto; the

Congress can override. Foreign affairs and war powers are dispersed and shared. The President has appointive powers with the advice and consent of the Senate. Impeachment and finance are shared by the House and Senate. All of the branches must work together, yet, each possesses an independence from the other and provides checks and balances on each other (Breckenridge, 1986).

Not only is there a separation of powers, but there is also a division of powers provided by the United States Constitution. The division of powers means federalism. Most nations divide power between the central or national governments and regional governments. Federalism is unique because power is not granted to the states by the central government, and hence cannot be withdrawn from them. Rather, the Constitution of the United States divides the powers. It delegates some to the national government and reserves some to the states (Burns, 1985).

By eighteenth century standards, the Constitution is truly a democratic document. But, as standards, lifestyles, cultures, traditions, and attitudes have changed, the Constitution has changed. The framers of the Constitution provided for this change. Article V of the main body provides the method for change. This article makes changes difficult so that they could not be made for, as Jefferson said in the Declaration of Independence, "light and transient" causes (Breckenridge, 1986).

The first changes to the Constitution came early. The first ten amendments are considered almost as a part of the original document. These amendments, known as the Bill of Rights, were guarantees of individual freedoms of citizens. Even a cursory reading of the amendments after the Bill of Rights shows that they do not alter the fundamentals of limited government--the separation of powers, the federal system, or the political process--set forth in the original document. The thirteenth, fourteenth, fifteenth, and nineteenth amendments attempt to insure equality to all and are really an extension of the Bill of Rights. The others reaffirm some existing constitutional arrangements or alter some procedures. At least one, the sixteenth, states national policy (Breckenridge, 1986).

If the procedure which was set up to allow changes in the Constitution has involved only minimal changes, how have changes been made to account for and keep up with national experience, growth, and development? How have changes been made to modify the Constitution into a document that could remain the supreme law of the land when standards, lifestyles, customs, traditions, and technology have changed so much? The amendments have done little to change the Constitution. The Supreme Court has done more. The Supreme Court has provided much of the gradual significant shaping of the Constitution (Breckenridge, 1986).

Although the Constitution was not divinely revealed it has been called as close to a perfect document as humans can reach. It has allocated power well between the electorate, the states, and the three branches of government. It has provided essential checks and balances and safeguards for fundamental liberties. Since the first ten amendments, which can be read as virtually part of the original system, only sixteen amendments over a period of approximately two hundred years have been required to keep it in good working order. Americans generally do not want any tampering with its basic provisions (Noonan, 1985).

But the Constitution is constantly in action. It is interpreted by the President, the Congress, the states, the citizens, and the courts. Government does not remain static or tranquil. Conflict is continual and inevitable in a democratic society. But it is in its interpretation by the courts that the greatest controversies arise. The doctrine of judicial review was established in Marbury v. Madison. In this case, Chief Justice John Marshall stated that the Constitution is the law of the land and that the Supreme Court had the responsibility of interpretation (Noonan, 1985).

In Federalist Paper No. 78, Hamilton stated:

> The interpretation of the laws is a proper and peculiar province of the Courts...Whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

This is judicial review, a major contribution of the Constitution of the United States.

According to Olson (1983), however, the courts tend to lose both the support of the governed, as well as their capacity to decide cases expeditiously as they venture more and more into the legislative and executive arenas to fulfill perceived lapses by the other branches. It often appears that they are doing this as they make decisions that are sometimes controversial. Hamilton, however, felt the courts to be the least dangerous branch of government. Again, in Federalist Paper No. 78, he stated:

> Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them.

These words of Hamilton have not, through the years, proven to be prophetic.

Through its interpretation of the Constitution, the Supreme Court is able to amend the Constitution. It does not actually change the words of the document, but it does change how those words are enforced. For example, in Plessy v. Ferguson (1896) the Court held that a Louisiana law requiring segregation of the races in railway cars and providing for separate but equal facilities for blacks and whites was constitutional. This remained the law of the land as interpreted by the Supreme Court until 1954. In

Brown v. Board of Education the Court "amended" the Constitution through interpretation. An unanimous Court decided in Brown that students cannot be discriminated against in their admittance to the public schools on the basis of race. What had been constitutionally legal, was no longer acceptable. The Court through interpretation had "amended" the Constitution.

The Court can only change or amend the Constitution's meaning when a case comes before it. The Supreme Court is a continuing Constitutional convention, always in session. If four of the justices agree to hear a case, the potential for change is present. This is one of the reasons that the Constitution is so flexible. The constitutional arrangement for government, the allocation and separation of powers, and the restraints on government all provide this needed flexibility. But through all this, the Constitution endures (Noonan, 1985).

The Constitution has lasted because it furnished only an outline for government. Much was left unsaid so that political circumstances could be considered. Others might give credit for the flexibility of the document to the sharing of power among the three branches and the compromises this sharing encourages. The doctrine of federalism solved the problems of governing many diverse territories within one nation. The Constitution articulates certain principles of democratic government, such as

representation, majority rule, and protection for minorities, that have become the core of American political culture. These are the accepted rules of the game from the smallest town council to the halls of Congress. All citizens look to this document as the supreme law of the land (Schmidt,1987).

THE SUPREME COURT

The highest level of the federal court system in the United States is the Supreme Court. According to the language of Article III of the United States Constitution, there is only "one supreme Court." This article also provides "such inferior Courts as the Congress may from time to time ordain and establish."

The Supreme Court of the United States is comprised of nine justices. These justices are appointed by the President and must be confirmed by the Senate. Appointments to the Supreme Court are lifetime "during Good Behavior." The Supreme Court has original jurisdiction in only rare instances and is mostly an appeals court.

Early in the Court's history, appointment to the Supreme Court was not considered such a great honor. Now, appointment to the United States Supreme Court is considered to be one of the highest honors an American can receive. The prestige and respect one enjoys from serving on the Supreme Court is matched by that of few other positions.

History has shown the importance of the position. The news media have reported the decisions of the Court extensively, causing Americans to have knowledge of its opinions and realize the impact of these opinions on their lives.

The appointment to the Supreme Court is for a lifetime, and the salary of the justices cannot be reduced. After a justice has completed fifteen years service, he may retire at age sixty-five with benefit of his full salary for life. A justice can be removed only for "Impeachment for, and Conviction of, Treason, Bribery, or other high Crime and Misdemeanors." Although Samuel Chase was impeached, no justice of the Supreme Court has ever been found guilty of a crime.

Of the three branches provided by the Constitution, the judiciary is unique. Members of Congress and the President are elected to their positions while justices are appointed. The President serves four years, Senators serve six years, House members serve two years and justices serve for life.

The inscription which appears over the entrance to the Supreme Court Building states the charge to the justices--to provide "equal justice under law." After the Court has rendered its decision, there is no appeal. Usually, the Supreme Court is the last resort for those who claim to have been deprived of their rights (Hudgins, 1970).

The judiciary, including the Supreme Court, is the only branch of government that provides a written statement every

time it makes a decision. It gives a statement of the reasons for its decisions. Justices who disagree with the majority may also write a dissenting opinion explaining their reasons for disagreement.

The selection process of the justices makes them the least accountable of the three branches of government to the people. They are removed from the voters because the voters do not choose them. They are the least visible of all the branches, not having to campaign and seek news coverage to attempt to gain favorable public opinion. The Court has a certain mystique. Although it has been slow to develop, it is now the best known and the most powerful judicial body in the world (Tribe, 1985).

The two institutions in American government that are commonly considered to be the least affected by partisan politics are the courts and the schools. This, however, is not true in either case. From the Marshall Court to the present day Rehnquist Court, the role of the Supreme Court in determining the course of American political life has been widely acknowledged. American political life also greatly affects the Supreme Court. The Court is deeply involved in and is extremely sensitive to the passions and controversies of politics (Menacker, 1987).

The Supreme Court makes decisions important to all segments of society. These justices exert a powerful, if often unseen and sometimes not understood, impact on nearly

every aspect of American life. There is a clear and fundamental link between the best known and most powerful judicial body in the world and the lives of the more than two hundred million citizens whom it serves (Tribe, 1985).

Judges throughout the court systems in the country are chosen politically. Some, at the state level, are even elected by the people. Those who are appointed must depend upon political experience and connections for their appointment. This same political experience and these same connections play a role in the decisions that are made (Menacker, 1987).

Even though the justices of the Supreme Court do not have to go through campaigns and elections, their selection does involve the political process. The President nominates justices and the Senate must confirm this nomination. The President will most often choose a candidate from his own political party and someone who shares his political philosophy and ideas. Since a Supreme Court Justice may serve long after the President is out of office, the President can leave his mark on the government long after he is gone if he chooses a person who has a long tenure. This responsibility of selection is taken very seriously by both the President and his party (Burns, 1985).

The Senate members also take their responsibility seriously. Their confirmation seats a person on the Supreme Court for life. The Senate Judiciary Committee conducts

hearings and hears testimony both for and against a nominee. Its members question the nominee and seek his views on a range of topics to get an idea about how he might interpret the Constitution. The nominee must complete questionnaires, submit to hearings, and come out clean in background checks. Senate confirmation is not automatic (Burns, 1985).

President Nixon was unable to get his first two appointees approved when trying to fill the seat vacated by Abe Fortas. Clement Haynsworth and Harold Carswell were his original appointees before the Senate confirmed his third appointee, Justice Blackmun, to the Court. More recently, President Reagan has had trouble getting appointees confirmed. Robert Bork, his first selection for the seat vacated by Justice Powell, was turned down by the Senate by a vote of fifty-two to forty-eight. Bork's views were considered to be too far to the right of American political thought. President Reagan's second choice, Douglas Ginsberg, withdrew when it was discovered that he had smoked marijuana. Pressure groups and interest groups organize to let their voices be heard about Supreme Court appointees. The Senate listens, and does not automatically accept a President's choice.

The Supreme Court also is subject to political considerations from Congress. This body sets the number of justices the Court will have. Congress reduced the size of the Supreme Court during Andrew Johnson's Presidency to

prevent him from having the opportunity to fill vacancies. After Johnson, Congress returned the Court to its prior and current size of nine members to allow Grant to fill the vacancies. In 1937, Franklin Roosevelt tried unsuccessfully to increase the number of justices,for the Court was declaring his New Deal unconstitutional (Schmidt, 1987).

Justices have been aware of the politics surrounding them. They are aware of the limitations that are placed upon them. Justice Jackson (1955) acknowledged this with his statement:

> The Supreme Court is a tribunal of limited jurisdiction, narrow processes, and small capacity for handling mass litigation; it has no force to coerce obedience, and is subject to being stripped of jurisdiction or smothered with additional Justice. Any time such a disposition exists and is supported strongly enough by public opinion. I think the Court can never escape consciousness of its own infirmities...

Ideology and politics affect when a sitting judge decides to retire. Because federal judges serve for life, they may be able to schedule their retirements to allow a president whose views they approve to nominate their successors. Older sitting justices watch events closely, trying to predict when the White House will be occupied by a president who will replace them with persons whose constitutional philosophies are similar to their own (Burns, 1985).

Justices are appointed politically. But the courts are expected to provide an impartial service, regardless of

race, ethnic origin, religion, sex, or politics. Justices are not immune from holding particular political and social attitudes that creep into their professional roles and decisions. If there is no precedent, the ideals of the justices will certainly influence their decision (Menacker, 1987).

Justices do have their biases. They have formulated their philosophies based on their economic, educational, or religious backgrounds. Whether liberal or conservative, the Court always reflects personalities and attitudes of the men and women who are on the bench at a particular time. When the justices decide whether or not a law should stand, their own attitudes, philosophies, and backgrounds shadow their legal decisions (Habenstreit, 1970). Justice Frankfurter (1957) said it this way:

> It is asked with sophomoric brightness, does a man cease to be himself when he becomes a Justice? Does he change his character by putting on a gown? No, he does not change his character. He brings his whole experience, his training, his outlook, his social, intellectual and moral environment with him when he takes a seat on the Supreme Bench.

The Supreme Court is a passive body. Violations of laws and/or court principles may exist and the Supreme Court is powerless to do anything about them. Prayer in schools is an example. If nobody complains, the Court remains passive. The Court cannot act on its own initiative. It must wait for parties to a real dispute who have substantial

injury to complain and to file suit. The person initiating action must request redress (Menacker, 1987).

Original jurisdiction is exercised over disputes "affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party." (U. S. Const.). Other cases reach the Court on appeal from lower federal courts or the highest tribunals from the states. The Supreme Court hears a case only when four of the nine justices agree to grant a writ of certiorari. This gives the appellant permission to bring the case forward. This approval will be given only when at least four justices consider that a substantial and ripe issue of federal constitutional or statutory law is at issue (Menacker, 1987).

The subject matter of the cases usually determines whether the Supreme Court will agree to hear the case and render a decision. The justices must exercise much discretion and discrimination in making these decisions because it would be impossible for them to hear arguments and render decisions on the nearly five thousand appeals they receive annually. The justices review the petitions and accept those with a significant constitutional question or some allegedly serious wrong (Hudgins, 1970).

