Illinois School Law Quarterly

Mission Statement

The primary purpose of the Illinois State School Law Quarterly is to provide a forum for the interchange of ideas, theories, and issues on various aspects of school law among practitioners, professors, and attorneys. The emphasis is on analyzing issues in school law for the purposes of developing new theories to explain current and past developments in the law and to provide the theoretical framework which can be used to anticipate and predict future developments in school law.

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Author: Robert Fitzgerald
Faculty Associate
University High School
Illinois State University

Student Rights in Modern America:
A Review of Supreme Court Cases from 1962 *to Today and Their Impact on Public School Administrators*

Background

With the writing of the Constitution in 1787 and the inception of the government it created by 1789, the United States of America became a republican-democracy. This was a revolutionary form of government where sovereignty and power rested in the hands of the people. Because of the responsibility delegated to the people under this system, the issue of education quickly became relevant to America's survival.

During the Jeffersonian Era, it was the responsibility of mothers to teach their children republican virtues. Only a few people outside of the privileged elite had the opportunity for a formal education. This changed during the Jacksonian Era. Through the efforts of pioneers in education like Horace Manu, the United States began its move towards free, universal, public education. With this movement came the responsibility of educating young people in the virtues and values of the American republic.

American republican principles are rooted in the fundamental philosophy of the natural rights of man outlined by John Locke in his *First Treatise of Government.* They are more commonly known by their usage in Thomas Jefferson's Declaration of Independence. Jefferson outlined the natural rights of man that we have grasped so tightly during our two-century existence. These rights were expounded upon in the Constitution, specifically in the first ten amendments that followed its ratification, more commonly known as the Bill of Rights.

For more than one-hundred and fifty years, these rights had been quietly, for lack of a better word, ignored in America's public schools. Much of that ignorance was rooted in the intentions of public schools. As

immigrants flooded into America during the 19th and 20th century, assimilation assistance became an essential part of the public school process. There was no more effective medium to turn immigrants into Americans than public schools. Suppression of civil liberties was an effective way to more rapidly encourage the assimilation of all students.[i]

The overly authoritative and widely parent-supported public schools of the 1950s were the culmination of this suppression.[ii] And then things began to change. The activist nature of the 1960s and America's move towards greater social consciousness caused students to challenge the existing norms and policies in their public schools.[iii] These challenges culminated in a series of Supreme Court cases over the past forty years that have had a profound impact on our public education system. This paper is an analysis of the major cases decided by the court during this era and the impact these decisions have had on educational administrators and their leadership in modem public schools.

Introduction

Since 1962, the Supreme Court has issued rulings in more than twenty major cases regarding education and the rights of students. To be an effective administrator, one must be aware of the major cases and the rulings of the court because of the impact they have had on the manner in which public schools operate. The culture and climate of each school will naturally playa role in administrative practices, but knowledge of the decisions addressed in each of the following Supreme Court cases will create better, more prepared and more capable administrators.

Most of the cases that were heard during this era dealt with the provisions of the First, Fourth, Eighth, and Fourteenth Amendments of the United States Constitution. The First Amendment protects the free practice of religion, speech, press, petition, and assembly. The Fourth Amendment

provides protection from illegal searches and seizures, inherently establishing the right to privacy. The Eighth Amendment prohibits cruel and unusual punishment. And, the Fourteenth Amendment protects citizens by prohibiting the states from violating any civil liberties without due process of law while providing every citizen with equal protection under the law.

Though these began simply as fundamental freedoms necessary to maintain a liberated republican society, they have become ambiguous areas of concern for the Supreme Court in cases stemming from educational practices. Of the above four mentioned amendments, each has been addressed during the past forty years in at least one major case argued before the court in an educational context. As 21st century students continue to become more cognizant of their rights, administrators need to stay educated about what they can and cannot do with regards to those rights in their educational environments. Comprehending the decisions provided in the following Supreme Court cases may help administrators do just that.

First Amendment Cases

"Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press; or the right of the people to assemble, and to petition the Government for redress of grievances."[iv]

In 1962, the Supreme Court ruled in *Engel v. Vitale* that state-sponsored prayer in public schools was unconstitutional due to a violation of the First Amendment's Establishment Clause. The case arose out of a decision made by the New York state Board of Regents and its authorship of a non-denominational prayer to be used in public schools. The prayer was challenged by the parents often students from Union Free School District No.9 who found the prayer to contradict their beliefs and religious practices. The prayer was supported in the New York court system on the

grounds that the prayer was not a mandatory requirement for New York public school students. The case was then appealed to the Supreme Court.

The major question before the court was whether or not a voluntary, state- sponsored, non-denominational prayer for use in public schools was in violation of the Establishment Clause of the First Amendment of the Constitution. The applicability of the Fourteenth Amendment was also addressed due to the authorship of the prayer being the Board of Regents, an agency of the state of New York.

In the opinion written by Justice Black, the court ruled that the Board of Regents' prayer was in violation of the Establishment Clause. Justice Black stated, "by using its public school system to encourage recitation of the Regents' prayer, the State of New York. ..adopted a practice wholly inconsistent with the Establishment Clause. ..(and) it is no part of the business of government to compose official prayers for any group of American people."[v]

The school district's rebuttal was based on claims that the prayer did not promote a specific religious denomination and students were not forced to participate. The court refuted these arguments, stating, "neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause."[vi]

Addressing the historical implication of the state-sponsored prayer in any context, Justice Black stated that, "(the) very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America."[vii]

This decision answered the question of whether or not religion in the form of a state-sponsored prayer has any place in public education; it did not address the issue of district-sponsored prayer, leaving the door open for future confusion and confrontation for administrators. This issue

was not decided upon until thirty years later in the more recent case of *Lee* v. *Weisman* (1992).

In 1992, the Supreme Court ruled in *Lee* v. *Weisman* that district-sponsored prayer in public schools violated the Establishment Clause. This case dealt with a public school district in Rhode Island whose administrators had invited religious officials to perform prayers at both the graduation ceremonies of the middle and high schools. The father of Deborah Weisman, a middle school student who was participating in the ceremonies, sought an injunction against the district, prohibiting them from performing the district- sponsored prayer at graduation. A temporary restraining order was denied by the court, and the graduation ceremony occurred with the invocation and benediction, recited by a rabbi who had been advised by the district that the prayer should be nonsectarian. Afterwards, the Weisman family sought a permanent injunction to prohibit school officials from inviting clergy to recite prayers at future graduation ceremonies. Both the district and circuit court of appeals ruled in favor of the injunction, stating that the performed prayers were in violation of the First Amendment's Establishment Clause. The case was then appealed to the Supreme Court.

Similar to the issue at hand in *Engle* v. *Vitale*, the primary question in this case was whether or not a district or school-sponsored prayer performed at public school graduation ceremonies violated the Establishment Clause. In a five to four decision, the court ruled that inclusion of prayers in a public school ceremony was coercive and forced students into a religious practice.

In his opinion, Justice Kennedy made the distinction that public schools and their principals are effectively agents of the state, making them bound by the Fourteenth Amendment to protect students from civil liberty violations. In addressing the argument made by the school district that the prayer was voluntary and non-denominational, Justice Kennedy

stated, "the school district's supervision and control of a high school graduation ceremony places subtle and indirect public and peer pressure on attending students to stand as a group or maintain respectful silence during the invocation and benediction."[viii]

When presented with the proposal of the district court that students were not required to attend graduation and therefore can be subjected to district-sponsored prayer, the court issued a strong refute. The school district argued that because of the importance of the event, the formal prayer should be allowed. The court reversed this statement in their favor, stating that it was one of the fundamental reasons why the district's argument failed. Here the court acknowledged the importance of a graduation ceremony in the life of a student, stating that, "absence would require forfeiture of those intangible benefits which have motivated the student through youth and all (their) high school years" and "the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice."[ix]

The *Lee* decision provided clarity to the court precedent established thirty years earlier in *Engle.* Not only was non-denominational and non-mandatory state-sponsored prayer prohibited in public schools, so too was similar district-sponsored prayer at school ceremonies. But like the decision in *Engle,* the declarations of the court in *Lee* did not apply to every situation. The court received the opportunity to expound on its earlier precedents in 2000 when it declared district-sponsored prayer at athletic events unconstitutional in *Santa Fe School District* v. *Doe.*

This case dealt with a traditional practice in the Santa Fe school district where the chaplain of the student council, a student elected official, would deliver a prayer over the public address system prior to the start of every home football game. In April of 1995, one Mormon and one Catholic family whose children were students in the school district

sought a temporary injunction against the district, claiming that the district's policies were violating the Establishment Clause, and not just in regards to the prayers at football games. Prayer at graduation ceremonies, promotion of specific religious meetings, ridiculing of students of certain denominations, and distribution of Gideon Bibles on school grounds were also claimed by the respondents as violations of their First Amendment rights. Out of fear of potential harassment, the respondent families were permitted the right of anonymous litigation under the name Doe by the district court.

In addressing the issues presented before it, the district court decided initially to provide guidance to the school district. With regards to the prayer offered at graduation ceremonies, the court aff1fmed the right of the district to encourage such prayer if the presenter was a senior student selected by a majority of their classmates and the prayer was nonsectarian in its orientation. In response the court's directive, the school district issued a series of policies over a four month period in 1995. The culminating policy, which was issued in October, dealt with the prayer performed at football games. The policy provided for two student elections, the f1fst to decide whether or not there should be a prayer recited at football games, and the second to select a student to perform the prayer. It was the constitutional validity of this policy that was challenged by the petitioning party.

With regards to the district's policy about prayer recited at graduation and football games, both the district and appellate courts ruled in favor of the Does. Citing the Supreme Court's *Lee* decision, both courts found that prayers performed at graduation ceremonies, regardless of the voting performed by students, were coercive and forced students to participate in religious practices. With regards to the prayers performed at football games, the lower courts were at a difference of opinion. The district court ruled that the school district's policies regarding

student-led prayer at football games did not fall under the constitutional precedent established in *Lee.* The appellate court reversed this decision, at which time the case was then appealed to the Supreme Court.

With little analysis of the information presented before it needed, the court upheld the decisions of the lower courts. Because the constitutional precedent regarding school-sponsored prayer at graduation ceremonies had previously been established by the decision in *Lee* v. *Weisman,* the court refused to readdress the issue. In fact, the court only agreed to grant the case a petition for certiorari on the grounds that the question be limited to school-sponsored prayer at football games and its relationship to the Establishment Clause.

Utilizing an argument from *Lee,* the school district claimed that the prayer did not violate the First Amendment because it was nonsectarian in its message. Its basis for this argument was the election process which allowed the prayer and prayer-giver to be chosen by the majority of students at the school. Addressing these arguments in the majority opinion, Justice Stevens stated, "while Santa Fe's majoritarian election might ensure that most of the students are represented, it does nothing to protect the minority; indeed, it likely serves to intensify their offense."[x]

The school district's rebuttal was that the policy regarding the prayer at school football games made not mention of praying. Instead, the words used in the policy to describe the event were "message, statement, and invocation." The policy also stated that the intent of the message was "to solemnize the event." The court addressed both of these arguments by stating, "a religious message is the most obvious method of solemnizing an event" and "the expressed purposes of the policy encourage the selection of a religious message, and that is precisely how the students understand the policy."[xi] With such statements as support, the court upheld the decision of the appellate court, ruling the district's policy concerning

school-sponsored prayer at football games in violation of the Establishment Clause.

The *Santa Fe* decision provided much needed clarity to the previous decisions of the court regarding the role of prayer in public schools. Coupled with both *Engle* and *Lee*, this decision leaves little argument as to what the role of administrators is when faced with prayer-oriented confrontations. A combination of all three cases has made it easier for administrators to evaluate district policies and decide whether or not they comply with constitutional guarantees provided by the Establishment Clause.