When the Supreme Court decides a case it becomes res judicata or a thing judged, and is no longer a subject for further dispute in lower courts. The Supreme Court finding

is now precedent and is binding on all lower federal courts and on all state courts in matters encompassing national law (Menacker, 1987).

Court decisions which are so important to all Americans and affect the daily lives of almost everyone are made by the people who comprise the Court. But as Tribe (1985) said:

> The donning of the judicial robe and taking of the appointed seat are not the powerful solvents of intellectual bias. The ties that bind Justices to their previous experience and attitudes are not easily dissolved. That power is of great significance to each and every one of us, for the most basic ingredients of our day-to-day lives are sifted and measured out by the Supreme Court.

Although the majority of members of the Supreme Court have been of the legal profession, that is not a requirement. As a matter of fact, there are few requirements or qualifications for membership. It does, however, take more than a passing knowledge of law and government. If simply reading the Constitution were all the Justices had to do, then their "only qualification for the job would be literacy and the only tool a dictionary." (Tribe, 1985).

Justice Clark uses even more eloquent language to describe the special talents needed by a Supreme Court Justice. In 1959, he said:

> When one starts to write an opinion for the Supreme Court of the United States he learns the full meaning of the statement of Rufus Choate that "one cannot drop

> the Greek alphabet to the ground and pick up the Iliad."

It is not enough just to know and understand the law and the Constitution. A Supreme Court Justice must also know how they are applied in providing for the protection of all citizens.

There are some things which influence the decisions of judges and, therefore, place some constraints on them. Precedent, statutory law, legal thought as found in books and law reviews, and opinions of other courts have certain impact on lawyers turned judge. Interest groups, public opinion, the media, views of colleagues, and contemporary events and the general social environment have certain impact on social beings named judge. Different individuals are influenced by different factors, thus creating disagreement even among members of the Court. About this, Justice Douglas (1954) commented:

> When judges do not agree, it is a sign that they are dealing with problems on which society itself is divided...The judiciary is a coordinate branch of government, bearing great responsibilities. The judge that writes his own predilections into the one law in disregard of constitutional principles or the legislative or executive edicts that he interprets is not worthy of the great traditions of the bench. The judge that quavers or retreats before an impending crisis of the day and finds haven in dialectics or weasel words or surrenders his own conviction for a passing expediency is likewise not born for the woolsack....

But the only real constraint that the justices have is the Constitution and their interpretation of it.

The Supreme Court possesses great power over the Constitution and the nation. But this power is based on the respect of the American people. Throughout most of its history, the Court has held the streams of government within their proper channels. It has largely succeeded in the delicate task of protecting the rights of sometimes unpopular minorities while relying for its support on the approval of the majority (Tribe, 1985).

As was mentioned earlier, the two American governmental institutions that are perceived as being the most removed from politics are the courts and the schools. Even though this is not true in either case, it is interesting to note that these two institutions do have some direct relationships. The Supreme Court has been called upon to settle many issues concerning education. Not only has the Court settled conflicts on different school problems, but it also has initiated certain changes in school governance. Brown v. Board of Education in 1954 completely changed the school systems of the nation and initiated other changes that swept through the entire society. The Supreme Court helped to begin a revolution in education.

Traditionally, the United States Supreme Court has been reluctant to interfere in school matters. It has particularly been reluctant to interfere in conflicts related to the rights and responsibilities of students. The judiciary has always had the strong belief in the American

tradition of local control of schools. In Epperson v. Arkansas, the Court stated, "Public education in our nation is committed to the control of the state and local authorities." It did not feel that the courts should interfere in the resolution of conflicts arising from the daily operation of schools (Zirkel, 1978).

Unless there is a clearly defined abuse of power and discretion on the part of the school, courts have generally presumed that rules and regulations are valid. But when school boards or school officials are charged with going beyond their legal authority or violate a student's rights, courts have been asked to settle the conflict. If school officials are able to show a rational relationship between a rule and the purpose for which it is designed, courts will allow it to stand (Nolte, 1971).

Pupil control has been one area in which the Supreme Court has been asked to settle conflicts. Teachers, school officials, and legislators all realize the necessity for adequate pupil control. Without this control, the purposes for which schools exist could not be realized. Without pupil control in schools, anarchy would exist and pandemonium would reign. Schools would be totally ineffective (Flowers, 1964).

Courts also recognize the need for proper control. They have handed down many decisions upholding litigated rules and regulations governing pupil control if they are

reasonable and within the framework of the constitutions and the statutes. These court decisions serve as precedents for consideration of later cases. Court decisions help school officials to deal with the problem of student control while, at the same time, protect the rights of the individual student (Flowers, 1964).

The influence of the Supreme Court on education could easily be underestimated. This influence has grown through the years. It had no plan and no model. It has evolved to become a powerful force on the governance of schools.

Many questions have been settled by the Supreme Court. The Court has helped to determine what kind of schools there should be and the scope and nature of their work. It has helped to determine the relationship of the schools operated by the state to organized religion. It has helped each child, regardless of race, creed, or national origin, to achieve the American dream of equal educational opportunity. And, one of the most important questions settled by the Court is the extent to which each citizen, teacher, scholar, or third party might enjoy his constitutional rights while in contact with the established educational institutions (Nolte, 1971).

Questions that the Supreme Court has been asked to answer have been answered in different ways at different times. Supreme Court decisions do not last forever if they are not in tune with the beliefs of the people. Courts

apply the test of reasonableness in school matters. If they look inconsistent, it is because what is reasonable in one case may, with a different set of personalities and a different set of circumstances, be unreasonable in another. As reasonableness changes, the decision may change (Williams, 1977).

There is a direct relationship between the public schools and the Supreme Court. But, despite accusations to the contrary, the Court does not attempt to legislate for the public schools. It is the Court's responsibility to settle questions of conflict. It is the justices' responsibility to interpret the laws, rules, and regulations with respect to their constitutionality, legislative intent, and reasonableness. It is their responsibility to protect the integrity of the school and its purposes while at the same time to protect the constitutional rights of the students (Flowers, 1964).

THE BURGER COURT

> In the white temple it is always quiet. No lobbyists or reporters hover about the paneled chambers; tall bronze gates seal off the cool marble passageways from the public. The black-robed Justices emerge onto the high bench only to hear the arguments of deferential lawyers, and then vanish again behind a thick velvet curtain. They deliberate in secret, insulated and remote from the hurly-burly of American politics.

These words by Evan Thomas (1984) describe the aloofness of the Supreme Court of the United States. In

principle, these Justices do not make laws: they simply interpret them and apply them. Justice Frankfurter suggested that the Court "breathe(s) life, feeble or strong, into the inert pages of the Constitution." It matters who does the breathing (Thomas, 1984).

As of January 1988, one hundred three justices have worn the robe and done the breathing. Each Court has its own style and its own reputation. The years in which Warren Burger served as Chief Justice of the United States were from 1969 until 1986. Warren Burger replaced Earl Warren who had presided over the Court with perhaps the reputation as being the most liberal in history. The Burger Court was expected to be more conservative. It was to be President Nixon's law and order court. It was, however, neither liberal nor conservative. It was divided and unpredictable with decisions often being made on one vote (Thomas, 1984).

Twelve justices served on the Court with Warren Burger. Chief Justice Burger was the fifteenth Chief Justice of the United States. His seventeen year tenure as Chief Justice is the longest in this century. The Chief Justice is considered the first among equals. The major leadership weapon of the Chief Justice is his power to designate the justice who will write the opinion when he is in the majority (Hudgins, 1987).

According to an article by Fiss and Krauthammer, the role of the Supreme Court in determining American political

life has been widely acknowledged from the Marshall Court to the Warren Court. It is still early to truly determine the role that the Burger Court has played. Although it often seemed to be adrift, it did have a vision that helped shape American politics (Fiss, 1982).

When Warren Burger was appointed to the Court by President Nixon in 1969, the membership was comprised of Justices Black, Douglas, Harlan, Brennan, Stewart, White, Marshall, and Burger. There were only eight members at this time because a replacement for Justice Abe Fortas had not been named. Justice Blackmun was named in 1970 as a replacement for Fortas. Later appointees were Justice Powell for Justice Black, Justice Rehnquist for Justice Harlan, Justice Stevens for Justice Douglas, and Justice O'Connor for Justice Stewart.

These thirteen justices who served as the Burger Court were appointed by seven different presidents. President Franklin appointed Justice Black in 1937. President Ronald Reagan appointed Justice O'Connor in 1981. Other Presidents making appointments to this Court were Eisenhower, Kennedy, Johnson, Nixon, and Ford. The President who appointed the most on this Court was Nixon who appointed four. A brief sketch of each of the thirteen appointees follows.

Justice Hugo Black was appointed to the Supreme Court in 1937 by President Roosevelt. Prior to his appointment to

the Court, Justice Black was a senator from Alabama. Only a month after his confirmation, it was learned that he had been a member of the Ku Klux Klan. This caused some furor, but was soon forgotten as he became a strong supporter of the government's protection of civil rights. He was famous for defending the rights guaranteed by the first amendment. He vigorously supported the New Deal policies of Roosevelt. Justice Black served on the Court until 1971 (Moritz, 1964).

William O. Douglas was also appointed by President Roosevelt. He came to the Court in 1939. Justice Douglas served longer on the Court than any other justice in the nation's history. He traveled widely and wrote books dealing with important problems in American and international life. He strongly supported government protection of civil liberties and civil rights. Justice Douglas was a lawyer and served as the Chairman of the Securities and Exchange Commission prior to his appointment to the Court. Justice Douglas served on the Court until 1975 (Candee, 1950).

President Eisenhower appointed John M. Harlan to the Supreme Court in 1955. Justice Harlan was a lawyer who had attended Princeton University and Oxford University and the New York Law School. He had been a justice of the United States Court of Appeals before his appointment to the Court. He served on the Court until 1971 (Candee, 1955).

Justice William Brennan was appointed to the Court in 1956 by President Eisenhower. Justice Brennan is considered a liberal justice and works to put together votes for a liberal result. He is warm and out-going and a part of the activist court and the liberal majorities of the 1960's. Justice Brennan is a foe of the death penalty and has worked for civil rights and individual liberties. Justice Brennan was formerly a state judge in New Jersey, and, as of this writing, is still a member of the Court (Thomas, 1984).

President Eisenhower also appointed Justice Potter Stewart. Justice Stewart came to the Supreme Court in 1958. He could not be labeled as a complete liberal or a complete conservative. He voted with each side from time to time. Justice Stewart went to Yale and to Cambridge and practiced law in Ohio. He served as a judge on the federal Court of Appeals before his appointment to the Supreme Court (Thomas, 1984).

Justice Byron R. White is the lone Kennedy appointee to serve on the Burger Court. He was appointed in 1962. Justice White is in excellent physical shape, a throwback to his former days as a college and professional football player. He is a private man who works hard. He is considered a careful jurist who heeds precedent if at all possible. Justice White avoids substitution of his personal views and has often been a swing voter. He seems to be moving more to the right in recent years. Justice White is

a lawyer who was Deputy Attorney General before his appointment to the Court (Thomas, 1984).

Justice Thurgood Marshall was appointed to the Supreme Court in 1967 by President Lyndon Johnson. He is the first and only black to have served on the Court. Justice Marshall has always been an ally to Justice Brennan, assuming a liberal position in voting. Because he is overweight, has a heart condition, and is not really healthy, he does not overtax himself. He delegates responsibilities whenever possible. As an attorney, he was chief counsel for the NAACP from 1938 to 1961. He presented the legal argument in Brown v. Board of Education. He served on the United States Court of Appeals and was Solicitor General of the United States before his appointment to the Court. Although he is almost 80 years old, he is determined to outlast Ronald Reagan so that Reagan cannot appoint his replacement (Thomas, 1984).

Warren Burger was appointed Chief Justice of the United States by President Nixon in 1968. He was judge on the United States Court of Appeals and was thought to be a judge who would be strong on law and order. Chief Justice Burger was unpredictable although he tended to uphold traditional American values. He is an antique collector and a connoisseur of fine wines. He is formal, but kind. He is a private person who tends to avoid the press if possible.

Chief Justice Burger retired in 1986 and was replaced as Chief Justice by William Rehnquist (Thomas, 1984).

Another Nixon appointee was Justice Harry A. Blackmun in 1970. Justice Blackmun was originally considered to be generally conservative. He is a bookish man who often works twelve hours per day. He was originally very closely allied to Burger, but has become somewhat more liberal. Burger and Blackmun were boyhood friends. Justice Blackmun was President Nixon's third appointee for this seat. The Senate had failed to confirm Clement Haynsworth and Harold Carswell for the seat vacated by Abe Fortas. Justice Blackmun was a lawyer from the Harvard Law School. He served on the United States Court of Appeals before his appointment to the Court (Thomas, 1984).

Justice Lewis Powell was appointed by Nixon in 1972. He was shy and gentlemanly. He was personally conservative but not an ideologue. Justice Powell indicated at the time of his appointment that he did not expect to stay on the Court more than ten years. He tried to be a careful and fair balancer of competing concerns. Justice Powell wrote the swing opinion striking down quotas but upholding affirmative action in the Bakke case. Justice Powell replaced Hugo Black on the Court and retired in 1987 (Thomas, 1984).