In both the *Lee* v. *Weisman* and *Santa Fe* v. *Doe* decisions, as in many other recent decisions regarding the Establishment Clause and its relationship with public education, the court used a test established in the case *Lemon* v. *Kurtzman* (1971). The Lemon Test, as it is now known, is the key for administrators when evaluating whether or not a school policy may be crossing into the boundaries of the Establishment Clause and in violation of their students' constitutional rights.

The Lemon Test sprang out of a case dealing with Pennsylvania and Rhode Island statutes that were providing aid, either in the form of salary reimbursements or instructional materials, to private schools. Though the primary issue was salary oriented, the outcome clarified the *Engle, Lee, and Santa Fe* decisions, providing administrators a much clearer picture on how to address similar situations in their districts.

The Lemon Test is comprised of three criteria administrators can use to evaluate policies and their relationship to the Establishment Clause. These criteria are: 1) Is the policy secular in its intentions and purposes? 2) Does the policy either advance or inhibit religion or religious practices? 3) Does the policy encourage an excessive entanglement between government and religion?[xii] By using the Lemon Test and understanding the decisions made in cases mentioned above,

administrators can be more appropriately prepared to make better decisions and take action when dealing with religiously oriented policies and situations.

All of the four cases mentioned above impact how administrators effectively operate their schools. Though the court's decisions have acknowledged that both state and district-sponsored prayer is unconstitutional, we know for a fact that it is still going on in many public schools. So how are administrators supposed to react when confronted with either of the two in their district? The Lemon Test is a good place to start. Coupled with utilization of this test, a careful evaluation of the values of the district you work in, the policies set by the board of education, and an understanding of the court decisions relevant to the situation will allow administrators to make appropriate choices that acceptable in their schools.

Though the First Amendment's Establishment Clause has garnered a significant amount of attention from the Supreme Court over the last forty years, it is not alone on its controversial plateau. Like the Establishment Clause, the Freedom of Speech Clause has provided ample opportunities for the Supreme Court to review and clarify its role in contemporary public education settings.

Sadly enough, there may be no constitutional clause more ambiguous, misunderstood, or misinterpreted than the First Amendment's Freedom of Speech Clause. Originally created and intended to protect political speech and governmental opposition from criminal prosecution and libel or slander suits, the Freedom of Speech Clause has been engulfed by Americans as a carte blanc for their personal profession of opinions and ignorance. Though our government has controversially suppressed this freedom multiple times throughout its history in order to ensure domestic tranquility or provide for the common defense, the events of the 1960s and social conscience movement that coincided with this era made young American

adults more aware of their freedoms, especially speech and expression, and the role that government and schools play in protecting or inhibiting those freedoms.

The first contemporary Supreme Court case to address the issue of freedom of speech and expression in an educational environment was *Tinker* v. *Des Moines* (1969), where the right of symbolic speech as a form of protest was protected in public schools. This case dealt with three students and their families in Des Moines, Iowa who decided to display their objection to the Vietnam War by wearing black armbands as symbols of protest. The school district found out in advance about this decision, at which time principals met and established a policy providing for the removal of armbands and suspension of anyone who did not abide by the request to do so. This did not prevent the three students from wearing armbands to school, at which time all three were suspended and sent home until they agreed to comply with the policy. This action caused the parents of the students to seek an injunction against the school district and principals.

At the district level, the requested injunction was denied. The district court held that the school district's armband and suspension policy was in fact constitutional because it was in compliance with the district's right to prevent disturbances from occurring in their schools. At the appellate level there was an equal division of justices, causing the affirmation of the district court's decision. The case was then appealed to the Supreme Court.

The initial question before the court was whether or not the district's policy pertaining to the banning of armbands, arguably symbolic forms of expression or protest, was in violation of the First Amendment. The court needed very little direction on this matter and frequently cited *West Virginia v. Barnette* (1943) which had held that forcing students to salute the flag was a constitutional violation.[xiii] At the same time, the

court restated its previous recognition of the right and duties of schools to both establish and enforce rules of conduct, so long as they abide by constitutional guarantees. The real question the court had to answer dealt with the argument made by the school district; that the reason behind the policy and the subsequent suspensions of the students was the potential disruption of the school environment.

In a seven to two decision, the court reversed the lower courts' decisions, stating that the wearing of armbands as a form of symbolic protest was protected by the First Amendment. The court addressed the question of constitutionality through Justice Fortas, in his majority opinion, which outlined six points of emphasis for schools and administrators to be aware of when dealing with issues of expression and speech. They are: 1) The armbands were as close to pure speech as possible and did not cause a disturbance; 2) Both teachers and students do not check their constitutional rights at the door when they enter schools; 3) Freedom of expression and speech cannot be infringed upon because of a threat of possible disturbance; 4) Administrative policies dealing with this type of expression must be content neutral and not target one group; 5) Administrators are not the final, absolute, and only authority in the lives of students; 6) Students rights are protected by the Constitution unless they cause disruptive behavior.[xiv]

The impact of this decision on school administrators is significant in that it provides a blueprint of analysis for questions regarding student expression. If administrators use the six outlined points of emphasis to decipher whether or not a student's expressive behavior, speech, or attire causes disruptive behavior, they can protect themselves from violating student freedoms in this context. Administrators need to remember that when making decisions regarding student actions and behaviors, they must first be able to prove that the behavior is

disruptive to the school environment. Anticipation of disruption is not enough to justify such an action.

The Supreme Court elaborated on the decision of *Tinker* in 1986 when it ruled in *Bethel School District No.403* v. *Fraser* that obscene speech in public schools was not protected under the Freedom of Speech Clause. This case dealt with a student in Bethel, Washington who gave a campaign speech in favor of a classmate that included subliminal graphic and sexual metaphors at a required assembly in front of the student body. The student was notified by teachers ahead of time that the speech was inappropriate and would probably warrant some sort of consequence. The student went ahead with the speech despite these warnings.