One of the most literate opinion writers in Supreme court history has been William Rehnquist. He was named to

the Court in 1972 by President Nixon, and as Chief Justice in 1986 by President Reagan. He is far right philosophically, but too far to the right to dominate the Burger Court. Justice Rehnquist has great legal acuity and personal amiability. He is more concerned with ideological purity than coalition building. Justice Rehnquist wrote many of the majority opinions for the Burger Court (Thomas, 1984).

Justice John Paul Stevens replaced William O. Douglas on the Court in 1975. He was chosen by President Gerald Ford. He is an iconoclast who likes to question accepted legal doctrine. He is a moderate who has drifted somewhat to the left. Justice Stevens is an outspoken critic of both the left and the right, and is not popular among the brethren. Justice Stevens believes that government should avoid regulation of business and the states. He was a judge on the United States Court of Appeals before appointment to the Supreme Court (Thomas, 1984).

The first and only woman to date to serve on the Supreme Court was a member of the Burger Court. Justice Sandra Day O'Connor was appointed by President Reagan in 1981 to replace Potter Stewart. She is a former state legislator and state judge in Arizona. She has been active in Republican party politics. She is a lawyer who served as a judge on the Arizona Court of Appeals before her appointment to the Supreme Court (Thomas, 1984).

These thirteen individuals will remain in history as the Burger Court. Some were and are liberal and some conservative. Some were moderate and tried to provide stability and moderation. It is sometimes difficult to see how the Burger Court played an important role in shaping American history. But it did have a vision that helped to inform its work and to shape United States politics (Fiss, 1982).

The Burger Court spoke firmly on some occasions. It will be remembered for ordering Nixon to turn over his tapes. Just two weeks after this unanimous decision, the President of the United States resigned. The Roe v. Wade case giving women the constitutional right to an abortion is another case for which the Burger Court will be remembered. It declared twenty-four statutes of unconstitutionality either in whole or in part. Most of these were for violation of first amendment rights, the equal protection clause, or the separation of powers concept (Burns, 1985). Although this Court was sometimes unstable and split on the issues, it, like all other Courts since the Marshall Court, has played a major role in determining the course of American political life (Fiss, 1982).

A SYNTHESIS

School officials possess both functional and formal authority over students. School officials control the

behavior of students in such a way as to be able to see a change in behavior. This authority has been handed down through lawmaking bodies to the professionals who are supposed to know about child development.

School discipline is at the core of a school system. For the school to be able to do those things for which it was organized, there must be a measure of organization and decorum. Any free political institution is possible when the great body of people involved are habituated to self control and to obedience to lawful authority. For students to become good citizens, they must be taught self restraint, obedience, and other civic virtues. For teachers to be able to influence this learning, they must possess the authority to control the environment of the students (Kirp, 1986).

In any discussion of authority of school officials, the major conflicts are parent's rights v. school official's rights and student rights v. an orderly environment. From the beginning of the first schools and the first school systems, the measure of the rights and duties of school officials relative to pupils' conduct was the doctrine of in loco parentis. This doctrine held that school officials stood in the place of the parent while the child was attending school. It was generally assumed the school officials would exercise their authority properly. When a student was disciplined at school, he was very often also

disciplined at home. Rarely was the discipline of the school questioned (McGhehey, 1982).

It was society's belief generally that school officials would establish rules that would create an atmosphere that would enhance the educational process. For this atmosphere to be present, there must be a large degree of control of the student's behavior. Control of student behavior meant disciplinary measures would be taken against individual students when their conduct was interpreted by school officials as being disruptive to the proper atmosphere for learning. Student rights had to be balanced against the orderly environment of schools (McGhehey, 1982).

The judiciary has been the governmental institution that has been called upon to provide the balance between students' rights and an orderly environment. The judiciary has also had to decide the parent's authority and the school official's authority. It was not until 1969 that the Supreme Court handed down its first opinion directly on the regulation of student conduct itself. It was the Tinker case where the Court stopped unrestricted control by school officials over students. The Court acknowledged that it had recognized the rights of students in the past, but had repeatedly emphasized the need for affirming the authority of school officials to prescribe and control conduct in the schools (McGhehey, 1982).

Tinker involved the wearing of armbands by students in protest of the war in Viet Nam. This conduct was in direct conflict with school policy. The Court held that the wearing of armbands was a form of expression or speech and , therefore, protected by the first amendment. The issue was whether the students could exercise their constitutional rights when they collided with the rules as established by school authorities.

The Court held in Tinker that as long as the students' expression did not materially disrupt classwork, cause substantial disorder, or invade the rights of others, it could not be punished. School officials could now see that their disciplinary rules must recognize the constitutional rights of students as compared with the intended effect of the rule. This case was an attempt by the Court to establish guidelines by which to reconcile the constitutional rights of students and the legitimate powers of school authorities (Reutter, 1982).

The Supreme Court has rendered many decisions in cases directly involving education. But education cases are not decided in isolation from cases in other walks of life. There have been many church-state cases not involving education. There have been many race-state cases not involving education. These cases have effects on schools and schools have an impact on society. This is particularly

true with regard to social policy. Schools impact on many people with many different backgrounds (Reutter, 1982).

Since education is not mentioned in the Constitution, it is a state function rather than a federal function by virtue of the tenth amendment. Yet, the operation of education must conform to the Constitution. If a substantial federal issue is involved, the case may ultimately warrant Supreme Court action regardless of whether it came through the state courts or the federal system (Reutter, 1982).

In recent years, the number of education cases decided by the Supreme Court has increased. This is due in part to the emphasis on civil rights and civil liberties in the country since World War II. Since the Constitution establishes many freedoms such as religion, speech, and assembly in general terms, it is sometimes difficult to determine who is correct in interpreting them. The Supreme Court also must determine when a person is deprived of liberties without "due process of law." As these provisions are in conflict in educational settings, the Supreme Court must be involved (Reutter, 1982).

State statutes also grant to individuals property rights which cannot be taken away without due process of law. Various education rights are in this category. Futher, many education cases are framed in terms of unequal protection of the laws. This framework allows the Supreme

Court to hear cases under the fourteenth amendment's prohibition against a state's "deny(ing) to any person within its jurisdiction the equal protection of the laws" (Reutter, 1982).

But Supreme Court findings do not provide the total influence that the Court has on schools. The Court delivers opinions only on questions brought before it. On some cases appealed to it but which are not accepted for review, the decisions of the lower courts stand. The Court influences by rejection.

The Supreme Court has exerted its influence over student rights. The direction of student rights often changes when a particular Court speaks. Judicial supervision of education may loosen or strengthen the school's influence over the decisions and conduct of its students. The legacy of the Burger Court will be no different (Hooker, 1978).

TABLE I

WHO APPOINTED THE BURGER COURT?

Justice	Year Appointed	President Who Appointed
Hugo Black	1937	Franklin Roosevelt
William Douglas	1939	Franklin Roosevelt
John Harlan	1954	Dwight Eisenhower
William Brennan	1956	Dwight Eisenhower
Potter Stewart	1958	Dwight Eisenhower
Byron White	1962	John Kennedy
Thurgood Marshall	1967	Lyndon Johnson
Warren Burger	1969	Richard Nixon
Harry Blackmun	1970	Richard Nixon
Lewis Powell	1972	Richard Nixon
William Rehnquist	1972	Richard Nixon
John Paul Stevens	1975	Gerald Ford
Sandra Day O'Connor	1981	Ronald Reagan

TABLE 2

PROFESSIONS OF BURGER COURT MEMBERS

PRIOR TO SUPREME COURT APPOINTMENT

Justice	Profession	Position Before Appointment
Hugo Black	Lawyer	Senator from Alabama
William Douglas	Lawyer	Chairman of Securities and Exchange Commission
John Harlan	Lawyer	U. S. Circuit Court of Appeals
William Brennan	Lawyer	State Judge in New Jersey
Potter Stewart	Lawyer	Judge - Federal Court of Appeals
Byron White	Lawyer	Deputy Attorney General
Thurgood Marshall	Lawyer	Solicitor General of United States
Warren Burger	Lawyer	Judge - U. S. Court of Appeals
Harry Blackmun	Lawyer	Judge - U. S. Court of Appeals
Lewis Powell	Lawyer	Law Practice
William Rehnquist	Lawyer	Head of the Office of Legal Counsel - Justice Department
John Paul Stevens	Lawyer	Judge - U. S. Court of Appeals
Sandra Day O'Connor	Lawyer	Judge - Court of Appeals

TABLE 3

AGES OF MEMBERS OF BURGER COURT

Justice	Year Born	Years of Service
Hugo Black	1886 - 1971	1937 - 1972
William O. Douglas	1898 - 1980	1939 - 1975
John Harlan	1899 - 1971	1955 - 1971
William Brennan	1906	1956 - Present
Potter Stewart	1915	1958 - 1981
Byron White	1917	1962 - Present
Thurgood Marshall	1907	1967 - Present
Warren Burger	1908	1969 - 1985
Harry Blackmun	1907	1970 - Present
Lewis Powell	1908	1972 - 1987
William Rehnquist	1925	1972 - Present
John Paul Stevens	1920	1975 - Present
Sandra Day O'Connor	1930	1981 - Present

CHAPTER III

RESEARCH DESIGN AND METHODOLOGY

DESIGN OF THE STUDY

The design of the study was legal research. The research included reporting, analyzing, and interpreting data from selected court cases. Other statutory and case law relevant to the topic was reviewed, studied, and analyzed. Primary sources were used whenever possible. Secondary sources were also used where necessary.

Definitive and historical data were reviewed to understand the background and significance of the problem. All data were organized, analyzed, and synthesized in formulation of conclusions and recommendations.

METHODOLOGY OF THE STUDY

The researcher used eight selected cases for in-depth study. Only eight cases were chosen because they represented the major decisions for pupil control as decided by the Burger Court. It was determined that they constituted an adequate number to determine the direction of a court during a period of time. These cases were landmark cases involving educational questions that were settled during the tenure of Chief Justice Warren Burger.

The opinions of these eight cases were subjected to a textual examination comparable to the dissection of Bible passages. They were examined for information about and clues to a pattern set by the Burger Court. After a thorough examination of these cases, the researcher moved to literature containing expert commentary. Further information was gained from the writings of these experts.

Judicial biographies provided background about the individuals on the bench during this period. Since the justices do not operate in a vacuum, it was important to know about their background, education , and environment. The personal philosophy that each brings to the courtroom influences his/her decisions. Political histories and recollections of those close to the justices were also examined to provide background information, not only about the justices, but also about the period of history in which they lived and worked.

Primary sources germane to the research topic were used to identify data. Court opinions were identified through the Supreme Court Digest. Using the citations found there, the researcher found the cases in the appropriate volume of the Supreme Court Reporter.

Secondary sources were also studied. A complete search of related literature was obtained from the Education Resources Information Center (ERIC). In addition, legal periodical articles were identified through the Index to

Legal Periodicals. The School Law Bulletin and the Institute of Government at the University of North Carolina materials were also beneficial. Books and sections of books which were relevant to this topic were located through card catalogs in various libraries. Bibliographies of related studies were examined to identify pertinent sources. Information was extracted from educational newsletters, documents, and pamphlets. Black's Law Dictionary was used for an understanding of terms.

PROCEDURES FOR THE STUDY

A definition of authority was developed in the Review of the Literature chapter. A theoretical base was established showing the relationship of authority to responsibility and to power. The historical development of authority and the long-standing debate over authority versus student rights were summarized and documented.

The Constitution was re-read to renew an understanding of the establishment of the Supreme Court. Literature on the Court was reviewed for an understanding of its role in establishing law. The role of justice of the Supreme Court was examined for an understanding of the importance that personalities and idealogies have played in court decisions. The individual members of the Burger Court were studied through biographies and other biographical material.

Eight cases were chosen for close scrutiny. Facts regarding these cases were examined, background information was reviewed, and questions to be answered were noted. The Courts' holdings and the rationale for such holdings were analyzed. An attempt was made to find a pattern which would show the Burger Court's understandings about the authority needs of school officials. Other cases were used, but not reported in the full detail that these selected cases were. These eight cases were chosen because they were the first cases bearing on a particular point or were significant, landmark cases.

CHAPTER IV

AN ANALYSIS OF CASES

INTRODUCTION

Schools need to be managed so that they provide the optimum learning environment for their students. One step in this process is for school officials to set firm disciplinary standards so that teachers can more easily teach and students can more easily learn. The second step is for school officials to have the authority to enforce these standards. When school officials, both professional and paraprofessional, are well trained in managing behavior, and have the authority to do so, the school learning environment will likely be safer and more orderly. Students perform better in an atmosphere in which behavior standards are uniform and positive. Their attitudes will be better and learning will be maximized when authority is recognized and discipline is fair and consistent throughout the school (Canter, 1985).