Upon confrontation with the principal, the student admitted that the speech was filled with sexual innuendos and was given a two day suspension by the school's hearing officer. The student was also informed that he would not be eligible to speak at graduation ceremonies, at which time he appealed his suspension through the procedures outlined in the district's grievance policy. The result of this appeal was a determination that the speech had violated a disciplinary policy of Bethel High School regarding profanity and obscenity in language and gestures. The student then served the required suspension.

The father of the student appealed the suspension to the district court, arguing that his son's First and Fourteenth Amendment rights were violated by the school district. His argument under the First Amendment was that his son's freedom of speech was being inhibited by the school. With regards to the Fourteenth Amendment, which provides equal protection under the law, the father argued that the removal of his son's name from the list of possible graduation speakers was unwarranted since the school's policy regarding offensive behavior did not mentioned it as a possible form of punishment.

The school district argued that the speech was offensive in nature and had a disruptive impact on the school environment and the learning process of other students. It also argued that because the assembly was a school-sponsored activity, the school had the right to control the language and regulate the content of the speeches given, and administer suspension plus removal from the graduation speaking list as an adequate means of punishment. All of these arguments were rejected in the district and appellate courts, which held that the respondent's First Amendment rights were violated, the school's obscenity code was ambiguous and unclear, and the removal of the student's name from the graduation speaking list was in clear violation of the Due Process Clause of the Fourteenth Amendment. The case was then appealed to the Supreme Court.

In the majority opinion written by Chief Justice Burger, the court reversed the decisions of the lower courts. The court acknowledged the precedent established in *Tinker* v. *Des Moines* regarding protected speech in public schools, which was the constitutional precedent used by the inferior courts, but clarified the difference between symbolic protest and sexual content as protected by the First Amendment. Chief Justice Burger expressed the duties of American schools stating that, "the process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class… (and) 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."[xv]

With regards to the claim made by the respondents that the Due Process Clause of the Fourteenth Amendment was violated by the administered punishment, the court also ruled in favor of the district. In addressing this issue, the court cited its decision in *New Jersey* v. *TL.O.* (1985) which acknowledged the ability of schools to maintain security and order in their buildings with a certain degree of latitude.[xvi] Chief

Justice Burger elaborated by stating, "given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions."[xvii]

As it did in *Tinker*, the Supreme Court once again recognized the rights of students protected in the First Amendment. But in *Bethel*, it more importantly provided clarification of what is and is not acceptable forms of speech and expression in a public school environment. Similar to the cases regarding the Establishment Clause, the *Tinker* and *Bethel* precedents do not answer every question. In the more recent case of *Hazelwood School District* v. *Kuhlmeier* (1988) the court had an opportunity to expound on its earlier decisions.

In 1988 the Supreme Court ruled in *Hazelwood School District* v. *Kuhlmeier* that speech in the form of school promoted newspapers was not protected by the Free Speech Clause of the First Amendment. This case dealt with three students attending a public school in St. Louis who were staff members of the school newspaper, the *Spectrum*, which was written, edited, and published by the Journalism II class. These students sought action against the district when two pages of text from the newspaper were deleted prior to publication. The articles in question, which were requested to be deleted by the school principal, focused on pregnancy and the impact of divorce on students. Both articles dealt with students at the school, but used anonymous names.

The principal argued that both articles violated the privacy of the students and families referred to in the articles. The district court agreed with the principal and supported his deletion of the articles. The appellate court reversed this decision, stating that the school paper was more than part of the curriculum; it was a public forum protected under the freedoms established in the First Amendment. The appellate court also

stated that in order for the school to be able to censor the articles, it had to show that the publication of the articles would result in a civil liability for the school. The court ruled that no civil action was warranted by the content of the articles, therefore the articles should not have been struck from the newspaper. The case was then appealed to the Supreme Court.

The question the court had to deal with was whether a school district is required to promote, not tolerate (as was the case in *Tinker),* student speech under the First Amendment. In a decision written by Justice White, the court reversed the appellate court's ruling. Citing frequently *Tinker* and *Bethel,* Justice White and the majority of the court recognized once again that the constitutional rights of students are not left behind when they walk in the doors every morning. In addition though, the court found the rights of students are not totally equal to the rights of other citizens in non-school settings.

The foundation of the court's decision was its disapproval of the appellate court's statement that the *Spectrum* was a public forum and therefore protected under the First Amendment. In his majority opinion, Justice White stated, "school officials did not deviate from their policy that production of Spectrum was to be part of the educational curriculum."[xviii] Here the Supreme Court recognized the legitimacy of the school board's policy and curriculum, acknowledging the *Spectrum* as being a part of the Journalism II course, not a public forum. To publish the questioned articles would have been promotion, not toleration, of student speech. Therefore, the suppression of the articles was not a violation of the students' First Amendment rights. This is the lesson administrators must learn when dealing with speech and expression issues.

Though it is ambiguous, the difference between promotion and toleration must be understood by administrators, for it is the key to making constitutionally inept decisions pertaining to their students. With

regards to religion, administrators must be weary of all potential policies that might be construed as promotion. Toleration is an acceptable practice, so long as toleration is provided to all interested parties. The same holds true for expression. Administrators must tolerate the rights of expression maintained by students, so long as those rights do not cause a disruption of the school environment. More importantly, toleration becomes a mute point when it falls into the category of school sponsorship of unwarranted opinions in violation of school policy.

Fourth Amendment Cases

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated…but upon probable cause."[xix]

There may be no amendment to the Constitution rooted more in the colonial struggles of the Revolutionary Era than that which provides our inherent right to privacy. Though it was originally drafted to protect English colonists from writs of assistance issued by the crown, the Fourth Amendment has evolved over time and is currently incorporated into our modern public education system. In the litigious era in which we live and work, it is essential that administrators know the foundations of this amendment, the rulings of the Supreme Court relevant to it, and the impact that these rulings have on contemporary educational leadership.

In 1985 the Supreme Court made its first major ruling regarding the Fourth Amendment and public schools in the case *New Jersey* v. *T.L.*O when it declared the search and seizure of a student's property a constitutional violation. The case involved two girls in a New Jersey high school who were found smoking in a restroom. The two girls were escorted to the assistant principal's office where one of the girls admitted to smoking. T.L.O. however, a fourteen year old student, protested that she was not smoking and that she did not smoke at all. The assistant principal

then escorted T.L.O. into a separate private office where he asked to see the contents of her purse. Per the assistant principal's instructions, T.L.O. handed her purse over for inspection. Included in the contents of the purse was a pack of cigarettes.

Upon closer inspection of the purse, the assistant principal found rolling papers, which he believed to be a sign of marijuana use. This finding urged the assistant principal to continue, upon which he found marijuana, a pipe, a significant amount of money, a note card which included names of students who owed T.L.O. money, and two letters implying that T.L.O. was selling marijuana. At that point, the student's parents were notified and the confiscated contents of the purse were turned over to the police. At the request of the police, T.L.O.'s parents allowed her to be interviewed where she confessed to having sold marijuana. T.L.O. was then prosecuted by the state as a juvenile offender.

At the trial, T.L.O. argued that the investigation and search of her purse by the assistant principal had violated her Fourth Amendment freedom from illegal searches and seizures. Therefore, the evidence found in the search and the subsequent confession of guilt should have been deemed inadmissible in court. The juvenile court, in which she was tried, refused to accept this motion, arguing that although students were protected from illegal searches and seizures in public schools, a school administrator may conduct a search on the foundations of reasonable cause and maintenance of a disciplined school environment.

The court ruled that the evidence gathered from the assistant principal's search was admissible. T.L.O. was found guilty and sentenced to one year of probation. The decision made by the Juvenile Court was eventually overturned by the New Jersey Supreme Court, which ordered the evidence found in the search of T.L.O.'s purse suppressed. The case was then appealed to the Supreme Court where the decision was overturned.

The constitutional question posed to the court in this case was whether or not public school administrators have the right to suppress the Fourth Amendment's prohibition of unreasonable searches and seizures in order to maintain a disciplined school environment. In its decision, written by Justice White, the court held that school administrators do not have such a right. The court did recognize the importance of a disciplined environment and the difficulty of maintaining such an environment. In doing so, they diffused the argument made by students that school administrators had no power what so ever to conduct searches and seizures, constituting a violation of student privacy.

With regards to searches being conducted in public schools, Justice White stated, "the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search."[xx] This phrase replaced the "probable cause" necessity of the Fourth Amendment with "reasonable suspicion" in public schools. In order to determine the reasonable nature of a search, the court provided two questions for administrators to consider: 1) Was the action (search) justified at its inception? 2) Was the search conducted in a manner reasonably related to the circumstances that justified it in its inception?[xxi]

If administrators use the court's questions to assess a situation that may possibly necessitate a search, they will be able to properly determine whether or not the search is reasonable and appropriate within their school. The decision of the court in this case provides administrators with fairly good guidance, but it does not answer every question regarding cases stemming from Fourth Amendment guarantees. In fact, the current issue surrounding reasonable searches and seizures in public schools is compulsory drug testing, which is of a totally different nature than that addressed in *T Lo* 0. One of the more current cases argued before the court on the issue of drug testing was *Vernonia School District*

Vo *Acton* (1995), where the court found such testing to be protected in public schools.

Vernonia, a small logging community in Oregon, adopted a district wide student drug policy which authorized drug testing at random for all student-athletes in the district. This policy was not adopted as a first-step measure to alleviate the drug problem in Vernonia's schools. Initially the district offered classes, speakers, and presentations on substance abuse, hoping to deter students from using drugs. These efforts failed, so the district looked to enact other measures. At a parent information meeting, the issue of compulsory drug testing was proposed, with unanimous support given to the district by the parents in attendance. As a result of this support, the district passed the Student Athlete Drug Policy.

The policy applied to all students who wished to participate in extracurricular athletics, requiring each participant and their parents to sign a written consent form allowing them to be tested. All athletes would be tested at the beginning of each season, with random testing occurring throughout the remaining season. Efforts were made to ensure that no test sample was intentionally tainted. Punishment for a failed test ranged ftom participation in an assistance program to suspension ftom athletics for up to two years, depending on the number of violations. The policy was enacted in 1989 and was challenged in 1991, where it eventually made its way to the Supreme Court.

In 1991, a seventh grade student in Vernonia signed up to play football, but was denied the ability to participate due to his and his parent's refusal to sign the consent form required by the Student Athlete Drug Policy. As a result of the denial, the family brought suit against the school district in a federal district court. The argument presented by the family was that their son's Fourth and Fourteenth Amendment liberties were being violated by the district. With regard to the Fourth Amendment,

the family felt that the compulsory drug testing violated the said amendment's guarantee of a right to privacy and freedom from unlawful searches and seizures. The Fourteenth Amendment violation was included in their claim because it extends the limitations of the Fourth Amendment to states and state officials.

In its first hearing, the district court denied the claims made by the family and dismissed the suit, ruling in favor of the school district. At the appellate level, this decision was reversed. The case then made its way to the Supreme Court, where the appellate decision was overturned.

The question before the court was whether or not mandatory drug testing for student-athletes in a public school violated the freedoms provided in the Fourth and Fourteenth Amendments. In the majority opinion written by Justice Scalia, the court addressed the role of a school in a student's life by stating, "(in) common law, and still today, unemancipated minors lack some of the most fundamental rights" and the decision in 7*:L.* 0. permitted "a degree of supervision and control that could not be exercised over free adults."[xxii]

Citing *Tinker,* once again the court confirmed that students in public schools do not check their rights at the door.[xxiii] Although, the court claimed, student-athletes subject themselves to a certain degree of supervision and regulation that may seem in violation of their constitutional rights. The court also noted that this subjugation on the part of student-athletes was voluntary, not mandated. Justice Scalia noted that "students who voluntarily participate in school athletics have reason to expect intrusions upon normal rights and privileges, including privacy.”[xxiv]

The court compared mandatory drug testing to other requirements necessary to be able to participate in athletics, such as physical examinations, proof of medical insurance, parent permission forms, minimum grade requirements, and any other expectations placed upon student-

athletes by the coach, athletic director, or school administration. With this justification, the court upheld the Vernonia policy as being both reasonable and constitutional.