Through the years school officials have set the policies for the governance of student conduct and have assumed authority for their enforcement. States have traditionally empowered school officials with a considerable degree of discretion in the establishment of these policies.

This grant of power enabled school officials to run their schools with a relatively free hand. Prior to 1969, the judiciary confirmed the authority of school officials to control student conduct. Unless school officials were blatantly unreasonable, capricious, or arbitrary or unless a constitutional law or statutory question was involved, rules governing student conduct were generally upheld (LaMorte, 1971).

Since the beginnings of public education there have been rules and violations of school rules. There is a wide range of punishments or actions taken by school officials when a rule is violated. Minimal punishments are many. Withholding privileges, detention, writing sentences, isolation, extra work, warnings, probation, and parent conferences are but a partial listing of so-called minimal punishments. These punishments are not usually challenged. There would likely be a very poor case if they were (Hogan, 1974).

The proper use of authority through punishment has been questioned in the courts many times. Most often the conflicts have arisen concerning corporal punishment and suspension or expulsion. Other cases have been heard because of search and seizure, freedom of expression, and due process rights. Cases involving substantive rights of students have helped to establish the proper use of authority (Hogan, 1974).

Willful misconduct of students has always been a serious problem. The necessity for school officials to deal with this misconduct has taken time from matters that are more important to the education of the child. Yet, if student control is not present, then none of the other aspects of education is possible. To overlook misbehavior could be detrimental to the future development of the student and injurious to the morale and governance of the entire school (Flowers, 1964).

Some consider punitive measures to be merely expedient and not a suitable deterrent to willful student misconduct. Exercise of authority through the use of punishment is a common practice in schools. The severity of the punishment will determine the likelihood of its vulnerability to litigation. Rules and regulations are not usually challenged in the courts. Methods employed in the enforcement of rules and regulations bring about objections by students and their parents. Personal judgment of individuals could be used to rank punishments in their order of importance. Court cases and literature on the subject would clearly show that corporal punishment would likely top the list in importance, followed closely by suspension and expulsion (Flowers, 1964).

Corporal punishment is defined by Black as "physical punishment as distinguished from pecuniary punishment or fine." It is punishment of or punishment inflicted upon the

body. It is a negative concept of discipline. Some states have substituted the term "reasonable force" for corporal punishment. This term is defined by Black as "that degree of force which is not excessive and is appropriate in protecting oneself or one's property." This term implies self defense and carries a more positive connotation (Peek, 1987).

It is well documented that school officials have the legal authority to punish school children physically in order to maintain discipline in schools. Courts have permitted corporal punishment for many years. The authority to punish children physically in school is gained from the common law doctrine of in loco parentis discussed elsewhere in this study. Courts have established two standards governing the corporal punishment of a child by school officials: 1) the punishment must be reasonable and must be administered in good faith; and 2) the teacher must not be motivated by malice (Alexander, 1985).

As early as 1859, the Supreme Court of Vermont in Lander v. Seaver established that the school master had the authority to punish students reasonably for acts detrimental to the good order of the school. In a later case the Connecticut Supreme Court of Errors stated in O'Rourke v. Walker (1925) that the teacher had authority to punish students for offenses committed against the school. Two landmark Supreme Court cases have spoken to the

issue of corporal punishment. In Baker v. Owen (1975) the Court held that North Carolina's reasonable force statute was not unconstitutional. Two years later, the Court held in Ingraham v. Wright that the eighth amendment prohibition of cruel and unusual punishment does not apply to schools and further that prior due process is not constitutionally required when corporal punishment is used. These two landmark cases will be examined in greater detail later in this study.

Another form of discipline for student misconduct is suspension. Suspension and expulsion are often used as synonyms and are often understood as being interchangeable. This is not the case. Black defines suspension as "a temporary stop, a temporary delay, interruption, or cessation." The continued emphasis throughout the definition is the temporary nature of the action. The suspension of a student from school is the dismissal of the student for a specific period of time. It may be for one day or several days, but it is temporary.

Suspensions are generally divided into two categories. Short term suspensions are for up to ten days. Long term suspensions are for ten days or more. The term of the suspension is usually in line with the seriousness of the offense for which the student is being punished.

Expulsion denotes a more permanent action. Black defines expulsion as "a putting out or driving out;

ejectment; banishment; a cutting off from the privileges of an institution permanently." The emphasis is on the permanent nature of the action. Expulsion from school is for more serious offenses of misconduct and is for the remainder of the year or forever. Suspension is a rather frequent occurrence. It can take place as an administrative action by school officials. Expulsion happens rarely and requires action by the board of education (Peek, 1987).

Most challenges to the administration of corporal punishment have come from either the eighth amendment's ban against cruel and unusual punishment or the fourteenth amendment's due process clause. Suspensions and expulsions are most often challenged with due process as the basis for the litigation.

The fourteenth amendment to the United States Constitution prohibits a state from depriving a person of his life, liberty, or property without due process of law. This means that these basic rights of man cannot be taken away unless certain legal procedures are followed. There are two types of due process. Procedural due process requires that if an individual is to be deprived of life, liberty, or property, a prescribed constitutional procedure must be followed. This procedure requires that the individual be given proper notice that he is about to be deprived of his life, liberty, or property. Second, he must

be given an opportunity to be heard, and finally, the hearing must be conducted fairly (Alexander, 1985).

Substantive due process requires that if a person's rights are to be deprived, it must be for a valid objective. Further, the means which are used must be reasonably calculated to achieve the stated objective. Black defines it as "the constitutional guarantee that no person shall be arbitrarily deprived of life, liberty, or property." Substantive due process protects individuals from arbitrary and unreasonable action. Basically, due process gives the accused the right to tell his side of the story without any arbitrary or unreasonable action against him. Cases charging denial of due process will be examined in this chapter.

Student willful misconduct often involves possession of materials which are in violation of school rules or established law. The authority of school officials to search for and seize these materials has been the focus of litigation. Traditionally, the doctrine of in loco parentis provided school officials with the authority to search students. According to courts, schools acted in place of the parent and thus had the authority that parents had in cases of discipline. School officials were usually allowed to conduct a search if they possessed reasonable suspicion that the search would reveal an item which violated school rules or the law (Hooker, 1978).

School officials have been placed in contrast with police officers. Under the fourth amendment to the Constitution, a police officer must have probable cause before he can search a citizen. Probable cause means that an officer may conduct a search only if it is more probable than not that the search will uncover illegal activity. Using the in loco parentis doctrine, the courts have held that school officials need only meet the less stringent reasonable suspicion requirement. Students suspended from school because of illegal materials found after a search have claimed a violation of their fourth amendment rights and have brought suit (Majestic, 1987). One such case is examined in this chapter.

Another volatile issue is the first amendment right of freedom of speech. Students are often suspended from school because of their violation of a school rule governing speech. Courts have operated on the premise that a student has the right to speak out on issues of public concern, even if the student is taking a position that is directly opposed to that taken by school officials. Students who are disciplined for their speech often claim a violation of their first amendment rights to free speech and bring suit (Cromartie, 1987). A case involving a suspension which was questioned because the student believed his first amendment rights had been violated is examined in this chapter.

The legal principle is well established that school officials have the authority to suspend students from school if they disobey a reasonable rule. School officials have considerable discretionary authority to determine whether a rule has been violated. They may also decide the punishment that will be imposed if a rule has been violated. Care must be taken to assure that the action is not arbitrary or unreasonable. When reasonableness is challenged, litigation results and the courts are asked to determine who has the legitimate authority (Flowers, 1964).

Many educators look upon suspension or expulsion as a ineffective means of discipline. Some incorrigible students may misbehave in anticipation of suspension because they do not wish to be in school anyway. When a student is suspended, he misses work and gets behind. He may come back knowing he cannot pass and become a bigger problem than he was before. When a student is denied school attendance, he is being deprived of education which is designed for his betterment. Courts look upon suspension in much the same way. They will not, however, condone keeping a student in school whose behavior is of such a grave nature that his presence will be disruptive to the school and detrimental to the morale of the student body. Courts have revealed that they will protect an environment of good teaching and good learning (Flowers, 1964).

The authority of school officials to control students is derived from their discretionary grant of power from law making bodies which gives them the authority to make and enforce reasonable rules and regulations for the efficient operation of schools. Students and parents no longer accept these rules and their enforcement blindly. Conflict emerges within public school systems when there is a clash between two distinct spheres of authority. There is the clash between student rights and a need for an orderly environment. There is a clash between parental authority and school officials' authority. Courts play a vital role in the resolution of these conflicts. They must decide whose authority is legitimate and maintain the boundaries within which each authority may function. They must guarantee student rights while insuring an orderly environment (Bolmier, 1970). A close examination of some landmark cases shows how the Supreme Court has been able to accomplish this task.

GOSS v. LOPEZ

Supreme Court of the United States, 1975

419 U.S. 565, 95 S. Ct. 729

Ohio law gave school principals the right to suspend students from school for up to ten days without giving any notice of reasons for the suspension and without having any type of hearing. Students did not have to be given the

opportunity to explain their view of the incident or to tell their side of the story.

Nine high school students in the Columbus Public School System were suspended for up to ten days. They were not granted a hearing of any kind. Suit was brought against the school system asking that the statutes giving the principal this right be overturned as being unconstitutional based on the fourteenth amendment's due process clause. The suit also sought orders restraining school officials from issuing further suspensions and requiring them to remove all references to the past school suspensions from the school records.

A three-judge federal court declared that the students had been denied due process of law contrary to the fourteenth amendment. Administrators of the Columbus Public School System challenged this judgment, and the case was heard by the Supreme Court. In a five to four vote the decision of the three-judge court was upheld. The suspensions that had been ordered and the statutes permitting students to be suspended without notice and without a hearing were declared unconstitutional. The records of the students were to be expunged of references to these suspensions.

This decision was issued during a period of unrest in the Ohio Public Schools. History shows that it was, in fact, a period of unrest throughout the country. The

charges against the students involved alleged misconduct including demonstrations, destruction of school property, and attacking a police officer. These misbehaviors were not the focal point of the suit. The action was brought under 42 U.S.C 1983, and alleged that the rights of the students had been violated in that they had been denied due process of law.

The Supreme Court agreed with the federal court that due process had not been given the students in accordance with the fourteenth amendment. The suspensions ordered and the statutes permitting students to be suspended without notice and hearing were declared unconstitutional. Before students can be suspended certain procedures must be followed. The students must be given either oral or written notice of the charges against them. If students deny the charges, an explanation of the evidence against them must be presented. There must be some type of hearing where students are given the opportunity to present their side of the incident.

Although the Court specified the things that must take place, it provided for them to be done quickly . Unless the student's presence in school posed a real threat to persons, property, or the academic program, the due process must precede the suspension. There need be no delay in time, however, between the notice and the hearing. They could take place in the same meeting. The constitutional

requirements could be met in an informal discussion if all the elements of due process are met. Long term suspensions or complicated situations where the facts could be confused may require more formal procedures. Legal counsel and the right to confront the accuser and witnesses could be part of the requirements in these cases, but are not required in short-term suspensions.

The fourteenth amendment prohibits a state from depriving a citizen of life, liberty, or property without due process of law. Goss v. Lopez did not involve anyone's life, but, according to the Court, did involve both property and liberty interests. Students have a property interest in public education. The United States Constitution does not guarantee all citizens a free public education, but the state of Ohio by statute had provided for a free education for all of its children between the ages of six and twenty-one. The fact that the state has undertaken to provide its children with such an education creates a constitutionally protected property interest. The state cannot deny compulsory education to some because of misconduct without being sure that they are given due process of law.

The liberty interest comes from the reputations of the students. The Court said that due process is required "where a person's good name is at stake...because of what the government is doing to him." Suspension from school

could damage a person's good name with teachers and other students. It could interfere with future educational and employment opportunities. Because a student has a liberty interest in education, that interest is protected by the Constitution.

The majority opinion was written by Justice White. Five members of the Court held that the Ohio statute was in violation of the due process clause and that each suspension was invalid. Joining Justice White were Justices Douglas, Brennan, Stewart, and Marshall.

Goss was one of several cases heard by the Burger Court that was decided by a five to four vote. The Justices who dissented were Chief Justice Burger and Justices Blackmun, Rehnquist and Powell. Justice Powell wrote the dissenting opinion.

In the dissenting opinion, the view was expressed that the majority decision unnecessarily opened avenues for judicial intervention in the operation of the public school that may affect adversely the quality of education. They felt that the students' interests in education had not been infringed upon by the suspensions within the limited period prescribed by Ohio law. They held that public education in the United States has been committed to the control of state and local authorities. Courts should not intervene in the resolution of conflicts which arise in the daily operation

of school systems, especially if they do not directly and sharply implicate basic constitutional values.

Goss v. Lopez was a doctrinal student rights case. It was a controversial case in 1975, being settled by the Supreme Court in a five to four decision. It is still a controversial case today. Goss is significant in school law history because it represents the high water mark for legal involvement in due process matters (Kemerer, 1979)

WOOD v. STRICKLAND

Supreme Court of the United States, 1975

419 U.S. 565, 95 S. Ct. 729

The Mena Public High School in Arkansas had a regulation that prohibited the use or possession of intoxicating beverages at school or at school activities. Three female students were expelled from school for the remainder of the semester because they violated this regulation. Their expulsion, for a period of approximately three months, resulted because they put malt liquor in the punch served at an extracurricular meeting held at the school. The students and their parents brought suit under 42 U.S.C. section 1983.

> Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an

> action at law, suit in equity, or other proper proceeding for redress.

The students sought monetary damages from two school administrators and from the members of the school board.

The students were sixteen years old and were in the tenth grade. When they discovered that the punch had not been prepared for the planned meeting of students and parents, they agreed to spike it. The girls went to a neighboring state and purchased two, twelve ounce bottles of malt liquor. They mixed these with six, ten ounce bottles of soft drink in an empty milk carton. Although the girls had some second thoughts about their activity, they went ahead with it. The punch was served at the meeting without apparent effect. Upon determination of the deed, the board voted to expel the girls for the remainder of the semester. The girls asked the board to forego its rule punishing this violation with such an expulsion. The board chose to proceed with the expulsions.

The students sought compensatory and punitive damages. They asked for injunctive relief allowing them to resume school attendance and preventing school officials from imposing any sanctions as a result of the expulsion. The complainants sought to have their records expunged of any record of the expulsions.

The federal district court held for the school officials that, in the absence of proof of malice, the school officials were immune from damage suits.

The Supreme Court declined to consider questions of interpretation and application of the relevant school regulation. The Court ruled that section 1983 provided for federal court intervention only when there was a violation of specific constitutional guarantees. The decision as to whether there had been a denial of due process was remanded to the lower court for consideration.

Under 42 U.S.C. section 1983, the Court had to determine to what extent school board members are immune from tort liability for their official acts. The Supreme Court ruled that officials, including school board members, could be held personally liable for damages if they violate a student's constitutional rights. A key passage in the Court's decision is:

> ... in the specific context of school discipline, we hold that a school board member is not immune from liability for damages under Section 1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected ..

The Court added that the liability holds even if the violation is done without malice. Ignorance or oversight are not excuses that can relieve liability. The Court used the following language:

> The official himself must be acting sincerely and with a belief that he is doing right, but an act violating a student's constitutional rights can be no more justified by ignorance or disregard of settled, indisputable law on the part of one entrusted with suspension of student's daily lives than by the presence of actual malice.

A school official's immunity from money damages sought under section 1983 relative to student conduct and discipline depends on two elements of good faith. The Supreme court established criteria that called for both objective and subjective tests. In order for an official to be denied qualified immunity, the plaintiff must establish that the defendant "knows or should have reasonably known" that his actions were a violation of the constitutional rights of the plaintiff. This is the objective test. The subjective test requires that it be proven that the defendant acted with malicious intent.

It is important for school officials to be able to function without fear of being sued. The Court found that public policy and prior legal decisions require a qualified good faith immunity so that those who act in good faith and within the scope of their duties will not be intimidated in meeting their responsibilities and will not exercise their discretion with undue timidity (Zirkel, 1978).

Civil rights, however, are important. The Court found that the element requiring administrators to act in accord with settled law and with the constitutional rights of those affected by official action to be a reasonable condition for

their immunity from a lawsuit for damages. If a school official acts out of ignorance or in disregard to settled law, he may be sued (Zirkel, 1978).

School officials are not immune from liability for money damages in cases where the constitutional rights of students are abrogated. Wood v. Strickland clearly permits courts to assess damages against either the governmental agency or an individual official of government if civil rights have been suppressed. It matters not if it is student, teacher, or some other party. This case established the potential liability of school board members for denial of students' due process rights. School board members may be liable, as individuals, for damages under section 1983 of the Civil Rights Act of 1871.

Justice White wrote the majority opinion in Wood v. Strickland. He was joined in the majority by Justices Douglas, Brennan, Stewart, and Marshall. The other four justices concurred in part and dissented in part. In the dissent, Justice Powell stated the belief that the standard for immunity has been too severe. He pointed to Scheuer v. Rhodes (416 U.S. 232) and quoted the following:

> It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with a good-faith belief, that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct.

Those in dissent indicated that the standard for immunity should be one acting in good faith in accordance with the reasonable belief that the action is lawful and justified. They foresaw that the majority opinion of the Court may make it difficult to get qualified persons to serve on school boards.

BAKER v.OWEN

Supreme Court of the United States, 1975

423 U.S.907

In Baker v. Owen, the Supreme Court summarily affirmed a lower court ruling that teachers may paddle students in spite of parental opposition. A federal district court had upheld the spanking of a child over the parents' protest. The Court ruled that even though parents generally have control of their children's behavior and discipline, "the state has a countervailing interest in the maintenance of order."

A North Carolina statute gave school officials the authority to "use reasonable force in the exercise of lawful authority to restrain or correct pupils and to maintain order." (N.C. Gen. Stat. Section 115-146) The mother, Virginia Baker, had previously informed school officials that she did not wish for corporal punishment to be used on her child because she disagreed with the practice in principle. Even though she had made her feelings known, her

son was struck twice on the buttocks because he disobeyed a rule forbidding the throwing of balls except during recess periods. The boy and his mother challenged the constitutionality of the statute and of the punishment inflicted under it.

Mrs. Baker's claim was that the administration of corporal punishment to her son after she had voiced her objections violated her rights as a parent to determine disciplinary methods for her child. The plaintiff also alleged that the circumstances in which the punishment was administered violated the student's right to procedural due process.

A three-judge federal district court was convened to hear the case. Circuit Judge Craven wrote the opinion of the court. In his opinion, Craven wrote that the punishment did not violate the fourteenth amendment liberty right of the mother to control the upbringing of the child. The child, however, does have a liberty interest in avoiding corporal punishment and, therefore, must be given due process. The court noted that the legal system had at one time been very tolerant of physical punishment. Both the courts and the professional education community now look upon this form of punishment with less favor.

The North Carolina statute allowing reasonable corporal punishment for the purpose of maintaining order in the schools was declared to be constitutional if it is

administered with certain due process. The due process, as outlined by the court, should include the following three elements:

> Except for acts of misconduct which are so anti-social or disruptive as to shock the conscience, corporal punishment may not be used unless the student has first been warned that the conduct for which he is being punished will occasion its use and unless other means have first been used to modify the student's behavior.
>
> A second teacher or other school official must be present at the time the punishment is inflicted and must be informed, prior to its infliction and in the student's presence, of the reason for the punishment.
>
> The school official who administered the punishment must provide, on parental request, a written explanation of the reasons for punishment and the name of the second official who was present.

The court concluded that the paddling was not cruel and unusual. The general conclusion of the court was that, although the parents do have a fourteenth amendment liberty interest in the control of the rearing and education of their children, that right does not preclude the state's use of reasonable punishment in order to achieve the legitimate goal of providing order in the schools. It did, however, note the child's liberty interest in freedom from arbitrary infliction of even minimal corporal punishment mandates that certain procedural due process must be followed.

Only the district court's decision that the state corporal punishment law was not constitutional was appealed to the Supreme Court. The Supreme Court summarily affirmed the district court ruling by a unanimous vote. Corporal

punishment is constitutional if students are afforded certain procedural safeguards prior to its administration.

INGRAHAM v. WRIGHT

Supreme Court of the United States, 1977

430 U.S. 651

A Florida statute permitted limited corporal punishment. It required prior consultation between the person doing the punishing and the school principal. The law specified that the punishment should not be degrading or unduly severe. Many schools in Florida used corporal punishment as a means of maintaining discipline.

The Dade County, Florida School Board Policy contained specific directions for and limitations to paddling. The authorized punishment consisted of paddling an unruly student's buttocks with a wooden paddle. The policy went so far as to describe the paddle that could be used. The paddle must measure less than two feet long be, three to four inches wide, and be approximately one-half of an inch thick. Normally, a paddling was limited to between one and five licks. This was to result in no apparent physical injury to the student. Although it was against regulations, Dade County teachers often paddled students without first consulting the principal.

During the 1970-1971 school year, James Ingraham and Roosevelt Andrews were enrolled in Drew Junior High School

in Dade County, Florida. Ingraham was an eighth grader and Andrews a ninth grader. Ingraham was given twenty licks with a paddle for failure to respond to a teacher's instructions. The paddling was administered while he was held over a table in the principal's office. As a result of the paddling, Ingraham suffered a hematoma which required medical attention. He stayed out of school for several days as a result of his injuries.

Andrews had been involved in several minor violations of school rules. On several occasions, he had received corporal punishment for these infractions. On two occasions, Andrews was struck on his arms. In one incident, the paddling caused him to lose full use of one arm for a week.

The students brought action against three administrators and the superintendent of the Dade County School System as a result of the paddling incidents. The questions concerned the use of corporal punishment in the public schools and involved two constitutional questions. The first question was whether the paddling of students as a means of maintaining school discipline constitutes cruel and unusual punishment in violation of the eighth amendment. The second question was whether the due process clause of the fourteenth amendment requires prior notice and an opportunity to be heard before the paddling can take place if it is constitutionally permissible.

The students argued that they and other students who had been subjected to disciplinary corporal punishment had been denied rights guaranteed by these two amendments. The students argued that the severe paddlings they received constituted cruel and unusual punishment and that they were deprived of a liberty interest when they were denied a hearing to be able to tell their side of the story.

The district court dismissed the complaint, holding that there was no constitutional basis for relief. A panel of the United States Court of Appeals for the Fifth Circuit voted to reverse, but when the entire court heard the case it affirmed the district court's decision. The Supreme Court granted certiorari and affirmed.

The majority opinion was written by Justice Powell. Joining Justice Powell in the majority were Justices Stewart, Blackmun, Rehnquist and Chief Justice Burger.

The Court held that the disciplinary paddling of public school students did not constitute cruel and unusual punishment in violation of the eighth amendment. The opinion was that the eighth amendment was designed to protect those convicted of a crime and did not apply to disciplinary corporal punishment of public school children. Extending the cruel and unusual clause to include the paddling of school children was not justified because public schools are open to public scrutiny. Teachers and administrators are subject to the legal constraints of

common law. To the extent that school officials are excessive or unreasonable, they are subject to possible civil and criminal liability.

Justice Powell, in the majority opinion, maintained that the due process clause of the fourteenth amendment did not require prior notice and a hearing before a disciplinary paddling. The traditional common law remedies preserved under state law are adequate to afford due process. In addition, if procedural safeguards are clear, a constitutional requirement of prior notice and a hearing would burden the use of corporal punishment as a disciplinary measure.

The due process clause of the fourteenth amendment does not require notice and hearing prior to imposition of corporal punishment. While corporal punishment in the public schools involves a student's liberty interest, the Court held that traditional common law remedies would provide adequate due process. The threat of civil and possible criminal action against school officials was considered to be sufficient to protect the student's due process rights in corporal punishment cases.

The decision in Ingraham was five to four. Justice White wrote the dissenting opinion. Joining Justice White in the dissent were Justices Brennan, Marshall, and Stevens. The dissenting opinion expressed the view that the eighth amendment's prohibition against cruel and unusual punishment

should not be limited to the punishment of those convicted of crimes. It should be construed as prohibiting all forms of barbaric punishment to all citizens regardless of the offense. The dissenters held that disciplinary spanking of school students was punishment as covered by the eighth amendment.

The dissent also covered the due process issue. Care must be taken to avoid punishing an innocent student. It is impossible to take back a paddling once it is administered. The due process clause of the fourteenth amendment should be construed as an informal give-and-take between the student and the disciplinarian. A formal or elaborate hearing before a neutral party is not necessary, but the student must be given an opportunity to give his version of the facts. The dissenting opinion was that the student was being denied a liberty interest if he was unable to tell his side of the story.

CAREY v. PIPHUS

Supreme Court of the United States, 1978

435 U.S. 247, 98 S.Ct. 1042

Jarius Piphus was a freshman at Chicago Vocational High School during the 1973-1974 school year. He was seen smoking on the school grounds by the principal. As the principal approached Piphus and the other student involved, he smelled what he believed to be smoke from burning

marijuana. When the students saw the principal, they threw the cigarettes into a hedge.

The principal took the students to the office. Although the students denied that they were smoking marijuana, they were suspended from school for twenty days. This was the normal penalty for violation of the school rule prohibiting drug use on campus.

The other student involved in this suit was Silas Brisco. He was a sixth grader at Clara Barton Elementary School in Chicago. The principal had instituted a rule against boys wearing earrings at school. The principal thought this rule to be necessary because he believed that this practice denoted membership in certain street gangs and increased the likelihood that gang members would terrorize other students. The principal reminded Brisco of the rule and asked that he not wear it to school again. Brisco insisted that this was only a symbol of black pride and had nothing to do with street gangs. Brisco was suspended for twenty days for violating the school rule by refusing to remove the earring.

These two plaintiffs brought suit charging that they had been suspended without due process in violation of the fourteenth amendment. The complaint sought declaratory and injunctive relief and actual and punitive damages. The district court held that both students had been suspended in violation of the fourteenth amendment. It also held that

school officials were not entitled to qualified immunity for damages citing Wood v. Strickland. The court felt that school officials should have known that a lengthy suspension without any type of hearing violated due process rights. The court, however, refused to award any damages in the absence of the proof of any actual injury.

The court of appeals reversed this decision and sent it back to the district court. The court of appeals held that the students were entitled to recover substantial "non-punitive" damages, even if their suspensions had been justified and even if they did not prove that any other actual injury was caused by the denial of due process.

The Supreme Court agreed to hear the case and to consider whether, in an action under section 1983 for the deprivation of procedural due process, a plaintiff must prove that he actually was injured by the deprivation before he may recover substantial damages. This is a part of the Civil Rights Act of 1871, and is quoted fully earlier in this study. In short, it provides for a damages award to compensate persons for injuries caused by the deprivation of constitutional rights. The Supreme Court held that , in the absence of proof of actual injury, students who have been suspended without due process of law are entitled to recover only nominal damages. This case issued a ruling that placed effective limits on money damage recovery for section 1983 suits.

In Carey v. Piphus, the Court clarified the nature and extent of the damages that could be levied by the courts. Justice Powell wrote the opinion. He explained that there was a limitation to the damages that were possible under this kind of action.

Justice Powell wrote that section 1983 was not intended to provide purely punitive relief whereby a court would punish the wrongdoer for ill deeds, but instead, the act was designed to compensate the victim for detriment and damage caused by the denial of constitutional rights. Compensatory damages of this nature are difficult to prove. The Supreme Court placed the burden of proof squarely on the shoulders of the plaintiff. If the absolute proof is not present, the individual is entitled to collect only nominal damages. The Supreme Court set these damages at one dollar.

The Court held that the basic purpose of damages under section 1983 should be to compensate persons for injuries incurred by the denial of constitutional rights. Violations of due process rights do not necessarily cause strong feelings of mental and emotional distress. An award of nominal damages recognizes the absolute right to procedural due process even when there is no proof of actual injury.

These two students were found to have been denied due process in their suspensions. Their request for monetary damages was limited to only nominal damages. The Court denied the more costly punitive or compensatory damages

unless the plaintiff could prove actual injury. Any civil rights violation is actionable under section 1983, but actual injury must be proven before anything more than nominal compensation can be received. The denial of due process rights is actionable for nominal damages without proof of actual injury. In the absence of proof of injury, the Court established a limit on the award.

BOARD OF EDUCATION OF ROGERS, ARKANSAS

v.

McCLUSKEY

Supreme Court of the United States, 1982

458 U.S. 966, 102 S. Ct. 3469

The Rogers School District in Rogers, Arkansas, had a rule that provided for mandatory suspension of any student who, on school premises, use, sell, are under the influence of, or possess narcotics or other hallucinogenics, drugs or controlled substances. A tenth grader left school after the first period without permission. Along with four other students, he consumed alcohol and became intoxicated. When he returned to school later that day to go on a band trip, he was notified that he was suspended from school.

The local board of education granted a hearing at which it voted to expel all five students for the remainder of the semester. Pete McCluskey, the tenth grader, sought

injunctive relief under 42 U.S.C. section 1983 in the United States District Court for the Western District of Arkansas. This court held that the school board had violated the student's right to substantive due process. The court concluded that alcohol is not included in the categories covered by the school board rule, and that, for this reason, the board had acted unreasonably by suspending the student under the rule.

The school board appealed the case to the United States Court of Appeals for the Eighth Circuit. This court affirmed the decision of the district court.

The Supreme Court of the United States granted certiorari and reversed the decision of the court of appeals. The Court asserted that both the lower courts had erred in "replacing a local school board's construction of its own rules." The district court had made its decision because it concluded that alcohol is not considered a drug in common parlance. The district court held that this made the judgment of the school board unreasonable.

The Supreme Court decided that a court could not substitute its own notions for the school board's definition of its own rules. It held that courts could not interpret a regulation of the officers who adopted it and are entrusted with its enforcement. Even though the rule did not mention alcohol specifically, the board considered it to be a drug and could invoke its automatic suspension penalty for

alcohol use. The Court pointed out that the district court had recognized alcohol as a drug in the technical sense.

Chief Justice Burger and Justices White, Blackmun, Powell, Rehnquist, and O'Connor expressed the views of the majority of the Court in a per curiam opinion. They held that the local board had interpreted its rule requiring mandatory suspension for drug use to include the use of alcohol since alcohol was a drug. Even though it was not specifically mentioned in the rule, the Court found that the board's interpretation of its own rule was reasonable and, therefore, reversed the decision of the court of appeals. The board's interpretation of its rule on mandatory suspension of students under the influence of drugs while on school premises to include the use of alcohol as a form of drug use was declared to be a reasonable exercise of authority by school officials.

The decision of the Court was not unanimous. A dissenting opinion was written by Justice Stevens who was joined by Justices Brennan and Marshall.

The dissent was not so much a disagreement with the Court's opinion in the case, but rather, a disagreement that the Court should have even heard the case. Justice Stevens contended that "this Court is not a forum for the correction of errors." The dissenters charged that the Court was doing an ineffective job in "supervising its discretionary docket."

This case was not considered by these three Justices to be of sufficient importance to be heard. It did not present questions whose resolutions would have immediate importance beyond the particular facts and parties involved. They considered the Court to be too busy to correct every error that is perceived in the thousands of cases which it is asked to review. Upholding a school board's power to enforce its suspension of a tenth grade student who had consumed too much alcohol, they saw, as not of sufficient national importance to require an opinion by the Supreme Court of the United States.

NEW JERSEY v. T. L. O.

Supreme Court of the United States, 1985

105 S.Ct. 733

In 1983 the United States Supreme Court agreed to hear its first case on student searches. The case, New Jersey v. T.L.O., has become a landmark case involving school officials' authority in student searches.

T.L.O., a fourteen year old high school freshman, was discovered, along with another student, smoking in the girls' lavatory. Because a school rule prohibited smoking, the teacher brought the two girls to the vice principal's office. After questioning by the vice principal, T.L.O.'s companion admitted to the smoking. T.L.O. denied the charge and claimed that she did not smoke at all. The vice

principal demanded to see T.L.O.'s purse. He opened it and found a pack of cigarettes. As he reached for it, he also noticed cigarette rolling papers. It had been his experience that these were closely related to the use of marijuana. He decided to search the purse thoroughly. He discovered marijuana, a pipe, some empty plastic bags, a substantial number of one dollar bills, and a list of people who owed T.L.O. money.

The vice principal notified T.L.O.'s mother and turned the evidence over to the police. T.L.O.'s mother brought her to the police station where she confessed that she had been selling marijuana at school. Based on T.L.O.'s confession and the evidence seized by the vice principal, a state juvenile court found her to be a delinquent child and sentenced her to one year on probation. The juvenile court denied T.L.O.'s motion to suppress both the evidence and her confession, ruling that the vice principal's search of the purse was reasonable under the fourth amendment. T. L. O. appealed her delinquency judgment to the New Jersey Superior Court. This court upheld the lower court's ruling that the student's fourth amendment rights had not been violated.

T.L.O. appealed further to the New Jersey Supreme Court. This court reversed the decisions of the lower courts. It held that the search of the purse was unreasonable because the vice principal had no grounds to believe the purse contained cigarettes. The New Jersey

Supreme Court went a step further. It held that the exclusionary rule prohibited a juvenile court from considering evidence which was unlawfully seized by school officials. The exclusionary rule prevents any court from allowing the use of evidence that was seized by police officers in violation of a person's fourth amendment rights.

The state of New Jersey then appealed to the United States Supreme Court. It sought a reversal of the New Jersey Supreme Court's ruling that the exclusionary rule applied to evidence unlawfully seized by school officials. The United States Supreme Court agreed to hear the case.

The Supreme Court was not sure how to proceed with the case. The case stayed on the docket for two years before the Court issued an opinion. The review had been granted only to rule on whether the exclusionary rule applied to unlawful student searches, however, the Supreme Court did not rule on that issue. Instead, it ruled only on the issue of what constitutes a reasonable search under the fourth amendment. Because the Court found that the search of T.L.O.'s purse was reasonable, it stated that there was no reason to decide on the applicability of the exclusionary rule.

Justice White delivered the opinion of the Court. He was joined in the majority by Chief Justice Burger and Justices Powell, Rehnquist, and O'Connor. The Court found that the New Jersey Supreme Court's ruling was defective

under the fourth amendment. Although the state supreme court had properly held that school officials needed only reasonable suspicion in order to conduct a student search, it had erred in holding that the search of T.L.O.'s purse was unreasonable. The Supreme Court stated that in order for a student search to meet constitutional standards, it must pass a two-pronged test. This is commonly referred to as the "reasonable suspicion" requirement.

Under the first part of this test, a student may be searched by a school official

> when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.

The second part of the reasonableness test requires that the

> search as actually conducted (be) reasonably related in scope to the circumstances which justify the interference in the first place.

For the scope of the search to be permissible, the search must be reasonably related to the objectives of the search. The search should not be excessively intrusive in light of the age and sex of the student and the nature of the infraction.

The Court held that this reasonableness standard could easily be applied to this case. The vice principal's decision to search the purse was justified by the teacher's report that the girls had been smoking in school. This

report gave the vice principal reason to believe that she had been smoking. Since T.L.O denied that she smoked at all, a search of the purse was necessary to determine her credibility. When the vice principal opened the purse and saw the cigarettes, it was not unreasonable for him to pick them up. When he did this, he noticed the rolling papers which provided reasonable suspicion that T.L.O. was carrying marijuana. A complete search of the purse was reasonable. The discovery of marijuana justified a thorough search of all the purse's compartments.

The Court found all these searches to be reasonable. It reversed the New Jersey Supreme Court's ruling and held that the evidence against T.L.O. had been properly admitted by the juvenile court. The student search was based on reasonable suspicion and therefore satisfied the fourth amendment. Because the search was upheld, the Court did not reach the question for which it had originally agreed to hear the case--whether the exclusionary rule applies. The exclusionary rule provides that evidence obtained through an illegal search or seizure may not be used in a court proceeding.

While the fourth amendment does apply to school officials, it applies only in a limited manner. Unlike searches performed by police officers, which must be based on probable cause, searches of students by school officials need be based only on a reasonable suspicion that the search

will reveal a violation of rules or produce evidence of an unlawful activity.

Justice Powell, joined by Justice O'Connor, wrote a concurring opinion. They agreed with the majority opinion, but also expressed the view that greater emphasis should be placed on the special characteristics of elementary and secondary schools that make it unnecessary to afford students the same constitutional protections granted adults and juveniles in a nonschool setting.

Justice Blackmun also wrote a concurring opinion. He expressed the view that the special need for an immediate response to behavior that threatens either the safety of school children and teachers or the educational process itself justified the Court in excluding school searches from the warrant and probable cause requirements. The standard should be determined by the balancing of relevant interests.

Justices Brennan and Marshall concurred in part, and dissented in part. They expressed the view that teachers, like all other government officials, must conform their conduct to the fourth amendment's protection of personal privacy and personal security. They held that the language of the fourth amendment compels that school searches are valid only if supported by probable cause. They expressed the view that the search in this case violated the student's fourth amendment rights.

BETHEL SCHOOL DISTRICT No. 403 v. FRASER

Supreme Court of the United States, 1986

106 S.Ct. 3160

A high school student in Bethel, Washington, delivered a speech nominating a fellow student for elective student office. The speech was delivered to a school assembly where attendance was required or students could report to study hall. Approximately six hundred students and teachers were present. Because the speech was filled with sexual innuendo, the student was suspended for three days, and his name was removed from a list of candidates for graduation speaker. He sued the school district claiming that his first amendment right to freedom of speech had been violated. The district court and the court of appeals found for the student.

The United States Supreme Court reversed the decision of the lower courts and held that the school's punishment of the student was proper. The Court held that the public schools may punish students who engage in "offensively lewd and indecent" speech.

In the nominating speech, the student referred to his candidate in terms of elaborate, explicit sexual metaphor. He had been advised in advance by two teachers that he should not deliver the speech. During the speech, a counselor observed students' reactions to include laughter,

graphic sexual gestures, hooting, bewilderment, and embarrassment. A teacher reported that she had to use class time the next day to discuss the speech.

The next day, Fraser was called to the office of the assistant principal. Here, he was notified that he had violated the school's disruptive conduct rule. This rule prohibited conduct that substantially interfered with the educational process. This included the use of obscene and profane language and gestures. When he admitted that he had deliberately used sexual innuendo in his speech, he was informed that he would be suspended for three days and that his name would be removed from the list of candidates for student speaker at graduation.

Fraser then filed suit in federal district court. He alleged that his first amendment rights to free speech had been violated. He sought injunctive relief and damages under 42 U. S. C. section 1983.

The district court agreed that his first amendment free speech rights had been violated. This court awarded him compensation for deprivation of his constitutional rights. He was also awarded litigation costs and attorney's fees. The court ordered the school district to allow the student to speak at graduation. The school's disruptive conduct rule was declared to be unconstitutionally vague and overbroad. The court of appeals rejected the school district's appeal and held that the district had failed to

prove that the speech had interfered with or disrupted the educational environment.