It is important to note here that the decision of the court in this case only recognized the constitutionality and reasonableness of drug testing for students participating in interscholastic athletics. This left the door open for future questions regarding drug testing. In June of2002, the Supreme Court answered some of these questions in *Board of Education of Independent School District No.92 of Pottawatomie County* v. *Earls* where it upheld the constitutionality of drug testing for all extracurricular activities.

In this case, a school district in Tecumseh, Oklahoma adopted a policy requiring all middle and high school students who wished to participate in any extracurricular activities to consent to a drug test. The Student Activities Drug Testing Policy went a step farther than the policy issued in the Veronia school district, which only required drug testing for athletes. This policy applied to any extracurricular activities offered by the school district which were sanctioned by the Oklahoma Secondary Schools Activities Association. Consenting to the policy, students would have to take a drug test before participation in an activity began, throughout the course of the activity's season, and anytime during the season upon probable cause of a violation.

The policy was challenged by two students from the school district and their parents who were unwilling to subject themselves to drug testing, citing a violation of their Fourth Amendment freedom from unwarranted searches and seizures. They also claimed the policy violated the Fourteenth Amendment because it was being administered by the school district, an agent of the state. Their primary arguments regarding both violations was the district's lack of citing any actual need for testing students involved in extracurricular activities and their failure to prove

that a drug problem truly existed, as had been the case in *Vernonia,* warranting the policy.

In its initial hearing by the district court, the constitutionality of the drug testing policy was supported. On appeals, the decision was reversed and the policy was declared in violation of the Fourth Amendment. The case was then granted certiorari by the Supreme Court where the judgment of the appellate court was reversed.

In the majority opinion written by Justice Thomas, the court reiterated the right of students to be free from unreasonable searches and seizures. The question posed to the court was whether or not the school district's drug testing policy was reasonable. Citing both the decisions made in *Vernonia* and *T.L.O.*, Justice Thomas stated that the court had "previously held that 'special needs' inhere in the public school context," supporting the reasonable nature of the policy.[xxv]

In *Vernonia,* the court had argued that drug testing was similar to other medical examinations necessary to insure the safety and health of a student-athlete. The students involved in the *Earls* case contested its reasonableness on the grounds that the extracurricular activities they were wanting to get involved in required much less concern with regards to their safety and health. The court responded to this argument by citing the numerous other requirements and rules that these students had to abide by to participate which were not required of the other members of the district's student body. Similar to the responses provided in *Vernonia,* the court reiterated that the "regulation of extracurricular activities further diminishes the expectation of privacy among school children."[xxvi]

As students, and parents for that matter, become more aware of and concerned about their right to privacy and protection from unwarranted searches and seizures, it is essential for schools and administrators to be knowledgeable of how far they can go to maintain an appropriate educational environment. Though the *T.L.O.* decision provides

administrators with reasonable suspicion as a safeguard for schools when addressing Fourth Amendment situations, it fails to truly define what constitutes such a suspicion that warrants a search of student property or invasion of privacy.

Like *T.L.O.*, the *Veronia* and *Earls* cases provide very little assistance. Though the court ruled that drug testing for all extracurricular activities is constitutional, these cases still spark debate in many school districts across the country. The most important thing for an administrator to remember in these situations is not the rulings provided by the Supreme Court, but rather the culture and climate of the school district and area in which they work. A consideration of both can help an administrator make an appropriate choice for the situation they are in.

Punishment Cases (Fourteenth and Eighth Amendments)

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,' nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. "[xxvii]

"Excessive *bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted."*[xxviii]

It is a widely accepted fact that students are going to get in trouble. For administrators, this may be what occupies most of their time. Therefore, it is important to be aware of the rights of students as punishments need to be administered. Having a better understanding of the rights students maintain under both the Eighth and Fourteenth Amendment will not only protect administrators from possible legal struggles, it will ensure that students are provided the basic liberties guaranteed and protected by the Constitution.

The issue of due process and the Fourteenth Amendment came up earlier in the *Bethel* case. In revision, the court made clear in its decision that school districts have relatively broad capabilities of

administering punishment in order to maintain an effective learning environment. It was also in this decision that the court stated that the conduct and discipline codes of school districts need not be outlined as specifically as criminal codes for society in general. The court first addressed the issue of due process rights in schools nine years before the *Bethel* decision in *Goss* v. *Lopez* (1975).

In 1972, the state of Ohio passed a statute which provided free education for all students age five to twenty-one. Under the Tenth Amendment, which reserves powers to the states not granted to or expressly denied the federal government, the initial intention of the statute was constitutional. One section of the statute, which came under fire in *Goss*, provided the power to suspend students for up to ten days or expel them from school to public school principals. The only necessary action a principal needed to make under this statute was to notify students' parents of the suspension or expulsion within twenty-four hours, and provide them the reasons for either punishment.

Nine students that attended public schools in Columbus were suspended from school for up to ten days for misconduct. The primary plaintiff in this case, Dwight Lopez, was suspended due to his alleged involvement in a cafeteria incident which had lead to destruction of school property. According to Lopez, seventy- five students were suspended for their involvement in the incident, of which he claimed he was not one of the guilty culprits. No hearing was ever provided for Lopez and no record or testimony existed of the disturbance.

Lopez' situation was mirrored with respect to the other eight plaintiffs, who were in conjunction with each other in arguing that their Fourteenth Amendment rights had been violated. Their primary cause for legal action had been the failure of the Columbus public schools to provide them with hearings of any kind prior to their suspensions and deprival of their rights to an education under Ohio statutory law. This

argument was accepted in the initial hearing of the case before the district court. It then went before the Supreme Court.

In contesting the decision of the district court, the argument presented by the Columbus school district followed an ill- fated path. According to the district, because the Ohio statute providing for free public education fell under the context of a reserved power of the state by the Tenth Amendment, it subsequently must be considered a denied power of the federal government. Since it is denied, primarily by the fact that there is no mention in the Constitution of the power to maintain a public school system, the school district argued that a free public education is not a constitutionally protected guarantee. Under this argument, the school district was then free from providing basic civil liberties, including the right of due process in suspension cases, to their students.

In the majority opinion delivered by Justice White, the court rejected this argument and affirmed the lower court's decision. According to the court, the students who were suspended had "legitimate claims of entitlement to a public education."[xxix] The legal basis of these claims was the Ohio statute that provided free public education to all state residents within the required age bracket. Since the students' ages fell within the statutory range, they were entitled to such an education. Justice White stated that "although Ohio may not be constitutionally obligated to establish and maintain a public school system, it has nevertheless done so and has required its children to attend."[xxx]

Because of the state's decision to establish such a system and require mandatory attendance for students age five to twenty-one, it may not claim its autonomy from withholding guaranteed constitutional rights, such as the right of due process. Referring to the *Bethel* decision, the court acknowledged the authority and necessity of the state and school districts to establish and enforce broad codes of conduct, but clarified that these codes "must be exercised with constitutional safeguards."[xxxi]

In response to the court's rejection of their initial argument, the district's rebuttal proclaimed that even if the court's statements were true regarding due process in public education settings, the only way this could come into play was if the district grossly subjected a student to some sort of punishment. According to the district, the ten day suspensions did not warrant such kind of punishment. In response, the court proceeded to equate public education with property rights and interests, clarifying that it was not the magnitude of the punishment, meaning the withholding of property in the form of a right to a free pubic education, which really mattered. In support of the rights of students to substantive due process, Justice White stated "its gravity is irrelevant to the question whether account must be taken of the Due Process Clause."[xxxii]

The real importance of this case is not necessarily the decision of the court. Most educated administrators and managers of school districts would agree with the court's claim that education is a quasi-constitutional guarantee. In so doing, they would also acknowledge that due process is an essential component of any situation necessitating a suspension or expulsion from school, regardless of whether or not they agree with the property claim initiated by the court. The real importance of this case lies in the process outlined by the court in its decision with regards to suspensions.

According to the court, the appropriate procedural due process requirements for a suspension up to ten days are that students be given either written or oral notification of the charges against them, and if there is a denial of these charges, they be permitted a hearing with no necessary delay (widely accepted as a ten-day period).[xxxiii] If administrators simply follow these procedures, they will protect themselves from violating their students' rights of due process of law pertaining to suspensions up to ten days.

It is important to note that the *Goss* decision only addressed suspensions up to ten days. With regards to suspensions more than ten days and expulsions, the court acknowledged that these "may require more formal procedures."[xxxiv] The most commonly accepted procedures in these instances would be to provide the student with action-specific written notification in a timely fashion, the right to counsel, the right to avoid self-incrimination as guaranteed by the Fifth Amendment, and the right to cross examine any witnesses against them.

Suspensions and expulsions are probably the two most common types of punishments prescribed to students by administrators, though they are not the only ones. In 1977, a case came before the Supreme Court dealing with corporal punishment in a public school. The case, *Ingraham* v. *Wright,* is considered the landmark case in defining what is or is not acceptable behavior by administrators when enacted forms of punishment that may boarder on violating the Eighth Amendment's Cruel and Unusual Punishment Clause.

In 1971, two junior high students from Dade County, Florida were subjected to corporal punishment in the form of paddling. James Ingraham, an eighth grader at the time, was punished for not leaving the auditorium in a timely fashion, at which time he was subjected to several strikes with a paddle by the principal, Willie Wright. As a result of the paddling Ingraham made several trips to the hospital, where he was diagnosed as having severe bruises, and was prescribed a rest period at home and various pills for discomfort. Ingraham was not the only student who had been subjected to paddling by the school administration.

The corporal punishment that was issued in this case was supported by both a Florida statute and school district policy, as long as it did not degrade students or was excessively severe in nature. In fact, at that time, more than two-hundred schools in Florida were administering some form of corporal punishment as a means of maintaining a disciplined school

environment. The family of James Ingraham, and other students subjected to such punishment, filed a petition with the district court in January of 1971. Their primary argument was that the corporal punishment they were subjected to, due to its severity, violated their Eight Amendment rights.

At the district level, and at the appellate level, the actions filed by the petitioners were dismissed. The courts found no constitutional violations had occurred, even though the evidence presented at the trial showed the severity of punishment administered. The case was then appealed to the Supreme Court.

There were two questions the court faced in hearing this case. The first question was whether paddling, as a means of corporal punishment issued with the intention of maintaining a disciplined school environment, violated the Eight Amendment's Cruel and Unusual Punishment Clause. The second question, relevant only if paddling was not a violation of constitutional rights, was whether or not students had the right to be notified and to be heard prior to the administration of the punishment. For both questions, the answer of the court was no.

In the majority decision, written by Justice Powell, the court answered the first question by focusing on two things. The first was the concept of corporal punishment as common law. Here the court stated that "the use of corporal punishment in this country as a means of disciplining schoolchildren dates back to the colonial period" and currently twenty-one states "have authorized the moderate use of corporal punishment in public schools."[xxxv] The court used this acceptance of corporal punishment, both historically and contemporarily, as a foundation for its second focal point.