The school district appealed again, this time to the United States Supreme Court. The Supreme Court ruled that while public school students have the right to advocate unpopular and controversial views in school, that right must be balanced against the schools' interest in teaching socially appropriate behavior. A public school is an instrument of the state. It may establish standards of civil and mature conduct. The Court observed that such standards would be difficult to convey in a school which tolerated "lewd, indecent, and offensive" speech and conduct. The Court held that this student had displayed such conduct and that, as such, was not entitled to protection under the first amendment.

The Court held that the school has an interest in protecting minors from exposure to vulgar and offensive spoken language. The penalties in this case had nothing to do with a political viewpoint. Schools must have the authority to control this type of behavior if they are to provide an environment conducive to learning. The first amendment guarantee of free speech does not prevent a school from prohibiting vulgar and lewd speech. To allow this type of speech would undermine the purposes of the school and destroy its basic educational mission. The Court stated that a high school assembly is no place for a "sexually

explicit monologue directed towards an unsuspecting audience of teenagers." Quoting from Justice Black's dissent in Tinker, the Court said that it was not necessary under the Constitution for "teachers, parents and elected school officials to surrender control of the American school system to public school students."

The Court held that the respondent's claim that his fourteenth amendment rights to due process had been denied was without merit. It is necessary for schools to be able to impose disciplinary sanctions for a wide range of behaviors and conduct which disrupt the educational process. It is not necessary for school disciplinary rules to be as detailed as a criminal code which imposes criminal sanctions. The rule against obscene language and the advice of teachers against giving the speech were adequate warnings that the lewd speech could lead to sanctions.

The majority opinion was written by Chief Justice Burger. Joining him were Justices White, Powell, Rehnquist, and O'Connor. Justice Blackmun concurred in the result, but did not write an opinion. Justice Brennan concurred in the judgment. In his opinion, he disagreed that the remarks made by Fraser were as lewd and offensive as the Court had suggested. He contended that "schools do not have limitless discretion to apply their own notions of decency." Justice Brennan concurred in the judgment because he believed that

school officials did not violate the first amendment in determining that Fraser should be punished for his remarks.

Justices Marshall and Stevens each wrote dissenting opinions, Justice Marshall dissented because he did not think the school district had proven that the remarks had disrupted the educational process. The district had not brought evidence of substantial disruption to either of the lower courts. In absence of such evidence, Justice Marshall held that the decisions of these courts should stand.

Justice Stevens felt it highly unlikely that Fraser would have delivered the speech had he known that it would result in the penalties that were imposed. He also contended that free expression should prevail over school authority in an argument of this type. The Court had always used the standard of applying contemporary community standards in evaluating expressions with sexual connotations. Since the district and circuit courts were closer to the situation, they were in a better position to evaluate the speech.

The first amendment guarantee of freedom of speech does not prohibit public school officials from disciplining a high school student for giving a lewd and indecent speech at an assembly of other high school students. School rules can give students adequate warning that improper speech can lead to disciplinary sanctions being imposed. Suspension from

school or other disciplinary measures are not violations of the due process clause of the Fourteenth Amendment.

SUMMARY

Teachers, principals, and other public school officials often find it necessary to exercise some form of disciplinary measures on students. Student behavior often is in violation of school policy, local laws, or society's standards of decency. Forms of punishment most often litigated are corporal punishment and exclusion from school. This chapter has contained an examination of selected Supreme Court cases dealing with these punishments.

Improper use of punishment has not been the only question considered by the Court in these cases. Students have questioned violations of their right to free speech as guaranteed by the first amendment, their right to be free from unreasonable search and seizure as guaranteed by the fourth amendment, and their right to due process as guaranteed by the fourteenth amendment. As punishments were questioned, additional questions as to the deprivation of the rights of students with respect to these amendments were considered by the Court.

Each of the cases has something to say about the authority of school officials. Each case either strengthens this authority or weakens it. In the concluding chapter,

the effects of these cases on this authority will be evaluated and discussed.

TABLE 4

AUTHORS OF OPINION

CASE	MAJORITY	DISSENTING	CONCURRING
Goss v. Lopez	Justice White	Justice Powell	
Wood v. Strickland	Justice White	Justice Powell	
Baker v. Owen	Summarily Affirmed		
Ingraham v. Wright	Justice Powell	Justice White	
Carey v. Piphus	Justice Powell		
Board of Education v. McClusky	Per Curiam	Justice Stevens	
New Jersey v. T.L.O.	Justice White	Justice Brennan Justice Stevens	Justice Blackmun Justice Powell
Bethel School v. Fraser	Chief Justice Burger	Justice Marshall Justice Stevens	Justice Brennan

TABLE 5

DIRECTION OF THE COURT:

Parent Authority and Student Rights

v.

School Authority and Orderly Environment

Case	Direction
Goss v. Lopez	Student Due Process Rights
Wood v. Strickland	Student Due Process Rights
Baker v. Owen	Orderly Environment
Ingraham v. Wright	Orderly Environment
Carey v. Piphus	School Authority
Board of Education v. McCluskey	Orderly Environment
New Jersey v. T.L.O.	Orderly Environment
Bethel School v. Fraser	Orderly Environment

TABLE 6

COURT TREATMENT OF LOWER COURT DECISION

CASE	YEAR	RULING	MAJORITY	BLACKMUN	BRENNAN	BURGER	DOUGLAS	MARSHALL	O'CONNOR	POWELL	REHNQUIST	STEWART	STEVENS	WHITE
Goss v. Lopez	1975	5 - 4	Affirmed	d	m	d	m	m	**	d	d	m	**	m
Wood v. Strickland	1975	5 - 4	Affirmed	d	m	d	m	m	**	d	d	m	**	m
Baker v. Owen	1975	9 - 0	Affirmed	m	m	m	**	m	**	m	m	m	m	m
Ingraham v. Wright	1977	5 - 4	Affirmed	m	d	m	**	d	**	m	m	m	d	d
Carey v. Piphus	1978	9 - 0	Affirmed	m	m	m	**	m	**	m	m	m	m	m
Board of Education v. McCluskey	1982	6 - 3	Reversed	m	d	m	**	d	m	m	m	**	d	m
New Jersey v. T.L.O.	1985	6 - 3	Reversed	m/c	d	m	**	d	m/c	m/c	m	**	d	m
Bethel School v. Fraser	1986	7 - 2	Reversed	m/c	m/c	m	**	d	m	m	m	**	d	m

* A total of eleven Burger Court members were serving at the times these cases were decided.

** Was not on Court for this decision

m - majority
c - concurring
d - dissent

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

INTRODUCTION

Student willful misconduct is one of the major concerns of school officials today. The loss of a day's instruction because of student misconduct or because of discipline for misconduct impacts individual students, the school, and society. Teachers, administrators, and legislators have sought and continue to seek solutions to these problems.

This study has investigated willful student misconduct and the punishments inflicted because of this misconduct. The researcher has looked at corporal punishment and exclusion from school as punishments for several acts of misconduct. The research included a close examination of eight cases decided by the Supreme Court of the United States. The examination was done in an attempt to determine the direction of the Court during the Burger years. The findings of this examination will be reported later in this chapter.

A review of the literature was done in Chapter II. From a study of authority, the researcher developed a theoretical base for an understanding of clashes between two or more authority spheres, resulting in a conflict that must

be resolved. The resolution of these conflicts often results from litigation. In Chapter II, the researcher investigated the relationship of the courts to the resolution of conflict. Literature and research on the Supreme Court of the United States, in general, and the Burger Court, in particular, were examined to analyze the role of these bodies in the resolution of conflict.

In Chapter IV, the researcher examined the eight cases chosen for in-depth study. The cases were reported and analyzed in an attempt to determine the direction of the Supreme Court under the leadership of Chief Justice Warren Burger on the issue of school officials' authority to control student willful misconduct. These cases were chosen because they were landmark cases or because they were the first cases heard by the Supreme Court in the disputed area. What the Court had to say in these cases has had far reaching effects in the governance of the public schools of America.

SUMMARY

Authority of school officials over students rests on the constitutional and legislative provisions which created the schools and defined their powers. States allocate authority for control of schools to local boards and to local school officials. Any action taken by a school board or by school officials must be within legal limits imposed

by the state. Actions taken by these entities must provide those involved with their rights as guaranteed by the United States Constitution.

School discipline is at the core of a school system. A proper environment for teaching and learning must exist for the school to be able to accomplish the purposes for which it was established. The authority of school officials to control student misconduct and to administer discipline when necessary for the violations of school rules and regulations must be present if an orderly environment is to exist. School officials must have the authority to impose certain sanctions on the behavior of students in pursuit of these goals.

Prior to 1969, authority of school officials was not questioned in the Supreme Court. Tinker v. Des Moines put school officials on notice that their disciplinary rules must recognize the constitutional rights of students. Conflict emerged between two authority spheres. Students' rights and parental authority clashed with school officials' authority and the need for an orderly environment. Courts have played a vital role in the resolution of the question of which authority is legitimate or which interest is greater. Courts have been asked to determine and maintain the boundaries which serve to separate these authority spheres.

A casual observer could easily underestimate the influence of the Supreme Court on the American educational system. From the Marshall Court to the Rehnquist Court, the role of the Supreme Court in determining the course of American political life and American education has become increasingly significant. The Supreme Court has helped to determine the extent to which school officials have authority to control student behavior and the extent to which each student might enjoy constitutional rights while in contact with the established educational system.

A period of Supreme Court history is recognized by the Chief Justice during that period. Each court has had its own distinct personality. Most courts have been identified as being liberal or conservative. The Warren Court was characterized as being a liberal court. President Nixon's appointment of Warren Burger as Chief Justice of the United States was the beginning of what he hoped would become a law-and-order court. Whether a court is liberal and works toward an expanded role for government in protecting the public from the inequities in society, or conservative and calls for a limited role for government, it is limited by what the Constitution actually says.

The Supreme Court has heard cases dealing with whether school officials have the authority to impose certain punishments on students who violate rules and regulations. Punishments most often resulting in litigation have been

corporal punishment and exclusion from school. Constitutional questions most often litigated involve the first amendment guarantee of freedom of speech, the fourth amendment ban on unreasonable search and seizure, the eighth amendment prohibition of cruel and unusual punishment, and the fourteenth amendment guarantee that life, liberty, or property will not be threatened without due process of law. Litigation also has been brought under 42 U.S.C.section 1983 which makes parties liable for damages if they deny the civil rights of another.

Authority is the ability of one person or group to be able to control the behavior of another individual or group. The authority of school officials to control the behavior of students is handed down from constitutions to legislatures to school boards to school officials. The proper exercise of this authority may determine the extent to which school officials may keep the authority. Courts, when asked to do so, may strengthen or weaken the authority of school officials to enforce rules and regulations in school and impose discipline upon students.

Conflict is caused by the clash of two distinct points of view. When parents and/or students have a different point of view about methods school officials use to control students, conflict results. The authority of school officials to impose certain rules and regulations or certain types of punishment is questioned. When the conflict cannot

be resolved, courts are asked to provide a resolution. When the constitutional rights of students are in question or when there is a statutory or constitutional issue, courts hear the cases and render a decision.

Often the conflict is not settled until the Supreme Court of the United States hears the case. The decision handed down by this Court establishes law and defines the authority of school officials. The decision in each case heard affects this authority. The authority of school officials is either enhanced or diminished by each case. Several cases decided by a particular Court can determine a pattern for that Court. The purpose of this study was to ascertain current school officials' authority over students as it has been defined by the Burger Court. Through a study and analysis of eight landmark cases heard by this Court, questions concerning the current status of authority of school officials can be answered. Prior to the report of the findings, each of the research questions is stated.

Was the authority of school officials to use corporal punishment as a means of discipline for student misconduct enhanced or diminished by these landmark decisions of the Burger Court?

Many states specifically allow the use of reasonable physical force by school officials to restrain students guilty of misconduct. Corporal punishment is used to correct unacceptable behavior and to maintain the order necessary for the conduct of an educational program. There

are a few states that specifically prohibit corporal punishment as a means of correcting behavior.

If the laws of a state permit the use of corporal punishment, the courts, when asked to hear a case, have generally upheld the reasonable application of this form of punishment.

The Supreme Court heard two cases involving corporal punishment during the tenure of Chief Justice Burger. In Baker v. Owen, the Court ruled that teachers may paddle students in spite of parental opposition. Even though the parents have control of their children's discipline,

> the state has a countervailing interest in the maintenance of order in the school sufficient to sustain the right of teachers and school officials to administer reasonable corporal punishment.

The Court ruled in Baker that corporal punishment is constitutional if students are afforded certain procedural safeguards prior to its administration. Ingraham v. Wright, the other case heard by the Court that has become a landmark for corporal punishment cases, weakened the Baker v. Owen guidelines pertaining to minimal due process. In this case, where the punishment was certainly more physical, the Court held that the cruel and unusual punishment clause of the eighth amendment does not apply to corporal punishment in the schools. About due process, the Court said:

> We conclude that the Due Process Clause does not require notice and a hearing prior to the imposition of corporal punishment in the public schools....