The second focal point was whether or not corporal punishment, though supported as common law, actually fell under the constitutional protection from cruel and unusual punishment provided by the Eighth Amendment. Here the court reviewed the Eighth Amendment and subsequent

cases involving it, finding that traditionally, the clauses contained in the amendment primarily dealt with criminal proceedings. According to Justice Powell, "bails, fines, and punishment traditionally have been associated with the criminal process" and the constitutional guarantees from the administration of such "does not apply to the paddling of children as a means of maintaining discipline in public schools."[xxxvi]

In rebuttal, the petitioners agreed to accept the court's statement, but suggested that a ban on corporal punishment in schools should be a corollary to the Eighth Amendment's prohibition of cruel and unusual punishment. The basis of their argument was the lack of foresight by the authors of the Constitution; there was no way they could have been able to foresee the growth of the American educational system, nor the constitutional questions that would emerge over time as a result. The court found this to be an inadequate reason for "wrenching the Eighth Amendment from its historical context and extending it to traditional disciplinary practices in the public schools."[xxxvii]

Because the court ruled that paddling in public schools was not a violation of students' constitutional rights, it was necessary for it to answer the question regarding the Fourteenth Amendment. The petitioners argued that because corporal punishment was administered by the principal without any kind of hearing or opportunity for them to voice their side, a violation of their due process rights had occurred. The question before the court was what procedural due process rights were available to these students under the Fourteenth Amendment and Florida law.

In answering this question for the majority of the court, Justice Powell reaffirmed the right of students to be provided substantial procedural safeguards when being punished in school. The court obviously wanted to avoid a federal versus state confrontation, for it attacked its own reaffirmation of this right by focusing strictly on the common-law practices of Florida. Under this guise, the court claimed that Florida had

traditionally supported the practice of corporal punishment in schools, therefore its constitutionality should no be questioned. The only direction the court provided in its answer was that the punishment administered should not be severe. If so, the court acknowledged the subjected student's right to seek both civil and criminal sanctions. Hammering this point home, Justice Powell stated, "the Fourteenth Amendment's requirement of procedural due process is satisfied by Florida's preservation of common- law constraints and remedies."[xxxviii]

The answers provided by *Goss* and *Ingraham* are vague for administrators. In *Goss,* there is an acknowledgement by the court of the right of procedural due process when subjecting students to a suspension from school. In *Ingraham,* where the punished were subjected to paddling without any such hearing, the court claimed that the procedural due process provided the students was satisfactory under Florida law. The court has hidden under the protection of the Tenth Amendment and left the decision regarding corporal punishment in schools up to each state. This is the key for administrators--to be aware of the statutes of their state and the policies of their district. By being learned of both of these, administrators will be better able to make decisions necessitating punishment without violating the constitutional rights of students.

Conclusion

Thomas Jefferson wrote that "the most sacred of the duties of the government (is) to do equal and impartial justice to all its citizens."[xxxix] It has been clearly defined by the Supreme Court that students are citizens and their rights do not abruptly halt when they walk through the doors of a school. Therefore, they must be provided, according to Mr. Jefferson, both equal and impartial justice. As agents of the state, lured into compliance of constitutional guarantees by the Fourteenth Amendment, school districts and administrators are included

within the scope of Thomas Jefferson's claim as the providing party of such justice.

Few administrators would fail to acknowledge and accept their duty to protect the rights of their students. This is not the concern. The real issue is whether or not administrators understand how to protect these rights. Hopefully, an analysis of some of the more major court cases decided upon during the last forty years will assist administrators in becoming more educated as to how. This, plus an understanding of state statutes, district policies, and school culture and climate will help administrators make decisions that provide protection from constitutional violations.

Jefferson also wrote, "Above all things I hope the education of the common people will be attended to, convinced that on their good sense we may rely with the most security for the preservation of a due degree of liberty."[xl] In order to appropriately educate the people, preservation and protection of liberty must be afforded to those being educated. Only then will this cycle be complete.

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[i] PATRICIA H. HINCHEY, STUDENTS RIGHTS: A REFERENCE HANDBOOK 4-9 (2001).
[ii] 1 *id.* at 8.
[iii] 2 *id.* at 9.
[iv] U.S. CONST. amend. I.
[v] Engel v. Vitale, 370 U.S. 421 (1962).
[vi] *Id.*
[vii] *Id.*
[viii] Lee v. Weisman, 505 U.S. 577 (1992).
[ix] *Id.*
[x] Santa Fe v. Doe, 530 U.S. 290 (2000).
[xi] *Id.*
[xii] Lemon v. Kurtzman, 403 U.S. 602 (1971).
[xiii] West Virginia v. Barnette, 319 U.S. 624 (1943)
[xiv] Tinker v. Des Moines, 393 U.S. 503 (1969).
[xv] Bethel v. Fraser, 478 U.S. 675 (1986).
[xvi] New Jersey v. T .L.O., 469 U.S. 325 (1985).
[xvii] *See Bethel v. Fraser,* 478 U.S. 675.
[xviii] Hazelwood v. Kuhlmeier, 484 U.S. 260 (1988).
[xix] U.S. CONST. amend. IV.

[xx] *See New Jersey v. TL.O.,* 469 U.S. 325.
[xxi] *Id.*
[xxii] Vernonia v. Acton, 515 U.S. 646 (1995).
[xxiii] *See Tinker v. Des Moines,* 393 U.S. 503.
[xxiv] *See Vernonia v. Acton,* 515 U.S. 646.
[xxv] Board of Ed. v. Earls. 242 F.3d 1264 (2002)
[xxvi] *Id.*
[xxvii] U.S. CONST. amend. XIV.
[xxviii] U.S. CONST. amend. VIII.
[xxix] Goss v. Lopez, 419 U.S. 565 (1975).
[xxx] *I d.*
[xxxi] *Id.*
[xxxii] *Id.*
[xxxiii] *Id.*
[xxxiv] *Id.*
[xxxv] Ingraham v. Wright, 430 U.S. 651 (1977).
[xxxvi] *Id.*
[xxxvii] *Id.*
[xxxviii] *Id.*
[xxxix] THE WRITINGS OF THOMAS JEFFERSON 574 (Henry Washington ed., Washington, D.C. 1854) (1816).
[xl] William J. Wagner, *Selected Jefferson Quotations,* (Sept. 1989) EDUCA TION>.