The Court has been reluctant to find corporal punishment unconstitutional. It has also been hesitant to make the use of due process necessary before its administration. The authority of school officials to use corporal punishment as a means of controlling the misconduct of students was enhanced by these decisions of the Burger Court.

Was the authority of school officials to use suspension and/or expulsion as a means of discipline for student misconduct enhanced or diminished by these landmark decisions of the Burger Court?

School officials have the authority to use suspensions and expulsions to control the willful misconduct of students. This authority must be wielded with care so that the students affected are accorded their constitutional rights of due process. Failure to follow due process requirements can lead to reversals of the suspensions or expulsions and to the expunction of the records or proceedings from the student's files. School officials and school boards may also be liable for damages as a body or as individuals if they deny the constitutional rights of due process to students.

In 1975, the Supreme Court held in Goss v. Lopez that procedural rights of students faced with short term suspensions must be granted. Students must be given the opportunity to be heard prior to suspension from school. The suspensions in this case were not held to be

unconstitutional on their face. They were overturned because of the lack of due process afforded the students. Goss ordered the suspensions overturned and the statutes permitting students to be suspended without notice and hearing to be unconstitutional.

School officials argued that students have no constitutional right to a free education. The Court responded that the state of Ohio had created that right as well as a property interest in education when it established public schools and required students to attend. The Court stated:

> Neither the property interest in educational benefits temporarily denied, nor the liberty interest in reputation which is also implicated, is so insubstantial that suspension may be constitutionally imposed by any procedure the school chooses....

On the surface, it may have appeared that the Burger Court weakened the authority of school officials to control student behavior through exclusion from school in Goss. But closer examination shows that it was, at its worst for school officials, a middle-of-the-road decision. The Court made the short term suspension due process procedures fairly simple.

> At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be give some kind of notice and some kind of hearing.

The emphasis on "some" in this statement indicates that long and formal procedures need not be undertaken on simple short term suspensions. The Court went on to say:

> We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident... To impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities in many places, and, by diverting resources, cost more than it would save in educational effectiveness.

This statement indicates that the Court had sympathy with school officials. Even so, giving " effective notice and informal hearing ... will provide a meaningful hedge against erroneous action." This hearing would alert the disciplinarian to the existence of "disputes about facts and arguments about cause and effect." The Court also allowed for the immediate removal of a student if his presence posed a threat to persons, property, or the academic program.

The Court observed that this basic due process or allowing the student to tell his side of the story was what a "fair-minded school principal would impose upon himself in order to avoid unfair suspensions." The decision might have been frightening to school officials in 1975. However, the authority of school officials remained intact. This authority must be used reasonably and prudently, guaranteeing constitutional rights of students.

In another major 1975 decision, Wood v. Strickland, the Court again expanded the rights of students. It held that students may sue school board members for violating their rights under the Constitution. It said:

> ... (A) school board member is not immune from liability for damages under section 1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with malicious intention to cause a deprivation of constitutional rights or other injury to the student.

Board members enjoy qualified good faith immunity from suit. When they exceed their authority or act in derogation of it, they lose this immunity. In Wood, board members failed to give due process to students prior to expulsion. The Court ruled that the board's action violated the students' rights and were subject to damages. The Court recognized that board members are expected to know what settled law is and to abide by it. Board members cannot be excused for not knowing what the law is.

Although this case expanded the rights of students, it does not diminish the authority of school officials to suspend or expel students from school. It made sure that the constitutional rights of due process were protected. Board members and school officials are expected to know settled law and are expected to abide by it. The authority of school officials to discipline students was not harmed if

they act wisely and prudently within the laws that guarantee student rights.

In 1978, in Carey v. Piphus, the Court clarified the nature and extent of damages that could be levied by the courts. It placed the burden of proof of actual injury on the student. Even though the Court clarified Wood and restated the position that school officials could be held liable for violating the civil rights of students, it retreated somewhat by establishing that the award would be one dollar in absence of actual proof of injury by the student. Again, the Court did not diminish the authority of school officials to use suspension as a means of disciplining students. It stated with certainty that school officials must follow due process or be liable for monetary damages if the student could prove actual injury.

In another exclusion case the Court, in 1982, strengthened school officials' authority to discipline students. In Board of Education v. McCluskey, the Court ruled that a school board was justified in using its own interpretation of what constituted drugs. The school board had defined alcohol as a drug and suspended a student for alcohol use. The suspension was upheld. The authority of the school board was enhanced as it was given the power to interpret its own rule.

On the matter of suspension and expulsion, the Court took a middle-of-the-road position. It required due process

before exclusion from school, but set forth requirements that were not an undue burden on school officials. It held that school board members could be sued by students whose rights had been violated, but then made it very difficult for students to sue. The Burger Court recognized that students have rights in the school. It also recognized the need for school officials to have authority if they are to maintain order and direct the educational enterprise.

Was the authority of school officials to conduct searches and seize illegal property of students enhanced or diminished by these decisions of the Burger Court?

The United States Supreme Court has ruled that students are protected under the fourth amendment to the Constitution. However, in 1985, the Court greatly increased the authority of school officials in student search and seizure cases. The case was New Jersey v. T.L.O. The Court reaffirmed that school officials are subject to the fourth amendment.

> In determining whether the search at issue in this case violated the Fourth Amendment, we are faced initially with the question whether that Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by school officials. We hold that it does.

Although school officials are bound by the fourth amendment, they are granted an exception. School officials are not required to have a warrant prior to search and seizure. Rather, the legality of such searches will depend upon the reasonableness of the search in light of all

circumstances. There must be reasonable grounds to believe that the search will reveal a violation of school rules or produce evidence of unlawful activity. The Court used the following language:

> ...(T)he substantial need of teachers and administrators for freedom to maintain order in the schools does not require adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.

The Court held that this reasonableness standard was all that was required to allow searches and seizure. No warrant is necessary for search and seizure by school officials. Law enforcement officers are bound by the probable cause standard which is more stringent. The Court justified its opinion with the substantial interest of school officials in maintaining discipline in the classroom and on the school grounds. The Court stated:

> Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems ... Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.

Although the Court dealt only with the search of a student's purse, the opinion helped to strengthen the authority of school officials in controlling student willful misconduct. It reaffirmed the notion that the school is a

special place where students do not have to be treated as adults with all the rights that adults enjoy. The Burger Court, in T.L.O., enhanced the authority of school officials to conduct searches and seize property of students. Although that authority is not without limits, the authority of school officials to enforce rules of behavior that provide an environment conducive to good teaching and learning was strengthened.

Was the authority of school officials to control speech of students enhanced or diminished by these decisions of the Burger Court?

In Tinker v. Des Moines, the Supreme Court held that school officials could not exercise restraint over student speech except where a substantial disruption or material interference with school activities could be shown. This case had been the standard in the area of free speech rights since 1969. The decision in Tinker was handed down before Warren Burger became Chief Justice.

Free speech involves the constitutional issue of the right of students to express opinions as opposed to the right of school officials to establish reasonable rules in the operation of schools. The concept of free speech as stated in the first amendment to the Constitution extends to symbolic speech as well as pure speech. On Chief Justice Burger's last day as Chief Justice, the Court handed down its decision in Bethel School District v. Fraser. The court held in Fraser that the Constitution does not

protect a student's sexually suggestive speech in assembly or class. One function of education is to bar the use of vulgar terms in public discourse. The Court said:

> The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct ....

The first amendment does not protect students in the use of vulgar, lewd, and offensive language in public discourse. The Court gave school officials the authority to control this type of speech.

> Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions.... The determination of what manner of speech in the classroom or in assembly is inappropriate properly rests with the school board.

This decision gave school officials the authority to exercise broad discretionary authority in determining what is inappropriate speech for students and to discipline them for using it.

Fraser did not overturn the decision of the Court in Tinker. It stated that Tinker contained a political message while Fraser's speech involved sexual innuendo. Tinker involved non-disruptive, passive expression of a political viewpoint. Fraser interfered with the work of the school and the rights of other students. There was no substantial disruption or material interference in Tinker. Both were present in Fraser.

The authority of school officials to control willful misconduct of students using indecent speech was

strengthened by the Court in Fraser. Schools must respond to a wide range of unanticipated conduct. The Burger Court, with its decision in Fraser, allowed school officials to enforce limits on student speech.

Was the authority of school officials to control the behavior of students enhanced or diminished by these decisions of the Burger Court?

The Burger Court was in session for seventeen years. During this time it handed down many decisions concerning education. Many of these decisions will have lasting impact on the authority of school officials.

The Burger Court began as a middle-of-the-road court. Each case was treated individually without a significant pattern being established. As the years passed, the Burger Court became more conservative, allowing greater latitude on the part of school officials to control the conduct of students. This was true, in part, because of changes in the membership of the Court, and, in part, because of the rise in a more conservative national conscience during the presidency of Ronald Reagan.

This researcher concludes that authority of school officials was strengthened by the decisions in these eight cases. Even in Goss and Wood, which on the surface would appear to diminish this authority, the Court established guidelines that only a prudent school official would use without the mandate. Each of the other cases analyzed clearly enhanced the authority of school officials

to control the willful misconduct of students. School officials were granted greater protection and freedom in their decision making processes.

CONCLUSIONS

The following conclusions are drawn from the analysis of the selected cases heard by the Burger Court:

(1) The Supreme Court has been reluctant to find corporal punishment unconstitutional.

(2) The Supreme Court has been hesitant to make the use of due process necessary before the administration of corporal punishment.

(3) The authority of school officials to use corporal punishment as a means of controlling student misconduct was enhanced by these decisions of the Burger Court.

(4) School officials have the authority to use suspensions and expulsions to control the willful misconduct of students.

(5) Due process rights of students being excluded from school were strengthened by these decisions of the Burger Court.

(6) Although the Courts' decisions in Goss and Wood expanded the rights of students, the decision did not diminish the authority of school officials to suspend or expel students from school.

(7) The opinion of the Court in T.L.O. strengthened the authority of school officials to control student willful misconduct.

(8) The Burger Court enhanced the authority of school officials to conduct searches and seize property of students.

(9) The authority of school officials to control the willful misconduct of students using indecent speech was strengthened by the Court in Fraser.

(10) As the years passed, the Burger Court became more conservative, allowing greater latitude on the part of school officials to control the conduct of students.

(11) The authority of school officials was strengthened by the decisions in these eight cases decided by the Burger Court.

(12) The Burger Court granted greater protection and freedom to school officials in their decision making processes.

RECOMMENDATIONS

The following recommendations are for the consideration of school officials as they attempt to develop and enforce rules and regulations to control student behavior:

(1) Use corporal punishment as a punishment of last resort. Even though the courts have clearly allowed its use, the potential for suit is great because of the controversy its use engenders.

(2) If corporal punishment is to be allowed, adopt a policy based on guidelines set forth in Baker v. Owen. If such a policy is adopted and implemented, the force will be reasonable, and courts are unlikely to intervene.

(3) Be aware that young people are increasingly demanding the reasons underlying the adoption of rules and regulations governing their conduct. Be prepared to deal with conflict and possible litigation if rules are unreasonable or are in violation of student rights.

(4) Be sure that decisions pass the test of reasonableness. If a rule or its enforcement is deemed reasonable, the courts typically hold for the school official.

(5) Follow due process requirements. Suspensions may be reversed, records expunged, lawsuits brought, and damages awarded if due process rights are denied.

(6) If a search and seizure seem necessary, be sure that there is reasonable suspicion in light of all the circumstances. There must be reasonable grounds to believe that the search will reveal a violation of school rules or produce evidence of unlawful activity.

(7) Recognize that limits in speech may be enforced. Speech is not protected if it causes a substantial disruption or material interference with school activities.

(8) Provide due process before corporal punishment is administered. Even though it may not be legally necessary, it still provides a measure of protection for school officials.

(9) Be constantly alert to changing trends brought about through new decisions in cases involving student rights.

Student willful misconduct and authority of school officials to control this misconduct is a constant concern of school officials, parents, and students. It is likely that there will be a continuing conflict brought on by the clash between parental authority versus school officials' authority and student rights versus an orderly environment. As a result, measures to resolve these conflicts satisfactorily will continue to be an area of importance for educational research. The following recommendations are made for further study:

(1) It is recommended that a study be made of the Rehnquist Court as it hands down its early cases. Several members of the Court are getting old. Who chooses their replacements may have an influence on the authority of school officials.

(2) It is recommended that a study be made of student willful misconduct and its effect on the school program.

(3) It is recommended that a study be made on kinds of student misbehavior and school official resolution of it to ascertain if officials are complying with Supreme Court decisions.

(4) It is recommended that a study be made of school board members' knowledge of the constitutional rights of students in disciplinary proceedings.

(5) It is recommended that an analysis be made of policies of selected school systems to ascertain if they comport with governing court decisions.

(6) It is recommended that a study be made of attitudes of selected school students on the issues of school officials' authority versus student rights on stated disciplinary issues.

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